

THOMAS J. MILLER  
ATTORNEY GENERAL



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ERIC TABOR  
CHIEF DEPUTY ATTORNEY GENERAL

IOWA DEPARTMENT OF JUSTICE  
OFFICE OF THE ATTORNEY GENERAL

June 9, 2017

William Gustoff  
State Central Committee Member  
Republican Party of Iowa  
621 East Ninth Street  
Des Moines, IA 50309

Dear Mr. Gustoff:

Please find enclosed a disk with records which are responsive to your public records request dated May 3, 2017 (enclosed). The response was made in accordance with our discussions which narrowed the scope of the request. (Email string enclosed.)

The following materials have been withheld:

- 18 email strings have been withheld because they constitute attorney work product which is confidential under Iowa Code section 22.7(4) and case law.
- 5 email strings are being withheld because they constitute attorney work product which is confidential under Iowa Code section 22.7(4), case law, and a common interest agreement.
- 27 email strings are being withheld because they are attorney/client communications which are confidential under Iowa Code section 622.10, case law, and the Rules of Professional Conduct.
- 1 email string has been redacted because it is a confidential settlement communication under Iowa Code section 22.7(18).

None of the documents withheld, nor redactions made, relate to gubernatorial succession.

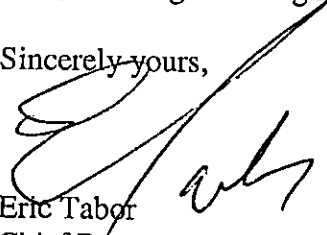
Draft documents, including all drafts of attorney general opinions concerning gubernatorial succession, have been produced. However, this Office is not establishing a precedent with respect to draft attorney general opinions and does not waive its right to consider withholding draft attorney general opinions in the future. Iowa Code section 22.7(65) is certainly less than clear and has not been interpreted by the courts.



William Gustoff  
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Although the review and production of these records consumed a considerable amount of time, no charge is being imposed.

Sincerely yours,



Eric Tabor  
Chief Deputy

Enc.



May 3, 2017

**To:** Attorney General Tom Miller, Jeffrey Thompson, Meghan Gavin, David Ranscht, and any assistant, deputy, paralegal, or secretary working with any of these individuals who participated in the research, preparation, drafting, or editing of the opinions released by the Attorney General's Office between December 7, 2016, and May 2, 2017, including any lawful custodian of these records.

Please consider this a formal request, pursuant to the Iowa Open Records Law, for access to, but not copies of, all documents, including but not limited to memos, letters, text messages and e-mails from November 1, 2016, through May 2, 2017, regarding:

- All documents regarding Laurie Belin, Bleeding Heartland, or desmoinesdem@yahoo.com.
- All documents sent to or from current or former employees of the Iowa Democratic Party.

All correspondence sent between the Office of the Attorney General and Senator David Johnson between December 7, 2016, and May 2, 2017.

All correspondence sent between the Office of the Attorney General and Senator Rob Hogg between December 7, 2016, and May 2, 2017.

All correspondence sent between the Office of the Attorney General and Gary Dickey between December 7, 2016, and May 2, 2017.

All correspondence sent between the Office of the Attorney General and Bill Brauch between December 7, 2016, and May 2, 2017.

All correspondence sent between the Office of the Attorney General and Marty Ryan between December 7, 2016, and May 2, 2017.

All correspondence sent between the Office of the Attorney General and Mark Lambert between December 7, 2016, and May 2, 2017.

All correspondence sent between the Office of the Attorney General and members of the Democrat House and Democrat Senate Caucus staff from December 7, 2016, through May 2, 2017 regarding Gubernatorial Succession, Kim Reynolds, Lt. Governor, Terry Branstad, powers and duties of the Governor devolving upon the Lt. Governor, legislator request of formal opinion regarding succession.



(Page 2)

All correspondence sent among Jeff Thompson, Eric Tabor, Geoff Greenwood, Kevin McCarthy, Nathan Blake, Rob Sand, John McCormally, Meghan Gavin, and David Ranscht from December 7, 2016, and May 2, 2016, related to Gubernatorial succession, Kim Reynolds, Lt. Governor, Terry Branstad, powers and duties of the Governor devolving upon the Lt. Governor, legislator request of formal opinion regarding succession.

All emails sent to or received by Jeff Thompson, Eric Tabor, Geoff Greenwood, Kevin McCarthy, Nathan Blake, Rob Sand, John McCormally, Meghan Gavin and David Ranscht from December 7, 2016 through May 2, 2017.

This request pertains to the Attorney General's Office, including the Office of Consumer Protection.

Note that this request is NOT specific to emails sent via state-managed email accounts. If some relevant communications were handled through the private e-mail accounts of the listed individuals, we fully expect those to be released as well.

For each redaction or withheld record, please cite the specific statutory basis on which the information is being kept confidential.

Note, this request includes all drafts. Iowa Code section 22.7(65) states, "tentative, preliminary, draft, speculative, or research material, prior to its completion for the purpose for which it is intended and in form prior to the form in which it is submitted for use or used in the actual formulation, recommendation, adoption, or execution of any official policy or action by a public official authorized to make such decisions for the governmental body or the government body. This subsection shall not apply to public records that are actually submitted for use or are used in the formulation, recommendation, adoption, or execution of any official policy or action of a governmental body or a government body by a public official authorized to adopt or execute official policy for the governmental body or the government body. Because Attorney General Miller completed his Formal Opinion on May 1, 2017, Iowa Code Section 22.7(65) is not applicable and all drafts are to be released.

Also, if there is a charge or fee for access to these documents, please provide us with advance notice of any proposed fee, along with a detailed cost estimate that serves as the basis for that fee.

Please let me know where and when I can review the requested documents. Thank you for your assistance.

Respectfully,

William Gustoff  
State Central Committee Member  
Republican Party of Iowa

## **Tabor, Eric [AG]**

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**From:** William Gustoff <wgustoff@whgllp.com>  
**Sent:** Monday, May 22, 2017 1:43 PM  
**To:** Tabor, Eric [AG]  
**Cc:** Chad Olsen  
**Subject:** Re: RPI FOIA Questions

Mr. Tabor,

Thank you for your email of May 15, 2017 (included below) seeking further clarification of our FOIA request regarding the gubernatorial succession opinion issued by Attorney General Tom Miller. In response to your questions (using the numbers indicated in your email):

1. I assume by use of the term "attorney work product" you are referring to Iowa Code Section 22.7(4), which provides confidentiality for "[r]ecords which represent and constitute the work product of an attorney, which are related to litigation or claim made by or against a public body." Unless you are referring to another code section or some other exception to the examination of public records under Iowa Code Chapter 22, I fail to see how Iowa Code Section 22.7(4) applies to any of the records we have requested.

It is not enough that the records are merely "the work product of an attorney," since that could apply to virtually any record of the Office of the Attorney General and render the entirety of Chapter 22 a nullity with regard to your office. To qualify for the attorney work product exception, a record must also be "related to litigation or claim...by or against a public body." That does not appear to be the case here. For any record you do claim to be exempt under Section 22.7(4), please specify the "litigation or claim" to which the record is related to qualify for the exemption.


Thus, with the forgoing analysis and conclusion, I do not think we can narrow our request further than the response we gave to your first request to narrow it, to which we responded in an email from Chad Olsen on May 15, 2017, at about 2:08 pm (also included below).

2. As stated in our reply from Chad Olsen on May 15, 2017, at about 2:08 pm, to your previous request for clarification and narrowing of our request, we have no way of knowing who in your office may have been communicating with the Iowa Democratic Party, the Democrat caucus staffs, Senator David Johnson, Senator Robb Hogg, Gary Dickey, Bill Brauch, Marty Ryan, or Mark Lambert. So, to be clear, we do want the search for those documents to be office-wide and to include all of those parties.

Thank you for your prompt attention to our request. Please contact Chad Olsen or me if you have any further questions.

Sincerely,

Bill Gustoff  
Treasurer, Republican Party of Iowa

**WHITAKER HAGENOW  
& GUSTOFF LLP **

**William R. Gustoff**

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**From:** "Tabor, Eric [AG]" <Eric.Tabor@iowa.gov>  
**Date:** Monday, May 15, 2017 at 5:29 PM  
**To:** Chad Olsen <chad@iowagop.org>  
**Cc:** William Gustoff <wgustoff@whgllp.com>, "Greenwood, Geoff [AG]" <Geoff.Greenwood@iowa.gov>, "Thompson, Jeffrey [AG]" <Jeffrey.Thompson@iowa.gov>, "Blake, Nathan [AG]" <Nathan.Blake@iowa.gov>  
**Subject:** RE: RPI FOIA Questions

Chad - Thank you for the email and your willingness to narrow the search for the materials you want. Some questions:

- (1) With respect to the second paragraph on page 2, I indicated that narrowing the search to the search terms "governor", "Lt. Governor", "Branstad", "Kim Reynolds", or "succession" reduced the number of emails from about 28,000 to about 1,000. In reviewing these 1,000 emails, many matters unrelated to the gubernatorial succession pop up. A good number of these matters are attorney work product and would be withheld. We did a search only using the search word "succession" and that search yielded about 250 emails. If you would prefer the narrower search using "succession", please let me know.
- (2) I am unclear whether you want the search for documents relating to the Iowa Democratic Party, the Democrat caucus staffs, and Laurie Belin to include the entire Office or just the individuals named in your request. Your point # 3 implies the office-wide search only applies to Johnson, Hogg, Dickey, Brauch, Ryan and Lambert.

Thank-you for the clarifications. Eric



**Eric Tabor**  
**Chief Deputy Attorney General**  
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**From:** Chad Olsen [mailto:chad@iowagop.org]  
**Sent:** Monday, May 15, 2017 2:08 PM  
**To:** Tabor, Eric [AG]  
**Cc:** William Gustoff  
**Subject:** Fwd: RPI FOIA Questions

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Eric,

Thank you for your call seeking clarification on our FOIA request regarding the gubernatorial succession opinion. After speaking with Mr. Gustoff, we have the following clarifications that we hope will facilitate the request and help your office better focus its search for the requested materials:

1. In the second paragraph on Page 2, we ask for all emails sent to/received by the listed individuals. You asked if we wanted all emails, or just those pertaining to the listed search terms. Please provide only the emails pertaining to the listed search terms for those individuals.
2. You expressed concern about complying with supplying all documents related to all past or current employees of the Iowa Democratic Party. Please provide any emails to or from (i) persons with the email extension "@iowademocrats.org"; and (ii) any persons employed or retained on contract by the Iowa Democratic Party in 2016 or 2017, including, but not limited to the following named individuals: Ben Foecke, Andy McQuire, Kevin Geiken, Derek Eadon, Danny Homan, Monica Biddix, Julianne Klampe, Andrew Nelson, Sean Hering, Adam Beaves, Zach Engstrom, Mike Frosolone, Jacob Becklund, Seth Cohen.
3. Regarding communication between the Office of Attorney General and Senator David Johnson, Senator Robb Hogg, Gary Dickey, Bill Brauch, Marty Ryan, and Mark Lambert, we have no way of knowing the individuals within your office with whom they may have been communicating. Therefore, although we would like to be able to narrow our request on this item, we must stick with our position that all individuals in the Office of Attorney General be included in the request.

If you have any further questions, please do not hesitate to call or email.

Thank you,



Chad

Chad F. Olsen

**Republican Party of Iowa**

Executive Director

515-282-8105 [office]

641-757-2491 [cell]

<http://www.iowagop.org>

*Paid for by the Republican Party of Iowa and not authorized by any candidate or candidate committee*

Case / AG Opinion	Become Governor?	New Lieutenant Governor / Vacancy in Lower Office?
<p><i>Chadwick v. Earhart</i>, 4 P. 1180 (Or. <b>1884</b>)</p>	<p><b>Yes.</b> "It is not explained how . . . a person can fill the office of governor without being governor."</p>	<p>Court suggested the next person in line would not retain their former position because "there is no constitutional implication that both offices shall be held together."</p> <p>(By contrast, we have a provision allowing some incompatibility as provided in the constitution.)</p>
<p><i>State ex rel. Sadler v. La Grave</i>, 45 P. 243 (Nev. <b>1896</b>)</p> <p>(governor died)</p>	<p><b>No</b></p>	<p>N/A—case was about drawing two salaries</p>
<p><i>People ex rel. Lynch v. Budd</i>, 45 P. 1060 (Cal. <b>1896</b>)</p> <p>(lieutenant governor died, governor appointed replacement)</p>	<p><b>No</b></p>	<p><b>No.</b></p>
<p><i>State ex rel. Hardin v. Sadler</i>, 47 P. 450 (Nev. <b>1897</b>)</p> <p>(same facts as previous Nevada case—governor died. Candidate for lt. gov. at next election sued to be placed into that office.)</p>	<p><b>No.</b></p>	<p><b>No.</b></p>
<p><i>State v. Heller</i>, 42 A. 155 (N.J. <b>1899</b>)</p> <p>(governor resigned)</p>	<p><b>No</b></p>	<p><b>No</b></p>



<p><i>State ex rel. Murphy v. McBride</i>, 70 P. 25 (Wash. <b>1902</b>)</p> <p>(governor died)</p>	<p>Not really addressed—although court said there was no governor vacancy, so <b>possibly a “yes.”</b></p>	<p><b>No.</b></p>
<p><i>State ex rel. Chatterton v. Grant</i>, 73 P. 470 (Wyo. <b>1903</b>)</p> <p>(governor died—question of whether replacement could receive two salaries)</p>	<p><b>Yes</b>, although court stated this question was not material to the salary question—and then stated it was possible the person is not governor “in a strictly technical sense”</p>	<p>Not raised—but if he’s collecting two salaries that implies no vacancy. (Our constitutional provision about receiving the governor’s salary suggests a different result in our case.)</p>
<p><i>Futrell v. Oldham</i>, 155 S.W. 502 (Ark. <b>1913</b>)</p> <p>(governor resigned)</p>	<p><b>No.</b> The constitution did not provide “that the president of the senate shall succeed to the office of Governor; nor that the office itself shall devolve upon him.”</p>	<p><b>No</b>—relying in part on a provision that “speaks of a vacancy in the office of the Governor whilst the president of the senate is performing the duties thereof.”</p> <p>(This suggests if there is a vacancy at all, it remains at the top of the pyramid.)</p>
<p><i>Olcott v. Hoff</i>, 181 P. 466 (Or. <b>1919</b>)</p> <p>(governor died, secretary of state was next in line)</p>	<p><b>Yes</b>—partially by reliance on federal constitution, which at the time used “devolve.”</p>	<p>N/A, because lieutenant governor position did not exist</p>
<p><i>Fitzpatrick v. McAlister</i>, 248 P. 569 (Okla. <b>1926</b>)</p> <p>(governor impeached and removed from office—question whether successor could be elected governor at next election and thereby “succeed himself”)</p>	<p><b>Yes</b></p>	<p>Not addressed</p>

<p><i>State ex rel. Lamey v. Mitchell</i>, 34 P.2d 369 (Mont. <b>1934</b>)</p> <p>(governor resigned)</p>	<p><b>Yes</b>, because there is no vacancy in the office of Governor</p>	<p><b>No</b></p>
<p><i>State ex rel. Sathre v. Moodie</i>, 258 N.W. 558 (N.D. <b>1935</b>)</p> <p>(Governor who was elected actually did not qualify as a ND resident.)</p>	<p><b>No.</b> The court referred to the lieutenant governor as “Acting Governor for the residue of the term.”</p>	<p>Not addressed</p>
<p><i>State ex rel. Martin v. Ekern</i>, 280 N.W. 393 (Wis. 1938)</p> <p>(lieutenant governor resigned)</p>	<p><b>No.</b></p>	<p><b>Yes</b>, under these circumstances (when governor remained)</p>
<p>Michigan AG Opinion (Mar. 28, <b>1939</b>)</p> <p>(governor died)</p>	<p><b>Yes</b></p>	<p><b>No</b>—which is the “most approved view”</p>
<p><i>State ex rel. Martin v. Heil</i>, 7 N.W.2d 375 (Wis. <b>1942</b>)</p> <p>(governor-elect passed away between election and inauguration)</p>	<p>Vacancy at inauguration “results in the devolution of the powers and duties upon the lieutenant-governor”</p>	<p><b>No.</b> Because the powers and duties devolved, a special election could not be held to elect a new governor. (Supports the merger theory in some respects.)</p>
<p>Ohio AG Opinion (Feb. 3, <b>1947</b>)</p> <p>Question presented: what happens when the governor-elect passes away between the election and the inauguration?</p>	<p>The lt. gov. elected at the same time does not become governor, because the Constitution must provide the exclusive answer to the question and the term “governor” does not include governor-elect.</p>	<p>N/A</p>
<p><i>State ex rel. De Concini v. Garvey</i>, 195 P.2d 153 (Ariz. <b>1948</b>)</p> <p>(governor died)</p>	<p><b>No.</b></p>	<p><b>No.</b></p>



<p><i>Thomas v. State Bd. of Elections</i>, 124 S.E.2d 164 (N.C. <b>1962</b>)</p> <p>(governor remained but lieutenant governor passed away)</p>	<p>N/A</p>	<p><b>No.</b> The state constitution fixed the succession order for executive power, “thereby withholding from the Governor the power to name his potential successor.” <i>Id.</i> at 168.</p>
<p>Michigan AG Opinion (Apr. 22, <b>1968</b>)</p> <p>(asked if governor resigns, can the office of lt. gov. be filled by appointment?)</p>	<p><b>Yes</b>—although not using “devolve”</p>	<p><b>No.</b> The constitution intends that a lt. gov. vacancy remain unfilled.</p>
<p>1977 Idaho Op. Att’y Gen. 51 (Jan. 4, <b>1977</b>)</p> <p>(Governor’s resignation to become Secretary of the Interior was imminent)</p>	<p>Uncertain, based on “substantial case law interpreting constitutional provisions virtually identical in wording to Idaho’s which conclude that . . . the lieutenant governor <i>never</i> truly succeeds to the office of governor.”</p>	<p>Uncertain, based on answer to first question—and especially based on comparison of language, including the verb “devolve.”</p> <p>However, opines that logic dictates a replacement; otherwise, “we are short one key person.”</p>
<p><i>Bryant v. English</i>, 843 S.W.2d 308 (Ark. <b>1992</b>)</p> <p>(governor resigned)</p>	<p><b>Yes</b></p>	<p><b>Yes</b>, by special election</p>
<p>Michigan AG Opinion (May 18, <b>1995</b>)</p> <p>(asked about validity of statute providing that senate shall appoint a new lt. gov. if a vacancy occurs or the lt. gov. succeeds to the office of governor)</p>		<p><b>No.</b> The constitution provides the exclusive mode of filling vacancies in the office of lt. gov.</p>

<p><i>In re Advisory Opinion to the Governor</i>, 688 A.2d 288 (N.H. <b>1997</b>)</p> <p>(lieutenant governor resigned)</p>	<p>N/A</p>	<p>Governor has power to appoint a new lt. gov. under general appointment authority unless the legislature specified otherwise.</p> <p>One justice dissented, contending that general appointment authority did not apply because the performance of lt. gov. duties was otherwise specified in the constitution.</p>
<p>Utah AG Opinion (Aug. 18, <b>2003</b>)</p> <p>(what happens when governor resigns?)</p>	<p><b>Yes</b></p>	<p><b>Yes</b>—based on constitutional amendment that was presented to the people as mirroring the federal 25<sup>th</sup> Amendment</p>
<p><i>Skelos v. Paterson</i>, 915 N.E.2d 1141 (N.Y. <b>2009</b>)</p> <p>(governor resigned)</p>	<p><b>Yes</b>, based on express constitutional language using the word “become”</p>	<p><b>Yes</b>, using a catchall statute the legislature enacted pursuant to a constitutional directive to provide for filling vacancies</p> <p>The court concluded there could be no reasonable dispute that a lt. gov. vacancy existed.</p>

**The supreme executive power of this state shall be vested in a chief magistrate, who shall be styled the governor of the state of Iowa. Iowa Const. art. IV, § 1.**

Do other states have similar provisions?

Yes, materially identical ("a chief magistrate")	No provision	No—power vested in <i>the</i> governor	No—power vested in <i>a</i> governor
Alabama	Arizona	Alaska	Delaware
Arkansas	Minnesota	California	Florida
Kentucky	Vermont (enumerates governor's powers and expressly says Lt. Gov. is empowered to perform them "in the governor's absence")	Colorado	Hawaii
Massachusetts: "There shall be a supreme executive magistrate, who shall be styled, the governor of the Commonwealth of Massachusetts . . . ."		Connecticut	Indiana
Nevada		Georgia	Kansas
Oklahoma		Idaho	Maine
South Carolina		Illinois	Maryland
		Louisiana: "The governor shall be the chief executive officer of the state."	Mississippi
		Michigan	Missouri
		Montana	New Jersey



		Nebraska	Oregon
		New Mexico	Rhode Island
		New York	Tennessee
		North Carolina	Virginia
		North Dakota	Washington
		Ohio	Wisconsin
		Pennsylvania	Wyoming
		South Dakota	
		Texas (just provides that governor shall be chief executive officer of the state)	
		Utah	
		West Virginia	

New Hampshire is not included in the table above because it has a hybrid provision: "There shall be a supreme executive magistrate, who shall be styled the Governor of the State of New Hampshire, and whose title shall be His Excellency. The executive power of the state is vested in the governor." N.H. Const. pt. 2, art. 41. Perhaps it fits in the "vested in *the* governor" category. Massachusetts might fall along the same lines.

“Devolve” only (or equivalent) (not including Iowa)	“become” or “succeed” only (re: resignation)	Distinction	Language has changed
Arkansas—but in that state, “devolve” has been held to mean that the lieutenant governor nonetheless becomes governor. <i>See Bryant v. English</i> , 843 S.W.2d 308, 309 (Ark. 1992).	North Dakota— “shall succeed to the office”	Alabama	U.S. Const.
Idaho	Oregon—“shall become governor”	Alaska	Arizona—formerly used only “devolve” but now distinguishes between permanent and temporary vacancies.
Kentucky—“shall exercise all the power and authority appertaining to the office”	Rhode Island—“shall fill the office”	Colorado	California—formerly used only “devolve” but now distinguishes between permanent and temporary vacancies.
Massachusetts— “perform all the duties”		Connecticut	Florida—formerly used only “devolve” but now distinguishes between permanent and temporary vacancies.
Nevada—a vacancy means the lieutenant governor “remains lieutenant governor, but invested with the powers and duties of governor.” <i>State v. Sadler</i> , 47 P. 450, 450 (Nev. 1897).		Delaware—powers and duties that devolve means the Lt. gov.’s office “shall become vacant,” but no vacancy occurs if the Lt. gov. “is acting as Governor during a temporary disability of the Governor.”	Michigan—a 1940 AG opinion discusses “devolve” but the Michigan Constitution now distinguishes between permanent and temporary vacancies.
New Hampshire— confers the title of “acting Governor.”		Georgia	Montana—formerly used only “devolve” but now distinguishes between permanent and temporary vacancies.

Oklahoma—but in that state, “the office” devolves, not just the powers and duties. A court decision has concluded that the successor actually becomes governor. <i>Fitzpatrick v. McAlister</i> , 248 P. 569, 572–73 (Okla. 1926).		Hawaii	New Jersey—formerly used just “devolve” but now distinguishes between permanent vacancy and temporary disability
Tennessee		Illinois	Utah—formerly used “devolve” and a 2003 AG opinion concluded “devolve” means the lieutenant governor actually becomes governor. Nonetheless, the Utah Constitution was amended after 2003 and now distinguishes between permanent vacancies and temporary disabilities
Vermont—uses “act as Governor” and “exercising the office”		Indiana	
Washington  A court decision concluded when the governor dies, “there is no vacancy in the office of governor.” <i>State v. McBride</i> , 70 P. 25, 26 (Wash. 1902).		Kansas	
West Virginia—“act as governor”		Louisiana	
		Maine	
		Maryland	
		Minnesota	



		Mississippi—when vacancy is permanent, “the Lieutenant Governor shall possess the powers and discharge the duties of the office.” When vacancy is temporary, lieutenant governor only discharges duties.	
		Missouri	
		Nebraska	
		New Mexico	
		New York	
		North Carolina	
		Ohio	
		Pennsylvania	
		South Carolina	
		South Dakota	
		Texas	
		Virginia	
		Wisconsin	

TOTALS

“Devolve” or equivalent 12 (13 including Iowa)

- 2 of those states (AR/OK) have court decisions concluding “devolve” still confers the office
- Oklahoma is potentially distinguishable because there, “the office” devolves, not just the powers and duties
- 3 of those states (NV/WA/WY) have court decisions concluding it doesn’t

“Shall become:” 3

Distinction between permanent vacancy and temporary disability: 27

Changes from “devolve” to distinguish between permanent vacancy and temporary disability: 7 (AZ/CA/FL/MI/MT/NJ/UT)

- 1 of those states (UT) features an AG opinion concluding “devolve” still confers the office, but the state constitution was nonetheless amended to be clearer
- 6 of those states (AZ/CA/FL/MI/MT/NJ) have court decisions concluding “devolve” doesn’t confer the office and the constitution has since been amended.

OVERALL: 13 “devolve” (including IA); 3 “shall become;” 34 distinctions.

[DRAFT]

The Honorable David Johnson  
State Senator  
PO Box 279  
Ocheyedan, Iowa 51354

Dear Senator Johnson:

Thank you for your letter of February 1, 2017. Your letter references Governor Terry Branstad's recent nomination to serve as United States Ambassador to China and poses nine specific questions about the effect of his potential resignation as Governor of Iowa. We agree that your letter raises important legal questions about Iowa's constitutional framework for the succession of executive power. This office has not previously addressed these questions directly, nor has the Iowa Supreme Court. Thus, we believe they are appropriately addressed in an official opinion of the Attorney General under Iowa Code section 13.2(e).

We share your belief that these important issues require a thoughtful and detailed analysis. Taken as a whole, the nine questions you pose implicate two central constitutional questions. Those two important questions of law are:

First question: If the governor resigns, does the lieutenant governor become governor?

Second question: If the lieutenant governor becomes governor, may she then appoint a new lieutenant governor?

The answers to these questions must flow from a careful consideration of the succession framework set forth in the words and structure of the Iowa constitution. *See Rudd v. Ray*, 248 N.W.2d 125, 129 (Iowa 1976) ("The framers of our constitution necessarily gave us their ideas in the words they agreed upon."). The debates of the 1857 constitutional convention also shed important light on the meaning and intent of the constitutional provisions establishing that framework. *See N. W. Halsey & Co v. City of Belle Plaine*, 104 N.W. 494, 496 (Iowa 1905) (noting that reading the constitutional debates may aid in a fuller understanding of constitutional provisions). Finally, our answers can and should be informed by interpretations of the same or similar provisions in other states' constitutions. *See Van Horn v. City of Des Moines*, 191 N.W. 144, 148 (Iowa 1922) (considering "similar provisions in the Constitution[s] of other states" to decide an issue of first impression).

## I. Background

We first provide context for the legal questions by identifying the relevant constitutional provisions, examining portions of the 1857 constitutional convention, and noting historical practice both in Iowa and on the federal level.

**A. Constitutional Provisions.** Article IV of the Iowa Constitution establishes the executive branch and sets forth a framework for the succession of executive power. Some provisions of article IV have been amended since 1857, but we initially focus on the original provisions because those established the original framework. In doing so, we consider *all* the original executive branch provisions without placing undue significance on one section. See *Rolfe State Bank v. Gunderson*, 794 N.W.2d 561, 565 (Iowa 2011) (“[W]e avoid placing undue importance on isolated portions of an enactment by construing all parts of the enactment together.”). We also remain mindful not to render any provision meaningless or redundant. See Iowa Code § 4.4(2) (2017) (presuming every piece of language is intended to be effective); *Mall Real Estate, L.L.C. v. City of Hamburg*, 818 N.W.2d 190, 198 (Iowa 2012) (“We . . . interpret statutes in such a way that portions of it do not become redundant or irrelevant.”); see also *Junkins v. Branstad*, 448 N.W.2d 480, 483 (Iowa 1989) (“Constitutional provisions are generally subject to the same rules of construction as statutes.”).

Considering article IV as a whole promotes a holistic understanding of the constitutional framework, because each provision can inform the others. See Iowa Code § 4.1(38) (“Words and phrases shall be construed according to the context . . . .”); see also *Allen v. Clayton*, 18 N.W. 663, 667 (Iowa 1884) (noting that to determine the meaning of a constitutional provision, “the sections preceding and following it, which have reference to the same subject-matter, must be read and considered”); *State ex rel. Martin v. Heil*, 7 N.W.2d 375, 381 (Wis. 1942) (“[T]he provision should be examined in its setting in order to find out . . . the real meaning and substantial purpose of those who adopted it.”). The following constitutional provisions are relevant to our analysis.

Article IV, section 1 provides that “The supreme executive power of this state shall be vested in a chief magistrate, who shall be styled the governor of the state of Iowa.” Iowa Const. art. IV, § 1. In other words, the person who has the powers is governor. This section has remained unchanged since 1857.

Article IV, sections 2 and 3 originally established that the governor and lieutenant governor would be elected by the people—but not on the same ticket. Article IV, section 6 required candidates for both offices to have the same qualifications.

Article IV, section 10 provided, "When any office shall, from any cause, become vacant, and no mode is provided by the Constitution and laws for filling such vacancy, the Governor shall have power to fill such vacancy, by granting a commission, which shall expire at the end of the next session of the General Assembly, or at the next election by the people."

Article IV, section 14 provided, "No persons shall, while holding any office under the authority of the United States, or this State, execute the office of Governor, or Lieutenant Governor, except as hereinafter expressly provided."

Article IV, section 15 established that the lieutenant governor would serve until a successor was elected and qualified, and that "while acting as Governor," the lieutenant governor would receive the same pay as provided for the governor.

Article IV, section 17 provides,

In case of the death, impeachment, resignation, removal from office, or other disability of the governor, the powers and duties of the office for the residue of the term, or until he shall be acquitted, or the disability removed, shall devolve upon the lieutenant governor.

This section has remained unchanged since 1857.

Article IV, section 18 made the lieutenant governor President of the Senate with a tiebreaking vote, but provided that "when [the lieutenant governor] shall exercise the office of Governor, the Senate shall choose a President pro tempore."

Article IV, section 19 continued the line of succession beyond the lieutenant governor:

If the Lieutenant Governor, while acting as Governor, shall be impeached, displaced, resign, or die, or otherwise become incapable of performing the duties of the office, the President pro tempore of the Senate shall act as Governor until the vacancy is filled, or the disability removed; and if the President of the Senate, for any of the above causes, shall be rendered incapable of performing the duties pertaining to the office of Governor, the same shall devolve upon the Speaker of the House of Representatives.

Although each provision is important, article IV, section 17 plays the biggest part in answering both questions. "[T]he purpose of art. IV, § 17 is to ensure that the citizens of Iowa are not without a person capable of performing



the constitutional and statutory duties imposed upon a governor.” 1980 Op. Att’y Gen. 550, 1980 WL 25903, at \*3 (Iowa Att’y Gen. Jan. 2, 1980).

Two notable aspects of article IV, section 17 inform our analysis. First, while death and resignation are permanent exits from office, the phrase “other disability” includes temporary conditions such as physical or mental incapacity or time spent undergoing a medical procedure. See 1923 Op. Att’y Gen. 263, 263 (Iowa Att’y Gen. Aug. 23, 1923) (answering a question posed by the governor about the operation of article IV, section 17 during a several-month hiatus recommended by his physician). Therefore, article IV, section 17 must operate within a framework applicable to several possible factual scenarios without creating “friction in the machinery of government.” *Fitzpatrick v. McAlister*, 248 P. 569, 576 (Okla. 1926). Because the provision applies equally to permanent and temporary disabilities, so too must the answers to the legal questions we address.

The second important aspect of article IV, section 17 is the word “devolve.” That word “is defined by lexicographers and in law dictionaries as meaning to roll or tumble down or descend.” *Id.* at 573 (citing authorities indicating that meaning as of 1926); see also “Devolve,” *Black’s Law Dictionary* (10th ed. 2014) (defining “devolve” to include transferring rights, duties, or powers and passing by transmission); “Devolve,” *Webster’s Third New Int’l Dictionary* (1993) (defining “devolve” as “to flow or roll from a situation viewed as higher to one that is lower” and “to fall or be passed . . . as an obligation or responsibility”); 12 *Words & Phrases* 546 (1954). The overall concept is that the word connotes downward movement. This downward movement means the powers and duties of the office of Governor *fall* upon the lieutenant governor; the lieutenant governor does not *rise* to the office of Governor. See Okla. Op. Att’y Gen. No. 65-235, at 1-2 (Okla. Att’y Gen. May 19, 1965) (“The office of Governor devolves upon the Lieutenant Governor, he does not ascend to it.”). This distinction is both important and purposeful.

Viewing article IV as a whole, section 1 and original section 18 complement each other and dovetail with sections 17 and 19. The words in section 18 indicate that when the powers and duties devolved (as section 17 instructed), the lieutenant governor would “exercise the office of Governor.” That aligns with the foundational principle that the person who has the powers is governor. Iowa Const. art. IV, § 1. The foundational principle is paramount. Sections 17 and 19 operate to ensure that there is always a successor designated to exercise those powers and duties—even in the absence of the elected lieutenant governor.

Additionally, article IV, section 14 is instructive because it expressly permits one person to hold more than one office if the constitution provides for it. The 1857 constitution provided for two possibilities immediately following

section 14, both of which referred specifically to the lieutenant governor: the lieutenant governor as governor and the lieutenant governor as senate president. See Iowa Const. art. IV, §§ 17–19 (original 1857 version). Section 19 further contemplated other officials holding more than one office by providing for the senate president as governor and the speaker of the house as governor.

**B. Constitutional Debates.** The Iowa Constitution of 1846 made no provision for a lieutenant governor. However, as the 1857 constitutional convention began, one delegate proposed that a committee dedicated to formulating the executive branch of government consider “providing for the election of a Lieutenant Governor who, by virtue of his office, shall . . . exercise all the powers and have the title of Governor in case of the death, removal, or other disability of the Governor.” 1 *The Debates of the Constitutional Convention of the State of Iowa* 39 (W. Blair Lord rep., 1857) [hereinafter *The Debates*]. The convention agreed to the resolution. *Id.* Accordingly, the drafters of article IV, section 17 envisioned that the lieutenant governor would “have the title of Governor” if the governor left office, *id.*—and utilized the word “devolve” to accomplish that result. See *Heil*, 7 N.W.2d at 381–82 (recounting similar debate from the Wisconsin constitutional convention in 1847).

The framers of our 1857 constitution also spent significant time debating the constitutional line of succession. Several of the delegates questioned the need for a lieutenant governor at all—possibly because Iowa had no lieutenant governor before 1857—and offered amendments to article IV, section 17. For instance, delegate Warren proposed an amendment substituting the words “Secretary of State” for “Lieutenant Governor.” 1 *The Debates* at 587. Delegate Clarke of Johnson County<sup>1</sup> proposed instead “that the duties of the office of Governor, in case of a vacancy, shall devolve upon the president of the Senate.” *Id.* The convention actually passed Clarke’s amendment, eliminating the position of lieutenant governor from the 1857 constitution and altering the constitutional line of succession.

The next morning, however, delegate Gray asked his colleagues “to consider well the importance of the matter before striking” the provisions regarding the lieutenant governor. *Id.* at 591. An advantage of retaining the office was the fact that the lieutenant governor “will be elected directly by the people, instead of by the Legislature.” *Id.* Gray found that important because “We all seem to agree in placing elections, as far as possible, directly in the power of the people.” *Id.* Delegate Clarke of Henry County agreed:

Gentlemen [of the convention] do not reflect that they may be taking from the people the power of selecting their own chief

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<sup>1</sup> “There were two men named Mr. Clarke and one named Mr. Clark at the Iowa convention.” *State v. Senn*, 882 N.W.2d 1, 13 n.7 (Iowa 2016); see 1 *The Debates*, at 6.

magistrate. When a man is a candidate for the office of Lieutenant Governor, the people always vote for him with the understanding that circumstances may arise which will make him their Governor. But if you give to the Senate the power of selecting the man who may be the Governor of the people, you take from the people this power and put it into the hands of the Senate.

*Id.* at 591–92.

Delegate Gray's remarks sparked renewed debate on the subject, and some delegates changed their minds. For example, delegate Wilson offered that although he had originally voted to eliminate the position of lieutenant governor, "upon reflection . . . the advantages in favor of [having a lieutenant governor] are far superior to the disadvantages." *Id.* at 593. Most significant, however, were Mr. Clark's remarks:

I voted yesterday to strike out the office of Lieutenant-Governor. I had not reflected upon it well, and I am inclined to the opinion that I did not vote right. Upon hearing the argument thus far upon the question, and upon reflection, I am disposed to favor the office of Lieut[enant] Governor, for one reason, if there were no other: I believe that an executive officer, whoever he may be that shall perform the duties of that office, whether Governor or Lieutenant-Governor, ought to be elected directly by the people, in all cases, at least so far as it is possible to provide for it. We elect the Governor by the direct votes of the people—by the popular will—by the popular voice. In case of his removal or disability, I see no reason why the person filling his place should not be elected directly by the whole people as much as the Governor himself.

*Id.* at 594.

After some further debate, the convention voted 19–14 against the amendment that would have struck the office of lieutenant governor. *Id.* at 595. Accordingly, the convention also restored other provisions relating to the office of lieutenant governor. *See id.* at 596.

It is evident, both from this historical record and because "[a]ll policital power is inherent in the people," Iowa Const. art. I, § 2, that this "elective principle" lies at the core of our constitutional framework. The framers intended that those in the gubernatorial line of succession be elected. Section 3 further reinforced the framers' commitment to the elective principle by requiring that the lieutenant governor "*be elected.*"

**C. Iowa Historical Practice.** Four Iowa governors have either resigned or died while in office. In 1877, Governor Samuel Kirkwood resigned to become a candidate for the United States Senate. Lieutenant Governor Joshua Newbold assumed the powers and duties of Governor upon the resignation. Governor Albert Cummins resigned in 1908 after his election to the United States Senate. Lieutenant Governor Warren Garst assumed the powers and duties of the Governor upon the resignation. In 1954, Governor William Beardsley was killed in an automobile accident. Upon his death, Lieutenant Governor Leo Elthon assumed the powers and duties of Governor. Finally, in 1969 Governor Harold Hughes resigned to take his seat in the United States Senate. Lieutenant Governor Robert Fulton assumed the powers and duties of the Governor upon the resignation.

In each of these four instances, the lieutenant governor (upon whom the powers and duties of the office devolved) was treated as Governor in every respect, but did not appoint a new lieutenant governor. In each of these four instances, a new lieutenant governor was eventually elected by popular vote at the same time the next governor was elected.

This historical practice reveals several significant trends. First, upon the death or resignation of a sitting governor, the lieutenant governor has *always* been considered governor. Second, the new governor has *never* appointed or named a new lieutenant governor.

**D. Federal Language and History.** In 1857, when the Iowa Constitution was ratified, article II, section 1, clause 6 of the United States Constitution read: "In Case of the Removal of the President from Office, or of his Death, Resignation, or Inability to discharge the Powers and Duties of the said Office, the Same shall devolve on the Vice President . . ." Thus, article IV, section 17 of the Iowa Constitution closely tracked language in the United States Constitution at the time.

Under that federal language, multiple presidents died in office. Following each death, the Vice President was considered President in full. Two of these instances occurred before 1857: John Tyler in 1841 and Millard Fillmore in 1850. Because of this history, the delegates to the 1857 Iowa constitutional convention likely understood the word "devolve" to mean that upon the governor's exit from office, the lieutenant governor would be governor following a downward movement of powers. See *State v. Baldon*, 829 N.W.2d 785, 810 (Iowa 2013) (Appel, J., specially concurring) (noting "the drafters of the Iowa Constitution were well aware" of existing federal law when writing in 1857); *Gallarno v. Long*, 243 N.W. 719, 723 (Iowa 1932) ("[H]istorical . . . matters may be taken into consideration when interpreting the Constitution.").

A federal court decision from 1867 confirms this understanding:



Three times, since the adoption of the constitution, the president has died, and, under [article II, section 1, clause 6], the powers and duties of the office of president have devolved upon the vice president. All branches of the government have, under such circumstances, recognized the vice president as holding the office of president, as authorized to assume its title . . . . It has never been supposed that, under the provision of the constitution, the vice president . . . acted as the servant, or agent, or locum tenens of the deceased president, or in any other capacity than as holding the office of president fully, for the time being, by virtue of express authority emanating from the United States.

*Merriam v. Clinch*, 17 F. Cas. 68, 70 (C.C.S.D.N.Y. 1867). The three instances to which the court referred were President Tyler, President Fillmore, and President Andrew Johnson in 1865.

Likewise, the Oklahoma Supreme Court relied upon federal history several decades later in analyzing the word “devolve:”

[U]pon the death of President Wm. H. Harrison, Vice President Tyler became President of the United States. For almost a century this construction of the federal Constitution has stood without question. It has been recognized as correct, and acquiesced in, not only by the departments of state and all the states of the Union, but officially recognized by every civilized government in the world.

. . . .

Defendant suggests that no court has ever pronounced that to be the law. To our mind, it is so clearly correct that no one has ever presumed to test its correctness in the courts. Therefore it should have greater weight than an ordinary departmental construction, not only because it has stood for almost a century, but because it has been recognized as the correct conception of our system of government, and because, for eighty-five years under this construction, there has been no friction in the machinery of government by reason of such construction.

*Fitzpatrick*, 248 P. at 576; see also *Olcott v. Hoff (Olcott I)*, 181 P. 466, 467 (Or. 1919) (“[U]pon the death of the president no one has ever claimed that the vice president . . . would not succeed to the office of president itself . . . .”); 1939 Mich. Att’y Gen. Rep. 69, 73 (Mich. Att’y Gen. Mar. 28, 1939) (“No one would contend that upon death or resignation of the President, the Vice President does not thereby become President of the United States . . . .”). Between *Merriam* in 1867 and *Fitzpatrick* in 1926, three more presidents died in office—

and once again, after each death, the vice President was considered President.<sup>2</sup> The consistent federal understanding of the word “devolve” over several decades further informs our determination of what “devolve” means in article IV, section 17 of the Iowa Constitution.

Moreover, President Tyler did not appoint a new vice president in 1841. A new vice president did not take office until 1845, following the election of George Dallas to the office almost four years later. In 1850, when Millard Fillmore assumed the powers and duties of the presidency upon Zachary Taylor’s death, he too did not appoint a new vice president. Once again, the country waited for a new vice president for almost three years until the election of William King.

This historical practice continued upon the death of every President. The most recent instance occurred upon the death of President John F. Kennedy. President Lyndon Johnson did not appoint a new vice president in 1963. Our nation’s next vice president, Hubert Humphrey, was elected in 1964.

Having established this historical perspective, we now proceed to analyze the legal questions.

## **II. If the Governor Resigns, Does the Lieutenant Governor Become Governor?**

Beyond dictionary definitions, another important guidepost in determining the meaning of “devolve” is what it was understood to mean at the time it was enacted:

In the interpretation of the Constitution . . . we are to ascertain the meaning by getting at the intention of those making the instrument. What thought was in the mind of those making the Constitution—what was their intention, is the great leading rule of construction.

*Ex parte Pritz*, 9 Iowa 30, 32 (1858); accord *Griffin v. Pate*, 884 N.W.2d 182, 186 (Iowa 2016) (beginning analysis of a constitutional provision “by looking back to review the history” of it “to gain a better understanding of the concept” as applied in a current case); *Redmond v. Ray*, 268 N.W.2d 849, 853 (Iowa 1978) (“In construing a constitution, our purpose is to ascertain the intent of the framers.”). The framers of our 1857 constitution were undoubtedly aware of the federal precedent under the “devolve” framework. This federal practice, and the framers’ resolution that the lieutenant governor could “have the title of Governor” if the governor left office, 1 *The Debates* at 39, are strong indications

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<sup>2</sup> The three were President Chester Arthur in 1881, President Theodore Roosevelt in 1901, and President Calvin Coolidge in 1923.



that the verb "devolve" was thought to convey the entire office of Governor upon the lieutenant governor.

**A. Other States' Experiences.** Iowa is not the first state to face significant legal questions regarding a governor's permanent departure from office. While other states' constitutions and experiences do not alone determine what the Iowa Constitution means, see *Handeland v. Brown*, 216 N.W.2d 574, 577 (Iowa 1974), we find valuable to our analysis the language used in those states' constitutions and court decisions or attorney general opinions involving that language.

Our review of available authority reveals a relatively even divide. When the relevant constitutional provision utilized the word "devolve," some authorities in other states have concluded that the lieutenant governor becomes governor. In view of the question as we have phrased it, we call these the "yes" decisions. See, e.g., *Bryant v. English*, 843 S.W.2d 308, 311 (Ark. 1992) ("[W]e hold that . . . the Lieutenant Governor serves as Governor for the residue of the term . . ."); *State ex rel. Lamey v. Mitchell*, 34 P.2d 369, 370 (Mont. 1934) ("[W]hen the Governor resigns or is permanently removed from office, there is no vacancy in the office of Governor in the sense that there is no one left with power to discharge the duties imposed upon the Governor."); *Fitzpatrick*, 248 P. at 577 ("Mr. Trapp is just as much a Governor, in every literal and practical sense and effect, as though he had been elected to the office."); *Chadwick v. Earhart*, 4 P. 1180, 1181 (Or. 1884) ("[I]t is not shown how . . . a person can fill the office of governor without being governor."); *State ex rel. Murphy v. McBride*, 70 P. 25, 26 (Wash. 1902) ("The constitution having provided that in case of the death of the governor the duties of the office shall devolve upon the lieutenant governor, there is no vacancy in the office of governor."); 1939 Mich. Att'y Gen. Rep. at 73 (concluding when the governor dies, the lieutenant governor is "governor of the state [for] all intents and purposes").

Others have concluded that the lieutenant governor or next person "in line" is not truly governor. We call these the "no" decisions. See, e.g., *State ex rel. De Concini v. Garvey*, 195 P.2d 153, 154 (Ariz. 1948) (concluding the person upon whom the powers and duties of governor devolve after the governor's death or resignation "is not governor de jure or de facto but merely ex officio"); *Futrell v. Oldham*, 155 S.W. 502, 504 (Ark. 1913) (concluding under a previous version of the Arkansas Constitution that the person upon whom the powers and duties of governor devolve "acts as Governor . . . merely by virtue of his office as president of the senate, and does not actually become Governor"); *People ex rel. Lynch v. Budd*, 45 P. 1060, 1060 (Cal. 1896) ("[I]t would hardly be contended that when the powers and duties of the governor devolve upon the lieutenant governor the latter thereby becomes governor . . ."); *State ex rel. Hardin v. Sadler*, 47 P. 450, 450 (Nev. 1897) ("If a vacancy occurs in the office

of governor, the powers and duties of the office devolve upon the lieutenant governor . . . . The officer remains lieutenant governor, but invested with the powers and duties of governor.”); *State v. Heller*, 42 A. 155, 157 (N.J. 1899) (“The language used is not ambiguous. It declares that the powers, duties, and emoluments of the office shall devolve on the president of the senate; it does not confer upon him the title of the office.”); *State ex rel. Martin v. Ekern*, 280 N.W. 393, 399 (Wis. 1938) (“[T]he lieutenant governor does not become governor. He remains lieutenant governor, upon whom devolves the powers and duties of governor.”).

**B. Analysis.** The substantial number of “no” decisions is significant. The “no” decisions are based on a careful parsing of the word “devolve” and the other relevant constitutional language. When resolving legal questions, precision and nuance matter. See *Rivera v. Woodward Res. Ctr.*, 865 N.W.2d 887, 897 (Iowa 2015). Thus, placing Iowa among the “no” decisions would be legally defensible. Indeed, in 1977, the Idaho Attorney General acknowledged that, although he believed them to be somewhat counterintuitive, the “no” decisions suggested “the lieutenant governor *never* truly succeeds to the office of governor” under the Idaho Constitution (which at the time used the word “devolve”). Idaho Op. Att’y Gen. No. 77-1, 1977 WL 25063, at \*1 (Idaho Att’y Gen. Jan. 4, 1977). The Idaho Attorney General went on to recommend that only the Idaho Supreme Court could answer the question definitively as a matter of Idaho law. See *id.*

Nonetheless, we find the “yes” decisions more persuasive than the “no” decisions for several reasons. First, we believe the “no” decisions elevate form over substance, which the Iowa Supreme Court has repeatedly cautioned against. See, e.g., *Lewis v. Jaeger*, 818 N.W.2d 165, 179 (Iowa 2012); *State ex rel. Miller v. Smokers Warehouse Corp.*, 737 N.W.2d 107, 110 (Iowa 2007); *Van Baale v. City of Des Moines*, 550 N.W.2d 153, 156 (Iowa 1996). The “no” decisions are somewhat technical, drawing a linguistic distinction that, while noteworthy, makes no substantive difference under the circumstances presented here. See *Harriman v. State*, 2 Greene 270, 285 (Iowa 1849) (considering it the court’s “imperative duty” to “disregard . . . unmeaning technicalities, and to look more to the substance and merits of each case”); see also *Heil*, 7 N.W.2d at 381 (“It is extremely important in the interpretation of constitutional provisions that we avoid determinations based purely on technical . . . argument and that we seek to discover the true spirit and intent of the provisions examined.”). Under Iowa’s framework, there could be little dispute that if the governor resigns, the lieutenant governor would possess authority to sign legislation, issue pardons, and even receive the governor’s salary. Instead, any dispute centers on the exact description of his or her new role.

On that score, article IV, section 1 of the Iowa Constitution carries significant weight. That section provides, “The supreme executive power of this state shall be vested in a chief magistrate, who shall be styled the governor of the state of Iowa.” Iowa Const. art. IV, § 1. In other words, the person who has the powers is governor. The powers make the governor, carrying with them the title. As the Arkansas Supreme Court concluded under a similar provision in the Arkansas Constitution, this means when the powers and duties of governor devolve upon the lieutenant governor, that person is thereafter styled the governor. See *Bryant*, 843 S.W.2d at 313; accord *Fitzpatrick*, 248 P. at 572 (“The person who . . . fills the office of chief magistrate is styled ‘the Governor of Oklahoma.’ He is the ‘Governor’ for the simple reason that he governs.”). Thus, there is no substantive difference between governor and acting governor. See *State ex rel. Chatterton v. Grant*, 73 P. 470, 474 (Wyo. 1903) (concluding that, after the governor died, the question whether a person “[wa]s in fact the governor of the state” was immaterial because, whether governor or acting governor, the person had the powers and duties of the office). A person acting as governor after the powers have devolved is governor, because of article IV, section 1.<sup>3</sup>

Second, the “yes” decisions comport with the Iowa framers’ understanding of the lieutenant governor’s role and with our state’s historical practice. In creating the office of lieutenant governor, the framers expected that person to “have the title of Governor” if the governor left office. 1 *The Debates* at 39. Furthermore, each time the governor of Iowa has resigned or died in office, the lieutenant governor was thereafter treated as governor. See William H. Fleming, *The Second Officer in the Government*, reprinted in *Annals of Iowa: A Historical Quarterly*, Vol. XIII, No. 1, at 533–34 (1921) [hereinafter *Annals of Iowa*] (recalling Governor Kirkwood’s resignation in 1877 and Governor Cummins’s resignation in 1908); Legis. Servs. Agency, *Pieces of Iowa’s Past: Lieutenant Governors Who Have Become Governor* 2–3 (Mar. 8, 2017), available at <https://www.legis.iowa.gov/docs/publications/TB/855445.pdf> (noting Governor Beardsley’s death in 1954 and Governor Hughes’s resignation in 1969). Indeed, one history of Iowa referred to Kirkwood’s successor as the “ninth governor of Iowa” following Kirkwood’s resignation. 4 Benjamin F. Gue, *History of Iowa: From the Earliest Times to the Beginning of the Twentieth Century* 199–200 (1903). Although historical practice standing alone does not mandate a similar result now, the historical practice is consistent with the framework of executive power we have described. *Gallarno*, 243 N.W.2d at 723 (noting history is important in interpreting constitutional provisions); see *Bryant*, 843 S.W.2d at 312 (finding it “of some persuasion”

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<sup>3</sup> This office’s 1923 opinion acknowledges, as it must, that in some instances the powers and duties will devolve only on a temporary basis. To the extent the 1923 opinion describes *acting as governor* to be substantively different from *being governor*, we now clarify that issue.



that, when the governor of Arkansas died in office or resigned, the lieutenant governor was historically treated as governor).

Finally, many of the “no” decisions are driven by legal problems that Iowa’s framework avoids. For example, in Arizona, the court concluded one reason the secretary of state did not become governor was the absence of a provision bestowing upon that person “the emoluments of the office of governor . . . when acting [as] governor.” *Garvey*, 195 P.2d at 157–58. By contrast, article IV, section 15 of the Iowa Constitution expressly provides that “while acting as governor,” the lieutenant governor is “paid the compensation . . . prescribed for the governor.” Iowa Const. art. IV, § 15.

Likewise, the Arkansas Supreme Court expressed concerns in *Futrell* about the president of the senate—a legislative officer—performing executive branch duties. See *Futrell*, 155 S.W. at 504; see also *Bryant*, 843 S.W.2d at 312 (explaining that creating the position of lieutenant governor alleviated any separation-of-powers concerns). Iowa’s framework has always avoided that problem. Article III, section 1 permitted the lieutenant governor to preside over the senate by allowing one person to perform both legislative and executive duties where expressly provided. Further, under the 1857 constitution, when the lieutenant governor was also president of the senate, article IV, section 18 directed the senate to elect a president pro tempore when the lieutenant governor was exercising the office of governor. And today, the lieutenant governor no longer has any legislative duties, so there is no separation-of-powers problem. Without potential issues like those faced in Arizona and Arkansas, we find the “yes” decisions to be a better analytical guide.

Iowa’s amendments to article IV do not change or alter our analysis of the effect of article IV, section 17. A 1952 amendment to article IV, section 19 removed a reference to the lieutenant governor “acting as” governor, replacing it with “if there be a vacancy in the office of Governor”—and that language remains today. There is a natural tendency to ascribe significance to the change, but that amendment doesn’t really say much about the title of the person upon whom the powers and duties devolve—because article IV, section 1 controls that question. And in any event, as we have explained, “acting as” governor is simply what the lieutenant governor does when the powers and duties devolve, not a substantive limit on his or her power or title.

The more significant piece of the 1952 amendments, in our view, was a section providing that if the governor-*elect* died, resigned, or failed to qualify, the lieutenant governor-elect would “assume the powers and duties of governor” upon inauguration. As we have noted, article IV, section 1 would therefore make the person with the powers the governor. In other words, the

1952 amendment solidified—not altered—the existing framework for the transfer of executive power in the event of a constitutional contingency.<sup>4</sup>

In 1972, several provisions of article IV were changed, but they did not affect sections 1 or 17. Originally, article IV, sections 2 and 3 provided the governor and lieutenant governor served two-year terms. The 1972 amendment merely increased both terms to four years. Thus, it does not indicate any significant change in the constitutional framework for transferring executive power. Indeed, the 1972 amendments retained the requirement that the governor and lieutenant governor be elected, and that they serve until successors were elected and qualified.

Iowa enacted more significant amendments in 1988. The 1988 amendments provided for the first time that the governor and lieutenant governor are elected together, on one ticket, “as if these two offices were one and the same.” Iowa Const. art. IV, § 3. Before 1988, it was possible for the governor and lieutenant governor to represent different political parties. The amendment brought to fruition a constitutional delegate’s statement at the 1857 convention: “The governor and lieutenant-governor will always, I presume, be the same in politics, and why not have the successor of the governor of the same politics, instead of bringing in one of the antagonistic party?” 1 *The Debates* at 593.

The 1988 amendments also recast the lieutenant governor’s duties. Under original article IV, section 18, the lieutenant governor was president of the senate and possessed a tiebreaking vote. If the lieutenant governor was absent, impeached, or exercising the office of Governor, the Senate was instructed to choose a president pro tempore to preside and break ties. However, the 1988 amendments revised article IV, section 18 to provide that the lieutenant governor “shall have the duties provided by law and those duties of the governor assigned to the lieutenant governor by the governor.” In other words, the 1988 amendments removed the lieutenant governor’s status as president of the Senate.

The only remaining duty “provided by law” is to receive the powers and duties of governor under article IV, section 17 if the governor leaves office; there are no additional statutory duties imposed upon the lieutenant governor. In other words, the lieutenant governor becomes governor *because* he or she is already lieutenant governor. As the Montana Supreme Court put it:

When the framers of the Constitution provided for the election of a Governor and a Lieutenant Governor as members of

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<sup>4</sup> Additionally, Governor Beardsley’s death occurred in 1954, after the 1952 amendments—but our state’s practice of treating the lieutenant governor as governor remained the same.

the executive department of the state, but conferred upon the latter no executive power or authority other than in the contingencies mentioned . . . , they manifested the intention that the people elect two qualified heads of that department—the one active, the other his lieutenant, ready at a moment's notice to assume the duties of the office, should his superior officer, for any reason, either temporarily or permanently, become unable to perform them.

*Mitchell*, 34 P.2d at 371–72; see also *State ex rel. Sathre v. Moodie*, 258 N.W. 558, 567 (N.D. 1935) (“The Lieutenant Governor, elected at the same election, . . . has been chosen by the people to act as Governor in [the] event the Governor fails to qualify, or is unable to act because of disability.”); *Olcott I*, 181 P. at 483 (“[W]hen the people elected Mr. Olcott . . . , by the very terms of the constitution they elected him to become governor upon the death of Governor Withycombe.”); *Heil*, 7 N.W.2d at 383 (noting the lieutenant governor “was deliberately chosen by the people for no other important purpose than to substitute for the governor”). Therefore, the 1988 amendments do not alter our analysis on this question.

**C. Answer.** After considering the Iowa Constitution’s language and structure, placing it in historical perspective, and comparing other legal analyses on similar constitutional provisions, it is our opinion that under article IV, section 17 of the Iowa Constitution, if the governor resigns and the powers and duties of the office devolve upon the lieutenant governor, the lieutenant governor becomes governor and has the title of Governor.<sup>5</sup>

### **III. If the Lieutenant Governor Becomes Governor, May She Then Appoint a New Lieutenant Governor?**

The framers of our 1857 constitution knew the federal precedent of *not* appointing a new vice president. See *Iowa Ins. Inst. v. Core Grp. of Iowa Ass’n for Justice*, 867 N.W.2d 58, 76 (Iowa 2015) (considering the “circumstances under which the statute was enacted” in order to derive legislative intent); *Rudd*, 248 N.W.2d at 129 (“When words are enshrined in a governmental

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<sup>5</sup> Two of your nine original questions ask whether the lieutenant governor would be required to take a new oath of office and who would be empowered to administer that oath. In light of our opinion as detailed above, the answer to those questions is that no new oath is required. When the lieutenant governor is elected and qualifies by taking an oath before the general assembly to discharge the duties of the office of Lieutenant Governor, those duties already include receiving the powers and duties of Governor should a constitutional contingency arise. Nevertheless, we understand each of the four Iowa lieutenant governors who became governor after the resignation or death of a sitting governor chose to take a ceremonial oath of office (in one form or another) when they assumed their new duties. This is because while no new oath is *required*, the constitution does not prohibit one.



charter, so as to speak across centuries, their history, purpose, and intended meaning must be closely examined.”). Yet, despite this precedent, our framers chose not to depart from the federal model and made no express provision for the appointment of a new lieutenant governor when the elected lieutenant governor was performing the duties of the office of Governor. The federal practice and the framers’ decision not to provide for a vacancy in the office of lieutenant governor are strong indications that they did not intend one.

The governor has always had authority to fill vacancies in state offices when the constitution and laws did not otherwise provide for doing so. Iowa Const. art. IV, § 10. Yet, despite this provision, in the four prior instances when a governor has resigned or died in office, the new governor has not relied upon the authority in section 10 to fill any “vacancy” in the office of lieutenant governor—suggesting that there isn’t one. See *Annals of Iowa* at 533 (noting Governor Newbold did not appoint a new lieutenant governor after Governor Kirkwood’s resignation “because the lieutenant-governorship was not vacant”). Other states’ experiences predominantly, even overwhelmingly, align with this view.

**A. Other States’ Experiences.** In answering question one, we noted considerable debate among states which use constitutional language similar to our own (“devolve”) as to whether the lieutenant governor “becomes” governor or is something less. Interestingly, however, we found virtually *no* debate on whether the new governor (or acting governor) can appoint a new lieutenant governor. The widely-accepted answer to that question is no.

Oregon’s experience and constitution mirrors Iowa’s in every major respect save one: upon the governor’s death the duties of the office devolve upon the Secretary of State, not the lieutenant governor. The Oregon Supreme Court closely examined whether the governor’s permanent departure created a vacancy in the office of the Secretary of State. *State ex rel. Roberts v. Olcott (Olcott II)*, 187 P. 286 (Or. 1920). Oregon, like Iowa, had a constitutional provision generally allowing for the governor to fill vacancies in state offices. The Oregon Supreme Court determined, however, that there was no vacancy in the office of Secretary of State when the governor died and the duties (and office) of governor devolved on the Secretary. *Id.* at 289. The court reasoned that the constitution set forth an unbroken and automatic line of succession. *Id.*

The same result was reached in a 1939 Michigan Attorney General opinion. That opinion noted that under the “devolve” framework it is well-settled that when the powers and duties of the superior office devolve upon the inferior officer, there is no vacancy in the inferior office. 1939 Mich. Att’y Gen. Rep. at 72 (noting “plain rules of common sense” make clear “that the people never intended to intrust the responsibilities of the governorship to one who

has not been elected”); 22 R.C.L. *Public Officers* § 97, at 442–43 (1918). In other words, when the powers and duties of governor devolve upon the lieutenant governor, there is no vacancy in the office of lieutenant governor.<sup>6</sup>

Other states have agreed. See, e.g., *Garvey*, 195 P.2d at 154 (adhering to the “prevailing view” that “the inferior officer does not vacate his office”); *Budd*, 45 P. at 1060 (“It is clear that the Lieutenant Governor does not vacate his office when he assumes the powers and duties of the Governorship.”); *Mitchell*, 34 P.2d at 372 (holding the assumption of the duties of the office of governor does not create a vacancy in the office of lieutenant governor because “he is discharging the functions of Governor by the mandate of the Constitution, and that by reason of being the Lieutenant Governor”); *Sadler*, 47 P. at 450 (holding when the powers and duties devolve, “there is no vacancy created thereby in the office of lieutenant governor”); *Heller*, 42 A. at 156 (finding no vacancy); *McBride*, 70 P. at 26 (“[T]he office of lieutenant governor did not . . . become vacant, but the officer “remained lieutenant governor, intrusted with the powers and duties of governor.”); *Ekern*, 280 N.W. at 399 (“He remains lieutenant governor, upon whom devolved the powers and duties of governor. In such a contingency no vacancy occurs in the office of lieutenant governor.”); Okla. Op. Att’y Gen. No. 65-235, at 1 (concluding that when the office of governor “devolves upon, descends to, the Lieutenant Governor, . . . [i]n no sense does the Lieutenant Governor vacate his office”); see also Idaho Op. Att’y Gen. No. 77-1, 1977 WL 25063, at \*3 (“[M]ost courts hold that resignation of a governor does not create a ‘vacancy’ in the office of lieutenant governor when that person assumes the devolved duties as governor.”).

There are two court decisions in other states which have reached the opposite conclusion, but neither is persuasive. By statute, Arkansas provides for the special election of a new lieutenant governor. Ark. Code § 7-7-105; *Stratton v. Priest*, 932 S.W.2d 321 (Ark. 1996) (affirming the constitutionality of the statute). Iowa lacks a comparable statute calling for a special election. Moreover, a special election upholds the elective principle, whereas simply appointing a new lieutenant governor does not.

Under very trying circumstances a divided New York Court of Appeals held that a catchall statute allowing the governor to fill vacancies could be used to fill a vacancy in the office of lieutenant governor. *Skelos v. Paterson*, 915 N.E.2d 1141, 1142 (N.Y. 2009). We do not find the *Skelos* majority’s reasoning persuasive, because it *assumes* a vacancy exists and decides only *who* is empowered to fill it. In Iowa, given our framers’ focus on the elective principle

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<sup>6</sup> That legal principle remains true in Michigan even though the Michigan Constitution was thoroughly redrafted in 1961. See 1968 Mich. Att’y Gen Rep. 234, 235 (Mich. Att’y Gen. Apr. 22, 1968) (recounting debate from the 1961 Michigan constitutional convention that stated if the lieutenant governor became governor after the governor’s death or resignation, “there is no replacement for him”).

and the near-unanimous authority predating *Skelos*, we hesitate to make a similar assumption. See Okla. Op. Att’y Gen. No. 65-235, at 1 (declining to acquiesce in the “erroneous assumption” that “the office of Lieutenant Governor becomes vacant when the Lieutenant Governor acquires the powers and duties of the Governorship”).

Interestingly, in 1943 the New York Attorney General opined that a statute allowing the governor to make appointments could not be applied to a lieutenant governor vacancy because it “would lead to the anomalous result that a Governor by appointing a Lieutenant Governor and then resigning could impose upon the people his own choice as their Governor.” 1943 N.Y. Op. Att’y Gen. No. 378, 1943 WL 54210, at \*4 (N.Y. Att’y Gen. Aug. 2, 1943).

**B. Analysis.** Having taken this wealth of information into consideration, we find the answer to your question in the intersection between article IV, sections 14, 15, 17, 18, and 19 of the Iowa Constitution. Section 14 prohibits an individual from holding two offices “except as herein expressly provided.” The subsequent sections then go on to provide for the line of succession in the event of the governor’s death, resignation, removal, or disability. This juxtaposition is not coincidental. In fact, the entire scheme suggests that our framers intended for situations when a single individual would hold two offices—including the offices of Governor and Lieutenant Governor.<sup>7</sup> Indeed, it means that when the executive powers and duties devolve from the governor to the lieutenant governor, those two offices essentially merge. As we previously stated—the lieutenant governor becomes governor *because* she is lieutenant governor.

We are persuaded that “[i]f the framers of the Constitution had intended that there should be a vacancy in the office of Lieutenant Governor upon the resignation, death, or permanent removal of the Governor, they could have easily said so.” *Mitchell*, 34 P.2d at 372; *accord Heller*, 42 A. at 156 (concluding if the framers intended a vacancy in the lower office, “it is reasonable to believe they would have said so in no uncertain language”). Our framers did not do so. This omission is telling, especially because our constitution was drafted shortly after two Presidents died in office—and especially when other states *have* amended their constitutions to do so. See, e.g., Del. Const. art. III, § 20 (“Whenever the powers and duties of the office of Governor shall devolve upon the Lieutenant-Governor, . . . his or her office shall become vacant . . . .”); Tex. Const. art. IV, § 16(d) (“On becoming Governor, the person vacates the office of

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<sup>7</sup> For example, Article III, section 1 prohibits any person from exercising the powers of two branches of government “except in cases hereinafter expressly directed or permitted.” The primary exception to this separation of powers provision originally lay in article IV, sections 15 and 18, which called for the Lieutenant Governor to serve as President of the Senate, and article IV, section 19, which named the President of the Senate and Speaker of the House of Representatives to the line of succession.



Lieutenant Governor . . . .”); Utah Const. art. VII, § 10(3)(a)(i) (defining vacancies in the office of Lieutenant Governor to include when “the Lieutenant Governor . . . becomes Governor”).

In addition to the framers’ distinct decision not to provide for a vacancy, other provisions referring to the lieutenant governor “acting as” governor or “exercising the office” of governor are further compelling evidence that there is no vacancy in the office of lieutenant governor. These provisions referring to the lieutenant governor performing particular functions—as opposed to saying merely “the lieutenant governor”—would be unnecessary and even meaningless if the new governor could simply appoint a “replacement” lieutenant governor. See Iowa Const. art. IV, §§ 15, 18–19 (1857 original version).

The express language of original section 19 (“If the Lieutenant Governor, while acting as Governor . . . .”) contemplates a *series* of events—something happens to the elected Governor and then something happens to the elected Lieutenant Governor. As the Oregon Supreme Court noted, the purpose of creating a line of succession is to ensure the automatic transfer of power—to ensure that someone is always endowed with the powers of Chief Magistrate. See *Olcott II*, 187 P. at 289. We believe that was also the purpose of article IV, section 19—to extend the line of gubernatorial succession beyond the lieutenant governor. Inserting a newly-appointed “replacement” lieutenant governor in that order would interrupt the line the framers deliberately chose and make it impossible for section 19’s provisions ever to be fully carried out.

Moreover, allowing for the appointment of a new lieutenant governor would subvert the elective principle that the Iowa framers clearly endorsed. Like his or her predecessor, under our Constitution an appointed lieutenant governor would assume the powers and duties of governor upon the governor’s death, resignation, removal, or disability. In other words, if a lieutenant governor who becomes governor can appoint a new lieutenant, Iowa could have a governor who was not elected by the people. This would be a particularly unpalatable result because a primary reason for creating the office of lieutenant governor, as expressed at the 1857 constitutional convention, was to ensure that the person first in the line of succession was a statewide elected official. See *Mitchell*, 34 P.2d at 372 (concluding an unelected governor “was never contemplated and never intended by the framers of the Constitution, or the people who adopted it”); 1939 Mich. Att’y Gen. Rep. at 69 (“[I]t was never intended . . . that any person, who has not received the sanction of the electors by direct vote, should be appointed to a position which would entitle him, in certain eventualities, to the high office of governor.”).

Finally, as we have noted, section 17’s devolution provision applies equally to both permanent and temporary disabilities. So must the answer to this question. While Governor Branstad’s prospective resignation would be permanent, it is easy to imagine situations which would remove a governor



from office only temporarily. For example, on June 29, 2002 and July 21, 2007, Vice President Dick Cheney assumed the powers and duties of the presidency while President George W. Bush underwent medical procedures. If the lieutenant governor assumed the power and duties of the governorship under similar (temporary) circumstances and appointed a new lieutenant governor, what would happen to those two officials upon the temporarily-disabled governor's return to the office of Governor? Allowing for the appointment of a new lieutenant governor during a temporary disability would be an absurd result. See *Mitchell*, 34 P.2d at 372 (“[I]f the Governor were . . . unable temporarily to perform the duties of his office, it could hardly be argued that while the Lieutenant Governor was discharging the duties of the office of Governor, he could appoint a Lieutenant Governor.”); *Heller*, 42 A. at 158 (concluding a vacancy in the lower office made little sense for temporary disabilities and “could not have been within the contemplation” of those drafting the constitutional provision).

The subsequent amendments to article IV in 1952 and 1988 reinforce our conclusion. In 1952, article IV, section 19 was amended to provide,

If there be a vacancy in the office of Governor and the Lieutenant Governor shall by reason of death, impeachment, resignation, removal from office, or other disability become incapable of performing the duties pertaining to the office of Governor, the President pro tempore of the Senate shall act as Governor until the vacancy is filled or the disability removed. . . .

Like its predecessor, this version of section 19 contemplates a series of events where the governor is first incapacitated and then the lieutenant governor—while exercising the powers and duties of governor—becomes incapacitated. Just like the original 1857 constitution, nothing in the 1952 amendments contemplates that there is a vacancy in the office of lieutenant governor when the sitting governor resigns or dies. See *Ekern*, 280 N.W. at 398–99 (concluding under language materially identical to revised article IV, section 19 that there is no lieutenant governor vacancy when the powers and duties of governor devolve). Tellingly, the historical practice of not appointing a new lieutenant governor continued following the death of Governor Beardsley in 1954 and the resignation of Governor Hughes in 1969—after the 1952 amendments.

As noted previously, in 1988 article IV was amended to provide for the election of governor and lieutenant governor on the same ticket and to alter the lieutenant governor's duties by removing her role as president of the senate. The 1988 amendments also amended article IV, section 2 to provide, that “[t]he governor and the lieutenant governor shall be elected by the qualified electors.” This latter amendment reinforces the framers' commitment to the elective principle.

Nothing in the 1988 amendments specifically altered the line of succession outlined in sections 17 and 19. Contemporary editorials do not indicate that the voters contemplated anything other than the single-ticket issue and the lieutenant governor's duties.<sup>8</sup> See, e.g., Editorial, *Preventive Maintenance*, Des Moines Reg., Oct. 16, 1988, at 2C; Thomas A. Fogarty, *Lawmakers Seek to Have Governor, Lt. Gov. Run as Team*, Des Moines Reg. (Feb. 3, 1988); Thomas A. Fogarty, *Voters to Decide if Governor, Lt. Gov. Should Run as a Team*, Des Moines Reg. (Apr. 13, 1988); Linda Lantor, *Lieutenant Governor Amendments Big Winners*, Des Moines Reg. (Nov. 9, 1988).

The 1988 amendments' failure to alter the line of succession or address the question of a vacancy in the office of lieutenant governor is striking considering the intervening history between 1952 and 1988. Originally the U.S. Constitution contained language mirroring Iowa's devolution framework. The U.S. Constitution, however, was amended in 1967 following the assassination of President Kennedy. The 25th Amendment to the United States Constitution expressly provided that the vice president becomes president and granted the President the authority to appoint a new vice president with Congressional approval. U.S. Const. amend. 25, §§ 1, 2.

Iowa's legislators and voters in 1988 were obviously aware of the change in the federal system; President Ford became the first unelected U.S. President just the decade before. Yet, Iowa did not attempt to follow the new federal model. While it is often dangerous to reach a conclusion based upon legislative *inaction*, by declining to adopt the federal model, we believe the amendments ratified our historical precedent—namely, that the lieutenant governor assumes the title, powers, and duties of governor, but does not appoint a new lieutenant governor. See *Chiodo v. Section 43.24 Panel*, 846 N.W.2d 845, 862 (Iowa 2014) (Mansfield, J., specially concurring).

Because it is our opinion that upon a governor's resignation, the lieutenant governor will hold both the Office of Governor and the Office of Lieutenant Governor, as expressly permitted by Article IV, section 14, there is no vacancy in the office of lieutenant governor to be filled. Cf. *Olcott I*, 181 P. at 481 (relying on "except as permitted" language to conclude an individual could "hold the offices of governor and secretary of state at the same time"). As a result, under these facts, Iowa Code section 69.8 does not apply. See Iowa Code § 69.8(2) (referring to the governor filling "*a vacancy* in the office of

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<sup>8</sup> This is in stark contrast to Utah, where its 1980 constitutional amendments addressing gubernatorial succession were presented to the voters as mirroring the succession of the federal government—which by this time had adopted the 25th Amendment. Utah Op. Att'y Gen. No. 03-001, 2003 WL 21996258 (Utah Att'y Gen. Aug. 18, 2003).

lieutenant governor” (emphasis added)). Consequently, we need not opine on the statute’s constitutionality.<sup>9</sup>

**C. Answer.** It is our opinion that if the governor resigns and the powers and duties of the office devolve upon the lieutenant governor, that person does not have authority to appoint a new lieutenant governor. Upon the governor’s resignation, the powers and duties of the office will devolve or fall upon the lieutenant governor—who does not ascend or rise to the office of Governor. However, under our constitutional framework, by possessing the powers and duties of the chief magistrate, the lieutenant governor becomes governor for all intents and purposes, is entitled to use the title of Governor, and is entitled to the compensation of governor for the remainder of the term. The lieutenant governor takes on this authority because she is lieutenant governor. In other words, upon a governor’s resignation, the lieutenant governor will hold both the offices of Governor and Lieutenant Governor. There is no vacancy to be filled. Our answer honors Iowa’s historical practice, upholds the elective principle, and preserves our constitutional line of succession.

We thank you, Senator, for your dedicated service to the State of Iowa and your keen interest in seeking clarity on these important legal issues.

Very truly yours,

Thomas J. Miller  
Attorney General

Jeffrey S. Thompson  
Solicitor General

Meghan L. Gavin  
Assistant Attorney General

David M. Ranscht  
Assistant Attorney General

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<sup>9</sup> Because it is not the factual context in which you have asked your questions, we do not address whether section 69.8 would be applicable if the lieutenant governor resigned or died in office while the governor remained. The Wisconsin Supreme Court has suggested that a vacancy in the office of lieutenant governor exists in *that* factual scenario, but not when the powers and duties of governor devolve upon the lieutenant governor. See *Ekern*, 280 N.W. at 399.

[DRAFT]

The Honorable David Johnson  
State Senator  
PO Box 279  
Ocheyedan, Iowa 51354

Dear Senator Johnson:

Thank you for your letter of February 1, 2017. Your letter references Governor Terry Branstad's recent nomination to serve as United States Ambassador to China and poses nine specific questions about the effect of his potential resignation as Governor of Iowa. We agree that your letter raises important legal questions about Iowa's constitutional framework for the succession of executive power. This office has not previously addressed these questions directly, nor has the Iowa Supreme Court. Thus, we believe they are appropriately addressed in an official opinion of the Attorney General under Iowa Code section 13.2(e).

We share your belief that these important issues require a thoughtful and detailed analysis. Taken as a whole, the nine questions you pose implicate two central constitutional questions. Those two important questions of law are:

First question: If the governor resigns, does the lieutenant governor become governor?

Second question: If the lieutenant governor becomes governor, may she then appoint a new lieutenant governor?

The answers to these questions must flow from a careful consideration of the succession framework set forth in the words and structure of the Iowa constitution. See *Rudd v. Ray*, 248 N.W.2d 125, 129 (Iowa 1976) ("The framers of our constitution necessarily gave us their ideas in the words they agreed upon."). The debates of the 1857 constitutional convention also shed important light on the meaning and intent of the constitutional provisions establishing that framework. See *N. W. Halsey & Co v. City of Belle Plaine*, 104 N.W. 494, 496 (Iowa 1905) (noting that reading the constitutional debates may aid in a fuller understanding of constitutional provisions). Finally, our answers can and should be informed by interpretations of the same or similar provisions in other states' constitutions. See *Van Horn v. City of Des Moines*, 191 N.W. 144, 148 (Iowa 1922) (considering "similar provisions in the Constitution[s] of other states" to decide an issue of first impression).



## I. Background

We first provide context for the legal questions by identifying the relevant constitutional provisions, examining portions of the 1857 constitutional convention, and noting historical practice both in Iowa and on the federal level.

**A. Constitutional Provisions.** Article IV of the Iowa Constitution discusses the executive branch and establishes a framework for the succession of executive power. Although some provisions of article IV have been amended since 1857, but we initially focus on the original provisions, because those — together with section 17 — established the original framework. In doing so, we consider all of the original executive branch provisions without placing undue significance on one section. See *Rolfe State Bank v. Gunderson*, 794 N.W.2d 561, 565 (Iowa 2011) (“[W]e avoid placing undue importance on isolated portions of an enactment by construing all parts of the enactment together.”). We also remain mindful not to render any provision meaningless or redundant. See Iowa Code § 4.4(2) (2017) (presuming every piece of language is intended to be effective); *Mall Real Estate, L.L.C. v. City of Hamburg*, 818 N.W.2d 190, 198 (Iowa 2012) (“We . . . interpret statutes in such a way that portions of it do not become redundant or irrelevant.”); see also *Jenkins v. Branstad*, 448 N.W.2d 480, 483 (Iowa 1989) (“Constitutional provisions are generally subject to the same rules of construction as statutes.”).

Considering article IV as a whole promotes a holistic understanding of the constitutional framework, because each provision can inform the others. See Iowa Code § 4.1(38) (2017) (“Words and phrases shall be construed according to the context . . . .”); see also *Allen v. Clayton*, 18 N.W. 663, 667 (Iowa 1884) (noting that to determine the meaning of a constitutional provision, “the sections preceding and following it, which have reference to the same subject-matter, must be read and considered”); *State ex rel. Martin v. Heil*, 7 N.W.2d 375, 381 (Wis. 1942) (“[T]he provision should be examined in its setting in order to find out . . . the real meaning and substantial purpose of those who adopted it.”). The following constitutional provisions are relevant to our analysis.

Article IV, section 1 provides that “The supreme executive power of this state shall be vested in a chief magistrate, who shall be styled the governor of the state of Iowa.” Iowa Const. art. IV, § 1. In other words, the person who has the powers is governor. Like article IV, section 17, article IV, section 1 has remained unchanged since 1857.

Article IV, sections 2 and 3 originally established that the governor and lieutenant governor would be elected by the people—but not on the same ticket. Article IV, section 6 required candidates for both offices to have the same qualifications.

Article IV, section 10 provided, "When any office shall, from any cause, become vacant, and no mode is provided by the Constitution and laws for filling such vacancy, the Governor shall have power to fill such vacancy, by granting a commission, which shall expire at the end of the next session of the General Assembly, or at the next election by the people."

Article IV, section 14 provided, "No persons shall, while holding any office under the authority of the United States, or this State, execute the office of Governor, or Lieutenant Governor, except as hereinafter expressly provided."

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Article IV, section 15 established that the lieutenant governor would serve until a successor was elected and qualified, and that "while acting as Governor," the lieutenant governor would receive the same pay as provided for the governor.

Article IV, section 17 of the Iowa Constitution is the key to plays the biggest part in answering both questions. "[T]he purpose of art. IV, § 17 is to ensure that the citizens of Iowa are not without a person capable of performing the constitutional and statutory duties imposed upon a governor." 1980 Op. Att'y Gen. 550, 1980 WL 25903, at \*3 (Iowa Att'y Gen. Jan. 2, 1980). That section provides,

In case of the death, impeachment, resignation, removal from office, or other disability of the governor, the powers and duties of the office for the residue of the term, or until he shall be acquitted, or the disability removed, shall devolve upon the lieutenant governor.

Iowa Const. art. IV, § 17. This section has remained unchanged since 1857.

Article IV, section 18 made the lieutenant governor President of the Senate with a tiebreaking vote, but provided that "when [the lieutenant governor] shall exercise the office of Governor, the Senate shall choose a President pro tempore."

Article IV, section 19 continued the line of succession beyond the lieutenant governor:

If the Lieutenant Governor, while acting as Governor, shall be impeached, displaced, resign, or die, or otherwise become incapable of performing the duties of the office, the President pro tempore of the Senate shall act as Governor until the vacancy is filled, or the disability removed; and if the President of the Senate, for any of the above causes, shall be rendered incapable of performing the duties pertaining to the office of Governor, the same shall devolve upon the Speaker of the House of Representatives.

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Although each provision is important, two notable aspects of article IV, section 17 particularly inform our analysis. First, while death and resignation are permanent exits from office, the phrase “other disability” includes temporary conditions such as physical or mental incapacity or time spent undergoing a medical procedure. See 1923 Op. Att’y Gen. 263, 263 (Iowa Att’y Gen. Aug. 23, 1923) (answering a question posed by the governor about the operation of article IV, section 17 during a several-month hiatus recommended by his physician). Therefore, article IV, section 17 must operate within a framework applicable to several possible factual scenarios without creating “friction in the machinery of government.” *Fitzpatrick v. McAlister*, 248 P. 569, 576 (Okla. 1926). Because the provision applies equally to permanent and temporary disabilities, so too must the answers to the legal questions we address.

The second important aspect of article IV, section 17 is the word “devolve.” That word “is defined by lexicographers and in law dictionaries as meaning to roll or tumble down or descend.” *Id.* at 573 (citing authorities indicating that meaning as of 1926); see also “Devolve,” *Black’s Law Dictionary* (10th ed. 2014) (defining “devolve” to include transferring rights, duties, or powers and passing by transmission); “Devolve,” *Webster’s Third New Int’l Dictionary* (1993) (defining “devolve” as “to flow or roll from a situation viewed as higher to one that is lower” and “to fall or be passed . . . as an obligation or responsibility”); 12 *Words & Phrases* 546 (1954). The overall concept is that the word connotes downward movement. This downward movement means the powers and duties of the office of Governor fall upon the lieutenant governor; the lieutenant governor does not rise to the office of Governor. See Okla. Op. Att’y Gen. No. 65-235, at 1-2 (Okla. Att’y Gen. May 19, 1965) (“The office of Governor devolves upon the Lieutenant Governor, he does not ascend to it.”). This distinction is both important and purposeful.

~~Related provisions enacted alongside article IV, section 17 can aid in determining the meaning of the word “devolve.” See Iowa Code § 4.1(38) (2017) (“Words and phrases shall be construed according to the context . . . .”); see also *Allen v. Clayton*, 18 N.W. 663, 667 (Iowa 1884) (noting that to determine the meaning of a constitutional provision, “the sections preceding and following it, which have reference to the same subject matter, must be read and considered”); *State ex rel. Martin v. Heil*, 7 N.W.2d 375, 381 (Wis. 1942) (“[T]he provision should be examined in its setting in order to find out . . . the real meaning and substantial purpose of those who adopted it.”).~~

~~Several other original provisions in article IV of the Iowa Constitution bear upon the question of transferring executive power. Although some provisions of article IV have been amended since 1857, we initially focus on the original provisions, because those together with section 17 established the~~

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~~original framework. In doing so, we consider all of the original executive branch provisions without placing undue significance on one section. See *Rolfe State Bank v. Gunderson*, 794 N.W.2d 561, 565 (Iowa 2011) (“[W]e avoid placing undue importance on isolated portions of an enactment by construing all parts of the enactment together.”). We also remain mindful not to render any provision meaningless or redundant. See Iowa Code § 4.4(2) (presuming every piece of language is intended to be effective); *Mall Real Estate, L.L.C. v. City of Hamburg*, 818 N.W.2d 190, 198 (Iowa 2012) (“We . . . interpret statutes in such a way that portions of it do not become redundant or irrelevant.”); see also *Junkins v. Branstad*, 448 N.W.2d 480, 483 (Iowa 1989) (“Constitutional provisions are generally subject to the same rules of construction as statutes.”).~~

~~Article IV, section 1 provides that “The supreme executive power of this state shall be vested in a chief magistrate, who shall be styled the governor of the state of Iowa.” Iowa Const. art. IV, § 1. In other words, the person who has the powers is governor. Like article IV, section 17, article IV, section 1 has remained unchanged since 1857.~~

~~Article IV, sections 2 and 3 originally established that the governor and lieutenant governor would be elected by the people but not on the same ticket. Article IV, section 18 made the lieutenant governor President of the Senate with a tiebreaking vote, but provided that “when [the lieutenant governor] shall exercise the office of Governor, the Senate shall choose a President pro tempore.” Article IV, section 15 established that the lieutenant governor would serve until a successor was elected and qualified, and that “while acting as Governor,” the lieutenant governor would receive the same pay as provided for the governor.~~

~~Article IV, section 19 established how executive power would transfer when multiple state officers were incapable of performing gubernatorial duties:~~

~~If the Lieutenant Governor, while acting as Governor, shall be impeached, displaced, resign, or die, or otherwise become incapable of performing the duties of the office, the President pro tempore of the Senate shall act as Governor until the vacancy is filled, or the disability removed; and if the President of the Senate, for any of the above causes, shall be rendered incapable of performing the duties pertaining to the office of Governor, the same shall devolve upon the Speaker of the House of Representatives.~~

~~Article IV, section 10 provided, “When any office shall, from any cause, become vacant, and no mode is provided by the Constitution and laws for filling such vacancy, the Governor shall have power to fill such vacancy, by granting a commission, which~~

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~~shall expire at the end of the next session of the General Assembly, or at the next election by the people.<sup>2</sup>~~

~~Article IV, section 14 provided, "No persons shall, while holding any office under the authority of the United States, or this State, execute the office of Governor, or Lieutenant Governor, except as hereinafter expressly provided."<sup>2</sup>~~

~~In light of these provisions, it is our opinion that~~ Viewing article IV as a whole, section 1 and original section 18 complement each other and dovetail with section 17. The words in section 18 indicate that when the powers and duties devolved (as section 17 instructed), the lieutenant governor would "exercise the office of Governor." That aligns with the foundational principle that the person who has the powers is governor. Iowa Const. art. IV, § 1. The foundational principle is paramount.

Furthermore~~Additionally~~, article IV, section 14 is instructive because it expressly permits one person to hold more than one office if the constitution provides for it. The 1857 constitution provided for two possibilities immediately following section 14, both of which referred specifically to the lieutenant governor: the lieutenant governor as governor and the lieutenant governor as senate president. See Iowa Const. art. IV, §§ 17-19 (original 1857 version). Section 19 further contemplated other officials holding more than one office by providing for the senate president as governor and the speaker of the house as governor.

**B. Constitutional Debates.** The Iowa Constitution of 1846 made no provision for a lieutenant governor. However, as the 1857 constitutional convention began, one delegate proposed that a committee dedicated to formulating the executive branch of government consider "providing for the election of a Lieutenant Governor who, by virtue of his office, shall . . . exercise all the powers and have the title of Governor in case of the death, removal, or other disability of the Governor." 1 *The Debates of the Constitutional Convention of the State of Iowa* 39 (W. Blair Lord rep., 1857) [hereinafter *The Debates*]. The convention agreed to the resolution. *Id.* Accordingly, the drafters of article IV, section 17 envisioned that the lieutenant governor would "have the title of Governor" if the governor left office, *id.*—and utilized the word "devolve" to accomplish that result. See *Heil*, 7 N.W.2d at 381-82 (recounting similar debate from the Wisconsin constitutional convention in 1847).

The framers of our 1857 constitution also spent significant time debating the constitutional line of succession. Several of the delegates questioned the need for a lieutenant governor at all—possibly because Iowa had no lieutenant governor before 1857—and offered amendments to article IV, section 17. For instance, delegate Warren proposed an amendment substituting the words

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“Secretary of State” for “Lieutenant Governor.” 1 *The Debates*, at 587. Delegate Clarke of Johnson County<sup>1</sup> proposed instead “that the duties of the office of Governor, in case of a vacancy, shall devolve upon the president of the Senate.” *Id.* The convention actually passed Clarke’s amendment, eliminating the position of lieutenant governor from the 1857 constitution and altering the constitutional line of succession.

The next morning, however, delegate Gray asked his colleagues “to consider well the importance of the matter before striking” the provisions regarding the lieutenant governor. *Id.* at 591. An advantage of retaining the office was the fact that the lieutenant governor “will be elected directly by the people, instead of by the Legislature.” *Id.* Gray found that important because “We all seem to agree in placing elections, as far as possible, directly in the power of the people.” *Id.* Delegate Clarke of Henry County agreed:

Gentlemen [of the convention] do not reflect that they may be taking from the people the power of selecting their own chief magistrate. When a man is a candidate for the office of Lieutenant Governor, the people always vote for him with the understanding that circumstances may arise which will make him their Governor. But if you give to the Senate the power of selecting the man who may be the Governor of the people, you take from the people this power and put it into the hands of the Senate.

*Id.* at 591–92. This “elective principle” lies at the core of our constitutional framework because “[a]ll political power is inherent in the people.” Iowa Const. art. I, § 2.

Delegate Gray’s remarks sparked renewed debate on the subject, and some delegates changed their minds. For example, delegate Wilson offered that although he had originally voted to eliminate the position of lieutenant governor, “upon reflection . . . the advantages in favor of [having a lieutenant governor] are far superior to the disadvantages.” 1 *The Debates* at 593. Most significant, however, were Mr. Clark’s remarks:

I voted yesterday to strike out the office of Lieutenant-Governor. I had not reflected upon it well, and I am inclined to the opinion that I did not vote right. Upon hearing the argument thus far upon the question, and upon reflection, I am disposed to favor the office of Lieut[enant] Governor, for one reason, if there were no other: I believe that an executive officer, whoever he may be that shall perform the duties of that office, whether Governor or Lieutenant-Governor, ought to be elected directly by the people, in

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<sup>1</sup> “There were two men named Mr. Clarke and one named Mr. Clark at the Iowa convention.” *State v. Senn*, 882 N.W.2d 1, 13 n.7 (Iowa 2016); see 1 *The Debates*, at 6.

all cases, at least so far as it is possible to provide for it. We elect the Governor by the direct votes of the people—by the popular will—by the popular voice. In case of his removal or disability, I see no reason why the person filling his place should not be elected directly by the whole people as much as the Governor himself.

*Id.* at 594. Mr. Clark's clear concern was upholding the elective principle.

After some further debate, the convention voted 19-14 against the amendment that would have struck the office of lieutenant governor. *Id.* at 595. Accordingly, the convention also restored other provisions relating to the office of lieutenant governor. *See id.* at 596.

From this historical record it is evident that the framers intended that those in the gubernatorial line of succession be elected. Section 3 further reinforced the framers' commitment to the elective principle by requiring that the lieutenant governor "be elected."

**C. Iowa Historical Practice.** Four Iowa governors have either resigned or died while in office. In 1877, Governor Samuel Kirkwood resigned to become a candidate for the United States Senate. Lieutenant Governor Joshua Newbold assumed the powers and duties of Governor upon the resignation. Governor Albert Cummins resigned in 1908 after his election to the United States Senate. Lieutenant Governor Warren Garst assumed the powers and duties of the Governor upon the resignation. In 1954, Governor William Beardsley was killed in an automobile accident. Upon his death, Lieutenant Governor Leo Elthon assumed the powers and duties of Governor. Finally, in 1969 Governor Harold Hughes resigned to take his seat in the United States Senate. Lieutenant Governor Robert Fulton assumed the powers and duties of the Governor upon the resignation.

In each of these four instances, the lieutenant governor (upon whom the powers and duties of the office devolved) was treated as Governor in every respect, but did not appoint a new "replacement" lieutenant governor. In each of these four instances, a new lieutenant governor was eventually elected by popular vote at the same the next governor was elected.

This historical practice reveals several significant trends. First, upon the death or resignation of a sitting governor, the lieutenant governor has *always* been considered governor. Second, the new governor has *never* appointed or named a new lieutenant governor. Finally, this historical precedent is consistent with the framers' intent that those in the line of gubernatorial succession be elected.

**D. Federal Language and History.** In 1857, when the Iowa Constitution was ratified, article II, section 1, clause 6 of the United States Constitution read: "In Case of the Removal of the President from Office, or of his Death, Resignation, or Inability to discharge the Powers and Duties of the said Office, the Same shall devolve on the Vice President . . . ." Thus, article IV, section 17 of the Iowa Constitution closely tracked language in the United States Constitution at the time.

Under that federal language, multiple presidents died in office. Following each death, the Vice President was considered President in full. Two of these instances occurred before 1857: John Tyler in 1841 and Millard Fillmore in 1850. Because of this history, the delegates to the 1857 Iowa constitutional convention likely understood the word "devolve" to mean that upon the governor's exit from office, the lieutenant governor would be governor following a downward movement of powers. See *State v. Baldon*, 829 N.W.2d 785, 810 (Iowa 2013) (Appel, J., specially concurring) (noting "the drafters of the Iowa Constitution were well aware" of existing federal law when writing in 1857); *Gallarno v. Long*, 243 N.W. 719, 723 (Iowa 1932) ("[H]istorical . . . matters may be taken into consideration when interpreting the Constitution.").

A federal court decision from 1867 confirms this understanding:

Three times, since the adoption of the constitution, the president has died, and, under [article II, section 1, clause 6], the powers and duties of the office of president have devolved upon the vice president. All branches of the government have, under such circumstances, recognized the vice president as holding the office of president, as authorized to assume its title . . . . It has never been supposed that, under the provision of the constitution, the vice president . . . acted as the servant, or agent, or locum tenens of the deceased president, or in any other capacity than as holding the office of president fully, for the time being, by virtue of express authority emanating from the United States.

*Merriam v. Clinch*, 17 F. Cas. 68, 70 (C.C.S.D.N.Y. 1867). The three instances to which the court referred were President Tyler, President Fillmore, and President Andrew Johnson in 1865.

Likewise, the Oklahoma Supreme Court relied upon federal history several decades later in analyzing the word "devolve:"

[U]pon the death of President Wm. H. Harrison, Vice President Tyler became President of the United States. For almost a century this construction of the federal Constitution has stood without question. It has been recognized as correct, and acquiesced in, not



only by the departments of state and all the states of the Union, but officially recognized by every civilized government in the world.

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Defendant suggests that no court has ever pronounced that to be the law. To our mind, it is so clearly correct that no one has ever presumed to test its correctness in the courts. Therefore it should have greater weight than an ordinary departmental construction, not only because it has stood for almost a century, but because it has been recognized as the correct conception of our system of government, and because, for eighty-five years under this construction, there has been no friction in the machinery of government by reason of such construction.

*Fitzpatrick*, 248 P. at 576; see also *Olcott v. Hoff (Olcott I)*, 181 P. 466, 467 (Or. 1919) (“[U]pon the death of the president no one has ever claimed that the vice president . . . would not succeed to the office of president itself . . . .”); 1939 Mich. Att’y Gen. Rep. 69, 73 (Mich. Att’y Gen. Mar. 28, 1939) (“No one would contend that upon death or resignation of the President, the Vice President does not thereby become President of the United States . . . .”). Between *Merriam* in 1867 and *Fitzpatrick* in 1926, three more presidents died in office—and once again, after each death, the vice President was considered President.<sup>2</sup> The consistent federal understanding of the word “devolve” over several decades further informs our determination of what “devolve” means in article IV, section 17 of the Iowa Constitution.

With regard to question two, President Tyler did not appoint a new vice president. A new vice president did not take office until 1845 following the election of George Dallas to the office. Therefore, for almost four years, the country had no separate “replacement” vice president. In 1850, when Millard Fillmore assumed the powers and duties of the presidency upon Zachary Taylor’s death, he too did not appoint a new vice president. Once again, the country had no separate “replacement” vice president for almost three years until the election of William King.

The framers of our 1857 constitution were undoubtedly aware of this historical practice. In the decade and a half preceding our constitutional convention, our nation was without a separate “replacement” vice president for seven years. See *Iowa Ins. Inst. v. Core Grp. of Iowa Ass’n for Justice*, 867 N.W.2d 58, 76 (Iowa 2015) (considering the “circumstances under which the statute was enacted” in order to derive legislative intent); *Rudd*, 248 N.W.2d at 129 (“When words are enshrined in a governmental charter, so as to speak

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<sup>2</sup> The three were President Chester Arthur in 1881, President Theodore Roosevelt in 1901, and President Calvin Coolidge in 1923.

across centuries, their history, purpose, and intended meaning must be closely examined.”); *Allen*, 18 N.W. at 664 (noting that experience with corporations in Iowa before 1857 informed the eventual constitutional provisions on that topic). Yet, despite this precedent, our framers chose not to depart from the federal model and made no express provision for the appointment of a new lieutenant governor. ~~We must assume that omission was intentional.~~

Furthermore, this historical practice continued upon the death of every President. The most recent instance occurred upon the death of President John F. Kennedy. President Lyndon Johnson did not appoint a new vice president in 1963. Our nation’s next vice president, Hubert Humphrey, was elected in 1964.

Having established this historical perspective, we now proceed to analyze the legal questions.

## **II. If the Governor Resigns, Does the Lieutenant Governor Become Governor?**

Beyond dictionary definitions, another important guidepost in determining the meaning of “devolve” is what it was understood to mean at the time it was enacted:

In the interpretation of the Constitution . . . we are to ascertain the meaning by getting at the intention of those making the instrument. What thought was in the mind of those making the Constitution—what was their intention, is the great leading rule of construction.

*Ex parte Pritz*, 9 Iowa 30, 32 (1858); accord *Griffin v. Pate*, 884 N.W.2d 182, 186 (Iowa 2016) (beginning analysis of a constitutional provision “by looking back to review the history” of it “to gain a better understanding of the concept” as applied in a current case); *Redmond v. Ray*, 268 N.W.2d 849, 853 (Iowa 1978) (“In construing a constitution, our purpose is to ascertain the intent of the framers.”). The federal practice under similar language prior to 1857, and the framers’ resolution that the lieutenant governor could “have the title of Governor,” if the governor left office, 1 *The Debates* at 39, are strong indications that the verb “devolve” was thought to convey the entire office of Governor upon the lieutenant governor.

**A. Other States’ Experiences.** Iowa is not the first state to face significant legal questions regarding a governor’s permanent departure from office. While other states’ constitutions and experiences do not alone determine what the Iowa Constitution means, we find valuable to our analysis the language used in those states’ constitutions and court decisions or attorney general opinions involving that language.

Our review of available authority reveals a relatively even divide. When the issue has surfaced and the relevant constitutional provision utilized the word "devolve," some authorities in other states have concluded that the lieutenant governor becomes governor. In view of the question as we have phrased it, we call these the "yes" decisions. See, e.g., *Bryant v. English*, 843 S.W.2d 308, 311 (Ark. 1992) ("[W]e hold that . . . the Lieutenant Governor serves as Governor for the residue of the term . . ."); *State ex rel. Lamey v. Mitchell*, 34 P.2d 369, 370 (Mont. 1934) ("[W]hen the Governor resigns or is permanently removed from office, there is no vacancy in the office of Governor in the sense that there is no one left with power to discharge the duties imposed upon the Governor."); *Fitzpatrick*, 248 P. at 577 ("Mr. Trapp is just as much a Governor, in every literal and practical sense and effect, as though he had been elected to the office."); *Chadwick v. Earhart*, 4 P. 1180, 1181 (Or. 1884) ("[I]t is not shown how . . . a person can fill the office of governor without being governor."); *State ex rel. Murphy v. McBride*, 70 P. 25, 26 (Wash. 1902) ("The constitution having provided that in case of the death of the governor the duties of the office shall devolve upon the lieutenant governor, there is no vacancy in the office of governor."); 1939 Mich. Att'y Gen. Rep. at 73 (concluding when the governor dies, the lieutenant governor is "governor of the state [for] all intents and purposes").

Others have concluded that the lieutenant governor or next person "in line" is not truly governor. We call these the "no" decisions. See, e.g., *State ex rel. De Concini v. Garvey*, 195 P.2d 153, 154 (Ariz. 1948) (concluding the person upon whom the powers and duties of governor devolve after the governor's death or resignation "is not governor de jure or de facto but merely ex officio"); *Futrell v. Oldham*, 155 S.W. 502, 504 (Ark. 1913) (concluding under a previous version of the Arkansas Constitution that the person upon whom the powers and duties of governor devolve "acts as Governor . . . merely by virtue of his office as president of the senate, and does not actually become Governor"); *People ex rel. Lynch v. Budd*, 45 P. 1060, 1060 (Cal. 1896) ("[I]t would hardly be contended that when the powers and duties of the governor devolve upon the lieutenant governor the latter thereby becomes governor . . ."); *State ex rel. Hardin v. Sadler*, 47 P. 450, 450 (Nev. 1897) ("If a vacancy occurs in the office of governor, the powers and duties of the office devolve upon the lieutenant governor . . . . The officer remains lieutenant governor, but invested with the powers and duties of governor."); *State v. Heller*, 42 A. 155, 157 (N.J. 1899) ("The language used is not ambiguous. It declares that the powers, duties, and emoluments of the office shall devolve on the president of the senate; it does not confer upon him the title of the office."); *State ex rel. Martin v. Ekern*, 280 N.W. 393, 399 (Wis. 1938) ("[T]he lieutenant governor does not become governor. He remains lieutenant governor, upon whom devolves the powers and duties of governor.").

**B. Analysis.** The substantial number of “no” decisions is significant. Although Iowa has “no obligation to adopt a rule just because it has generally been adopted elsewhere,” *Handeland v. Brown*, 216 N.W.2d 574, 577 (Iowa 1974), all of the “no” decisions are based on a careful parsing of the word “devolve” and the other relevant constitutional language. When resolving legal quandaries, precision and nuance matter. See *Rivera v. Woodward Res. Ctr.*, 865 N.W.2d 887, 897 (Iowa 2015). Thus, placing Iowa among the “no” decisions would be legally defensible. Indeed, in 1977, the Idaho Attorney General acknowledged that, although he believed them to be somewhat counterintuitive, the “no” decisions suggested “the lieutenant governor *never* truly succeeds to the office of governor” under the Idaho Constitution (which at the time used the word “devolve”). Idaho Op. Att’y Gen. No. 77-1, 1977 WL 25063, at \*1 (Idaho Att’y Gen. Jan. 4, 1977). The Idaho Attorney General went on to recommend that only the Idaho Supreme Court could answer the question definitively as a matter of Idaho law. See *id.*

Nonetheless, we find the “yes” decisions more persuasive than the “no” decisions. With specific regard to New Jersey, the *Heller* court noted several phrases in the state’s constitution that referred to the governor “or person administering the government.” *Heller*, 42 A. at 157. If the person exercising executive power after the governor’s resignation was governor, the court concluded, the phrase “person administering the government” would be superfluous. See *id.* Thus, the *Heller* decision is distinguishable because it was based in part on unique constitutional language. The Iowa Constitution does not similarly refer to the governor “or person administering the government.”

We also believe the “no” decisions elevate form over substance, which the Iowa Supreme Court has repeatedly cautioned against. See, e.g., *Lewis v. Jaeger*, 818 N.W.2d 165, 179 (Iowa 2012); *State ex rel. Miller v. Smokers Warehouse Corp.*, 737 N.W.2d 107, 110 (Iowa 2007); *Van Baale v. City of Des Moines*, 550 N.W.2d 153, 156 (Iowa 1996). The “no” decisions are somewhat technical, drawing a linguistic distinction that, while noteworthy, makes no substantive difference under the circumstances presented here. See *Harriman v. State*, 2 Greene 270, 285 (Iowa 1849) (considering it the court’s “imperative duty” to “disregard . . . unmeaning technicalities, and to look more to the substance and merits of each case”); see also *Heil*, 7 N.W.2d at 381 (“It is extremely important in the interpretation of constitutional provisions that we avoid determinations based purely on technical or verbal . . . argument and that we seek to discover the true spirit and intent of the provisions examined.”). Under Iowa’s framework, there could be little dispute that if the governor resigns, the lieutenant governor would possess authority to sign legislation, issue pardons, and even receive the governor’s salary. Instead, any dispute centers on the exact description of his or her new role.



On that score, article IV, section 1 of the Iowa Constitution carries significant weight. That section provides, "The supreme executive power of this state shall be vested in a chief magistrate, who shall be styled the governor of the state of Iowa." Iowa Const. art. IV, § 1. In other words, the person who has the powers is governor. The powers make the governor, carrying with them the title. As the Arkansas Supreme Court concluded under a similar provision in the Arkansas Constitution, this means when the powers and duties of governor devolve upon the lieutenant governor, that person is thereafter styled the governor. See *Bryant*, 843 S.W.2d at 313; accord *Fitzpatrick*, 248 P. at 572 ("The person who . . . fills the office of chief magistrate is styled 'the Governor of Oklahoma.' He is the 'Governor' for the simple reason that he governs."). Thus, there is no substantive difference between governor and acting governor. See *State ex rel. Chatterton v. Grant*, 73 P. 470, 474 (Wyo. 1903) (concluding that, after the governor died, the question whether a person "[wa]s in fact the governor of the state" was immaterial because, whether governor or acting governor, the person had the powers and duties of the office). A person acting as governor after the powers have devolved is governor, because of article IV, section 1.<sup>3</sup>

The "yes" decisions also comport with the Iowa framers' understanding of the lieutenant governor's role and with our state's historical practice. In creating the office of lieutenant governor, the framers expected that person to "have the title of Governor" if the governor left office. 1 *The Debates*, at 39. Furthermore, each time the governor of Iowa has resigned or died in office, the lieutenant governor was thereafter treated as governor. See William H. Fleming, *The Second Officer in the Government*, reprinted in *Annals of Iowa: A Historical Quarterly*, Vol. XIII, No. 1, at 533-34 (1921) [hereinafter *Annals of Iowa*] (recalling Governor Kirkwood's resignation in 1877 and Governor Cummins's resignation in 1908); Legis. Servs. Agency, *Pieces of Iowa's Past: Lieutenant Governors Who Have Become Governor* 2-3 (Mar. 8, 2017), available at <https://www.legis.iowa.gov/docs/publications/TB/855445.pdf> (noting Governor Beardsley's death in 1954 and Governor Hughes's resignation in 1969). Indeed, one history of Iowa referred to Kirkwood's successor as the "ninth governor of Iowa" following Kirkwood's resignation. 4 Benjamin F. Gue, *History of Iowa: From the Earliest Times to the Beginning of the Twentieth Century* 199-200 (1903). Although historical practice standing alone does not mandate a similar result now, the historical practice is consistent with the framework of executive power we have described. *Gallarno*, 243 N.W.2d at 723 (noting history is important in interpreting constitutional provisions); see *Bryant*, 843 S.W.2d at 312 (finding it "of some persuasion" that, when the

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<sup>3</sup> This office's 1923 opinion acknowledges, as it must, that in some instances the powers and duties will devolve only on a temporary basis. To the extent the 1923 opinion describes *acting as governor* to be substantively different from *being governor*, we now clarify that issue.

governor of Arkansas died in office or resigned, the lieutenant governor was historically treated as governor).

Finally, many of the "no" decisions are driven by legal quagmires that Iowa's framework avoids. For example, in Arizona, the court concluded one reason the secretary of state did not become governor was the absence of a provision bestowing upon that person "the emoluments of the office of governor . . . when acting [as] governor." *Garvey*, 195 P.2d at 157-58. By contrast, article IV, section 15 of the Iowa Constitution expressly provides that "while acting as governor," the lieutenant governor is "paid the compensation . . . prescribed for the governor." Iowa Const. art. IV, § 15.

Likewise, the Arkansas Supreme Court expressed concerns in *Futrell* about the president of the senate—a legislative officer—performing executive branch duties. See *Futrell*, 155 S.W. at 504; see also *Bryant*, 843 S.W.2d at 312 (explaining that creating the position of lieutenant governor alleviated any separation-of-powers concerns). Iowa's framework has always avoided that problem. Article III, section 1 permitted the lieutenant governor to preside over the senate by allowing one person to perform both legislative and executive duties where expressly provided. Further, under the 1857 constitution, when the lieutenant governor was also president of the senate, article IV, section 18 directed the senate to elect a president pro tempore when the lieutenant governor was exercising the office of governor. And today, the lieutenant governor no longer has any legislative duties, so there is no separation-of-powers problem. Without potential issues like those faced in Arizona and Arkansas, we find the "yes" decisions to be a better analytical guide.

Iowa's amendments to article IV do not change or alter our analysis of the effect of article IV, section 17. A 1952 amendment to article IV, section 19 removed a reference to the lieutenant governor "acting as" governor, replacing it with "if there be a vacancy in the office of Governor"—and that language remains today. There is a natural tendency to ascribe significance to the change, but that amendment doesn't really say much about the title of the person upon whom the powers and duties devolve—because article IV, section 1 controls that question. And in any event, as we have explained, "acting as" governor is simply what the lieutenant governor does when the powers and duties devolve, not a substantive limit on his or her power or title.

The more significant piece of the 1952 amendments, in our view, was a section providing that if the governor-elect died, resigned, or failed to qualify, the lieutenant governor-elect would "assume the powers and duties of governor" upon inauguration. As we have noted, article IV, section 1 would therefore make the person with the powers the governor. In other words, the

1952 amendment solidified—not altered—the existing framework for the transfer of executive power in the event of a constitutional contingency.<sup>4</sup>

In 1972, several provisions of article IV were changed, but they did not affect sections 1 or 17. Originally, article IV, sections 2 and 3 provided the governor and lieutenant governor served two-year terms. The 1972 amendment merely increased both terms to four years. Thus, it does not indicate any significant change in the constitutional framework for transferring executive power. Indeed, the 1972 amendments retained the requirement that the governor and lieutenant governor be elected, and that they serve until successors were elected and qualified.

Iowa enacted more significant amendments in 1988. The 1988 amendments provided for the first time that the governor and lieutenant governor are elected together, on one ticket, “as if these two offices were one and the same.” Iowa Const. art. IV, § 3. Before 1988, it was possible for the governor and lieutenant governor to represent different political parties. The amendment brought to fruition a constitutional delegate’s statement at the 1857 convention: “The governor and lieutenant-governor will always, I presume, be the same in politics, and why not have the successor of the governor of the same politics, instead of bringing in one of the antagonistic party?” 1 *The Debates*, at 593.

The 1988 amendments also recast the lieutenant governor’s duties. Under original article IV, section 18, the lieutenant governor was president of the senate and possessed a tiebreaking vote. If the lieutenant governor was absent, impeached, or exercising the office of Governor, the Senate was instructed to choose a president pro tempore to preside and break ties. However, the 1988 amendments revised article IV, section 18 to provide that the lieutenant governor “shall have the duties provided by law and those duties of the governor assigned to the lieutenant governor by the governor.” In other words, the 1988 amendments removed the lieutenant governor’s status as president of the Senate.

The only remaining duty “provided by law” is to receive the powers and duties of governor under article IV, section 17 if the governor leaves office; there are no additional statutory duties imposed upon the lieutenant governor. In other words, the lieutenant governor becomes governor *because* he or she is already lieutenant governor. As the Montana Supreme Court put it:

When the framers of the Constitution provided for the election of a Governor and a Lieutenant Governor as members of

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<sup>4</sup> Additionally, Governor Beardsley’s death occurred in 1954, after the 1952 amendments—but our state’s practice of treating the lieutenant governor as governor remained the same.

the executive department of the state, but conferred upon the latter no executive power or authority other than in the contingencies mentioned . . . , they manifested the intention that the people elect two qualified heads of that department—the one active, the other his lieutenant, ready at a moment's notice to assume the duties of the office, should his superior officer, for any reason, either temporarily or permanently, become unable to perform them.

*Mitchell*, 34 P.2d at 371-72; see also *State ex rel. Sathre v. Moodie*, 258 N.W. 558, 567 (N.D. 1935) ("The Lieutenant Governor, elected at the same election, . . . has been chosen by the people to act as Governor in [the] event the Governor fails to qualify, or is unable to act because of disability."); *Olcott I*, 181 P. at 483 ("[W]hen the people elected Mr. Olcott . . . , by the very terms of the constitution they elected him to become governor upon the death of Governor Withycombe."); *Heil*, 7 N.W.2d at 383 (noting the lieutenant governor "was deliberately chosen by the people for no other important purpose than to substitute for the governor"). Therefore, the 1988 amendments do not alter our analysis on this question.

**C. Answer.** After considering the Iowa Constitution's language, placing it in historical perspective, and comparing other legal analyses on similar constitutional provisions, it is our opinion that under article IV, section 17 of the Iowa Constitution, if the governor resigns and the powers and duties of the office devolve upon the lieutenant governor, the lieutenant governor becomes governor and has the title of Governor.<sup>5</sup>

### **III. If the Lieutenant Governor Becomes Governor, May She Then Appoint a New Lieutenant Governor?**

The governor has always had authority to fill vacancies in state offices when the constitution and laws did not otherwise provide for doing so. Iowa Const. art. IV, § 10. Yet, despite this provision, in the four prior instances when a governor has resigned or died in office, the new governor has not relied upon the authority in section 10 to fill any "vacancy" in the office of lieutenant

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<sup>5</sup> Two of your nine original questions ask whether the lieutenant governor would be required to take a new oath of office and who would be empowered to administer that oath. In light of our opinion as detailed above, the answer to those questions is that no new oath is required. When the lieutenant governor is elected and qualifies by taking an oath before the general assembly to discharge the duties of the office of Lieutenant Governor, those duties already include receiving the powers and duties of Governor should a constitutional contingency arise. Nevertheless, we understand each of the four Iowa lieutenant governors who became governor after the resignation or death of a sitting governor chose to take a ceremonial oath of office (in one form or another) when they assumed their new duties. This is because while no new oath is *required*, the constitution does not prohibit one.



governor—suggesting that there isn't one. See *Annals of Iowa*, at 533 (noting Governor Newbold did not appoint a new lieutenant governor after Governor Kirkwood's resignation "because the lieutenant-governorship was not vacant"). Other states' experiences predominantly, even overwhelmingly, align with this view.

**A. Other States' Experiences.** In answering question one, we noted considerable debate among states which use constitutional language similar to our own ("devolve") as to whether the lieutenant governor "becomes" governor or is something less. Interestingly, however, we found virtually *no* debate on whether the new governor (or acting governor) can appoint a new lieutenant governor. The widely-accepted answer to that question is no.

Oregon's experience and constitution mirrors Iowa's in every major respect save one: upon the governor's death the duties of the office devolve upon the Secretary of State, not the lieutenant governor. The Oregon Supreme Court closely examined whether the governor's permanent departure created a vacancy in the office of the Secretary of State. *State ex rel. Roberts v. Olcott (Olcott II)*, 187 P. 286 (Or. 1920). Oregon, like Iowa, had a constitutional provision generally allowing for the governor to fill vacancies in state offices. The Oregon Supreme Court determined, however, that there was no vacancy in the office of Secretary of State when the governor died and the duties (and office) of governor devolved on the Secretary. *Id.* at 289. The court reasoned that the constitution set forth an unbroken and automatic line of succession. *Id.*

The same result was reached in a 1939 Michigan Attorney General opinion. That opinion noted that under the "devolve" framework it is well-settled that when the powers and duties of the superior office devolve upon the inferior officer, there is no vacancy in the inferior office. 1939 Mich. Att'y Gen. Rep. at 72 (noting "plain rules of common sense" make clear "that the people never intended to intrust the responsibilities of the governorship to one who has not been elected"); 22 R.C.L. *Public Officers* § 97, at 442-43 (1918). In other words, when the powers and duties of governor devolve upon the lieutenant governor, there is no vacancy in the office of lieutenant governor.<sup>6</sup>

Other states have agreed. See, e.g., *Garvey*, 195 P.2d at 154 (adhering to the "prevailing view" that "the inferior officer does not vacate his office"); *Budd*, 45 P. at 1060 ("It is clear that the Lieutenant Governor does not vacate his office when he assumes the powers and duties of the Governorship."); *Mitchell*,

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<sup>6</sup> That legal principle remains true in Michigan even though the Michigan Constitution was thoroughly redrafted in 1961. See 1968 Mich. Att'y Gen. Rep. 234, 235 (Mich. Att'y Gen. Apr. 22, 1968) (recounting debate from the 1961 Michigan constitutional convention that stated if the lieutenant governor became governor after the governor's death or resignation, "there is no replacement for him").

34 P.2d at 372 (holding the assumption of the duties of the office of governor does not create a vacancy in the office of lieutenant governor because “he is discharging the functions of Governor by the mandate of the Constitution, and that by reason of being the Lieutenant Governor”); *Sadler*, 47 P. at 450 (holding when the powers and duties devolve, “there is no vacancy created thereby in the office of lieutenant governor”); *Heller*, 42 A. at 156 (finding no vacancy); *McBride*, 70 P. at 26 (“[T]he office of lieutenant governor did not . . . become vacant, but the officer “remained lieutenant governor, intrusted with the powers and duties of governor.”); *Ekern*, 280 N.W. at 399 (“He remains lieutenant governor, upon whom devolved the powers and duties of governor. In such a contingency no vacancy occurs in the office of lieutenant governor.”); Okla. Op. Att’y Gen. No. 65-235, at 1 (concluding that when the office of governor “devolves upon, descends to, the Lieutenant Governor, . . . [i]n no sense does the Lieutenant Governor vacate his office”); *see also* Idaho Op. Att’y Gen. No. 77-1, 1977 WL 25063, at \*3 (“[M]ost courts hold that resignation of a governor does not create a ‘vacancy’ in the office of lieutenant governor when that person assumes the devolved duties as governor.”).

There are two court decisions in other states which have reached the opposite conclusion, but neither is persuasive. By statute, Arkansas provides for the special election of a new lieutenant governor. Ark. Code § 7-7-105; *Stratton v. Priest*, 932 S.W.2d 321 (Ark. 1996) (affirming the constitutionality of the statute). Iowa lacks a comparable statute calling for a special election. Moreover, a special election upholds the elective principle, whereas simply appointing a new lieutenant governor does not.

Under very trying circumstances a divided New York Court of Appeals held that a catchall statute allowing the governor to fill vacancies could be used to fill a vacancy in the office of lieutenant governor. *Skelos v. Paterson*, 915 N.E.2d 1141, 1142 (N.Y. 2009). We do not find the *Skelos* majority’s reasoning persuasive, because it *assumes* a vacancy exists and decides only *who* is empowered to fill it. In Iowa, given our framers’ focus on the elective principle and the near-unanimous authority predating *Skelos*, we hesitate to make a similar assumption. *See* Okla. Op. Att’y Gen. No. 65-235, at 1 (declining to acquiesce in the “erroneous assumption” that “the office of Lieutenant Governor becomes vacant when the Lieutenant Governor acquires the powers and duties of the Governorship”).

Interestingly, in 1943 the New York Attorney General opined that a statute allowing the governor to make appointments could not be applied to a lieutenant governor vacancy because it “would lead to the anomalous result that a Governor by appointing a Lieutenant Governor and then resigning could impose upon the people his own choice as their Governor.” 1943 N.Y. Op. Att’y Gen. No. 378, 1943 WL 54210, at \*4 (N.Y. Att’y Gen. Aug. 2, 1943).

**B. Analysis.** Having taken this wealth of information into consideration, we find the answer to your question in the intersection between article IV, sections 14, 15, 17, 18, and 19 of the Iowa Constitution. Section 14 prohibits an individual from holding two offices “except as herein expressly provided.” The subsequent sections then go on to provide for the line of succession in the event of the governor’s death, resignation, removal, or disability. This juxtaposition is not coincidental. In fact, the entire scheme suggests that our framers intended for situations when a single individual would hold two offices—including the offices of Governor and Lieutenant Governor.<sup>7</sup> Indeed, it means that when the executive powers and duties devolve from the governor to the lieutenant governor, those two offices essentially merge. As we previously stated—the lieutenant governor becomes governor *because* she is lieutenant governor.

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We are persuaded that “[i]f the framers of the Constitution had intended that there should be a vacancy in the office of Lieutenant Governor upon the resignation, death, or permanent removal of the Governor, they could have easily said so.” Mitchell, 34 P.2d at 372; accord Heller, 42 A. at 156 (concluding if the framers intended a vacancy in the lower office, “it is reasonable to believe they would have said so in no uncertain language”). Our framers did not do so. This omission is telling, especially because our constitution was drafted shortly after two Presidents died in office—and especially when other states have amended their constitutions to do so. See, e.g., Del. Const. art. III, § 20 (“Whenever the powers and duties of the office of Governor shall devolve upon the Lieutenant-Governor . . . his or her office shall become vacant . . .”); Tex. Const. art. IV, § 16(d) (“On becoming Governor, the person vacates the office of Lieutenant Governor . . .”); Utah Const. art. VII, § 10(3)(a)(i) (defining vacancies in the office of Lieutenant Governor to include when “the Lieutenant Governor . . . becomes Governor”).

In addition to the framers’ distinct decision not to provide for a vacancy, other provisions referring to the lieutenant governor “acting as” governor or “exercising the office” of governor are further compelling evidence that there is no vacancy in the office of lieutenant governor. These provisions referring to the lieutenant governor performing particular functions—as opposed to saying merely “the lieutenant governor”—would be unnecessary and even meaningless if the new governor could simply appoint a “replacement” lieutenant governor. See Iowa Const. art. IV, §§ 15, 18–19 (1857 original version).

<sup>7</sup> For example, Article III, section 1 prohibits any person from exercising the powers of two branches of government “except in cases hereinafter expressly directed or permitted.” The primary exception to this separation of powers provision originally lay in article IV, sections 15 and 18, which called for the Lieutenant Governor to serve as President of the Senate, and article IV, section 19, which named the President of the Senate and Speaker of the House of Representatives to the line of succession.

The express language of original section 19 ("If the Lieutenant Governor, while acting as Governor . . .") contemplates a series of events—something happens to the elected Governor and then something happens to the elected Lieutenant Governor. As the Oregon Supreme Court noted, the purpose of creating a line of succession is to ensure the automatic transfer of power—to ensure that someone is always endowed with the powers of Chief Magistrate. See *Olcott II*, 187 P. at 289. We believe that was also the purpose of article IV, section 19: to extend the line of succession beyond the lieutenant governor. Inserting a newly-appointed "replacement" lieutenant governor in that order would interrupt the line the framers deliberately chose and make it impossible for section 19's provisions ever to be fully carried out.

Moreover, allowing for the appointment of a new lieutenant governor would subvert the elective principle that the Iowa framers clearly endorsed. Like his or her predecessor, under our Constitution an appointed lieutenant governor would assume the powers and duties of governor upon the governor's death, resignation, removal, or disability. In other words, if a lieutenant governor who becomes governor can appoint a new lieutenant, Iowa could have a governor who was not elected by the people. This would be a particularly absurd/unpalatable result because the sole *purpa* primary reason ~~ese~~ *esse* for creating the office of lieutenant governor, as expressed at the 1857 constitutional convention, was to ensure that the person first in the line of succession was a statewide elected official. See *Mitchell*, 34 P.2d at 372 (concluding an unelected governor "was never contemplated and never intended by the framers of the Constitution, or the people who adopted it"); 1939 Mich. Att'y Gen. Rep. at 69 ("[I]t was never intended . . . that any person, who has not received the sanction of the electors by direct vote, should be appointed to a position which would entitle him, in certain eventualities, to the high office of governor.").

~~Furthermore~~ Finally, as we have noted, section 17's devolution provision applies equally to both permanent and temporary disabilities. So must the answer to this question. While Governor Branstad's prospective resignation would be permanent, it is easy to imagine situations which would remove a governor from office only temporarily. For example, on June 29, 2002 and July 21, 2007, Vice President Dick Cheney assumed the powers and duties of the presidency while President George W. Bush underwent ~~minor~~—medical procedures. If the lieutenant governor assumed the power and duties of the governorship under similar (temporary) circumstances and appointed a new lieutenant governor, what would happen to those two officials upon the temporarily-disabled governor's return to the office of Governor? Allowing for the appointment of a new lieutenant governor during a temporary disability would be an absurd result. See *Mitchell*, 34 P.2d at 372 ("[I]f the Governor were . . . unable temporarily to perform the duties of his office, it could hardly be argued that while the Lieutenant Governor was discharging the duties of the



office of Governor, he could appoint a Lieutenant Governor.”); *Heller*, 42 A. at 158 (concluding a vacancy in the lower office made little sense for temporary disabilities and “could not have been within the contemplation” of those drafting the constitutional provision).

~~We do not think the line of succession detailed in section 19 was intended to apply *only* in situations where the governor and lieutenant governor die or resign simultaneously. The express language of original section 19 (“If the Lieutenant Governor, while acting as Governor . . .”) contemplates a series of events—something happens to the elected Governor and then something happens to the elected Lieutenant Governor. As the Oregon Supreme Court noted, the purpose of creating a line of succession is to ensure the automatic transfer of power to ensure that someone is always endowed with the powers of Chief Magistrate. See *Olcott II*, 187 P. at 289.~~

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~~Additionally, the original 1857 version of section 18 expressly contemplates situations when the Lieutenant Governor is exercising the powers and duties of the governor and there is no separate Lieutenant Governor. Under that version of section 18, the Senate can then elect a new President pro tempore. Other provisions referring to the lieutenant governor “acting as” governor or “exercising the office” of governor are further compelling evidence that there is no vacancy in the office of lieutenant governor because these provisions would be unnecessary and even meaningless if the new governor could simply appoint a new lieutenant governor. See Iowa Const. art. IV, §§ 15, 18–19 (1857 original version).~~

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~~We are persuaded that “[i]f the framers of the Constitution had intended that there should be a vacancy in the office of Lieutenant Governor upon the resignation, death, or permanent removal of the Governor, they could have easily said so.” *Mitchell*, 34 P.2d at 372; accord *Heller*, 42 A. at 156 (concluding if the framers intended a vacancy in the lower office, “it is reasonable to believe they would have said so in no uncertain language”). Our framers did not do so. This omission is telling, especially because our constitution was drafted shortly after two Presidents died in office and especially when other states *have* amended their constitutions to do so. See, e.g., Del. Const. art. III, § 20 (“Whenever the powers and duties of the office of Governor shall devolve upon the Lieutenant Governor, . . . his or her office shall become vacant . . .”); Tex. Const. art. IV, § 16(d) (“On becoming Governor, the person vacates the office of Lieutenant Governor . . .”); Utah Const. art. VII, § 10(3)(a)(i) (defining vacancies in the office of Lieutenant Governor to include when “the Lieutenant Governor . . . becomes Governor”).~~

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~~Moreover, allowing for the appointment of a new lieutenant governor would subvert the elective principle that the Iowa framers clearly endorsed. Like his or her predecessor, under our Constitution an appointed lieutenant~~

~~governor would assume the powers and duties of governor upon the governor's death, resignation, removal, or disability. In other words, if a lieutenant governor who becomes governor can appoint a new lieutenant, Iowa could have a governor who was not elected by the people. This would be a particularly absurd result because the sole purpose of creating the office of lieutenant governor, as expressed at the 1857 constitutional convention, was to ensure that the person first in the line of succession was a statewide elected official. See Mitchell, 34 P.2d at 372 (concluding an unelected governor "was never contemplated and never intended by the framers of the Constitution, or the people who adopted it"); 1939 Mich. Att'y Gen. Rep. at 69 ("[I]t was never intended . . . that any person, who has not received the sanction of the electors by direct vote, should be appointed to a position which would entitle him, in certain eventualities, to the high office of governor.")~~

The subsequent amendments to Article IV in 1952 and 1988 reinforce our conclusion. In 1952, Article IV, section 19 was amended to provide,

If there be a vacancy in the office of Governor and the Lieutenant Governor shall by reason of death, impeachment, resignation, removal from office, or other disability become incapable of performing the duties pertaining to the office of Governor, the President pro tempore of the Senate shall act as Governor until the vacancy is filled or the disability removed. . . .

Like its predecessor, this version of section 19 contemplates a series of events where the governor is first incapacitated and then the lieutenant governor—while exercising the powers and duties of governor—is incapacitated. Just like the original 1857 constitution, nothing in the 1952 amendments contemplates that there is a vacancy in the office of lieutenant governor when the sitting governor resigns or dies. See *Ekern*, 280 N.W. at 398-99 (concluding under language materially identical to revised article IV, section 19 that there is no lieutenant governor vacancy when the powers and duties of governor devolve). Most tellingly, the historical practice of not appointing a new lieutenant governor was continued following the death of Governor Beardsley in 1954 and the resignation of Governor Hughes in 1969—after the 1952 amendments.

As noted previously, in 1988 article IV was amended to provide for the election of governor and lieutenant governor on the same ticket and to alter the lieutenant governor's duties by removing her role as president of the senate. The 1988 amendments also amended article IV, section 2 to provide, that "[t]he governor and the lieutenant governor shall be elected by the qualified electors." This latter amendment reinforces the framers' original commitment to the elective principle.

Nothing in the 1988 amendments specifically altered the line of succession outlined in sections 17 and 19. Contemporary editorials do not

indicate that the voters contemplated anything other than the single-ticket issue and the lieutenant governor's duties.<sup>8</sup> See, e.g., Editorial, *Preventive Maintenance*, Des Moines Reg., Oct. 16, 1988, at 2C; Thomas A. Fogarty, *Lawmakers Seek to Have Governor, Lt. Gov. Run as Team*, Des Moines Reg. (Feb. 3, 1988); Thomas A. Fogarty, *Voters to Decide if Governor, Lt. Gov. Should Run as a Team*, Des Moines Reg. (Apr. 13, 1988); Linda Lantor, *Lieutenant Governor Amendments Big Winners*, Des Moines Reg. (Nov. 9, 1988).

The 1988 amendments' failure to alter the line of succession or address the question of a vacancy in the office of lieutenant governor is striking considering the intervening history between 1952 and 1988. Originally the U.S. Constitution contained language mirroring Iowa's devolution framework. The U.S. Constitution, however, was amended in 1967 following the assassination of President Kennedy. The 25th Amendment to the United States Constitution expressly provided that the vice president becomes president and granted the President the authority to appoint a new vice president with Congressional approval. U.S. Const. amend. 25, §§ 1, 2.

Iowa's legislators and voters in 1988 were obviously aware of the change in the federal system; President Ford became the first unelected U.S. President just the decade before. Yet, Iowa did not attempt to follow the new federal model. While it is often dangerous to reach a conclusion based upon legislative inaction, by declining to adopt the federal model, we believe the amendments ratified our historical precedent—namely, that the lieutenant governor assumes the title, powers, and duties of governor, but does not appoint a new lieutenant governor. See *Chiodo v. Section 43.24 Panel*, 846 N.W.2d 845, 862 (Iowa 2014) (Mansfield, J., specially concurring).

Because it is our opinion that upon a governor's resignation, the lieutenant governor will hold both the Office of Governor and the Office of Lieutenant Governor, as expressly permitted by Article IV, section 14, there is no vacancy in the office of lieutenant governor to be filled. Cf. *Olcott I*, 181 P. at 481 (relying on "except as permitted" language to conclude an individual could "hold the offices of governor and secretary of state at the same time").

As a result, under these facts, Iowa Code section 69.8 does not apply. See Iowa Code § 69.8(2) (referring to the governor filling "a vacancy in the office

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<sup>8</sup> This is in stark contrast to Utah, where its 1980 constitutional amendments addressing gubernatorial succession were presented to the voters as mirroring the succession of the federal government—which by this time had adopted the 25th Amendment. Utah Op. Att'y Gen. No. 03-001, 2003 WL 21996258 (Utah Att'y Gen. Aug. 18, 2003).

of lieutenant governor” (emphasis added)). Consequently, we need not opine on the statute’s constitutionality.<sup>9</sup>

**C. Answer.** It is our opinion that if the governor resigns and the powers and duties of the office devolve upon the lieutenant governor, that person does not have authority to appoint a new lieutenant governor. Upon the governor’s resignation, the powers and duties of the office will devolve or descend upon the lieutenant governor—who does not ascend or rise to the Office of Governor. However, under our constitutional framework, by possessing the powers and duties of the chief magistrate, the lieutenant governor becomes governor for all intents and purposes, is entitled to use the title of Governor, and is entitled to the compensation of governor for the remainder of the term. The lieutenant governor takes on this authority because she is lieutenant governor. In other words, upon a governor’s resignation, the lieutenant governor will hold both the offices of Governor and Lieutenant Governor. There is no vacancy to be filled.

We thank you, Senator, for your dedicated service to the State of Iowa and your keen interest in seeking clarity on these important legal issues.

Very truly yours,

Thomas J. Miller  
Attorney General

Jeffrey S. Thompson  
Solicitor General

Meghan L. Gavin  
Assistant Attorney General

David M. Ranscht  
Assistant Attorney General

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<sup>9</sup> Because it is not the factual context in which you have asked your questions, we do not address whether section 69.8 would be applicable if the lieutenant governor resigned or died in office while the governor remained. The Wisconsin Supreme Court has suggested that a vacancy in the office of lieutenant governor exists in *that* factual scenario, but not when the powers and duties of governor devolve upon the lieutenant governor. See *Ekern*, 280 N.W. at 399.

## **I. If Governor Branstad Resigns, Is Lieutenant Governor Reynolds Governor?**

Article IV, section 17 of the Iowa Constitution is the key to answering this question. “[T]he purpose of art. IV, § 17 is to ensure that the citizens of Iowa are not without a person capable of performing the constitutional and statutory duties imposed upon a governor.” 1980 Op. Att’y Gen. 550, 1980 WL 25903, at \*3 (Iowa Att’y Gen. Jan. 2, 1980). That section provides,

In case of the death, impeachment, resignation, removal from office, or other disability of the governor, the powers and duties of the office for the residue of the term, or until he shall be acquitted, or the disability removed, shall devolve upon the lieutenant governor.

Iowa Const. art. IV, § 17.<sup>1</sup> Article IV, section 17 has remained unchanged since 1857.

I focus here on two notable aspects of article IV, section 17. First, while death and resignation are permanent exits from office, the phrase “other disability” includes temporary conditions such as physical or mental incapacity. See 1923 Op. Att’y Gen. 263, 263 (Iowa Att’y Gen. Aug. 23, 1923) (answering a question posed by the governor about the exercise of

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<sup>1</sup> Article IV, section 17 bears a section heading stating “Lieutenant governor to act as governor.” I give that heading no weight in my analysis. During the 1857 Iowa convention, the constitutional provisions did not include section descriptions or titles when read into the record. See 1 *The Debates of the Constitutional Convention of the State of Iowa*, at 76–78 (W. Blair Lord rep., 1857). The original handwritten version of the Iowa Constitution does not include section descriptions or titles either. See generally Iowa Const., at [https://www.legis.iowa.gov/docs/publications/icnst/attachments/Iowa\\_Constitution\\_Scanned.pdf](https://www.legis.iowa.gov/docs/publications/icnst/attachments/Iowa_Constitution_Scanned.pdf). Furthermore, a section heading “cannot limit the plain meaning of the text.” *Atchison, Topeka & Santa Fe Ry. Co. v. Bair*, 338 N.W.2d 338, 344 (Iowa 1983). That important limitation, which prevents a code editor’s choice of language from frustrating the intent of a statute, is even more significant when considering a constitutional provision.



gubernatorial power under article IV, section 17 during a several-month hiatus recommended by his physician). Therefore, article IV, section 17 must carry an interpretation commensurate with its flexibility; its provisions must establish a framework applicable to several possible factual scenarios without creating “friction in the machinery of government by reason of such construction.” *Fitzpatrick v. McAlister*, 248 P. 569, 576 (Okla. 1926).

The second important piece of article IV, section 17 is the word “devolve.” ~~a downward transfer~~ That word “is defined by lexicographers and in law dictionaries as meaning to roll or tumble down or descend.” *Id.* at 573 (citing authorities indicating that meaning as of 1926); *see also* “Devolve,” *Black’s Law Dictionary* (10th ed. 2014) (defining “devolve” to include transferring rights, duties, or powers and passing by transmission); “Devolve,” *Webster’s Third New Int’l Dictionary* (1993) (defining “devolve” as “to flow or roll from a situation viewed as higher to one that is lower” and “to fall or be passed . . . as an obligation or responsibility”); *12 Words & Phrases* 546 (1954). The overall concept is that the word connotes downward movement. This downward movement creates an interpretation question: ~~Does it~~ article IV, section 17 of the Iowa Constitution, mean if the governor resigns, is ~~the lieutenant governor is truly governor, or that the lieutenant governor is something less—such as acting governor or governor ex officio~~ not?

~~One~~ Beyond dictionary definitions, another important guidepost in determining the meaning of “devolve” is what it was understood to mean at the time it was enacted:

In the interpretation of the Constitution . . . we are to ascertain the meaning by getting at the intention of those making the instrument. What thought was in the mind of those making the Constitution—what was their intention, is the great leading rule of construction.

*Ex parte Pritz*, 9 Iowa 30, 32 (1858); accord *Griffin v. Pate*, 884 N.W.2d 182, 186 (Iowa 2016) (beginning analysis of a constitutional provision “by looking back to review the history” of it “to gain a better understanding of the concept” as applied in a current case); *Redmond v. Ray*, 268 N.W.2d 849, 853 (Iowa 1978) (“In construing a constitution, our purpose is to ascertain the intent of the framers.”). There are several important pieces to the historical puzzle that, once assembled, illuminate the framework the Iowa Constitution’s framers established.

**A. Constitutional Debates.** The Iowa Constitution of 1846 made no provision for a lieutenant governor. However, as the 1857 constitutional convention began, one delegate proposed that a committee dedicated to formulating the executive branch of government consider “providing for the election of a Lieutenant Governor who, by virtue of his office, shall . . . exercise all the powers and have the title of Governor in case of the death, removal, or other disability of the Governor.” 1 *The Debates of the Constitutional Convention of the State of Iowa*, at 39 (W. Blair Lord rep., 1857) [hereinafter *The Debates*]. The convention agreed to the resolution. *Id.* Accordingly, the drafters of article IV, section 17 envisioned that the lieutenant governor would “have the title of Governor” if the governor left office, *id.*—and utilized the word “devolve” to accomplish that result. See *State ex rel. Martin v. Heil*, 7 N.W.2d

375, 381–82 (Wis. 1942) (recounting similar debate from the Wisconsin constitutional convention in 1847).

**B. *Federal Language and History.*** In 1857, when the Iowa Constitution was ratified, article II, section 1, clause 6 of the United States Constitution read: “In Case of the Removal of the President from Office, or of his Death, Resignation, or Inability to discharge the Powers and Duties of the said Office, the Same shall devolve on the Vice President . . . .” Thus, article IV, section 17 of the Iowa Constitution matched language in the United States Constitution at the time.

Under that federal language, ~~several~~multiple presidents died in office. Following each death, the Vice President was considered President, not “acting President.” Two instances occurred before 1857: John Tyler in 1841 and Millard Fillmore in 1850. Because of this history, the delegates to the 1857 Iowa constitutional convention likely understood the word “devolve” to mean that upon the governor’s exit from office, the lieutenant governor would be governor following a downward movement of powers. See *State v. Baldon*, 829 N.W.2d 785, 810 (Iowa 2013) (Appel, J., specially concurring) (noting “the drafters of the Iowa Constitution were well aware” of existing federal law when writing in 1857).

A federal court decision from 1867 confirms this understanding:

Three times, since the adoption of the constitution, the president has died, and, under [article II, section 1, clause 6], the powers and duties of the office of president have devolved upon the vice president. All branches of the government have, under such circumstances, recognized the vice president as holding the office of president, as authorized to assume its title . . . . It has never

been supposed that, under the provision of the constitution, the vice president . . . acted as the servant, or agent, or locum tenens of the deceased president, or in any other capacity than as holding the office of president fully, for the time being, by virtue of express authority emanating from the United States.

*Merriam v. Clinch*, 17 F. Cas. 68, 70 (C.C.S.D.N.Y. 1867). The three instances to which the court referred were Tyler, Fillmore, and Andrew Johnson in 1865.

Likewise, the Oklahoma Supreme Court relied upon federal history several decades later in analyzing the word “devolve:”

[U]pon the death of President Wm. H. Harrison, Vice President Tyler became President of the United States. For almost a century this construction of the federal Constitution has stood without question. It has been recognized as correct, and acquiesced in, not only by the departments of state and all the states of the Union, but officially recognized by every civilized government in the world.

.....

Defendant suggests that no court has ever pronounced that to be the law. To our mind, it is so clearly correct that no one has ever presumed to test its correctness in the courts. Therefore it should have greater weight than an ordinary departmental construction, not only because it has stood for almost a century, but because it has been recognized as the correct conception of our system of government, and because, for eighty-five years under this construction, there has been no friction in the machinery of government by reason of such construction.

*Fitzpatrick*, 248 P. at 576. Between *Merriam* in 1867 and *Fitzpatrick* in 1926, three more presidents died in office—and once again, after each death, the Vice President was considered President.<sup>2</sup> The consistent federal understanding of the word “devolve” over several decades further informs my determination of what “devolve” means in article IV, section 17 of the Iowa Constitution.

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<sup>2</sup> The three were Chester Arthur in 1881, Theodore Roosevelt in 1901, and Calvin Coolidge in 1923.

**C. Other Original Executive Branch Provisions.** Related provisions enacted alongside article IV, section 17 can also aid in determining the meaning of the word “devolve.” See Iowa Code § 4.1(38) (2017) (“Words and phrases shall be construed according to the context . . . .”); see also State ex rel. Martin v. Heil, 7 N.W.2d at 381 (“[T]he provision should be examined in its setting in order to find out . . . the real meaning and substantial purpose of those who adopted it.”). Several other original provisions in article IV of the Iowa Constitution bear upon the question of transferring ~~or shifting~~ executive power. Although some provisions of article IV have been amended since 1857, I initially focus on the original provisions, because those—~~together with section 17—~~established the original framework ~~as the drafters intended it.~~

Article IV, section 1 provides that “The supreme executive power of this state shall be vested in a chief magistrate, who shall be styled the governor of the state of Iowa.” Iowa Const. art. IV, § 1. In other words, the person who has the powers is governor. Like article IV, section 17, article IV, section 1 has remained unchanged since 1857.

Article IV, sections 2 and 3 originally established that the governor and lieutenant governor would be elected by the people—but not on the same ticket.

Article IV, section 18 made the lieutenant governor President of the Senate with a tiebreaking vote, but provided that “when [the lieutenant governor] shall exercise the office of Governor, the Senate shall choose a President pro tempore.”



Article IV, section 15 established that the lieutenant governor would serve until a successor was elected and qualified, and that “while acting as Governor,” the lieutenant governor would receive the same pay as provided for the governor.

Article IV, section 19 established how executive power would transfer when multiple state officers were incapable of performing gubernatorial duties:

If the Lieutenant Governor, while acting as Governor, shall be impeached, displaced, resign, or die, or otherwise become incapable of performing the duties of the office, the President pro tempore of the Senate shall act as Governor until the vacancy is filled, or the disability removed; and if the President of the Senate, for any of the above causes, shall be rendered incapable of performing the duties pertaining to the office of Governor, the same shall devolve upon the Speaker of the House of Representatives.

In light of these provisions, it is my opinion that section 1 and original section 18 complement each other and dovetail with section 17. Because the framers understood that the lieutenant governor would “have the title of Governor,” 1 *The Debates* at 39, they also provided in section 18 that when the powers and duties devolved (as section 17 instructed), the lieutenant governor would “exercise the office of Governor.” That aligns with the foundational principle that the person who has the powers is governor. Iowa Const. art. IV, § 1. The foundational principle is paramount.

**D. Other States’ Experiences.** Iowa is not the first state to face significant legal questions regarding a governor’s permanent departure from office. While other states’ constitutions and experiences do not alone determine ~~conclusively~~ what the Iowa Constitution means, I find valuable to my analysis the language used in those states’ constitutions, court decisions or

attorney general opinions involving that language, and any subsequent linguistic changes.

My review of available authority reveals a relatively even divide. When the issue has surfaced and the relevant constitutional provision utilized the word “devolve,” some authorities in other states have concluded that the lieutenant governor is governor. In view of the question as I have phrased it, I call these the “yes” decisions. *See, e.g., Bryant v. English*, 843 S.W.2d 308, 311 (Ark. 1992) (“[W]e hold that . . . the Lieutenant Governor serves as Governor for the residue of the term . . . .”); *State ex rel. Lamey v. Mitchell*, 34 P.2d 369, 370 (Mont. 1934) (“[W]hen the Governor resigns or is permanently removed from office, there is no vacancy in the office of Governor in the sense that there is no one left with power to discharge the duties imposed upon the Governor.”); *Fitzpatrick*, 248 P. at 577 (“Mr. Trapp is just as much a Governor, in every literal and practical sense and effect, as though he had been elected to the office.”); *Chadwick v. Earhart*, 4 P. 1180, 1181 (Or. 1884) (“[I]t is not shown how . . . . a person can fill the office of governor without being governor.”); *State ex rel. Murphy v. McBride*, 70 P. 25, 26 (Wash. 1902) (“The constitution having provided that in case of the death of the governor the duties of the office shall devolve upon the lieutenant governor, there is no vacancy in the office of governor.”); 1939 Op. Att’y Gen. 69, 73 (Mich. Att’y Gen. Mar. 28, 1939) (concluding when the governor dies, the lieutenant governor is “governor of the state [for] all intents and purposes”).

Others have concluded that the lieutenant governor or next person “in line” is not truly governor, ~~but is instead only acting governor~~. I call these the “no” decisions. See, e.g., *State ex rel. De Concini v. Garvey*, 195 P.2d 153, 154 (Ariz. 1948) (concluding the person upon whom the powers and duties of governor devolve after the governor’s death or resignation “is not governor de jure or de facto but merely ex officio ~~or acting governor~~”); *People ex rel. Lynch v. Budd*, 45 P. 1060, 1060 (Cal. 1896) (“[I]t would hardly be contended that when the powers and duties of the governor devolve upon the lieutenant governor the latter thereby becomes governor . . . .”); *State ex rel. Hardin v. Sadler*, 47 P. 450, 450 (Nev. 1897) (“If a vacancy occurs in the office of governor, the powers and duties of the office devolve upon the lieutenant governor . . . . The officer remains lieutenant governor, but invested with the powers and duties of governor.”); *State v. Heller*, 42 A. 155, 157 (N.J. 1899) (“The language used is not ambiguous. It declares that the powers, duties, and emoluments of the office shall devolve on the president of the senate; it does not confer upon him the title of the office.”); *State ex rel. Martin v. Ekern*, 280 N.W. 393, 399 (Wis. 1938) (“[T]he lieutenant governor does not become governor. He remains lieutenant governor, upon whom devolves the powers and duties of governor.”).

**E. Analysis.** The substantial amount of “no” decisions are significant. Although Iowa has “no obligation to adopt a rule just because it has generally been adopted elsewhere,” *Handeland v. Brown*, 216 N.W.2d 574, 577 (Iowa 1974), all of the “no” decisions are based on a careful parsing of the word “devolve” and the other relevant constitutional language. When resolving legal

quandaries, precision and nuance matter. *See Rivera v. Woodward Res. Ctr.*, 865 N.W.2d 887, 897 (Iowa 2015). Thus, placing Iowa among the “no” decisions would be legally defensible. Indeed, in 1977, the Idaho Attorney General acknowledged that, although he believed them to be somewhat counterintuitive, the “no” decisions suggested “the lieutenant governor *never* truly succeeds to the office of governor” under the Idaho Constitution (which at the time used the word “devolve”). Idaho Op. Att’y Gen. No. 77-1, 1977 WL 25063, at \*1 (Idaho Att’y Gen. Jan. 4, 1977). The Idaho Attorney General went on to recommend that only the Idaho Supreme Court could answer the question definitively as a matter of Idaho law. *See id.*

Nonetheless, I find the “yes” decisions more persuasive than the “no” decisions. Several of the “no” decisions have been superseded by subsequent constitutional amendments in their respective states. Those amendments often changed the framework for transferring executive power to provide that the lieutenant governor “becomes governor” or “shall be governor” when the governor dies, resigns, or otherwise leaves office permanently. *See, e.g.,* Ariz. Const. art. V, § 6; Cal. Const. art. V, § 10; N.J. Const. art. V, § 1 ¶ 6; Wis. Const. art. V, § 7(1). In other words, the people of the respective states amended the constitution to clarify the framework of executive power, suggesting they believed the court’s previous interpretation was incorrect.

Additionally, with specific regard to New Jersey, the *Heller* court noted several phrases in the state’s constitution that referred to the governor “or person administering the government.” *Heller*, 42 A. at 157. If the person

exercising executive power after the governor's resignation was governor, the court concluded, the phrase "person administering the government" would be superfluous. *See id.* Thus, the *Heller* decision is distinguishable because it was based in part on unique constitutional language. The Iowa Constitution does not similarly refer to the governor "or person administering the government."

I also conclude the "no" decisions elevate form over substance, which the Iowa Supreme Court has repeatedly cautioned against. *See, e.g., Lewis v. Jaeger*, 818 N.W.2d 165, 179 (Iowa 2012); *State ex rel. Miller v. Smokers Warehouse Corp.*, 737 N.W.2d 107, 110 (Iowa 2007); *Van Baale v. City of Des Moines*, 550 N.W.2d 153, 156 (Iowa 1996). The "no" decisions are somewhat technical, drawing a linguistic distinction that, while noteworthy, makes no substantive difference under the circumstances presented here. *See Harriman v. State*, 2 Greene 270, 285 (Iowa 1849) (considering it the court's "imperative duty" to "disregard . . . unmeaning technicalities, and to look more to the substance and merits of each case"); see also *State ex rel. Martin v. Heil*, 7 N.W.2d at 381 ("It is extremely important in the interpretation of constitutional provisions that we avoid determinations based purely on technical or verbal argument and that we seek to discover the true spirit and intent of the provisions examined."). Whether her title would be governor or acting governor, there could be little dispute that if Governor Branstad resigns, now-Lieutenant Governor Reynolds would possess authority to sign legislation, ~~appoint new members of state boards and commissions,~~ issue pardons, and



even receive the governor's salary. Instead, the dispute centers on the exact wording of her new title.

On that score, article IV, section 1 of the Iowa Constitution carries significant weight. That section provides, "The supreme executive power of this state shall be vested in a chief magistrate, who shall be styled the governor of the state of Iowa." Iowa Const. art. IV, § 1. In other words, the person who has the powers is governor. The powers make the governor, carrying with them the title. As the Arkansas Supreme Court concluded under a similar provision in the Arkansas Constitution, this means when the powers and duties of governor devolve upon the lieutenant governor, that person is thereafter styled the governor. See *Bryant*, 843 S.W.2d at 313; accord *Fitzpatrick*, 248 P. at 572 ("He is the 'Governor' for the simple reason that he governs."). Thus, there is no substantive difference between governor and acting governor—when the governor's exit is permanent. See *State ex rel. Chatterton v. Grant*, 73 P. 470, 474 (Wyo. 1903) (concluding that, after the governor died, the question whether a person "[wa]s in fact the governor of the state" was immaterial because, whether governor or acting governor, the person had the powers and duties of the office). A person acting as governor after the powers have devolved is governor, because of article IV, section 1.

The "yes" decisions also comport with the Iowa framers' understanding of the lieutenant governor's role and with our state's historical practice. In creating the office of lieutenant governor, the framers expected that person to "have the title of Governor" if the governor left office. 1 *The Debates*, at 39.

Furthermore, on four previous occasions the governor of Iowa has resigned or died in office—and each time, the lieutenant governor was thereafter treated as governor. See William H. Fleming, *The Second Officer in the Government*, reprinted in *Annals of Iowa: A Historical Quarterly*, Vol. XIII, No. 1, at 533–34 (1921) (recalling Governor Kirkwood’s resignation in 1877 and Governor Cummins’s resignation in 1908); Legis. Servs. Agency, *Pieces of Iowa’s Past: Lieutenant Governors Who Have Become Governor* 2–3 (Mar. 8, 2017), available at <https://www.legis.iowa.gov/docs/publications/TB/855445.pdf> (noting Governor Beardsley’s death in 1954 and Governor Hughes’s resignation in 1969). Indeed, one history of Iowa referred to Kirkwood’s successor as the “ninth governor of Iowa” following Kirkwood’s resignation. 4 Benjamin F. Gue, *History of Iowa: From the Earliest Times to the Beginning of the Twentieth Century* 199–200 (1903). Although historical practice standing alone does not mandate a similar result now, the historical practice is consistent with the framework of executive power I have described. See *Bryant*, 843 S.W.2d at 312 (finding it “of some persuasion” that, when the governor of Arkansas died or resigned, the lieutenant governor was historically treated as governor).

Unlike the constitutional amendments in the “no” states, Iowa’s amendments to article IV do not change or alter my analysis of the effect of article IV, section 17. A 1952 amendment to article IV, section 19 removed a reference to the lieutenant governor “acting as” governor, replacing it with “if there be a vacancy in the office of Governor”—and that language remains today. ~~However, the 1952 amendment did not remove language in article IV,~~

~~section 15 which establishes the lieutenant governor's compensation that referred to the lieutenant governor acting as governor.~~

There is a natural tendency to ascribe significance to the change, but ~~these amendments~~ that amendment doesn't really say much about the title of the person upon whom the powers and duties devolve—because article IV, section 1 controls that question.<sup>3</sup> And in any event, as I have explained, "acting as" governor is simply what the lieutenant governor does when the powers and duties devolve, not a substantive limit on his or her power or title.

The more significant piece of the 1952 amendments, in my view, was a section providing that if the governor-*elect* died, resigned, or failed to qualify, the lieutenant governor-elect would "assume the powers and duties of governor" upon inauguration. As I have noted, article IV, section 1 would therefore make the person with the powers the governor. In other words, the 1952 amendment solidified—not altered—the existing framework for the transfer of executive power in the event of a constitutional contingency.<sup>4</sup>

In 1972, several provisions of article IV were changed, but they did not affect sections 1 or 17. Originally, article IV, sections 2 and 3 provided the governor and lieutenant governor served two-year terms. The 1972 amendment merely increased both terms to four years. Thus, they do not

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<sup>3</sup> If anything, the 1952 amendment reinforces the downward direction of the "devolve" framework by suggesting if there is a vacancy in the executive branch, it occurs in the governor's office.

<sup>4</sup> Additionally, Governor Beardsley's death occurred in 1954, after the 1952 amendments—but our state's practice of treating the lieutenant governor as governor remained the same.

indicate any significant change in the constitutional framework for transferring executive power.

Iowa enacted more significant amendments in 1988. The 1988 amendments provided for the first time that the governor and lieutenant governor are elected together, on one ticket, "as if these two offices were one and the same." Iowa Const. art. IV, § 3. Before 1988, it was possible for the governor and lieutenant governor to represent different political parties. The amendment brought to fruition a constitutional delegate's statement at the 1857 convention: "The governor and lieutenant-governor will always, I presume, be the same in politics, and why not have the successor of the governor of the same politics, instead of bringing in one of the antagonistic party?" 1 *The Debates*, at 593.

The 1988 amendments also recast the lieutenant governor's duties. Under original article IV, section 18, the lieutenant governor was president of the senate and possessed a tiebreaking vote. If the lieutenant governor was absent, impeached, or exercising the office of Governor, the Senate was instructed to choose a president pro tempore to preside and break ties. However, the 1988 amendments revised article IV, section 18 to provide that the lieutenant governor "shall have the duties provided by law and those duties of the governor assigned to the lieutenant governor by the governor." In other words, the 1988 amendments removed the lieutenant governor's status as president of the Senate.

The only remaining duty “provided by law” is to receive the powers and duties of governor under article IV, section 17 if the governor leaves office; there are no additional statutory duties imposed upon the lieutenant governor.

As the Montana Supreme Court put it:

When the framers of the Constitution provided for the election of a Governor and a Lieutenant Governor as members of the executive department of the state, but conferred upon the latter no executive power or authority other than in the contingencies mentioned . . . , they manifested the intention that the people elect two qualified heads of that department—the one active, the other his lieutenant, ready at a moment’s notice to assume the duties of the office, should his superior officer, for any reason, either temporarily or permanently, become unable to perform them.

*State ex rel. Lamey v. Mitchell*, 34 P.2d at 371–72; *see also State ex rel. Martin v. Heil*, 7 N.W.2d at 383 (noting the lieutenant governor “was deliberately chosen by the people for no other important purpose than to substitute for the governor”). Therefore, the 1988 amendments do not alter my analysis on this question.

**F. Answer.** After considering the Iowa Constitution’s language, placing it in historical perspective, and comparing other legal analyses on similar topics, it is my opinion that under article IV, section 17 of the Iowa Constitution, if the governor resigns and the powers and duties of the office devolve upon the lieutenant governor, the lieutenant governor has the title of governor.



## MEMORANDUM

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**To:** Jeff Thompson, Meghan Gavin  
**From:** David Ranscht  
**Date:** February 6, 2017  
**Re:** Draft Answers to Gubernatorial Succession Questions

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On February 1, 2017, the Attorney General's Office received a request from state Senator David Johnson for a formal legal opinion regarding several provisions of the Iowa Constitution. Senator Johnson requested the opinion because President Donald Trump announced he intends to nominate Iowa Governor Terry Branstad as a United States Ambassador. To serve as an ambassador, Governor Branstad would have to resign his position as Governor of Iowa. Senator Johnson requests an expedited attorney general opinion exploring the succession provisions of the Iowa Constitution. Essentially, Senator Johnson asks the Attorney General's Office to opine on what happens if and when Governor Branstad submits his resignation. Although some past Iowa governors have resigned, these specific questions have not arisen in Iowa before.

### I. OPERATIVE CONSTITUTIONAL PROVISIONS

The relevant provision of the Iowa Constitution is article IV, section 17, which is entitled "Lieutenant governor to act as governor." It provides:

In case of the death, impeachment, resignation, removal from office, or other disability of the governor, the powers and duties of the office for the residue of the term, or until he shall be acquitted, or the disability removed, shall devolve upon the lieutenant governor.

Iowa Const. art. IV, § 17. This provision has never been amended.

Several other state constitutions contain similar language that centers around the verb "devolve." *See, e.g.,* Ark. Const. art. 6, § 4; Idaho Const. art. IV, § 12; Nev. Const. art. 5, § 18; Okla. Const. art. 6, § 16; Tenn. Const. art. 3, § 12; Wash. Const. art. 3, § 10. Additionally, although they do not contain the verb "devolve," some state constitutions provide—like article IV, section 17 of the Iowa Constitution—that if a governor resigns, the lieutenant governor shall have the powers, authorities, and duties of governor. *See, e.g.,* Ky. Const. § 84; Mass. Const. pt. 2, ch. II, § II, art. III; Miss. Const. art. 5, § 131.

In contrast, many state constitutions distinguish between permanent disabilities and temporary disabilities. Permanent disabilities occur when a governor dies or resigns, whereas temporary disabilities could include physical or mental incapacity, or absence from the state. In those states, generally the lieutenant governor becomes governor when a permanent disability occurs but gubernatorial powers devolve (or the lieutenant governor acts as governor) during any period of temporary disability. *See, e.g.*, Ala. Const. art. V, § 127; Alaska Const. art. 3, §§ 9, 11; Ariz. Const. art. 5, § 6; Cal. Const. art. 5, § 10; Colo. Const. art. 4, § 13 (1), (5); Conn. Const. art. 4, § 18(a)–(b); Fla. Const. art. 4, § 3(a)–(b); Ga. Const. art. 5, § 1, ¶ V(a)–(b); Haw. Const. art. 5, § 4; Ind. Const. art. 5, § 10(a); Kan. Const. art. 1, § 11; Me. Const. art. 5, pt. 1, §§ 14–15; Md. Const. art. 2, § 6(b), (d); Mich. Const. art. 5, § 26; Minn. Const. art. 5, § 5; Mo. Const. art. 4, § 11(a); Neb. Const. art. IV, § 16; N.J. Const. art. 5, § 1, ¶¶ 6–7; N.M. Const. art. 5, § 7; N.Y. Const. art. 4, § 5; N.C. Const. art. III, § 3(1), (3); Ohio Const. art. III, § 15(A)–(B); Pa. Const. art. 4, § 13; S.D. Const. art. 4, § 6; Tex. Const. art. 4, § 16(c)–(d); Utah Const. art. 7, § 11(2), (5); Va. Const. art. 5, § 16; Wis. Const. art. 5, § 7(1)–(2). Article IV, section 17 of the Iowa Constitution does not make a similar distinction; its provisions apply to all disabilities, whether temporary or permanent. *See* Iowa Const. art. IV, § 17.

Several other provisions of article IV of the Iowa Constitution bear upon the question of gubernatorial succession. Article IV, section 1 provides that “The supreme executive power of this state shall be vested in a chief magistrate, who shall be styled the governor of the state of Iowa.” Article IV, section 10 grants the governor authority to fill any office that becomes vacant if the constitution and laws do not provide a mode for filling such vacancy. Article IV, section 18 provides that the lieutenant governor “shall have the duties provided by law and those duties of the governor assigned to the lieutenant governor by the governor.” Finally, the Iowa Constitution contemplates a contingency that becomes active when multiple state officers are incapable of performing gubernatorial duties:

If there be a vacancy in the office of the governor and the lieutenant governor shall by reason of death, impeachment, resignation, removal from office, or other disability become incapable of performing the duties pertaining to the office of governor, the president of the senate shall act as governor until the vacancy is filled or the disability is removed; and if the president of the senate, for any of the above causes, shall be incapable of performing the duties pertaining to the office of governor the same shall devolve upon the speaker of the house of representatives; and if the speaker of the house of representatives, for any of the above causes, shall be incapable of performing the duties pertaining to the office of governor, the justices of the supreme court shall convene the general assembly by proclamation and the general assembly shall organize by the election of a president by the senate and a speaker by the house of representatives. The general

assembly shall thereupon immediately proceed to the election of a governor and lieutenant governor in joint convention.

Iowa Const. art. IV, § 19.

In 1844, when Iowa first offered a state constitution for ratification by the people, a newspaper editorial expressed disappointment that much of it was written “in very confused and bungling language” that rendered the drafters’ intent “almost or quite doubtful.” *Its Style*, The Iowa Standard, Vol. IV, No. 46 (Nov. 14, 1844), reprinted in *Press Comments and Other Materials on the Constitutions of 1844 and 1846*, at 214 (Benjamin F. Shambaugh ed., 1900). Though modern readers might feel similarly about the current Iowa Constitution, constitutional history illuminates the framework the drafters established—and why they established it.

## II. CONSTITUTIONAL HISTORY

### A. Iowa History

#### 1. The 1857 Convention

Iowa enacted its current constitution in 1857. As the constitutional convention began, one delegate proposed that an Executive Committee dedicated to formulating the executive branch of government consider “providing for the election of a Lieutenant Governor who, by virtue of his office, shall . . . exercise all the powers and have the title of Governor in case of the death, removal, or other disability of the Governor.” 1 *The Debates of the Constitutional Convention of the State of Iowa*, at 39 (W. Blair Lord rep., 1857) [hereinafter *The Debates*]. The previous Iowa Constitution of 1846 made no provision for a lieutenant governor. The 1857 convention agreed to the resolution. *Id.*

When it came time to debate provisions of article IV, a representative from the Committee read the proposed provisions to the convention. *Id.* at 76–78. The provisions did not include section descriptions or titles. *See id.* In other words, the convention did not understand article IV, section 17 to provide that the lieutenant governor “acts as” governor. That descriptive heading came later! Instead, by the words of the resolution at the outset of the convention, the drafters understood that the lieutenant governor would “have the title of Governor” if the Governor left office. *Id.* at 39.

When considering statutes, the Iowa Supreme Court has stated that a section heading “cannot limit the plain meaning of the text.” *Atchison, Topeka & Santa Fe Ry. Co. v. Bair*, 338 N.W.2d 338, 344 (Iowa 1983). That important limitation, which prevents a code editor’s choice of language from frustrating the intent of a statute, is even more significant when considering a

constitutional provision. But even if the heading of article IV, section 17—which does not use operative language from article IV, section 17 itself—sheds *some* light on the framers’ intent in drafting the provision, *see T & K Roofing Co. v. Iowa Dep’t of Educ.*, 593 N.W.2d 159, 163 (Iowa 1999), other available materials better establish what the Iowa Constitution’s framers really understood “devolve” to mean and what they intended the gubernatorial succession framework to look like.

Notably, despite the resolution at the outset of the 1857 convention, Iowa considered having no lieutenant governor at all. During debate on article IV, delegate Warren proposed an amendment to article IV, section 17 that replaced the words “Lieutenant Governor” with “Secretary of State.” 1 *The Debates*, at 587. Delegate Clarke of Johnson County<sup>1</sup> proposed instead “that the duties of the office of Governor, in case of a vacancy, shall devolve upon the president of the Senate.” *Id.* The convention passed the amendment as Clarke proposed it, inserting the words “president of the Senate” in place of “Lieutenant Governor.” *Id.* Accordingly, the convention also deleted other provisions referring to the lieutenant governor’s duties and place in the line of succession. *See id.* at 587–88.

But not every delegate was convinced the convention had made the right decision. The next morning, delegate Gray asked his colleagues “to consider well the importance of the matter before striking” the provisions for a lieutenant governor. *Id.* at 591. He noted many other states’ constitution provided for the office of lieutenant governor and indicated “there are some advantages connected with the office.” *Id.*

Among those advantages was the fact that the lieutenant governor “will be elected directly by the people, instead of by the Legislature.” *Id.* Gray found that important because “We all seem to agree in placing elections, as far as possible, directly in the power of the people.” *Id.* Delegate Clarke of Henry County agreed:

Gentlemen [of the convention] do not reflect that they may be taking from the people the power of selecting their own chief magistrate. When a man is a candidate for the office of Lieutenant Governor, the people always vote for him with the understanding that circumstances may arise which will make him their Governor. But if you give to the Senate the power of selecting the man who may be the Governor of the people, you take from the people this power and put it into the hands of the Senate.

*Id.* at 591–92.

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<sup>1</sup> “There were two men named Mr. Clarke and one named Mr. Clark at the Iowa convention.” *State v. Senn*, 882 N.W.2d 1, 13 n.7 (Iowa 2016); *see* 1 *The Debates*, at 6.

Delegate Gray's remarks sparked renewed debate on the subject, and some delegates changed their minds. For example, delegate Wilson offered that although he had originally voted to eliminate the position of lieutenant governor, "upon reflection . . . the advantages in favor of [having a lieutenant governor] are far superior to the disadvantages." *Id.* at 593. Most significant, however, were Mr. Clark's remarks:

I voted yesterday to strike out the office of Lieutenant-Governor. I had not reflected upon it well, and I am inclined to the opinion that I did not vote right. Upon hearing the argument thus far upon the question, and upon reflection, I am disposed to favor the office of Lieut.-Governor, for one reason, if there were no other: I believe that an executive officer, whoever he may be that shall perform the duties of that office, whether Governor or Lieutenant-Governor, ought to be elected directly by the people, in all cases, at least so far as it is possible to provide for it. We elect the Governor by the direct votes of the people—by the popular will—by the popular voice. In case of his removal or disability, I see no reason why the person filling his place should not be elected directly by the whole people as much as the Governor himself.

*Id.* at 594. Mr. Clark's clear concern was ensuring that the person exercising the state's executive power, "whether Governor or Lieutenant-Governor," has a majority of the citizenry's blessing to do so. *See id.*

After some further debate, the convention voted 19–14 against the amendment that would have struck the office of lieutenant governor. *Id.* at 595. Accordingly, the convention also restored other provisions relating to the office of lieutenant governor. *See id.* at 596.

## 2. Iowa Governors Who Resigned

Governor Kirkwood resigned in 1877 to become a United States Senator. Then-Lieutenant Governor Newbold "entered on the discharge of the duties of the executive" for the remainder of the term (just under a year) but did not appoint a new lieutenant governor "because the lieutenant-governorship was not vacant." William H. Fleming, *The Second Officer in the Government, reprinted in Annals of Iowa: A Historical Quarterly*, Vol. XIII, No. 1, at 533 (1921) [hereinafter *Annals of Iowa*]. A later history of Iowa referred to Newbold as the "ninth Governor of Iowa" and stated he "became Governor" when Kirkwood resigned. 4 Benjamin F. Gue, *History of Iowa: From the Earliest Times to the Beginning of the Twentieth Century* 199–200 (1903).

Governor Cummins resigned in 1908 to become a United States Senator. Then-Lieutenant Governor Garst "entered on the performance of executive duties" for the remainder of



the term (just under two months) but did not appoint a new lieutenant governor. *Annals of Iowa*, at 534.

Governor Hughes resigned in 1969 to become a United States Senator. Then-Lieutenant Governor Fulton assumed the duties of governor for the remainder of the term (just over two weeks) but did not appoint a new lieutenant governor.

Additionally, in 1954, Governor Beardsley died in office. Although Governor Beardsley did not resign, his death—like a resignation—was a permanent “disability” under the Iowa Constitution. Then-Lieutenant Governor Elthon assumed the duties of governor for the remainder of the term (just under two months). However, Elthon did not appoint a new lieutenant governor.

### 3. Interpretation and Subsequent Amendments

In 1923, Governor Kendall requested an opinion from the Attorney General’s Office because he received medical advice recommending he take an extended vacation and abstain from performing his official duties. 1923 Att’y Gen. Ann. Rep. 349, 349 (Iowa Att’y Gen. Aug. 23, 1923). The length of his expected absence was indefinite but would likely be two to three months. *Id.* He asked the Attorney General’s Office to opine on “whether or not the Lieutenant Governor can, during [the] temporary absence, perform the duties of Governor.” *Id.*

The Attorney General concluded “that during the temporary disability of the governor, that the lieutenant governor may act as governor.” *Id.* at 348. The opinion differentiates between the governor permanently leaving office and the governor stepping aside temporarily:

From a consideration of [article IV of the Iowa Constitution] it will be observed that in case of death, resignation, or removal from office of the governor, that the lieutenant-governor succeeds him as governor of the state for the residue of the term. It will further appear that when there is a temporary disability of the governor, the lieutenant-governor acts in his stead during the period of time such disability continues. In the first instance, the lieutenant-governor becomes governor. In the second instance he simply acts as governor during the temporary disability of his chief.

*Id.* The opinion makes that distinction in part because “terms of a constitution, like those of a statute, are always to be given their natural and obvious meaning. That is, the meaning in which they are commonly and ordinarily understood.” *Id.* at 347–46.<sup>2</sup> The Attorney General further

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<sup>2</sup> Because the 1923 volume of attorney general opinions was compiled in chronological order, the volume is paginated in reverse order.

advised Governor Kendall that, when stepping aside, he should make clear “there is no resignation or permanent abandonment of the office of governor.” *Id.* at 343–42.

The 1923 opinion has not been rescinded or disavowed. Neither the legislature nor the people of Iowa sought to amend the Iowa Constitution to establish that the Attorney General’s interpretation was incorrect.

However, the people later amended article IV of the Iowa Constitution. Originally, article IV, section 19 established a succession order if, while acting as governor, the lieutenant governor died, resigned, was impeached or displaced, or otherwise became incapable of performing the duties of the office. The 1952 amendment to article IV, section 19 established the current language, with one exception: it referred not just to the president of the Senate, but the president pro tempore. Accordingly, the 1952 amendment removed the reference to the lieutenant governor “acting as” governor—and that language remains today. However, the 1952 amendment did not remove language in article IV, section 15—which establishes the lieutenant governor’s compensation—that referred to the lieutenant governor acting as governor.

In 1972, several provisions of article IV were changed, but they did not affect gubernatorial succession. Originally, article IV, sections 2 and 3 provided the governor and lieutenant governor served two-year terms. The 1972 amendment increased both terms to four years. It also amended article IV, section 15 to reflect the four-year terms.

The most significant constitutional amendments occurred in 1988. Those amendments, which remain in force today, provided for the first time that the governor and lieutenant governor are elected together, on one ticket, “as if these two offices were one and the same.” Iowa Const. art. IV, § 3. Before 1988, it was possible for the governor and lieutenant governor to represent different political parties. The amendment brought to fruition a constitutional delegate’s statement at the 1857 convention: “The governor and lieutenant-governor will always, I presume, be the same in politics, and why not have the successor of the governor of the same politics, instead of bringing in one of the antagonistic party?” 1 *The Debates*, at 593.

The 1988 amendments also recast the lieutenant governor’s duties. Under original article IV, section 18, the lieutenant governor was president of the senate and possessed a tiebreaking vote. If the lieutenant governor was absent, impeached, or exercising the office of Governor, the Senate was instructed to choose a president pro tempore to preside and break ties.

However, the 1988 amendments revised article IV, section 18 to provide that the lieutenant governor “shall have the duties provided by law and those duties of the governor assigned to the lieutenant governor by the governor.” In other words, the 1988 amendments removed the lieutenant governor’s status as president of the Senate. Accordingly, the 1988

amendments also altered article IV, section 19 to establish that if there is a gubernatorial vacancy and the lieutenant governor is incapable of performing the duties of the office, those duties devolve on the president of the Senate—not the president pro tempore.

Finally, although it is not a constitutional amendment, the Iowa legislature amended section 69.8 of the Iowa Code in 2009. 2009 Iowa Acts ch. 57, § 73. The amendment added a sentence to section 69.8 providing that “[a]n appointment by the governor to fill a vacancy in the office of lieutenant governor shall be for the balance of the unexpired term.” The provision was the only substantive amendment to chapter 69 in a bill that predominantly altered the logistics and administration of ballots and elections.

### B. *Federal History*

The original language of article IV, section 17 of the Iowa Constitution matched language existing in the United States Constitution at the time. In 1857, when the Iowa Constitution was ratified, article II, section 1, clause 6 of the United States Constitution read: “In Case of the Removal of the President from Office, or of his Death, Resignation, or Inability to discharge the Powers and Duties of the said Office, the Same shall devolve on the Vice President . . . .”

Under that language, numerous presidential vacancies occurred. Each time, the Vice President became President despite the word “devolve.” Two of these instances occurred before 1857: John Tyler in 1841 and Millard Fillmore in 1850. Thus, because of this history, the delegates to the 1857 Iowa constitutional convention likely understood the word “devolve” to mean that the successor became president—or on the state level, became governor.

A federal court decision from 1867 confirms this understanding:

Three times, since the adoption of the constitution, the president has died, and, under [article II, section 1, clause 6], the powers and duties of the office of president have devolved upon the vice president. All branches of the government have, under such circumstances, recognized the vice president as holding the office of president, as authorized to assume its title . . . . It has never been supposed that, under the provision of the constitution, the vice president, in acting as president, acted as the servant, or agent, or locum tenens of the deceased president, or in any other capacity than as holding the office of president fully, for the time being, by virtue of express authority emanating from the United States.

*Merriam v. Clinch*, 17 F. Cas. 68, 70 (C.C.S.D.N.Y. 1867).

However, neither Tyler nor Fillmore appointed a new vice president. Nor did any of the other vice presidents who succeeded to the presidency before 1972: Andrew Johnson in 1865, Chester Arthur in 1881, Theodore Roosevelt in 1901, Calvin Coolidge in 1923, Harry Truman in 1945, and Lyndon Johnson in 1963.

In 1972, the 25th Amendment superseded the original language from article II, section 1. Now, if the President dies, resigns, or is removed, “the Vice President shall become President.” U.S. Const. art. 2, § 1. Furthermore, when the vice president becomes president, a vacancy occurs in the office of vice president, and the new “President shall nominate a Vice President who shall take office upon confirmation by a majority of both Houses of Congress.” *Id.* § 2. The 25th Amendment also established that the vice president acts as president when the president is temporarily unable to discharge the duties of the office. *Id.* § 3. Although the Iowa Constitution originally mirrored the United States Constitution and has been amended since 1972, the succession provisions have not changed to match the 25th Amendment.

### C. *Other States’ Histories*

While other states’ constitutions and experiences do not alone determine conclusively what the Iowa Constitution means, the language used and any decisions involving that language can be valuable to a linguistic analysis. Indeed, some members of the 1857 constitutional convention expressly advocated that the convention should consider other states’ provisions and experiences. For example, delegate Gray noted in support of keeping the position of lieutenant governor that many other states had such an office. 1 *The Debates*, at 591. Likewise, delegate Clarke of Henry County indicated other states’ experiences lent to the convention a wisdom the individual members would not otherwise have:

We may certainly look to the experience of other States. This matter has been somewhat scoffed at here. Gentlemen pretend to have within them a light superior to any they can borrow. I am willing to look to the experience and wisdom of other States; and, as [Mr. Gray] has observed, I find that, in a majority of the free States, this system prevails; and if this office [of lieutenant governor] is found beneficial elsewhere, . . . why should we not introduce this provision into our Constitution?

*Id.* at 592. Although the *existence* of a lieutenant governor is now well established, these delegates’ comments support the general notion that other states’ constitutional provisions and history can illuminate, influence, or suggest what Iowa’s language means.

As detailed above, several other state constitutions contain the word “devolve”—but that number used to be higher. See *Olcott v. Hoff*, 181 P. 466, 468 (Or. 1919) (collecting states that,

as of 1919, provided “the powers and duties of [governor] devolve upon the lieutenant governor”). In several instances, the state constitution was amended after a judicial decision interpreting the previous language. And in one instance, the state constitution was amended to crystallize an attorney general’s opinion—even though the amendment accomplished only what the attorney general opined the previous language already did.

### 1. Arizona

Arizona distinguishes between permanent and temporary disabilities. If the governor dies, resigns, or is removed from office, “the secretary of state . . . shall succeed to the office of governor.” Ariz. Const. art. 5, § 6. If the governor is temporarily disabled, the powers and duties “devolve upon the same person as in case of vacancy, but only until the disability ceases.” *Id.*

Before the current language, Arizona used language materially similar to the Iowa Constitution, which utilized the word “devolve” for both permanent and temporary disabilities. *See State ex rel. De Concini v. Garvey*, 195 P.2d 153, 154 (Ariz. 1948) (quoting the relevant provision of the Arizona Constitution as it existed at the time). While that language was in force, the governor of Arizona died. *Id.* at 153. The attorney general filed a lawsuit asserting that the successor (the secretary of state) “did not in law or in fact become governor of Arizona . . . , but by virtue of the section the powers and duties of the office of governor merely devolved upon” him. *Id.* The secretary of state asserted he was “governor de jure and de facto.” *Id.*

The Arizona Supreme Court acknowledged that “public business and tranquility demand a prompt judicial inquiry.” *Id.* It noted the “prevailing view” at the time that “the inferior officer does not vacate his office and become governor de jure and de facto, but that the duties and powers of governor merely devolve on him and he retains his former office.” *Id.* at 154. It ultimately followed that path, concluding that the secretary state was “acting governor.” *Id.* at 158.

The court’s decision contains two other important conclusions. First, even though the successor was acting governor, he was “entitled to physical possession of the office space and facilities provided” for the governor. *Id.* at 157–58. Second, the court concluded the successor’s duties in his current position “embrace the responsibility to act as governor in case any of the contingencies provided for in the constitutional provision arise.” *Id.* at 157.

After 1948, the Arizona Constitution was amended to its current language. The fact that the people amended the constitution suggests they believed the court’s interpretation of the word “devolve” was incorrect.

## 2. Arkansas

The Arkansas Constitution's succession provision is materially identical to article IV, section 17 of the Iowa Constitution. That provision became significant when then-Governor Bill Clinton was elected President of the United States and indicated his intention to resign as Governor of Arkansas. *See Bryant v. English*, 843 S.W.2d 308, 309 (Ark. 1992). In *Bryant*, the Arkansas Supreme Court concluded that when Clinton resigned, the office of governor would devolve upon the lieutenant governor such that the lieutenant governor became governor. *See id.* at 311. The court found support for its conclusion from several circumstances.

First, a previous Arkansas decision (under a previous constitutional provision when the position of lieutenant governor did not exist) expressed concern that the person tasked with exercising the powers and duties of governors might not be elected by a statewide vote. *Id.* at 312. That concern was alleviated with a constitutional amendment that created the position of lieutenant governor, so there was no issue with allowing the lieutenant governor to become governor, not just acting governor. *See id.*

Second, the court pointed out that if the lieutenant governor was only acting governor, he could continue presiding over the Senate, and that raised separation-of-powers concerns. *See id.* However, if the lieutenant governor became governor, those concerns would be avoided. *See id.* In Iowa, the lieutenant governor has no legislative powers; the 1988 amendment removed "presiding over the Senate" from the lieutenant governor's duties.

Third, the court noted the chain of succession provided the powers would "devolve" upon the lieutenant governor, but if they were unable to exercise the powers and duties of the office, the president of the senate would "act as" governor. *Id.* The difference in language suggested "devolve" did not mean the lieutenant governor would merely act as governor. *See id.*

Finally, in Arkansas, historical practice had treated the lieutenant governor as governor (not acting governor) after the governor resigned. *Id.* at 312–13. That practice comported with the Arkansas Constitution's command that the supreme executive power vests in a chief magistrate styled the Governor of the State of Arkansas. *Id.* at 313. In other words, the person who has the powers *is* Governor. *See id.* Iowa has a similar provision and a similar historical practice. Iowa Const. art. IV, § 1.

## 3. California

California distinguishes between permanent and temporary disabilities. Cal. Const. art. 5, § 10. When a permanent disability occurs, "The Lieutenant Governor shall become Governor." *Id.* However, like Iowa, California formerly used the word "devolve." Under that language, the



California Supreme Court concluded that the lieutenant governor (1) did not actually become governor and (2) could not appoint a new lieutenant governor:

[I]t is provided that in case of the death, resignation, impeachment, absence from the state, or inability to act of the governor, “the powers and duties of his office shall devolve upon the lieutenant-governor for the residue of the term, or until the disability shall cease.” It will be seen that in case of a vacancy in the office of governor the vacancy is not to be filled, but the powers and duties devolve upon the lieutenant governor, who does not cease to be lieutenant governor. Under such circumstances it would hardly be contended that when the powers and duties of the governor devolve upon the lieutenant governor the latter thereby becomes governor, and can appoint a lieutenant governor.

*People ex rel. Lynch v. Budd*, 45 P. 1060, 1060 (Cal. 1896). The people have since amended the constitution to include its current language.

#### 4. Colorado

Colorado distinguishes between permanent and temporary disabilities. Colo. Const. art. 4, § 13. The Colorado Constitution also provides that a lieutenant governor who “accedes to the office of governor” may select a new lieutenant governor subject to “confirmation by a majority vote of both houses of the general assembly.” *Id.* § 13(4).

However, the Colorado Constitution formerly contained provisions matching the Iowa Constitution. *See People ex rel. Parks v. Cornforth*, 81 P. 871, 872 (Colo. 1905) (quoting the relevant provisions of the state constitution as they existed at the time). While that language was in force, a succession controversy arose. *See id.*

The governor resigned in 1905, and the lieutenant governor “qualified as governor.” *Id.* The president pro tempore of the senate then “qualified as lieutenant governor.” *Id.* However, at the end of the legislative session, the senate elected a new president pro tempore. *Id.* The question that reached the Colorado Supreme Court asked whether the previous president pro tempore remained lieutenant governor, or whether he only held that office because of his position as president pro tempore. *See id.*

The court concluded “the president pro tem. does not become the lieutenant governor” and that “[i]f the framers of [the] Constitution had intended that the president pro tem. of the Senate should become lieutenant governor de jure in the contingency under consideration, they could easily have said so.” *Id.* at 872–73. Accordingly, the court concluded only the new president pro tempore was empowered to perform the lieutenant governor’s duties. *Id.* at 875.

In 1974—after the federal 25th Amendment—Colorado repealed and reenacted its succession provisions, changing them to the current language.

#### 5. Michigan

If the governor resigns, the lieutenant governor shall be governor for the remainder of the term. However, for temporary disabilities, “the powers and duties of the office of the governor shall devolve . . .” Mich. Const. art. V, § 26. That language differs from the Iowa Constitution, but in 1939, the relevant provision of the Michigan Constitution (then article VI, section 16) was materially similar to current article IV, section 17 of the Iowa Constitution. *See* 1939 Att’y Gen. Ann. Rep. 69, 71 (Mich. Att’y Gen. Mar. 28, 1939) (quoting the provision in force at the time).

That year, after the governor of Michigan died, the attorney general’s office issued an attorney general opinion regarding succession “[b]ecause of serious consequences which might follow a prolonged silence on the subject.” *Id.* at 69. The opinion sought to clarify whether there was “now a vacancy in the office of lieutenant governor.” *Id.*

The attorney general answered that question “no,” adhering to the “most approved view” that when a governor dies or resigns, “no vacancy is created in the minor office by operation of law.” *Id.* No vacancy occurs because

it was never intended that the line of succession should be broken, or that any person, who has not received the sanction of the electors by direct vote, should be appointed to a position which would entitle him, in certain eventualities, to the high office of governor.

*Id.* In other words, “plain rules of common sense” made it clear “that the people never intended to intrust the responsibilities of the governorship to one who has not been elected to state office.” *Id.* at 72.

The attorney general also noted the Michigan Constitution’s similarity to the United States Constitution and recognized that “when the Vice President has succeeded to the office of President, it has never been claimed that he thereby vacated the office of Vice President.” *Id.* at 73. Based on the core of democracy—election by the people—and historical practice, the opinion ultimately concluded that,

upon death of the governor of the State of Michigan, his powers and duties devolve upon the lieutenant governor; that the office of lieutenant governor is not thereby vacated; that the Constitution, by plain and unambiguous language, provides for a line of succession, from the governor, to the lieutenant governor,

and to the secretary of state, a line of succession which cannot be broken by the appointment of a lieutenant governor to fill a supposed vacancy. No vacancy exists.

*Id.* at 73.

#### 6. Montana

“If the office of governor becomes vacant by reason of death, resignation, or disqualification, the lieutenant governor shall become governor for the remainder of the term, except as provided in this constitution.” Mont. Const. art. VI, § 14(6).

“When there is a vacancy in the office of governor, the successor shall be the governor. The acting governor shall have the powers and duties of the office of governor only for the period during which he serves.” *Id.* § 14(8). An “acting governor” only happens when the governor requests it of the lieutenant governor or when the governor is disabled. *See id.* § 14(2)–(4).

However, before the current language, Montana (like Iowa) used the word “devolve.” *See State ex rel. Lamey v. Mitchell*, 34 P.2d 369, 370 (Mont. 1934) (quoting the provision in force at the time). After an election in 1932, the governor resigned in 1933. *Id.* The Montana Supreme Court concluded “when the Governor resigns or is permanently removed from office, there is no vacancy in the office of Governor in the sense that there is no one left with power to discharge the duties.” *Id.* The court further explained the state’s constitutional structure:

When the framers of the Constitution provided for the election of a Governor and a Lieutenant Governor as members of the executive department of the state ([Mont. Const.] section 1, art. 7), but conferred upon the latter no executive power or authority other than in the contingencies mentioned in [the succession provision], they manifested the intention that the people elect two qualified heads of that department—the one active, the other his lieutenant, ready at a moment’s notice to assume the duties of the office, should his superior officer, for any reason, either temporarily or permanently, become unable to perform them.

*Id.* at 371–72.

The court also concluded that when a governor resigns, dies, or is permanently removed from office, there is no vacancy in the office of lieutenant governor. *Id.* at 372. The court explained,

When the duties, powers, and emoluments of the office of Governor devolve upon the Lieutenant Governor, it cannot be said that he vacates his office of Lieutenant Governor, and, unless he does so, there is no vacancy in his office. His assumption of the duties of Governor does not create, and neither can he make, a vacancy, as he is discharging the functions of Governor by the mandate of the Constitution, and that by reason of being Lieutenant Governor. If the framers of the Constitution had intended that there should be a vacancy in the office of Lieutenant Governor upon the resignation, death, or permanent removal of the Governor, they could have easily said so.

*Id.*

Two aspects of the succession structure cemented the court's conclusion. First, if there were a lieutenant governor vacancy, the lieutenant governor / new governor could appoint a lieutenant governor, which would interrupt the line of successors chosen by the voters. This "was never contemplated and never intended by the framers of the Constitution, or the people who adopted it." *Id.* Second, because the provision covered both permanent and temporary disabilities, if the lieutenant governor's office always became vacant, another conundrum would arise. Specifically, if the governor suffered a temporary disability and the lieutenant governor took over, any person subsequently appointed to the post of lieutenant governor would essentially be squeezed out once the temporary disability ended. *See id.*

#### 7. Nevada

Nevada's succession provision is materially identical to Iowa's. *Compare* Iowa Const. art. IV, § 17, *with* Nev. Const. art. 5, § 18. The Nevada Supreme Court considered the provision after the governor died in 1896. *State ex rel. Hardin v. Sadler*, 47 P. 450, 450 (Nev. 1897). The court concluded there was no vacancy in the office of lieutenant governor:

If a vacancy occurs in the office of governor, the powers and duties of the office devolve upon the lieutenant governor, but there is no vacancy created thereby in the office of lieutenant governor. The officer remains lieutenant governor, but invested with the powers and duties of governor.

*Id.* The Nevada Constitution has not changed since 1897.

#### 8. New Jersey

New Jersey distinguishes between permanent and temporary disabilities; for permanent disabilities, "the Lieutenant Governor shall become Governor," while for temporary ones, the

powers of the office devolve. N.J. Const. art. 5, § 1, ¶¶ 6–7. However, the New Jersey Constitution previously contained a provision much like Iowa’s—although there was no such thing as a lieutenant governor at the time. *See State v. Heller*, 42 A. 155, 156 (N.J. 1899) (quoting the provision in force at the time, which established that the governor’s powers and duties devolved upon the president of the senate). Under that language, a succession dispute arose.

In 1898, the governor of New Jersey resigned. *Id.* The president of the senate took an oath assuming gubernatorial powers and duties but later resigned “as a member of the senate.” *Id.* The speaker of the house, who was next in the succession order, then asserted *he* was now entitled to exercise the powers and duties of governor. *See id.* However, the president of the senate asserted he remained governor and his resignation only affected his senate seat. *See id.* The New Jersey Supreme Court concluded the president of the senate was only governor through his position as senate president:

In construing [the succession] clause of the constitution it must be borne in mind that it was carefully drawn by learned jurists, who knew how to express with exactness and precision the purpose they had in view. The provision is that, in case of the resignation of the governor, the powers, duties, and emoluments of the office shall devolve upon the president of the senate, and not that the president of the senate shall thereby become governor . . . . If the framers of the fundamental law had intended to transfer the president of the senate to the executive chair, and thereby to vacate his office of senator, it is reasonable to believe that they would have said so in no uncertain language. The language used is not ambiguous. It declares that the powers, duties, and emoluments of the office shall devolve on the president of the senate; it does not confer upon him the title of the office. The president of the senate exercises the powers of the governor; the president of the senate performs the duties of the governor; the president of the senate receives the emoluments of that office. He is still president of the senate, with the added duties required of the chief executive of the state imposed upon him. There is no language in the constitution from which it can reasonably be inferred that his office of president of the senate was to be vacated. He retains his office of senator; and as president of the senate, and not as governor, he exercises the added powers and performs the superimposed duties.

*Id.* at 156–57. Accordingly, when he resigned his senate position, he also resigned his ability to exercise the powers and duties of the governor and the speaker of the house became entitled to exercise those powers and duties. *Id.* at 158.

There are two other important aspects of the New Jersey court's decision. First, it concluded the successor did not actually become governor because other provisions in the state constitution referred to the governor "or person administering the government." *Id.* at 157. Therefore, if the successor actually became governor, those words would be superfluous. *Id.* The Iowa Constitution does not contain similar language that would become superfluous if the lieutenant governor *is* governor following the governor's resignation.

Second, the court highlighted the constitutional provision's flexible nature, applying to both permanent and temporary disabilities. If the successor's previous position automatically became vacant, even during a temporary disability, they would lose it when the temporary disability ended. *Id.* at 158. The court concluded that meaning of the language "could not have been within the contemplation of the able men who incorporated it in this clause relating to a matter of supreme importance." *Id.*

9. New York

10. Oklahoma

Oklahoma's succession provision is similar to Iowa's, using the word "devolve"—although one difference is that in Oklahoma, "the office" devolves, while in Iowa, the powers and duties do. *Compare* Iowa Const. art. IV, § 17, *with* Okla. Const. art. 6, § 16. In a 1926 case, the Oklahoma Supreme Court concluded the office of Governor automatically devolves upon another, who by virtue of filling that office becomes the chief magistrate styled the governor of Oklahoma. *Fitzpatrick v. McAlister*, 248 P. 569, 572 (Okla. 1926). In other words, the person who has the powers is governor. In particular, the court noted the difference between the word "devolve," which applied only to the lieutenant governor, and "act as Governor," which applied only to those further down the line of succession. *See id.* Because of that difference in language, the court concluded the word "devolve" actually conferred the title and office.

The court found support for its conclusion in federal history:

[U]pon the death of President Wm. H. Harrison, Vice President Tyler became President of the United States. For almost a century this construction of the federal Constitution has stood without question. It has been recognized as correct, and acquiesced in, not only by the departments of state and all the states of the Union, but officially recognized by every civilized government in the world.

On each occasion where the President of the United States has died, the Vice President has immediately succeeded to the office of President as President of the United States, and thereupon the government of the United States has at



once, through its consular offices, notified all governments of the world of the change in Presidents.

Defendant suggests that no court has ever pronounced that to be the law. To our mind, it is so clearly correct that no one has ever presumed to test its correctness in the courts. Therefore it should have greater weight than an ordinary departmental construction, not only because it has stood for almost a century, but because it has been recognized as the correct conception of our system of government, and because, for eighty-five years under this construction, there has been no friction in the machinery of government by reason of such construction.

*Id.* at 576.

The decision was not unanimous. A dissenting opinion suggested the lieutenant governor would perform gubernatorial duties “merely as the occupant of the office of Lieutenant Governor, to which he was elected.” *Id.* at 580 (Branson, V.C.J., dissenting). The dissent also highlighted the possibility that if the lieutenant governor became governor and thereby vacated the office of lieutenant governor, he could appoint a replacement. *See id.* at 581. That was problematic, the dissent asserted, because doing so would “make it impossible that the President pro tempore of the Senate would ever succeed to the performance of the duties of Governor, as was clearly contemplated in the succession line to such duties as set out in . . . the Constitution.” *Id.*

#### 11. Oregon

In Oregon, the successor “shall become Governor.” Or. Const. art. V, § 8a. However, the Oregon Constitution formerly provided that the duties of governor would “devolve on the secretary of state” and if the secretary of state was disabled, “the president of the senate shall act as governor.” *See Chadwick v. Earhart*, 4 P. 1180, 1180 (Or. 1884) (quoting the provision as it existed at the time). In other words, the Oregon Constitution distinguished between devolution and an acting governor.

In *Chadwick*, one party contended that

the duties of the office of governor became annexed to the office of secretary of state, and are discharged as duties incident to the latter office; in other words, that the duties of the office, but not the office itself, devolve upon the secretary of state.

*Id.* The court was skeptical, noting that position seemed to require “either that the office of governor should continue vacant . . . ; or, second, that the office be filled, and yet he who fills it be in nowise governor, but continue to be merely secretary of state.” *Id.*

Accordingly, the court concluded the successor became governor:

In the first place, it is not shown how an office can be vacant, and yet there be a person, not the deputy or locum tenens of another, empowered by law to discharge the duties of the office, and who does, in fact, discharge them. It is not explained how, in such a case, the duties can be separated from the office so that he who discharges them does not become an incumbent of the office. And, in the second place, how a person can fill the office of governor without being governor. It is the function of a public officer to discharge public duties. Such duties constitute his office.

*Id.* at 1181. A later decision adhered to *Chadwick* and concluded that upon the governor’s death, “by reason of the fact that Mr. Olcott was secretary of state he automatically became governor.” *Olcott*, 181 P. at 482. The court concluded “when the people elected Mr. Olcott secretary of state, by the very terms of the constitution they elected him to become governor” if the incumbent died. *Id.* at 483.

## 12. Utah

Utah defines vacancy to include resignation and disability that extends for the remainder of the term. Utah Const. art. VII, § 11(1)(a). If a vacancy occurs, the lieutenant governor “shall become governor.” *Id.* § 11(2). The Utah Constitution also provides that if a disability is only temporary, the lieutenant governor shall discharge the powers and duties. *Id.* § 11(5)(a). And, it establishes that when the lieutenant governor becomes governor, a vacancy occurs in the office of lieutenant governor. *Id.* § 10(3)(a)(i).

However, before 2008, the Utah Constitution, like Iowa, used only “devolve.” The Utah Attorney General issued an advisory opinion in 2003 on the question of succession. Utah A.G. Opinion No. 03-001, 2003 WL 21996258 (Aug. 18, 2003). The opinion concluded (1) “devolve” means that the lieutenant governor becomes governor, and (2) a vacancy occurs in the office of lieutenant governor that the governor is entitled to fill by appointment. *Id.* at \*1, 3. The attorney general relied in part on the federal history involving the word “devolve.” Because four vice presidents had become president before Utah adopted a constitution, at the time the state adopted one, “it was understood, in theory and in practice, that the Constitutional language ‘shall devolve’ meant ‘succession’ such that the Lieutenant Governor would become the Governor.” *Id.* at \*1.

The attorney general also noted that in 1980, the citizens of Utah adopted constitutional amendments that required the governor and lieutenant governor to run on the same ticket and clarified the line of succession of executive authority. *Id.* Those amendments were presented to the voters as mirroring the succession of the federal government—which by this time had adopted the 25th Amendment providing the vice president becomes president. *Id.*

Despite the attorney general's conclusions about the existing language, the Utah Constitution was later amended to its current language to cement the attorney general's understanding of the constitutional structure.

### 13. Washington

Washington's succession provision is similar to Iowa's, using the word "devolve." Compare Iowa Const. art. IV, § 17, with Wash. Const. art. 3, § 10. The Washington Supreme Court confronted the provision in a 1902 case presenting the question whether the death of the governor creates a vacancy in either the office of governor or lieutenant governor. *State ex rel. Murphy v. McBride*, 70 P. 25, 25 (Wash. 1902). The court concluded,

The constitution having provided that in case of the death of the governor the duties of the office shall devolve upon the lieutenant governor, there is no vacancy in the office of governor. . . . When the lieutenant governor, by virtue of his office and of the command of the constitution, assumed the duties of governor on the death of Gov. Rogers, the office of lieutenant governor did not thereby become vacant, but the officer remained lieutenant governor, intrusted with the powers and duties of governor.

*Id.* at 26.

### 14. Wisconsin

In Wisconsin, the lieutenant governor "shall become governor" if the governor dies, resigns, or is removed. Wis. Const. art. 5, § 7(1). The lieutenant governor "shall serve as acting governor" if the governor is absent or disabled. *Id.* § 7(2). But the language was not always what it is today. In 1938, it matched article IV, section 17 of the Iowa Constitution. See *State ex rel. Martin v. Ekern*, 280 N.W. 393, 398 (Wis. 1938) (quoting the provision in force at the time).

Under that provision, the Wisconsin Supreme Court acknowledged that the question of succession was "most important and of great public concern and interest" because the people of the state were "vitaly interested in seeing that no important office, such as that of lieutenant

governor, be intruded into by any person who has not lawful authority to hold the office or to perform the duties thereof.” *Id.* at 394. It ultimately concluded that when a vacancy occurs in the office of governor, “the lieutenant governor does not become governor. He remains lieutenant governor, upon whom devolves the powers and duties of governor. In such a contingency no vacancy occurs in the office of lieutenant governor.” *Id.* at 399.

#### 15. Wyoming

Wyoming does not use either the word “devolve” or the phrase “become Governor.” Instead, it provides that the secretary of state “shall act as governor.” Wyo. Const. art. 4, § 6. In 1903, the governor died, and a dispute arose about the secretary of state’s compensation while fulfilling his constitutional duty to act as governor. *State ex rel. Chatterton v. Grant*, 73 P. 470, 470 (Wyo. 1903). The court concluded the secretary of state performed duties both in that role and as governor, and accordingly was entitled to compensation for both positions. *See id.* at 472. However, the court also noted it did not observe a material distinction between “devolve” and “act as.” *Id.* at 476.

## MEMORANDUM

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**To:** Jeff Thompson, Meghan Gavin  
**From:** David Ranscht  
**Date:** February 6, 2017 (updated February 24, 2017)  
**Re:** Draft Answers to Gubernatorial Succession Questions

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On February 1, 2017, the Attorney General's Office received a request from state Senator David Johnson for a formal legal opinion regarding several provisions of the Iowa Constitution and the Iowa Code. Senator Johnson requested the opinion because President Donald Trump announced he intends to nominate Iowa Governor Terry Branstad as a United States Ambassador. To serve as an ambassador, Governor Branstad would have to resign his position as Governor of Iowa.

Senator Johnson requests an attorney general opinion exploring the succession provisions of the Iowa Constitution. *See* Iowa Code § 13.2(e) (setting forth the attorney general's authority to give written opinions when requested by a state officer); Iowa Admin. Code r. 61—1.5 (providing additional standards for requesting attorney general opinions). Essentially, Senator Johnson asks the Attorney General's Office to opine on what happens if and when Governor Branstad submits his resignation. Although some past Iowa governors have resigned, these specific questions have not arisen in Iowa before.

### I. OPERATIVE CONSTITUTIONAL PROVISIONS

The relevant provision of the Iowa Constitution is article IV, section 17, which is currently entitled "Lieutenant governor to act as governor." It provides:

In case of the death, impeachment, resignation, removal from office, or other disability of the governor, the powers and duties of the office for the residue of the term, or until he shall be acquitted, or the disability removed, shall devolve upon the lieutenant governor.

Iowa Const. art. IV, § 17. This provision has never been amended. "[T]he purpose of art. IV, § 17 is to ensure that the citizens of Iowa are not without a person capable of performing the constitutional and statutory duties imposed upon a governor." 1980 Op. Att'y Gen. 550, 1980 WL 25903, at \*3 (Iowa Att'y Gen. Jan. 2, 1980).

Several other state constitutions contain similar language that centers around the verb “devolve.” *See, e.g.*, Ark. Const. art. 6, § 4; Idaho Const. art. IV, § 12; Nev. Const. art. 5, § 18; Okla. Const. art. 6, § 16; Tenn. Const. art. 3, § 12; Wash. Const. art. 3, § 10. Additionally, although they do not contain the verb “devolve,” some state constitutions provide—like article IV, section 17 of the Iowa Constitution—that if a governor resigns, the lieutenant governor shall have the powers, authorities, and duties of governor. *See, e.g.*, Ky. Const. § 84; Mass. Const. pt. 2, ch. II, § II, art. III; Miss. Const. art. 5, § 131.

In contrast, many state constitutions distinguish between permanent disabilities and temporary disabilities. Permanent disabilities occur when a governor dies or resigns, whereas temporary disabilities could include physical or mental incapacity, or absence from the state. In those states, generally the lieutenant governor becomes governor when a permanent disability occurs but gubernatorial powers devolve (or the lieutenant governor acts as governor) during any period of temporary disability. *See, e.g.*, Ala. Const. art. V, § 127; Alaska Const. art. 3, §§ 9, 11; Ariz. Const. art. 5, § 6; Cal. Const. art. 5, § 10; Colo. Const. art. 4, § 13 (1), (5); Conn. Const. art. 4, § 18(a)–(b); Fla. Const. art. 4, § 3(a)–(b); Ga. Const. art. 5, § 1, ¶ V(a)–(b); Haw. Const. art. 5, § 4; Ind. Const. art. 5, § 10(a); Kan. Const. art. 1, § 11; Me. Const. art. 5, pt. 1, §§ 14–15; Md. Const. art. 2, § 6(b), (d); Mich. Const. art. 5, § 26; Minn. Const. art. 5, § 5; Mo. Const. art. 4, § 11(a); Neb. Const. art. IV, § 16; N.J. Const. art. 5, § 1, ¶¶ 6–7; N.M. Const. art. 5, § 7; N.Y. Const. art. 4, § 5; N.C. Const. art. III, § 3(1), (3); Ohio Const. art. III, § 15(A)–(B); Pa. Const. art. 4, § 13; S.D. Const. art. 4, § 6; Tex. Const. art. 4, § 16(c)–(d); Utah Const. art. 7, § 11(2), (5); Va. Const. art. 5, § 16; Wis. Const. art. 5, § 7(1)–(2). Article IV, section 17 of the Iowa Constitution does not make a similar distinction; its provisions apply to all disabilities, whether temporary or permanent. *See* Iowa Const. art. IV, § 17.

Several other provisions of article IV of the Iowa Constitution bear upon the question of gubernatorial succession. Article IV, section 1 provides that “The supreme executive power of this state shall be vested in a chief magistrate, who shall be styled the governor of the state of Iowa.” *See also* 1980 Op. Att’y Gen. 550, 1980 WL 25903, at \*3 (“The term ‘governor’ refers to an office and not merely to a particular person.”). Article IV, section 10 grants the governor authority to fill any office that becomes vacant if the constitution and laws do not provide a mode for filling such vacancy. Article IV, section 18 provides that the lieutenant governor “shall have the duties provided by law and those duties of the governor assigned to the lieutenant governor by the governor.” Finally, the Iowa Constitution contemplates a contingency that becomes active when multiple state officers are incapable of performing gubernatorial duties:

If there be a vacancy in the office of the governor and the lieutenant governor shall by reason of death, impeachment, resignation, removal from office, or other disability become incapable of performing the duties pertaining to the



office of governor, the president of the senate shall act as governor until the vacancy is filled or the disability is removed; and if the president of the senate, for any of the above causes, shall be incapable of performing the duties pertaining to the office of governor the same shall devolve upon the speaker of the house of representatives; and if the speaker of the house of representatives, for any of the above causes, shall be incapable of performing the duties pertaining to the office of governor, the justices of the supreme court shall convene the general assembly by proclamation and the general assembly shall organize by the election of a president by the senate and a speaker by the house of representatives. The general assembly shall thereupon immediately proceed to the election of a governor and lieutenant governor in joint convention.

Iowa Const. art. IV, § 19.

In 1844, when Iowa first offered a state constitution for ratification by the people, a newspaper editorial expressed disappointment that much of it was written “in very confused and bungling language” that rendered the drafters’ intent “almost or quite doubtful.” *Its Style*, *The Iowa Standard*, Vol. IV, No. 46 (Nov. 14, 1844), *reprinted in Press Comments and Other Materials on the Constitutions of 1844 and 1846*, at 214 (Benjamin F. Shambaugh ed., 1900). Though modern readers might feel similarly about the current Iowa Constitution, constitutional history illuminates the framework the drafters established—and why they established it.

## II. CONSTITUTIONAL HISTORY

### A. *Iowa History*

#### 1. The 1857 Convention

Iowa enacted its current constitution in 1857. As the constitutional convention began, one delegate proposed that an Executive Committee dedicated to formulating the executive branch of government consider “providing for the election of a Lieutenant Governor who, by virtue of his office, shall . . . exercise all the powers and have the title of Governor in case of the death, removal, or other disability of the Governor.” 1 *The Debates of the Constitutional Convention of the State of Iowa*, at 39 (W. Blair Lord rep., 1857) [hereinafter *The Debates*]. The previous Iowa Constitution of 1846 made no provision for a lieutenant governor. The 1857 convention agreed to the resolution. *Id.*

When it came time to debate provisions of article IV, a representative from the Committee read the proposed provisions to the convention. *Id.* at 76–78. The provisions did not include section descriptions or titles. *See id.* In other words, the convention did not understand

article IV, section 17 to provide that the lieutenant governor “acts as” governor. That descriptive heading came later. Instead, by the words of the resolution at the outset of the convention, the drafters understood that the lieutenant governor would “have the title of Governor” if the Governor left office. *Id.* at 39.

When considering statutes, the Iowa Supreme Court has stated that a section heading “cannot limit the plain meaning of the text.” *Atchison, Topeka & Santa Fe Ry. Co. v. Bair*, 338 N.W.2d 338, 344 (Iowa 1983). That important limitation, which prevents a code editor’s choice of language from frustrating the intent of a statute, is even more significant when considering a constitutional provision. But even if the heading of article IV, section 17—which does not use operative language from article IV, section 17 itself—sheds *some* light on the framers’ intent in drafting the provision, *see T & K Roofing Co. v. Iowa Dep’t of Educ.*, 593 N.W.2d 159, 163 (Iowa 1999), other available materials better establish what the Iowa Constitution’s framers really understood “devolve” to mean and what they intended the gubernatorial succession framework to look like.

Notably, despite the resolution at the outset of the 1857 convention, Iowa considered having no lieutenant governor at all. During debate on article IV, delegate Warren proposed an amendment to article IV, section 17 that replaced the words “Lieutenant Governor” with “Secretary of State.” 1 *The Debates*, at 587. Delegate Clarke of Johnson County<sup>1</sup> proposed instead “that the duties of the office of Governor, in case of a vacancy, shall devolve upon the president of the Senate.” *Id.* The convention passed the amendment as Clarke proposed it, inserting the words “president of the Senate” in place of “Lieutenant Governor.” *Id.* Accordingly, the convention also deleted other provisions referring to the lieutenant governor’s duties and place in the line of succession. *See id.* at 587–88.

But not every delegate was convinced the convention had made the right decision. The next morning, delegate Gray asked his colleagues “to consider well the importance of the matter before striking” the provisions for a lieutenant governor. *Id.* at 591. He noted many other states’ constitution provided for the office of lieutenant governor and indicated “there are some advantages connected with the office.” *Id.* Among those advantages was the fact that the lieutenant governor “will be elected directly by the people, instead of by the Legislature.” *Id.* Gray found that important because “We all seem to agree in placing elections, as far as possible, directly in the power of the people.” *Id.* Delegate Clarke of Henry County agreed:

Gentlemen [of the convention] do not reflect that they may be taking from the people the power of selecting their own chief magistrate. When a man is a candidate for the office of Lieutenant Governor, the people always vote for him

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<sup>1</sup> “There were two men named Mr. Clarke and one named Mr. Clark at the Iowa convention.” *State v. Senn*, 882 N.W.2d 1, 13 n.7 (Iowa 2016); *see* 1 *The Debates*, at 6.

with the understanding that circumstances may arise which will make him their Governor. But if you give to the Senate the power of selecting the man who may be the Governor of the people, you take from the people this power and put it into the hands of the Senate.

*Id.* at 591–92. This is known as the “elective principle.”

Delegate Gray’s remarks sparked renewed debate on the subject, and some delegates changed their minds. For example, delegate Wilson offered that although he had originally voted to eliminate the position of lieutenant governor, “upon reflection . . . the advantages in favor of [having a lieutenant governor] are far superior to the disadvantages.” *Id.* at 593. Most significant, however, were Mr. Clark’s remarks:

I voted yesterday to strike out the office of Lieutenant-Governor. I had not reflected upon it well, and I am inclined to the opinion that I did not vote right. Upon hearing the argument thus far upon the question, and upon reflection, I am disposed to favor the office of Lieut.-Governor, for one reason, if there were no other: I believe that an executive officer, whoever he may be that shall perform the duties of that office, whether Governor or Lieutenant-Governor, ought to be elected directly by the people, in all cases, at least so far as it is possible to provide for it. We elect the Governor by the direct votes of the people—by the popular will—by the popular voice. In case of his removal or disability, I see no reason why the person filling his place should not be elected directly by the whole people as much as the Governor himself.

*Id.* at 594. Mr. Clark’s clear concern was ensuring that the person exercising the state’s executive power, “whether Governor or Lieutenant-Governor,” has a majority of the citizenry’s blessing to do so. *See id.*

After some further debate, the convention voted 19–14 against the amendment that would have struck the office of lieutenant governor. *Id.* at 595. Accordingly, the convention also restored other provisions relating to the office of lieutenant governor. *See id.* at 596.

## 2. Iowa Governors Who Resigned

Governor Kirkwood resigned in 1877 to become a United States Senator. Then-Lieutenant Governor Newbold “entered on the discharge of the duties of the executive” for the remainder of the term (just under a year) but did not appoint a new lieutenant governor “because the lieutenant-governorship was not vacant.” William H. Fleming, *The Second Officer in the Government*, reprinted in *Annals of Iowa: A Historical Quarterly*, Vol. XIII, No. 1, at 533

(1921) [hereinafter *Annals of Iowa*]. A later history of Iowa referred to Newbold as the “ninth Governor of Iowa” and stated he “became Governor” when Kirkwood resigned. 4 Benjamin F. Gue, *History of Iowa: From the Earliest Times to the Beginning of the Twentieth Century* 199–200 (1903).

Governor Cummins resigned in 1908 to become a United States Senator. Then-Lieutenant Governor Garst “entered on the performance of executive duties” for the remainder of the term (just under two months) but did not appoint a new lieutenant governor. *Annals of Iowa*, at 534.

Governor Hughes resigned in 1969 to become a United States Senator. Then-Lieutenant Governor Fulton assumed the duties of governor for the remainder of the term (just over two weeks) but did not appoint a new lieutenant governor.

Additionally, in 1954, Governor Beardsley died in office. Although Governor Beardsley did not resign, his death—like a resignation—was a permanent “disability” under the Iowa Constitution. Then-Lieutenant Governor Elthon assumed the duties of governor for the remainder of the term (just under two months). However, Elthon did not appoint a new lieutenant governor.

### 3. Interpretation and Subsequent Amendments

In 1923, Governor Kendall requested an opinion from the Attorney General’s Office because he received medical advice recommending he take an extended vacation and abstain from performing his official duties. 1923 Att’y Gen. Ann. Rep. 349, 349 (Iowa Att’y Gen. Aug. 23, 1923). The length of his expected absence was indefinite but would likely be two to three months. *Id.* He asked the Attorney General’s Office to opine on “whether or not the Lieutenant Governor can, during [the] temporary absence, perform the duties of Governor.” *Id.*

The Attorney General concluded “that during the temporary disability of the governor, that the lieutenant governor may act as governor.” *Id.* at 348. The opinion differentiates between the governor permanently leaving office and the governor stepping aside temporarily:

From a consideration of [article IV of the Iowa Constitution] it will be observed that in case of death, resignation, or removal from office of the governor, that the lieutenant-governor succeeds him as governor of the state for the residue of the term. It will further appear that when there is a temporary disability of the governor, the lieutenant-governor acts in his stead during the period of time such disability continues. In the first instance, the lieutenant-

governor becomes governor. In the second instance he simply acts as governor during the temporary disability of his chief.

*Id.* The opinion makes that distinction in part because “terms of a constitution, like those of a statute, are always to be given their natural and obvious meaning. That is, the meaning in which they are commonly and ordinarily understood.” *Id.* at 347–46.<sup>2</sup> The Attorney General further advised Governor Kendall that, when stepping aside, he should make clear “there is no resignation or permanent abandonment of the office of governor.” *Id.* at 343–42.

The 1923 opinion has not been rescinded or disavowed. Neither the legislature nor the people of Iowa sought to amend the article IV, section 17 of the Iowa Constitution to establish that the Attorney General’s interpretation was incorrect.

However, the people later amended article IV of the Iowa Constitution in other respects. Originally, article IV, section 19 established a succession order if, while acting as governor, the lieutenant governor died, resigned, was impeached or displaced, or otherwise became incapable of performing the duties of the office. The 1952 amendment to article IV, section 19 established the current language, with one exception: it referred not just to the president of the Senate, but the president pro tempore. Accordingly, the 1952 amendment removed the reference to the lieutenant governor “acting as” governor—and that language remains today. However, the 1952 amendment did not remove language in article IV, section 15—which establishes the lieutenant governor’s compensation—that referred to the lieutenant governor acting as governor.

In 1972, several provisions of article IV were changed, but they did not affect gubernatorial succession. Originally, article IV, sections 2 and 3 provided the governor and lieutenant governor served two-year terms. The 1972 amendment increased both terms to four years. It also amended article IV, section 15 to reflect the four-year terms.

The most significant constitutional amendments occurred in 1988. Those amendments, which remain in force today, provided for the first time that the governor and lieutenant governor are elected together, on one ticket, “as if these two offices were one and the same.” Iowa Const. art. IV, § 3. Before 1988, it was possible for the governor and lieutenant governor to represent different political parties. The amendment brought to fruition a constitutional delegate’s statement at the 1857 convention: “The governor and lieutenant-governor will always, I presume, be the same in politics, and why not have the successor of the governor of the same politics, instead of bringing in one of the antagonistic party?” 1 *The Debates*, at 593.

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<sup>2</sup> Because the 1923 volume of attorney general opinions was compiled in chronological order, the volume is paginated in reverse order.

The 1988 amendments also recast the lieutenant governor's duties. Under original article IV, section 18, the lieutenant governor was president of the senate and possessed a tiebreaking vote. If the lieutenant governor was absent, impeached, or exercising the office of Governor, the Senate was instructed to choose a president pro tempore to preside and break ties.

However, the 1988 amendments revised article IV, section 18 to provide that the lieutenant governor "shall have the duties provided by law and those duties of the governor assigned to the lieutenant governor by the governor." In other words, the 1988 amendments removed the lieutenant governor's status as president of the Senate. Accordingly, the 1988 amendments also altered article IV, section 19 to establish that if there is a gubernatorial vacancy and the lieutenant governor is incapable of performing the duties of the office, those duties devolve on the president of the Senate—not the president pro tempore.

Finally, although it is not a constitutional amendment, the Iowa legislature amended section 69.8 of the Iowa Code in 2009. 2009 Iowa Acts ch. 57, § 73. The amendment added a sentence to section 69.8 providing that "[a]n appointment by the governor to fill a vacancy in the office of lieutenant governor shall be for the balance of the unexpired term." The provision was the only substantive amendment to chapter 69 in a bill that predominantly altered other chapters delineating the logistics and administration of ballots and elections.

## B. *Federal History*

The original language of article IV, section 17 of the Iowa Constitution matched language existing in the United States Constitution at the time. In 1857, when the Iowa Constitution was ratified, article II, section 1, clause 6 of the United States Constitution read: "In Case of the Removal of the President from Office, or of his Death, Resignation, or Inability to discharge the Powers and Duties of the said Office, the Same shall devolve on the Vice President . . ."

Under that language, numerous presidential vacancies occurred. Each time, the Vice President became President despite the word "devolve." Two of these instances occurred before 1857: John Tyler in 1841 and Millard Fillmore in 1850. Thus, because of this history, the delegates to the 1857 Iowa constitutional convention likely understood the word "devolve" to mean that the successor became president—or on the state level, became governor.

A federal court decision from 1867 confirms this understanding:

Three times, since the adoption of the constitution, the president has died, and, under [article II, section 1, clause 6], the powers and duties of the office of president have devolved upon the vice president. All branches of the government have, under such circumstances, recognized the vice president as holding the



office of president, as authorized to assume its title . . . . It has never been supposed that, under the provision of the constitution, the vice president, in acting as president, acted as the servant, or agent, or locum tenens of the deceased president, or in any other capacity than as holding the office of president fully, for the time being, by virtue of express authority emanating from the United States.

*Merriam v. Clinch*, 17 F. Cas. 68, 70 (C.C.S.D.N.Y. 1867).

However, neither Tyler nor Fillmore appointed a new vice president. Nor did any of the other vice presidents who succeeded to the presidency before 1967: Andrew Johnson in 1865, Chester Arthur in 1881, Theodore Roosevelt in 1901, Calvin Coolidge in 1923, Harry Truman in 1945, and Lyndon Johnson in 1963.

In 1967, the 25th Amendment superseded the original language from article II, section 1. Now, if the President dies, resigns, or is removed, "the Vice President shall become President." U.S. Const. art. 2, § 1. Furthermore, when the vice president becomes president, a vacancy occurs in the office of vice president, and the new "President shall nominate a Vice President who shall take office upon confirmation by a majority of both Houses of Congress." *Id.* § 2. The 25th Amendment also established that the vice president acts as president when the president is temporarily unable to discharge the duties of the office. *Id.* § 3. Although the Iowa Constitution originally mirrored the United States Constitution and has been amended since 1967, the succession provisions have not changed to match the 25th Amendment.

### C. *Other States' Histories*

While other states' constitutions and experiences do not alone determine conclusively what the Iowa Constitution means, the language used and any decisions involving that language can be valuable to a linguistic analysis. Indeed, some members of the 1857 constitutional convention expressly advocated that the convention should consider other states' provisions and experiences. For example, delegate Gray noted in support of keeping the position of lieutenant governor that many other states had such an office. 1 *The Debates*, at 591. Likewise, delegate Clarke of Henry County indicated other states' experiences lent to the convention a wisdom the individual members would not otherwise have:

We may certainly look to the experience of other States. This matter has been somewhat scoffed at here. Gentlemen pretend to have within them a light superior to any they can borrow. I am willing to look to the experience and wisdom of other States; and, as [Mr. Gray] has observed, I find that, in a majority of the free States, this system prevails; and if this office [of lieutenant governor] is

found beneficial elsewhere, . . . why should we not introduce this provision into our Constitution?

*Id.* at 592. Although the *existence* of a lieutenant governor is now well established, these delegates' comments support the general notion that other states' constitutional provisions and history can illuminate, influence, or suggest what Iowa's language means.

As detailed above, several other state constitutions contain the word "devolve"—but that number used to be higher. See *Olcott v. Hoff*, 181 P. 466, 468 (Or. 1919) (collecting states that, as of 1919, provided "the powers and duties of [governor] devolve upon the lieutenant governor"). In several instances, the state constitution was amended after a judicial decision interpreting the previous language. And in one instance, the state constitution was amended to crystallize an attorney general's opinion—even though the amendment accomplished only what the attorney general opined the previous language already did.

#### 1. Arizona

Arizona distinguishes between permanent and temporary disabilities. If the governor dies, resigns, or is removed from office, "the secretary of state . . . shall succeed to the office of governor." Ariz. Const. art. 5, § 6. If the governor is temporarily disabled, the powers and duties "devolve upon the same person as in case of vacancy, but only until the disability ceases." *Id.*

Before the current language, Arizona used language materially similar to the Iowa Constitution. See *State ex rel. De Concini v. Garvey*, 195 P.2d 153, 154 (Ariz. 1948) (quoting the relevant provision of the Arizona Constitution as it existed at the time). While that language was in force, the governor died. *Id.* at 153. The attorney general filed a lawsuit asserting that the successor (the secretary of state) "did not in law or in fact become governor of Arizona . . . , but by virtue of the section the powers and duties of the office of governor merely devolved upon" him. *Id.* The secretary of state asserted he was "governor de jure and de facto." *Id.*

The Arizona Supreme Court acknowledged that "public business and tranquility demand a prompt judicial inquiry." *Id.* It noted the "prevailing view" at the time that "the inferior officer does not vacate his office and become governor de jure and de facto, but that the duties and powers of governor merely devolve on him and he retains his former office." *Id.* at 154. It ultimately followed that path, concluding that the secretary state was "acting governor." *Id.* at 158.

The court's decision contains two other important conclusions. First, even though the successor was acting governor, he was "entitled to physical possession of the office space and

facilities provided” for the governor. *Id.* at 157–58. Second, the court concluded the successor’s duties in his current position “embrace the responsibility to act as governor in case any of the contingencies provided for in the constitutional provision arise.” *Id.* at 157.

After 1948, the Arizona Constitution was amended to its current language. The fact that the people amended the constitution suggests they believed the court’s interpretation of the word “devolve” was incorrect.

## 2. Arkansas

The Arkansas Constitution’s succession provision is materially identical to article IV, section 17 of the Iowa Constitution. That provision became significant when then-Governor Bill Clinton was elected President of the United States and indicated his intention to resign as Governor of Arkansas. *See Bryant v. English*, 843 S.W.2d 308, 309 (Ark. 1992). In *Bryant*, the Arkansas Supreme Court concluded that when Clinton resigned, the office of governor would devolve upon the lieutenant governor such that the lieutenant governor became governor. *See id.* at 311. The court found support for its conclusion from several circumstances.

First, a previous Arkansas decision (under a previous constitutional provision when the position of lieutenant governor did not exist) expressed concern that the person tasked with exercising the powers and duties of governors might not be elected by a statewide vote. *Id.* at 312. That concern was alleviated with a constitutional amendment that created the position of lieutenant governor, so there was no issue with allowing the lieutenant governor to become governor, not just acting governor. *See id.*

Second, the court pointed out that if the lieutenant governor was only acting governor, he could continue presiding over the Senate, and that raised separation-of-powers concerns. *See id.*; *see also* Ark. Const. art. VI, § 5. However, if the lieutenant governor became governor, those concerns would be avoided. *See Bryant*, 843 S.W.2d at 312. In Iowa, the lieutenant governor has no legislative powers; the 1988 amendment removed “presiding over the Senate” from the lieutenant governor’s duties.

Third, the court noted the chain of succession provided the powers would “devolve” upon the lieutenant governor, but if they were unable to exercise the powers and duties of the office, the president of the senate would “act as” governor. *Id.* The difference in language suggested “devolve” did not mean the lieutenant governor would merely act as governor. *See id.*

Finally, in Arkansas, historical practice had treated the lieutenant governor as governor (not acting governor) after the governor resigned. *Id.* at 312–13. That practice comported with the Arkansas Constitution’s command that the supreme executive power vests in a chief

magistrate styled the Governor of the State of Arkansas. *Id.* at 313. In other words, the person who has the powers *is* Governor. *See id.* Iowa has a similar provision and a similar historical practice. Iowa Const. art. IV, § 1.

In Arkansas, when the lieutenant governor becomes governor, a vacancy occurs in the office of lieutenant governor that is filled by a special election. Ark. Code § 7-7-105; *see Stratton v. Priest*, 932 S.W.2d 321 (Ark. 1996) (addressing a constitutional challenge to section 7-7-105). Furthermore, the position of lieutenant governor is specifically exempted from the governor's general appointment power. In other words, Arkansas's procedure upholds the elective principle. Although the drafters of the Iowa Constitution clearly subscribed to the elective principle, there is no statute analogous to Arkansas Code section 7-7-105 in the Iowa Code.

### 3. California

California distinguishes between permanent and temporary disabilities. Cal. Const. art. 5, § 10. When a permanent disability occurs, "The Lieutenant Governor shall become Governor." *Id.* However, like Iowa, California formerly used the word "devolve." Under that language, the California Supreme Court concluded that the lieutenant governor (1) did not actually become governor and (2) could not appoint a new lieutenant governor:

[I]t is provided that in case of the death, resignation, impeachment, absence from the state, or inability to act of the governor, "the powers and duties of his office shall devolve upon the lieutenant-governor for the residue of the term, or until the disability shall cease." It will be seen that in case of a vacancy in the office of governor the vacancy is not to be filled, but the powers and duties devolve upon the lieutenant governor, who does not cease to be lieutenant governor. Under such circumstances it would hardly be contended that when the powers and duties of the governor devolve upon the lieutenant governor the latter thereby becomes governor, and can appoint a lieutenant governor.

*People ex rel. Lynch v. Budd*, 45 P. 1060, 1060 (Cal. 1896). The people have since amended the constitution to include its current language.

### 4. Colorado

Colorado distinguishes between permanent and temporary disabilities. Colo. Const. art. 4, § 13. The Colorado Constitution also provides that a lieutenant governor who "accedes to the office of governor" may select a new lieutenant governor subject to "confirmation by a majority vote of both houses of the general assembly." *Id.* § 13(4). However, the Colorado Constitution formerly contained provisions matching the Iowa Constitution. *See People ex rel. Parks v. Cornforth*, 81 P. 871, 872 (Colo. 1905) (quoting the relevant provisions of the state constitution

as they existed at the time). While that language was in force, a succession controversy arose. *See id.*

The governor resigned in 1905, and the lieutenant governor “qualified as governor.” *Id.* The president pro tempore of the senate then “qualified as lieutenant governor.” *Id.* However, at the end of the legislative session, the senate elected a new president pro tempore. *Id.* The question that reached the Colorado Supreme Court asked whether the previous president pro tempore remained lieutenant governor, or whether he only held that office because of his position as president pro tempore. *See id.*

The court concluded “the president pro tem. does not become the lieutenant governor” and that “[i]f the framers of [the] Constitution had intended that the president pro tem. of the Senate should become lieutenant governor de jure in the contingency under consideration, they could easily have said so.” *Id.* at 872–73. Accordingly, the court concluded only the new president pro tempore was empowered to perform the lieutenant governor’s duties. *Id.* at 875.

In 1974—after the federal 25th Amendment—Colorado repealed and reenacted its succession provisions, changing them to the current language.

#### 5. Michigan

If the governor resigns, the lieutenant governor shall be governor for the remainder of the term. However, for temporary disabilities, “the powers and duties of the office of the governor shall devolve.” Mich. Const. art. V, § 26. That language differs from the Iowa Constitution, but in 1939, the relevant provision of the Michigan Constitution (then article VI, section 16) was materially similar to current article IV, section 17 of the Iowa Constitution. *See* 1939 Op. Att’y Gen. 69, 71 (Mich. Att’y Gen. Mar. 28, 1939) (quoting the provision in force at the time).

That year, after the governor of Michigan died, the attorney general’s office issued an attorney general opinion regarding succession “[b]ecause of serious consequences which might follow a prolonged silence on the subject.” *Id.* at 69. The opinion sought to clarify whether there was “now a vacancy in the office of lieutenant governor.” *Id.*

The attorney general answered that question “no,” adhering to the “most approved view” that when a governor dies or resigns, “no vacancy is created in the minor office by operation of law.” *Id.* No vacancy occurs because

it was never intended that the line of succession should be broken, or that any person, who has not received the sanction of the electors by direct vote, should be

appointed to a position which would entitle him, in certain eventualities, to the high office of governor.

*Id.* In other words, “plain rules of common sense” made it clear “that the people never intended to intrust the responsibilities of the governorship to one who has not been elected to state office.” *Id.* at 72.

The attorney general also noted the Michigan Constitution’s similarity to the United States Constitution and recognized that, as of 1939, “when the Vice President has succeeded to the office of President, it has never been claimed that he thereby vacated the office of Vice President.” *Id.* at 73. Based on the elective principle at the core of democracy—and historical practice—the opinion ultimately concluded that,

upon death of the governor of the State of Michigan, his powers and duties devolve upon the lieutenant governor; that the office of lieutenant governor is not thereby vacated; that the Constitution, by plain and unambiguous language, provides for a line of succession, from the governor, to the lieutenant governor, and to the secretary of state, a line of succession which cannot be broken by the appointment of a lieutenant governor to fill a supposed vacancy. No vacancy exists.

*Id.* at 73.

## 6. Montana

“If the office of governor becomes vacant by reason of death, resignation, or disqualification, the lieutenant governor shall become governor for the remainder of the term, except as provided in this constitution.” Mont. Const. art. VI, § 14(6).

“When there is a vacancy in the office of governor, the successor shall be the governor. The acting governor shall have the powers and duties of the office of governor only for the period during which he serves.” *Id.* § 14(8). An “acting governor” only happens when the governor requests it of the lieutenant governor or when the governor is disabled. *See id.* § 14(2)–(4).

However, before the current language, Montana (like Iowa) used the word “devolve.” *See State ex rel. Lamey v. Mitchell*, 34 P.2d 369, 370 (Mont. 1934) (quoting the provision in force at the time). After an election in 1932, the governor resigned in 1933. *Id.* The Montana Supreme Court concluded “when the Governor resigns or is permanently removed from office,



there is no vacancy in the office of Governor in the sense that there is no one left with power to discharge the duties.” *Id.* The court further explained the state’s constitutional structure:

When the framers of the Constitution provided for the election of a Governor and a Lieutenant Governor as members of the executive department of the state, but conferred upon the latter no executive power or authority other than in the contingencies mentioned in [the succession provision], they manifested the intention that the people elect two qualified heads of that department—the one active, the other his lieutenant, ready at a moment’s notice to assume the duties of the office, should his superior officer, for any reason, either temporarily or permanently, become unable to perform them.

*Id.* at 371–72 (citation omitted).

The court also concluded that when a governor resigns or dies, there is no vacancy in the office of lieutenant governor. *Id.* at 372. The court explained,

When the duties, powers, and emoluments of the office of Governor devolve upon the Lieutenant Governor, it cannot be said that he vacates his office of Lieutenant Governor, and, unless he does so, there is no vacancy in his office. His assumption of the duties of Governor does not create, and neither can he make, a vacancy, as he is discharging the functions of Governor by the mandate of the Constitution, and that by reason of being Lieutenant Governor. If the framers of the Constitution had intended that there should be a vacancy in the office of Lieutenant Governor upon the resignation, death, or permanent removal of the Governor, they could have easily said so.

*Id.*

Two aspects of the succession structure cemented the court’s conclusion. First, if there were a lieutenant governor vacancy, the lieutenant governor / new governor could appoint a lieutenant governor, which would interrupt the line of successors chosen by the voters. This “was never contemplated and never intended by the framers of the Constitution, or the people who adopted it.” *Id.* Second, because the provision covered both permanent and temporary disabilities, if the lieutenant governor’s office always became vacant, another conundrum would arise. Specifically, if the governor suffered a temporary disability and the lieutenant governor took over, any person subsequently appointed to the post of lieutenant governor would essentially be squeezed out once the temporary disability ended. *See id.*

## 7. Nevada

Nevada's succession provision is materially identical to Iowa's. *Compare* Iowa Const. art. IV, § 17, *with* Nev. Const. art. 5, § 18. The Nevada Supreme Court considered the provision after the governor died in 1896. *State ex rel. Hardin v. Sadler*, 47 P. 450, 450 (Nev. 1897). The court concluded there was no vacancy in the office of lieutenant governor:

If a vacancy occurs in the office of governor, the powers and duties of the office devolve upon the lieutenant governor, but there is no vacancy created thereby in the office of lieutenant governor. The officer remains lieutenant governor, but invested with the powers and duties of governor.

*Id.* The Nevada Constitution has not changed since 1897.

## 8. New Jersey

New Jersey distinguishes between permanent and temporary disabilities; for permanent disabilities, "the Lieutenant Governor shall become Governor," while for temporary ones, the powers of the office devolve. N.J. Const. art. 5, § 1, ¶¶ 6–7. However, the New Jersey Constitution previously contained a provision like Iowa's—although there was no such thing as a lieutenant governor at the time. *See State v. Heller*, 42 A. 155, 156 (N.J. 1899) (quoting the provision in force at the time, which established that the governor's powers and duties devolved upon the president of the senate). Under that language, a succession dispute arose.

In 1898, the governor of New Jersey resigned. *Id.* The president of the senate took an oath assuming gubernatorial powers and duties but later resigned "as a member of the senate." *Id.* The speaker of the house, who was next in the succession order, then asserted *he* was now governor. *See id.* However, the president of the senate asserted he remained governor and his resignation only affected his senate seat. *See id.* The New Jersey Supreme Court concluded the president of the senate was only governor through his position as senate president:

In construing [the succession] clause of the constitution it must be borne in mind that it was carefully drawn by learned jurists, who knew how to express with exactness and precision the purpose they had in view. The provision is that, in case of the resignation of the governor, the powers, duties, and emoluments of the office shall devolve upon the president of the senate, and not that the president of the senate shall thereby become governor . . . . If the framers of the fundamental law had intended to transfer the president of the senate to the executive chair, and thereby to vacate his office of senator, it is reasonable to believe that they would have said so in no uncertain language. The language used is not ambiguous. It

declares that the powers, duties, and emoluments of the office shall devolve on the president of the senate; it does not confer upon him the title of the office. The president of the senate exercises the powers of the governor; the president of the senate performs the duties of the governor; the president of the senate receives the emoluments of that office. He is still president of the senate, with the added duties required of the chief executive of the state imposed upon him. There is no language in the constitution from which it can reasonably be inferred that his office of president of the senate was to be vacated. He retains his office of senator; and as president of the senate, and not as governor, he exercises the added powers and performs the superimposed duties.

*Id.* at 156–57. Accordingly, when he resigned his senate position, he also resigned his ability to exercise the powers and duties of the governor and the speaker of the house became entitled to exercise those powers and duties. *Id.* at 158.

There are two other important aspects of the New Jersey court’s decision. First, it concluded the successor did not actually become governor because other provisions in the state constitution referred to the governor “or person administering the government.” *Id.* at 157. Therefore, if the successor actually became governor, those words would be superfluous. *Id.* The Iowa Constitution does not contain similar language that would become superfluous if the lieutenant governor *is* governor following the governor’s resignation.

Second, the court highlighted the constitutional provision’s flexible nature, applying to both permanent and temporary disabilities. If the successor’s previous position automatically became vacant, even during a temporary disability, they would lose it when the temporary disability ended. *Id.* at 158. The court concluded that meaning of the language “could not have been within the contemplation of the able men who incorporated it in this clause relating to a matter of supreme importance.” *Id.*

## 9. New York

New York distinguishes between permanent and temporary disabilities. When a permanent disability occurs, the lieutenant governor becomes governor, but when a temporary disability occurs, the lieutenant governor acts as governor. N.Y. Const. art. IV, § 5. In 1943, the state’s attorney general opined that a statute allowing some appointments could not be applied to a lieutenant governor vacancy because it “would lead to the anomalous result that a Governor by appointing a Lieutenant-Governor and then resigning could impose upon the people his own choice as their Governor.” 1943 N.Y. Op. Att’y Gen. No. 378, 1943 WL 54210, at \*4 (N.Y. Att’y Gen. Aug. 2, 1943).

In 2008, the governor resigned, and in accordance with the constitution, the lieutenant governor became governor. *See Skelos v. Paterson*, 915 N.E.2d 1141, 1142 (N.Y. 2009). Although the state constitution provides that if both the office of governor and the office of lieutenant governor are vacant, the president of the senate shall act as governor, N.Y. Const. art. IV, § 6, the senate deadlocked and could not elect a temporary president, *see Skelos*, 915 N.E.2d at 1142. Accordingly, each political party recognized a different temporary president, which made it unclear “which one of the rival temporary presidents stood next in the line of gubernatorial succession.” *Skelos*, 915 N.E.2d at 1142. The governor attempted to break the deadlock by simply appointing a new lieutenant governor. *Id.* However, a state legislator filed a lawsuit seeking (1) a declaration that the appointment was unconstitutional and (2) an injunction preventing the governor from appointing anyone to the office of lieutenant governor. *Id.*

When the case reached the New York Court of Appeals, the court stated there could be no dispute that the lieutenant governor became governor and thereby left a vacancy in the office of lieutenant governor. *Id.* at 1144. It then rejected the contention “that the Constitution requires that a vacancy in the office of Lieutenant Governor be preserved until the next . . . election” and applied a state statute—the one the attorney general had opined 60 years earlier could not apply—to fill a gap left by the constitution. *Id.* The court reasoned it made little sense to have “an extended vacancy running the balance of an elective term” when the constitution contained a provision intending to assure vacancies were filled. *Id.* at 1144–45.

The court also concluded the elective principle could not control the result of the case:

While there can be no quarrel with the proposition that, generally, election must be the preferred means of filling vacancies in elective office, it does not follow that the elective principle is preeminent when it comes to filling a vacancy in the office of Lieutenant Governor.

*Id.* at 1145. It concluded that a constitutional amendment placing the governor and lieutenant governor on the same ticket subordinated the elective principle “to assure the structural integrity and efficacy of the executive branch.” *Id.* It acknowledged that subordinating the elective principle created the possibility an unelected individual could occupy the state’s highest office, but it concluded that was a permissible result because all rules of succession are “inevitably imperfect” and “invariably compromise elective principles” at *some* stage. *Id.* at 1146. In other words, it deferred to the legislature’s judgment in passing a statute that applied. *See id.* (“For now, the Legislature . . . has specified that the vacancy is to be filled not by election but by gubernatorial appointment alone—a determination that the Legislature is always free to revisit.”).

The decision was not unanimous. The dissenting opinion principally highlighted the possibility “that the citizens . . . will one day find themselves governed by a person who has never been subjected to scrutiny by the electorate, and who could in turn appoint his or her own unelected Lieutenant Governor.” *Id.* at 1147 (Pigott, J., dissenting). Justice Pigott asserted that was “contrary to the text of the New York Constitution and affords Governors unprecedented power.” *Id.*

Justice Pigott relied on historical practice, noting “no one . . . harbored a suggestion” that the new governor could appoint a replacement lieutenant governor because “no Governor in the history of the State had done so.” *Id.*; *see also id.* at 1152 & n.3 (collecting 10 occasions since New York’s founding “when the position of Lieutenant Governor has become vacant” but noting none of the vacancies were filled by appointment). He also noted the constitution did not expressly provide an appointment power—but it *did* “provide a clear line of succession,” which could not be circumvented. *See id.* at 1150. He asserted the majority erred by grouping the position of lieutenant governor—one of the state’s highest offices—into what was effectively a catchall statute addressing other minor state officials. *Id.*; *cf. Whitman v. Am. Trucking Ass’n*, 531 U.S. 457, 468 (2001) (noting Congress does not “hide elephants in mouseholes”). In Justice Pigott’s view, the lieutenant governor was not addressed in the statute because the constitution already provided a method of succession. *See Skelos*, 915 N.E.2d at 1150.

Finally, Justice Pigott explored constitutional amendments that affected the lieutenant governor. First, in 1945, the constitution was amended to indicate “precisely what was to occur when there was a vacancy in the office of Lieutenant Governor alone;” it indicated the temporary senate president was to perform all the duties of lieutenant governor during the vacancy. *See id.* at 1154–55. Second, in 1953, the constitution was amended to require that the governor and lieutenant governor be elected together, on one ticket—just as Iowa did in 1988. *See id.* at 1155. Accommodating those changes, Justice Pigott suggested it was improper “that a Lieutenant Governor could be appointed by a Governor with no input from the electorate and no vetting by the legislative branch of government.” *Id.*

There has been some academic criticism of the *Skelos* decision. *See* Patrick A. Woods, Comment, *Automatic Lieutenant Gubernatorial Succession: Preventing Legislative Gridlock Without Sacrificing the Elective Principle*, 76 Alb. L. Rev. 2301, 2303 (2013) (asserting *Skelos* “removes any electoral check from those selected to fill the position of lieutenant-governor and leaves structural problems unresolved”). But it is not universally panned. *See* Richard Briffault, *Skelos v. Paterson: The Surprisingly Strong Case for the Governor’s Surprising Power to Appoint a Lieutenant Governor*, 73 Alb. L. Rev. 675, 676–77 (2010) (asserting that the *Skelos* majority was right despite disagreement from the sitting attorney general, “a former chief judge, a former lieutenant governor, a former attorney general, and a leading academic expert on the state constitution”).



In any event, the decision appeared to assume that there was a vacancy in the office of lieutenant governor despite earlier caselaw from other states holding almost unanimously that the lieutenant governor's ascension does not leave a vacancy in the office of lieutenant governor. That assumption may leave the decision on shaky analytical ground.

There are a few other differences between New York's framework and Iowa's. First, the lieutenant governor's duties include presiding over the senate in New York, but not in Iowa. Second, the New York Constitution provides for vacancies in the lieutenant governor's office alone, with no vacancy in the governor's office. N.Y. Const. art. IV, § 6. The Iowa Constitution is not as specific. Finally, the New York Constitution directs the legislature to provide for filling vacancies. N.Y. Const. art. XIII, § 3. By contrast, the Iowa Constitution contains no similar instructions for the legislature.

#### 10. Oklahoma

Oklahoma's succession provision is similar to Iowa's, using the word "devolve"—although one difference is that in Oklahoma, "the office" devolves, while in Iowa, the powers and duties do. *Compare* Iowa Const. art. IV, § 17, *with* Okla. Const. art. 6, § 16. In a 1926 case, the Oklahoma Supreme Court concluded the office of Governor automatically devolves upon another, who by virtue of filling that office becomes the chief magistrate styled the governor of Oklahoma. *Fitzpatrick v. McAlister*, 248 P. 569, 572 (Okla. 1926). In other words, the person who has the powers is governor. In particular, the court noted the difference between the word "devolve," which applied only to the lieutenant governor, and "act as Governor," which applied only to those further down the line of succession. *See id.* Because of that difference in language, the court concluded the word "devolve" actually conferred the title and office.

The court found support for its conclusion in federal history:

[U]pon the death of President Wm. H. Harrison, Vice President Tyler became President of the United States. For almost a century this construction of the federal Constitution has stood without question. It has been recognized as correct, and acquiesced in, not only by the departments of state and all the states of the Union, but officially recognized by every civilized government in the world.

On each occasion where the President of the United States has died, the Vice President has immediately succeeded to the office of President as President of the United States, and thereupon the government of the United States has at once, through its consular offices, notified all governments of the world of the change in Presidents.



Defendant suggests that no court has ever pronounced that to be the law. To our mind, it is so clearly correct that no one has ever presumed to test its correctness in the courts. Therefore it should have greater weight than an ordinary departmental construction, not only because it has stood for almost a century, but because it has been recognized as the correct conception of our system of government, and because, for eighty-five years under this construction, there has been no friction in the machinery of government by reason of such construction.

*Id.* at 576.

The decision was not unanimous. A dissenting opinion suggested the lieutenant governor would perform gubernatorial duties “merely as the occupant of the office of Lieutenant Governor, to which he was elected.” *Id.* at 580 (Branson, V.C.J., dissenting). The dissent also highlighted the possibility that if the lieutenant governor became governor and thereby vacated the office of lieutenant governor, he could appoint a replacement. *See id.* at 581. That was problematic, the dissent asserted, because it would “make it impossible that the President pro tempore of the Senate would ever succeed to the performance of the duties of Governor, as was clearly contemplated in the succession line to such duties as set out in . . . the Constitution.” *Id.*

#### 11. Oregon

In Oregon, the successor “shall become Governor.” Or. Const. art. V, § 8a. However, the Oregon Constitution formerly provided that the duties of governor would “devolve on the secretary of state” and if the secretary of state was disabled, “the president of the senate shall act as governor.” *See Chadwick v. Earhart*, 4 P. 1180, 1180 (Or. 1884) (quoting the provision as it existed at the time). In other words, the Oregon Constitution distinguished between devolution and an acting governor.

In *Chadwick*, one party contended that

the duties of the office of governor became annexed to the office of secretary of state, and are discharged as duties incident to the latter office; in other words, that the duties of the office, but not the office itself, devolve upon the secretary of state.

*Id.* The court was skeptical, noting that argument seemed to require “either that the office of governor should continue vacant . . . ; or, second, that the office be filled, and yet he who fills it be in nowise governor, but continue to be merely secretary of state.” *Id.*

Accordingly, the court concluded the successor became governor:

In the first place, it is not shown how an office can be vacant, and yet there be a person, not the deputy or locum tenens of another, empowered by law to discharge the duties of the office, and who does, in fact, discharge them. It is not explained how, in such a case, the duties can be separated from the office so that he who discharges them does not become an incumbent of the office. And, in the second place, how a person can fill the office of governor without being governor. It is the function of a public officer to discharge public duties. Such duties constitute his office.

*Id.* at 1181. A later decision adhered to *Chadwick* and concluded that upon the governor's death, "by reason of the fact that Mr. Olcott was secretary of state he automatically became governor." *Olcott*, 181 P. at 482. The court concluded "when the people elected Mr. Olcott secretary of state, by the very terms of the constitution they elected him to become governor" if the incumbent died. *Id.* at 483.

## 12. Utah

Utah defines vacancy to include resignation and disability that extends for the remainder of the term. Utah Const. art. VII, § 11(1)(a). If a vacancy occurs, the lieutenant governor "shall become governor." *Id.* § 11(2). The Utah Constitution also provides that if a disability is only temporary, the lieutenant governor shall discharge the powers and duties. *Id.* § 11(5)(a). And, it establishes that when the lieutenant governor becomes governor, a vacancy occurs in the office of lieutenant governor. *Id.* § 10(3)(a)(i).

However, before 2008, the Utah Constitution, like Iowa, used only "devolve." The Utah Attorney General issued an advisory opinion in 2003 on the question of succession. Utah A.G. Opinion No. 03-001, 2003 WL 21996258 (Aug. 18, 2003). The opinion concluded (1) "devolve" means that the lieutenant governor becomes governor, and (2) a vacancy occurs in the office of lieutenant governor that the governor is entitled to fill by appointment. *Id.* at \*1, 3. The attorney general relied in part on the federal history involving the word "devolve." Because four vice presidents had become president before Utah adopted a constitution, at the time the state adopted one, "it was understood, in theory and in practice, that the Constitutional language 'shall devolve' meant 'succession' such that the Lieutenant Governor would become the Governor." *Id.* at \*1.

The attorney general also noted that in 1980, the citizens of Utah adopted constitutional amendments that required the governor and lieutenant governor to run on the same ticket and

clarified the line of succession of executive authority. *Id.* Those amendments were presented to the voters as mirroring the succession of the federal government—which by this time had adopted the 25th Amendment providing the vice president becomes president. *Id.*

Despite the attorney general’s conclusions about the existing language, the Utah Constitution was later amended to its current language to cement the attorney general’s understanding of the constitutional structure. Furthermore, the attorney general may have reached his opinion about a lieutenant governor vacancy because (1) the legislature codified its finding that the lieutenant governor is a significant position, Utah Code § 67-1a-1; and (2) the lieutenant governor is the state’s chief election officer, so it would be important to have someone in the position, *see* Utah Code § 67-1a-2. The Iowa Code does not contain a similar emphasis on the lieutenant governor’s importance, and here, the secretary of state is the chief election officer. Those differences may provide a basis on which to distinguish Utah’s conclusions.

### 13. Washington

Washington’s succession provision is similar to Iowa’s, using the word “devolve.” *Compare* Iowa Const. art. IV, § 17, *with* Wash. Const. art. 3, § 10. The Washington Supreme Court confronted the provision in a 1902 case presenting the question whether the death of the governor creates a vacancy in either the office of governor or lieutenant governor. *State ex rel. Murphy v. McBride*, 70 P. 25, 25 (Wash. 1902). The court concluded,

The constitution having provided that in case of the death of the governor the duties of the office shall devolve upon the lieutenant governor, there is no vacancy in the office of governor. . . . When the lieutenant governor, by virtue of his office and of the command of the constitution, assumed the duties of governor on the death of Gov. Rogers, the office of lieutenant governor did not thereby become vacant, but the officer remained lieutenant governor, intrusted with the powers and duties of governor.

*Id.* at 26.

### 14. Wisconsin

In Wisconsin, the lieutenant governor “shall become governor” if the governor dies, resigns, or is removed. Wis. Const. art. 5, § 7(1). The lieutenant governor “shall serve as acting governor” if the governor is absent or disabled. *Id.* § 7(2). But the language was not always what it is today. In 1938, it matched article IV, section 17 of the Iowa Constitution. *See State ex rel. Martin v. Ekern*, 280 N.W. 393, 398 (Wis. 1938) (quoting the provision in force at the time).

Under that provision, the Wisconsin Supreme Court acknowledged that the question of succession was “most important and of great public concern and interest” because the people of the state were “vitaly interested in seeing that no important office, such as that of lieutenant governor, be intruded into by any person who has not lawful authority to hold the office or to perform the duties thereof.” *Id.* at 394. It ultimately concluded that when a vacancy occurs in the office of governor, “the lieutenant governor does not become governor. He remains lieutenant governor, upon whom devolves the powers and duties of governor. In such a contingency no vacancy occurs in the office of lieutenant governor.” *Id.* at 399.

### 15. Wyoming

Wyoming does not use either the word “devolve” or the phrase “become Governor.” Instead, it provides that the secretary of state “shall act as governor.” Wyo. Const. art. 4, § 6. In 1903, the governor died, and a dispute arose about the secretary of state’s compensation while fulfilling his constitutional duty to act as governor. *State ex rel. Chatterton v. Grant*, 73 P. 470, 470 (Wyo. 1903). The court concluded the secretary of state performed duties both in that role and as governor, and accordingly was entitled to compensation for both positions. *See id.* at 472. However, the court also noted it did not observe a material distinction between “devolve” and “act as.” *Id.* at 476.

## III. SYNTHESIS

Several themes pervade the historical accounts. One major recurring theme is elective principle—the notion that the people should not be subject to the rule of a person none of them elected. Iowa’s constitutional delegates voiced this principle during the debates in 1857, and it has repeatedly surfaced when other states’ provisions came before courts in those states. *See, e.g., Bryant*, 843 S.W.2d at 312; *State ex rel. Lamey v. Mitchell*, 34 P.2d at 372; *Skelos*, 915 N.E.2d at 1145.

Another theme is historical understanding. The notion that “it’s always been this way” is assuredly not reason, standing alone, to continue a particular practice; something can be legally incorrect even if it’s longstanding. *See Griffin v. Pate*, 884 N.W.2d 182, 208 (Iowa 2016) (Hecht, J., dissenting) (rejecting the notion that a practice should continue just “because ‘that’s the way it’s always been in Iowa’ or because ‘that’s the way it’s done elsewhere’ ”). But it *can* illuminate the understanding Iowa’s framers had at the time they were drafting the Iowa Constitution; it can shed light on the words’ original intent even though original intent is not the end of the analysis. *See id.* at 198–202 (majority opinion) (beginning analysis of a constitutional provision by determining what it was understood to mean at the time of enactment before tracing its interpretation over time). In that respect, the history of *presidential* succession before 1857,

and the language in the United States Constitution at the time, provides a worthy indication of what Iowa's framers likely meant by the word "devolve."

A final theme is the importance of linguistic difference. Many states have changed their respective succession provisions, either because a court determined succession did not work in the way the people actually intended or perhaps just to update language. Additionally, some states differentiate between permanent and temporary disabilities—but Iowa's provision applies to both and must carry an interpretation commensurate with that flexibility. *See State ex rel. Lamey v. Mitchell*, 34 P.2d at 372; *Heller*, 42 A. at 158. Of particular importance here is the fact that the 25th Amendment was adopted in 1967, and the Iowa Constitution has seen multiple amendments since then—yet the Iowa Constitution was not changed to mirror it.

To be sure, reasonable minds can debate the meaning of the constitution. The histories discussed above in some instances contain competing answers; some say the successor becomes governor, while others say the successor is merely acting governor. Some grant a successor the power to appoint a new lieutenant governor; others don't. There is room to disagree. However, there are several factors that carry the most persuasive weight in determining what Iowa's answers are.

First, the elective principle was clearly important to the Iowa drafters. *See 1 The Debates*, at 591–94. And it has remained important, because even though Iowans have amended article IV of the Iowa Constitution, in doing so they retained the principle that both the governor and lieutenant governor "shall be elected." Iowa Const. art. IV, § 2. Accordingly, the elective principle deserves paramount consideration. As several courts determined, it would frustrate the elective principle *and* the constitutional succession order if a governor could always appoint a new lieutenant.

Second, the series of amendments to the Iowa Constitution delineate the contours of the lieutenant governor's duties. By placing the governor and lieutenant governor together on one ticket and removing the lieutenant governor's duty to preside over the senate, the people displayed their intent that the lieutenant governor be ready as a standby—just in case. *See State ex rel. Lamey v. Mitchell*, 34 P.2d at 371–72. The lieutenant governor's duties are as provided by law, and one of those duties flows from the constitution: the duty to become governor in the event of a vacancy. The duty is already encompassed in the office of lieutenant governor.

Finally, history carries significant weight in two respects. It illustrates that at the time article IV, section 17 was enacted, "devolve" meant that the successor becomes governor. It also suggests that the 1988 amendments consciously avoided duplicating the language of the 25th Amendment because the people of Iowa wished to uphold the elective principle.

In light of the resources and documents discussed in this memo, the answers to Senator Johnson's questions about gubernatorial succession in the event of Governor Branstad's resignation are as follows.

1. If Governor Branstad resigns, Lieutenant Governor Reynolds becomes Governor. She succeeds to the office, title, position, and powers of Governor because the person possessing the powers is styled the Governor of Iowa. Iowa Const. art. IV, § 1.
2. Article IV, section 17 itself does not contain the phrase "act as governor." That section heading was added later and cannot circumvent the plain meaning of the actual language. The framers' intent in selecting the word "devolve" was to match the United States Constitution, and under the United States Constitution, the government experienced two presidential successions before 1857 in which the vice president became president. Thus, the framers understood "devolve" to mean that executive power separated between two offices merged into one in the event of a constitutional contingency.
3. If Governor Branstad resigns, no vacancy occurs in the office of lieutenant governor. Essentially, the offices of governor and lieutenant governor merge. The voters elected Governor Branstad and Lieutenant Governor Reynolds with the understanding that Lieutenant Governor Reynolds would step in if a particular contingency—specified in article IV, section 17—occurred. One of the lieutenant governor's duties is to become Governor if that contingency occurs. Accordingly, Lieutenant Governor Reynolds becomes Governor because she is already Lieutenant Governor. Because there is no vacancy in the office of lieutenant governor, Iowa Code section 69.8 does not apply.
4. Because there is no vacancy in the office of lieutenant governor, there is nothing to fill. Accordingly, Governor Reynolds could not appoint a successor lieutenant governor.



**Gavin, Meghan [AG]**

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92 Or. 462

Supreme Court of Oregon.

OLCOTT, GOVERNOR,  
v.  
HOFF, STATE TREASURER.

June 10, 1919.

In Banc.

Original proceeding in mandamus by Ben W. Olcott, Governor, against O. P. Hoff, State Treasurer. Writ ordered to issue.

**\*\*466 \*462** This is an original proceeding on a petition for an alternative writ of mandamus, in which it is alleged that at the general election on November 5, 1918, James Withycombe was elected governor of the state of Oregon, and that he duly qualified for that office on January 14, 1919; that at the general election held on November 7, 1916, the petitioner, Ben W. Olcott, was elected secretary of state of the state of Oregon, and that he duly qualified for that office on December 26, 1916; that ever since he "has been and now is the duly **\*463** qualified and acting secretary of state," and that on March 3, 1919, James Withycombe, the duly elected and qualified governor of the state, died. Further allegations of the petition follow:

"That under and by virtue of section 8, art. 5, of the constitution of Oregon, the office of governor and the duties thereof devolved upon the secretary of state, and that on the 7th day of March your petitioner, Ben W. Olcott, took the oath of office and assumed the office and duties of governor. That he has been since that time and now is the governor of the state of Oregon. That on April 1, 1919, a warrant was duly issued by the secretary of state in favor of Ben W. Olcott, governor, for the sum of \$336, in payment of the salary due said Ben W. Olcott, as governor, from March 7 to March 31 (inclusive), 1919, in accordance with law. That your petitioner has presented said warrant to O. P. Hoff, state treasurer, and that said O. P. Hoff, state treasurer, has failed and refused and still fails and refuses to pay the same, alleging as his reason that the warrant should be drawn to Ben W. Olcott, secretary of state, acting governor. That there is money in the state treasurer's hands to the credit of the fund for the

payment of the salary of governor, which money was appropriated by H. B. No. 470, passed at the thirtieth session of the legislature, sufficient to pay petitioner's claim."

Wherefore the petitioner prays:

"That an alternative writ of mandamus issue out of this court, returnable on the 8th day of April, 1919, commanding the said O. P. Hoff, state treasurer, to pay said warrant, or on the failure thereof to show this court on the return day why the same has not been done, and for such other relief as may be proper, and your petitioner particularly prays that this court will define his duties and powers in relation to the office of Governor."

**\*\*467 \*464** To this petition the defendant, O. P. Hoff, state treasurer, demurred upon the ground that "it appears from the face thereof that the writ does not state facts sufficient to constitute a cause of action against this defendant." The case was argued and submitted on April 10, 1919, at which time the court extended a general invitation to the bar of the state to file informal briefs on either side, as a result of which numerous and exhaustive briefs pro and con were submitted by able and distinguished attorneys, covering a wide range of research and investigation.

On behalf of the petitioner it is vigorously contended that in the interests of the general public, to settle and determine chaotic political and governmental conditions, this court should define his official title and tenure of office and prescribe his duties. The right or province of this court to decide such questions under the record is strenuously denied by opposing briefs. The vital question we are asked to decide is whether the petitioner, Mr. Olcott, holds the office of governor in fact, and, if so, for how long, or whether he has the right only to discharge the duties of that office during the remainder of his term as secretary of state. For the purposes of this opinion, all of the allegations of the petition must be deemed taken as true.

West Headnotes (3)

**111 Mandamus**  
↔ Scope and extent of relief in general

On an original proceeding in mandamus in the Supreme Court, the court will decide all matters of general public interest and importance which

the petition asks and which are argued in the briefs, not personal to the petitioner, and which, until decided, will seriously affect and unsettle the administration of the affairs of the state, though a decision as to such matter might be dicta as far as the parties involved are concerned.

2 Cases that cite this headnote

[2]

**Public Employment**

⇨ Form, rate, and amount in general

**States**

⇨ Constitutional restrictions

Where the Governor of Oregon is removed, dies, resigns, or is unable to discharge the duties of his office, the secretary of state becomes Governor in fact and is entitled to receive compensation as such, under Const. art. 5, § 8, notwithstanding Const. art. 3, § 1, art. 2, § 10, providing, among other things, that no person shall hold more than one lucrative office at the same time.

2 Cases that cite this headnote

[3]

**Courts**

⇨ Constitutional questions

When a clause of the Constitution has been construed by the Supreme Court, that construction should not be set aside except for the most cogent reasons.

1 Cases that cite this headnote

**Attorneys and Law Firms**

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**Opinion**

JOHNS, J.

Under our form of government all power, both state and federal, is vested in the legislative, executive, and judicial departments. Each is separate and distinct from the other. In the affairs of state the governor is the chief executive and all other officers in that branch are more or less subordinate to his position. The office of secretary of state is next in importance. Section 1 of article 3 of the constitution provides:

“The powers of the government shall be divided into three separate departments—the legislative, the executive, including the administrative, and the judicial; and no person charged with official duties under one of these departments shall exercise any of the functions of another, except as in this constitution expressly provided.”

Sections 1 and 8 of article 5 follow:

“The chief executive power of the state shall be vested in a governor, who shall hold his office for the term of four years; and no person shall be eligible to such office more than eight in any period of twelve years.”

“In case of the removal of the governor from office, or of his death, resignation, or inability to discharge the duties of the office, the same shall devolve on the secretary of state; and in case of the removal from office, death, resignation, or inability, both of the governor and secretary of state, the president of the \*466 senate shall act as governor, until the disability be removed, or a governor be elected.”

The latter article also defines the qualifications of governor and the manner of his election, specifies who are ineligible for the office, and names his special powers and duties.

<sup>11</sup> In addition to such obligations and responsibilities, it is a matter of common knowledge that the governor is a member of numerous boards before which important business of all state institutions is daily transacted and by which large amounts of bonds are issued and certified for state purposes. This court knows as a matter of law that Mr. Olcott's term of office as secretary of state expires on January 3, 1921, and that if his right to the office of governor or to discharge the duties of that office ends with his term of secretary of state, another governor must be elected at the next general election. These are all matters of general public interest and importance, not personal to Mr. Olcott, and until such time as they are decided will seriously affect and unsettle the administration of the affairs of state. For such reasons, we think it is not only our province but our duty, in this kind of a case, in a measure to disregard and overlook any of the apparent forms or technicalities which have been suggested, and decide such public questions as are not inconsistent with our judicial duties.

<sup>12</sup> Whether Mr. Olcott is governor in fact and holds the office as such for the unexpired term of the late Governor Withycombe, or whether he shall discharge the duties of that office for the remainder of his term as secretary of state, depends upon the legal construction which should be placed upon section 8 of article 5 of the constitution, above quoted.

\*467 As stated by Mr. Justice McBride in *State v. Finch*, 54 Or. 482, 103 Pac. 505, our constitution is largely copied from that of Indiana, which was adopted by that state in 1851, and which provides:

"In case of the removal of the governor from office, or of his death, resignation or inability to discharge the duties of the office, the same shall devolve on the lieutenant governor."

By substituting the words "secretary of state" for "lieutenant governor" that section of the Indiana organic law is made identical with the corresponding section of our own constitution. Counsel have not \*\*468 cited, and we have not been able to find, any decision of the state of Indiana construing that section of its constitution.

The federal constitution, section 1 of article 2, provides:

"In case of the removal of the president from office, or of his death, resignation, or inability to discharge the powers and duties of the said office, the same shall devolve on the

vice president."

It will be noted that by inserting the words "powers and" between the words "the" and "duties" and substituting the title "vice president" for "secretary of state" our own constitution is made identical with the federal. In so far as we are advised, this particular section of the federal constitution has never been construed by any court, yet upon the death of the president no one has ever claimed that the vice president became acting president only, or that he would not succeed to the office of president itself for the remainder of the unexpired term for which the president was elected.

We have examined the constitutions of every state in the Union, and none of them are identical with our \*468 own; the closest resemblance being found in the Indiana and federal constitutions, as above noted.

Under their respective constitutions, in the event of the death of the governor, the powers and duties of that office devolve upon the lieutenant governor in the following states: Alabama, California, Colorado, Connecticut, Delaware, Idaho, Illinois, Indiana, Iowa, Kentucky, Louisiana, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, Nevada, New Mexico, New York, North Carolina, North Dakota, Ohio, Oklahoma, Pennsylvania, Rhode Island, South Dakota, Texas, Vermont, Virginia, Washington, Wisconsin. And under like condition such duties devolve upon the president or speaker of the senate in the following named states: Arkansas, Florida, Georgia, Kansas, Maine, Maryland, New Hampshire, New Jersey, Tennessee, West Virginia. It is only in Oregon, Arizona, Utah, and Wyoming that in the event of the governor's death the secretary of state succeeds to his office or performs his duties. Excluding Oregon, the constitutions of Alabama, \*469 Delaware, New Mexico, Oklahoma, South Carolina, and Virginia, only, expressly provide that upon the death of the governor the office of governor itself shall devolve upon his designated successor; and we have not been cited to or able to find any decision by the courts of either of those states construing that particular section of their respective constitutions.

The only decision of this court on the subject was rendered in the case of *Chadwick v. Earhart*, 11 Or. 389, 4 Pac. 1180, which is vigorously assailed by counsel here, who claim that it was largely dictum, is not the law, and should be overruled. That case was decided at the October term, 1884, and it appears from the brief of the respondent R. P. Earhart, who was then the secretary of state, that—

"The statement of facts contained in the stipulation which is the basis of

this action may be briefly stated by submitting the questions. In the event of the resignation of the governor of Oregon does the secretary of state become the governor by operation of law, and is he entitled to the salary provided by law for that office? \* \* \* A nice question is raised by the stipulation, but it is of no importance in ascertaining whether appellant is entitled to the salary in question, that is, was the appellant the governor during the two days after the qualification of the respondent and before the qualification of Governor Thayer? And further, as the secretary of state is governor or acting governor, as the case may be, the office or duties thereof devolved on the respondent during that time. And we maintain that the title to each office terminated with the expiration of the four years after his qualification.”

Among other things, it was stipulated that—

“Mr. Earhart objects to the salary being paid from the 9th day of September, 1878, to the 11th day of September, 1878—two days—on the ground that Mr. Chadwick was not secretary of state after Mr. Earhart \*470 was sworn in on the 9th day of September, 1878, though Mr. Chadwick acted as governor until and including the 11th day of September, 1878.”

The attorney for Mr. Chadwick, the appellant, made the following contention in his brief:

“In the event of the happening of any one of the above contingencies the office of governor devolves upon the secretary of state. The language in reference to the duties of secretary of state in this event is the same as that defining the office of president when the vice president succeeds to the same, except the word ‘powers’ is omitted.

“The office of governor is distinctive. It cannot merge into another. It cannot be vacant any more than can be the president’s office. The appointments under a constitution cannot be broken, whether they are made by an election

or otherwise. The office is always filled. The incumbent is an incident to the office. Whether the incumbent is at the time secretary of state, he is the governor, and as much as if his appointment had been made by an election. The office devolves on him. The means used to fill the office of governor are absolute, and while they may be different according to contingencies, the one act of filling the office makes the incumbent governor. It is the office, not the man. Under a constitution there can be no such thing as an ‘acting officer.’ That is one that appears to be what he is not. No more than a clerk of a department could discharge the duties of president.

“There can be but one construction of the constitution in reference to this matter, and that is the office shall devolve on the secretary \*\*469 of state. Duties are subordinate to the office and a part of it, and when the office devolves on the secretary of state, duties follow—prescribed, or to be prescribed, by legislative enactment. 1 Kent Com. 279.”

It was on such stipulation of facts and the briefs of respective counsel that the decision was rendered \*471 wherein this court, through Mr. Chief Justice Waldo, said: “Two questions are submitted in this case. The first and principal one is, whether, when, under section 8 of article 5 of the constitution of Oregon, the duties of the office of governor devolve upon the secretary of state, he has a right to the salary of the office. Second. If this question be answered in the affirmative, whether he shall continue to perform the duties of the office for the remainder of the term of the outgoing governor, or shall he perform those duties only so long as he shall continue to be secretary of state. \* \* \*

“Counsel for the respondent claims that in the contingency provided for in said section 8 the duties of the office of governor become annexed to the office of secretary of state and are discharged as duties incident to the latter office. In other words, that the duties of the office, but not the office itself, devolve upon the secretary of state.

“This position seems to require: First, either that the office of governor should continue vacant during the time the secretary discharges its duties, and that such duties be in some way performed by the secretary of state, as such, consistently with a condition of vacancy; or, second, that the office be filled and yet he who fills it be in no wise governor, but continue to be merely secretary of state.

“In the first place, it is not shown how an office can be vacant and yet there be a person, not the deputy, or locum tenens, of another, empowered by law to discharge the

duties of the office and who does in fact discharge them. It is not explained how, in such a case, the duties can be separated from the office, so that he who discharges them does not become an incumbent of the office. And, in the second place, how a person can fill the office of governor without being governor.

"It is the function of a public officer to discharge public duties. Such duties constitute his office. Hence, given a public office and one who, duly empowered, discharges its duties, and we have an incumbent in \*472 that office. Such is the case here. The secretary of state, by force of the function cast upon him, becomes governor, and consequently entitled to the salary appertaining to the office.

"Nor does the language of the section, grammatically considered, bear the interpretation counsel has put upon it. Leaving out the co-ordinate clauses following the first clause, and the sentence reads: 'In case of the removal of the governor from office, the same shall devolve on the secretary of state;' that is, the office shall devolve. So, taken with each of the succeeding clauses, the word 'same' stands for 'office.'"

As to the second question, the opinion holds that the individual—

"\* \* \* answering the description at the time the contingency arises designates him as the person who is to enter and fill the office, and when, as thus designated, he enters into the office, he holds it in his natural, and not in his official, capacity. This seems to be the principle which applies when the office of governor devolves on the secretary of state on the happening of any of the events specified in the constitution. \* \* \* Now, as two offices may remain distinct which are not incompatible, though the officer is the same person, it would seem that the same principle should govern the holding of the office of governor by the secretary of state.

"This question therefore must also be answered in favor of the appellant, and judgment be entered accordingly."

We do not agree with the statement of counsel that other courts have refused "to accept the Chadwick Case as sound law." Upon that particular point, no United States court has ever construed the federal constitution and no state court has ever rendered any decision construing the same, or a similar provision of a state constitution.

\*473 To support the argument that Mr. Olcott does not hold the office and is acting governor only, amicus curiæ, counsel for defendant, cites and relies upon the following

authorities: State v. Grant, 12 Wyo. 1, 73 Pac. 470, 2 Ann. Cas. 382; State v. Sadler, 23 Nev. 357, 47 Pac. 450; Clifford v. Heller, 63 N. J. Law, 105, 42 Atl. 155, 57 L. R. A. 312; People v. Budd, 114 Cal. 168, 45 Pac. 1060, 34 L. R. A. 46; People v. Cornforth, 34 Colo. 107, 81 Pac. 871; Opinion of the Justices, 70 Me. 570; State v. Stearns, 72 Minn. 200, 75 N. W. 210; State v. McBride, 29 Wash. 335, 70 Pac. 26; Futrell v. Oldham, 107 Ark. 386, 155 S. W. 502, Ann. Cas. 1915A, 571. Those decisions were rendered under the respective constitutions of the different states, which provide as follows:

"If the governor be impeached, displaced, resign or die, or from mental or physical disease or otherwise become incapable of performing the duties of his office or be absent from the state, the secretary of state shall act as governor until the vacancy is filled or the disability removed." Wyoming, art. 4, § 6.

"In case of the impeachment of the governor, or his removal from office, death, inability to discharge the duties of the said office, resignation or absence from the state, the powers and duties of the office shall devolve upon the lieutenant governor for the residue of the term, or until the disability shall cease." Nevada, art. 5, § 18.

"In case of the death, resignation, or removal from office of the governor, the powers, duties, and emoluments of the office shall devolve upon the president of the senate." New Jersey, art. 5, § 12.

"In case of the impeachment of the governor, or his removal from office, death, inability to discharge the powers and duties of his office, resignation, or absence from the state, the powers and duties of the office shall devolve upon the lieutenant governor for the residue \*474 of the \*\*470 term, or until the disability shall cease." California, art. 5, § 16.

"In case of the death, impeachment, or conviction of felony or infamous misdemeanor, failure to qualify, resignation, absence from the state, or other disability of the governor, the powers, duties and emoluments of the office, for the residue of the term, or until the disability be removed, shall devolve upon the lieutenant governor." Colorado, art. 4, § 13.

"Whenever the office of the governor shall become vacant by death, resignation, removal from office or otherwise, the president of the senate shall exercise the office of governor until another governor shall be duly qualified." Maine, art. 5, § 14.

"The lieutenant governor shall be ex officio president of the senate; and in case a vacancy should occur, from any

cause whatever, in the office of governor, he shall be governor during such vacancy." Minnesota, art. 5, § 6.

"In case of the removal, resignation, death or disability of the governor, the duties of the office shall devolve upon the lieutenant governor." Washington, art. 3, § 10.

"In case of the death, conviction on impeachment, failure to qualify, resignation, absence from the state or other disability of the governor, the powers, duties and emoluments of the office for the remainder of the term or until the disability be removed, or a governor elected and qualified, shall devolve upon and accrue to the president of the senate." Arkansas, art. 6, § 12.

It will be noted that in all of the sections quoted it is not the office, but the powers and duties of the office, which devolve upon his successor in the event of the death of the governor. The importance of that distinction is clearly pointed out by the recent decision of the supreme court of Arkansas in construing the constitution of that state in the case of *Futrell v. Oldham*, supra, \*475 where the opinion says:

"If the framers of the constitution had intended to provide for the devolution of the office of governor, in case of vacancy by resignation or otherwise, upon the president of the senate, that intention could easily have been directly expressed in appropriate words. But they chose other terms which clearly observe the distinction between the course of succession of the office itself and a mere devolution of the duties and the emoluments of the office for the time being, and deliberately adopted the latter as the best means of having the government administered until the people themselves can elect a governor."

That distinction was also made and emphasized by this court in the case of *Chadwick v. Earhart*, supra.

W. H. Holmes, who submitted an *amicus curiæ* brief in the instant case, was also one of counsel for the respondent Earhart in the Chadwick Case, and then contended that "the right of the appellant to the salary would depend on whether the title of the office of governor was vested in him or not;" that the title to that office was not vested in Chadwick and that his term as governor was special, "and the time cannot be extended

by implication." In his brief in the pending case he frankly says:

"If the Chadwick case was correct law, it would seem the question has already been determined judicially and there would be nothing for the attorney general to do except to state that the question has been decided by the court of last resort in the state of Oregon and that the secretary of state would be justified in following the decision. Owing to the refusal of other courts in the land to accept the Chadwick case as sound law, and inasmuch as the secretary of state wants his rights and duties defined in regard to resigning his \*476 office as secretary of state, with the view of assuming the office of governor and appointing a person to the office which he proposes to resign, it is important that the question now before the court be correctly decided."

Then, as now, he vigorously asserted that it was not the law and should be overruled.

Much stress is laid upon the fact that R. P. Boise was a member of the constitutional convention, and that as circuit judge he sustained the demurrer to the complaint in the Chadwick Case. We have a very high regard and a profound respect for his judicial learning and ability, but his decision was rendered under the old practice and upon an agreed statement of facts, with a view of prosecuting an appeal and obtaining an early decision in the appellate court. Outside of the fact that Judge Boise sustained the demurrer, there is no written evidence in this or the circuit court as to what may have been his personal opinion or reason for sustaining the demurrer. The fact remains that the Chadwick Case was decided by this court in October, 1884; that the opinion of the then judges of this court, William P. Lord, E. B. Watson, and J. P. Waldo, Chief Justice, was unanimous, and that for more than 34 years it has never been questioned in this court.

Counsel now attack the grammatical construction given to that section of the constitution in the opinion, contending that the word "same" as used therein refers to the word "duties" and not to "office," and that it should be construed to mean that in case of the removal of the governor or of his death, resignation, or inability to discharge the duties of his office, the duties of the office, and not the office itself, should devolve upon the



secretary of state. That question was \*477 squarely decided in the Chadwick Case and its decision was necessary to the opinion. It was there contended that Chadwick knew of the terms and provisions of that section of the constitution when he was elected and qualified as secretary of state; that because he was secretary of state he might be called upon to perform the duties of the office of governor, and for such reason he was not entitled to receive \*\*471 any compensation for his services in that capacity; and that even though he performed the duties of governor he should receive only his salary as secretary of state. In deciding that point the court held that the word "same" relates to and qualifies the word "office," and in legal effect that the section should read:

"In case of the removal of the governor from office or of his death, resignation, or inability to discharge the duties of the office, the office itself shall devolve upon the secretary of state."

Section 7 of article 2 of the organic law of Oregon adopted in 1845 provides that—

"The governor shall continue in office two years, and until his successor is duly elected and qualified; and in case of the office becoming vacant, by death, resignation or otherwise, the secretary shall exercise the duties of the office until the vacancy be filled by election."

Volume 9 of United States Statutes at large, p. 324, Act Aug. 14, 1848, c. 177, § 3, establishing the territory of Oregon, provides:

"And in case of the death, removal, resignation, or absence of the governor from the territory, the secretary shall be, and he is hereby, authorized \* \* \* to perform all the powers and duties of the governor, during such vacancy or absence, or until another governor shall duly be appointed and qualified to fill such vacancy."

\*478 Our present constitution was adopted on November 9, 1857, and its framers must have known of such terms and provisions of the organic law and territorial statutes, both of which specify that in the event of the death of the

governor the secretary of state shall exercise and perform the duties of that office; that under the organic law he should perform those duties "until the vacancy be filled by election," and that under the territorial statute he should perform those duties "during such vacancy or absence, or until another governor shall duly be appointed and qualified to fill such vacancy." Yet with such knowledge it is significant that the constitution which they adopted provides that—

"In case of the removal of the governor from office, or of his death, resignation, or inability to discharge the duties of the office, the same shall devolve on the secretary of state."

They did not select either, but drafted and adopted another section, using language of their own, with a different meaning. That section further says:

"In case of the removal from office, death, resignation, or inability, both of the governor and secretary of state, the president of the senate shall act as governor, until the disability be removed, or a governor be elected."

And it is contended that because in such a case "the president of the senate shall act as governor," it must follow that the section should be construed to mean that upon the death of the governor the secretary of state should "act as governor." We do not think that it will bear that construction. It specifically says that:

"In case of the removal of the governor from office, or of his death, resignation, or inability to discharge \*479 the duties of the office, the same shall devolve on the secretary of state"

—and that in the event of the death or disability of both the governor and the secretary of state the president of the senate shall act as governor. It does not say that the secretary of state shall act as governor, although it says that the president of the senate shall "act as governor." If it had been the intent of the framers of the constitution that the secretary of state should "act as governor," it would have been an easy matter to say so and to apply the same language to the secretary of state that it did to the president of the senate.

[3] Upon the question of stare decisis the supreme court of Washington in *Re City of Seattle*, 62 Wash. 218, 113 Pac. 762, says:

“The rule of stare decisis is peculiarly applicable to the construction of the constitution. The interpretation of that document should not be made dependent upon every change in the personnel of the court. When one of its clauses has been once construed, that construction should not be set aside except for the most cogent reasons. Certainty in the law is of the first importance.”

In Cooley’s Constitutional Limitations (7th Ed.) p. 83, it is said:

“Precedents, therefore, become important, and counsel are allowed and expected to call the attention of the court to them, not as concluding controversies, but as guides to the judicial mind. Chancellor Kent says: ‘A solemn decision upon a point of law arising in any given case becomes an authority in a like case, because it is the highest evidence which we can have of the law applicable to the subject, and the judges are bound to follow that decision so long as it stands unreversed, unless it can be shown that the law was misunderstood \*480 or misapplied in that particular case. If a decision has been made upon solemn argument and mature deliberation, the presumption is in favor of its correctness and the community has a right to regard it as a just declaration or exposition of the law, and to regulate their actions and contracts by it. It would therefore be extremely inconvenient to the public if precedents were not duly regarded and implicitly followed. It is by the notoriety and stability of such rules that professional men can give safe advice to those who consult them, and people in general can venture to buy and trust, and to deal with each other. If judicial decisions were to be lightly disregarded, we should disturb and unsettle the great landmarks of property. When a rule has once been deliberately adopted and declared, it ought not to be disturbed unless by a court of appeal or review, and never by the same court, except for very urgent reasons, and upon a clear manifestation of error; and if the practice were75 \*\*472 otherwise, it would be leaving us in a perplexing uncertainty as to the law.’”

This rule of construction has been adopted and followed by a long line of decisions of this court, commencing with the case of State v. Clark, 9 Or. 470, and ending with the case of Multnomah County v. U. S. Fidelity & Guaranty Co., 180 Pac. 104, decided April 22, 1919. The rule is well stated by Mr. Justice Burnett in his dissenting opinion in Kalich v. Knapp, 73 Or. 587, 145 Pac. 27, Ann. Cas. 1916E, 1051, thus:

“Another doctrine equally well settled is that of stare decisis, to the effect that when a decision has once been rendered it amounts to an authoritative construction of the law, and should not be disregarded or overturned except for very cogent reasons showing beyond question that on principle it was wrongly decided. The principle is that laws are largely conventional rules of action, and it is more important that the rule be settled as a guiding precept to the public than that by the action of the courts the law should \*481 be made to fluctuate like the tides,” citing authorities.

Section 10 of article 2 of the constitution provides that—

“ \* \* \* Nor shall any person hold more than one lucrative office at the same time, except as in this constitution expressly permitted.”

It is contended that under section 1 of article 3, supra, and the section just quoted, no one individual can receive the emoluments and hold the offices of governor and secretary of state at the same time, but it will be noted that each of such sections contains the clause, “except as in this constitution expressly permitted,” and that the offices of governor and secretary of state are both executive or administrative, and not legislative or judicial. All of the constitution was adopted at the same time, and its various provisions must be construed as a whole, and when section 10 of article 2 and section 1 of article 3 are considered with section 8 of article 5 they are not in conflict. The devolving of the office of governor, at the death of that official, upon the secretary of state is one of the exceptions contemplated by the framers of the constitution, provided for by section 10 of article 2 and section 1 of article 3. The word “devolve” has a legal meaning and is well defined by Bouvier thus: “To pass from a person dying to a person living.”

Regardless of the question as to whether the Chadwick Case is sustained by the weight of authority, the fact remains that since its decision in October, 1884, many legislatures have come and gone; that the people have directly or indirectly had the power to amend the constitution; that for more than 34 years it has been the law of the state; and that it was decided \*482 by eminent justices of this court and is sustained by such reasoning and authority as clearly to bring it within the rule of stare decisis and make it binding on this court.

Mr. Olcott is governor in fact and has the right and title to the office itself, with the accompanying right and authority to perform the duties and receive the emoluments of the office. As to whether he could resign

as secretary of state, and as governor appoint another to that position and still continue to hold the office of governor, we do not feel legally justified in going beyond anything said in this opinion. That is less a public and more a personal question for Mr. Olcott.

But we do hold that, upon the death of the late Governor Withycombe, by reason of the fact that Mr. Olcott was then secretary of state he automatically became governor, and when he took the oath as such the office of governor and the title to that office were thrust upon him by the terms and provisions of section 8 of article 5 of the constitution, and that under the authority of *Chadwick v. Earhart*, supra, he became and is now governor in fact and is entitled to hold that office, perform all of its duties, and receive its emoluments for the full period of the unexpired term to which the late Governor Withycombe was elected. This decision is based upon the express terms and provisions of our state constitution, which was adopted by a direct vote of the people, and which within itself, in case of the removal of the governor from office, or of his death, etc., provides how and by whom the office of governor shall be filled; and for such reason it is not in conflict with the recent opinion of the majority of this court in *State ex rel. v. Kellaher*, 177 Pac. 944. In that kind of \*483 a case there is a vacancy, and the law provides for an appointment to fill the same and states by whom the appointment shall be made. In the instant case, however, when the people elected Mr. Olcott secretary of state, by the very terms of the constitution they elected him to become governor upon the death of Governor Withycombe. There was no vacancy in that office, as the people, speaking through the constitution, have made their own selection.

The court sincerely thanks distinguished counsel for their able and instructive briefs as amici curiæ on the respective sides, and assures them that the same are duly appreciated.

Let the writ issue as prayed for in the petition.

BEAN, J., concurs.

McBRIDE, C. J. (specially concurring).

I fully concur with the reasoning of Justice JOHNS, and in the conclusion arrived at by him, but think we should go further and decide every question that is presented in the briefs.

\*\*473 In the specially concurring opinions of Justices BURNETT and BENNETT, it is urged that the question as to whether the petitioner will hold for the remainder of the unexpired term of the late Governor Withycombe, or only until his own term as secretary of state expires, and the further question as to whether Mr. Olcott can now resign the office of secretary of state and continue to hold the office of governor, are not necessarily involved here, and that any discussion of these questions is academic, and any opinion rendered in respect to them, would be merely dictum.

If these questions involved merely the private rights of individuals this contention would undoubtedly be correct; but where the general public has an interest \*484 in the controversy the courts have, with substantial unanimity, disregarded the technical limitations embraced in the term "dictum" and decided the whole controversy, where such a course appeared promotive of the public good, or calculated to settle disputed construction of provisions of the constitution and prevent future litigation concerning them. I do not now refer to or cite the decisions from those states where the law provides for the submission of such questions to the supreme court without suit, but to those having constitutions no broader in these respects than our own and to the supreme court of the United States. *Giles v. Harris*, 189 U. S. 475, 23 Sup. Ct. 639, 47 L. Ed. 909; *Memphis St. Ry. Co. v. Rapid Transit Co.*, 133 Tenn. 99, 179 S. W. 635, L. R. A. 1916B, 1147, Ann. Cas. 1917C, 1045; *Boise City Irr. & Land Co. v. Clark*, 131 Fed. 415, 65 C. C. A. 399; *Borgnis v. Falk Co.*, 147 Wis. 327, 133 N. W. 209, 37 L. R. A. (N. S.) 489; *State v. Stutsman*, 24 N. D. 68, 139 N. W. 83, Ann. Cas. 1914D, 776; *State v. Southern Tel. & Cons. Co.*, 65 Fla. 67, 61 South. 119; *Commonwealth of Mass. v. Klaus*, 145 App. Div. 798, 130 N. Y. Supp. 713; *In re Fairchild*, 151 N. Y. 361, 45 N. E. 943; *People v. Gen. Com. of Republican Party*, 25 App. Div. 339, 49 N. Y. Supp. 723; *In re Morgan*, 114 App. Div. 45, 99 N. Y. Supp. 775.

In *Giles v. Harris*, supra, the United States supreme court says:

"Perhaps it should be added to the foregoing statement that the bill was filed in September, 1902, and alleged the plaintiff's desire to vote at an election coming off in November. This election has gone by, so that it is impossible to give specific relief with regard to that. But we are not prepared to dismiss the bill or the appeal on that ground, because to be enabled \*485 to cast a vote in that election is not, as in *Mills v. Green*, 159 U. S. 651, 657 [16 Sup. Ct. 132, 40 L. Ed. 293], the whole object of the bill. It is not even the principal object of the relief sought by the plaintiff. The principal object of that is to obtain the permanent advantages of registration as of a date before 1903. \* \* \*

“The traditional limits of proceedings in equity have not embraced a remedy for political wrongs. \* \* \* But we cannot forget that we are dealing with a new and extraordinary situation, and we are unwilling to stop short of the final considerations which seem to us to dispose of the case.” *Giles v. Harris*, 189 U. S. 475, 484, 486, 23 Sup. Ct. 639, 641, 642 (47 L. Ed. 909).

In *Memphis St. Ry. Co. v. Rapid Transit Co.*, supra, the supreme court of Tennessee, says:

“We have formerly said that, when any question involving the constitutionality of an act of the legislature is bona fide made and relied upon in a case, this court should take appellate jurisdiction of such a case. \* \* \* Although we appreciate the delicacy of passing on the validity of an act of the legislature, such a duty is often imposed upon us, and we must not dodge our jurisdiction. Where an act of the legislature undertakes to regulate a particular subject, and the application of such an act is invoked by one party in a suit involving that subject, and the validity of the act is questioned by the other party, we think it proper that the statute should be tested.”

In *State v. Southern Tel. & Const. Co.*, supra, the supreme court of Florida says:

“The railroad commissioners, acting for the state, are the relators and plaintiffs in error, and the fact that the person in whose favor the order is sought to be enforced has moved away does not show that under no circumstances can the writ be made effective for the purpose designed in this case. And even if under \*486 no circumstances the writ could be made effective because of Mr. Chaires’ removal, the appellate court does not thereby lose jurisdiction of the cause, and it may be retained for the determination of questions properly presented involving the duties and authority of state officials that are of general interest to the public. \* \* \*

“The respondent’s motion to quash the alternative writ presents questions of law that affect the authority and duties of the railroad commissioners in regulating the service rendered by telephone companies, and the public as well as the relators is interested in having the legal questions raised determined for the future guidance of the

state officials. \* \* \*

In *Commonwealth of Mass. v. Klaus*, supra, the court says:

“This is an appeal from an order of a justice \* \* \* denying a motion to issue a subpoena requiring Rembrandt Peale, a person within the state, to appear and testify in a criminal action pending in the state of Massachusetts. \* \* \* By the subpoena applied for, it was sought to procure the attendance of Peale in Massachusetts in September, 1910, and it may be that the criminal prosecution has already ended, so that his attendance would now be useless.

“On this point the papers on appeal do not advise us, but even if such were the case we should deem it our duty to examine the question of the validity of the act, because the special term decision already referred to will, unless overruled, probably serve to render the act nugatory. Appellate courts not infrequently pass upon questions affecting important public \*\*474 interests, even where in the particular case the question has become academic.”

In *Re Fairchild*, supra, the court of appeals of New York says:

“The respondent contends that, inasmuch as the election has been held, the decision of the questions presented on this appeal is of no importance, as it can, \*487 at most, only affect the questions of costs. We think the questions involved are of sufficient importance to require their determination by this court, as it may prevent future embarrassment in the congressional district to which the controversy relates, and also settle other questions upon which there is a conflict in the decisions of the supreme court. \* \* \*

In *People v. Gen. Com., etc.*, supra, the same court says:

“This court held in *Re Cuddeback*, 3 App. Div. 103, 39 N. Y. Supp. 388, viz.: ‘An appeal will not always be dismissed because the question is no longer a practical one. Notwithstanding the fact that an election has been held, and a decision of the question involved cannot affect the result of that election, yet, where the point at issue is one of public interest, affecting the rights of all the electors of the state, the courts will determine it.’

“Following the doctrine there laid down, it seems that we

ought not, in this case, to dismiss the appeal, because the question here involved is as much a matter of public interest as the question involved in the case from which the quotation has been made. \* \* \*

And in *Re Morgan*, supra, the same court says:

“\* \* \* The sole question involved in this appeal is the constitutionality of said amendment, and, although the said election has long since passed, and therefore our decision can have no effect upon the rights of the appellant at said election, both sides urge a consideration by this court of a public question vitally affecting the conduct of elections in the future. Although in one sense academic, such considerations have moved both this court \* \* \* and the court of appeals \* \* \* to consider and determine cases involving the election laws, although the immediate necessity therefor has passed away. \* \* \*”

This phase of the matter here under discussion did not escape the astute mind of Bouvier, who observes:

\*488 “So also it has been held, with respect to a court of last resort, that all that is needed to render its decision authoritative is that there was an application of the judicial mind to the precise question adjudged; and that the point was investigated with care and considered in its fullest extent ([*Alexander v. Worthington et al.*], 5 Md. 488), and that when a question of general interest is involved, and is fully discussed and submitted by counsel, and the court decides the question with a view to settle the law, the decision cannot be considered a dictum (*Id.*).”

In the present case it cannot be successfully argued that the public has not a profound interest in the speedy solution of the questions submitted. There can be little question that Mr. Olcott is entitled to hold both the office of governor and secretary of state, and to draw the salaries of both. It is creditable to him that he does not wish to do the first and will not do the second. In the infancy of the state, when its business was insignificant and its revenues

small, one person could well perform the duties of both governor and secretary of state, but with the enormous expansion of state business each of the three constitutional officers finds in his own department all the business which he can attend to, and more.

Questions involving the care and expenditure of vast sums of money and affecting large social and economic interests continually present themselves before the various boards, of which these officers are members. The object of having a board composed of these officers was to have the advantage of the opinions of three minds and the independent research of three persons before conclusions, vital in the administration of the state's fiscal affairs, were arrived at. Where the offices of governor and secretary of state are merged in one individual, the public loses the safeguard \*489 that was intended by the constitution when it provided that certain boards should consist of three officers, namely, the governor, secretary, and treasurer. If it is possible for Mr. Olcott to give up the office of secretary of state and retain the office of governor, he should be permitted to do so, in the public interest, and we ought not to quibble about “dicta” in so declaring.

The public also has an interest in having the duration of his term of office settled. If a new governor is to be chosen at the next general election, the voters of the state should be apprised of that fact, so they may look about and weigh the qualifications of the various candidates, or prospective candidates, with a view to enabling themselves to choose intelligently. With the question undecided, and perhaps a large majority of the voters under the impression that Mr. Olcott's term will not expire at the next general election, the primary election for that office will be clouded with uncertainties not conducive to intelligent selection.

It is true that each of these questions could be presented later by two or more additional lawsuits; that to use a homely simile, we could “cut the dog's tail off by inches” instead of by making one slash and finishing the business once for all. It is true the progress by inches would furnish business for attorneys and capital for petty politicians, but it would not promote the interest of the public, which, as before shown, is to have these questions settled now.

I consider every question discussed in the various briefs absolutely settled by the case of *Chadwick v. Earhart*, 11 Or. 389, 4 Pac. 1180, cited in the principal opinion. Chief Justice Waldo, who delivered the opinion \*490 in \*\*475 that case, was not only a lawyer of great learning but notably accurate in his choice of language, and the language used by him seems to me to bear no other construction than that when the secretary of state becomes

governor he becomes such in his natural, not official, capacity; just as the vice president, on the death of the president, succeeds to the office for the remainder of the term. Such was the interpretation put upon that opinion by Justice Lord, who was one of his associates and who concurred in the opinion. After Justice Lord's retirement from the bench, he was selected as a commissioner to revise the Oregon laws, and produced the compilation which now bears his name.

His annotation to section 8 of article 5 of the constitution is as follows, citing *Chadwick v. Earhart*, supra:

"Under this provision when the governor resigns, the duties of the governor's office devolve upon the secretary of state, who continues to perform them for the remainder of the term."

If the language of the opinion were even obscure, which it is not, this interpretation by one of the learned justices who participated in its rendition ought to settle the question as to what the court meant to decide.

I do not consider the cases of *State v. Johns*, 3 Or. 533, *State v. Ware*, 13 Or. 380, 10 Pac. 885, and *State v. Kellaher*, in point in the present controversy. They were decided upon the theory that where a vacancy in an elective office is filled by appointment the people should have the right to elect a successor at the earliest opportunity. Such is not the case here. Mr. Olcott was not appointed to the office of governor. He succeeded to it by virtue of \*491 his election to the office of secretary of state, just as the vice president of the United States, upon the death of the president, succeeds to that office. The people, when they elected him secretary of state, had notice, by the very terms of the constitution, that in case the governor should die he would succeed to the office of governor; they chose him with that contingency in view. In effect, in choosing a secretary of state, they chose a vice governor, the rules of whose succession to the office are in no wise different from those investing the vice president, except that while the governor lives the secretary performs the duties relating to the secretaryship, while the vice president, during the life of the president, performs the duties of president of the senate. In both instances the original source of their authority is an election by the people and not, as in the case of *State v. Johns*, an appointment by the executive.

For the reasons given by Justice JOHNS, as well as those urged herein, I am of the opinion that this court should declare the petitioner is governor in fact and not acting governor; that he is entitled to the salary of governor; that

he holds the office for the remainder of the term of the late Governor Withycombe, and that he may resign the office of secretary of state and still hold the office of governor.

HARRIS, J. (concurring in part).

On April 1, 1919, a warrant was issued by the secretary of state in favor of "Ben W. Olcott, governor, for the sum of \$336 in payment of the salary due said Ben W. Olcott, as governor, from March 7, to March 31, 1919." The state treasurer contends that the warrant "should be drawn to Ben W. Olcott, secretary of state, acting governor"; and since the warrant is not so drawn the state treasurer \*492 refuses to pay it. From this brief statement it can be seen at a glance that the sole question for decision is whether the state treasurer is obliged to pay the warrant; and yet, while it is true that the only question for decision is whether the state treasurer must pay the warrant, it is also true that it may be necessary to decide certain preliminary questions before the ultimate question can be reached or decided, and therefore any opinion expressed about the preliminary questions or the ultimate question is not obiter dictum. As the writer views it, one of the preliminary questions is whether Ben W. Olcott was, from March 7th to March 31st, merely ex officio governor or governor in his natural capacity. The petitioner is probably entitled to the salary attaching to the office of governor for the period mentioned in the warrant, whether he was merely acting as governor by virtue of his office as secretary of state or whether he was governor in truth and in his natural capacity. I prefer, however, to decide the ultimate question for decision by deciding whether Ben W. Olcott was only secretary of state and merely performing the duties of the office of governor as ex officio governor or whether he was in truth governor, and thus place my conclusions upon stated, certain, and defined ground. Furthermore, since the state treasurer will be obliged to pay warrants each month so long as the petitioner is entitled to occupy the office of governor, I think that we can with propriety discuss and determine the question as to how long Ben W. Olcott is entitled to hold the office of governor, and thus decide the rights of the petitioner upon the one hand and the duties of the defendant upon the other.

The conclusion reached by this court in 1884 in *Chadwick v. Earhart*, 11 Or. 389, 4 Pac. 1180, when \*493 applied to the same facts confronting us now and here, indubitably decides that Ben W. Olcott is in truth governor. If article 5, § 8, of the state constitution, were now for the first time presented for judicial construction I would, for reasons which to me are not only persuasive but convincing, take the view that upon the removal, death, resignation, or



inability of the governor to discharge the duties of the office, the \*\*476 secretary of state becomes merely ex officio governor. In other words, it is my opinion that a correct construction of the constitution only empowered Chadwick to act as governor until he ceased to be secretary of state and then the duties of the office of governor devolved upon Earhart, the succeeding secretary of state, until Thayer qualified as governor; or, applying what I conceive to be the meaning of the constitution to the instant case, because and only because he is secretary of state, Ben W. Olcott would perform the duties of governor until his term as secretary of state expires on the first Monday in January, 1921, when his successor's term as secretary of state shall begin, and such successor would then discharge the duties of governor until the speaker of the house of representatives at the session to be held in 1921 publishes the vote for governor. Although I would entertain an opinion different from that expressed in *Chadwick v. Earhart* if the question of the construction of article 5, § 8, of the organic act were res integra, nevertheless whatever the views of any of us may be, candor compels each of us to admit that the question of the construction of this section of the constitution is not so plain and clear as to be entirely free from serious debate. The members of the legislative assembly of 1878 differed in their opinions as to whether Chadwick or Earhart was entitled to perform the duties of governor \*494 during the two days which intervened between the expiration of Chadwick's term as secretary of state and the commencement of Thayer's term as governor; and in the subsequent litigation growing out of that situation lawyers and judges differed in their views as to whether the secretary of state became governor in his natural capacity upon the death or resignation of the governor. Stephen F. Chadwick was a member of the constitutional convention, and he asserted that he was entitled to hold the office of governor until the inauguration of Thayer, who had been elected at the June, 1878, election; but so far as the writer has been able to discover, every other member of the constitutional convention who has left any record of his view was of the opinion that Chadwick was only governor ex officio and that when Earhart became secretary of state he, and not Chadwick, was entitled to act as governor until the inauguration of Thayer. The house and senate journals of the session of 1878 contain some interesting information. Before noticing the legislative journals, however, we should first acquaint ourselves with all the facts entering into the controversy in *Chadwick v. Earhart*, because by so doing we can better understand the story told by the house and senate journals and better comprehend the full meaning of the decision rendered in that lawsuit.

Stephen F. Chadwick was elected secretary of state and L. F. Grover was chosen governor at the June, 1874,

election. Each was elected for a term of four years. At that time the biennial sessions of the legislative assembly commenced on the second Monday of September in the even-numbered years, and this accounts for the fact that there was a regular session in 1874 and also in 1878, but commencing with 1885 the biennial sessions have begun on the second Monday \*495 in January of the odd-numbered years. Article 4, § 10, State Constitution; section 2594, L. O. L. The constitution provides that the returns of every election for governor shall be sealed up and directed to the speaker of the house of representatives, who shall open and publish them in the presence of both houses of the legislative assembly. Article 5, § 4. In 1878, as now, the law provided that the term of office of the governor ceases when his successor, having been declared elected by the legislative assembly, as provided in the constitution, shall be inaugurated by taking the oath of office. *Deady's Code*, p. 711; section 3440, L. O. L. See, also, chapter 84, *Laws 1913*. In 1878, the statute provided that—

"The term of office of the secretary of state, state treasurer and state printer shall cease on the first day of the regular session of the legislative assembly next following the general election on which the terms of their successors shall begin." *Deady's Code*, p. 711; section 3441, L. O. L.

In 1908 the constitution was amended so as to read thus: "All officers except the governor, elected at any regular general biennial election after the adoption of this amendment, shall assume the duties of their respective offices on the first Monday in January following such election." Article 2, section 14. See *Laws 1909*, p. 8.

The legislative session which was held in 1878 commenced on Monday, the 9th day of September; R. P. Earhart was elected secretary of state at the June, 1878, election; Chadwick qualified as secretary of state in September, 1874, and by force of the statute then in existence his term as secretary of state ceased on September 9, 1878, and Earhart's term as secretary of state began simultaneously with the termination of \*496 Chadwick's term as secretary of state. The legislative assembly of 1876 elected L. F. Grover United States senator; and on February 1, 1877, Grover resigned as governor so that he could assume the duties of United States senator. W. W. Thayer was elected governor at the June, 1878, election. The vote for governor was published by the speaker of the house on September 10th, and Thayer "took the oath of office" on September 11, 1878. Chadwick assumed and discharged the duties of governor from February 1, 1877, the date when Grover resigned, until September 11, 1878, the date when Thayer was



installed in the office. Chadwick ceased to be secretary of state on September 9, 1878, the date when \*\*477 he was succeeded by Earhart as secretary of state, and notwithstanding the fact that Earhart and not Chadwick was from that time on secretary of state the latter and not the former acted as governor.

The house and the senate each effected a permanent organization on September 9, 1878. On the following day D. P. Thompson of Multnomah county introduced House Joint Resolution No. 2, which reads as follows:

“Resolved, that a committee of three on the part of the house and two on the part of the senate be appointed to wait on his excellency, Governor R. P. Earhart, and inform him of the organization of the two houses, and that they are ready to receive any message he may be pleased to make.”

H. Green of Benton county immediately moved to amend the resolution “by striking out the word ‘Earhart’ and substituting therefor the word ‘Chadwick.’” The motion to amend prevailed, and then the resolution, as amended, was adopted by a vote of 34 for with 23 against it. Among those voting against the resolution as amended was W. A. Starkweather, who was a \*497 member of the constitutional convention. When H. J. R. No. 2 was received by the senate that body adopted it. There was but one absentee, and all the members present voted for the resolution. It may be of interest to note in passing that the membership of the senate included at least seven lawyers. According to the journal of the house on September 11th:

“The convention was called to order by the president of the senate, who stated the object of the convention to be to hear the biennial message of the outgoing executive, Governor Chadwick, and also, the inaugural address of his excellency, W. W. Thayer, governor elect.”

Chadwick delivered a message to the joint convention and then Thayer “took the oath of office” and delivered his inaugural address.

We find from an examination of the records that Chadwick, who helped to frame the constitution asserted that he was governor; that Starkweather, by his vote as a member of the house of representatives, denied that Chadwick had authority to act as governor after his term of secretary of state had expired; and that R. P. Boise,

who was also a member of the constitutional convention, as a circuit judge decided that Chadwick was not entitled to the salary of governor for any part of the period from February 1, 1877, to September 11, 1878. It is a very significant circumstance that Matthew P. Deady, who was the president of the constitutional convention and afterwards became a very eminent jurist, in his code of 1866 employs the following marginal heading for section 8 of article 5: “Acting governor in case of vacancy or disability.” We find members of the house of representatives, among whom were lawyers of recognized ability, expressing different views; but we also find a \*498 majority of the members of the house affirmatively and squarely deciding that Chadwick was governor, and we likewise find all the members of the senate, except a single absentee, unequivocally treating Chadwick as governor, presumably with full knowledge of the controversy that had arisen in the house and of the decision reached by a majority of the members of the house concerning the official status of Chadwick. Although the decision of the legislature does not bind the court when called upon to construe the constitution, nevertheless the views of the members of the legislature, solemnly expressed at a time when the constitution was only 19 years old, are not entirely without significance and may afford some aid. We find, however, that when the controversy was finally submitted to an appellate court the question was judicially settled by the unanimous voice of that court.

A judicial decision which is clearly and manifestly erroneous, and because erroneous produces injustice and hardship, should, like the errors of any other tribunal, officer, or person, be corrected and righted at the earliest opportunity, for the doctrine of stare decisis was never intended to apply to such a situation; but when a court is confronted, as we are now, with a controversy involving the construction of a section of the constitution, and the official records of the state disclose the fact that different persons, bearing the responsibilities of public office, have in the discharge of their duties expressed variant opinions, and it appears that a legislative assembly, removed only 19 years from the date of the adoption of the constitution, has by unmistakable action decided that the resignation of the elected governor devolves the office of governor upon and transfers it to the secretary of state, and it is shown that an appellate court has by \*499 a unanimous voice adjudged that the death of the elected governor devolves the office of governor upon and transfers it to the person who is secretary of state, the rule of stare decisis becomes peculiarly and pre-eminently applicable, because it accomplishes what it was designed to accomplish, by giving to the law, as construed by the courts, the qualities of certainty, definiteness, and stability. The decision rendered by the court in Chadwick v. Earhart ought to be

binding upon us to the extent that it was necessary for the court to construe article 5, § 8, in order to decide the issues presented in that litigation. Turning now to the pleadings in *Chadwick v. Earhart* we find that Chadwick demanded of Earhart as secretary of state a warrant for \$2,420.75 to cover the salary of governor for the period, commencing February 1, 1877, and ending September 11, 1878. Earhart refused to issue the warrant. Chadwick brought a proceeding for the purpose of compelling the issuance of the warrant. The stipulation upon which the case was tried contained the following recital:

\*\*478 "Mr. Earhart objects to the salary being paid from the 9th day of September, 1878, to the 11th day of September, 1878—two days—on the ground that Mr. Chadwick was not secretary of state after Mr. Earhart was sworn in on the 9th day of September, 1878, though Mr. Chadwick acted as governor or until and including the 11th of September, 1878."

Thus it will be seen that the question of salary covered two periods: (1) From February 1, 1877, to September 9, 1878, or the period during which Chadwick was secretary of state, and (2) from September 9, 1878, to September 11, 1878, or the period during which Chadwick was not secretary of state. The court decided that Chadwick was entitled to the salary \*500 of governor for both periods, and hence in order to reach that decision it became necessary to construe article 5, § 8, and to determine whether Chadwick was simply *ex officio* governor while secretary of state or whether the office devolved upon him in his natural capacity thus making him governor in truth; and since the court determined that the office of governor devolved upon Chadwick in his natural capacity, making him governor in truth, that decision ought to be accepted as final, and ought to govern now just as it governed then.

However, as I read it, the written opinion rendered in *Chadwick v. Earhart* does not decide that the people cannot elect a governor at the general election to be held in 1920, or that the person so elected cannot qualify and assume the office of governor when the speaker of the house publishes the vote in January, 1921, after the legislature convenes. Ben W. Olcott was elected secretary of state at the November, 1916, election and his term as such will expire on the first Monday in January, 1921. His successor will be elected at the November, 1920, election and such successor will assume the duties of secretary of state on the first Monday in January, 1921. James Withycombe was elected governor at the November,

1918, election and he qualified on January 14, 1919, after the speaker of the house of representatives published the vote cast for governor. James Withycombe was elected for a term of four years ending in January, 1923, but he died on March 3, 1919, and hence two regular elections will be held between the date of his death and the end of the four-year period for which he was elected. In this respect the facts in *Olcott v. Hoff* are essentially different from the facts in *Chadwick v. Earhart*; for in the latter case Grover resigned \*501 on February 1, 1877, and a governor was elected at the very first opportunity which was in June, 1878, and the elected governor assumed the duties of the office at the very first opportunity, which did not occur until the speaker of the house published the vote cast for governor. When in *Chadwick v. Earhart* the court speaks of "the remainder of the term of the outgoing governor," reference is made to the "remainder" left after February 1, 1877, for the court was dealing with that and no other "remainder." The court was not called upon to decide, nor did it attempt to decide, whether Chadwick could have occupied the office of governor from February 1, 1875, if Grover had resigned on that date, and held it through two elections, one in 1876 and the other in 1878. As I read the opinion in *Chadwick v. Earhart*, no expressions appearing there or rule applied there can be found sustaining the view that the people cannot elect a governor at the next election to be held in November, 1920. When James Withycombe died, the constitution appointed Ben W. Olcott, because he was secretary of state, governor "until \* \* \* a governor be elected," so that the office will not be without an occupant "until \* \* \* a governor be elected." If we apply to the facts presented to us the same rules that were applied in *State ex rel. v. Johns*, 3 Or. 533, the conclusion is unavoidable that the legal voters can, at the election to be held in November, 1920, elect a governor who can assume the office in 1921 when the speaker of the house publishes the vote cast for governor. Be it remembered, too, that it was R. P. Boise, a member of the constitutional convention, who as circuit judge decided *State ex rel. v. Johns* in the circuit court, and that his reasoning was repeated with approval and that his conclusion was affirmed when the supreme court decided \*502 the same case on appeal; and, moreover, one of the judges participating in the decision announced by the supreme court was P. P. Prim, also a member of the constitutional convention. The doctrines which were announced and applied in *State ex rel. v. Johns* were again recognized in *State ex rel. v. Ware*, 13 Or. 380, 10 Pac. 885, and at a more recent date followed by a majority of the court, as now constituted, in *State v. Kellaher*, 177 Pac. 944. The same rule was followed and put into practice when Ben W. Olcott was elected secretary of state at the 1912 election to succeed Frank W. Benson, who had died in April, 1911, after having been elected in

1910 for the full term of four years. Suppose that Frank W. Benson had not died in April, 1911, but that he had lived and filled out his term, and that Ben W. Olcott had been elected secretary of state in 1914 and re-elected in 1918 contemporaneously with the re-election of James Withycombe as governor, and suppose that Ben W. Olcott should to-day resign both the office of secretary of state and governor; would any one be so bold as to contend that the president of the senate would be entitled to act as secretary of state and also as governor, or that he could act as either until 1923? The framers of the constitution deliberately provided for the two offices of governor and secretary of state, and they intended that those offices should be occupied by different persons so long as possible; but, anticipating \*\*479 the possibility of death, resignation, or removal, they provided for those contingencies by declaring that the secretary of state shall be automatically appointed governor "until \* \* \* a governor be elected." This automatic appointment is temporary and ends just as soon as the people can elect a governor at the next biennial election. When the writers of the constitution \*503 made the governor, secretary of state, and state treasurer a board of commissioners for the sale of school and university lands and for the investment of funds arising therefrom, they did so for the manifest purpose of bringing to the business the judgment, wisdom, and experience of three men; and every one of the various subsequent acts of the legislature making these officers the constituent members of boards was framed for the same purpose. The makers of the constitution did not intend that one person could occupy more than one of these offices any longer than was necessary.

In article 2, § 10, we read that no person shall "hold more than one lucrative office at the same time, except as in this constitution expressly permitted." There is no provision in the constitution expressly or by manifest implication declaring that the secretary of state shall hold the office of governor through two biennial elections; but, upon the contrary, the whole plan and purpose of the constitution negatives the idea that the secretary of state can hold any longer than is necessary. The constitution provides for the two offices of governor and secretary of state because the framers of the organic act deemed two offices necessary; one person is prohibited from holding two lucrative offices except as in the constitution expressly provided, because the framers of the organic act deemed it desirable that one person hold only one lucrative office. The rule established by the constitution is that one person can hold but one office; for one person to hold two offices is the exception. The framers of the constitution anticipated the contingencies of death, resignation, or removal by providing for the exception. The important business of the management of school and

university lands and funds was \*504 placed in the hands of three and not two persons. A board of three persons is the rule; a board of two persons is the exception. The office of governor as well as that of secretary of state is elective. An election is the rule; an appointment is the exception. Finding as we do that two offices with two persons as the officers is the rule, while two offices with one person acting as the two officers is the exception, that an election is the rule and an appointment is the exception, that a board of three commissioners for the management of the school and university lands and funds is the rule, while a board with two commissioners is the exception, we would also expect to find provisions terminating the exceptions whenever they occur, and re-establishing the rule at the very earliest opportunity. The rule was provided for because it was deemed to be the best; the exception was provided for because it was deemed to be the next best; and naturally the theory of the constitution is that the best shall be had as long as possible, while the next best shall be had only so long as necessary. As shown by the stipulation filed in Chadwick v. Earhart the "remainder" discussed and referred to in that case only covered the short period which intervened between the end of Chadwick's term as secretary of state and the commencement of Thayer's term as governor. That case, as well as every case, must be read in the light of the facts presented to the court. The conclusion that the office of governor can be filled by the people at the next election harmonizes every part of the constitution with every other part, gives full meaning to every word and every section, and as said in State ex rel. v. Johns "is in perfect accord with the spirit of our constitution and laws."

\*505 There is no analogy whatever between the offices of president and vice president of the United States on the one hand and those of governor and secretary of state in the other. By the express language of the constitution of the United States the president "shall hold his office during the term of four years, and, together with the vice president, chosen for the same term, be elected as follows." Our constitution does not tie the office of governor to that of the secretary of state; nor does it tie the latter to the former. The governor is elected "at the times and places of choosing members of the legislative assembly." Article 5, § 4. Members of the legislature are elected at the general elections which are held biennially. In brief, I take the view that Ben W. Olcott is governor in truth as distinguished from governor ex officio; that he is entitled to hold the office of governor and is entitled to the salary of that office until his successor is elected and qualified; and that the legal voters are entitled to elect a governor at the next election to be held in November, 1920, and that the person so elected is entitled to assume the duties of the office when the vote is published by the

speaker of the house of representatives in January, 1921. I think, too, that the logic of the holding in Chadwick v. Earhart inevitably leads to the conclusion that the petitioner can resign as secretary of state and continue to occupy the office of governor.

BENSON, J., concurs.

BENNETT, J. (specially concurring).

In this case it appears from the pleading that the petitioner, who was secretary of state at the time of the death of Governor Withycombe, and who has assumed the office \*506 of \*\*480 governor, drew his warrant on the state treasurer for \$336, being the salary as governor from the death of Governor Withycombe to the 1st of April. This warrant was drawn "in payment of the salary due said Ben W. Olcott, as governor." The defendant, the state treasurer, refused to honor this warrant upon the ground that it should have been drawn to "Ben W. Olcott, secretary of state, acting governor."

It seems the legal controversy between the parties is over a mere matter of words; the one claiming the warrant should be drawn for his salary "as governor," and the other that the warrant should have been drawn in his favor as "acting governor."

I do not think there is any question but what the warrant was sufficient, and therefore, in any view, should have been honored, and that the plaintiff is entitled to the relief prayed for. I therefore concur in the result of the opinion of Mr. Justice JOHNS.

The real purpose of the proceeding was, no doubt, to test questions which, as I view them, go far beyond the real question involved in the case. However important the public questions involved may be, I do not think we have any authority to go beyond the case presented to us. If we did and should decide questions not presented, our decision would be mere dictum, and not binding upon our successors, or even upon us individually, if we should change our individual opinion at some future date.

No doubt the power should be vested in the courts to pass upon moot questions of great public interest like this in an authoritative way, but so far the legislature does not seem to have conferred that power. I therefore reserve my opinion as to the question of whether or not the petitioner will continue to hold the \*507 office of governor personally after he ceases to be secretary of state, and as to the kindred questions urged.

In view of the opinions written by the Chief Justice and some of the other justices, I deem it necessary to add something to the above brief expression of my views.

I do not view the authorities cited by Mr. Chief Justice McBride, in relation to our authority or lack of authority to pass upon questions in no way involved in the case before us as at all in point, or as giving us the slightest authority to go beyond the issues presented in this case.

In all of these cases the questions decided by the court were squarely within the issues made by the pleadings, and the decision was entirely pertinent and responsive to the actual case in litigation. In some of them the decision of the court could still be made partly or wholly effective. In others, by reason of the lapse of time or the happening of some event between the decision of the lower court and that of the appellate tribunal, the decree in the particular case could no longer be enforced, but the issues between the parties, which were living issues at the time of the commencement of the action, still remained. In such a case it is well settled that the appellate court may retain and decide the case, or it may, at its option, refuse to proceed further and dismiss the appeal.

The leading case cited—Giles v. Harris, 189 U. S. 475, 23 Sup. Ct. 639, 47 L. Ed. 909—belongs to the former class of cases, and the questions decided were not only clearly within the issues made by the pleadings, but were still practical living issues in the case at the time of the ultimate decision.

That case was a suit brought by a colored man in the state of Alabama on behalf of himself and 5,000 \*508 other colored voters against the board of registrars of Montgomery county, to secure the right of permanent registration and also the registration for the coming election in November. Before the hearing was reached in the United States supreme court that election had passed, but there still remained in the case the question of permanent registration. It was in such a case that the language, quoted with so much apparent assurance that it is an authority in this case, was used. The court said:

"To be enabled to cast a vote in that election is not \* \* \* the whole object of the bill. It is not even the principal object of the relief sought by the plaintiff. The principal object \* \* \* is to obtain the permanent advantages of registration."

The court denied the relief upon two grounds. Having considered the case and found against the plaintiff upon one ground, it also proceeded to consider the second

ground and decide against him as to that also, and it was in this connection that the court used the language, which is referred to in the second quotation:

“We are unwilling to stop short of the final considerations which seem to us to dispose of the case.”

Here then, was simply the common occurrence of there being two grounds upon which a case could be decided; both of them squarely within the issues of the case and the court deciding them both. In such a case, I think it is well settled that the court may dispose of the case upon one ground alone, or may properly pass upon both questions involved.

I cannot see how such a case furnishes an iota of authority for us to go entirely outside of every issue in this case and decide questions that are not in the case at all.

\*509 It is a significant fact in the Giles Case supra, that one of the questions urged was that the new constitution of Alabama was in conflict with the federal constitution, and therefore void. No question, it would seem, could exceed such a question in public importance, yet the court refused to pass upon it, saying:

“We express no opinion as to the alleged fact of their unconstitutionality.”

\*\*481 Another significant thing is that the court cites with approval the previous case of *Mills v. Green*, 159 U. S. 651, 16 Sup. Ct. 132, 40 L. Ed. 293, in which the same court had used the following language:

“The duty of this court, as of every other judicial tribunal, is to decide actual controversies by a judgment which can be carried into effect, and not to give opinions upon moot questions or abstract propositions, or to declare principles or rules of law which cannot affect the matter in issue in the case before it.”

The case of *Memphis v. Rapid Transit Co.*, cited from 133 Tenn. 99, 179 S. W. 635, L. R. A. 1916B, 1143, Ann. Cas. 1917C, 1045, was a suit by a street car company against a jitney company for operating jitneys in competition; the plaintiff relying upon an act of the legislature. The defendant demurred to the complaint, relying upon two grounds, one of which was that the act was unconstitutional. At the hearing it was claimed the

case could be decided upon other grounds than the constitutional question, and that therefore (under the practice in that state) the cause should have been appealed to a different court. The court held the constitutional question squarely in the case, and therefore proceeded to decide the same. It was under these conditions and in regard to such a case, that the court used the language quoted.

\*510 The case of *Boise City Land Co. v. Clark*, cited from 131 Fed. 415, 65 C. C. A. 399, was a case brought by a water company in Idaho against the county commissioners to annul an order fixing the rate it could charge in the year 1901 for water from its canals. The case was tried in the United States circuit court and appealed to the court of appeals. Before it could be reached for hearing in the latter court, the period for which the rates were fixed for that season had expired. Nevertheless the court proceeded to decide the case, which involved no question of general public importance, but the questions decided were all squarely within the issues and necessary to a decision.

It is one thing to decide the issues actually presented in a case, even although something has happened pending the appeal, making the judgment ineffective, and an entirely different matter to go clear outside of the issues, as we are asked to do.

In many cases, as in the fixing of rates for a particular year, or the right to vote at a particular election, it is impossible to reach a decision in the appellate courts before the party's right in the particular instance has expired, and he could never have the question or his rights decided if his cause should be dismissed upon that ground. In such cases the courts have always, and I think properly, exercised their discretion to dismiss the cause, or to hear and decide it, as seemed just under the particular circumstances.

The other cases of *State v. Stutsman*, 24 N. D. 68, 139 N. W. 83, Ann. Cas. 1914D, 776; *State v. Tel. Co.*, 65 Fla. 67, 61 South. 119; *Comm. v. Klaus*, 145 App. Div. 798, 130 N. Y. Supp. 713; *In re Fairchild*, 151 N. Y. 361, 45 N. E. 943; *People v. General Committee*, 25 App. Div. 339, 49 N. Y. Supp. 723, and *In re Morgan*, 114 App. Div. 45, 99 N. Y. Supp. 775, \*511 cited in Chief Justice McBride's opinion, are all exactly similar, in principle and in questions involved, to the case of *Boise City v. Clark*, supra, and are no more in point. It will be noticed that in every one of them there was a real lawsuit between real adversary parties. In no one of them did the court go outside of the issues made by the pleadings.

There is no case cited, and I do not think any one can be

found, in which the court has deliberately and intentionally gone clear outside of the issues (as we are asked to do) and decided questions which were not and never had been in the case.

If we do this we are not following any beaten path; we have no precedents; we are cutting the fences that have marked the boundaries of proper judicial authority ever since we have had English-speaking courts. The common law never gave us any such authority. Neither did the state constitution, nor has the legislature. Our only pretence of authority will be the invitation of public officers, who have no more statutory right to invite us to make the decision than we have to accept the invitation.

I do not wish to quibble or to shirk my share of responsibility in deciding any question that is properly before the court. Neither am I willing to be stampeded into a decision I have no right to make, nor to rush headlong to the exercise of powers I do not possess, in order that I may have the satisfaction or the notoriety of helping to decide some important question.

This is not a case where the questions presented have become merely academic, after the case was commenced, by reason of the lapse of time. Here the question as to who will be governor if the secretary of state resigns, or if another governor should be \*512 elected at the election in 1920, never was in the case, and could not be, for no such state of facts yet exists. The question may never arise. Mr. Olcott may never resign as secretary of state. He may run for governor himself at the next election.

To accept and amplify Mr. Chief Justice McBRIDE'S homely illustration, this is not a case where any one has suggested to "cut the dog's tail off by inches." It is a case where, because one dog has a broken tail which needs amputation, we are asked to drag in the other dogs in the community and mutilate them, because their tails might possibly be broken at some time in the future.

If another secretary of state, elected at the next election, shall claim the office of \*\*482 governor, he will have a right to be heard. There will then be an actual controversy, and I think he ought not to be foreclosed, by any premature decision we may now make, in a "mock trial" on a "moot" question in an arranged and fictitious lawsuit.

As a citizen, I have a more or less well-defined opinion as to all the questions suggested here, formed partly from my own impressions and partly from the briefs of the attorney general, and those of public spirited citizens, who, at the invitation of the court, have taken enough time from their private business to file more or less careful briefs in the

case. If I should don my official robe and attempt to give my half-baked street opinions judicial utterance, I would agree with Mr. Chief Justice McBRIDE as to the result, but not as to the reasoning or analogies by which he has reached that result. On the other hand, I should agree with Mr. Justice HARRIS as to his reasoning, up to a certain point, but not as to the result reached by him. But if I should attempt to do so, some other \*513 judge succeeding me might properly refuse to give my opinion any binding force. He might well conclude that it takes more than a judge and a gown to make a judicial decision.

I shall content myself, therefore, with the expression of an opinion on the questions really in issue, and upon which, as I understand, we are all agreed.

BURNETT, J. (concurring in part).

In this case an alternative writ of mandamus was issued out of this court, directed to the defendant, from which, barring a clerical omission, we learn in substance that James Withycombe, the duly elected and inaugurated governor of the state, died March 3, 1919, at which time the petitioner, Ben W. Olcott was the duly elected, qualified, and acting secretary of state and has since then continued to hold the latter office. It is further recited that on April 1, 1919, the secretary of state issued a warrant in favor of Ben W. Olcott for \$336, in payment of the salary due him for service as governor of the state from March 7 to March 31, inclusive, 1919, which warrant the petitioner herein has presented to the defendant as state treasurer and the latter fails and refuses to pay the same, although there is money in his hands applicable to the payment of the salary of the governor. By the writ, the defendant was required to show cause why he had not paid the warrant. On the return day the defendant demurred, not to the petition for the writ, but as the statute requires (L. O. L. § 618), to the writ itself, on the ground that it does not state facts sufficient to constitute a cause of action against the defendant.

The sole question presented is whether the defendant is right in refusing to pay the warrant in question. We have nothing to do with the petition. It has performed \*514 its office in securing the issuance of the writ, for, as shown in sections 618, 619, and 620, L. O. L., the pleadings in a proceeding by mandamus are the alternative writ, the demurrer or answer to the same, and the demurrer or reply to the answer, and none others are allowed. They are to "have the same effect and to be construed and may be amended in the same manner as pleadings in an action."

Admitted, as it is, that the regularly elected governor died during his incumbency in office and that the petitioner

here was at the time the duly elected, qualified, and acting secretary of state, we are not at present concerned about whether he is performing the duties of the office of governor as de facto or de jure governor, or merely by virtue of the authority vested in him as secretary of state, or, in other words, as an alternate upon whom the constitution imposes the functions of governor in case of the death of the latter officer. So far as public interests are concerned or the rights of the people are involved, it matters not in which of the two suggested capacities the duties and the authorities of the executive office are exercised, so they are performed. It is said in the writ:

“That under and by virtue of section 8, art. 5, of the constitution of Oregon, the office of governor and the duties thereof devolved upon the secretary of state, and that on the 7th day of March, 1919, petitioner, Ben W. Olcott, took the oath of office, and that since that time he has been and now is the governor of the state of Oregon.”

This states but a mere conclusion of law and presents no issuable fact. Neither is it directly averred that the petitioner has performed any of the duties or exercised any of the powers of governor. It is presumed, however, that official duty has been regularly \*515 performed, whether it be that of the secretary of state or that of a successor to a deceased governor. Indeed, it may well be doubted whether an auditing officer can assume to pass upon the amount or quality of service of any individual upon whom official duties have been cast by operation of law.

Coming to the precise question of whether the petitioner is entitled to the salary which otherwise would have been paid to the elected governor had he survived, the rule is well stated in *Preston v. United States* (D. C.) 37 Fed. 417, 418, thus:

“If there be no incompatibility between the respective duties of the two offices or employments, and the functions of each are separate and distinct, he is entitled to recover two compensations.”

Section 8, art. 5, of the constitution, reads thus:

\*\*483 “In case of the removal of the governor from office, or of his death, resignation, or inability to discharge the duties of the office, the same shall

devolve on the secretary of state; and in case of the removal from office, death, resignation, or inability, both of the governor and secretary of state, the president of the senate shall act as governor, until the disability be removed, or a governor be elected.”

Whatever view may be taken of this clause of the fundamental law, as to the capacity in which the petitioner shall administer the duties of the chief executive, it is plain that by force of the constitution itself the duties of the two offices are not incompatible with each other, however separate and distinct they may be. In other words, the constitution itself casts the performance of the duties of both offices upon the same individual under certain circumstances, with the result that they are constitutionally compatible with each other. Under such circumstances, the extra duty having \*516 been performed, as we must presume it has been, the petitioner is entitled to the compensation which the law provides for such service. As stated by Mr. Chief Justice Bigelow in *State ex rel. v. La Grave*, 23 Nev. 216, 45 Pac. 243, 35 L. R. A. 233:

“Another reason that may be offered for this conclusion is that it is a general principle of justice and right that, when one legally performs the duties of an office, he should be entitled to the emoluments thereof.”

In *United States v. Saunders*, 120 U. S. 126, 7 Sup. Ct. 467, 30 L. Ed. 594, the claimant drew a salary as clerk of a committee of congress and likewise as clerk in the president's office. The duties of the two were held not to be incompatible, and hence his claim was allowed for both salaries. In *State v. Roddle*, 12 S. D. 433, 81 N. W. 980, the defendant was a secretary of state and likewise was made by a statute a member of the state committee on brands and marks, carrying with it an additional compensation, and it was held that he was entitled to both emoluments. Similarly, in *State ex rel. v. Walker*, 97 Mo. 962, the individual who held the office of secretary of state and was also a member of the board of equalization was allowed pay for both positions. In *Scranton School District v. Simpson*, 133 Pa. 202, 19 Atl. 359, and in *McCauley v. School District*, 133 Pa. 493, 19 Atl. 410, the occupant of the office of city treasurer, who was ex officio treasurer of the school district, was allowed the statutory compensation for both positions. The same doctrine is taught in *United States v. Macdaniel*, 7 Pet. 1, 8 L. Ed. 587; *United States v. Ripley*, 7 Pet. 18, 8 L. Ed.



593; *United States v. Fillebrown*, 7 Pet. 28, 8 L. Ed. 596; and in *Milnor v. Metz*, 16 Pet. 221, 10 L. Ed. 943. In \*517 *Löve v. Baehr*, 47 Cal. 364, the attorney general, to whom was allowed by law a statutory salary, was also made a member of the board of examiners, carrying with it a special additional compensation, and he was sustained in his claim for both emoluments. In *re Conrad* (C. C.) 15 Fed. 641, is a case where the same individual was claiming fees as chief supervisor and as a United States commissioner, and his claim was sustained; and in *Smith v. Waterbury*, 54 Conn. 174, 7 Atl. 17, the city attorney had a salary allowed to him by law and a statute allowing him certain fees for special services was sustained. In other words, the common sense principle is that he who performs services enjoined upon him by law is entitled to the compensation provided by the same law of those particular services, in the absence of anything restricting the emolument to a single office.

It is true that section 10 of article 2 of the organic law declares that:

“No person holding a lucrative office or appointment under the United States or under this state shall be eligible to a seat in the legislative assembly; nor shall any person hold more than one lucrative office at the same time, except as in this constitution expressly permitted.”

This must be read in connection with section 8 of article 5, already quoted. If the latter section be construed to invest the petitioner with the office of governor both de facto and de jure, it would constitute an exception within the meaning of section 10 of article 2. On the other hand, if it be held that he is merely exercising functions of the office of secretary of state visited upon him on account of the death of the elected governor, he would not be holding more \*518 than one lucrative office within the meaning of the latter section.

This disposes of the question presented by the pleadings for our consideration. All else respecting the length of time the petitioner shall perform the duties of governor, or whether he has authority to resign the office of governor or resign the office of secretary of state and continue to hold as governor, or whether he can obstruct the order of succession provided by section 8 of article 5 by appointing a secretary of state to succeed himself, is not presented by the instant record, and any attempt to dispose of these matters in this proceeding would be gratuitous dictum. The only excuse for discussing those questions is found not in any allegation even of the

petition itself, and much less in the writ which is the primary pleading, but only in the last clause of the prayer of the petition, as follows:

“And this petitioner particularly prays that this court will define his duties and powers in relation to the office of governor.”

Nowhere in the record does the petitioner intimate any desire for advice or decision \*\*484 about his right to resign any office, or concerning the length of time he will be required or permitted to exercise its functions. As already pointed out, the petition is no part of the pleadings. *McLeod v. Scott*, 21 Or. 111, 26 Pac. 1061, 29 Pac. 1; *Elliott v. Oliver*, 22 Or. 44, 29 Pac. 1; *Shively v. Pennoyer*, 27 Or. 33, 39 Pac. 396. The clause of its prayer, if indeed we may consider it at all, amounts simply to a request for the court to give counsel to the petitioner on a question not presented by the record. It does not call for any decision. It is said in section 957, L. O. L.:

\*519 “Any judicial officer may act as an attorney in any action, suit, or proceeding to which he is a party or in which he is directly interested. A judge of the county court or justice of the peace, otherwise authorized by law, may act as an attorney in any court other than the one of which he is judge, except in an action, suit, or proceeding removed therefrom to another court for review; but no judicial officer shall act as attorney in any court, or otherwise other than as in this section allowed. \* \* \*”

In effect, at least, if we undertook to advise the petitioner concerning “his duties and powers in relation to the office of governor” we would violate this provision of the statute. Moreover, as declared in chapter 196, Laws 1915, it is the function of the attorney general, when requested to do so by any state official, to give his opinion in writing upon any question submitted to him in which the state of Oregon may have an interest, and he shall, when requested, give legal advice to any of said officials, boards, or commissions. For this court or its members to give such counsel as the petitioner in his prayer requests would be to usurp the functions of the attorney general in contravention of section 1 of article 3 of the constitution, dividing the powers of government into three separate departments, the legislative, the executive, including the administrative, and the judicial, and forbidding any

person charged with official duties under one of these departments to exercise any of the functions of another. All we are called upon by the record before us to decide is the issue of law presented by the demurrer to the writ. All beyond that would be unwarranted and would not bind any one. We could not compel the petitioner to resign either the office of secretary of state or of governor, nor could we restrain him on the record from doing either of those acts, any \*520 more than we could direct him in the care of his children or the investment of his money. It would present a situation thus described in 3 Words & Phrases, 2052:

“The mere dictum of a judge is not the decision of a court. There is nothing authoritative in a case except what is required to be decided to reach the final judgment, and what, by the judgment, becomes res adjudicata between the parties as to the subject-matter of the suit. Love v. Miller, 53 Ind. 294, 21 Am. Rep. 192. ‘An obiter dictum is a gratuitous opinion, an individual impertinence, which, whether it be wise or foolish, right or wrong, bindeth none, not even the lips that utter it. Old Judge’—taken

from the title-page of a work on ‘Obiter Dicta,’ published by John D. Allen, New York, 1885. Hart v. Stribling, 6 South. 455, 456, 25 Fla. 433.”

For these reasons I concur in the direction that a peremptory writ issue commanding the state treasurer to pay to the petitioner the amount of the warrant in question; but I object to the gratuitous statement in the opinion of Mr. Justice JOHNS about the length of time the petitioner may discharge the duties of the chief executive of the state, as not within the issue presented by the record and not even requested by either party.

#### All Citations

92 Or. 462, 181 P. 466

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67 Ariz. 304  
Supreme Court of Arizona.

STATE ex rel. DE CONCINI, Attorney General,  
v.  
GARVEY.

No. 5123.  
|  
June 21, 1948.

Original proceeding in quo warranto by the State of Arizona, on the relation of Evo De Concini, Attorney General of the State of Arizona, against Dan E. Garvey to determine whether the Secretary of State upon death of Governor became the Governor or was merely the acting Governor.

Judgment in accordance with opinion.

West Headnotes (4)

<sup>[1]</sup> **Courts**  
☞ Quo warranto

The Supreme Court in the public interest exercised original jurisdiction in quo warranto proceeding to determine whether Secretary of State upon death of Governor, became vested with office of Governor or whether he was merely required to perform duties of the office. A.R.S.Const. art. 5, § 6.

Cases that cite this headnote

<sup>[2]</sup> **States**  
☞ Governor

The Secretary of State upon death of Governor acts as Governor and is empowered to perform all duties of that office, and his official acts performed as acting Governor are valid. A.R.S.Const. art. 5, § 6.

1 Cases that cite this headnote

<sup>[3]</sup> **States**  
☞ Governor

Upon death of Governor, Secretary of State did not become vested with office of Governor, but duties of office of Governor devolved upon him to be performed as acting Governor. A.R.S. § 41-122; A.R.S.Const. art. 5, § 6.

Cases that cite this headnote

<sup>[4]</sup> **Public Employment**  
☞ Additional compensation; extra services  
**States**  
☞ In general; holding two offices

The Secretary of State upon death of Governor was not entitled to additional compensation for performance of duties of office of Governor, since obligation of his office was to act as Governor in contingencies provided for by Constitution. A.R.S.Const. art. 5, § 6.

3 Cases that cite this headnote

**Attorneys and Law Firms**

\*305 \*\*153 Evo De Concini, Atty. Gen., and Perry M. Ling, Chief Asst. Atty. Gen., for plaintiff.

Morgan & Locklear, Stahl & Murphy, and Charles C. Bernstein, all of Phoenix, for defendant.

**Opinion**

LA PRADE, Justice.

This is an action in quo warranto brought by the attorney

general in the name of the state, upon his relation, against the Honorable Dan E. Garvey, who is now and at all times since the first Monday of January, 1947, has been the duly elected, qualified, and acting secretary of state. The complaint alleges that the Honorable Sidney P. Osborn, the duly elected and acting governor of Arizona, died on the 28th day of May, 1948. The relator then alleges that, upon the death of Governor Osborn, the respondent, as secretary of state, purportedly under and by virtue of article 5, section 6 of the constitution of the state of Arizona, unlawfully assumed the office of governor of the state of Arizona and has since unlawfully held and exercised the same. The relator further alleges that under and by virtue of said section of the constitution Dan E. Garvey did not in law or in fact become governor of Arizona upon the death of Governor Osborn, but by virtue of the section the powers and duties of the office of governor merely devolved upon Mr. Garvey as said secretary of state.

Respondent by his answer denies that he unlawfully assumed the office of governor of the state of Arizona and unlawfully holds and exercises the rights and duties of that office. He contends the facts to be that upon the death of Governor Osborn he by virtue of the constitutional provision above referred to succeeded to the duties, powers, emoluments, and rights of the office of governor, and lawfully holds such office by virtue of the constitutional provision. \*306 He further maintains that he was required to and did assume the duties, powers, and privileges of the office of governor for the remainder of Governor Osborn's term, and that the *office* became vested in him so that he is governor de jure and de facto.

<sup>141</sup> The public business and tranquility demand a prompt judicial inquiry and final determination of the actions of the respondent \*\*154 in admittedly holding and exercising the office of governor. It is for this reason that we have exercised our original jurisdiction in the premises, as we did in *Sullivan v. Moore*, 49 Ariz. 51, 64 P.2d 809 and *State v. Sullivan*, 66 Ariz. 348, 188 P.2d 592, and have promptly determined the issues. Two questions are presented for determination: first, upon the death of Governor Osborn did the respondent become vested with the *office* of governor for the remainder of the term? second, if he did not become vested with the office of Governor, is he entitled to the emoluments of the office by virtue of the fact that he must perform the duties thereof?

The first question can be answered only by reference to the pertinent constitutional and statutory provisions. Article 5, section 6, of the Arizona constitution provides:

'[*Succession to governorship*].—In case of the

impeachment of the governor, or his removal from office, death, inability to discharge the duties of his office, resignation, or absence from the state, *the powers and duties of the office shall devolve upon the secretary of state until the disability ceases, or during the remainder of the term.*' (Emphasis supplied.)

The following section of the code, relating to the duties of secretary of state and his assistant, we consider to be pertinent and highly illuminating and informative in our search for a correct determination on the questions involved:

'*Assistant secretary*.—The secretary shall appoint an assistant secretary of state, who, in the absence of the secretary of state, *or when the secretary of state is acting governor*, shall perform the duties of the secretary.' (Emphasis supplied.) Section 4-204, A.C.A.1939.

The questions presented, though a matter of first impression in this state, are not novel. The question of the effect of the succession of an inferior officer to the duties and powers of the office of governor has been exhaustively treated by courts of last resort in many states. The prevailing view is that in such a case the inferior officer does not vacate his office and become governor de jure and de facto, but that the duties and powers of governor merely devolve on him and he retains his former office and becomes, practically speaking, ex officio governor. 24 Am.Jur., Governor, section 10. Under this view it is held that where the duties of the office of governor devolve on the president of the senate, he does not become governor, or cease to be a senator and president of the senate, and that on his resignation as \*307 senator he ceases to be entitled to act as governor. *Clifford v. Heller*, 63 N.J.L. 105, 42 A. 155, 57 L.R.A. 312. For convenience following each citation will appear the constitutional provision of the state whose decision is referred to.

'In case of the death, resignation, or removal from office of the governor, the powers, duties, and emoluments of the office shall devolve upon the president of the senate.' New Jersey, article 5, par. 12, N.J.S.A.

And where such duties devolve on the lieutenant governor, an election of a lieutenant governor to fill the supposed vacancy is unauthorized. *State v. Sadler*, 23 Nev. 356, 47 P. 450; *State v. McBride*, 29 Wash. 335, 70 P. 25.

'In case of the impeachment of the governor, or his removal from office, death, inability to discharge the duties of the said office, resignation or absence from the state, the powers and duties of the office shall devolve

upon the lieutenant-governor for the residue of the term, or until the disability shall cease.' Nevada, article 5, section 18.

'In case of the removal, resignation, death, or disability of the governor, the duties of the office shall devolve upon the lieutenant-governor.' Washington, article 3, section 10.

Nor can the lieutenant governor in such an event appoint a successor to himself as lieutenant governor. *People v. Budd*, 114 Cal. 168, 45 P. 1060, 35 L.R.A. 46.

'In case of the impeachment of the Governor, or his removal from office, death, inability to discharge the powers and duties of his office, resignation, or absence from the State, the powers and duties of the office shall devolve upon the Lieutenant Governor for the residue of the term, or \*\*155 until the disability shall cease.' California, article 5, section 16.

Likewise under this rule where a vacancy in the office of governor occurs, and the president pro tempore of the senate acts under a provision that he 'shall be lieutenant governor' in such a case, he does not cease to be a senator, but retains his right to vote in that body. *State v. Stearns*, 72 Minn. 200, 75 N.W. 210.

'The lieutenant governor shall be ex officio president of the Senate; and in case a vacancy should occur, from any cause whatever, in the office of governor, he shall be governor during such vacancy.' Minnesota, article 5, section 6, M.S.A.

And on the election of another as president pro tempore his right to act as lieutenant governor ceases. *People v. Cornforth*, 34 Colo. 107, 81 P. 871.

'In case of the death, impeachment, or conviction of felony or infamous misdemeanor, failure to qualify, resignation, absence from the state or other disability of the governor, the powers, duties and emoluments of the office, for the residue of the term, or until the disability be removed, shall devolve upon the lieutenant-governor.' Colorado, article 4, section 13.

\*308 And it has been held that where the powers, duties, and emoluments devolve on the lieutenant governor for the residue of the term there was no vacancy in either the office of governor or lieutenant governor that could be filled at a general election which intervened before the expiration of the term. *State v. Mitchell*, 97 Mont. 252, 34 P.2d 369.

'In case of the failure to qualify, the impeachment or conviction of felony or infamous crime of the governor,

or his death, removal from office, resignation, absence from the state, or inability to discharge the powers and duties of his office, the powers, duties and emoluments of the office, for the residue of the term, or until the disability shall cease, shall devolve upon the lieutenant-governor.' Montana, section 14, article 7.

[2] A vacancy in the office of governor does not arise by the impeachment of the incumbent, his removal from office, or death in the sense that there is no one left with power to discharge the duties imposed upon the governor. *State v. McBride*, supra; *State v. Mitchell*, supra. In *State ex rel. Martin v. Ekern*, 1938, 228 Wis. 645, 280 N.W. 393, 399, it is said:

'When a vacancy, either permanent or temporary, occurs in the office of governor, the powers and duties of that office devolve upon the lieutenant governor for the residue of the term or until the governor, absent or impeached, shall have returned or the disability shall cease. It is clear that the lieutenant governor does not become governor. He remains lieutenant governor, upon whom devolves the powers and duties of governor. In such a contingency no vacancy occurs in the office of lieutenant governor. \* \* \*.'

To the same effect see *Futrell v. Oldham*, 107 Ark. 386, 155 S.W. 502, Ann.Cas.1915A, 571. The Arkansas constitutional provision reads as follows:

'In case of the death conviction or impeachment, failure to qualify, resignation, absence from the State or other disability of the Governor, the powers, duties and emoluments of the office for the remainder of the term, or until the disability be removed, or a Governor elected and qualified, shall devolve upon and accrue to the President of the Sentate.' Section 12, article 6.

The same situation exists where the governor is absent from the state or physically unable to discharge the duties of his office. The framers of our constitution never intended that there should be any interim in which the affairs of state were not executed for they said in explicit language that upon the happening of *any* of the contingencies mentioned in section 6, article 5, supra, the powers and duties of the office of governor were to be immediately transferred to the secretary of state who was then given a mandate to discharge the duties of the office for the residue of the term for which the governor was elected. He, as secretary of state, acts \*309 as governor and is empowered to perform all the duties of that office, and his official \*\*156 acts performed as acting governor are valid. *McCluskey v. Hunter*, 33 Ariz. 513, 266 P. 18.

While a legislative interpretation is not binding upon us, it

is nevertheless entitled to respectful consideration. We find that as long as 1922 the legislature, in enacting section 4-204, supra, was aware of the contingencies contained in the constitutional provision under consideration, and considered that there would be occasions when the secretary of state was 'acting governor.' The code section specifically provides that when the secretary of state is 'acting governor' the assistant secretary of state shall perform the duties of the secretary.

We have observed that the prevailing view is that an inferior officer does not vacate his office and become governor de jure and de facto where the several constitutions provide merely that the duties and powers of the office devolve upon him. See Annotation, Ann.Cas.1915A, 577, at page 579. Opposed to the authorities just considered are three cases, all from one jurisdiction, namely, Oregon. In the reported case of Chadwick v. Earhart, 11 Or. 389, 4 P. 1180, the court had before it for consideration the constitutional provision reading as follows:

'In case of the removal of the governor from office, or of his death, resignation, or inability to discharge the duties of the office, the same shall devolve on the secretary of state; and in case of the removal from office, death, resignation, or inability, both of the governor and secretary of state, the president of the senate shall act as governor until the disability be removed or a governor be elected.' (Emphasis supplied.) Section 8, article 5.

The court in analyzing grammatically the section held that the word 'same' related to and qualified the word 'office' and that in legal effect the section should read 'In case of the removal of the governor from office or of his death, resignation, or inability to discharge the duties of the office, the office itself shall devolve upon the secretary of state.'

In the later case of Olcott v. Hoff, 92 Or. 462, 181 P. 466, 470, the Oregon court again had before it for consideration the same section of the constitution and was asked to review its decision in the Chadwick case. It was called to the attention of the court that many courts had refused to accept its interpretation in the Chadwick case as sound law. The justice who wrote the prevailing opinion was still of the opinion that the grammatical interpretation made in the Chadwick case was correct. He attempted to distinguish the cases from Wyoming, Nevada, New Jersey, California, Colorado, Minnesota, Washington, and Arkansas by stating:

'It will be noted that in all of the sections quoted it is not the office, but the powers and duties of the office, which

\*310 devolve upon his successor in the event of the death of the governor. The importance of that distinction is clearly pointed out by the recent decision of the supreme court of Arkansas in construing the constitution of that state in the case of Futrell v. Oldham, supra, where the opinion says: 'If the framers of the constitution had intended to provide for the devolution of the office of governor, in case of vacancy by resignation or otherwise, upon the president of the senate, that intention could easily have been directly expressed in appropriate words. But they chose other terms which clearly observe the distinction between the course of succession of the office itself and a mere devolution of the duties and the emoluments of the office for the time being, and deliberately adopted the latter as the best means of having the government administered until the people themselves can elect a governor.'

Mr. Justice Harris of that court, in a separate opinion concurring in part, made this observation of the Chadwick decision:

'\* \* \* If article 5, § 8, of the state constitution, were now for the first time presented for judicial construction I would, for reasons which to me are not only persuasive but convincing, take the view that upon the removal, death, resignation, or inability of the governor to discharge the duties of the office, the secretary of state becomes merely ex officio governor. In other words, it is my opinion that a correct construction of the constitution \*\*157 only empowered Chadwick to act as governor until he ceased to be secretary of state and then the duties of the office of the governor devolved upon Earhart, the succeeding secretary of state, until Thayer qualified as governor; or, applying what I conceive to be the meaning of the constitution to the instant case, because and only because he is secretary of state, Ben W. Olcott would perform the duties of governor until his term as secretary of state expires on the first Monday in January, 1921, when his successor's term as secretary of state shall begin, and such successor would then discharge the duties of governor until the speaker of the house of representatives at the session to be held in 1921 publishes the vote for governor. \* \* \*'

This justice in stating that the doctrine of state decisis should never be resorted to where an opinion was clearly and manifestly erroneous and capable of producing injustice and hardship, nevertheless for other considerations, adhered to the original decision in the Chadwick case.

In State v. Olcott, 94 Or. 633, 187 P. 286, 290, the court was again confronted with a contingency growing out of its previous interpretations. In this case, Mr. Justice



Bennett in a specially concurring opinion, made reference to the original decision in the Chadwick case and the observations of Mr. Justice Harris in *Olcott v. Hoff*, supra:

\*311 'After much consideration and some hesitation, I feel compelled to concur in the opinion of Mr. Justice Johns upon the ground of stare decisis only. It seems to me that the case of *Chadwick v. Earhart*, 11 Or. 389, 4 P. 1180, is directly in point and is controlling. If it were not for that case and if the question was here as a matter of first impression, I should be governed by the reasoning of Mr. Justice Harris when the question was under consideration in *Olcott v. Hoff*, which seems to me to present, as a matter of logic, the stronger considerations.'

<sup>[3]</sup> <sup>[4]</sup> We do not consider the decision in *Chadwick v. Earhart*, supra, as persuasive or authoritative. The interpretation of that case was based on the language of the constitutional provision, and we sincerely believe was not justified. In any event our constitutional provision specifically provides that 'the powers and duties of the office shall devolve upon the secretary of state \* \* \*.' This section is not susceptible of the interpretation that the *office* shall devolve upon the secretary of state. Having concluded that the *office* of governor does not devolve upon the secretary of state and that Dan E. Garvey is still secretary of state and only ex officio or acting governor, it is apparent that he is not legally entitled to any extra compensation for the performance of services or duties which pertain to his office of secretary of state. By law the incumbent of an office is bound to perform all of the duties belonging to it without extra compensation. As was said in *United States v. Smith*, 27 Fed.Cas. 1139, page 1141, No. 16,321:

'\* \* \* No man is under any necessity to accept an office, but having accepted it, the obligation rests upon him to discharge its duties for the remuneration which the law provides. He accepts it with a knowledge of the pay or

salary attached to it, and though its duties may be onerous, and the compensation inadequate, if he chooses to retain the office he must be content with what the law gives.'

The respondent took oath to perform the duties of secretary of state. His duties embrace the responsibility to act as governor in case any of the contingencies provided for in the constitutional provision arise. *Walls v. Hall*, 202 Ark. 999, 154 S.W.2d 573, 136 A.L.R. 1047.

We, therefore, hold that respondent Garvey is not governor de jure or de facto but merely ex officio or acting governor invested by constitutional mandate with all of the powers and duties of that high office, which devolve upon him by virtue of the fact that he is secretary of state. Respondent, however, is entitled to physical possession of the office space and facilities provided for the chief executive of the state, but as no provision has been made that the emoluments of the office of governor inure to the secretary of state when acting governor he is entitled \*312 \*\*158 only to the compensation provided for the secretary of state.

It is the judgment of this court and it is hereby ordered that the Honorable Dan E. Garvey be and he is hereby precluded from holding or exercising the office of governor of the state of Arizona other than as secretary of state and acting governor. Let the mandate of the court issue forthwith.

STANFORD, C. J., and UDALL, J., concur.

#### All Citations

67 Ariz. 304, 195 P.2d 153



311 Ark. 187  
Supreme Court of Arkansas.

Winston BRYANT, Attorney General, Appellant,  
v.

Dr. Arthur ENGLISH, the Republican Party of  
Arkansas, the Democratic Party of Arkansas, and  
Martin Borchert, Appellees and Cross-Appellees,

v.  
Jim Guy TUCKER, Lieutenant Governor,  
Cross-Appellant.

No. 92-1284.

Dec. 4, 1992.

Suit for declaratory judgment was filed requesting interpretation of various provisions of the Constitution of Arkansas regarding succession to the Office of Governor when the Governor resigns with more than 12 months remaining in term of office. The Circuit Court, Pulaski County, John B. Plegge, J., entered judgment declaring that upon resignation of Governor, powers and duties of the Office of Governor, but not office itself devolves upon Lieutenant Governor for the remainder of four-year term. Court also ruled that special election to fill office is not required and that Lieutenant Governor is not authorized to appoint successor to the Office of Governor. Attorney General appealed, and Lieutenant Governor cross-appealed. The Supreme Court, Dudley, J., held that: (1) constitutional amendment provides that the Lieutenant Governor serves as Governor for the residue of the term and not merely until a new Governor is elected at special election, and (2) Office of Governor itself devolves upon Lieutenant Governor.

Affirmed.

Glaze, J., concurred in part and dissented in part with opinion which was joined by Corbin, J.

West Headnotes (5)

- [1] **Constitutional Law**  
⇌Contemporary circumstances  
**Constitutional Law**  
⇌Context of the times

In order to determine meaning and extent of coverage of constitutional amendment, court may look to history of the times and condition existing at time of the adoption of the amendment in order to ascertain the mischief to be remedied and the remedy adopted.

4 Cases that cite this headnote

- [2] **Constitutional Law**  
⇌Operation as to constitutional provisions previously in force

Repeal by implication is accomplished when a constitutional amendment takes up a whole subject anew and covers the entire subject matter of the original Constitution.

3 Cases that cite this headnote

- [3] **Constitutional Law**  
⇌Plain, ordinary, or common meaning

Constitutional amendment is to be interpreted and understood in its most natural and obvious meaning.

1 Cases that cite this headnote

- [4] **Public Employment**  
⇌Term of person filling vacancy  
**States**  
⇌Lieutenant Governor  
**States**  
⇌Resignation, suspension, and removal or impeachment of officers

Constitutional amendment governing office of Lieutenant Governor provides that when the Governor resigns, the Lieutenant Governor serves as Governor for the residue of the term and not merely until a new Governor is elected

at a special election. Const.Amend. No. 6, § 4.

1 Cases that cite this headnote

[5]

**Public Employment**

↔Manner and Mode of Filling Vacancy

States

↔Lieutenant Governor

States

↔Resignation, suspension, and removal or  
impeachment of officers

Upon resignation of the Governor, the Office of Governor itself devolves upon the Lieutenant Governor, not merely the powers and duties of the Office of Governor. Const.Amend. No. 6, § 4.

1 Cases that cite this headnote

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**Opinion**

\*\*309 DUDLEY, Justice.

On November 6, 1990, Governor Bill Clinton was re-elected to the Office of Governor, and Jim Guy Tucker was elected to the Office of Lieutenant Governor. Both

were elected and commissioned to four-year terms of office that commenced on January 15, 1991. On November 3, 1992, a little over twenty-one months later, Governor Clinton was elected to the Office of President of the United States of America. It is anticipated that Governor Clinton will resign from the Office of Governor before January 20, 1993, which is the day the oath of the Office of President of the United States will be administered. The result will be that a vacancy will exist in the Office of Governor, and more than twelve months will remain on the four-year term to which Governor Clinton was elected.

This suit for a declaratory judgment was filed requesting an interpretation of the various provisions of the Constitution of Arkansas regarding succession to the Office of Governor when the Governor resigns with more than twelve months remaining in the term of office. The trial court entered a judgment declaring that upon the resignation of Governor Clinton, the powers and duties of the Office of Governor, but not the office itself, will devolve upon the Lieutenant Governor for the remainder of the four-year term. The trial court also ruled that a special election to fill the office is not required and that the Lieutenant Governor is not authorized to appoint a successor to the Office of Governor. Attorney General Winston Bryant appeals from the judgment, \*190 and Lieutenant Governor Jim Guy Tucker cross-appeals from that part of the judgment declaring that the Office of Governor does not devolve upon the Lieutenant Governor. On direct appeal, we affirm the trial court's judgment and hold that upon the resignation of a Governor, the powers and duties of the Office of Governor devolve upon the Lieutenant Governor for the remainder of the four-year term, and, on cross-appeal, we reverse and hold that the Office of Governor itself devolves upon the Lieutenant Governor.

**I. Procedure**

The Declaratory Judgments Act, Ark.Code Ann. §§ 16-111-101—16-111-111 (1987), provides that the purpose of the act is "to afford relief from uncertainty ... with respect to ... status," and the act is to be liberally construed to that end. The parties stipulated in the trial court that they anticipate that Governor Clinton will resign from the Office of Governor, and the trial court held that a justiciable controversy exists. We have concluded that we should decide the issue because it is a matter of significant public interest and a matter of constitutional law. *See Bennett v. N.A.A.C.P.*, 236 Ark. 750, 370 S.W.2d 79 (1963).

## II. Background

Neither the 1836 Constitution of Arkansas nor the 1861 constitution provided for the office of Lieutenant Governor. Those constitutions placed the President of the Senate next in the line of succession for the Office of Governor, and they required a special election if the remaining term of the Governor exceeded a certain period of time. The 1864 constitution, for the first time, created the office of Lieutenant Governor and provided for a statewide election to the office. Ark. Const. of 1864, art. VI, § 19. The 1868 constitution also provided for a Lieutenant Governor and stated that if the Office of Governor became vacant, the Lieutenant Governor served during the “residue of the term.” It made no provision for a special election to fill the vacancy. Ark. Const. of 1868, art. VI, § 10.

Unfortunately, the present Constitution of Arkansas, adopted in 1874, did not originally provide for the office of Lieutenant Governor. Article 6, sections 12 and 13 of the present constitution, originally placed the President of the Senate, \*191 followed by the Speaker of the House, in the line of gubernatorial succession, but article 6, section 14 required a special election to fill a vacancy in the Office of Governor when the office was vacated more than twelve months before the expiration of the Governor’s \*\*310 term. Article 6, section 12 of the present constitution originally provided that in the event of the “death, conviction or impeachment, failure to qualify, resignation, absence from the State or other disability of the Governor,” the powers and duties of the office devolved on the President of the Senate “for the remainder of the term, or until the disability be removed, or a Governor elected and qualified.” When construed with the special election procedure of article 6, section 14, the reason for each of these three limitations on the President of the Senate’s period of service is obvious. Each limitation on service was tied to a different contingency. If the Governor became disabled, the President of the Senate served as Governor until the disability was removed. If the office became vacant through death, impeachment, or resignation of the Governor less than twelve months before the end of the Governor’s term, the President of the Senate served “for the remainder of the term.” If the vacancy in office occurred more than twelve months before the end of the Governor’s term, the President of the Senate served until “a Governor [was] elected and qualified” at a special election called in accordance with article 6, section 14.

Only days after his inauguration on January 18, 1907, Governor John Sebastian Little suffered a nervous breakdown. Arkansas History Commission, 1 *Annals of Arkansas 1947* 239 (Dallas T. Herndon ed., 1947) [hereinafter *Annals* ]. On February 11, 1907, Governor Little wrote Senator John I. Moore, the President of the Senate, and asked him to assume the duties of Governor. Senator Moore served as acting Governor until the adjournment of the General Assembly on May 14, 1907. *Id.* at 239. He was succeeded as acting Governor by Senator X.O. Pindall, who was elected President of the Senate shortly before its adjournment. Senator Pindall served as chief executive for sixteen months from May 15, 1907, until January 11, 1909, when he was replaced by the newly elected President of the Senate, Jesse M. Martin. *Id.* at 240. Senator Martin was acting Governor for three days until the inauguration of George W. Donaghey, who had been elected Governor at the general election of 1908. \*192 *Id.* at 240. In sum, during the two-year period between January 15, 1907, and January 15, 1909, the affairs of Arkansas were in the hands of no less than six governors: Jeff Davis, John Sebastian Little, John I. Moore, X.O. Pindall, Jesse M. Martin, and George Donaghey. *See id.* at 233, 239–41.

The first seven months of 1913 were even more trying; they amounted to a gubernatorial succession crisis. The crisis was triggered when Governor Joe T. Robinson resigned from office following his election to the United States Senate. *Id.* at 247. W.K. Oldham was President of the Senate when Governor Robinson resigned, but because Senator Oldham was prohibited by article 5, section 18 of the constitution from serving past the end of the legislative session, the Senate elected J.M. Futrell as its President prior to adjournment on March 13, 1913. *See id.* at 251. Oldham argued that pursuant to article 6, section 12, he succeeded to the Office of Governor when Governor Robinson resigned and did not cease to be Governor when a new Senate President was elected. Futrell argued that he became Governor by virtue of his election as President of the Senate two days after Governor Robinson’s resignation. In *Futrell v. Oldham*, 107 Ark. 386, 155 S.W. 502 (1913), this court ruled in Futrell’s favor, holding that under article 6, section 12, the powers and duties of Governor devolved upon the office of the President of the Senate and not upon the individual occupying that office. In sum, during the first seven months of 1913, state government was headed by five different individuals: George Donaghey, Joe T. Robinson, W.K. Oldham, J.M. Futrell, and George W. Hays. *See Annals, supra*, at 244, 247, 251. This was labeled our “procession” of governors. Dr. David Y. Thomas, 1 *Arkansas and Its People; A History, 1541–1930* 282 (1930). The newspapers of the time spoke of the

confusion. The *Arkansas Democrat* of January 31, 1913, contained an article that began, "Political complications in Arkansas are as thick as a London Fog." The February 8, 1913, *Arkansas Democrat* carried an article that \*\*311 contains the sentence, "Kill off the antiquated method of filling a gubernatorial vacancy."

### III. Amendment 6

In February 1913, Representative Kidder introduced a House Joint Resolution for a constitutional amendment that \*193 would create the office of Lieutenant Governor. In part, it was a replication of the provision in the 1868 constitution. The March 5, 1913, *Arkansas Democrat* wrote: "There is no sound argument against the office proposed. It fixes the status of the governor's successor and does away with a special election to fill a vacancy." On March 6, 1913, Amendment 6 to the 1874 constitution was proposed by the General Assembly. See 1913 Ark. Acts 1527. Amendment 6 was submitted to, and approved by, the voters at the 1914 general election. See *Combs v. Gray*, 170 Ark. 956, 281 S.W. 918 (1926), for additional history of the adoption.

[1] [2] [3] Amendment 6, section 4 provides: "In the case of the [resignation] of the Governor, ... the powers and duties of the office, shall devolve upon the Lieutenant Governor for the residue of the term..." In interpreting constitutional amendments, we have said that a court, in order to determine the meaning and the extent of coverage of a constitutional amendment, may look to the history of the times and the condition existing at the time of the adoption of the amendment in order to ascertain the mischief to be remedied and the remedy adopted. *Huxtable v. State*, 181 Ark. 533, 26 S.W.2d 577 (1930). "Amendments to a constitution are not regarded as if they had been parts of the original instrument but are treated as having a force superior to the original to the extent to which they are in conflict." *Grant v. Hardage*, 106 Ark. 506, 509, 153 S.W. 826, 827 (1913). Repeal by implication is accomplished when a constitutional amendment takes up a whole subject anew and covers the entire subject matter of the original constitution. *McCraw v. Pate*, 254 Ark. 357, 494 S.W.2d 94 (1973); *Berry v. Gordon*, 237 Ark. 547, 376 S.W.2d 279 (1964); *Pulaski County v. Downer*, 10 Ark. 588 (1850). Further, a constitutional amendment is to be interpreted and understood in its most natural and obvious meaning. *Carter v. Cain*, 179 Ark. 79, 14 S.W.2d 250 (1929).

[4] Amendment 6 took up a new subject matter of gubernatorial succession. The citizens wanted to prevent

any more gubernatorial succession crises and sought to change the procedure previously set out in article 6. It is impossible to reconcile the natural and obvious meaning of the language of the amendment, quoted above, with the special election procedure set out originally in article 6, section 14 in the factual situation before us. If the appellant Attorney General's suggested meaning were \*194 adopted, and we construed "residue of the term" to only mean the Lieutenant Governor takes office only until the next special election, the constitutional amendment would, in part, amount to an exercise in futility. For these reasons, we hold that amendment 6, section 4 provides that the Lieutenant Governor serves as Governor for the residue of the term and not merely until a new Governor is elected at a special election.

We do not decide whether the special election process set out in article 6 is still viable if the Lieutenant Governor becomes Governor and then vacates the office. That issue is not before us.

[5] The trial court ruled that the "powers and duties of the Office of Governor, but not the Office of Governor" devolved upon the Lieutenant Governor. The trial court's ruling was undoubtedly based on our decision in *Futrell v. Oldham*, 107 Ark. 386, 155 S.W. 502 (1913), and certainly that case contains language stating that, under article 6, the President of the Senate exercised the powers of the Office of Governor, but did not actually become Governor. For several reasons, we think the holding of *Futrell* should be distinguished when the Governor resigns and his place is taken by the Lieutenant Governor under the provisions of amendment 6.

\*\*312 First, the framers of amendment 6 took verbatim from article 6, section 10 of the 1868 constitution the phrase "the powers and duties of the office shall devolve upon the Lieutenant Governor," and they did so without having the opportunity to read this court's opinion in *Futrell*. The House Joint Resolution proposing amendment 6 was adopted on March 6, 1913, eighteen days before this court handed down the decision in *Futrell* on March 24, 1913.

Second, in deciding *Futrell*, this court was obviously concerned that the President of the Senate had never been elected by a direct statewide vote—he had been directly elected only by the voters of a local state Senate district. The opinion provides:

The central thought [of article 6, sections 12, 13, and 14] is, that the office of Governor is never to be filled at all except by the direct

vote of the people themselves, and provision is made by the Constitution for only a temporary devolution of the duties and emoluments of the office upon \*195 some other functionary while a vacancy exists.

107 Ark. at 394, 155 S.W. at 505. Under amendment 6, section 2, the Lieutenant Governor is now an elected by a direct statewide vote of the people at the same time and for the same term as the Governor.

An equally important distinguishing factor is that today, under amendment 6, section 2, the Lieutenant Governor is a member of the executive branch of the government, but under article 6, as interpreted in *Futrell v. Oldham*, the President of the Senate was a member of the legislative branch and remained such while performing the duties of governor only until an election could be called. The opinion provides:

So, if the person discharging for the time being the duties of Governor is still President of the Senate, he cannot be Governor. He may exercise the powers of the latter office—"exercise the office of Governor," as it is otherwise expressed in another section, but he does not fill the two offices.

107 Ark. at 391, 155 S.W. at 504.

Under amendment 6 we are not faced with the same problem. In fact, allowing the Lieutenant Governor to succeed to the Office of Governor eliminates the separation of powers and the dual office-holding problems. If the Lieutenant Governor were not to assume the Office of Governor, he would act as Governor and still preside over the Senate and have the power to cast votes in the event of tie votes. This mixing of executive and legislative powers is avoided when the Lieutenant Governor assumes the Office of Governor and sheds the duties of Senate President. For these reasons, *Futrell v. Oldham* is distinguished.

Amendment 6, section 4 provides that if the Office of Governor becomes vacant, "the powers and duties of the office, shall devolve upon the Lieutenant Governor for the residue of the term." The next section of the amendment, section 5, provides that if the offices of both Governor and Lieutenant Governor become vacant, the President

(pro tempore) of the Senate "shall act as Governor until the vacancy [is] filled." Similarly, the Speaker of the House "shall act as Governor until the vacancy be filled" if the President of the Senate becomes unable to act as \*196 Governor. The difference in language suggests that the Lieutenant Governor, unlike the President (pro tempore) of the Senate or the Speaker of the House, does not merely act as Governor when the Governor resigns. Rather, it suggests that he becomes the Governor.

It is also of some persuasion that for nearly three-quarters of a century the executive branch has treated a lieutenant governor as governor when he filled a vacant governor's office. The first instance occurred in 1926 when Lieutenant Governor Harvey Parnell succeeded Governor John E. Martineau. *Historical Report of the Secretary of State--Arkansas* 230 (1978). It also occurred when Governor Dale Bumpers resigned from the Office of Governor and Lieutenant Governor Bob Riley was commissioned governor, as well as \*\*313 when Governor David Pryor resigned and Lieutenant Governor Joe Purcell was commissioned as Governor. See Commissions in Secretary of State's Office. In addition, we are persuaded that the drafters of amendment 6, and the voters who approved it, knew that article 6, section 2 would remain in place. It provides: "The supreme executive power of the State shall be vested in a chief magistrate, who shall be styled 'the Governor of the State of Arkansas.'"

Accordingly, we hold that amendment 6, section 4 provides that upon the resignation of the Governor, the Lieutenant Governor becomes "the Governor of the State of Arkansas."

One of the parties advanced the argument that amendment 29 of the Constitution of Arkansas requires the Lieutenant Governor to appoint a new governor. We summarily reject the argument and hold that amendment 6 specifically provides for filling a vacancy in the Office of Governor.

Affirmed on direct appeal and reversed on cross-appeal.

GLAZE and CORBIN, JJ., dissent in part and concur in part.

GLAZE, Justice, concurring in part and dissenting in part.

I concur in part and dissent in part. My disagreement with

the majority court has nothing to do with its holding on the merits. In fact, I totally agree with its decision as it pertains to the merits, but disagree that this court procedurally reached the merits.

This lawsuit is a declaratory judgment action and, as such, \*197 requires that a present actual controversy must exist. In stating this well-recognized principle, this court stated the following:

The Declaratory Judgment Statute is applicable *only where there is a present actual controversy, and all interested persons are made parties, and only where justiciable issues are presented.* It does not undertake to decide the legal effect of laws upon a state of facts which is future, contingent or uncertain. A *declaratory judgment will not be granted* unless the danger or dilemma of the plaintiff is present, not *contingent on the happening of hypothetical future events*; the prejudice to his position must be actual and genuine and not merely possible, speculative, contingent, or remote. (Emphasis added.)

*Andres v. First Ark. Development Finance Corp.*, 230 Ark. 594, 324 S.W.2d 97 (1959); *see also Files v. Hill*, 268 Ark. 106, 594 S.W.2d 836 (1980); *McFarlin v. Kelly*, 246 Ark. 1237, 442 S.W.2d 183 (1969).

Justice John A. Fogelman stated the following reason for the foregoing rule in a concurring opinion where he said:

The declaratory judgment act is not intended to be the vehicle for advisory opinions to persons not having a justiciable controversy with their apparent adversaries by a court having no jurisdiction. It is far better, in my opinion, that important questions, particularly constitutional ones, be pounded out on the anvil of advocacy by persons whose interests are vitally real, not academic, with all interested parties before the court.

*Block v. Allen*, 241 Ark. 970, 980, 411 S.W.2d 21, 27 (1967).

Let me first point out the obvious—Governor Bill Clinton is *not* a party to this declaratory judgment action. Second, nowhere in the record before this court is it shown that the Governor has resigned or that he intends to resign his office. In an attempt to circumvent this obvious procedural defect in parties and the record, the parties appear to rely upon the Democratic Party of Arkansas's brief wherein it argues as follows:

The fact that Governor Clinton's exact resignation date may not be known is not a bar to determining the \*198 succession issue. Governor Clinton cannot serve both as Governor and President. Article 6, Section 11 of the Arkansas Constitution provides that no "person holding office under the authority of this State, or of the United States, shall exercise the office of Governor, except as herein provided." Governor Clinton's resignation now that he has been elected President cannot \*\*314 be doubted. Governor Clinton will resign no later than January 20, 1993, in order to assume the Presidency. Thus, it is assured that there will be a vacancy in the Governor's office no later than 58 days after November 23rd. The resulting vacancy in the office of Governor is hardly the hypothetical fact situation feared by the courts.

The parties to this lawsuit *cannot* stipulate or assume how a person not a party or witness in this case might act in the future; namely, that Governor Clinton will vacate the Governor's office. The majority court is wrong in allowing the parties to make such a stipulation, especially when this factual issue could have been resolved by having made the Governor a party to this action and his resignation could then have been easily confirmed. Nor was the Governor deposed or called as a witness so the resignation issue could be put to rest. Clearly, Governor Clinton has an interest in this cause since this case affects not only his duties and responsibilities as governor, but also involves the emoluments he receives from that office. Until the Governor resigns, the succession issue presented in this cause remains purely hypothetical and contingent upon his vacating the office of Governor.

In an obvious attempt to avoid the Governor's absence in this lawsuit and to cure a record failing to reflect the Governor's resignation, the Democratic Party cites Article 6, Section 11 of the Arkansas Constitution which is captioned "Incompatible Offices" and provides, "No member of Congress, or other person holding office under the authority of this State, or of the United States, shall exercise the office of Governor, except as herein provided." In citing this constitutional language, the Party concludes the Governor's resignation now that he has been elected President cannot be doubted. Of course, this is an assumption or conclusion the parties to this action

are unable to make. Clearly, the above constitutional language does not mean Governor Clinton automatically resigns or vacates his office upon \*199 being sworn in as President. In addition, such dual officeholder issues are decided in quo warranto or ouster, not declaratory judgment, proceedings.

My natural inclination is much like the majority court's and the parties' to this case—that (1) the Governor likely will resign sometime prior to January 20, 1993, (2) a vacancy will then exist and (3) the succession problem will be a reality. However, to indulge in this assumption on the actual facts of this case is to ignore an entire body of law that provides this court only grants declaratory judgment relief when a *present actual controversy exists and all interested persons are made parties*. This court's apparent willingness to address the hypothetical facts present here breaks with clear, prior precedent and, in my view, will permit parties henceforth to stipulate to future facts and events in order to obtain declaratory relief and advisory opinions. This court, instead, should require the presence of Governor Clinton in this lawsuit either as a party or a witness, so a finding as to his resignation from or vacating of office can be established. Only then will an actual controversy exist, allowing this court to decide the succession issue.

One last point—the Democratic Party, recognizing justiciability as a problem, asserts this court nevertheless can declare the law concerning the Governor-succession issue because this is a case of extreme public importance. In support of this assertion, it cites *Robinson v. Arkansas Game and Fish Commission*, 263 Ark. 462, 565 S.W.2d 433 (1978); *Moorman v. Taylor*, 227 Ark. 180, 297 S.W.2d 103 (1957); and *Rockefeller v. Purcell*, 245 Ark. 536, 434 S.W.2d 72 (1968). Suffice it to say, each of these cases, unlike the present case, once involved a justiciable controversy, but the actual controversy later became moot for one reason or another. Here, as already discussed, an actual controversy is yet to occur. The cases cited are simply not on point.

For the reasons above, I would reverse.

CORBIN, J., joins.

All Citations

311 Ark. 187, 843 S.W.2d 308



114 Cal. 168  
Supreme Court of California.

PEOPLE ex rel. LYNCH  
v.  
BUDD, Governor.

S. F. 600.  
|  
Sept. 3, 1896.

In bank. Application on relation of John C. Lynch against James H. Budd, governor, for a writ of mandate. Denied.

West Headnotes (1)

[1] Public Employment

↔Term of person filling vacancy  
States

↔Term of office, vacancies, and holding over

Under Const. art. 5, § 15, providing that a lieutenant governor shall be elected at the same time and places as the governor, and Const. art. 5, § 8, authorizing the governor, when a vacancy occurs in any office for the filling of which no provision is made by the constitution, to fill such vacancy by granting a commission, which shall expire at the end of the next legislature, or at the "next election by the people," one appointed by the governor to fill a vacancy in the office of lieutenant governor for the filling of a vacancy in which there is no special constitutional provision will hold office till the next gubernatorial election.

22 Cases that cite this headnote

Attorneys and Law Firms

\*\*1060 \*168 J. J. De Haven, for petitioner.

W. W. Foote and Garret W. McEnerney, for respondent.

Opinion

TEMPLE, J.

This is an application for a writ of mandate to compel the governor to include in his proclamation \*169 for the coming election a call to fill the office of lieutenant governor for the unexpired term of Spencer G. Millard, deceased. Respondent has filled the vacancy caused by the death of the lieutenant governor by the appointment of William T. Jeter, who has duly qualified.

In this case both parties concede—as, indeed, the exigencies of each require him to do—that the vacancy caused by the death of Millard was one which the governor had the power to fill. If there can be question of the power of the governor in this respect, therefore, we have not considered it. And no question has been made, nor have we considered, whether a mandate will issue to compel the chief executive to perform an act which, if it be his duty to perform, is enjoined upon him by the constitution as the executive, nor whether he can be compelled to perform any public duty at the instance of one who has no vested right to have it performed, nor any interest special to himself, or other than that which every citizen has in its performance; or, rather, we have not considered whether to issue the mandate asked for would trench upon the province of the executive.

The constitution provides (section 3, art. 4) that members of the assembly shall be elected in 1880 and biennially thereafter. Section 2, art. 5, provides that the governor shall be elected 'at the time and places of voting for members of assembly, and shall hold his office for four years from and after the first day of January subsequent to his election.' Section 15, art. 5, is as follows: 'A lieutenant-governor shall be elected at the same time and places, and in the same manner, as the governor; and his term of office and his qualifications of eligibility shall also be the same. He shall be president of the senate, but shall have only a casting vote therein. If, during a vacancy of the office of governor, the lieutenant-governor shall be impeached, displaced, resign, die, or become incapable of performing the duties of his office, or be absent from the state, the president pro \*170 tempore of the senate shall act as governor until the vacancy be filled or the disability shall cease. The lieutenant-governor shall be disqualified from holding any other office, except as specially provided in this constitution, during the term for which he shall have been elected.' And in the following section it is provided that in case of the death, resignation,

impeachment, absence from the state, or inability to act of the governor, 'the powers and duties of his office shall devolve upon the lieutenant-governor for the residue of the term, or until the disability shall cease.' It will be seen that in case of a vacancy in the office of governor the vacancy is not to be filled, but the powers and duties devolve upon the lieutenant governor, who does not cease to be lieutenant governor. Under such circumstances it would hardly be contended that when the powers and duties of the governor devolve upon the lieutenant governor the latter thereby becomes governor, and can appoint a lieutenant governor. Nor do I think it could be contended that when the president pro tempore of the senate acts as governor he could appoint a person to fill the vacancy in the office of lieutenant governor. If he could, he would then appoint himself out of office, and it would be his duty to do so.

But it is conceded by the parties that upon the death of the lieutenant governor the governor may fill the vacancy by appointment. This is unmistakably within the language of section 8, art. 5, which reads as follows: 'When any office shall from any cause become vacant, and no mode is provided by the constitution and law for filling such vacancy, the governor shall have the power to fill such vacancy by granting a commission, which shall expire at the end of the next legislature or at the next election by the people.' An office has become vacant, and there is no other mode provided by the constitution or laws to fill it. 'The next election by the people' does not mean the \*171 next general election or the next election held by the people, but it must mean that the appointee shall hold until some one has been elected to fill that office. But there is nothing in this provision which indicates when this election shall be held, but only that until some one has been elected to fill the vacancy the appointee shall hold. This section does not direct that such election shall be at the next general election. It provides simply for filling vacancies by appointment, and that such appointees shall hold until the office is filled in the manner provided by law; but does not itself provide for such election or direct when it shall be. If, however, the phrase 'the next election by \*\*1061 the people' is equivalent to the phrase 'the next election,' and we assume that it was intended thereby to indicate the election at which such vacancy would be filled, we would feel compelled to hold that the next election is that which the constitution has provided for filling that particular office; that is, the next gubernatorial election. Many authorities may be cited in support of this proposition. In *Matthews v. Shawnee Co.*, 34 Kan. 606, 9 Pac. 765, the governor appointed a judge to fill a vacancy. The constitution provided for an appointment to fill the vacancy until the next regular election. Upon a contest the supreme court said: 'The words 'regular election' do not necessarily mean general

election, or township election, or any state, county, city, or district election. They simply mean the regular election prescribed by law for the election of the particular officer to be elected.' *State v. Philips*, 30 Fla. 579, 11 South. 925, involved a municipal office. The court said: 'When it is declared that the city council shall fill vacancies until the next regular election, it means until the next regular election provided by the charter for electing the officer whose term has become vacant.' To the same effect are *State v. Gardner*, 3 S. D. 553, 54 N. W. 606; *Sawyer v. Haydon*, 1 Nev. 75; \*172 *People v. Wilson*, 72 N. C. 155; *State v. Cobb*, 2 Kan. 32; and *People v. Mathewson*, 47 Cal. 442. The effect of these decisions is that the term 'next election' means the next election for a lieutenant governor, and that the language used in section 8 cannot be understood as itself directing that at the next succeeding general election the vacancy shall be filled.

Is an election at that time authorized by any law? The constitution contains no provision for holding an election for filling this vacancy, and is silent as to whether the appointee shall hold for the residue of the term. And this is more noticeable because as to some other officers there are explicit directions upon the subject. In regard to justices of this court and judges of the superior court, it is expressly provided that in case of a vacancy the appointee shall hold until the election and qualification of a successor, 'Which election shall take place at the next general election.' Sections 3, 5, art. 6. In regard to railroad commissioners, the provision is that the appointee shall hold office for the residue of the unexpired term. The constitution is equally silent in regard to filling vacancies in other executive offices. A similar state of things existed under the constitution of 1849, and the legislature passed a law for filling such vacancies ('An act concerning offices;' April 28, 1851; St. 1851, p. 415). This act did not provide for the election of a lieutenant governor. Like the governor, he was required, in case of resignation, to resign to the legislature if that body was in session; if not in session, to the secretary of state. Such is also the requirement of the present code. Pol. Code, § 995. Like the old statute, the present code contains no provision in regard to an election to fill a vacancy in the office of lieutenant governor. As to other state officers, the provision is that they shall hold for the balance of the unexpired term. There has never been in the laws a provision for an election to fill a vacancy occasioned by the death or \*173 resignation of a lieutenant governor. Perhaps it was not supposed that such vacancy would ever be filled, even by appointment. At all events, there is no law, either constitutional or statutory, for such an election. In such case there can be no election. *People v. Weller*, 11 Cal. 49; *People v. Mathewson*, 47 Cal. 442; *Kenfield v. Irwin*, 52 Cal. 164. In *Sawyer v. Haydon*, 1 Nev. 75, it was said: 'We think no court or judge has gone so far as

to hold that the people might hold an election or vote for any particular officer at a general election, unless some special provision was made for electing such officer for the particular term for which he is seeking to be elected, either in the constitution or some statutory enactment.' This was also said in *People v. Mathewson*, 47 Cal. 442. The efficacy of an election depends upon the law in pursuance of which it is held, and the fact that an office is elective does not of itself, without some law authorizing and regulating the election, render valid any attempted election. The writ is therefore denied.

We concur: BEATTY, C. J.; McFARLAND, J.; VAN FLEET, J.; HARRISON, J.; HENSHAW, J.

GAROUTTE, J.

I concur in the judgment. The constitution provides that the powers and duties of the office of governor, in case of vacancy, shall devolve upon the lieutenant governor for the residue of the term, or until the disability shall cease. The constitution further provides that in case of a vacancy in both the office of governor and lieutenant governor the president pro tempore of the senate shall act as governor until the vacancy be filled. The constitution does not provide that the president pro tempore of the senate shall perform the duties of the office of lieutenant governor in case a vacancy exists in that office. And this omission to so provide is, to my mind, an unintentional lapse on the part of the framers of the constitution. Such appears to be plain when we consider that there is an express \*174 provision of that instrument casting upon the president pro tempore of the senate authority to perform the duties of the office of governor if there be no lieutenant governor, taken in connection with the many other provisions of that instrument which all point to that conclusion. But no authority is found in the constitution vesting the president pro tempore of the senate with the duties of the lieutenant governor when a vacancy occurs in that office, and hence any such question is foreclosed.

The foregoing conditions being present, a vacancy \*\*1062 occurred in the office of lieutenant governor upon the death of the incumbent, and the governor had the power to fill such vacancy by virtue of section 8, art. 5, of the constitution. That section reads as follows: 'When any office shall from any cause become vacant, and no mode is provided by the constitution and law for filling such vacancy, the governor shall have the power to fill such vacancy by granting a commission, which shall expire at

the end of the next legislature or at the next election by the people.' It follows that the result of this litigation in part rests upon the true construction of the words 'the next election by the people.' It is conceded by the present incumbent of the office that the next election by the people since his appointment will be the coming presidential election to be held in November, but he claims the words should be construed to mean 'the next election by the people at which a lieutenant governor is regularly to be elected.' If the framers of an instrument of the dignity and importance of a state constitution had intended such to be the law, it was easy for them to have said so, and they should have so declared in terms. And, in the absence of a declaration of that kind, I do not consider myself authorized to so interpret a phrase of that instrument; certainly not unless the intent of its authors to that effect is plainly apparent; and we look in vain for such intent. Upon a question of statutory construction it was said in *Blythe v. Ayres*, 96 Cal. 582, 31 Pac. 924: 'We are not here to construct \*175 a statute, but to construe a statute. We can neither interpolate nor eliminate, and we are bound to assume that the legislature enacted the law as it now stands with a due comprehension of the meaning of words, and of the rules of statutory construction, and that they incorporated into the act all that was intended, and that they intended that effect should be given to all that was found therein.' And that principle of construction applies with full force here. If any layman of ordinary intelligence, be he merchant, doctor, or mechanic, should have the question submitted to him as to the proper signification of the words here under consideration, to wit, the officer's commission shall expire 'at the next election by the people,' he would say without hesitation that the commission expired at the next general election. Such is the fair and legitimate construction of the language. There are some decisions of courts of other states which in a measure look in an opposite direction from the views here expressed. But these decisions are largely based upon provisions of law not identical with the one here involved. Many of those provisions use the term 'regular election,' and in such cases stress by the court is laid upon the word 'regular' as a most material element in arriving at the true construction of the language. Notwithstanding the foregoing construction of the constitutional provision is favorable to the petitioner, still the relief he asks must be denied. For, though the appointee's commission expire at 'the next election by the people,' still, in the absence of some law authorizing the election of a lieutenant governor at that time, no election can be held, and I find no such law. A provision of constitution or statute declaring a certain day upon which the commission of an officer shall expire is in no sense a provision that an election shall be held upon that day to fill the office. Under these

conditions the present appointee of the governor will hold until his successor is elected and qualified, regardless of the day \*176 upon which his commission may expire; and his successor can only be elected at a time fixed by law, which time will be at the regular state election in the year 1898.

**All Citations**

114 Cal. 168, 45 P. 1060

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34 Colo. 107  
Supreme Court of Colorado.

PEOPLE ex rel. PARKS  
v.  
CORNFORTH.

July 3, 1905.

In bank. Quo warranto by the people, on the relation of Fred W. Parks, against Arthur Cornforth, to determine the right of the respondent to hold the office of lieutenant governor. Judgment in favor of relator.

West Headnotes (3)

[1] States  
⇌Lieutenant Governor

Where, by the terms of the Constitution, the president pro tem. of the Senate did not become de jure Lieutenant Governor on the later becoming Governor, he could not become such by estoppel from acts of the party entitled to the office.

4 Cases that cite this headnote

[2] States  
⇌Lieutenant Governor

1 Mills' Ann.St. § 1767, provides that whenever, by the resignation of the Governor, the powers and duties of his office shall devolve on the Lieutenant Governor, the Governor's salary shall cease, and the same shall be received by the Lieutenant Governor, and during the time that the Lieutenant Governor shall act as Governor "all the duties and powers of the Lieutenant Governor shall devolve on the president of the senate pro tem." Held, that the words quoted could not be construed as evidencing the intention of the framers of the Constitution that the president pro tem. of the

Senate should become de jure Lieutenant Governor on the Lieutenant Governor acceding to the office of Governor.

5 Cases that cite this headnote

[3] States  
⇌Lieutenant Governor

Const. art. 4, § 13, declares that in case of resignation of the Governor the powers, duties, and emoluments of the office for the residue of the term, or until the disability is removed, shall devolve on the Lieutenant Governor. Section 14 declares that the Lieutenant Governor shall be president of the Senate, and in case of the disqualification of the Lieutenant Governor, or when he shall hold the office of Governor, then the president pro tem. "shall perform the duties of the Lieutenant Governor until the vacancy is filled or the disability is removed"; and section 10, art. 5, provides that the Senate, at the beginning and close of each regular session, and at such other times as may be necessary, shall elect one of its members president pro tem. Held, that where, after the Lieutenant Governor became Governor, on the later's resignation respondent, who was then president pro tem. of the Senate, qualified as Lieutenant Governor, but at the close of the then regular session of the Legislature relator was elected president pro tem. of the Senate, to succeed respondent, who was still a senator, the later did not become Lieutenant Governor de jure during the remainder of the term, and the right to such office passed to relator on his election as president pro tem. of the Senate.

6 Cases that cite this headnote

Attorneys and Law Firms

\*108 \*\*872 John M. Waldron and Fred W. Parks, for relator.

N. C. Miller, Atty. Gen., Horace G. Lunt, O. B. Willcox, and McAllister & Gandy, for respondent.

### Opinion

GUNTER, J.

Original proceeding in the nature of quo warranto. The information alleges that respondent usurps the office of lieutenant governor of this state, asks a judgment of ouster, and that the relator be declared entitled to discharge the duties and receive the emoluments of that office. The facts are: March \*109 17, 1905, James H. Peobody, then governor for the term ending second Tuesday in January, 1907, resigned, and Jesse F. McDonald, then lieutenant governor, qualified as governor, and since has acted as such. March 18, 1905, respondent, a senator for the term ending first Wednesday in December, 1906, and president pro tem. of the Senate, qualified as lieutenant governor, and since has acted as such. April 3d, at the close of the regular session of the Legislature, beginning January 4, 1905, relator was elected president pro tem. to succeed respondent. Respondent is still a senator. There is no controversy but that respondent, as president pro tem. at the time the powers and duties of governor, through the resignation of Gov. Peobody, devolved upon Lieut. Gov. McDonald, was entitled to perform the duties of lieutenant governor. The question is whether such right ended with the election of relator as president pro tem. Relator insists that the duties in question are legally attached to the holder of the office of president pro tem. of the Senate, and whenever the term of office of such president expires such duties pass to his successor in office. Respondent contends that the holder of the office of president pro tem. at the time the lieutenant governor legally assumes the duties of governor, through a resignation of the governor, becomes legally invested with the title of lieutenant governor, and empowered to discharge the duties and receive the emoluments thereof for the remainder of the term for which the governor and lieutenant governor were respectively elected, and that this is true regardless of the fact that his term of office as such president pro tem. as well as senator may both expire before the termination of the residue of the gubernatorial term.

\*110 1. This question is determined by the construction of the following sections of our state Constitution:

'In case of the death, impeachment, or conviction of felony or infamous misdemeanor, failure to qualify, resignation, absence from the state, or disability of the governor, the powers, duties and emoluments of the

office, for the residue of the term or until the disability be removed, shall devolve upon the lieutenant governor.' Art. 4, § 13.

'The lieutenant governor shall be president of the Senate, and shall vote only when the Senate is equally divided. In case of the absence, impeachment or disqualification from any cause of the lieutenant governor, or when he shall hold the office of governor, then the president pro tempore shall perform the duties of the lieutenant governor, until the vacancy is filled or the disability removed.' Art. 4, § 14.

'The Senate shall, at the beginning and close of each regular session, and at such other times as may be necessary, elect one of its members president pro tempore.' Art. 5, § 10.

These sections, read together, provide that the Senate shall, at the beginning and close of each regular session, and at such other times as may be necessary, elect one of its members president pro tem., and that in case of the absence, impeachment, or disqualification from any cause of the lieutenant governor, or when the powers, duties, and emoluments of the office of governor devolve upon the lieutenant governor through the death, impeachment, or conviction of felony, or infamous misdemeanor, failure to qualify, resignation, absence from the state, or disability of the governor, the president pro tem. shall perform the duties of lieutenant governor until the cause preventing the lieutenant governor from discharging his official duties is removed. \*111 It thus appears that if the lieutenant governor fails to perform his duties for some temporary cause, as absence or sickness, the Constitution in terms provides that while such condition exists his duties shall be performed by the president pro tem. It is conceded by counsel for respondent that in such temporary contingency the president pro tem. does not become the lieutenant governor. The same language is used in devolving duties on the president pro tem. in the event the lieutenant governor is unable to perform his duties through those of the governor devolving upon him from some permanent cause as in this case, resignation of the governor. If the framers of our Constitution had intended that the president pro tem. of the Senate should become lieutenant governor de jure in the contingency under \*\*873 consideration, they could easily have said so. They have not so provided. They have simply said that if for some permanent cause the lieutenant governor fails to discharge his official duties they shall be performed while such condition obtains by the president pro tem. of the Senate as such.

The question under consideration was ruled in *State v. Heller*, 63 N. J. Law, 105, 42 Atl. 155, 57 L. R. A. 312.

Griggs, the governor of New Jersey, resigned before the expiration of his term. Vorhees, the then president of the state Senate, qualified as his successor. Later, before the expiration of the time for which Griggs had been elected, Vorhees resigned as a member of the state Senate. Immediately the speaker of the House qualified as governor, contending that the resignation of Vorhees as state senator terminated his right to officiate as governor. Vorhees claimed that, having been the legal successor of Griggs as governor at the time of the resignation, he thereby became the governor de jure for the remainder of the unexpired term of Griggs as governor, regardless \*112 of the expiration of his term as state senator. The question was determined by the construction of the following provision of the New Jersey Constitution: 'In case of the \* \* \* resignation \* \* \* from office of the governor, the powers, duties and emoluments of the office shall devolve upon the president of the Senate, and in case of his \* \* \* resignation \* \* \* then upon the speaker of the House of Assembly, for the time being, until another governor shall be elected and qualified.' The court, in ruling, said: 'It my judgment, the framers of the Constitution meant simply what they said-that in case the governor resigned the president of the Senate, as such, should have the powers and perform the duties of the office. Foster M. Vorhees did not become governor upon the resignation of Governor Griggs. He still continued to be a senator and president of the Senate. He could not resign the office of governor, which he never held. When he resigned and vacated the office of senator, he ceased to be president of the Senate, and could no longer exercise the functions pertaining to the executive department. Therefore upon his resignation as senator the powers, duties, and emoluments of the office devolved upon David O. Watkins, the speaker of the House of Assembly. He is de jure the speaker of the House, and of right as such speaker exercises the executive powers. He is not governor de jure or de facto in the constitutional sense of that term.' On page 110 of 63 N. J. Law, page 157 of 42 Atl. (57 L. R. A. 312) the court further said: 'It [New Jersey Constitution] declares that the powers, duties and emoluments of the office (governor) shall devolve on the president of the Senate. It does not confer upon him the title of the office. The president of the Senate exercise the powers of the governor; the president of the Senate performs the duties of the governor; the president of the Senate receives \*113 the emoluments of that office. he is still president of the senate, with the added duties required of the chief executive of the state imposed upon him. There is no language in the Constitution from which it can be reasonably inferred that his office of president of the Senate was to be vacated. He retains his office of senator; and as president of the Senate, and not as governor, he exercises the added powers, and performs the

superimposed duties.' The following cases are of service in construing the language under consideration: 'then the president pro tempore shall perform the duties of the lieutenant governor, until the vacancy is filled or the disability removed.' Section 13, supra. Carr v. Wilson (W. Va.) 9 S. E. 31-33, 3 L. R. A. 64; Tieman v. Haw, 49 Iowa, 315; State v. Byrne (Wis.) 73 N. W. 321. Such rulings upon similar provisions to some extent support the conclusion reached in State v. Heller, supra. See, also, 14 A. & E. Ency. of Law (2d Ed.) 1108. The principle of corporate law, which in effect declares that the right to hold a given corporate office is dependent upon a continued ownership of corporate stock-Oudin v. Conlan (Wash.) 75 Pac. 798-by analogy lends strength to the conclusion in State v. Heller. We conclude that respondent did not become Lieutenant Governor de jure by the duties of governor devolving upon Lieut. Gov. McDonald through the resignation of Gov. Peabody, and that by the election of relator as president pro tem., respondent, being no longer president pro tem., lost his right to perform the duties of lieutenant governor, and relator by such election became entitled to perform the duties of such office.

\*114 2. As contra the conclusion we have reached respondent has cited Merriman v. Clinch, 6 Blatchf. 5, Fed. Cas. No. 9,460; People ex rel. Church v. Hopkins, 55 N. Y. 74; Chatterton v. Grant (Wyo.) 73 Pac. 470; Chadwick v. Earhart, 11 Or. 389, 4 Pac. 1180. In Merriman v. Clinch, King, while holding the office of collector of customs, appointed Clinch as his deputy. King died, and Clinch for some time thereafter, under his appointment by King, and as authorized by the statute, performed the duties of the office of collector. The administrator of King sued to recover of Clinch the fees and salary of the office of collector of customs, which had come into his hands as deputy collector after the death of King and before his successor was appointed. The court held that the administrator had no claim upon the fees and salary of the office of collector accruing after the death of King. In Church v. Hopkins, Miller, superintendent of the insurance department of the state of New York, resigned before the expiration of his term. Church had been appointed by Miller deputy superintendent, and was such at the time of his resignation. Church, under his appointment \*\*874 as deputy, and as authorized by statute, performed all the duties of superintendent. He sued to recover the salary as superintendent during the time he acted such. The court held him entitled to recover. In State ex rel. Chatterton v. Grant, Chatterton, secretary of state of Wyoming, became acting governor of that state on the death of the Governor. He continued also to perform the duties of secretary of state. He sued to recover salary as secretary of state and governor. He was permitted to recover. In Chadwick v. Earhart, Grover



resigned as governor before the expiration of his term of office. Chadwick, secretary of state for the same term, qualified \*115 as governor, and discharged the duties of that office and secretary of state until the expiration of the term for which he had been elected secretary of state, and the duties of governor for two days after the expiration of his term as secretary of state. A new governor and secretary of state had been elected. The secretary of state qualified, but exactly when does not appear, and the new governor failed to qualify during the first two days of his term, and during which time Chadwick, although his term as secretary of state had expired, continued to perform the duties of governor. Chadwick sued to recover the salary of governor for the entire time of his service as such, including the two days after the expiration of his term as secretary of state. The court held him entitled to recover. The Constitution of Oregon involved in the decision was that in the case of the removal of the governor from office or 'of his \* \* \* resignation \* \* \* the same shall devolve on the secretary of state.' The conclusion of the court that Chadwick was entitled to recover for the time he performed the duties of governor before the expiration of his term as secretary of state is not in conflict with our ruling here. The part of the decision holding that he was entitled to recover the salary of governor for the two days after the expiration of his term of office as secretary of state is against our conclusion here. The weight of the decision upon the latter point is to some extent impaired by the fact that the question received no attention in the brief of counsel for Chadwick, and but slight mention in the brief of adverse counsel. We decline, however, to follow this case as to the latter point decided therein for the reasons given in the earlier part of this opinion.

3. 1 Mills' Ann. St. § 1767, provides: 'Whenever by the impeachment of the governor, his removal from office, death or resignation, or absence \*116 from the state, the powers and duties of his office shall devolve upon the lieutenant governor, the salary of the governor shall cease, and the same shall be received by the lieutenant governor, as a full compensation for his services until such disability shall cease; and during the time that the lieutenant governor shall act as governor the duties and powers of the lieutenant governor shall devolve upon the president of the Senate pro tem., who shall receive the salary of the lieutenant governor during such term of service.' This statute enacted shortly after the adoption of the Constitution, respondent says, should be availed of in construing sections of the Constitution under consideration, and, if so availed of, shows by the use of the words 'duties and powers of lieutenant governor shall devolve upon the president of the Senate pro tem.,' that it was the intention of the framers of the Constitution that the president pro tem. should become de jure lieutenant governor. Such words are not so construed. The

Constitution of Nevada provides that when a vacancy occurs in the office of governor through any one of certain contingencies, 'the powers and the duties of the office shall devolve upon the lieutenant governor for the residue of the term, or until the disability shall cease.' In *State v. Sadler*, 23 Nev. 356, 47 Pac. 450, in construing this provision, the court said: 'If a vacancy occurs in the office of governor, the powers and duties of the office devolve upon the lieutenant governor. But there is no vacancy created thereby in the office of lieutenant governor. The officer remains lieutenant governor, but invested with the powers and duties of governor.' The provisions of the California Constitution are identical in terms with those of Nevada, and in \*117 *People v. Budd*, 114 Cal. 168, 45 Pac. 1060, 34 L. R. A. 46, the court said: 'Under such circumstances it would hardly be contended that when the powers and duties of the governor devolved upon the lieutenant governor the latter thereby becomes governor, and can appoint a lieutenant governor. Nor do I think it would be contended that when the president pro tem. of the Senate acts as governor he can appoint a person to fill the vacancy in the office of the lieutenant governor. If he could, he would then appoint himself out of office, and it would be his duty to do so.' See, also, *State v. McBride* (Wash.) 70 Pac. 26; *State v. Stearns* (Minn.) 75 N. W. 211. The statute does not, we think, enlarge the language of the Constitution, except as it provides for payment of the salary of the lieutenant governor to the president pro tem.; but, even if the language so used has the contended effect, it would not control what appears to us to be the clear meaning of the terms used in the Constitution.

4. It is contended that by certain acts officers of the executive department of the state government recognized respondent as lieutenant governor, and that this should have weight in construing the constitutional provisions in question. If there were the acts of recognition relied on in a doubtful question of construction, they should be considered, but not to control the plain terms of the Constitution.

5. It is further contended that certain \*\*875 acts of the relator, whereby it is said he impliedly recognized respondent as lieutenant governor, should estop him from making the contention he here presses. No act of the relator could compel us to declare respondent lieutenant governor de jure when under the Constitution he is not so.

Judgment will be entered enjoining respondent from performing the duties of lieutenant governor \*118 of this state, and declaring relator entitled, as president pro tem. of the Senate, to perform such duties.

People v. Cornforth, 34 Colo. 107 (1905)

81 P. 871

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**All Citations**

34 Colo. 107, 81 P. 871

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KeyCite Yellow Flag - Negative Treatment  
Distinguished by State ex rel. Ayres v. Gray, Fla., December 11, 1953  
97 Mont. 252  
Supreme Court of Montana.

STATE ex rel. LAMEY  
v.  
MITCHELL, Secretary of State, and six other  
cases.

Nos. 7306-7311, and 7313.  
|  
June 13, 1934.

Original separate mandamus proceedings by the State, on the relation of Arthur F. Lamey, J. W. Speer, Hugh R. Adair, W. R. Church, and Howard A. Johnson, and original separate mandamus proceedings by Frank A. Hazelbaker and H. R. Eickemeyer, against Sam W. Mitchell, Secretary of State.

Writs denied, and proceedings dismissed.

West Headnotes (8)

[1] **Mandamus**  
⇌Elections and Proceedings Relating Thereto

Mandamus held not to lie to compel Secretary of State to file primary nominating petitions of candidates for Governor and Lieutenant Governor, where, upon resignation of Governor, Lieutenant Governor assumed duties of Governor, since neither office was vacant (Const. art. 7, §§ 1, 14-16).

Cases that cite this headnote

[2] **Public Employment**  
⇌Occurrence and Existence; What Creates or Constitutes Vacancy

Office is not "vacant" when there is person

clothed with authority to perform its duties.

1 Cases that cite this headnote

[3] **States**  
⇌Lieutenant Governor

When Governor resigns or is permanently removed from office, there is no "vacancy" in office of Governor in sense that there is no one left with power to discharge duties imposed upon Governor, since Lieutenant Governor then acts as Governor and is empowered to perform duties of that office (Const. art. 7, § 14).

1 Cases that cite this headnote

[4] **States**  
⇌Lieutenant Governor

Lieutenant Governor upon happening of contingencies removing Governor from office is entitled to act as Governor, as against contention that, while also acting as Lieutenant Governor, he is holding two offices, since in absence of Lieutenant Governor, president pro tempore of senate performs duties of Lieutenant Governor until vacancy is filled or disability removed (Const. art. 7, §§ 1, 14-16).

1 Cases that cite this headnote

[5] **States**  
⇌Lieutenant Governor

Lieutenant Governor's acting as Governor upon Governor's resignation does not violate constitutional provision that all political power is vested in and derived from people, in that it deprives them of right to elect Governor, since people are presumed to know law and must be presumed to have chosen Lieutenant Governor

with knowledge that during term for which he and Governor were elected, Lieutenant Governor might be called upon to exercise powers of Governor for residue of term (Const. art. 3, § 1; art. 7, §§ 1, 14).

Cases that cite this headnote

1 Cases that cite this headnote

Attorneys and Law Firms

\*369 Howard Toole, of Missoula, H. C. Hall, of Great Falls, John B. Tansil, of Billings, and M. M. Duncan, of Virginia City, for relator Lamey.

[6] Public Employment

↔Term of person filling vacancy

States

↔Term of office, vacancies, and holding over

August Linn, of White Sulphur Springs, Charles Davidson, of Great Falls, and E. G. Toomey, of Helena, for relator Speer.

Word "term," within Constitution providing that under certain conditions duties and emoluments of office of Governor for residue of term shall devolve upon Lieutenant Governor, applies to office and not to incumbent thereof (Const. art. 7, § 14).

Hugh R. Adair and C. A. Spaulding, both of Helena, for relator Adair.

5 Cases that cite this headnote

Albert J. Galen, of Helena (Brown & Jones, of Billings, J. A. Poore, of Butte, W. J. Paul, of Deer Lodge, Earle Genzberger, of Butte, John L. Campbell, of Missoula, T. C. Busha, of Great Falls, Marron & Foor, of Wolf Point, Gilbert, Gilbert & McFadden, of Dillon, C. A. Linn, of White Sulphur Springs, Robert A. O'Hara, of Hamilton, and Loud & Choate and George W. Farr, all of Miles City, of counsel), for plaintiff Hazelbaker.

[7] Public Employment

↔Occurrence and Existence; What Creates or Constitutes Vacancy

States

↔Term of office, vacancies, and holding over

\*370 J. R. Wine, of Helena, for relator Church.

P. G. Greenan and La Rue Smith, both of Great Falls, for plaintiff Eickemeyer.

Upon resignation, death, or permanent removal of Governor, there is no "vacancy" in office of Lieutenant Governor who acts as Governor, since by assuming Governor's office, Lieutenant Governor does not vacate his office (Rev. Codes 1921, § 511; Const. art. 7, §§ 1, 14-16).

S. C. Ford, of Helena, Lloyd I. Wallace, of Polson, Clarence E. Wohl, of Hysham, Benjamin P. Harwood, of Billings, C. F. Holt, of Great Falls, and George W. Padbury, Jr., of Helena, for relator Johnson.

Raymond T. Nagle, Atty. Gen., and Enor K. Matson, Asst. Atty. Gen., for Mitchell, Secretary of State, in each of the cases.

2 Cases that cite this headnote

Opinion

McKINNON, District Judge (sitting in place of ANGSTMAN, Justice).

[8] Statutes

↔Legislative Construction

Legislative interpretation, though not binding on court, is entitled to consideration.

Relators ask for writs of mandate to compel the Secretary of State to file their primary nominating petitions and to print their names on the ballot for the primary election to be held July, 1934.

At the general election in 1932, Hon. J. E. Erickson and Hon. Frank H. Cooney were elected Governor and

Lieutenant Governor, respectively, of the state of Montana. On the 13th day of March, 1933, Erickson resigned. On the 6th day of June, 1934, the relators tendered to the Secretary of State their primary nominating petitions for the primary election to be held July 17, 1934, for the following offices, namely, for Governor, J. W. Speer, as Republican candidate; A. F. Lamey, as Democratic candidate. For Lieutenant Governor on the Republican ticket, Frank A. Hazelbaker and Howard A. Johnson; and on the Democratic ticket, Hugh R. Adair, W. Ray Church, and H. Eickemeyer. All these petitions were refused by the Secretary of State, and each candidate has asked that the Secretary of State be compelled to file his petition, and that his name appear on the ballot at the primary nominating election for the particular office above mentioned.

These six applications for writs of mandate were consolidated for the purpose of argument, and will be so treated in this opinion. One question is presented for decision, namely: Is there a vacancy in either the office of Governor or Lieutenant Governor?

Section 1 of article 7 of the Constitution provides: "The executive department shall consist of a governor, lieutenant-governor, secretary of state, attorney general, state treasurer, state auditor and superintendent of public instruction, each of whom shall hold his office for four years, or until his successor is elected and qualified. \*\*\* They shall perform such duties as are prescribed in this constitution and by the laws of the state. \*\*\*"

[1] It will be noted by the foregoing provision that the term of the Governor and the Lieutenant Governor is four years, or until their successor is elected and qualified. The word "term" applies to the office and not to the person. State ex rel. Kuhl v. Kaiser, 95 Mont. 550, 27 P.(2d) 1113; State ex rel. Morgan v. Knight, 76 Mont. 71, 245 P. 267.

Section 14 of article 7 reads: "In case of the failure to qualify, the impeachment or conviction of felony or infamous crime of the governor, or his death, removal from office, resignation, absence from the state, or inability to discharge the powers and duties of his office, the powers, duties and emoluments of the office, for the residue of the term, or until the disability shall cease, shall devolve upon the lieutenant-governor."

[2] It will thus be seen that when the Governor resigns or is permanently removed from office, there is no vacancy in the office of Governor in the sense that there is no one left with power to discharge the duties imposed upon the Governor. The same situation exists where the Governor is absent from the state or physically unable to discharge the duties of his office. The framers of the Constitution

never intended that there should be any interim in which the affairs of the state should not be executed, for they said in explicit language that on the happening of any of the contingencies mentioned in section 14, supra, the powers, duties, and emoluments of the office were to be immediately transferred to the Lieutenant Governor, who is then given a mandate to discharge the duties of the office for the residue of the term for which the Governor was elected. He, as Lieutenant Governor, acts as Governor and is empowered to perform the duties of that office.

[3] While the legislative interpretation is not binding on us, it is nevertheless entitled to respectful consideration. We find that as early as 1895 the Legislature of this state treated the Lieutenant Governor, when he performed the duties of Governor, as acting Governor. This is disclosed in section 132, Revised Codes of 1921, as follows: "When the lieutenant-governor acts as governor, he is entitled to receive during the time he so acts, the compensation which the governor, if acting, would be entitled to receive for such time; but during such time he is not entitled, as lieutenant-governor, to any other compensation or mileage."

[4] There can be no vacancy in an office when there is a person clothed with authority to perform its duties. In State ex rel. Chenoweth v. Acton, 31 Mont. 37, 77 P. 299, 300, the \*371 court, speaking through Mr. Commissioner Callaway, said: "The word 'vacancy,' as applied to an office, has no technical meaning. An office is not vacant so long as it is supplied, in the manner provided by the Constitution or law, with an incumbent who is legally qualified to exercise the powers and perform the duties which pertain to it; and, conversely, it is vacant, in the eye of the law, whenever it is unoccupied by a legally qualified incumbent, who has a lawful right to continue therein until the happening of some future event."

In State ex rel. Murphy v. McBride, 29 Wash. 335, 70 P. 25, 26, a Governor and a Lieutenant Governor were elected at the general election in November, 1900, for the term of four years. On December 26, 1901, the Governor died, and it was urged that there was a vacancy in the office of Governor and also in the office of Lieutenant Governor. The constitutional provision (art. 3, § 10) which was under consideration read as follows: "In case of the removal, resignation, death, or disability of the governor, the duties of the office shall devolve upon the lieutenant-governor, and in case of a vacancy in both the offices of governor and lieutenant-governor, the duties of governor shall devolve upon the secretary of state, who shall act as governor until the disability be removed or a governor be elected." It will be noted that this

constitutional provision does not provide that upon the resignation of the Governor, the Lieutenant Governor shall serve for the residue of the term. The court, in discussing the question of vacancy, said: "It is a well-settled rule that an office is not vacant so long as it is supplied, in the manner provided by the constitution or laws, with an incumbent who is legally authorized to exercise the power and perform the duties which pertain to it. \*\*\* The constitution having provided that in case of the death of the governor the duties of the office shall devolve upon the lieutenant governor, there is no vacancy in the office of governor. It is not necessary to discuss the meaning of the provision 'who shall act as governor until the disability be removed or a governor be elected,' because that provision, as used here, clearly refers only to the secretary of state, in case that officer should assume the duties of governor under the contingency named. What is said above applies equally to the lieutenant governor. When the lieutenant governor, by virtue of his office and of the command of the constitution, assumed the duties of governor on the death of Gov. Rogers, the office of lieutenant governor did not thereby become vacant, but the officer remained lieutenant governor, intrusted with the powers and duties of governor."

Our attention has been called to the language of this court in *State ex rel. McGowan v. Sedgwick*, 46 Mont. 187, 127 P. 94, in which it is stated that upon the resignation of the Governor, there is a vacancy in that office, but we do not consider it binding, for the reason that that was not the question under consideration in that case.

[5] It is urged that upon the happening of any of the contingencies mentioned in section 14, supra, the Lieutenant Governor by exercising the powers and duties of the Governor acts also as Lieutenant Governor, and that he cannot hold two offices. This argument is answered by section 15 of article 7 of the Constitution, as follows: "The lieutenant-governor shall be president of the senate, but shall vote only when the senate is equally divided. In case of the absence or disqualification of the lieutenant-governor, from any cause which applies to the governor, or when he shall hold the office of governor, then the president pro tempore of the senate shall perform the duties of the lieutenant-governor until the vacancy is filled or the disability removed."

The argument is also answered in the case of *State ex rel. Murphy v. McBride*, supra, in which the court says: "It is argued, however, that since it is made the duty of the lieutenant governor, under the constitution, to be presiding officer of the state senate (section 16, art. 3), and as such to approve all bills passed by that body, he must, as governor, review and approve or reject bills which as lieutenant governor he has already approved. These duties are, no doubt, inconsistent; but this

argument, we think, is fully met by another provision of the constitution, which provides, at section 10, art. 2, in substance, that when the lieutenant governor shall act as governor the senate shall choose a temporary president. The lieutenant governor, therefore, when the duties of governor devolve upon him, is relieved of the duties of presiding officer of the senate." See, also, *Clifford v. Heller*, 63 N. J. Law, 105, 111, 42 A. 155, 57 L. R. A. 312; *Futrell v. Oldham*, 107 Ark. 386, 392, 155 S. W. 502, Ann. Cas. 1915A, 571.

When the framers of the Constitution provided for the election of a Governor and a Lieutenant Governor as members of the executive department of the state (section 1, art. 7), but conferred upon the latter no executive power or authority other than in the \*372 contingencies mentioned in section 14, supra, they manifested the intention that the people elect two qualified heads of that department—the one active, the other his lieutenant, ready at a moment's notice to assume the duties of the office, should his superior officer, for any reason, either temporarily or permanently, become unable to perform them. This to the end that the important functions of state government should not falter or halt for an instant.

[6] It cannot be said that this arrangement violates section 1 of article 3, to the effect that all political power is vested in and derived from the people, in that it deprives them of the right of electing a Governor; as the people are presumed to know the law and are certainly conversant with human frailty, they must be presumed to have chosen a Lieutenant Governor with the knowledge that, at any time during the term for which he and the Governor were elected, he might be called upon to exercise the powers and discharge the duties of governor "for the residue of the term."

[7] Neither do we think that upon resignation, death, or permanent removal of the Governor there is a vacancy in the office of Lieutenant Governor. In any such event he, as Lieutenant Governor, shoulders immediately the duties of Governor, and while "he holds the office of governor," the president pro tempore of the senate performs the duties which theretofore devolved upon the Lieutenant Governor. When the duties, powers, and emoluments of the office of Governor devolve upon the Lieutenant Governor, it cannot be said that he vacates his office of Lieutenant Governor, and, unless he does so, there is no vacancy in his office. Section 511, Rev. Codes 1921. His assumption of the duties of the office of Governor does not create, and neither can he make, a vacancy, as he is discharging the functions of Governor by the mandate of the Constitution, and that by reason of being Lieutenant Governor. If the framers of the Constitution had intended that there should be a vacancy in the office of Lieutenant Governor upon the resignation, death, or permanent

removal of the Governor, they could have easily said so. They chose, however, to say that upon the happening of either of those contingencies the Lieutenant Governor should assume the duties of the office and discharge them for the residue of the term.

It would be idle to say that upon the resignation of the Governor there was thereby created a vacancy in the office of Lieutenant Governor, in view of the specific language of sections 14 and 15, supra. If that be true, then the Lieutenant Governor, upon assuming the powers and duties of the Governor, would be entitled to appoint a Lieutenant Governor. In this manner he could divest the people of their representative chosen by the Legislature, namely, the president pro tempore, to preside during the absence of the Lieutenant Governor. In our opinion this was never contemplated and never intended by the framers of the Constitution, or the people who adopted it.

Then, again, if the Governor were absent from the state or unable temporarily to perform the duties of his office, it could hardly be argued that while the Lieutenant Governor was discharging the duties of the office of Governor, he could appoint a Lieutenant Governor. In

such a case the "disability" of the Governor may cease at any time, and he thereupon assumes the duties of his office.

[8] In view of the fact that it is our opinion that there is neither a vacancy in the office of Governor nor the office of Lieutenant Governor, other questions presented in these cases need not be considered.

The writs are denied, and the several proceedings dismissed.

CALLAWAY, C. J., and MATTHEWS and ANDERSON, JJ., concur.

STEWART, J., concurring in the result reached.

**All Citations**

97 Mont. 252, 34 P.2d 369



63 N.J.L. 105  
Supreme Court of New Jersey.  
STATE (CLIFFORD, Prosecutor)  
v.  
HELLER, Sheriff.  
Jan. 4, 1899.

*\*\*155 Syllabus by the Court.*

\*105 1. The legality of the proceedings at the trial of a prisoner convicted of a crime by a court of competent jurisdiction cannot be challenged or reviewed by habeas corpus.

2. On a writ of certiorari allowed with the writ of habeas corpus to bring up a warrant for the execution of the prisoner, purporting to be issued by the executive department of the state government under authority of the act of April 16, 1846, the court will adjudge whether such warrant is valid.

3. When the governor of the state resigns, the powers, duties, and emoluments of the office devolve, under the constitution, upon the president of the senate, but he does not thereby become the governor of the state in the constitutional sense. The president of the senate retains his office of senator, and as president of the senate he exercises the powers and performs the duties of the executive department.

4. When he resigns his office as senator, he ceases to be president of the senate, and thereupon the powers, duties, and emoluments of the executive office devolve in like manner upon the speaker of the house of assembly.

5. The granting of a reprieve and the fixing of a day for the execution of a convicted criminal is by the common law a judicial power, and cannot be exercised by the governor, or person administering the government, except in so far as it is expressly permitted by the constitution.

6. The constitution bestows upon the executive department the power to reprieve, but limits the exercise of that power to a period of 90 days after conviction, which means 90 days after sentence in the court below. As an incident to this granted power, the executive department may direct the execution to be proceeded with within the 90 days, and in that event the execution takes

place not by force of the executive warrant, but in virtue of the judgment of the court.

7. After the lapse of the 90 days, the power of the executive department in this respect ceases.

Application by Edward Clifford against William Heller, sheriff, for release on habeas corpus, and certiorari by Edward Clifford against the same defendant. Petitioner remanded.

West Headnotes (7)

[1] **Habeas Corpus**  
↔ Jurisdictional Defects

The legality of the proceedings at the trial of a person convicted of a crime by a court of competent jurisdiction cannot be challenged or reviewed by habeas corpus, since the statute provides that persons committed or detained by virtue of a final judgment of a competent tribunal of civil or criminal jurisdiction shall not be entitled to the writ.

6 Cases that cite this headnote

[2] **Constitutional Law**  
↔ Encroachment on Judiciary

The governor or person administering the state government, except in so far as permitted by the constitution, cannot grant a reprieve or fix a day for the execution of a convicted criminal, since it is a judicial power.

5 Cases that cite this headnote

[3] **Criminal Law**  
↔ Extent of Review as Determined by Mode Thereof

On a writ of certiorari allowed with the writ of habeas corpus to bring up a warrant for the execution of the prisoner, purporting to be issued by the executive department of the state government under authority of Act April 16, 1846, the supreme court will adjudge whether such warrant is valid.

2 Cases that cite this headnote

[4] **Pardon and Parole**  
↔Constitutional and statutory provisions

N.J.S.A.Const.1844, art. 5, § 9, empowering the executive department to grant a reprieve, to extend until the expiration of a time not exceeding 90 days after conviction, limits the time in which to act to 90 days after the conviction.

3 Cases that cite this headnote

[5] **Pardon and Parole**  
↔Reprieve

Under N.J.S.A.Const.1844, art. 5, § 9, bestowing on the executive department the power to reprieve, but limiting the exercise of it to 90 days after conviction, the executive department may direct the execution to be proceeded with within the 90 days, but in that event the execution takes place by virtue of the judgment of the court.

6 Cases that cite this headnote

[6] **States**  
↔Governor

Under N.J.S.A.Const. art. 5, § 12, providing that, when the governor of the state resigns, the powers, duties, and emoluments of the office shall devolve on the president of the senate, the

president retains his office as senator, and as president of the senate exercises the powers and performs the duties of the executive department.

11 Cases that cite this headnote

[7] **States**  
↔Governor

Where the governor of the state resigns, and thereby the duties and powers of the office are cast on the president of the senate in his capacity as president, the latter's resignation as senator also terminates his right to act as governor, so that, in such case, under N.J.S.A.Const. art. 5, § 12, the speaker of the house assumes the powers and duties of the governor.

10 Cases that cite this headnote

**Attorneys and Law Firms**

Warren Dixon and John P. Stockton, for prosecutor.

James S. Erwin and The Attorney General, for the State.

Argued November term, 1898, before DEPUE, VAN SYCKEL, and LIPPINCOTT, JJ.

**Opinion**

\*106 VAN SYCKEL, J.

Edward Clifford was convicted of murder in the first degree in the court of oyer and terminer of the county of Hudson, and sentenced by the said court on the 15th day of September, 1896. The proceedings at the trial were subsequently taken to the court of errors and appeals for review, and by the judgment of that court the judgment of the oyer and terminer was in all respects affirmed. Thereupon the court of oyer and terminer ordered the said Clifford to be executed on the 16th day of February, 1898. On the 14th day of February, 1898, Foster M. Voorhees, president of the senate of New Jersey, under his hand and the great seal of the state of New Jersey, directed the

sheriff of the county of Hudson to suspend the execution of said death sentence until the 16th day of March, 1898. Further proceedings were taken on behalf of Clifford in the federal courts, by which the execution of sentence was stayed until November 25, 1898, when David O. Watkins, speaker of the house of assembly of New Jersey, under his hand and the great seal of the state, suspended the execution of said sentence until the 6th day of January, 1899, and ordered the said Clifford to be executed on that day. Clifford is now before this court on habeas corpus, and at his instance a writ of certiorari was allowed to bring before the court the proceedings upon which the state claims to rest the order of David O. Watkins, the validity of which is controverted in this case.

Our habeas corpus act provides that the following, among other, persons mentioned shall not be entitled to prosecute such writ: "Persons committed or detained by virtue of the final judgment or decree of any competent tribunal of civil or criminal jurisdiction or by virtue of any execution issued upon such judgment or decree, unless such judgment or decree be founded upon contract." It is clear, therefore, that the legality of the proceedings at the trial of Clifford cannot be challenged or reviewed by writ \*107 of habeas corpus; and, if the case before us presented no other question, it would be the duty of the court to dismiss the writ as improvidently granted. But the return to the certiorari, and the facts agreed upon, present a question of great importance, in which the validity of the judgment of our courts is in no wise involved. That question is whether David O. Watkins had the power to order the execution of Clifford. If the warrant issued by him was unauthorized, \*\*156 it is the province and the duty of this court to intervene for the purpose of preventing an unlawful execution of the person condemned.

The admitted facts controlling this controversy are as follows: On the 31st day of January, 1898, John W. Griggs, then governor of New Jersey, filed in the office of the secretary of state his resignation as governor, to take effect at the termination of that day. Foster M. Voorhees was then president of the senate of New Jersey, being a senator from the county of Union. He thereupon took the oath, diligently, faithfully, and to the best of his knowledge to administer the government of the state in conformity with the powers delegated to him; which oath was filed in the office of the secretary of state on the 1st of February, 1898. On the 18th of October, 1898, Foster M. Voorhees filed in the office of the secretary of state a paper writing, of which the following is a copy: "State of New Jersey, Executive Department. To the Secretary of State, and to the Governor or Person Administering the Government: I hereby resign my commission as a member of the senate from the county of Union. Foster M. Voorhees." David O. Watkins was then a member of

the general assembly of the state of New Jersey from Gloucester county, and speaker of the house of assembly. \*108 On the 18th day of October, 1898, he filed in the office of the secretary of state an oath that he would diligently, faithfully, and to the best of his knowledge, administer the government of the state in conformity with the powers delegated to him. It is insisted on behalf of the prosecutor that when Foster M. Voorhees filed in the office of the secretary of state the oath before mentioned, he ceased to be a member of the senate, and became governor of the state for the term fixed by the constitution until another governor should be elected; that his resignation of his seat in the senate was unnecessary, and could not in any wise affect the tenure of his office as governor. To support this contention the well-settled rule laid down by Chief Justice Kirkpatrick in *State v. Parkhurst*, 9 N. J. Law, 446, is relied upon: "That, if a person holding an office be appointed to and accept another office incompatible therewith, such acceptance of the second is a virtual surrender of and vacates the first." The argument is that Foster M. Voorhees became governor of New Jersey, and ceased thereby to be senator without resigning the latter office; that his subsequent resignation of the senatorship did not operate as a resignation of his office as governor, or in any wise affect his right to hold said office, or his duty to execute its prescribed functions; that under the constitution the office of governor could become again vacant only by the death, resignation, or removal of Foster M. Voorhees, and, as neither of those contingencies has occurred, there was no vacancy in the office of governor by which David O. Watkins could succeed to that office.

Assuming the premises of the prosecutor to be entirely sound, it seems to result, not only that the resignation of the senatorship by Foster M. Voorhees did not vacate the office of governor, but that the resignation of the senatorship was equivalent to a declaration that he resigned that office, and elected to retain the office of governor, which he did not resign. It is well settled, both in England and in this country, that title to an office cannot be challenged on habeas corpus, or in \*109 any other collateral proceeding. Where the official is in possession of the office, and is executing its powers under color of title, he will be regarded at least as a *de facto* officer, and as to the public his official acts will be efficacious. That rule, so absolutely essential to the stability of government and the protection of the governed, should be recognized in its full force. The case sub judice is peculiar and novel. The situation is this: If Foster M. Voorhees, as president of the senate, was transferred by force of the constitutional provision to the office of governor, thereby vacating his office of senator, he is still governor of New Jersey, in full possession of the powers of the office, and under obligation to perform

its duties; and if he is governor de jure, in possession of the office, David O. Watkins cannot at the same time be governor de facto, and the warrant signed by him is without the slightest legal value. All that appears in the case before us is that Gov. Griggs resigned; that Foster M. Voorhees, president of the senate, took the oath before stated; that he subsequently resigned his office of senator; that David O. Watkins is speaker of the assembly, and that he took the oath set forth. No act appears on his part to show that he is governor de facto except the oath and the signing of the death warrant. If Foster M. Voorhees was governor, and his resignation of the senatorship was not a vacation of his office as governor, he must still be governor, nothing appearing before us except his resignation as senator to show that he is not still acting and claiming to act as governor. We are constrained, therefore, to resort to an interpretation of the provisions of our state constitution touching this subject, to determine whether David O. Watkins had the right, either de jure or de facto, to do the act which has given rise to this litigation.

The clause of the constitution which provides for the vacancy in the office of governor is as follows: "In case of the death, resignation or removal from office of the governor, \*110 the powers, duties and emoluments of the office shall devolve upon the president of the senate, and in case of his death, resignation or removal, then upon the speaker of the house of assembly, for the time being, until another governor shall be elected, and qualified; but in such case another governor shall be chosen at the next election for members of the legislature, unless such death, resignation or removal shall occur within thirty days immediately preceding such next election, in \*\*157 which case a governor shall be chosen at the second succeeding election for members of the legislature. When a vacancy happens, during the recess of the legislature, in any office which is to be filled by the governor and senate or by the legislature in joint meeting, the governor shall fill such vacancy and the commission shall expire at the end of the next session of the legislature unless a successor shall be sooner appointed; when a vacancy happens in the office of clerk or surrogate of any county, the governor shall fill such vacancy, and the commission shall expire when a successor is elected and qualified." Article 5, cl. 12. In construing this clause of the constitution it must be borne in mind that it was carefully drawn by learned jurists, who knew how to express with exactness and precision the purpose they had in view. The provision is that, in case of the resignation of the governor, the powers, duties, and emoluments of the office shall devolve upon the president of the senate, and not that the president of the senate shall thereby become governor, and hold the title and the office until another governor is elected. If the framers of the fundamental law had intended to transfer the president of

the senate to the executive chair, and thereby to vacate his office of senator, it is reasonable to believe that they would have said so in no uncertain language. The language used is not ambiguous. It declares that the powers, duties, and emoluments of the office shall devolve on the president of the senate; it does not confer upon him the title of the office. The president of the senate exercises the powers of the \*111 governor; the president of the senate performs the duties of the governor; the president of the senate receives the emoluments of that office. He is still president of the senate, with the added duties required of the chief executive of the state imposed upon him. There is no language in the constitution from which it can reasonably be inferred that his office of president of the senate was to be vacated. He retains his office of senator; and as president of the senate, and not as governor, he exercises the added powers and performs the superimposed duties. That such is not only the ordinary acceptation and the reasonable interpretation of the language employed, but also the intention of those who framed this clause, is evinced in other parts of the organic law. In clauses 9 and 10 of article 5 and clauses 2 and 3 of article 8 this language appears: "The governor or person administering the government." Why is this language so sedulously used throughout the constitution? If the president of the senate becomes governor, and ceases to be senator, he is fitly and accurately described in all those clauses by the word "governor," and therefore the words "person administering the government" are not only unnecessary and superfluous, but misdescriptive. The words "person administering the government" were inserted advisedly to describe the president of the senate who might be called upon to administer the government, but who would not thereby become or be governor; and, in the absence of that language, would not be subject to the clauses referred to. Again, article 3 of the constitution provides as follows: "The powers of the government shall be divided into three distinct departments, the legislative, executive and judicial; and no person or persons belonging to or constituting one of these departments, shall exercise any of the powers properly belonging to either of the others, except as herein expressly provided." \*112 What is the significance of the words in this clause, "except as herein expressly provided"? What powers belonging to one department of government were there which it was expressly provided in the constitution might be exercised by one of the other departments? The framers of this article said by this exception, in unmistakable language, there are some powers belonging to one department of the government which it is expressly provided in this constitution shall be exercised by a person or persons belonging to one of the other departments. In the constitution we find such a provision, and it is the only

one in the constitution except the power to reprieve. That provision is the one before referred to in clause 12 of article 5, which provides that the president of the senate, or, in case of his death, resignation, or removal, the speaker of the house, shall exercise the powers of the executive department of the government in the contingency therein specified. It must, therefore, have been the understanding and intention of the constitution makers that the executive powers to be exercised by a member of the legislative department were to be exercised in the capacity of a legislator, and that made the exception in article 3 a necessary provision.

But it is argued that the president of the senate is a judge of the court of impeachment, and may try himself if he is impeached, and pardon himself if convicted. This is clearly a misconception of the situation. As president of the senate he performs the duties of the chief executive, and any malfeasance in that respect is as much a violation of his duty as a senator and as president of the senate as malfeasance in his purely legislative action would be. If impeached, it would be as a senator, and not as governor. He would be tried by the senate, which is the trial court in all cases of impeachment. While there is no express provision in the constitution that a member of the senate shall not sit as a judge on his own trial if impeached, he is nevertheless incompetent, and would be excluded. The principle \*113 that a man shall not be a judge in his own case is accepted universally by judicial tribunals. It is a rule of such fundamental character that it is deemed essential to the well-being of society, and underlies the organic law itself. If any doubt could arise upon this point, a reference to \*\*158 section 3 of article 6 of the constitution should set it at rest. That section provides that all impeachments shall be tried by the senate, and that the members of the senate, when sitting for that purpose, shall each take an oath "truly and impartially to try and determine the charge in question according to evidence." It would be the sublimity of folly to attempt to bind a senator by such an oath when he was sitting in his own case. If the president of the senate was impeached and convicted, he would cease to be senator, and thereupon the powers of the executive would devolve upon the speaker of the house. The fact that the president of the senate exercises both legislative and executive functions in the view herein taken can have no significance in this discussion, when we advert to the fact that under the first state constitution the governor was not only the chief executive, but he was also president of the legislative council, with a casting vote, and presiding judge of the highest court in the state. The powers of government were more wisely distributed by the constitution of 1844, in which, by article 3, a member of one department could not exercise a power belonging to either of the others, except in the instances where the office of governor

became vacant, and the power to reprieve was granted. If anything is needed to establish the correctness of this view, it is found in clause 13 of article 5, which reads as follows: "In case of the impeachment of the governor, his absence from the state or inability to discharge the duties of his office, the powers, duties and emoluments of the office shall devolve upon the president of the senate; and in case of his death, resignation or removal, then upon the speaker \*114 of the house of assembly for the time being, until the governor absent, or impeached, shall return or be acquitted, or until the disqualification or inability shall cease, or until a new governor be elected and qualified." In case of the absence of the governor from the state, precisely the same language is used as in clause 12 in relation to his resignation of the office, and it must necessarily receive the same interpretation. In case of his absence from the state, "the powers, duties, and emoluments of the office shall devolve upon the president of the senate until the governor returns." Will it be seriously contended that, when the governor goes out of the state, the president of the senate becomes governor until the duly-elected governor returns, and thereby vacates and loses his office as senator? That such an interpretation of this language would be adopted could not have been within the contemplation of the able men who incorporated it in this clause relating to a matter of supreme importance. It is true construction, then, when the senate was composed of 10 members of one party and 11 of the other, the governor of the state, by the simple device of passing into an adjoining state, could have vacated the seat of one senator, and thus have deprived the opposing party of a majority in that branch of the legislature. In my judgment, the framers of the constitution meant simply what they said,—that, in case the governor resigned, the president of the senate, as such, should have the powers and perform the duties of the office. Foster M. Voorhees did not become governor upon the resignation of Gov. Griggs. He still continued to be a senator, and president of the senate. He could not resign the office of governor, which he never held. When he resigned and vacated the office of senator, he ceased to be president of the senate, and could no longer exercise the functions pertaining to the executive department. Therefore, upon his resignation as senator, the powers, duties, and emoluments of the office devolved upon David O. Watkins, the speaker of the house of assembly. \*115 He is de jure the speaker of the house, and of right, as such speaker, exercises the executive powers. He is not governor, either de jure or de facto, in the constitutional sense of that term. The act of 1898 cannot, in any respect, affect this controversy.

The question, therefore, remains to be considered whether the issuing of the warrant for the execution of Clifford was a valid exercise by David O. Watkins of the powers

committed to him as speaker of the house of assembly? By the common law, where the judgment was pronounced in the oyer and terminer, a precept for execution was issued to the sheriff in the name and under the hands and seals of the three commissioners before whom judgment was given; but the precepts by justices of the jail delivery need not have been otherwise than by a simple award upon the roll. In later times there was no more done, but, after judgment was entered, the judges subscribed a calendar in paper directing the several judgments of deliverance to the parties acquitted, or the execution of the parties condemned, of which the sheriff was required to take notice openly in court. 2 Hale, P. C. p. 409. It is also quite clear that by the common law the time and place of execution were not named in the sentence; it was left to the judgment and discretion of the sheriff. The execution of the prisoner was directed by the words "sus. per coll." written against his name in a calendar prepared for the purpose. Mr. Chitty says: "The practice of the present day at the assizes is that, when all the other public business of the court is terminated, the clerk makes out in writing four lists of prisoners in the separate columns containing their crimes, verdicts, and sentences, and a blank column, in which the judge writes his pleasure respecting those capitally convicted as to be executed, respited, or transported. If the sheriff receives no special order from the judge, he executes the judgment of the law in the usual manner, according to the directions of the calendar." 1 Chit. Cr. Law, 781. \*\*159 \*116 The only instance of a warrant from the crown was in the case of high treason, where a peer of the realm was tried before parliament. Where all the rest of the judgment save the beheading was pardoned, the execution was to be under the great seal. 3 Co. Just. p. 31; 2 Hale, P. C. pp. 409-412. In felonies we think it clear that the direction for the execution of the sentence was a judicial act, for these reasons: First, that the judgment of the court was a sufficient warrant; and, secondly, issues extraneous of those raised at the trial might be raised in suspension of the sentence, which required a judicial determination,—as, for instance, where the convict is a female, she may plead that she is quick with child; and, second, if an allegation be made that since the conviction the accused has become insane. In both of these cases, as well as others, there is to be a judicial investigation. 4 Bl. Comm. 395. At common law, reprieve might be granted either by the king, under his power to pardon, or by the court; and every court which had power to award execution had power to grant a reprieve. This reprieve was simply a suspension of the sentence. In *Rex v. Harris*, 1 Ld. Raym. 482, "counsel urged that in criminal causes, where execution is deferred, it cannot be awarded without bringing the prisoner to the bar, to which Holt, C. J., agreed, and he cited Knightly's Case, who was indicted

for high treason, and, being arraigned at bar in the king's bench, confessed the indictment, and judgment of death was pronounced against him in Easter term, and execution was countermanded, so that Trinity term passed, and then in the long vacation they had designed to execute it, and upon that all the judges of England met to consider what could be done, and it was resolved by all that in regard a term had intervened without execution done it could not be awarded without bringing Knightly to the bar; and, per Holt, C. J., it would be the same thing if Trinity term had not passed, but only begun, so that Knightly was imprisoned \*117 until Michaelmas term, and in the meantime he obtained a pardon." In *Sir Walter Rawley's Case* the question was whether a privy seal was sufficient for execution. It was resolved on a conference between all the judges that the prisoner ought to be brought to the court, and then demanded if he could say anything, etc., and that it was not a legal course that he should be commanded by a privy seal or great seal to be executed without being demanded what he hath to say, etc. Hut. 21. If the governor can intervene and have execution by virtue of his warrant, the prisoner will be deprived of the right of a judicial determination of matters which in law are subjects of judicial cognizance. If the order which shall carry the judgment of the court into effect is one within judicial control,—as we deem it to be,—then the several constitutional provisions are to be considered. By the constitution of 1776 the governor had no power to pardon or to grant reprieve. Whatever power there was in that respect was vested in the governor and council; that is the court of appeals.

Under the power to pardon at common law the power of the king to reprieve was included, and the power of reprieve was not vested in the governor, but in the governor and council. By the act of November 16, 1820, the governor, with the advice of his privy council, had power to suspend execution of the sentence of death until the rising of the next meeting of the governor and council. By the act of 1821, where such a reprieve was granted, and a pardon was not granted at the next meeting, it was made the duty of the governor and council to appoint a time for the execution of the criminal. *Elmer's Dig.* p. 118. By the constitution of 1844 the executive, with the concurrence of the chancellor and of the six judges of the court of appeals, or a major part of them, may grant pardons after conviction (article 5, cl. 10); and by article 5, cl. 9, the executive was \*118 given power to grant reprieve to extend until the expiration of a time not exceeding 90 days after conviction. By the act of April 16, 1846, it is provided that, where a reprieve is granted by the governor, the governor shall issue his warrant to the sheriff of the proper county, commanding him to execute the sentence at such time as shall therein be appointed and expressed. Revision, p. 290, § 123. Power



to reprieve is limited to a postponement of the execution for 90 days after the conviction; that is, after the sentence in the court below. By article 3 of the constitution of 1844, before set forth, the governor is prohibited from exercising any legislative or judicial power except as in said constitution is expressly provided. The express provision of the constitution on this subject, so far as concerns the executive, is that he shall have power to suspend the sentence of the court for a period not exceeding 90 days. The term "reprieve," as used both in the constitution and in the statute, is merely the postponement of the sentence for a time. It does not and cannot defeat the ultimate execution of the judgment of the court; it merely delays it. In the exercise of the power to reprieve for 90 days, which is the constitutional limit of that power, the governor has, as an incident to that power, the right to say that at the expiration of that time the sheriff shall no longer be stayed, but shall proceed to execute the judgment of the court. The reprieve, to be in proper form, should fix a day not exceeding 90 days from the sentence, when it shall expire, and direct the execution to be proceeded with at the expiration of that time. The execution takes place then, not by order of the governor, but in virtue of the judgment of the court. The governor simply says: "The prisoner is adjudged to be executed on a certain day. I direct the execution to be postponed until a future day specified, and then the execution is to be proceeded with." \*119 In *Ex parte Flemming*, 60 Miss. 910, \*\*160 the court said: "The power to respite necessarily carries with it the power to fix another and later day for the execution of the death sentence, since the respite is nothing more than a suspension of the sentence until its own expiration. The subsequent execution takes place, not by virtue of a new sentence, but by reason of

the expiration of the temporary suspension of the original sentence which was caused by the respite." *Sterling v. Drake*, 29 Ohio St. 457, is to the like effect. If there was a doubt in respect to the proper procedure in this respect, the long-continued practice of the executive department to make orders for the execution of sentences where there has been a reprieve will justify the construction that such orders may be issued, provided that the time for execution is not extended beyond the 90 days. That practice, commencing in 1853, has been pursued until the present time. The order certified into this court was made after the expiration of the 90 days, and is without any legal or constitutional warrant, and must be set aside. The order made in the case of *Martin* by Gov. Ludlow does not conflict with the views herein expressed. The reprieve and order were both within 90 days from the time of conviction, and, that time having elapsed, *Martin* was executed, not under the governor's warrant, but under an order made by the court of oyer and terminer. The traverse of the sheriff's return to the writ of habeas corpus must be stricken out, and the prisoner remanded. Let rules be entered accordingly.

DEPUE and LIPPINCOTT, JJ., concur.

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Office of the Attorney General

State of New York  
Formal Opinion  
August 2, 1943

**CONSTITUTION, ARTICLE III, SECTION 9; ARTICLE IV, SECTIONS 5 AND 3; PUBLIC OFFICERS LAW, SECTIONS 41, 42 AND 53.**

\*1 In the event of the death of the Lieutenant-Governor, no election may be held in order to fill that office. The New York Constitution makes express provision for the devolution of the duties but omits provision for any election to fill the office. Only if there be no Governor and no Lieutenant-Governor, is an election required by the Constitution to fill the Governor's office. Even then there is no provision for filling the office of Lieutenant-Governor.

Department of State

You have requested my opinion—whether you should certify that the office of Lieutenant-Governor of this State is to be filled at the next general election, in view of the recent death of the late Lieutenant-Governor, the Honorable Thomas W. Wallace.

The question is answered in the negative.

From the explicit language of the Constitution it is clear that, in the event of the death of the Lieutenant-Governor, no election may be held for the purpose of filling that office. Instead, a precise devolution of the functions of that office is provided. This is completely unlike the situation that obtains with the other statewide elective offices, such as the Attorney-General and the Comptroller. Only in the event that there be no Governor and no Lieutenant-Governor does the Constitution require an election to fill the office of Governor otherwise than in the regular gubernatorial election years. Even then there is no provision for filling the office of Lieutenant-Governor.

The succession to the Governorship has always received special treatment in the various Constitutions of the State. This special treatment not only maintains uninterrupted functioning of government but seeks to make certain that the State's Chief Executive be chosen only after opportunity for the full and free expression of the people's will. Thus great and fundamental State issues may receive the undivided attention of the people and the widest attendance at the polls.

This constitutional plan of succession is patterned after the Constitution of the United States.

The first Constitution of the State was adopted in 1777, before the adoption of the Constitution of the United States. It made provision for the election of a Lieutenant-Governor in the event of his death, resignation or removal. It provided (Art. XX): "That a lieutenant-governor shall, at every election of a governor, and as often as the lieutenant-governor shall die, resign, or be removed from office, be elected in the same manner with the governor, to continue in office until the next election of a governor; \* \* \*"

That very explicit provision was omitted from the Constitution of 1821.

The subsequent Constitutions of 1846, 1894 and 1938 have similarly omitted any provision for the election of a Lieutenant-Governor in the event of death, resignation or removal. It should be noted that these provisions of the Constitution which omitted this provision followed the adoption of the United States Constitution, which contained no provision for electing a Vice-President in the event of a vacancy in that office.

\*2 The plan under all the Constitutions of this State since the one of 1777 has been for a succession to the governorship or

lieutenant-governorship when either of those officers should die, resign or be removed, rather than elections to fill such offices, except when both the offices of Governor and Lieutenant-Governor are vacant. In 1847 the Legislature enacted a special law (ch. 303) requiring the election of a Lieutenant-Governor to fill a vacancy in that office. That law was never tested in the courts. In any event, it applied only to the election to be held in that year. In the same year, the general law on the subject of vacancies was amended by chapter 240 and expressly excepted the offices of Governor and Lieutenant-Governor.

The Constitution of 1894 (Art. IV, §§ 6 and 7) contained the following provisions on the subject:

“When lieutenant-governor to act as governor. § 6. In case of the impeachment of the Governor, or his removal from office, death, inability to discharge the powers and duties of the said office, resignation, or absence from the State, the powers and duties of the office shall devolve upon the Lieutenant-Governor for the residue of the term, or until the disability shall cease. But when the Governor shall, with the consent of the Legislature, be out of the State, in time of war, at the head of a military force thereof, he shall continue Commander-in-Chief of all the military force of the State.”

“Qualifications and duties of lieutenant-governor; succession to the governorship-§ 7. The Lieutenant-Governor shall possess the same qualifications of eligibility for office as the Governor. He shall be president of the Senate, but shall have only a casting vote therein. If during a vacancy of the office of Governor, the Lieutenant-Governor shall be impeached, displaced, resign, die, or become incapable of performing the duties of his office, or be absent from the State, the President of the Senate shall act as Governor until the vacancy be filled or the disability shall cease; and if the President of the Senate for any of the above causes shall become incapable of performing the duties pertaining to the office of governor, the Speaker of the Assembly shall act as Governor until the vacancy be filled or the disability shall cease.”

The references in section 7 to a vacancy were apparently to a vacancy in the office of Governor and the references to disability to a disability of the Lieutenant-Governor. (Lincoln's Constitutional History of New York, Vol. IV, p. 490).

It is thus seen that, under the Constitution of 1894, upon a vacancy occurring in the office of Governor, the duties of that office devolved upon the Lieutenant-Governor *for the remainder of the term*. It was only when a vacancy existed in *both* the office of Governor and Lieutenant-Governor that an election was to take place and then the election was to be of a Governor only. The use of the singular noun “vacancy” when vacancies would exist in both offices makes that entirely clear. There is thus no need for an election except when the office of both Governor and Lieutenant-Governor are vacant. Since there is no need for an election when the Governor dies, certainly there is no need for an election when the Lieutenant-Governor dies while the Governor still holds office.

\*3 In the revision by the Constitutional Convention of 1938, section 6 of Article IV was renumbered 5 and section 7 became section 6. The only other change in former section 6 was to delete the word “said”. The last sentence of former section 7 was divided into two sentences and amended to read:

“If the office of governor become vacant and there be no lieutenant-governor, such vacancy shall be filled for the remainder of the term at the next general election happening not less than three months after such vacancy occurs; and in such case, until the vacancy be filled by election, or in case the lieutenant-governor be under impeachment or unable to discharge the powers and duties of the office of governor or shall be absent from the state, the temporary president of the senate shall act as governor during such inability, absence or the pendency of such impeachment. If the temporary president of the senate shall be unable to discharge the power and duties of the office of governor or be absent from the state, the speaker of the assembly shall act as governor during such inability or absence.”

This amendment was obviously designed to clarify the former language and was made without any purpose to effect a change the plan of succession or the circumstances under which an election should take place. On that subject, the Chairman of the Committee on Governor and Other State Officers of the Constitutional Convention of 1938 said (Revised Record, Vol. III, p. 2523):

“We now come to Section 6. The change in this section deals with the succession in office of the Governor, and it has been made so that it will be a correct statement of succession. It is now provided that in the event a vacancy occurs in the office of Lieutenant-Governor, it should be filled by the President of the Senate. The Lieutenant-Governor is the President of the Senate, so that the language means nothing. We have redrafted the section so that it states the correct succession of officers.”

The 1938 revision removed any doubt that it is the office of Governor rather than that of Lieutenant-Governor that is to be filled in the case of vacancies in *both* the offices of Governor and Lieutenant-Governor and made it plain in even clearer language that it is only when there are vacancies in *both* offices that there is to be an election.

Any argument contrary to the conclusion which I have expressed must of necessity be based upon the general provisions of law relating to the filling of vacancies in office. The Constitution (Art. XIII § 8) provides as follows:

“The legislature shall provide for filling vacancies in office, and in case of elective officers, no person appointed to fill a vacancy shall hold his office by virtue of such appointment longer than the commencement of the political year next succeeding the first annual election after the happening of the vacancy.”

Pursuant to that direction, the Legislature has provided (Public Officers Law, § 42) that a “vacancy occurring before October fifteenth of any year in any office authorized to be filled at a general election, shall be filled at the general election held next thereafter, unless otherwise provided by the constitution, or unless previously filled at a special election.” That that provision was not intended to apply to the office of Governor or Lieutenant-Governor is made clear by other provisions of the Public Officers Law. Section 41 of that law provides:

\*4 “Vacancies filled by legislature. When a vacancy occurs or exists, other than by removal, in the office of comptroller or attorney-general, or a resignation of either such officer to take effect at any future day shall have been made while the legislature is in session, the two houses thereof, by joint ballot, shall appoint a person to fill such actual or prospective vacancy.”

That section from 1849 to 1926 also embraced all of the other effective State officers except Governor and Lieutenant-Governor, viz: Secretary of State, Treasurer and State Engineer and Surveyor, until such offices were abolished as elective offices. Section 42 of the Public Officers Law, as well as section 41, applies to the offices of State Comptroller and Attorney-General (1941 A. G. 250; *Matter of Moore v. Walsh*, 286 N. Y. 552). If the Legislature had intended that section 42 should apply to the office of Lieutenant-Governor, it naturally would have included that office in section 41 also. The omission shows recognition of the fact that death or disability of the Lieutenant-Governor was taken care of by the rule of succession contained in the Constitution itself.

Again, section 43 of the Public Officers Law provides:

“If a vacancy shall occur, otherwise than by expiration of term, with no provision of law for filling the same, if the office be elective, the governor shall appoint a person to execute the duties thereof until the vacancy shall be filled by an election. But if the term of such officer shall expire with the calendar year in which the appointment shall be made, or if the office be appointive, the appointee shall hold for the residue of the term.”

No one has ever claimed that this section conferred upon the Governor the power to appoint his own successor. Such a contention would lead to the anomalous result that a Governor by appointing a Lieutenant-Governor and then resigning could impose upon the people his own choice as their Governor. Yet there is no distinction in language between this section and section 42 of the Public Officers Law which provides for filling vacancies in other elective offices.

Section 9 of Article III of the Constitution contains the provision:

“and the senate shall choose a temporary president to preside in case of the absence or impeachment of the lieutenant-governor, or when he shall refuse to act as president, or shall act as governor.”

Under the constitutional plan, there is in no real sense a vacancy in the office of Lieutenant-Governor when the incumbent dies, for immediately and automatically, the Temporary President of the Senate succeeds to his duties as President of the Senate (Art. III, § 9, *supra*) and becomes authorized to act as Governor during a vacancy in that office or when the Governor is without the State (Art. IV, § 6, *supra*). In my opinion, the rule of succession which the Constitution prescribes was intended to be all-inclusive and to deny to the Legislature the authority to provide for the election of a Governor or

Lieutenant-Governor otherwise than provided by the Constitution itself.

\*5 The functions of the Lieutenant-Governor under the Constitution are (1) to exercise the powers and perform the duties of Governor when that office is vacant or the Governor is without the State, and (2) to preside over the Senate. The Constitution makes provision for the carrying out of both of those functions by others when there is no Lieutenant-Governor. There is thus no necessity or occasion for the election of a Lieutenant-Governor when that officer dies. The Constitution recognizes this not alone in the general succession plan which it sets up, but also by an explicit provision of section 6 of Article IV. When there is no Governor and no Lieutenant-Governor, express provision is made for an election to fill the vacancy in the office of Governor (*supra*, page 2). Yet even upon such election for Governor, no provision is made for the election of a Lieutenant-Governor.

The rule of succession under the New York Constitution is substantially the same as the rule of succession to the presidency and vice-presidency under the Federal Constitution and statutes. Section 5 of Article II of the Constitution of the United States provides:

“In Case of the Removal of the President from Office, or of his Death, Resignation, or Inability to discharge the Powers and Duties of the said Office, the same shall devolve on the Vice-President and the Congress may by Law provide for the Case of Removal, Death, Resignation or Inability, both of the President and Vice President, declaring what Officer shall then act as President, and such Officer shall act accordingly, until the Disability be removed, or a President shall be elected.”

Pursuant to that authority, the Congress has provided (U. S. Code, Title 3, § 21) for the succession to the presidency, in turn, of various members of the President’s cabinet.

The Federal Constitution further provides (Art. 1, § 3):

“The Vice President of the United States shall be President of the Senate, but shall have no Vote, unless they be equally divided.

The Senate shall chuse their other Officers, and also a President pro tempore, in the absence of the Vice-President, or when he shall exercise the Office of President of the United States.”

Significantly, no provision is made in either Constitution or statute for the election or appointment of a Vice-President and in the several instances in which Vice-Presidents have died in office (1853, 1875, 1885, 1899) no election has taken place or appointment been made.

In conclusion, it is apparent that the Constitution of this State makes express provision for the devolution of the Lieutenant-Governor’s duties but definitely omits provision for any election to fill the office. In fact, such a provision was contained in the first Constitution of 1777, and eliminated thereafter. Analysis of the statutes and analogies from the Federal Constitution also demonstrate that no election is proper. Moreover, the nature of the Lieutenant-Governor’s functions makes it inappropriate to attempt to fill the office otherwise than in the regular gubernatorial election years.

\*6 Without discussing any technical ground which might lead to the same result (see Election Law, §§ 69, 82, 319-f), it is my opinion that you should not certify that the office of Lieutenant-Governor is to be filled at the election to be held in November.

Nathaniel L. Goldstein

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1943 N.Y. Op. Atty. Gen. No. 378 (N.Y.A.G.), 1943 WL 54210

13 N.Y.3d 141  
Court of Appeals of New York.

Dean G. SKELOS et al., as Duly Elected Members  
of the New York State Senate, Respondents,  
v.  
David PATERSON, as Governor of the State of  
New York, et al., Appellants.

Sept. 22, 2009.

vacancy was to be dealt with, state Constitutional provision regarding vacancy of office of Lieutenant-Governor merely stated what was to occur while there was a vacancy and did not apply to fill or end a vacancy, and another Constitutional provision expressly contemplated that vacancies in elective office may be filled by appointment. McKinney's Const. Art. 4, § 6; McKinney's Const. Art. 13, § 3; McKinney's Public Officers Law § 43.

5 Cases that cite this headnote

### Synopsis

**Background:** State Senator brought action seeking declaratory judgment that Governor could not, consistent with the New York State Constitution, appoint putative nominee to office of Lieutenant-Governor, and for permanent injunction prohibiting Governor from appointing nominee or any other individual to that office. The Supreme Court, Nassau County, William R. LaMarca, J., 25 Misc.3d 347, 884 N.Y.S.2d 812, granted the Senator's motion for a preliminary injunction enjoining the nominee from exercising any of the powers of the office of Lieutenant-Governor. The Supreme Court, Appellate Division, 65 A.D.3d 339, 885 N.Y.S.2d 92, affirmed. Governor appealed.

**Holding:** The Court of Appeals, Lippman, Chief Judge, held that Governor had authority to fill vacancy in office of Lieutenant-Governor by appointment.

Reversed.

Pigott, J., filed opinion dissenting in which Graffeo and Smith, JJ., concurred.

### West Headnotes (1)

[1] States  
⇌ Lieutenant Governor

Governor had authority to fill vacancy in office of Lieutenant-Governor by appointment under public officers law for filling other vacancies; Lieutenant-Governor office was vacant, there was no other provision of law bearing upon how

### Attorneys and Law Firms

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Weil, Gotshal & Manges LLP, New York City (Caitlin J. Halligan, Gregory Silbert and Dotan Weinman of counsel), and Richard Briffault for Citizens Union of the City of New York and another, amici curiae.

Stroock & Stroock & Lavan LLP, New York City (Charles G. Moerdler, Alan M. Klinger, Jeremy S. Rosof and Benjamin I. Rubinstein of counsel), for United Federation of Teachers and others, amici curiae.

Skelos as a plaintiff in this action; however, Senator Espada did not file a brief on this appeal. We therefore refer to only one plaintiff for purposes of this opinion.

**\*146 \*\*1142 OPINION OF THE COURT**

Chief Judge LIPPMAN.

The issue on this appeal is whether the Governor of the State of New York has the authority to fill a vacancy in the office of Lieutenant Governor by appointment. We now hold that he does.

I.

In November 2006, Eliot Spitzer and David Paterson were elected respectively to the offices of Governor and Lieutenant Governor. On March 17, 2008, Governor Spitzer resigned and, pursuant to article IV § 5 of the New York Constitution, Lieutenant Governor Paterson became Governor. Fifteen months later, Republicans and Democrats split 31–31 in the Senate. Because each party recognized a different temporary \*147 president of the Senate, this political deadlock complicated the conduct of day-to-day business in the Senate chamber. Moreover, it was not clear which one of the rival temporary presidents stood next in the line of gubernatorial succession.

On July 8, 2009, Governor Paterson responded to this situation by appointing Richard Ravitch to the office of Lieutenant Governor. Pursuant to article IV, § 6 of the Constitution, the Lieutenant Governor presides over the Senate and casts a tie-breaking vote on certain procedural matters. Governor Paterson relied on section 43 of the Public Officers Law in making this appointment.

The following day, plaintiff Dean G. Skelos, a State Senator elected from the 9th Senatorial District, commenced this action for a declaratory judgment that the Governor's appointment of Mr. Ravitch was unconstitutional.<sup>1</sup> He also sought to permanently enjoin the Governor from appointing any individual to the office of Lieutenant Governor. Plaintiff then moved to preliminarily enjoin Mr. Ravitch from acting in the capacity of Lieutenant Governor. Supreme Court, Nassau County granted the preliminary injunction (25 Misc.3d 347, 884 N.Y.S.2d 812 [2009] ), and the Appellate Division, Second Department, affirmed (65 A.D.3d 339; 885 N.Y.S.2d 92 [2009] ). Thus, Mr. Ravitch has, to date, not presided over the Senate.

<sup>1</sup> Senator Pedro Espada, Jr. initially joined Senator

In assessing the likelihood of plaintiff's success upon the merits (*see* \*\*1143 *Doe v. Axelrod*, 73 N.Y.2d 748, 750, 536 N.Y.S.2d 44, 532 N.E.2d 1272 [1988] ), the Appellate Division held that

“the Governor's purported appointment of Mr. Ravitch was unlawful because no provision of the Constitution or of any statute provides for the filling of a vacancy in the office of lieutenant governor other than by election, and only the temporary president of the Senate is authorized to perform the duties of that \*\*\*848 office during the period of the vacancy” (65 A.D.3d at 348, 885 N.Y.S.2d 92).

The Appellate Division sua sponte granted the Governor leave to appeal from its order, and certified a question to this Court. We now reverse.

\*148 II.

The Governor has raised a threshold question as to Senator Skelos's standing to sue in light of the stringent criteria for legislator standing that we adopted in *Silver v. Pataki*, 96 N.Y.2d 532, 539–540, 730 N.Y.S.2d 482, 755 N.E.2d 842 [2001]. The parties do not dispute, however, that the public's interest is best served by resolving the constitutional issue presented by the Governor's action as expeditiously as possible. Accordingly, assuming, without deciding, that Senator Skelos presently has standing to sue the Governor, we now proceed to the merits (*see Matter of New York State Assn. of Criminal Defense Lawyers v. Kaye*, 96 N.Y.2d 512, 516, 730 N.Y.S.2d 477, 755 N.E.2d 837 [2001]; *Babigian v. Wachtler*, 69 N.Y.2d 1012, 1013, 517 N.Y.S.2d 905, 511 N.E.2d 49 [1987]; *Matter of Roman Catholic Diocese of Albany v. New York State Dept. of Health*, 66 N.Y.2d 948, 951, 498 N.Y.S.2d 780, 489 N.E.2d 749 [1985] ).

III.

Our State Constitution specifies that “[t]he legislature shall provide for filling vacancies in office” (N.Y. Const, art XIII, § 3 [emphasis supplied] ), and expressly contemplates that vacancies in elective office may be filled by appointment (*see id.*). In pursuance of the

constitutional mandate imposed by article XIII, § 3, the Legislature has enacted three comprehensive and complementary provisions, i.e., Public Officers Law §§ 41, 42 and 43. The first of these, titled “Vacancies filled by legislature” (emphasis supplied), prescribes the means by which vacancies in the offices of State Attorney General and Comptroller are to be filled. The second, titled “Filling vacancies in elective offices” (emphasis supplied), generally requires that such vacancies occurring before September 20th of any year in office be filled by means of election at the next general election, but, in the case of a vacancy in the office of United States Senator, requires, in certain circumstances, a temporary appointment by the Governor “to fill such vacancy” (see Public Officers Law § 42[4-a]). Notably, this section specifically excepts from its scope the elective offices of Governor and Lieutenant Governor. The last of these vacancy-filling provisions, section 43, the one upon which the Governor relied in his appointment of Mr. Ravitch, titled “Filling other vacancies” (emphasis supplied), is plainly intended as a catchall to complete the Legislature’s satisfaction of the mandate of article XIII, § 3. Unlike its neighboring provision, section 42, section 43 does not specifically exclude any office from its application, but rather provides:

\*149 “If a vacancy shall occur, otherwise than by expiration of term, with no provision of law for filling the same, if the office be elective, the governor shall appoint a person to execute the duties thereof until the vacancy shall be filled by an election” (emphasis supplied).

It is not disputed that when Governor Spitzer resigned in March 2008, then-Lieutenant Governor Paterson became Governor \*\*1144 for the remainder of Governor Spitzer’s term (see N.Y. Const, art IV § 5). Nor can it be reasonably disputed that when Lieutenant Governor Paterson became Governor, he ceased being Lieutenant Governor, leaving a vacancy in that office. The first condition of the statute’s applicability was thus met.

The second condition of section 43—that there be no provision of law (apart from section 43) for filling the vacancy—was also satisfied. The only other provision of law bearing upon how a vacancy in the \*\*\*849 office of Lieutenant Governor alone is to be dealt with is article IV § 6 of the State Constitution, but its direction that “the temporary president of the senate shall perform all the duties of lieutenant-governor” applies only “during [the] vacancy or inability” and thus cannot fill or end the vacancy. Plaintiff does not appear to contend otherwise; indeed, the central contention of plaintiff’s argument is that the Constitution requires that a vacancy in the office of Lieutenant Governor be preserved until the next

quadrennial election.

An appointment under Public Officers Law § 43, in contrast to the devolution mandated by article IV § 6, effectively fills the office in accordance with the command of article XIII, § 3; the article IV, § 6 devolution, although plainly necessary and useful to assure continuity of service in the short term, can at best provide only stopgap coverage of the function of the Lieutenant Governor. Properly understood, then, the two provisions—article IV, § 6 and Public Officers Law § 43—are complementary rather than duplicative and, accordingly, article IV, § 6 should not be construed, as it was by the Appellate Division, as a limitation upon gubernatorial appointment pursuant to Public Officers Law § 43. Article IV, § 6 merely states what is to occur while there is a vacancy; it does not, and cannot, consistent with the command of article XIII, § 3, be understood to state that the vacancy may not be filled.

The dissent places singular importance upon the apparent equivalence of the operative verbs in each of the provisions at issue—“execute” in Public Officers Law § 43 and “perform” in \*150 article IV, § 6—arguing that the provisions must be understood as duplicative, and, accordingly, that neither provision may be applied to fill the office of Lieutenant Governor. But, a correct understanding of what the provisions at issue are intended to accomplish does not turn on whether or not these expressions are themselves semantically equivalent. When understood in context, each expression refers to a materially different assumption of authority: the assumption under section 43 is plenary, in accordance with the mandate of article XIII, § 3 that vacancies be filled, but that occurring pursuant to article IV, § 6, concededly, is not.

Nor does article XIII, § 3’s proviso that “no person appointed to fill a vacancy [in elective office] shall hold his or her office by virtue of such appointment longer than the commencement of the political year next succeeding the first annual election after the happening of the vacancy” prevent the Governor from appointing a Lieutenant Governor. The intent of the constitutional limitation is clear; namely, to assure that appointments to elective offices extend no longer than is reasonably necessary to fill such offices by election. Where, as here, an office may not legally appear on the ballot except quadrennially (see N.Y. Const, art IV, §§ 1, 6), and there will be a lengthy period before the next election for the office may be held, plaintiff’s reading of the durational limitation at issue would result in an extended vacancy running the balance of an elective term. This appears to be fundamentally incompatible with the main object of



article \*\*1145 XIII, § 3, expressed unequivocally in its first clause, which, of course, is to assure that vacancies are filled.

We have never interpreted article XIII, § 3 to impose the requirement that plaintiff finds in it. Rather, we have held that the provision demands only that “when a vacancy in elective office occurs, the vacancy must be filled by election in the shortest space of time *reasonably possible*” (*Matter of Roher v. Dinkins*, 32 N.Y.2d 180, 188, 344 N.Y.S.2d 841, 298 N.E.2d 37 [1973] [emphasis supplied]; see also *Matter of Mitchell v. Boyle*, 219 N.Y. 242, 248, 114 N.E. 382 [1916] ). Other states have dealt \*\*\*850 with the issue of measuring the permissible length of an appointment to an elective office similarly, holding that when the length of the appointive term is tied to the “next election” or the “first proper election” subsequent to the vacancy, what is meant is the next election at which the office may be legally filled (see *People ex rel. Lynch v. Budd*, 114 Cal. 168, 171, 45 P. 1060, 1061 [1896]; *State ex rel. Trauger v. Nash*, 66 Ohio St. 612, 620–621, 64 N.E. 558, 560 [1902] ).

\*151 We also reject plaintiff’s contention that article XIII must be read to forbid the appointment of a Lieutenant Governor so as to vindicate the elective principle. While there can be no quarrel with the proposition that, generally, election must be the preferred means of filling vacancies in elective office, it does not follow that the elective principle is preeminent when it comes to filling a vacancy in the office of Lieutenant Governor.

We, of course, were completely in agreement with this contention when, in *Matter of Ward v. Curran*, 291 N.Y. 642, 50 N.E.2d 1023 [1943], *affg.* 266 App.Div. 524, 44 N.Y.S.2d 240 [3d Dept.1943], we unanimously affirmed a decision of the Appellate Division holding that, pursuant to article XIII of the Constitution and the then-current version of Public Officers Law § 42, a vacancy in the office of Lieutenant Governor was to be filled at the next annual election subsequent to the vacancy. Our determination, however, engendered dismay in the executive branch because it raised a real possibility that the offices of Governor and Lieutenant Governor would be filled by individuals from opposing parties with incompatible political and policy agendas. As a consequence of our decision in *Ward*, Governor Dewey entreated the Legislature to amend the law, and the Legislature responded, specifically excepting the offices of Governor and Lieutenant Governor from the reach of Public Officers Law § 42 and its mandate that vacancies in elective office be filled by election. Subsequent constitutional amendments, requiring that the Governor and Lieutenant Governor be elected together

quadrennially and by a single ballot (see N.Y. Const, art IV, §§ 1, 6), definitively eliminated any residual possibility that the executive branch would be split between members of opposing parties and, equally definitively, eliminated any possibility that a vacancy in the office of Lieutenant Governor might be separately filled by election in a nonquadrennial year.

The elective principle, upheld by the judiciary in *Ward*, was thus legislatively subordinated to assure the structural integrity and efficacy of the executive branch and has remained so ever since. If it is to be restored to primacy in filling a nonquadrennial vacancy in the office of Lieutenant Governor, that is a matter for constitutional amendment.

That election has been deemed impermissible as a means of filling a midterm vacancy in the Lieutenant Governorship does not, however, mean that the vacancy may not be filled. Indeed, in amending the Public Officers Law to remove the office of Lieutenant Governor from the \*\*1146 election mandate of \*152 Public Officers Law § 42, the Legislature did not alter section 43, which, in the aftermath of *Ward* is logically understood as applying to a vacancy in the Lieutenant Governorship.<sup>2</sup> A \*\*\*851 conclusion that naturally follows this pairing of action and inaction is that the Legislature, while desirous of eliminating the problematic prospect of a divided executive, fully intended that a vacancy in the office would be filled in accordance with the mandate of article XIII, § 3, and that it would be filled by appointment pursuant to section 43. Filling the office by gubernatorial appointment is entirely consonant with the purpose of the post-*Ward* legislative and constitutional amendments, whereas requiring that the office be left vacant risked a scenario of the sort that the Legislature at Governor Dewey’s behest sought to avoid—one in which a president pro tem of the Senate, quite possibly of a party other than the Governor, would, while performing the duties of the Lieutenant Governor during a vacancy in the office, actively oppose the Governor’s agenda and frustrate the work of the executive branch.<sup>3</sup>

<sup>2</sup> As the Attorney General pointed out in his 1943 pre-*Ward* opinion, “there [was] no distinction in language between [section 43] and section 42 of the Public Officers Law” (1943 Ops. Atty. Gen. 378, 382, 1943 WL 54210). And at the time of the post-*Ward* amendment to the Public Officers Law, the Legislature was well aware that section 42 had been held to apply to the office of Lieutenant Governor, even though the office was not specifically mentioned. The same language, appearing in section 43, could not in this *Ward*-defined context have been understood to exclude the office of Lieutenant Governor.

<sup>3</sup> The rationale for the post-*Ward* amendments was well summarized by Governor Dewey in his February 1953 address to the Assembly:

“Executive responsibilities in our government are so interwoven that the election of a Governor and Lieutenant Governor politically opposed to each other involves serious problems. As a practical matter the Governor must encounter difficulty in leaving the State even for a short period and on pressing public business. This has created the greatest embarrassment in other states, to the damage of public confidence in government and the injury of the public interest.

“Even more important, there is a great advantage in being able to entrust many of the complex administrative tasks of the Governor to an able Lieutenant Governor. I have done this repeatedly and with notable benefit to the people of the State. This would not have been possible if the Lieutenant Governor was required, as a matter of party loyalty, to lead the minority party.” (Message of the Governor In Relation to Proposed Constitutional Amendment For Joint Election of Governor and Lieutenant Governor, Feb. 9, 1953 [1953 N.Y. Legis Doc No. 36, at 3].)

To be sure, the subordination of the elective principle in this context is not entirely unproblematic. It does create the possibility \*153 that an unelected individual will, for a time, occupy the State’s highest office. Rules of succession are, however, inevitably imperfect and, at some stage of the devolution they direct, invariably compromise elective principles. Before us, however, is not the abstract question of whether it would be better in the case of a vacancy in the office of the Lieutenant Governor to fill the vacancy by election or by gubernatorial appointment subject to legislative confirmation or by gubernatorial appointment alone. For now, the Legislature, pursuant to an express grant of constitutional authority, has specified that the vacancy is to be filled not by election but by gubernatorial appointment alone—a determination that the Legislature is always free to revisit.

#### IV

Until today, the interplay between Public Officers Law § 43 and article IV, § 6 of the Constitution presented an open legal \*\*1147 question. Indeed, as our dissenting colleagues detail at some length, the particular legal

configuration governing the outcome of the present dispute did not even come into existence until after *Ward*, and there have been, prior to the vacancy at issue, only two post-*Ward* vacancies in the office of the Lieutenant Governor. While it has been suggested that these vacancies were left unfilled because of some consensus as to the unavailability of the power of gubernatorial appointment, it is at least equally likely that they remained vacant for purely political reasons. Given these circumstances, it is entirely understandable that plaintiff has acted vigorously to \*\*\*852 defend his interpretation of the relevant constitutional and statutory provisions. Having given due consideration to plaintiff’s argument, however, we conclude that Public Officers Law § 43 affords the Governor the authority to fill a vacancy in the office of Lieutenant Governor by appointment.

Accordingly, the order of the Appellate Division should be reversed, without costs, the motion for an injunction denied and the certified question answered in the negative.

PIGOTT, J. (dissenting).

Under the majority’s rationale, the possibility exists that the citizens of this state will one day find themselves governed by a person who has never been subjected to scrutiny by the electorate, and who could in turn appoint his or her own unelected Lieutenant Governor. Because this is contrary to the text of the New York Constitution and affords Governors unprecedented power to appoint a successor, we respectfully dissent.

\*154 I.

When then-Governor Eliot Spitzer resigned and Lieutenant Governor David Paterson became our 55th Governor no one gave a thought or harbored a suggestion that he had the ability to appoint a Lieutenant Governor. This is not surprising since no Governor in the history of the State had done so. But after 15 months marked by a deeply troubled economy and a deadlock that paralyzed the State Senate, the Governor, prompted perhaps by understandable frustration, attempted on July 8, 2009 to unilaterally fill the post.

Shortly after the appointment, plaintiffs brought this action seeking judgment declaring that the Governor’s action in appointing a Lieutenant Governor was unconstitutional. The Governor, as the majority notes,

asserted authority to do so pursuant to section 43 of the Public Officers Law, a section referred to by all parties as a “catch-all provision.” Until now, that provision had been used to fill vacancies in local offices but, in no instance, the second most important executive office in the state.

Supreme Court granted a preliminary injunction concluding, as relevant to this appeal, that the Senators “have alleged a usurpation of Senate power that gives rise to sufficient injury-in-fact falling within their zone of interest” and as such, they had standing to commence this action (25 Misc.3d 347, 359, 884 N.Y.S.2d 812 [2009]). Addressing the likelihood of success on the merits, the court concluded that article IV, § 6 of the Constitution “strongly suggests that the office is to remain vacant until such time as a Governor is elected” and “[s]ince a Lieutenant Governor has never been appointed, this interpretation is consistent with historical practice.” (*Id.*)

The court also reasoned that article XIII, § 3, which mandates the Legislature to fill “vacancies in office,” did not apply to a vacancy in the office of Lieutenant Governor, because that constitutional provision permitted the appointee to serve only until \*\*1148 the next election, while article IV, § 6 makes clear there can be no separate election for Lieutenant Governor. Therefore, since the Legislature is not empowered to fill the office of Lieutenant Governor under the Constitution, contrary to defendants’ urging, section 43 of the Public Officers Law is not available for that purpose. As a result, the court concluded the Senators had established a likelihood of success on the merits and granted an injunction.

The Appellate Division affirmed, rejecting defendants’ claim that Senator Skelos was without standing to bring the action, \*155 noting that the Lieutenant Governor has the ability to control debate in the Senate chamber and to cast a vote to \*\*\*853 break a tie on certain procedural matters (65 A.D.3d 339, 885 N.Y.S.2d 92 [2009]). It concluded that the Governor simply did not have authority to appoint a Lieutenant Governor. That court too rejected the Governor’s reliance on Public Officers Law § 43 and determined that no provision of the Constitution nor any statute provides for the filling of the office of Lieutenant Governor other than by election.

## II.

Unlike the majority, we view standing as a threshold issue that must be resolved and we determine that Senator Skelos established that he is a proper party to pursue this

claim. The test for determining a litigant’s standing is twofold. “First, a plaintiff must show ‘injury in fact,’ meaning that plaintiff will actually be harmed by the challenged ... action. As the term itself implies, the injury must be more than conjectural” (*New York State Assn. of Nurse Anesthetists v. Novello*, 2 N.Y.3d 207, 211, 778 N.Y.S.2d 123, 810 N.E.2d 405 [2004], citing *Society of Plastics Indus. v. County of Suffolk*, 77 N.Y.2d 761, 772–773, 570 N.Y.S.2d 778, 573 N.E.2d 1034 [1991]). Second, the injury plaintiff asserts must fall within his or her zone of interest (*Society of Plastics*, 77 N.Y.2d at 773, 570 N.Y.S.2d 778, 573 N.E.2d 1034).

Our standing analysis begins—but does not end—with *Silver v. Pataki*, 96 N.Y.2d 532, 730 N.Y.S.2d 482, 755 N.E.2d 842 [2001]. In *Silver*, the Court held that Assembly Speaker Sheldon Silver—acting in his capacity as an individual legislator, and not as a legislative leader—had standing to pursue his claim that the Governor’s exercise of line-item veto power exceeded the powers granted the executive in the State Constitution. The general rule is that an individual legislator can sue—on a vote nullification or usurpation of power theory—to vindicate a personal injury, although “lost political battle” claims are not cognizable. Speaker Silver was deemed to have standing even though there were many other identifiable persons and organizations directly harmed by the exercise of the vetoes—such as any party who would have benefitted from the vetoed legislation (*see Clinton v. City of New York*, 524 U.S. 417, 118 S.Ct. 2091, 141 L.Ed.2d 393 [1998] [New York City, health care providers and others who would have benefitted from vetoed legislation successfully challenged constitutional validity of President Clinton’s exercise of the line-item veto]). Thus, the Court found standing in *Silver* even though a dismissal of Speaker Silver’s complaint would not have erected an impenetrable barrier to judicial consideration of that controversy.

\*156 Although Senator Skelos’ contention that the Governor has exceeded his constitutional authority is different from the constitutional argument presented in *Silver*, his assertion of standing in this case is similarly legitimate. The *Silver* Court recognized that an individual legislator could initiate a lawsuit challenging vote nullification or usurpation of power by the Governor in the budget process, expressly rejecting \*\*1149 the notion that only a majority of the legislative house could do so. This case does not involve the budget process but it does involve alleged overreaching by the Governor in a manner that directly affects each sitting Senator. Here it is claimed that the Governor has without constitutional authority installed an unelected person to serve as president of the Senate and, by that appointment, this

private citizen has gained the authority to restrict the speech of elected Senators. This allegation of harm is not institutional in nature but is personal to each Senator.

The Lieutenant Governor's only constitutional duties are to preside over the Senate and, on occasion, issue a casting vote. If elected Senators cannot bring suit to challenge the alleged placement of a so- \*\*\*854 called "interloper" as the presiding officer of the body in which they serve, we are hard-pressed to identify who would have standing to object to this appointment. Granted, although he has expressed no inclination to do so, the Attorney General could initiate a quo warranto proceeding—but this is because a statute specifically grants him that right, not because he has standing under our common-law jurisprudence. Where a claim is justiciable—and here no one asserts that the controversy involves a political question rendering it inappropriate for judicial review—we have not interpreted our standing rules so strictly that they erect an impenetrable barrier to suit (*see Consumers Union of U.S., Inc. v. State of New York*, 5 N.Y.3d 327, 806 N.Y.S.2d 99, 840 N.E.2d 68 [2005]; *Saratoga County Chamber of Commerce v. Pataki*, 100 N.Y.2d 801, 814, 766 N.Y.S.2d 654, 798 N.E.2d 1047 [2003]; *Boryszewski v. Brydges*, 37 N.Y.2d 361, 364, 372 N.Y.S.2d 623, 334 N.E.2d 579 [1975] ). But if we adopt the Governor's position, that is precisely what we would be doing—raising the specter that this very significant issue concerning the constitutional validity of the Governor's appointment would be unreviewable by the judicial branch. Although the majority has chosen not to decide the issue of standing, we think it important to articulate a resolution of the standing issue given the magnitude of this case.

We further reject defendants' contention that the controversy is not ripe for review because Ravitch has not yet presided over the Senate, restricted any Senator's speech, or issued a casting \*157 vote. This argument ignores the fact that Ravitch has been precluded from doing so, first by a temporary restraining order and, later, by the preliminary injunction issued by Supreme Court and affirmed by the Appellate Division. It would be ironic for this Court to dismiss a litigant's claim because, in initiating the lawsuit and obtaining preliminary relief, he was successful at postponing the imminent harm he is suing to prevent. In addition, it is alleged that the Governor's motivation in making the appointment was, in large part, to put Ravitch in a position to issue the tie-breaking vote to resolve the Senate leadership impasse—an allegation that is eminently plausible given the circumstances surrounding the appointment. This litigation—commenced soon after the appointment was made—was therefore not precipitous.

Moreover, since there appears to be no dispute that any ripeness problem would disappear the moment Ravitch presided over the Senate and ruled on any point of order, dismissing this action would only postpone a ruling on the merits in a situation where the public is manifestly best served by prompt resolution of an important constitutional issue. Nothing would be accomplished by burdening the public or the parties with further delay just to allow this inevitable scenario to play out. Nor do the parties urge us to do so.

### \*\*1150 III.

Arriving at the merits, we note that both sides concede that the Constitution does not expressly accord the Governor the power to appoint a Lieutenant Governor. Nor can the Constitution itself be read in such a way as to permit the Governor to make an appointment to that office. The Constitution does, however, provide a clear line of succession to the office of Governor, the very purpose of article IV.

Article IV, § 6 provides that in the event of a vacancy in the offices of *both* Governor and Lieutenant Governor (a simultaneous vacancy): "the temporary president of the senate shall act as governor until the inability shall cease or until a governor shall be elected." If this situation arises, article IV, § 6 mandates that a prompt election be held by requiring that \*\*\*855 "a governor and lieutenant-governor shall be elected for the remainder of the term at the next general election happening not less than three months after both offices shall have become vacant." Most definitely, the framers of the Constitution were intent on having the electorate promptly fill both vacancies.

\*158 Next, that section addresses a vacancy in the office of Lieutenant Governor only, while there is a sitting Governor:

"In case of vacancy in the office of lieutenant-governor alone, or if the lieutenant-governor shall be impeached, absent from the state or otherwise unable to discharge the duties of office, the temporary president of the senate shall perform all the duties of lieutenant-governor during such vacancy or inability."

Thus, the drafters of the Constitution logically placed the duties of Lieutenant Governor in the hands of a duly elected state Senator—one who is elected president of that body by the entire Senate, representing all citizens of this state.

The majority errs in deciding that this constitutional mandate merely provides for a “caretaker” role by the temporary president for a limited interim period until the Lieutenant Governor’s office is filled by the Governor under the Public Officers Law. The majority also errs in reading the Public Officers Law, which contains specific provisions for filling vacancies in the offices of Comptroller, Attorney General, and United States Senator, to let the Lieutenant Governor’s office fall into a “catch-all” with all other elected officials in the state no matter how minor. A review of Public Officers Law §§ 41–43 makes the majority’s misreading of them clear. Together, they provide a comprehensive mechanism for dealing with vacancies in nearly every office in the state—but *not* that of Governor or Lieutenant Governor, who are separately treated in article IV, § 6.

Public Officers Law § 41, enacted pursuant to an express grant of authority in article IV, § 1 of the Constitution, provides for the filling of vacancies in the offices of Comptroller and Attorney General. Section 42 provides for the filling of vacancies in other elective offices, but expressly excludes the offices of Governor or Lieutenant Governor. Finally, section 43 addresses the filling of all “other vacancies” and provides: “If a vacancy shall occur, otherwise than by expiration of term, *with no provision of law for filling the same*, if the office be elective, the governor shall appoint a person to execute the duties thereof until the vacancy *shall be filled by an election*” (emphasis added).

When viewed in light of the constitutional construct of the executive office, its powers and duties, Public Officers Law § 43 cannot be construed to confer the right to fill a vacancy in the \*159 Lieutenant Governor’s office. First, contrary to the majority’s view, section 43 by its terms \*\*1151 only permits the Governor to appoint someone to an office to “execute the duties” of that office until the office can be filled by an election for the remainder of the term. Yet article IV of the Constitution clearly provides that when there is a vacancy in the office of Lieutenant Governor, the duties of that office are assumed by the temporary president of the Senate—there is no language restricting the duration that the temporary president of the Senate fulfills those duties. This situation differs from the scenarios presented in cases like *People ex rel. Smith v. Fisher*, 1840 WL 3540, 24 Wend 215 [1840] and *People ex rel. Henderson v. Snedeker*, 1856 WL 6750, 4 Kern.

52, 14 N.Y. 52 [1856], in which a deputy took over when an elected official such as a county clerk was unable to complete a term of office and the deputy was then properly replaced by a gubernatorial appointee. The statutes at issue in \*\*\*856 those cases made clear that the deputy was to perform the duties of the elected office only until someone else could be “elected or appointed” and therefore clearly indicated that the deputy’s authority was intended to cease when the Governor appointed a replacement for the elected official. As such, the Court held that the deputy performed the duties of office only until the Governor appointed a replacement who, in turn, fulfilled the duties only until an election could be held.

In contrast, article IV, § 6 does not state that the temporary president of the Senate will fulfill the duties of the office of Lieutenant Governor only until someone else is appointed nor, unlike article IV, § 1 (addressing the offices of Comptroller and Attorney General), does it specifically direct the Legislature to craft a procedure for filling a midterm vacancy in that office. Rather, the clause unqualifiedly states that the temporary president of the Senate is to perform the duties of the Lieutenant Governor “during such vacancy.” Furthermore, article IV precludes a midterm election for the office of Lieutenant Governor because it requires the Governor and Lieutenant Governor to be jointly elected in quadrennial elections (unless there is a simultaneous vacancy in both offices [see art IV, §§ 1, 6]).

Because the Constitution, particularly article IV, § 6, instructs that the temporary president of the Senate, an elected official, is to “perform” the duties of Lieutenant Governor during a vacancy, it leaves no room for anyone else to “execute” the duties of that office under Public Officers Law § 43. In this regard, we note that neither this Court nor the Legislature has \*160 ever drawn a distinction between “executing” the duties of an office and “performing” those duties. The cases the defendants cite for this questionable distinction do not support it. Furthermore, there are numerous statutes that use words like “execute,” “fulfill,” “perform,” “discharge,” “act as” and the like to confer precisely the same authority.<sup>1</sup> Article IV, § 6 of the Constitution similarly contains synonyms that describe the inability of officers to act and the obligations that devolve on their successors, indicating that these officials “discharge” duties, “perform” duties or “act as” their predecessors—and it is evident that all of these mean the same thing. There is simply no \*\*1152 evidence that the Legislature intended that Public Officers Law § 43 apply to the office of Lieutenant Governor when it adopted that provision. And if it did, the result would be a conflict. Contrary to the majority’s view that constitutional provisions are to be “harmonized” with

statutes, it is axiomatic that where there is an incompatibility between the Constitution and a statute, the Constitution governs and the statute bows.

<sup>1</sup> See e.g. County Law § 652(1) (undersheriff shall “execute the duties of the office of sheriff” until a new sheriff is elected or appointed); County Law § 914 (deputy shall, “subject to the provisions of the public officers law, have all the powers and fulfill all the duties of the county clerk”); Town Law § 42 (until a successor is appointed, the deputy town supervisor shall “perform all of the duties of the supervisor”); Second Class Cities Law § 62 (deputy city comptroller “shall discharge the duties of the office” in the event of a vacancy).

Of equal importance, article XIII, § 3 limits the duration of any appointment under section 43 by directing that “no person appointed to fill a vacancy shall hold his or her office by virtue of such appointment longer than the commencement of the political year next succeeding the first *annual* election after the happening of the vacancy” (emphasis added).<sup>2</sup> Yet, \*\*\*857 article IV, § 1 \*161 mandates that the Governor and Lieutenant Governor run together and only on the quadrennial, thus barring the Lieutenant Governor from running for office separate from the Governor in a nonquadrennial year. These provisions, read together, can only be reasonably interpreted to mean that the drafters of the Constitution intended that a vacancy in the office of Lieutenant Governor remain unfilled until the next gubernatorial election, with the temporary president of the Senate performing the duties of Lieutenant Governor in the interim.

<sup>2</sup> If article XIII, § 3 is applied to a vacancy in the office of Lieutenant Governor under the facts presented here, since the vacancy occurred on March 17, 2008, this would mean that a midterm election would have had to be held in November 2008 (the first “annual election after the happening of the vacancy”) and any appointee—who would have had to be chosen by the Governor before that time—could serve only until the winner of that midterm election took office at “the commencement of the [next] political year,” which would have been January 1, 2009 (see art XIII, § 4). Such a midterm election is expressly precluded under several provisions of the Constitution (see art IV, §§ 1, 6) and, in any event, there was no appointment in 2008. Defendants argue that the time frames in article XIII, § 3 have not been strictly applied but, even reading some flexibility into the provision (and our precedent has not clearly done so), the fact remains that the clause requires a prompt election to replace an appointee and this must occur as soon as possible after the vacancy

arises. Certainly, it does not authorize a long-term appointment to fulfill a complete unexpired term.

IV

The construction of our Constitution over two centuries refutes the majority’s reading of it. This is not the first time that a vacancy in the office of Lieutenant–Governor has arisen. There have been at least 10 occasions since the first New York Constitution was adopted in 1777 when the position of Lieutenant Governor has become vacant,<sup>3</sup> but no Governor has ever seen fit to assert that he had the power to appoint a Lieutenant Governor to fill the vacancy. On two of those occasions, there were midterm elections to fill the vacancies. But that cannot occur under our current Constitution, because both the Constitution and the Public Officers Law have since been amended in significant \*\*1153 respects.<sup>4</sup>

<sup>3</sup> The vacancies occurred in 1811, 1828, 1829, 1847, 1885, 1910, 1913, 1943, 1973 and 1985. Six occurred as a result of the succession of the Lieutenant Governor to the office of Governor. The remaining four stemmed from either the death or resignation of the Lieutenant Governor. The most recent vacancies occurred in December 1973 when Lieutenant Governor Malcolm Wilson succeeded to the Governorship upon the resignation of Nelson Rockefeller (Senator Anderson, temporary president of the Senate at the time, fulfilled the duties until the end of the term) and in February 1985 when Lieutenant Governor Alfred DeBello resigned (again, Senator Anderson fulfilled the duties until the end of the term).

<sup>4</sup> The first of the two elections to fill Lieutenant Governor vacancies occurred in 1847 as a result of a special statute passed by the Legislature (see L. 1847, ch. 303). The constitutional validity of that statute was never challenged. The second such election resulted from *Matter of Ward v. Curran*, 266 App.Div. 524, 44 N.Y.S.2d 240 [3d Dept.1943], *affd. without op.* 291 N.Y. 642, 50 N.E.2d 1023 [1943].

The position of Lieutenant Governor was created in New York’s first Constitution of 1777 (adopted before the United States Constitution), which provided for an election to fill a vacancy in that office in the event the Lieutenant Governor \*162 died, resigned or was removed from office (see Constitution of 1777 art XX). But that

clause was removed in the 1821 Constitution and no Constitution since that time has specified any procedure for filling a Lieutenant Governor vacancy. In this respect, our State Constitution was similar to the Federal Constitution, which did not contain a procedure for filling a vacancy in the office of Vice President until the adoption \*\*\*858 of the 25th Amendment in 1967. Instead, the New York Constitution has spelled out a chain of succession in the event of the death or other inability of the Governor or Lieutenant Governor, currently codified in article IV, § 6. The Constitution and the statutes upon which the defendants rely have never been read to permit appointment of a Lieutenant Governor, even though there have been many opportunities for prior Governors to advance such a reading.

The decision in *Matter of Ward v. Curran*, 266 App.Div. 524, 44 N.Y.S.2d 240 [3d Dept.1943], *affd. without op.* 291 N.Y. 642, 50 N.E.2d 1023 [1943]—which involved the eighth Lieutenant Governor vacancy in New York’s history—held that the Constitution, as it was then worded, permitted an election to fill the vacancy, but it does not support the majority’s view that such a vacancy can be filled by appointment. The controversy underlying *Ward* arose in July 1943 when Lieutenant Governor Thomas Wallace died, creating a vacancy in the office of Lieutenant Governor. Governor Thomas Dewey and Wallace had been elected the previous November on the Republican ticket. Albert Ward, the State Chair of the Democratic Party, brought a mandamus proceeding against the Secretary of State to compel an election to fill the office of Lieutenant Governor in the upcoming November 1943 election. Both Governor Dewey and Attorney General Nathaniel Goldstein took the position that such an election would be illegal as the Constitution required that the Governor and Lieutenant Governor be chosen at the same time and for the same term (the Constitution did not yet require that these offices be elected jointly by single vote). They further asserted that article III, § 9 of the Constitution—a provision addressing the powers of the Legislature—directed the Senate to “choose a temporary president to preside in case of the absence or impeachment of the lieutenant-governor.” (266 App.Div. at 526, 44 N.Y.S.2d 240.) They did not, however, rest their analysis on the predecessor to article IV, § 6 because, at that time, it did not contain any language indicating \*163 that the temporary president of the Senate assumed the powers of the Lieutenant Governor.<sup>5</sup>

<sup>5</sup> The 1938 version of article IV, § 6 that was in effect when *Ward* was decided read as follows:

“The lieutenant-governor

shall possess the same qualifications of eligibility for office as the governor. He shall be president of the senate, but shall have only a casting vote therein. If the office of governor become vacant and there be no lieutenant-governor, such vacancy shall be filled for the remainder of the term at the next general election happening not less than three months after such vacancy occurs; and in such case, until the vacancy be filled by election, or in case the lieutenant-governor be under impeachment or unable to discharge the powers and duties of the office of governor or shall be absent from the state, the temporary president of the senate shall act as governor during such inability, absence or the pendency of such impeachment. If the temporary president of the senate shall be unable to discharge the powers and duties of the office of governor or be absent from the state, the speaker of the assembly shall act as governor during such inability or absence. The lieutenant-governor shall receive for his services an annual salary of ten thousand dollars.”

\*\*1154 In a divided decision, the Appellate Division directed the Secretary of State to conduct the election pursuant to the predecessor of Public Officers Law § 42. The majority reasoned that it was inappropriate for the person who fulfills the duties of Lieutenant Governor to be someone who was elected only by the voters of a single senatorial district. They emphasized: “It is a fundamental principle of our form of government that a vacancy in an elective office should be filled *by election* as soon as practicable after the vacancy occurs” \*\*\*859 (266 App.Div. at 526, 44 N.Y.S.2d 240 [emphasis added]). The dissenter believed that such an election would be unconstitutional because article IV, § 1 contains the only provision authorizing an election for Governor or



Lieutenant Governor and requires that such office be filled in quadrennial elections. Thus, he concluded that the office of Lieutenant Governor could not be filled at a general election that was not a quadrennial election. This Court affirmed without opinion (291 N.Y. 642, 50 N.E.2d 1023 [1943]).

Upset with this turn of events, Governor Dewey urged the Legislature to begin the process of amending the Constitution and to change Public Officers Law § 42 to preclude an election for the office of Lieutenant Governor (Message of Governor Thomas E. Dewey to the Legislature, Jan. 5, 1944, 1944 N.Y. Legis. Doc. No. 1, at 17–18). The Legislature heeded the Governor’s call on both counts. It immediately amended Public Officers Law § 42—the statute on which Ward had relied—so that it \*164 expressly excluded the Governor and Lieutenant Governor from its ambit (as it continues to do today) (see L. 1944, ch. 3). The Legislature also passed amendments to the New York Constitution that were ultimately adopted by vote of the People.

More specifically, article IV, § 6 was amended in 1945 to add a provision directly addressing what is to occur when there is a vacancy in the office of Lieutenant Governor alone.<sup>6</sup> This amendment was \*\*1155 significant for several reasons. Whereas the 1938 version of this clause did not indicate that the temporary president of the Senate fulfills the duties of Lieutenant Governor during a vacancy in that office, the 1945 version expressly so provided. Furthermore, the 1945 version indicated precisely what was to occur when there was a vacancy in the office of Lieutenant Governor alone—“the temporary president ... shall perform all the duties of lieutenant-governor ... during such vacancy.” The 1945 amendments also stated that the Lieutenant Governor can never be separately elected from the Governor. These constitutional amendments, combined with the \*165 legislative amendment to Public Officers Law § 42, overruled *Ward*.

<sup>6</sup> The 1945 version of article IV, § 6 provided:

“The lieutenant-governor shall possess the same qualifications of eligibility for office as the governor. He shall be president of the senate, but shall have only a casting vote therein. The lieutenant-governor shall receive for his services an annual salary of ten thousand dollars.

“If the office of governor become vacant and there be no lieutenant-governor, *the offices of governor and lieutenant-governor* shall be filled for the remainder of the terms at the next general election happening not less than three months after the vacancy in the office of governor occurs. *No election of a lieutenant-governor shall be had in*

*any event except at the time of electing a governor.* Until the vacancies in the offices of the governor and lieutenant-governor be filled by election, the temporary president of the senate then in office or his successor as such temporary president shall *perform all the duties of lieutenant-governor and shall act as governor.*

“*If the office of lieutenant-governor alone be vacant, or in case the lieutenant-governor be under impeachment, unable to discharge the powers and duties of the office of governor or shall be absent from the state, the temporary president of the senate then in office or his successor as such temporary president shall perform all the duties of lieutenant-governor, including the duty of acting as governor when necessary, during such vacancy, inability, absence or the pendency of such impeachment.*

“If ... the temporary president of the senate ... be unable to discharge the powers and duties of such office or be absent from the state, the speaker of the assembly shall act as governor during such inability or absence” (emphasis added to identify new language).

In the years since 1945, other constitutional amendments have moved still further \*\*\*860 away from *Ward*’s holding. In 1953, the Constitution was amended to require that the Governor and Lieutenant Governor be “chosen jointly, by the casting by each voter of a single vote applicable to both offices” (art § 1), echoing another of Governor Dewey’s recommendations. Additional clarification of the chain of succession occurred in 1949 and 1963 amendments.

Defendants and the majority use *Ward* as support for the conclusion that a vacancy in the office of Lieutenant Governor can be filled through gubernatorial appointment under Public Officers Law § 43. They contend that, unlike Public Officers Law § 42, section 43 was not amended in the wake of *Ward* to expressly exclude the office of Lieutenant Governor. But nothing in *Ward* suggests that section 43 ever applied to that office. *Ward* held that the Lieutenant Governor vacancy could be filled by election—not by gubernatorial appointment. In *Ward*, the Appellate Division majority determined that it would be inappropriate to allow the office of Lieutenant Governor to be filled by the temporary president of the Senate for the entire unexpired term because that legislative leader had been elected only by the voters of one district of the state. It seems highly unlikely that the *Ward* court would have endorsed the notion that a Lieutenant Governor could be appointed by a Governor with no input from the electorate and no vetting by the legislative branch of government.

In fact, shortly before the litigation, Attorney General Goldstein issued an opinion clarifying that such an appointment would be inconsistent with the constitutional and statutory scheme. Citing Public Officers Law § 43, the Attorney General observed:

“No one has ever claimed that this section conferred upon the Governor the power to appoint his own successor. Such a contention would lead to the anomalous result that a Governor by appointing a Lieutenant-Governor and then resigning could impose upon the people his own choice as their Governor” (1943 Ops. Atty. Gen. 378, 382, available at 1943 WL 54210, \*4).

This point, which was repeated in the Attorney General’s brief \*166 in *Ward*, was not disputed by the parties or the Appellate Division.

As we noted, the fact that no Governor has previously attempted to appoint a Lieutenant Governor, while significant, does not resolve the legal issue before us. But it does show a remarkable consensus \*\*1156 that such an appointment was impermissible. This consensus may result in part from a similarity between our Constitution and the Federal Constitution, which lacked a procedure for filling a vacancy in the office of Vice President until a constitutional amendment was adopted in 1967. The 25th Amendment (§ 2) now provides: “Whenever there is a vacancy in the Office of the Vice President, the President shall nominate a Vice President who shall take office upon confirmation by a majority vote of both Houses of Congress.” New York constitutional commentators and participants at constitutional conventions have examined whether it would be advisable to adopt a similar mechanism by which the Governor could fill a vacancy in the office of Lieutenant Governor by appointment. Proposals for constitutional amendments have been submitted over the years that would have authorized gubernatorial appointment with the advice and consent of the Senate (*see* Proposition No. 923, 8 Proceedings of the Constitutional Convention of the State of New York, June 12, 1967, at 606–608) or, comparable to the 25th Amendment, with confirmation by a majority vote of both houses of the Legislature (*see* 1985 Rep. of N.Y. Law Rev. Commn, reprinted in 1985 McKinney’s Session Laws of N.Y., at 2483, 2575). To \*\*\*861 date, none of these proposals has been acted upon.

Supporters of the proposed amendments, like the Governor and some of the amici curiae, make strong policy arguments in support of allowing the Governor to make an appointment to fill a vacancy in the office of Lieutenant Governor. But since our Constitution does not

currently permit such a procedure, the constitutional amendment process is the only appropriate vehicle for such a change.

## V

The majority and defendants rely on decisions from other states to support their arguments but the cases cited are not persuasive. The constitutional provisions at issue in those cases were different from New York clauses that guide our analysis, either because there was no temporal provision that limited the duration that an appointee could hold an office to a specific and \*167 ascertainable date (as there is in article XIII, § 3 of the New York Constitution) (*see People ex rel. Lynch v. Budd*, 114 Cal. 168, 45 P. 1060 [1896]; *State ex rel. Trauger v. Nash*, 66 Ohio St. 612, 64 N.E. 558 [1902]; *State ex rel. Weeks v. Day*, 14 Fla. 9 [1871]; *In re Advisory Opinion to the Governor*, 688 A.2d 288 [R.I. 1997] ), or there was no clause directing that a particular official was to fulfill the duties of Lieutenant Governor in the event of a vacancy in that office alone (as there is in article IV, § 6 of the New York Constitution) (*see Advisory Opinion to Governor*, 217 So.2d 289 [Fla.1968] ), or both provisions were absent (*see State ex rel. Martin v. Ekern*, 228 Wis. 645, 280 N.W. 393 [1938] ). In any event, most of these cases were subsequently overruled by constitutional amendment or legislative enactment.

## VI.

Despite our disagreement, we join the majority in acknowledging the good faith and good intentions of all parties in this difficult and important case. At the time the Governor named a Lieutenant Governor, two Senators credibly claimed the position of temporary president of the Senate. The resulting uncertainty over the temporary president’s identity created two practical problems. First, it clouded the line of gubernatorial succession; and second, the absence of an acknowledged presiding officer thwarted day-to-day business in the Senate. While the amici’s dire characterizations of this political deadlock may be overstated, it is easy to understand why the Governor felt impelled to act and has \*\*1157 vigorously defended his position. But neither the Governor nor this Court can amend the Constitution. Our Constitution’s provisions governing gubernatorial succession have been scrutinized repeatedly over the past few decades, and have consistently been adjudged adequate. We should

adhere to the Constitution we have, which simply does not authorize what the majority now sanctions.

**All Citations**

13 N.Y.3d 141, 915 N.E.2d 1141, 886 N.Y.S.2d 846, 2009 N.Y. Slip Op. 06585

Judges CIPARICK, READ and JONES concur with Chief Judge LIPPMAN; Judge PIGOTT dissents in a separate opinion in which Judges GRAFFEO and SMITH concur.

Order reversed, etc.

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Declined to Follow by State ex rel. De Concini v. Garvey, Ariz., June 21, 1948

11 Or. 389  
SUPREME COURT OF OREGON

CHADWICK  
v.  
EARHART, Secretary of State.

October Term, 1884

Appeal from Marion county.

West Headnotes (4)

- [1] **Public Employment**  
 ⇌ Term of person filling vacancy  
**States**  
 ⇌ Term of office, vacancies, and holding over

Const. art. 5, § 8, provides that in case of the removal of the governor from office, or of his death, etc., the secretary of state shall discharge the duties of the office. Held, that he must perform these duties until a new governor enters, though meantime the secretary's term expires.

5 Cases that cite this headnote

- [2] **Public Employment**  
 ⇌ Manner and Mode of Filling Vacancy  
**States**  
 ⇌ Resignation, suspension, and removal or impeachment of officers

The constitution of Oregon, article 5, section 8, provides that, "In case of the removal of the governor from office, or of his death, resignation, or inability to discharge the duties of the office, the same shall devolve on the secretary of state."

7 Cases that cite this headnote

- [3] **Public Employment**  
 ⇌ Salaries  
**States**  
 ⇌ Particular Officers and Employees

The governor resigned, and the secretary of state entered on the discharge of the duties of the office of governor, and continued to discharge such duties after he ceased to be secretary of state, and until the governor next succeeding entered into the office. Held, that he was entitled to the salary of the office of governor the whole term.

Cases that cite this headnote

- [4] **Public Employment**  
 ⇌ Salaries  
**States**  
 ⇌ Constitutional restrictions

Const. art. 5, § 8, provides that in case of the removal of the governor from office, or of his death, etc., the secretary of state shall discharge the duties of the office. Held, that he must perform these duties until a new governor enters, though meantime the secretary's term expires, and for the time he performs the duties he is entitled to the salary of governor.

6 Cases that cite this headnote

**Attorneys and Law Firms**

\*\*1180 \*389 R. Williams, for appellant.

Holmes & Hayden, for respondent.

**Opinion**

WALDO, C.J.

Two questions are submitted in this case. The first and principal one is whether, when, under section 8, art. 5, Const.Or., the duties of the office of governor devolve upon the secretary of state, he has a right to the salary of the office. Second, if this question be answered in the affirmative, whether he shall continue to perform the duties of the office for the remainder of the term of the outgoing governor, or shall he perform those duties only so long as he shall continue to be secretary of state? "In case of the removal of the governor from office, or \*390 of his death, resignation, or inability to discharge the duties of the office, the same shall devolve on the secretary of state, and in case of the removal from office, death, resignation, or inability both of the governor and secretary of state, the president of the senate shall act as governor until the disability be removed, or a governor be elected." Const.Or. art. 5, § 8. If the office of governor continue after the governor ceases to hold the office under this section; if the office be not vacant, but shall be lawfully filled by one acting therein directly as the agent of the state, and not in the character of deputy of a governor incumbent,—it would seem difficult to distinguish such a person from a governor of right and in fact.

Counsel for the respondent claim that in the contingency provided for in said section 8 the duties of the office of governor became annexed to the office of secretary of state, and are discharged as duties incident to the latter office; in other words, that the duties of the office, but not the office itself, devolve upon the secretary of state. This position seems to require—First, either that the office of governor should continue vacant during the time the secretary discharges its duties, and that such duties be in some way performed by the secretary of state, as such, consistently with a condition of vacancy; or, second, that the office be filled, and yet he who fills it be in nowise governor, but continue to be merely secretary of state.

\*\*1181 In the first place, it is not shown how an office can be vacant, and yet there be a person, not the deputy or locum tenens of another, empowered by law to discharge the duties of the office, and who does, in fact, discharge them. It is not explained how, in such a case, the duties can be separated from the office so that he who discharges them does \*391 not become an incumbent of the office. And, in the second place, how a person can fill the office of governor without being governor. It is the function of a public officer to discharge public duties. Such duties constitute his office. Hence, given a public office, and one who, duly empowered, discharges its duties, and we have

an incumbent in that office. Such is the case here. The secretary of state, by force of the function cast upon him, becomes governor, and consequently entitled to the salary appertaining to the office. Nor does the language of the section, grammatically considered, bear the interpretation counsel have put upon it. Leaving out the co-ordinate clauses following the first clause, and the sentence reads: "In case of the removal of the governor from office, the same shall devolve on the secretary of state." That is, the office shall devolve. So, taken with each of the succeeding clauses, the word "same" stands for "office."

The constitution of the United States, providing for the contingency of a vacancy in the office of president, is nearly the same with the provision of our state constitution providing for a vacancy in the office of governor. The only difference conceivably material is that the constitution of the United States has the words "powers and duties," where the constitution of Oregon has only the word "duties." But it is conceived that duties necessarily imply powers, and that in legal effect the language of the two constitutions is the same. See *U.S. v. Bassett*, 2 Story, 404. Of this provision of the constitution of the United States, in *Merriam v. Clinch*, 6 Blatchf. 9, (1867,) Mr. Justice BLATCHFORD said:

"Three times since the adoption of the constitution the president has died, and, under the provision referred to, the powers and duties of the office of \*392 president have devolved on the vice-president. All branches of the government have, under such circumstances, recognized the vice-president as holding the office of president, as authorized to assume its title, and as entitled to its emoluments. The vice-president holds the office of president until a successor to the deceased president comes to assume the office, at the expiration of the term for which the deceased president and the vice-president were elected."

The case of *People v. Hopkins*, 55 N.Y. 74, is much in point. In 1859 a law was passed in New York establishing the office of superintendent of insurance. The superintendent was to be appointed by the governor for the term of three years, with authority to appoint clerks, one of whom was to be designated his deputy, and to "possess the powers and perform the duties attached by law to the office of principal, during a vacancy in such office, and during the absence and inability of his

principal." The superintendent resigned his office, \*\*1182 the duties of which thereupon devolved upon the deputy. The deputy claimed the salary of a superintendent during the time he discharged the duties of the office, and it was held that he was entitled to such salary. The court, by GROVER, J., supported the conclusion reached by references which are especially pertinent in this case:

"But there are precedents which, though not judicial, I regard as entitled to be considered as decisive of the question under consideration. In the constitution of the state adopted in 1822 will be found the following provision: 'In case of the impeachment of the governor, or his removal from office, death, resignation, or absence from the state, the powers and duties of the office shall devolve upon the lieutenant governor for the residue of the term, or until the governor, absent or impeached, shall return or be acquitted.' Const. 1822, art. 3, § 6. On the eleventh \*393 of February, 1828, the office of governor became vacant by the death of De Witt Clinton, the then incumbent of the office, and its powers and duties, under the above provision of the constitution, devolved upon Nathaniel Pitcher, then lieutenant governor. The question arose whether he was to be regarded, in the exercise of the powers and performance of the duties so vested in him, as acting governor, or in the performance of the contingent duties of lieutenant governor, and, as a consequence, whether he was entitled to the salary of the former office, or the compensation given to the lieutenant governor for his services as such. It was held by William L. Marcy, then comptroller, that he was to be regarded as the acting governor, and entitled to the salary given by law to that officer. The same question, under the same provision, again arose in 1829 upon the resignation of the office of governor by Martin Van Buren, and the powers and duties of the office devolving upon Enos T. Throop, then lieutenant governor, and were decided the same way by Silas Wright, then comptroller. It will be seen that these questions were identical with that in the present case. We surely shall not go far astray in following the precedents established by these able jurists, wise statesmen, and rigid economists."

The principle on which the second question is to be

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decided, namely, whether the appellant ceases to be governor when he ceases to be secretary of state, seems to be this: If an office be appendant, as the expression is in 1 Leon. 321, to another office, the determination of the first office will determine the second. This is the case where an officer holding any office is ex officio entitled to some other office. For instance, in *City of Portland v. Denny*, 5 Or. 160, the recorder of the city of Portland was ex officio a justice of the peace, but on the determination of his office of recorder he would have ceased to be a justice of the peace. \*394 On the contrary, if the nomination or appointment to an office be by a descriptio personarum of one who, on some contingency, is to enter and fill another office, the answering the description at the time the contingency arises designates him as the person who is to enter and fill the office, and, when thus designated, he enters into the office, he holds it entirely independent of the first office. This seems to be the principle which applies when the office of governor devolves on the secretary of state on the happening of any of the events specified in the constitution. That the president of the senate, who holds under a similar title, ceases to be president of the senate when he becomes governor seems evident, for the two offices \*\*1183 are incompatible at common law, and there is no constitutional implication that both offices shall be held together. It would follow, therefore, that the president of the senate would hold the office of governor, once incumbent, without reference to his office of president of the senate. Now, as two offices may remain distinct, though the officer is the same person, it would seem that the same principle as to the office of governor should govern the holding of the office of governor by the secretary of state.

This question, therefore, must also be answered in favor of the appellant, and judgment must be entered accordingly. Judgment reversed.

#### All Citations

11 Or. 389, 4 P. 1180

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2003 WL 21996258 (Utah A.G.)

Office of the Attorney General

State of Utah  
AG Opinion Number 03-001  
August 18, 2003

*Re: Opinion Request on Gubernatorial Succession*

\*1 Governor Michael O. Leavitt  
Governor's Office  
210 State Capitol  
Salt Lake City, UT 84114-0000

Dear Governor Leavitt:

This letter responds to your request for legal guidance on the question whether the Lieutenant Governor, upon the resignation of the Governor, succeeds to the Office of Governor or whether she becomes an "acting" Governor. Based upon the provisions of Article VII, § 11 of the Utah Constitution, the history of the adoption of that section and its amendment in 1980, case law and actions in other states (there being no Utah case on point), and the efficient operation of government, it is my conclusion that upon resignation of the Governor, the Lieutenant Governor succeeds to that office, and becomes the Governor.

Upon its adoption, the Utah Constitution provided that in the case of the resignation of the Governor the "powers and duties of the Governor shall devolve upon the Lieutenant Governor." Article VII, § 11. That language followed the provisions in the United States Constitution, Article II, § 1(6), that in the event of the removal of the President, his death, resignation, or inability to discharge the powers and duties of the office that "the same shall devolve to the Vice President." The federal experience under that language was that the Vice President succeeded to the office of, and became, the President. This succession occurred four times prior to the adoption of Utah's Constitution - John Tyler in 1840, Millard Fillmore in 1850, Andrew Johnson in 1765, and Chester Arthur in 1881. Therefore, at the time of the adoption of the Utah Constitution, it was understood, in theory and in practice, that the Constitutional language "shall devolve" meant "succession" such that the Lieutenant Governor would become the Governor.

Utah's succession provision was revisited in 1980 when the citizens of the State of Utah adopted amendments revising the Executive Article. Among other changes, the revision created the Office of Lieutenant Governor in place of the Secretary of State, required the candidates for Governor and Lieutenant Governor to run on the same ticket, clarified the line of succession of executive authority, and a procedure to determine gubernatorial disability while providing continuity in government. See Senate Joint Resolution 7, passed March 8, 1979 and adopted in November, 1980. Included with the information provided to the electorate in the Voter Information Pamphlet in 1980, when they adopted the amendments, was the impartial analysis by the Legislative Research Director Jon Memmott and arguments in favor of the Executive Article revision by proponent senators Karl N. Snow and Fred W. Finlayson. The impartial analysis noted that candidates for the Office of Lieutenant Governor and Governor run on the same ticket "as in the case with the candidates for the office of President and Vice President of the United States." The arguments in favor of the revision also noted that "the proposed amendment clarifies the present order of succession, making it similar to that of the U.S. Constitution." Thus, the electorate were told that the creation of the Office of Lieutenant Governor and the succession provisions were similar to, and modeled on, the federal system. In addition to the long history of succession to President by Vice Presidents, the U.S. Constitution had been amended by that time that to clarify "in the case of removal of the President from office or of his death or resignation, the Vice President shall become President." The United States Constitution, Amendment 25, § 1, effective February 23, 1967.

\*2 Because the Utah constitutional language that the "powers and duties devolve" came from equivalent federal language where the Vice President succeeded to and became the President, and because the citizens adopted amendments to the Utah Constitution providing for a Lieutenant Governor and a succession "similar to that of the United States Constitution," the intent of the provisions and the understanding and expectation of the citizens who adopted them, was that succession would



be similar to the federal system and that the Lieutenant Governor would succeed to the Office of Governor and become Governor.

This issue has been faced in a number of other states with constitutional language similar to Utah. See *Bryant v. English*, 843 S.W.2d 308 (Arkansas 1992) and *Chadwick v. Earhart*, 4 P. 1180 (Oregon 1884), reaffirmed in *State v. Alcott*, 187 P. 286 (Oregon 1920). In *Bryant*, a case stemming from the resignation of Governor Clinton to become President, the Court in arriving at its conclusion analyzed the language of the Arkansas Constitution, the history of the provisions and the times when it was adopted, the effect on state government of different interpretations, and how the office had been viewed. Arkansas's constitution, like Utah's, provided that powers and duties "devolve" to the Lieutenant Governor. The Court also looked to the further Arkansas provision, similar to Utah's, that upon the vacancy of the Offices of both Governor and Lieutenant Governor that the President of the Senate (or in his inability, the Speaker of the House) "shall act as Governor until the vacancy is filled." (Emphasis added). The Court stated, at page 312:

The difference in language suggests that the Lieutenant Governor, unlike the President (pro tempore) of the Senate or the Speaker of the House, does not merely act as Governor when the Governor resigns. Rather, it suggests that he becomes Governor.

The Court thus held, under the same language as in the Utah Constitution (i.e., that the powers and duties of the Governor "shall devolve upon the Lieutenant Governor for the residue of the term"), that upon resignation of the Governor, the Lieutenant Governor becomes the Governor and is not an "acting Governor." The similarity of Arkansas's constitutional provisions and the reasoning of the Arkansas Court is persuasive authority for interpreting the Utah Constitution.

Some other states, under similar (and dissimilar) language have ruled differently - that the successor (either the Lieutenant Governor, Secretary of State or President of the Senate) does not become Governor, but "acts" as Governor. See e.g., *State ex rel. De Concini v. Garby*, 195 P.2d 153 (Arizona 1940). However, I am not persuaded by that other line of cases. Further, most of those are older cases and in most instances the legislatures and citizens amended their constitution after the court decision to clearly provide that the successor does become the Governor. See e.g. Arizona, California, Montana, and Wisconsin. Thus, case law from other states, and specifically the *Bryant* case, as well as the people's response to contrary decisions, support my determination that under the Utah Constitution upon resignation of the Governor the Lieutenant Governor becomes the Governor.

\*3 The specific language of the Utah Constitution does not lead to a contrary conclusion. As indicated above, the operative language is that upon the resignation "the powers and duties of the Governor shall devolve upon the Lieutenant Governor." Article VII § 11, Utah Constitution. That specific language and word "devolve" came from the United States Constitution which had long been interpreted to mean that the Vice President succeeded to and became the President upon resignation or death of the President. The alternative claim would be that the Lieutenant Governor becomes the "acting" Governor, exercising the powers and duties of the office, but not assuming the title, nor the power to appoint a Lieutenant Governor. However, the only provisions in the Utah Constitution providing for someone to "act as Governor" under a succession is in the case of a vacancy in the both the Offices of Governor and Lieutenant Governor, where the President of the Senate, or if he/she is unable, the Speaker of the House "shall act as Governor until the vacancy is filled." Article VII § 11, Utah Constitution. As was noted in *Bryant v. English* above, different language respecting the Lieutenant Governor and the legislative leaders would suggest a different treatment - the Lieutenant Governor, unlike the President of the Senate or Speaker of the House who would "act as Governor," becomes the Governor.

It is thus my conclusion that upon the resignation of Governor Leavitt, Lieutenant Governor Walker succeeds to and becomes Governor of the State of Utah. Upon her becoming Governor, the Office of Lieutenant Governor becomes vacant and is subject to the Governor's appointment power under Article VII, § 10, of the Utah Constitution.

A separate question and issue has been raised whether the exercise of that appointment power by the Governor requires Senate confirmation. Article VII § 10 provides that the Governor shall "nominate, and by and with the consent of the Senate, appoint all state and district officers whose offices are established by this Constitution and whose appointment is not otherwise provided for." However, the appointment of the Lieutenant Governor by the Governor is "otherwise provided for," as that section further sets forth that if the Office of Lieutenant Governor is vacant "it shall be the duty of the Governor to fill the same by appointment, from the same political party of the removed person; and the appointee shall hold office until a

successor shall be elected and qualified, as provided by law.” This provides specific appointment authority, with separate appointment requirements, and thus is an appointment that is “otherwise provided for.” Therefore, Senate confirmation is not necessary.

The conclusion that Senate confirmation is not necessary was similarly reached by the Utah Supreme Court in Matheson v. Ferry, 641 P.2d 674 (Utah 1982). The Court stated, at page 692:

The construction is also consistent with the policy underlying the language in § 10 that the Governor shall fill unexpired vacancies in the major elective State offices, i.e., Lieutenant Governor, State Auditor, State Treasurer, and Attorney General without senatorial confirmation. In such cases, the sole restriction upon the power of the Governor in making the appointment is that the appointee must be from the same party as the party of the person who previously held that office. (Emphasis added).

\*4 Thus, when a Lieutenant Governor succeeds to the Office of Governor, the vacated Lieutenant Governor’s Office will need to be filled by the Governor with an appointment in accordance with Article VII, § 10, without the consent of the Senate.

My conclusion that Lieutenant Governor Walker will become Governor Walker upon resignation of Governor Leavitt will hopefully end the current questions surrounding this issue and provide for a clear and complete transition. If I can be of further assistance in this matter, or if you have further questions, please contact me.

Sincerely,

Mark L. Shurtleff  
Utah Attorney General

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2003 WL 21996258 (Utah A.G.)

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Distinguished by State ex rel. Ayres v. Gray, Fla., December 11, 1953

29 Wash. 335  
Supreme Court of Washington.

STATE ex rel. MURPHY  
v.  
McBRIDE, Governor.  
STATE ex rel. HAGEMEYER  
v.  
SAME.

Aug. 7, 1902.

Applications—one on the relation of John C. Murphy, and the other on the relation of W. A. Hagemeyer—for mandamus to Henry McBride, governor. Denied.

Reavis, C. J., and Anders, J., dissenting.

West Headnotes (3)

[1] **Judges**  
↔Creation and abolition of office

Laws 1901, p. 345, increasing the number of judges of the supreme court till a certain time only, when the number shall be as before, does not violate Const. art. 4, § 2, providing such court shall consist of five judges, and that the Legislature may increase the number of judges from time to time.

1 Cases that cite this headnote

[2] **Judges**  
↔Vacancy in office

Const. art. 4, § 3, providing that the terms of judges of the supreme court elected shall be six years, and if a vacancy occur the governor shall appoint a person to hold the office till the election to fill the vacancy, is not infringed by Laws 1901, p. 345, increasing the number of

judges of the supreme court, for a definite period of less than two years, by two, who shall be appointed by the governor.

10 Cases that cite this headnote

[3] **Public Employment**  
↔Manner and Mode of Filling Vacancy States  
↔Term of office, vacancies, and holding over

Under Const. art. 3, § 2, vesting the supreme executive power in a governor, who shall hold office for a term of four years, and till his successor is elected and qualified, and section 3, providing that the lieutenant governor shall hold his office for the same term, and section 10, providing that on death or disability of the governor the duties of the office shall devolve on the lieutenant governor, and in case of a vacancy in both offices the duties of governor shall devolve on the secretary of state, who shall act as governor till the disability be removed or a governor be elected, there is no vacancy in the office of governor or lieutenant governor, to be filled by an election for an unexpired term, where the governor dies, and the lieutenant governor performs the governor's duties.

9 Cases that cite this headnote

**Attorneys and Law Firms**

\*336 \*\*25 John E. Humphries, J. W. Robinson, and Phil Skillman, for relators.

W. B. Stratton, E. W. Ross, and C. C. Dalton, for respondent.

Bo Sweeny, amicus curiae.

**Opinion**

MOUNT, J.

These two cases involve the same questions, and for that reason were consolidated at the argument and heard as one. They are applications for a writ of mandamus to respondent, requiring him to issue his \*337 proclamation for the election of a governor, a lieutenant governor, and three justices of the supreme court at the next general election. It appears from the petitions that Hon. John R. Rogers and Hon. Henry McBride were at the general election held in November, 1900, elected to the offices of governor and lieutenant governor, respectively, for the term of four years, beginning on the second Monday of January, 1901; that these officers duly qualified as such, and entered upon the discharge of their respective duties; that on December 26, 1901, the Honorable John R. Rogers died, and respondent thereupon took the oath of office, and is now acting governor; that there is a vacancy in the office of governor, and also in the office of lieutenant governor. It also appears that the legislature of 1901 passed an act increasing the number of judges of this court from five to seven; that appointments were made to fill the vacancies created by the act; that the terms of office of the two judges so appointed will expire on the second Monday of October, 1902; that the governor refuses to issue his proclamation for the election of a governor, lieutenant governor, and two supreme court justices at the next general election, to be held in November of this year. Respondent appeared and filed a demurrer to each of the petitions.

The first question presented is, does the death of the governor cause a vacancy in that office, which may be filled by an election for the unexpired term, and, if not, does the office of lieutenant governor become vacant when the incumbent assumes the duties of governor? The provisions of the constitution relating to this question are as follows: Section 2, art. 3: 'Governor, Term of Office. The supreme executive power of this state shall be vested in a governor, who shall \*338 hold his office for a term of four years, and until his successor is elected and qualified.' Section 3, art. 3, provides that the lieutenant governor shall hold his office for four years, and until his successor is elected and qualified. Section 10, art. 3: 'Vacancy in. In case of the removal, resignation, death or disability of the governor, the duties of the office shall devolve upon the lieutenant governor, and in case of a vacancy in both the offices of governor and lieutenant governor, the duties of governor shall devolve upon the secretary of state, who shall act as governor until the disability be removed or a governor be elected.' This last section clearly provides (1) that upon the death of the governor the duties of the office shall devolve upon the lieutenant governor; and (2) in case of a vacancy in the offices of both governor and lieutenant governor the duties of governor devolve upon the secretary of state, who shall act until the disability be removed or a governor

elected. This provision of the constitution of this state is in effect the same as the provision of the constitution of the United States with reference to the succession of the vice president to the office of president of the United States. Upon the death or disability of the president, it has uniformly been held that the vice president holds the office of president until a successor to a deceased president comes to assume the office. *Merriam v. Clinch*, 6 Blatchf. 9, Fed. Cas. No. 9,460. In that case it was said: 'It has never been supposed that, under the provision \*\*26 of the constitution, the vice president, in acting as president, acted as the servant or agent or locum tenens of the deceased president or in any other capacity than as holding the office of president fully, for the time being, by virtue of express authority emanating from the United States.' \*339 In the case of *Chadwick v. Earhart*, 11 Or. 389, 4 Pac. 1180, where the court was considering a constitutional provision of the state of Oregon in almost the identical language of section 10, supra, it was said: 'In the first place, it is not shown how an office can be vacant, and yet there be a person, not the deputy or locum tenens of another, empowered by law to discharge the duties of the office, and who does in fact discharge them. It is not explained how in such a case the duties can be separated from the office, so that he who discharges them does not become an incumbent of the office, and, in the second place, how a person can fill the office of governor without being governor.' It is a well-settled rule that an office is not vacant so long as it is supplied, in the manner provided by the constitution or laws, with an incumbent who is legally authorized to exercise the power and perform the duties which pertain to it. *Mechem*, Pub. Off. § 125; *Throop*, Pub. Off. § 431. The constitution having provided that in case of the death of the governor the duties of the office shall devolve upon the lieutenant governor, there is no vacancy in the office of governor. It is not necessary to discuss the meaning of the provision, 'who shall act as governor until the disability be removed or a governor be elected,' because that provision, as used here, clearly refers only to the secretary of state, in case that officer should assume the duties of governor under the contingency named. What is said above applies equally to the lieutenant governor. When the lieutenant governor, by virtue of his office and of the command of the constitution, assumed the duties of governor on the death of Gov. Rogers, the office of lieutenant governor did not thereby become vacant, but the officer remained lieutenant governor, intrusted \*340 with the powers and duties of governor. *People v. Budd*, 114 Cal. 168, 45 Pac. 1060, 34 L. R. A. 46; *State v. Sadler*, 23 Nev. 356, 47 Pac. 450; *People v. Hopkins*, 55 N. Y. 74; *Robertson v. State*, 109 Ind. 79, 10 N. E. 582, 643. It is argued, however, that since it is made the duty of the lieutenant governor, under the constitution, to be presiding officer of

the state senate (section 16, art. 3), and as such to approve all bills passed by that body, he must, as governor, review and approve or reject bills which as lieutenant governor he has already approved. These duties are, no doubt, inconsistent; but this argument, we think, is fully met by another provision of the constitution, which provides, at section 10, art. 2, in substance, that when the lieutenant governor shall act as governor the senate shall choose a temporary president. The lieutenant governor, therefore, when the duties of governor devolve upon him, is relieved of the duties of presiding officer of the senate.

The legislature of 1901 passed the following act:

'An act increasing the number of judges of the supreme court of the state of Washington, and declaring an emergency.

'Section 1. The supreme court of the state of Washington, from and after the passage of this act, up and to the first Tuesday, after the first Monday in October, 1902, shall consist of seven judges: provided, that after the first Tuesday after the first Monday in October, 1902, said supreme court shall consist only of five judges.

'Sec. 2. The governor is hereby authorized to appoint one from each of the dominant political parties the two additional judges provided for by section 1 of this act, which appointees shall hold office until the first Tuesday \*341 after the first Monday in October, 1902, and no longer, and each of the said judges shall receive a salary of four thousand dollars per annum.'

Laws 1901, p. 345.

Section 3 declares an emergency. After this act was passed, the governor, by authority thereof, made two appointments as provided therein. It is conceded in this case that the legislature may increase the number of judges of this court from five to seven; but it is argued (1) that when the increase is once made no decrease can be made, and (2) that the temporary increase made is in conflict with the constitutional term. We are therefore urged to hold that so much of the act as increased the number of judges of this court to seven may be allowed to stand, and the remainder be declared void, thereby making a permanent increase, instead of a temporary one. This reasoning, it seems to us, must fail, because by the very terms of the act the increase of the number of judges from five to seven was temporary. This intention is clearly and definitely expressed as the single purpose of the act, so that if the temporary increase is void the whole act must fail. Cooley, Const. Lim. (6th Ed.) p. 211. The rule of law is well settled in this country that the legislative department is not made a special agency for

the exercise of specially defined legislative powers, but is intrusted with general authority to make laws at discretion, except where the constitution has imposed limits upon this legislative power. Cooley, Const. Lim. pp. 104, 201. In other words, the constitution of this state is a limitation upon the powers of the legislature, and not a grant of power. Hence, before an act of the legislature may be declared unconstitutional, it must appear that the act is in conflict with some express \*342 provision of the constitution which prohibits the act or parts of the act complained of. Bearing this rule in mind, we consider the questions presented:

1. The constitution provides (section 2, art. 4): 'The supreme court shall consist of five \*\*27 judges, a majority of whom shall be necessary to form a quorum and pronounce a decision. \* \* \* The legislature may increase the number of judges of the supreme court from time to time, and may provide for separate departments of said court.' The evident meaning of the first provision is that this court shall never be decreased below five judges. The second provision gives express authority for an increase of the number of judges. There is no express provision for a decrease in the number after the increase has been made unless it be found in the phrase 'from time to time.' If it be conceded, as argued by relators, that the words 'from time to time' mean that the legislature may at one time make one increase, and at another time another increase, these words add nothing to the declaration that 'the legislature may increase the number of judges of the supreme court,' because without the words 'from time to time' that authority rests in the legislature by reason of the fact that no limitation is placed upon the number to which the court may be increased. We must therefore look for some meaning in the words 'from time to time,' or conclude that they were used without purpose. These words are defined by lexicographers to mean 'occasionally.' The word 'occasionally' is defined to mean: 'As occasion demands or requires; as convenience requires; accidentally, or on some special occasion.' But whatever may be the technical meaning of the words, they certainly cannot be held to mean that the legislature may not decrease the number of judges after the increase \*343 thereof. If, therefore, the legislature has power to increase the number of judges as occasion or convenience requires, and there is no restriction upon a decrease, except below five, it follows that a decrease may be had to this minimum when necessity or occasion requires, of which necessity or occasion the legislature is the exclusive judge. Again, the fact that the constitution has placed a minimum limit and permitted an increase in the number of judges is a strong inference that the increased number may be reduced to the minimum. Furthermore, the legislative and the executive branches of the state government have placed this construction upon their

powers, and, where these co-ordinate branches have construed a constitutional provision and acted upon it, great weight will be given thereto. State v. Rusk, 15 Wash. 403, 46 Pac. 387.

2. Does the act conflict with the provision relating to the terms fixed by the constitution? Section 3, art. 4, of the constitution, provides: 'The judges of the supreme court shall be elected by the qualified electors of the state at large, at the general state election, at the times and places at which state officers are elected, unless some other time be provided by the legislature. \* \* \* After the first election the terms of judges elected shall be six years from and after the second Monday in January next succeeding their election. If a vacancy occur in the office of a judge of the supreme court, the governor shall appoint a person to hold the office until the election and qualification of a judge to fill the vacancy, which election shall take place at the next succeeding general election, and the judge so elected shall hold the office for the remainder of the unexpired term.' The term fixed by this provision is six years, and applies only to judges elected. This term begins on the second Monday in January next succeeding an election, and \*344 cannot be changed by the legislature. Mechem, Pub. Off. § 387; Throop, Pub. Off. § 311; State v. Twichell, 4 Wash. St. 715, 31 Pac. 19. The vacancy here referred to is evidently intended to apply to a vacancy which shall continue beyond an election and for the remainder of the unexpired term. The unexpired term referred to is the remainder of the six-year term. The clear intention of this section of the constitution is (1) to require that the judges of this court shall be elected whenever there is an election at which they may be elected; (2) that the terms of judges elected shall be six years; and (3) that appointive judges shall not serve for a longer time than the next succeeding general election and the qualification of a successor. There is no limitation, either express or implied, upon the legislature to make appointive terms extend to an election. The limitation is that, where a vacancy occurs which extends beyond an election, then an appointee shall hold until the next succeeding general election, and until the qualification of a judge to fill the vacancy. It cannot be said that all vacancies which occur in the membership of this court may be filled by an appointee from the time of the appointment to the next succeeding general election, because a vacancy may occur after the election of a successor to one of the elected judges, and before the expiration of his term, where no election intervenes, which vacancy could be filled by appointment only until the expiration of the term. State v. Black, 22 Minn. 336. For example, the regular elective term of Judge REAVIS expires on the second Monday of January, 1903. His successor will be elected regularly in November of this year. No other general election will be held until

November, 1904. If Judge REAVIS should resign on the day \*345 following the election in November next, and the governor should appoint a person to fill the vacancy occurring by reason of such resignation, it certainly cannot be held that such an appointee may hold office until the next succeeding election, two years hence, and thus deprive the regularly elected judge from taking office on the second Monday in January next succeeding his election. The term of an appointive judge, therefore, is not fixed, except that it cannot extend beyond an election and the qualification of his successor, or to the end of the term. When the term of judges elected was fixed at six years, it was intended thereby to distinguish elected judges from appointed judges, and to fix the \*\*28 terms of elected judges for a definite time, and to limit the terms of appointed judges to the next election. Within that limit the legislative power is complete. It may provide for a term of any length of time up to the succeeding general election. This term is appointive. But if a vacancy is created which extends beyond an election, the provisions of the constitution apply, and the legislature has no authority to change or modify the 'terms' therein contained. The act in question does not attempt to change or modify the terms of judges elected. It undertakes to create a vacancy, and to terminate the vacancy at a fixed time before an election can take place, and before an elective term may begin; and this, we hold, may be done, because there is no fixed constitutional appointive term. It is certainly not necessary that a general act be passed, increasing the number of judges for an indefinite time, and that subsequently another act be passed, decreasing this number. What may be done by a legislative body indirectly may be done directly. The act in question is not in conflict with any constitutional term, and, in so far as it increased the \*346 number of judges of this court temporarily, was not in conflict with any provision of the constitution.

The writs prayed for will be denied.

FULLERTON, HADLEY, DUNBAR, and WHITE, JJ.,  
concur.

REAVIS, C. J.

I concur in the conclusion that no vacancy exists in the office of governor, and that a lieutenant governor ought not to be elected this fall. I am unable, however, to assent to the construction given to the statute entitled 'An act increasing the number of judges of the supreme court of

the state of Washington, and declaring an emergency' (Laws 1901, p. 345), in the majority opinion. I feel convinced that sound canons of constitutional interpretation impose the duty of declaring section 2 of this law void. The statute is already set out in the majority opinion. This section adds additional qualifications to the office of judge to those required in the constitution, and defines and limits the duration of terms of the two judges appointed by the governor until the first Tuesday after the first Monday in October, 1902. The legislature has no power to define the term or prescribe the qualification of a judicial officer. This seems clear under the plain provisions of the constitution. If there be one rule set at rest by judicial authority,—including, among other courts that have spoken upon the question, this court,—it is that when the term, qualifications, salary, or method of election of a judicial officer is prescribed in the constitution, the legislature is incompetent to change, modify, or in any manner interfere with such requirements in the organic law. Thus the term cannot be abridged or extended by legislative act. In *State v. Twichell*, 4 Wash. St. 715, 31 Pac. 19, this court had before it for construction the act of March 3, 1890, \*347 entitled 'An act providing for an additional number of superior court judges, and declaring an emergency to exist.' Laws 1889-90, p. 346. This law provided for additional superior court judges in several counties, and their appointment by the governor until the ensuing general election in November of the same year. Section 3 provided for the election of two judges in King county, as follows: 'At the general election in 1890, there shall be elected in the county of Spokane one superior judge, and in the county of Pierce two superior judges, and in the county of King two superior judges, for said counties, in addition to the judges now provided for by law in said counties, who shall hold their offices for the term of four years from and after the second Monday in January, 1891.' It will be observed that the section directs the election of the two judges in King county at the election in November, 1890, and fixed their terms for four years after the second Monday in January, 1891. The proceeding before the court was mandamus to compel the election of the successors of these two additional judges at the November election in 1892, and the complaint of the relator was that the relator was that the legislature had extended the term prescribed for superior court judges in the constitution. The court observed in determining this case: 'On March 3, 1890, the legislature passed an act providing for additional judges in the counties of Spokane, Pierce, and King. Section 3 of said act provides that 'at the general election in 1890 there shall be elected \* \* \* in the county of King, two superior judges \* \* \* in addition to the judge now provided for by law in said county, who shall hold their offices for the term of four

years from and after the second Monday in January, 1890.' Before the enactment of that law there had been but one judge elected for said county of King. He was \*348 elected at the election for the adoption of the constitution in 1889, and, under the provisions of said constitution, his term of office will expire in January next, and his successor must be elected at the coming November election. And if the provisions of the law of March 3, 1890, above quoted, are of force, it is conceded that said successor to the judge elected in 1889 is the only one to be so elected. The contention on the part of the petitioner, however, is that so much of the law above quoted as assumes to fix the term of office of the judges therein provided for is unconstitutional and void. The appellant contends that such provision is not only not opposed to any express provision of the constitution, but is in entire harmony with the letter and spirit thereof. To determine the right of these respective contentions is to determine the controversy at bar. If the constitution has not provided for the terms of additional judges, which might be provided for the courts of the several counties by the legislature, it follows, as of course, that \*\*29 the legislature has full power to enact in regard thereto. If, on the other hand, the constitution has so provided, such provision must control, and any attempt of the legislature to change or modify the same would be absolutely void and of no effect. \* \* \* Thus construing it, we are forced to the conclusion that the constitution makers intended that the regular term of all superior court judges should be uniform, and that the regular incumbents of said offices should hold for the same term,—not only as to its duration, but also as to the time of its commencing and ending. And we think that the additional judges to be provided by act of the legislature, when so provided, occupied exactly the same relation to the constitution and the term of office therein provided for as did those created by the constitution itself. If the legislature had simply provided for two additional judges for the county of King, and stopped there, the legislation would have been effective. If this is true, it must be because the term of office and other provisions as to salary, etc., were covered by the constitution. The constitution created the office of judge of \*349 the superior court. It provided that a certain number of judges should be elected. It also provided that the legislature might authorize and require the election of an additional number of judges. It does not follow, however, as contended for by appellant, that because the election of a portion of the judges was authorized by the constitution itself, and another portion thereof by the legislature, that the respective portions bear any other than a common relation to all the provisions of the constitution relating to such officers. The term of office, then, of all the judges, must be held to have been provided for in the constitution. \* \* \* If this construction of the



clause above referred to is to obtain, it follows that a definite term, ending three years from the second Monday of January, 1890, applicable to all superior court judges, whether provided for in the constitution or by legislation, was fixed in the constitution. If the constitution has thus provided definite terms, it would, of course, follow that the legislature could not change or modify the same.' The language of the court has been cited at considerable length here, because I am impressed with the view that its reasoning and authority should be controlling in the construction of the statute of 1901, supra, now before the court. The same care and deliberation was expressed in section 3, art. 4, of the constitution, relating to the terms and qualifications of the supreme judge, as in the section relating to the superior judge; and this is also true of the election of the judges of both courts, and the method of filling vacancies in these offices.

The majority of the court, as I understand, concludes that the legislature cannot alter or modify the terms of the judges elected, and has no power to change the method of filling vacancies in the terms prescribed by the constitution; and the authorities cited in the opinion fully sustain the rule. It is then announced, \*350 'If, therefore, the legislature has power to increase the number of judges as occasion or convenience requires, and there is no restriction upon a decrease, except below five, it follows that a decrease may be had to this minimum when necessity or occasion requires, of which necessity or occasion the legislature is the exclusive judge.' If this be the correct rule, the fair deduction therefrom is that the framers of the constitution intended to create five constitutional judges with fixed qualifications, duration of terms, and salaries, who should always sit with the court, and additional judges of occasion or necessity may be designated by the legislature in such numbers and for such times as it may deem expedient. It would seem fairly to follow, also, that the legislature might, so far as any express limitation goes, appoint the additional judges for a month, or, as here, 18 months, or any intervening time between two general elections. Such appointive judges are certainly not filling any vacancies mentioned in the constitution, for it definitely fixed the appointing power of the governor 'to vacancies' until the next general election, or, if to the end of the regular term, then that terminates in the successor who is the judge elected at a general election. The constitution, with much particularity and certainty, provides for the election of all judges, and very minutely fixes the power and procedure for filling vacancies. It says: 'If a vacancy occur in the office of a judge of the supreme court, the governor shall appoint a person to hold the office until the election and qualification of a judge to fill the vacancy, which election shall take place at the next succeeding general election, and the judge so elected shall hold the office for the

remainder of the unexpired term.' It may be thus observed that the appointment by the governor of the two additional judges in the present instance \*351 was made under the act of 1901, supra, for there was no vacancy filled, ending with the general election. But according to the construction of the court here, the governor's appointment was made for a full term created by the legislature. Then, if the legislature could create a special term in duration, its power is necessarily plenary to appoint judges itself, instead of authorizing appointment by the governor, for they are legislative officers, and there would seem to be no express restriction upon adding qualifications for the judges not mentioned in the constitution; that is, one could be from each dominant party, or any other qualification not expressly inhibited which the legislature might deem expedient,—as that some of the judges should be Socialists, and the other Democrats or Republicans. It is plain that these offices are elective. The vacancy is an emergency,—an unforeseen event,—and must \*\*30 always occur at the time in an office then in existence; and it is only an interval in the incumbency of the existing office, and cannot be a vacancy if it envelops the whole duration of the office. Somewhere in the term,—in the commencement, during its course, or before its ending,—there must be an elected judge. No executive appointment can extend beyond the next general election. Thus Judge WHITE was appointed by Governor Rogers to the vacancy occasioned by the resignation of Judge Gordon in June, 1900, but he was thereafter elected to fill the unexpired vacancy in November, 1900. Section 5, art. 4, of the constitution, relating to vacancies in the office of superior court judge, is in identical words with the requirement for filling the vacancies in this court. In State v. Millett, 20 Wash. 221, 54 Pac. 1124, the question of filling the vacancy of superior court judge was determined. It was there said: \*352 'The commission of the governor only entitles the holder to retain office until his successor is elected and qualified, and the word 'remainder,' as found in that section, relates to the term existing at the date of the election, not to a term beginning some months later. \* \* \* Counsel for the respondent has urged upon the consideration of the court the importance of having a fixed and certain time at which elected officers shall qualify, and argues that great public inconvenience might follow if it were held that a judge elected to fill a vacancy might qualify any time after the result of the election is declared. \* \* \* However, the constitution plainly limits the right of the appointed judge to hold until the election and qualification of his successor at the next succeeding general election.'

It seems to be suggested that the constitution is a limitation only upon legislative power, and that the express limitation must be found to inhibit the power of the legislature, at its discretion, to create and define the

tenure of appointive judges, while admitting that it cannot interfere with the constitutional office of the original five judges. However, there is no express limitation in words on the legislative power to diminish the number of the judges below five. There is in words no such limitation as to the diminution of salaries, but all here concede such limitations exist by implication. It could hardly be successfully maintained that the legislature could increase the court if the power to increase had not been conferred. I understand the correct rule of construction to be that the mandate 'thou shalt,' when used in directing the organization of the court and fixing the number of its members, also implies negatively the inhibition 'thou shalt not' add any other number, and it therefore required power affirmatively given to increase the number after the first organization. The sovereign powers of the state were deliberately \*353 distributed in framing the constitution into legislative, executive, and judicial departments. In the supreme and superior courts were reposed the judicial functions, and their organization, powers, qualifications, and terms of the judges, are defined. The independence of the court is guarded in all cases by fixed tenures of office and salaries during the terms. The convention, when vesting such functions in courts, had in view as well the future as the present of the state, and foresaw its large growth and development, and the necessity that would arise for increasing the number of judges for the courts, and it provided for such increase from 'time to time' by the legislature. But it plainly intended to preserve the harmony and the unity of this court in the tenure and qualifications of its judges. I conclude that section 2 of the act of 1901, supra, and the same idea wherever expressed elsewhere in the act, is a departure from that intention, and that the plain mandate of the constitution carries with it the implied prohibition upon the creation of legislative offices such as the act of 1901 does if all its provisions are held valid. However, the void section of this statute may be eliminated, and the law, in its substance, be valid. The title is perfect: 'An act increasing the number of judges of the supreme court, and declaring an emergency.' This is clearly within the authority of the constitution. The first section declares that after the enactment the court shall consist of seven members. Here the limitation imposed upon the terms of the judges and the added qualifications were beyond the power of the legislature. In *State v. Twichell*, supra,—the case where the legislature had extended the term of superior judges,—the court declared that such interference was beyond the competency \*354 of the legislature, but held that portion of the statute within its competency valid, and

gave effect to the law; observing that the power of the legislature was limited to providing for the increase of the number of judges. So in this case the legislature was only competent to provide the number of judges to be added to the court. It was unnecessary and was immaterial that the act provided for their appointment by the governor, for the constitution had already designated the method of filling the vacancies by the governor, and so it may be said of the specifications of the salaries. I understand the true rule of construction, approved by the great weight of, if not by unanimous, authority, is that if the valid exercise of legislative power can be separated from the void, and is susceptible of operation, the valid will be enforced. A few of such authorities may be mentioned here: *Cooley*, *Const. Lim.* (4th Ed.) pp. 214–216; *Commissioners v. George* (Ky.) 47 S. W. 779, 84 Am. St. Rep. 454; *State v. Brewster*, 44 Ohio St. 589, 9 N. E. 849; *State v. Thoman*, 10 Kan. 191; *Griebel v. State*, 111 Ind. 369, 12 N. E. 700. In the case of *State v. Blend*, 121 Ind. 514, 23 N. E. 511, 16 Am. St. Rep. 411, the rule is admirably stated as follows: 'It is equally well settled \*\*31 that, when a part of a statute is unconstitutional, if by striking from the act all that part which is void, that which is left is complete in itself, sensible, capable of being executed, and wholly independent of that which is rejected, the courts will reject that which is unconstitutional and enforce the remainder.' I conclude that the statute here, with the void features eliminated, is clear and sensible, and should be enforced; that there is a valid increase of this court by the addition of two constitutional judges; that the two members appointed \*355 by Gov. Rogers are filling vacancies contemplated by the constitution; and that their successors to fill the unexpired terms ought to be elected at the general election in November, and the writ should issue for that purpose.

ANDERS, J.

I concur in the foregoing opinion of Chief Justice REAVIS.

#### All Citations

29 Wash. 335, 70 P. 25

228 Wis. 645  
Supreme Court of Wisconsin.

STATE ex rel. MARTIN  
v.  
EKERN.

June 21, 1938.

Original action. Petition for leave to bring quo warranto proceedings in this court.

Petition granted.

West Headnotes (10)

[1] Courts  
⇌ Wisconsin

Whether office of Lieutenant Governor is held by one without lawful authority is a question publici juris, and is one which relates to the sovereignty of the state, its franchises or prerogatives, or the liberties of its people. Const. art. 5, § 7.

Cases that cite this headnote

[2] Courts  
⇌ Quo warranto

The original jurisdiction of the Supreme Court was properly invoked in quo warranto proceedings to determine whether Lieutenant Governor held office by lawful authority, since question sought to be determined was publici juris and related to the sovereignty of the state, its franchises or prerogatives, or the liberties of its people.

1 Cases that cite this headnote

[3] Public Employment  
⇌ Occurrence and Existence; What Creates or Constitutes Vacancy

The term "vacancy," as applied to an office, has no technical meaning.

2 Cases that cite this headnote

[4] Quo Warranto  
⇌ Use of name of state  
Quo Warranto  
⇌ Private persons

A private person who was a citizen, elector, and taxpayer of the state could, upon refusal of Attorney General to bring action, bring an action in the name of the state for the purpose of determining whether appointee to the office of Lieutenant Governor was lawfully in office, since action was for the purpose of vindicating a public right, and upon refusal of Attorney General to bring action legality of appointment could be tested in no other way. St.1937, §§ 17.01(1), 294.04, 370.01(1).

1 Cases that cite this headnote

[5] States  
⇌ Governor

The office of Governor is one of high dignity in which the people have a paramount interest.

Cases that cite this headnote

[6] States  
⇌ Lieutenant Governor

The office of Lieutenant Governor is of great importance because upon incumbent may at any

time devolve the powers and duties of the Governor. Const. art. 5, § 7.

construed according to a common and approved usage. St.1937. § 370.01(1).

1 Cases that cite this headnote

Cases that cite this headnote

[7] States  
⇌Lieutenant Governor

Under constitutional provisions relating to the office of Lieutenant Governor, where vacancy occurs in the office of Governor, the powers and duties of that office devolve upon the Lieutenant Governor for the remainder to the term or until the Governor, absent or impeached, shall have returned or the disability shall cease; but the Lieutenant Governor does not become Governor, and remains Lieutenant Governor, upon whom devolves the powers and duties of Governor, and in such contingency no vacancy occurs in the office of Lieutenant Governor. St.1937, §§ 17.01(1), 17.27(1-4); Const. art. 5, §§ 1, 2, 7, 8; art. 13, §§ 9, 10.

3 Cases that cite this headnote

[8] States  
⇌Lieutenant Governor

Under statutes authorizing Governor to fill vacancy in any office in the state where no other provision is made for filling the same, Governor was authorized to fill vacancy created by the resignation of Lieutenant Governor by appointing successor to take vacated office. St.1937, §§ 17.01(1), 17.27(1-4); Const. art. 5, §§ 1, 2, 7, 8; art. 13, §§ 9, 10.

2 Cases that cite this headnote

[9] Statutes  
⇌Plain Language; Plain, Ordinary, or Common Meaning

Words and phrases of a statute would be

[10] Stipulations  
⇌Stipulations as to pleadings and service thereof

Where party stipulated that in event court granted leave to citizen to commence action to test legality of appointment of Lieutenant Governor, petition should be considered as a complaint to which opposing party demurred, on determination that action was properly brought, stipulation became effective and petition would be considered as a complaint to which opposing party demurred.

Cases that cite this headnote

Demurrer to the petition, considered as a complaint, is sustained.

On May 19, 1938, James W. Martin of Ozaukee county, pursuant to the procedural rules laid down in In re Exercise of Original Jurisdiction of Supreme Court, 201 Wis. 123, 229 N.W. 643, petitioned this court for leave to bring, in the name of the state of Wisconsin, an original action of quo warranto, for the purpose of having determined by what authority Herman L. Ekern holds the office of lieutenant governor of this state, and if it be found that he holds that office without lawful authority, to oust and exclude him therefrom. Upon the filing of the petition an order \*394 was made by Mr. Chief Justice ROSENBERRY requiring Mr. Ekern to show cause why the petitioner should not be given leave to bring, in the name of the state, an original action in this court. Pursuant to that order, the petition was heard on May 31, 1938. The question whether leave to commence the action should be granted was argued by the attorneys for the petitioner and for Mr. Ekern. The court thereupon took a recess and conferred on the question of granting the prayer of the petition. After a brief conference, the court was of the view that the question presented required studious and painstaking consideration. Upon reconvening, the court

stated that it would take the matter under advisement. It was then suggested, that if the petitioner and the respondent would stipulate, that in the event the court granted leave to commence the action, the petition should be considered as a complaint, to which the respondent demurred, the court would then hear arguments on the merits. The parties so stipulated and the merits were argued.

The petition in substance alleges: That the petitioner is a citizen, resident, taxpayer and elector of Ozaukee county; that prior to the making of his petition he demanded in writing of Orland S. Loomis, the attorney general of this state, that he bring the action in the name of the state, but that the attorney general refused so to do, and therefore the petitioner asks leave to bring the action as a private person in the name of the state; that on November 3, 1936, Philip F. LaFollette, was elected governor of the state of Wisconsin and Henry A. Gunderson was elected lieutenant governor thereof; that Philip F. LaFollette took the oath of office as governor on January 4, 1937, and ever since has been the governor of this state; that on the same day Henry A. Gunderson took the oath as lieutenant governor and continued to act as such officer until October 18, 1937, when he resigned; that by reason of the resignation of Henry A. Gunderson as lieutenant governor, a vacancy occurred in that office, without the right, authority or warrant in law to have the same filled by appointment; that on May 16, 1938, Philip F. LaFollette, as governor of this state, appointed Herman L. Ekern to the office of lieutenant governor of this state; that Mr. Ekern accepted said appointment and on May 17, 1938, took the oath of office, assumed the duties thereof and ever since then has held the office and exercised the duties thereof; that the act of Philip F. LaFollette in appointing Herman L. Ekern to the office of lieutenant governor, was without warrant in law and therefore a clear usurpation and abuse of power; and that Mr. Ekern, in taking said office and in acting as lieutenant governor usurped and intruded into said office without warrant in law. The petition, considered as a complaint, demands judgment that the appointment of Herman L. Ekern to the office of lieutenant governor be declared void; that he be adjudged guilty of usurping and intruding into and unlawfully holding said office; that he be ousted and excluded therefrom and that the office of lieutenant governor be declared vacant.

#### Attorneys and Law Firms

Rubin, Zabel & Rupp, of Milwaukee (Wm. B. Rubin and W. C. Zabel, both of Milwaukee, of counsel), for petitioner.

Orland S. Loomis, Atty. Gen., and Ralph M. Hoyt, Sp.

Counsel, and Walter D. Corrigan, Sr., Sp. Counsel, both of Milwaukee, for defendant.

#### Opinion

NELSON, Justice.

The first question for determination is whether this court should grant leave to the petitioner to bring an original action in the name of the state of Wisconsin. Such leave is asked because the attorney general has refused to bring the action. The question which the petitioner seeks to have determined is most important and of great public concern and interest. Obviously the people of this state are vitally interested in seeing that no important office, such as that of lieutenant governor, be intruded into by any person who has not lawful authority to hold the office or to perform the duties thereof.

[1] [2] [3] The office of governor is one of high dignity in which the people have a paramount interest, Attorney General ex rel. Bashford v. Barstow, 4 Wis. 567. The office of lieutenant governor is likewise of great importance because upon the incumbent thereof may at any time devolve the powers and duties of the governor. Sec. 7, art. 5, Const. That the question sought to be determined is *publici juris* and is one which relates to "the sovereignty of the state, its franchises or prerogatives, or the liberties of its people," cannot be gainsaid. Attorney General v. Railroad Cos., 35 Wis. 425; Attorney General v. Eau Claire, 37 Wis. 400; In re Income Tax Cases, 148 Wis. 456, 134 N.W. 673, 135 N.W. 164; In \*395 re Exercise of Original Jurisdiction of Supreme Court, *supra*.

[4] Assuming for the moment that under the circumstances alleged, the petitioner is a proper person to bring the action in the name of the state, we think it clear, that under the rules stated in the four cases just cited, the petitioner properly invokes the original jurisdiction of this court. In a very early case the question: Why was original jurisdiction of these high prerogative writs given to the supreme court? was propounded and answered thus:

"Because these are the very armor of sovereignty. Because they are designed for the very purpose of protecting the sovereignty and its ordained officers from invasion or intrusion, and also to nerve its arm to protect its citizens in their liberties, and to guard its prerogatives and franchises against usurpation. The convention might well apprehend that it would never do to dissipate and scatter these elements of the State sovereignty among five, ten, twenty or forty inferior tribunals, and wait their tardy progress through them to the supreme tribunal, upon

whose decision must finally depend their efficacy!" Attorney General v. Blossom, 1 Wis. 277 (\*317) at page 287>(\*330).

The petitioner asks leave to bring this action in behalf of the state, by virtue of the provisions of sec. 294.04, Stats., which so far as here material provides:

"(1) An action may be brought by the attorney-general in the name of the state, upon his own information or upon the complaint of any private party, against the parties offending in the following cases:

"(a) When any person shall usurp, intrude into or unlawfully hold or exercise any public office, civil or military. \*\*\*

"(2) Such action may be brought in the name of the state by a private person on his own complaint when the attorney-general refuses to act or when the office usurped pertains to a county, town, city, village or school district." [5] [6] Sec. 294.04 was enacted by the legislature as sec. 336, of ch. 120, Laws of 1856, and as a part of our code. Ever since its enactment it has continued in force without amendment except that the word "school" was inserted before the word "district" in the last line thereof. Giving to the words and phrases of that statute a construction according to their common and approved usage, sec. 370.01 (1), it would seem that their meaning is so clear and unambiguous as not to require construction. That statute was construed by this court in 1875. In State ex rel. Wood v. Baker, 38 Wis. 71, 81, Mr. Chief Justice Ryan, speaking for the court said:

"Sec. 6, ch. 160, R.S., relates to proceedings in the nature of quo warranto for usurpation of office; and authorizes the attorney general to bring an action in the name of the state 'upon his own information or upon the complaint of any private person.' Interpreted by the constitution and translated into legal phraseology, we take this to mean that, in such cases, the attorney general may file an information in the nature of quo warranto, ex officio or upon the relation of a private person. The word 'complaint' cannot mean a pleading so called in the code, but seems to be used in a general sense, as a substitute for relation; and the attorney general certainly proceeds ex officio when he acts on his own information only. So far, therefore, we see no material change of the law. The section, however, goes on to provide that such an action may be brought 'in the name of the state, by a private person, on his own complaint, when the attorney general refused to act, or when the office usurped pertains to a county, town, city or district.'" Before such a statute, the courts of the state might perhaps, in proper cases, have

authorized proceedings in the name of the attorney general, if that officer wrongfully refused to act, and it was necessary to proceed in his name. Att'y. Gen'l. ex rel. Bashford v. Barstow, 4 Wis., 567. Be that as it may, this branch of the section gives a new proceeding by private parties, in the name of the state, without use of the attorney general's name or office, in cases of local office, and in all cases in which that officer may refuse to act. This proceeding is plainly in the nature of a civil action, although in the name of state. 3 Black. Com., 263."

That the construction given to that statute at the time was the only one that reasonably could be given to it seems clear. However, the respondent contends that the words "a private citizen" do not mean any private citizen but only a private person who is entitled to the office. That contention is based upon the holding of this court in State ex rel. Heim v. Williams, 114 Wis. 402, 405, 90 N.W. 452. \*396 Mr. Justice Dodge, speaking for the court in that case, in respect to the right of the relator there to maintain the action, and in respect to sec. 3466, Stats. 1898 (now sec. 297.04) said (page 453):

"But our statute has recognized or created an additional province for such a suit by providing (section 3466, Rev.St. 1898): 'Such action may be brought in the name of the state by a private person on his own complaint when the attorney general refuses to act.' Under that statute it has provided (section 3463) that the proceeding is by 'civil action,' thus making it subject to section 2605: 'Every action must be prosecuted in the name of the real party in interest;' or, to transpose the idea, that a party, in order to prosecute, must have a real interest in the object to be accomplished. State ex rel. Peacock v. Orvis, 20 Wis. 235; State ex rel. Chase v. McKinney, 25 Wis. 416; State ex rel. Wood v. Baker, 38 Wis. 71, 81; State ex rel. Att'y. Gen'l. v. Cunningham, 81 Wis. 440, 471, 487, 51 N.W. 724, 15 L.R.A. 561; State ex rel. Glenn v. Stein, 13 Neb. 529, 14 N.W. 481; Att'y. Gen. ex rel. Lawrence v. Trombly, 89 Mich. 50, 58, 50 N.W. 744. The relator, though using the name of the state to sue, neither alleges nor claims any but a private interest. He does not assume to champion the rights of the public, which would be presented were the attorney general here present on behalf of the state, but predicates his right to such wholly upon his title to the office. If he has not such title, then he has no interest in a judgment ousting the respondent from the office, save such as is common to all citizens or members of the community. That title is denied, and therefore becomes the first subject for inquiry and decision."

That language apparently has remained unchallenged up to the present time, probably for the reason that no similar action has been brought. Only twice has that case been referred to. State ex rel. Harley v. Lindemann, 132 Wis.

47, 111 N.W. 214; and State ex rel. Kleist v. Donald, 164 Wis. 545, 160 N.W. 1067. In the first case mentioned, it was cited to the proposition that (page 215) "there can be no question but what the offices alleged to have been usurped are public offices and pertain to the city of Milwaukee and the public schools therein, within the meaning of the statute quoted. Upon the facts thus admitted it is well settled that the relator may rightfully maintain this action in the name of the state." In the second case mentioned, it was cited in connection with a contention of the relator which was not considered sound. In State ex rel. Heim v. Williams, supra, the cause of action which the relator asserted was so obviously without merit that the court may have failed to consider the full implications of the language used. The court no doubt intended by the following language: "The relator, though using the name of the state to sue, neither alleges nor claims any but a private interest. He does not assume to champion the rights of the public, which would be presented were the attorney general here present on behalf of the state, but predicates his right to sue wholly upon his title to the office," strictly to base its holding on the allegations of the complaint. An examination of the complaints, original and amended, (Vol. 695, Cases and Briefs) reveals that the relator there in bringing the action had only one purpose in mind and that was to obtain the office for himself. This court gave no thought or consideration in that case to the proposition that a vindication of a public right was also involved. In Re Income Tax Cases, supra, this court, in speaking of the original jurisdiction of this court, said: (page 500, 134 N.W. page 686)

"This transcendent jurisdiction is a jurisdiction reserved for the use of the state itself when it appears to be necessary to vindicate or protect its prerogatives or franchises or the liberties of its people. The state uses it to punish or prevent wrongs to itself or to the whole people. The state is always the plaintiff, and the only plaintiff, whether the action be brought by the Attorney General, or, against his consent, on the relation of a private individual under the permission and direction of the court. It is never the private relator's suit. He is a mere incident. He brings the public injury to the attention of the court, and the court, by virtue of the power granted by the Constitution, commands that the suit be brought by and for the state. The private relator may have a private interest which may be extinguished (if it be severable from the public interest), yet still the state's action proceeds to vindicate the public right. The fact that in many cases, as, for example, cases of unlawful imprisonment, the private wrong and the \*397 public wrong are so closely identified that the ending of the private wrong necessarily puts an end to the public wrong, makes no difference with the principle."

What the court there said is, in our view, clearly correct and is particularly applicable here where the petitioner seeks to vindicate no private right but only the public right to have its offices filled and held only by those who are legally elected or appointed thereto, and to have the powers and duties thereof exercised and performed only by those entitled to such offices. While it is not specifically stated in the petition that leave is asked to bring the action for the purpose of vindicating a public right, that is obviously the primary and only purpose of the action which the petitioner asks leave to bring. So construing the petition, as we think it clearly must be construed, we have a petition in which a private person, a citizen, elector and taxpayer of this state asks leave to bring an action in the name of the state for the purpose of vindicating a public, not a private right, upon the refusal of the attorney general to bring it. In a situation like this, where an appointment has been made to fill a vacancy in office, there never can be a petitioner or relator who has any claim or title to such office. Unless a citizen, upon the refusal of the attorney general to bring the action, can obtain leave to bring an action in the name of the state to determine whether such appointment is lawful, then the lawfulness of the appointment will never be determined and the alleged wrongful usurpation or unlawful intrusion into the office cannot be questioned. Let us assume that a lieutenant governor tenders his resignation to the legislature, as he is required to do if the legislature is in session, sec. 17.01 (1), Stats.; that the legislature then proceeds by joint resolution, without authority of law, to make an appointment to fill the vacancy; and that the attorney general, upon request of a private person, refuses to bring an action to determine whether such appointee is the lieutenant governor of this state, or a usurper and intruder into such office. Could it be argued that leave should not be granted to a private person to bring an action in the name of the state for the purpose of determining whether such lieutenant governor so elected or appointed is a de jure officer or a mere usurper? We think not. Similar examples readily suggest themselves. Without further discussion, we are of the opinion that the prayer of the petition for leave to bring the action should be granted.

[7] The conclusion of the court that leave to bring the action should be granted renders the stipulation made at our bar, and heretofore mentioned, effective. The petition, from now on, will be considered as a complaint to which the respondent has demurred. The petitioner will now be referred to as the relator and the respondents as the defendant.

So many of the allegations of the complaint as are material, may be summarized as follows: Philip F. LaFollette was elected governor of the state of Wisconsin



on November 3, 1936, and Henry A. Gunderson was elected lieutenant governor of this state at the same time. Both Philip F. LaFollette and Henry A. Gunderson, on January 4, 1937, took their oaths of office as governor and lieutenant governor respectively. Philip F. LaFollette, at all times since January 4, 1937, has been the governor of this state. On October 16, 1937, Henry A. Gunderson resigned as lieutenant governor. On May 16, 1938, Philip F. LaFollette, as governor, appointed the defendant, Herman L. Ekern, to the office of lieutenant governor. Herman L. Ekern, on May 17, 1938, took the prescribed oath of office, assumed the duties of the office and ever since has exercised the functions thereof.

The relator asserts that Philip F. LaFollette, as governor of this state, was without legal authority to appoint the defendant to the office of lieutenant governor and that the defendant has ever since his appointment and qualification usurped and intruded into the office of lieutenant governor.

The sole question for decision is whether the governor of this state, under the constitution and laws passed in pursuance thereof, has the authority to appoint one having the required qualifications to the office of lieutenant governor. The controversy which has arisen requires a reference to and a construction of the following provisions of our constitution and laws which concededly are applicable.

Sec. 1, art. 5. "The executive power shall be vested in a governor, who shall hold his office for two years; a lieutenant governor shall be elected at the same time, and for the same term."

Sec. 2, art. 5. "No person except a citizen of the United States and a qualified \*398 elector of the state shall be eligible to the office of governor or lieutenant governor."

Sec. 7, art. 5. "In case of the impeachment of the governor, or his removal from office, death, inability from mental or physical disease, resignation, or absence from the state, the powers and duties of the office shall devolve upon the lieutenant governor for the residue of the term or until the governor, absent or impeached, shall have returned, or the disability shall cease. \*\*\*"

Sec. 8, art. 5. "The lieutenant governor shall be president of the senate, but shall have only a casting vote therein. If, during a vacancy in the office of governor, the lieutenant governor shall be impeached, displaced, resign, die, or from mental or physical disease become incapable of performing the duties of his office, or be absent from the state, the secretary of state shall act as governor until the vacancy shall be filled or the disability shall cease."

Sect. 9, art. 13. "All county officers whose election or appointment is not provided for by this constitution shall be elected by the electors of the respective counties, or appointed by the boards of supervisors, or other county authorities, as the legislature shall direct. All city, town and village officers whose election or appointment is not provided for by this constitution shall be elected by the electors of such cities, towns and villages, or of some division thereof, or appointed by such authorities thereof as the legislature shall designate for that purpose. All other officers whose election or appointment is not provided for by this constitution, and all officers whose offices may hereafter be created by law, shall be elected by the people or appointed, as the legislature may direct."

Sec. 10, art. 13. "The legislature may declare the cases in which any office shall be deemed vacant, and also the manner of filling the vacancy, where no provision is made for that purpose in this constitution."

Sec. 17.27(4), Stats. "*Any other vacancy.* In case of a vacancy in any office in the state where no other provision is made for filling the same, it shall be filled by appointment by the governor."

It is conceded that there is no provision in our constitution or laws which specifically provides for the filling of a vacancy in the office of lieutenant governor.

[8] The relator contends that under our constitution there can never be a vacancy in the office of the lieutenant governor because sec. 8, art. 5, provides that "if, during a vacancy in the office of governor, the lieutenant governor shall be impeached, displaced, resign, die, or from mental or physical disease become incapable of performing the duties of his office, or be absent from the state, the secretary of state shall act as governor until the vacancy shall be filled or the disability shall cease" and because that provision of the constitution prevents a vacancy in the office of lieutenant governor. The contention, in our opinion, is not sound. That Henry A. Gunderson resigned as lieutenant governor is alleged in the complaint. That since he resigned he has not been lieutenant governor is conceded. That there was a vacancy in the office of lieutenant governor is conceded. That there was a vacancy in the office of lieutenant governor from October 18, 1937, to May 16, 1938, seems so clear as to require no discussion. The term "vacancy" as applied to an office has no technical meaning. In *State ex rel. Lamey v. Mitchell*, 97 Mont. 252, 34 P.2d 369, 371, it was said:

"The word 'vacancy' as applied to an office, has no technical meaning. An office is not vacant so long as it is supplied, in the manner provided by the Constitution or law, with an incumbent who is legally qualified to exercise the powers and perform the duties which pertain

to it; and, conversely, it is vacant, in the eye of the law, whenever it is unoccupied by a legally qualified incumbent, who has a lawful right to continue therein until the happening of some future event." See, also, State ex rel. Murphy v. McBride, 29 Wash. 335, 70 P. 25.

But it is argued that there can be no vacancy in an office when there is a person who is qualified and authorized to perform the duties thereof. Citing State ex rel. Lamey v. Mitchell, supra, a case in which alleged vacancies in the offices of governor and lieutenant governor were considered.

The provision: "if, during a vacancy in the office of governor, the lieutenant governor shall be impeached, displaced, resign, die, or from mental or physical disease become incapable of performing the duties of his office, or be absent from the state, the secretary of state shall act as governor until the vacancy shall be filled or the disability shall cease," clearly recognizes (1) that there may be a vacancy in the office of lieutenant governor as the result of impeachment, displacement, resignation, death or mental or physical disease, which renders \*399 him incapable of performing the duties of his office, or as a result of his absence from the state, but not as a result of the powers and duties of the office of governor devolving upon him, and (2) that upon the happening of any of those contingencies, during a vacancy in the office of governor, the secretary of state shall act as governor until the vacancy shall be filled or the disability shall cease. The phrase, "or the disability shall cease," may be referable either to the disability of the governor or the lieutenant governor, and the phrase "until the vacancy shall be filled" may likewise be referable to a vacancy in the office of governor or to a vacancy in the office of lieutenant governor, which occurs "during a vacancy in the office of governor."

[9] When a vacancy, either permanent or temporary, occurs in the office of governor, the powers and duties of that office devolve upon the lieutenant governor for the residue of the term or until the governor, absent or impeached, shall have returned or the disability shall cease. It is clear that the lieutenant governor does not become governor. He remains lieutenant governor, upon whom devolves the powers and duties of governor. In such a contingency no vacancy occurs in the office of lieutenant governor. State ex rel. Lamey v. Mitchell, supra; State ex rel. Hardin v. Sadler, 23 Nev. 356, 47 P. 450; People ex rel. Lynch v. Budd, 114 Cal. 168, 45 P. 1060, 34 L.R.A. 46. It is likewise clear that if, during a vacancy in the office of governor, a vacancy occurs in the office of lieutenant governor, the secretary of state shall act as governor. He does not become either governor or lieutenant governor. He does not perform the duties of lieutenant governor except as he acts as governor. He

does not cease to be secretary of state. Under our constitution the secretary of state can act as governor only when there occurs, during a vacancy in the office of governor, a vacancy also in the office of lieutenant governor. To hold otherwise would amount to judicially changing the language of our constitution. It is our opinion that the office of lieutenant governor unquestionably became vacant upon the resignation of Mr. Gunderson which vacancy could be filled, if there be authority under the constitution and laws to fill it by appointment. Sec. 10, art. 13, provides that "the legislature may declare the cases in which any office shall be deemed vacant, and also the manner of filling the vacancy, where no provision is made for that purpose in this constitution." As hereinbefore stated, no provision is made in our constitution for the filling of a vacancy in the office of lieutenant governor. It is conceded that prior to the enactment of ch. 422, Laws of 1921, there was no law which authorized the filling of a vacancy in the office of lieutenant governor. Sec. 17.27 (4) was enacted in 1921, upon the advice of the revisor of statutes. In submitting the bill which contained the following language which the legislature subsequently enacted into law:

"A new subsection is added to section 17.27 of the statutes to read:

"(17.27) (4) Any other vacancy. In case of a vacancy in any office in the state where no other provision is made for filling the same, it shall be filled by appointment by the governor," the revisor appended the following:

"Note: This is a blanket provision to take care of any omission in the laws for filling vacancies."

It is contended by the relator that in construing sec. 17.27 (4), the court should apply the rule that specific provisions of a statute should prevail over general provisions upon the same subject. *Degutes v. State*, 189 Wis. 435, 207 N.W. 948; *Wisconsin Gas & Electric Co. v. City of Ft. Atkinson*, 193 Wis. 232, 213 N.W. 873, 52 A.L.R. 1033. The rule in our opinion is not applicable because there is no specific provision in our constitution or laws relating to the filling of a vacancy in the office of lieutenant governor, and consequently there is no conflict between a specific law and a general law.

[10] The relator further contends that in construing this statute we should apply, as an aid to construction, the doctrine of *noscitur a sociis*. It is pointed out that while the statute was enacted by the legislature as a new subsection it was numbered sec. 17.27 (4) and that its application should therefore be restricted to the vacancies mentioned in paragraph (1), (2) and (3), of sec. 17.27. See *Boardman v. State*, 203 Wis. 173, 233 N.W. 556; *City of*

Milwaukee v. Kassen, 203 Wis. 383, 234 N.W. 352; Fox v. Milwaukee Mechanics' Ins. Co., 210 Wis. 213, 246 N.W. 511. The contention might have some merit had paragraph (4) been adopted at the same time that paragraphs (1), (2) and (3), were enacted. Paragraph (4), clearly, was denominated by the revisor as "a blanket provision to take care of any omission in the laws for filling vacancies." That is quite significant. Paragraph (4) is clear and unambiguous. It is \*400 all-inclusive. It authorizes the governor to fill a vacancy in any office in the state where no other provision is made for filling the same. Its plain provisions are broad enough to include an appointment to the office of lieutenant governor when a vacancy exists in that office. We cannot give to it a construction which would except from its provisions a vacancy in the office of lieutenant governor.

Nor can we say that the construction, which in our opinion must be given to paragraph (4), is so violative of

the spirit of our constitution and the fundamental concepts therein expressed, as to impel a holding that the legislature never intended to authorize the governor to appoint a lieutenant governor when a vacancy occurs in that office. It is therefore our conclusion that the governor was authorized to appoint Herman L. Ekern to the office of lieutenant governor, which became vacant upon the resignation of Henry A. Gunderson and that therefore the complaint does not state a cause of action.

The demurrer to the complaint is sustained.

#### All Citations

228 Wis. 645, 280 N.W. 393

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12 Wyo. 1  
Supreme Court of Wyoming.

STATE ex rel. CHATTERTON, Acting Governor  
and Secretary of State,

v.

GRANT, State Auditor.

Aug. 20, 1903.

Mandamus by the state, on the relation of Fenimore Chatterton, Acting Governor and Secretary of State, to compel Le Roy Grant, as State Auditor, to issue warrants for and audit relator's claim for salary both as Secretary of State and Acting Governor. On demurrer to the writ. Demurrer overruled.

West Headnotes (4)

- [1] **Mandamus**  
 ⇨ Demurrer to petition or complaint, or to alternative writ  
**Pleading**  
 ⇨ Facts well pleaded

A demurrer in mandamus admits all well pleaded allegations of the petition.

Cases that cite this headnote

- [2] **Public Employment**  
 ⇨ Holding Other Office or Employment; Incompatibility

One holding two separate and distinct offices, not incompatible, may recover the compensation provided by law for each office, in the absence of statute expressly or by necessary implication forbidding it.

2 Cases that cite this headnote

- [3] **States**  
 ⇨ Governor

Where the Secretary of State, upon the death of the Governor, assumes and exercises the duties and powers of the latter office as Acting Governor, pursuant to law, and also continues, as required by law, to exercise the duties of his office of Secretary, he is entitled while performing the duties of both offices to the salary provided and appropriated for each office.

3 Cases that cite this headnote

- [4] **Public Employment**  
 ⇨ Additional compensation; extra services  
**States**  
 ⇨ Particular Officers and Employees

Const. art. 4, § 6, declares that if the Governor shall die the Secretary of State shall act as Governor until the vacancy is filled; and section 13 declares that until otherwise provided the Governor shall receive a salary of \$2,500, and the Secretary of State \$2,000, and that the salaries of any of the officers prescribed by such section shall not be increased during the period for which they were elected, and that all fees and profits arising from their offices shall be covered into the state treasury. Section 12 provides that the duties of the Secretary of State shall be prescribed by law, and Rev. St. 1899, §§ 54-69, prescribed such duties, without imposing any of the duties of the office of Governor on the Secretary of State, or referring to the Secretary's duty to act as Governor in any manner. *Held*, that the offices of Governor and Secretary of State were not incompatible, and that on the death of the Governor during his term of office a vacancy in such office existed, to be filled by the Secretary of State, who during his incumbency was entitled to receive the salaries of both offices.

9 Cases that cite this headnote

#### Attorneys and Law Firms

\*470 P. B. Coolidge, for relator.

J. A. Van Orsdel, Atty. Gen., for respondent.

#### Opinion

POTTER, J.

The sole question involved in this case is whether the relator is entitled to receive the salary provided and appropriated by law for both the offices of Governor and Secretary of State. From the petition herein, it appears that at the general election held November 4, 1902, De Forest Richards was elected to the office of Governor of the state of Wyoming for the term of four years from the first Monday in January, 1903, and on said first Monday in January, 1903, to wit, January 5th, he duly and regularly qualified as such Governor and entered upon the duties of such office. He died April 28, 1903, thereby causing a vacancy in said office, to be filled in the manner required by law. At the same general election the relator, Fenimore Chatterton, was elected to the office of Secretary of State for the same term of four years; and he duly qualified as such, and entered upon the discharge of the duties of that office, on said first Monday in January, 1903, and continues to occupy said office and to perform the duties thereof. Upon the death of Gov. Richards, and on the date thereof, the relator, as required by statute, issued a proclamation announcing the death of the Governor, and that, as is provided by section 6 of article 4 of the Constitution of said state, and section 50 of the Revised Statutes of 1899, he had assumed and entered upon the duties of Governor of the state; and the allegation of the petition is that on said date said relator did assume and enter upon the duties of Governor, and has continued to fill said office, and act as Governor, in addition to his duties as Secretary of State, exercising all the powers and performing all the duties of that office. It is alleged that the relator is eligible to the office, and not under impeachment, and that, his assumption of the office having occurred more than 20 days before the next general election of county officers, the powers and duties of Governor will devolve upon the relator until the next general election, which will occur November 8, 1904. It is alleged that the salaries of both the Governor and

Secretary of State for the year 1903 have been appropriated by the Legislature, and are in the Treasury of the state, except the monthly installments for January, February, March, and April, which have been already disbursed; that on the 1st day of June, 1903, the relator presented to the respondent, the duly elected and qualified Auditor of the State, an itemized account, duly verified as required by law, showing that there was due relator the sum of \$208.33, his salary as Acting Governor for the month of May, 1903, and the further sum of \$166.66, his salary as Secretary of State for the same month, and he then and there demanded of said auditor that he draw his warrant on the State Treasurer for said amounts. Thereupon the auditor refused to draw a warrant for the payment of said account; and indorsed on the statement thereof his refusal, and the reasons therefor, as \*471 follows: "It is understood that this voucher is presented, and that my refusal to pay the same is made, for the purpose of having the Supreme Court of the State of Wyoming decide the question whether or not the Secretary of State is entitled to receive two salaries—the salary of Governor, as Acting Governor, and the salary of Secretary of State. In order that this question may be settled, I hereby refuse payment."

The prayer of the petition is that a writ of mandamus issue, commanding the Auditor to issue and deliver to the relator his two warrants on the Treasurer for the respective amounts claimed. An alternative writ of mandamus was allowed, and the petition is met by a general demurrer, upon which the cause has been heard and must be determined. The demurrer admits all the material allegations that are well pleaded, and doubtless the facts are accurately set forth. The demurrer has been deemed by counsel to raise the only question at issue, viz., the right of relator to the salaries of the two offices. The material constitutional provisions relating to the office of Governor, and the compensation thereof, are as follows:

"The executive power shall be vested in a Governor, who shall hold his office for the term of four (4) years and until his successor is elected and qualified." Article 4, § 1.

"If the Governor be impeached, displaced, resign or die, or from mental or physical disease or otherwise become incapacitated of performing the duties of his office, or be absent from the state, the Secretary of State shall act as Governor until the vacancy is filled or the disability removed." Section 6.

"Until otherwise provided by law, the Governor shall receive an annual salary of two thousand five hundred dollars, the Secretary of State, State Auditor, State Treasurer, and Superintendent of Public Instruction shall

each receive an annual salary of two thousand dollars, and the salaries of any of the said officers shall not be increased or diminished during the period for which they were elected, and all fees and profits arising from any of the said offices shall be covered into the State Treasury." Section 13.

Sections 4, 5, 7, 8, and 9 of the said article prescribe the duties of the office of Governor. It is unnecessary for the purpose of this opinion to recite those duties in detail; but it may be well to say that the Governor is, by the Constitution, made commander in chief of the military forces of the state, and it is provided that he may call out the same to execute the laws, suppress insurrection, and repel invasion. He may convene the Legislature on extraordinary occasions. He is required to transact all necessary business with the officers of the government, civil and military, and to expedite all such measures as may be resolved upon by the Legislature, and see that the laws are faithfully executed. He is given power to remit fines and forfeitures, and to grant reprieves, commutations, and pardons after conviction, for all offenses except treason and cases of impeachment. He is authorized in case of a vacancy in public office to fill the same by appointment, where no other mode of filling the vacancy is provided by law. Every bill passing the Legislature must be presented to him before it becomes a law, and, if approved by him, he is required to sign it. He is given a veto power over legislative measures. After specifically prescribing a number of the duties of the office of Governor, it is provided by section 12 of the same article as follows: "The powers and duties of the Secretary of State, of State Auditor, Treasurer and Superintendent of Public Instruction shall be as prescribed by law." And the first Legislature of the state proceeded to define the duties of Secretary of State. Rev. St. 1899, §§ 54-69. None of the duties of the office of Governor were thereby imposed upon the Secretary of State, nor was any reference made therein to the duty of such officer to act as Governor; and it is obvious that the duties and powers of the office of Governor do not ordinarily pertain to the office of Secretary of State.

The statutory provisions on the subject of succession in the office of Governor are as follows:

"In case of the removal, death, resignation or inability of the Governor of the State of Wyoming, the Secretary of State, or if there be none, or in case of his removal, death, resignation or inability, then the President of the last Senate, or if there be none, or in case of his removal, death, resignation, or inability, then the Speaker of the last House of Representatives, or if there be none, or in case of his removal, death, resignation, or inability, then the State Auditor, or if there be none, or in case of his

removal, death, resignation, or inability, then the State Treasurer, shall act as Governor until the disability of the Governor is removed, or a Governor shall be elected." Rev. St. 1899, § 50.

"Whenever the powers and duties of the office of Governor of the state of Wyoming shall devolve upon any of the persons named in the foregoing section as therein provided, the person upon whom such duties shall devolve, shall issue a proclamation to the effect that the person theretofore an incumbent in said office of Governor, naming him, has ceased to act as such, naming the reason, and stating that such person succeeding to the duties and powers of such office has assumed the duties and powers thereof." Rev. St. 1899, § 51.

"Whenever the powers and duties of the office of the Governor of the state of Wyoming shall devolve upon a person, as herein before provided, the person acting as Governor shall continue to act as Governor, as aforesaid, until the end of the term of the Governor: provided, such assumption of office is made as aforesaid less than twenty days before the next general election of county officers, preceding the next ensuing general election for state officers; but should such assumption be made as aforesaid previous to twenty days before a general election for county officers, then and in that case, the person acting as Governor as aforesaid, shall issue an additional proclamation calling for the election of a Governor to fill the unexpired term, which election shall take place at the same time as the general election for county officers, and such election, together with the returns and canvass thereof, shall be conducted in all respects as though it was an original election for Governor. When the state canvassing board shall have canvassed the vote of the election as aforesaid, and in the manner provided by law, declared a person at such election to be elected as Governor, such person shall, within thirty days after such canvass, or as soon thereafter as possible, qualify and assume the duties and powers of Governor, and shall be the Governor of the state of Wyoming for the remainder of the unexpired term of Governor." Rev. St. 1899, § 52.

"The foregoing provisions shall only apply to persons who are eligible to the office of Governor of the state of Wyoming under the Constitution of the state of Wyoming, and who are not under impeachment by the House of Representatives of the state of Wyoming, at the time the powers and duties shall devolve upon them respectively." Rev. St. 1899, § 53.

These provisions were enacted by the first state Legislature under the following title: "An act to provide for an Acting Governor in case of the removal, death,



resignation or inability of the Governor, and to provide for the election of his successor.”

Outside the constitutional provisions rendering certain officers ineligible to hold another office during the term for which they may respectively have been elected, there is no statute of this state prohibiting a person from holding and exercising the duties of two offices that are not incompatible, nor, if legally holding such offices, from receiving the compensation that is attached to each by law. It certainly cannot be held that the offices of Governor and Secretary of State are incompatible, in the sense that the same person, if Secretary of State, cannot legally act in the dual capacity, and perform the duties of each office, upon the death, disability, or resignation of the Governor, since the Constitution and statutes expressly require it. No question of compatibility is involved. Whether the same person could be lawfully elected to both offices is not before us for consideration. That contingency will hardly occur. The situation that confronts us is that the law designates the Secretary of State in a case like the present to act as Governor; and he will be required to so act until after the next general election, that will not occur until November, 1904. During that period all the powers of the Governor and all the duties of that responsible office will devolve upon him. He cannot escape them any more than one regularly chosen to the office. In the meantime he has all the powers, and is subject to all the responsibilities, attaching to the office of Secretary of State. There is no express provision of the statute entitling him to the salary of the office of Governor, nor, as already indicated, is there any provision expressly forbidding its payment to him. The relator being the regularly elected and qualified Secretary of State, it must be conceded that he is entitled to receive the salary provided by law to be paid to that officer. In the absence of statute expressly or by necessary implication depriving him of the compensation belonging to that office upon assuming the powers and duties of Governor, he would have a right to it, even if permitted to draw the salary of the other office. In view of our statutes, or rather the absence of statutory provision on the subject, we cannot conceive of any principle upon which the salary attaching to the office of Secretary of State can be denied him, whatever may be his right to the compensation provided by law for the office of Governor. It seems clear and reasonable that, if he is found entitled to receive the salary of the executive office, he will necessarily be entitled to the salaries of both offices.

It is a general principle that an officer who holds two or more separate and distinct offices, not incompatible with each other, to each of which compensation is attached, may recover the compensation provided by law for each office. *Mechem on Pub. Off.* 859. In considering the case of a person seeking the recovery of salary claimed to be

due him as clerk of a committee in Congress, who had during part of the period also occupied a position as clerk in the office of the President, and the effect of certain sections of the statute prohibiting double or extra compensation, the Supreme Court of the United States said: “We are of the opinion that, taking these sections all together, the purpose of this legislation was to prevent a person holding an office or appointment for which the law provides a definite compensation, by way of salary or otherwise, which is intended to cover all the services which, as such officer, he may be called upon to render, from receiving extra compensation, additional allowances, or pay for other services which may be required of him either by act of Congress or by order of the head of his department, or in any other mode, added to or connected with the regular duties of the place which he holds, but that they have no application to the case of two distinct offices, places, or employments, each of which has its own duties and its own compensation, which offices may both be held by one person at the same time. In the latter case he is, in the eye of the law, two officers, or holds two places or appointments, the functions of which are separate and distinct; \*473 and, according to all the decisions, he is in such case entitled to recover the two compensations. In the former case he performs the added duties under his appointment to a single place, and the statute has provided that he shall receive no additional compensation for that class of duties unless it is so provided by special legislation.” *United States v. Saunders*, 120 U. S. 126, 7 Sup. Ct. 467, 30 L. Ed. 594. In the case of *Converse v. United States*, 21 How. 463, 16 L. Ed. 192, the court was called upon to construe various provisions of statute limiting the right of certain officers to additional compensation, and with reference to some of them it was said: “But they can by no fair interpretation be held to embrace an employment which has no affinity or connection, either in its character or by law or usage, with the line of his official duty, and where the service to be performed is of a different character and for a different place, and the amount of compensation regulated by law.” But it was held that, as the services for which compensation was claimed were foreign to the regular official duties of the officer, he was entitled to recover; the compensation to be paid for such services having been fixed by law, and the money appropriated to pay it. Upon the general principle above stated, compensation for services rendered in the discharge of the duties of both offices were allowed one occupying the position of chief supervisor of elections and also United States commissioner. *In re Conrad* (C. C.) 15 Fed. 641. And the two duties of crier and messenger, although separate offices, were held not incompatible, and where the same person held both offices he was allowed the compensation of both. *Preston v. United States* (D. C.) 37 Fed. 417.



Where the city treasurer was required by law to act ex officio as school treasurer, giving bond for each office, and taking a separate oath of office for each, he was held to be entitled not only to the salary of his office as city treasurer, but also to the salary or compensation of school treasurer. *Scranton Sch. Dist. v. Simpson*, 133 Pa. 202, 19 Atl. 359. It appearing in that case that a statute had been enacted providing that the city treasurer should be ex officio school treasurer, it was held that the latter office had not been abolished, but that the statute merely designated the person who should fill it. It was held in Missouri, where an appropriation was made by law for the payment of compensation to members of the State Board of Equalization, that the Secretary of State, who was constituted a member of the board by the Constitution, was entitled to compensation for services rendered by him in that capacity. *State ex rel. v. Walker*, 97 Mo. 162, 10 S. W. 473. And in South Dakota, where the Secretary of State was, under the law, a member of the brand and mark committee, and the law provided a compensation to be paid each member, said officer was held entitled to such compensation, in addition to his salary as Secretary of State. *State v. Roddle*, 81 N. W. 980. See, also, *State ex rel. v. La Grave* (Nev.) 48 Pac. 193; *Badeau v. U. S.*, 130 U. S. 439, 9 Sup. Ct. 579, 32 L. Ed. 997; *Love v. Baehr*, 47 Cal. 364.

The Attorney General has filed a brief herein in support of the demurrer and he presents an able argument against relator's claim. We do not understand that he disputes the general principle, but his contention is that in acting as Governor the relator is but performing his duty as Secretary of State. The argument is that the duty is one imposed upon the Secretary of State, and is not foreign to the duties of that office; that his situation is not analogous to the case of a Lieutenant Governor who assumes the office of Governor in case of a vacancy in that office through the death or resignation of the regularly chosen incumbent thereof; that the relator does not become the successor of the deceased Governor, and is not, in fact, Governor, but simply acts in that capacity until, in obedience to the mandate of the statute, a successor may be regularly elected by the people. It is even argued that a vacancy continues to exist, and will so continue until some person is chosen at the next election to serve the balance that may remain of the unexpired term, and that in the meantime the state is and will be without a Governor. In this connection it should be remembered that the statute providing for succession in the office of Governor uses precisely the same language in designating the various officers or persons who shall in certain prescribed contingencies act as Governor. No different words are employed in describing the duty of President of the Senate or Speaker of the House upon the occurrence of the event that would require either of them to assume

the duties of Governor. It is evident that the powers and rights of either would not be in any way superior to or different from the powers and rights of the relator under like circumstances. If the relator does not occupy the office of Governor, but merely executes the duties of Secretary of State in assuming the responsibilities and powers of Governor, then it would seem that the same thing would be true of the President of the Senate and Speaker of the House, and that, should either of them be required to act as Governor, he would be merely performing certain duties added for the time being to his office. And it would follow that, although the law has provided no compensation to be paid to those officers except during a session of the Legislature, they would not be entitled to the salary of the Governor, or any other compensation, until the Legislature should make further provision. In this case we are not concerned with a mere temporary disability of the Governor, or his temporary absence from the state, and the occasional assumption of his duties by another while he continues to occupy the office and draw the salary thereof; nor are we \*474 called upon to consider what the rule would be in such cases. The contention of the Attorney General seems to be supported in some measure by the case of *United States v. Smith*, 27 Fed. Cas. 1139 (No. 16,321). That was a suit upon the bond of the Secretary of the territory of Minnesota, and the officer set up in defense an account against the government, including an item for salary due him as Acting Governor during the absence of that officer. There had not occurred a vacancy in the office, as we read the case, but the Governor was absent from the territory on certain occasions, and during such absence the Secretary acted. The statute authorizing him to do so provided that he should discharge the duties of the executive "in case of the death, removal, resignation, or necessary absence of the Governor from the territory." Act March 3, 1849, c. 121, § 3, 9 Stat. 404. In charging the jury, the district judge said: "The defendant took the office of Secretary knowing that in any of the emergencies specified the duties of Governor would devolve on him. And the law made no provision for any additional compensation in that event. In assuming the office of Secretary of the territory the defendant became bound to act as Governor, if necessary under the law, as fully as he was obliged to discharge any other duty as Secretary. It pertained to the office of Secretary, though not strictly within the legitimate range of its duties. The salary certainly was less than the labor and responsibility required, but this is an evil which this court and jury cannot remedy without usurping legislative power." The learned court moreover held that the item came within the operation of an act of Congress forbidding the allowance to one individual for the salaries of two different offices on account of his having performed the duties thereof at

the same time. Notwithstanding that the general language of the court might be held to be applicable to the situation of relator, we think it is not a necessary implication that upon facts like those in the case at bar the court would have expressed the same opinion respecting the character of the duties of the officer. Again, in *State, etc., v. Heller* (N. J. Sup.) 42 Atl. 155, 57 L. R. A. 312, it was said, in view of the language of the Constitution, that although the President of the Senate, in case of a vacancy in the office of Governor, exercises the powers and performs the duties of Governor, and receives the emoluments of that office, he does not become Governor, but that he still holds the office of President of the Senate, with the added duties required of the chief executive imposed upon him. He was held to be the "person administering the government," since the Constitution, in various clauses, used the words "the Governor or person administering the Government." The statute there evidently gave the officer the emoluments of the office, and hence his right thereto was not involved in the case.

We are not altogether satisfied that the question whether the relator is in fact the governor of the state in the same sense as one regularly elected to that office is material to the determination of his right to the salary of the office. He is at least the Acting Governor. The expression both of the statute and Constitution is that he "shall act as Governor." And the statute requires him to issue a proclamation to the effect that he has "succeeded" to the duties and powers of the office, and has assumed such duties and powers. Moreover, the statute (section 52) refers to the act of the officer in taking upon himself the powers and duties of governor as an "assumption of office." And in case such "assumption of office" is made less than 20 days before the next general election of county officers, preceding the next ensuing general election for state officers, the "person acting as Governor" is required to "continue to act as Governor" until the end of the term. The significance of this requirement is made more manifest when it is remembered that an election for county officers occurs every two years, whereas a regular election for state officers occurs but once in four years; and hence the person so acting as Governor might be required to serve in that capacity more than one-half of the entire term, and until the end thereof, in which event, also, the vacancy, as such (that is, for the existing term), would not be filled at all by an election, but the Acting Governor would be succeeded by one elected for a new and full term. Whether the relator has succeeded to the title of Governor, or not, it must be conceded, we think, that he may appropriately assume at least the title of Acting Governor. Possibly that is his correct title, in the performance of executive functions. It is unnecessary, however, to decide that question.

We are not convinced that the duties of Acting Governor are attached to the office of Secretary of State. It seems to us that the more reasonable view is that the person occupying the office of Secretary of State is designated to act as Governor. This view is impressed upon us and strengthened whether we consider the nature of the duties of the two offices, or the legislation concerning them. We have already alluded to the fact that the Constitution imposes upon the Legislature the duty of prescribing the duties of Secretary of State, while it enumerates many of the powers and duties of the Governor, and the further fact that in the chapter defining the duties of the former office the Legislature omitted any reference to the requirement that the incumbent should in certain contingencies act as Governor. It appears to us to be incontrovertible that the two offices are separate and distinct, each having its own duties and responsibilities. \*475 The duties and powers of one do not pertain to, nor are they legitimately connected with, the other office. It is doubtless true that, whenever by law the Secretary is required to attest or countersign any document bearing the signature of the Governor, he continues to do so, and, when necessary, attaches the great seal of the state thereto, notwithstanding that it is the same person who signs in both capacities. It may be conceded, for the purposes of the case, that in a strictly technical sense the relator is not Governor. But it would not necessarily follow, in our judgment, that the salary of the office is not to be paid to him. To all intents and purposes he is the Governor of the state, and in a constitutional sense he is Acting Governor, at least. As such he is required to perform various duties, and is authorized to exercise very great powers, entirely distinct from the duties of his other office—such duties as not only by our written law, but ordinarily, are imposed and conferred solely upon the chief executive officer of a state. It might also be conceded, without seriously impairing the relator's right to the salary in question, that in a limited sense the office of Governor is vacant. But we are not able to subscribe to the proposition that there is an absolute and unqualified vacancy in the office. That would imply either that there is no one lawfully authorized to perform its duties, or that they are temporarily an adjunct of another office. In *State ex rel. v. Henderson*, 4 Wyo. 555, 35 Pac. 520, 22 L. R. A. 751, Chief Justice Groesbeck, speaking for this court, said: "An office cannot be said to be vacant while any person is authorized to act in it, and does so act." That language was employed in determining a question not involved here, viz., the authority of the Governor in a certain case to appoint to an office. We think—and may have something further to say on that subject—that the duties have not become an adjunct of another office. The statute, as already indicated, seems to indicate quite clearly that the Secretary, in entering upon the discharge

of the duties, shall assume an office, and that reference is manifestly to some office other than that of Secretary of State. It is a conceded fact, and must be, that the relator is lawfully authorized to perform the duties of the office of Governor.

We deem it unnecessary to discuss technically the question of vacancy in the office. In the sense that the law contemplates that there shall be an incumbent of the office regularly chosen to that position, it may be admitted that a vacancy has occurred, and continues to exist, which can be filled only through an election by the people. But the office is now supplied in the manner provided by the Constitution and statutes, with an incumbent who is legally qualified to exercise its powers and perform the duties which pertain to it; and, although such incumbent is merely designated as an Acting Governor, he is for all practical purposes in possession of the office and all of its prerogatives.

In this connection it is difficult to perceive much, if any, distinction between the facts in this case, and where, a vacancy occurring in an elective office, the Governor or some other competent authority has appointed some person to fill the office until the next general election, at which time the people are required to choose some one to serve out the remainder of the unexpired term. That is the case in the event of a vacancy in the office of Justice of the Supreme Court, and on three occasions there has occurred such a vacancy, which was filled by appointment of the executive until the following general election, when an incumbent for the balance of the unexpired term was elected. In the case of Governor, instead of an appointment by some other officer until an opportunity regularly arrives for the people to signify their preference, the law itself designates a person who shall act.

Under the Constitution of the state of Oregon, in case of the removal of the Governor, or his death, resignation, or inability to discharge the duties of the office, the same was made to devolve upon the Secretary of State. In the case of *Chadwick v. Earhart*, 11 Or. 389, 4 Pac. 1180, one of the questions, as stated in the opinion, was whether, when the duties of the office of Governor devolve upon the Secretary of State, he has a right to the salary of the office. The court answered the question in the affirmative. It was said in the opinion: "If the office of Governor continue after the Governor ceases to hold the office under this section—if the office be not vacant, but shall be lawfully filled by one acting therein directly as the agent of the state, and not in the character of deputy of a Governor incumbent—it would seem difficult to distinguish such a person from a Governor of right and in fact." And again, in response to the argument that the

duties of the office of Governor became annexed to the office of Secretary of State, and were discharged as duties incident to the latter office: "In the first place, it is not shown how an office can be vacant, and yet there be a person, not the deputy or locum tenens of another, empowered by law to discharge the duties of the office, and who does in fact discharge them. It is not explained how in such a case the duties can be separated from the office, so that he who discharges them does not become an incumbent of the office. And, in the second place, how a person can fill the office of Governor without being Governor. It is the function of a public officer to discharge public duties. Such duties constitute his office. Hence, given a public office, and one who, duly empowered, discharges its duties, and we have an incumbent in that office. Such is the case here. The Secretary of State, by force of the function cast upon him, becomes Governor, and \*476 consequently entitled to the salary appertaining to the office." Counsel endeavors to distinguish the Oregon case from the case at bar on account of the provision in the Constitution of that state that the office shall "devolve" upon the Secretary of State, while the language of our law is that he shall act as Governor. We fail to observe any material distinction. The same section of the Oregon Constitution, in providing for succession in case of the removal, death, resignation, or disability of both the Governor and Secretary of State, declared that in such case "The President of the Senate shall act as Governor." Const. Or. Art. 5, § 8. And in the case cited, in determining the tenure of office as Governor of the Secretary of State, the court mentioned the possibility of the President of the Senate succeeding to the office, and referred to him in language indicating quite clearly that he would be regarded as Governor, for it was said that he would hold the office of Governor, once incumbent, without reference to his office of President of the Senate, and also that he would cease to be President of the Senate when he became Governor. It is evident that the Oregon court itself perceived no distinction between the declaration that the office should devolve, and one that a certain person should act as Governor.

In the case of *People v. Hopkins*, 55 N. Y. 74, it was held that a deputy of the Superintendent of Insurance, upon whom the law imposed the duties of the office during a vacancy in the principal office, and during the absence and inability of the incumbent thereof, was entitled to the salary of a superintendent during the time he discharged the duties of the office. The statutory provision was that the deputy should "possess the powers and perform the duties attached by law to the office of the principal, during a vacancy in such office, and during the absence and inability of his principal." Laws 1859, p. 882, c. 366, § 2. There the deputy was only empowered to perform the duties and possess the powers, etc., during a vacancy in



the office. The office was not made otherwise to devolve upon him. Yet he was entitled to the salary. And in this connection it might be pertinent to inquire what considerations ordinarily determine whether or not compensation shall be paid an officer, and the amount thereof. Our own Constitution furnishes an answer. It is provided in section 1 of article 14 that "The Legislature shall, from time to time, fix the amount of such salaries as are not already fixed by this Constitution, which shall in all cases be in proportion to the value of the services rendered and the duty performed." And in 23 Ency. L. (2d. Ed.) 387, "salary" is defined as "a fixed annual or periodical payment for services, depending upon the amount of service rendered." In fixing a salary to be paid the executive of the state, it would be difficult, we imagine, to show that it was intended by those who framed the fundamental instrument of our state government to bestow the compensation in consideration of the acceptance of the title of Governor. It will hardly be questioned that the salary was intended as compensation for the rendition of services and the performance of duty. The opinion in the case last above cited possesses further interest in view of the argument made in this case to the effect that the relator should not be allowed the salary because he only acts as Governor, and is not Governor in fact. The court, in its opinion, stated that the statute made the deputy, to all intents and purposes, acting superintendent for the time during which there is no other superintendent, and referred to certain precedents, not judicial, but, as stated, furnished by "able jurists, wise statesmen, and rigid economists." It seems that in February, 1828, the office of governor of New York became vacant by the death of De Witt Clinton, and that its powers and duties devolved upon the then Lieutenant Governor. The learned judge states that the question arose whether the officer aforesaid was to be regarded as Acting Governor, and entitled to the salary of the office; and it was held by the Comptroller that he was to be so regarded, and was entitled to the salary. And the same conclusion was reached on a subsequent occasion. The New York Constitution declared that the "powers and duties of the office" should devolve upon the Lieutenant Governor, but the court states that he was regarded as "Acting Governor"; and it is noticeable that not the office, but the "powers and duties" of the office, were made to devolve upon him. It will probably be conceded that the powers and duties of the Governor's office have devolved upon the relator in this case.

The Constitution of Nevada provides, in case of vacancy in the office of Governor, that "the powers and duties of the office shall devolve upon the Lieutenant Governor." Here, again, we have the "powers and duties," rather than the "office," devolving, if there is any distinction. It was held by the Supreme Court of Nevada that a Lieutenant

Governor upon whom the powers and duties of Governor had devolved in consequence of the death of the incumbent of that office was entitled to the salary attached to the office. State ex rel. v. La Grave, 23 Nev. 216, 45 Pac. 243, 35 L. R. A. 233. It seems to have been argued in that case that the relator remained Lieutenant Governor, exercising the powers and duties of Governor. In a concurring opinion, Chief Justice Bigelow expressed a doubt as to whether the Lieutenant Governor became "Governor," in the full sense of the term; but he said that he filled the office, not temporarily, but permanently, and that he became at least permanent Acting Governor for the residue of the term. The learned chief justice referred to the proposition, as a general principle of \*477 justice and right, that, where one legally performs the duties of an office, he should be entitled to the emoluments thereof. And he held that any doubt as to the right of the officer to receive the salary should be resolved in his favor. The question whether, upon the assumption of the duties of Governor by the Lieutenant Governor, a vacancy was created in the latter office, subsequently came before the same court; and it was held that a vacancy did not exist, but that the officer remained Lieutenant Governor, but invested with the powers and duties of Governor. State ex rel. v. Sadler (Nev.) 47 Pac. 450. Under similar constitutional provisions, the declaration being that the "powers and duties" of the office shall devolve upon the Lieutenant Governor, the Supreme Court of California, in People ex rel. v. Budd, 45 Pac. 1060, 34 L. R. A. 46, say: "It will be seen that in case of a vacancy in the office of Governor the vacancy is not to be filled, but the powers and duties devolve upon the Lieutenant Governor, who does not cease to be Lieutenant Governor." And it was held that he could not appoint a Lieutenant Governor, upon the principle, evidently, that there would not be a vacancy in the office on account of the assumption by the incumbent of the duties of Governor. And so in the case at bar it is not contended on either hand that a vacancy has occurred in the office of Secretary of State. No question of salary was involved in the California case above cited. The language of the court seems, however, to sustain the argument of the Attorney General that the vacancy in the office of Governor is not filled in consequence of the assumption of its duties by the Secretary of State.

Our views as to the fact of vacancy in the office have, in a measure, been stated, although, in our opinion, it is immaterial whether there is a technical vacancy or not. We believe it more reasonable to say that the office is to all practical intents and purposes occupied by the officer upon whom the law has imposed its powers and duties, and that at least he is Acting Governor, and as such comes within the meaning and operation of the law prescribing a salary for the office of Governor. We cannot accept the proposition that the very high and responsible duties of

the executive office have been given such a movable character by the law as to be attached in certain contingencies first to the office of Secretary of State, then possibly in succession to the offices of President of the Senate, Speaker of the House of Representatives, Auditor, and State Treasurer. In our judgment, the conclusion more consonant with reason and the rules governing the interpretation of statutes is that the duties and powers remain as incident and attached to the office of Governor continually, and that when exercised and performed by either of the officers authorized by law, in case the regular incumbent has ceased to act, they are exercised and performed as the powers and duties of the office of Governor. Indeed, the language of the law clearly so implies, when it requires the designated officer to act as Governor. He is required to perform all the service that constitutes the consideration for the salary provided by law. In the absence of statute expressly or by necessary implication forbidding the relator from receiving the compensation attached to both offices, we see no reason why the same should not be paid to him upon his proper and lawful demand. There is nothing inequitable in this conclusion. The state has duly appropriated the money to

pay the salary, and the money is in the treasury. The services for which the salary is provided are being performed, and have been performed for the period covered by the claim of the relator here in question. He is required to give attention to the duties of two state offices. His responsibilities are largely increased, and every principle of justice requires that he be compensated. This is recognized in many of the states by an express provision of either Constitution or statute allowing the one upon whom the duties of Governor have devolved to be paid the compensation attached by law to the office. The demurrer will be overruled.

CORN, C. J., and KNIGHT, J., concur.

**All Citations**

12 Wyo. 1, 73 P. 470, 2 Am. Ann. Cas. 382

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23 Nev. 356  
Supreme Court of Nevada.

STATE ex rel. HARDIN  
v.  
SADLER, Governor.

No. 1,488.  
|  
Jan. 16, 1897.

Application by C. H. E. Hardin for mandamus to Reinhold Sadler, governor of the state of Nevada. Writ dismissed.

West Headnotes (1)

[1] **Public Employment**

☞ Manner and Mode of Filling Vacancy  
States

☞ Term of office, vacancies, and holding over

Under Const. art. 5, § 18, providing that, in case of vacancy in the office of governor, the powers and duties shall devolve on the lieutenant governor; and section 17, providing that if, during a vacancy in the office of governor, the lieutenant governor die or become incapable of performing the duties of the office, the president pro tempore of the senate shall act as governor till the vacancy is filled,—vacancy in the office of governor creates no vacancy in the office of lieutenant governor.

10 Cases that cite this headnote

**Attorneys and Law Firms**

\*450 James F. Dennis, for relator.

J. R. Judge, Atty. Gen., for respondent.

**Opinion**

BELKNAP, C. J.

This is an application for a writ of mandamus requiring respondent to commission relator as lieutenant governor of the state. The petition, among other things, alleges that the Honorable John E. Jones, the duly-elected governor of the state, died upon the 10th day of April, 1896; that thereupon the powers and duties of the office of governor devolved upon respondent, the lieutenant governor, who is now the acting governor of the state; that at the last general election relator was the candidate of the Silver party and of the Democratic party for the office of lieutenant governor, and received the highest number of votes cast for any candidate for that office, and was elected. A demand upon and refusal by respondent to issue a certificate of election are alleged, and this court is asked to issue a writ of mandamus requiring him to do so. The attorney general has demurred to the petition, upon the ground that it does not state facts sufficient to entitle relator to the relief prayed for.

The provisions of the constitution bearing upon the subject are as follows (article 5):

“Sec. 17. A lieutenant governor shall be elected at the same time and places, and in the same manner, as the governor, and his term of office and eligibility shall also be the same. He shall be president of the senate, but shall have only a casting vote therein. If during a vacancy in the office of governor, the lieutenant governor shall be impeached, displaced, resign, die, or become incapable of performing the duties of the office, or be absent from the state, the president pro tempore of the senate shall act as governor until the vacancy be filled or the disability cease.

“Sec. 18. In case of the impeachment of the governor, or his removal from office, death, inability to discharge the duties of the said office, resignation, or absence from the state, the powers and duties of the office shall devolve upon the lieutenant governor for the residue of the term, or until the disability shall cease.”

The gubernatorial succession is covered by the foregoing provisions. If a vacancy occurs in the office of governor, the powers and duties of the office devolve upon the lieutenant governor, but there is no vacancy created thereby in the office of lieutenant governor. The officer remains lieutenant governor, but invested with the powers and duties of governor. Again, if, during a vacancy in the office of governor, the lieutenant governor becomes

incapable of discharging the duties of the office of governor from any of the causes enumerated in the constitution, —in other words, if a vacancy exists in both the office of governor and lieutenant governor,—the president pro tempore of the senate acts as governor until the vacancy be filled or the disability cease. People v. Budd (Cal.) 45 Pac. 1060. There being no vacancy in the office of lieutenant governor, the demurrer must be sustained, and the writ dismissed. It is so ordered.

BONNIFIELD and MASSEY, JJ., concur.

**All Citations**

23 Nev. 356, 47 P. 450

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121 Okla. 83  
Supreme Court of Oklahoma.

FITZPATRICK

v.

McALISTER, Secretary of State Election Board, et  
al.

No. 17513.

June 28, 1926.

*Syllabus by the Court.*

Article 6 of the Constitution defines the executive department of the state, and names certain officers who shall be vested with executive powers.

Section 2 of said article is as follows: "The supreme executive power" of the estate "shall be vested in a chief magistrate, who shall be styled 'the Governor \* \* \* of Oklahoma.'"

Section 4 of said article contains the following provision, to wit: "The Governor, secretary of state, state auditor, and state treasurer shall not be eligible immediately to succeed themselves."

Sections 15 and 16 are in pari materia to the extent that they relate to and form part of, the entire purpose and scheme provided for in article 6, and to such extent only. They are independent of each other to the extent that they deal with, and provide for, the distinctly different conditions which each does provide for.

Said section 15 provides for such vacancies only as may be caused by the elected Governor's temporary absence from his office, and where, though absent from his office, he still retains his right to the office, still possesses his right, upon his return to assume the duties and exercise the powers of his office, and further provides that, during such vacancy, if the Lieutenant Governor becomes incapable of performing the duties of the office, then the President of the Senate may act as Governor, and, in case of his disability, the Speaker of the House may act as Governor during such vacancy, thus making complete and adequate provisions for taking care of the peculiar contingency and condition which it seeks to provide for, viz. vacancies occasioned by a temporary absence or inability of the Governor, where the Governor still has the

right to return to his office and assume its duties, and to this extent section 15 is independent of section 16.

Const. art. 6, § 16, is as follows: "In case of impeachment of the Governor, or of his death, failure to qualify, resignation, removal from the state, or inability to discharge the powers and duties of the office, the said office, with its compensation, shall devolve upon the Lieutenant Governor for the residue of the term or until the disability shall be removed."

Thus section 16 makes provision for a wholly different contingency and condition to that provided for in section 15. Section 16 provides for occasions where the individual rights of the elected Governor, as distinguished from the public rights, have been terminated, where his rights to return to the office and assume its powers have been foreclosed, and, in order to protect the right of the public to a continuation of the functions of government, in such case, section 16 provides that the office of Governor, with its compensation, shall devolve upon the Lieutenant Governor for the residue of the term, thus making complete and adequate provision for the particular contingency and condition \*570 which it seeks to provide for, and to this extent section 16 is independent of section 15.

Const. art. 6, § 16, creates no vacancy, contemplates no vacancy, mentions no vacancy. It simply makes provision for an uninterrupted functioning of the office of chief executive with a duly commissioned officer at the head of such department thereby avoiding a vacancy.

When the elected Governor becomes impeached, as is the condition presented here, the office of Governor automatically devolves upon another. The person on whom such office devolves necessarily fills such office, exercising all the powers, discharging all the duties, and enjoying all the emoluments, compensation, honor and prestige which pertain to such office. The person who thus fills the office of chief magistrate is styled "the Governor of Oklahoma." He is the Governor for the simple reason that he governs. He governs officially for the reason that section 16 expressly vests him with authority to do so. Therefore he is the official Governor, and, being the official Governor, he is rendered ineligible to succeed himself by the inhibition contained in section 4, art. 6, of the Constitution.

*Additional Syllabus by Editorial Staff.*

“Devolve” means to roll or tumble down upon, or descend, to be transmitted by course of events, or by operation of law, to transfer from one person to another (citing Words and Phrases, First and Second Series, “Devolve”).

Appeal from District Court, Oklahoma County; William H. Zwick, Judge.

Suit by Kirby Fitzpatrick against W. C. McAlister, Secretary of the State Election Board, and others for injunction. From a judgment for defendants, plaintiff appeals. Reversed, with directions.

Branson, V. C. J., and Nicholson, C. J., dissenting.

West Headnotes (5)

[1] **States**  
⇌Governor

Constitutional provision relating to devolution of powers and duties of Governor on his inability to discharge duties of his office, due to impeachment, etc., is independent of provision for vacancies caused by elected Governor’s temporary absence from office. Const. art. 6, §§ 15, 16.

Cases that cite this headnote

[2] **Public Employment**  
⇌Term limits  
**States**  
⇌Eligibility to office

On impeachment of elected Governor, person succeeding him is official Governor, and is ineligible to succeed himself. Const. art. 6, §§ 2, 4, 16.

1 Cases that cite this headnote

[3] **Public Employment**  
⇌Vacancy  
**Public Employment**  
⇌Temporary absence or incapacitation  
**States**  
⇌Term of office, vacancies, and holding over  
**States**  
⇌Resignation, suspension, and removal or impeachment of officers

Constitutional provisions relating to devolution of duties on temporary vacancy in Governor’s office or his inability to discharge duties of his office due to impeachment, etc., held in pari materia to extent of relating to and forming part of scheme of government, and independent of each other in so far as they deal with, and provide for, distinctly different conditions. Const. art. 6, §§ 1, 2, 4, 15, 16.

Cases that cite this headnote

[4] **Public Employment**  
⇌Occurrence and Existence; What Creates or Constitutes Vacancy  
**States**  
⇌Term of office, vacancies, and holding over

Constitutional provision as to devolution of Governor’s powers on his inability to discharge duties of his office, due to impeachment, etc., held to create no vacancy, and to contemplate none. Const. art. 6, § 16; Const. U.S. art. 2, § 1.

Cases that cite this headnote

[5] **Public Employment**  
⇌Impeachment or address  
**States**  
⇌Resignation, suspension, and removal or impeachment of officers

When elected Governor is impeached, his office automatically devolves on another who exercises all powers of such office. Const. art. 6, §§ 2, 4, 16.

Cases that cite this headnote

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C. B. Stuart and J. D. Lydick, both of Oklahoma City, Jos. C. Stone, of Muskogee, N. A. Gibson, of Tulsa, Frank Dale, of Guthrie, John Barry, of El Reno, and J. H. Gordon, of McAlester, for defendant in error M. E. Trapp.

**Opinion**

HARRISON, J.

This proceeding was begun in the district court to test the eligibility of Mr. M. E. Trapp to succeed himself in the office of Governor.

Mr. Trapp had theretofore filed his application with the state election board as a candidate for nomination for Governor, and plaintiff sought to enjoin said board from certifying Mr. Trapp's name to the state board of affairs, and to enjoin the state board of affairs from having Mr. Trapp's name printed as a candidate for Governor on the official ballots to be voted at the forthcoming primary election to be held in August of this year.

The trial court denied the injunction, and plaintiff appealed. Plaintiff contends that, under the provisions of article 6 of the Constitution, Mr. Trapp is not eligible to the office of Governor. Defendants contend that he is eligible. The controversy arose out of the following facts, viz.:

At the November election, 1922, J. C. Walton was elected Governor, and defendant M. E. Trapp was elected Lieutenant Governor, and both went into office in January, 1923. In November, 1923, Mr. Walton was impeached and removed from office by the Senate sitting as a court of impeachment, and thereupon, by virtue of section 16, art. 6, of the Constitution, the office of Governor devolved upon the Lieutenant Governor, who was defendant Mr. M. E. Trapp, who has occupied the office of Governor, and exercised the powers of

Governor, from the date of said impeachment until the present date, and is now occupying such office with the powers thus conferred by said section 16, and is seeking the nomination for Governor, and to ultimately succeed himself to the office of Governor at the general election in November of this year.

Plaintiff in error contends that under section 16, art. 6, of the Constitution, the office of Governor devolved upon the Lieutenant Governor immediately upon the impeachment of Governor Walton, and that thereupon Lieutenant Governor Trapp became the Governor in fact and in law, and that, having held and filled the office of Governor, and exercised the powers of Governor, and enjoyed the emoluments of the office of Governor from the time said office devolved upon him until the present time, he is not now eligible to succeed himself to the office of Governor at the ensuing term because of the inhibition contained in section 4, art. 6, of the Constitution, which is as follows:

"The Governor, secretary of state, state auditor, and state treasurer shall not be eligible immediately to succeed themselves."

\*571 On the other hand, it is contended by defendants in error that, upon the impeachment of Mr. Walton, there became a vacancy in the office of Governor, which has never been filled, but which has existed to the present time, and now exists, and that, though the powers, duties, and emoluments of the office of Governor devolved upon Lieutenant Governor Trapp upon the impeachment of Governor Walton, yet Mr. Trapp did not thereby become Governor in every sense of the word, but became merely Acting Governor during a vacancy, and that, not being Governor, but being merely "Acting Governor," he is therefore not rendered ineligible by the inhibition contained in said section 4, art. 6.

Defendants in error further contend that, by harmonizing the provisions of sections 15 and 16 of said article 6, and construing the two sections together, it will be seen that no vacancy was caused in the office of Lieutenant Governor by the devolution of the office of Governor upon the Lieutenant Governor, and no vacancy now exists in the office of Lieutenant Governor, and that therefore Mr. Trapp is still Lieutenant Governor, but that a vacancy does exist in the office of Governor by reason of Governor Walton's impeachment and removal from office, and that Mr. Trapp's being merely "Acting Governor" during such vacancy does not fill such vacancy, and therefore the inhibition in said section 4, art. 6, does not apply to him; that said inhibition applies only

to an "elected Governor," and does not apply to one upon whom the "office of Governor" has devolved by virtue of said section 16.

From the foregoing may be seen the respective positions of the parties to this controversy, and that the main question to be determined is whether, under the existing conditions, the inhibitive provision in said section 4 applies to Mr. Trapp.

The questions involved have all been briefed and orally argued by the parties hereto, and, in addition to the briefs and oral arguments of parties in the instant case (case No. 17520, J. B. A. Robertson v. State Election Board and M. E. Trapp, 248 P. 583), which involves the identical questions herein presented, and seeks the very same relief herein sought, have also been briefed, and were orally argued and submitted with this case, the briefs in both cases to be used in each.

It is notable that, while numerous authorities have been cited in support of the contentions of the parties, yet no case has been cited where the identical conditions here presented, and the identical questions of law here involved, have ever been passed upon and decided by any court of last resort. We have been unable to find any case ourselves that is at all similar in all of its phases.

Though plaintiff in error is represented by able and diligent counsel, and defendant in error represented by a remarkable array of powerful lawyers, yet no case directly in point has been cited; that is, no case where any candidate has ever aspired to any office in the face of a similar constitutional inhibition against his immediately succeeding himself in office. Hence, in the absence of a controlling decision, it becomes necessary to search the provisions of our Constitution for a solution of the problem presented, guided in so doing by such light as the partially analogous cases cited may afford us. Article 4 of our Constitution distributes the powers of state government into three separate departments, viz. legislative, executive, and judicial.

[1] Article 6 defines the executive department, and names certain state officers who shall be vested with executive power. The provisions of said article 6 pertinent to the questions under consideration are:

Section 1, which says:

"The executive authority of the state shall be vested in a Governor, Lieutenant Governor, secretary of state, state auditor, Attorney General, state treasurer, superintendent of public instruction, state examiner and

inspector, chief mine inspector, commissioner of labor, commissioner of charities and corrections, commissioner of insurance, and other officers provided by law and this Constitution, each of whom shall keep his office and public records, books, and papers at the seat of government, and shall perform such duties as may be designated in this Constitution or prescribed by law."

Section 2, which says:

"The supreme executive power shall be vested in a chief magistrate, who shall be styled 'The Governor of the state of Oklahoma.'"

Section 4, which, after prescribing the length of term of office of certain state officers, including the Governor, says:

"The Governor, secretary of state, state auditor, and state treasurer shall not be eligible immediately to succeed themselves."

Section 15, which says:

"The Lieutenant Governor shall possess the same qualifications of eligibility for office as the Governor. He shall be President of the Senate, but shall have only a casting vote therein, and also in joint vote of both houses. If, during a vacancy of the office of Governor, the Lieutenant Governor shall be impeached, displaced, resign, die or be absent from the state, or become incapable of performing the duties of the office, the President, pro tempore, of the Senate, shall act as Governor until the vacancy be filled or the disability shall cease; and if the President, pro tempore, of the Senate, for any of the above enumerated causes, shall become incapable of performing the duties pertaining to the office of Governor, the Speaker of the House of Representatives shall act as Governor until the vacancy be filled or the disability shall cease. Further provisions for succession to the office

of Governor shall be prescribed by law.”

himself.”

\*572 Section 16, which says:

“In case of impeachment of the Governor, or of his death, failure to qualify, resignation, removal from the state, or inability to discharge the powers and duties of the office, the said office, with its compensation, shall devolve upon the Lieutenant Governor for the residue of the term or until the disability shall be removed.”

These are the sections of said article 6 which bear directly upon the question before us, viz. whether the defendant M. E. Trapp is eligible to succeed himself in the office of Governor. It is observed that in section 1, art. 6, supra, the Lieutenant Governor is named as one of the executive officers of the state, and is vested with executive authority. He is expressly made a part of the executive department. As to what his executive powers are, and when and how he may exercise them, will be seen in the further course of our analysis.

By section 2, supra, it will be seen that the supreme executive power is in reality vested in a chief magistrate, who shall be styled “the Governor \* \* \* of Oklahoma.” The real executive head, therefore, the office in whom the supreme executive power of the state is in intentment and in reality vested, is a chief magistrate. It is in the office of chief magistrate that the supreme executive power is lodged. The person who exercises the supreme executive power of the state does so by virtue of his being the chief magistrate.

The person on whom such office by the Constitution devolves necessarily fills such office, and exercises all powers lodged in such office, and is charged with all the duties pertaining to such office, and enjoys all the emoluments, compensations, honor, and prestige which belong to such office. The person who thus fills the office of chief magistrate is styled “the Governor of Oklahoma.” He is the “Governor” for the simple reason that he governs. A Governor is one who governs. He governs officially for the reason that section 16 vests him with authority to do so, and requires him to do. Therefore he is the official Governor. The provision of section 4, supra, speaks for itself. It simply says in simple words:

“The Governor \* \* \* shall not be eligible immediately to succeed

Section 15, supra, prescribes that the Lieutenant Governor shall possess the same qualifications of eligibility for office as the Governor. It also imposes other than executive duties upon the Lieutenant Governor, viz.: He shall be president of the Senate, and shall have a casting vote therein, and a casting vote also in joint session of both houses. These duties are not imposed upon him, nor these powers conferred upon him, because he is one of the executive officers of the state, for they are not executive duties—they are legislative duties. The Constitution does not say why these duties are imposed upon the Lieutenant Governor. It may have prescribed such duties for him because, as a rule in states of the Union, similar duties and powers are generally given to the Lieutenant Governor, and because, under the federal Constitution, the Vice President performs similar duties, such being the general custom and general conception of the proper and harmonious method of running the entire machinery of our government. But, whatever may have been the reason for giving these powers and duties to the Lieutenant Governor, it is a fact that they are given him by our Constitution.

Said section 15 further provides that, if, during a vacancy of the office of Governor, the Lieutenant Governor shall be impeached, or become incapable of performing the duties of the office, the President pro tempore of the Senate shall act as Governor until the vacancy be filled, and, if the President of the Senate, for any reason, becomes incapable of performing the duties pertaining to the office of Governor, then the Speaker of the House shall act as Governor until the disability ceases. Now let it be observed that the words “shall act as Governor” are not applied to the Lieutenant Governor, but are applied only to the President of the Senate and Speaker of the House in cases where the Lieutenant Governor is under a disability. The words “shall act as Governor,” or, as defendants in error put it, “the Acting Governor,” are not anywhere in the Constitution applied to the Lieutenant Governor.

They are applied nowhere else, nor to any one else, except to the President of the Senate and Speaker of the House, and to them only in cases where “the Lieutenant Governor becomes incapable of performing the duties of the office.” This section nowhere denominates the Lieutenant Governor as a mere “Acting Governor,” nor does it imply that he is regarded as only “an Acting Governor.” It says, “or become incapable of performing the duties of the office,” meaning the office of Governor. Then, in such case, the President of the Senate shall act as Governor, and, if he be disqualified, then the Speaker of the House shall act as Governor. The Lieutenant Governor is

nowhere spoken of as "Acting Governor."

[3] But section 16, *supra*, provides that, in case of impeachment of the Governor, the said office, with its compensation, shall devolve upon the Lieutenant Governor. This section does not say, "upon the Lieutenant Governor who shall act as Governor," but it says:

"The said office, with its compensation, shall devolve upon the Lieutenant Governor for the residue of the term or until the disability shall be removed."

It means that all the powers, duties, and responsibilities of the office of Governor shall devolve upon the Lieutenant Governor, and \*573 that all the emoluments, compensation, honor, dignity, and prestige of the said office shall be his. He is thereby made the chief magistrate in fact by the plain language of the Constitution. He is vested with all the powers, and charged with all the duties and responsibilities, and is given all compensations, which belong to the chief magistrate, in whom the supreme executive power of the state is vested. "The said office, with its compensation, shall devolve upon the Lieutenant Governor."

But, it is insisted by defendants in error, persistently and repeatedly, that the two sections (15 and 16) must be construed together, and that, by construing them together, we find a vacancy in the office of Governor, a vacancy which, they claim, we are not at liberty to read out of the Constitution, a vacancy which is not filled by the Lieutenant Governor, as he is a mere "Acting Governor," a vacancy which the law makes no provision for filling except by an election. But, upon examination of the two sections, we find that, by either construing the two sections together, or by construing them separately, we nowhere find the Lieutenant Governor referred to as "Acting Governor." Furthermore, we nowhere find the words "shall act as Governor," except in cases where the Lieutenant Governor is, for some reason, rendered incapable of performing the duties of Governor. Then the President of the Senate or Speaker of the House shall "act as Governor."

Under section 16, when the Governor is impeached, and his rights become foreclosed, the office devolves upon the Lieutenant Governor.

[6] The word "devolve" is defined by lexicographers and in law dictionaries as meaning to roll or tumble down or descend; to be transmitted by course of events, or by operation of law; to transfer from one person to another; to pass by transmission to another; to pass from a person

dying to a person living; to pass from the possessor to a successor. See Webster's Int. Dict. 1923; Funk & Wagnall's Stand. Dict.; Black's Law Dict.: 14 Cyc. 286; Words and Phrases, both First and Second Series; 18 C. J. 1034, and notes.

Hence, when Governor Walton became impeached, when the judgment of the high court of impeachment was pronounced, the official powers of Mr. Walton ended, his rights of tenure were ended, and the office of chief magistrate of the state, the office in which is lodged the supreme executive powers of the state, automatically, instantaneously with the ending, descended upon, passed down to, devolved upon, Mr. Trapp. There was no interim, no vacancy, no delay in the transmission, no interruption in, no suspension of, the functions of government—they passed right on.

By the judgment of impeachment, Mr. Walton's authority ceased; his term and tenure ended; his individual rights were foreclosed; "the said office, with its compensation," devolved automatically upon Mr. Trapp. There was no vacancy created, none intended, none contemplated. It was never intended that, under the conditions provided for in section 16, there should be an interim during which the state would have no Governor, and the functions of government be suspended, but, on the contrary, it is wisely provided in said section 16, that, when by operation of law, or by reason of other circumstances, the authority of the elected Governor is terminated, his tenure ended, and his individual rights foreclosed, the said office (the Governor's office), with its compensation, shall devolve upon another, in order that the functions of government may continue without interruption, and the public rights be protected.

Section 16 deals with conditions wholly different and distinct in their very nature from the conditions dealt with in section 15, and to this extent the two sections are independent of each other. It is contended by defendants in error that the two sections must be construed together to give effect to either, and the case of *Ex parte Crump*, 10 Okl. Cr. 133, 135 P. 428, 47 L. R. A. (N. S.) 1036, in which Judge Doyle, who delivered the opinion of the Criminal Court of Appeals, held that the two sections (15 and 16, article 6) are *in pari materia*.

[2] We concur with the learned judge in the view that said sections 15 and 16 are *in pari materia* to the extent that they relate to, and form a part of, the entire purpose of article 6 to the extent that they aid in providing for, and constitute, an element of the entire scheme intended to be provided for in article 6, but to such extent only. They are independent of each other to the extent that they deal with, and completely provide for, the distinctly different

conditions which each does provide for.

Section 15 anticipates vacancies such as may be caused by the Governor's absence from the state, and other circumstances which may cause a temporary absence of the Governor from his office, and refers to such occasions as vacancies, but these are occasions where, though the Governor may be absent from his office, though he may be sick or out of the state, and temporarily away from his office, yet he still retains his right to the office. His right to the office has not been terminated, his term nor tenure has not been ended, by operation of law by judicial proceedings, nor by other circumstances. He still has, still possesses, his right to the office, and, upon his return, may assume the duties and exercise the powers of his office. Such instances the Constitution treats as vacancies, and provides for the filling of such vacancies, and that, when either the President of the Senate or Speaker of the House fills such vacancies, he merely acts as Governor during such vacancy.

[4] But section 16 deals with a wholly different \*574 and distinct condition—a condition which was deemed essential to be separately dealt with, and one which past history has shown to have been necessary to be dealt with, viz. a condition where the chief magistrate, the one who is styled “the Governor of Oklahoma,” has been impeached and removed from office, where his rights have been foreclosed and his term and tenure ended. In such case there is no vacancy; therefore no need to speak of a vacancy. The office immediately devolves upon the Lieutenant Governor. Hence section 16 does not speak of a vacancy.

It is unnecessary to draw a distinction between a “temporary vacancy” and a “permanent vacancy.” It is unnecessary to say whether there is a distinction between the two terms. Section 15 unquestionably has reference to temporary vacancies, and to temporary vacancies only, and deals with, and provides for, temporary vacancies only. Nowhere does article 6 speak of a permanent vacancy. Section 16, in dealing with the conditions which it provides for, does not recognize a vacancy of any kind, but provides that the powers of government may continue right on; that the ship of state, as it were, may continue its course without interruption, and with a duly commissioned chief executive at the helm.

[5] Defendants in error say:

“Section 15 is the sole and only section of the Constitution which authorizes any one to exercise and perform the powers and duties of the office of Governor other than the elected Governor himself.”

This contention has no support from the Constitution. If it were true, then the Lieutenant Governor has no authority under any circumstances to exercise the powers and discharge the duties of Governor and draw a Governor's pay. For it must be clearly seen that section 15 does not in express words give to the Lieutenant Governor any such powers and privileges, but does expressly say that in certain cases the President of the Senate or, in case of his disability, the Speaker of the House may act as Governor, but it nowhere expressly says that the Lieutenant Governor, under any circumstances, may act as Governor. Hence, if section 15 is the only section which authorizes the Lieutenant Governor to act as Governor, and it be true, as defendants contend, that he has no authority except such as is expressly given him, then he has no authority, under any circumstances, to exercise the powers of Governor, for it is only by implication that section 15 authorizes him to exercise such powers. The following language in said section 15, to wit:

“If, during a vacancy of the office of Governor the Lieutenant Governor shall be impeached, \* \* \* or become incapable of performing the duties of the office, the President, pro tempore, of the Senate, shall act as Governor; \* \* \* and if the President, pro tempore, of the Senate, \* \* \* shall become incapable of performing the duties pertaining to the office of Governor, the Speaker of the House of Representatives shall act as Governor until the vacancy be filled, \* \* \*”

—is the only language in section 15 which even implies that the Lieutenant Governor shall ever, at any time, exercise the powers of Governor, or even “act as Governor.” However, the above language does imply that, in case of a temporary absence of the Governor, that is, such a temporary absence as renders him incapable of discharging his duties, then the Lieutenant Governor may exercise a Governor's powers and perform a Governor's duties, unless, for some of the reasons mentioned, he is rendered incapable of doing so, but it is by implication only that he derives such authority from section 15. But, as heretofore pointed out, section 16 expressly says:

“In case of impeachment of the Governor \* \* \* or inability to discharge the powers and duties of the office, the said office, with its compensation, shall devolve upon the



Lieutenant Governor.”

As to the contention of defendants in error that the inhibition in section 4, supra, applies to an elected Governor only, and does not apply to one on whom the office of Governor devolves, we must answer that the Constitution says no such thing. The Constitution says the Governor shall not be eligible immediately to succeed himself. This inhibition is not confined to an elected Governor, at least by any express language, nor is it confined to any particular length of term, nor is its application restricted to a four-year term. It simply says the Governor shall not be eligible immediately to succeed himself. In its literal sense, and its every practical working sense, a Governor is one who governs, and, conversely, one who governs is Governor. The language of section 4 in its literal significance applies to the one who is governing at the time the circumstances arise for an election to succeed himself, and does not except any one from the force of the ineligibility clause merely because he may have been governing for a short period only.

Defendants in error contend that it should apply only to an elected Governor who has served a four-year term, and that it should not apply to a portion of a four-year term; that, if the elected Governor should be impeached one week or one day, before the time for filing as a candidate to succeed himself, under such circumstances it would be absurd to apply the provision of said section 4. As to whether these suggested conditions may ever become possibilities, we are not called upon to decide. The present case does not present such a condition, and it would be mere dictum for us to say what should be done under such remote possibilities. It might suffice to say, however, that, if such \*575 conditions should arise, the courts will cross that bridge when it is reached.

Defendants in error argue also that the plaintiff's contention would bring about a condition wherein the elected Governor, if he saw fit to do so, in order to prevent the Lieutenant Governor from running for Governor, might resign or be removed or impeached a week or a day before the time for announcing as a candidate, and thereby force the Lieutenant Governor to act as Governor during the remaining week or day of the term, and then, by applying section 4, prevent the Lieutenant Governor from running for office. This is another bridge which the courts will cross when it is reached. In this connection, however, it is perceived that such remote possibilities might as easily come from the opposite direction. For example, an elected Governor might fail to qualify; he might die on the day before his time for taking office. In such case the office of Governor

would devolve upon the Lieutenant Governor for four years, and he might serve until the time arrived for filing as a candidate and resign, and thereby make it the duty of the President of the Senate or Speaker of the House to act as Governor, with an understanding with the President of the Senate or Speaker of the House that no change would be made in governmental policies, nor in the numerous appointive boards and employees, and again announce and run for Lieutenant Governor, with an understanding with some person running for Governor that, if elected, he would not qualify, but would leave the powers and duties of the office of Governor to devolve upon the Lieutenant Governor, who, if he should be elected as Lieutenant Governor, would then have another four-year term in the office of Governor, and the same proceeding might possibly be repeated for a number of terms, at the end of which terms he could run for Governor himself, claiming that he had been only "Acting Governor," thus perpetuating himself in the office of Governor, the very condition which section 4 expressly prohibits. So, while it is seen that these theoretic possibilities may work both ways, yet none of such conditions are before us now, and that bridge will be crossed when it is reached.

We now have before us an actual and clearly defined problem with the provisions of the Constitution as our only rule for solution. The authorities cited afford us very little light. None of them deal with conditions anything like similar to the conditions here presented, and none of them have been construed constitutional provisions identical with ours.

It is unnecessary to give space to the constitutional provisions of other states, nor to a discussion of the effect which such provisions have in other states, nor is it proper for us to interpret the decisions from other states to the extent of saying what effect they have on such states, but we may properly say what application the decisions of another state has to the law of our state, and may properly say what degree of persuasiveness they have upon us in construing the laws of our state, and, as no decisions have been cited exactly in point, and no constitutional provisions construed identical with ours, we are forced to construe our own Constitution with the effect it has upon our state in view. Again referring to the Crump Case, supra, and to the case of *People v. Wells*, 2 Cal. 198, which is quoted from with apparent approval by the Criminal Court of Appeals in the Crump Case, and which is separately cited by defendants, we find that neither of those decisions deal with a condition at all similar to the one here presented. In the Crump Case the court was dealing with an occasion of temporary absence of the Governor from the state; the question being whether during such temporary absence the Lieutenant Governor had authority to issue pardons. The court was dealing with

an absence, a vacancy, which was essentially temporary. The facts in the case and the reasoning of the court show that it was essentially temporary, and that the court had such a condition in view; looked at it from that standpoint of a temporary vacancy in reaching its final conclusion. In that case, the absence of the Governor was only a temporary absence, and the vacancy created in his office was only a temporary vacancy. The Governor, though temporarily absent, still had the constitutional right, upon his return, to assume the duties of the office of Governor, but, under the conditions here presented, the impeached Governor has no right to return and oust the present Governor and assume the powers of the office of Governor. Mr. Walton's rights to the office, his tenure of office, his term of office, which as the California case says, belonged to him as an individual, have been terminated and foreclosed by the court of impeachment, but, as was also held in the California case, the people's right to a continuous functioning of the government has not ceased.

These are the conditions which we have here, and section 16 provides for just such conditions. Hence neither the Crump Case nor the California case are controlling in this case further than heretofore indicated. Defendants lay stress upon the concluding words of section 16, to wit, "or until the disability shall be removed." We are dealing with a condition where the disability cannot be removed; the law provides no means for its removal; it has become final; and it is our duty to avoid speculations and deal with the actual condition which confronts us.

Plaintiff in error cites three Oregon cases, viz. Chadwick v. Earhart, 11 Or. 389, 4 P. 1180; Olcott, Gov., v. Hoff, Treas., 92 Or. 462, 181 P. 466; State ex rel. Roberts v. Olcott, 94 Or. 633, 187 P. 286, in support of his contentions.

We do not feel at liberty to say what effect the decisions of the court of Oregon have upon \*576 the state of Oregon, but it is obvious to us that the conclusions were reached from a different standpoint than the standpoint here presented. The first Oregon case was dealing with the mere sordid question of salary, the question being Section 16, art. 6, Constitution of Oklahoma:

"In case of impeachment of Governor, or of his death, failure to qualify, resignation, removal from the state, or inability to discharge the powers and duties of the office, the said office, with its compensation, shall

whether the secretary of state, under certain conditions, was entitled to the Governor's salary, and in the second case also the question of salary appears to have been the bone of contention. In the third case the court followed the previous holding under the doctrine of stare decisis. However, it was held in the Oregon cases that the person on whom the office of Governor devolves becomes Governor.

The case of Futrell v. Oldham, 107 Ark. 386, 155 S. W. 502, Ann. Cas. 1915A, 571, is cited by defendants in error, but that case is not in point here. In the opinion the court said:

"The case turns on the question whether, on the resignation of the Governor, the then incumbent of the office of President of the Senate succeeded to the vacated office, or whether merely as such President of the Senate the powers, duties and emoluments of the office \* \* \* devolved upon him while he remained President."

This case is not in point here because it deals with a different condition, and for the further reason that the President of the Senate is not made an executive officer, nor constituted a part of the executive department by the Constitution of Arkansas, as is the Lieutenant Governor constituted by the Oklahoma Constitution. Plaintiff in error also cites section 1, art. 2, of the Constitution of the United States, and the instances, six separate occasions, where, upon the death of the President, the Vice President has succeeded to the office of President and became President of the United States, and has been so recognized. Said section of the federal Constitution is identical with ours, with the exception that ours is the stronger and more definite, as may be seen from the following parallel:

Section 1, art. 2, Constitution of the United States of America:

"In case of the removal of the President from office, or of his death, resignation or inability to discharge the powers and duties of the said office, the same shall devolve on the Vice President."

devolve upon the Lieutenant Governor for the residue of the term or until the disability shall be removed.”

It will be seen that the only difference between the two Constitutions, both dealing with the same conditions, is that the federal Constitution says, “the same shall devolve on the Vice President,” while the Oklahoma Constitution says, “the said office, with its compensation, shall devolve upon the Lieutenant Governor.” Defendant in error argues that no court has ever decided that the Vice President became President upon the death of the President, and appears to discount the departmental construction which the various departments of the federal government, including the federal Congress, have placed upon the above provisions of the federal Constitution. This construction has stood since April 4, 1841, when, upon the death of President Wm. H. Harrison, Vice President Tyler became President of the United States. For almost a century this construction of the federal Constitution has stood without question. It has been recognized as correct, and acquiesced in, not only by the departments of state and all the states of the Union, but officially recognized by every civilized government of the world.

On each occasion where the President of the United States has died, the Vice President has immediately succeeded to the office of President as President of the United States, and thereupon the government of the United States has at once, through its consular offices, notified all governments of the world of the change in Presidents.

Defendant suggests that no court has ever pronounced that to be the law. To our mind, it is so clearly correct that no one has ever presumed to test its correctness in the courts. Therefore it should have greater weight than an ordinary departmental construction, not only because it has stood for almost a century, but because it has been recognized as the correct conception of our system of government, and because, for eighty-five years under this construction, there has been no friction in the machinery of government by reason of such construction. While this construction of the federal Constitution is entitled to weight, yet we are not confined to such construction as our sole guide in construing our own. The plain language of our Constitution, under the universally accepted meaning of the language used, is sufficient unto itself.

Defendant contends that every man has a right to run for Governor, and if elected, to become Governor once. This we concede, provided he possesses the constitutional qualifications for the office, but he must be thirty years of age; must have been a resident of the state three years; and must not be immediately succeeding himself in the office of Governor. Possessing these qualifications, he may become Governor as often as the people elect him, but, lacking in either of them, his personal ambitions to become Governor are not to be weighed in the scales with the public interest and welfare.

The framers of the Constitution and the people in adopting the inhibition in section 4, supra, must have had reasons for so doing. The Constitution itself does not say what those reasons were, and we shall not assume \*577 to say what they were, but we may say what effect such provision has, and do say that it has a most wholesome and much-needed effect. We judicially know that under the law the Governor of this state has very extensive powers. He is a member of, and ex officio chairman of, several of the most important and powerful boards and commissions of the state. That he has authority to appoint and remove members of many important boards and commissions, and to dictate the employment of every clerk, stenographer, helper, and janitor allowed by law to be employed by such boards. We judicially know that he is ex officio chairman of the state board of equalization, which has power to equalize and fix property values and the rate of taxation; that he has power as chief executive to convoke the Legislature, and to veto acts of the Legislature, to issue pardons to persons who have been duly convicted in the courts, and power to call out the militia and many other far-reaching powers, and we also judicially know that under the law the present incumbent has all of the above-mentioned powers, and as a matter of common knowledge, we know that too long an exercise of such tremendous powers by one man may bring about oppression and detriment to the public welfare, and that too long a tenure of office with the powers which a Governor has may enable him to build up a dangerous, and possibly invincible, political machine with which to perpetuate his powers.

While we do not know, and do not pretend to say,

whether the present incumbent or any other Governor has ever used his powers wrongfully or oppressively, yet we do know that section 4 whatever may have been the reason for its adoption, has the effect of preventing these possible dangers, and do know that it is well to guard against them.

Mr. Trapp is just as much a Governor, in every literal and practical sense and effect, as though he had been elected to the office. He has all the powers, emoluments, and immunities which could be conferred upon him by an election, as well as the same individual rights of tenure and occupancy which an elected Governor has, and, except by impeachment for misconduct, there is no provision of law by which he can be divested of such rights until the end of his term. He is now filling the office which, upon the impeachment of Mr. Walton, devolved upon him by section 16, and section 4 says, "The Governor shall not be eligible immediately to succeed himself."

Discerning our system and plan of government, and our constitutional provisions for the operation of same as we do, the reasons herein given become potent and conclusive.

The judgment of the trial court is therefore reversed, with directions to issue the order of injunction herein sought.

Reversed.

MASON, PHELPS, LESTER, HUNT. CLARK, and RILEY, JJ., concur.

NICHOLSON, C. J., dissents.

BRANSON, V. C. J. (dissenting).

In this court the parties bear the same adversary positions as they bore in the district court. They are, therefore, referred to as plaintiff and defendants.

One Kirby Fitzpatrick, as plaintiff, sued the state board of public affairs, the state election board, and the individual members of each. He prayed relief, enjoining the defendants from causing to be printed on the official Democratic primary ballots to be used throughout the state in the primary, to be held, as required by law, the first Tuesday in August, 1926, the name of M. E. Trapp. The said M. E. Trapp had duly filed his application with

the said defendant election board to be placed on such ballots as a candidate for nomination for Governor of Oklahoma, and his said application to be placed on said ballots had been by said board accepted.

The question of the propriety of the injunctive remedy sought is by none of the parties drawn in question, and the same will, therefore, not be discussed. Only a part of the substance of the pleadings is necessary to be stated for a clear understanding of the issue.

At the regular November election, 1922, one J. C. Walton was duly elected as Governor of the state of Oklahoma. He was inaugurated by taking the constitutional oath on the 8th day of January, 1923, and thereafter continued to fill the office until the 23d day of October, 1923, when the House of Representatives duly assembled, filed impeachment charges with the state Senate, and the state Senate did, by resolution, on said last-named date, suspend him from office; but on the trial the charges were sustained, and judgment entered removing him from office. Section 168, C. O. S. 1921.

At the same time the said Walton was elected Governor, the said M. E. Trapp was duly elected Lieutenant Governor of the state of Oklahoma for the constitutional term of four years, beginning on the 8th day of January, 1923, and on said date the said M. E. Trapp qualified as Lieutenant Governor by taking the constitutional oath of office, and, as defendants contend, has ever since been Lieutenant Governor by reason of his election to said office and his qualification as such officer.

An extended discussion of the one question presented is unnecessary to make lucid the conclusion we reach. That one question is whether the said M. E. Trapp is eligible to be Governor for the term for which he seeks to be nominated and elected, and which term begins under the Constitution the second Monday in January, 1927. The plaintiff alleges that he is ineligible, and contends that, \*578 because of his ineligibility, he should not be placed on the primary ballots as aforesaid; while the defendants, taking the view that he is eligible, have accepted his filing, and intend to place his name, unless prevented from doing so, upon such ballots.

Whether he is eligible depends upon the construction to be placed on certain provisions of the Constitution of the state. The correlation of these said provisions are before this court for the first time, and we must say what they mean, for they are not without ambiguity. We have no exact precedent from the decisions of any other state to ease our task, for, while we find similar provisions in many Constitutions, we find none of them exact as ours in their entirety. The decisions of other courts hereinafter

cited are helpful so far as they deal with provisions similar to certain provisions here in question, but from the point at which they stop we must follow a rule of reason all our own. It is admitted that the ineligibility attaches only to the Governor.

Before considering the particular provisions which bear directly on the dispute, consideration of the provisions of the Constitution as to who may be Governor and how he may become Governor we consider important. Bearing thereon we cite, but give only the substance of, the provisions, constitutional and statutory.

Article 6 (Williams' Oklahoma Constitution) creates the executive department of state government, names the officers in whom executive authority is lodged, and, in a measure, the conditions under which such authority is so lodged. Section 3 thereof makes any male person who has been an elector of the state for three years, and is not less than thirty years of age, eligible to be elected either Governor or Lieutenant Governor. Section 1 thereof provides, among other things:

"The executive authority of the state shall be vested in a Governor, Lieutenant Governor," etc.

It cannot be considered amiss to point out here that the express language of this section vests executive authority in the Lieutenant Governor of the state. Just when he can exercise the same, and what authority he can exercise, depends upon other provisions of the Constitution hereinafter discussed. Before going to them, however, we think it important to call the attention of the reader to the fact that article 3 (Williams' Oklahoma Constitution) provides for mandatory elections for state and other officers. The provisions of said article 3 of the Constitution as to mandatory elections were vitalized by statutory enactments passed by the first state Legislature of the state. This Legislature convened soon after Statehood day, which was November 16, 1907, and the statute so vitalizing the said article 3 as to the mandatory selection of officers by popular elections is now brought down in our statutes as chapters 40 and 41, C. O. S. 1921. Section 6093, C. O. S. 1921, vitalizes that provision of article 3 of the Constitution which provides for a mandatory primary system. Section 6126 provides for the election of persons so nominated at the primary the first Tuesday after the first Monday of November of each even numbered year, beginning in 1908.

Reverting again to the Constitution, we find that section 4 of said article 6 provides that the term of office of Governor, and the term of office of the Lieutenant Governor (which runs concurrently), shall be four years from the second Monday of January next after their

election, and that it further provides that the Governor shall not be eligible to immediately succeed himself. We come to the question here at issue: Who is the individual made ineligible to immediately succeed himself? The language of the said section is that the Governor is ineligible to immediately succeed himself. The language of section 1 of the same article makes clear that executive authority is vested in both the Governor and the Lieutenant Governor. These sections contemplate that two individuals shall be elected at the same election for the same term of office, and that executive authority shall be vested in each. They are each required to have the same qualifications, but the latter is not cloaked with the same ineligibility as the former. Each is elected by the electors of the state. We think it is not subject to debate that there is no provision in the Constitution or statute whereby the Governor can be appointed by any individual or collection of individuals. There are ample provisions in the Constitution and statutes under which most of the other numerous officers of the state may fill their respective offices by appointment by the Governor, or other designated appointing power, for section 13 of article 6 provides that the Governor shall commission all officers who are not commissioned by law, and, when any office shall become vacant, he shall, unless otherwise provided by law, appoint a person to fill the vacancy until a successor shall have been elected. Under this provision it is not subject to debate that, if the Lieutenant Governor should die, be removed on impeachment, or remove from the state, or otherwise be taken from the office, the Governor is directed by the said section to appoint a Lieutenant Governor, at least until the succeeding election. If the Governor should die, or be removed from office, there is nothing in the Constitution which authorizes the Lieutenant Governor to appoint a Governor.

We then ask ourselves the question: Can there be, under the Constitution of Oklahoma, a constitutional Governor except as the electorate of the state makes one at an election? We find no provision in the Constitution \*579 which says so, nor do we find any which can be fairly so construed. Being the chief officer of the state, the ordinary meaning of the language used as to him expressly reserved to the people the sole power to make a Governor. Said section 1 of article 6 is different from other Constitutions dealing with the same matter. It vests executive power, not as a function to an office whoever may be holder thereof, but in individuals, and so far as is involved here, in individuals referred to as Governor and Lieutenant Governor. Section 2 of article 6 makes a distinction between the executive power vested by section 1 in the Governor and the executive power vested in the Lieutenant Governor, in that it makes the executive power of the Governor supreme. Said section 2 says:

“The supreme executive power shall be vested in a chief magistrate, who shall be styled ‘the Governor of the state of Oklahoma,’”

—but it cannot be said, with right reason, that, because this section vests supreme executive power in a chief magistrate, styled the Governor of the state of Oklahoma, it thereby robs the Lieutenant Governor of the executive power which the preceding section said should exist in the Lieutenant Governor. We ask ourselves the question: Under what circumstances could executive power be exercised by the Lieutenant Governor, and what power? Unless we desire to read something into said section 4 of article 6, or to read something out of the same, the conclusion is inevitable that a constitutional Governor is a person nominated at a primary, and elected at a general, election for a term of four years. Under said section 2 his right to use the executive power vested in him by section 1 is supreme, and, when it exists at all, it supercedes any executive power vested in the Lieutenant Governor, and such power so vested in the latter is dormant until some condition arises under which he can exercise the same. The Governor exercises supreme executive power from the day of his inauguration for a period of four years, subject to the conditions of sections 15 and 16 of article 6, which are, in substance, to wit, his impeachment, failure to qualify, resignation, removal from the state, or inability to exercise the same, or vacancy in his office. When some one of these contingent conditions arises, it operated to strike down, or suspend, the Governor’s executive power.

And, under such circumstances, shall we say that the executive power vested in the Lieutenant Governor cannot then be exercised by him? That part of section 1 in referring to the Lieutenant Governor is meaningless, unless the exercise of executive authority by the Lieutenant Governor was intended to be conditioned on the happening of some of the provisions enumerated in sections 15 and 16 of article 6. If some of said conditions exist, then under the said sections the performance of the duties of the supreme executive, whatever those may be made by law, are charged to the Lieutenant Governor, but the performance of these duties by him are not, as Governor for the Constitution does not say so, and he was not so elected. The Constitution does not say when the Lieutenant Governor exercises executive authority so given him by section—he does so as Governor—but said section 1, when read in the light of the other sections of article 6, clearly recognizes that the elected Governor may be unable to exercise the same or to fill the office either because of impeachment, conviction on impeachment charges, death, failure to qualify, removal from the state, or some other inability, such as absence from the state, sickness, etc. The constitutional convention, knowing that

some of the above disabilities might exist, or that the office might become vacant, and knowing that the same must be continuously filled in the sense that the duties of the office must be performed in the interest of the public good, in effect says that, if from any of these causes he, the Governor, is suffering from inability to discharge the duties of the office, the said office, with its compensation, shall devolve upon the Lieutenant Governor for the remainder of the term or until the disability shall be removed.

From the oral argument presented by counsel for plaintiff, the writer is unable to escape the conclusion that plaintiff’s position is that we must turn the question here in dispute solely upon the language of the said section 16, and that part thereof which provides:

“That the said office, with its compensation, shall devolve upon the Lieutenant Governor for the residue of the term or until the disability shall be removed.”

Diligent search can be made of each section of said article 6, creating and dealing with the executive department, and nothing therein can be found of an executive nature to be done by the Lieutenant Governor, except when a contingency arises as contemplated by sections 15 and 16. There is nothing in any section of said article (and no other article) that either expressly or by fair intendment indicates that, on the contingency of said sections arising, the Lieutenant Governor can exercise executive authority in any status other than as Lieutenant Governor. And can any reason be given why it should be exercised by him other than as Lieutenant Governor when the only section vesting such authority in him says that it is vested in a Lieutenant Governor? The Governor being possessed of supreme executive authority until some contingency, as specified supra, arises, no executive authority can be exercised by the Lieutenant Governor, but, when such contingency does arise, \*580 he performs the duties of the office merely as the occupant of the office of Lieutenant Governor, to which he was elected.

Suppose we accept the contention of the plaintiff referred to in the foregoing paragraph, to the effect that the question must be decided by the language, “that the said office, with its compensation shall devolve upon the Lieutenant Governor,” and do not consider other sections dealing with the same matter (to do this, however, would violate all rules of constitutional and statutory construction), we then are faced with a definition of the word “office” as given in the latest authentic edition of Webster’s New International Dictionary as “a right to

exercise a public function or employment and receive the emoluments thereto belonging." (Webster gives another: "In its fullest sense, office embraces the elements of tenure, duration, duties, and emoluments.") Suppose we substitute the said definition of office in the sentence relied on by the plaintiff. It will then read that the right to exercise the public functions (of the Governor—ours), and receive the emoluments thereto belonging, devolves upon the Lieutenant Governor. Would such sentence demote him as Lieutenant Governor and promote him as constitutional Governor? Would that strip him of his character as one official, and make him another official? No such conclusion can be reached by any fair or logical process of reasoning, and there is no provision in the Constitution of the state whereby a person elected as one official may, by operation of law, take on the status of another official. If we even omit Webster's definition set out, *supra*, we find in sections 15 and 16 of article 6 that the term "office" and "duties and powers of the office" are shown by the context to have been intended to mean that, when the person elected as Governor or Lieutenant Governor dies, or is otherwise incapacitated, it is only the duties and powers which he might have exercised that can be performed by another and distinct officer.

It must be noted that section 16 draws no distinction between his status in exercising executive authority by the Lieutenant Governor where there is a permanent disability, such as death or removal from office, and where there is merely a temporary disability on the part of the supreme executive. This was clearly pointed out in the case of *Ex parte Hawkins*, 10 Okl. Cr. R. 396, 136 P. 991, and in *Ex parte Crump*, 10 Okl. Cr. 133, 135 P. 428, 47 L. R. A. (N. S.) 1036, in which the Criminal Court of Appeals of this state construed sections 15 and 16 of article 6, *supra*. In so construing them, that court cited with approval the logical reasoning of the Supreme Court of California in the case of *People v. Wells*, 2 Cal. 198. There is no section of the Constitution, unless we read something into it, which undertakes to make the Lieutenant Governor a constitutional Governor merely because he may exercise powers that would be, but for some contingency as set out above, exercised by the supreme executive. But plaintiff argues vigorously that the Constitution never contemplated that a vacancy should ever exist in the office of Governor. The idea plaintiff expresses is only true in the sense that the Constitution never contemplated that there should not be some one within the state who could exercise executive authority ordinarily exercised by the Governor. But there is nothing to be found therein which indicates that it must always be exercised by the officer known as Governor. This is clear from section 15, which, among other things, says:

"If, during a vacancy of the office of Governor, the Lieutenant Governor shall be impeached, displaced, resign, die or be absent from the state, or become incapable of performing the duties of the office, the President, pro tempore, of the Senate, shall act as Governor until the vacancy be filled or the disability shall cease."

We think this section clearly shows that the makers of the Constitution contemplated that a vacancy might exist in the office of Governor, either temporary or permanent. When a permanent vacancy occurs, said section clearly directs that the Lieutenant Governor shall exercise the powers and duties of the office, and, if during that time he (the Lieutenant Governor) should be impeached, displaced, resign, die, or be absent from the the state, section 15 directs that the President pro tempore of the Senate shall perform the duties of the office, and also provides for additional succession to such duties. Should we give the said constitutional provisions the construction contended for by plaintiff, and say, as he desires, that, when the Governor is removed from office, the Lieutenant Governor becomes the constitutional Governor, it would be tantamount to saying that the Lieutenant Governor as such was not given any executive authority, under any contingency, by the language of section 1. Such would lead to confusion, and such confusion, as we believe, the adroit minds of those who framed the Constitution would have prevented had they anticipated this court would read into the Constitution a construction of its provisions that would make a Lieutenant Governor constitutional Governor, though never elected as such. The inability of the Governor to immediately succeed himself is a limitation upon the right given to every citizen of the state to seek this high office who possesses qualifications set out above. Unless clear from the language used, we must not give this restrictive provision a meaning that would so penalize a man, who had been elected only as Lieutenant Governor, when, and if while serving, he should be nominated and elected Governor, he would be disqualified to take the office when inauguration day \*581 arrived, if the Governor had died or been removed between election day and inauguration day. Should we give it the construction plaintiff contends for, then the minute the Governor resigns, is removed on impeachment, or dies, the Lieutenant Governor instantly becomes the constitutional Governor by operation of law, and the office of Lieutenant Governor thereby becomes vacant. If this is the law, under section 13 of said article 6, *supra*, he could immediately appoint a Lieutenant Governor, and, if



feeling friendly to the deposed Governor, he could forthwith hand such impeached and removed Governor a commission as the Lieutenant Governor of the state, and then, if the friendship extended that far, out of personal consideration for the Governor so removed, could resign himself as Governor, whereupon the Governor so impeached could forthwith become the constitutional Governor by operation of law. Shall we read these provisions into article 6, which might bring about such conditions when otherwise they would not be possible. If on the removal of the Governor the Lieutenant Governor automatically is removed from the office to which he was elected, and instantly becomes Governor, in the exercise of his appointive power, under section 13, he is directed to appoint some one as Lieutenant Governor, and could do it forthwith, and this would operate to make it impossible that the President pro tempore of the Senate would ever succeed to the performance of the duties of Governor, as was clearly contemplated in the succession line to such duties as set out in section 15 of the Constitution.

The construction we give leaves effective the ineligibility of the elected Governor to be or become Governor for the term immediately succeeding that for which he was elected and served either in part or in whole, and does not extend the said ineligibility to an individual not specifically made ineligible by section 4. Again, should we give the meaning plaintiff contends for, we would make it possible to defeat such intent of section 4 in this, to wit, that the elected Governor, after serving for approximately three and one-half years, could resign before the primary, the Lieutenant Governor would then become automatically the constitutional Governor, and the Governor elected for the term then running, thus, by his own act, making himself eligible to be Governor for the next term, could forthwith enter the race, and, if elected, would be qualified, for that he would not be immediately succeeding himself, a constitutional Governor having served in the interim. Likewise, in the instant case, if M. E. Trapp is Governor in the constitutional sense of the term, he could forthwith appoint a Lieutenant Governor; then resign. His appointee would then be the constitutional Governor, and Trapp could continue his campaign, and, if elected, could qualify as Governor the second Monday in January, 1927, for the reason that he would not be "immediately succeeding himself;" but another constitutional Governor would have filled the office in the interim. No such possibility of juggling with this high office was ever intended, but, when all provisions are considered, the Constitution means that, if A. is honored by being elected Governor for a term of four years, he is ineligible to be Governor the next term which begins four years later. That is what the Constitution says, and it means that, and

nothing more. That meaning prevents possible and probable unseemly and disconcerting conditions, and we must adhere to it.

We are driven to these conclusions: First, that under the Constitution of Oklahoma, there cannot be a constitutional Governor, except when elected as such by the electors of the state. Second, that under section 1 executive authority is vested in both the Governor and the Lieutenant Governor, but that under section 2 supreme executive authority is vested in the Governor, and the Lieutenant Governor cannot exercise executive authority until a contingency arises, as set forth in sections 15 and 16 of said article. Third, that under said sections a vacancy may occur and exist in the office of Governor, in which event the Lieutenant Governor, as such, exercises the executive authority which the Governor, but for the arising of the contingency, would have exercised. Fourth, that, if while so exercising such authority, the Lieutenant Governor is impeached, displaced, resigns, dies, or is absent from the state, etc., the President pro tempore of the Senate may perform such duties. Fifth, that the Lieutenant Governor, who runs and is elected as such, cannot by operation of law be made a constitutional Governor, but is merely a constitutional Lieutenant Governor, and may exercise executive authority when the Chief Executive, to wit, the Governor, is removed, dies, or cannot otherwise act. Sixth, that this construction gives force to the language of section 1, section 2, section 4, section 13, section 15, and section 16, which are all the sections dealing with the subject, and thereby creates no possibility of a confusion in the performance of the executive functions. Neither does it destroy or strike down the succession provided by section 15 of said article to the duties of the office of the executive, such as might occur otherwise.

We think our reasons and conclusions are borne out by these cases: *Sadler State ex rel. v. La Grave*, 23 Nev. 216, 45 P. 243, 35 L. R. A. 233; *State ex rel. Hardin v. Sadler*, 23 Nev. 356, 47 P. 450; *People v. Cornforth*, 34 Colo. 107, 81 P. 871; *Clifford v. Heller*, 63 N. J. Law, 105, 42 A. 155, 57 L. R. A. 312; \*582 *People v. Budd*, 114 Cal. 168, 45 P. 1060, 34 L. R. A. 46; *State v. McBride*, 29 Wash. 335, 70 P. 25; *State ex rel. Chatterton v. Grant*, 12 Wyo. 1, 73 P. 470, 2 Ann. Cas. 382; *Clifford v. Heller*, 63 N. J. Law, 105, 42 A. 155, 57 L. R. A. 312; *Futrell v. Oldham*, 107 Ark. 386, 155 S. W. 502, Ann. Cas. 1915A, 571.

In the above cited case of *People v. Budd*, 114 Cal. 168, 45 P. 1060, 34 L. R. A. 46, the court, in part, says:

"It will be seen that in case of a vacancy in the office of Governor the vacancy is not to be filled, but the powers and duties devolve upon the

Lieutenant Governor, who does not cease to be Lieutenant Governor. Under such circumstances it would hardly be contended that when the powers and duties of the Governor devolve upon the Lieutenant Governor the latter thereby becomes Governor, and can appoint a Lieutenant Governor. Nor do I think it could be contended that when the President pro tempore of the Senate acts as Governor he could appoint a person to fill the vacancy in the office of Lieutenant Governor. If he could, he would then appoint himself out of office, and it would be his duty to do so."

Again, if we consider sections 15 and 16 separately instead of together, do we find anything in section 16 which authorizes M. E. Trapp to be Governor? Under the facts as they were and are, can we not see by an analysis of that section that, when Trapp began to perform the duties of the office, it was not as Governor? No one contends for a moment that mere inability or disability on the part of the elected Governor would make the Lieutenant Governor Governor in fact. Under this section 16 the first thing mentioned is, "In case of impeachment of the Governor, \* \* \* the office 'devolves,' etc., upon the Lieutenant Governor."

What does impeachment mean? And could impeachment have made Trapp Governor? It certainly could if the word "devolve" means what plaintiff contends, for he says that is the one word which made Trapp Governor. This court has definitely said through Justice Harrison in the case of State ex rel. Trapp v. Chambers, District Judge, 96 Okl. 78, 220 P. 890, 30 A. L. R. 1144, that—

" 'Impeachment' of the Governor, within the meaning of section 16, art. 6, of the Constitution, is the adoption of articles of impeachment by the House of Representatives, and the presentation thereof to the Senate, and the indication by that body that the same are accepted for the purpose of permitting prosecution thereof, and the impeachment of the Governor operates to suspend him; the duties and emoluments of the office automatically devolving upon the Lieutenant Governor for the remainder of the term or until the

disability is removed by the acquittal of the Governor of the charges preferred against him."

So the word "devolve" clearly from said opinion did not make Trapp Governor while impeachment charges were pending against Walton, for this court said there: "The duties and emoluments" of the Governor "devolved" upon Trapp.

The second contingency set out in section 16 is, in case of death, the office "devolves." Walton was not then, and is not now, dead, so "devolve" did not make Trapp Governor under that contingency. The third is, in case of his failure to qualify, the office "devolves." Walton did not fail to qualify, and "devolve" could not make Trapp Governor under that contingency. The fourth contingency is in case of resignation, the office "devolves." "Devolve" did not make him Governor for this reason, for Walton did not resign. The fifth contingency is, in case of his removal from the state, the office "devolves." Walton did not remove from the state, so that contingency not having taken place, "devolve" did not make Trapp Governor. The sixth and last contingency of said section 16 is in case of inability to discharge the powers and duties of the office, the office "devolves" upon the Lieutenant Governor "until the disability is removed." This contingency did not permit "devolve" to make Trapp Governor, for there was no "inability" on the part of Walton to discharge the powers and duties of Governor, for that "inability" is a condition that may be removed or terminated, or, in other words, is temporary. It is defined by lexicographers as "an inherent lack of power to perform the thing in question." An illustration would seem to make it clear. For instance, if Walton had been afflicted with insanity, this would have brought about a lack of power to perform the duties of the office which inhered in him personally, and such inability as might be removed such as acquittal on the impeachment charges would have restored him to the right to perform the duties of the office.

Section 16 was given this meaning as far back as 1913, by Judge Henry Furman, a man of recognized learning, and a judge of eminent ability. In the case of Ex parte Hawkins, 10 Okl. Cr. 396, 136 P. 991, he said:

"This case presents simply a cold question of law, and must be decided as such without reference to any other considerations. Article 6, § 16 (Williams' Constitution, § 165) provides in express terms that all of the powers of the Governor shall devolve upon the Lieutenant

Governor during the inability of the Governor to discharge the powers and duties of said office, and until such disability shall be removed. \* \* \* The Governor may go to other states \* \* \* without forfeiting his office. \* \* \* During his absence, or inability to act, the Lieutenant Governor is vested with all of the powers of Governor. \* \* \* The Constitution provides that there shall always be some one within the State clothed with power to perform the duties of Chief Executive. \* \* \* The powers of the Lieutenant Governor to act, during the inability of the Governor, are not derived from the invitation or request of the \*583 Governor; but they rest alone upon the provisions of the Constitution of Oklahoma.”

This comes from the pen of one long since removed from divergent judicial and political views. He was discussing the identical section of the Constitution plaintiff relies on as making a Governor out of a Lieutenant Governor. Judge Furman said in brief that, during an inability of the Governor to act, the Lieutenant Governor came forward, not to say “I am Governor,” but to do the work and perform the duties which the Governor would have done but for the inability. This shows clearly the futility of considering section 16 separate from sections 1 and 15 of the same article.

Plaintiff admitted in oral argument that section 15 should come after section 16; that this mistake was made in enrolling the article by the enrolling clerk. This is only important, if at all, in reading the two sections together. If they are so read in the light of the above authorities, they will in substance be: When the Governor has impeachment charges pending against him, fails to qualify, resigns, removes from the state, or possesses inability to act, or (section 15) if during a vacancy of the office of Governor from any of the above causes which would create a vacancy, or from death, or removal by a judgment of a court of impeachment, the duties and powers of the Governor are held and performed by the Lieutenant Governor, and if during such vacancy the Lieutenant Governor suffers impeachment or removal from office or inability to act, the President pro tempore of the Senate shall perform the duties, then the Speaker of

the House, and then such other persons as the Legislature may provide by law.

Section 168, C. O. S. 1921, on impeachments, provides in closing:

“If two-thirds of the Senators present shall vote yea upon any charge or count contained in the article of impeachment, the accused shall be adjudged guilty [by the Senate as a court of impeachment—ours], and the judgment of the court shall be that he be removed from office.”

That is what created the vacancy in the office of Governor in the present term, and was such a vacancy in such office as is referred to in section 15 of article 6 of the Constitution, and during which that section and section 16 requires that the Lieutenant Governor shall have the power and perform the duties of the office and such of them as would otherwise be required of the Governor. It was such contingency actually occurring which was anticipated by the Constitution as the reason for vesting executive authority in the Lieutenant Governor in section 1 of the same article clearly to be exercised on the contingencies set out in sections 15 and 16.

We feel that the usage grown up in departmental construction of the national government that on a vacancy in the office of the elected President the Vice President becomes President is not even persuasive here, for there is nothing in the Constitution of the United States that makes the elected President, or a successor to him, ineligible to succeed himself, and the question here could never arise as to the presidency.

It must be noted in conclusion that not one decided case from all the states is cited to support the opinion of the court on the question here involved, though there are numerous ones, as set out above on similar questions.

The writer believes the judgment of the trial court should be affirmed.

#### All Citations

121 Okla. 83, 248 P. 569, 1926 OK 584

Fitzpatrick v. McAlister, 121 Okla. 83 (1926)

248 P. 569, 1926 OK 584

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## Ranscht, David [AG]

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**From:** Ranscht, David [AG]  
**Sent:** Friday, March 24, 2017 5:49 PM  
**To:** Gavin, Meghan [AG]  
**Cc:** Thompson, Jeffrey [AG]  
**Subject:** Weekend lt. gov. reading  
**Attachments:** Ohio AG 1947-1562.pdf; In re Advisory Opinion to the Governor.pdf; Thomas v State Bd of Elections.pdf; The Honorable John V Evans.pdf; State ex rel Martin v Heil.pdf; State ex rel Sathre v Moodie.pdf; Robertson v State ex rel Smith.pdf

Attached are a bunch of items I ran across in doing some searching this afternoon that I haven't previously shared. Of particular interest is the 1977 Idaho AG opinion (Evans). Unfortunately, I couldn't find any indication that the Idaho Supreme Court actually did what the AG opinion recommended.

I don't see anything in these materials that contradicts what we have discussed so far. In fact, there's some pretty strong language in the Indiana case (*Robertson*) that supports our theory. None of the other cases *directly* address the scenario in front of us, but possibly provide some helpful clarity by way of evaluating related scenarios.

The general consensus appears to be that the alternative scenario we've discussed (governor stays but lt. gov. resigns) gives the governor an appointment power. CA and WI deal with that expressly. So does the Rhode Island case (which is the advisory opinion attached here)—although the dissent in that case appears to consider "lieutenant governor resigns" and "lieutenant governor becomes governor after governor resigns" to be the same thing, and I'm not sure that's true under our framework.

One interesting wrinkle is North Carolina (*Thomas*). The court in that case held that even if the lieutenant governor dies, the replacement has to wait until the next general election to be elected with a new governor. In other words, no appointment is allowed and there's not even a special election.

The 1947 Ohio AG opinion says if the governor-elect dies, the lieutenant governor-elect does *not* become governor; instead, the previous governor holds over. The Ohio Constitution was amended in 1976 to fix that.

I found four instances of using statutes to obtain a new lieutenant governor, but none of them match the question here.

Two of them dealt not with our facts but with the governor staying and the lieutenant resigning or dying—WI and OH. Ohio even issued a writ of mandamus to the governor *compelling* him to appoint someone new in accordance with the statute. But the common thread between them is that each state's constitution authorizes or even directs the legislature to provide for appointment, for filling vacancies, or for defining vacancy—something the Iowa Constitution lacks. Ohio also amended its constitution in 1989 to provide that when there is a lieutenant governor vacancy (i.e. when the governor stays but lieutenant resigns), the governor fills it by appointment—so the statute would no longer be in use there.

The third is New York, but New York (like WI and OH) contains a constitutional provision ordering the legislature to provide for appointments and vacancies. On that basis, I'd say it's distinguishable.

The fourth instance of using a statute to obtain a lieutenant governor is Arkansas, but the statute there provides for an election, not an appointment.

I'll look forward to discussing next week.



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109 Ind. 79  
Supreme Court of Indiana.

Robertson  
v.  
State ex rel.  
Smith.<sup>1</sup>

February 23, 1887.

Appeal from circuit court, Marion county.

West Headnotes (9)

[1] **Courts**  
↔ Grounds and essentials of jurisdiction  
Jurisdiction of the subject-matter and of the person are absolutely essential to the power of a court to decide a legal controversy, and unless both exist it is the imperative duty of the court to decline to do more than ascertain and declare that it has no power to examine or decide the merits of the case.

6 Cases that cite this headnote

[2] **Judgment**  
↔ Jurisdiction of cause of action  
Jurisdiction of the subject-matter and of the person is essential to the validity of all judicial judgments, and where there is no jurisdiction the court will not express an opinion upon the merits of the controversy.

3 Cases that cite this headnote

[3] **Quo Warranto**  
↔ Existence and adequacy of other remedies  
**States**  
↔ Lieutenant Governor  
A claimant of the office of Lieutenant-Governor can not maintain an information in the nature of a quo warranto to settle the title to that office, as section 6 of article 5 of

the Constitution vests exclusive jurisdiction of such controversies in the General Assembly.

2 Cases that cite this headnote

[4] **Statutes**  
↔ Statutory scheme in general  
Statutes are to be construed as parts of one great and uniform system of law.

5 Cases that cite this headnote

[5] **Quo Warranto**  
↔ Nature and scope of remedy  
The remedy by information in the nature of a quo warranto is a civil proceeding.

Cases that cite this headnote

[6] **Quo Warranto**  
↔ Nature and scope of remedy  
**Quo Warranto**  
↔ Jurisdiction  
An information in the nature of a quo warranto to settle the title to a public office is a civil action, and, under section 312, R.S.1881 (Burns' Ann.St. § 2-707), must be filed in the county where the defendant has his last and usual place of residence.

6 Cases that cite this headnote

[7] **Quo Warranto**  
↔ Jurisdiction  
Where the respondent resides in Ablen county, and the information is filed in Marion County, there is an absolute failure of jurisdiction.

Cases that cite this headnote

[8] **Quo Warranto**  
↔ Venue  
Where information is filed in one county against respondent in another county, there is an absolute failure of jurisdiction and Supreme Court on appeal is not required to



give written statement of decision on each question as provided by Const. art. 7, § 5.

Cases that cite this headnote

[9] **Election Law**

⇌ Jurisdiction

Const. art. 5, § 6, declaring that contested elections for Governor or Lieutenant Governor shall be determined by the General Assembly in such manner as may be prescribed by law, confers on the General Assembly exclusive power over a contest of the election of Lieutenant Governor, and precludes a person claiming to have been elected to such office from maintaining quo warranto to determine his right to the office.

4 Cases that cite this headnote

**Attorneys and Law Firms**

\*582 L. T. Michener and Harrison, Miller & Elane, for appellant. Jason B. Brown, David Turpie, and Cas. Byfield, for appellee.

**Opinion**

ELLIOTT, C. J.

On the twelfth day of January, 1887, the relator, Alonzo G. Smith, filed an information against the appellant, praying an injunction against him restraining him from "obtruding, or attempting to intrude, himself into the office of lieutenant governor," and for a judgment of ouster "excluding him" from that office. The relator's information alleges that, on the seventh day of November, 1884, the relator was duly elected a member of the senate of the general assembly of the state of Indiana, that he duly qualified, and that on the thirteenth day of April, 1885, he was chosen president of the senate; that he accepted the office, and entered on the discharge of its duties; that upon the assembling of the senate, in January, 1887, he was reelected president of that body, and was in possession of that office at the time the information was filed. It is also alleged that Manlon D. Manson was elected to the office of lieutenant governor in November, 1884, and that, having qualified, he held that office until July, 1886,

when he vacated it, by accepting a federal office; that on the second day of November, 1886, at the general election then held, a majority of the voters of the state, assuming that a vacancy existed in the office of lieutenant governor, were procured to vote for the respondent for that office; that returns of the vote, regular in form, were made by the proper officers; that such returns were duly certified to the secretary of state, and that certified statements of the votes were delivered to the speaker of the house of representatives. It is further alleged that, on the tenth day of January, 1887, the speaker of the house of representatives opened and published the returns in the presence of the members of the house of representatives, the senate not being present nor in session at the time; that the speaker declared that the respondent had received a majority of the votes cast at the election, and had been duly elected lieutenant governor; that the respondent thereupon took the oath of office, and unlawfully intruded into the office by attempting to exercise its functions and duties, and that the speaker of the house recognized him as the lieutenant governor of the state. The information also avers that the respondent claims the right to exercise the function of the office of the president of the senate, and is unlawfully interfering with the rights of the relator as such officer; and that the senate, by a majority of its members, supports the claim of the relator to be \*583 the presiding officer, while the house of representatives, by a majority of its members, sustains the claim of the respondent. Summons was issued and served on the appellant; and a temporary restraining order was granted, enjoining him from attempting to perform any of the duties of the office of president of the senate. From this order the appellant appeals.

On the thirteenth day of January, 1887, the appellant entered a special appearance, and filed a verified plea, denying the jurisdiction of the court, alleging in his plea that he had never been a resident or inhabitant of Marion county, but was, and had been for more than 20 years, a resident and citizen of the county of Ablen. The appellee demurred to this plea, and his demurrer was sustained.

The question at the threshold is this: Had the circuit court jurisdiction to hear and determine the cause? If that court had no power over the cause, this court, of course, has none.

Two things are absolutely essential to the power of a court to decide a legal controversy,—jurisdiction of the subject-matter, and jurisdiction of the person. Both must exist,

otherwise it is the imperative duty of the court to decline to do more than ascertain and declare that it has no power to examine or decide the merits of the controversy. Authors and courts agree upon this rudimentary principle of law. Neither in reason nor upon authority can there be a doubt as to its soundness. Power is essential to the validity of every act, judicial, legislative, or executive. Where there is no power to hear and determine, there can be no judicial decision. Expressions of individual opinion there may be, but a judicial judgment there cannot be. A judicial judgment is the product of power,—the power of the law,—and is not the mere expression of the individual opinion of the judge. The question is purely and intrinsically one of power, for the jurisdiction of a court consists solely in its power to hear and determine the causes brought to its bar. If jurisdiction does not exist, power is absent; and, if power is lacking, an expression of opinion, upon any other than a jurisdictional question, although judicial in form, is simply the opinion of its author,—valuable it may possibly be as an argument, but effective as the opinion of the court it is not. “Jurisdiction,” says a recent writer, “is the right to pronounce judgment acquired by due process of law.” Herm. Estop. § 69. At another place this writer says: “Jurisdiction is authority to hear and determine.” Id. § 73. Again, speaking of the court, he says: “It must act judicially in all things, and cannot then transcend the power conferred by law.”

In *Mills v. Com.*, 13 Pa. St. 627, the court said: “Jurisdiction’ is the power and authority to declare the law. The very word in its origin imports as much. It is derived from the words ‘*juris*’ and ‘*dico*,’—‘I speak by the law.’”

Chief Justice Shaw said: “To have jurisdiction is to have power to inquire into the fact,” and “to apply the law.” *Hopkins v. Com.*, 3 Metc. 460.

Chief Justice Marshall, speaking upon a kindred subject, said: “Judicial power, as contradistinguished from the power of the laws, has no existence. Courts are the mere instruments of the law, and can will nothing.” *Osborn v. United States Bank*, 9 Wheat. 738.

In *In re School-law Manual*, 4 Atl. Rep. 878, the supreme court of New Hampshire declared that, where there was no jurisdiction, it was not only the duty of the court not to express an opinion, but it was its duty not to have an opinion, on the merits of the cause.

The supreme court of Texas in *Withers v. Patterson*, 27 Tex. 491, said: “The jurisdiction of a court means the power or authority which is conferred upon a court by the constitution and laws to hear and determine causes between parties, and to carry its judgments into effect.”

These are a few only of the many statements that abound in the books and reports, and declare what all must concede to be the law of the land. Accepting \*584 these statements as correct, then the conclusion must be that, where there is no jurisdiction, there is no power. No consideration can be imagined, nor reason conceived, which will justify a court in assuming to pronounce a judgment where it has neither the right nor the power to hear or decide. It is only where courts can speak by the law that they can rightfully speak at all. An expression of opinion by a judicial tribunal, where it has no power to speak by the law, is utterly devoid of force. A decision without jurisdiction is a judgment only in form, for it is absolutely and everywhere void. The author from whom we have quoted says: “If a court has no jurisdiction, its decision is a nullity; and it matters not what facts it finds, or what questions it decides,—in fact they are nullities. If without jurisdiction it cannot adjudicate the real merits of the case, it cannot adjudicate any other question, whether it be introductory, incidental, or collateral.” Herm. Estop. § 68. Another author says: “Where there is no jurisdiction, it does not belong to the proper functions of a court to give an opinion upon a matter submitted to them for the guidance of parties or inferior tribunals. \* \* \* The whole business of a court is confined to giving decisions in cases properly before it.” Wells, Jur. 10. In *Elliott v. Piersol*, 1 Pet. 328, the supreme court of the United States said, in speaking of a court: “But, if it act without authority, its judgments and orders are regarded as nullities.” Our own court has decisively affirmed this elementary doctrine. *Smith v. Myers*, 9 N. E. Rep. 692, (this term.)

The only course which a court can rightfully pursue is to decline to speak in all cases where it cannot speak by the law. It is not a matter of choice; it is a matter of duty. The duty is as solemn and imperative as any one among all the grave duties that rest upon the courts of the country. Nor ought the courts to give opinions which are in form judgments, but in reality mere phantomatic resemblances, since, in more ways than one, such a course is productive of evil.

To the judicial department, as the most conservative of all the co-ordinate branches of the government, is intrusted the high duty of declaring and enforcing the law as it exists, and upon the officers of that department rests, more strongly than upon the officers of the other departments, the solemn obligation to unwaveringly abide by the established principles of law. A great and important part of the duty of the courts is to compel citizens and officers to obey the rules of law, and they cannot, upon any imaginable ground, be themselves excused for violating those principles. It is the plain and solemn duty of the courts to apply to themselves the rules which they enforce against others. Courts, most of all the instruments of the law, should sternly refuse to transgress its rules. It is an established principle of law, long settled and firmly maintained, that courts will not decide any question affecting the merits of a case over which it has no jurisdiction, and no court can, without a plain and inexcusable breach of duty, violate that principle. No one thing in all jurisprudence can be of higher importance than that the judiciary should inflexibly adhere to the law as it comes from the hands of the law-makers.

The question upon the facts stated in the appellant's plea is whether there was any jurisdiction in the circuit court over the person of the appellant, not whether there was a defect in its process, or an irregularity in the service of its writs. There is no middle ground; there is either complete jurisdiction, or an utter want of jurisdiction. If, upon the facts stated in the plea, the law is that the appellant may be sued in Marion county, there is plenary jurisdiction; if the law is that he cannot be there sued, then there is an absolute want of power to proceed a single step against him. It is either power, or no power. The court cannot look beyond or outside of the record, and on the record the question is, was there any jurisdiction at all?

It is enough for the decision of this court to affirm that there was no jurisdiction of the person of the appellant. It is not necessary, nor, indeed, \*585 proper, to decide any other questions than those of jurisdiction. The want of jurisdiction of the person is fatal to the right to go further into the cause. It is an elementary rule that, without jurisdiction, there is no validity or vitality in any judgment; for, to give the slightest vitality to the judgment, there "must be jurisdiction of the cause and of the person." Herm. Estop. § 54. As there was no jurisdiction of the person, this cause cannot in any event go back to the court

from which it came for trial, but it goes back there only to be cast out.

Jurisdiction of the person of the appellant could only have been acquired in an action brought in the county of Allen, where he resided. Section 312 of the Code governs this case, for it does not fall within the provisions of any other section. That section reads thus: "In all other cases the action shall be commenced in the county where the defendants, or some one of them, has his usual place of residence." This language is broad and comprehensive in its scope, and mandatory in its effect. It is the positive command of the law that all actions, except those otherwise provided for, shall be brought in the county where the defendant resides, and there is no authority to bring them elsewhere. It is not within the power of the court to create an exception. To do that would be judicial legislation, and judicial legislation is always odious, for legislation by the courts is usurpation. There is no escape from the command of the statute, and it is the duty of the courts to enforce it. They have no discretion to change it, nor have they power to take a case out of its operation. They must apply the law as it is written in section 312 to all cases for which a different provision has not been made by the legislature. If the law is faulty, the legislature, and not the courts, must amend it; for the courts have no authority to change a line or a word, since there is neither ambiguity nor obscurity. Section 1132 does not impair the force or effect of the section under immediate mention. The provision of section 1132 is that an information may be filed by the prosecuting attorney of the circuit court in the proper county, and "the proper county" can only be ascertained by exploring the statute. It is to the law, and to the law alone, that we can look to ascertain what is "the proper county;" and the law informs us that "the proper county" is the county of the defendant's usual residence. The "proper county" can only be the county where the law authorizes actions to be instituted, for no other county can, with accuracy or propriety, be said to be "the proper" county. Our cases have uniformly held that all actions except those for which express provision is made must be brought in the county where the defendant resides. A forcible example is supplied by the case of *State v. Whitewater, etc., Co.*, 8 Ind. 320, which was an action to compel, by mandate, the rebuilding of a bridge in Dearborn county. The court held that the action must be brought in Fayette county, where the defendant resided, saying, among other things: "But it is assumed that the present action is local in its nature, and must be brought in the county where the duty

sought to be enforced is to be performed. The Code points out and defines the subject-matter of all the actions which must be instituted in the county in which the subject of the action, or some part thereof, is situated; but the case at bar does not seem to be within the definition." *Hawley v. State*, 69 Ind. 98, strongly enforces the same general doctrine. That was a prosecution for bastardy, and it was held that it must be instituted in the county where the defendant resided; the court saying: "Such proceedings, being transitory in their character, must, under the Code, be commenced in the county in which the defendant resides, when he is a resident of the state." In other cases the court has asserted the policy of the statute to be—what, indeed, its language plainly imports—to require all actions, not expressly otherwise provided for, to be brought in the county where the defendant resides. *Hodson v. Warner*, 60 Ind. 214; *Boorum v. Ray*, 72 Ind. 151; *Robbins v. Alley*, 38 Ind. 553; *Ewing v. Ewing*, 24 Ind. 468; *Michael v. Thomas*, Id. 72; *McCauley v. Murdock* \*586, 97 Ind. 229; *State v. Board, etc., of Vanderburgh Co.*, 49 Ind. 457; *Coleman v. Lyman*, 42 Ind. 289.

It must therefore be deemed the settled law of this state that all actions must be brought in the county where the defendant resides, except such as the statute expressly provides shall be brought elsewhere.

It is assumed that this is not strictly a civil action, but is a special proceeding, and is not governed by section 312 of the Code. But it has been expressly ruled that such a proceeding as this is a civil action. In *Reynolds v. State*, 61 Ind. 392, the question came directly before the court, and in deciding it the court said: "It is clear, we think, from this section of the Code, that an information in the nature of a *quo warranto* in this state is a civil action."

If, however, it were conceded that the position of the appellee is tenable, still it would by no means result that section 312 does not apply; for it is now quite well settled that the provisions of the Code do apply to all proceedings, whether under special statutes or not, unless excluded by the provisions of those statutes. *Evans v. Evans*, 105 Ind. 204, 5 N. E. Rep. 24, 768; *Bass v. Elliott*, 105 Ind. 517, 5 N. E. Rep. 663, and cases cited; *Burkett v. Holman*, 104 Ind. 6, 3 N. E. Rep. 406; *Burkett v. Bowen*, 104 Ind. 184, 3 N. E. Rep. 768; *Powell v. Powell*, 104 Ind. 18, 3 N. E. Rep. 639. Statutes are to be regarded as forming parts of one great and uniform body of law, and are not to be deemed isolated and detached systems, complete in themselves. *Lutz v. City of Crawfordsville*,

*ante*, 411, (this term; *Humphries v. Davis*, 100 Ind. 274. It would be a departure from principle to declare that each "special proceeding" is complete in itself, and it would be a departure productive of serious evils, for scarcely one of all the "special proceedings" can be carried into practical effect without aid from the Code of Civil Procedure. It is necessary in almost, if not quite, every instance to refer to the provisions of the Code in order to give any effect to these special proceedings; and certainly this must have been intended by the legislature, for, had it undertaken to make each system complete in itself, many ponderous volumes of statutes would have been required.

It is the judgment of this court that the circuit court had no jurisdiction to grant the order of injunction, and that, upon the facts set forth in the appellant's plea, that court had no jurisdiction of the person of the appellant.

The cause is remanded, with instructions to dissolve the restraining order, and for further proceedings in accordance with this opinion.

MITCHELL, J.

While concurring in the opinion of the court to the extent that it holds that an information to try the title to an office can only be tried, unless by consent, in the county in which the defendant resides, I do not concur in the view that there was such a want of jurisdiction in the court below over the person of the defendant as excuses this court from giving a statement in writing of each question arising in the record, and the decision of the court thereon. Section 5, art. 7, Const. The record discloses that the appellant was personally served with summons in Marion county; that he appeared in person and by counsel, and pleaded in abatement of the jurisdiction of the court. It therefore became, at most, a mixed question of law and fact, to be determined by the learned judge, whether or not jurisdiction of the defendant's person had been acquired, either by the process of the court or by the consent of the defendant. The court may have decided erroneously, but, if it did, this was an error in no sense different from any other which occurs in the progress of a cause. As is said by a standard author: "There is a difference between want of jurisdiction and a defect in obtaining jurisdiction. At common law, the defendant was brought within the power of the court by service of the *brevia* or original writ. In this country the same object is accomplished by the service of summons, \* \* \* or by the voluntary appearance of the defendant \*587 in person or

by attorney. From the moment of the service of process, the court has such control over the litigants that all its subsequent proceedings, however erroneous, are not void. If there is any irregularity in the process, or in the manner of its service, the defendant must take advantage of such irregularity by some motion or proceeding in the court wherein the action is pending." Freem. Judgm. § 126.

It cannot, therefore, with propriety be said that the court below had no jurisdiction over the person of the defendant. It decided, upon inspection of its own process, that it had jurisdiction; and while it may be true that, upon the facts as they appear, or may be hereafter shown, its jurisdiction may have been defectively obtained, and that the restraining order may well be for that reason dissolved, it does not follow that this court, because it finds one error, is thereby excused from giving its decision upon the real questions which the record presents. Certainly no court has ever set up the unwarranted pretense that it could with propriety either give a decision, or intimate an opinion, in a case which involved a subject-matter over which it had no jurisdiction, or where it had no jurisdiction of the parties. The record before us does not present such a case. If the court below had decided, as it very properly did in the recent case of *Smith v. Myers*, 9 N. E. Rep. 692, (present term,) that it had no jurisdiction of the subject-matter, the duty of this court would have terminated with the examination of that question. So, also, if, after having acquired, through its process, jurisdiction of the appellant's person, it had decided that its jurisdiction was so imperfect as not to warrant it in proceeding further, the examination of that question would have ended our duty on this appeal. The court below, however, decided that it had jurisdiction of the person of the defendant, and proceeded to adjudge other questions which appear in the record. Precedents will be looked for in vain to support the proposition that an erroneous decision of a *nisi prius* court on the subject of the completeness of its jurisdiction over the person of a litigant renders it improper for an appellate court, after the *nisi prius* court has held its jurisdiction complete, to examine other questions subsequently decided by such court, and properly presented by the record. The reason why such question should be passed upon is that it is within the power of the parties at any moment to perfect the defective jurisdiction of the court below over their person by consent. We cannot say, in advance, that they may not do so, especially if the decision of the court should be favorable to the party defectively served. "This is in accordance with the general line of judicial precedent, and

is sanctioned by an example furnished by so illustrious a tribunal as that of the supreme court of the United States, under the presidency of Chief Justice Marshall, he himself delivering the opinion in the given case. *Marbury v. Madison*, 1 Cranch, 137. We cannot greatly err in following the precedent set by so learned and pure a court." *State v. Allen*, 21 Ind. 516.

The questions of chief concern to the parties, and which, by reason of the relation of the parties to the state, are of vital importance to the public, relate to the jurisdiction of the court over the subject-matter of the information. This subject also involves the validity of the election held in November, 1886, for lieutenant governor. These subjects concern the second office in one of the departments of state. Between the office in contest and that of chief executive of the state is interposed only the slender thread upon which hangs a single life. Should the governor become disabled, the confusion which vexes the public service now would be transferred to, and turn into chaos, the office of the chief executive, to be settled there by such means as the contestants and their respective adherents might be able and willing to employ.

The question always properly first in order in every court is whether it has jurisdiction over the subject-matter of the suit. This and cognate questions were elaborately argued by learned and eminent counsel on both sides. The exigencies of the public service demand that they should be settled.

\*588 The relator's case proceeds upon the theory that an election for lieutenant governor can only occur once in four years. His claim is that in April, 1885, the senate, of which body he was then and still is a member, elected him as its president *pro tempore*. By virtue of this election, he asserts that he became vested with a right to discharge the duties of the office of president of the senate on any occasion when the lieutenant governor should thereafter be absent, until the senate, in its pleasure, should remove him. He alleges that the senate, when it assembled in January, 1887, recognized his right, and reelected him to the office. Thus he claims to have been incumbent in the office of president of the senate, by a title founded in the constitution, at the time and before the election in 1886 occurred, and that he is now in the discharge of its duties under the authority of the constitution. Thus, he asserts that the constitution has prescribed a method for supplying any vacancy which may occur in the office in question during the period intervening quadrennial

elections, and that by his election by the senate the office was supplied before the election in 1886 occurred. Hence the argument is, there was no vacancy which authorized or required an election by the electors of the state, or which gave color of support to any of the subsequent steps in that connection, resulting finally in the declaration by the speaker of the house that the respondent had been elected to the office of lieutenant governor.

The position of the respondent is, in effect, that if both the law and the fact be as claimed by the relator, yet the court cannot so decide—*First*. Because the controversy involves a contest over the election of, and is therefore said to be a contested election for, lieutenant governor. All such contests, it is argued, are by the constitution expressly committed to the final determination of the general assembly. *Second*. Because, even though this should not be considered a case of contested election, since the subject of the information involves the right to exercise an office which pertains to a co-ordinate branch of the state government, the contention is that it is a matter exclusively of political, and not of judicial, concern. Hence it is said the subject-matter is foreign to the jurisdiction of, and is not cognizable by, the courts.

The first question for consideration, therefore, is, do the facts presented in the information make this a case of contested election, within the purview of section 6, art. 5, of the constitution, which reads as follows: "Contested elections for governor and lieutenant governor shall be determined by the general assembly in such manner as may be prescribed by law?" Pursuant to this provision, the general assembly has enacted, in substance, that the election of any person declared elected by popular vote to any state office may be contested by any elector entitled to vote for such person. Provision is made for the organization of a committee, to be selected from the members of both houses, before which the contest is to be carried on. The causes of contest are prescribed, and the mode of procedure marked out. The judgment of this committee is to be reported to each house separately, and is to be conclusive. The causes for which an election may be contested are (1) irregularity or malconduct; (2) ineligibility of the contestee; (3) infamous crime in the contestee; (4) illegal votes. Section 4756, Rev. St. 1881.

An examination of the constitution, and legislation which has followed, makes it manifest that all contested elections for governor or lieutenant governor are committed to the exclusive judgment of the general assembly, to be

determined by the committee for which provision is made, under the rules and regulations prescribed in the statute. From the authorities, and upon principle, these general conclusions may be deduced: (1) When the constitution confers the power and enjoins the duty of determining contested elections upon the general assembly, its power in that respect is plenary, final, and exclusive in the specific cases mentioned. (2) When the constitution confides to a legislative body the power to judge of the election and qualification of its own members, the exercise of that power belongs exclusively to the body to which it is so committed, \*589 and is not the subject of review in the courts or by any other body *State v. Baxter*, 28 Ark. 129; *State v. Marlow*, 15 Ohio St. 114; *State v Tomlinson*, 20 Kan. 692; *People v. Mahaney*, 13 Mich. 481; *People v. Fitzgerald*, 41 Mich. 2, 2 N. W. Rep. 179; *Alter v. Simpson*, 46 Mich. 138, 8 N. W. Rep. 724; *State v. Gilmore*, 20 Kan. 551; *O'Ferrall v. Colby*, 2 Minn. 180, (Gil. 148;) *Cooley*, Const. Lim. 133; *McCrary*, Elect. § 515; *Hulseman v. Rems*, 41 Pa. St. 396.

While it is undoubtedly true that every contested election involves the title to an office, it cannot, with propriety, be said that every contest or litigation which involves the title to an office is a contested election. If the relator had, as he assumes, a vested legal right in the office of president of the senate, which had its inception and attached to him prior to, and which is in nowise dependent upon or connected with, the election through which the respondent claims, it is not apparent how such right can become involved in a contested election. If, under the constitution and law, the relator had a right anterior to the election, and if, as he further assumes, the election was unauthorized, then the mere holding of such election could not involve the pre-existing title in an election contest. The vested right could not have been annihilated by an unauthorized election, nor can the question of the existence of such a right, anterior to and independent of the election, be taken out of the cognizance of the judicial tribunals by the mere fact of an election. The logic of the adverse contention is, conceding all that the relator claims in respect to his antecedent right, as well as the invalidity of the election, that the title of the relator has nevertheless become so involved in and confused by the form of an election that there is now no power to ascertain and declare the title, except by resolving the controversy into a case of contested election, and by sending it to the general assembly. By this method of reasoning the jurisdiction of the court over the subject-matter is sought

to be defeated. This view of the situation is not, in my opinion, maintainable either in reason or upon authority.

The right in dispute is cognizable only by judicial authority. All the judicial power of the state, except such as is specially conferred upon other departments of the government, is committed to the courts. The authorities support the proposition that, where one department of the government is, in special cases, authorized to exercise power which belongs in general to another department, the exercise of such power will be limited strictly to the subjects specially enumerated. To declare what the law is, is a judicial function. *Kilbourn v. Thompson*, 103 U. S. 168; *Marbury v. Madison*, 1 Cranch, 137; *McDonald v. Keeler*, 99 N. Y. 463.

The judicial power committed to the general assembly is, in respect to the subject now under consideration, only such as strictly pertains to cases of contested elections for governor and lieutenant governor. The causes for such contest are specifically enumerated in the statute. These causes are only such as arise out of and pertain to an election. Before there can be a contested election an election must have been held. An election implies the choice of a qualified person to an office, by an electoral body, at the time, and substantially in the manner and with the safeguards, provided by law. The electoral body may manifest its choice in a manner which leaves no doubt of the fact of choice; yet, if such choice be manifested at a time or under conditions unknown to the law, the fact of choice, however unmistakable, goes for nothing. Under a government such as ours, the people derive their power to elect officers from the written law which they themselves have prescribed. It is not inherent, to be exercised upon any and every occasion when they may assemble together. The force and efficacy of the ballot is derived from the constitution and laws; and no one can predicate title to an office upon a popular vote, unless such vote was cast at a time when the constitution and laws authorized an election for that office to be holden. *McKune v. Weller*, 11 Cal. 49; *Foster v. Scarff*, 15 Ohio St. 532; *Sawyer v. Haydon*, 1 Nev. 75; \*590 *Biddle v. Willard*, 10 Ind. 62; *Com. v. Meeser*, 44 Pa. St. 341; *State v. Stauffer*, 11 Neb. 173; *State v. Whittemore*, Id. 173; *State v. Buck*, 13 Neb. 273; *State v. Hedlund*, 16 Neb. 566; *McCrary*, Elect. § 109; *Cooley*, Const. Lim. (5th Ed.) 747.

If, by the constitution, the electors have surrendered to others, chosen by themselves, the power to supply the office the title to which is in dispute, by electing another

to perform the duties of the office, they may not, without changing the fundamental law, resume such power at their pleasure. The adverse argument is, in effect, that, because there has been an election in form, the court may not inquire whether there has been an election in law and in fact. Because a title to an office is asserted as the result of an election, the pre-existing title of an incumbent in the same office becomes merged in the form of such election, and is hence no longer a subject of judicial inquiry in the courts.

But it is said, even if this be not a case of contested election, the subject of the right or office in dispute is cognizable solely by the political departments of the state government. Hence it is said the court below has and had no jurisdiction to entertain the subject of the information. Whatever the determination of the general assembly may be, even though, as in the case now under consideration, one branch of the assembly determines in favor of one claimant, and the other branch in favor of the other, it is said the judgment of the general assembly is conclusive on the courts and the people in a case like this. The argument is that an exposition by the courts of the law of the case would be to subordinate the supreme will of the legislature,—would be an encroachment upon its prerogative. The argument addressed to this feature of the case derives its force mainly from the alleged impotency of the court. Whatever its judgment may eventually be, it is said, it possesses no power to enforce its mandate, and hence its jurisdiction would be futile. The assumption is that, under our system of government, official station may be of such quality and degree that all inquiry into the title or pretense of one who asserts a right or claim to such station is denied the judicial department. In respect to this assumption, an author distinguished for his learning has said: “There is a basis of truth in this argument; the executive of the state cannot be subordinated to the judiciary, and may in general refuse obedience to writs by which this is attempted. But when the question is, who is the executive of the state? the judges have functions to perform which are at least as important as those of any other citizens, and the fact that they are judges can never be a reason why they should submit to usurpation. A successful usurpation can only be accomplished with the acquiescence of the other departments; and the judges, for the determination of their own course, must in some form inquire into and take notice of the facts.” *Cooley*, Const. Lim. 786; *High*, Ext. Rem. § 634; *Kerr v. Trego*, 47 Pa. St. 292.



It has been contended, in effect, that this is an application to the court to determine who shall preside over the senate, and that, because that body is a branch of an independent department of the state government, it has the inherent and exclusive right to determine that question for itself. That, if it determines that the relator has the right, it is possessed of ample power, without the aid of the court, to protect him in its enjoyment; and, if it is the pleasure of the senate that the respondent should preside, it is not in the power of the court to subordinate its will. The argument is specious, but it rests on a misapprehension of the case as it appears upon the record. The court is not asked to confer a right upon, or create a title in, the relator, nor is it asked to determine who shall preside over the senate. The case proceeds upon the theory that the senate, in the exercise of its constitutional prerogative, has conferred the right upon the relator, and that the respondent is unlawfully interfering with the right so conferred, and still recognized as existing, by the body which conferred, and had the power to confer, the right. The judgment of the court in this as in all other controversies \*591 concerning the rights of parties cannot create the right in one, or destroy it in the other. The rights of each are fixed by the constitution, and the jurisdiction of the court is invoked, as the mere instrument of the constitution, to ascertain and declare their rights as they are. The office of the court in all controversies is not to create rights, but to ascertain and enforce them when ascertained. In this respect the case is not different from any other controversy between parties involving rights of property. Nor is the jurisdiction of the court to be determined by the situation of the parties, or their ability to enforce their respective rights, without the aid of the court. Because a controversy has arisen between two individuals involving the right or franchise to preside over the senate, in no legal sense involves the senate, as a legislative body, further than such controversy may affect the dignity and decorum which should attend its sessions. The senate has no more power to adjudicate, except provisionally, upon an existing legal right or title of its presiding officer, than it has upon the legal rights of any other individual. Grant that the senate has the power, as it doubtless has, to refuse to permit its chamber to be made the arena in which to settle the disputed right or title, by such means as may seem available to the parties, does it follow that either party is forever precluded from invoking the judgment of the law upon the right in dispute? The general assembly, or either branch of it, cannot act judicially upon the right in dispute. Suppose it be true, as it is claimed on the one

hand, that the relator is presiding over the senate without authority of law, and in open defiance of the lawfully expressed will of the people, will it be said that because he does so with the concurrence of the senate, and under the protection of its officers, that the respondent's right is destroyed unless he establish it by force? Must the right be forever abandoned without judicial examination? Or suppose it be true, as is asserted on the other hand, that the respondent, in defiance of law, being supported by the house, intrudes into and interferes with the constitutional rights of the relator, are the parties without other means of settling their rights under the law, except it be to set their respective supporters in array? The right must remain in perpetual dispute until some tribunal which has authority to pronounce judgment of the law declares in favor of one party or the other. The law is without force or efficiency until vitality is breathed into it through the judgment and process of the court. Until the court speaks the judgment of the law, the contest must proceed by methods extrajudicial, except one party or the other abandon his claim. Shall the court, the exponent of the law, though formally invoked, refuse to speak while the unseemly contest goes on; or must it first inquire whether the party against whom it may declare, will obey the voice of the law before it makes response?

It cannot be admitted or shown that the parties are reduced to this extremity. The same constitution which conferred the right, wherever it may be lodged, has provided the remedy for its protection. That instrument requires that "all courts shall be open, and every man, for an injury done to him in his person, property, or reputation, shall have remedy by due course of law." Authority to adjudge the disputed claim having been lodged in no other tribunal, the courts must declare the law, and then it becomes the duty of the chief executive, under the sanction of his oath, to "take care that the laws be faithfully executed." Whenever it becomes a question whether or not there was a vacancy to be filled by an election or appointment, or where the question is, did the law authorize the election or appointment in a given case? it is universally held that the courts have jurisdiction to determine the law of the case. There is no authority which holds to the contrary. *Com. v. Meeser*, 44 Pa. St. 342; *Prouty v. Stroer*, 11 Kan. 235; *Attorney General v. Francis*, 26 Kan. 724; *Page v. Hardin*, 8 B. Mon. 648.

A decision by the legislature that a constitutional office is vacant cannot destroy the pre-existing title of an incumbent. The question presented by \*592 the record,

and questions closely analogous, have been the subjects of adjudication in the courts of last resort in some of the states, as well as in the supreme court of the United States. Uniformly the jurisdiction of the courts to determine the title to an office is maintained, unless the right to determine such title has been expressly confided to some other tribunal. The person claiming such a vested right may invoke the aid of the court to ascertain and protect his right against any one who unlawfully assails it.

Thus, in the case of *Marbury v. Madison*, 1 Cranch, 137, which involved the right of the court to coerce the delivery of a commission by the head of one of the departments of the federal government, through which it was claimed an individual had secured a vested right in an office, Chief Justice Marshall said: "If one of the heads of departments commits an illegal act under color of his office, by which an individual sustains an injury, it cannot be pretended that his office alone exempts him from being sued in the ordinary mode of proceeding, and being compelled to obey the judgment of the law. \* \* \* It is not by the office of the person to whom the writ is directed, but the nature of the thing to be done, that the propriety or impropriety of issuing the *mandamus* is to be determined."

The proceeding here is not against the respondent as an officer, but because it is alleged he unlawfully assumes to act as such, to the injury of another who claims the right. Being sued as an individual who is wrongfully attempting to exercise the functions of an office, he may not cover himself with the mantle of the office in dispute, and in that character claim that he is so related to a co-ordinate branch of the government that all judicial inquiry must be suspended. *Attorney General v. Barstow*, 4 Wis. 567; *Cunningham v. Macon, etc., R. Co.*, 109 U. S. 446, 3 Sup. Ct. Rep. 292, 609; *U. S. v. Schurz*, 102 U. S. 378; *U. S. v. Boutwell*, 17 Wall. 604; *Kendall v. Stokes*, 3 How. 87; *Bates v. Clark*, 95 U. S. 204; *U. S. v. Lee*, 106 U. S. 196, 1 Sup. Ct. Rep. 240; *Poindexter v. Greenhow*, 114 U. S. 270, 5 Sup. Ct. Rep. 903; High, Extr. Rem. §§ 634, 635, and notes.

Whether the court below properly entertained jurisdiction of the subject-matter of the information can only be determined by inquiring whether the election held in November, 1886, for lieutenant governor, was or was not a valid election. If the election was authorized by the constitution and laws, then the votes of the electors communicated a title to the office of lieutenant governor to the respondent which can neither be impeached nor inquired into save by the general assembly. If the election

was not authorized by law, then, in legal contemplation, there has been no election, and the pre-existing title of the relator cannot be involved in a case of contested election. His title, in that event, is the subject of adjudication in the courts.

Article 5 of the constitution, entitled "Executive," creates two offices or public stations, and makes provision for the election of three officers. The offices created embrace the duties of the chief executive of the state and those of the president of the senate. The officers for whose election and service provision is made are entitled, respectively, "governor," "lieutenant governor," and "president of the senate." These stand related to each other so as to supply an order of succession. The first two are elected by the people, and are each to hold their office during four years. The third is to be elected by the senate whenever the occasion may require. While the officer entitled "governor" fills the chief executive office, the one entitled "lieutenant governor" is, so long as he is able to attend, *virtute officii* president of the senate. While the lieutenant governor presides over the senate, he who may become president is a senator. In the absence of the one next above, the one next below succeeds to his duties. In respect to the first two, the plain implication is that when one is chosen the other must be. This inference arises from the manner in which the elector is required to designate for whom he votes, and from the manner of the return, canvass, and publication of the vote. The official term of both are fixed alike, the beginning and ending thereof being fixed for all time. The duties which pertain to the office of chief executive are prescribed, and provision is made that, in case of the removal from office of the governor, or of his death, resignation, or inability to discharge the duties of the office, the same shall devolve on the lieutenant governor. Section 10 also enjoins upon the general assembly to provide by law for the case of removal from office, death, resignation, or inability, both of the governor and lieutenant governor, and to declare what officer shall then act as governor. The officer so to be declared is then to act accordingly until the disability be removed, or a governor be elected. It is provided that the lieutenant governor shall, by virtue of his office, be president of the senate, with the right to join in debate, and vote when the senate is in committee of the whole, and to give the casting vote when the senate is equally divided. Such other duties as are annexed to the office of president of the senate arise by parliamentary law. The duties thus assigned to the lieutenant governor are precisely those which parliamentary law assigns to the presiding officer or

speaker of a legislative assembly. Cush. Man. §§ 306-310. Section 11 provides that whenever the lieutenant governor shall act as governor, or shall be unable to attend as president of the senate, the senate shall elect one of its own members as president for the occasion.

Thus it will be seen that the fifth article of the constitution has created the executive office, divided it into official terms of four years each from a given day, and provided that the tenure of those who may fill the office, or discharge its duties, shall be four years. It has also created the office of president of the senate, and designated the manner in which it shall be supplied with an incumbent. It has made provision for the election of three constitutional officers, to the end that two constitutional offices may be constantly and without interruption supplied with incumbents. Two of the officers are to be elected concurrently, by the electoral body at large, every four years. The election of the third may or may not be held in abeyance until the occasion for his election arises. When the occasion arises he is to be elected by the senate. The inquiry then is, how may the occasion arise which requires the election of the third officer for which the constitution has made provision, and what are to be his official duties when he is called into being? Provision having been made for three officers, while concurrent duties were prescribed for but two, the inference arises at once that the framers of the constitution deliberately contemplated that emergencies might arise in which a supernumerary officer would be necessary, in order to secure the discharge of the duties pertaining to the executive department. It is at once apparent that an order of succession was accordingly arranged, so as to prevent the possibility of a vacancy during any of the executive terms into which the future had been divided. Contemplating the possible removal from office, or of the death, resignation, or other disability, of the governor, and to the end that the executive office might not thereby become vacant of a constitutional incumbent, it was provided that, upon the happening of any such event, the duties of that office should at once devolve upon the lieutenant governor. This provision made it impossible that the succession in the office of governor should ever be broken during an executive term, or the office become vacant, while there remained a governor or lieutenant governor qualified to act. Foreseeing, moreover, that, in the event the lieutenant governor should be required to assume the functions of governor, he would be unable to perform the incompatible duty of acting as president of the senate, and realizing that the lieutenant governor might be unable to attend as such president by reason of death,

resignation, or other cause, the framers of the constitution ordained that it should be the duty of the senate to elect a president *pro tempore* for any such occasion. This was to the end that a qualified person might be at hand, or might at once be supplied, when the occasion demanded, who should be \*594 clothed with the power to discharge the duties which by the constitution were assigned to the lieutenant governor by virtue of his office.

Thus it will appear, by attending to the constitutional scheme, that there never can be a moment, during any quadrennial period, when the constitution itself has not supplied an officer qualified to discharge the duties assigned to the governor or lieutenant governor without calling for the intervention of the electoral body. In the character of lieutenant governor, that official is required, during the inability, whether temporary or continuous, of the governor, to discharge the functions of the executive office, while during any like inability of the lieutenant governor to act as president of the senate the duties of that station are devolved upon the president *pro tempore*.

Still further, the article of the constitution which makes provision for the succession in the executive office contemplates the possibility that both the governor and lieutenant governor may at the same time be disabled from discharging the functions of their respective stations. So far attention has been given to the precautions taken in order that a vacancy might not occur in the event of the death or disability of one or the other of these two officers. As it serves to justify the conclusion that in no event was it contemplated that an election should intervene during the progress of an executive term, it may be well to consider briefly the other contingency provided for. What was deemed necessary in the event of the death, resignation, or inability of both governor and lieutenant governor? Was it contemplated that a vacancy would or might then occur in both offices? Clearly not. This is apparent from the fact that the general assembly was enjoined to declare what officer should, in such an emergency, act as governor; and why not, in the event of the death or resignation of both, also declare who should then be lieutenant governor? Plainly because the only duties annexed to that office pertained to the senate; and therefore, in the next succeeding section, to the senate was committed the duty, in any and every contingency, of supplying a person to perform those duties. There was hence neither necessity for, nor propriety in, an injunction that the general assembly should declare by law who should act as lieutenant governor, in case of the death

or resignation of that officer. The duty of supplying a person to perform the functions of that office was to be and was committed without limitation to the senate, by requiring the election of a president *pro tempore* as often as occasion might require. In pursuance of the constitutional mandate, the general assembly provided, in section 5559, Rev. St. 1881, as follows: "In case of the removal from office by death \* \* \* of both governor and lieutenant governor, a vacancy occurs in the office of governor, the president of the senate shall act as governor until the vacancy be filled, and, if there be no president of the senate, the secretary of state shall convene the senate for the purpose of electing a president thereof." It thus appears that the constitution, as also the legislation which followed in obedience to its requirement, indicates that the only account which was to be taken of the death, resignation, or other inability of the lieutenant governor was that, if the senate had not already done so, it should then elect a president *pro tempore*.

It follows, from a proper construction of the constitution, that there can be no vacancy in the office of governor or lieutenant governor so long as either remains qualified to act. Upon the death or disqualification of both, the constitution contemplates that a vacancy may occur in the executive office alone. To meet such a possible emergency, it required the general assembly to declare by law what officer should then act as governor. This has been done accordingly. The confusion in which the situation is involved grows out of an attempt to confound names with things; titles with offices. It seems to be supposed that the duties and office of lieutenant governor and president of the senate, which in virtue of his office the lieutenant governor may or may not fill, depending on circumstances, can only be filled by supplying some one to \*595 act therein with the title of lieutenant governor. This is the fundamental error which underlies the appellant's case. An office without a legally authorized incumbent is not filled by merely employing a given title, nor can an office become legally vacant while the constitution supplies an incumbent who possesses all the other requisite qualifications except the title. It is the substance, and not the shadow; the legally elected and authorized incumbent, and not the title,—that fills the office. In case of the death or resignation of the governor, the executive office becomes, for the time being, titularly vacant. It does not, however, while there is a lieutenant governor, become vacant in fact. In case the lieutenant governor acts as governor, or in case of his death or resignation, the office of president of the senate is, in

respect of the name, vacated by the lieutenant governor, but it no more becomes vacant in fact than does the office of governor in the case first supposed.

The framers of the constitution were not so much concerned that there should always be two persons supplied with the title of "governor" and "lieutenant governor," respectively, as that there should always be at hand two persons legally qualified to discharge the respective duties of chief executive and president of the senate. As was pertinently said in the case of *Chadwick v. Earhart*, 11 Or. 389, 4 Pac. Rep. 1180: "It is not shown how an office can be vacant, and yet there be a person, not the deputy or *locum tenens* of another, empowered by law to discharge the duties of the office, and who does in fact discharge them. It is not explained how, in such a case, the duties can be separated from the office, so that he who discharges them does not become an incumbent of the office. \* \* \* It is the function of a public officer to discharge public duties. Such duties constitute his office. Hence, given a public office, and one who, duly empowered, discharges its duties, and we have an incumbent in that office."

In New York a law was passed establishing the office of superintendent of insurance. The superintendent was to be appointed by the governor for the term of three years, with authority to designate his deputy. The deputy was to possess the powers and perform the duties attached by law to the office, during absence and inability of the principal. The superintendent resigned his office. The court of appeals, speaking of the *status* of the former deputy after the resignation of the superintendent, said: "It thus appears that the statute confers, in the case of a vacancy, upon the deputy all the powers, and imposes upon him all the duties, of the office of superintendent during its continuance. In short, it makes him, to all intents and purposes, acting superintendent, for the time during which there is and can be no other superintendent. The act contemplates that there shall at all times be a person clothed with all the powers, and subject to all the duties, of superintendent." *People v. Hopkins*, 55 N. Y. 74.

So, it may be said here, the executive department of the state is fashioned upon such a scheme as that each executive term consists of four years, each term having a definite beginning and ending. The electoral body designates at quadrennial elections two persons, one of whom acquires an absolute right to be chief executive for four years; the other becomes a contingent, to act

in case of the inability of the first-named. Meanwhile the constitution assigns certain duties to the contingent connected with the senate. The senate is authorized and required to supply a contingent for the lieutenant governor, to discharge the duties assigned him, in case of his inability to attend as president of the senate; and thus the constitution contemplates that there shall be a contingent to the governor, and one to the lieutenant governor, each clothed with all the power, and subject to all the duties, of the principal officer.

The argument in support of the validity of the election has its foundation on section 18 of article 5 of the constitution. This section provides, among other things, that, when at any time a vacancy shall have occurred in any state office, the governor shall fill such vacancy by appointment, which shall \*596 expire when a successor shall have been elected and qualified. Learned counsel in support of their position say: "We maintain \* \* \* that the constitution does contemplate vacancies in the office of lieutenant governor. We say it is a state office, within the meaning of section 18, and that when a vacancy occurs, it being a state office, it is entirely competent, nay, it is the duty of the governor to appoint a lieutenant governor to serve until a successor can be elected." In my opinion this position is wholly untenable. There is nothing in the constitution which so much as raises an inference that the office of lieutenant governor can become vacant in a legal or actual sense. Nor is the constitution fairly capable of such a construction as would authorize the strange anomaly of a chief executive appointing to office one who might, by his voluntary act, succeed to the executive office the next day after the appointment was made. The confusion arises out of the fact that the office, and the duties which pertain to it, are spoken of as entirely distinct, whereas they are inseparably connected. It is only where there is an existing office, without an incumbent lawfully authorized to discharge its duties, that the office is, in the eye of the law, vacant. The very idea and definition of the word "office" implies the right to exercise a public function or employment. The inevitable, logical conclusion, therefore, is that, wherever there is an existing office, the duties of which the law devolves upon a person or officer named upon the happening of any given event, the person or officer so designated becomes, upon the happening of the event named, the incumbent of the office. This is so, not because the person becomes *eo nomine* the officer, but because, while lawfully in the discharge of its duties, he fills the office. There were therefore, assuming the facts stated in the information to be true, two inseparable obstacles to

the appointment by the governor of a lieutenant governor when Gen. Manson vacated the office. One was, the office was not vacant, because the relator had been elected and was then president *pro tempore* of the senate; the other was that the constitution made provision for supplying the office, if it was not already supplied, by an election by the senate.

In *Clarke v. Irwin*, 5 Nev. 111-128, the court say: "Two things must concur—there must be a vacancy, and no provision made by the constitution for filling the office—before the governor can exercise the appointing power." Neither of the foregoing conditions was present. As was, in effect, said in the case last above cited: If there was a vacancy, then the very constitution which created the office filled the same, and there was no such condition of things as authorized an appointment. An executive system in which the chief executive could, in any event, appoint his own successor apparent, thereby vesting such appointee with power to become president of the senate, has, in my opinion, found no precedent in our form of government, either state or national.

The argument is that, a vacancy in the office of lieutenant governor having occurred, such vacancy was to be filled, first, by appointment by the governor, and then by the electoral body in November, 1886, under the provisions of sections 4678, Rev. St. 1881. This section provides that a general election shall be held in the month of November, biennially, at which all existing vacancies in office shall be filled, unless otherwise provided by law. It is said there is nothing in the constitution which forbade the people to fill the vacancy in the office of lieutenant governor. To this there are three sufficient answers: (1) There was no vacancy. (2) If there was, the constitution provided a mode of filling it other than by the electoral body, viz., by the election of a president *pro tempore* of the senate. (3) The constitution, by the clearest implication, forbids an election for governor or lieutenant governor except for the term of four years, which term can in no case commence at any other than the times specified in that instrument.

It is argued that the election, if lawfully holden, could only confer title for the unexpired executive term. This construction reduces the office of lieutenant \*597 governor, the term of which is fixed in the constitution at four years, to the level of offices created by legislative enactment, and subjects the office by judicial interpolation, rather than by construction, to the operation of section 5567, Rev. St. 1881, which provides

“that every person elected to fill any office in which a vacancy has occurred shall hold such office for the unexpired term thereof.” It has, however, been repeatedly held by this court that this statute has no application to an office created by, and the term of which is fixed in, the constitution. *Governor v. Nelson*, 6 Ind. 496; *Baker v. Kirk*, 33 Ind. 517; *State v. Long*, 91 Ind. 351. It must therefore be regarded as the settled law of this state that when a person is elected to an office created by, and the term of which is fixed in, the constitution, such election confers an indefeasible title for the full constitutional term. The emphatic language of the constitution is: “There shall be a lieutenant governor, who shall hold his office during four years.” The construction contended for would, in effect, require the court to add: “Except in case of an election to fill a vacancy, when he shall hold only during the unexpired term of such office.” To do this is equally beyond the power of the court and the legislature. *People v. Burbank*, 12 Cal. 378. If it is competent by construction thus to add to the constitution, the enactment of section 5567 was wholly unnecessary, as the provisions of that section could as readily have been interpolated into the statute by construction as into the constitution. That the constitution makes no provision for elections to fill vacancies in the office of governor or lieutenant governor, or for the limitation of the terms of persons elected to fill vacancies in those offices, is conclusive that no such vacancies were contemplated.

Among other objections to the construction thus given the constitution, and which has, again and again, been given it in the administration of the executive department of the government, it has been contended that there would result an irreconcilable conflict between sections 8 and 10 of article 5. The first provides that no person holding any office under the government of the United States or of this state shall fill the office of governor or lieutenant governor. The second provides that, in case of the death or disability of both governor and lieutenant governor, the general assembly shall declare what officer shall then act as governor until the disability be removed. It is said that to declare that another officer of the state shall act as governor in such a contingency is a violation of section 8. The framers of the constitution cannot be involved in such contradiction. The scheme of the constitution does not contemplate that either the lieutenant governor or the president of the senate shall, in any event, discharge the functions of two incompatible offices. When the lieutenant governor acts as governor, or fills the executive office, he does so in the character of lieutenant governor, and ceases

for the occasion to be president of the senate. When the president *pro tempore* of the senate acts as president, he does so in the character and office of senator, and does not become in name lieutenant governor. The office of president of the senate is for the time being appendant to that of senator. When, however, the contingency arises that the president of the senate is to act as governor, he does so in his natural and not in his official capacity as senator. He ceases for the occasion to be senator. This is according to the principle declared in *Chadwick v. Earhart*, *supra*. It is there said: “If an office be appendant, as the expression is in 1 Leon. 321, to another office, the determination of the first office will determine the second. \* \* \* On the contrary, if the nomination or appointment to an office be *descriptio personarum* of some one who holds some office by the title of which he is described, and who on some contingency is to enter and fill another office, the answering the description at the time the contingency arises designates him as the person who is to enter and fill the office, and when, as thus designated, he enters into the office, he holds it in his natural, and not in his official, capacity.” The application of this principle results in dissipating all of the supposed incongruities in the constitutional provisions to which reference has been made.

\*598 The same reasoning by which it is sought to prove that the office of lieutenant governor becomes vacant upon the death or resignation of that officer would, if valid, prove that under like circumstances the office of governor also becomes vacant. It would also prove that when the lieutenant governor, by reason of the death or resignation of the governor, acts as chief executive, the office of lieutenant governor becomes vacant. Yet it is conceded that in such a case the latter office does not become vacant, and that the lieutenant governor, while filling the office of governor, does so as, or in the character of, lieutenant governor. Will it be pretended that, while acting as governor in such a case, the lieutenant governor actually fills two offices,—that of chief executive and president of the senate? or does he fill the one in fact, and the other in name, by his title?

In 1861, after the governor-elect resigned, and the distinguished citizen who, as lieutenant governor, supplied the executive chair, assumed the duties of the executive, he as actually and effectually vacated the discharge of any official duty in any other office than that of governor as though he had died on the day he assumed the executive function. It was absolutely certain that from thenceforth,

during the remainder of the executive term, he would be disqualified and unable to preside over the senate. Did the office of lieutenant governor thereby become vacant? Should there have been an election for lieutenant governor holden in 1862, while Gov. Morton was actually filling the executive chair in the character of lieutenant governor, so as to have supplied the state with two lieutenant governors? or was the office of governor, while it was thus so adequately and actually filled, vacant, so that there should have been an election to supply that office? Perhaps it is well that the question which now perplexes the affairs of state was then not so much as even suggested, to add confusion to the crisis which was then upon the people.

Consider the situation in which the affairs of the state are involved at this moment. The general assembly, which it is asserted is the only body capable and authorized to decide the pending controversy, consists of two wholly independent bodies. The senate has decided for itself that the right and title to the office in dispute was conferred by its election on the relator, while the house has given its judgment that the election, the result of which was declared by its speaker, conferred the title on the respondent. Each separate branch of the general assembly has given its judgment on the case. The result of the judgment of the general assembly is to present the people of the state two persons contending for one office, each supported by the judgment of one separate branch of the legislative department of the state. In this extremity the court is appealed to by one of the parties, and asked to expound the constitution and declare the law in respect to his claim of title to the office in dispute. Shall it now be said that the best and only judgment which, under the constitution, the law can give in the premises, is that which has been declared by the general assembly? Is the extremity such that the confusion which now distracts the public service must continue until one or the other of the claimants tires of the contest, or abandons his claim, or may the court in this, as in any other case of disputed right, declare the law?

On behalf of the appellant it was contended that the issuance of an injunction in a case like this was in excess of the jurisdiction of the court. After a careful consideration of the subject, I am constrained to concur in this view. Without elaborating, my conclusion is that all that a court can properly entertain in a case involving the title to an office such as that in controversy is some appropriate proceeding to determine the right in dispute. Its jurisdiction is limited to giving judgment on the naked

legal right. So long as the title remains unsettled, it is not the province of the court to interfere by the extraordinary remedy of injunction for the protection of one or the restraint of the other litigant. This principle is peculiarly applicable to the case before us, which involves a right to exercise an office which can only be exercised \*599 under the supervision and protection of a co-ordinate branch of the government. While the legislative department has no power to pass judicially upon the title involved, each house, when separately assembled, or both when in joint assembly, has the power and the right to maintain its own dignity, and the good order and decorum of its proceedings. For this purpose, when the right to preside is in dispute, each may and must determine provisionally, until the right is judicially settled, who shall preside over its deliberations. Hence, while the courts are under the solemn duty when their jurisdiction is properly invoked of determining the title, they may not in a contest of such gravity interpose their authority in a matter which concerns the propriety of the conduct and proceedings of the senate or joint assembly of the two houses. So far as the relator has invoked the jurisdiction of the court by an information, the proceeding is appropriate to the end that the title to the office in dispute may be judicially determined. *Cochran v. McCleary*, 22 Iowa, 75. The feature of the case which invokes the restraining power of the court cannot, in my opinion, be entertained. *Beal v. Ray*, 17 Ind. 554; *Smith v. Meyers*, 9 N. E. Rep. 692, (present term.)

For these reasons, while I think the court had jurisdiction of the subject-matter, the restraining order should nevertheless be dissolved, and the further order of the court should be that, unless the respondent waives the question of jurisdiction over his person, the pending case should be dismissed.

HOWK, J.

My judgment yields a ready and earnest assent to each and all of the conclusions of Mitchell, J., upon each and all of the momentous questions discussed by him in this important cause. I cannot say aught which would give additional force to his able and exhaustive arguments upon each of these questions. Therefore I content myself with earnestly concurring in his opinion.

NIBLACK, J.

I concur with the conclusion reached in this case that, upon the facts disclosed by the record, the court below



had no jurisdiction over the person of the appellant, and that for that reason, if for no other, the judgment appealed from ought to be reversed. I also agree that, having reached the conclusion that there was no jurisdiction over the person of the appellant, there is nothing we can say on the merits of the controversy which can properly be considered as of binding authority as a decision in the cause. But I trust that, under the circumstances, it will not be deemed inappropriate for me to express some individual views on some of the questions discussed by my brother judges who have preceded me. I am further of the opinion that the court did not have, and could not be made to have, any jurisdiction over the subject-matter of the action.

Sections 4, 5, and 6 of article 5 of the present constitution of this state, as they are known by their original numbers, are as follows:

"Sec. 4. In voting for governor and lieutenant governor, the electors shall designate for whom they vote as governor, and for whom as lieutenant governor. The returns of every election for governor and lieutenant governor shall be sealed up and transmitted to the seat of government, directed to the speaker of the house of representatives, who shall open and publish them in presence of both houses of the general assembly.

Sec. 5. The persons respectively having the highest number of votes for governor and lieutenant governor shall be elected; but, in case two or more persons shall have an equal and highest number of votes for either office, the general assembly shall, by a joint vote, forthwith proceed to elect one of said persons governor or lieutenant governor, as the case may be.

Sec. 6. Contested elections for governor or lieutenant governor shall be determined by the general assembly in such manner as may be prescribed by law."

\*600 These provisions of the constitution, as I believe, confer upon the general assembly of this state exclusive power and control over—*First*, acting in part through the speaker of the house of representatives, who is charged with the duty of opening and publishing the returns, the matter of computing the votes cast at any election for governor and lieutenant governor respectively, and of determining and declaring the result arrived at by such computation; *secondly*, the matter of electing both the governor and lieutenant governor, when, by reason of a tie in the votes cast, there has been no choice by the people;

*thirdly*, all matters of contest arising out of the alleged election of any person, either as governor or lieutenant governor, and consequently, all questions affecting the rights of any person to hold the office of either governor or lieutenant governor.

The phrase "contested elections" has no technical or legally defined meaning. An election may be said to be "contested" whenever an objection is formally urged against it which, if found to be true in fact, would invalidate it. This must be true both as to objections founded upon some constitutional provision as well as upon any mere statutory enactment. The primary meaning of the verb "to contest," as given by Webster, is "to make a subject of dispute, contention, or litigation; to call in question; to controvert; to oppose; to dispute." It is further defined as meaning, "to defend, as a suit or other judicial proceeding; to dispute, or resist, as a claim by due course of law; to litigate." The power, therefore, to "determine contested elections" for governor or lieutenant governor, necessarily carries with it jurisdiction over every possible objection which may, under the constitution or any statute, be urged against the so-called election of any person to either one of those offices. Section 4743, Rev. St. 1881, and the next three succeeding sections, prescribing the manner of proceeding in contesting the election of state officers, were evidently intended to carry into effect the provision of the constitution concerning contested elections for governor and lieutenant governor; but the subsequent section, (4756,) which states generally the causes for which an election may be contested, does not specifically enumerate the objection presented in this case against the validity of the election of the appellant as lieutenant governor as a cause of contest; and it is for this reason claimed that the general assembly has no jurisdiction to hear and determine such a contest as the complaint in this case was intended to present, and that hence, there being no other remedy, the courts must have jurisdiction to hear and determine such a contest. This does not by any means follow. As applicable to a tribunal having only statutory jurisdiction to hear and determine a contested election case, the claim might have much plausibility, but, as applicable to a tribunal upon which the constitution has conferred complete jurisdiction, such a claim can have no foundation. It must be borne in mind that the constitution says that "contested elections for governor and lieutenant governor shall be determined by the general assembly." This is equivalent to saying that all such contested elections must be so determined. The failure, therefore, of the general assembly to provide that

a particular state of facts, which, under the constitution, ought to render an election for governor or lieutenant governor invalid, shall constitute a cause of contest, is simply a failure on its part to fully meet all the requirements of the constitution, and, in the very nature of things, no authority is thereby conferred upon the courts to supply the omission.

As I construe the various sections of the constitution having some bearing on the subject under discussion, in the light of the principles and usage governing American elections, the election of a governor or lieutenant governor may be contested for causes other than those specifically enumerated in the statute. If the person receiving the highest number of votes should prove to be an idiot or insane, and hence incapable of either comprehending the nature of the oath he would be required to take, or of discharging the duties of the \*601 office to which he has been elected, might not such a palpable disqualification be made a ground of contest? So, if the person receiving the greater number of votes should, after the election, commit some high crime or misdemeanor, amounting to an impeachable offense under the constitution, if committed after taking office, might not the general assembly, upon a contest, declare him to be incapable of taking the office? If there was no vacancy in the office at the time the election was held, or if the vacancy was one which the people were not authorized to fill at that time, could not either one of such facts be brought to the attention of the general assembly by an elector under the provisions of sections 4743 and 4744 of the statute above referred to, and the validity of the election be thus contested? If not, why not? But, however that may be, I, for the reasons given, maintain that, whatever power the courts might otherwise have had to adjudicate controversies arising out of elections for governor or lieutenant governor, all jurisdiction over such questions has been conferred upon the general assembly, to be exercised by it in such manner as has been or may hereafter be prescribed by law, and that, consequently, the courts of the state are wholly without jurisdiction to determine such controversies. The constitutional provisions which I have above set out take this case out of the rules of decision on kindred questions in some of the other states, and render many of the cases cited and relied on in argument totally inapplicable as precedents at the present hearing.

A careful examination of the constitution and existing laws will disclose that all that pertains to the returns and the contesting of the elections for governor and lieutenant

governor, and to the counting in and inauguration of these officers, stands upon a footing different from that of other state officers. The governor and lieutenant governor receive no commissions as muniments of title to their offices. The only authentic record of any matter relating to their election is found in the journal of the two houses of the general assembly. All the state officers who receive commissions must have their oaths of office indorsed upon their respective commissions, and certified copies of such oaths must be filed in the office of the secretary of state. Section 5519, Rev. St. 1881, prescribes the oath which every public officer of the state is required to take before entering upon the duties of his office. Section 5521 further enacts that "members of the general assembly shall take such oath before taking their seats, which shall be entered on the journals, and the governor and lieutenant governor shall each take such oath in presence of both houses of the general assembly in convention, and the same shall be entered on the journals thereof." Thus it will be seen that every thing having relation to the returns and contests of their elections, to counting them in, and to the inauguration of governor and lieutenant governor, is wholly committed to the general assembly, as much so and as exclusively, I respectfully submit, as each house is made the judge of the election returns and qualifications of its own members. The governor and lieutenant governor may for cause be impeached by the house of representatives, and tried and removed by the senate, or may, in common with other state officers, be removed by a two-thirds vote of both houses. The courts, for the causes stated, have absolutely nothing to do either with inducting the governor and lieutenant governor into office, or with excluding them therefrom, in the first instance, or in getting them out of office after they may have forfeited their right to remain in. Under the peculiar structure of our state constitution, these are political and hence not judicial questions, and are committed to the general assembly as the chief representatives of the political power of the state.

But it is claimed that the case presented is that of two persons claiming the right to discharge the duties of the same office, and that, in such a case, the statute expressly authorizes a proceeding in the nature of *quo warranto* to settle such a controversy independently of any provision of the constitution concerning contested elections for governor and lieutenant governor. But \*602 the appellant bases his claim of right to preside over the senate upon the assumption that he is the duly-elected and qualified, and hence acting, lieutenant governor of the state. The relator of the appellee bases his claim to

be recognized as the presiding officer of the senate upon the assumption that there is at present a vacancy in the office of lieutenant governor, and that, being a member of that body, he has, under the constitution, been elected president *pro tempore* of the senate, which confers upon him the exclusive right of presiding over its deliberations. Each, therefore, bases his claim to preside over the senate upon a title essentially different from the other. Conceding all the relator claims, he has not thereby become, in any proper sense, the lieutenant governor of the state. He is still a senator, and as such entitled to vote upon all questions coming before the senate. He does not occupy, and, while remaining a senator cannot be made to occupy, those supernumerary relations to the senate which are by the constitution imposed upon the lieutenant governor. There is nothing in the constitution or laws of this state which prescribes the duties of a president *pro tempore* of the senate, or confers upon him any fixed tenure of office. Under the parliamentary law, to which we must alone look in the absence of any constitutional or statutory provision on the subject, the president *pro tempore* of the senate is only its presiding officer during the pleasure of that body. He may be removed at any time by a vote of the senate, or the election of some other senator to the same position. At all events, his term cannot extend beyond the legislative term during which he is elected. Every fourth year, therefore, his term of office must, at the utmost, expire about two months before the end of the concurrent term of lieutenant governor. On this subject see section 3, art. 4, of the constitution, also section 9, art. 5, of the same instrument. Consequently the relator and the appellant cannot with propriety be considered as claimants to the same office. The points of collision between them are *sui generis*, and do not, as I conceive, present a case either authorizing or requiring judicial intervention.

The condition of things complained of is really one of disorganization between the two houses of the general assembly, one recognizing the appellant as the lawfully-elected and duly-qualified lieutenant governor of the state, and the other denying his title to that office. This condition of disorganization develops a controversy over which the courts, on general principles, have no jurisdiction, and concerning which no court can exercise even the slightest control. It presents a case for legislative, and consequently not judicial, arbitrament.

So far as I am able to perceive, the senate has the unquestionable right to determine who is entitled to act as its presiding officer. Section 16, art. 4, of the constitution,

declares that "each house shall have all powers necessary for a branch of the legislative department of a free and independent state." This provision is nothing more than an affirmation of the principles of the parliamentary law as applicable to the separate powers and relative independence of the two houses of a legislative body like our general assembly. Each house is entitled to decide every question which falls within its own exclusive jurisdiction. When, therefore, there is a contest as to which of two persons is entitled to preside over the senate, the question, from the very necessity of the situation, becomes one which the senate must decide. It may, as a matter of abstract law, decide incorrectly; but if it shall, I know of no tribunal this side of the ballot-box which is authorized to review its decision. It has all the organization and official force necessary for the enforcement of its own rules and orders, and as much power in that respect as any other tribunal which does not command the military forces of the state. It may, under parliamentary laws, punish persons guilty of a contempt of its authority. See Cush. Parl. Law, pars. 655, 671. This is also recognized as an existing power by sections 14 and 15, art. 4, of the constitution. In short, neither house either needs \*603 or is entitled to receive any aid or assistance from the courts in the performance of the various duties which the constitution has devolved upon it. Then, too, I know of nothing in the constitution, or in any statute, or prescribed by any rule of parliamentary law, which designates any officer as the person entitled to preside when the two houses meet in joint convention. The right of a particular person or officer to thus preside might be established by a joint rule of the two houses, but the complaint in this case makes no mention of such a joint rule. Assuming, therefore, that no such rule is in existence here, I have no reason for believing that, when the two houses assemble in joint, an aggregate majority of the body thus composed may not call whomsoever it pleases to the president's chair, and authorize him to preside for the occasion. It has most usually been the custom in this state for either the lieutenant governor or president *pro tempore* of the senate to preside on such occasions, but the custom thus most usually observed has not ripened into, or ever been accepted as, a precedent of binding authority. If, therefore, a joint convention may select whomsoever it pleases to preside over its proceedings, it is too plain for argument that no court can inhibit the person thus selected from so presiding. I consequently know of no principle on which the restraining order granted in this case can be

sustained, conceding that the court below had jurisdiction over the person of the appellant.

In response to much that has been said upon the subject in argument, I feel quite assured that the senate of this state is not, like the senate of the United States, a continuous body. In the senate of the United States a majority constitutes a quorum, and, as there is always more than a quorum of qualified senators holding seats in that body, its organized existence is necessarily continuous. But in the senate of this state two-thirds of its members are necessary to make a quorum. As one-half of its members go out of office at the end of each legislative term of two years,—that is to say, on the day after each general and biennial election,—it becomes, at the end of each such legislative term, a disorganized body; and, as the officers of the senate comprise an essential part of its organization, it necessarily results that the terms of such officers expire when the body becomes disorganized for want of a quorum. See section 3, art. 4, of the constitution, above referred to. This, of course, includes the president *pro tempore*, when one has been elected. Cush. Parl. Law, pars. 283, 296.

I might still further enlarge upon some of the views I have thus expressed, but I deem it unnecessary for any practical purpose.

ELLIOTT, C. J.

It will not, I trust, be thought improper for me to add something to what I have said in the foregoing opinion; for in that opinion I spoke for the court, expressing in part, but not in full, my own views. I fully concur in the opinion of my Brother Niblack that the courts have no jurisdiction of the subject-matter of this action, and, as the subject has been by him so fully and so ably discussed, little can be added.

I began the investigation of this question with the impression that the courts had jurisdiction of the subject-matter, but I leave it with the firm conviction that they have not. This impression arose from a belief that it is better and safer that such controversies as this should be settled by some other tribunal than the legislature, but, while still impressed with that belief, I am compelled to yield to the settled rules of the law, and the clear words of the constitution. Whatever may be the views of a court or judge upon a question of constitutional policy, the expressed will of the people, as written in their constitution, must be obeyed and enforced. I am

convinced that the framers of the constitution have conferred upon the general assembly exclusive authority over such controversies as this, although, regarded as a question of policy, I am persuaded that it would have been wiser to have intrusted the authority to some other tribunal. The makers of the constitution had \*604 power to vest the authority in the legislature, and they have done it. To their judgment all must yield.

The grant of power to the legislature cannot be defeated upon the presumption that it will not be justly exercised. On the contrary, it is the duty of the judiciary to assume that the legislators will faithfully and impartially perform the duty imposed upon them by the constitution they have solemnly sworn to support. Courts must accord to the legislature the same solemn sense of duty, and the same conscientious resolution to perform it unmoved by improper motives that they can claim for themselves. In *Brown v. Buzan*, 24 Ind. 194, it was said: "The judiciary ought to accord to the legislature as much purity of purpose as it would claim for itself, as honest a desire to obey the constitution, and also a high capacity to judge of its meaning." It is therefore natural and reasonable to conclude that the framers of the constitution, influenced by this principle, believed that the legislature would impartially hear and determine all controversies, and, acting, upon that belief, inserted in that instrument the provision investing the general assembly with power to determine all contests for the offices of governor and lieutenant governor.

There was a time in our history when eminent men, statesmen and jurists, believed that the courts had arrogated to themselves a power which did not belong to them, and that its assumption was hostile to the spirit of our institutions. So thought Jefferson, Madison, Jackson, Randolph, Van Buren, and Bancroft in the earlier years of the republic, and so thought Abraham Lincoln in the more recent years. 2 Bancroft, Hist. Const. 198, 202; Garland's Life of Randolph, 327; Van Buren, Pol. Hist. 8; Lincoln's First Inaugural Address. The illustrious lawyers and statesmen of the early years were leaders of men, and their utterances did much to mould and give tone to public opinion. Their most radical views prevailed with many in their own times, and are advocated by lawyers of our own day. (Mr. Street's Address before American Bar Association, 1883.) The influence of these great men was wide spread, and there is no doubt that their views controlled in a great measure the members of the constitutional conventions of the older states, and inspired

them with the belief that the public good demanded that bounds be set to the power of the judiciary. Our own conventions—that of 1816 and that of 1851—borrowed from the older states, and, influenced by the same reasons as those which had moved the conventions of those states to limit the power of the judiciary in matters of a practical nature, distributed the power by investing authority over controversies respecting the title to the executive offices in the general assembly.

The members of the convention which framed the federal constitution believed that the courts should only decide purely judicial questions. One of the historians of the debates of that body gives us substantially this account of the actions of its members. Dr. Johnson, that historian says, moved an amendment to the provisions relating to the jurisdiction of the courts, whereupon Mr. Madison said “he doubted whether it was not going too far to extend the jurisdiction of the court generally to cases arising under the constitution, and whether it ought not to be limited to cases of a judiciary nature. The right of expounding the constitution in cases not of this nature ought not to be given to that department. The motion of Dr. Johnson was agreed to, *nem. con.*, it being generally supposed that the jurisdiction given was constructively limited to cases of a judiciary nature.” 5 Elliott's Debates, 483. It is now firmly settled, and as I believe wisely settled, in accordance with sound governmental policy and true principles of jurisprudence, that the judiciary has power to decide, in all cases over which it has jurisdiction, upon the constitutionality of legislative and executive acts, but this just result was only reached after a fierce and stubborn conflict. Judges who asserted this principle were denounced in bitterest terms in high places and in the public \*605 prints. Nor did the attack upon them end in words. In 1796, during the troublous times in Rhode Island so well described by Mr. McMasters in his History of the American People, the judges of the superior court were impeached for deciding an act of the legislature to be unconstitutional, and, although they were acquitted, they lost their offices. In 1806 two of the judges of the supreme court of Ohio (Judges Tod and Pease) were impeached for making a similar decision, but, after a bitter contest, they were acquitted. These contests were the subject of much discussion, and the conduct of the judges was in many quarters wrathfully assailed, and in others stoutly defended. Denunciations of what was asserted to be the tyrannical usurpation of authority rang throughout the land, and many men, some of them great leaders, declared that the power of the judiciary must be confined

within narrower limits. The strife profoundly agitated the public mind, and its influence was felt in the halls of the conventions, and it led to a limitation upon the power of the courts.

It is always proper to examine the history of the country, and study the discussions of the times, in order to ascertain the meaning of constitutional provisions. It is, indeed, often necessary to do so, and from these sources light is oftentimes obtained that clears away obscurity and difficulty. Cooley, Const. Lim. 81. In this instance history supplies material aid, for it informs us that there was a reason for limiting the power of the judiciary, and a purpose to be accomplished in doing it.

A reason urged by some who denied the power asserted by the courts was that a power so great should not be intrusted to men whose terms of office were for life, as in the earlier years of the republic were the terms of the judges of the state and federal courts. It was thought by many—whether justly or not, it is not for the judiciary to decide—that it was wiser and better to place the authority of determining contests respecting the rights to office in the hands of the officers whose terms of office were not of great duration. Ohio, Kentucky, and other states have taken the entire power from the courts, and placed it in special tribunals. Our own court has recognized the general principle that it is often best to intrust high power to officers whose terms are short. In *Brown v. Buzan*, 24 Ind. 194, it was said: “Thus, to whatever extent this court might err in denying the rightful authority of the law-making department, we should chain that authority, for a long period, at our feet. It is better and safer, therefore, that the judiciary, if err it must, should not err in that direction. If either department must overstep the limits of its constitutional power, it should be that whose official life will soonest end. It has the least motive to usurp power not given, and the people can sooner relieve themselves of its mistakes. This reasoning supplies grounds for sustaining the policy of distributing the power of settling contests for office, for, if that power is lodged in the legislature, the people can, at short and often recurring intervals, rebuke where rebuke is needed, and approve where approval is merited.”

Another reason given in support of the policy of placing contests for office under the jurisdiction of special tribunals is thus stated by the highest court of Kentucky: “The very purpose of providing these boards was to prevent the ordinary tribunals of justice from being

harassed with the investigation, and being involved in the excitement to which these cases may be expected to give rise." *Newcum v. Kirtley*, 13 B. Mon. 515. This argument is not without force. The wider the separation between judicial questions and political ones the better, for courts should be kept, if possible, entirely beyond the domain of political controversies. But this is aside from our path, for it is not for the courts to judge of the strength or soundness of reasons which influenced the framers of the constitution to enact the provisions there written; it is quite enough for them to know that there was a reason and a purpose in the minds of the men who wrought the constitution of the commonwealth.

\*606 The power of determining who is or who is not rightfully entitled to the chief executive offices of the state is, indeed, a very high one; and, if the courts have that power, then, as they do undoubtedly have it over all other offices except the legislative, they would have control over all offices save the legislative, and there was therefore at least some reason to doubt whether it was wise that they alone should wield a power of such great magnitude. It is, at all events, very evident that the makers of our constitution deemed it wise to limit the power of the courts by investing the general assembly with authority to decide all contests involving the title to the two principal executive offices of the state. These are certainly plausible, if not convincing, reasons for a distribution of the high power of determining titles to office, since, as has been shown, if it is left wholly in the courts, they are invested with the highest power in the government, and one that some have not hesitated to affirm is autocratic. It is, indeed, claiming very much for the courts to assume that they possess the supreme power to decide all contests involving titles to office; and it is evident that the framers of the constitution, regarding it as better to divide the power and limit the authority of the courts, placed all contests for the chief executive offices under the jurisdiction of the legislature. If it was not intended to take contests involving the title to the executive offices from the judiciary, there would have been no necessity for any specific provision upon the subject; and it cannot be inferred that the framers of so solemn an instrument as the constitution have done a vain and fruitless thing. But the provision is in the constitution, and it is there for a reason. Because it was deemed wise to divide the power, it was written: "Contested elections for governor and lieutenant governor shall be determined by the general assembly." The meaning of the word "contested" is neither doubtful nor obscure, as my Brother

Niblack has shown, and as any one may see by turning to the works of the lexicographers. We are to interpret the constitution by assigning to the words employed their usual meaning. Chief Justice Marshall said: "The framers of the constitution, and the people who adopted it, must be understood to have employed words in their natural sense, and to have intended what they have said." *Gibbons v. Ogden*, 9 Wheat. 188. Judge Cooley says: "What a court has to do is to declare the law as it is written." Cooley, *Const. Lim.* 67.

The constitution vests in the general assembly sole and supreme jurisdiction over all disputes, controversies, or questions, whatsoever form or position they may assume, arising out of a contest for the office of governor or lieutenant governor. The authority is to decide all phases of the controversy, not some part or parcel of it. This is the plain import of the language employed, neither clouded by doubt, nor obscured by uncertainty. It is a settled principle that, where jurisdiction of a subject is conferred upon any tribunal, it has jurisdiction of every part of it, and of every question of law or fact that can possibly arise from the beginning to the end of the controversy. Once jurisdiction attaches, it exists for all purposes, all questions are within the authority of the tribunal, and no other tribunal in the world has a right to interfere with its decision except where there is a right of review or appeal. The rule rests on a solid foundation, for, if one tribunal might decide one part of a controversy, and another some other part, there would be a hopeless confusion that no power could clear away, and a disastrous conflict that no tribunal could reconcile. If it were conceded that the power to hear and determine contests involving the title to the office of lieutenant governor is purely a judicial power, it would not impair the force of the constitutional provision referred to; for it cannot be doubted that the people, in their sovereign capacity, and as the source of all power, may invest the legislature with pure judicial power. They have, indeed, done so in more instances than one. It is a mistake to assume that the constitution confers power upon the people, for the people's power is primary, original, inherent and supreme. Constitutions \*607 limit, but do not create, power of the people. The constitution is the creature, not the creator, of the people's power. In many instances powers of a judicial nature are conferred upon the legislature, and it has always been held that, where such a power is conferred, it is exclusive and supreme. No other tribunal can share in its exercise, nor any court control it. *People v. Mahaney*, 13 Mich. 492; *State v. Gilmore*, 20 Kan. 551; *State v. Tomlinson*, Id. 692;

*Dalton v. State*, 43 Ohio St. 652; *Smith v. Myers*, and cases cited, 9 N. E. Rep. 692.

A high tribunal has been established by the constitution for the trial of contests involving the title to the offices of governor and lieutenant governor. That tribunal has all authority over the subject, or it has none. It is not possible to assume that it may decide some questions, but not all, without contravening the long-established rule that jurisdiction over the subject is jurisdiction over every question that can arise. The high tribunal provided by the constitution is the special one to which all questions in a dispute, contest, or controversy, involving the title to either of the executive offices, must be submitted. Where exclusive authority is vested in a special tribunal, courts have no jurisdiction to control, supervise, or review its decisions. In *Wright v. Fawcett*, 42 Tex. 203, it was said, in speaking of judicial power: "To decide the result of an election is a question of a different character; it is part of the process of political organization, and not a question of private right." *Hulseman v. Rems*, 41 Pa. St. 396; and see *Arberry v. Beavers*, 6 Tex. 469; *Baker v. Chisholm*, 3 Tex. 157; *Walker v. Tarrant Co.*, 20 Tex. 16. Where the law has provided a mode of deciding cases of contested elections designed to be final, the courts have no authority to adjudicate such cases other than such as the law gives them. *Batman v. Megowan*, 1 Metc. (Ky.) 533; *Grier v. Shackelford*, 3 Brev. 491; *Skerrett's Case*, Brightly, Elect. Cas. 320; *Ewing v. Filley*, 43 Pa. St. 389. This principle is again asserted in *Rogers v. Johns*, 42 Tex. 339. It was decided in the case of *State v. Harmon*, 31 Ohio St. 250, that "the authority conferred on the senate to try contested elections is not a judicial power, within the meaning of the constitution." In *State v. Marlow*, 15 Ohio St. 114, a similar principle was declared, the court saying: "Jurisdiction being thus specially conferred upon other tribunals, and the mode of its exercise prescribed, it cannot be inferred that it was intended by the constitution to be differently exercised by a proceeding in *quo warranto* as at common law, or by the supreme or district courts under a mere general grant of jurisdiction in *quo warranto*." The constitution of Arkansas contains this provision: "Contested elections shall likewise be determined by both houses of the general assembly in such manner as is now, or may hereafter be, prescribed by law;" and the supreme court of that state held that a controversy between claimants to the office of governor must be determined by the legislature, the court saying: "Under this constitution, the determination of the question as to whether a person exercising the office of

governor has been duly elected or not is vested exclusively in the general assembly of the state, and neither this nor any other court has jurisdiction to try a suit in relation to such contest, be the mode or form what it may, whether at the suit of the attorney general, or on the relation of a claimant through him, or by an individual alone, claiming a right to the office. Such issue should be made before the general assembly. It is their duty to decide, and no other tribunal can determine that question." *State v. Baxter*, 28 Ark. 129.

No contest, controversy, or dispute respecting the right to an office, can ever be determined without deciding both questions of law and fact. Every controversy of a legal nature involves two elements,—law and fact,—and a tribunal having jurisdiction over the subject must, of necessity, have power to decide both the law and the fact. Without this power, no progress could be made, and an adjudication would be impossible. The elements of law and \*608 fact which enter into all controversies are so blended and interwoven as to be absolutely inseparable. The law is the arbiter, and the facts invoke its powers. Without law, there is no power to decide; for without it there would be no rule to determine the force and effect of the facts. On principle, it is plain that jurisdiction to hear and determine involves power to decide all questions of law and fact. But authority is not wanting. In *Batman v. Megowan*, *supra*, it was said, in speaking of a special tribunal, that "its decisions are final on all questions both of law and fact which may be involved in the investigation of the rights of the claimants to the office in contest." Courts unhesitatingly decide all questions, whether of law or of fact, in election contests, and, surely, what the courts may do the high constitutional tribunal composed of the law-makers of the commonwealth must do. It is not necessary to go through the cases, for, beginning with *Waldo v. Wallace*, 12 Ind. 569, it has been the uniform practice to decide all questions of law, the grave as well as the trifling, which the contest involves. This is the rule everywhere,—in the legislative halls, and in the courts. One of the many examples where congress decided a pure question of law was that of *Gholson v. Clarborne*, decided in 1837, where the question was, as here, the right to hold an election. Cong. Elect. Cas. 9. *Howard v. Cooper* is another illustration, for in that case the question was as to the validity of an election. In the case of Mr. Grafien, of Virginia, the question was purely one of law, and was as to the right to hold an election at the time Mr. Grafien claimed to have been elected. Id. 282, 465. Precedents are, however, not needed, for it cannot be conceived that



power to determine a contest, dispute, or controversy means nothing more than authority to determine the facts.

A high tribunal has been designated by the people to determine all contests for the office of lieutenant governor. There the people have placed that great power, and there it must rest, until the people in their sovereign capacity shall change their constitution.

ZOLLARS, J.

When the questions here involved are examined, it is not at all surprising that the honorable gentlemen, parties to this litigation, have honestly differed as to their rights, and the proper method of having those rights settled. Nor is it at all strange that their able and learned counsel have also differed, both as to the rights, and the forum in which those rights are to be ascertained and settled. The novelty and importance of the questions involved, and the want of entire harmony upon each proposition, has seemed to render it proper for different members of the court to submit their individual views upon some of the questions about which there is a difference of opinion.

At the bottom of the controversy is the controlling question as to whether or not the election for lieutenant governor in November last was authorized by the constitution and statutes of the state. Upon that question the relator, Smith, seeks a decision by the court. That question, on the other hand, the respondent, Robertson, claims the court cannot decide, because it has not jurisdiction so to do—*First*, because it has no jurisdiction over the subject-matter of the controversy; and, *second*, because it has no jurisdiction over his person.

We are thus met *in limine* with the question of jurisdiction. Jurisdiction is not a question of propriety, policy, or choice, but one of power. Jurisdiction is the power to decide. When the question is made, the court must first examine and determine whether or not it has jurisdiction. When it is ascertained that it has not, both the power and the duty of the court are at an end. When a question is before a court for decision, it is its duty, without hope of commendation or fear of censure, to decide it. And when a court has once determined that it has not jurisdiction to decide and adjudicate, it should have the courage, without hope of commendation or the fear of censure, \*609 to say so, and to refrain from the expression of an opinion that will be a mere *dictum*, and from making an adjudication that will bind no one. An opinion or an adjudication without jurisdiction is a mere *brutum fulmen*,

not only not binding upon the parties to the suit, but which the humblest citizen of the state may disregard with impunity. Such adjudications might well tend to destroy that confidence which it is to be hoped the people have in the conservatism and integrity of the courts. The courts are the great conservators of organized society. If, by decisions extra judicial, or by thoughtless, biased, and unjust criticisms, the people shall utterly lose confidence in them, then, indeed, shall we be at the beginning of the end, when anarchy shall take the place of order.

The question of jurisdiction, as made here, is twofold. As I have said, it is insisted by the respondent, Robertson, that the Marion circuit court had not, and hence this court has not, jurisdiction over his person, he being a resident of Allen county. That he was and is a resident of Allen county, and not of Marion county, is admitted on all hands. After a careful examination of the question, we all agree that, by reason of his not being a resident of Marion county, the Marion circuit court did not have jurisdiction over his person. Upon that branch of the case I agree fully with what is said by Elliott, C. J. The respondent, Robertson, might have waived the point of the want of jurisdiction over his person. He did not do so. On the contrary, he insisted, and still insists, upon the objection. The courts cannot compel such a waiver. We have no reason to assume or presume that he will, in any event, change his attitude in that regard.

The novel and difficult branch of the question of jurisdiction which is before us for decision is as to whether or not the court had or has jurisdiction over the subject-matter; in other words, whether the court had or has the power to decide in this case, and as between the parties here litigant, the legality and constitutionality of the election for lieutenant governor in November last. That question has challenged the greatest research and the best thought of each one of us.

I agree with Judges Niblack and Elliott that in this case the court has not jurisdiction of the subject-matter. I do not, however, agree with all of the reasoning by which they reach that conclusion. Upon that question the arguments of counsel have taken a wide range, involving the structure of the state government, and the checks and balances as established by the constitution.

It is argued, on the one hand, that an adjudication by the courts of the questions here involved would be an unwarranted interference with, and an unwarranted

infringement upon, the duties, functions, and prerogatives of the legislative department of the government by the judicial department. As applied simply to the judicial and legislative departments of the government, as such, the argument, in my judgment, is not sound. Article 3 of the constitution (Rev. St. 1881, § 96) is as follows: "The powers of the government are divided into three separate departments,—the legislative, the executive, including the administrative, and the judicial; and no person charged with official duties under one of these departments shall exercise any of the functions of another, except as in this constitution expressly provided." By section 16 of article 4 of the constitution (Rev. St. 1881, § 112) it is ordained that each house of the general assembly shall have all the powers necessary for a branch of the legislative department of a free and independent state. The primary object, and the proper functions of the legislative department of the government, as such, is not to settle controversies between citizens, nor to adjudicate upon their rights, whether those rights relate to private property or public office. The primary object of the department, and its proper function, is to determine upon policy, and to carry that policy, by legislation, into laws. In distinguishing between judicial and legislative acts, the United States supreme court in *Sinking Fund Cases*, 99 U. S. 761, said: "The one determines \*610 what the law is, and what the rights of the parties are with reference to transactions already had; the other prescribes what the law should be in the future cases arising under it." So, in the case of *Wayman v. Southard*, 10 Wheat. 46, Chief Justice Marshall said: "The difference between the departments undoubtedly is that the legislative makes, the executive executes, and the judiciary construes, the laws." In speaking of the difference between a judicial and legislative act, the supreme court of Tennessee, in the case of *Mabry v. Baxter*, 11 Heisk. 690, said: "The one is a determination of what the existing law is, in relation to some existing thing already done or happened, while the other is a predetermination of what the law shall be for the regulation of all future cases falling under its provisions." As a member of and in the convention which framed our constitution, Judge Biddle said: "What is the legislative power? It is that power by and through which a state makes its laws. \* \* \* The general assembly has no other duty or power than to *make* laws. After a law has been enacted, this department has no further power over the subject. It can neither adjudge the law, nor execute it." So far as the legislative department settles, or may settle,

the state policy, it may properly be called the political department of the government.

The question upon which the relator, Smith, here seeks an adjudication, however, very clearly is neither a political nor a legislative question. It is not what ought to be done as a matter of state policy, nor what manner of laws ought to be passed for future cases, or as a rule of future action. It is purely a judicial question, involving the proper construction of the constitution, and the laws already in existence, upon the question of the term and the election of a lieutenant governor. It is therefore not a question that belongs to the legislative or political department of the government, as such.

If the legislature has authority, either concurrent or exclusive, to decide the question, it is not because it is in the legislative department of the government, but because provisions of the constitution and statutes, enacted in pursuance thereof, other than I have yet referred to, clothe that body with the extraordinary power, which is neither legislative nor political, but judicial. As we have seen, one of the co-ordinate branches of the government is the judicial. It is ordained by section 1 of article 7 of the constitution (Rev. St. 1881, § 161) that "the judicial power of the state shall be vested in a supreme court, in circuit courts, and in such other courts as the general assembly may establish." This is a general grant of all judicial power to the judicial department of the government, to the exclusion of the other departments, and, with appropriate legislation in pursuance of the grant, carries into the courts for final adjudication all judicial questions, unless there are other constitutional provisions lodging judicial power in certain cases elsewhere. The constitution is the people's. They made it, and they are sovereign. They had the right to lodge the judicial power of the government which they established wherever they saw fit; and if we shall find that, from the general grant of judicial power to the judicial department, they have, by the same constitution, carved out a certain portion as to certain cases, and lodged it elsewhere, there is no choice for the courts but to respect and to give force and effect to what they have done, whatever may have been the preconceived notion of the individual judges as to the existence or the propriety of such special grant.

Section 4 of article 5 of the constitution provides that "the returns of every election for governor and lieutenant governor shall be sealed up and transmitted to the seat of government, directed to the speaker of the house

of representatives, who shall open and publish them in the presence of both houses of the general assembly." Section 5 of the same article provides that "the persons respectively having the highest number of votes for governor and lieutenant governor shall be elected; but, in case two or more persons shall have an equal and the highest number of votes for either office, the general assembly shall, by joint vote, forthwith proceed to elect one of the said persons \*611 governor or lieutenant governor, as the case may be." Section 5521 of the statutes (Rev. St. 1881) provides that the governor and lieutenant governor shall each take an oath of office in the presence of both houses of the general assembly in convention, and that the same shall be entered upon the journals thereof. The two houses thus canvass the vote for governor and lieutenant governor, not because they constitute the legislative department of the government, nor because the duties are legislative, but because the constitution imposes the duty, and clothes them with the power in the way of a special grant. In my judgment, by the constitution, the two houses are constituted a special tribunal, in the nature of a board of canvassers, to open and publish the returns of the votes for governor and lieutenant governor. And I do not think that the grant is any broader simply because it is to the two houses. I think that, in the same words, the grant would have carried with it just as much authority had it been to the state officers, constituting them a special tribunal to canvass the votes for governor and lieutenant governor, and to make a record of the result. Would such a grant constitute the state officers a judicial tribunal in such a sense as that their determination upon the returns before them would be conclusive as to the validity of the election, and as to the election of the person declared elected governor or lieutenant governor? It is not the publishing of the votes by the speaker of the house, nor his declaration of the result, that makes the persons voted for governor or lieutenant governor, but the number of votes received. So the constitution declares.

Does the grant of power to the two houses to publish the returns, and declare the result, constitute them a judicial tribunal in such a sense as that their determination and declaration upon the returns before them are conclusive as to the validity of the election, and as to the election of the persons declared to be elected? I think not. I think that the action of the two houses in publishing the returns and in declaring the results is purely ministerial. They declare the result upon the returns before them, but back of that there may be a sufficient number of illegal votes to change the result, and the majority candidate may be ineligible.

No authority seems to be given to the two houses, when thus in joint convention, to summon the interested parties before them, to send for or to examine witnesses as to the illegality of votes, or as to the ineligibility of the persons voted for.

In the state of Wisconsin, the attorney general, the secretary of state, and the state treasurer were, by statute, constituted a board of state canvassers. As such a board, they had the authority, and it was made their duty, "upon the statements of elections made by the board of county canvassers, to examine and make a statement of the whole number of votes cast at any such elections for the offices of governor, lieutenant governor, secretary of state, etc., to certify such statements to be correct, and thereupon determine the result." It was held by the supreme court of that state that the duties were not judicial, but purely ministerial. *Attorney General v. Barstov*, 4 Wis. 567, (812.) In that case the proceeding was an information in the nature of *quo warranto* to oust from the office a person who was claiming to be governor by virtue of an election, and who had been declared elected by the board of state canvassers. It was contended by Mr. Carpenter, with great ability, learning, and research, that the suit could not be maintained—*First*, because the determination of the board of state canvassers was final; and, *second*, because it would be an unwarranted interference with the executive department by the judicial department of the government. The argument was answered by the court's holding that the board was not a judicial tribunal, and that the proceedings were not to affect the executive department, but to oust a person who had wrongfully intruded into the office of the chief executive. See the comments of Cooley on that case. Cooley, Const. Lim. (2d. Ed.) 264. See, to the same effect, also, *Dickey v. Reed*, 78 Ill. 261; *Gass v. State*, 34 Ind. 425.

\*612 Clearly, a proceeding by information against a usurper into an executive office is not an encroachment upon the executive department of the government. It has been frequently held by this court that the judiciary may control executive action as to matters purely ministerial. *The Governor v. Nelson*, 6 Ind. 496; *Biddle v. Willard*, 10 Ind. 62; *Baker v. Kirk*, 33 Ind. 517; *Gray v. State*, 72 Ind. 567, (577.) And yet this court has steadily maintained the independence of the co-ordinate departments of the government, refusing to yield its jurisdiction, and refusing to exercise functions belonging to the legislative or executive departments. *La Fayette, M. & B. R. Co. v. Geiger*, 34 Ind. 185, (196); *Butler v. State*, 97 Ind. 373;

*Johnston v. Board, etc.*, 107 Ind. 15, (24,) 8 N. E. Rep. 1, and cases there cited; *Columbus, etc., Ry. Co. v. Board, etc.*, 65 Ind. 427; *Shoultz v. McPheeters*, 79 Ind. 373.

The record of the canvass by the two houses of the declaration of the result and of the oath is doubtless *prima facie* evidence of the elections of the persons declared to be elected governor or lieutenant governor, just as the certificate of election and the commission issued to other officers are *prima facie* evidence of their election. In a collateral proceeding, such record is doubtless conclusive evidence of the election, but it is not conclusive in a direct proceeding, authorized by the constitution and laws, and especially is it not conclusive as to whether or not there was a valid election under the constitution and laws. As to the force of decisions by boards of canvassers and of certificates of elections and commissions, see *Cooley*, Const. Lim. (2d Ed.) 623; *State v. Shay*, 101 Ind. 36; *O'Ferrall v. Colby*, 2 Minn. 180, (Gil. 148:); *Prince v. Skillin*, 71 Me. 361.

If the constitution contained no provision upon the subject under discussion other than those so far examined, I am satisfied that a claimant for the office of governor or lieutenant governor would have a right, under existing statutes, to go into the courts and contest the validity of the election of the person declared elected by the two houses. And especially am I satisfied that the law officers of the state, moving in behalf of the people, would have such a right. *McCrary*, Elect. (2d Ed.) § 264. Each house is the judge, and the exclusive judge, of the election and qualification of its members. That right they get partially from the constitution, and partially from the usages and laws of parliamentary bodies. But the right thus acquired has no application to the lieutenant governor, because he is not a member of either house. The constitution assigns to him certain duties as president of the senate, but that does not make him a senator, nor a member of the body, in such sense as that the senate may pass upon his election and qualification as a member. See *Winter v. Thistlewood*, 101 Ill. 450.

There is, however, another provision of the constitution which, in my judgment, enlightened by much research, and the best thought I have been able to give to the subject, is controlling and conclusive against the right of the relator, Smith, to maintain this action. The conclusion which I have been constrained to reach, I may say, is not in accord with my first impressions. The provision of the constitution to which I refer is section 6 of article 5, (Rev.

St. 1881, § 132,) and is as follows: "Contested elections for governor or lieutenant governor shall be determined by the general assembly in such manner as may be prescribed by law." That section, without doubt in my mind, invests the general assembly with judicial power to hear and determine contested elections for governor and lieutenant governor; and to the extent, and no further, that such powers are thereby granted, they diminish the general grant of judicial powers to the judicial department proper. The clause, "in such manner as may be prescribed by law," has no reference to the grant of power. It neither enlarges nor lessens the grant. It has reference only to the manner or mode of executing the powers granted. The power thus granted to the general assembly cannot be augmented or abridged by legislation, nor by a failure of legislation. The statute provides that the election of any person \*613 declared elected by popular vote to a state office may be contested by any elector who was entitled to vote for such person. It also provides that such contest shall be tried before a committee of seven chosen from each house of the general assembly; that the committee shall report their judgment in the premises to both branches of the general assembly; that it shall be entered upon the journals of the respective houses, and shall be conclusive. Rev. St. 1881, § 4746 *et seq.* Section 4756 of the statute specifies certain causes as grounds of contest. That the election was without constitutional and statutory authority is not specified as one of such causes.

If, however, in the case before us, the election for lieutenant governor in November last was without constitutional authority, the respondent, Robertson, has no right to the office. The infirmity in his title to the office, in such case, would arise out of the invalidity of the election; and as such invalidity, if it exists, is to be determined by an examination of the constitution and the statutes, I think it might be assigned as a cause of contest, although it is not specifically named in the above section of the statute as such cause.

But, as said by Niblack, J., to concede that the invalidity of the election is not specified in the statute as a cause of contest, and that to be made available it must be there specified, would not change the matter. The constitution creates the general assembly the exclusive tribunal for the determination of contested elections for governor and lieutenant governor. It remains such exclusive tribunal, whatever be the character of the legislation as to causes and mode of procedure, or whether there is any legislation at all upon the subject. The jurisdiction of that tribunal,

being established by the constitution, cannot, as I have said, be changed by legislative enactment. The statute, as we have seen, establishes the general assembly a tribunal for the trial and determination of contested elections for other state offices. The jurisdiction to try contested elections for such other offices, being conferred by statute, may be limited by the statutes which confer it, or by other statutes. As to such contests, the statutes may confer upon the courts concurrent jurisdiction in a like or different mode of procedure. That, as we shall see, has been done in this state.

It is argued by counsel that the case before us, instituted by the relator, Smith, is not a case of contested election, nor in the nature of such a proceeding. Clearly this is a contest over an office. The relator asserts his rights as president of the senate, and seeks to have those rights settled in this contest with the respondent. He asserts that the respondent was elected lieutenant governor at a general election in November last, but is not lieutenant governor, because that election was without authority. His success, upon his theory, depends upon the question as to whether or not that election was valid or invalid. The respondent, as stated in the complaint, claims that by virtue of that election he is lieutenant governor, and, as such, entitled to preside over the senate. That claim the relator contests; or, to use the definition of the word "contest," that claim he "calls in question," "contends against," "controverts," "disputes," "opposes," "resists," and seeks to "litigate" in this proceeding. He is "calling in question," "contending against," "controverting," "disputing," "resisting," "contesting," the election of the respondent to the office of lieutenant governor. To say that the election through which the respondent claims was without authority, that for that reason there was no election in the eye of the law, and that, therefore, the relator is not contesting, or seeking to contest, an election, will not do. Whether or not there was a valid election is the very question in contest. The relator's complaint shows that the respondent is claiming to have been elected lieutenant governor at the last general state election; that that election was in all regards conducted according to the forms of law, and that the respondent received a majority of the votes cast for lieutenant governor. His election to the office, however, is disputed, contested, on the ground that the election \*614 for lieutenant governor was without authority,—in violation of the constitution.

An examination of the statutes under which this proceeding was instituted will show that the proceeding

is and must be a contest for an office, and that, when an election is involved, a contest of that election. So far as material here, that statute is as follows:

"Sec. 1131, Rev. St. 1881. An information may be filed against any person \* \* \* in the following cases: *First*, when any person shall usurp, intrude into, or unlawfully hold or exercise any public office, or any franchise within this state, or any office in any corporation created by the authority of this state. .

Sec. 1132. The information may be filed by the prosecuting attorney in the circuit court of the proper county, upon his own relation, whenever he shall deem it his duty to do so, or shall be directed by the court or other competent authority, or by any other person on his own relation, whenever he *claims an interest in the office*, franchise, or corporation which is the subject of the information."

"Sec. 1134. Whenever an information shall be filed against a person for usurping an office by the prosecuting attorney, he shall also set forth therein the name of the person rightfully entitled to the office, with an averment of his right thereto; and, when filed by *any other* person, he shall show *his interest* in the matter, and he may claim the damages he has sustained."

"Sec. 1136. In every case *contesting the right to an office*, judgment shall be rendered upon the *rights of the parties*, and for the damages the relator may show himself entitled to, if any," etc.

"Sec. 1137. If judgment be rendered in favor of the *relator*, *he shall proceed to exercise the functions of the office* after he has been qualified as required by law; and the court shall order the defendant to deliver over all books," etc.

"Sec. 1141. Whenever any person shall be found guilty of any usurpation of or intrusion into or unlawfully exercising any office \* \* \* within this state, \* \* \* the court shall give judgment of ouster against the defendant, and exclude him from the office," etc.

"Sec. 1144. When an information is filed by the prosecuting attorney, he shall not be liable for costs; but, when it is filed upon the relation of a private person, he shall be liable for costs, unless the same are adjudged against the defendant."

There are no italics in the above statutes as printed. They are used here to direct attention to certain portions which

I regard as important in the case. Under that statute, when any person shall intrude, etc., into a public office, an information may be filed by the prosecuting attorney upon his own relation, or by any other person, "whenever he claims an interest in the office." He must show his interest in the office. "In every case contesting the right to an office," judgment shall be rendered "upon the rights of the parties." "If judgment be rendered in favor of the relator, he shall proceed to exercise the functions of the office." Other statutes provide for contesting elections for county, township, and city offices. In some instances, special tribunals are created. These statutes also prescribe a mode of procedure. Rev. St. 1881, § 4768 *et seq.*

The tribunals thus created, as well as the tribunal for the determination of contests in the case of state offices other than governor and lieutenant governor, are statutory, and, as I have said, the authority which created them may give the courts concurrent jurisdiction. It has often been contended in this state that the special and statutory tribunals for the determination of contested elections have exclusive jurisdiction, and that such contests cannot be determined in a proceeding by information. The contention has always been disregarded, and it has been held that the election of all officers (except for governor and lieutenant governor, as to which there has been no adjudication) \*615 may be contested and determined in a proceeding by information. Those holdings were rested upon the ground that the tribunals for the trial of such contests were statutory, and not constitutional, such as the tribunal established by the constitution for the determination of contested elections for governor and lieutenant governor. It has uniformly been held, too, that in order that a private person may prosecute a proceeding by information, he must show that he has an interest in the office. When he has shown this he may, in that proceeding, contest the election of the adverse claimant, if he claims through an election. And when the claim of the adverse claimant is that he is entitled to the office by virtue of an election, the contest waged by the relator, although in the form of a proceeding by information, is, in every practical sense of the term, a contest of an election. The election relied upon by the adversary in such case is contested, and, for all practical purposes, the proceeding is one of contested election. See *State v. Shay*, 101 Ind. 36, and cases there cited; *State v. Adams*, 65 Ind. 393. In the case last above it was said: "This court has frequently held that the right to an office may be contested by an information during the time the statute for contesting elections was in force." See, also, *Reynolds v. State*, 61 Ind. 393; *State v.*

*Gallagher*, 81 Ind. 558; *Elam v. State*, 75 Ind. 518; *Gass v. State*, 34 Ind. 425.

It is not necessary to a contested election that both parties to the contest shall have been voted for at the contest. Any citizen qualified to vote at the election may be a contestor. Rev. St. 1881, § 4743. We must judge of the nature of the relator's case by the facts he states in his complaint. He does not claim to be lieutenant governor, but he does claim that, as president *pro tempore* of the senate, he has the right to perform the duties which belong to the office of lieutenant governor. To that extent he claims to have an interest and right in the office of lieutenant governor. That right he asserts against the respondent; and, as I have said, he shows in this complaint that the respondent received the majority of the votes of the electors of the state at the general election in November last for the office of lieutenant governor; that the election was in all things regular; and that the respondent claims to have been and was elected to that office, if the election was authorized by the constitution. He contests the respondent's claim upon the ground that the election was invalid, being without constitutional sanction. He contests the election. The controversy is purely a private one between the relator and the respondent. The end sought is an adjudication that the respondent was not elected lieutenant governor, and hence is not entitled to preside as president of the senate, and that therefore the relator is entitled to preside as president of the senate, having been duly elected to that position. This is not a case where there has been no election at all. Whatever may be said as to the constitutionality of the election, the respondent comes into the contest through an election at which all the people voted. Although not in name, in my judgment this is a proceeding to contest the election of the respondent to the office of lieutenant governor. The relator is thus waging a contest in the courts which by the constitution belongs exclusively to another forum. It must be waged and settled before the general assembly. That tribunal alone has jurisdiction of the subject-matter. It has exclusive jurisdiction, too, over everything that pertains to the controversy, both of law and fact. See *People v. Mahaney*, 13 Mich. 481.

There is no partition of the jurisdiction, giving to the general assembly authority to determine the questions of fact, and to the courts authority to determine the law in the same case. If the tribunal created to determine contested elections for governor and lieutenant governor were established by statute, and not by the constitution, the relator might avail himself of the proceeding by

information, as here attempted. The tribunal being established by the constitution, he must seek his remedy in that tribunal. This conclusion \*616 is fully sustained by the authorities cited by Elliott, C. J., and which I need not cite here at length. *State v. Baxter*, 28 Ark. 129; *Baxter v. Brooks*, 29 Ark. 173.

It has been held in some of the states that, when special tribunals are established by statute for the determination of contested elections, their jurisdiction is exclusive, as against any proceeding by information in the courts on the part of a claimant to the office. *Com. v. Baxter*, 35 Pa. St. 263; *Com. v. Leech*, 44 Pa. St. 332; *State v. Marlow*, 15 Ohio St. 114.

It does not result from the holding that the courts have not jurisdiction of the subject-matter of this controversy, that the parties are without remedy. They have open to them the tribunal ordained by the constitution of the state. It ought to be presumed that that tribunal is a capable and impartial one. The fathers had sufficient faith in it to establish it. We must respect their work, and trust it. Possibly it might have been better to have lodged in the judicial department of the government the jurisdiction to try contests involving the chief executive officers of the state. However that may be, we must take the constitution as we have received it, and yield obedience to its several provisions until they may be changed, if change is desirable. What I have said in the foregoing is with strict reference to the precise case before us.

Where there has in fact been an election, as in the case before us, and one of two persons claim an office through such an election, and another, disputing such an election, claims an interest in the same office, or its duties and emoluments, they must settle that contest in the tribunal established by the constitution, and cannot settle it in the courts in a proceeding by information. When we have determined that the court below was without jurisdiction, we have determined that its orders and judgments, whatever they were, must be reversed. I do not say that in no case can the courts in a proceeding by information in the nature of *quo warranto*, upon the relation of the proper law officer, oust from the office of governor or lieutenant governor a wrongful intruder and usurper. That question is not before us. I may add that there is a very marked difference between a proceeding by information, instituted by private persons, and a proceeding by information in the nature of *quo warranto* upon the relation of a public prosecuting attorney. In the one case the private person seeks to settle and protect private rights in a public office; in the other, the officer moves in behalf of the sovereign people. See the following cases: *Reynolds v. State*, 61 Ind. 393, (403); *People v. Holden*, 28 Cal. 128; *Com. v. Burrell*, 7 Pa. St. 34; *Hesing v. Attorney General*, 104 Ill. 292; *Vogel v. State*, 107 Ind. 374, 8 N. E. Rep. 164.

#### All Citations

109 Ind. 79, 10 N.E. 582

#### Footnotes

1 Rehearing denied, 10 N. E. 643.



KeyCite Yellow Flag - Negative Treatment  
Distinguished by State ex rel. Martin v. Heil, Wis., December 29, 1942  
65 N.D. 340  
Supreme Court of North Dakota.

STATE ex rel.  
SATHRE, Atty. Gen.,  
v.  
MOODIE et al.

No. 6330.  
|  
Feb. 2, 1935.

*\*558 Syllabus by the Court.*

1. Section 87 of the Constitution conferring original jurisdiction upon the Supreme Court to issue writs of habeas corpus, mandamus, quo warranto, certiorari, and injunction expressly provides that: "No jury trial shall be allowed in said supreme court, but in proper cases questions of fact may be sent by said court to the district court for trial."

2. Under the pleadings in this proceeding there is an issue of fact involved properly triable to a jury.

3. Where a question of fact properly triable to a jury arises in an original proceeding in quo warranto in the Supreme Court, and it appears that conditions exist which make it practically impossible to secure a trial jury, and where the parties to the proceeding waive a trial by jury and ask the \*559 Supreme Court to try the question itself, and it appears that the ends of justice so require, the court will hear and determine such question.

4. Under section 73 of the Constitution, no person is qualified for the office of Governor of North Dakota who has not resided within the state for the five years next preceding his election.

5. The term "resided," in section 73 of the Constitution, means having had a residence, as defined by section 14, Comp. Laws 1913.

6. Every person has in law a residence where such person remains when not called elsewhere for labor or special or temporary purpose, and to which he returns in seasons

of repose. Such person can have but one residence which he cannot lose until another is gained. Leaving his place of residence is not an abandonment unless he establishes another, and a new residence can be established only by the union of act and intent.

7. Where a person having legal residence in North Dakota removes to Minnesota, and there lives with his family in the same apartment for a period of approximately twenty months, and during such time registers as a voter as required by the laws of Minnesota, votes at the primary and general elections, and exercises the rights of a citizen of Minnesota, it is *held*, for reasons stated in the opinion, that he acquires a legal residence in Minnesota, notwithstanding his intention to return to North Dakota at some indefinite time in the future.

8. Section 72 of the Constitution, providing that the powers and duties of the office of Governor devolve upon the Lieutenant Governor in case of the disability of the Governor, does not differentiate between a disability existing before election and one occurring after election.

9. In event of the disqualification of the Governor elect, the election and qualification of the Lieutenant Governor supplies a successor to the former Governor or Acting Governor, and the powers and duties of the office devolve upon the Lieutenant Governor for the remainder of the term for which the disqualified Governor elect was chosen.

Original application in the Supreme Court for writ of quo warranto by the State, on the relation of P. O. Sathre, Attorney General, against Thomas H. Moodie and another.

Writ granted.

West Headnotes (10)

[1] Courts

↔ In issuance of writs

Where questions of fact properly triable to jury arise in original quo warranto proceeding in Supreme Court, but conditions exist making it practically impossible to secure jury trial, Supreme Court will try and determine all

issues in case, both of fact and law, especially where parties waived jury trial, and request such procedure (Const. §§ 73, 86, 87).

1 Cases that cite this headnote

[2] **Domicile**

↔ Domicile distinguished from residence

Person has "residence" where he remains when not called elsewhere for labor or special or temporary purpose and to which he returns in seasons of repose, and he can have but one residence which he cannot lose until another is gained. Const. § 73; Comp.Laws 1913, § 14.

5 Cases that cite this headnote

[3] **Domicile**

↔ Intent

Leaving place of residence does not constitute abandonment thereof unless resident establishes another, and a new residence can be established only by union of act and intent. Const. § 73; Comp.Laws 1913, § 14.

7 Cases that cite this headnote

[4] **Quo Warranto**

↔ Trial or hearing

Where information in quo warranto proceeding instituted in Supreme Court charged that Governor elect was not citizen of United States and that he had not resided five years next preceding election within state, and respondent denied such averments, questions of fact, properly triable to jury, held presented (Const. §§ 73, 87).

4 Cases that cite this headnote

[5] **Public Employment**

↔ Residence or domicile

**States**

↔ Eligibility to office

Term "reside," as used in Constitution requiring Governor to have resided within

state for five years next preceding his election, means having legal residence, that is, a residence entitling one to vote or to hold office (Const. § 73; Comp.Laws 1913, § 14).

1 Cases that cite this headnote

[6] **Public Employment**

↔ Residence or domicile

**States**

↔ Eligibility to office

North Dakota resident removing in August, 1929, to sister state and there living with family in same apartment for approximately 20 months, during which time he registered as voter and voted at elections and exercised rights of citizen of such state, acquired "residence" therein, notwithstanding intention to return to North Dakota at some indefinite time in future, disqualifying him from becoming Governor of North Dakota in 1935, since he was not "resident" of North Dakota for five years next preceding election in November, 1934 (Const. § 73).

5 Cases that cite this headnote

[7] **Public Employment**

↔ Continuation in position or office after expiration of term; holding over

**States**

↔ Term of office, vacancies, and holding over

Word "successor," as used in Constitution providing that Governor shall hold office for term of two years and until his successor is elected and duly qualified, means some one who is intrusted with powers and is obliged to perform duties of his predecessor (Const. § 71).

1 Cases that cite this headnote

[8] **Public Employment**

↔ Death, disability, or incapacitation

**States**

↔ Term of office, vacancies, and holding over

Constitution providing that duties of office of Governor devolve on Lieutenant Governor in case of "disability" of Governor does not differentiate between disability existing before election and one accruing after election (Const. § 72).

1 Cases that cite this headnote

[9] **Public Employment**

↔ Ineligibility or Disqualification

**States**

↔ Term of office, vacancies, and holding over

Lack of residential qualification on part of Governor elect is legal "disability," causing powers and duties of office of Governor to devolve on Lieutenant Governor (Const. § 72).

Cases that cite this headnote

[10] **Public Employment**

↔ Manner and Mode of Filling Vacancy

**Public Employment**

↔ Term of person filling vacancy

**States**

↔ Term of office, vacancies, and holding over

In event of disqualification of Governor elect, election and qualification of Lieutenant Governor supplies "successor" to former Governor or Acting Governor, and powers and duties of office of Governor devolve on Lieutenant Governor for remainder of term for which disqualified Governor elect was chosen (Const. §§ 71, 72).

1 Cases that cite this headnote

**Attorneys and Law Firms**

P. O. Sathre, Atty. Gen., and Francis Murphy, Sp. Asst. Atty. Gen., for relator.

M. W. Murphy and M. A. Hildreth, both of Fargo, John Moses, of Hazen, John F. Sullivan, of Mandan, W. D. Lynch, of La Moure, and C. J. Murphy, of Grand Forks, for respondent Moodie.

Alvin C. Strutz, of Bismarck, for respondent Welford.

**Opinion**

BURKE, Chief Justice.

[1] This is an original proceeding in quo warranto instituted in this court upon the application of the Attorney General. It involves the title to the office of Governor. In the information it is alleged that the respondent Thomas H. Moodie received a majority of the votes cast at the last general election for the office of Governor; that a certificate of election was duly issued to him, and that he has qualified and entered upon the discharge of his duties as Governor; and that the respondent, Walter Welford, at the same election, was elected Lieutenant Governor, and that he has duly qualified as such officer. It is further alleged in the information that the said respondent, Thomas H. Moodie, did not possess the qualifications prescribed by section 73 of the State Constitution, and that he is ineligible to the office of Governor in this: (1) That he is not a citizen of the United States; and (2) that he had not "resided five years next preceding the election within the state."

The respondent Moodie filed a return wherein he denied the averments of the information and asserted that he was and is a citizen of the United States, and that he had resided within North Dakota the five years next preceding said general election, and, hence, possesses the qualifications which the Constitution prescribes for the incumbent of the office of Governor.

The pleadings in the case presented questions of fact properly triable to a jury. This court, therefore, entered an order that:

"Whereas, in the above entitled action there are presented issues of fact which are properly triable to a jury,

And whereas, the provision of the constitution (North Dakota Constitution, § 87) conferring original jurisdiction upon the supreme court expressly provides that 'no jury shall be allowed in the Supreme Court but in proper cases

questions of fact may be sent by said court to the district court for trial.' \* \* \*

It is ordered:

1. That the issues of fact in this case be sent to the district court of Ramsey County for trial; that such issues of fact be tried to a jury, unless the parties expressly waive trial by jury, and the trial judge accepts \*560 such waiver and determines to try the case without a jury.

2. That the Hon. C. W. Buttz, one of the judges of the Second Judicial District of North Dakota, whose chambers are located in said Ramsey County, be and he hereby is designated as the judge to preside at the trial of said action."

On January 21, 1935, Judge Buttz made the following report to this court: "January 7, 1935, Supreme Court made order in this case that issues of fact be sent District Court Ramsey County for trial designating me judge to preside at trial. I was notified of entry of order on same day. Shortly thereafter was informed that Attorney General might file application for change of place of trial. On same day I communicated with him requesting if such application were made it be presented promptly so that case might be tried as expeditiously as possible. In order to cause as little inconvenience as possible and to expedite disposition of case I arranged for hearing the application for change of place of trial and conference with counsel for respective parties before January 14th. They were unable to agree. At that time counsel for both sides present at Fargo and application for change of place of trial was submitted by attorney general. Conformable to usual practice gave the opposing side opportunity until Saturday night submit rebutting affidavits. At that time had not the slightest doubt that it would be possible to obtain fair and impartial jury either in Ramsey county or in any other county to which case might be transferred, if a change of place of trial were ordered. Both sides and myself have honestly tried to expedite trial. Not a moment was wasted. Careful consideration has led me to conclusion that county chosen by Supreme Court, namely Ramsey, is probably most impartial county and, consequently, I denied application for change of venue as it appeared to me that in all circumstances there is greater probability of obtaining a fair and impartial jury in Ramsey County than in any other county in state. However recently addresses have been broadcast over radio purporting to discuss not only all facts in case but

procedure adopted. In many instances in such manner as to tend to discredit decision that may ultimately be reached. In similar instances discussions have appeared in press. According to press House of Representatives have discussed and passed resolutions looking toward impeachment of Governor Moodie for same reasons and grounds that are involved in this action. According to statements in press communications have been sent to members of legislative assembly from practically every section of state expressing opinions on very issues involved in this case. In short, there has been developed such intense feeling dissension and turmoil as to render it difficult if not impossible to obtain fair and impartial jury in any county of state. In my opinion there is greatest likelihood that no jury would agree upon verdict; great probability is that disagreement will result. In short, it is my deliberate judgment that the conditions which have been brought about in this state the past week makes it highly probable that an attempt to try case to a jury would be wholly futile and merely involve needless expense and tend to prolong present state of uncertainty and turmoil. Therefore, am of opinion that ends of justice will be best served if case be returned to Supreme Court for final disposition."

Immediately after this report had been received by this court, counsel for the respective parties were informed and directed to appear. They did so appear. The report was duly considered, and in open court counsel for the respective parties announced that they fully acquiesced in the report and that they waived trial by jury and requested the Supreme Court to try all issues in the case, both of law and of fact. The question, therefore, presented itself whether in the circumstances this court should try and determine the issues of fact in the case.

[2] The primary function of this court is to exercise appellate jurisdiction; that is, to review on appeal the decisions rendered in the trial courts. Section 86 of the State Constitution expressly so provides. It says that, except as otherwise provided in the Constitution, the Supreme Court shall have appellate jurisdiction only. In addition to the appellate jurisdiction the Constitution grants to the Supreme Court a general superintending control over all inferior courts; and it also grants to the Supreme Court original and prerogative jurisdiction "to issue writs of habeas corpus, mandamus, quo warranto, certiorari, injunction and such other original and remedial writs as may be necessary to the proper exercise of its jurisdiction," and authorizes the court to hear and determine the same. North Dakota Constitution, § 87. But the section of the Constitution which grants this power

specifically outlines the procedure to be employed by the court in carrying it into effect. \*561 It says that in all original proceedings "no jury trial shall be allowed in said supreme court, but in proper cases questions of fact may be sent by said court to a district court for trial." North Dakota Constitution, § 87.

Before the North Dakota Constitution was adopted, perplexing questions had arisen in other states as regards the right of trial by jury of questions of fact in quo warranto proceedings brought directly in the Supreme Court. In Wisconsin and Kansas it had been found necessary to impanel a jury in the Supreme Court for the purpose of trying questions similar to those involved in this case. *State v. Messmore*, 14 Wis. 125; *State v. Allen*, 5 Kan. 213; *State v. Foster*, 32 Kan. 14, 3 P. 534. In a quo warranto proceeding brought in the Supreme Court of Michigan, that court had referred the case to a circuit court for trial, the refusal of the lower court to try the case to a jury was held to be error, and it was said that it was not within the power of the Supreme Court to deprive a party of the right of trial by jury. *People v. Doesburg*, 16 Mich. 133. The provisions of the Constitutions of Wisconsin, Michigan, and Kansas, conferring original jurisdiction upon the Supreme Court, were quite similar to those of the Constitution of North Dakota, but in none of those Constitutions was there a provision similar to that in section 87 of the North Dakota Constitution: "No jury trial shall be allowed in said supreme court, but in proper cases questions of fact may be sent by said court to a district court for trial."

This is the first time in the history of this court that it has been confronted with the trial and determination of disputed questions of fact in a quo warranto proceeding instituted in this court. In all other quo warranto proceedings that have been instituted directly in this court no questions of fact were presented. And, so far as we can ascertain, during the entire history of the state there have been presented to this court for determination only two controversies involving title to an elective state office.

The first case involved the office of state superintendent of public instruction, and arose following the general election of 1918. At that election one Minnie J. Nielson received the highest number of votes for that office. A certificate of election was issued, and she duly qualified. But the incumbent, N. C. McDonald, refused to turn the office over to her. The Attorney General applied to this

court for a writ of mandamus to compel the office to be surrendered to Miss Nielson. The incumbent, McDonald, sought to assert, among other defenses, that Miss Nielson did not possess the prescribed legal qualifications, and that, consequently, he was entitled to continue in office. This court held that the certificate of election issued to Miss Nielson was prima facie evidence of title to the office; that such prima facie title could not be defeated in a mandamus proceeding by averments of fact involving the ultimate title to the office, and directed a writ of mandamus to be issued. Miss Nielson was accordingly placed in possession of the office. *State v. McDonald*, 41 N. D. 389, 170 N. W. 873. After that decision had been rendered, McDonald, the incumbent, made application to the Supreme Court for leave to institute an original proceeding in quo warranto in the Supreme Court. The Attorney General appeared in opposition to the application, pointed out that the proceeding involved a trial and determination of issues of fact, and contended that the relator should be required to institute action in the nature of quo warranto in the district court and try the issues there. This court denied the application for leave to institute an original proceeding in this court. The incumbent, McDonald, thereupon brought action in the district court, and the issues in the case were tried and determined there, and the controversy was brought to this court on appeal. *McDonald v. Nielson*, 43 N. D. 346, 175 N. W. 361.

The second controversy arose in 1934, and involved the question whether the Governor of the state had been placed under disability as a result of a conviction for felony so as to cause the duties and powers of the Governor's office to devolve upon the Lieutenant Governor. That case presented no question of fact. It presented questions of law only. *State ex rel. Olson v. Langer* (N. D.) 256 N. W. 377.

It seems entirely clear that the framers of the Constitution did not intend that the Supreme Court ordinarily should hear witnesses, and weigh their testimony, and try and determine disputed questions of fact, especially where such questions were of such nature as to be properly triable to a jury; but it was intended that when an issue of fact properly triable to a jury arose in a proceeding in the Supreme Court, such question should be sent to a district court for trial. In short, the procedure adopted in this case was in accord with the intent, spirit, and purpose of the Constitution. But in view of the existing conditions (which according to \*562 the certificate of the trial judge arose

after this court sent the case to the district court for trial we are agreed that this court not only may, but should, try the case.

The jurisdiction conferred upon this court by section 87 of the Constitution is a prerogative jurisdiction. This jurisdiction "is not only limited to the prerogative writs, but it is confined to prerogative causes." Attorney General v. Eau Claire. 37 Wis. 400, 443. The people of North Dakota in their Constitution conferred this great judicial power upon the Supreme Court that it might be used in their behalf for the assertion of sovereign rights and to protect and vindicate the prerogatives and franchises of the state and the liberties of the people. This principle was announced in the early history of the state, and has been steadfastly adhered to. State of North Dakota v. Nelson County, 1 N. D. 88, 45 N. W. 33, 8 L. R. A. 283, 26 Am. St. Rep. 609; State v. Archibald, 5 N. D. 359, 66 N. W. 234; State ex rel. Linde v. Taylor. 33 N. D. 76, 156 N. W. 561, L. R. A. 1918B, 156, Ann. Cas. 1918A, 583.

"The jurisdiction," said Chief Justice Morgan (State v. Fabrick, 17 N. D. 532, 536, 117 N. W. 860, 861), "is not to be exercised unless the interests of the state are directly affected. \* \* \* The matters to be litigated must not only be publici juris, but the sovereignty of the state, or its franchises or prerogatives, or the liberties of its people, must be affected. \* \* \* There must be presented matters of such strictly public concern as involve the sovereign rights of the state, or its franchises or privileges."

"This transcendent jurisdiction," said Chief Justice Winslow of Wisconsin (State ex rel. Bolens v. Frear, 148 Wis. 456, 134 N. W. 673, 686, L. R. A. 1915B, 569, 606, Ann. Cas. 1913A, 1147), "is a jurisdiction reserved for the use of the state itself when it appears to be necessary to vindicate or protect its prerogatives or franchises or the liberties of its people. The state uses it to punish or prevent wrongs to itself or to the whole people. \* \* \*"

The governmental power thus reserved, by the people for use by the state to protect, preserve, and vindicate the sovereign rights of the state and of the people may not be thwarted or rendered impotent because circumstances render it difficult or even impossible to pursue the ordinary methods of procedure. And where, as here, it is shown that conditions exist which render the usual and ordinary methods of procedure inapplicable, inadequate, or unavailing, other appropriate judicial means will be adopted so that the great ends for which the jurisdiction

was reserved may not be defeated. Hence, inasmuch as in this case the usual and ordinary procedure was shown to be inadequate and ineffective, the court decided to try and determine all the issues in the case, both of law and of fact, directly in this court. Accordingly a trial was had at which evidence was adduced.

A written stipulation that Mr. Moodie is a citizen of the United States was filed leaving only the question of his constitutional qualification as to residence.

It is conceded that Thomas H. Moodie sold his newspaper at Mohall; that he left Mohall for Minneapolis, not intending to return to Mohall; that he arrived in Minneapolis in August, 1929; that he lived with his wife in Minneapolis until the 3d day of April, 1931, at 2545 Blaisdell avenue; that he registered as a voter and voted at the primary in June and at the general election in the fall; that his wife, with his knowledge, also, registered as a voter that year. But it is his contention that his residence in Minneapolis was temporary; that he went to Minneapolis because certain newspaper organizations in that city had information relating to papers in North Dakota which he, Moodie, might purchase, and while waiting for an opportunity to purchase he had temporary employment on the Tribune.

Mr. Moodie is a newspaper man. He practically grew up in a newspaper office and apparently there was no kind of work about a newspaper office that he did not know and could not do. He could set type, run a linotype machine, write editorials, political or otherwise. He apparently was a very versatile and industrious man. He worked on newspapers in Minneapolis, St. Paul, Duluth, Virginia, Bemidji, New Orleans, St. Louis, Langdon, Grand Forks, Fargo, Wahpeton, Ray, Long Beach, San Francisco, Mohall, Williston, Minot, Bismarck, and other cities. He apparently could drop into a city or town and go right to work in a newspaper office in some capacity. When he lived in a town or city long enough to entitle him to vote, he voted, and there never was any question about the legality of his vote or his right to cast the same.

[3] The term "resided," as used in the Constitution, means having had a legal residence; that is, a residence entitling one to vote or to hold office in the state of North Dakota. Residence is defined in section 14, Comp. Laws 1913, and the parts of section 14 which are \*563 applicable to the facts in the instant case are as follows:

“§ 14. Every person has in law a residence. In determining the place of residence the following rules are to be observed:

1. It is the place where one remains when not called elsewhere for labor or other special or temporary purpose, and to which he returns in seasons of repose;
2. There can be only one residence;
3. A residence cannot be lost until another is gained; \* \* \*
7. The residence can be changed only by the union of act and intent.”

[4] [5] In other words, every person has in law a residence where such person remains when not called elsewhere for labor or other special or temporary purpose and to which he returns in seasons of repose; that he can have but one residence, and the one residence to which he is entitled he cannot lose until another is gained; that is, leaving his place of residence is not an abandonment unless he establishes another, and a new residence can only be established by the union of act and intent; that is, there must be an actual change of residence, together with an intention to make such change.

[6] The sole question of fact in the case is, Did Thomas H. Moodie establish a legal residence in Minneapolis; that is, was there a union of act and intent to change the residence from Mohall, N. D., and establish it in Minneapolis, Minn.? The act of moving to Minneapolis from Mohall without any intention of returning to Mohall and the living in Minneapolis with his wife at 2545 Blaisdell avenue for a period of one year and nearly eight months are conceded, so that the question of fact is narrowed down to Mr. Moodie's intention.

Such questions have been many times in the courts, and the law for determining the intention is well settled.

In the case of *Nelson v. Gass*, 27 N. D. 357, 146 N. W. 537, 538, Ann. Cas. 1915C, 796, this court held: “The place of one's residence for the purpose of voting is where he has his established home, the place where he is habitually present, and to which, when he departs, he intends to return, and must be determined from all the facts and circumstances, and the intention must be accompanied by acts in harmony therewith.” Syllabus par. 9.

In the opinion the court said:

“A good-faith intent of a voter to make a place his home for all purposes is one essential element entering into the determination of the question of residence, and a domicile once gained does not continue until a new one is acquired for voting purposes, nor does a right to vote at a particular poll or district continue until the right to vote elsewhere is shown; but the shortest absence coincident with an intention to change the residence defeats the right to vote at the former domicile. *Kreitz v. Behrensmeyer*, 125 Ill. 141, 17 N. E. 232, 8 Am. St. Rep. 349.

\* \* \* *Berry v. Wilcox*, 44 Neb. 82, 62 N. W. 249, and note in 48 Am. St. Rep. 712. The question of residence must be determined from all the facts and circumstances surrounding the person, as related to his residence, and the intention must be accompanied by acts in harmony with the declared intention, and, notwithstanding one may testify that his intention was to make his home in a certain place, if his acts are of a character to negative his declaration or inconsistent with it, it is clear that the court cannot be governed by his testimony as to intention.

In harmony with our views we quote briefly from *State v. Savre*, 129 Iowa, 122, 105 N. W. 387, 3 L. R. A. (N. S.) 455, 113 Am. St. Rep. 452: ‘A person cannot live in one place and by force of imagination constitute some other his place of abode. The intent and the fact, as already stated, must concur.’ \* \* \* See, also, *People v. Moir*, 207 Ill. 180, 69 N. E. 905, 99 Am. St. Rep. 205; *Gardner v. Board of Education*, 5 Dak. 259, 38 N. W. 433; *People v. Ellenbogen*, 114 App. Div. 182, 99 N. Y. S. 897; *Frost v. Brisbin*, 19 Wend. (N. Y.) 11 [32 Am. Dec. 423]; *White v. Slama*, 89 Neb. 65, 130 N. W. 978, Ann. Cas. 1912C, 518. In *Widmayer v. Davis*, 231 Ill. 42, 83 N. E. 87, 88, it was held that a man who lived for a year or more in a ward, but prior to an election moved away, and left clothing and kept the key of the house in which he had lived, so he might be entitled to vote, was not a qualified voter.”

In *Shelton v. Tiffin*, 6 How. 163, 185, 12 L. Ed. 387, the court said: “On a change of domicile from one State to another, citizenship may depend upon the intention of the individual. But this intention may be shown more satisfactorily by acts than declarations.”

In *The Venus*, 8 Cranch, 253, 279, 3 L. Ed. 562, it is said: “If it sufficiently appear that the intention of removing



was to make a permanent settlement, or for an indefinite time, the right of domicil is acquired.”

In the case of *State v. Stoelting*, 53 N. D. 736, 208 N. W. 101, 103, this court said: “While registering and voting in a particular place is not conclusive, it is strong circumstantial \*564 proof of residence.” This statement of the law is supported by the great weight of authority. The fact of voting is not conclusive, but it is a strong circumstance which indicates the intention of the voter to cast a legal vote.

The case of *Kadlec v. Pavik*, 9 N. D. 278, 83 N. W. 5, was an election contest. It was claimed that one Jarus was foreign-born; that he came to this country about ten years before the election was held and when he was about twenty years old. There was no evidence to show that he had ever denationalized himself. He lived in Walsh county for seven or eight years before this election was held. The contestant showed these facts and then showed that the records of Walsh county failed to show that he had ever declared his intention to become a citizen of this country or received his final naturalization papers. From these facts the trial court concluded that a legal presumption arose that Jarus was not a legal voter, and this court said: “It is a case that rests largely upon presumptions. The alienage being shown, it is presumed to continue until evidence to the contrary is shown. *Hauenstein v. Lynham*, 100 U. S. 483, 25 L. Ed. 628. But, when it is shown that the party has cast a vote in this country, then this presumption disappears, and the opposite presumption prevails, because the law will not presume that a party has committed an unlawful act. *Gumm v. Hubbard*, 97 Mo. 311, 11 S. W. 61 [10 Am. St. Rep. 312].”

In that case it was shown that Jarus was foreign-born and the presumption of law that this condition continued until the contrary was shown was overcome by the presumption of law that the vote cast was a legal vote. The same presumption applies to the vote cast by Mr. Moodie at the primary election and the general election which followed in Minneapolis; that is, the presumption is that his voting in Minneapolis was legal. An examination of the authorities will show that the law, as stated by Judge Spalding (*Nelson v. Gass*, supra), for determining residence is supported by the great weight of authority, and it is entirely unnecessary to cite the authorities at length. But see *Pacific Mutual Ins. Co. v. Tompkins*, 101 F. 539, 41 C. C. A. 488; *Tuttle v. Wood*, 115 Iowa, 507, 88 N. W. 1056; *Hairston v. Hairston*, 27 Miss. 704, 61 Am.

Dec. 531; *Pope v. Williams*, 98 Md. 59, 56 A. 543, 66 L. R. A. 398, 103 Am. St. Rep. 379; *Gaddie v. Mann* (C. C.) 147 F. 955; *Chambers v. Prince* (C. C.) 75 F. 177; *Jones v. Subera* (C. C.) 150 F. 462; *Corel v. Ry. Co.* (C. C.) 123 F. 452; *Blair v. Silver Peak Mines* (C. C.) 93 F. 332; *Mitchell v. U. S.*, 21 Wall. 350, 22 L. Ed. 584.

“By the use of the word “intention” in the statute it is reasonably clear the legislature did not mean an undefined or undefinable purpose on the part of the voter to return to his former residence at some unknown time during the course of his life. To entertain a doubtful, vague, or equivocal purpose to return does not prove the fact of “intention” as used in the statute, when reasonably construed in view of the legislative object and the general law on the subject of domicile. That a person may live in one voting district and do business there and at the same time retain a right to vote in another district is undoubtedly true; but the right depends upon a reasonable intention to resume his former home and to rebut the presumption that he had abandoned it.” *Kennan on Residence and Domicile*, § 500, quoting from *Felker v. Henderson*, 78 N. H. 509, 102 A. 623, L. R. A. 1918E, 510.

“The difficulties which are met with in connection with this question are due not so much to any obscurity or uncertainty in the law as to the infinite variety of facts and circumstances which have to be considered in its application to individual cases. In every case of change of domicile there are three essential elements which must concur, viz:

First. A definite abandonment of the former domicile.

Second. Actual removal to, and physical presence in the new domicile.

Third. A bona fide intention to change and to remain in the new domicile permanently or for an indefinite time.

Nothing is better settled in the law of domicile than that every change must be *facto et animo*—in fact and intent. It is also elementary that every man must have a domicile somewhere, that the presumption is against a change of domicile and that the burden of proof rests upon the one alleging a change of domicile.” *Kennan on Residence and Domicile*, § 92. *Putnam v. Johnson*, 10 Mass. 488; *Wharton, Conflict of Laws*, § 58; *Sleeper v. Paige*, 15 Gray (Mass.) 349.

"A person's residence is the place of his domicile, or place where his habitation is fixed without any present intention of removing therefrom. The words 'inhabitant,' 'citizen,' and 'resident,' as employed in different constitutions to define the qualifications of electors mean substantially the same thing; and one is an inhabitant, resident, or citizen at the place where he has his domicile \*565 or home. Every person at all times must be considered as having a domicile somewhere, and that which he has acquired at one place is considered as continuing until another is acquired at a different place." Cooley's Constitutional Limitations, p. 1365; *People v. Turpin*, 49 Colo. 234, 112 P. 539, 33 L. R. A. (N. S.) 766, Ann. Cas. 1912A, 724; *Welsh v. Shumway*, 232 Ill. 54, 83 N. E. 549; *Elam v. Maggard*, 165 Ky. 733, 178 S. W. 1065; *Carwile v. Jones*, 38 Mont. 590, 101 P. 153; *In re Rooney*, 172 App. Div. 274, 159 N. Y. S. 132; *Finn v. Bd. of Canvassers*, 24 R. I. 482, 53 A. 633; *Clarke v. McCowan*, 107 S. C. 209, 92 S. E. 479; *Seibold v. Wahl*, 164 Wis. 82, 159 N. W. 546, Ann. Cas. 1917C, 400.

In the case of *In re Rooney*, 172 App. Div. 274, 159 N. Y. S. 132, 133, the court said:

"There is no suggestion that any one of these men intended to commit a crime; they have acted in entire good faith, believing that they had a right to determine for themselves their voting residences, as distinguished from their homes, based upon some popular impressions which have found their justification in the determination of the court in *People v. Platt*, 117 N. Y. 159, 22 N. E. 937. \* \* \*

It is true, of course, that a person may have two or more residences, as distinguished from a domicile (*Bischoff v. Bischoff*, 88 App. Div. 126, 85 N. Y. S. 81, and authorities there cited); but the word 'residence' or 'resident,' when used in the Constitution, or in statutes relating to the subject of voting and eligibility to office, jurisdiction in divorce, probate, and administration, etc., is in nearly every case synonymous with 'domicile.' *Cincinnati, H. & D. R. Co. v. Ives* [Sup.] 3 N. Y. S. 895, and authorities there cited; *Bell v. Pierce*, 51 N. Y. 12, 17; *Barney v. Oelrichs*, 138 U. S. 529, 532, 11 S. Ct. 414, 34 L. Ed. 1037; *De Meli v. De Meli*, 120 N. Y. 485, 491, 24 N. E. 996, 17 Am. St. Rep. 652."

Now, what are the facts to which this law must be applied? Thomas H. Moodie was practically all his life engaged in the newspaper business. He was a legal resident of Mohall, N. D., in July, 1929, when he sold his newspaper and wrote and published a beautiful farewell message to its patrons

and the citizens generally of Mohall, expressing many fine and beautiful sentiments of good will and concluding with a statement that his future was indefinite. He stored part of his furniture in Mohall and part of it at Minot, N. D., went with his wife to Minneapolis, and took up a residence in an apartment at 2545 Blaisdell avenue, where he remained for a period of one year and nearly eight months. During that time, and after he had been at this place for a period which lawfully entitled him to vote, he registered as a voter as required by the laws of the state of Minnesota, voting at the primary and at the general election in the fall for state and county officers in the state of Minnesota.

He filed a federal income tax return, giving his residence as 2545 Blaisdell avenue, Minneapolis. The laws of Minnesota require a license to fish, and provide for a resident license and a nonresident license. Mr. Moodie took out a resident license, and gave his address as 2545 Blaisdell avenue, Minneapolis, Minn. When he returned to North Dakota in 1931 and became a resident of Williston. in answer to the question in his state income tax return, viz., "Did you file an income tax return last year?" he answered "No, not a resident then." He also made three applications for automobile licenses in Minnesota while there, giving his place of residence 2545 Blaisdell avenue, Minneapolis. The automobile applications we do not consider very important, as nonresidents, after a certain limited time, are required to take out an automobile license. However, they are admissible for what they are worth as evidence of intention. As against these physical facts are the statements of the witnesses to whom he talked when he went to Minneapolis and to whom he said that he intended to purchase a paper in North Dakota and return to that state. We think from the whole record that Mr. Moodie did intend to return to the state of North Dakota some time. His testimony, his statements to the witnesses in Minneapolis, and the fact that he did return, all indicate an intention to return some time. On the witness stand his truthfulness was apparent to every one. He answered all questions without hesitation when the answers were unfavorable as well as when they were favorable. He stated that his plans were indefinite when he left Mohall; that within a week from the time he sold his paper at Mohall he began negotiations for "The Williston Herald"; that he left Mohall not intending to return to Mohall; that his employment with the Tribune was temporary; that he wanted to get into business for himself, preferably in North Dakota; but that he would purchase a country paper elsewhere than in North Dakota, if he got a good buy. His truthfulness and candor on the stand were

recognized and acknowledged by the Attorney General in his argument. It is true \*566 that Mr. Moodie stated that he was asked to vote in Minneapolis and he thought he had a right to vote as he had lived there for the lawful time, and that his voting there would not affect his residence in North Dakota. But his registering and voting in Minneapolis were in harmony with his custom of voting wherever he was on election day if he had been in the state and election precinct long enough to cast a legal vote. It is quite apparent from this record, that while Mr. Moodie had an intention to return some time to North Dakota, he had the intent when he registered as a voter in Minneapolis to cast his vote as he had always cast it, and that he did not intend to exercise any rights of citizenship in North Dakota while he was in Minnesota, but intended to exercise them in Minnesota. He knew that North Dakota had an absent voter's ballot law; but he did not attempt to vote by absent ballot, and did not in any way claim any benefit or any privilege of citizenship in North Dakota.

As stated in the case of *Dickinson v. Brookline*, 181 Mass. at page 196, 63 N. E. 331, 92 Am. St. Rep. 407, "When you intend the facts to which the law attaches a consequence, you must abide the consequence whether you intend it or not."

Mr. Moodie intended to cast a legal vote in Minnesota, and he was qualified under the laws of Minnesota to vote at the election at which he voted. His manner of voting in Minneapolis was no different from his manner of voting in Grand Forks, Wahpeton, Mohall, and Williston. He took an interest in public affairs, as every good citizen should, and always voted when and wherever he could cast a legal vote. No one ever questioned the legality of any vote he ever cast in North Dakota, Minnesota, or elsewhere. They were all legal votes. He did not register in Minnesota as a voter until after he had been living at 2545 Blaisdell avenue for the length of time required by law to entitle him to vote.

His residence at 2545 Blaisdell avenue, Minneapolis, Minn., was intended as a legal residence for the purpose of voting and enjoying all the civil rights and privileges granted by the Constitution and the laws of Minnesota, and to secure such rights he strictly complied with all the requirements of the law. There is nothing in this record which reflects in any way upon Mr. Moodie. He violated no law and did no wrong; but his removing to Minneapolis and establishing a voting residence there deprived him of his legal residence in North Dakota during the time he was

in Minneapolis, and it necessarily follows that he was not a resident of North Dakota for the five years next preceding the election in November, 1934, as required by section 73 of the Constitution.

This proceeding was instituted by the Attorney General. The state itself is plaintiff. Its purpose is not merely to try the title of Mr. Moodie to the office of Governor, but also to determine the question of succession in case Mr. Moodie is held ineligible. Accordingly, the Attorney General joined Mr. Welford as a party respondent and set forth in the information that "in the event that the said respondent Thomas H. Moodie be held to be disqualified and ineligible to hold such office for the term commencing on the first Monday in January, 1935, the powers and duties thereof will devolve upon the respondent Walter Welford and it will thereby and then become his duty to exercise the powers and duties of the office of Governor of North Dakota. \* \* \*" And the Attorney General's information concluded with the prayer, "That the court declare, state and fix the rights, status, and legal relations of the said respondent Walter Welford to the office of Governor and for such other and further relief as the court may deem just and proper in the premises."

It therefore becomes necessary to consider the status of Walter Welford and his legal relation to the office of Governor. The Constitution of the state says:

Section 71: "The executive power shall be vested in a governor, who shall reside at the seat of government and shall hold his office for the term of two years and until his successor is elected and duly qualified."

Section 72: "A lieutenant governor shall be elected at the same time and for the same term as the governor. In case of the death, impeachment, resignation, failure to qualify, absence from the state, removal from office, or the disability of the governor, the powers and duties of the office for the residue of the term, or until he shall be acquitted or the disability be removed, shall devolve upon the lieutenant governor."

Under section 71 the Governor holds office until "his successor is elected and duly qualified." Under section 72, in event of the "failure to qualify" on the part of the Governor, the powers and duties of the office devolve upon the Lieutenant Governor. Since Thomas H. Moodie did not possess the qualifications required of a Governor at the time of the general election, he was under legal disability. It is undisputed that Walter Welford \*567 was

legally elected and has qualified as Lieutenant Governor. Under section 678, Comp. Laws 1913, all state officers are required to qualify on or before the first Monday of January next succeeding their election, or within ten days thereafter. When the time arrived for the state officers elected at the general election of 1934 to qualify, Ole H. Olson was the Acting Governor. The Governor had been disqualified (*State ex rel. Olson v. Langer* (N. D.) 256 N. W. 377), and the disability resulting in such disqualification still exists.

[7] The word successor as used in section 71 means some one who is intrusted with the powers and is obligated to perform the duties of his predecessor. The Lieutenant Governor is not appointed to fill a vacancy. No act is required on the part of any official or governmental body to confer upon him the powers and duties of Governor in event of the "impeachment, resignation, failure to qualify, absence from the state, removal from office, or the disability of the governor." His authority is derived directly from the Constitution. From the above-quoted language, it will be noted that a number of specific instances are set out followed by the general term, "or the disability of the governor." In *State ex rel. Olson v. Langer* (N. D.) 256 N. W. 377, 383, this court, in discussing the meaning of this last phrase, said: "The word 'disability' has a reasonably definite meaning. It means: 'State of being disabled; deprivation or want of ability; absence of competent physical, intellectual, or moral power, means, fitness, or the like; an instance of such want or deprivation.' It connotes 'want of legal qualification to do a thing; legal incapacity, incompetency, or disqualification; also, an instance or cause of such incapacity.' Webster's New International Dictionary. We must presume, of course, that the words used by the framers of the Constitution were used in their ordinarily accepted sense, unless the contrary clearly appears. Indeed, unless given the ordinary and accepted meaning, disability would have no place in this constitutional provision."

[8] [9] The lack of residential qualifications on the part of the Governor is a legal disability. The Constitution does not differentiate between a disability existing before election and one occurring after election in regard to the right of the Lieutenant Governor to assume the powers and duties of the office of Governor. The provision in the Constitution devolving these powers and duties upon him must be construed in the light of reason. The context must be considered. When the framers of the Constitution used

the language which we are here considering, they intended to include legal as well as physical or mental disabilities, and did not exclude disabilities existing prior to election.

[10] Even though the general election of 1934 was a legal nullity in so far as the election of a Governor is concerned, we must bear in mind that there was a legal and valid election of a Lieutenant Governor. There was an expression of the electors as to both offices. Careful reasoning leads us to the conclusion that the framers of our Constitution intended by section 72 to designate a person who would act as Governor in event that the person elected as Governor should fail or cease for any reason to act. The general function of the Lieutenant Governor is to act in event the Governor cannot or does not exercise the powers and perform the duties of his office. He must possess the same qualifications as the Governor. These qualifications are not affected by the particular type or nature of the disability which prevents the Governor from acting. The Constitution does not say that the Lieutenant Governor shall act if the Governor is under certain disabilities and shall not act if he labors under others. The Governor elect could not legally qualify as Governor for the term to which he was elected because of his failure to possess the required qualifications. The Lieutenant Governor, elected at the same election, does possess the required qualifications. He has been chosen by the people to act as Governor in event the Governor fails to qualify, or is unable to act because of disability. Section 2 of the Constitution states: "Government is instituted for the protection, security and benefit of the people." Clearly the interests of those who hold office or seek authority are of minor importance when considered in the light of the declared purpose of the Constitution.

The purpose of a hold-over provision is to conserve the public interests by preventing a vacancy in office. Such provision is not designed or intended to extend the tenure of office by an incumbent for his own benefit beyond the specified term. 23 Am. & Eng. Ency. of Law (2d Ed.) p. 147. It is the policy of the law of this state that every two years the people shall choose not only the Governor, but the officer or officers who shall succeed the Governor and perform the duties of his office in case he for any reason is unable to qualify, or dies or becomes disqualified to serve during the term of office. A hold-over \*568 provision applies only when there is no qualified successor; but in this case there is a qualified successor. The framers of the Constitution, having in mind the great importance of the

office of Governor, provided not merely for one successor, but they provided for another successor (Const. N. D. § 72) in case the first should, for any reason, be unable to serve, and for still another in case the second should also be unable to serve. Const. N. D. § 77.

If the Governor elect fails to qualify or is disqualified, the Lieutenant Governor is the successor in office to the former Governor or Acting Governor. The election and qualification of a Governor or of a Lieutenant Governor, in event the Governor elect is disqualified, meets the requirement of section 71 that the Governor serves until his successor is elected and duly qualified. In event of the disqualification of the Governor elect, the legal election and qualification of the Lieutenant Governor supplies a successor and terminates the former administration. The purpose of the provision in section 71 of the Constitution to the effect that the Governor "shall hold his office \* \* \* until his successor is elected and duly qualified" is to prevent a hiatus in government; to guard against any lapse or period when there would be no officer to discharge the duties of Governor. It is a provision made for the benefit of the public. It is a lengthening out of the service of the incumbent to the commencement of the term of a new incumbent authorized to exercise the powers and perform the duties of Governor, whether that new incumbent be a newly elected Governor or other officer authorized to exercise the functions of the office. When such new incumbent qualifies and takes possession of the office, the old administration is at an end. It cannot

be revived. The functions of Governor devolve upon the officials elected at the last general election in the order of succession provided for in the Constitution. Walter Welford will serve as Acting Governor for the residue of the term for which Thomas H. Moodie was elected. It is the duty of Mr. Moodie to surrender the office of Governor to Lieutenant Governor Welford. Though Mr. Moodie is not entitled to hold the office, nevertheless no question can be raised as to the validity of the official acts performed by him. Under the wise provisions of the law, every act so done is valid and effective. He was clothed with prima facie title to the office. State ex rel. Sathre v. Byrne et al. (N. D.) 258 N. W. 121; State ex rel. Butler v. Callahan, 4 N. D. 481, 61 N. W. 1025. He was a de facto officer. As such he was clothed with all the rights and powers that he would have enjoyed as a de jure officer possessed of every qualification. State v. Ely, 16 N. D. 569, 113 N. W. 711, 14 L. R. A. (N. S.) 638.

The application for the writ must be granted. It is assumed the respondents will act in conformity with this decision without the issuance of a formal writ.

BURR, NUESSELE, MORRIS, and CHRISTIANSON, JJ., concur.

All Citations

65 N.D. 340, 258 N.W. 558

KeyCite Yellow Flag - Negative Treatment  
Distinguished by State ex rel. Ayres v. Gray, Fla., December 11, 1953  
242 Wis. 41  
Supreme Court of Wisconsin.

STATE ex rel. MARTIN, Atty. Gen.

v.

HEIL, Governor, et al.

Dec. 29, 1942.

### Opinion

**\*\*376 \*43** Original Action for declaratory relief dated on December 11, 1942, by State of Wisconsin, upon the relation of John E. Martin, Attorney General, plaintiff, v. Julius P. Heil, Governor, and Walter S. Goodland, Lieutenant Governor, respectively, defendants. The court having assumed original jurisdiction upon the petition of the Attorney General, a complaint was duly filed and motions for judgment by Julius P. Heil and Walter S. Goodland were made for the purpose of raising issues of law upon the facts alleged therein. Such motions for judgment were duly made on December 14, 1942.

In view of the pressure of time and for the purpose of making a clear and orderly presentation of the legal issues, counsel **\*44** informally agreed, in conference with the court, that generally speaking, the following questions were presented by the facts appearing in the complaint:

(1) Does the present incumbent of the office of governor hold over beyond the expiration of his present term until his successor is chosen and qualified?

(2) If he does not so hold over, is there a vacancy after the fourth of January, 1943 in the office of governor?

If there is a vacancy, how is the same to be filled?

(a) By the devolution of the powers and duties of the office upon the lieutenant-governor?

If so, for what term or period?

(b) By special election?

If so, by whom may such a special election be called?

(c) Does the present incumbent have authority to appoint his successor?

The facts of the petition will be stated in the opinion.

### West Headnotes (12)

#### [1] Public Employment

⇔ Continuation in position or office after expiration of term; holding over

#### States

⇔ Term of office, vacancies, and holding over

Constitutional provision fixing governor's term at two years does not authorize incumbent of such office to hold over under any circumstances beyond the term for which he was elected. Const. art. 5, § 1.

Cases that cite this headnote

#### [2] Public Employment

⇔ Continuation in position or office after expiration of term; holding over

#### States

⇔ Term of office, vacancies, and holding over

Where governor-elect died after certificate of election had been issued to him but before he had qualified as governor, under constitutional provision fixing governor's term at two years, deceased's predecessor in office did not hold over beyond the term for which he was elected. Const. art. 5, § 1.

Cases that cite this headnote

#### [3] Public Employment

⇔ Manner and Mode of Filling Vacancy

#### States

⇔ Term of office, vacancies, and holding over

The use of the word "governor" in the constitutional provision for devolution of the duty of such office upon the lieutenant-governor under certain circumstances does not necessarily preclude construction of the term as including "governor-elect" for a particular term so as to render constitutional

provision inapplicable in case of death of governor-elect before he qualified as governor, the term "governor-elect" being merely a statutory designation and not a constitutional word. Const. art. 5, § 7.

Cases that cite this headnote

[4] **Public Employment**

↔ Temporary absence or incapacitation

**States**

↔ Term of office, vacancies, and holding over

Constitutional provision for devolution of powers and duties of office of governor upon lieutenant-governor for the residue of term or until the disability ceases in case of removal, death, or resignation of governor or inability to discharge duties of office, uses the word "residue" to indicate that unless absent governor returns or disability is removed lieutenant-governor shall hold until the end of term, and hence the use of such word, which as used may properly be applied to the whole of a term as well as to a part, does not render constitutional provision inapplicable in case of death of governor-elect before he has qualified as governor. Const. art. 5, § 7.

Cases that cite this headnote

[5] **Public Employment**

↔ Manner and Mode of Filling Vacancy

**States**

↔ Term of office, vacancies, and holding over

In view of constitutional provision for secretary of state to act as governor if during a vacancy in office of governor the lieutenant-governor shall be impeached, resign, die, or for other reasons be unable to discharge duties of office, that constitutional provision for devolution upon lieutenant-governor of powers and duties of office of governor upon certain contingencies list among such contingencies impeachment and removal from office which could apply only to a governor who had qualified as such does not render

the constitutional provision inapplicable in case of death of governor-elect who has not qualified as governor, the failure of a governor to qualify being within the general definition of "vacancy". Const. art. 5, §§ 7, 8.

Cases that cite this headnote

[6] **Constitutional Law**

↔ Intent in general

**Constitutional Law**

↔ Spirit or letter in general

In construing constitutional provisions, it is extremely important to avoid determinations based purely on technical or verbal arguments and to seek rather to discover the true spirit and intent of the provision examined.

1 Cases that cite this headnote

[7] **Constitutional Law**

↔ Plain, ordinary, or common meaning

**Constitutional Law**

↔ Extrinsic aids to construction in general

Effect must be given to plain and completely unambiguous language in the constitution, but where there is a reasonable ground to differ concerning the sense in which language is used, the provision should be examined in its setting in order to find out, if possible, the real meaning and substantial purpose of those who adopted it.

2 Cases that cite this headnote

[8] **Constitutional Law**

↔ History in general

Where there is reasonable ground to differ concerning the sense in which language of constitutional provision was used, consideration should be given to the debates and proceedings of the constitutional convention itself.

Cases that cite this headnote

[9] **Public Employment**



↔ Manner and Mode of Filling Vacancy

**States**

↔ Term of office, vacancies, and holding over

In view of the fact that constitutional provision for lieutenant-governor was adopted to insure that in all contingencies the functions of the office of governor would be discharged without interruption, it would be unreasonable to construe constitutional provision for the devolution of powers and duties of the office of governor upon lieutenant-governor in certain contingencies as being inapplicable in case of death of governor-elect before he has qualified as governor. Const. art. 5, § 7.

Cases that cite this headnote

[10] **Public Employment**

↔ Manner and Mode of Filling Vacancy

**States**

↔ Term of office, vacancies, and holding over

That legislature construed constitutional provision for devolution of powers and duties of the office of governor upon lieutenant-governor in certain contingencies as applying as well in case of death of governor-elect before he has qualified as governor as in the case of death of governor after qualifying as such is evidenced by exception of office of governor from elaborate legislative provisions for special elections to fill vacancies and failure of legislature to make provisions for filling vacancies in the office of governor. St.1941, §§ 7.01, 17.03, Const. art. 5, § 7.

Cases that cite this headnote

[11] **Public Employment**

↔ Manner and Mode of Filling Vacancy

**Public Employment**

↔ Term of person filling vacancy

**States**

↔ Term of office, vacancies, and holding over

Where duly elected governor died after certificate of election had been issued to him but before he had qualified as governor, upon the first day of the term for which deceased was elected the powers and duties of the office of governor devolved upon the duly elected lieutenant-governor for the entire term for which deceased was elected. Const. art. 5, §§ 1, 7.

Cases that cite this headnote

[12] **Public Employment**

↔ Authority to fill vacancy

**States**

↔ Term of office, vacancies, and holding over

Where duly elected governor died before qualifying as governor, the incumbent in the office of governor could not appoint a successor, since "vacancy" in the office of governor would not occur until after expiration of incumbent's term and hence appointment of a successor would be for a vacancy not arising during incumbency of appointing governor. St.1941, § 17.27(4).

Cases that cite this headnote

**Attorneys and Law Firms**

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Rubin, of Milwaukee, and J. E. Messerschmidt, of Madison, Amicus Curiae.

**\*\*377 \*45 WICKHEM, Justice.**

The facts of this case are not in dispute and are thus set forth in the complaint: Julius P. Heil was elected governor on November 5, 1940, for a term beginning the first Monday in January, 1941. He duly qualified for the office and has since been, and is now, the duly elected and qualified governor. Walter S. Goodland, at the same election, was elected to the office of lieutenant-governor, qualified for the office, and is now the duly elected and qualified lieutenant-governor. On November 3, 1942, Orland S. Loomis was elected to the office of governor to succeed Julius P. Heil and a certificate of election issued and delivered to him. At the same election, Walter S. Goodland was elected to succeed himself in the office of lieutenant-governor, a certificate of election was issued to him, and on December 9, 1942, he filed his oath of office as lieutenant-governor for the term beginning the first Monday in January, 1943. Orland S. Loomis died on December 7, 1942, not having taken the oath of office as governor, but having, however, on November 30, 1942, entered upon his duties as governor-elect by holding budget hearings as provided by section 15.08, Stats. Upon his death, Walter S. Goodland undertook to conduct such budget hearings on December 11, 1942, continuing throughout that day, but has not subsequently held such hearings.

Upon these facts, the questions heretofore referred to have arisen. It needs no argument to demonstrate that an early determination of these questions is of the utmost importance to the people of the state of Wisconsin in order that the government of the state may function in a valid and orderly manner.

Broadly speaking, the questions presented are whether the present incumbent, Julius P. Heil, holds over for the whole or any part of the term for which Orland S. Loomis was elected; whether, if he does, he holds over only until such time as by special election a successor to Orland S. Loomis can be elected; whether, if Julius P. Heil does not hold over as governor for **\*46** any part of the ensuing term, he may appoint a successor, either to hold for the term or until a special election be called to select a successor to Orland S. Loomis; whether, on the other hand, Walter S. Goodland as the duly elected lieutenant-governor, on the first Monday of January, 1943, by virtue

of applicable constitutional provisions, will succeed to the powers, duties and functions of governor for the whole of the term for which Orland S. Loomis was elected. The questions have been stated factually, in order to present at the outset, the results of the various contentions of the parties.

An understanding of the questions presented may be promoted by setting forth the provisions of the constitution and statutes material to a consideration of these questions.

Article V, Section 1, Constitution, provides: "The executive power shall be vested in a governor, who shall hold his office for two years; a lieutenant governor shall be elected at the same time, and for the same term."

Article V, Section 7, Constitution, provides: "In case of the impeachment of the governor, or his removal from office, death, inability from mental or physical disease, resignation, or absence from the state, the powers and duties of the office shall devolve upon the lieutenant governor for the residue of the term or until the governor, absent or impeached, shall have returned, or the disability shall cease. \* \* \*"

Article V, Section 8, Constitution, provides: "\* \* \* If, during a vacancy in the office of governor, the lieutenant governor shall be impeached, displaced, resign, die, or from mental or physical disease become incapable of performing the duties of his office, or be absent from the state, the secretary of state shall act as governor until the vacancy shall be filled or the disability shall cease."

Article XIII, Section 10, Constitution, provides: "The legislature may declare the cases in which any office shall be deemed vacant, and also the manner of filling the **\*47** vacancy, where no provision is made for that purpose in this constitution."

Section 17.03, Stats., is entitled "Vacancies, how caused." Subsection (9) of this section provides that a public office becomes vacant upon "The death or declination in writing of any person elected or appointed to fill a vacancy or for a full term before he qualifies, or his death or such declination before the time when, by law, he should enter upon the duties of his office to which he was elected or appointed."

**\*\*378** Section 7.01 is entitled "Elections to fill vacancies." Subsection (2) provides for special elections

to fill vacancies in the office of United States senator or representatives in the Congress of the United States. Subsection (3) provides for special elections to fill vacancies in the office of state senator or assemblyman. Subsection (4) provides: "A vacancy in any other elective state office (except that of governor or lieutenant governor), if it occurs more than six months before the expiration of the current term, may be filled at a special election held not later than sixty days before the next general election."

Section 17.19 (4), Stats., provides: "In the office of secretary of state, treasurer, attorney-general or state superintendent, by appointment by the governor, and a person so appointed shall hold office until his successor is elected, as provided in section 7.01, and qualifies, but if no such election is held, the person so appointed shall hold office for the residue of the unexpired term."

Section 17.27, Stats., is entitled "Vacancies in other offices; how filled" and subsection (4) provides: "In case of a vacancy in any office in the state where no other provision is made for filling the same, it shall be filled by appointment by the governor."

\*48 [1] As the questions agreed upon by counsel are framed, the first is whether the present incumbent holds over beyond the expiration of his present term until his successor is elected and qualified. With the exception of one brief amicus curiae, it is conceded in all briefs which urge that a successor to Mr. Loomis may be selected by special election, that there must be a holding over by the incumbent or a devolution of the powers of that office for a portion of the term upon the lieutenant-governor, in order to avoid the probability of a situation in which for a time there would be no governor, or any person empowered to discharge his functions. This is true because it would be difficult in any event to conduct a special election after November in time for the successor to qualify by the first Monday of January, next. It would, of course, be quite impossible to do so if the death occurred just before the time when the governor-elect was to qualify. It is inconceivable, in view of the time, care and effort put upon the subject of succession by the constitutional convention that such an hiatus was left unprovided for. If the governor holds over, the possibility of a special election to take care of the office for a portion of the ensuing term may be considered. If he does not, it is impossible to find any constitutional ground for a conclusion that the office is to be vacant in function and fact until filled by special election. We

are of the view that the constitution does not authorize the incumbent of the office of governor to hold over under any circumstances, beyond the term for which he was elected. The constitutional provision is not that the governor shall hold for a period of two years and until his successor shall be elected and qualified. The provision is that the governor shall hold for a term of two years. The absence of words extending the term until such time as a successor has been duly elected and qualified is, of course, not wholly conclusive and as pointed out in *State ex rel. Pluntz v. Johnson*, 176 Wis. 107, 184 N.W. 683, 186 N.W. 729, there has been a tendency in the authorities to \*49 hold, in spite of the absence of these words, that an incumbent holds over until his successor is selected and qualified. In the *Pluntz* case, which is cited as authority for the proposition that the present incumbent holds over beyond his term, this court upon rehearing and after a contrary ruling had been vigorously defended in the original opinion, held that an elective sheriff holds over until his successor is elected and qualified, although the applicable constitutional provision did not specifically so extend the term. The court grounded its conclusions upon the tendencies of the authorities, upon practical construction and upon the inconvenience and annoyance which would result from suspension of official functions, if no person was authorized to act as sheriff.

We are strongly of the view that the opinion has no bearing upon this case. The *Pluntz* case construed Article VI, section 4 of the Constitution. This section deals with the time and manner of election of sheriffs, coroners, registers of deeds, district attorneys, and all other county officers, except judicial officers. As originally enacted, the section provided that sheriffs should be elected once every two years and as often as "vacancies shall happen". It will be noted that Article VI, section 4, Constitution, never has specifically defined the term of a sheriff, the extent of the term being implied from the fact that a sheriff was elected every two years. See \*\*379 *State ex rel. Knutson v. Johnson*, 171 Wis. 521, 177 N.W. 899. In 1882 the section was amended to provide that all vacancies should be filled by appointment, and that the person appointed "shall hold only for the unexpired portion of the term to which he shall be appointed and until his successor shall be elected and qualified." To conclude that an elective sheriff did not hold over until his successor was elected and qualified would not only create a complete vacancy in that office until the successor qualified, with all the resulting disorder and inconvenience, but a wholly irrational distinction

between an appointive and an elective sheriff. In none of the offices \*50 dealt with in Article VI, section 4, Constitution, does the constitution provide for substitutes or in any way take care of the discharge of official functions during such a period.

[2] When to the practical construction found by the court to have existed from the time the constitution was adopted was added that furnished by the amendment of 1882, itself, the court found it possible, although not without great difficulty, to conclude that elective and appointive sheriffs were intended by the constitution to have the same term. The constitutional provision with respect to the governor presents quite a different problem. The language is not merely that a governor shall be elected every two years as in the case of a sheriff, but that his term shall be two years. There is no such aid to a liberal construction of Article V, section 1, Constitution, as was furnished by the 1882 amendment to Article VI. Further than this the governor is the executive head of the state—the holder of a political office of the first importance. The report of the constitutional convention indicates that the members of that convention were greatly concerned and gave profound consideration to every aspect of the office of governor. There was, for example, vigorous advocacy of a one-year term and a limit to the number of successive terms he could serve. The debates evidence to a considerable degree that distrust of the executive which belongs to the period of the Revolution and the years following it. Elaborate precautions were taken to provide as completely as possible, for his term and the contingencies of his inability to serve, and we cannot believe that it was the purpose of the constitution to permit an incumbent to hold over at all. Even if the holding over was merely until a successor could be chosen, such a governor would discharge many of the most important functions of the office during the period of his holding over. While this is especially true now, because the biennial session of the legislature commences shortly after the governor's inauguration, the difference at the time of the adoption of the constitution \*51 was only one of degree. There is every reason in the case of a great political office like that of governor for giving to the constitutional term of two years its literal significance. There is, on the other hand, little practical objection in an administrative office to permitting a sheriff or clerk of court to give continuity to the administration of his office by continuing until a successor is elected and qualified. While the Pluntz case states that the tendency of the authorities is in the direction of liberal construction, we have discovered no case in

which such a construction was applied to the office of governor. We are of the view that under the constitution the present governor does not hold over beyond the term of office for which he was elected.

[3] The next question is whether, assuming that the governor does not hold over, there will, after the fourth of January, 1943, be a vacancy in the office of governor, and if there is such a vacancy, how the same is to be filled. We deem it convenient at this point to consider the proper construction of Article V, section 7, Constitution, since this is one of the two sections making express provision for the discharge of the functions of the office of governor in case of the inability of the governor to act. In this connection we express our strong conviction that Article V, section 7, Constitution, either devolves the powers and duties of governor upon the lieutenant-governor for the complete term in such a situation as is here presented, or it does not impose them upon him at all. The language of section 7 is open to no other construction. It is suggested in one of the briefs that the office remains vacant, although the functions devolve upon the lieutenant-governor, and that since the office remains vacant, steps may be taken to fill this vacancy by special election. While the premise is true and was expressly sustained in *State ex rel. Martin v. Ekern*, 228 Wis. 645, 280 N.W. 393, the difficulty with the conclusion is that the vacancy specified by section 7 is completely provided for by section 7 itself, thus leaving no room for the \*52 operation of Article XIII, section 10, which permits the legislature to provide the manner in which vacancies shall be filled where the constitution contains no \*\*380 provision for that purpose. It is contended by counsel for incumbent that the terms of section 7 plainly and unambiguously refer to the disability of a governor who has actually qualified. It is strongly argued that the term "residue" implies that only a part of the term remained to be served when the disability occurred. It is argued from this that the constitution in section 7 has only taken care of a situation in which a qualified governor, by reason of the circumstances detailed, has become unable to serve the rest of his term, and that the situation in which a governor has wholly failed to qualify is unprovided for. It would follow from this that by authority of Article XIII, section 10, Constitution, the legislature may define the vacancy and prescribe the manner of filling it. The legislature, having in section 17.03(9), Stats. included in the definition of a vacancy the death or declination before he qualified of a person

elected to office, the situation is claimed to be one which must be dealt with by special election or appointment in accordance with statutory provisions applicable to such situations. The first question to be answered is whether the language of section 7 so clearly and unambiguously supports the position of counsel for the incumbent that it is not open to construction. It is our conclusion that it does not. The use of the word "governor" in section 7 does not unambiguously exclude "governor-elect." The term "governor-elect" is a merely statutory designation, and not a constitutional word. There is no reason, so far as rules having to do with the use of language generally are concerned, why the term "governor" may not include "governor-elect" for a particular term, and it is a particular term that the constitution deals with in section 7. Webster's dictionary defines governor as "the person elected as chief executive official of a State in the United States. \* \* \*" It requires no more interpolation to hold that the term "governor" \*53 includes "governor-elect" than it does to limit it to "qualified and acting" governor. We see no reason why the word "governor" as used in section 7 may not reasonably be taken to include an elected governor who has not qualified.

[4] A more formidable difficulty is presented by the word "residue." It is asserted that this term usually has the meaning of "rest" or "remainder" and unambiguously implies that a part of the term will always have elapsed when the disability occurs and that it inevitably follows that a qualified governor must have occupied the office for the elapsed portion. This would be quite persuasive if we failed to consider the peculiar purpose for which the term "residue" was used in section 7. It plainly deals, not with the beginning, but with the termination of the devolution of the governor's powers upon the lieutenant-governor. Its purpose is to indicate that unless the governor, absent or impeached, "shall have returned, or the disability shall cease" the lieutenant-governor is to hold until the end of the term. The lieutenant-governor clearly takes over the functions of the office upon the happening of the disability. Since the word "residue" is clearly used to establish the period of the lieutenant-governor's devolved powers, the implication that he acts to fill out a partially expired term is much weakened—if not destroyed. The word "residue" so used is correctly applied to the whole of a term, as well as to a part. Two constitutional provisions of other states illustrate the points made. In the constitution of West Virginia, the provisions corresponding to section 7 are as follows:

"In case of the death, conviction on impeachment, failure to qualify, resignation, or other disability of the Governor, the President of the Senate shall act as Governor". Article 7, § 16.

Here it will be noticed that failure to qualify is one of the specified contingencies, and the word "governor", where first used, clearly applies to governor-elect. The Nebraska constitution, Article 4, § 16, provides that in case of the death, impeachment and \*54 notice thereof to the accused, failure to qualify, resignation, absence from the state or other disability of the governor, the powers, duties and emoluments of the office for the residue of the term, or until the disability shall be removed, shall devolve upon the lieutenant-governor. Here, as in the West Virginia provision, failure to qualify is specifically made one of the contingencies upon which the lieutenant-governor is to exercise the powers and duties of governor. In the Nebraska constitution the term "governor" includes "governor-elect" and "residue" is applicable to the whole of the term as well as to a part.

[5] [6] [7] A further objection may briefly be referred to. A listing of the contingencies upon which the powers and duties of the office of governor shall devolve upon \*\*381 the lieutenant-governor include two that probably cannot apply to a governor who has not qualified. Those are impeachment and removal from office. However, this does not mean that the rest of the contingencies, to wit: death, inability from mental or physical disease, resignation or absence from the state, cannot as well apply to a governor-elect as to a fully qualified governor. The fact that some of the specified contingencies can only apply to a governor who has qualified imports no such limitation into contingencies which are capable of applying to a governor-elect. The provisions of section 8 of Article V of the constitution bear importantly upon the construction of section 7. It is there provided that if during a vacancy in the office of governor, the lieutenant-governor shall be impeached, displaced, resign, etc., the secretary of state shall act as governor until the vacancy shall be filled, or the disability shall cease. It apparently deals with the contingencies provided for by section 7, assumes that the lieutenant-governor acts as governor during a vacancy in that office, and implies that section 7 merely contains a general description of a vacancy in the office of governor. This would be important since the failure of a governor to qualify is within the general definition of "vacancy." \*55 See, in this connection,

State ex rel. Martin v. Ekern, 228 Wis. 645, 280 N.W. 393. Some ambiguity is created in section 8 by the statement that the secretary of state shall act as governor until the vacancy shall be filled or the disability shall cease, but it is arguable that the words "vacancy shall be filled" relate to the return of an absent governor in contrast with one who has been impeached but who has removed his disability. We have sought to do no more in our analysis of section 7 than to demonstrate that the language of that section may reasonably be construed to provide for devolution of the powers of the governor upon the lieutenant-governor where the former has never qualified. It is, of course, arguable that the language was not intended to cover that situation and the section is not wholly free from ambiguity. It is extremely important in the interpretation of constitutional provisions that we avoid determinations based purely on technical or verbal argument and that we seek to discover the true spirit and intent of the provisions examined. We must not fail to give effect to plain and completely unambiguous language in the constitution, but where there is a reasonable ground to differ concerning the sense in which language is used, the provision should be examined in its setting in order to find out, if possible, the real meaning and substantial purpose of those who adopted it.

[8] In view of the foregoing, consideration should be given to the debates and proceedings of the constitutional convention itself. The committee on the executive, legislative and administrative, comprising seven members, reported to the convention on December 21, 1847, provisions identical with those now constituting article V of the constitution. There was a vigorous debate on the question whether there was any necessity for providing for the office of lieutenant-governor. It was at first voted to amend section VII by striking out all reference to a lieutenant-governor and imposing his duties upon the president of the senate. In the course of the debate upon \*56 this amendment the contingencies named in section VII were attacked as too remote to warrant the expense of providing a lieutenant-governor. The proponents of the section denied the remoteness and asserted that it was highly improper and opposed to the genius of our institutions to substitute for the lieutenant-governor a legislative officer of the senate who had never been voted upon by the people as a whole. They contended that the people should elect a governor, lieutenant-governor and secretary of state, "thereby providing for all contingencies which could arise". Ultimately, the

convention reconsidered its action after further debate and voted to retain section 7 in the present form. In the course of the second debate one of the objectors to the creation of the office of lieutenant-governor stated that the latter was at best, a mere minute-man—an officer without duties, save as president of the senate. He saw no good reason why these duties could not as well be performed by a president of that body, duly elected by its members; and in case of vacancy in the office of governor providing that the secretary of the territory should issue a proclamation for an election to fill the vacancy provided an incumbent was deemed necessary. In opposition to this, one of the delegates stated that while he did not feel strongly about the matter, a contingency might occur in which his services might be highly necessary and he was in favor of providing for all contingencies that might occur \*\*382 and therefore on the whole, he was in favor of having such an officer. "Wisconsin Historical Collections", "The Attainment of Statehood", Quaipe, volume XXIX, page 268. Article V, section 7, Constitution, was adopted and has never since been amended.

It appears quite clearly that the provisions of the New York constitution of 1846 were available and used by the delegates to our constitutional convention. The corresponding section of the New York constitution of 1821 was identical with section 7 as ultimately adopted in this state, except that the words "inability from mental or physical disease" did not \*57 occur in the New York constitution of 1821, article 3, § 6. The corresponding section of the New York constitution of 1846, article 4, § 6, as ultimately adopted, was identical with section 7 of the Wisconsin constitution, except that it substituted "inability to discharge the powers and duties of the said office" for the reference to mental or physical disease. It is interesting, however, to note that the proposed section as originally presented to the New York convention of 1846 is identical with section 7, except that the Wisconsin version substitutes the words "shall have returned" for "shall return" and omits the word "all" before the words "the military force".

In the light of this similarity, it is significant that the debates took almost precisely the same course in New York as they did in Wisconsin. Throughout the debates in New York, the defenders of the provision for the office of lieutenant-governor constantly recur to the need in case of the death or inability of the governor, for "someone to fill his place"—"to take upon himself the office of governor in

case of vacancy”—and stressed these considerations as the sole substantial reasons for having a lieutenant-governor at all. The fact that at least a portion of the draft of the New York constitution was before the delegates of the Wisconsin convention is stated in Attorney General ex rel. Schantz v. Brunst, 3 Wis. 787. It is evident to us that both the draft and the debates of the New York constitution were known to the delegates to the Wisconsin convention and that our convention copied and adopted a proposed draft of the matter covered by section 7, including a portion later deleted there.

[9] [10] We conclude that there is not the slightest evidence in the proceedings of the constitutional convention of any intention to make a distinction between the case of a duly elected governor who, by reason of death or some other circumstance, has failed to qualify, and that of one who has qualified and later has become disabled to act. The carefully prescribed succession without adverting to this distinction is, standing \*58 alone, a strong circumstance indicating that no such distinction was intended to be preserved. To suppose, in the absence of language clearly compelling that conclusion, that there was an intended distinction as to vacancy and devolution of power between the case of a governor who died the day before he qualified, and one who died the day after that event seems wholly unreasonable in view of the fact that the only purpose asserted in the Wisconsin and New York constitutions for having a lieutenant-governor was to insure that in all contingencies the functions of the office of governor would be discharged without interruption. That the foregoing was the practical construction of section 7 by the legislature is evidenced by the fact that there has been no legislative effort to deal with the situation at all. The office of governor is excepted from elaborate provisions for special elections to fill vacancies and no specific provisions for filling vacancies in the office of governor have ever been enacted. This is not an accidental omission. The legislature never supposed it had any duties to perform with respect to vacancies in the office of governor. It may be answered that the office of lieutenant-governor is also excepted from provisions for special election, and that we held in State ex rel. Martin v. Ekern, supra, that this made operative section 17.27(4), Stats. providing for filling the office by appointment. In that case, however, there was concededly a vacancy, and no constitutional provision for filling it. There was no ambiguity of construction which would warrant resort to practical construction. We have found no case directly in point. The North Dakota case

of State v. Moodie, 65 N.D. 340, 258 N.W. 558, goes much further than our conclusions here. Upon identical constitutional provisions, section 72, it was held that the lieutenant-governor had the duties of governor devolved upon him in a case where by reason of nonresidence the governor lacked the qualifications for office, and the election \*\*383 was completely void. Several cases take a contrary view. \*59 Carr v. Wilson, 32 W.Va. 419, 9 S.E. 31, 3 L.R.A. 64; State ex rel. Thayer v. Boyd, 31 Neb. 682, 48 N.W. 739, 51 N.W. 602. These cases appear to us not to be in point for the reason that in none of them was a governor considered to have been elected at all. For example, in the Carr case, the constitution of West Virginia, article 7, § 16, specifies failure to qualify as one of the contingencies upon which the powers of the governor devolved upon the lieutenant-governor. This case, nevertheless, held that where no governor was ever elected, the situation was not within the contingencies of the devolution clause, which in respects other than above noted was substantially identical with section 7.

[11] We conclude that with respect to the office of governor, the constitution takes care of every contingency involving a duly elected governor, except one in which the governor, lieutenant-governor and secretary of state are all unable to function, a contingency evidently considered so remote as not to call for specific mention. Viewing the provision of section 7 in the light of the constitutional history of the office of lieutenant-governor, and of the practical construction by the legislature, we are of the view that on the first Monday of January, 1943, the powers and duties of the office of governor will devolve upon Walter S. Goodland, the duly elected lieutenant-governor, for the entire term for which Mr. Loomis was elected. The language of section 7 readily accommodates itself to this construction and the construction conforms to the general constitutional purpose providing for succession as well as the reasons for the creation of the office of lieutenant-governor as these appear from the debates of the constitutional convention. It is something more than a make-weight that this conclusion obviates many practical difficulties which any other construction would raise. It avoids the holding over of a governor, either de jure or de facto; it invests with the powers and duties of governor, a person who at the same election as that in which the deceased governor-elect prevailed, was deliberately chosen by the people for no other important \*60 purpose than to substitute for the governor; it avoids an interregnum and the expense of a special election which



could in most cases furnish a substitute only for the least important portion of the ensuing term.

[12] We have not heretofore discussed the proposition that the incumbent may, in the circumstances, appoint a successor. The contention calls for no extended discussion. It fails in view of our conclusion as to the proper construction of section 7, of article V. It would fail in any event, under the doctrine of *State v. Roden*, 219 Wis. 132, 262 N.W. 629, since such an appointment would be for a vacancy not arising during the incumbency of the present governor.

The foregoing disposes of all questions submitted by the parties and so importantly affecting the interests of the people of this state as to warrant the exercise of original jurisdiction.

We take this occasion to acknowledge the substantial help given by the able briefs filed by the parties, as well as those filed amicus curiae. We commend the correct and public-spirited attitude of the Governor, Lieutenant-Governor, Secretary of State and Attorney General, whose high-minded efforts to promote the orderly processes of government by a decision in this case evidence fidelity to their duties as citizens and public officers in a democracy.

It is held:

(1) That the present incumbent of the office of governor does not hold over beyond the expiration of his present term;

(2) That on and after the 4th day of January, 1943, there will be a vacancy in the office of governor;

(3) That the vacancy in the office of governor on January 4, 1943, results in the devolution of the powers and duties of the office upon the lieutenant-governor for the residue of the term, that is, for the term ending on the first Monday in January, 1945;

\*61 (4) That because, as indicated in (3), the constitution devolves the duties of the office upon the lieutenant-governor, a special election cannot be called to fill the vacancy;

(5) That for the reason stated in (3) and because of the doctrine of *State v. Roden*, 219 Wis. 132, 262 N.W. 629, the present incumbent has no authority to fill by appointment a vacancy in the office of governor.

BARLOW, J., not participating.

All Citations

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Office of the Attorney General

State of Idaho  
Opinion No. 77-1  
January 4, 1977

\*1 The Honorable John V. Evans  
Lieutenant Governor of Idaho  
Statehouse  
Boise, Idaho 83720  
*Statehouse Mail*

Per Request for Attorney General Opinion.

**QUESTION PRESENTED:**

' . . . , I would appreciate the preparation of a formal Attorney General's opinion on the Constitutional authority and procedure for nomination and appointment of a Lieutenant Governor to succeed the office upon my vacating the same.'

**CONCLUSION:**

The question presented anticipates the imminent resignation of the office of Governor of Idaho so as to assume the post of United States Secretary of the Interior. The Idaho Constitution provides, 'In case of the \* \* \* resignation [of the Governor], the powers, duties and emoluments of the office for the residue of the term \* \* \* shall devolve upon the lieutenant governor.' This section, read in tandem with the next section of the *Idaho Constitution* regarding temporary performance of the duties of lieutenant governor by the president pro tempore of the Senate until the vacancy in the office of lieutenant governor is filled, together with the Article 4, § 6, power of the governor to appoint state officers would seem to clearly imply a succession by the lieutenant governor to *the office* of governor, thus creating a vacancy in the lieutenant governor's office. There is not only logic, but also case law to support such a conclusion. However, there is substantial case law interpreting constitutional provisions virtually identical in wording to Idaho's which conclude that under such circumstances the lieutenant governor *never* truly succeeds to the office of governor, is merely an acting, ex officio governor throughout the remaining term, and vacates his underlying office at the peril of not only losing the right to that office but also the right to act as governor.

With such indecision in the decided law regarding the nature of the right of holding the office of governor by the person designated by the Constitution to perform the duties of the same we feel ill advised in recommending to the incumbent Lieutenant Governor a course of action which, if we are wrong, could be fatal not only to his elected office, but also to any person he attempted to appoint to perform lieutenant governor duties after the Governor has resigned.

**RECOMMENDATION:**

We, therefore, recommend that the following constitutional questions be presented to the Idaho Supreme Court for its immediate consideration, by way of extraordinary writ:

1. When the Governor resigns does the Lieutenant Governor become Governor de jure or de facto, or is he merely acting governor or governor ex officio?

2. Upon resignation of the Governor is there a 'vacancy' created in the office of Lieutenant Governor, or does the Lieutenant Governor remain as such while also assuming the duties, powers and emoluments of Governor?

\*2 3. While performing the duties of Governor is the Lieutenant Governor entitled to the Governor's salary, and if so, is he also entitled to the salary as Lieutenant Governor?

4. After the Governor has resigned does the Lieutenant Governor perform only the duties of Governor, or is he also required to perform his duties as Lieutenant Governor whenever physically possible?

5. When physically impossible for the Lieutenant Governor to perform his duties as such due to performing the duties of Governor, either part or full time as interpreted by the Court, does the president pro tempore of the Senate perform the duties of Lieutenant Governor on a part-time basis, full time basis, or does he only act until the 'vacancy' in the office of Lieutenant Governor is filled by appointment by the Governor?

6. After the Governor has resigned and the duties, powers and emoluments of the office of Governor have devolved upon the Lieutenant Governor, may the Lieutenant Governor safely resign his office so as to create a vacancy therein, or will such a resignation act to destroy the foundation upon which the *Idaho Constitution* allows him to act as Governor?

We conclude that these questions are beyond the scope of this office due to the numerous conflicting case law interpreting similar constitutional provisions. Only the Idaho Supreme Court can provide the final, definitive answers.

#### ANALYSIS:

Clearly, in Idaho the governor has the power to appoint someone to fill a true 'vacancy' in the office of Lieutenant Governor. Article 4, § 6, *Idaho Constitution*. Since the lieutenant governor is not one of the enumerated state officers listed therein, such appointment falls under that portion of Article 4, § 6, which requires the Governor to 'nominate and, by and with the consent of the senate, appoint all officers whose offices are established by the constitution, \* \* \*, and whose appointment \* \* \* is not otherwise provided for.' Though certain constitutional officers are later listed in the constitutional provisions and, apparently, may be appointed without senatorial consent, the lieutenant governor is not among those listed. That being so, the provisions of Section 50-904 and 50-914, *Idaho Code*, relating to appointments, which by 1968 constitutional amendment must be followed for appointment of those enumerated constitutional officers, are inapplicable to appointing a person to fill a vacancy in the office of Lieutenant Governor, and any person so appointed to fill a true 'vacancy' in that office would hold office until the expiration of the remaining elective term. *Moon v. Masters*, 73 Idaho 146, 247 P.2d 158 (1952); *Budge v. Gifford*, 25 Idaho 521, 144 P. 333 (1914).

The threshold problem, however, remains that of determining when a 'vacancy' has occurred in the office of Lieutenant Governor. Idaho's constitutional succession provisions relating to filling the office of Governor when that person resigns, dies or is otherwise disqualified must be carefully scrutinized. With the expected and impending resignation of the incumbent Governor, it is apparent that, upon such resignation, Article 4, § 12, *Idaho Constitution*, comes into effect. That section provides:

\*3 In case of the \* \* \* resignation [of the governor], the powers, duties and emoluments of the office for the residue of the term \* \* \* shall devolve upon the lieutenant governor.

Note well that said section *does not* provide that the lieutenant governor shall succeed to the office of Governor, but merely that the powers, duties and emoluments of the office shall 'devolve' upon him. As will be noted later herein, most of the courts treat this act of devolution not as creating a true 'vacancy' in the office of lieutenant governor, but, rather, as acting to create a situation whereby the lieutenant governor must, by law, act as governor while still holding the office, together with its responsibilities, of lieutenant governor. To resolve the obvious dilemma thus created of one person attempting to perform the duties of two important executive offices simultaneously, these same courts hold that the next

person in line of succession, in Idaho's case the president pro tempore of the Senate [Article 4, § 13, *Idaho Constitution*] shall assume the duties of lieutenant governor whenever his gubernatorial duties interfere with his exercise of his duties as lieutenant governor. Idaho has a specific constitutional provision covering such a contingency. Article 4, § 13, *Idaho Constitution* provides:

\* \* \* [W]hen he [the lieutenant governor] shall hold the office of governor, then the president pro tempore of the Senate shall perform the duties of the lieutenant governor until the vacancy is filled or the disability removed.

Yet, as noted above, most courts hold that resignation of a governor does not create a 'vacancy' in the office of lieutenant governor when that person assumes the devolved duties as governor. The term 'disability' is apropos to such a situation inasmuch as the lieutenant governor is unable, at some times, to be in two places at once—to perform the duties of both offices simultaneously, but, what constitutes a 'removal' of the 'disability'? Must the lieutenant governor and president pro tempore of the Senate constantly be in communication so as to know from one minute to the next who is to do what at any given point in time? This is the gist of the holdings of the majority of case law on the subject, yet adherence to such construction produces an absurd result. At some point in this 'chain of succession' it must be realized that state government is, when a governor resigns, short one very vital person. It matters not whether we consider that we are not lacking a lieutenant governor, because the pro tempore acts to fill that office during the 'disability' period, or whether we are without a pro tempore. In either event we are short one key person. And the very exigencies and complexities of modern state government can hardly allow a state to limp along with such a shortage. Such absurdity may well be 'the law' as presently interpreted by the courts of many states, including neighboring states with constitutional provisions quite similar or virtually identical to those of Idaho. However, logic, and the law, should allow the conclusion to be reached that a permanent 'devolution' upon death or resignation of the Governor results in a true succession by the lieutenant governor to the office of Governor, thus creating a 'vacancy' in the office of Lieutenant Governor which may be filled by gubernatorial appointment. Yet, the cases do not on the whole so hold. In fact, there is case law to the effect that a person who did have the gubernatorial duties devolve on him by resignation of the incumbent governor lost the right to act as governor when he resigned the underlying office which gave him the constitutional right to perform the duties of governor. The primary New Jersey case which so holds is discussed herein. There is no clear-cut answer to the question posed which may be analyzed and resolved with legal exactness. The logical result which would result in the greatest efficiency and continuity of state government may well not be the legal result. This is one of those perplexing situations where the Attorney General must seek resort to the Idaho Supreme Court for a final legal resolution of the dilemma which is tailored to the *Idaho Constitution* and the needs of the Idaho people.

\*4 The Oregon Supreme Court, in *Chadwick v. Earhart*, 11 Or. 389, 4 P. 1180 (1884), considered whether, when under the *Oregon Constitution* 'the duties of the office of governor devolve upon the secretary of state, he has a right to the salary of the office.' [4 P. at 1180.] They considered:

In the first place, it is not shown how an office can be vacant, and yet there be a person, not the deputy or *locum tenens* of another, empowered by law to discharge the duties of the office, and who does in fact, discharge them. It is not explained how, in such a case, the duties can be separated from the office so that he who discharges them does not become an incumbent of the office of governor without being governor. It is the function of a public officer to discharge public duties. Such duties constitute his office. Hence, given a public office, and one who, duly empowered, discharges its duties, and we have an incumbent in that office. Such is the case here. The secretary of state, by force of the function cast upon him, becomes governor, and consequently entitled to the salary appertaining to the office. *Id.* at 1181.

Thus, in Oregon, it was decided long ago that the next-in-line for the office of governor upon a resignation, death or disability of the incumbent thereof became fully vested with the office itself, not merely an *ex officio*, or acting, governor. The Oregon constitutional provision regarding devolution, however, is not exactly identical to Idaho's. Next, in *Olcott v. Hoff*, 92 Or. 462, 181 P. 466 (1919), the Oregon Supreme Court again considered its constitutional devolution section and posed:

The vital question we are asked to decide is whether the petitioner, Mr. Olcott, holds the office of governor in fact, and, if so, for how long, or whether he has only the right to discharge the duties of that office during the remainder of his term as secretary of state. 181 P. at 466.

The relevant portions of the Oregon Constitution provided: 'In case of the removal of the governor from office, or of his death, resignation, or inability to discharge the duties of the office, the same shall devolve on the secretary of state.' Article 5, § 8, *Oregon Constitution*. As pondered with regard to the U.S. Constitution, what does the phrase 'the same' modify—'duties'—or 'the office'? The Court proceeded to review in detail numerous cases from other jurisdictions which held that the lieutenant governor, under such circumstances is merely an 'acting governor' and does not 'hold' the office of governor, then stated:

It will be noted that in all of the [constitutional] sections quoted it is not the office, but the powers and duties of the office, which devolve upon his successor in the event of the death of the governor. *Id.* at 470.

Justice Johns, writing for the Court in an opinion in which five of the seven justices concurred, stated:

Mr. Olcott is governor in fact and has the right and title to the office itself, with the accompanying right and authority to perform the duties and receive the emoluments of the office. As to whether he could resign as secretary of state, and as governor appoint another to that position and still continue to hold the office of governor, we do not feel legally justified in going beyond anything said in this opinion. *That is less a public and more a personal question for Mr. Olcott.* [Emphasis supplied.] *Id.* at 472.

\*5 Three justices believed that the Court should have taken the next logical step and hold that Olcott could, in fact, resign as secretary of state and appoint a successor to that office in his capacity as governor. Chief Justice McBride felt: There can be little question that Mr. Olcott is entitled to hold both the office of governor and secretary of state, and draw the salaries of both. It is creditable to him that he does not wish to do the first and will not do the second. In the infancy of the state, when its business was insignificant and its revenues small, one person could well perform the duties of both governor and secretary of state, but with the enormous expansion of state business [by 1919] each of the three constitutional officers finds in his own department all the business which he can attend to, and more. *Id.* at 474.

The Chief Justice concluded:

For the reasons expressed by Justice JOHNS, as well as those urged herein, I am of the opinion that this court should declare the petitioner is governor in fact and not acting governor; that he is entitled to the salary of governor; that he holds the office for the remainder of the term of the late Governor Withycombe, and that he may resign the office of secretary of state and still hold the office of governor. *Id.* at 475.

Justice Harris concluded similarly, with Justice Benson concurring:

In brief, I take the view that Ben W. Olcott is governor in truth as distinguished from governor ex officio, that he is entitled to hold the office of governor and is entitled to the salary of that office until his successor is elected; . . . I think, too, that the logic of the holding in *Chadwick v. Earhart* inevitably leads to the conclusion that the petitioner can resign as secretary of state and continue to occupy the office of governor. *Id.* at 479.

The question remains as to whether this decision was reached through interpreting the nuances of words and the proper modification of certain words by yet other words, or whether it was a decision which attempted to reach a practical, effective approach to a complex problem by not giving undue influence to technical terms and rules of construction.

Third in the important trilogy of Oregon cases is *State ex rel. O'Hare v. Appling*, 215 Or. 303, 334 P.2d 482 (1959), which posed the question of an implied resignation when the secretary of state became *elected* governor, and the time of such implied resignation. The Court noted with approval these general principles:

The doctrine of implied resignation is thus stated in 100 A.L.R. 1170:

'\* \* \* if the holding of two offices by the same person, at the same time, is inhibited by the Constitution or statute, a forbidden incompatibility is created similar in its effect to that of common law, and, as in the case of the latter, it is well settled by an overwhelming array of authority that the acceptance of a second office of the kind prohibited operates, ipso facto, to absolutely vacate the first office.'

\*6 The multitude of decisions from all over the United States and England cited in the extensive annotation beginning at 100 A.L.R. 1162 fully bears out the foregoing statement that this doctrine has the support of 'an overwhelming array of authority.' . . . The quoted language of the Supreme Court of Maine in *Stubbs v. Lee*, 64 Me. 195, 198:

'Where one has two incompatible offices, both cannot be retained. The public has a right to know which is held and which is surrendered. It should not be left to chance, or to the uncertain and fluctuating whim of the office-holder to determine. The general rule, therefore, that the acceptance of and qualification for an office incompatible with one then held is a resignation of the former, is one certain and reliable as well as one indispensable for the protection of the public.' 334 P.2d at 486.

The Court went on to conclude that the offices of Secretary of State and Governor were incompatible. Likewise, it should be concluded that, in Idaho, the offices of Lieutenant Governor and Governor are incompatible.

In *Merriam v. Clinch*, 6 Blatchf. 5, Fed. Cas. No. 9,460 (S.D.N.Y. 1867, upon the death of a collector of customs it was claimed that certain emoluments belonged to his estate. In holding to the contrary, the Court considered Article 2, § 6, *United States Constitution*, under which due to death, resignation, or inability to discharge 'the powers of the said office [of president], the same shall devolve upon the vice president,' and noted:

Three times since the adoption of the constitution, the president has died, and, under the provisions referred to, the powers and duties of the office of president have devolved upon the vice president. All branches of the government have, under such circumstances, recognized the vice president *as holding the office of president*, as authorized to assume its title, and as entitled to its emoluments. The vice president holds the office of president until a successor to the deceased president comes to assume the office, at the expiration of the term for which the deceased president and vice president were elected. . . . It has never been supposed that, under the provision of the constitution, the vice president, in acting as president, acted as the servant, or agent, or locum tenens of the deceased president, or in any other capacity than as holding the office of president fully, for the time being, by virtue of express authority emanating from the United States. [Emphasis supplied.] 17 Fed. Cas. at p. 70.

As will be seen from the analysis of the Oregon cases, where the state's Constitution uses similar phraseology to the United States Constitution, the conclusion as to what the person upon whom executive duties devolve succeeds to may turn upon the interpretation of what the words 'the same' modify. Isolating the key phrase 'the powers of the said office, the same shall devolve', it is critical to the concept and nature of succession whether 'the same' modifies 'the powers'—signifying a status of merely acting temporarily as the executive—or whether 'the same' modifies 'office'—signifying a true succession by the second-in-command to the full status of the executive for the remainder of the executive's term. This dilemma, when coupled with substantial conflicting case law not only from other neighboring states with constitutional devolution sections virtually identical to Idaho's, but also from other jurisdictions, creates a circumstance where legal advice on the question presented herein becomes futile when rendered by any other than the Idaho Supreme Court.

\*7 A leading case which takes a position contrary to Oregon's is *State v. Heller*, 63 N.J. Law. 105, 42 A. 155, 57 L.R.A. 312 (1899). In *Heller*, New Jersey Governor Griggs resigned before the expiration of his term and Vorhees, then president of the state Senate, qualified as his successor. Later, before the expiration of the term for which Griggs had been elected, Vorhees resigned as a member of the state Senate. Immediately, the speaker of the House qualified as governor, contending that the resignation of Vorhees, as state senator, terminated his right to officiate as governor. Vorhees, however, claimed that, having been the successor of Griggs as governor at the time of Griggs' resignation, he thereby became governor de jure for the remainder of the unexpired gubernatorial term, regardless of the expiration of his term as state senator. The New Jersey Constitution, substantially like Idaho's, provided that: 'In case of the \* \* \* resignation \* \* \* from the office of the governor, the powers, duties and emoluments of the office shall devolve upon the president of the Senate, and in case of his \* \* \* resignation \* \* \* then upon the speaker of the House of Assembly \* \* \*.' In the Idaho Constitution the first devolution is on the lieutenant governor, then upon the president pro tempore of the state Senate. The New Jersey court ruled:

In construing this clause of the constitution it must be borne in mind that it was carefully drawn by learned jurists, who knew how to express with exactness and precision the purpose they had in view. The provision is that, in case of the resignation of the governor, the powers, duties and emoluments of the office shall devolve upon the president of the senate, and not that the president of the senate shall thereby become governor, and hold the title and the office until another governor is elected. *If the framers of the fundamental law had intended to transfer the president of the senate to the executive chair, and thereby to vacate his office, it is reasonable to believe that they would have said so in no uncertain language.* The language used is not ambiguous. It declares that the powers, duties and emoluments of the office shall devolve on the president of the senate; *it does not confer upon him the title of the office.* The president of the senate exercises the powers of the governor; the president of the senate performs the duties of the governor; the president of the senate receives the emoluments of that office. *He is still president of the senate, with the added duties required of the chief executive of the state imposed upon him. There is no language in the constitution from which it can reasonably be inferred that his office of president of the senate was to be vacated.* He retains his office of senator; and as president of the senate, and not as governor, he exercises the added powers and performs the superimposed duties. [Emphasis supplied.] 42 A. at 157

Further considering the nature of the constitutional grant of power when a governor resigns, the New Jersey Supreme Court held:

\*8 In my judgment, the framers of the Constitution meant simply what they said—that in case the governor resigned the president of the Senate, as such should have the powers and perform the duties of the office. *Foster M. Vorhees did not become governor upon the resignation of Governor Griggs. He still continued to be a senator and president of the Senate. He could not resign the office of governor, which he never held. When he resigned and vacated the office of senator, he ceased to be the president of the Senate, and could no longer exercise the functions pertaining to the executive department. Therefore upon his resignation as senator the powers, duties and emoluments of the office [of governor] devolved upon David O. Watkins, the speaker of the House of Assembly.* He is de jure the speaker of the House, and of right as such speaker exercises the executive powers. He is not governor de jure or de facto in the constitutional sense of that term. [Emphasis supplied.] *Id.* at 158.

Next, the Colorado Supreme Court in *People ex rel. Parks v. Cornforth*, 34 Col. 107, 81 P. 871 (1905), was presented with this factual setting: In 1905 Governor Peabody resigned and Lieutenant Governor McDonald qualified as governor and acted as such. Cornforth, president pro tempore of the state Senate qualified and acted as lieutenant governor during the same period but was replaced as president pro tempore later in 1905 by Parks, though Cornforth remained a senator. The question was whether the right of Cornforth to act as lieutenant governor ended with the election of Parks as president pro tempore. Construing Article 4, § 13 and Article 4, § 14, *Colorado Constitution*, which are virtually identical to Article 4, § 12 and Article 4, § 13, *Idaho Constitution*, regarding assuming the duties of governor and lieutenant governor upon death, resignation, or disability, the Colorado Supreme Court analyzed:

The same language is used in devolving duties on the president pro tem. [although the word 'devolve' does not appear in the Colorado or Idaho Constitutions regarding the pro tem. assuming lt. governor duties] in the event the lieutenant



governor is unable to perform his duties through those of the governor devolving upon him from some permanent cause as in this case, resignation of the governor. If the framers of our constitution had intended that the president pro tem. of the Senate should become lieutenant governor de jure in the contingency under consideration, they could easily have said so. They have not so provided. They have simply said that if for some permanent cause the lieutenant governor fails to discharge his official duties they shall be performed which such condition obtains by the president pro tem. of the Senate as such. 81 P. at 872-873.

The Court, after considering several cases from other jurisdictions, concluded that the duty to act as lieutenant governor appertained to the holder of the office of president pro tempore of the state senate, and did not create a de jure vested right in the holder of that office at such time as the governor died and the lieutenant governor had the gubernatorial duties devolve upon him. Thus, the newly elected pro tempore was entitled to assume, when necessary, the duties of lieutenant governor whenever the same could not be performed by the lieutenant governor while acting as governor.

\*9 The neighboring state of Washington has also had occasion to consider the question of devolution of duties upon the lieutenant governor, in *State ex rel. Murphy v. McBride*, 29 Wash. 335, 70 P. 25 (1902). In 1900, Rogers was elected governor and McBride was elected lieutenant governor. Rogers died in late 1901. As stated: The first question presented is, does the death of the governor cause a vacancy in that office, which may be filled by an election for the unexpired term, and, if not, does the office of lieutenant governor become vacant when the incumbent assumes the duties of governor? 70 P. at 25.

As in the Idaho and Montana Constitutions, the 'succession' provision of Washington's Constitution provided that the duties of the office of governor 'devolve upon the lieutenant governor' upon resignation, death or disability of the governor. The Court noted:

This provision of the constitution of this state is in effect the same as the provision of the constitution of the United States with reference to the succession of the vice president to the office of president of the United States. Upon the death or disability of the president, it has uniformly been held that the vice president holds the office of president until a successor to a deceased president comes to assume the office. *Merriam v. Clinch*, 6 Blatchf. 9, Fed. Cas. No. 9,460. In that it was said: 'It has never been supposed that, under the provision of the constitution, the vice president, in acting as president, acted as the servant or agent or locum tenens of the deceased president, or in any other capacity other than as holding the office of president fully, for the time being, by virtue of express authority emanating from the United States.' *Id.* at 25-26.

Next, the Court considered one of the Oregon cases, then concluded:

It is a well settled rule that an office is not vacant so long as it is supplied, in the manner provided by the constitution or laws, with an incumbent who is legally authorized to exercise the power and perform the duties which pertain to it. [Citations omitted.] The constitution having provided that in case of the death of the governor the duties of the office devolve upon the lieutenant governor, there is no vacancy in the office of governor . . . What is said above applies equally to the lieutenant governor. *When the lieutenant governor, by virtue of his office and of the command of the constitution, assumed the duties of governor on the death of Gov. Rogers, the office of lieutenant governor did not thereby become vacant, but the officer remained lieutenant governor, intrusted with the powers and duties of governor.* [Emphasis supplied; citations omitted.] It is argued, however, that since it is made the duty of the lieutenant governor, under the constitution, to be presiding officer of the state senate (section 16, art. 3), and as such to approve all bills passed by that body, he must, as governor, review and approve or reject bills which as lieutenant governor he has already approved. These duties are, no doubt, inconsistent; but this argument, we think, is fully met by another provision of the constitution, which provides, at section 10, art. 2, in substance that when the lieutenant governor shall act as governor the senate shall choose a temporary president. *The lieutenant governor, therefore, when the duties of governor devolve upon him, is relieved of the duties of presiding officer of the senate.* [Emphasis supplied.] *Id.* at 26.

\*10 In yet another neighboring state, Montana, that state's Supreme Court was called upon, in *State ex rel. Lamey v. Mitchell*, 97 Mont. 252, 34 P.2d 369 (1934), to consider whether the following facts led to the creation of vacancies in executive offices of the State. At the 1932 general election, Erickson was elected governor and Cooney was elected lieutenant governor. In March, 1933, Erickson resigned as governor. The Court framed the sole question presented for review as follows: 'Is there a vacancy in either the office of Governor or Lieutenant Governor?' [34 P.2d at 370.] Article 7, § 4, *Montana Constitution*, which when the word 'treason' is added is *identical* to Article 4, § 12, *Idaho Constitution*, provided for devolvement of the powers, duties and emoluments of the office of governor on the lieutenant governor when the governor resigned or otherwise could not perform the duties of office. The Montana Court held:

It will thus be seen that when the Governor resigns or is permanently removed from office, there is no vacancy in the office of Governor in the sense that there is no one left with power to discharge the duties imposed upon the Governor . . . The framers of the Constitution never intended that there should be any interim in which the affairs of the state should not be executed, for they said in explicit language that on the happening of any of the contingencies mentioned in section 14, supra, the powers, duties, and emoluments of the office were to be immediately transferred to the Lieutenant Governor, who is then given a mandate to discharge the duties of the office for the residue of the term for which the Governor was elected. He, as Lieutenant Governor, *acts as Governor* and is empowered to perform the duties of that office. [Emphasis supplied.]

There can be no vacancy in an office when there is a person clothed with authority to perform its duties. In *State ex rel. Chenoweth v. Action*, 31 Mont. 37, 77 P. 299, 300, the court, speaking through Mr. Commissioner Callaway, said: 'The word 'vacancy,' as applied to an office, has no technical meaning. An office is not vacant so long as it is supplied, in the manner provided by the Constitution or law, with an incumbent who is legally qualified to exercise the powers and perform the duties which pertain to it; and, conversely, it is vacant, in the eye of the law, whenever it is unoccupied by a legally qualified incumbent, who has a lawful right to continue therein until the happening of some future event.' 34 P.2d at 370-371.

The Court next noted:

It is urged that upon the happening of any of the contingencies in section 14, supra, the Lieutenant Governor by exercising the powers and duties of the Governor acts also as Lieutenant Governor, and that he cannot hold two offices. This argument is answered by section 15 of article 7 of the [Montana] Constitution [exactly identical with Article 4, § 13, *Idaho Constitution*] . . .

The argument is also answered in the case of *State ex rel. Murphy v. McBride*, supra, [29 Wash. 335, 70 P. 25 (1902), quoting therefrom the explanation and acceptance of the inconsistent duties as constitutionally authorized and resolved by temporary action of the temporary president of the state senate.]

\*11 When the framers of the Constitution provided for the election of a Governor and a Lieutenant Governor as members of the executive department of the state (section 1, art. 7), but conferred upon the latter no executive power or authority other than in the contingencies mentioned in section 14, supra, they manifested the intention that the people elect two qualified heads of that department—the one action, the other his lieutenant, ready at a moment's notice to assume the duties of the office should his superior officer, for any reason, either temporarily or permanently, become unable to perform them. This to the end that the important functions of state government should not falter or halt for an instant. *Id.* at 371-372.

Concerning the concept of a vacancy occurring when the duties of governor devolved upon the lieutenant governor by constitutional action, the Court concluded:

Neither do we think that upon resignation, death, or permanent removal of the Governor there is a vacancy in the office of Lieutenant Governor. In any such event he, as Lieutenant Governor, shoulders immediately the duties of Governor,

and while 'he holds the office of Governor,' the president pro tempore of the senate performs the duties which theretofore devolved upon the Lieutenant Governor. When the duties, powers and emoluments of the office of Governor devolve upon the Lieutenant Governor, it cannot be said that he vacates his office of Lieutenant Governor, and, *unless he does so*, there is no vacancy in his office. [Emphasis supplied; code citation omitted.] His assumption of the duties of the office of Governor does not create, and neither can he make, a vacancy, as he is discharging the functions of Governor and by the mandate of the Constitution, *and that by reason of being Lieutenant Governor*. [Emphasis supplied.] If the framers of the Constitution had intended that there be a vacancy in the office of Lieutenant Governor upon the resignation, death or permanent removal of the Governor, they could have easily said so. They chose, however, to say that upon the happening of either of those contingencies the Lieutenant Governor should *assume the duties of the office* and discharge them for the residue of the term. [Emphasis supplied.] *Id.* at 372.

Note that, on the one hand, the Court, by stating 'unless he does so' implies that the lieutenant governor *could* resign his office when the Governor's duties devolved upon him under the Constitution and, thus, create a 'vacancy' in the office of Lieutenant Governor, yet, on the other hand notes that he only has the right to act as governor 'by reason of being Lieutenant Governor'. This exact issue has been considered by New Jersey's highest court as has previously been discussed. In concluding its line of reasoning about the lack of vacancy in the office of lieutenant governor the Court stated:

It would be idle to say that upon the resignation of the Governor there was thereby created a vacancy in the office of Lieutenant Governor, in view of the specific language of sections 14 and 15, *supra*. If that be true, then the Lieutenant Governor, upon assuming the powers and duties of the Governor, would be entitled to appoint a Lieutenant Governor. In this manner he could divest the people of their representative chosen by the Legislature, namely the president pro tempore, to preside during the absence of the Lieutenant Governor. In our opinion this was never contemplated and never intended by the framers of the Constitution, or the people who adopted it. *Id.* at 372.

\*12 Under a constitutional provision similar to Idaho's, the Arizona secretary of state assumed the duties of governor. The germane question presented to the Court in *State ex rel. De Concini v. Garvey*, 67 Ariz. 304, 195 P.2d 153 (1948), was: 'upon the death of Governor Osborne did the respondent become vested with the *office* of governor for the remainder of the term?' [195 P.2d at 154.] it was held:

The framers of our constitution never intended that there should be any interim in which the affairs of state were not executed for they said in explicit language that upon the happening of *any* of the contingencies mentioned in section 6, article 5, *supra*, [*Arizona Constitution*] the powers and duties of the office of governor were to be immediately transferred to the secretary of state who was then given a mandate to discharge the duties of the office for the residue of the term for which the governor was elected. He, as secretary of state, acts as governor and is empowered to perform all the duties of that office, and his official acts performed as acting governor are valid. [Citation omitted.]

We have observed that the prevailing view is that an inferior officer does not vacate his office and become governor de jure and de facto where the several constitutions provide merely that the duties and powers of the office devolve upon him. *Id.* at 155-156.

The Court concluded:

The respondent took an oath to perform the duties of secretary of state. His duties embrace the responsibility to act as governor in case any of the contingencies provided for in the constitutional provision arise. [Citation omitted.]

We, therefore, hold that respondent Garvey is not governor de jure or de facto but merely ex officio or acting governor invested by constitutional mandate with all of the powers and duties of that high office, which devolve upon him by virtue of the fact that he is secretary of state. Respondent, however, is entitled to physical possession of the office space and facilities provided for the chief executive of the state, but as no provision has been made that the emoluments of

the office of governor inure to the secretary of state when acting as governor he is entitled only to the compensation provided for the secretary of state. *Id.* at 157–158.

Since Idaho's constitutional provision provides that the lieutenant governor is entitled to 'the powers, duties and emoluments' of the office of governor, it seems clear that the lieutenant governor would accede to the governor's salary whenever he assumed the role of that chief executive, regardless of whether it was determined that he held the office de facto or de jure, or merely ex officio or as acting governor. The question of whether the lieutenant governor remains further entitled to the emoluments, including salary, of *that* office while the gubernatorial duties have devolved upon him is still an open one. As noted herein, courts have gone both ways on the issue, some holding that the person may draw both salaries even where there is an express constitutional prohibition against an officer of state government being paid more than one salary. Only the courts may provide the definitive answer for Idaho to that dilemma.

\*13 In *State ex rel. Chatterton v. Grant*, 12 Wyo. 1, 73 P. 470 (1903), Chatterton, Wyoming secretary of state, became acting governor upon the death of the incumbent governor by virtue of that state's constitution. He continued also to perform the duties of secretary of state. He sued to recover salary as secretary of state and also as governor. The Wyoming Supreme Court permitted him to recover both salaries, holding, in effect, that he was performing, with constitutional sanction, the duties of both offices, and ruled:

It certainly cannot be held that the offices of Governor and Secretary of State are incompatible, in the sense that the same person, if Secretary of State, cannot legally act in the dual capacity and perform the duties of each office, upon the death, disability, or resignation of the Governor, since the Constitution and statutes expressly require it. No question of compatibility is involved. 73 P. at 472.

In Nevada, in *State ex rel. Hardin v. Sadler*, 23 Nev. 356, 47 P. 450 (1897), the Nevada Constitution provided for devolution of powers and duties of the office of governor upon the lieutenant governor for the residue of the term or until any disability should cease. Construing this provision, the Nevada Supreme Court ruled:

If a vacancy occurs in the office of governor, the powers and duties of the office devolve upon the lieutenant governor. But there is no vacancy created thereby in the office of lieutenant governor. The officer remains lieutenant governor, but invested with the powers and duties of governor. 47 P. at 450.

Though the Nevada Court chose to use the term 'vacancy' regarding the status occurring in the office of governor, it would appear that the better reasoned conclusion, supported by most case law, is that no true 'vacancy' does occur in the governor's office through death, resignation, disability, or the like, inasmuch as the Constitution calls for mandatory, automatic succession in such cases. Thus, in no instant of time can a true 'vacancy' be deemed to have occurred so long as there remains a constitutionally designated and qualified officer able to assume the powers, duties and emoluments of the office of governor.

In yet another Nevada Supreme Court case, *State ex rel. Sadler v. La Grave*, 23 Nev. 216 45 P. 243, 35 L.R.A. 233 (1896), the Nevada state comptroller contended that when the powers and duties of the office of governor devolved upon the lieutenant governor by virtue of that state's Constitution (similar to Idaho's), no change occurs in the position of that officer, who remains lieutenant governor, exercising the powers and duties of the governor, but not entitled to the salary attached to the office. The Nevada Supreme Court held that the lieutenant governor while acting governor was entitled to the salary attached to the office of governor. Concurring, Chief Justice Bigelow noted:

I concur in the judgment, but do not wish to be understood thereby as holding that, upon the death of the governor, the lieutenant governor becomes 'governor' in the full sense of the term. Justice Belknap's opinion might possibly be so construed. 45 P. at 245.

\*14 In *Furtrell v. Oldham*, 107 Ark. 386, 155 S.W. 501, Ann. Cas. 1915A, 571 (1913), as stated by the Court: The case turns on the question whether, on the resignation of the Governor, the then incumbent of the office of president of the senate succeeded to the vacated office, or whether merely as such president of the senate the powers, duties, and emoluments of the office of Governor devolved upon him while he remained president. 155 S.W. at 503.

As will be seen from the style of the question the constitutional provision in Arkansas relating to devolution when a governor leaves office is virtually identical to that of Idaho, except that their president of the senate is apparently not also termed lieutenant governor, as is the case in Idaho. The Court concluded:

If the framers of the Constitution had intended to provide for the devolution of the office of Governor, in case of vacancy by resignation, or otherwise, upon the president of the senate, that intention could easily have been expressed in appropriate words. But they chose other terms which clearly observe the distinction between the course of succession of the office itself and the mere devolution of the duties and emoluments of the office for the time being, and deliberately adopted the latter as the best means of having the government administered until the people themselves can elect a governor. *Id.* at 505.

In the case of *People ex rel. Lynch v. Budd*, 114 Cal. 168, 45 P. 1060 (1896), the lieutenant governor died during his term and the governor appointed a successor. Both parties conceded that the vacancy caused by the death of the incumbent was one which the governor had the power to fill. Construing California's constitutional provision relating to 'vacancies' in the offices of governor and lieutenant governor, the Court noted:

It will be seen that in case of a vacancy in the office of governor the vacancy is not to be filled, but the powers and duties devolve upon the lieutenant governor, *who does not cease to be lieutenant governor*. [Emphasis supplied.] Under such circumstances it would hardly be contended that when the powers and duties of the governor devolve upon the lieutenant governor the latter thereby becomes governor, and can thereby appoint a lieutenant governor. Nor do I think it could be contended that when the president pro tempore of the senate acts as governor he could appoint a person to fill the vacancy in the office of lieutenant governor. If he could, he would then appoint himself out of office, and it would be his duty to do so.

But it is conceded by the parties that upon the death of the lieutenant governor the governor may fill the vacancy by appointment. This is unmistakably within the language of section 8, art. 5 [*California Constitution*] . . . 45 P. at 1060.

Though considering whether a deputy was authorized to assume the duties of the superintendent of the state insurance department during the absence and inability of the superintendent, the New York appellate court in *People ex rel. Church v. Hopkins*, 55 N.Y. 74 (1873), considered precedent in that state's executive branch noting:

\*15 But there are precedents which, though not judicial, I regard as entitled to be considered as decisive of the question under consideration. [The New York constitutional provision for powers and duties of governor devolving upon the lieutenant governor were set out.] On the 11th day of February, 1828, the office of Governor became vacant by the death of De Witt Clinton, the then incumbent of the office, and its powers and duties, under the above provision of the Constitution, devolved upon Nathaniel Pitcher, then lieutenant governor. The question arose whether he was to be regarded, in the exercise of the powers and performance of his duties so vested in him, as acting governor, or in the performance of the contingent duties of lieutenant governor, and, as a consequence, whether he was entitled to the salary of the former office, or the compensation given to the lieutenant governor for his services as such. It was held by William L. Marcy, then comptroller, that he was to be regarded as the acting governor, and entitled to the salary given by law to that officer. The same questions, under the same provision, again arose in 1829, upon the resignation of the office of governor by Martin Van Buren, and the powers and duties of the office devolving upon Enos T. Throop, then lieutenant governor, and were decided in the same way by Silas Wright, then comptroller. It will be seen that these questions were identical with that in the present case. We surely shall not go far astray in following the precedents established by these able jurists, wise statesmen and rigid economists. 55 N.Y. at 80-81.

All justices concurred.

It should be readily apparent from the foregoing cases that though several states have considered situations similar to that which Idaho faces, under similar constitutional provisions, there is no consistent underlying thread tying all the cases together into a uniform pattern. The interpretations of various aspects of the devolution problem are so diverse that it is perilous for any but a court to tread in the area. As a consequence of the lack of uniform interpretation this is one situation where the Attorney General believes that discretion and duty both require submission of the basic question and its numerous side issues to the Idaho Supreme Court in the first instance.

**AUTHORITIES CONSIDERED:**

1. *Idaho Constitution*, Article 4, §§ 6, 12 & 13.
2. *Idaho Code*, Sections 50-904 & 50-914.
3. Idaho Cases: *Moon v. Masters*, 73 Idaho 146, 247 P.2d 158 (1952); *Budge v. Gifford*, 26 Idaho 521, 144 P. 333 (1914).
4. *United States Constitution*, Article 2, § 6.
5. Other cases: *Merriam v. Clinch*, 6 Blatchf. 5 Fed. Cas. No. 9,460 (S.D.N.Y. 1867); *State ex rel. De Concini v. Garvey*, 67 Ariz. 304, 195 P.2d 153 (1948); *Furtell v. Oldham*, 107 Ark. 386, 155 S.W. Ann. Cas. 1915A, 571 (1913); *People ex rel. Lynch v. Budd*, 114 Cal. 168, 45 P. 1060 (1896); *People ex rel. Parks v. Cornforth*, 34 Col. 107, 81 P. 871 (1905); *State ex rel. Lamey v. Mitchell*, 97 Mont. 252, 34 P.2d 369 (1934); *State ex rel. Hardin v. Sadler*, 23 Nev. 356, 47 P. 450 (1897); *State ex rel. Sadler v. La Grave*, 23 Nev. 216, 45 P. 243 35 L.R.A. 233 (1896); *State v. Heller*, 63 N.J. Law. 105, 42 A. 155, 57, L.R.A. 312 (1899); *People ex rel. Church v. Hopkins*, 55 N.Y. 74 (1873); *State ex rel O'Hara v. Appling*, 215 Or. 303, 334 P.2d 482 (1959); *Olcott v. Hoff*, 92 Or. 462, 181 P. 466 (1919); *Chadwick v. Earhart*, 11 Or. 389, 4 P. 1180 (1884); *State ex rel. Murphy v. McBride*, 29 Wash. 335, 70 P. 25 (1902); *State ex rel. Chatterton v. Grant*, 12 Wyo. 1, 73 P. 470 (1903).

\*16 WAYNE L. KIDWELL  
Attorney General of the State of Idaho

ANALYSIS BY:

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Chief Deputy Attorney General  
State of Idaho

1977 Idaho Op. Atty. Gen. 51 (Idaho A.G.), Idaho Op. Atty. Gen. No. 77-1, 1977 WL 25063

256 N.C. 401  
Supreme Court of North Carolina.

J. Max THOMAS, Petitioner,

v.

STATE BOARD OF ELECTIONS, David M. McConnell, Chairman; Warren R. Williams, Joseph E. Zaytoun, Robert S. Ewing, Dan S. Judd, Members of the State Board of Elections; and Raymond C. Maxwell, Executive Secretary, Respondents.

No. 452

Feb. 28, 1962

Mandamus proceeding to compel State Board of Elections to accept petitioner's filing fee and to certify him as a candidate for office of lieutenant-governor in primary election to fill unexpired term of deceased lieutenant-governor. The Superior Court, Wake County, Wm. Y. Bickett, J., dismissed the proceeding, and the petitioner appealed. The Supreme Court, Denny, J., held that the succession of governor and lieutenant-governor is fixed by the constitution and a vacancy in the office of lieutenant-governor may not be filled at an election for any portion of unexpired term.

Affirmed.

West Headnotes (4)

[1] States

⇨ Governor

States

⇨ Lieutenant Governor

The succession of governor and lieutenant-governor is fixed by the Constitution and a vacancy in the office of lieutenant-governor may not be filled at an election for any portion of unexpired term. Const. art. 2, §§ 1 et seq., 19, 20; art. 3, §§ 1 et seq., 2, 11, 12, 13; G.S. § 163-7.

Cases that cite this headnote

[2] States

⇨ Lieutenant Governor

Governor has no authority to appoint a successor to fill out vacancy existing by reason of death of lieutenant-governor. Const. art. 2, §§ 1 et seq., 19, 20; art. 3, §§ 1 et seq., 2, 11, 12, 13; G.S. § 163-7.

Cases that cite this headnote

[3] States

⇨ Lieutenant Governor

When vacancy occurs in office of lieutenant-governor, the powers, duties and emoluments of such office devolve upon president of senate for unexpired portion of the lieutenant-governor's term. Const. art. 2, §§ 1 et seq., 19, 20; art. 3, §§ 1 et seq., 2, 11, 12, 13; G.S. § 163-7.

I Cases that cite this headnote

[4] Mandamus

⇨ Nature and Scope of Remedy in General

Mandamus

⇨ Existence and Adequacy of Other Remedy in General

Mandamus

⇨ Nature and Existence of Rights to Be Protected or Enforced

Mandamus is a proceeding of a civil nature and it can be maintained only when there is no other adequate remedy and when right sought to be enforced is not in doubt.

Cases that cite this headnote

**\*\*165 \*402** This is a proceeding instituted in the Superior Court of Wake County by the petitioner, J. Max Thomas, who seeks to have the court issue in his behalf a writ of mandamus compelling respondent State Board of Elections to accept his filing fee and certify him as a candidate for the office of Lieutenant-Governor of North Carolina in the primary election to be held in the year 1962, to fill the unexpired term of the late H. Cloyd Philpot as Lieutenant-Governor of North Carolina.



The petitioner tendered a notice of candidacy and a filing fee of \$21.00 to the respondents on 15 December 1961. Petitioner is seeking to become a candidate of the Democratic Party for the office of Lieutenant-Governor in the primary to be held in May 1962.

Respondents answered the petition and denied the legal right of the petitioner to become a candidate for such office and alleged that said office was not open for the filing of candidates and would not be until the primary to be held in 1964.

The respondents filed a demurrer *ore tenus* to the petition and the matter was heard before his Honor, William Y. Bickett, Resident Judge of the Tenth Judicial District, in Chambers in the Wake County Courthouse in Raleigh, North Carolina, on 20 January 1962.

There were no questions or issues of fact to be determined or passed upon. It was admitted that the petitioner tendered the proper filing fee, and that he is eligible in all respects to become a candidate of the Democratic Party for the office of Lieutenant-Governor of this State if, under the Constitution and laws of this State, the year 1962 and the primary to be held in said year is the proper time for the election of a candidate to fill such office. Therefore, the matter was heard upon the pleadings and the demurrer interposed by the respondents and upon argument of counsel.

His Honor sustained the demurrer *ore tenus*, ordered that no writ of mandamus issue, and dismissed the proceeding. Judgment was entered accordingly.

The petitioner appeals to this Court, assigning error.

#### Attorneys and Law Firms

R. Floyd Crouse, Sparta, Joe Branch, Enfield, Irving E. Carlyle, Winston-Salem, for petitioner.

T. W. Bruton, Atty. Gen., Ralph Moody, Asst. Atty. Gen., for respondents.

#### Opinion

DENNY, Justice.

The question presented for determination arises out of the following factual situation: The Honorable H. Cloyd Philpot was \*403 elected Lieutenant-Governor of this State for a term of four years in the general election in

November 1960, and took the oath of office and entered upon the duties of the office in January 1961. He died on 19 August 1961.

\*\*166 As a matter of history, the Honorable Tod R. Caldwell was elected Governor and the Honorable Curtis H. Brogden was elected Lieutenant-Governor of North Carolina for four-year terms in 1872. Governor Caldwell died on 11 July 1874. Lieutenant-Governor Brogden took the oath of office as Governor on 14 July 1874. See Governor's Message to the General Assembly, reported in the Journal of the House, Session 1874-75, beginning on page 21.

It might be well to note that the succession of Lieutenant-Governor Brogden to the office of Governor is the only instance in the history of this State since the office of Lieutenant-Governor was created by the Constitutional Convention of 1868, when the Lieutenant-Governor succeeded to the Governorship before the midterm general election. In each other instance in which a Lieutenant-Governor has succeeded to the Governorship in this State, the vacancy in the office of Governor occurred after the midterm general election had been held. However, Governor Caldwell having died on 11 July 1874, less than thirty days prior to the next general election held on 6 August 1874, the question now before this Court has never been, nor could it have been, raised until the death of Lieutenant-Governor Philpot.

[I] Therefore, the determinative question presented on this appeal is simply this: Is the succession of Governor and Lieutenant-Governor fixed by our Constitution, thereby excluding the right to have the vacancy in the office of Lieutenant-Governor filled by election prior to November 1964?

In considering the question presented, it is well to keep in mind that the offices of Governor and Lieutenant-Governor, aside from the powers and duties, are treated in the same constitutional manner. For example: The offices of the Executive Department of the State government were established and the terms fixed by the provisions of Article III, Section 1 of the Constitution of North Carolina, which read as follows: 'OFFICERS OF THE EXECUTIVE DEPARTMENT; TERMS OF OFFICE.--The executive department shall consist of a Governor, in whom shall be vested the supreme executive power of the State; a Lieutenant-Governor, a Secretary of State, an Auditor, a Treasurer, a Superintendent of Public Instruction,

an Attorney General, a Commissioner of Agriculture, a Commissioner of Labor, and a Commissioner of Insurance, who shall be elected for a term of four years by the qualified electors of the State, at the same time and places and in the same manner as members of the General Assembly \*404 are elected. Their term of office shall commence on the first day of January next after their election, and continue until their successors are elected and qualified: Provided, that the officers first elected shall assume the duties of their office ten days after the approval of this Constitution by the Congress of the United States, and shall hold their offices four years from and after the first day of January.'

The eligibility requirements of the Governor and Lieutenant-Governor are set out in the Constitution and are the same. Article III, Section 2 of the Constitution is as follows: 'QUALIFICATIONS OF GOVERNOR AND LIEUTENANT-GOVERNOR.--No person shall be eligible as Governor or Lieutenant-Governor unless he shall have attained the age of thirty years, shall have been a citizen of the United States five years, and shall have been a resident of this State for two years next before the election; nor shall the person elected to either of these two offices be eligible to the same office more than four years in any term of eight years, unless the office shall have been cast upon him as Lieutenant-Governor or President of the Senate.' (Emphasis added.)

There is certainly no denial of the fact that when the office of Governor becomes vacant, there is a constitutional plan of succession other than by an election, to fill the vacancy for the unexpired term. It is necessary, therefore, to examine the several sections of the Constitution bearing on the \*\*167 duties of the Lieutenant-Governor and the procedure to be followed when the 'powers, duties and emoluments of the office of Governor shall devolve' upon the Lieutenant-Governor and he is unable to act.

Article III, Section 11 prescribes the duties of the Lieutenant-Governor as follows: 'DUTIES OF THE LIEUTENANT-GOVERNOR.--The Lieutenant-Governor shall be President of the Senate but shall have no vote unless the Senate be equally divided. He shall receive such compensation as shall be fixed by the General Assembly.'

Article III of the Constitution deals with the Executive Department of our State government. The Lieutenant-Governor is an officer of the Executive Department. Even

so, Article II of our Constitution which deals with the Legislative Department of the government, in Section 19, provides as follows: 'PRESIDENT OF THE SENATE.--The Lieutenant-Governor shall preside in the Senate, but shall have no vote unless it may be equally divided.' Article II further contains the following provisions in Section 20: 'OTHER SENATORIAL OFFICERS.--The Senate shall choose its other officers and also a speaker (protempore) in the absence of the Lieutenant-Governor, or when he shall exercise the office of Governor.'

The constitutional method of succession is set out in \*405 Article III, Section 12 of our Constitution which reads as follows: 'IN CASE OF IMPEACHMENT OF GOVERNOR, OR VACANCY CAUSED BY DEATH OR RESIGNATION.--In case of the impeachment of the Governor, his failure to qualify, his absence from the State, his inability to discharge the duties of his office, or, in case the office of Governor shall in anywise become vacant, the powers, duties and emoluments of the office shall devolve upon the Lieutenant-Governor until the disabilities shall cease or a new Governor shall be elected and qualified. In every case in which the Lieutenant-Governor shall be unable to preside over the Senate, the senators shall elect one of their own number president of their body; and the powers, duties and emoluments of the office of Governor shall devolve upon him whenever the Lieutenant-Governor shall, for any reason, be prevented from discharging the duties of such office as above provided, and he shall continue as acting Governor until the disabilities be removed, or a new Governor or Lieutenant-Governor shall be elected and qualified. Whenever, during the recess of the General Assembly, it shall become necessary for the President of the Senate to administer the government, the Secretary of State shall convene the Senate, that they may elect such president.'

We think the provisions of our Constitution clearly point out upon whom the powers, duties and emoluments of the offices of Governor and Lieutenant-Governor shall devolve in the event of a vacancy in either or both of said offices. We think this view is further supported by the provisions of Section 13 of Article III in our Constitution which reads as follows: 'DUTIES OF OTHER EXECUTIVE OFFICERS.--The respective duties of the Secretary of State, Auditor, Treasurer, Superintendent of Public Instruction, Attorney General, Commissioner of Agriculture, Commissioner of Labor, and Commissioner of Insurance shall be prescribed by

law. If the office of any of said officers shall be vacated by death, resignation, or otherwise, it shall be the duty of the Governor to appoint another until the disability be removed or his successor be elected and qualified. Every such vacancy shall be filled by election at the first general election that occurs more than thirty days after the vacancy has taken place, and the person chosen shall hold the office for the remainder of the unexpired term fixed in the first section of this article: Provided, that when the unexpired term of any of the offices named in this section in which such vacancy has occurred expires on the first day of January succeeding the next general election, the Governor shall appoint to fill said vacancy for **\*\*168** the unexpired term of said office.' This last proviso was authorized by Chapter 1033 of the North Carolina Session Laws of 1953, **\*406** and submitted to and approved by a vote of the people at the general election held on 2 November 1954.

It will be noted that the offices of Commissioner of Agriculture, Commissioner of Labor, and Commissioner of Insurance, have been created since the adoption of the Constitution in 1868 and Sections 1 and 13 of Article III of the Constitution amended to include these offices in the Executive Department of the State government.

The petitioner contends that his petition for a writ of mandamus is clearly supported by the provisions of G.S. s 163-7, reading as follows: 'FOR VACANCIES IN STATE OFFICES.--Whenever any vacancies shall exist by reason of death, resignation, or otherwise, in any of the following offices, to wit, Secretary of State, Auditor, Treasurer, Superintendent of Public Instruction, Attorney General, Solicitor, Justices of the Supreme Court, judges of the superior court, or any other State officer elected by the people, the same shall be filled by elections, to be held in the manner and places and under the same regulations and rules as prescribed for general elections, at the next regular election for members of the General Assembly which shall occur more than thirty days after such vacancy, except as otherwise provided for in the Constitution.'

In our opinion, when the General Assembly enacted the foregoing statute, it clearly recognized that the Governor and the Lieutenant-Governor were not subject to its provisions and that is the reason the statute contains the provision, 'except as otherwise provided for in the Constitution.'

Moreover, the Constitution does not otherwise provide except as to the offices of Governor and Lieutenant-Governor.

If it had been the intent of the framers of the Constitution to authorize or require the election of a successor to fill a vacancy in the office of Lieutenant-Governor, as required with respect to the offices named in the Constitution in Section 13, Article III, then we can think of no sound reason why the framers of the Constitution did not include the office of Lieutenant-Governor in Section 13, Article III of the Constitution. Every office in the Executive Department of the State government created by the Constitutional Convention of 1868, was named in Section 13 of Article III of the Constitution, and the manner of succession in the event of a vacancy in any of said offices is explicitly set out therein, except the offices of Governor and Lieutenant-Governor.

Moreover, in each of the offices named in Section 13, Article III of the Constitution in which a vacancy is required to be filled, the duty is imposed upon the Governor to appoint another to fill the office until a successor is elected and qualified.

[2] **\*407** Consequently, if the contentions of the petitioner are correct, we can think of no valid reason why the Governor should not have appointed a successor to Lieutenant-Governor Philpot immediately after his death, to serve until the next general election. We hold, however, there is no constitutional provision which authorizes the Governor to appoint a successor to Lieutenant-Governor Philpot, to fill out the vacancy now existing by reason of his death. Furthermore, no Governor has ever attempted to appoint another to fill a vacancy in the office of Lieutenant-Governor.

Here, again, we think the framers of the Constitution deliberately and advisedly provided for the succession of Governor and Lieutenant-Governor otherwise than by election, thereby withholding from the Governor the power to name his potential successor. On the other hand, whenever it becomes necessary for a President of the Senate to be elected, upon whom the powers, duties and emoluments of the office of Governor or Lieutenant-Governor may devolve, the power and responsibility for electing a President of the Senate is vested **\*\*169** by the Constitution in that body. Section 12, Article III of the Constitution of North Carolina.

The factual situation involved in this appeal is not controlled by the decision in *Rodwell v. Rowland*, 137 N.C. 617, 50 S.E. 319.

We hold that the Constitution provides for the succession of the Governor and the Lieutenant-Governor and does not authorize a vacancy in either office to be filled at an election for any portion of an unexpired term. Section 12, Article III of the Constitution of North Carolina.

[3] We further hold that when a vacancy occurs in the office of Lieutenant-Governor, the powers, duties and emoluments of the office of Lieutenant-Governor devolve upon the President of the Senate who shall discharge the duties and powers of the office of Lieutenant-Governor for the unexpired portion of the term to which the Lieutenant-Governor was elected.

In the case of *State v. Emery*, 224 N.C. 581, 31 S.E.2d 858, 157 A.L.R. 441, Stacy, C. J., speaking for the Court, said: 'The will of the people as expressed in the Constitution is the supreme law of the land. *Warrenton v. Warren County*, 215 N.C. 342, 2 S.E.2d 463. In searching for this will or intent all cognate provisions are to be brought into view in their entirety and so interpreted as to effectuate the manifest purposes of the instrument. \* \* \*

When the provisions of our Constitution bearing on the question now before us are properly interpreted, we think

they support in letter and spirit the conclusion we have reached.

[4] '\* \* \* Mandamus is an action or proceeding of a civil nature, extraordinary \*408 in the sense that it can be maintained only when there is no other adequate remedy and designed to enforce clear legal rights or the performance of ministerial duties which are enjoined by law; but the writ will not be issued to enforce an alleged right which is in doubt.' Not only must the plaintiff show that he has a clear legal right; he must show that the opposing party is under legal obligation to perform the act or to grant the relief for the performance or enforcement of which the action is prosecuted. \* \* \* 'McIntosh, *North Carolina Practice and Procedure*, Second Edition, Volume 2, Section 2445.

In our opinion, the petitioner is not entitled to the writ he seeks and we so hold; therefore, the judgment from which this appeal was taken is

Affirmed.

WINBORNE, C. J., not sitting.

**All Citations**

256 N.C. 401, 124 S.E.2d 164

688 A.2d 288  
Supreme Court of Rhode Island.

In re ADVISORY OPINION TO THE  
GOVERNOR (Appointment to Fill Vacancy  
In Office of Lieutenant Governor).

No. 96-565-M.P.  
|  
Jan. 22, 1997.

Governor filed request for written opinion concerning his authority to fill vacancy in office of lieutenant governor. The Supreme Court held that: (1) governor had authority under Rhode Island Constitution to fill vacancy in office of lieutenant governor for remainder of four-year term for that constitutional office after lieutenant governor vacated his office by assuming office as member of United States House of Representatives, and (2) lieutenant governor appointed by governor to fill vacancy in that office would be expected to serve until next general election, unless General Assembly were to take action that diminished or shortened such period of service.

Question answered.

Lederberg, J., filed dissenting opinion.

West Headnotes (5)

- [1] **Courts**  
↔ Questions Submitted by Legislature or Governor or Other Officer  
Governor's request for written opinion concerning power of governor to appoint person to fill vacancy in constitutional office for remainder of prior incumbent's term had bearing upon performance of constitutional duty of governor, and was thus appropriate and required Supreme Court's written response. Const. Art. 9, § 5; Art. 10, § 3.

1 Cases that cite this headnote

- [2] **States**

↔ Lieutenant Governor

Governor had authority under Rhode Island Constitution to fill vacancy in office of lieutenant governor for remainder of four-year term for that constitutional office after lieutenant governor vacated his office by assuming office as member of United States House of Representatives. Const. Art. 9, § 5.

2 Cases that cite this headnote

- [3] **Constitutional Law**  
↔ Plain, Ordinary, or Common Meaning  
**Constitutional Law**  
↔ Giving Effect to Every Word

When constitutional provision is clear and unambiguous, Supreme Court must accord its provisions their plain and ordinary meaning, and no word or section must be assumed to have been unnecessarily used or needlessly added.

4 Cases that cite this headnote

- [4] **States**  
↔ Legislature  
Unlike United States Congress, Rhode Island General Assembly does not look to State Constitution for grants of power.

Cases that cite this headnote

- [5] **States**  
↔ Lieutenant Governor  
Lieutenant governor appointed by governor to fill vacancy in that office would be expected to serve until next general election, unless General Assembly were to take action that diminished or shortened such period of service by providing another method of filling vacancy for remainder of term of office. Const. Art. 9, § 5.

1 Cases that cite this headnote

**Attorneys and Law Firms**

\*289 Joseph S. Larissa, Jr. /Harris Weiner, for Governor.

Lisa Dinerman, Special Asst. Attorney General, for Plaintiff.

John A. MacFadyen, III, Richard P. Kearns, Providence, for House.

Edward M. Fogarty, Providence, for Senate.

**Opinion**

To His Excellency Lincoln Almond, Governor of the State of Rhode Island and Providence Plantations.

We have received from Your Excellency a request for our written opinion in accordance with article 10, section 3, of the Rhode Island Constitution on the following question.

“Does the Governor have authority pursuant to Article 9, Section 5 of the Rhode Island Constitution to fill a vacancy in the office of Lieutenant Governor for the remainder of a four-year term for that constitutional office?”

Upon receipt of your request, the court invited briefs to be filed by those who were proponents of the Governor's power to appoint and also by those who opposed the purported appointive power of the Governor in respect to filling the vacancy in the office of Lieutenant Governor. Briefs were filed by the executive counsel to the Governor and the Attorney General, who supported the Governor's appointive power. Briefs were filed on behalf of the Rhode Island House of Representatives and its Speaker and on behalf of the Majority Leader of the Rhode Island Senate, opposing the purported appointive power of the Governor to fill the vacancy in the office of Lieutenant Governor.

All parties agree that the office of Lieutenant Governor became vacant by operation of law on January 7, 1997, when the incumbent \*290 Lieutenant Governor, Robert A. Weygand, assumed office as a member of the United States House of Representatives. This action on his part vacated his office as Lieutenant Governor pursuant to the provisions of article 3, section 6, of the Rhode Island Constitution, which forbid any person holding office under the government of the United States to act as a

general officer of this state or as a member of the General Assembly. It is undisputed that Lieutenant Governor Weygand took the oath of office as a member of the United States Congress on January 7, 1997, and that his doing so created a vacancy in the office of Lieutenant Governor.

The Governor argues that he has the power to appoint a person to fill this vacancy pursuant to article 9, section 5, of the Rhode Island Constitution which reads as follows:

“**Authority to fill vacancies.**—The governor may fill vacancies in office not otherwise provided for by this Constitution or by law, until the same shall be filled by the general assembly, or by the people.”

I

Propriety of the Request

[1] Neither the proponents nor the opponents of the Governor's appointive power have challenged the propriety of this request. We have stated on numerous occasions that we shall give an advisory opinion to the Governor on a matter that has a bearing on a present constitutional duty awaiting performance by the Governor. *See, e.g., In re Advisory From The Governor*, 633 A.2d 664, 666 (R.I.1993); *In re Advisory Opinion (Chief Justice)*, 507 A.2d 1316, 1319 (R.I.1986); *In re Request for Advisory Opinion Regarding House Bill 83-H-5640*, 472 A.2d 301, 302 (R.I.1984).

The present request asks our opinion concerning the power of the Governor to appoint a person to fill a vacancy in a constitutional office for the remainder of the prior incumbent's term. This question certainly has a bearing upon the performance of a constitutional duty by the Governor, and thus the request is appropriate and requires our written response.

II

Existence of the Power

[2] The provisions of article 9, section 5, of the Rhode Island Constitution are straightforward and

unambiguous. The Governor is endowed by these provisions with the authority (not mandatory) to "fill vacancies in office not otherwise provided for by this Constitution or by law, until the same shall be filled by the general assembly, or by the people." The Senate and the House as amici agree that there is no specific provision in the State Constitution for the filling of a vacancy in the office of Lieutenant Governor. This is contrasted with the clearly focused provisions contained in article 4, section 4, of the Constitution, which provide for filling of a vacancy in the offices of the Secretary of State, the Attorney General, or the General Treasurer by the Grand Committee of the General Assembly. This section also authorizes the Governor to appoint some person to fill such a vacancy until a successor is elected by the General Assembly and is qualified to act.

The House and the Senate are in consonance in contending that although the Constitution does not provide for the filling of a vacancy in the office of Lieutenant Governor, save by the general provisions of article 9, section 5, the provisions of that section are nevertheless not triggered by a vacancy in the office of Lieutenant Governor. They argue that other provisions of the Constitution provide for transfer of the functions of the office of Lieutenant Governor in his absence or inability to serve for any cause. For example, the Constitution does provide for the election of a person to preside over the Senate in the absence of the Lieutenant Governor in article 8, section 3. This section reads as follows:

**"Presiding officer in absence of lieutenant governor.**-If by reason of death, resignation, absence, or other cause, the lieutenant governor is not present, to preside in the senate, the senate shall elect one of its own members to preside during such absence or vacancy; and until such election is made by the senate, the secretary of state shall preside. The presiding \*291 officer of the senate shall preside in grand committee and in joint assembly."

The Constitution also provides in article 9, section 10, that in the event of a vacancy in both the offices of Governor and Lieutenant Governor, the Speaker of the House of Representatives "shall in like manner fill the office of governor during such vacancy." The amici House and Senate also contend that historical precedents under both the Charter of King Charles II of 1663 and the prior Constitution of 1843 militate against the propriety of a

gubernatorial appointment of a person to fill a vacancy in the office of Lieutenant Governor.<sup>1</sup>

[3] We confirm our observation contained in *Kass v. Retirement Board of the Employees' Retirement System*, 567 A.2d 358, 360 (R.I.1989), that " 'a page of history is worth a volume of logic' in determining the extent of state as well as federal constitutional limitations," quoting Justice Oliver Wendell Holmes in *New York Trust Co. v. Eisner*, 256 U.S. 345, 349, 41 S.Ct. 506, 507, 65 L.Ed. 963, 983 (1921). Nevertheless, we also adhere to the proposition that when a constitutional provision is clear and unambiguous, we must accord its provisions their plain and ordinary meaning, *City of Pawtucket v. Sundlun*, 662 A.2d 40, 45 (R.I.1995); *In re Advisory Opinion to the Governor*, 612 A.2d 1, 7 (R.I.1992), and "no word or section must be assumed to have been unnecessarily used or needlessly added." *Kennedy v. Cumberland Engineering Co.*, 471 A.2d 195, 198 (R.I.1984). Historical anecdotal occurrences cannot overcome a clear and unambiguous grant of constitutional power.

[4] We also agree, as we set forth in *Kass*, that historically the power of the General Assembly has been plenary and unlimited, save as this authority may have been limited by the Constitution of the United States and/or the Constitution of the State of Rhode Island. 567 A.2d at 360. Unlike the United States Congress, the Rhode Island General Assembly does not look to our State Constitution for grants of power. *In re Advisory Opinion to the House of Representatives*, 485 A.2d 550, 553 (R.I.1984); *Payne & Butler v. Providence Gas Co.*, 31 R.I. 295, 316, 77 A. 145, 154 (1910). "Accordingly, this court has consistently adhered to the view that the General Assembly possessed 'all of the powers inhering in sovereignty other than those which the constitution textually commits to the other branches of our state government and that those that are not so committed \* \* \* are powers reserved to the general assembly.'" *Kass*, 567 A.2d at 361 (quoting *Nugent v. City of East Providence*, 103 R.I. 518, 525-26, 238 A.2d 758, 762 (1968)). In answering the question propounded by the Governor, we must look to the text of article 9, section 5, to determine whether that provision of our Constitution endows the Governor with the power to fill a vacancy in the office of Lieutenant Governor. We believe that it does in clear and unambiguous terms.

Although article 8, section 3, of the Constitution provides for the performance of *functions* by others "[i]f by



reason of death, resignation, absence, or other cause, the lieutenant governor is not present," no provision purports to deal with the filling of a *vacancy* in that office save the general provisions of article 9, section 5. Consequently this section is controlling.

In answering the question propounded by Your Excellency, the justices of this court do not purport to comment upon policy questions relating to the desirability or the necessity of filling a vacancy in this general office but only respond to the question concerning the power of the Governor to do so. We are of the opinion that article 9, section 5, allows the Governor to fill any vacancy that is not otherwise provided for by the Constitution or *by law*.

\*292 Given the plenary authority of the General Assembly, we have little doubt that it could have enacted a statute providing for the filling of a vacancy in the office of Lieutenant Governor as has been suggested by the Attorney General in his brief. We find no express prohibition in the Constitution withholding such power, nor is it forbidden by necessary implication.<sup>2</sup> Nevertheless, the General Assembly has not enacted such a statute, and therefore, the Governor's power to appoint is clearly authorized by article 9, section 5, of the Constitution.

### III

#### Duration of Such Appointment

[5] In light of our recognition of the plenary power of the General Assembly, we cannot say unequivocally that absent death, resignation, or other circumstances causing an additional vacancy a person appointed by the Governor pursuant to article 9, section 5, would serve until the next general election. We are of the opinion that such person would be expected to serve for that period unless the General Assembly were to take action that might diminish or shorten such period of service by providing another method for filling the vacancy for the remainder of the term of office. *See, e.g., Casey v. Willey*, 89 R.I. 87, 96-97, 151 A.2d 369, 374 (1959); *In re Filling of Vacancies by the Governor (Railroad Comm'r)*, 28 R.I. 602, 606, 67 A. 802, 803 (1907). In issuing this caveat, we do not purport to determine the validity of any such actions as might be taken by the General

Assembly subsequent to an appointment by the Governor but only to indicate that such an action might have a significant bearing upon the term during which the person appointed to the vacant office of Lieutenant Governor might serve. However, we reiterate that the Governor's constitutional authority to fill vacancies "is only for a temporary purpose-until the normal elective power shall act." *In re Filling of Vacancies by the Governor*, 28 R.I. at 606, 67 A. at 803. With respect to the office of Lieutenant Governor, "the normal elective power" is the people. The General Assembly has not yet attempted to act in order to invoke this elective power and we have no way of knowing whether it will do so before the existing term of office expires, or if it does act, whether such actions as it may decide to take would be valid.

For the reasons stated, we answer the question addressed to us by the Governor in the affirmative with the caveat that action by the General Assembly might affect the length of the term that such an appointee might serve.

/s/ Joseph R. Weisberger

/s/ JOSEPH R. WEISBERGER

/s/ Chief Justice

/s/ John P. Bourcier

/s/ JOHN P. BOURCIER

/s/ Justice

/s/ Robert G. Flanders, Jr.

/s/ ROBERT G. FLANDERS, Jr.

/s/ Justice

/s/ Donald F. Shea

/s/ DONALD F. SHEA

/s/ Justice (retired and sitting by designation)

LEDERBERG, Justice, dissenting.

I respectfully disagree with the majority's conclusion that section 5 of article 9 of the Rhode Island Constitution authorizes a Governor to fill by appointment a vacancy in the office of Lieutenant Governor. Rather, section 5 of article 9 grants a limited and defined power to a governor to fill only those vacancies "not otherwise provided for by this Constitution or by law." The section does not endow a governor with authority to fill a vacancy in the constitutional office of Lieutenant Governor because the Constitution provides that the people shall *elect* a Lieutenant Governor. It is inconceivable that the \*293 framers intended that a vacancy in that particular constitutional office be filled "by appointment" by the Governor for the very reason that the majority recognizes, namely, "other provisions of the constitution provide for the performance of [the] *functions* " of that office during any such vacancy. Hence, such a vacancy is "otherwise provided for."

The constitution assigns two duties to the Lieutenant Governor: first, to serve as the presiding officer of the Senate and the Grand Committee, R.I. Const. art. 8, sec. 2, and second, to accede to the governorship in the event of a vacancy in that office, R.I. Const. art. 9, sec. 9. The constitution specifically provides that, in the absence of the Lieutenant Governor, "the senate shall elect one of its own members to preside." Article 8, section 3. In fact, even the Lieutenant Governor's duty to preside over the Senate and the Grand Committee will expire on January 14, 2003, at which time "the senate shall elect its president, who shall preside in the senate and in grand committee." Article 8, section 2. In respect to the unlikely event that vacancies arise in the offices of both Governor and Lieutenant Governor, the Constitution provides that the Speaker of the House of Representatives would accede to the governorship. R.I. Const. art. 9, sec. 10. Thus, by expressly providing for the assumption of *all* duties assigned to the Lieutenant Governor, the Constitution has thereby plainly "provided for" the eventuality of a vacancy in that office. Consequently, the Governor's authority under article 9, section 5, to fill vacancies that are "not otherwise provided for" clearly does not apply to a vacancy in the office of Lieutenant Governor.

My colleagues aptly assert that "[a] page of history is worth a volume of logic." Happily, in this case, we do not require volumes of logic to compel the conclusion that the office is to remain vacant in the event of absence, inability,

or vacancy. And, in fact, there are volumes of *history* to support this conclusion.

In each instance that the office of Lieutenant Governor has become vacant since the adoption of the Constitution of 1843, the position has remained vacant until the people elected a Lieutenant Governor at the following election. "Our task in construing constitutions is to give effect to the intent of the framers." *City of Pawtucket v. Sundhm*, 662 A.2d 40, 45 (R.I.1995). In so doing, it is appropriate for this Court to consult extrinsic sources and to "look to the history of the times and examine the state of affairs as they existed when the [provisions were] framed and adopted." *Id.* In this case, the historical record reveals seven occasions when the office of Lieutenant Governor became vacant. Rhode Island Manual at 205-13 (1991-1994).

In July 1853, just eleven years after the Constitution was adopted, the Lieutenant Governor acceded when the Governor resigned, and the office of lieutenant governor remained vacant for ten months (out of a twelve-month term) until May 1855. In September 1862, the Lieutenant Governor resigned after his election to the United States Senate, and the office of Lieutenant Governor remained unoccupied for eight months until May 1863. In February 1928, the Lieutenant Governor acceded upon the death of the Governor, and the office of Lieutenant Governor became vacant for eleven months (of a two-year term) until January 1929. From April 1944 to January 1945, a period of nine months, the Lieutenant Governor's office was unoccupied after the Lieutenant Governor resigned to accept a judicial appointment. From October 1945 to January 1947, the Lieutenant Governor's office was vacant for fifteen months of a two-year term, when the Governor resigned and the Lieutenant Governor acceded. In December 1950, the Governor again resigned, and the Lieutenant Governor acceded to his office, creating a vacancy in the Lieutenant Governor's office until January 1951. Finally, in April 1956, the Lieutenant Governor resigned upon his appointment to Superior Court, and the office of lieutenant governor remained vacant for nine months until January 1957. There is no evidence in the historical record that the Governor, or for that matter the General Assembly, ever filled or attempted to fill any of these vacancies by appointing a new Lieutenant Governor.

The majority refers in footnote 1 *supra* to “numerous instances under the Constitution of 1843 when vacancies in the office of Lieutenant Governor either were filled by the \*294 Grand Committee or were left vacant” and notes that the “historical outline is interesting but scarcely controlling [because w]e must construe the current provisions of the Constitution of 1986.” As the historical outline clearly reveals, however, vacancies in the office of Lieutenant Governor were *never* filled after the 1843 Constitution was adopted.<sup>3</sup> Moreover, the provision of the 1986 Constitution we are asked to construe, namely article 9, section 5, is identical to article 7, section 5, of the 1843 Constitution. Ergo, history in this case is not merely “interesting” but is compelling and conclusive as well.

Changes in the constitutional framework of government should not be effectuated without the approval of the people: “the constitution which at any time exists, till changed by an explicit and authentic act of the whole people, is sacredly obligatory upon all.” R.I. Const. art. 1, sec. 1 (quoting the Father of his Country). The comprehensive review of our constitution in 1986 presented an opportunity for the framers to provide for filling this vacancy by appointment had they intended that the office should *not* remain vacant. For example, article 4, section 4, in contrast, *does* direct that vacancies in the constitutional offices of Secretary of State, General Treasurer, and Attorney General be filled by the General Assembly. That section specifically grants power to the Governor to fill vacancies in these three offices in the event the Legislature is not in session, but such appointees serve only “until a successor elected by the general assembly is qualified to act.”

The majority's conclusion misapplies the constitutional history of this state and fails to defer to a century and a half of this court's jurisprudence on the respective powers of the legislative and executive departments. “[T]he power of the General Assembly in this state, as in other states, has been plenary and unlimited, save as this authority may have been limited by the Constitution of the United States and the Constitution of the State of Rhode Island.” *Kass v. Retirement Board of the Employees' Retirement System*, 567 A.2d 358, 360 (R.I.1989). The framers “stoutly \* \* \* refused to vest the executive department with full

executive powers.” *Gorham v. Robinson*, 57 R.I. 1, 23, 186 A. 832, 844 (1936). Fourteen years after the adoption of the 1842 Constitution, this Court recognized the extremely limited power of the executive, stating that “[t]he executive power had been nominal, merely, under the charter; and the constitution extends it very little.” *G & D Taylor & Co. v. Place*, 4 R.I. 324, 349-50 (1856). And, only a year ago, this court concluded that “the executive department-chief executive has today essentially the same limited powers first given in 1842. All that have been added in the intervening one hundred and fifty-three years since that time, are the Governor's limited pardoning and veto powers.” *Narragansett Indian Tribe v. State*, 667 A.2d 280, 281 (R.I.1995).

In spite of the ample history of the office of Lieutenant Governor remaining vacant and in disdain of our unwavering precedents that have construed the Governor's power as “nominal” and “limited,” my colleagues read the catchall provision of article 9, section 5, as providing the remarkable enumerated power to appoint a constitutional officer. The majority does this notwithstanding our previous interpretation of this section as “only a power given to the executive for general convenience *in case some other custodian of it has not been provided*, and it is only for a temporary purpose-until the normal elective power shall act.” (Emphasis \*295 added.) *In re Filling of Vacancies by the Governor (Railroad Comm'r)*, 28 R.I. 602, 606, 67 A. 802, 803 (1907).

It is my opinion that one cannot extract from article 9, section 5, the grant of the extraordinary executive power to appoint the Lieutenant Governor, a constitutional general officer, who, by the very mandate of the Constitution, must be *elected* by the citizens of this state. “[S]uch a construction would go far beyond any meaning which can be legitimately deduced from the text and would be an attempt to stretch its provisions to include circumstances not contemplated by those who framed it.” 28 R.I. at 606, 67 A. at 804.

#### All Citations

688 A.2d 288

#### Footnotes

- 1 The amici and our colleague cite numerous instances under the charter when the General Assembly filled vacancies in the office of deputy governor and numerous instances under the Constitution of 1843 when vacancies in the office of Lieutenant Governor either were filled by the Grand Committee or were left vacant. This historical outline is interesting but scarcely controlling. We must construe the current provisions of the Constitution of 1986. Moreover, the mere fact that a constitutional power has not been exercised does not prove that the power does not exist.
- 2 The maxim "*expressio unius est exclusio alterius*" is too weak a foundation upon which to rest a prohibition based upon necessary implication. See *Opinion of the Court to the Governor in the Matter of the Constitutional Convention*, 55 R.I. 56, 69-73, 178 A. 433, 440-41 (1935). The requirement of article 4, section 4, of the Rhode Island Constitution that vacancies in the office of the Secretary of State, the Attorney General, or the General Treasurer be filled in a certain manner is not inconsistent with an exercise of power by the General Assembly to provide by law for the filling of a vacancy in the office of Lieutenant Governor in a different or, indeed, in a similar manner. 55 R.I. at 69-73, 178 A. at 440-41.
- 3 The record reveals one instance in which a vacancy in the position of Lieutenant Governor-*elect* was filled by the General Assembly. On December 16, 1901, governor-elect William Gregory died, and Charles Kimball, who at the time was both incumbent Lieutenant Governor and Lieutenant Governor-elect, became Governor. Rhode Island Manual at 206-07, 212-13 (1991-1994). On February 18, 1902, the Grand Committee elected George Shepley to the position of Lieutenant Governor. It appears that the authority for this election was section 3 of amendment XI to the Constitution of 1843, which is substantially the same as article 4, section 3, of the 1986 Constitution, pertaining to vacancies among general officers-*elect*, and not any general authority to fill vacancies arising during the term of office of Lieutenant Governor. In any event, history provides no precedent of a Governor's filling a vacancy in the lieutenant governorship, which is the issue before us.

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child's best interests and such placement is approved by the Juvenile Court or requested by the parents or legal custodian of such child.

2. After a Child Welfare Board has determined that a child is "in need of public care or protective services" and that day care center service in a privately operated day care center is "for the best interests" of such child, if the parents of such child are able to pay a part of the cost of care the board may pay to the private agency only the remaining portion of the cost of care.

3. After a Child Welfare Board has determined that a child is "in need of public care or protective services" and that day care center service in a day care center operated by the board itself is "for the best interests" of such child the board may provide the facilities for such care and collect from the parents as much of the cost as it determines they are able to pay.

Respectfully,

HUGH S. JENKINS,  
Attorney General.

1562

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1. GOVERNOR, SUCCESSION TO OFFICE—DEVOLUTION OF POWERS AND DUTIES—DEATH OF PERSON ELECTED GOVERNOR PRIOR TO INDUCTION INTO OFFICE—LAW FOUND IN CONSTITUTION OF OHIO, ARTICLE III, SECTION 2—FORCE AND EFFECT OF ANY LAW ENACTED BY GENERAL ASSEMBLY.
  2. PERSON ELECTED GOVERNOR—ENTITLED TO HOLD OFFICE, DISCHARGE DUTIES AND RECEIVE EMOLUMENTS, TERM OF TWO YEARS, COMMENCING ON SECOND MONDAY OF JANUARY, NEXT AFTER ELECTION AND UNTIL SUCCESSOR ELECTED AND QUALIFIED.
  3. WHERE PERSON ELECTED GOVERNOR DIES SUBSEQUENT TO ELECTION AND PRIOR TO SECOND MONDAY IN JANUARY NEXT FOLLOWING—PERSON HOLDING OFFICE ENTITLED TO CONTINUE UNTIL SUCCESSOR ELECTED AND QUALIFIED.

4. "GOVERNOR" — "GOVERNOR-ELECT" — IF PERSON ELECTED GOVERNOR SHOULD DIE BEFORE INDUCTION INTO OFFICE, DUTIES AND POWERS OF OFFICE WOULD NOT DEVOLVE UPON LIEUTENANT GOVERNOR.

## SYLLABUS:

1. The entire law governing the succession to the office of governor and the devolution of the powers and duties thereof in the event of the death of the person elected to such office prior to his induction thereinto is set out in the Constitution of Ohio and, consequently, an act prescribing a method of such succession or devolution different from that provided for by the Constitution, would, if enacted by the General Assembly, be unconstitutional and without any force and effect in law.

2. Under Section 2 of Article III of the Constitution of Ohio, a person elected to the office of governor is entitled to hold such office and discharge the duties and receive the emoluments thereof for a term of two years commencing on the second Monday of January next after his election, and until his successor is elected and qualified.

3. Where the person elected to the office of governor dies subsequent to his election thereto and prior to the second Monday in January next following, the person holding said office is entitled to hold the same beyond the term for which he was elected and continue therein until his successor is elected and qualified.

4. The term "governor," as the same appears in Section 15 of Article III of the Constitution of Ohio, does not include "governor-elect" and, consequently, if a person elected to the office of governor should die before being inducted into said office, the duties and powers thereof would not devolve upon the lieutenant governor.

Columbus, Ohio, February 3, 1947

Hon. Thos. E. Bateman, Clerk of the Senate  
Columbus, Ohio

Dear Sir:

This will acknowledge receipt of a copy of Senate Resolution No. 21, adopted by the Senate of the 97th General Assembly, which resolution reads as follows:

"Relative to a successor to a governor in case of death of a governor-elect prior to taking office.

WHEREAS, The importance of deciding the successor to a governor-elect who dies before the term of office for which he was elected commences is being forcibly brought to the attention of the public, and

WHEREAS, The constitution of Ohio, in Article 3, Section 2, seems to indicate that the incumbent governor might hold his office until a successor is elected and qualified, and

WHEREAS, This constitutional provision is ambiguous when applied to the situation above stated, and

WHEREAS, It is desirable that this question be determined in order that the orderly processes of the state government might continue in the event of such happenings, now

THEREFORE BE IT RESOLVED, By the Ohio Senate that the attorney general of Ohio is hereby requested for an opinion as to the constitutional authority of the General Assembly to enact laws designating the person to assume the office of governor in the event that the governor-elect should die between the date of his election and the date of the beginning of the term of office for which he was elected."

A search of the Constitution and the statutes of Ohio reveals but three sections of the former which appear to be pertinent to the question concerning the devolution of the duties of the office of governor in the event of the death of the governor-elect before being inducted into office. Said sections, to-wit, Sections 1, 2 and 15 of Article III of the Constitution of Ohio, read as follows:

Section 1. "The executive department shall consist of a governor, lieutenant governor, secretary of state, auditor of state, treasurer of state, and an attorney general, who shall be elected on the first Tuesday after the first Monday in November, by the electors of the state, and at the places of voting for members of the general assembly."

Section 2. "The governor, lieutenant governor, secretary of state, treasurer, and attorney general shall hold their offices for two years; and the auditor for four years. Their terms of office shall commence on the second Monday of January next after their election, and continue until their successors are elected and qualified."

Section 15. "In case of the death, impeachment, resignation, removal, or other disability of the governor, the powers and duties of the office, for the residue of the term, or until he shall be acquitted, or the disability removed, shall devolve upon the lieutenant governor."

It is apparent from an examination of the above sections that if the answer to the aforesaid question is to be found at all, it must be found therein. In such case, there is left no room for the operation of statutes



prescribing the manner in which such duties shall devolve upon the happening of said contingency. In other words, if the above provisions of the Constitution, in their operation, are thought to be unsatisfactory, the power to effect a change therein rests with the people themselves and not with the General Assembly.

Therefore, if the question presented by your resolution is to be answered categorically, it must be stated that the General Assembly is without constitutional authority to enact laws designating the person to assume the duties of the office of governor in the event the governor-elect should die between the date of his election and the date of the beginning of the term of office for which he was elected, or perhaps, expressed more accurately, any laws which might be enacted by the General Assembly which would prescribe a method other than that provided for by the Constitution would be unconstitutional and, consequently, without any force and effect.

However, since your resolution calls attention to the importance of deciding who the successor to a governor-elect would be in the event of his death prior to the commencement of the term for which he was elected, and in order that the initial steps to effectuate a constitutional amendment may be taken by the General Assembly in the event that body, in its wisdom, decides that the constitutional procedure now in force is unsatisfactory, I shall proceed with a consideration of said question.

First, and possibly of paramount importance in the resolution thereof, are the concluding words of Section 2 of Article III of the Constitution. Said section, if dissected and only those parts thereof pertaining to the office of governor exposed, would read:

"The governor shall hold his office for two years and his term of office shall commence on the second Monday of January next after his election and continue *until his successor is elected and qualified.*"

From this it is manifest that unless a successor to an incumbent governor has been elected and is qualified to enter upon the office of governor on the date of the commencement of the term, such incumbent governor will hold over beyond the term for which he was elected. There is certainly no ambiguity of language here which can cast doubt on such conclusion.

It becomes necessary, then, to determine the scope in meaning of the word "successor". The question is: Does such word include, under certain circumstances, the person elected as lieutenant governor for a term commencing at the expiration of the term for which the incumbent governor was elected? I find myself unable to reach such conclusion.

Webster's New International Dictionary, Second Edition, defines "successor" as "\* \* \* one who succeeds to a throne, title, or estate, or is elected or appointed to an office. \* \* \* vacated by another." It will be noted that under the provisions of Section 15 of Article III of the Constitution, the lieutenant governor does not, in case of the happening of any of the contingencies enumerated therein, succeed to the office of governor. Said section provides "\* \* \* the powers and duties of the office \* \* \* shall devolve upon the lieutenant governor." The definition of "devolve" appearing in Webster's New International Dictionary, Second Edition, is "To transfer from one person to another." Therefore, since the lieutenant governor, when called upon to exercise the powers and duties of the office of governor which may have devolved upon him by reason of said constitutional provision, in no sense becomes governor, it is difficult to perceive how he can, in such case, be regarded as a "successor to the governor."

This precise question was before the Supreme Court of Wisconsin in *State, ex rel. Martin v. Ekern*, 228 Wis., 645, wherein constitutional provisions similar to those of Ohio were under consideration. In said case, decided by the court in 1938, it was held:

"3. Under Section 7, Article V, Constitution, the powers and duties of the office of governor devolve on the lieutenant governor during a vacancy in the office of governor, but the lieutenant governor does not become governor, and remains lieutenant governor, on whom devolves the powers and duties of governor, and in such contingency no vacancy occurs in the office of lieutenant governor; but under Section 8, Article V, there may be a vacancy in the office of lieutenant governor as a result of impeachment, displacement, resignation, death, or incapacitating disease."

See also: *State, ex rel. Lamey v. Mitchell*, 97 Mont., 252; *State, ex rel. Hardin v. Sadler*, 23 Nev., 356; *People, ex rel. Lynch v. Budd*, 114 Cal., 168.

This brings me to the next point. In order to conclude that the lieu-

tenant governor would succeed to the office of governor in the event of the death of the person elected to the latter office prior to the commencement of the term for which he was elected, it would, of course, be necessary to construe the word "governor" as it appears in Section 15 of Article III of the Constitution as including "governor-elect."

The word "governor" appears throughout the Constitution in numerous sections. Section 5 of Article III of the Constitution provides that the supreme executive power of this state shall be vested in the governor. Certainly, nobody would contend for one moment that the supreme executive authority of this state is vested in the person elected to the office of governor prior to the time that he is inducted into said office.

Section 8 of Article III of the Constitution empowers the governor to convene the General Assembly in special session. In view of this, could it be tenably argued that the governor-elect could exercise this power? The Constitution (Section 16, Article II) provides that if the governor signs a bill passed by the General Assembly it shall become law. It would certainly require no argument to convince a court that an act of the General Assembly, signed by the governor-elect, has no force and effect. In Section 11 of Article III of the Constitution it is provided that the governor shall have power, after conviction, to grant reprieves, commutations and pardons for crimes. No argument, ingenious though it might be, could release a convict from the penitentiary on a pardon signed by the governor-elect. Section 2 of Article XVII of the Constitution empowers the governor to fill by appointment any vacancy which may occur in any elective state office, other than that of a member of the General Assembly or of governor. Certainly, no one could be found who is bold enough to assert that an appointment to fill a vacancy in a state office could be made by the governor-elect.

Therefore, if the word "governor," as the same appears in the above, and many other sections of the Constitution, can only mean the person who, after being elected to the office of governor, has entered upon his term, no logical or sensible argument could be advanced why said word should be given a different and broader meaning when it appears in Section 15 of Article III of the Constitution.

It is a familiar rule of construction that the same word or phrase, when used in different statutes, should be given the same meaning in each. In this regard, it is stated in 37 O. Jur., 573:

"The same word or phrase when employed in different acts by the same body ought generally to be understood to mean the same thing. Indeed, where the language of an existing statute is ambiguous and the legislature by a previous enactment upon the same subject has, in express language or by clear and indubitable inference, clearly indicated the meaning of the ambiguous word or phrase used in such statute, it will be presumed, in the absence of a later expression to the contrary, to have used the word or phrase in subsequent legislation in the same sense. Accordingly, the meaning of similar terms in other statutes has been used as an aid in determining the meaning of such ambiguous term in the statute under consideration—especially where the statutes containing the similar provisions have been the subject of judicial interpretation. \* \* \*"

See: State, ex rel. v. Tomlinson, 99 O. S. 233; Iroquois Co. v. Meyer, 80 O. S. 676; Heckman v. Adams, 50 O. S. 305; State, ex rel. v. Conn, 110 O. S., 404; Cincinnati Traction Co. v. Public Utilities Commission, 113 O. S. 618.

It is likewise well settled that the rules governing the construction of statutes are applicable to the construction of constitutions. *McMahon v. Keller*, 11 O. App. 410; *Miami County v. Dayton*, 92 O. S. 215; *Shryock v. Zanesville*, 92 O. S. 375. In the latter case, it was stated at page 383:

"In construing constitutional provisions the court must apply the same general rules governing the construction of statutes, mindful, however, of the limitation that in such construction a strict rather than a liberal construction should be had; but after all, the real intention of the body framing the law, be it constitutional convention or general assembly, must be ascertained, if humanly possible, and gives full effect."

An officer-elect is defined in Webster's New International Dictionary, Second Edition, as "A person chosen to an office, but not yet actually inducted into it."

In the case of *Cordell v. Frizell*, 1 Nev. 130, decided by the Supreme Court of Nevada in 1865, the court, in commenting on the distinction between an officer and an officer-elect, stated at page 132:

"The only question for us to determine is, was the relator, on the 31st day of October, 1864 (the day the Constitution took effect), a county officer under the laws of the territory of Nevada? Counsel for relator say the Constitution applies the term 'officer,' as well to those elected as to those who are actually in office, and refer us to several sections where the word *officer*

is used when alluding, not to those in office, but to those elected to fill an office at a future day. Those who have been elected but not inducted into office, are, properly speaking, *officers-elect*—those in office are simply *officers*—those who have been in office, but have gone out, are properly *ex-officers*. It is very proper, in either conversation or writing, when speaking of an *officer elect*, to leave off the suffix, and style him simply an officer, if the context of the sentence shows you are speaking of one not yet inducted into office, but who is to be at a future day; so, too, in speaking of an ex-officer, you may leave off the prefix under like circumstances. But if the term 'officer' is used in a sentence where there is nothing to qualify or control its meaning, everybody understands it refers to an officer then holding and enjoying the office."

In view of the above, I find myself impelled to the conclusion that the word "governor", as used in Section 15 of Article III of the Constitution, means the person holding the office of governor and not the person elected thereto who has not yet entered upon his term.

In reaching the above conclusion, I am not unmindful of the case of State, ex rel. Martin v. Heil, 242 Wis. 41, wherein it was held by the Supreme Court of Wisconsin that:

"The word 'governor,' in general, means the person elected as chief executive official of a state, and the word 'governor,' as used in Section 7, Article V, Constitution, includes, not only a qualified and acting governor, but also a governor-elect who has not qualified and who dies before the beginning of the term for which he was elected."

In discussing the meaning of the word "governor" in Section 7 of Article V of the Constitution of Wisconsin, which contains provisions substantially similar to those of Section 15 of Article III of the Constitution of Ohio, it was stated by Wickhem, J., at page 52:

"\* \* \* The first question to be answered is whether the language of Section 7 so clearly and unambiguously supports the position of counsel for the incumbent that it is not open to construction. It is our conclusion that it does not. The use of the word 'governor' in Section 7 does not unambiguously exclude 'governor-elect.' The term 'governor-elect' is a merely statutory designation, and not a constitutional word. There is no reason, so far as rules having to do with the use of language generally are concerned, why the term 'governor' may not include 'governor elect' for a particular term, and it is a particular term that the Constitution deals with in Section 7. Webster's dictionary

defines governor as 'the person elected as chief executive official of a state in the United States. \* \* \*' It requires no more interpolation to hold that the term 'governor' includes 'governor-elect' than it does to limit it to 'qualified and acting' governor. We see no reason why the word 'governor' as used in Section 7 may not reasonably be taken to include an elected governor who has not qualified."

Since the above statement, which has utterly failed to work conviction in my mind, is all that appears in the opinion as a basis for the holding of the court on this point, I feel that such holding can be cast aside with perfect impunity and without qualm of conscience.

There remains one more cogent reason why the powers and duties of the office of governor would not, under the circumstances set out in your resolution, devolve upon the lieutenant governor. It is to be noted that Section 15 of Article III of the Constitution provides that in case of the death, etc., of the governor, the powers and duties of the office, "for the residue of the term," shall devolve upon the lieutenant governor.

"Residue" is defined in Webster's New International Dictionary, Second Edition, as "that which remains after a part is taken, separated, removed or designated; remnant; remainder; rest." "Residue," as defined by Bouvier, is that which remains of something after taking away some part of it. See also: *Stevens v. Flower*, 46 N. J. Eq. 340; *Morgan v. Huggins*, 48 Fed. 3; *Ricker v. Brown*, 183 Mass. 424; *United States v. Crary*, 2 F. Supp. 870.

Therefore, since "residue" in its natural and popular sense signifies what is left of a number or quantity or period of time after something has been taken therefrom, the duties of the office of governor, were they to devolve upon the lieutenant governor immediately upon the latter's induction into office, which, under Section 2 of Article III of the Constitution, is simultaneous with the induction of the governor into office, clearly would not devolve for the *residue* of the term of the governor. The fact that the word "residue" is written into the section clearly indicates that a part of the term must have elapsed before the powers and duties of the office of governor could devolve upon the lieutenant governor, and, consequently, it would follow that the governor must have entered upon his term of office before the constitutional provision under discussion would apply.

Up to this point, with the exception of *State, ex rel. Martin v. Heil*, supra, wherein constitutional provisions unlike those in Ohio govern, I

have not brought attention to any decisions dealing with the main question before me. While neither of the following cases is exactly in point with the factual situation presented in your resolution, I, nevertheless, feel that the reasoning in each is persuasive and should be given consideration.

In *State, ex rel. Thayer v. Boyd*, 31 Neb. 682, the Supreme Court of Nebraska had before it a case wherein the person receiving the highest number of votes for the office of governor was ineligible, under the constitution, to be elected. The constitutional provisions applicable were set out in Sections 1 and 16 of Article V of the Constitution of Nebraska then in force (1891). Said sections read:

“Section 1. The executive department shall consist of a governor, lieutenant governor, secretary of state, auditor of public accounts, treasurer, superintendent of public instruction, attorney general, and commissioner of public lands and buildings, who shall each hold his office for the term of two years from the first Thursday after the first Tuesday in January next after his election, and until his successor is elected and qualified, \* \* \*.”

“Section 16. In case of the death, impeachment, and notice thereof to the accused, failure to qualify, resignation, absence from the state, or other disability of the governor, the powers, duties, and emoluments of the office for the residue of the term, or until the disability shall be removed, shall devolve upon the lieutenant governor.”

Notwithstanding the fact that the latter section, above quoted, named as one of the contingencies upon the happening of which the duties of the office of governor would devolve upon the lieutenant governor, the failure of the governor to qualify, the court held that the incumbent governor held over for the full term succeeding that for which he was elected. In commenting on the import of the above constitutional provisions the court stated:

“The provisions of the first section are plain and unambiguous. It provides that the governor shall hold his office for two years, ‘and until his successor is elected and qualified.’ If Section 1 stood alone it could not be successfully disputed that it was not only the privilege, but the duty of the governor to hold the office until his successor shall be duly elected and qualified. (*People v. Osborne*, 7 Col., 605; *Tappan v. Gray*, 9 Paige, 506; *People v. Bissell*, 49 Cal., 407; *People v. Whitman*, 10 Id., 38; *State v. McMullen*, 46 Ind., 307; *State v. Lusk*, 18 Mo., 333; *Commonwealth v. Hanley*, 9 Pa. St., 513; *State v. Jenkins*, 43 Mo., 261; *State v. McMillen*, 23 Neb., 389; *Carr v. Wilson*, 32 W. Va., 419.)



Under the provisions of Section 16, quoted above, the duties of the office of governor devolve upon the lieutenant governor in certain contingencies, among which are the failure of the governor elect to qualify, and disability of the governor. The words 'other disability,' as used in the section, have no reference to the ineligibility of the person to be elected to the office, but were intended by the framers of the constitution to cover any disability of the governor not specifically enumerated in the section, occurring after the commencement of his term of office. The failure to elect a governor, on account of the ineligibility of the person receiving the highest number of votes for the office, is not a disability of the governor."

Another case which should be given consideration is *Ex parte Lawhorne*, 18 Grattan 85, decided by the Court of Appeals of Virginia in 1868. Since the constitutional provisions in this case made the governor ineligible for the same office for the term next succeeding that for which he was elected, and notwithstanding this fact the court held that the governor, whose term had expired, held over until his successor was elected and qualified, I am constrained to regard the same as of compelling force in the instant case.

The report of that case shows that Francis Pierpont was elected and qualified as governor of that state for the term of four years from the 1st day of January, 1864. On the 13th day of January, 1868, no successor to him having been elected or qualified, Governor Pierpont granted a full and immediate pardon to James Lawhorne, who was then confined in the penitentiary under a sentence for grand larceny. The superintendent of the penitentiary refused to release him on the ground that Pierpont's term of office had expired on January 1, 1868. Lawhorne applied to the court for a writ of habeas corpus.

Section 22 of Article VI of the Constitution of Virginia, then in force, provided that "judges and all other officers, whether elected or appointed, shall continue to discharge the duties of their respective offices, after their terms of service have expired, until their successors are qualified."

Section 1 of Article V of that constitution fixed the term of governor at four years, commencing on the first day of January succeeding his election, and made him ineligible to the same office for the term next succeeding that for which he was elected.

Section 8 provided for the election of a lieutenant governor at the same time, and for the same term as the governor.

Section 9 provided that "In case of the removal of the governor from office, or of his death, failure to qualify, resignation, removal from the state, or inability to discharge the powers and duties of the office, the said office, with its compensation, shall devolve upon the lieutenant governor; and the General Assembly shall provide by law for the discharge of the executive functions in other necessary cases."

The court held that the Constitution made it obligatory upon Pierpont to discharge the duties of the office of governor until his successor was qualified, and that the pardon granted by him was valid.

With respect to the governor's right to hold over, the court stated at page 87:

"\* \* \* It is important, as before stated, that there should be some person always ready to perform the duties of every office; and when an incumbent has served out the term for which he was elected or appointed, who can be more suitable than he, as a general rule, to continue to discharge the duties of his office until his successor is qualified? He has been once elected or appointed to the office, and is therefore presumed to be fit for it. He has served out his term, and is therefore presumed to be familiar with its duties."

In the course of the court's discussion concerning the constitutional provisions prohibiting two successive terms of office, it was stated:

"Much stress is laid on the first of these sections, which declares the governor, after holding the office for the term of four years, to 'be ineligible to the same office for the term next succeeding that for which he was elected,' &c., from which an intention is inferred to make him incapable of continuing to discharge the duties of his office after the expiration of his term of service. But this is not a well-founded inference. The policy of making him ineligible to the same office for the next succeeding term was to avoid exposing him to the temptation of using means afforded him by his office to secure his re-election to the same office, or his election to another office during his term of service. There was no reason whatever for rendering him incompetent to continue to discharge the duties of his office after the expiration of his term of service and until the qualification of his successor. No policy of the law requires it. He cannot be supposed to have any agency, official or otherwise, in bringing about the occasion for such continuance. There is not a word in the constitution which either expresses or implies an intention to render him incompetent to continue to discharge the duties of his office on such an emergency. The words, 'and be ineligible to the same office for the term next succeeding that for which he

was elected,' refer solely to a popular re-election for a full term of service, and not to his continuing, *ex officio*, when the occasion requires it, to discharge the duties of his office after his term of service has expired, and until his successor is qualified—an occasion which is not likely often to arise, nor to be of long continuance; but however often it may arise, or however long it may continue, or whatever may have produced it, the same principle applies to the case. \* \* \*"

Before concluding, I might also invite attention to the fact that of the contingencies enumerated in Section 15 of Article III of the Constitution, only two, to-wit, death and other disability, can apply to a governor-elect. Impeachment, resignation and removal, if any one of such events occur, can operate only against the person holding the office and not the person elected thereto who has not yet entered upon the term. Certainly the person elected to the office of governor can not be impeached prior to the time that he is inducted into such office, nor can he resign from said office before such time, and obviously he can not be removed therefrom before he occupies it. To me it seems unlikely that the framers of the Constitution, when they named certain contingencies and then used the term "governor", intended such term to include persons who under no circumstances could have the contingencies named happen to them.

In view of the above, and without further prolonging this discussion which has perhaps been unduly extended, you are advised that in my opinion:

1. The entire law governing the succession to the office of governor and the devolution of the powers and duties thereof in the event of the death of the person elected to such office prior to his induction thereinto is set out in the Constitution of Ohio and, consequently, an act prescribing a method of such succession or devolution different from that provided for by the Constitution, would, if enacted by the General Assembly, be unconstitutional and without any force and effect in law.

2. Under Section 2 of Article III of the Constitution of Ohio, a person elected to the office of governor is entitled to hold such office and discharge the duties and receive the emoluments thereof for a term of two years commencing on the second Monday of January next after his election, and until his successor is elected and qualified.

3. Where the person elected to the office of governor dies subsequent to his election thereto and prior to the second Monday in January next

following, the person holding said office is entitled to hold the same beyond the term for which he was elected and continue therein until his successor is elected and qualified.

4. The term "governor," as the same appears in Section 15 of Article III of the Constitution of Ohio, does not include "governor-elect" and, consequently, if a person elected to the office of governor should die before being inducted into said office, the duties and powers thereof would not devolve upon the lieutenant governor.

Respectfully,

HUGH S. JENKINS,  
Attorney General.

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1606

EDUCATION, BOARD OF—MAY SEND EMPLOYES AND OFFICIAL REPRESENTATIVES TO ATTEND PROGRAM OF INSTRUCTION AT COLLEGE OR UNIVERSITY—MATTERS PERTAINING TO CONDUCT AND MANAGEMENT OF SCHOOLS—EXPENSES MAY BE PAID, INCLUDING REGISTRATION FEE, FROM "SERVICE FUND"—SECTION 4845-8 G. C.

SYLLABUS:

A board of education may, if it deems it conducive to the welfare of the schools under its charge, send any of its employes as its official representatives to attend a program of instruction given by a college or university on matters pertaining to the conduct and management of the schools, and may pay the expense thereof, including a registration fee, from the "service fund" set aside pursuant to the provisions of Section 4845-8 of the General Code.

Columbus, Ohio, February 5, 1947

Bureau of Inspection and Supervision of Public Offices  
Columbus, Ohio

Gentlemen:

I have before me your request for my opinion reading as follows:

"During the past year or so in several of the colleges of the State, 'Workshops' or programs for the education or instruction of the personnel of boards of education have been conducted.

## Ranscht, David [AG]

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**From:** Ranscht, David [AG]  
**Sent:** Thursday, February 23, 2017 11:30 AM  
**To:** Thompson, Jeffrey [AG]; Gavin, Meghan [AG]  
**Subject:** Updated governor answers  
**Attachments:** Draft Answers.docx

Here is a redline copy with some tweaks throughout and some attempt to make distinctions from AR, NY, and UT.

## MEMORANDUM

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**To:** Jeff Thompson, Meghan Gavin  
**From:** David Ranscht  
**Date:** February 6, 2017 (updated February 23, 2017)  
**Re:** Draft Answers to Gubernatorial Succession Questions

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On February 1, 2017, the Attorney General's Office received a request from state Senator David Johnson for a formal legal opinion regarding several provisions of the Iowa Constitution and the Iowa Code. Senator Johnson requested the opinion because President Donald Trump announced he intends to nominate Iowa Governor Terry Branstad as a United States Ambassador. To serve as an ambassador, Governor Branstad would have to resign his position as Governor of Iowa.

Senator Johnson requests an expedited-attorney general opinion exploring the succession provisions of the Iowa Constitution. See Iowa Code § 13.2(e) (setting forth the attorney general's authority to give written opinions when requested by a state officer); Iowa Admin. Code r. 61--1.5 (providing additional standards for requesting attorney general opinions). Essentially, Senator Johnson asks the Attorney General's Office to opine on what happens if and when Governor Branstad submits his resignation. Although some past Iowa governors have resigned, these specific questions have not arisen in Iowa before.

### I. OPERATIVE CONSTITUTIONAL PROVISIONS

The relevant provision of the Iowa Constitution is article IV, section 17, which is currently entitled "Lieutenant governor to act as governor." It provides:

In case of the death, impeachment, resignation, removal from office, or other disability of the governor, the powers and duties of the office for the residue of the term, or until he shall be acquitted, or the disability removed, shall devolve upon the lieutenant governor.

Iowa Const. art. IV, § 17. This provision has never been amended. "[T]he purpose of art. IV, § 17 is to ensure that the citizens of Iowa are not without a person capable of performing the constitutional and statutory duties imposed upon a governor." 1980 Op. Att'y Gen. 550, 1980 WL 25903, at \*3 (Iowa Att'y Gen. Jan. 2, 1980).

Several other state constitutions contain similar language that centers around the verb “devolve.” *See, e.g.*, Ark. Const. art. 6, § 4; Idaho Const. art. IV, § 12; Nev. Const. art. 5, § 18; Okla. Const. art. 6, § 16; Tenn. Const. art. 3, § 12; Wash. Const. art. 3, § 10. Additionally, although they do not contain the verb “devolve,” some state constitutions provide—like article IV, section 17 of the Iowa Constitution—that if a governor resigns, the lieutenant governor shall have the powers, authorities, and duties of governor. *See, e.g.*, Ky. Const. § 84; Mass. Const. pt. 2, ch. II, § II, art. III; Miss. Const. art. 5, § 131.

In contrast, many state constitutions distinguish between permanent disabilities and temporary disabilities. Permanent disabilities occur when a governor dies or resigns, whereas temporary disabilities could include physical or mental incapacity, or absence from the state. In those states, generally the lieutenant governor becomes governor when a permanent disability occurs but gubernatorial powers devolve (or the lieutenant governor acts as governor) during any period of temporary disability. *See, e.g.*, Ala. Const. art. V, § 127; Alaska Const. art. 3, §§ 9, 11; Ariz. Const. art. 5, § 6; Cal. Const. art. 5, § 10; Colo. Const. art. 4, § 13 (1), (5); Conn. Const. art. 4, § 18(a)–(b); Fla. Const. art. 4, § 3(a)–(b); Ga. Const. art. 5, § 1, ¶ V(a)–(b); Haw. Const. art. 5, § 4; Ind. Const. art. 5, § 10(a); Kan. Const. art. 1, § 11; Me. Const. art. 5, pt. 1, §§ 14–15; Md. Const. art. 2, § 6(b), (d); Mich. Const. art. 5, § 26; Minn. Const. art. 5, § 5; Mo. Const. art. 4, § 11(a); Neb. Const. art. IV, § 16; N.J. Const. art. 5, § 1, ¶¶ 6–7; N.M. Const. art. 5, § 7; N.Y. Const. art. 4, § 5; N.C. Const. art. III, § 3(1), (3); Ohio Const. art. III, § 15(A)–(B); Pa. Const. art. 4, § 13; S.D. Const. art. 4, § 6; Tex. Const. art. 4, § 16(c)–(d); Utah Const. art. 7, § 11(2), (5); Va. Const. art. 5, § 16; Wis. Const. art. 5, § 7(1)–(2). Article IV, section 17 of the Iowa Constitution does not make a similar distinction; its provisions apply to all disabilities, whether temporary or permanent. *See* Iowa Const. art. IV, § 17.

Several other provisions of article IV of the Iowa Constitution bear upon the question of gubernatorial succession. Article IV, section 1 provides that “The supreme executive power of this state shall be vested in a chief magistrate, who shall be styled the governor of the state of Iowa.” *See also* 1980 Op. Att’y Gen. 550, 1980 WL 25903, at \*3 (“The term ‘governor’ refers to an office and not merely to a particular person.”). Article IV, section 10 grants the governor authority to fill any office that becomes vacant if the constitution and laws do not provide a mode for filling such vacancy. Article IV, section 18 provides that the lieutenant governor “shall have the duties provided by law and those duties of the governor assigned to the lieutenant governor by the governor.” Finally, the Iowa Constitution contemplates a contingency that becomes active when multiple state officers are incapable of performing gubernatorial duties:

If there be a vacancy in the office of the governor and the lieutenant governor shall by reason of death, impeachment, resignation, removal from office, or other disability become incapable of performing the duties pertaining to the



office of governor, the president of the senate shall act as governor until the vacancy is filled or the disability is removed; and if the president of the senate, for any of the above causes, shall be incapable of performing the duties pertaining to the office of governor the same shall devolve upon the speaker of the house of representatives; and if the speaker of the house of representatives, for any of the above causes, shall be incapable of performing the duties pertaining to the office of governor, the justices of the supreme court shall convene the general assembly by proclamation and the general assembly shall organize by the election of a president by the senate and a speaker by the house of representatives. The general assembly shall thereupon immediately proceed to the election of a governor and lieutenant governor in joint convention.

Iowa Const. art. IV, § 19.

In 1844, when Iowa first offered a state constitution for ratification by the people, a newspaper editorial expressed disappointment that much of it was written “in very confused and bungling language” that rendered the drafters’ intent “almost or quite doubtful.” *Its Style*, The Iowa Standard, Vol. IV, No. 46 (Nov. 14, 1844), *reprinted in Press Comments and Other Materials on the Constitutions of 1844 and 1846*, at 214 (Benjamin F. Shambaugh ed., 1900). Though modern readers might feel similarly about the current Iowa Constitution, constitutional history illuminates the framework the drafters established—and why they established it.

## II. CONSTITUTIONAL HISTORY

### A. *Iowa History*

#### 1. The 1857 Convention

Iowa enacted its current constitution in 1857. As the constitutional convention began, one delegate proposed that an Executive Committee dedicated to formulating the executive branch of government consider “providing for the election of a Lieutenant Governor who, by virtue of his office, shall . . . exercise all the powers and have the title of Governor in case of the death, removal, or other disability of the Governor.” 1 *The Debates of the Constitutional Convention of the State of Iowa*, at 39 (W. Blair Lord rep., 1857) [hereinafter *The Debates*]. The previous Iowa Constitution of 1846 made no provision for a lieutenant governor. The 1857 convention agreed to the resolution. *Id.*

When it came time to debate provisions of article IV, a representative from the Committee read the proposed provisions to the convention. *Id.* at 76–78. The provisions did not include section descriptions or titles. *See id.* In other words, the convention did not understand

article IV, section 17 to provide that the lieutenant governor “acts as” governor. That descriptive heading came later. Instead, by the words of the resolution at the outset of the convention, the drafters understood that the lieutenant governor would “have the title of Governor” if the Governor left office. *Id.* at 39.

When considering statutes, the Iowa Supreme Court has stated that a section heading “cannot limit the plain meaning of the text.” *Atchison, Topeka & Santa Fe Ry. Co. v. Bair*, 338 N.W.2d 338, 344 (Iowa 1983). That important limitation, which prevents a code editor’s choice of language from frustrating the intent of a statute, is even more significant when considering a constitutional provision. But even if the heading of article IV, section 17—which does not use operative language from article IV, section 17 itself—sheds *some* light on the framers’ intent in drafting the provision, *see T & K Roofing Co. v. Iowa Dep’t of Educ.*, 593 N.W.2d 159, 163 (Iowa 1999), other available materials better establish what the Iowa Constitution’s framers really understood “devolve” to mean and what they intended the gubernatorial succession framework to look like.

Notably, despite the resolution at the outset of the 1857 convention, Iowa considered having no lieutenant governor at all. During debate on article IV, delegate Warren proposed an amendment to article IV, section 17 that replaced the words “Lieutenant Governor” with “Secretary of State.” 1 *The Debates*, at 587. Delegate Clarke of Johnson County<sup>1</sup> proposed instead “that the duties of the office of Governor, in case of a vacancy, shall devolve upon the president of the Senate.” *Id.* The convention passed the amendment as Clarke proposed it, inserting the words “president of the Senate” in place of “Lieutenant Governor.” *Id.* Accordingly, the convention also deleted other provisions referring to the lieutenant governor’s duties and place in the line of succession. *See id.* at 587–88.

But not every delegate was convinced the convention had made the right decision. The next morning, delegate Gray asked his colleagues “to consider well the importance of the matter before striking” the provisions for a lieutenant governor. *Id.* at 591. He noted many other states’ constitution provided for the office of lieutenant governor and indicated “there are some advantages connected with the office.” *Id.* Among those advantages was the fact that the lieutenant governor “will be elected directly by the people, instead of by the Legislature.” *Id.* Gray found that important because “We all seem to agree in placing elections, as far as possible, directly in the power of the people.” *Id.* Delegate Clarke of Henry County agreed:

Gentlemen [of the convention] do not reflect that they may be taking from the people the power of selecting their own chief magistrate. When a man is a candidate for the office of Lieutenant Governor, the people always vote for him

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<sup>1</sup> “There were two men named Mr. Clarke and one named Mr. Clark at the Iowa convention.” *State v. Senn*, 882 N.W.2d 1, 13 n.7 (Iowa 2016); *see* 1 *The Debates*, at 6.

with the understanding that circumstances may arise which will make him their Governor. But if you give to the Senate the power of selecting the man who may be the Governor of the people, you take from the people this power and put it into the hands of the Senate.

| *Id.* at 591–92. This is known as the “elective principle.”

Delegate Gray’s remarks sparked renewed debate on the subject, and some delegates changed their minds. For example, delegate Wilson offered that although he had originally voted to eliminate the position of lieutenant governor, “upon reflection . . . the advantages in favor of [having a lieutenant governor] are far superior to the disadvantages.” *Id.* at 593. Most significant, however, were Mr. Clark’s remarks:

I voted yesterday to strike out the office of Lieutenant-Governor. I had not reflected upon it well, and I am inclined to the opinion that I did not vote right. Upon hearing the argument thus far upon the question, and upon reflection, I am disposed to favor the office of Lieut.-Governor, for one reason, if there were no other: I believe that an executive officer, whoever he may be that shall perform the duties of that office, whether Governor or Lieutenant-Governor, ought to be elected directly by the people, in all cases, at least so far as it is possible to provide for it. We elect the Governor by the direct votes of the people—by the popular will—by the popular voice. In case of his removal or disability, I see no reason why the person filling his place should not be elected directly by the whole people as much as the Governor himself.

*Id.* at 594. Mr. Clark’s clear concern was ensuring that the person exercising the state’s executive power, “whether Governor or Lieutenant-Governor,” has a majority of the citizenry’s blessing to do so. *See id.*

After some further debate, the convention voted 19–14 against the amendment that would have struck the office of lieutenant governor. *Id.* at 595. Accordingly, the convention also restored other provisions relating to the office of lieutenant governor. *See id.* at 596.

## 2. Iowa Governors Who Resigned

Governor Kirkwood resigned in 1877 to become a United States Senator. Then-Lieutenant Governor Newbold “entered on the discharge of the duties of the executive” for the remainder of the term (just under a year) but did not appoint a new lieutenant governor “because the lieutenant-governorship was not vacant.” William H. Fleming, *The Second Officer in the Government*, reprinted in *Annals of Iowa: A Historical Quarterly*, Vol. XIII, No. 1, at 533

(1921) [hereinafter *Annals of Iowa*]. A later history of Iowa referred to Newbold as the “ninth Governor of Iowa” and stated he “became Governor” when Kirkwood resigned. 4 Benjamin F. Gue, *History of Iowa: From the Earliest Times to the Beginning of the Twentieth Century* 199–200 (1903).

Governor Cummins resigned in 1908 to become a United States Senator. Then-Lieutenant Governor Garst “entered on the performance of executive duties” for the remainder of the term (just under two months) but did not appoint a new lieutenant governor. *Annals of Iowa*, at 534.

Governor Hughes resigned in 1969 to become a United States Senator. Then-Lieutenant Governor Fulton assumed the duties of governor for the remainder of the term (just over two weeks) but did not appoint a new lieutenant governor.

Additionally, in 1954, Governor Beardsley died in office. Although Governor Beardsley did not resign, his death—like a resignation—was a permanent “disability” under the Iowa Constitution. Then-Lieutenant Governor Elthon assumed the duties of governor for the remainder of the term (just under two months). However, Elthon did not appoint a new lieutenant governor.

### 3. Interpretation and Subsequent Amendments

In 1923, Governor Kendall requested an opinion from the Attorney General’s Office because he received medical advice recommending he take an extended vacation and abstain from performing his official duties. 1923 Att’y Gen. Ann. Rep. 349, 349 (Iowa Att’y Gen. Aug. 23, 1923). The length of his expected absence was indefinite but would likely be two to three months. *Id.* He asked the Attorney General’s Office to opine on “whether or not the Lieutenant Governor can, during [the] temporary absence, perform the duties of Governor.” *Id.*

The Attorney General concluded “that during the temporary disability of the governor, that the lieutenant governor may act as governor.” *Id.* at 348. The opinion differentiates between the governor permanently leaving office and the governor stepping aside temporarily:

From a consideration of [article IV of the Iowa Constitution] it will be observed that in case of death, resignation, or removal from office of the governor, that the lieutenant-governor succeeds him as governor of the state for the residue of the term. It will further appear that when there is a temporary disability of the governor, the lieutenant-governor acts in his stead during the period of time such disability continues. In the first instance, the lieutenant-

governor becomes governor. In the second instance he simply acts as governor during the temporary disability of his chief.

*Id.* The opinion makes that distinction in part because “terms of a constitution, like those of a statute, are always to be given their natural and obvious meaning. That is, the meaning in which they are commonly and ordinarily understood.” *Id.* at 347–46.<sup>2</sup> The Attorney General further advised Governor Kendall that, when stepping aside, he should make clear “there is no resignation or permanent abandonment of the office of governor.” *Id.* at 343–42.

The 1923 opinion has not been rescinded or disavowed. Neither the legislature nor the people of Iowa sought to amend the Iowa Constitution to establish that the Attorney General’s interpretation was incorrect.

However, the people later amended article IV of the Iowa Constitution. Originally, article IV, section 19 established a succession order if, while acting as governor, the lieutenant governor died, resigned, was impeached or displaced, or otherwise became incapable of performing the duties of the office. The 1952 amendment to article IV, section 19 established the current language, with one exception: it referred not just to the president of the Senate, but the president pro tempore. Accordingly, the 1952 amendment removed the reference to the lieutenant governor “acting as” governor—and that language remains today. However, the 1952 amendment did not remove language in article IV, section 15—which establishes the lieutenant governor’s compensation—that referred to the lieutenant governor acting as governor.

In 1972, several provisions of article IV were changed, but they did not affect gubernatorial succession. Originally, article IV, sections 2 and 3 provided the governor and lieutenant governor served two-year terms. The 1972 amendment increased both terms to four years. It also amended article IV, section 15 to reflect the four-year terms.

The most significant constitutional amendments occurred in 1988. Those amendments, which remain in force today, provided for the first time that the governor and lieutenant governor are elected together, on one ticket, “as if these two offices were one and the same.” Iowa Const. art. IV, § 3. Before 1988, it was possible for the governor and lieutenant governor to represent different political parties. The amendment brought to fruition a constitutional delegate’s statement at the 1857 convention: “The governor and lieutenant-governor will always, I presume, be the same in politics, and why not have the successor of the governor of the same politics, instead of bringing in one of the antagonistic party?” 1 *The Debates*, at 593.

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<sup>2</sup> Because the 1923 volume of attorney general opinions was compiled in chronological order, the volume is paginated in reverse order.

The 1988 amendments also recast the lieutenant governor's duties. Under original article IV, section 18, the lieutenant governor was president of the senate and possessed a tiebreaking vote. If the lieutenant governor was absent, impeached, or exercising the office of Governor, the Senate was instructed to choose a president pro tempore to preside and break ties.

However, the 1988 amendments revised article IV, section 18 to provide that the lieutenant governor "shall have the duties provided by law and those duties of the governor assigned to the lieutenant governor by the governor." In other words, the 1988 amendments removed the lieutenant governor's status as president of the Senate. Accordingly, the 1988 amendments also altered article IV, section 19 to establish that if there is a gubernatorial vacancy and the lieutenant governor is incapable of performing the duties of the office, those duties devolve on the president of the Senate—not the president pro tempore.

Finally, although it is not a constitutional amendment, the Iowa legislature amended section 69.8 of the Iowa Code in 2009. 2009 Iowa Acts ch. 57, § 73. The amendment added a sentence to section 69.8 providing that "[a]n appointment by the governor to fill a vacancy in the office of lieutenant governor shall be for the balance of the unexpired term." The provision was the only substantive amendment to chapter 69 in a bill that predominantly altered other chapters delineating the logistics and administration of ballots and elections.

## B. *Federal History*

The original language of article IV, section 17 of the Iowa Constitution matched language existing in the United States Constitution at the time. In 1857, when the Iowa Constitution was ratified, article II, section 1, clause 6 of the United States Constitution read: "In Case of the Removal of the President from Office, or of his Death, Resignation, or Inability to discharge the Powers and Duties of the said Office, the Same shall devolve on the Vice President . . . ."

Under that language, numerous presidential vacancies occurred. Each time, the Vice President became President despite the word "devolve." Two of these instances occurred before 1857: John Tyler in 1841 and Millard Fillmore in 1850. Thus, because of this history, the delegates to the 1857 Iowa constitutional convention likely understood the word "devolve" to mean that the successor became president—or on the state level, became governor.

A federal court decision from 1867 confirms this understanding:

Three times, since the adoption of the constitution, the president has died, and, under [article II, section 1, clause 6], the powers and duties of the office of president have devolved upon the vice president. All branches of the government have, under such circumstances, recognized the vice president as holding the

office of president, as authorized to assume its title . . . . It has never been supposed that, under the provision of the constitution, the vice president, in acting as president, acted as the servant, or agent, or locum tenens of the deceased president, or in any other capacity than as holding the office of president fully, for the time being, by virtue of express authority emanating from the United States.

*Merriam v. Clinch*, 17 F. Cas. 68, 70 (C.C.S.D.N.Y. 1867).

However, neither Tyler nor Fillmore appointed a new vice president. Nor did any of the other vice presidents who succeeded to the presidency before 1967: Andrew Johnson in 1865, Chester Arthur in 1881, Theodore Roosevelt in 1901, Calvin Coolidge in 1923, Harry Truman in 1945, and Lyndon Johnson in 1963.

In 1967, the 25th Amendment superseded the original language from article II, section 1. Now, if the President dies, resigns, or is removed, “the Vice President shall become President.” U.S. Const. art. 2, § 1. Furthermore, when the vice president becomes president, a vacancy occurs in the office of vice president, and the new “President shall nominate a Vice President who shall take office upon confirmation by a majority of both Houses of Congress.” *Id.* § 2. The 25th Amendment also established that the vice president acts as president when the president is temporarily unable to discharge the duties of the office. *Id.* § 3. Although the Iowa Constitution originally mirrored the United States Constitution and has been amended since 1967, the succession provisions have not changed to match the 25th Amendment.

### C. *Other States' Histories*

While other states' constitutions and experiences do not alone determine conclusively what the Iowa Constitution means, the language used and any decisions involving that language can be valuable to a linguistic analysis. Indeed, some members of the 1857 constitutional convention expressly advocated that the convention should consider other states' provisions and experiences. For example, delegate Gray noted in support of keeping the position of lieutenant governor that many other states had such an office. 1 *The Debates*, at 591. Likewise, delegate Clarke of Henry County indicated other states' experiences lent to the convention a wisdom the individual members would not otherwise have:

We may certainly look to the experience of other States. This matter has been somewhat scoffed at here. Gentlemen pretend to have within them a light superior to any they can borrow. I am willing to look to the experience and wisdom of other States; and, as [Mr. Gray] has observed, I find that, in a majority of the free States, this system prevails; and if this office [of lieutenant governor] is

found beneficial elsewhere, . . . why should we not introduce this provision into our Constitution?

*Id.* at 592. Although the *existence* of a lieutenant governor is now well established, these delegates' comments support the general notion that other states' constitutional provisions and history can illuminate, influence, or suggest what Iowa's language means.

As detailed above, several other state constitutions contain the word "devolve"—but that number used to be higher. *See Olcott v. Hoff*, 181 P. 466, 468 (Or. 1919) (collecting states that, as of 1919, provided "the powers and duties of [governor] devolve upon the lieutenant governor"). In several instances, the state constitution was amended after a judicial decision interpreting the previous language. And in one instance, the state constitution was amended to crystallize an attorney general's opinion—even though the amendment accomplished only what the attorney general opined the previous language already did.

### 1. Arizona

Arizona distinguishes between permanent and temporary disabilities. If the governor dies, resigns, or is removed from office, "the secretary of state . . . shall succeed to the office of governor." Ariz. Const. art. 5, § 6. If the governor is temporarily disabled, the powers and duties "devolve upon the same person as in case of vacancy, but only until the disability ceases." *Id.*

Before the current language, Arizona used language materially similar to the Iowa Constitution, ~~which utilized the word "devolve" for both permanent and temporary disabilities.~~ *See State ex rel. De Concini v. Garvey*, 195 P.2d 153, 154 (Ariz. 1948) (quoting the relevant provision of the Arizona Constitution as it existed at the time). While that language was in force, ~~the governor of Arizona died.~~ *Id.* at 153. The attorney general filed a lawsuit asserting that the successor (the secretary of state) "did not in law or in fact become governor of Arizona . . . , but by virtue of the section the powers and duties of the office of governor merely devolved upon" him. *Id.* The secretary of state asserted he was "governor de jure and de facto." *Id.*

The Arizona Supreme Court acknowledged that "public business and tranquility demand a prompt judicial inquiry." *Id.* It noted the "prevailing view" at the time that "the inferior officer does not vacate his office and become governor de jure and de facto, but that the duties and powers of governor merely devolve on him and he retains his former office." *Id.* at 154. It ultimately followed that path, concluding that the secretary state was "acting governor." *Id.* at 158.



The court's decision contains two other important conclusions. First, even though the successor was acting governor, he was "entitled to physical possession of the office space and facilities provided" for the governor. *Id.* at 157–58. Second, the court concluded the successor's duties in his current position "embrace the responsibility to act as governor in case any of the contingencies provided for in the constitutional provision arise." *Id.* at 157.

After 1948, the Arizona Constitution was amended to its current language. The fact that the people amended the constitution suggests they believed the court's interpretation of the word "devolve" was incorrect.

## 2. Arkansas

The Arkansas Constitution's succession provision is materially identical to article IV, section 17 of the Iowa Constitution. That provision became significant when then-Governor Bill Clinton was elected President of the United States and indicated his intention to resign as Governor of Arkansas. *See Bryant v. English*, 843 S.W.2d 308, 309 (Ark. 1992). In *Bryant*, the Arkansas Supreme Court concluded that when Clinton resigned, the office of governor would devolve upon the lieutenant governor such that the lieutenant governor became governor. *See id.* at 311. The court found support for its conclusion from several circumstances.

First, a previous Arkansas decision (under a previous constitutional provision when the position of lieutenant governor did not exist) expressed concern that the person tasked with exercising the powers and duties of governors might not be elected by a statewide vote. *Id.* at 312. That concern was alleviated with a constitutional amendment that created the position of lieutenant governor, so there was no issue with allowing the lieutenant governor to become governor, not just acting governor. *See id.*

Second, the court pointed out that if the lieutenant governor was only acting governor, he could continue presiding over the Senate, and that raised separation-of-powers concerns. *See id.*; *see also Ark. Const. art. VI, § 5*. However, if the lieutenant governor became governor, those concerns would be avoided. *See Bryant*, 843 S.W.2d at 312~~*id.*~~ In Iowa, the lieutenant governor has no legislative powers; the 1988 amendment removed "presiding over the Senate" from the lieutenant governor's duties.

Third, the court noted the chain of succession provided the powers would "devolve" upon the lieutenant governor, but if they were unable to exercise the powers and duties of the office, the president of the senate would "act as" governor. *Id.* The difference in language suggested "devolve" did not mean the lieutenant governor would merely act as governor. *See id.*

Finally, in Arkansas, historical practice had treated the lieutenant governor as governor (not acting governor) after the governor resigned. *Id.* at 312–13. That practice comported with the Arkansas Constitution’s command that the supreme executive power vests in a chief magistrate styled the Governor of the State of Arkansas. *Id.* at 313. In other words, the person who has the powers *is* Governor. *See id.* Iowa has a similar provision and a similar historical practice. Iowa Const. art. IV, § 1.

In Arkansas, when the lieutenant governor becomes governor, a vacancy occurs in the office of lieutenant governor that is filled by a special election. Ark. Code § 7-7-105; see *Stratton v. Priest*, 932 S.W.2d 321 (Ark. 1996) (addressing a constitutional challenge to section 7-7-105). Furthermore, the position of lieutenant governor is specifically exempted from the governor’s general appointment power. In other words, Arkansas’s procedure upholds the elective principle. Although the drafters of the Iowa Constitution clearly subscribed to the elective principle, there is no statute analogous to Arkansas Code section 7-7-105 in the Iowa Code.

### 3. California

California distinguishes between permanent and temporary disabilities. Cal. Const. art. 5, § 10. When a permanent disability occurs, “The Lieutenant Governor shall become Governor.” *Id.* However, like Iowa, California formerly used the word “devolve.” Under that language, the California Supreme Court concluded that the lieutenant governor (1) did not actually become governor and (2) could not appoint a new lieutenant governor:

[I]t is provided that in case of the death, resignation, impeachment, absence from the state, or inability to act of the governor, “the powers and duties of his office shall devolve upon the lieutenant-governor for the residue of the term, or until the disability shall cease.” It will be seen that in case of a vacancy in the office of governor the vacancy is not to be filled, but the powers and duties devolve upon the lieutenant governor, who does not cease to be lieutenant governor. Under such circumstances it would hardly be contended that when the powers and duties of the governor devolve upon the lieutenant governor the latter thereby becomes governor, and can appoint a lieutenant governor.

*People ex rel. Lynch v. Budd*, 45 P. 1060, 1060 (Cal. 1896). The people have since amended the constitution to include its current language.

### 4. Colorado

Colorado distinguishes between permanent and temporary disabilities. Colo. Const. art. 4, § 13. The Colorado Constitution also provides that a lieutenant governor who “accedes to the office of governor” may select a new lieutenant governor subject to “confirmation by a majority

vote of both houses of the general assembly.” *Id.* § 13(4). However, the Colorado Constitution formerly contained provisions matching the Iowa Constitution. *See People ex rel. Parks v. Cornforth*, 81 P. 871, 872 (Colo. 1905) (quoting the relevant provisions of the state constitution as they existed at the time). While that language was in force, a succession controversy arose. *See id.*

The governor resigned in 1905, and the lieutenant governor “qualified as governor.” *Id.* The president pro tempore of the senate then “qualified as lieutenant governor.” *Id.* However, at the end of the legislative session, the senate elected a new president pro tempore. *Id.* The question that reached the Colorado Supreme Court asked whether the previous president pro tempore remained lieutenant governor, or whether he only held that office because of his position as president pro tempore. *See id.*

The court concluded “the president pro tem. does not become the lieutenant governor” and that “[i]f the framers of [the] Constitution had intended that the president pro tem. of the Senate should become lieutenant governor de jure in the contingency under consideration, they could easily have said so.” *Id.* at 872–73. Accordingly, the court concluded only the new president pro tempore was empowered to perform the lieutenant governor’s duties. *Id.* at 875.

In 1974—after the federal 25th Amendment—Colorado repealed and reenacted its succession provisions, changing them to the current language.

## 5. Michigan

If the governor resigns, the lieutenant governor shall be governor for the remainder of the term. However, for temporary disabilities, “the powers and duties of the office of the governor shall devolve—.” Mich. Const. art. V, § 26. That language differs from the Iowa Constitution, but in 1939, the relevant provision of the Michigan Constitution (then article VI, section 16) was materially similar to current article IV, section 17 of the Iowa Constitution. *See* 1939 Op. Att’y Gen. Ann. Rep. 69, 71 (Mich. Att’y Gen. Mar. 28, 1939) (quoting the provision in force at the time).

That year, after the governor of Michigan died, the attorney general’s office issued an attorney general opinion regarding succession “[b]ecause of serious consequences which might follow a prolonged silence on the subject.” *Id.* at 69. The opinion sought to clarify whether there was “now a vacancy in the office of lieutenant governor.” *Id.*

The attorney general answered that question “no,” adhering to the “most approved view” that when a governor dies or resigns, “no vacancy is created in the minor office by operation of law.” *Id.* No vacancy occurs because

it was never intended that the line of succession should be broken, or that any person, who has not received the sanction of the electors by direct vote, should be appointed to a position which would entitle him, in certain eventualities, to the high office of governor.

*Id.* In other words, “plain rules of common sense” made it clear “that the people never intended to intrust the responsibilities of the governorship to one who has not been elected to state office.” *Id.* at 72.

The attorney general also noted the Michigan Constitution’s similarity to the United States Constitution and recognized that, as of 1939, “when the Vice President has succeeded to the office of President, it has never been claimed that he thereby vacated the office of Vice President.” *Id.* at 73. Based on the elective principle at the core of democracy—election by the people—and historical practice—, the opinion ultimately concluded that,

upon death of the governor of the State of Michigan, his powers and duties devolve upon the lieutenant governor; that the office of lieutenant governor is not thereby vacated; that the Constitution, by plain and unambiguous language, provides for a line of succession, from the governor, to the lieutenant governor, and to the secretary of state, a line of succession which cannot be broken by the appointment of a lieutenant governor to fill a supposed vacancy. No vacancy exists.

*Id.* at 73.

## 6. Montana

“If the office of governor becomes vacant by reason of death, resignation, or disqualification, the lieutenant governor shall become governor for the remainder of the term, except as provided in this constitution.” Mont. Const. art. VI, § 14(6).

“When there is a vacancy in the office of governor, the successor shall be the governor. The acting governor shall have the powers and duties of the office of governor only for the period during which he serves.” *Id.* § 14(8). An “acting governor” only happens when the governor requests it of the lieutenant governor or when the governor is disabled. *See id.* § 14(2)–(4).

However, before the current language, Montana (like Iowa) used the word “devolve.” *See State ex rel. Lamey v. Mitchell*, 34 P.2d 369, 370 (Mont. 1934) (quoting the provision in

force at the time). After an election in 1932, the governor resigned in 1933. *Id.* The Montana Supreme Court concluded “when the Governor resigns or is permanently removed from office, there is no vacancy in the office of Governor in the sense that there is no one left with power to discharge the duties.” *Id.* The court further explained the state’s constitutional structure:

When the framers of the Constitution provided for the election of a Governor and a Lieutenant Governor as members of the executive department of the state, but conferred upon the latter no executive power or authority other than in the contingencies mentioned in [the succession provision], they manifested the intention that the people elect two qualified heads of that department—the one active, the other his lieutenant, ready at a moment’s notice to assume the duties of the office, should his superior officer, for any reason, either temporarily or permanently, become unable to perform them.

*Id.* at 371–72 (citation omitted).

The court also concluded that when a governor resigns or dies, there is no vacancy in the office of lieutenant governor. *Id.* at 372. The court explained,

When the duties, powers, and emoluments of the office of Governor devolve upon the Lieutenant Governor, it cannot be said that he vacates his office of Lieutenant Governor, and, unless he does so, there is no vacancy in his office. His assumption of the duties of Governor does not create, and neither can he make, a vacancy, as he is discharging the functions of Governor by the mandate of the Constitution, and that by reason of being Lieutenant Governor. If the framers of the Constitution had intended that there should be a vacancy in the office of Lieutenant Governor upon the resignation, death, or permanent removal of the Governor, they could have easily said so.

*Id.*

Two aspects of the succession structure cemented the court’s conclusion. First, if there were a lieutenant governor vacancy, the lieutenant governor / new governor could appoint a lieutenant governor, which would interrupt the line of successors chosen by the voters. This “was never contemplated and never intended by the framers of the Constitution, or the people who adopted it.” *Id.* Second, because the provision covered both permanent and temporary disabilities, if the lieutenant governor’s office always became vacant, another conundrum would arise. Specifically, if the governor suffered a temporary disability and the lieutenant governor took over, any person subsequently appointed to the post of lieutenant governor would essentially be squeezed out once the temporary disability ended. *See id.*

## 7. Nevada

Nevada's succession provision is materially identical to Iowa's. *Compare* Iowa Const. art. IV, § 17, *with* Nev. Const. art. 5, § 18. The Nevada Supreme Court considered the provision after the governor died in 1896. *State ex rel. Hardin v. Sadler*, 47 P. 450, 450 (Nev. 1897). The court concluded there was no vacancy in the office of lieutenant governor:

If a vacancy occurs in the office of governor, the powers and duties of the office devolve upon the lieutenant governor, but there is no vacancy created thereby in the office of lieutenant governor. The officer remains lieutenant governor, but invested with the powers and duties of governor.

*Id.* The Nevada Constitution has not changed since 1897.

## 8. New Jersey

New Jersey distinguishes between permanent and temporary disabilities; for permanent disabilities, “the Lieutenant Governor shall become Governor,” while for temporary ones, the powers of the office devolve. N.J. Const. art. 5, § 1, ¶¶ 6–7. However, the New Jersey Constitution previously contained a provision like Iowa's—although there was no such thing as a lieutenant governor at the time. *See State v. Heller*, 42 A. 155, 156 (N.J. 1899) (quoting the provision in force at the time, which established that the governor's powers and duties devolved upon the president of the senate). Under that language, a succession dispute arose.

In 1898, the governor of New Jersey resigned. *Id.* The president of the senate took an oath assuming gubernatorial powers and duties but later resigned “as a member of the senate.” *Id.* The speaker of the house, who was next in the succession order, then asserted *he* was now ~~entitled to exercise the powers and duties of governor~~. *See id.* However, the president of the senate asserted he remained governor and his resignation only affected his senate seat. *See id.* The New Jersey Supreme Court concluded the president of the senate was only governor through his position as senate president:

In construing [the succession] clause of the constitution it must be borne in mind that it was carefully drawn by learned jurists, who knew how to express with exactness and precision the purpose they had in view. The provision is that, in case of the resignation of the governor, the powers, duties, and emoluments of the office shall devolve upon the president of the senate, and not that the president of the senate shall thereby become governor . . . . If the framers of the fundamental

law had intended to transfer the president of the senate to the executive chair, and thereby to vacate his office of senator, it is reasonable to believe that they would have said so in no uncertain language. The language used is not ambiguous. It declares that the powers, duties, and emoluments of the office shall devolve on the president of the senate; it does not confer upon him the title of the office. The president of the senate exercises the powers of the governor; the president of the senate performs the duties of the governor; the president of the senate receives the emoluments of that office. He is still president of the senate, with the added duties required of the chief executive of the state imposed upon him. There is no language in the constitution from which it can reasonably be inferred that his office of president of the senate was to be vacated. He retains his office of senator; and as president of the senate, and not as governor, he exercises the added powers and performs the superimposed duties.

*Id.* at 156–57. Accordingly, when he resigned his senate position, he also resigned his ability to exercise the powers and duties of the governor and the speaker of the house became entitled to exercise those powers and duties. *Id.* at 158.

There are two other important aspects of the New Jersey court’s decision. First, it concluded the successor did not actually become governor because other provisions in the state constitution referred to the governor “or person administering the government.” *Id.* at 157. Therefore, if the successor actually became governor, those words would be superfluous. *Id.* The Iowa Constitution does not contain similar language that would become superfluous if the lieutenant governor *is* governor following the governor’s resignation.

Second, the court highlighted the constitutional provision’s flexible nature, applying to both permanent and temporary disabilities. If the successor’s previous position automatically became vacant, even during a temporary disability, they would lose it when the temporary disability ended. *Id.* at 158. The court concluded that meaning of the language “could not have been within the contemplation of the able men who incorporated it in this clause relating to a matter of supreme importance.” *Id.*

## 9. New York

New York distinguishes between permanent and temporary disabilities. When a permanent disability occurs, the lieutenant governor becomes governor, but when a temporary disability occurs, the lieutenant governor acts as governor. N.Y. Const. art. IV, § 5. In 1943, the state’s attorney general opined that a statute allowing some appointments could not be applied to a lieutenant governor vacancy because it “would lead to the anomalous result that a Governor by appointing a Lieutenant-Governor and then resigning could impose upon the people his own

choice as their Governor.” 1943 N.Y. Op. Att’y Gen. No. 378, 1943 WL 54210, at \*4 (N.Y. Att’y Gen. Aug. 2, 1943).

In 2008, the governor resigned, and in accordance with the constitution, the lieutenant governor became governor. *See Skelos v. Paterson*, 915 N.E.2d 1141, 1142 (N.Y. 2009). Although the state constitution provides that if both the office of governor and the office of lieutenant governor are vacant, the president of the senate shall act as governor, N.Y. Const. art. IV, § 6, the senate deadlocked and could not elect a temporary president, *see Skelos*, 915 N.E.2d at 1142. Accordingly, each political party recognized a different temporary president, which made it unclear “which one of the rival temporary presidents stood next in the line of gubernatorial succession.” *Skelos*, 915 N.E.2d at 1142. The governor attempted to break the deadlock by simply appointing a new lieutenant governor. *Id.* However, a state legislator filed a lawsuit seeking (1) a declaration that the appointment was unconstitutional and (2) an injunction preventing the governor from appointing anyone to the office of lieutenant governor. *Id.*

When the case reached the New York Court of Appeals, the court ~~recognized it was undisputed~~ stated there could be no dispute that the lieutenant governor became governor and thereby left a vacancy in the office of lieutenant governor. *Id.* at 1144. It then rejected the contention “that the Constitution requires that a vacancy in the office of Lieutenant Governor be preserved until the next . . . election” and applied a state statute—the one the attorney general had opined 60 years earlier could not apply—to fill a gap left by the constitution. *Id.* The court reasoned it made little sense to have “an extended vacancy running the balance of an elective term” when the constitution contained a provision intending to assure vacancies were filled. *Id.* at 1144–45.

The court also concluded ~~what it called~~ “the elective principle” could not control the result of the case:

While there can be no quarrel with the proposition that, generally, election must be the preferred means of filling vacancies in elective office, it does not follow that the elective principle is preeminent when it comes to filling a vacancy in the office of Lieutenant Governor.

*Id.* at 1145. It concluded that a constitutional amendment placing the governor and lieutenant governor on the same ticket subordinated the elective principle “to assure the structural integrity and efficacy of the executive branch.” *Id.* It acknowledged that subordinating the elective principle created the possibility an unelected individual could occupy the state’s highest office, but it concluded that was a permissible result because all rules of succession are “inevitably imperfect” and “invariably compromise elective principles” at *some* stage. *Id.* at 1146. In other words, it deferred to the legislature’s judgment in passing a statute that applied. *See id.* (“For



now, the Legislature . . . has specified that the vacancy is to be filled not by election but by gubernatorial appointment alone—a determination that the Legislature is always free to revisit.”).

The decision was not unanimous. The dissenting opinion principally highlighted the possibility “that the citizens . . . will one day find themselves governed by a person who has never been subjected to scrutiny by the electorate, and who could in turn appoint his or her own unelected Lieutenant Governor.” *Id.* at 1147 (Pigott, J., dissenting). Justice Pigott asserted that was “contrary to the text of the New York Constitution and affords Governors unprecedented power.” *Id.*

Justice Pigott relied on historical practice, noting “no one ~~gave a thought or~~ . . . harbored a suggestion” that the new governor could appoint a replacement lieutenant governor because “no Governor in the history of the State had done so.” *Id.*; *see also id.* at 1152 & n.3 (collecting 10 occasions since New York’s founding “when the position of Lieutenant Governor has become vacant” but noting none of the vacancies were filled by appointment). He also noted the constitution did not expressly provide an appointment power—but it *did* “provide a clear line of succession,” which could not be circumvented. *See id.* at 1150. He asserted the majority erred by grouping the position of lieutenant governor—one of the state’s highest offices—into what was effectively a catchall statute addressing other minor state officials. *Id.*; *cf. Whitman v. Am. Trucking Ass’n*, 531 U.S. 457, 468 (2001) (noting Congress does not “hide elephants in mouseholes”). In Justice Pigott’s view, the lieutenant governor was not addressed in the statute because the constitution already provided a method of succession. *See id. Skelos*, 915 N.E.2d at 1150.

Finally, Justice Pigott explored constitutional amendments that affected the lieutenant governor. First, in 1945, the constitution was amended to indicate “precisely what was to occur when there was a vacancy in the office of Lieutenant Governor alone;” it indicated the temporary senate president was to perform all the duties of lieutenant governor during the vacancy. *See id.* at 1154–55. Second, in 1953, the constitution was amended to require that the governor and lieutenant governor be elected together, on one ticket—just as Iowa did in 1988. *See id.* at 1155. Accommodating those changes, Justice Pigott suggested it was improper “that a Lieutenant Governor could be appointed by a Governor with no input from the electorate and no vetting by the legislative branch of government.” *Id.*

There has been some academic criticism of the *Skelos* decision. *See* Patrick A. Woods, Comment, *Automatic Lieutenant Gubernatorial Succession: Preventing Legislative Gridlock Without Sacrificing the Elective Principle*, 76 Alb. L. Rev. 2301, 2303 (2013) (asserting *Skelos* “removes any electoral check from those selected to fill the position of lieutenant-governor and leaves structural problems unresolved”). But it is not universally panned. *See* Richard Briffault,

*Skelos v. Paterson: The Surprisingly Strong Case for the Governor's Surprising Power to Appoint a Lieutenant Governor*, 73 Alb. L. Rev. 675, 676–77 (2010) (asserting that the *Skelos* majority was right despite disagreement from the sitting attorney general, “a former chief judge, a former lieutenant governor, a former attorney general, and a leading academic expert on the state constitution”).

In any event, the decision appeared to assume that there was a vacancy in the office of lieutenant governor despite earlier caselaw from other states holding almost unanimously that the lieutenant governor's ascension does not leave a vacancy in the office of lieutenant governor. That assumption may leave the decision on shaky analytical ground.

There are a few other differences between New York's framework and Iowa's. First, the lieutenant governor's duties include presiding over the senate in New York, but not in Iowa. Second, the New York Constitution provides for vacancies in the lieutenant governor's office alone, with no vacancy in the governor's office. N.Y. Const. art. IV, § 6. The Iowa Constitution is not as specific. Finally, the New York Constitution directs the legislature to provide for filling vacancies. N.Y. Const. art. XIII, § 3. By contrast, the Iowa Constitution contains no similar instructions for the legislature.

#### 10. Oklahoma

Oklahoma's succession provision is similar to Iowa's, using the word “devolve”—although one difference is that in Oklahoma, “the office” devolves, while in Iowa, the powers and duties do. *Compare* Iowa Const. art. IV, § 17, *with* Okla. Const. art. 6, § 16. In a 1926 case, the Oklahoma Supreme Court concluded the office of Governor automatically devolves upon another, who by virtue of filling that office becomes the chief magistrate styled the governor of Oklahoma. *Fitzpatrick v. McAlister*, 248 P. 569, 572 (Okla. 1926). In other words, the person who has the powers is governor. In particular, the court noted the difference between the word “devolve,” which applied only to the lieutenant governor, and “act as Governor,” which applied only to those further down the line of succession. *See id.* Because of that difference in language, the court concluded the word “devolve” actually conferred the title and office.

The court found support for its conclusion in federal history:

[U]pon the death of President Wm. H. Harrison, Vice President Tyler became President of the United States. For almost a century this construction of the federal Constitution has stood without question. It has been recognized as correct, and acquiesced in, not only by the departments of state and all the states of the Union, but officially recognized by every civilized government in the world.

On each occasion where the President of the United States has died, the Vice President has immediately succeeded to the office of President as President of the United States, and thereupon the government of the United States has at once, through its consular offices, notified all governments of the world of the change in Presidents.

Defendant suggests that no court has ever pronounced that to be the law. To our mind, it is so clearly correct that no one has ever presumed to test its correctness in the courts. Therefore it should have greater weight than an ordinary departmental construction, not only because it has stood for almost a century, but because it has been recognized as the correct conception of our system of government, and because, for eighty-five years under this construction, there has been no friction in the machinery of government by reason of such construction.

*Id.* at 576.

The decision was not unanimous. A dissenting opinion suggested the lieutenant governor would perform gubernatorial duties “merely as the occupant of the office of Lieutenant Governor, to which he was elected.” *Id.* at 580 (Branson, V.C.J., dissenting). The dissent also highlighted the possibility that if the lieutenant governor became governor and thereby vacated the office of lieutenant governor, he could appoint a replacement. *See id.* at 581. That was problematic, the dissent asserted, because it would “make it impossible that the President pro tempore of the Senate would ever succeed to the performance of the duties of Governor, as was clearly contemplated in the succession line to such duties as set out in . . . the Constitution.” *Id.*

## 11. Oregon

In Oregon, the successor “shall become Governor.” Or. Const. art. V, § 8a. However, the Oregon Constitution formerly provided that the duties of governor would “devolve on the secretary of state” and if the secretary of state was disabled, “the president of the senate shall act as governor.” *See Chadwick v. Earhart*, 4 P. 1180, 1180 (Or. 1884) (quoting the provision as it existed at the time). In other words, the Oregon Constitution distinguished between devolution and an acting governor.

In *Chadwick*, one party contended that

the duties of the office of governor became annexed to the office of secretary of state, and are discharged as duties incident to the latter office; in other words, that

the duties of the office, but not the office itself, devolve upon the secretary of state.

*Id.* The court was skeptical, noting that argument seemed to require “either that the office of governor should continue vacant . . . ; or, second, that the office be filled, and yet he who fills it be in nowise governor, but continue to be merely secretary of state.” *Id.*

Accordingly, the court concluded the successor became governor:

In the first place, it is not shown how an office can be vacant, and yet there be a person, not the deputy or locum tenens of another, empowered by law to discharge the duties of the office, and who does, in fact, discharge them. It is not explained how, in such a case, the duties can be separated from the office so that he who discharges them does not become an incumbent of the office. And, in the second place, how a person can fill the office of governor without being governor. It is the function of a public officer to discharge public duties. Such duties constitute his office.

*Id.* at 1181. A later decision adhered to *Chadwick* and concluded that upon the governor’s death, “by reason of the fact that Mr. Olcott was secretary of state he automatically became governor.” *Olcott*, 181 P. at 482. The court concluded “when the people elected Mr. Olcott secretary of state, by the very terms of the constitution they elected him to become governor” if the incumbent died. *Id.* at 483.

## 12. Utah

Utah defines vacancy to include resignation and disability that extends for the remainder of the term. Utah Const. art. VII, § 11(1)(a). If a vacancy occurs, the lieutenant governor “shall become governor.” *Id.* § 11(2). The Utah Constitution also provides that if a disability is only temporary, the lieutenant governor shall discharge the powers and duties. *Id.* § 11(5)(a). And, it establishes that when the lieutenant governor becomes governor, a vacancy occurs in the office of lieutenant governor. *Id.* § 10(3)(a)(i).

However, before 2008, the Utah Constitution, like Iowa, used only “devolve.” The Utah Attorney General issued an advisory opinion in 2003 on the question of succession. Utah A.G. Opinion No. 03-001, 2003 WL 21996258 (Aug. 18, 2003). The opinion concluded (1) “devolve” means that the lieutenant governor becomes governor, and (2) a vacancy occurs in the office of lieutenant governor that the governor is entitled to fill by appointment. *Id.* at \*1, 3. The attorney general relied in part on the federal history involving the word “devolve.” Because four vice presidents had become president before Utah adopted a constitution, at the time the state adopted

one, “it was understood, in theory and in practice, that the Constitutional language ‘shall devolve’ meant ‘succession’ such that the Lieutenant Governor would become the Governor.” *Id.* at \*1.

The attorney general also noted that in 1980, the citizens of Utah adopted constitutional amendments that required the governor and lieutenant governor to run on the same ticket and clarified the line of succession of executive authority. *Id.* Those amendments were presented to the voters as mirroring the succession of the federal government—which by this time had adopted the 25th Amendment providing the vice president becomes president. *Id.*

Despite the attorney general’s conclusions about the existing language, the Utah Constitution was later amended to its current language to cement the attorney general’s understanding of the constitutional structure. Furthermore, the attorney general may have reached his opinion about a lieutenant governor vacancy because (1) the legislature codified its finding that the lieutenant governor is a significant position, Utah Code § 67-1a-1; and (2) the lieutenant governor is the state’s chief election officer, so it would be important to have someone in the position, see Utah Code § 67-1a-2. The Iowa Code does not contain a similar emphasis on the lieutenant governor’s importance, and here, the secretary of state is the chief election officer. Those differences may provide a basis on which to distinguish Utah’s conclusions.

### 13. Washington

Washington’s succession provision is similar to Iowa’s, using the word “devolve.” *Compare* Iowa Const. art. IV, § 17, *with* Wash. Const. art. 3, § 10. The Washington Supreme Court confronted the provision in a 1902 case presenting the question whether the death of the governor creates a vacancy in either the office of governor or lieutenant governor. *State ex rel. Murphy v. McBride*, 70 P. 25, 25 (Wash. 1902). The court concluded,

The constitution having provided that in case of the death of the governor the duties of the office shall devolve upon the lieutenant governor, there is no vacancy in the office of governor. . . . When the lieutenant governor, by virtue of his office and of the command of the constitution, assumed the duties of governor on the death of Gov. Rogers, the office of lieutenant governor did not thereby become vacant, but the officer remained lieutenant governor, intrusted with the powers and duties of governor.

*Id.* at 26.

### 14. Wisconsin

In Wisconsin, the lieutenant governor “shall become governor” if the governor dies, resigns, or is removed. Wis. Const. art. 5, § 7(1). The lieutenant governor “shall serve as acting governor” if the governor is absent or disabled. *Id.* § 7(2). But the language was not always what it is today. In 1938, it matched article IV, section 17 of the Iowa Constitution. *See State ex rel. Martin v. Ekern*, 280 N.W. 393, 398 (Wis. 1938) (quoting the provision in force at the time).

Under that provision, the Wisconsin Supreme Court acknowledged that the question of succession was “most important and of great public concern and interest” because the people of the state were “vitaly interested in seeing that no important office, such as that of lieutenant governor, be intruded into by any person who has not lawful authority to hold the office or to perform the duties thereof.” *Id.* at 394. It ultimately concluded that when a vacancy occurs in the office of governor, “the lieutenant governor does not become governor. He remains lieutenant governor, upon whom devolves the powers and duties of governor. In such a contingency no vacancy occurs in the office of lieutenant governor.” *Id.* at 399.

### 15. Wyoming

Wyoming does not use either the word “devolve” or the phrase “become Governor.” Instead, it provides that the secretary of state “shall act as governor.” Wyo. Const. art. 4, § 6. In 1903, the governor died, and a dispute arose about the secretary of state’s compensation while fulfilling his constitutional duty to act as governor. *State ex rel. Chatterton v. Grant*, 73 P. 470, 470 (Wyo. 1903). The court concluded the secretary of state performed duties both in that role and as governor, and accordingly was entitled to compensation for both positions. *See id.* at 472. However, the court also noted it did not observe a material distinction between “devolve” and “act as.” *Id.* at 476.

## III. SYNTHESIS

Several themes pervade the historical accounts. One major recurring theme is ~~what the New York court referred to as the elective principle~~—the notion that the people should not be subject to the rule of a person none of them elected. Iowa’s constitutional delegates voiced this principle during the debates in 1857, and it has repeatedly surfaced when other states’ provisions came before courts in those states. *See, e.g., Bryant*, 843 S.W.2d at 312; *State ex rel. Lamey v. Mitchell*, 34 P.2d at 372; *Skelos*, 915 N.E.2d at 1145.

Another theme is historical understanding. The notion that “it’s always been this way” is assuredly not reason, standing alone, to continue a particular practice; something can be legally incorrect even if it’s longstanding. *See Griffin v. Pate*, 884 N.W.2d 182, 208 (Iowa 2016) (Hecht, J., dissenting) (rejecting the notion that a practice should continue just “because ‘that’s the way it’s always been in Iowa’ or because ‘that’s the way it’s done elsewhere’ ”). But it *can*

illuminate the understanding Iowa's framers had at the time they were drafting the Iowa Constitution; it can shed light on the words' original intent even though original intent is not the end of the analysis. *See id.* at 198–202 (majority opinion) (beginning analysis of a constitutional provision by determining what it was understood to mean at the time of enactment before tracing its interpretation over time). In that respect, the history of *presidential* succession before 1857, and the language in the United States Constitution at the time, provides a worthy indication of what Iowa's framers likely meant by the word “devolve.”

A final theme is the importance of linguistic difference. Many states have changed their respective succession provisions, either because a court determined succession did not work in the way the people actually intended or perhaps just to update language. Additionally, some states differentiate between permanent and temporary disabilities—but Iowa's provision applies to both and must carry an interpretation commensurate with that flexibility. *See State ex rel. Lamey v. Mitchell*, 34 P.2d at 372; *Heller*, 42 A. at 158. Of particular importance here is the fact that the 25th Amendment was adopted in 1967, and the Iowa Constitution has seen multiple amendments since then—yet the Iowa Constitution was not changed to mirror it.

To be sure, reasonable minds can debate the meaning of the constitution. The histories discussed above in some instances contain competing answers; some say the successor becomes governor, while others say the successor is merely acting governor. Some grant a successor the power to appoint a new lieutenant governor; others don't. There is room to disagree. However, there are several factors that carry the most persuasive weight in determining what Iowa's answers are.

First, the elective principle was clearly important to the Iowa drafters. *See 1 The Debates*, at 591–94. And it has remained important, because even though Iowans have amended article IV of the Iowa Constitution, in doing so they retained the principle that both the governor and lieutenant governor “shall be elected.” Iowa Const. art. IV, § 2. Accordingly, the elective principle deserves paramount consideration. As several courts determined, it would frustrate the elective principle *and* the constitutional succession order if a governor could always appoint a new lieutenant.

Second, the series of amendments to the Iowa Constitution delineate the contours of the lieutenant governor's duties. By placing the governor and lieutenant governor together on one ticket and removing the lieutenant governor's duty to preside over the senate, the people displayed their intent that the lieutenant governor be ready as a standby—just in case. *See State ex rel. Lamey v. Mitchell*, 34 P.2d at 371–72. The lieutenant governor's duties are as provided by law, and one of those duties flows from the constitution: the duty to become governor in the event of a vacancy. The duty is already encompassed in the office of lieutenant governor.

Finally, history carries significant weight in two respects. It illustrates that at the time article IV, section 17 was enacted, “devolve” meant that the successor becomes governor. It also suggests that the 1988 amendments consciously avoided duplicating the language of the 25th Amendment because the people of Iowa wished to uphold the elective principle.

In light of the resources and documents discussed in this memo, the answers to Senator Johnson’s questions about gubernatorial succession in the event of Governor Branstad’s resignation are as follows.

1. If Governor Branstad resigns, Lieutenant Governor Reynolds becomes Governor. She succeeds to the office, title, position, and powers of Governor because the person possessing the powers is styled the Governor of Iowa. Iowa Const. art. IV, § 1.
2. Article IV, section 17 itself does not contain the phrase “act as governor.” That section heading was added later and, ~~like a statutory heading,~~ cannot circumvent the plain meaning of the actual language. The framers’ intent in selecting the word “devolve” was to match the United States Constitution, and under the United States Constitution, the government experienced two presidential successions before 1857 in which the vice president became president. Thus, the framers understood “devolve” to mean “become.”
3. If Governor Branstad resigns, no vacancy occurs in the office of lieutenant governor. Essentially, the offices of governor and lieutenant governor merge. The voters elected Governor Branstad and Lieutenant Governor Reynolds with the understanding that Lieutenant Governor Reynolds would step in if a particular contingency—specified in article IV, section 17—occurred. One of the lieutenant governor’s duties is to become Governor if that contingency occurs. Accordingly, Lieutenant Governor Reynolds becomes Governor because she is already Lieutenant Governor. Because there is no vacancy in the office of lieutenant governor, Iowa Code section 69.8 does not apply.
4. Because there is no vacancy in the office of lieutenant governor, there is nothing to fill. Accordingly, Governor Reynolds could not appoint a successor lieutenant governor.



**Ranscht, David [AG]**

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**From:** Ranscht, David [AG]  
**Sent:** Friday, April 14, 2017 1:03 PM  
**To:** 'Gavin, Meghan [AG]'  
**Subject:** My draft  
**Attachments:** Question One.docx

Here's what I have.

I also requested from the Oklahoma AG a copy of their opinion number 65-235, which is too old to be in full text on their website and also not on Westlaw. A journal article I was reading described it as answering "no" to the question "If the Lieutenant Governor succeeds to the Governorship (due to death, resignation, or impeachment of the Governor), does the then Governor have the authority to appoint another person to the Lieutenant Governorship?"

The person I talked to in Oklahoma said they would look for it and email me. I'll forward it when he does.



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**I. If Governor Branstad Resigns, Is Lieutenant Governor Reynolds Governor?**

Article IV, section 17 of the Iowa Constitution is the key to answering this question. “[T]he purpose of art. IV, § 17 is to ensure that the citizens of Iowa are not without a person capable of performing the constitutional and statutory duties imposed upon a governor.” 1980 Op. Att’y Gen. 550, 1980 WL 25903, at \*3 (Iowa Att’y Gen. Jan. 2, 1980). That section provides,

In case of the death, impeachment, resignation, removal from office, or other disability of the governor, the powers and duties of the office for the residue of the term, or until he shall be acquitted, or the disability removed, shall devolve upon the lieutenant governor.

Iowa Const. art. IV, § 17.<sup>1</sup> Article IV, section 17 has remained unchanged since 1857.

I focus here on two notable aspects of article IV, section 17. First, while death and resignation are permanent exits from office, the phrase “other disability” includes temporary conditions such as physical or mental incapacity. See 1923 Op. Att’y Gen. 263, 263 (Iowa Att’y Gen. Aug. 23, 1923) (answering a question posed by the governor about the exercise of

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<sup>1</sup> Article IV, section 17 bears a section heading stating “Lieutenant governor to act as governor.” I give that heading no weight in my analysis. During the 1857 Iowa convention, the constitutional provisions did not include section descriptions or titles when read into the record. See 1 *The Debates of the Constitutional Convention of the State of Iowa*, at 76–78 (W. Blair Lord rep., 1857). The original handwritten version of the Iowa Constitution does not include section descriptions or titles either. See generally Iowa Const., at [https://www.legis.iowa.gov/docs/publications/icnst/attachments/Iowa\\_Constitution\\_Scanned.pdf](https://www.legis.iowa.gov/docs/publications/icnst/attachments/Iowa_Constitution_Scanned.pdf). Furthermore, a section heading “cannot limit the plain meaning of the text.” *Atchison, Topeka & Santa Fe Ry. Co. v. Bair*, 338 N.W.2d 338, 344 (Iowa 1983). That important limitation, which prevents a code editor’s choice of language from frustrating the intent of a statute, is even more significant when considering a constitutional provision.

gubernatorial power under article IV, section 17 during an extended hiatus recommended by his physician). Therefore, article IV, section 17 must carry an interpretation commensurate with its flexibility; its provisions must establish a framework applicable to several possible factual scenarios without creating “friction in the machinery of government by reason of such construction.” *Fitzpatrick v. McAlister*, 248 P. 569, 576 (Okla. 1926).

The second important piece of article IV, section 17 is the word “devolve”—a downward transfer. Does it mean the lieutenant governor is governor, or that the lieutenant governor is something less—such as acting governor or governor ex officio?

One important guidepost in determining the meaning of “devolve” is what it was understood to mean at the time it was enacted:

In the interpretation of the Constitution . . . we are to ascertain the meaning by getting at the intention of those making the instrument. What thought was in the mind of those making the Constitution—what was their intention, is the great leading rule of construction.

*Ex parte Pritz*, 9 Iowa 30, 32 (1858); accord *Griffin v. Pate*, 884 N.W.2d 182, 186 (Iowa 2016) (beginning analysis of a constitutional provision “by looking back to review the history” of it “to gain a better understanding of the concept” as applied in a current case); *Redmond v. Ray*, 268 N.W.2d 849, 853 (Iowa 1978) (“In construing a constitution, our purpose is to ascertain the intent of the framers.”); *Des Moines Joint Stock Land Bank v. Nordholm*, 253 N.W. 701, 723 (Iowa 1934) (Claussen, C.J., dissenting) (“[W]hy should not the [constitutional] language be construed as it was understood by the people who adopted it?”).

There are several important pieces to the historical puzzle that, once assembled, illuminate the framework the Iowa Constitution's framers established.

**A. *Constitutional Debates.*** The Iowa Constitution of 1846 made no provision for a lieutenant governor. However, as the 1857 constitutional convention began, one delegate proposed that a committee dedicated to formulating the executive branch of government consider "providing for the election of a Lieutenant Governor who, by virtue of his office, shall . . . exercise all the powers and have the title of Governor in case of the death, removal, or other disability of the Governor." 1 *The Debates of the Constitutional Convention of the State of Iowa*, at 39 (W. Blair Lord rep., 1857) [hereinafter *The Debates*]. The convention agreed to the resolution. *Id.* Accordingly, the drafters of article IV, section 17 envisioned that the lieutenant governor would "have the title of Governor" if the governor left office. *Id.*

**B. *Federal Language and History.*** In 1857, when the Iowa Constitution was ratified, article II, section 1, clause 6 of the United States Constitution read: "In Case of the Removal of the President from Office, or of his Death, Resignation, or Inability to discharge the Powers and Duties of the said Office, the Same shall devolve on the Vice President . . . ." Thus, article IV, section 17 of the Iowa Constitution matched language in the United States Constitution at the time.

Under that federal language, several presidents died in office. Following each death, the Vice President was considered President, not "acting

President.” Two of these instances occurred before 1857: John Tyler in 1841 and Millard Fillmore in 1850. Because of this history, the delegates to the 1857 Iowa constitutional convention likely understood the word “devolve” to mean that upon the governor’s exit from office, the lieutenant governor would be governor. See *State v. Baldon*, 829 N.W.2d 785, 810 (Iowa 2013) (Appel, J., specially concurring) (noting “the drafters of the Iowa Constitution were well aware” of existing federal law when writing in 1857).

A federal court decision from 1867 confirms this understanding:

Three times, since the adoption of the constitution, the president has died, and, under [article II, section 1, clause 6], the powers and duties of the office of president have devolved upon the vice president. All branches of the government have, under such circumstances, recognized the vice president as holding the office of president, as authorized to assume its title . . . . It has never been supposed that, under the provision of the constitution, the vice president . . . acted as the servant, or agent, or locum tenens of the deceased president, or in any other capacity than as holding the office of president fully, for the time being, by virtue of express authority emanating from the United States.

*Merriam v. Clinch*, 17 F. Cas. 68, 70 (C.C.S.D.N.Y. 1867). The three instances to which the court referred were Tyler, Fillmore, and Andrew Johnson in 1865.

Likewise, the Oklahoma Supreme Court relied upon federal history several decades later in analyzing the word “devolve:”

[U]pon the death of President Wm. H. Harrison, Vice President Tyler became President of the United States. For almost a century this construction of the federal Constitution has stood without question. It has been recognized as correct, and acquiesced in, not only by the departments of state and all the states of the Union, but officially recognized by every civilized government in the world.

.....

Defendant suggests that no court has ever pronounced that to be the law. To our mind, it is so clearly correct that no one has ever presumed to test its correctness in the courts. Therefore it should have greater weight than an ordinary departmental construction, not only because it has stood for almost a century, but because it has been recognized as the correct conception of our system of government, and because, for eighty-five years under this construction, there has been no friction in the machinery of government by reason of such construction.

*Fitzpatrick*, 248 P. at 576. Between *Merriam* in 1867 and *Fitzpatrick* in 1926, three more presidents died in office—and once again, after each death, the Vice President was considered President.<sup>2</sup> The consistent federal understanding of the word “devolve” over several decades further informs my determination of what “devolve” means in article IV, section 17 of the Iowa Constitution.

**C. Other Original Executive Branch Provisions.** Related provisions enacted alongside article IV, section 17 can also aid in determining the meaning of the word “devolve.” Cf. Iowa Code § 4.1(38) (2017) (“Words and phrases shall be construed according to the context . . . .”). Several other original provisions in article IV of the Iowa Constitution bear upon the question of transferring or shifting executive power. Although some provisions of article IV have been amended since 1857, I initially focus on the original provisions, because those—together with section 17—established the original framework as the drafters intended it.

Article IV, section 1 provides that “The supreme executive power of this state shall be vested in a chief magistrate, who shall be styled the governor of the state of Iowa.” Iowa Const. art. IV, § 1. In other words, the person who has

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<sup>2</sup> The three were Chester Arthur in 1881, Theodore Roosevelt in 1901, and Calvin Coolidge in 1923.

the powers is governor. Like article IV, section 17, article IV, section 1 has remained unchanged since 1857.

Article IV, sections 2 and 3 originally established that the governor and lieutenant governor would be elected by the people—but not on the same ticket.

Article IV, section 18 made the lieutenant governor President of the Senate with a tiebreaking vote, but provided that “when [the lieutenant governor] shall exercise the office of Governor, the Senate shall choose a President pro tempore.”

Article IV, section 15 established that the lieutenant governor would serve until a successor was elected and qualified, and that “while acting as Governor,” the lieutenant governor would receive the same pay as provided for the governor.

Article IV, section 19 established how executive power would transfer when multiple state officers were incapable of performing gubernatorial duties:

If the Lieutenant Governor, while acting as Governor, shall be impeached, displaced, resign, or die, or otherwise become incapable of performing the duties of the office, the President pro tempore of the Senate shall act as Governor until the vacancy is filled, or the disability removed; and if the President of the Senate, for any of the above causes, shall be rendered incapable of performing the duties pertaining to the office of Governor, the same shall devolve upon the Speaker of the House of Representatives.

In light of these provisions, it is my opinion that section 1 and original section 18 complement each other and dovetail with section 17. Because the framers understood that the lieutenant governor would “have the title of Governor,” <sup>1</sup> *The Debates* at 39, they also provided in section 18 that when the

powers and duties devolved (as section 17 instructed), the lieutenant governor would “exercise the office of Governor.” That aligns with the foundational principle that the person who has the powers *is* governor. Iowa Const. art. IV, § 1. The foundational principle is paramount.

**D. Other States’ Experiences.** Iowa is not the first state to face questions regarding a governor’s permanent departure from office. While other states’ constitutions and experiences do not alone determine conclusively what the Iowa Constitution means, I find valuable to my analysis the language used in those states’ constitutions, court decisions or attorney general opinions involving that language, and any subsequent linguistic changes.

My review of available authority reveals a relatively even divide. When the issue has surfaced and the relevant constitutional provision utilized the word “devolve,” some authorities in other states have concluded that the lieutenant governor is governor. In view of the question as I have phrased it, I call these the “yes” decisions. *See, e.g., Bryant v. English*, 843 S.W.2d 308, 311 (Ark. 1992) (“[W]e hold that . . . the Lieutenant Governor serves as Governor for the residue of the term . . . .”); *State ex rel. Lamey v. Mitchell*, 34 P.2d 369, 370 (Mont. 1934) (“[W]hen the Governor resigns or is permanently removed from office, there is no vacancy in the office of Governor in the sense that there is no one left with power to discharge the duties imposed upon the Governor.”); *Fitzpatrick*, 248 P. at 577 (“Mr. Trapp is just as much a Governor, in every literal and practical sense and effect, as though he had been elected to the office.”); *Chadwick v. Earhart*, 4 P. 1180, 1181 (Or. 1884) (“[I]t is not shown



how . . . . a person can fill the office of governor without being governor.”); *State ex rel. Murphy v. McBride*, 70 P. 25, 26 (Wash. 1902) (“The constitution having provided that in case of the death of the governor the duties of the office shall devolve upon the lieutenant governor, there is no vacancy in the office of governor.”); 1939 Op. Att’y Gen. 69, 73 (Mich. Att’y Gen. Mar. 28, 1939) (concluding when the governor dies, the lieutenant governor is “governor of the state [for] all intents and purposes”).

Others have concluded that the lieutenant governor or next person “in line” is not truly governor, but is instead only acting governor. I call these the “no” decisions. See, e.g., *State ex rel. De Concini v. Garvey*, 195 P.2d 153, 154 (Ariz. 1948) (concluding the person upon whom the powers and duties of governor devolve after the governor’s death or resignation “is not governor de jure or de facto but merely ex officio or acting governor”); *People ex rel. Lynch v. Budd*, 45 P. 1060, 1060 (Cal. 1896) (“[I]t would hardly be contended that when the powers and duties of the governor devolve upon the lieutenant governor the latter thereby becomes governor . . . .”); *State ex rel. Hardin v. Sadler*, 47 P. 450, 450 (Nev. 1897) (“If a vacancy occurs in the office of governor, the powers and duties of the office devolve upon the lieutenant governor . . . . The officer remains lieutenant governor, but invested with the powers and duties of governor.”); *State v. Heller*, 42 A. 155, 157 (N.J. 1899) (“The language used is not ambiguous. It declares that the powers, duties, and emoluments of the office shall devolve on the president of the senate; it does not confer upon him the title of the office.”); *State ex rel. Martin v. Ekern*, 280 N.W. 393, 399 (Wis.

1938) (“[T]he lieutenant governor does not become governor. He remains lieutenant governor, upon whom devolves the powers and duties of governor.”).

**E. Analysis.** The substantial amount of “no” decisions are significant. Although Iowa has “no obligation to adopt a rule just because it has generally been adopted elsewhere,” *Handeland v. Brown*, 216 N.W.2d 574, 577 (Iowa 1974), all of the “no” decisions are based on a careful parsing of the word “devolve” and the other relevant constitutional language. When resolving legal quandaries, precision and nuance matter. *See Rivera v. Woodward Res. Ctr.*, 865 N.W.2d 887, 897 (Iowa 2015). Thus, placing Iowa among the “no” decisions would be legally defensible. Indeed, in 1977, the Idaho Attorney General acknowledged that, although he believed them to be somewhat counterintuitive, the “no” decisions suggested “the lieutenant governor *never* truly succeeds to the office of governor” under the Idaho Constitution (which at the time used the word “devolve”). Idaho Op. Att’y Gen. No. 77-1, 1977 WL 25063, at \*1 (Idaho Att’y Gen. Jan. 4, 1977). The Idaho Attorney General went on to recommend that only the Idaho Supreme Court could answer the question definitively as a matter of Idaho law. *See id.*

Nonetheless, I find the “yes” decisions more persuasive than the “no” decisions. Several of the “no” decisions have been superseded by subsequent constitutional amendments in their respective states. Those amendments often changed the framework for transferring executive power to provide that the lieutenant governor “becomes governor” or “shall be governor” when the governor dies, resigns, or otherwise leaves office permanently. *See, e.g., Ariz.*

Const. art. V, § 6; Cal. Const. art. V, § 10; N.J. Const. art. V, § 1 ¶ 6; Wis. Const. art. V, § 7(1). In other words, the people of the respective states amended the constitution to clarify the framework of executive power, suggesting they believed the court's previous interpretation was incorrect.

Additionally, with specific regard to New Jersey, the *Heller* court noted several phrases in the state's constitution that referred to the governor "or person administering the government." *Heller*, 42 A. at 157. If the person exercising executive power after the governor's resignation was governor, the court concluded, the phrase "person administering the government" would be superfluous. *See id.* Thus, the *Heller* decision is distinguishable because it was based in part on unique constitutional language. The Iowa Constitution does not similarly refer to the governor "or person administering the government."

I also conclude the "no" decisions elevate form over substance, which the Iowa Supreme Court has repeatedly cautioned against. *See, e.g., Lewis v. Jaeger*, 818 N.W.2d 165, 179 (Iowa 2012); *State ex rel. Miller v. Smokers Warehouse Corp.*, 737 N.W.2d 107, 110 (Iowa 2007); *Van Baale v. City of Des Moines*, 550 N.W.2d 153, 156 (Iowa 1996). The "no" decisions are somewhat technical, drawing a linguistic distinction that, while noteworthy, makes no substantive difference under the circumstances presented here. Whether her title would be governor or acting governor, there could be little dispute that if Governor Branstad resigns, now-Lieutenant Governor Reynolds would possess authority to sign legislation, appoint new members of state boards and

commissions, issue pardons, and even receive the governor's salary. Instead, the dispute centers on the exact wording of her new title.

On that score, article IV, section 1 of the Iowa Constitution carries significant weight. That section provides, "The supreme executive power of this state shall be vested in a chief magistrate, who shall be styled the governor of the state of Iowa." Iowa Const. art. IV, § 1. In other words, the person who has the powers is governor. The powers make the governor, carrying with them the title. As the Arkansas Supreme Court concluded under a similar provision in the Arkansas Constitution, this means when the powers and duties of governor devolve upon the lieutenant governor, that person is thereafter styled the governor. *See Bryant*, 843 S.W.2d at 313; *accord Fitzpatrick*, 248 P. at 572 ("He is the 'Governor' for the simple reason that he governs."). Thus, there is no substantive difference between governor and acting governor when the governor's exit is permanent. *See State ex rel. Chatterton v. Grant*, 73 P. 470, 474 (Wyo. 1903) (concluding that, after the governor died, the question whether a person "[wa]s in fact the governor of the state" was immaterial because, whether governor or acting governor, the person had the powers and duties of the office).

The "yes" decisions also comport with the Iowa framers' understanding of the lieutenant governor's role and with our state's historical practice. As I have noted, in creating the office of lieutenant governor, the framers expected that person to "have the title of Governor" if the governor left office. 1 *The Debates*, at 39. Furthermore, on four previous occasions the governor of Iowa has

resigned or died in office—and each time, the lieutenant governor was thereafter treated as governor. See William H. Fleming, *The Second Officer in the Government*, reprinted in *Annals of Iowa: A Historical Quarterly*, Vol. XIII, No. 1, at 533–34 (1921) (recalling Governor Kirkwood’s resignation in 1877 and Governor Cummins’s resignation in 1908); Legis. Servs. Agency, *Pieces of Iowa’s Past: Lieutenant Governors Who Have Become Governor* 2–3 (Mar. 8, 2017), available at <https://www.legis.iowa.gov/docs/publications/TB/855445.pdf> (noting Governor Beardsley’s death in 1954 and Governor Hughes’s resignation in 1969). Although historical practice standing alone does not mandate a similar result now, the historical practice is consistent with the framework of executive power I have described. See *Bryant*, 843 S.W.2d at 312 (finding it “of some persuasion” that, when the governor of Arkansas died or resigned, the lieutenant governor was historically treated as governor).

Unlike the constitutional amendments in the “no” states, Iowa’s amendments to article IV do not change or alter my analysis of the effect of article IV, section 17. A 1952 amendment to article IV, section 19 removed a reference to the lieutenant governor “acting as” governor, replacing it with “if there be a vacancy in the office of Governor”—and that language remains today. However, the 1952 amendment did not remove language in article IV, section 15—which establishes the lieutenant governor’s compensation—that referred to the lieutenant governor acting as governor.

There is a natural tendency to ascribe significance to the change, but those amendments don’t really say much about the title of the person upon

whom the powers and duties devolve—because article IV, section 1 controls that question. The more significant piece of the 1952 amendments, in my view, was a section providing that if the governor-*elect* died, resigned, or failed to qualify, the lieutenant governor-elect would “assume the powers and duties of governor” upon inauguration. As I have noted, article IV, section 1 would therefore make the person with the powers the governor. In other words, although the governor-elect provision was later repealed, the 1952 amendment solidified—not altered—the existing framework for the transfer of executive power in the event of a constitutional contingency.<sup>3</sup>

In 1972, several provisions of article IV were changed, but they did not affect sections 1 or 17. Originally, article IV, sections 2 and 3 provided the governor and lieutenant governor served two-year terms. The 1972 amendment merely increased both terms to four years. Thus, they do not indicate any significant change in the constitutional framework for transferring executive power.

Iowa enacted more significant amendments in 1988. The 1988 amendments provided for the first time that the governor and lieutenant governor are elected together, on one ticket, “as if these two offices were one and the same.” Iowa Const. art. IV, § 3. Before 1988, it was possible for the governor and lieutenant governor to represent different political parties. The amendment brought to fruition a constitutional delegate’s statement at the

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<sup>3</sup> Additionally, Governor Beardsley’s death occurred in 1954, after the 1952 amendments—but our state’s practice of treating the lieutenant governor as governor remained the same.

1857 convention: “The governor and lieutenant-governor will always, I presume, be the same in politics, and why not have the successor of the governor of the same politics, instead of bringing in one of the antagonistic party?” 1 *The Debates*, at 593.

The 1988 amendments also recast the lieutenant governor’s duties. Under original article IV, section 18, the lieutenant governor was president of the senate and possessed a tiebreaking vote. If the lieutenant governor was absent, impeached, or exercising the office of Governor, the Senate was instructed to choose a president pro tempore to preside and break ties.

However, the 1988 amendments revised article IV, section 18 to provide that the lieutenant governor “shall have the duties provided by law and those duties of the governor assigned to the lieutenant governor by the governor.” In other words, the 1988 amendments removed the lieutenant governor’s status as president of the Senate. The only remaining duty “provided by law” is to receive the powers and duties of governor under article IV, section 17 if the governor leaves office; there are no additional statutory duties imposed upon the lieutenant governor. As the Montana Supreme Court put it:

When the framers of the Constitution provided for the election of a Governor and a Lieutenant Governor as members of the executive department of the state, but conferred upon the latter no executive power or authority other than in the contingencies mentioned . . . , they manifested the intention that the people elect two qualified heads of that department—the one active, the other his lieutenant, ready at a moment’s notice to assume the duties of the office, should his superior officer, for any reason, either temporarily or permanently, become unable to perform them.

*State ex rel. Lamey v. Mitchell*, 34 P.2d at 371–72. Therefore, the 1988 amendments do not alter my analysis on this question.

**F. Answer.** After considering the Iowa Constitution’s language, placing it in historical perspective, and comparing other legal analyses on similar topics, it is my opinion that under article IV, section 17 of the Iowa Constitution, if the governor resigns and the powers and duties of the office devolve upon the lieutenant governor, the lieutenant governor has the title of governor.



## Ranscht, David [AG]

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**From:** Ranscht, David [AG]  
**Sent:** Wednesday, February 08, 2017 10:27 AM  
**To:** Gavin, Meghan [AG]; Thompson, Jeffrey [AG]  
**Subject:** New York Succession  
**Attachments:** AUTOMATIC LIEUTENANT GUBERNATORIAL SUCCESSION PREVENTING LEGISLATIVE GRIDLOCK WI.pdf; SKELOS V PATERSON THE SURPRISINGLY STRONG CASE FOR THE GOVERNORS SURPRISING POW.pdf; Skelos v Paterson.pdf

In 2009 in New York, the governor resigned, the lieutenant governor took over, and then the senate deadlocked trying to elect a president pro tem—so the now-governor just appointed a new lieutenant governor and some litigation resulted. Court decision and some scholarship attached. I have not read them yet but am starting...



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13 N.Y.3d 141

Court of Appeals of New York.

Dean G. SKELOS et al., as Duly Elected Members  
of the New York State Senate, Respondents,

v.

David PATERSON, as Governor of the  
State of New York, et al., Appellants.

Sept. 22, 2009.

### Synopsis

**Background:** State Senator brought action seeking declaratory judgment that Governor could not, consistent with the New York State Constitution, appoint putative nominee to office of Lieutenant-Governor, and for permanent injunction prohibiting Governor from appointing nominee or any other individual to that office. The Supreme Court, Nassau County, William R. LaMarca, J., 25 Misc.3d 347, 884 N.Y.S.2d 812, granted the Senator's motion for a preliminary injunction enjoining the nominee from exercising any of the powers of the office of Lieutenant-Governor. The Supreme Court, Appellate Division, 65 A.D.3d 339, 885 N.Y.S.2d 92, affirmed. Governor appealed.

**Holding:** The Court of Appeals, Lippman, Chief Judge, held that Governor had authority to fill vacancy in office of Lieutenant-Governor by appointment.

Reversed.

Pigott, J., filed opinion dissenting in which Graffeo and Smith, JJ., concurred.

West Headnotes (1)

### [1] States

↔ Lieutenant Governor

Governor had authority to fill vacancy in office of Lieutenant-Governor by appointment under public officers law for filling other vacancies; Lieutenant-Governor office was vacant, there was no other

provision of law bearing upon how vacancy was to be dealt with, state Constitutional provision regarding vacancy of office of Lieutenant-Governor merely stated what was to occur while there was a vacancy and did not apply to fill or end a vacancy, and another Constitutional provision expressly contemplated that vacancies in elective office may be filled by appointment. McKinney's Const. Art. 4, § 6; McKinney's Const. Art. 13, § 3; McKinney's Public Officers Law § 43.

5 Cases that cite this headnote

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## \*146 \*\*1142 OPINION OF THE COURT

Chief Judge LIPPMAN.

The issue on this appeal is whether the Governor of the State of New York has the authority to fill a vacancy in the office of Lieutenant Governor by appointment. We now hold that he does.

## I.

In November 2006, Eliot Spitzer and David Paterson were elected respectively to the offices of Governor and Lieutenant Governor. On March 17, 2008, Governor Spitzer resigned and, pursuant to article IV § 5 of the New York Constitution, Lieutenant Governor Paterson became Governor. Fifteen months later, Republicans and Democrats split 31–31 in the Senate. Because each party recognized a different temporary \*147 president of the Senate, this political deadlock complicated the conduct of day-to-day business in the Senate chamber. Moreover, it was not clear which one of the rival temporary presidents stood next in the line of gubernatorial succession.

On July 8, 2009, Governor Paterson responded to this situation by appointing Richard Ravitch to the office of Lieutenant Governor. Pursuant to article IV, § 6 of the Constitution, the Lieutenant Governor presides over the Senate and casts a tie-breaking vote on certain procedural matters. Governor Paterson relied on section 43 of the Public Officers Law in making this appointment.

The following day, plaintiff Dean G. Skelos, a State Senator elected from the 9th Senatorial District, commenced this action for a declaratory judgment that the Governor's appointment of Mr. Ravitch was unconstitutional.<sup>1</sup> He also sought to permanently enjoin the Governor from appointing any individual to the office of Lieutenant Governor. Plaintiff then moved to preliminarily enjoin Mr. Ravitch from acting in the capacity of Lieutenant Governor. Supreme Court, Nassau County granted the preliminary injunction (25 Misc.3d 347, 884 N.Y.S.2d 812 [2009] ). and the Appellate Division, Second Department, affirmed (65 A.D.3d 339, 885 N.Y.S.2d 92 [2009] ). Thus, Mr. Ravitch has, to date, not presided over the Senate.

In assessing the likelihood of plaintiff's success upon the merits (*see* \*\*1143 *Doe v. Axelrod*, 73 N.Y.2d 748, 750, 536 N.Y.S.2d 44, 532 N.E.2d 1272 [1988] ), the Appellate Division held that

“the Governor's purported appointment of Mr. Ravitch was unlawful because no provision of the Constitution or of any statute provides for the filling of a vacancy in the office of lieutenant governor other than by election, and only the temporary president of the Senate is authorized to perform the duties of that \*\*\*848 office during the period of the vacancy” (65 A.D.3d at 348, 885 N.Y.S.2d 92).

The Appellate Division sua sponte granted the Governor leave to appeal from its order, and certified a question to this Court. We now reverse.

## \*148 II.

The Governor has raised a threshold question as to Senator Skelos's standing to sue in light of the stringent criteria for legislator standing that we adopted in *Silver v. Pataki*, 96 N.Y.2d 532, 539–540, 730 N.Y.S.2d 482, 755 N.E.2d 842 [2001]. The parties do not dispute, however, that the public's interest is best served by resolving the constitutional issue presented by the Governor's action as expeditiously as possible. Accordingly, assuming, without deciding, that Senator Skelos presently has standing to sue the Governor, we now proceed to the merits (*see Matter of New York State Assn. of Criminal Defense Lawyers v. Kaye*, 96 N.Y.2d 512, 516, 730 N.Y.S.2d 477, 755 N.E.2d 837 [2001]; *Babigian v. Wachtler*, 69 N.Y.2d 1012, 1013, 517 N.Y.S.2d 905, 511 N.E.2d 49 [1987]; *Matter of Roman Catholic Diocese of Albany v. New York State Dept. of Health*, 66 N.Y.2d 948, 951, 498 N.Y.S.2d 780, 489 N.E.2d 749 [1985] ).

## III.

Our State Constitution specifies that “[t]he legislature shall provide for *filling* vacancies in office” (N.Y. Const, art XIII, § 3 [emphasis supplied] ), and expressly contemplates that vacancies in elective office may be filled by appointment (*see id.*). In pursuance of the constitutional mandate imposed by article XIII, § 3,

the Legislature has enacted three comprehensive and complementary provisions, i.e., Public Officers Law §§ 41, 42 and 43. The first of these, titled “Vacancies *filled* by legislature” (emphasis supplied), prescribes the means by which vacancies in the offices of State Attorney General and Comptroller are to be filled. The second, titled “*Filling* vacancies in elective offices” (emphasis supplied), generally requires that such vacancies occurring before September 20th of any year in office be filled by means of election at the next general election, but, in the case of a vacancy in the office of United States Senator, requires, in certain circumstances, a temporary appointment by the Governor “to fill such vacancy” (*see* Public Officers Law § 42[4-a] ). Notably, this section specifically excepts from its scope the elective offices of Governor and Lieutenant Governor. The last of these vacancy-filling provisions, section 43, the one upon which the Governor relied in his appointment of Mr. Ravitch, titled “*Filling* other vacancies” (emphasis supplied), is plainly intended as a catchall to complete the Legislature's satisfaction of the mandate of article XIII, § 3. Unlike its neighboring provision, section 42, section 43 does not specifically exclude any office from its application, but rather provides:

\*149 “If a vacancy shall occur, otherwise than by expiration of term, with no provision of law for filling the same, if the office be elective, the governor *shall* appoint a person to execute the duties thereof until the vacancy shall be filled by an election” (emphasis supplied).

It is not disputed that when Governor Spitzer resigned in March 2008, then-Lieutenant Governor Paterson became Governor \*\*1144 for the remainder of Governor Spitzer's term (*see* N.Y. Const, art IV § 5). Nor can it be reasonably disputed that when Lieutenant Governor Paterson became Governor, he ceased being Lieutenant Governor, leaving a vacancy in that office. The first condition of the statute's applicability was thus met.

The second condition of section 43—that there be no provision of law (apart from section 43) for filling the vacancy—was also satisfied. The only other provision of law bearing upon how a vacancy in the \*\*\*849 office of Lieutenant Governor alone is to be dealt with is article IV § 6 of the State Constitution, but its direction that “the temporary president of the senate shall perform all the duties of lieutenant-governor” applies only “during [the] vacancy or inability” and thus cannot fill or end the

vacancy. Plaintiff does not appear to contend otherwise; indeed, the central contention of plaintiff's argument is that the Constitution requires that a vacancy in the office of Lieutenant Governor be preserved until the next quadrennial election.

An appointment under Public Officers Law § 43, in contrast to the devolution mandated by article IV § 6, effectively fills the office in accordance with the command of article XIII, § 3; the article IV, § 6 devolution, although plainly necessary and useful to assure continuity of service in the short term, can at best provide only stopgap coverage of the function of the Lieutenant Governor. Properly understood, then, the two provisions—article IV, § 6 and Public Officers Law § 43—are complementary rather than duplicative and, accordingly, article IV, § 6 should not be construed, as it was by the Appellate Division, as a limitation upon gubernatorial appointment pursuant to Public Officers Law § 43. Article IV, § 6 merely states what is to occur while there is a vacancy; it does not, and cannot, consistent with the command of article XIII, § 3, be understood to state that the vacancy may not be filled.

The dissent places singular importance upon the apparent equivalence of the operative verbs in each of the provisions at issue—“execute” in Public Officers Law § 43 and “perform” in \*150 article IV, § 6—arguing that the provisions must be understood as duplicative, and, accordingly, that neither provision may be applied to fill the office of Lieutenant Governor. But, a correct understanding of what the provisions at issue are intended to accomplish does not turn on whether or not these expressions are themselves semantically equivalent. When understood in context, each expression refers to a materially different assumption of authority: the assumption under section 43 is plenary, in accordance with the mandate of article XIII, § 3 that vacancies be filled, but that occurring pursuant to article IV, § 6, concededly, is not.

Nor does article XIII, § 3's proviso that “no person appointed to fill a vacancy [in elective office] shall hold his or her office by virtue of such appointment longer than the commencement of the political year next succeeding the first annual election after the happening of the vacancy” prevent the Governor from appointing a Lieutenant Governor. The intent of the constitutional limitation is clear; namely, to assure that appointments to elective

offices extend no longer than is reasonably necessary to fill such offices by election. Where, as here, an office may not legally appear on the ballot except quadrennially (see N.Y. Const, art IV, §§ 1, 6), and there will be a lengthy period before the next election for the office may be held, plaintiff's reading of the durational limitation at issue would result in an extended vacancy running the balance of an elective term. This appears to be fundamentally incompatible with the main object of article \*\*1145 XIII, § 3, expressed unequivocally in its first clause, which, of course, is to assure that vacancies are filled.

We have never interpreted article XIII, § 3 to impose the requirement that plaintiff finds in it. Rather, we have held that the provision demands only that "when a vacancy in elective office occurs, the vacancy must be filled by election in the shortest space of time *reasonably possible*" (*Matter of Roher v. Dinkins*, 32 N.Y.2d 180, 188, 344 N.Y.S.2d 841, 298 N.E.2d 37 [1973] [emphasis supplied]; see also *Matter of Mitchell v. Boyle*, 219 N.Y. 242, 248, 114 N.E. 382 [1916] ). Other states have dealt \*\*\*850 with the issue of measuring the permissible length of an appointment to an elective office similarly, holding that when the length of the appointive term is tied to the "next election" or the "first proper election" subsequent to the vacancy, what is meant is the next election at which the office may be legally filled (see *People ex rel. Lynch v. Budd*, 114 Cal. 168, 171, 45 P. 1060, 1061 [1896]; *State ex rel. Trauger v. Nash*, 66 Ohio St. 612, 620-621, 64 N.E. 558, 560 [1902] ).

\*151 We also reject plaintiff's contention that article XIII must be read to forbid the appointment of a Lieutenant Governor so as to vindicate the elective principle. While there can be no quarrel with the proposition that, generally, election must be the preferred means of filling vacancies in elective office, it does not follow that the elective principle is preeminent when it comes to filling a vacancy in the office of Lieutenant Governor.

We, of course, were completely in agreement with this contention when, in *Matter of Ward v. Curran*, 291 N.Y. 642, 50 N.E.2d 1023 [1943], *affg.* 266 App.Div. 524, 44 N.Y.S.2d 240 [3d Dept.1943], we unanimously affirmed a decision of the Appellate Division holding that, pursuant to article XIII of the Constitution and the then-current version of Public Officers Law § 42, a vacancy in the office of Lieutenant Governor was to be filled at the next annual election subsequent to

the vacancy. Our determination, however, engendered dismay in the executive branch because it raised a real possibility that the offices of Governor and Lieutenant Governor would be filled by individuals from opposing parties with incompatible political and policy agendas. As a consequence of our decision in *Ward*, Governor Dewey entreated the Legislature to amend the law, and the Legislature responded, specifically excepting the offices of Governor and Lieutenant Governor from the reach of Public Officers Law § 42 and its mandate that vacancies in elective office be filled by election. Subsequent constitutional amendments, requiring that the Governor and Lieutenant Governor be elected together quadrennially and by a single ballot (see N.Y. Const, art IV, §§ 1, 6), definitively eliminated any residual possibility that the executive branch would be split between members of opposing parties and, equally definitively, eliminated any possibility that a vacancy in the office of Lieutenant Governor might be separately filled by election in a nonquadrennial year.

The elective principle, upheld by the judiciary in *Ward*, was thus legislatively subordinated to assure the structural integrity and efficacy of the executive branch and has remained so ever since. If it is to be restored to primacy in filling a nonquadrennial vacancy in the office of Lieutenant Governor, that is a matter for constitutional amendment.

That election has been deemed impermissible as a means of filling a midterm vacancy in the Lieutenant Governorship does not, however, mean that the vacancy may not be filled. Indeed, in amending the Public Officers Law to remove the office of Lieutenant Governor from the \*\*1146 election mandate of \*152 Public Officers Law § 42, the Legislature did not alter section 43, which, in the aftermath of *Ward* is logically understood as applying to a vacancy in the Lieutenant Governorship.<sup>2</sup> A \*\*\*851 conclusion that naturally follows this pairing of action and inaction is that the Legislature, while desirous of eliminating the problematic prospect of a divided executive, fully intended that a vacancy in the office would be filled in accordance with the mandate of article XIII, § 3, and that it would be filled by appointment pursuant to section 43. Filling the office by gubernatorial appointment is entirely consonant with the purpose of the post-*Ward* legislative and constitutional amendments, whereas requiring that the office be left vacant risked a scenario of the sort that the Legislature at Governor

Dewey's behest sought to avoid—one in which a president pro tern of the Senate, quite possibly of a party other than the Governor, would, while performing the duties of the Lieutenant Governor during a vacancy in the office, actively oppose the Governor's agenda and frustrate the work of the executive branch.<sup>3</sup>

To be sure, the subordination of the elective principle in this context is not entirely unproblematic. It does create the possibility \*153 that an unelected individual will, for a time, occupy the State's highest office. Rules of succession are, however, inevitably imperfect and, at some stage of the devolution they direct, invariably compromise elective principles. Before us, however, is not the abstract question of whether it would be better in the case of a vacancy in the office of the Lieutenant Governor to fill the vacancy by election or by gubernatorial appointment subject to legislative confirmation or by gubernatorial appointment alone. For now, the Legislature, pursuant to an express grant of constitutional authority, has specified that the vacancy is to be filled not by election but by gubernatorial appointment alone—a determination that the Legislature is always free to revisit.

#### IV

Until today, the interplay between Public Officers Law § 43 and article IV, § 6 of the Constitution presented an open legal \*\*1147 question. Indeed, as our dissenting colleagues detail at some length, the particular legal configuration governing the outcome of the present dispute did not even come into existence until after *Ward*, and there have been, prior to the vacancy at issue, only two post-*Ward* vacancies in the office of the Lieutenant Governor. While it has been suggested that these vacancies were left unfilled because of some consensus as to the unavailability of the power of gubernatorial appointment, it is at least equally likely that they remained vacant for purely political reasons. Given these circumstances, it is entirely understandable that plaintiff has acted vigorously to \*\*\*852 defend his interpretation of the relevant constitutional and statutory provisions. Having given due consideration to plaintiff's argument, however, we conclude that Public Officers Law § 43 affords the Governor the authority to fill a vacancy in the office of Lieutenant Governor by appointment.

Accordingly, the order of the Appellate Division should be reversed, without costs, the motion for an injunction denied and the certified question answered in the negative.

PIGOTT, J. (dissenting).

Under the majority's rationale, the possibility exists that the citizens of this state will one day find themselves governed by a person who has never been subjected to scrutiny by the electorate, and who could in turn appoint his or her own unelected Lieutenant Governor. Because this is contrary to the text of the New York Constitution and affords Governors unprecedented power to appoint a successor, we respectfully dissent.

#### \*154 I.

When then-Governor Eliot Spitzer resigned and Lieutenant Governor David Paterson became our 55th Governor no one gave a thought or harbored a suggestion that he had the ability to appoint a Lieutenant Governor. This is not surprising since no Governor in the history of the State had done so. But after 15 months marked by a deeply troubled economy and a deadlock that paralyzed the State Senate, the Governor, prompted perhaps by understandable frustration, attempted on July 8, 2009 to unilaterally fill the post.

Shortly after the appointment, plaintiffs brought this action seeking judgment declaring that the Governor's action in appointing a Lieutenant Governor was unconstitutional. The Governor, as the majority notes, asserted authority to do so pursuant to section 43 of the Public Officers Law, a section referred to by all parties as a "catch-all provision." Until now, that provision had been used to fill vacancies in local offices but, in no instance, the second most important executive office in the state.

Supreme Court granted a preliminary injunction concluding, as relevant to this appeal, that the Senators "have alleged a usurpation of Senate power that gives rise to sufficient injury-in-fact falling within their zone of interest" and as such, they had standing to commence this action (25 Misc.3d 347, 359, 884 N.Y.S.2d 812 [2009] ). Addressing the likelihood of success on the merits, the court concluded that article IV, § 6 of the Constitution "strongly suggests that the office is to remain vacant until such time as a Governor is elected" and "[s]ince

a Lieutenant Governor has never been appointed, this interpretation is consistent with historical practice.” (*Id.*)

The court also reasoned that article XIII, § 3, which mandates the Legislature to fill “vacancies in office,” did not apply to a vacancy in the office of Lieutenant Governor, because that constitutional provision permitted the appointee to serve only until \*\*1148 the next election, while article IV, § 6 makes clear there can be no separate election for Lieutenant Governor. Therefore, since the Legislature is not empowered to fill the office of Lieutenant Governor under the Constitution, contrary to defendants’ urging, section 43 of the Public Officers Law is not available for that purpose. As a result, the court concluded the Senators had established a likelihood of success on the merits and granted an injunction.

The Appellate Division affirmed, rejecting defendants’ claim that Senator Skelos was without standing to bring the action, \*155 noting that the Lieutenant Governor has the ability to control debate in the Senate chamber and to cast a vote to \*\*\*853 break a tie on certain procedural matters (65 A.D.3d 339, 885 N.Y.S.2d 92 [2009] ). It concluded that the Governor simply did not have authority to appoint a Lieutenant Governor. That court too rejected the Governor’s reliance on Public Officers Law § 43 and determined that no provision of the Constitution nor any statute provides for the filling of the office of Lieutenant Governor other than by election.

## II.

Unlike the majority, we view standing as a threshold issue that must be resolved and we determine that Senator Skelos established that he is a proper party to pursue this claim. The test for determining a litigant’s standing is twofold. “First, a plaintiff must show ‘injury in fact,’ meaning that plaintiff will actually be harmed by the challenged ... action. As the term itself implies, the injury must be more than conjectural” (*New York State Assn. of Nurse Anesthetists v. Novello*, 2 N.Y.3d 207, 211, 778 N.Y.S.2d 123, 810 N.E.2d 405 [2004], citing *Society of Plastics Indus. v. County of Suffolk*, 77 N.Y.2d 761, 772–773, 570 N.Y.S.2d 778, 573 N.E.2d 1034 [1991]). Second, the injury plaintiff asserts must fall within his or her zone of interest (*Society of Plastics*, 77 N.Y.2d at 773, 570 N.Y.S.2d 778, 573 N.E.2d 1034).

Our standing analysis begins—but does not end—with *Silver v. Pataki*, 96 N.Y.2d 532, 730 N.Y.S.2d 482, 755 N.E.2d 842 [2001]. In *Silver*, the Court held that Assembly Speaker Sheldon Silver—acting in his capacity as an individual legislator, and not as a legislative leader—had standing to pursue his claim that the Governor’s exercise of line-item veto power exceeded the powers granted the executive in the State Constitution. The general rule is that an individual legislator can sue—on a vote nullification or usurpation of power theory—to vindicate a personal injury, although “lost political battle” claims are not cognizable. Speaker Silver was deemed to have standing even though there were many other identifiable persons and organizations directly harmed by the exercise of the vetoes—such as any party who would have benefitted from the vetoed legislation (*see Clinton v. City of New York*, 524 U.S. 417, 118 S.Ct. 2091, 141 L.Ed.2d 393 [1998] [New York City, health care providers and others who would have benefitted from vetoed legislation successfully challenged constitutional validity of President Clinton’s exercise of the line-item veto] ). Thus, the Court found standing in *Silver* even though a dismissal of Speaker Silver’s complaint would not have erected an impenetrable barrier to judicial consideration of that controversy.

\*156 Although Senator Skelos’ contention that the Governor has exceeded his constitutional authority is different from the constitutional argument presented in *Silver*, his assertion of standing in this case is similarly legitimate. The *Silver* Court recognized that an individual legislator could initiate a lawsuit challenging vote nullification or usurpation of power by the Governor in the budget process, expressly rejecting \*\*1149 the notion that only a majority of the legislative house could do so. This case does not involve the budget process but it does involve alleged overreaching by the Governor in a manner that directly affects each sitting Senator. Here it is claimed that the Governor has without constitutional authority installed an unelected person to serve as president of the Senate and, by that appointment, this private citizen has gained the authority to restrict the speech of elected Senators. This allegation of harm is not institutional in nature but is personal to each Senator.

The Lieutenant Governor’s only constitutional duties are to preside over the Senate and, on occasion, issue a casting vote. If elected Senators cannot bring suit to challenge the alleged placement of a so- \*\*\*854 called

“interloper” as the presiding officer of the body in which they serve, we are hard-pressed to identify who would have standing to object to this appointment. Granted, although he has expressed no inclination to do so, the Attorney General could initiate a quo warranto proceeding—but this is because a statute specifically grants him that right, not because he has standing under our common-law jurisprudence. Where a claim is justiciable—and here no one asserts that the controversy involves a political question rendering it inappropriate for judicial review—we have not interpreted our standing rules so strictly that they erect an impenetrable barrier to suit (see *Consumers Union of U.S., Inc. v. State of New York*, 5 N.Y.3d 327, 806 N.Y.S.2d 99, 840 N.E.2d 68 [2005]; *Saratoga County Chamber of Commerce v. Pataki*, 100 N.Y.2d 801, 814, 766 N.Y.S.2d 654, 798 N.E.2d 1047 [2003]; *Boryszewski v. Brydges*, 37 N.Y.2d 361, 364, 372 N.Y.S.2d 623, 334 N.E.2d 579 [1975]). But if we adopt the Governor’s position, that is precisely what we would be doing—raising the specter that this very significant issue concerning the constitutional validity of the Governor’s appointment would be unreviewable by the judicial branch. Although the majority has chosen not to decide the issue of standing, we think it important to articulate a resolution of the standing issue given the magnitude of this case.

We further reject defendants’ contention that the controversy is not ripe for review because Ravitch has not yet presided over the Senate, restricted any Senator’s speech, or issued a casting \*157 vote. This argument ignores the fact that Ravitch has been precluded from doing so, first by a temporary restraining order and, later, by the preliminary injunction issued by Supreme Court and affirmed by the Appellate Division. It would be ironic for this Court to dismiss a litigant’s claim because, in initiating the lawsuit and obtaining preliminary relief, he was successful at postponing the imminent harm he is suing to prevent. In addition, it is alleged that the Governor’s motivation in making the appointment was, in large part, to put Ravitch in a position to issue the tie-breaking vote to resolve the Senate leadership impasse—an allegation that is eminently plausible given the circumstances surrounding the appointment. This litigation—commenced soon after the appointment was made—was therefore not precipitous.

Moreover, since there appears to be no dispute that any ripeness problem would disappear the moment Ravitch

presided over the Senate and ruled on any point of order, dismissing this action would only postpone a ruling on the merits in a situation where the public is manifestly best served by prompt resolution of an important constitutional issue. Nothing would be accomplished by burdening the public or the parties with further delay just to allow this inevitable scenario to play out. Nor do the parties urge us to do so.

### \*\*1150 III.

Arriving at the merits, we note that both sides concede that the Constitution does not expressly accord the Governor the power to appoint a Lieutenant Governor. Nor can the Constitution itself be read in such a way as to permit the Governor to make an appointment to that office. The Constitution does, however, provide a clear line of succession to the office of Governor, the very purpose of article IV.

Article IV, § 6 provides that in the event of a vacancy in the offices of *both* Governor and Lieutenant Governor (a simultaneous vacancy): “the temporary president of the senate shall act as governor until the inability shall cease or until a governor shall be elected.” If this situation arises, article IV, § 6 mandates that a prompt election be held by requiring that \*\*\*855 “a governor and lieutenant-governor shall be elected for the remainder of the term at the next general election happening not less than three months after both offices shall have become vacant.” Most definitely, the framers of the Constitution were intent on having the electorate promptly fill both vacancies.

\*158 Next, that section addresses a vacancy in the office of Lieutenant Governor only, while there is a sitting Governor:

“In case of vacancy in the office of lieutenant-governor alone, or if the lieutenant-governor shall be impeached, absent from the state or otherwise unable to discharge the duties of office, the temporary president of the senate shall perform all the duties of lieutenant-governor during such vacancy or inability.”



Thus, the drafters of the Constitution logically placed the duties of Lieutenant Governor in the hands of a duly elected state Senator—one who is elected president of that body by the entire Senate, representing all citizens of this state.

The majority errs in deciding that this constitutional mandate merely provides for a “caretaker” role by the temporary president for a limited interim period until the Lieutenant Governor’s office is filled by the Governor under the Public Officers Law. The majority also errs in reading the Public Officers Law, which contains specific provisions for filling vacancies in the offices of Comptroller, Attorney General, and United States Senator, to let the Lieutenant Governor’s office fall into a “catch-all” with all other elected officials in the state no matter how minor. A review of Public Officers Law §§ 41–43 makes the majority’s misreading of them clear. Together, they provide a comprehensive mechanism for dealing with vacancies in nearly every office in the state—but *not* that of Governor or Lieutenant Governor, who are separately treated in article IV, § 6.

Public Officers Law § 41, enacted pursuant to an express grant of authority in article IV, § 1 of the Constitution, provides for the filling of vacancies in the offices of Comptroller and Attorney General. Section 42 provides for the filling of vacancies in other elective offices, but expressly excludes the offices of Governor or Lieutenant Governor. Finally, section 43 addresses the filling of all “other vacancies” and provides: “If a vacancy shall occur, otherwise than by expiration of term, *with no provision of law for filling the same*, if the office be elective, the governor shall appoint a person to execute the duties thereof until the vacancy *shall be filled by an election*” (emphasis added).

When viewed in light of the constitutional construct of the executive office, its powers and duties, Public Officers Law § 43 cannot be construed to confer the right to fill a vacancy in the \*159 Lieutenant Governor’s office. First, contrary to the majority’s view, section 43 by its terms \*\*1151 only permits the Governor to appoint someone to an office to “execute the duties” of that office until the office can be filled by an election for the remainder of the term. Yet article IV of the Constitution clearly provides that when there is a vacancy in the office of Lieutenant Governor, the duties of that office are assumed by the temporary president of the Senate—there

is no language restricting the duration that the temporary president of the Senate fulfills those duties. This situation differs from the scenarios presented in cases like *People ex rel. Smith v. Fisher*, 1840 WL 3540, 24 Wend 215 [1840] and *People ex rel. Henderson v. Snedeker*, 1856 WL 6750, 4 Kern. 52, 14 N.Y. 52 [1856], in which a deputy took over when an elected official such as a county clerk was unable to complete a term of office and the deputy was then properly replaced by a gubernatorial appointee. The statutes at issue in \*\*\*856 those cases made clear that the deputy was to perform the duties of the elected office only until someone else could be “elected or appointed” and therefore clearly indicated that the deputy’s authority was intended to cease when the Governor appointed a replacement for the elected official. As such, the Court held that the deputy performed the duties of office only until the Governor appointed a replacement who, in turn, fulfilled the duties only until an election could be held.

In contrast, article IV, § 6 does not state that the temporary president of the Senate will fulfill the duties of the office of Lieutenant Governor only until someone else is appointed nor, unlike article IV, § 1 (addressing the offices of Comptroller and Attorney General), does it specifically direct the Legislature to craft a procedure for filling a midterm vacancy in that office. Rather, the clause unqualifiedly states that the temporary president of the Senate is to perform the duties of the Lieutenant Governor “during such vacancy.” Furthermore, article IV precludes a midterm election for the office of Lieutenant Governor because it requires the Governor and Lieutenant Governor to be jointly elected in quadrennial elections (unless there is a simultaneous vacancy in both offices [see art IV, §§ 1, 6]).

Because the Constitution, particularly article IV, § 6, instructs that the temporary president of the Senate, an elected official, is to “perform” the duties of Lieutenant Governor during a vacancy, it leaves no room for anyone else to “execute” the duties of that office under Public Officers Law § 43. In this regard, we note that neither this Court nor the Legislature has \*160 ever drawn a distinction between “executing” the duties of an office and “performing” those duties. The cases the defendants cite for this questionable distinction do not support it. Furthermore, there are numerous statutes that use words like “execute,” “fulfill,” “perform,” “discharge,” “act as” and the like to confer precisely the same authority.<sup>1</sup> Article IV, § 6 of the Constitution similarly contains

synonyms that describe the inability of officers to act and the obligations that devolve on their successors, indicating that these officials “discharge” duties, “perform” duties or “act as” their predecessors—and it is evident that all of these mean the same thing. There is simply no \*\*1152 evidence that the Legislature intended that Public Officers Law § 43 apply to the office of Lieutenant Governor when it adopted that provision. And if it did, the result would be a conflict. Contrary to the majority's view that constitutional provisions are to be “harmonized” with statutes, it is axiomatic that where there is an incompatibility between the Constitution and a statute, the Constitution governs and the statute bows.

Of equal importance, article XIII, § 3 limits the duration of any appointment under section 43 by directing that “no person appointed to fill a vacancy shall hold his or her office by virtue of such appointment longer than the commencement of the political year next succeeding the first *annual* election after the happening of the vacancy” (emphasis added).<sup>2</sup> Yet, \*\*\*857 article IV, § 1 \*161 mandates that the Governor and Lieutenant Governor run together and only on the quadrennial, thus barring the Lieutenant Governor from running for office separate from the Governor in a nonquadrennial year. These provisions, read together, can only be reasonably interpreted to mean that the drafters of the Constitution intended that a vacancy in the office of Lieutenant Governor remain unfilled until the next gubernatorial election, with the temporary president of the Senate performing the duties of Lieutenant Governor in the interim.

#### IV

The construction of our Constitution over two centuries refutes the majority's reading of it. This is not the first time that a vacancy in the office of Lieutenant-Governor has arisen. There have been at least 10 occasions since the first New York Constitution was adopted in 1777 when the position of Lieutenant Governor has become vacant,<sup>3</sup> but no Governor has ever seen fit to assert that he had the power to appoint a Lieutenant Governor to fill the vacancy. On two of those occasions, there were midterm elections to fill the vacancies. But that cannot occur under our current Constitution, because both the Constitution

and the Public Officers Law have since been amended in significant \*\*1153 respects.<sup>4</sup>

The position of Lieutenant Governor was created in New York's first Constitution of 1777 (adopted before the United States Constitution), which provided for an election to fill a vacancy in that office in the event the Lieutenant Governor \*162 died, resigned or was removed from office (*see* Constitution of 1777 art XX). But that clause was removed in the 1821 Constitution and no Constitution since that time has specified any procedure for filling a Lieutenant Governor vacancy. In this respect, our State Constitution was similar to the Federal Constitution, which did not contain a procedure for filling a vacancy in the office of Vice President until the adoption \*\*\*858 of the 25th Amendment in 1967. Instead, the New York Constitution has spelled out a chain of succession in the event of the death or other inability of the Governor or Lieutenant Governor, currently codified in article IV, § 6. The Constitution and the statutes upon which the defendants rely have never been read to permit appointment of a Lieutenant Governor, even though there have been many opportunities for prior Governors to advance such a reading.

The decision in *Matter of Ward v. Curran*, 266 App.Div. 524, 44 N.Y.S.2d 240 [3d Dept.1943], *affd. without op.* 291 N.Y. 642, 50 N.E.2d 1023 [1943]—which involved the eighth Lieutenant Governor vacancy in New York's history—held that the Constitution, as it was then worded, permitted an election to fill the vacancy, but it does not support the majority's view that such a vacancy can be filled by appointment. The controversy underlying *Ward* arose in July 1943 when Lieutenant Governor Thomas Wallace died, creating a vacancy in the office of Lieutenant Governor. Governor Thomas Dewey and Wallace had been elected the previous November on the Republican ticket. Albert Ward, the State Chair of the Democratic Party, brought a mandamus proceeding against the Secretary of State to compel an election to fill the office of Lieutenant Governor in the upcoming November 1943 election. Both Governor Dewey and Attorney General Nathaniel Goldstein took the position that such an election would be illegal as the Constitution required that the Governor and Lieutenant Governor be chosen at the same time and for the same term (the Constitution did not yet require that these offices be elected jointly by single vote). They further asserted

that article III, § 9 of the Constitution—a provision addressing the powers of the Legislature—directed the Senate to “choose a temporary president to preside in case of the absence or impeachment of the lieutenant-governor.” (266 App.Div. at 526, 44 N.Y.S.2d 240.) They did not, however, rest their analysis on the predecessor to article IV, § 6 because, at that time, it did not contain any language indicating \*163 that the temporary president of the Senate assumed the powers of the Lieutenant Governor.<sup>5</sup>

\*\*1154 In a divided decision, the Appellate Division directed the Secretary of State to conduct the election pursuant to the predecessor of Public Officers Law § 42. The majority reasoned that it was inappropriate for the person who fulfills the duties of Lieutenant Governor to be someone who was elected only by the voters of a single senatorial district. They emphasized: “It is a fundamental principle of our form of government that a vacancy in an elective office should be filled *by election* as soon as practicable after the vacancy occurs” \*\*\*859 (266 App.Div. at 526, 44 N.Y.S.2d 240 [emphasis added]). The dissenter believed that such an election would be unconstitutional because article IV, § 1 contains the only provision authorizing an election for Governor or Lieutenant Governor and requires that such office be filled in quadrennial elections. Thus, he concluded that the office of Lieutenant Governor could not be filled at a general election that was not a quadrennial election. This Court affirmed without opinion (291 N.Y. 642, 50 N.E.2d 1023 [1943]).

Upset with this turn of events, Governor Dewey urged the Legislature to begin the process of amending the Constitution and to change Public Officers Law § 42 to preclude an election for the office of Lieutenant Governor (Message of Governor Thomas E. Dewey to the Legislature, Jan. 5, 1944, 1944 N.Y. Legis. Doc. No. 1, at 17–18). The Legislature heeded the Governor's call on both counts. It immediately amended Public Officers Law § 42—the statute on which *Ward* had relied—so that it \*164 expressly excluded the Governor and Lieutenant Governor from its ambit (as it continues to do today) (*see* L. 1944, ch. 3). The Legislature also passed amendments to the New York Constitution that were ultimately adopted by vote of the People.

More specifically, article IV, § 6 was amended in 1945 to add a provision directly addressing what is

to occur when there is a vacancy in the office of Lieutenant Governor alone.<sup>6</sup> This amendment was \*\*1155 significant for several reasons. Whereas the 1938 version of this clause did not indicate that the temporary president of the Senate fulfills the duties of Lieutenant Governor during a vacancy in that office, the 1945 version expressly so provided. Furthermore, the 1945 version indicated precisely what was to occur when there was a vacancy in the office of Lieutenant Governor alone—“the temporary president ... shall perform all the duties of lieutenant-governor ... during such vacancy.” The 1945 amendments also stated that the Lieutenant Governor can never be separately elected from the Governor. These constitutional amendments, combined with the \*165 legislative amendment to Public Officers Law § 42, overruled *Ward*.

In the years since 1945, other constitutional amendments have moved still further \*\*\*860 away from *Ward*'s holding. In 1953, the Constitution was amended to require that the Governor and Lieutenant Governor be “chosen jointly, by the casting by each voter of a single vote applicable to both offices” (art § 1), echoing another of Governor Dewey's recommendations. Additional clarification of the chain of succession occurred in 1949 and 1963 amendments.

Defendants and the majority use *Ward* as support for the conclusion that a vacancy in the office of Lieutenant Governor can be filled through gubernatorial appointment under Public Officers Law § 43. They contend that, unlike Public Officers Law § 42, section 43 was not amended in the wake of *Ward* to expressly exclude the office of Lieutenant Governor. But nothing in *Ward* suggests that section 43 ever applied to that office. *Ward* held that the Lieutenant Governor vacancy could be filled by election—not by gubernatorial appointment. In *Ward*, the Appellate Division majority determined that it would be inappropriate to allow the office of Lieutenant Governor to be filled by the temporary president of the Senate for the entire unexpired term because that legislative leader had been elected only by the voters of one district of the state. It seems highly unlikely that the *Ward* court would have endorsed the notion that a Lieutenant Governor could be appointed by a Governor with no input from the electorate and no vetting by the legislative branch of government.

In fact, shortly before the litigation, Attorney General Goldstein issued an opinion clarifying that such an appointment would be inconsistent with the constitutional and statutory scheme. Citing Public Officers Law § 43, the Attorney General observed:

“No one has ever claimed that this section conferred upon the Governor the power to appoint his own successor. Such a contention would lead to the anomalous result that a Governor by appointing a Lieutenant–Governor and then resigning could impose upon the people his own choice as their Governor” (1943 Ops. Atty. Gen. 378, 382, available at 1943 WL 54210, \*4).

This point, which was repeated in the Attorney General's brief \*166 in *Ward*, was not disputed by the parties or the Appellate Division.

As we noted, the fact that no Governor has previously attempted to appoint a Lieutenant Governor, while significant, does not resolve the legal issue before us. But it does show a remarkable consensus \*\*1156 that such an appointment was impermissible. This consensus may result in part from a similarity between our Constitution and the Federal Constitution, which lacked a procedure for filling a vacancy in the office of Vice President until a constitutional amendment was adopted in 1967. The 25th Amendment (§ 2) now provides: “Whenever there is a vacancy in the Office of the Vice President, the President shall nominate a Vice President who shall take office upon confirmation by a majority vote of both Houses of Congress.” New York constitutional commentators and participants at constitutional conventions have examined whether it would be advisable to adopt a similar mechanism by which the Governor could fill a vacancy in the office of Lieutenant Governor by appointment. Proposals for constitutional amendments have been submitted over the years that would have authorized gubernatorial appointment with the advice and consent of the Senate (*see* Proposition No. 923, 8 Proceedings of the Constitutional Convention of the State of New York, June 12, 1967, at 606–608) or, comparable to the 25th Amendment, with confirmation by a majority vote of both houses of the Legislature (*see* 1985 Rep. of N.Y. Law Rev. Commn, reprinted in 1985 McKinney's Session Laws of N.Y., at 2483, 2575). To \*\*\*861 date, none of these proposals has been acted upon.

Supporters of the proposed amendments, like the Governor and some of the amici curiae, make strong policy arguments in support of allowing the Governor to make an appointment to fill a vacancy in the office of Lieutenant Governor. But since our Constitution does not currently permit such a procedure, the constitutional amendment process is the only appropriate vehicle for such a change.

## V

The majority and defendants rely on decisions from other states to support their arguments but the cases cited are not persuasive. The constitutional provisions at issue in those cases were different from New York clauses that guide our analysis, either because there was no temporal provision that limited the duration that an appointee could hold an office to a specific and \*167 ascertainable date (as there is in article XIII, § 3 of the New York Constitution) (*see People ex rel. Lynch v. Budd*, 114 Cal. 168, 45 P. 1060 [1896]; *State ex rel. Trauger v. Nash*, 66 Ohio St. 612, 64 N.E. 558 [1902]; *State ex rel. Weeks v. Day*, 14 Fla. 9 [1871]; *In re Advisory Opinion to the Governor*, 688 A.2d 288 [R.I. 1997] ), or there was no clause directing that a particular official was to fulfill the duties of Lieutenant Governor in the event of a vacancy in that office alone (as there is in article IV, § 6 of the New York Constitution) (*see Advisory Opinion to Governor*, 217 So.2d 289 [Fla.1968] ), or both provisions were absent (*see State ex rel. Martin v. Ekern*, 228 Wis. 645, 280 N.W. 393 [1938] ). In any event, most of these cases were subsequently overruled by constitutional amendment or legislative enactment.

## VI

Despite our disagreement, we join the majority in acknowledging the good faith and good intentions of all parties in this difficult and important case. At the time the Governor named a Lieutenant Governor, two Senators credibly claimed the position of temporary president of the Senate. The resulting uncertainty over the temporary president's identity created two practical problems. First, it clouded the line of gubernatorial succession; and second, the absence of an acknowledged presiding officer thwarted day-to-day business in the Senate. While the amici's dire characterizations of this political deadlock

may be overstated, it is easy to understand why the Governor felt impelled to act and has \*\*1157 vigorously defended his position. But neither the Governor nor this Court can amend the Constitution. Our Constitution's provisions governing gubernatorial succession have been scrutinized repeatedly over the past few decades, and have consistently been adjudged adequate. We should adhere to the Constitution we have, which simply does not authorize what the majority now sanctions.

Judges CIPARICK, READ and JONES concur with Chief Judge LIPPMAN; Judge PIGOTT dissents in a separate opinion in which Judges GRAFFEO and SMITH concur.

Order reversed, etc.

#### All Citations

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#### Footnotes

- 1 Senator Pedro Espada, Jr. initially joined Senator Skelos as a plaintiff in this action; however, Senator Espada did not file a brief on this appeal. We therefore refer to only one plaintiff for purposes of this opinion.
- 2 As the Attorney General pointed out in his 1943 pre-*Ward* opinion, "there [was] no distinction in language between [section 43] and section 42 of the Public Officers Law" (1943 Ops. Atty. Gen. 378, 382, 1943 WL 54210). And at the time of the post-*Ward* amendment to the Public Officers Law, the Legislature was well aware that section 42 had been held to apply to the office of Lieutenant Governor, even though the office was not specifically mentioned. The same language, appearing in section 43, could not in this *Ward*-defined context have been understood to exclude the office of Lieutenant Governor.
- 3 The rationale for the post-*Ward* amendments was well summarized by Governor Dewey in his February 1953 address to the Assembly:

"Executive responsibilities in our government are so interwoven that the election of a Governor and Lieutenant Governor politically opposed to each other involves serious problems. As a practical matter the Governor must encounter difficulty in leaving the State even for a short period and on pressing public business. This has created the greatest embarrassment in other states, to the damage of public confidence in government and the injury of the public interest.

"Even more important, there is a great advantage in being able to entrust many of the complex administrative tasks of the Governor to an able Lieutenant Governor. I have done this repeatedly and with notable benefit to the people of the State. This would not have been possible if the Lieutenant Governor was required, as a matter of party loyalty, to lead the minority party." (Message of the Governor In Relation to Proposed Constitutional Amendment For Joint Election of Governor and Lieutenant Governor, Feb. 9, 1953 [1953 N.Y. Legis Doc No. 36, at 3].)
- 1 See e.g. County Law § 652(1) (undersheriff shall "execute the duties of the office of sheriff" until a new sheriff is elected or appointed); County Law § 914 (deputy shall, "subject to the provisions of the public officers law, have all the powers and fulfill all the duties of the county clerk"); Town Law § 42 (until a successor is appointed, the deputy town supervisor shall "perform all of the duties of the supervisor"); Second Class Cities Law § 62 (deputy city comptroller "shall discharge the duties of the office" in the event of a vacancy).
- 2 If article XIII, § 3 is applied to a vacancy in the office of Lieutenant Governor under the facts presented here, since the vacancy occurred on March 17, 2008, this would mean that a midterm election would have had to be held in November 2008 (the first "annual election after the happening of the vacancy") and any appointee—who would have had to be chosen by the Governor before that time—could serve only until the winner of that midterm election took office at "the commencement of the [next] political year," which would have been January 1, 2009 (see art XIII, § 4). Such a midterm election is expressly precluded under several provisions of the Constitution (see art IV, §§ 1, 6) and, in any event, there was no appointment in 2008. Defendants argue that the time frames in article XIII, § 3 have not been strictly applied but, even reading some flexibility into the provision (and our precedent has not clearly done so), the fact remains that the clause requires a prompt election to replace an appointee and this must occur as soon as possible after the vacancy arises. Certainly, it does not authorize a long-term appointment to fulfill a complete unexpired term.
- 3 The vacancies occurred in 1811, 1828, 1829, 1847, 1885, 1910, 1913, 1943, 1973 and 1985. Six occurred as a result of the succession of the Lieutenant Governor to the office of Governor. The remaining four stemmed from either the death or resignation of the Lieutenant Governor. The most recent vacancies occurred in December 1973 when Lieutenant Governor Malcolm Wilson succeeded to the Governorship upon the resignation of Nelson Rockefeller (Senator Anderson,

temporary president of the Senate at the time, fulfilled the duties until the end of the term) and in February 1985 when Lieutenant Governor Alfred DelBello resigned (again, Senator Anderson fulfilled the duties until the end of the term).

4 The first of the two elections to fill Lieutenant Governor vacancies occurred in 1847 as a result of a special statute passed by the Legislature (see L. 1847, ch. 303). The constitutional validity of that statute was never challenged. The second such election resulted from *Matter of Ward v. Curran*, 266 App.Div. 524, 44 N.Y.S.2d 240 [3d Dept.1943], *affd. without op.* 291 N.Y. 642, 50 N.E.2d 1023 [1943].

5 The 1938 version of article IV, § 6 that was in effect when *Ward* was decided read as follows:

"The lieutenant-governor shall possess the same qualifications of eligibility for office as the governor. He shall be president of the senate, but shall have only a casting vote therein. If the office of governor become vacant and there be no lieutenant-governor, such vacancy shall be filled for the remainder of the term at the next general election happening not less than three months after such vacancy occurs; and in such case, until the vacancy be filled by election, or in case the lieutenant-governor be under impeachment or unable to discharge the powers and duties of the office of governor or shall be absent from the state, the temporary president of the senate shall act as governor during such inability, absence or the pendency of such impeachment. If the temporary president of the senate shall be unable to discharge the powers and duties of the office of governor or be absent from the state, the speaker of the assembly shall act as governor during such inability or absence. The lieutenant-governor shall receive for his services an annual salary of ten thousand dollars."

6 The 1945 version of article IV, § 6 provided:

"The lieutenant-governor shall possess the same qualifications of eligibility for office as the governor. He shall be president of the senate, but shall have only a casting vote therein. The lieutenant-governor shall receive for his services an annual salary of ten thousand dollars.

"If the office of governor become vacant and there be no lieutenant-governor, *the offices of governor and lieutenant-governor* shall be filled for the remainder of the terms at the next general election happening not less than three months after the vacancy in the office of governor occurs. *No election of a lieutenant-governor shall be had in any event except at the time of electing a governor.* Until the vacancies in the offices of the governor and lieutenant-governor be filled by election, the temporary president of the senate then in office or his successor as such temporary president shall *perform all the duties of lieutenant-governor* and shall act as governor.

"*If the office of lieutenant-governor alone be vacant, or in case the lieutenant-governor be under impeachment, unable to discharge the powers and duties of the office of governor or shall be absent from the state, the temporary president of the senate then in office or his successor as such temporary president shall perform all the duties of lieutenant-governor, including the duty of acting as governor when necessary, during such vacancy, inability, absence or the pendency of such impeachment.*

"If ... the temporary president of the senate ... be unable to discharge the powers and duties of such office or be absent from the state, the speaker of the assembly shall act as governor during such inability or absence" (emphasis added to identify new language).

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Articles

SKELOS V. PATERSON: THE SURPRISINGLY STRONG CASE FOR THE  
GOVERNOR'S SURPRISING POWER TO APPOINT A LIEUTENANT GOVERNOR

Richard Briffault<sup>a1</sup>

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On July 8, 2009, Governor David Paterson surprised New York's legal and political world by announcing his intention to appoint Richard Ravitch to fill the vacancy in the office of lieutenant governor. No New York governor had ever appointed a lieutenant governor before. Paterson's action was widely denounced as unauthorized and unconstitutional. Four months later, observers were even more astonished when the Court of Appeals in *Skelos v. Paterson* upheld the governor's action. This article explains why the governor and Court of Appeals were right to conclude that the governor had statutory and constitutional authority for his action. Indeed, the case for the governor's action is quite straightforward and surprisingly strong. That authority follows from the plain text of a statute, the leading judicial precedent, and the relevant provisions of the state constitution. By contrast, the case against the governor's action was quite weak, relying more on extra-textual and policy concerns than the law itself.

### I. Introduction

On July 8, 2009, Governor David Paterson surprised New York's political and legal world by announcing his intention to appoint Richard Ravitch as lieutenant governor, thereby filling the vacancy in that office created on March 17, 2008, when Governor Eliot Spitzer resigned and Paterson, then lieutenant governor, became governor. As Court of Appeals Judge Eugene Pigott later put it, \*676 when Paterson became governor, "no one gave a thought or harbored a suggestion that he had the ability to appoint a Lieutenant Governor."<sup>1</sup> No provision of the state constitution expressly authorizes the governor to appoint a lieutenant governor.<sup>2</sup> Instead, the constitution provides that "the temporary president of the senate shall perform all the duties of lieutenant-governor" if there is a vacancy in that office.<sup>3</sup> There have been at least ten vacancies in the office of lieutenant governor,<sup>4</sup> and at no time before July 2009 did a governor ever attempt to appoint a lieutenant governor to fill the vacancy.<sup>5</sup> Indeed, at the time Governor Paterson acted, the office of lieutenant governor had been vacant for fifteen months and he had made no previous attempt to fill it. On the eve of Governor Paterson's action, Attorney General Andrew Cuomo announced that such an appointment was "not constitutional."<sup>6</sup> The constitutionality of Governor Paterson's move was subsequently denounced by a former chief judge, a former lieutenant governor, a former attorney general, and a leading academic expert on the state constitution.<sup>7</sup> When the inevitable court challenge resulted, a state supreme court justice and a unanimous four-judge appellate division panel in rapid succession held the governor's action unconstitutional.<sup>8</sup>

\*677 Yet the Court of Appeals ultimately upheld the governor's appointment<sup>9</sup>--and the Court of Appeals was right. The governor's action was authorized by the plain meaning of a state statute, supported by judicial precedent, and

consistent with both the text and structure of the state constitution. The legal grounds for challenging the governor's action were weak and inconsistent, ultimately relying more on the arguments that "it's never been done before" and extra-textual concerns about undue gubernatorial power than legal texts. Although no constitutional provision expressly authorized the governor's action, no constitutional or statutory provision barred it, either. A gubernatorial action authorized by statute and not precluded by the constitution or any other law is presumptively valid.

The Ravitch litigation is a reminder that even when it comes to constitutional questions, widely held but untested assumptions and reliance on traditions and past practices (or the lack of them) is no substitute for close and careful reading of the relevant constitutional and statutory texts and case law. The fact that something has never been done before may only mean that it "present [s] an open legal question,"<sup>10</sup> not that it is unauthorized or prohibited.

The Ravitch litigation underscores the continuing importance of the longstanding view of a state constitution as a limitation, and not a grant of powers, so that the legislature has plenary authority to exercise a power as long as it is not limited by the New York State Constitution.<sup>11</sup> So, too, the Ravitch dispute reminds us just how problematic are some of our laws dealing with the filling of vacancies in statewide elective office. One benefit of this dispute could be closer attention to the vacancies issue. Certainly, the scandals that engulfed Governor Paterson in early 2010 only further underscored the value of having a lieutenant governor in place and the uncertainty about gubernatorial succession removed.

\*678 Part II of this comment provides a brief chronology of the events leading to Governor Paterson's naming of Richard Ravitch as lieutenant governor, and of the litigation that followed. Part III analyzes the legal issues raised by the governor's action. Part IV concludes by considering the implications for state constitutional law and for the specific question of filling vacancies in state office.

## II. A Tumultuous Term: From the Election of Eliot Spitzer to the Judicial Validation of the Appointment of Richard Ravitch

In November 2006, Eliot Spitzer, then the state attorney general, and David Paterson, then a state senator and senate minority leader, both Democrats, were together elected governor and lieutenant governor of the State of New York by an overwhelming 65.7% of the vote.<sup>12</sup> Less than fifteen months into his term, Governor Spitzer, engulfed by scandal, resigned, and on March 17, 2008, Lieutenant Governor Paterson, by virtue of article IV, section 5 of the state constitution,<sup>13</sup> became New York's 55th governor.<sup>14</sup> Thereafter, the position of lieutenant governor remained vacant until the summer of 2009. Article IV, section 6 provides that in the event of a vacancy in that office, the temporary president of the senate "shall perform all the duties of lieutenant-governor during such vacancy."<sup>15</sup> When Paterson became governor, the senate majority leader and temporary president of the senate was Joseph Bruno, a Republican. At that time, Senator Bruno became acting lieutenant governor.<sup>16</sup> On June 24, 2008, Senator Bruno, also buffeted by scandal, stepped down from his leadership post (he quit the senate altogether on July 18, 2008)<sup>17</sup> and Senator Dean Skelos, another Republican, became majority leader, temporary senate president, and acting lieutenant governor.<sup>18</sup> In the November 2008 \*679 elections, for the first time since 1965, the Democratic Party won a majority of senate seats<sup>19</sup> and on January 7, 2009, the Democratic leader, Malcolm Smith, became senate majority leader, temporary president of the senate, and, as a result, acting lieutenant governor.<sup>20</sup>

Senator Smith's hold on power was a precarious one, however. His party held a slender 32-30 majority,<sup>21</sup> and even before the Democrats took control of the senate in January 2009, a group of four Democrats had temporarily withheld their support from the party leadership while they negotiated terms for their votes.<sup>22</sup> On June 8, 2009, the Democratic majority broke apart as two Democrats--Senators Pedro Espada and Hiram Monserrate--bolted their party and joined



the thirty Republicans in an effort to remove Senator Smith as temporary president.<sup>23</sup> They adopted a resolution electing Senator Espada temporary president and Senator Skelos majority leader.<sup>24</sup> The rest of the Democratic Senators refused to accept the legitimacy of this action and went to state supreme court, Albany County, seeking a declaration that Smith was still temporary president.<sup>25</sup> That action was dismissed as an “improvident intrusion into the affairs of the senate” by the court on June 16.<sup>26</sup> In the meantime, Senator Monserrate had returned to the Democratic fold on June 15, leaving the senate evenly split between two groups of thirty-one, each claiming control, including the right to choose the senate’s leadership and determine its agenda.<sup>27</sup> During this period, it was unclear who was temporary president of the senate and acting lieutenant governor—Senator Espada or Senator Smith—so that it was unclear who could preside \*680 over the senate or who would take over as governor should Governor Paterson become incapacitated.<sup>28</sup>

That 31-31 division persisted for nearly a month, leaving the senate stalled and unable to do any business.<sup>29</sup> Mid-June 2009 was a particularly unfortunate time for such deadlock. A number of significant laws, including the one giving the mayor of New York City control over the city’s schools, were set to expire on June 30.<sup>30</sup> Similarly, a number of laws authorizing state and local taxes were due to expire on June 30, and other laws authorizing new revenue measures were needed by June 30th if taxes—essential for the local revenue collections needed to balance local budgets—were to be in place at the start of the local government fiscal year on July 1.<sup>31</sup> The senate was unable to take action on any of these measures.<sup>32</sup> Governor Paterson repeatedly called the senate into extraordinary session to address these matters. The senate met in special session eighteen times, with the two contending groups meeting separately within the chamber, “gaveling in and minutes later gaveling out without conducting any meaningful legislative business.”<sup>33</sup> As a result, tens of millions of dollars of state and local revenues were lost, and “the tax structures and budgets of towns and cities across the state were in shambles.”<sup>34</sup> The senate’s failure to approve tax measures required New York City to postpone the hiring of 250 police officers, 150 firefighters, 175 school safety agents, 150 crossing guards, and thirty-four emergency operators.<sup>35</sup> The state comptroller estimated that the total direct cost of the senate stalemate to the state and to local governments was \$2.9 billion.<sup>36</sup> Moreover, on July 1, the old New York City Board of Education— \*681 defunct since 2002—sprang back to life, unsettling the governance structure for New York City’s public schools.<sup>37</sup>

Finally, on July 8th, Governor Paterson moved to break the senate impasse by naming Richard Ravitch—a distinguished senior civic and business leader, who had previously served as chair of the state Urban Development Corporation and as head of the Metropolitan Transportation Authority—as lieutenant governor.<sup>38</sup> Under the constitution, the lieutenant governor not only presides over the senate but can cast a “casting vote,” that is, he can break ties on procedural matters.<sup>39</sup> Ravitch’s appointment would have enabled the senate to organize itself and get back to business. Indeed, even though the legal status of Ravitch’s appointment was immediately clouded by litigation, and Ravitch was not cleared to preside over the senate until the Court of Appeals’s decision in late September, the governor’s action had an immediate effect. On July 9th, Senator Espada returned to the Democratic fold, giving the Democrats a working majority in the senate<sup>40</sup> and making Malcolm Smith once again temporary senate president.

Governor Paterson had barely announced Ravitch’s appointment when Senators Skelos and Espada sued to block Ravitch from taking office. The two senators sought a temporary restraining order from state supreme court, Nassau County, barring the appointment.<sup>41</sup> A temporary restraining order was issued on July 9th, but was vacated later the same day by the Appellate Division, Second Department.<sup>42</sup> Thereafter the litigation moved swiftly through three levels of the state judiciary. After briefing and oral argument, Supreme Court, Nassau County, on July 22 granted a preliminary injunction barring Ravitch from exercising any of the powers of the office of lieutenant governor.<sup>43</sup> That injunction was affirmed by a unanimous four-judge panel of the Appellate Division, Second Department on August 20th.<sup>44</sup> While the case was pending \*682 before the appellate division, Senator Espada dropped out, leaving Senator Skelos to carry the

challenge alone. Relying on somewhat different reasoning and turning aside a host of technical questions<sup>45</sup> in order to resolve the central question of gubernatorial power, both the supreme court and the appellate division concluded that the governor's action was unauthorized by law and unconstitutional.<sup>46</sup> On September 22nd, a closely divided Court of Appeals reversed, in an opinion by Chief Judge Lippman, joined by Judges Ciparick, Read, and Jones.<sup>47</sup> Judge Pigott, joined by Judges Graffeo and Smith, issued a strong dissent.<sup>48</sup>

### III. Legal Analysis: Why the Court of Appeals Was Right

#### A. The Case for the Governor's Power to Appoint a Lieutenant Governor

The case for the governor's power to appoint a lieutenant governor is surprisingly straightforward, relying on the plain meaning of a state statute, clear judicial precedent, and state constitutional provisions dealing with the lieutenant governor, along with some traditional norms of statutory construction and constitutional interpretation.

##### 1. The Statutory Authorization

The statute is section 43 of the Public Officers Law, which provides that when a vacancy occurs in an "elective" office, "otherwise than by expiration of term," and there is "no provision of law for filling" that vacancy, the governor "shall appoint a person to execute the duties thereof until the vacancy shall be filled by an election."<sup>49</sup> The office of lieutenant governor is an elective office. The vacancy in it was created otherwise than by expiration of term. And there is no other provision for filling that vacancy.

\*683 Other provisions of the Public Officers Law address the filling of other vacancies. Section 41 provides a mechanism for filling vacancies in the offices of attorney general and comptroller.<sup>50</sup> Section 42 provides generally for the filling of vacancies in elective office, primarily by election, including special elections.<sup>51</sup> Section 42, however, specifically excludes the governor and lieutenant governor from its scope.<sup>52</sup> With the office of lieutenant governor not covered by section 41 and expressly excluded from section 42, it falls within the "catchall"<sup>53</sup> language of section 43.

##### 2. The Precedent

The applicability of section 43 to the office of lieutenant governor is confirmed by an older decision of the appellate division, affirmed by the Court of Appeals, *Ward v. Curran*.<sup>54</sup> The *Ward* case arose after the death of Lieutenant Governor Thomas Wallace in 1943.<sup>55</sup> At that time, section 42 of the Public Officers Law did not contain the exclusion of the office of lieutenant governor from its directive that a special election be used to fill a vacancy in elective office--that exclusion was added in response to *Ward*.<sup>56</sup> The secretary of state, however, resisted ordering a special election to fill the vacancy created by Wallace's death.<sup>57</sup> The attorney general agreed with the secretary of state that an election was not needed.<sup>58</sup> He argued that section 42 did not apply to the office of lieutenant governor, and that the question of vacancies in the office of lieutenant governor was fully taken care of by the constitutional provision authorizing the temporary president of the senate to act as lieutenant governor in the event of a vacancy in that office.<sup>59</sup> According to the attorney general, with the temporary president so acting, the office was not vacant and an election was not needed.<sup>60</sup> The appellate division rejected the attorney general's argument<sup>61</sup> \*684 and the Court of Appeals agreed.<sup>62</sup> Although section 42 was subsequently amended to exclude the lieutenant governor from the special election provision,<sup>63</sup> the legislature did not so modify section 42's companion provision, section 43.

The Ward decision confirms the applicability of the Public Officers Law vacancy-filling provisions to the office of lieutenant governor even though the office is not specifically mentioned; it was not mentioned in section 42 when Ward held that section 42 applied to the lieutenant governor. Ward also confirms that the legislature was aware of the fact that broadly-phrased Public Officers Law provisions apply to the lieutenant governor when, after Ward, it amended section 42 but not section 43. The interpretative canon of “[m]eaningful [v]ariation,”<sup>64</sup> and the related rule of *expressio unius est exclusio alterius*<sup>65</sup> indicate that the exclusion of the lieutenant governor from one section of the Public Officers Law but not from the next complementary section, section 43, was intentional. As the United States Supreme Court once observed, “[w]here Congress includes particular language in one section of the statute but omits it in another . . . it is generally presumed that Congress acts intentionally and purposely in the disparate inclusion or exclusion.”<sup>66</sup> The Court of Appeals has similarly concluded that “where the Legislature lists exceptions in a statute, items not specifically referenced are deemed to have been intentionally excluded.”<sup>67</sup>

In light of Ward and these traditional canons of construction, Chief Judge Lippman was plainly correct in concluding that “in amending the Public Officers Law to remove the office of lieutenant governor from the election mandate of Public Officers Law § 42, the Legislature did not alter section 43, which, in the aftermath of Ward is logically understood as applying to a vacancy in the \*685 lieutenant governorship.”<sup>68</sup>

### 3. The Constitutional Provisions

The Ravitch decision is also supported by two constitutional provisions: the sentence of article IV, section 1, which was given its current form as a result of an amendment to the constitution adopted in 1953,<sup>69</sup> and a sentence added to article IV, section 6 in 1945.<sup>70</sup> The critical language in article IV, section 1 states:

The executive power shall be vested in the governor who shall hold office for four years; the lieutenant-governor shall be chosen at the same time, and for the same term. . . . They shall be chosen jointly, by the casting by each voter of a single vote applicable to both offices.<sup>71</sup>

The key language in article IV, section 6 is: “No election of a lieutenant governor shall be had in any event except at the time of electing a governor.”<sup>72</sup>

These provisions that the governor and lieutenant governor “shall be chosen at the same time, and for the same term,”<sup>73</sup> and that the lieutenant governor shall not be separately elected,<sup>74</sup> were added at the request of Governor Dewey in direct response to the Ward decision.<sup>75</sup> Dewey had been governor at the time of Lieutenant Governor Wallace's death<sup>76</sup> and had been gearing up to run for president in 1944. He had sought to avoid the special election because it raised the possibility of a Democrat being elected lieutenant governor and succeeding to the governorship in the event Dewey won the presidency.<sup>77</sup> With the state senate safely in Republican hands, having the temporary senate president serve as the acting lieutenant governor, and succeeding to the governorship, \*686 was preferable.

Upset by the Ward decision, Governor Dewey “urged the Legislature to begin the process of amending the constitution and to change Public Officers Law § 42 to preclude an election for the office of Lieutenant Governor. . . . The Legislature heeded the Governor's call on both counts.”<sup>78</sup> Public Officers Law section 42 was amended to exclude the lieutenant governor,<sup>79</sup> and the constitution was amended, by the language just quoted, to bar the separate election of the lieutenant governor.

As Governor Dewey explained in his Messages to the Legislature concerning the amendment to article IV, section 1:

Executive responsibilities in our government are so interwoven that the election of a Governor and a Lieutenant Governor politically opposed to each other involves serious problems.

....

. . . [T]here is a great advantage in being able to entrust many of the complex administrative tasks of the Governor to an able Lieutenant Governor. . . . This would not have been possible if the Lieutenant Governor was required, as a matter of party loyalty, to lead the minority party.<sup>80</sup>

As amended, article IV establishes the principle that the governor and lieutenant governor are partners, united by “party loyalty” and a common purpose, with the governor entitled to “entrust many of the complex administrative tasks of [state]” to his teammate, the lieutenant governor.<sup>81</sup> As Governor Dewey put it, “[g]ood government requires responsible cohesive administration.”<sup>82</sup>

Gubernatorial appointment of a lieutenant governor to fill a vacancy in that office, pursuant to Public Officers Law section 43, is entirely consistent with the structure established by article IV, sections 1 and 6, making the governor and lieutenant governor political teammates and enabling the governor to look to a loyal lieutenant governor for assistance. It is certainly far more consistent with this constitutional vision than leaving the acting \*687 lieutenant governorship in the hands of a legislator, like Senator Bruno or Senator Skelos, who is the leader of the opposition party in the senate, or in the hands of someone like Senator Espada, who displays no discernable party loyalty at all.

Taken together, then, the case for the governor's action is extremely clear. Public Officers Law section 43 gives the governor authority to make an appointment to fill a vacancy in elective offices, including lieutenant governor. Ward v. Curran confirms that the Public Officers Law applies to the office of lieutenant governor,<sup>83</sup> and traditional canons of interpretation require the conclusion that by amending section 42 to exclude the lieutenant governor without so amending section 43, the legislature intended the lieutenant governor to be covered by section 43. So, too, gubernatorial appointment fulfills the vision expressed by the post-Ward constitutional amendments that the lieutenant governor is to be the governor's political partner.

### B. Rejecting the Unpersuasive Case Against the Governor's Power to Appoint a Lieutenant Governor

The case against the governor's power to appoint a lieutenant governor is more complex, relying on inconsistent and insubstantial theories, strained readings of the relevant legal texts, and ultimately on non-textual policy arguments. These arguments can be boiled down to six points: (1) section 43 does not apply because the office of lieutenant governor is not elective; (2) section 43 does not authorize gubernatorial appointment; (3) section 43 does not apply because the office of lieutenant governor is not vacant; (4) section 43 is invalid because the legislature's authority to enact the vacancy-filling measure is based on article XIII, section 3 of the constitution, and section 43 is inconsistent with that provision of the constitution; (5) gubernatorial appointment is inconsistent with “the elective principle”;<sup>84</sup> and finally, (6) the governor cannot make an appointment because no governor has ever made such an appointment before.

The first and second points are flatly inconsistent with the \*688 governing texts. The third and fourth points have some merit, but the third fails to account for the constitution's specific language while the fourth relies on an unduly crabbed reading of the constitutional text. The fifth point is inconsistent with the claim that the lieutenant governor is not elected,<sup>85</sup> and is belied by the constitution's prohibition of a special election for lieutenant governor. The final point is not a legal argument at all. These points are addressed below.

#### 1. Lieutenant Governor Is an Elective Office

The principal argument addressed by the supreme court, Nassau County against the governor's power to act pursuant to section 43 is that the "office of lieutenant-governor is not an 'elective office' within the meaning of § 43" since the lieutenant governor is elected on a joint ticket with the governor.<sup>86</sup> But that is nonsense. The constitution provides for the election of a lieutenant governor.<sup>87</sup> This argument was dropped even by the appellate judges who opposed the governor.<sup>88</sup> Chief Judge Lippman's opinion for the Court of Appeals properly assumed without discussion that the lieutenant governor is an elective office.<sup>89</sup>

## 2. Section 43 Authorizes the Governor to Fill Vacancies in Elective Office

The second contention, discussed by both the appellate division and the Court of Appeals, that section 43 does not actually authorize the governor to fill vacancies,<sup>90</sup> is equally nonsensical. To be sure, it relies on the language of section 43, which provides that "the governor shall appoint a person to execute the duties" of the offices to which it applies, and does not say something like "shall appoint someone to fill the vacancy."<sup>91</sup> But this hyper-technical \*689 argument ignores the fact that section 43 is titled "filling other vacancies," much as section 41 is entitled "vacancies filled by legislature" and section 42 is entitled "filling vacancies in elective offices."<sup>92</sup> Plainly, the legislature assumed that all three consecutive sections within the article of the Public Officers Law entitled "creation and filling of vacancies" dealt with filling vacancies. Although the title of a legislative section is not controlling, it is surely relevant to the interpretation of the statute.<sup>93</sup> Moreover, this argument is not limited to the office of lieutenant governor, but potentially could be used against the power to appoint to fill a vacancy in any elective office covered by section 43, in effect nullifying the statute. Again, Chief Judge Lippman was plainly correct in treating section 43, with sections 41 and 42, as part of a package of "vacancy-filling provisions."<sup>94</sup>

## 3. The Office of Lieutenant Governor Was Vacant

The claim that section 43 is inapplicable to the lieutenant governor position because there is no vacancy to fill is somewhat more substantial. The constitution directs that in the event of a vacancy in the office of lieutenant governor, "the temporary president of the senate shall perform all the duties of lieutenant-governor during such vacancy."<sup>95</sup> Arguably, then, the office is not vacant. But "perform[ing] the duties" is not quite the same thing as filling the vacancy. The distinction is highlighted by comparing this language with the provision of the constitution directing that, in the event of the governor's death, resignation, or removal from office, the lieutenant governor "shall become governor for the remainder of the term."<sup>96</sup> By that language, the lieutenant governor fills the vacancy in the office of governor. By contrast, the temporary president of the senate is merely acting as lieutenant governor.

The difference between filling a vacancy and merely acting as lieutenant governor is underscored by the fact that the lieutenant governor gives up his former post to become governor while the temporary senate president remains temporary senate president while "perform[ing] the duties" of lieutenant governor. Dual office- \*690 holding is highly unusual in our system, and the presumption ought to be that the temporary senate president is merely "perform [ing] the duties" of lieutenant governor, not actually becoming lieutenant governor. So, too, the identity of the person "perform[ing] the duties" of lieutenant governor can keep changing. There were four people "perform[ing] those duties" between 2008 and 2009--Joseph Bruno, Dean Skelos, Malcolm Smith, and Pedro Espada. This is hardly consistent with any one of them filling the vacancy. In addition, the temporary president of the senate's "perform[ance of] the duties" of lieutenant governor raises the uneasy possibility that he will be able to cast two votes in the senate--his own vote as a senator, and, in the event of a tie, the casting vote of the lieutenant governor.<sup>97</sup> With a 31-31 or even a 32-30 senate, the prospect of a tie and a casting vote by the senate majority leader/acting lieutenant governor is not at all farfetched. Then-Majority Leader Joseph Bruno chuckled at a 2008 forum that he would be "happy to have two votes."<sup>98</sup> Double-voting is even more troubling than dual office-holding. While the constitution may be read to permit it in this instance, given the problematic

nature of double-voting it makes sense to treat the authorization of double-voting as only a temporary measure, rather than one locked in for the duration of the lieutenant governor's term.

These concerns growing out of the temporary senate president's continuing role in the senate while also acting as lieutenant governor confirm that the better reading of article IV, section 6 is the one adopted by the Court of Appeals majority, that the temporary senate president does not fill the vacancy but provides "only stopgap coverage of the function of the Lieutenant Governor."<sup>99</sup> As Chief Judge Lippman's opinion explained:

Properly understood, then, the two provisions--article IV, § 6 and Public Officers Law § 43--are complementary rather than duplicative and, accordingly, article IV, § 6 should not be construed, as it was by the Appellate Division, as a limitation upon gubernatorial appointment pursuant to \*691 Public Officers Law § 43.<sup>100</sup>

#### 4. Application of Section 43 to the Office of Lieutenant Governor Is Not Inconsistent with Article XIII, Section 3.

Probably the strongest argument against the governor's action is the one based on article XIII, section 3. That provision authorizes the legislature to

provide for filling vacancies in office, and in case of elective officers, no person appointed to fill a vacancy shall hold his or her office by virtue of such appointment longer than the commencement of the political year next succeeding the first annual election after the happening of the vacancy.<sup>101</sup> Article XIII, section 3 is apparently the source of the legislature's authority to enact the vacancy-filling provisions of the Public Officers Law, but its requirement that the appointee filling a vacancy cannot serve "longer than the commencement of the political year next succeeding the first annual election after the happening of the vacancy"<sup>102</sup> is arguably inconsistent with the governor's power to appoint a lieutenant governor to fill out the remainder of the lieutenant governor's term. The language suggests that any appointee's term should have ended after the 2008 election as the lieutenant governor position became vacant in March 2008, or for an appointment made in July 2009, the 2009 election.

But this argument is also unpersuasive. The constitution does not define the term "political year." All it says, in article XIII, section 4, is that "[t]he political year and legislative term shall begin on the first day of January,"<sup>103</sup> but that does not indicate which January--2009, 2010, or 2011--or whether, given section 4's focus on the legislative term, that the "political year" is the same for all offices. Certainly, it is not the general case that appointments to fill vacancies in elective offices are good only until the first of January in the year after the appointment is made. Indeed, that is not the rule for filling any of the vacancies in statewide office. Section 42 (4-a) of the Public Officers Law provides that if a vacancy occurs in the elective office of United States Senator in an even-numbered year within sixty days before the annual primary day, which is \*692 usually in September, the governor can appoint someone who will serve until "the third day of January in the year following the next even numbered calendar year."<sup>104</sup> In other words, someone appointed, say, "in late August 2010, would serve until January 2013, or nearly two and a half years,"<sup>105</sup> while "someone appointed in an odd-numbered year would hold office until 'the third day of January in the next odd numbered calendar year.'"<sup>106</sup> Thus, pursuant to section 42 (4-a), Senator Kirsten Gillibrand's appointment could last "nearly two years."<sup>107</sup>

Section 41 of the Public Officers Law goes even further, authorizing "the Legislature to fill vacancies in the elective offices of Attorney General and Comptroller for the duration of the vacant term."<sup>108</sup> Therefore, Comptroller DiNapoli's legislative appointment in early 2007 means his term will not expire until January 2011, lasting almost four years.<sup>109</sup>

Therefore, “[i]n light of the uncertain meaning of ‘political year’ in the context of filling vacancies in statewide offices,”<sup>110</sup> like United States Senator, attorney general, and comptroller, and given the “‘same time, same term’ provision of Article IV, § 1,”<sup>111</sup> it is probably best to treat the term “political year” for appointment to fill the vacancy in the office of lieutenant governor, as one that runs with the Governor’s and Lieutenant Governor’s constitutional four-year term of office. That would be consistent with the legislature’s power to appoint an attorney general or comptroller for the duration of those offices’ four-year terms, as well as with article IV’s evident desire to treat the governor and lieutenant governor as a team.<sup>112</sup>

The Court of Appeals was, thus, consistent with longstanding state practice in holding that the purpose of the political year provision is “to assure that appointments to elective offices extend no longer than is reasonably necessary to fill such offices by election.”<sup>113</sup> Given article IV’s directive that the lieutenant governor can be elected only at an election for governor, article XIII \*693 would be satisfied if the appointive term ran until “the next election at which the office may be legally filled.”<sup>114</sup> Consistent with the “whole act” rule,<sup>115</sup> this nicely and appropriately harmonizes the relevant constitutional provisions and also reflects “the main object of article XIII, § 3, expressed unequivocally in its first clause, which, of course, is to assure that vacancies are filled.”<sup>116</sup>

#### 5. The “Elective Principle” Does Not Bar a Gubernatorial Appointment

Diametrically opposed to the claim that section 43 does not apply because the lieutenant governor is not elected is the argument that gubernatorial appointment violates the so-called “electoral principle.” This argument was put forward with great rhetorical force by the plaintiffs and by Judge Pigott’s dissent. Judge Pigott stressed that the appointed lieutenant governor could succeed to the governorship in the event of the latter’s death or resignation with “the possibility exist[ing] that the citizens of this state will one day find themselves governed by a person who has never been subjected to scrutiny by the electorate.”<sup>117</sup>

In early March 2010, with Governor Paterson mired in scandals, Judge Pigott’s concern proved prescient, but the legal argument that an “electoral principle” limits the appointive power is weak. The “electoral principle phrase” draws on language in the Ward opinion, which in turn quoted an earlier case, to the effect that “[i]t is a fundamental principle of our form of government than a vacancy in an elective office should be filled by election as soon as practicable after the vacancy occurs.”<sup>118</sup> But whatever the power of the “elective principle” idea in Ward, it was displaced by the people and the legislature when the constitution and the Public Officers Law were amended to bar a special election to fill a vacancy in the office of lieutenant governor. As the Court of Appeals put it, “the elective principle, upheld by the judiciary in Ward, was thus legislatively subordinated to assure the structural integrity and \*694 efficacy of the executive branch.”<sup>119</sup>

The elective principle, including the filling of vacancies in elective office by election is, of course, a sound idea. But for a host of offices--attorney general and comptroller, whose vacancies are filled by legislative selection; the office of United States Senator, for which the governor can make a two-year appointment followed by a special election; and all the elective offices covered by section 43--the elective principle has been superseded by other provisions.<sup>120</sup> As the Court of Appeals explained, “[r]ules of succession are . . . inevitably imperfect and . . . invariably compromise elective principles.”<sup>121</sup>

The elective principle objection is, thus, really a policy argument which must fall given the many constitutional and statutory provisions that accept, or require, other means of filling vacancies.

#### 6. The Fact That No Governor Before Ever Sought to Appoint a Lieutenant Governor Is Irrelevant

Even more than the elective principle, the central concern driving Judge Pigott's dissent, and much of the opposition to the governor's action, is that the appointment of a lieutenant governor is "unprecedented."<sup>122</sup> Judge Pigott stressed that on "at least 10 occasions since the first New York Constitution was adopted in 1777 . . . the position of Lieutenant Governor has been vacant, but no Governor has ever seen fit to assert that he had the power to appoint a Lieutenant Governor to fill the vacancy."<sup>123</sup> For the governor's opponents and the Court of Appeals dissenters, the objection was two-hundred-and-thirty years of non-action.

Judge Pigott's dissent overstates the history of non-action. New York did not adopt a four-year term for governor and lieutenant governor until 1938, so that for more than 160 years the lieutenant governor served for a two-year term (or in some periods a three-year term). With that shorter term, some period of vacancy in office might have been acceptable. Also, for at least two different eras, legislation provided for filling the vacancy by election, and two \*695 vacancies--in 1847 and 1943--were filled by election.<sup>124</sup>

As a result, the relevant period for non-action is just the roughly six decades since the post-Ward amendments to the Public Officers Law and the constitution. During that time, there were three vacancies in the office of lieutenant governor prior to the present one--in 1953, 1973, and 1985. When the first two vacancies occurred, the senate was controlled by the same party as the governor, so there was no partisan conflict between the governor and the acting lieutenant governor.<sup>125</sup> The only time in modern New York history when the lieutenant governorship was vacant and the governor and temporary senate president were of opposing political parties was the not-quite two-year period between the resignation of Lieutenant Governor DelBello in February 1985 and the end of the term to which he had been elected in December 1986.<sup>126</sup> That is not an overwhelming negative precedent against the governor's action.

More importantly, "the mere fact that a constitutional power has not been exercised does not prove the power does not exist."<sup>127</sup> A power may exist but lie dormant until circumstances remind us of its existence and justify or require its use. The objection from lack of prior use is like the claim about the elective principle--ultimately not a legal argument at all. Judge Pigott acknowledged this when he observed "the fact that no Governor has previously attempted to appoint a Lieutenant Governor . . . does not resolve the legal issue."<sup>128</sup> It just shows that prior governors--and, in some sense, really just Governor Mario Cuomo in 1985--either did not think they had the authority, or for political reasons, chose not to exercise the authority they had. But that is not much of a reason to discount a statute plainly supplying the necessary authority.

In short, the plain meaning of section 43 of the Public Officers Law, supported by the Ward decision and the legislature's post-Ward exclusion of the lieutenant governor from section 42 but not section 43, provided the authority for the governor's action, which was congruent with article IV's structural commitment to a vision of the governor and the lieutenant governor as political partners. The \*696 internal objections to the use of section 43--that the lieutenant governor is not "elective" and that section 43 does not authorize the filling of vacancies--are specious. The constitutional objections--that article IV effectively fills the vacancy with the temporary senate president, and that a gubernatorial appointment of a lieutenant governor is inconsistent with article XIII's "next election" language--are more substantial, but also fail. The text of article IV indicates that the temporary senate president only performs the duties and does not fill the vacancy, while the fact of dual office-holding and the prospect of double voting support the need for someone to actually fill the vacancy. The practice reflected in other vacancy-filling statutes is to treat the "next election" requirement to mean the next election at which the office may be legally filled. The "elective principle" and "unprecedented" arguments were rhetorically the most potent, but were really no more than policy arguments and, as such, inadequate to modify the plain meaning of the statutory text.

#### IV. Conclusion



This article will conclude with two points, one about state constitutional interpretation, and the other about filling vacancies in state offices.

### A. State Constitutional Interpretation

One reason why the governor's action and the Court of Appeals's decision upholding it came as such a surprise to many legal and political observers is that they approached the problem as if it were a question of federal constitutional law, not state constitutional law. It is a longstanding rule of constitutional interpretation that, whereas Congress must justify its actions in terms of one of the specific enumerated powers granted to it by the United States Constitution, the state legislature has plenary authority to make laws unless it is specifically limited by the state constitution. This grant-versus-limitation distinction was most famously articulated by nineteenth century jurist and scholar Thomas McIntyre Cooley in his book, *A Treatise on the Constitutional Limitations*, which observed:

We look in the Constitution of the United States for grants of legislative power, but in the constitution of the State to ascertain if any limitations have been imposed upon the complete power with which the legislative department of the \*697 State was vested in its creation. . . . [T]he State legislature has jurisdiction of all subjects on which its legislation is not prohibited.<sup>129</sup>

This grant-versus-limitation distinction, and its implication that a state legislature may act unless limited by its constitution, continues to be part of state constitutional law today.<sup>130</sup>

From the state constitutional perspective, then, the key question is not the one asked by Judge Pigott: Is there anything in the constitution authorizing the governor's action? That might be the central issue in a federal constitutional dispute. In a state case, the question is whether anything in the constitution barred the legislature's decision to give the governor the power to make an appointment to fill the vacancy. The Court of Appeals's decision is consistent with this approach and reminds us of its significance.

### B. Filling Vacancies in State Office

The Ravitch litigation also reminds us just how problematic our laws governing the filling of vacancies in statewide elective office are, and just how much the law has departed from the "elective" principle. As of March 2010, of the six statewide elective offices--governor, lieutenant governor, attorney general, comptroller, and New York's two United States Senators--four are occupied by individuals who were not elected to them. Three--Lieutenant Governor Ravitch, Comptroller DiNapoli, and Senator Gillibrand--were not elected at all, but were appointed to their positions. The case of Comptroller DiNapoli is particularly egregious. He was appointed by the legislature pursuant to Public Officers Law section 41 on February 7, 2007 to complete the term--which started on January 1, 2007--to which Alan Hevesi had been elected in November 2006.<sup>131</sup> DiNapoli's term runs until the end of 2010. In other words, for forty-seven of his forty-eight-month term, we will have an unelected comptroller. Senator Gillibrand, who was appointed on January 26, 2009, will not face the voters until November 2010, so she will have more than twenty-one months in \*698 office without an election. Lieutenant Governor Ravitch will actually hold the shortest unelected time in office--just eighteen months from his appointment until the end of 2010.

Nor do these appointments reflect broad support from the institutions of state government. Senator Gillibrand, like Lieutenant Governor Ravitch, was appointed by Governor Paterson unilaterally. While the "teammate" model of governor-lieutenant governor relations adopted by the state constitution provides some support for this, there is no reason for a United States Senator to be the partner of the governor. And while the appointment of the comptroller--like the appointment to fill a vacancy in the office of attorney general--is nominally by the entire legislature, the much

greater size of the assembly relative to the senate means that, as a practical matter, these appointments are made by the assembly and, ultimately, determined by the assembly leadership.<sup>132</sup>

Those who were troubled by the departure from the “elective principle” and the unilateral power vested in one state official, reflected by the appointment of Lieutenant Governor Ravitch, should examine the vacancy-filling provisions more broadly. Surely, there is no reason for the office of comptroller to be held by an appointee for four years. Nor was there any reason there could not have been a special election for United States Senator in 2009, rather than 2010. Although an appointment may be a necessary or desirable “stopgap” until an election can be held, there is no need for these stopgap periods to last so long. And, if the law is going to permit an appointee to hold office for two or four years, there is a good case for requiring the participation of more branches of government--the governor and both houses of the legislature--in some of these decisions.

The events following the Court of Appeals's decision have served to underscore both the political benefits of its action and the need for further attention to the question of filling vacancies. As readers of this article know, the political tumult that followed Governor Spitzer's resignation and the June-July 2009 senate stalemate did not end with Lieutenant Governor Ravitch's appointment. On February 9, 2010, the senate, by a 53-8 vote, expelled Senator Monserrate for misconduct growing out of an incident of domestic violence. Until a special election set for mid-March to fill his seat, \*699 that left the Democrats with a 31-30 margin in the senate and, thus, without an actual majority. On February 26, 2010, amid an outcry over his participation in an effort to persuade a woman who had brought charges of domestic violence against one of his closest aides to drop her case, Governor Paterson ended his campaign to be elected to a full term and called on the attorney general to investigate the case. On March 3, 2010, the governor's legal difficulties worsened when the Commission on Public Integrity charged him with violating the state's ethics laws for soliciting and securing free tickets to the first game of the 2009 World Series from the New York Yankees, and found that he had given false testimony to the Commission while under oath. The Commission referred these charges to the attorney general and the Albany County District Attorney for further investigation. From the vantage point of early March 2010, with the governor facing calls for his resignation, with the possibility of impeachment not out of the question, and with the senate lacking a clear majority party, the value of having an undisputed full-time lieutenant governor in place and ready to take over as governor should the need arise could not be clearer.

New York's ongoing political turmoil underscores the need for a careful and comprehensive consideration of our laws for filling vacancies in office. One added benefit of the Skelos v. Paterson decision is that we now know that curing the “democracy deficit” in our vacancy-filling laws does not require the extraordinary effort of a constitutional amendment, but can be accomplished by ordinary legislation. Although Governor Paterson's appointment of Richard Ravitch as lieutenant governor was characterized by critics as a gubernatorial power-grab, Paterson relied entirely on authority given to him by the legislature. If the legislature thinks section 43 gives him too much power, it can take it back.

So, too, if the legislature thinks that the better approach to filling the vacancy in the office of lieutenant governor is to follow the model provided by the Twenty-Fifth Amendment to the United States Constitution for filling a vacancy in the office of vice president--presidential nomination subject to confirmation by both houses of Congress--the legislature can do so.<sup>133</sup> As we have learned, Judge Pigott was right to worry that an unelected lieutenant governor could become an unelected governor. Requiring a lieutenant governor appointee to secure the approval of the \*700 legislature would surely give the appointee enhanced legitimacy, both as lieutenant governor and as a potential future governor. The legislation should give serious consideration to reforming the lieutenant governor appointment process. From that perspective, Skelos v. Paterson should not be read--or not read only--as an endorsement of gubernatorial power. It is an affirmation of legislative authority as well.

#### Footnotes

- a1 Joseph P. Chamberlain Professor of Legislation, Columbia Law School.
- 1 Skelos v. Paterson, 13 N.Y.3d 141, 154, 915 N.E.2d 1141, 1147, 886 N.Y.S.2d 846, 852 (2009) (Pigott, J., dissenting).
- 2 Id. at 157, 915 N.E.2d at 1150, 886 N.Y.S.2d at 854 (Pigott, J., dissenting).
- 3 N.Y. Const. art. IV, § 6.
- 4 Judge Pigott's dissent in Skelos refers to ten prior vacancies that occurred in the following years: 1811, 1828, 1829, 1847, 1885, 1910, 1913, 1943, 1973 and 1985. Skelos, 13 N.Y.3d at 161, 915 N.E.2d at 1153, 886 N.Y.S. 2d at 857 n.3 (Pigott, J., dissenting). There was likely an additional, eleventh vacancy, however--that created on September 29, 1953, by the resignation of Lieutenant Governor Frank Moore. Moore left office to become president of the Government Affairs Foundation created by Nelson Rockefeller, who was ultimately to run for governor. See Nicholas Webb, Finding Aid for the Frank C. Moore PAPERS, 1881-1978, Biographical Note (July 2009), available at <http://library.albany.edu/speccoll/findaids/apap223.htm>.
- 5 See Skelos, 13 N.Y.3d at 161, 915 N.E.2d at 1152, 886 N.Y.S.2d at 857 (Pigott, J., dissenting).
- 6 Statement of Attorney General Andrew Cuomo Regarding Lieutenant Governor Appointment Proposal (July 2008), available at [http://www.ag.ny.gov/meida\\_center/2009/july/july6a\\_09.html](http://www.ag.ny.gov/meida_center/2009/july/july6a_09.html).
- 7 See Brief of Gerald Benjamin, Peter J. Galie, Michael J. Hutter & Stan Lundine as Amici Curiae at 11-13, Skelos v. Paterson, 65 A.D.3d 339, 885 N.Y.S.2d 92 (App. Div. 2d Dep't 2009) (No. 2009-00678), available at [http://www.courts.state.ny.us/courts/ad2/pdf/SkelosvPaterson/Hutter\(Skelos%20v.%P#aterson\)080609-Brief.pdf](http://www.courts.state.ny.us/courts/ad2/pdf/SkelosvPaterson/Hutter(Skelos%20v.%P#aterson)080609-Brief.pdf) (noting the opinions of former Chief Judge Wachtler, former Attorney General Vacco, former Lieutenant Governor Lundine, and Jerry H. Goldfeder, the Chair of the Committee on Election Law of the Association of the Bar of the City of New York).
- 8 Skelos v. Paterson, 25 Misc. 2d 347, 360, 884 N.Y.S.2d 812, 825 (Sup. Ct. Nassau County 2009), aff'd, 65 A.D.3d 339, 348, 885 N.Y.S.2d 92, 98-99 (App. Div. 2d Dep't 2009), rev'd, 13 N.Y.3d 141, 153, 915 N.E.2d 1141, 1147, 886 N.Y.S.2d 846, 852 (2009). The state supreme court opinion was issued July 21, 2009, less than two weeks after the governor's action. The appellate division decision came down one month later, on August 20th.
- 9 Skelos, 13 N.Y.3d at 153, 915 N.E.2d at 1147, 886 N.Y.S.2d at 852.
- 10 Id. at 153, 915 N.E.2d at 1146-1147, 886 N.Y.S.2d at 851 (2009).
- 11 See, e.g., Richard Briffault & Laurie Reynolds, Cases and Materials on State and Local Government Law 52 (7th ed. 2009) (noting that, with respect to state constitutional jurisprudence, the legislature may embrace all powers not restricted by the state constitution); see also Robert F. Williams, State Constitutional Law: Cases and Materials 793-94 (3d ed. 1999) (summarizing the traditional view that state sovereign power rests with the legislature pursuant to limitations imposed by the state constitution).
- 12 Jonathan P. Hicks, Spitzer Vote Total Is Slightly Lower in Official Count, N.Y. Times, Jan. 11, 2007, at B5.
- 13 N.Y. Const. art. IV, § 5 ("In case of the removal of the governor from office or of his or her death or resignation, the lieutenant-governor shall become governor for the remainder of the term.").
- 14 Nicholas Confessore, Pledging Unity, Paterson Takes Albany's Helm, N.Y. Times, Mar. 11, 2008, at A1.
- 15 N.Y. Const. art. IV, § 6.
- 16 Nicholas Confessore, 'I Apologize to the Public, to Whom I Promised Better.', N.Y. Times, Mar. 11, 2008, at B1.
- 17 Jeremy W. Peters, Bruno Says He Will Leave State Senate by Week's End, N.Y. Times, July 16, 2008, at B4; Danny Hakim, Bruno Declines Re-election Bid, N.Y. Times, June 24, 2008, at B1.
- 18 Danny Hakim & Jeremy W. Peters, New Day in Albany Opens as the Senate Selects Bruno's Successor, N.Y. Times, June 25, 2008, at B1.

- 19 Nicholas Confessore, *The Democratic Hand Waiting to Grasp the Senate's Gavel*, N.Y. Times, Nov. 28, 2009, at A35.
- 20 Jeremy W. Peters, *Role Reversal in the Senate, and Emotions Run High*, N.Y. Times, Jan. 8, 2009, at A27.
- 21 Brief of Defendant-Appellants at 11, *Skelos v. Paterson*, 13 N.Y.3d 141, 915 N.E.2d 1141, 886 N.Y.2d 846 (2009) (No. 2009-0183), 2009 WL 3362061.
- 22 Danny Hakim, *Celebration Interrupted: 4 Dissidents Risk Democrats' Gain in Senate*, N.Y. Times, Nov. 6, 2008, at A27.
- 23 *Skelos v. Paterson*, 13 N.Y.3d 141, 153, 915 N.E.2d 1141, 1147, 886 N.Y.S.2d 846, 852 (2009).
- 24 *Id.*
- 25 *Id.*
- 26 *Id.*; see also *Smith v. Espada*, No. 4912-09, slip op. at 4 (N.Y. Sup. Ct., Albany County, June 16, 2009), <http://www.nycourts.gov/whatsnow/pdf/Smith%20v.%C20Espada%20.Revised.last.pdf>.
- 27 *Skelos*, 25 Misc. 3d at 351, 884 N.Y.S.2d at 819, *aff'd*, 65 A.D.3d at 348, 885 N.Y.S.2d at 98-99 (App. Div. 2d Dep't 2009), *rev'd*, 13 N.Y.3d at 153, 915 N.E.2d at 1147, 886 N.Y.S.2d at 852 (2009).
- 28 *Skelos*, 13 N.Y.3d at 146-47, 915 N.E.2d at 1142, 886 N.Y.S.2d at 847.
- 29 *Id.*
- 30 Editorial, *New York's Defective Legislators*, N.Y. Times, July 2, 2009, at A22.
- 31 Nicholas Confessore, *Senate Inaction is Hurting Many Towns Across State*, N.Y. Times, July 2, 2009, at A17.
- 32 See David King, *As Time Runs Out, Paterson Tries to End the Deadlock*, Gotham Gazette, June 22, 2009, available at <http://www.gothamgazette.com/print/2948>.
- 33 Brief of Citizens Union of the City of New York et al. as Amici Curiae Supporting Defendants-Appellants at 2, *Skelos*, 13 N.Y.3d 141, 915 N.E.2d 1141, 886 N.Y.S.2d 846 (No. 2009-0183), 2009 WL 3362068.
- 34 Brief of United Federation of Teachers, et al. as Amici Curiae Supporting Defendants-Appellants at 1, *Skelos*, 13 N.Y.3d 141, 915 N.E.2d 1141, 886 N.Y.S.2d 846 (No. 2009-0183), 2009 WL 3362070.
- 35 James Barron, *Senate Impasse in Albany Forces City to Impose Hiring Freeze*, N.Y. Times, July 7, 2009, at A22; see also Brief of Citizens Union of the City of New York et al., *supra* note 33, at 29.
- 36 Press Release, Office of the New York State Comptroller, *Cost of State Senate Inaction to New Yorkers* (July 2, 2009), available at <http://www.osc.state.ny.us/press/releases/jul09/070209factsheet.htm>.
- 37 Brief of Citizens Union of the City of New York et al., *supra* note 33, at 29.
- 38 *Id.* at 28.
- 39 N.Y. Const. art. IV, § 6.
- 40 *Espada Returns to Democratic Party, Senate Gets Back to Work*, NY1.com, July 9, 2009, [http://ny1.com/-all-boroughs-news-content/top\\_stories/102009/espada-returns-to-democratic-party/Default.aspx](http://ny1.com/-all-boroughs-news-content/top_stories/102009/espada-returns-to-democratic-party/Default.aspx).
- 41 James T. Madore, *LI Judge Blocks Ravitch from Lieutenant Governor Post*, Newsday, July 22, 2009, at A06.
- 42 *Id.*
- 43 *Skelos v. Paterson*, 25 Misc. 3d 347, 361, 884 N.Y.S.2d 812, 826 (Sup. Ct. 2009), *aff'd*, 65 A.D.3d 339, 348, 885 N.Y.S.2d 92, 98-99 (App. Div. 2d Dep't 2009), *rev'd*, 13 N.Y.3d 141, 153, 915 N.E.2d 1141, 1147, 886 N.Y.S.2d 846, 852 (2009).

- 44 Skelos, 65 A.D.3d 339, 348, 885 N.Y.S.2d 92, 99, rev'd, 13 N.Y.3d 141, 153, 915 N.E.2d 1141, 1147, 886 N.Y.S.2d 846, 852.
- 45 See *id.* (holding that the case was properly brought in Nassau County and did not have to be brought in Albany County; that a quo warranto proceeding instituted by the attorney general was not the exclusive legal means available for testing the governor's authority to appoint Ravitch to be lieutenant governor; and that two individual legislators had standing to bring the claim against the governor).
- 46 See Skelos, 25 Misc. 3d at 360, 884 N.Y.S.2d at 825, aff'd, 65 A.D.3d at 348, 885 N.Y.S.2d at 99, rev'd, 13 N.Y.3d at 153, 915 N.E.2d at 1147, 886 N.Y.S.2d at 852 (2009).
- 47 Skelos, 13 N.Y.3d at 153, 195 N.E.2d at 1147, 886 N.Y.S.2d at 852.
- 48 *Id.* at 153, 915 N.E.2d at 1147, 886 N.Y.S.2d at 852 (Pigott, J., dissenting).
- 49 N.Y. Pub. Off. Law § 43 (McKinney 2008).
- 50 § 41.
- 51 § 42.
- 52 *Id.*; see also Skelos, 13 N.Y.3d at 148, 915 N.E.2d at 1143, 886 N.Y.S.2d at 848.
- 53 Skelos, 13 N.Y.3d at 148, 195 N.E.2d at 1143, 886 N.Y.S.2d at 848.
- 54 266 A.D. 524, 526, 527, 44 N.Y.S.2d 240, 241-42 (App. Div. 3d Dep't 1943), aff'd, 291 N.Y. 642, 644, 50 N.E.2d 1023, 1023 (1943).
- 55 Skelos, 13 N.Y.3d at 162, 915 N.E.2d at 1153, 886 N.Y.S.2d at 858 (Pigott, J., dissenting).
- 56 *Id.* at 151, 915 N.E.2d at 1145, 886 N.Y.S.2d at 850.
- 57 *Id.* at 162, 915 N.E.2d at 1153, 886 N.Y.S.2d at 858 (Pigott, J., dissenting).
- 58 *Id.*
- 59 *Id.*
- 60 *Id.*
- 61 Ward v. Curran, 266 A.D. 524, 526-27, 44 N.Y.S.2d 240, 241-42 (App. Div. 3d Dep't 1943), aff'd, 291 N.Y. 642, 644, 50 N.E.2d 1023, 1023 (1943).
- 62 Ward, 291 N.Y. at 643-44, N.E.2d at 1023.
- 63 Skelos, 13 N.Y.3d at 163-64, 915 N.E.2d at 1154, 886 N.Y.S.2d at 859.
- 64 William N. Eskridge, Jr. et al., *Cases and Materials on Legislation: Statutes and the Creation of Public Policy* 866 (4th ed. 2007).
- 65 N.Y. Stat. Law § 240 (McKinney 1971) ("The maxim *expressio unius est exclusio alterius* is applied in the construction of the statutes, so that where a law expressly describes a particular act, thing or person to which it shall apply, an irrefutable inference must be drawn that what is omitted or not included was intended to be omitted or excluded.").
- 66 Keene Corp. v. United States, 508 U.S. 200, 208 (1993) (quoting *Russello v. United States*, 464 U.S. 16, 23 (1983)).
- 67 Weingarten v. Bd. of Trustees of N.Y. City Teachers' Ret. Sys., 98 N.Y.2d 575, 583, 785 N.E.2d 174, 179, 750 N.Y.S.2d 573, 578 (2002).

- 68 Skelos, 13 N.Y.3d at 151-52, 915 N.E.2d at 1145-46, 886 N.Y.S.2d at 850. Subsection (3) of section 42, which deals with the consequences of the failure to elect to any office in an election held to fill a vacancy, and also expressly exempts the office of lieutenant governor, provides further support for the *expressio unius* argument. N.Y. Pub. Off. Law § 42(3) (2008).
- 69 N.Y. Const. art. IV, § 1 (amended 1953).
- 70 N.Y. Const. art. IV, § 6 (amended 1945).
- 71 N.Y. Const. art. IV, § 1.
- 72 N.Y. Const. art. IV, § 6.
- 73 N.Y. Const. art. IV, § 1.
- 74 N.Y. Const. art. IV, § 6.
- 75 Skelos v. Paterson, 13 N.Y.3d 141, 163-64, 915 N.E.2d 1141, 1154, 886 N.Y.S.2d 846, 859 (2009) (Pigott, J., dissenting).
- 76 *Id.* at 162, 915 N.E.2d at 1153, 886 N.Y.S.2d at 858 (Pigott, J., dissenting).
- 77 Brief for Plaintiff-Respondent at 49, Skelos, 13 N.Y.3d at 141, 915 N.E.2d 1141, 886 N.Y.S.2d 846 (No. 2009-0183), 2009 WL 3362063.
- 78 Skelos, 13 N.Y.3d at 163, 915 N.E.2d at 1154, 886 N.Y.2d at 859 (Pigott, J., dissenting) (citation omitted).
- 79 Public Officers Law, ch. 3, 1944 N.Y. Laws 3 (codified as amended at N.Y. Pub. Off. Law § 42 (McKinney 2008)).
- 80 Thomas E. Dewey, Governor's Messages to the Legislature, Governor, Lieutenant Governor, Joint Election, S.I. 13, reprinted in 1953 New York State Legislative Annual 318-19 (1953).
- 81 *Id.* at 319.
- 82 *Id.*
- 83 See Ward v. Curran, 291 N.Y. 642, 643, 50 N.E.2d 1023, 1023 (1943). The conclusion that the Public Officers Law applies to the lieutenant governor—unless the office is specifically excluded—is buttressed by section 31, which is part of the same article as section 43. N.Y. Pub. Off. Law § 31 (McKinney 2008). It is article 3 which deals with the creation and filling of vacancies, and expressly provides the procedure for the resignation of the lieutenant governor as part of the article's general treatment of resignations. See § 31(1)(a).
- 84 See *infra* notes 112-114 and accompanying text.
- 85 Senator Skelos's Court of Appeals brief contended both that the governor's action “violated the elective principle,” and that “the office of Lieutenant Governor is not an elective office.” Brief for Plaintiff-Respondents, *supra* note 77, at 31, 57-60.
- 86 Skelos v. Paterson, 25 Misc. 3d 347, 360, N.Y.S.2d 812, 825 (Sup. Ct. Nassau County 2009), *aff'd*, 65 A.D.3d 339, 348, 885 N.Y.S.2d 92, 98-99 (App. Div. 2d Dep't 2009), *rev'd*, 13 N.Y.3d 141, 153, 915 N.E.2d 1141, 1147, 886 N.Y.S.2d 846, 852 (2009).
- 87 N.Y. Const. art. IV, § 1.
- 88 The argument was not, however, dropped by Senator Skelos's lawyers. See *supra* note 85.
- 89 Skelos, 13 N.Y.3d at 148, 915 N.E.2d at 1143, 886 N.Y.S.2d at 848.
- 90 Skelos, 65 A.D.3d at 347, 885 N.Y.S.2d at 98, *rev'd*, 13 N.Y.3d at 149, 915 N.E.2d at 1144; 886 N.Y.S.2d at 852.
- 91 N.Y. Pub. Off. Law § 43 (McKinney 2008); see also Skelos, 65 A.D.3d at 347, 885 N.Y.S.2d at 98, *rev'd*, 13 N.Y.3d at 159, 915 N.E.2d at 1150-51, 885 N.Y.S.2d at 855.
- 92 N.Y. Pub. Off. Law §§ 41-43.

- 93 Eskridge et. al., *supra* note 64, at 862-63.
- 94 See *id.* (espousing a method of statutory interpretation that interprets each section “in the context of the whole enactment”).
- 95 N.Y. Const. art. IV, § 6.
- 96 N.Y. Const. art. IV, § 5.
- 97 N.Y. Const. art. IV, § 6.
- 98 Senator Joseph L. Bruno, Remarks at the Nelson A. Rockefeller Institute of Government, Gubernatorial Succession and the Powers of the Lieutenant Governor: A Public Policy Forum 15 (May 29, 2008), available at [http://www.rock.inst.org/pdf/publicpolicy\\_forums/2008-05-29-public\\_policy\\_forum\\_gubernatorial\\_succession\\_and\\_the\\_powers\\_of\\_the\\_lieutenant\\_governor.pdf](http://www.rock.inst.org/pdf/publicpolicy_forums/2008-05-29-public_policy_forum_gubernatorial_succession_and_the_powers_of_the_lieutenant_governor.pdf).
- 99 Skelos v. Paterson, 13 N.Y.3d 141, 149, 915 N.E.2d 1141, 1144, 886 N.Y.2d 846, 849 (2009).
- 100 See *id.* at 146, 915 N.E.2d at 1142, 886 N.Y.S.2d at 847.
- 101 N.Y. Const. art. XIII, § 3.
- 102 *Id.*
- 103 N.Y. Const. art. XIII, § 4.
- 104 Brief of Citizens Union of the City of New York et al., *supra* note 33, at 19 (quoting N.Y. Pub. Off. Law § 42(4-a) (McKinney 2008)).
- 105 *Id.* at 19.
- 106 *Id.* (quoting N.Y. Pub. Off. Law § 42 (4-a) (McKinney 2008)).
- 107 *Id.* at 20.
- 108 *Id.*
- 109 *Id.*
- 110 *Id.*
- 111 *Id.* (quoting N.Y. Const. art. IV, § 1).
- 112 *Id.*
- 113 Skelos v. Paterson, 13 N.Y.3d 141, 150, 915 N.E.2d 1141, 1144, 886 N.Y.S.2d 846, 849 (2009).
- 114 *Id.* at 150, 915 N.E.2d at 1145, 886 N.Y.S.2d at 850.
- 115 Eskridge et al., *supra* note 64, at 862.
- 116 Skelos, 13 N.Y.3d at 150, 915 N.E.2d at 1144-45, 886 N.Y.S.2d at 849.
- 117 *Id.* at 153, 915 N.E.2d at 1147, 886 N.Y.S.2d at 852 (Pigott, J., dissenting).
- 118 Ward v. Curran, 266 A.D. 524, 526, 44 N.Y.S.2d 240, 242 (App. Div. 3d Dep't 1943), *aff'd*, 291 N.Y. 642, 644, 50 N.E.2d 1023, 1023 (1943). (quoting Wing v. Ryan, 255 A.D. 163, 167, 6 N.Y.S.2d 825, 829 (App. Div. 3d Dep't 1938), *aff'd*, 278 N.Y. 10, 10, 17 N.E.2d 133, 133 (1938)).
- 119 Skelos, 13 N.Y.3d at 151, 915 N.E.2d at 1145, 886 N.Y.S.2d at 850.

- 120 Brief of Citizens Union of the City of New York et al., *supra* note 33, at 19-20 (citing N.Y. Pub. Off. Law § 42(4-a), which specifies the procedure for filling a vacancy in the office of United States Senator from N.Y.).
- 121 Skelos, 13 N.Y.3d at 153, 915 N.E.2d at 1146, 886 N.Y.S.2d at 851.
- 122 *Id.* at 153, 915 N.E.2d at 1146, 886 N.Y.S.2d at 851 (Pigott, J., dissenting).
- 123 *Id.* at 153, 915 N.E.2d at 1147, 886 N.Y.S.2d at 852 (Pigott, J., dissenting).
- 124 *Id.* at 161, 915 N.E.2d at 1152, 886 N.Y.S.2d at 857. As was suggested at *supra* note 4, there were probably eleven such vacancies.
- 125 *Id.* at 161 n.3, 915 N.E.2d at 1153 n.3, 886 N.Y.S.2d 857 n.3 (Pigott, J., dissenting).
- 126 Nancy Connell, *Lundine Only Wants a Portion of the Job, Would Seek Senate Reprieve*, *Times Union* (Albany, N.Y.), Oct. 24, 1986, at A1.
- 127 *In re Advisory Opinion to the Governor*, 688 A.2d 288, 291 n.1 (R.I. 1997).
- 128 Skelos, 13 N.Y.3d at 166, 915 N.E.2d at 1155, 886 N.Y.S.2d at 860 (Pigott, J., dissenting).
- 129 Thomas M. Cooley, *A Treatise on the Constitutional Limitations Which Rest upon the Legislative Power of the States of the American Union* 355 (8th ed. 1927).
- 130 See, e.g., *Briffault & Reynolds*, *supra* note 11, at 52; (discussing the state constitution's role as a limitation on legislative power and the factors that differentiate state from federal constitutional power); *Williams*, *supra* note 11, at 577-80 (noting, *inter alia*, that powers not restricted by the state constitution remain with the state legislature).
- 131 Michael Cooper, *Legislators Pick a Comptroller, Defying Spitzer*, *N.Y. Times*, Feb. 8, 2007, at A1.
- 132 It comes as no surprise that the last two statewide officials appointed pursuant to section 41 of the Public Officers Law--Comptroller DiNapoli and G. Oliver Koppell, who was appointed attorney general in 1994 to fill the vacancy created by the resignation of Robert Abrams--were both members of the assembly when they were appointed.
- 133 U.S. Const. amend. XXV (codified as amended at 3 U.S.C. § 19 (2006)).



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Comment

AUTOMATIC LIEUTENANT GUBERNATORIAL SUCCESSION: PREVENTING  
LEGISLATIVE GRIDLOCK WITHOUT SACRIFICING THE ELECTIVE PRINCIPLE

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**I. Introduction**

In June of 2009 the government of the State of New York came to a shuddering halt.<sup>1</sup> Two candidates for Temporary President of the Senate, the office that represents party control, commanded equal votes for the position.<sup>2</sup> The tie-breaking vote would ordinarily have been cast by the lieutenant-governor, but due to the resignation of Eliot Spitzer and elevation of David Paterson, that position was vacant.<sup>3</sup> The uncertainty as to who held the position paralyzed Senate operations and left open a very real question as to who would succeed to the governorship should something happen to then-Governor Paterson.<sup>4</sup> The delay caused by the impasse cost state and local governments \$2.9 billion.<sup>5</sup> The deadlock prompted Paterson to appoint Richard Ravitch to lieutenant-governor, marking the first time in New York history that any governor had attempted to fill that post despite numerous historical vacancies.<sup>6</sup> \*2302 Litigation as to the propriety of the appointment immediately ensued, eventually resulting in the New York Court of Appeals upholding the legitimacy of the appointment.<sup>7</sup> Had the situation not resolved itself politically on the day of the appointment,<sup>8</sup> the deadlock could have continued for more than an additional two months during the pendency of the appeal.<sup>9</sup>

Although the crisis was in no small measure a result of the fact that "New York's [legislature] was, by far, the most dysfunctional legislature in the nation,"<sup>10</sup> the impasse could have been solved in a day had there been an effective constitutional mechanism for succession to the office of lieutenant-governor in the case of a vacancy. The absence of such a mechanism led to unprecedented gubernatorial action and the New York Court of Appeals's authorization, by a slim majority and in a decision that has been heavily criticized,<sup>11</sup> of Ravitch's appointment via a statutory catch-all provision typically used only for minor officials.<sup>12</sup> That decision also left in place many of the structural problems that allowed the crisis to come to a head in the first place, such as when a replacement lieutenant-governor must be appointed.

This article is an attempt to find a solution to the problem of lieutenant gubernatorial succession in New York. Part II will discuss the problems created by allowing appointment pursuant to Public Officers Law section 43 and the structural issues that remain unresolved even with the present judicially approved method of appointment. Part III will consider several alternative methods of gubernatorial succession and to filling a vacancy in the office of lieutenant-governor. It will discuss whether any of those approaches would suffice to meet the policy goals of the lieutenant-governor's office in New York's constitutional structure. Part IV will offer a potential solution, which avoids the risk of legislative gridlock and preserves some electoral input into which candidates may be chosen to succeed to the office of lieutenant-governor.

**\*2303 II. The Unacceptable Skelos Solution**

The Court of Appeals's decision in *Skelos v. Paterson* removes any electoral check from those selected to fill the position of lieutenant-governor and leaves several structural problems unresolved. Chief Judge Lippman's opinion recognized that the Skelos solution is not necessarily the best solution to the issue of succession, and held only that the present constitutional and statutory scheme permits the governor to appoint a lieutenant-governor in case of a vacancy.<sup>13</sup> Three major flaws with the present structure are discussed below.

#### A. Appointment Without Limitations Violates the Elective Principle

The present structure permits the possibility that an entirely unelected person could succeed to the office of governor without ever facing any elective check or second-hand elective scrutiny. Appointment through the mechanism of Public Officers Law section 43 does not permit any check, either by ratification or special election, on the authority of the governor to choose whomever he or she likes for the position.<sup>14</sup> Moreover, because Article VI of the New York State Constitution provides that “[n]o election of a lieutenant-governor shall be had in any event except at the time of electing a governor,”<sup>15</sup> it seems as though this appointee would be eligible to serve the remaining balance of the previous, elected lieutenant-governor's term, however long that may be. Accordingly, the office of lieutenant-governor could be occupied by an individual beyond scrutiny by anyone other than the governor himself for nearly a full four-year term.

Occupation of the office of lieutenant-governor by an unelected person runs contrary to the office as viewed through the lens of the other relevant constitutional provisions. The principle that the lieutenant-governor be elected has been with us since New York's first constitution in 1777 and remained unchanged since.<sup>16</sup> In the \*2304 two vacancy instances directly addressed by the New York Constitution, the lieutenant-governor is succeeded by someone who has faced election. Where only the lieutenant-governor's office is vacant, “the temporary president of the senate shall perform all the duties of lieutenant-governor during such vacancy or inability.”<sup>17</sup> Prior to the Skelos decision, this section had meant that the Temporary President was lieutenant-governor as far as mattered. No distinction between being a placeholder and permanent occupant of the office was necessary because no governor had ever attempted to appoint a replacement.<sup>18</sup> As Judge Pigott noted in his dissent, this practice ensures that the elective principle is assured by “plac[ing] the duties of Lieutenant Governor in the hands of a duly elected state Senator--one who is elected president of that body by the entire Senate, representing all citizens of this state.”<sup>19</sup> The other instance constitutionally addressed is when both the governor's and lieutenant-governor's offices are vacant, requiring a special election at the next general election if one is not too close in time to be practicable.<sup>20</sup> The appointment, potentially for the majority of a gubernatorial term, of someone never subjected to elective scrutiny runs contrary to this clear principle.

More worrying than the potential occupation of the lieutenant-governor's office by an unelected person is the possibility, created by the Skelos decision, that an unelected person could occupy the office of governor itself.<sup>21</sup> As observed by Attorney General Nathaniel \*2305 Goldstein more than sixty years ago, the application of Public Officers Law section 43 to the office of lieutenant-governor “lead[s] to the anomalous result that a Governor by appointing a Lieutenant-Governor and then resigning could impose upon the people his own choice as their Governor.”<sup>22</sup> This section was, as observed by Judge Pigott, written to decry the use of Public Officers Law section 43 to fill Lieutenant Gubernatorial vacancies, rather than endorse it.<sup>23</sup> The Attorney General's opinion made its reason clear as well; it argued that “[t]his special treatment not only maintains uninterrupted functioning of government but seeks to make certain that the State's Chief Executive be chosen only after opportunity for the full and free expression of the people's will.”<sup>24</sup> The people's will would obviously be thwarted in the “anomalous” situation identified above. Moreover, the governor need not make a calculated appointment and then resign to effect the possibility of an unelected governor, the office need only become vacant by whatever means. Had, for example, Governor Paterson died on September 23, 2009 (the day after the Skelos decision was issued), then Richard Ravitch would have succeeded to the office of governor under our constitutional scheme

without ever having been subject to elective scrutiny. He could then, entirely permissibly, have appointed an additional lieutenant-governor, creating an entirely unelected executive branch of the New York State Government.<sup>25</sup>

It is difficult to imagine a situation more disconcerting than the second one outlined above. The Skelos majority's nonchalance when faced with this possibility is puzzling.<sup>26</sup> Any system admitting the possibility of an unelected chief executive of a state after only two vacancies is a cause for serious concern.<sup>27</sup> A functional system that \*2306 does not pose such grave risks to the elective principle can certainly be devised.

### B. The Possibility for Gridlock Still Exists

Because the appointment mechanism now in place does not require the governor to appoint a successor within any particular time frame, the possibility for legislative gridlock still remains. It was not until a crisis of arguably constitutional proportions arose as to who occupied the office of Temporary President that any governor in the history of New York attempted to fill a vacancy in the office of lieutenant-governor.<sup>28</sup> Moreover, Paterson did not attempt to do so until more than a year after he was elevated to governor and probably would not have done so but for the crisis itself.<sup>29</sup> Legislative leaders, when alerted to the ambiguity of constitutional provisions relating to lieutenant gubernatorial succession, have not considered appointment of a successor or clarification of the method of filling the position to be particularly important.<sup>30</sup> Additionally, given the seeming unimportance of appointing a replacement lieutenant-governor and the potential political ramifications of doing so, it is entirely possible that future governors when faced with a vacancy may delay appointment until after a crisis has begun and the need to have a replacement lieutenant governor in place has already arisen. In fact, the argument that prior vacancies "were [[[potentially] left unfilled [as] the result of political considerations" was among the reasons the Skelos majority rejected the argument that lieutenant gubernatorial vacancies must remain unfilled for the duration of the term.<sup>31</sup>

\*2307 The likelihood of a delay in appointment creates the possibility of additional gridlock scenarios. Consider a scenario where Governor Paterson dies during the first few days of the 2009 gridlock. In such a case, "the temporary president of the senate shall act as governor until the inability shall cease or until a governor shall be elected."<sup>32</sup> However, at that time the very question causing the crisis had been just who the Temporary President of the Senate was. It is also not clear whether such a situation would qualify as one in which the office of Temporary President is deemed "vacant," passing governance down to the Speaker. There is also the possibility that a future governor could purposefully choose to delay appointing a successor, and prolong gridlock, for some situational political purpose.<sup>33</sup>

The present appointment power does no more to mitigate these two possibilities than any other procedure that allows the timing of the appointment of a replacement to be discretionary. A proper scheme for filling a vacancy in the office of lieutenant-governor should be able to incorporate mechanisms that prevent the very possibility of 2009 style gridlock reoccurring. As discussed below, several of the systems employed by other states are structured such that gridlock is not possible.<sup>34</sup>

### C. Unchecked Appointment Gives Too Much Discretion to the Governor

Allowing a governor to, without any outside input, select a replacement goes too far toward ensuring a unified executive branch. At least as a constitutional matter, New York does not give a gubernatorial candidate the discretion to pick his own running-mate. The constitution requires that a governor and lieutenant-governor "shall be chosen jointly, by the casting by each voter of a single vote applicable to both offices."<sup>35</sup> However, this joint ticket is comprised of the two most successful party candidates for each position, not the most successful gubernatorial candidate and his chosen

lieutenant-gubernatorial candidate.<sup>36</sup> Of course, a \*2308 particularly strong or influential gubernatorial candidate may, as a matter of practical politics, get to select their running mate.<sup>37</sup> However, that they can do so is by no means constitutionally or legally mandated and “guarantees only compatible political parties but not necessarily personal or political compatibility.”<sup>38</sup> This disjunction serves as an elective check on a governor with a weak mandate.

There are, of course, good reasons to want a unified executive branch of state government. The constitutional provision requiring a joint ticket itself was put into place to help ensure that there would be a unified executive.<sup>39</sup> Prior to a 1953 amendment, New York did not require that the two offices be elected together and “candidates for different parties could be--and were--elected.”<sup>40</sup> But allowing direct appointment of a replacement lieutenant-governor goes farther than our constitutional structure was intended to allow by ensuring that a governor gets exactly who they want, rather than the person considered most qualified by the other members of their political party. A well-designed system of gubernatorial succession should be able to account for the need for political unification of the executive branch without giving the governor the ability to select a candidate as his lieutenant who his party and the electorate would never have approved.

### III. Other Approaches

Other states approach the issue of succession and of the position of lieutenant-governor in myriad fashions. While every state has a governor and a plan for gubernatorial succession, five states--Arizona,<sup>41</sup> Maine,<sup>42</sup> New Hampshire,<sup>43</sup> Oregon,<sup>44</sup> and Wyoming<sup>45</sup>-- \*2309 do not have a lieutenant-governor at all. Several states are structured similarly to New York and contain the same pre-Skelos ambiguity regarding succession.<sup>46</sup> The most common approaches are discussed below.

#### A. Statutory or Constitutional Provision?

Of the states that do have succession plans for the office of lieutenant-governor, not all are contained in their constitutions; some are instead delegated to statute.<sup>47</sup> The Skelos decision effectively rendered New York one such state by assigning the appointment of a successor to lieutenant-governor to Public Officers Law section 43 and noting that assignment was “a determination that the Legislature is always free to revisit.”<sup>48</sup>

This raises a question: Why should we correct the problems with succession by constitutional amendment rather than by statute? Peter Galie put the principle underlying why we should constitutionalize the succession provisions well when discussing the purpose of constitutions and constitutional amendments. “Constitutionalism,” he said, “is a struggle to render government immune, as far as possible from human frailties and their political consequence, what the [[r]epublican tradition called, ‘corruption,’ in its larger sense, while simultaneously establishing institutions that will be effective and powerful enough to do the job we have asked them to do.”<sup>49</sup> Whatever else belongs in constitutions, certainly those provisions that lay out its structure and ensure its basic functioning at times of political upheaval are properly constitutional \*2310 provisions. The need to invoke succession provisions, in particular those addressing vacancies in the office of a chief executive, seem almost by definition to be accompanied by periods of political division and uncertainty. The death, resignation, or impeachment of a governor or lieutenant-governor is the most likely cause of a vacancy in the lieutenant-governor’s office. However neither of the latter two cases arises so suddenly as to keep the order of succession, if as malleable as a statute, out of the political arena.<sup>50</sup> It is entirely possible that in the face of an impending gubernatorial impeachment an opposition party would seek to amend the governing succession provisions, whatever they may be, as a means to blunt the new governor or as a political chip to be traded away for other gubernatorial concessions.

The structure of New York's amendment process would keep the order of succession away from political gamesmanship during the periods of leadership crisis likely to accompany a vacancy. Neither of the two methods of amendment permitted in New York can happen quickly as both require the action of a legislative body in addition to a referendum.<sup>51</sup> The first method requires that both houses of the state legislature propose the amendment, the Attorney General issue a recommendation, the houses pass the amendment, and then refer it to the next legislative session after an intervening election.<sup>52</sup> Only if in the second session both houses pass the amendment again and the people then approve it by referendum will an amendment become effective.<sup>53</sup> The second method requires a full-blown constitutional convention followed by a referendum.<sup>54</sup> Either way, the order of gubernatorial succession would be safe from the politics of the moment, as it ought to be.

### B. Gubernatorial Appointment and Legislative Confirmation

By far the most common and most commonly proposed method of lieutenant gubernatorial succession is that the governor nominates a candidate to fill the vacancy and then the legislature confirms the \*2311 nomination. Several states use this approach.<sup>55</sup> The Federal Constitution also follows a similar pattern for filling a vacancy in the office of Vice President.<sup>56</sup> This method has been suggested several times in New York,<sup>57</sup> and there is at the time of writing legislation pending to create such a scheme statutorily.<sup>58</sup> Such a format is not as simple as it appears and, despite its popular appeal, does not actually resolve many of the succession related issues the 2009 crisis brought to light.

As an initial hurdle, there is the question: "Who gets to ratify?" Is it the Senate,<sup>59</sup> the Assembly, both the Assembly and Senate sitting in joint session,<sup>60</sup> or both bodies sitting separately and having to ratify separately?<sup>61</sup> There are proponents of all of these views and each has arguments as to why one structure would be better than another.<sup>62</sup> However, no matter how a confirmation system is set up, the key problems remain the same.

First, a system requiring confirmation is not automatic. As a result, any such system engenders the same potential delayed appointment gridlock identified with appointment under Public Officers Law section 43.<sup>63</sup> It similarly does not avoid the problem of an indeterminate Temporary President. In such a case there is no lieutenant-governor to call the Senate into session and the \*2312 Temporary President cannot do so because the cause of the deadlock itself is uncertainty about who the Temporary President is. Without a presiding officer, the Senate could not convene in order to confirm a nomination. Moreover, even if it did convene, it seems unlikely that the deadlock regarding the present Senate leadership would not spill over into the confirmation vote, resulting in an unbroken tie to confirm the nominee and opening the question as to whether an evenly split vote is a confirmation or disconfirmation of the nominee.

Second, New York's structure makes it unlikely that any nominee from the same party as the governor would be confirmed if the opposing party controls either house of the state legislature. If the system is one that requires confirmation of the Senate only or both houses of the legislature separately then the Senate leadership is likely to block opposition party nominees. Under our present constitutional structure, when there is a vacancy in the office of lieutenant-governor "the temporary president of the senate shall perform all the duties of lieutenant-governor during such vacancy or inability."<sup>64</sup> Note that the Temporary President is merely performing the duties of the lieutenant-governor; he does not become lieutenant-governor.<sup>65</sup> Instead he keeps his position as a member of the Senate and serves as acting lieutenant-governor.<sup>66</sup> As a practical matter, this means that the party leader of the dominant party in the Senate gets two votes on any particular piece of legislation: one as a member of the Senate and a casting vote in case of a tie.<sup>67</sup> It is not difficult to see how an opposition party to the governor would not want to give up the tie-breaking vote on key political legislation or important procedural issues.<sup>68</sup> As a \*2313 consequence, the confirmation in the Senate of an opposition party lieutenant-governor seems unlikely and at a minimum would be subject to significant political

gamesmanship prior to confirmation. The gamesmanship alone would result in considerable delay in the appointment process and may forestall appointment altogether.

Although the specific issue of Senate leadership blocking confirmation might be avoided in a confirmation system that has both houses sitting together as one body or the Assembly sitting alone, that alternative only shifts the problem of gamesmanship to the Assembly. An opposition party Assembly is no more likely to approve of a replacement lieutenant-governor than the Senate would be because the appointment remains a bargaining chip. A joint session is no better because as a practical matter, due to the comparative sizes of the houses of the legislature, when the two bodies sit as one the Assembly essentially rules the day.<sup>69</sup>

Finally, although better than a nominee who is subject to no scrutiny, direct or indirect, the confirmation process still leaves something to be desired when taking the elective principle into account. Admittedly, the houses voting can conceptually act as a "stand in" for direct action by the electorate; but the confirmation process still leaves open the possibility that the replacement lieutenant-governor is someone who has never been directly elected to any office.<sup>70</sup>

### C. Legislative Appointment

Another alternative to the present system is legislative appointment. Under this system, the two houses of the state legislature convene as one and jointly elect someone to fill the vacancy. New York is no stranger to this method, as it is how we fill vacancies in two other statewide elected offices: Comptroller and \*2314 Attorney General.<sup>71</sup> There are, however, several problems with this approach.

Two concerns are the same as those expressed with the confirmation process in the section above. Election from a joint session of the legislature means in practice that the office will be elected by the Assembly, and the appointee will probably be a member of the Assembly.<sup>72</sup> It also permits the risk, if a distant one, that someone who does not and has never held elective office will be appointed to the position.

A more significant concern is that if the Assembly is not of the same party as the governor, odds are good that the replacement lieutenant-governor will not be politically compatible with the existing executive branch. As noted earlier, the purpose of joint election for governor and lieutenant-governor was to avoid exactly such a scenario.<sup>73</sup> At least one state that uses legislative appointment for lieutenant-governor--Michigan--has attempted to solve this problem by restricting the potential nominees for the vacancy to members "of the same political party as the governor."<sup>74</sup> The provision, however, has never been used.<sup>75</sup> It is also doubtful how much practical effect a limitation of this kind would have on the appointment. In theory, an aspiring nominee of the opposition party could switch parties long enough to be appointed and then switch back thereafter or simply remain in the position and the party despite having had no real change in beliefs. Even without such shenanigans on the part of potential opposition party nominees, an opposing party is likely to appoint whatever member of the opposition they find politically tolerable, rather than someone who may actually be compatible with the sitting governor. When, due to the primary process, governors and lieutenant-governors of the same party but from opposite ends of the political spectrum have been selected, the results were less than ideal.<sup>76</sup> Unlike the \*2315 risk of an incompatible lieutenant-governor being selected in a primary, where the lieutenant gubernatorial candidate is selected by members of the governor's own party, here the replacement lieutenant-governor would be selected by the opposition, likely handicapping even a governor with a strong electoral mandate from his party. Finally, it is not impossible that short of some mechanism forcing an opposition legislature to act, they may do nothing rather than appoint a party-opponent, particularly where that opponent could potentially wield considerable influence in a sharply divided Senate.

#### D. Special Election

Another alternative used by several other states is to hold a special election. The election can be held immediately or as close to immediately as possible,<sup>77</sup> at the next general election, or the next general election in reasonable proximity to the creation of the vacancy.<sup>78</sup> New York uses the latter process when there is a simultaneous vacancy in both the governor and lieutenant-governor's offices.<sup>79</sup> Currently, the New York Constitution expressly prohibits the holding of a special election to fill a lieutenant gubernatorial vacancy.<sup>80</sup> The present forbiddance is a wise policy, despite its close adherence to the elective principle. Holding a special election contains numerous problems and solves none of the other issues identified.

Far from being automatic, a special election can involve significant delay. A special election, whenever held, takes an extended period of time to complete and, if following a similar structure to that already in place for dual vacancy, could take as long as fifteen months depending the timing of the vacancy.<sup>81</sup> Such a mechanism could potentially allow 2009 style gridlock, disastrous when lasting only a month, to extend for over a year.

\*2316 There is also no guarantee that a candidate compatible with the sitting governor would be elected. The special election would, by necessity, have to allow candidates from both political parties and all ends of the political spectrum. The chances of an incompatible candidate being elected may actually be higher that they might otherwise be with a completely independently elected governor and lieutenant-governor if the vacancy was created by the impeachment or disgraceful resignation of the office's former occupant.

#### E. Automatic Succession

Some states have automatic succession provisions. Unlike in New York, where the Temporary President only becomes acting lieutenant-governor, under these provisions the next person in line becomes lieutenant-governor, usually requiring them to forfeit their prior position.<sup>82</sup> This is the mechanism by which New York fills a vacancy in the governor's office with the lieutenant-governor, creating a lieutenant gubernatorial vacancy.<sup>83</sup> Although this method can have severe flaws if inartfully drafted, a well-crafted automatic succession mechanism can solve many of the problems identified above.

An automatic succession mechanism can prevent gridlock. A mechanism of automatic succession has the benefit of immediately moving a party into the vacated position and, if crafted carefully, can avoid problematic ambiguity. By having a successor lieutenant-governor come immediately into place, gridlocks requiring the casting of a tie-breaking vote can be immediately solved. Had someone already been lieutenant-governor in May 2009, there would not have been a month of senatorial inaction.

What offices are chosen to succeed and how specifically they are identified can pose difficulties. The office chosen can potentially run afoul of the elective principle if the party selected is one that has not been elected, directly or indirectly, to some other statewide office. This can happen one of two ways. First, the succeeding party can come from an office not elected in the first place.<sup>84</sup> This \*2317 problem is easily avoided by choosing only elective positions for the line of succession, or at least doing so before getting too far down the list for it to be practical any longer.

The second way to run afoul of the elective principle is to identify a succeeding party that is occupying an elected office, but, because of a quirk of timing, was not actually elected to that office. This situation could occur where an office is typically elected, but had already been vacated and a replacement appointed. For example, if the New York Attorney General were chosen to be next in the line of succession, but one had already resigned and a replacement been appointed by the Senate and Assembly pursuant to Public Officers Law section 41, the automatic identification of that person

would be discordant with the elective principle. Arizona, an automatic succession state that does not have a Lieutenant-governor, demonstrates how to avoid this pitfall. Its succession provision specifically qualifies that the person succeeding shall only do so “if holding by election.”<sup>85</sup> Otherwise, that office is skipped in the line of succession.<sup>86</sup>

Latent ambiguity in exactly which human being occupies a particular office that is designated to succeed can also be problematic. Identifying an office itself, particularly one that can be in flux, can cause rather than abate succession problems. For example, identifying “Temporary President” or other office that is tied to party control of a particular legislative body can be problematic in several ways. First, automatic succession would be of little help where there is an ongoing leadership dispute, as in 2009. A provision that said that the Temporary President became lieutenant-governor rather than was acting lieutenant-governor would have made little difference in that situation. Additionally, there is some question as to the permanency of those types of positions over periods when the legislature is not in session. Some scholars have argued that leadership positions in the various houses of the legislature expire at the end of each legislative session.<sup>87</sup> That would mean that between sessions, if a vacancy \*2318 occurred, there would be no human being clearly identifiable as the holder of that office, particularly if in between the sessions the balance of power in the chamber had shifted.<sup>88</sup> Minnesota’s succession provision provides an example of how to avoid this problem.<sup>89</sup> It provides that “[t]he last elected presiding officer of the senate shall become lieutenant governor in case a vacancy occurs in that office.”<sup>90</sup> By adding that temporal component (“last elected”) any ambiguity as to which human being occupies the office is avoided.

Another objection to automatic succession is that it can also run contrary to having a unified executive branch in a similar manner to holding a special election. There is absolutely no guarantee that whoever occupies a particular elective office in the order of succession at a given period of time will be compatible with the present administration.<sup>91</sup> The potential inflexibility of automatic succession makes this problem virtually unavoidable if there is simply going to be an enumerated list of offices in an order of devolution. However, a set list of offices in a line of succession does not necessarily need to be the mechanism by which automatic succession takes place.

Alaska has a somewhat ingenious automatic succession scheme with a guarantee that the successor will be politically compatible with the sitting governor. Alaska makes no constitutional provision for the replacement of a lieutenant-governor.<sup>92</sup> However, statutorily, they have created a backup appointment system. The governor, who is constitutionally required to be elected at the same time as the lieutenant-governor,<sup>93</sup> “shall appoint . . . [subject to legislative confirmation] a person to succeed to the office of lieutenant governor if the office of lieutenant governor becomes vacant.”<sup>94</sup> The statute has some other problems<sup>95</sup> but this added level of forward planning allows a successor to be identified—as a human being thus avoiding ambiguity—far in advance of any \*2319 vacancy while also allowing the sitting governor, presumably with some input from the sitting lieutenant-governor, to identify a successor who is politically aligned. If drafted in a manner that limits gubernatorial choice of backups to elected officials such a system could avoid colliding with the elective principle.

#### IV. A Proposed Solution

After review of the succession mechanisms above, it seems that a solution avoiding the lion’s share of the potential systemic problems can be devised. A system which requires that a governor, within a short, specific period of time of taking office, to appoint a successor to the lieutenant-governor, drawing only from a pool of those elected directly or indirectly elected to statewide office,<sup>96</sup> avoids a clash with the elective principle, prevents 2009 style senatorial gridlock, and ensures that the governor can select a politically compatible successor without having unfettered discretion as to who that person is. The language of such an amendment, modeled after the Alaska statute with some modifications to avoid problems identified earlier, which could be added to Article IV, Section 6 could read:



Within twenty (20) days of assuming office, either by election or succession to office in case of vacancy, the governor shall appoint, from among the elected attorney general, the elected comptroller, the most recently elected temporary president of the senate, and the most recently elected speaker of the assembly, a person to succeed to the office of lieutenant-governor if the office of lieutenant-governor becomes vacant. The person designated is next in line for succession to the office of lieutenant-governor, subject to the pleasure of the governor. If the person designated is removed from appointment, vacates the appointment, or ceases to meet the qualifications required for appointment, the governor shall appoint a successor subject to the same qualifications as the person initially appointed.

If a vacancy occurs in the office of governor and the lieutenant-governor succeeds to the office of governor or if the office of lieutenant-governor otherwise becomes vacant, \*2320 the person designated as next successor to the office of lieutenant-governor as provided in herein succeeds to the office of lieutenant-governor for the remainder of the term vacated. Within twenty (20) days of the appointed successor assuming the office of lieutenant-governor, the governor shall appoint a person to succeed to office of lieutenant-governor in case of subsequent vacancy from among the potential candidates identified in the previous paragraph.

Obviously, this proposal is not perfect and somewhat unorthodox. For example, although a politically compatible lieutenant-governor is likely to be among the four choices, this structure does not guarantee that the successor lieutenant-governor will in fact be politically compatible with or of the same party as the sitting governor. It is possible that between the four choices to succeed to lieutenant-governor, not a single one will be of the same party and politically compatible with the governor. Such a worry is somewhat minor, however, because as a practical matter any governor without a single friend among the other major elected figures in the state is unlikely to be effective regardless of who his lieutenant-governor turns out to be. Moreover, this potential detriment more closely mirrors the possibility that a governor running for office will end up with a politically incompatible lieutenant-governor as a consequence of the primary election and, in that sense, is more compatible with the present structure of the New York Constitution.

The most realistic objection to this format is that it is politically unlikely to happen any way other than through constitutional convention. It would be asking for a lot of statesmanship from the houses of the state legislature to twice pass an amendment that shuts them out of the process for appointing a lieutenant governor.<sup>97</sup> Mixed alternatives that might be more politically palatable, such as providing a disconfirmation procedure whereby the legislature could reject a nominee to be the successor, reintroduce the horse-trading that must be avoided, and again invite the questions as to how disconfirmation procedure would function as are involved in a confirmation procedure.<sup>98</sup>

\*2321 Politics aside, the proposed provision addresses all of the major concerns identified in the foregoing discussion. The elective principle is satisfied in that all of the potential appointees have been elected, directly or indirectly, to a statewide office. Confirmation and other sources of legislative gamesmanship have been screened out of the appointment process. Succession to the office is automatic in case of a vacancy, preventing any gridlock caused by delay in a new lieutenant-governor taking office. Finally, a short time limit is in place requiring the governor to swiftly appoint a backup, minimizing the risk that a delay in appointment of a backup could translate into delay in the succession of a lieutenant-governor.

## V. Conclusion

The foregoing article has been an examination of the problems caused by the decision in *Skelos v. Paterson*, which permitted the governor of New York to appoint the lieutenant-governor pursuant to a catchall, restrictionless statutory section. It has examined various alternative ways to deal with the problem of vacancy in the office of lieutenant-governor and has proposed language that may solve the problem. If the people of the State of New York adopt the provision

outlined in section IV, or something similar, we should be able to avoid disastrous government deadlock like that of 2009 without sacrificing the principle that the highest and second highest offices in the state should always be occupied by those who have been, at some stage of things, elected.

## Footnotes

- a1 Patrick A. Woods, J.D. Albany Law School, 2012. The author would like to thank Professors Robert A. Emery and Robert C. Batson for their assistance and sound advice during the researching and writing of this article. I am also grateful to Mary L. D'Agostino, Grace B. Atwater, and Robert McIver for their excellent editorial work.
- 1 Eric Lane & Laura Seago, *Albany's Dysfunction Denies Due Process*, 30 Pace L. Rev. 965, 965 (2010) [hereinafter "Albany's Dysfunction" ] ("The coup that shut down the New York State Senate for over a month last summer brought the State Legislature's dysfunction to the forefront of public consciousness.").
- 2 *Skelos v. Paterson*, 915 N.E.2d 1141, 1142 (N.Y. 2009) (Lippman, C.J.).
- 3 *Id.*
- 4 Jeremy W. Peters, *Who Would Lead New York if Paterson Left? Who Knows?*, N.Y. Times, July 7, 2009, at A16, available at <http://www.nytimes.com/2009/07/07/nyregion/07succession.html>.
- 5 Richard Briffault, *Skelos v. Paterson: The Surprisingly Strong Case for The Governor's Surprising Power to Appoint a Lieutenant Governor*, 73 Alb. L. Rev. 675, 680 (2010) (citing Press Release, Office of the N.Y. State Comptroller, *Cost of State Senate Inaction to New Yorkers* (July 2, 2009), available at <http://www.osc.state.ny.us/press/releases/jul09/070209factsheet.htm>).
- 6 Briffault, *supra* note 5, at 676 (citing *Skelos*, 915 N.E.2d at 1152 (Pigott, J., dissenting)).
- 7 Briffault, *supra* note 5, at 681-82.
- 8 Danny Hakim, *Albany Impasse Ends as Defector Rejoins Caucus*, N.Y. Times, July 10, 2009, at A1, available at <http://www.nytimes.com/2009/07/10/nyregion/10albany.html>.
- 9 Briffault, *supra* note 5, at 681-82 (summarizing the procedural history of the *Skelos* case).
- 10 *Albany's Dysfunction*, *supra* note 1, at 966 (citations omitted).
- 11 See, e.g., *id.* at 984 (describing the *Skelos* decision as being on "thin law").
- 12 *Skelos*, 91 N.E.2d at 1146-47 (Lippman, C.J.) (upholding the appointment through the use of New York Public Officers Law section 43); *id.* at 1147, (Pigott, J., dissenting) ("Until now [Public Officers Law section 43] had been used to fill vacancies in local offices but, in no instance, the second most important executive office in the state.").
- 13 *Id.* at 1146 (Lippman, C.J.) ("Before us ... is not the abstract question of whether it would be better [to have some other system]. For now, the Legislature, pursuant to an express grant of constitutional authority, has specified that the vacancy is to be filled not by election but by gubernatorial appointment alone--a determination that the Legislature is always free to revisit.").
- 14 See N.Y. Pub. Off. Law § 43 (McKinney 2013) (containing no limitations on candidate selection and no provision for ratification of the decision).
- 15 N.Y. Const. art. IV, § 6.
- 16 See generally Peter Galie, *Remarks at the Nelson A. Rockefeller Institute of Government* (May 29, 2008), in *Gubernatorial Succession and the Powers of the Lieutenant Governor: A Public Policy Forum 20-24* (2008) [hereinafter *Lieutenant Gubernatorial Succession Forum*], available at [http://www.rockinst.org/pdf/public\\_policy\\_forums/2008-05-29-](http://www.rockinst.org/pdf/public_policy_forums/2008-05-29-)

public\_policy\_forum\_gubernatorial\_succession\_and\_the\_powers\_of\_the\_lieutenant\_governor.pdf (providing a brief history of the constitutional provisions relating to the office of lieutenant-governor).

17 N.Y. Const. art. IV, § 6.

18 Briffault, *supra* note 5, at 676 (citing Skelos, 915 N.E.2d at 1152 (Pigott, J., dissenting)).

19 Skelos, 915 N.E.2d at 1150 (Pigott, J., dissenting). See also Gerald Benjamin, Remarks at the Nelson A. Rockefeller Institute of Government (May 29, 2008), in Lieutenant Gubernatorial Succession Forum, *supra* note 16, at 27 (noting that elective bodies act as “surrogates of the people” and function as a “secondary electorate” when they perform elections among themselves).

20 N.Y. Const. art. IV, § 6 (“In case of vacancy in the offices of both governor and lieutenant-governor, a governor and lieutenant-governor shall be elected for the remainder of the term at the next general election happening not less than three months after both offices shall have become vacant.”).

21 The Skelos majority acknowledges this possibility. 91 N.E.2d at 1146 (Lippman, C.J.) (“To be sure, the subordination of the elective principle in this context is not entirely unproblematic. It does create the possibility that an unelected individual will, for a time, occupy the State’s highest office.”).

22 1943 N.Y. Op. Att’y Gen. 378, 1943 WL 54210.

23 Skelos, 91 N.E.2d at 1155 (Pigott, J., dissenting).

24 1943 N.Y. Op. Att’y Gen. 378, 1943 WL 54210. The notion that governors must be popularly elected is, of course, not a New York specific phenomenon. By 1866 every state in the union had a popularly elected governor and no state admitted since has failed to have one. Thomas Schick, *The New York State Constitutional Convention of 1915 and the Modern State, governor 7* (1978).

25 To take the theoretical exercise to its utmost extreme, Ravitch could then have resigned or died, making his appointee governor, allowing the appointment of another lieutenant-governor, and creating an entire executive branch that was neither elected nor even appointed by someone who was elected.

26 See Skelos, 915 N.E.2d at 1146 (Lippman, C.J.) (“Rules of succession are inevitably imperfect and, at some stage of devolution they direct, invariably compromise elective principles.”).

27 It is worth noting that without the appointment of a replacement lieutenant-governor, the devolution of office would have to go through six elected officials prior to reaching an appointee. See N.Y. Unconsol. Law § 9105 (McKinney 2013) (adding “attorney general, comptroller, commissioner of transportation, commissioner of health, commissioner of commerce, industrial commissioner, chairman of the public service commission, secretary [sic] of state” to the line of succession after governor, lieutenant-governor, Temporary President of the Senate, and Speaker of the Assembly.).

28 Briffault, *supra* note 5, at 676 (citing Skelos, 915 N.E.2d at 1152 (Pigott, J., dissenting)).

29 Skelos, 915 N.E.2d at 1142 (Lippman, C.J.) (noting that Paterson was elevated to governor upon the March 17, 2008 resignation of Eliot Spitzer).

30 See, e.g., Joseph L. Bruno, Remarks at the Nelson A. Rockefeller Institute of Government (May 29, 2008), in Lieutenant Gubernatorial Succession Forum, *supra* note 16, at 14-20 (stating that a pending proposed constitutional amendment to create an appointment and confirmation system for the lieutenant-governor’s office would probably not pass, downplaying the importance of the issue, and suggesting that other amendments--such as a constitutional spending cap--are more pressing); see also Galie, *supra* note 16, at 22 (discussing that the issue had not been taken seriously at other constitutional conventions).

31 Rose Mary Bailly, *Administrative Law*, 61 *Syracuse L. Rev.* 557, 564 (2011) (citing Skelos, 915 N.E.2d at 1146 (Lippman, C.J.)).

32 N.Y. Const. art. IV, § 6.

33 This possibility when paired with the possibility of an unelected governor is particularly troubling.

- 34 Sec infra Part III.
- 35 N.Y. Const. art. IV, § 1.
- 36 See, e.g., Adam Nagourney, *Democrats Hope to Trim Their Pool of Candidates*, N.Y. Times (May 24, 1998), <http://www.nytimes.com/1998/05/24/nyregion/democrats-hope-to-trim-their-pool-of-candidates.html> (discussing the multiple candidates for lieutenant-governor that year and noting that the governor and lieutenant governor run together on a single ticket during the general election, despite having been chosen individually during the primaries).
- 37 Jacob Gershman, *Cuomo Picks Running Mate*, Wall St. J. (May 27, 2010), <http://online.wsj.com/article/SB10001424052748704717004575268291912969> (identifying Robert Duffy as the picked running mate of Andrew Cuomo, but also noting that Duffy was “running unopposed.”).
- 38 Peter J. Galie, *Ordered Liberty: A Constitutional History of New York* 272 (1996).
- 39 Id.
- 40 Id.
- 41 See generally Ariz. Const. art. V (providing for no lieutenant-governor).
- 42 See generally Me. Const. art. V (providing for no lieutenant-governor).
- 43 See generally N.H. Const. pt. 2, art. 49 (providing for no lieutenant-governor).
- 44 See generally Or. Const. art. V (providing for no lieutenant-governor).
- 45 See generally Wyo. Const. art. IV (providing for no lieutenant-governor).
- 46 See, e.g., Ala. Const. art. V, § 127 (2011) (containing nearly identical language to New York); Idaho Const. art. IV, § 13 (2011) (containing a similar structure and no express provision for filling vacancy). These similarities should not be all that surprising considering how influential the New York Constitution has been historically. See Jamin Soderstrom, *Back to the Basics: Looking Again to State Constitutions for Guidance on Forming a More Perfect Vice Presidency*, 35 Pepp. L. Rev. 967, 967 (2008) (noting the influence that the New York Constitution has had on the Federal Constitution).
- 47 See, e.g., Haw. Const. art. V, § 4 (2011); Alaska Stat. Ann. § 44.19.040 (West 2011); Ga. Code Ann., § 45-5A-3 (West 2011); Mich. Comp. Laws Ann. § 168.67 (West 2011).
- 48 *Skelos v. Paterson*, 915 N.E.2d 1141, 1146 (Lippman, C.J.).
- 49 Peter J. Galie, *Remarks at the Nelson A. Rockefeller Institute of Government* (April 20, 2007), in *Constitutions and Effective Government: The Case of New York 6-7* (2007), available at [http://www.rockinst.org/pdf/public\\_policy\\_forums/2007-04-20-public\\_policy\\_forum\\_constitutions\\_and\\_effective\\_government\\_the\\_case\\_of\\_new\\_york\\_presented\\_by\\_peter\\_j\\_galie.pdf](http://www.rockinst.org/pdf/public_policy_forums/2007-04-20-public_policy_forum_constitutions_and_effective_government_the_case_of_new_york_presented_by_peter_j_galie.pdf).
- 50 See Benjamin, *supra* note 19, at 27 (“Sometimes vacancies occur in a relatively planned way.”).
- 51 See Burton C. Agata, *Amending and Revising the New York State Constitution*, in *The New York State Constitution: A Briefing Book 9* (Gerald Benjamin, ed. 1994).
- 52 N.Y. Const. art. XIX, § 1.
- 53 Id.
- 54 N.Y. Const. art. XIX, § 2.
- 55 See, e.g., Cal. Const. art. V, § 5 (2011); Colo. Const. art. IV, § 13 (2011); Ind. Const. art. V, § 10 (2011); La. Const. art. IV, § 15 (2011); Md. Const. art. II, § 6 (2011); N.M. Const. art. V, § 16 (2011).

- 56 U.S. Const. amend. XXV (“Whenever there is a vacancy in the office of the Vice President, the President shall nominate a Vice President who shall take office upon confirmation by a majority vote of both Houses of Congress.”).
- 57 *Skelos v. Paterson*, 915 N.E.2d 1141, 1156 (N.Y. 2009) (Pigott, J., dissenting) (listing two examples of similar defeated proposals).
- 58 A.B. 3607, 234th Leg., Reg. Sess. (N.Y. 2011).
- 59 E.g., Utah Const. art. VII, § 10 (2011).
- 60 See Robin Schimminger, Remarks at the Nelson A. Rockefeller Institute of Government (May 29, 2008), in *Lieutenant Gubernatorial Succession Forum*, supra note 16, at 4-5; see also, e.g., Md. Const. art. II, § 6 (requiring a majority in the General Assembly—which includes the Senate and the House of Delegates—to confirm a nomination by the governor to fill a vacancy in the office of the lieutenant-general).
- 61 *Skelos*, 91 N.E.2d at 1156 (Pigott, J., dissenting) (identifying this proposal as having been suggested by the Law Revision Commission in 1985).
- 62 That is, all of these schemas have proponents except, perhaps, for the proposal that Assembly votes alone. I have yet to locate anyone who has proposed this particular approach in a bicameral system. However, there are elective principle and separation of powers arguments that could be made for this structure. For example, having the Assembly only decide would remove a level of self serving bias from asking a senate majority leader and temporary president to get his party to approve a candidate that would effectively oust him from the position of presiding officer over his own chamber.
- 63 See discussion supra Part II.B.
- 64 N.Y. Const. art. IV, § 6 (2011).
- 65 Gerald Benjamin & Kim Juszczak, *Filling Vacancies* (August 17, 2011) (unpublished draft) (on file with author); Richard Briffault, Remarks at the Nelson A. Rockefeller Institute of Government (May 29, 2008), in *Lieutenant Gubernatorial Succession Forum*, supra note 16, at 33.
- 66 Briffault, supra note 65, at 33.
- 67 *Id.* at 36. Peter Galie believes that although it does seem that the constitution permits the acting lieutenant-governor two votes, that those votes are limited only to procedural matters. Galie, supra note 16, at 40. Of course, this would not actually matter in the case of succession, as a confirmation is a procedural or organizational matter and not a bill to become law. See *id.*; see also N.Y. Const. art. III, § 14 (2011). Moreover, although there might be a legal challenge to a law that is passed with a second vote as lieutenant-governor, it is difficult to see how the use of a casting vote to defeat a law could be challenged as a practical matter. See Briffault, supra note 65, at 42.
- 68 See Bruno, supra note 30, at 14-15 (“[L]egislation [clearing up the succession issue] is not going to pass in the Senate.... [T]he most important vote in the Legislature in either house is the vote that elects the leader.... I am happy to have two votes [as acting lieutenant-governor] and I can manage.”).
- 69 Briffault, supra note 65, at 34 (“Not surprisingly, the Assembly tends to dominate [the joint voting] process.”).
- 70 See Benjamin, supra note 19, at 27. That such a person would be, at least, nominated is not at all farfetched. Although Richard Ravitch had a long career in government and public service, Paterson appointed Ravitch despite the fact that Ravitch “has never held elected office.” Chris Rovzar, *Paterson Names Dick Ravitch Lieutenant Governor*, N.Y. Mag. (July 8, 2009, 4:56 PM), [http://nymag.com/daily/intelligencer/2009/07/paterson\\_to\\_name\\_dick\\_ravitch.html](http://nymag.com/daily/intelligencer/2009/07/paterson_to_name_dick_ravitch.html).
- 71 N.Y. Pub. Off. Law § 41 (McKinney 2011).
- 72 Briffault, supra note 65, at 34 (observing that the past two times that a vacancy has been filled by joint Senate-Assembly voting the elected candidate has been an assemblyman).

- 73 Galie, *supra* note 38, at 272 (“A responsible, cohesive administration necessitated the election of a governor and lieutenant-governor from the same party.”).
- 74 Mich. Comp. Laws Ann. § 168.67 (West 2011).
- 75 The provision also may never be used since the Michigan Attorney General has twice issued opinions indicating that it believes the provision violates the Michigan Constitution. See 1968 Mich. Op. Att’y Gen. 4625, at 234, available at <http://www.ag.state.mi.us/opinion/datafiles/1960s/op03307.pdf>; 1995 Mich. Op. Att’y Gen. 6849, available at 1995 WL 308077.
- 76 Galie, *supra* note 38, at 272 (“Having governor and lieutenant-governor ... from ideologically opposed wings of the same party, created serious problems.”); Benjamin, *supra* note 19, at 28-29 (discussing recent historical examples of this problem).
- 77 *Stratton v. Priest*, 932 S.W.2d 321 (Ark. 1996) (holding a statutory provision for special election of lieutenant-governor constitutional).
- 78 N.J. Const. art. V, § 1, P 9.
- 79 N.Y. Const. art. IV, § 6 (“[A] governor and lieutenant-governor shall be elected for the remainder of the term at the next general election happening not less than three months after both offices shall have become vacant.”).
- 80 *Id.* (“No election of a lieutenant-governor shall be had in any event except at the time of electing a governor.”).
- 81 See *id.*; Briffault, *supra* note 65, at 33.
- 82 E.g., Minn. Const. art. V, § 5; Pa. Const. art. IV, § 14.
- 83 N.Y. Const. art. IV, § 5 (2011) (“In case of the removal of the governor from office or of his or her death or resignation, the lieutenant-governor shall become governor for the remainder of the term.”).
- 84 For example, Alaska’s succession provision has the person succeeding to the office of lieutenant-governor coming “from among the officers who head the principal departments of the state government or otherwise.” Alaska Stat. Ann. § 44.19.040 (West 2011).
- 85 Ariz. Const. art. V, § 6 (“[T]he secretary of state, if holding by election, shall succeed to the office of governor until his successor shall be elected and shall qualify.”).
- 86 *Id.* (“If the secretary of state be holding otherwise than by election, or shall fail to qualify as governor, the attorney general, the state treasurer, or the superintendent of public instruction, if holding by election, shall, in the order named, succeed to the office of governor.”).
- 87 Briffault, *supra* note 65, at 41.
- 88 *Id.* at 33.
- 89 Minn. Const. art. V, § 5.
- 90 *Id.*
- 91 See Benjamin, *supra* note 19, at 28-29 (discussing “automaticity in succession”).
- 92 See Alaska Const. art. III, §§ 11-13.
- 93 *Id.* § 13.
- 94 Alaska Stat. § 44.19.040 (2011).
- 95 It requires legislative confirmation, raising some of the issues discussed *supra* in Part III.B., and may violate the elective principle by appointing from unelected officials, as mentioned *supra* in footnote 84.

- 96 As a practical matter, this limits the potential pool to the elected Attorney General, the elected Comptroller, the most recently elected Temporary President of the Senate, and the most recently elected Speaker of the Assembly.
- 97 See, e.g., Gerald Benjamin, *When Does a Gambling Prohibition Not Prohibit Gambling? Or an Alternative Mad Hatter's Riddle and How it Helps Us to Understand Constitutional Change in New York*, 75 Alb. L. Rev. 739, 744 (2012) (noting that the New York State Legislature almost never even acts on constitutional amendments that would limit itself).
- 98 See *supra* Part III.B.

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## Ranscht, David [AG]

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**From:** Ranscht, David [AG]  
**Sent:** Monday, December 12, 2016 12:58 PM  
**To:** 'Gavin, Meghan [AG]'; Thompson, Jeffrey [AG]  
**Subject:** RE: 1988 Amendment  
**Attachments:** Governor Michael O Leavitt.pdf; People ex rel Lynch v Budd.pdf; State ex rel Chatterton v Grant.pdf; State ex rel De Concini v Garvey.pdf; State v McBride.pdf

Here are 4 cases (AZ/CA/WA/WY) that may not already be in the stack, along with the 2003 Utah AG opinion.

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-----Original Message-----

**From:** Gavin, Meghan [AG]  
**Sent:** Sunday, December 11, 2016 5:12 PM  
**To:** Ranscht, David [AG]; Thompson, Jeffrey [AG]  
**Subject:** 1988 Amendment

It occurred to me that we should look at the legislative history for the 1988 amendment to see if the intention was to modernize succession as well as allow for the joint election of the governor and lieutenant governor. I've pulled the online version but will ask the state librarian to pull the complete versions tomorrow. I have a discovery conference in front of Judge Hansen first thing tomorrow morning but am otherwise available.

Since the Lt governor receives the compensation for the governor when performing that offices duties, is the debate focused on the title?

Thanks,  
Meghan



2003 WL 21996258 (Utah A.G.)

Office of the Attorney General

State of Utah

AG Opinion Number 03-001

August 18, 2003

*Re: Opinion Request on Gubernatorial Succession*

\*1 Governor Michael O. Leavitt  
Governor's Office  
210 State Capitol  
Salt Lake City, UT 84114-0000

Dear Governor Leavitt:

This letter responds to your request for legal guidance on the question whether the Lieutenant Governor, upon the resignation of the Governor, succeeds to the Office of Governor or whether she becomes an "acting" Governor. Based upon the provisions of Article VII, § 11 of the Utah Constitution, the history of the adoption of that section and its amendment in 1980, case law and actions in other states (there being no Utah case on point), and the efficient operation of government, it is my conclusion that upon resignation of the Governor, the Lieutenant Governor succeeds to that office, and becomes the Governor.

Upon its adoption, the Utah Constitution provided that in the case of the resignation of the Governor the "powers and duties of the Governor shall devolve upon the Lieutenant Governor." Article VII, § 11. That language followed the provisions in the United States Constitution, Article II, § 1(6), that in the event of the removal of the President, his death, resignation, or inability to discharge the powers and duties of the office that "the same shall devolve to the Vice President." The federal experience under that language was that the Vice President succeeded to the office of, and became, the President. This succession occurred four times prior to the adoption of Utah's Constitution - John Tyler in 1840, Millard Fillmore in 1850, Andrew Johnson in 1765, and Chester Arthur in 1881. Therefore, at the time of the adoption of the Utah Constitution, it was understood, in theory and in practice, that the Constitutional language "shall devolve" meant "succession" such that the Lieutenant Governor would become the Governor.

Utah's succession provision was revisited in 1980 when the citizens of the State of Utah adopted amendments revising the Executive Article. Among other changes, the revision created the Office of Lieutenant Governor in place of the Secretary of State, required the candidates for Governor and Lieutenant Governor to run on the same ticket, clarified the line of succession of executive authority, and a procedure to determine gubernatorial disability while providing continuity in government. See Senate Joint Resolution 7, passed March 8, 1979 and adopted in November, 1980. Included with the information provided to the electorate in the Voter Information Pamphlet in 1980, when they adopted the amendments, was the impartial analysis by the Legislative Research Director Jon Memmott and arguments in favor of the Executive Article revision by proponent senators Karl N. Snow and Fred W. Finlayson. The impartial analysis noted that candidates for the Office of Lieutenant Governor and Governor run on the same ticket "as in the case with the candidates for the office of President and Vice President of the United States." The arguments in favor of the revision also noted that "the proposed amendment clarifies the present order of succession, making it similar to that of the U.S. Constitution." Thus, the electorate were told that the creation of the Office of Lieutenant Governor and the succession provisions were similar to, and modeled on, the federal system. In addition to the long history of succession to President by Vice Presidents, the U.S. Constitution had been amended by that time that to clarify "in the case of removal of the President from office or of his death or resignation, the Vice President shall become President." The United States Constitution, Amendment 25, § 1, effective February 23, 1967.

\*2 Because the Utah constitutional language that the “powers and duties devolve” came from equivalent federal language where the Vice President succeeded to and became the President, and because the citizens adopted amendments to the Utah Constitution providing for a Lieutenant Governor and a succession “similar to that of the United States Constitution,” the intent of the provisions and the understanding and expectation of the citizens who adopted them, was that succession would be similar to the federal system and that the Lieutenant Governor would succeed to the Office of Governor and become Governor.

This issue has been faced in a number of other states with constitutional language similar to Utah. See *Bryant v. English*, 843 S.W.2d 308 (Arkansas 1992) and *Chadwick v. Earhart*, 4 P. 1180 (Oregon 1884), reaffirmed in *State v. Alcott*, 187 P. 286 (Oregon 1920). In *Bryant*, a case stemming from the resignation of Governor Clinton to become President, the Court in arriving at its conclusion analyzed the language of the Arkansas Constitution, the history of the provisions and the times when it was adopted, the effect on state government of different interpretations, and how the office had been viewed. Arkansas's constitution, like Utah's, provided that powers and duties “devolve” to the Lieutenant Governor. The Court also looked to the further Arkansas provision, similar to Utah's, that upon the vacancy of the Offices of both Governor and Lieutenant Governor that the President of the Senate (or in his inability, the Speaker of the House) “shall act as Governor until the vacancy is filled.” (Emphasis added). The Court stated, at page 312:

The difference in language suggests that the Lieutenant Governor, unlike the President (pro tempore) of the Senate or the Speaker of the House, does not merely act as Governor when the Governor resigns. Rather, it suggests that he becomes Governor.

The Court thus held, under the same language as in the Utah Constitution (i.e., that the powers and duties of the Governor “shall devolve upon the Lieutenant Governor for the residue of the term”), that upon resignation of the Governor, the Lieutenant Governor becomes the Governor and is not an “acting Governor.” The similarity of Arkansas's constitutional provisions and the reasoning of the Arkansas Court is persuasive authority for interpreting the Utah Constitution.

Some other states, under similar (and dissimilar) language have ruled differently - that the successor (either the Lieutenant Governor, Secretary of State or President of the Senate) does not become Governor, but “acts” as Governor. See e.g., *State ex rel. De Concini v. Garby*, 195 P.2d 153 (Arizona 1940). However, I am not persuaded by that other line of cases. Further, most of those are older cases and in most instances the legislatures and citizens amended their constitution after the court decision to clearly provide that the successor does become the Governor. See e.g. Arizona, California, Montana, and Wisconsin. Thus, case law from other states, and specifically the *Bryant* case, as well as the people's response to contrary decisions, support my determination that under the Utah Constitution upon resignation of the Governor the Lieutenant Governor becomes the Governor.

\*3 The specific language of the Utah Constitution does not lead to a contrary conclusion. As indicated above, the operative language is that upon the resignation “the powers and duties of the Governor shall devolve upon the Lieutenant Governor.” Article VII § 11, Utah Constitution. That specific language and word “devolve” came from the United States Constitution which had long been interpreted to mean that the Vice President succeeded to and became the President upon resignation or death of the President. The alternative claim would be that the Lieutenant Governor becomes the “acting” Governor, exercising the powers and duties of the office, but not assuming the title, nor the power to appoint a Lieutenant Governor. However, the only provisions in the Utah Constitution providing for someone to “act as Governor” under a succession is in the case of a vacancy in the both the Offices of Governor and Lieutenant Governor, where the President of the Senate, or if he/she is unable, the Speaker of the House “shall act as Governor until the vacancy is filled.” Article VII § 11, Utah Constitution. As was noted in *Bryant v. English* above, different language respecting the Lieutenant Governor and the legislative leaders would suggest a different treatment - the Lieutenant Governor, unlike the President of the Senate or Speaker of the House who would “act as Governor,” becomes the Governor.

It is thus my conclusion that upon the resignation of Governor Leavitt, Lieutenant Governor Walker succeeds to and becomes Governor of the State of Utah. Upon her becoming Governor, the Office of Lieutenant Governor becomes vacant and is subject to the Governor's appointment power under Article VII, § 10, of the Utah Constitution.

A separate question and issue has been raised whether the exercise of that appointment power by the Governor requires Senate confirmation. Article VII § 10 provides that the Governor shall "nominate, and by and with the consent of the Senate, appoint all state and district officers whose offices are established by this Constitution and whose appointment is not otherwise provided for." However, the appointment of the Lieutenant Governor by the Governor is "otherwise provided for," as that section further sets forth that if the Office of Lieutenant Governor is vacant "it shall be the duty of the Governor to fill the same by appointment, from the same political party of the removed person; and the appointee shall hold office until a successor shall be elected and qualified, as provided by law." This provides specific appointment authority, with separate appointment requirements, and thus is an appointment that is "otherwise provided for." Therefore, Senate confirmation is not necessary.

The conclusion that Senate confirmation is not necessary was similarly reached by the Utah Supreme Court in *Matheson v. Ferry*, 641 P.2d 674 (Utah 1982). The Court stated, at page 692:

The construction is also consistent with the policy underlying the language in § 10 that the Governor shall fill unexpired vacancies in the major elective State offices, i.e., Lieutenant Governor, State Auditor, State Treasurer, and Attorney General without senatorial confirmation. In such cases, the sole restriction upon the power of the Governor in making the appointment is that the appointee must be from the same party as the party of the person who previously held that office. (Emphasis added).

\*4 Thus, when a Lieutenant Governor succeeds to the Office of Governor, the vacated Lieutenant Governor's Office will need to be filled by the Governor with an appointment in accordance with Article VII, § 10, without the consent of the Senate.

My conclusion that Lieutenant Governor Walker will become Governor Walker upon resignation of Governor Leavitt will hopefully end the current questions surrounding this issue and provide for a clear and complete transition. If I can be of further assistance in this matter, or if you have further questions, please contact me.

Sincerely,

Mark L. Shurtleff  
Utah Attorney General

2003 WL 21996258 (Utah A.G.)

KeyCite Yellow Flag - Negative Treatment  
Distinguished by State ex rel. Ayres v. Gray, Fla., December 11, 1953  
29 Wash. 335  
Supreme Court of Washington.

STATE ex rel. MURPHY  
v.  
McBRIDE, Governor.  
STATE ex rel. HAGEMEYER  
v.  
SAME.

Aug. 7, 1902.

Applications—one on the relation of John C. Murphy, and the other on the relation of W. A. Hagemeyer—for mandamus to Henry McBride, governor. Denied.

Reavis, C. J., and Anders, J., dissenting.

West Headnotes (3)

[1] Judges

⇔ Creation and abolition of office

Laws 1901, p. 345, increasing the number of judges of the supreme court till a certain time only, when the number shall be as before, does not violate Const. art. 4, § 2, providing such court shall consist of five judges, and that the Legislature may increase the number of judges from time to time.

1 Cases that cite this headnote

[2] Judges

⇔ Vacancy in office

Const. art. 4, § 3, providing that the terms of judges of the supreme court elected shall be six years, and if a vacancy occur the governor shall appoint a person to hold the office till the election to fill the vacancy, is not infringed by Laws 1901, p. 345, increasing the number of judges of the supreme court, for a definite period of less than two years, by two, who shall be appointed by the governor.

10 Cases that cite this headnote

[3] Public Employment

⇔ Manner and Mode of Filling Vacancy States

⇔ Term of office, vacancies, and holding over

Under Const. art. 3, § 2, vesting the supreme executive power in a governor, who shall hold office for a term of four years, and till his successor is elected and qualified, and section 3, providing that the lieutenant governor shall hold his office for the same term, and section 10, providing that on death or disability of the governor the duties of the office shall devolve on the lieutenant governor, and in case of a vacancy in both offices the duties of governor shall devolve on the secretary of state, who shall act as governor till the disability be removed or a governor be elected, there is no vacancy in the office of governor or lieutenant governor, to be filled by an election for an unexpired term, where the governor dies, and the lieutenant governor performs the governor's duties.

9 Cases that cite this headnote

Attorneys and Law Firms

\*336 \*\*25 John E. Humphries, J. W. Robinson, and Phil Skillman, for relators.

W. B. Stratton, E. W. Ross, and C. C. Dalton, for respondent.

Bo Sweeny, amicus curiae.

Opinion

MOUNT, J.

These two cases involve the same questions, and for that reason were consolidated at the argument and heard as one. They are applications for a writ of mandamus to respondent, requiring him to issue his \*337 proclamation for the election of a governor, a lieutenant governor, and

three justices of the supreme court at the next general election. It appears from the petitions that Hon. John R. Rogers and Hon. Henry McBride were at the general election held in November, 1900, elected to the offices of governor and lieutenant governor, respectively, for the term of four years, beginning on the second Monday of January, 1901; that these officers duly qualified as such, and entered upon the discharge of their respective duties; that on December 26, 1901, the Honorable John R. Rogers died, and respondent thereupon took the oath of office, and is now acting governor; that there is a vacancy in the office of governor, and also in the office of lieutenant governor. It also appears that the legislature of 1901 passed an act increasing the number of judges of this court from five to seven; that appointments were made to fill the vacancies created by the act; that the terms of office of the two judges so appointed will expire on the second Monday of October, 1902; that the governor refuses to issue his proclamation for the election of a governor, lieutenant governor, and two supreme court justices at the next general election, to be held in November of this year. Respondent appeared and filed a demurrer to each of the petitions.

The first question presented is, does the death of the governor cause a vacancy in that office, which may be filled by an election for the unexpired term, and, if not, does the office of lieutenant governor become vacant when the incumbent assumes the duties of governor? The provisions of the constitution relating to this question are as follows: Section 2, art. 3: 'Governor, Term of Office. The supreme executive power of this state shall be vested in a governor, who shall \*338 hold his office for a term of four years, and until his successor is elected and qualified.' Section 3, art. 3, provides that the lieutenant governor shall hold his office for four years, and until his successor is elected and qualified. Section 10, art. 3: 'Vacancy in. In case of the removal, resignation, death or disability of the governor, the duties of the office shall devolve upon the lieutenant governor, and in case of a vacancy in both the offices of governor and lieutenant governor, the duties of governor shall devolve upon the secretary of state, who shall act as governor until the disability be removed or a governor be elected.' This last section clearly provides (1) that upon the death of the governor the duties of the office shall devolve upon the lieutenant governor; and (2) in case of a vacancy in the offices of both governor and lieutenant governor the duties of governor devolve upon the secretary of state, who shall act until the disability be removed or a governor elected. This provision

of the constitution of this state is in effect the same as the provision of the constitution of the United States with reference to the succession of the vice president to the office of president of the United States. Upon the death or disability of the president, it has uniformly been held that the vice president holds the office of president until a successor to a deceased president comes to assume the office. *Merriam v. Clinch*, 6 Blatchf. 9, Fed. Cas. No. 9,460. In that case it was said: 'It has never been supposed that, under the provision \*\*26 of the constitution, the vice president, in acting as president, acted as the servant or agent or locum tenens of the deceased president or in any other capacity than as holding the office of president fully, for the time being, by virtue of express authority emanating from the United States.' \*339 In the case of *Chadwick v. Earhart*, 11 Or. 389, 4 Pac. 1180, where the court was considering a constitutional provision of the state of Oregon in almost the identical language of section 10, supra, it was said: 'In the first place, it is not shown how an office can be vacant, and yet there be a person, not the deputy or locum tenens of another, empowered by law to discharge the duties of the office, and who does in fact discharge them. It is not explained how in such a case the duties can be separated from the office, so that he who discharges them does not become an incumbent of the office, and, in the second place, how a person can fill the office of governor without being governor.' It is a well-settled rule that an office is not vacant so long as it is supplied, in the manner provided by the constitution or laws, with an incumbent who is legally authorized to exercise the power and perform the duties which pertain to it. *Mechem*, Pub. Off. § 125; *Throop*, Pub. Off. § 431. The constitution having provided that in case of the death of the governor the duties of the office shall devolve upon the lieutenant governor, there is no vacancy in the office of governor. It is not necessary to discuss the meaning of the provision, 'who shall act as governor until the disability be removed or a governor be elected,' because that provision, as used here, clearly refers only to the secretary of state, in case that officer should assume the duties of governor under the contingency named. What is said above applies equally to the lieutenant governor. When the lieutenant governor, by virtue of his office and of the command of the constitution, assumed the duties of governor on the death of Gov. Rogers, the office of lieutenant governor did not thereby become vacant, but the officer remained lieutenant governor, intrusted \*340 with the powers and duties of governor. *People v. Budd*, 114 Cal. 168, 45 Pac. 1060, 34 L. R. A. 46; *State v. Sadler*, 23 Nev. 356, 47 Pac.

450; *People v. Hopkins*, 55 N. Y. 74; *Robertson v. State*, 109 Ind. 79, 10 N. E. 582, 643. It is argued, however, that since it is made the duty of the lieutenant governor, under the constitution, to be presiding officer of the state senate (section 16, art. 3), and as such to approve all bills passed by that body, he must, as governor, review and approve or reject bills which as lieutenant governor he has already approved. These duties are, no doubt, inconsistent; but this argument, we think, is fully met by another provision of the constitution, which provides, at section 10, art. 2, in substance, that when the lieutenant governor shall act as governor the senate shall choose a temporary president. The lieutenant governor, therefore, when the duties of governor devolve upon him, is relieved of the duties of presiding officer of the senate.

The legislature of 1901 passed the following act:

'An act increasing the number of judges of the supreme court of the state of Washington, and declaring an emergency.

'Section 1. The supreme court of the state of Washington, from and after the passage of this act, up and to the first Tuesday, after the first Monday in October, 1902, shall consist of seven judges: provided, that after the first Tuesday after the first Monday in October, 1902, said supreme court shall consist only of five judges.

'Sec. 2. The governor is hereby authorized to appoint one from each of the dominant political parties the two additional judges provided for by section 1 of this act, which appointees shall hold office until the first Tuesday \*341 after the first Monday in October, 1902, and no longer, and each of the said judges shall receive a salary of four thousand dollars per annum.'

Laws 1901, p. 345.

Section 3 declares an emergency. After this act was passed, the governor, by authority thereof, made two appointments as provided therein. It is conceded in this case that the legislature may increase the number of judges of this court from five to seven; but it is argued (1) that when the increase is once made no decrease can be made, and (2) that the temporary increase made is in conflict with the constitutional term. We are therefore urged to hold that so much of the act as increased the number of judges of this court to seven may be allowed to stand, and the remainder be declared void, thereby making a permanent increase, instead of a temporary one. This

reasoning, it seems to us, must fail, because by the very terms of the act the increase of the number of judges from five to seven was temporary. This intention is clearly and definitely expressed as the single purpose of the act, so that if the temporary increase is void the whole act must fail. *Cooley, Const. Lim. (6th Ed.)* p. 211. The rule of law is well settled in this country that the legislative department is not made a special agency for the exercise of specially defined legislative powers, but is intrusted with general authority to make laws at discretion, except where the constitution has imposed limits upon this legislative power. *Cooley, Const. Lim.* pp. 104, 201. In other words, the constitution of this state is a limitation upon the powers of the legislature, and not a grant of power. Hence, before an act of the legislature may be declared unconstitutional, it must appear that the act is in conflict with some express \*342 provision of the constitution which prohibits the act or parts of the act complained of. Bearing this rule in mind, we consider the questions presented:

1. The constitution provides (section 2, art. 4): 'The supreme court shall consist of five \*\*27 judges, a majority of whom shall be necessary to form a quorum and pronounce a decision. \* \* \* The legislature may increase the number of judges of the supreme court from time to time, and may provide for separate departments of said court.' The evident meaning of the first provision is that this court shall never be decreased below five judges. The second provision gives express authority for an increase of the number of judges. There is no express provision for a decrease in the number after the increase has been made unless it be found in the phrase 'from time to time.' If it be conceded, as argued by relators, that the words 'from time to time' mean that the legislature may at one time make one increase, and at another time another increase, these words add nothing to the declaration that 'the legislature may increase the number of judges of the supreme court,' because without the words 'from time to time' that authority rests in the legislature by reason of the fact that no limitation is placed upon the number to which the court may be increased. We must therefore look for some meaning in the words 'from time to time,' or conclude that they were used without purpose. These words are defined by lexicographers to mean 'occasionally.' The word 'occasionally' is defined to mean: 'As occasion demands or requires; as convenience requires; accidentally, or on some special occasion.' But whatever may be the technical meaning of the words, they certainly cannot be held to mean that the legislature may

not decrease the number of judges after the increase \*343 thereof. If, therefore, the legislature has power to increase the number of judges as occasion or convenience requires, and there is no restriction upon a decrease, except below five, it follows that a decrease may be had to this minimum when necessity or occasion requires, of which necessity or occasion the legislature is the exclusive judge. Again, the fact that the constitution has placed a minimum limit and permitted an increase in the number of judges is a strong inference that the increased number may be reduced to the minimum. Furthermore, the legislative and the executive branches of the state government have placed this construction upon their powers, and, where these co-ordinate branches have construed a constitutional provision and acted upon it, great weight will be given thereto. *State v. Rusk*, 15 Wash. 403, 46 Pac. 387.

2. Does the act conflict with the provision relating to the terms fixed by the constitution? Section 3, art. 4, of the constitution, provides: "The judges of the supreme court shall be elected by the qualified electors of the state at large, at the general state election, at the times and places at which state officers are elected, unless some other time be provided by the legislature. \* \* \* After the first election the terms of judges elected shall be six years from and after the second Monday in January next succeeding their election. If a vacancy occur in the office of a judge of the supreme court, the governor shall appoint a person to hold the office until the election and qualification of a judge to fill the vacancy, which election shall take place at the next succeeding general election, and the judge so elected shall hold the office for the remainder of the unexpired term." The term fixed by this provision is six years, and applies only to judges elected. This term begins on the second Monday in January next succeeding an election, and \*344 cannot be changed by the legislature. *Mechem*, Pub. Off. § 387; *Throop*, Pub. Off. § 311; *State v. Twichell*, 4 Wash. St. 715, 31 Pac. 19. The vacancy here referred to is evidently intended to apply to a vacancy which shall continue beyond an election and for the remainder of the unexpired term. The unexpired term referred to is the remainder of the six-year term. The clear intention of this section of the constitution is (1) to require that the judges of this court shall be elected whenever there is an election at which they may be elected; (2) that the terms of judges elected shall be six years; and (3) that appointive judges shall not serve for a longer time than the next succeeding general election and the qualification of a successor. There is no limitation, either express or implied, upon the legislature to make appointive terms

extend to an election. The limitation is that, where a vacancy occurs which extends beyond an election, then an appointee shall hold until the next succeeding general election, and until the qualification of a judge to fill the vacancy. It cannot be said that all vacancies which occur in the membership of this court may be filled by an appointee from the time of the appointment to the next succeeding general election, because a vacancy may occur after the election of a successor to one of the elected judges, and before the expiration of his term, where no election intervenes, which vacancy could be filled by appointment only until the expiration of the term. *State v. Black*, 22 Minn. 336. For example, the regular elective term of Judge REAVIS expires on the second Monday of January, 1903. His successor will be elected regularly in November of this year. No other general election will be held until November, 1904. If Judge REAVIS should resign on the day \*345 following the election in November next, and the governor should appoint a person to fill the vacancy occurring by reason of such resignation, it certainly cannot be held that such an appointee may hold office until the next succeeding election, two years hence, and thus deprive the regularly elected judge from taking office on the second Monday in January next succeeding his election. The term of an appointive judge, therefore, is not fixed, except that it cannot extend beyond an election and the qualification of his successor, or to the end of the term. When the term of judges elected was fixed at six years, it was intended thereby to distinguish elected judges from appointed judges, and to fix the \*\*28 terms of elected judges for a definite time, and to limit the terms of appointed judges to the next election. Within that limit the legislative power is complete. It may provide for a term of any length of time up to the succeeding general election. This term is appointive. But if a vacancy is created which extends beyond an election, the provisions of the constitution apply, and the legislature has no authority to change or modify the 'terms' therein contained. The act in question does not attempt to change or modify the terms of judges elected. It undertakes to create a vacancy, and to terminate the vacancy at a fixed time before an election can take place, and before an elective term may begin; and this, we hold, may be done, because there is no fixed constitutional appointive term. It is certainly not necessary that a general act be passed, increasing the number of judges for an indefinite time, and that subsequently another act be passed, decreasing this number. What may be done by a legislative body indirectly may be done directly. The act in question is not in conflict

with any constitutional term, and, in so far as it increased the \*346 number of judges of this court temporarily, was not in conflict with any provision of the constitution.

The writs prayed for will be denied.

FULLERTON, HADLEY, DUNBAR, and WHITE, JJ.,  
concur.

REAVIS, C. J.

I concur in the conclusion that no vacancy exists in the office of governor, and that a lieutenant governor ought not to be elected this fall. I am unable, however, to assent to the construction given to the statute entitled 'An act increasing the number of judges of the supreme court of the state of Washington, and declaring an emergency' (Laws 1901, p. 345), in the majority opinion. I feel convinced that sound canons of constitutional interpretation impose the duty of declaring section 2 of this law void. The statute is already set out in the majority opinion. This section adds additional qualifications to the office of judge to those required in the constitution, and defines and limits the duration of terms of the two judges appointed by the governor until the first Tuesday after the first Monday in October, 1902. The legislature has no power to define the term or prescribe the qualification of a judicial officer. This seems clear under the plain provisions of the constitution. If there be one rule set at rest by judicial authority,—including, among other courts that have spoken upon the question, this court,—it is that when the term, qualifications, salary, or method of election of a judicial officer is prescribed in the constitution, the legislature is incompetent to change, modify, or in any manner interfere with such requirements in the organic law. Thus the term cannot be abridged or extended by legislative act. In *State v. Twichell*, 4 Wash. St. 715, 31 Pac. 19, this court had before it for construction the act of March 3, 1890, \*347 entitled 'An act providing for an additional number of superior court judges, and declaring an emergency to exist.' Laws 1889-90, p. 346. This law provided for additional superior court judges in several counties, and their appointment by the governor until the ensuing general election in November of the same year. Section 3 provided for the election of two judges in King county, as follows: 'At the general election in 1890, there shall be elected in the county of Spokane one superior judge, and in the county of Pierce two superior judges, and in the county of King two superior judges, for said counties, in addition to the judges now provided for by

law in said counties, who shall hold their offices for the term of four years from and after the second Monday in January, 1891.' It will be observed that the section directs the election of the two judges in King county at the election in November, 1890, and fixed their terms for four years after the second Monday in January, 1891. The proceeding before the court was mandamus to compel the election of the successors of these two additional judges at the November election in 1892, and the complaint of the relator was that the relator was that the legislature had extended the term prescribed for superior court judges in the constitution. The court observed in determining this case: 'On March 3, 1890, the legislature passed an act providing for additional judges in the counties of Spokane, Pierce, and King. Section 3 of said act provides that 'at the general election in 1890 there shall be elected \* \* \* in the county of King, two superior judges \* \* \* in addition to the judge now provided for by law in said county, who shall hold their offices for the term of four years from and after the second Monday in January, 1890.' Before the enactment of that law there had been but one judge elected for said county of King. He was \*348 elected at the election for the adoption of the constitution in 1889, and, under the provisions of said constitution, his term of office will expire in January next, and his successor must be elected at the coming November election. And if the provisions of the law of March 3, 1890, above quoted, are of force, it is conceded that said successor to the judge elected in 1889 is the only one to be so elected. The contention on the part of the petitioner, however, is that so much of the law above quoted as assumes to fix the term of office of the judges therein provided for is unconstitutional and void. The appellant contends that such provision is not only not opposed to any express provision of the constitution, but is in entire harmony with the letter and spirit thereof. To determine the right of these respective contentions is to determine the controversy at bar. If the constitution has not provided for the terms of additional judges, which might be provided for the courts of the several counties by the legislature, it follows, as of course, that \*\*29 the legislature has full power to enact in regard thereto. If, on the other hand, the constitution has so provided, such provision must control, and any attempt of the legislature to change or modify the same would be absolutely void and of no effect. \* \* \* Thus construing it, we are forced to the conclusion that the constitution makers intended that the regular term of all superior court judges should be uniform, and that the regular incumbents of said offices should hold for the



same term,—not only as to its duration, but also as to the time of its commencing and ending. And we think that the additional judges to be provided by act of the legislature, when so provided, occupied exactly the same relation to the constitution and the term of office therein provided for as did those created by the constitution itself. If the legislature had simply provided for two additional judges for the county of King, and stopped there, the legislation would have been effective. If this is true, it must be because the term of office and other provisions as to salary, etc., were covered by the constitution. The constitution created the office of judge of \*349 the superior court. It provided that a certain number of judges should be elected. It also provided that the legislature might authorize and require the election of an additional number of judges. It does not follow, however, as contended for by appellant, that because the election of a portion of the judges was authorized by the constitution itself, and another portion thereof by the legislature, that the respective portions bear any other than a common relation to all the provisions of the constitution relating to such officers. The term of office, then, of all the judges, must be held to have been provided for in the constitution. \* \* \* If this construction of the clause above referred to is to obtain, it follows that a definite term, ending three years from the second Monday of January, 1890, applicable to all superior court judges, whether provided for in the constitution or by legislation, was fixed in the constitution. If the constitution has thus provided definite terms, it would, of course, follow that the legislature could not change or modify the same.' The language of the court has been cited at considerable length here, because I am impressed with the view that its reasoning and authority should be controlling in the construction of the statute of 1901, supra, now before the court. The same care and deliberation was expressed in section 3, art. 4, of the constitution, relating to the terms and qualifications of the supreme judge, as in the section relating to the superior judge; and this is also true of the election of the judges of both courts, and the method of filling vacancies in these offices.

The majority of the court, as I understand, concludes that the legislature cannot alter or modify the terms of the judges elected, and has no power to change the method of filling vacancies in the terms prescribed by the constitution; and the authorities cited in the opinion fully sustain the rule. It is then announced, \*350 'If, therefore, the legislature has power to increase the number of judges as occasion or convenience requires, and there is no restriction upon a decrease, except below five, it

follows that a decrease may be had to this minimum when necessity or occasion requires, of which necessity or occasion the legislature is the exclusive judge.' If this be the correct rule, the fair deduction therefrom is that the framers of the constitution intended to create five constitutional judges with fixed qualifications, duration of terms, and salaries, who should always sit with the court, and additional judges of occasion or necessity may be designated by the legislature in such numbers and for such times as it may deem expedient. It would seem fairly to follow, also, that the legislature might, so far as any express limitation goes, appoint the additional judges for a month, or, as here, 18 months, or any intervening time between two general elections. Such appointive judges are certainly not filling any vacancies mentioned in the constitution, for it definitely fixed the appointing power of the governor 'to vacancies' until the next general election, or, if to the end of the regular term, then that terminates in the successor who is the judge elected at a general election. The constitution, with much particularity and certainty, provides for the election of all judges, and very minutely fixes the power and procedure for filling vacancies. It says: 'If a vacancy occur in the office of a judge of the supreme court, the governor shall appoint a person to hold the office until the election and qualification of a judge to fill the vacancy, which election shall take place at the next succeeding general election, and the judge so elected shall hold the office for the remainder of the unexpired term.' It may be thus observed that the appointment by the governor of the two additional judges in the present instance \*351 was made under the act of 1901, supra, for there was no vacancy filled, ending with the general election. But according to the construction of the court here, the governor's appointment was made for a full term created by the legislature. Then, if the legislature could create a special term in duration, its power is necessarily plenary to appoint judges itself, instead of authorizing appointment by the governor, for they are legislative officers, and there would seem to be no express restriction upon adding qualifications for the judges not mentioned in the constitution; that is, one could be from each dominant party, or any other qualification not expressly inhibited which the legislature might deem expedient,—as that some of the judges should be Socialists, and the other Democrats or Republicans. It is plain that these offices are elective. The vacancy is an emergency,—an unforeseen event,—and must \*\*30 always occur at the time in an office then in existence; and it is only an interval in the incumbency of the existing office, and cannot be a vacancy

if it envelops the whole duration of the office. Somewhere in the term,—in the commencement, during its course, or before its ending,—there must be an elected judge. No executive appointment can extend beyond the next general election. Thus Judge WHITE was appointed by Governor Rogers to the vacancy occasioned by the resignation of Judge Gordon in June, 1900, but he was thereafter elected to fill the unexpired vacancy in November, 1900. Section 5, art. 4, of the constitution, relating to vacancies in the office of superior court judge, is in identical words with the requirement for filling the vacancies in this court. In *State v. Millett*, 20 Wash. 221, 54 Pac. 1124, the question of filling the vacancy of superior court judge was determined. It was there said: \*352 'The commission of the governor only entitles the holder to retain office until his successor is elected and qualified, and the word 'remainder,' as found in that section, relates to the term existing at the date of the election, not to a term beginning some months later. \* \* \* Counsel for the respondent has urged upon the consideration of the court the importance of having a fixed and certain time at which elected officers shall qualify, and argues that great public inconvenience might follow if it were held that a judge elected to fill a vacancy might qualify any time after the result of the election is declared. \* \* \* However, the constitution plainly limits the right of the appointed judge to hold until the election and qualification of his successor at the next succeeding general election.'

It seems to be suggested that the constitution is a limitation only upon legislative power, and that the express limitation must be found to inhibit the power of the legislature, at its discretion, to create and define the tenure of appointive judges, while admitting that it cannot interfere with the constitutional office of the original five judges. However, there is no express limitation in words on the legislative power to diminish the number of the judges below five. There is in words no such limitation as to the diminution of salaries, but all here concede such limitations exist by implication. It could hardly be successfully maintained that the legislature could increase the court if the power to increase had not be conferred. I understand the correct rule of construction to be that the mandate 'thou shalt,' when used in directing the organization of the court and fixing the number of its members, also implies negatively the inhibition 'thou shalt not' add any other number, and it therefore required power affirmatively given to increase the number after the first organization. The sovereign powers of the state were deliberately \*353 distributed in framing the constitution

into legislative, executive, and judicial departments. In the supreme and superior courts were reposed the judicial functions, and their organization, powers, qualifications, and terms of the judges, are defined. The independence of the court is guarded in all cases by fixed tenures of office and salaries during the terms. The convention, when vesting such functions in courts, had in view as well the future as the present of the state, and foresaw its large growth and development, and the necessity that would arise for increasing the number of judges for the courts, and it provided for such increase from 'time to time' by the legislature. But it plainly intended to preserve the harmony and the unity of this court in the tenure and qualifications of its judges. I conclude that section 2 of the act of 1901, *supra*, and the same idea wherever expressed elsewhere in the act, is a departure from that intention, and that the plain mandate of the constitution carries with it the implied prohibition upon the creation of legislative offices such as the act of 1901 does if all its provisions are held valid. However, the void section of this statute may be eliminated, and the law, in its substance, be valid. The title is perfect: 'An act increasing the number of judges of the supreme court, and declaring an emergency.' This is clearly within the authority of the constitution. The first section declares that after the enactment the court shall consist of seven members. Here the limitation imposed upon the terms of the judges and the added qualifications were beyond the power of the legislature. In *State v. Twichell*, *supra*,—the case where the legislature had extended the term of superior judges,—the court declared that such interference was beyond the competency \*354 of the legislature, but held that portion of the statute within its competency valid, and gave effect to the law; observing that the power of the legislature was limited to providing for the increase of the number of judges. So in this case the legislature was only competent to provide the number of judges to be added to the court. It was unnecessary and was immaterial that the act provided for their appointment by the governor, for the constitution had already designated the method of filling the vacancies by the governor, and so it may be said of the specifications of the salaries. I understand the true rule of construction, approved by the great weight of, if not by unanimous, authority, is that if the valid exercise of legislative power can be separated from the void, and is susceptible of operation, the valid will be enforced. A few of such authorities may be mentioned here: *Cooley*, *Const. Lim.* (4th Ed.) pp. 214-216; *Commissioners v. George* (Ky.) 47 S. W. 779, 84 Am. St. Rep. 454; *State v.*

Brewster, 44 Ohio St. 589, 9 N. E. 849; State v. Thoman, 10 Kan. 191; Griebel v. State, 111 Ind. 369, 12 N. E. 700. In the case of State v. Blend, 121 Ind. 514, 23 N. E. 511, 16 Am. St. Rep. 411, the rule is admirably stated as follows: 'It is equally well settled \*\*31 that, when a part of a statute is unconstitutional, if by striking from the act all that part which is void, that which is left is complete in itself, sensible, capable of being executed, and wholly independent of that which is rejected, the courts will reject that which is unconstitutional and enforce the remainder.' I conclude that the statute here, with the void features eliminated, is clear and sensible, and should be enforced; that there is a valid increase of this court by the addition of two constitutional judges; that the two

members appointed \*355 by Gov. Rogers are filling vacancies contemplated by the constitution; and that their successors to fill the unexpired terms ought to be elected at the general election in November, and the writ should issue for that purpose.

ANDERS, J.

I concur in the foregoing opinion of Chief Justice REAVIS.

**All Citations**

29 Wash. 335, 70 P. 25

67 Ariz. 304  
Supreme Court of Arizona.

STATE ex rel. DE CONCINI, Attorney General,  
v.  
GARVEY.

No. 5123.  
|  
June 21, 1948.

Original proceeding in quo warranto by the State of Arizona, on the relation of Evo De Concini, Attorney General of the State of Arizona, against Dan E. Garvey to determine whether the Secretary of State upon death of Governor became the Governor or was merely the acting Governor.

Judgment in accordance with opinion.

West Headnotes (4)

[1] Courts

↔ Quo warranto

The Supreme Court in the public interest exercised original jurisdiction in quo warranto proceeding to determine whether Secretary of State upon death of Governor, became vested with office of Governor or whether he was merely required to perform duties of the office. A.R.S.Const. art. 5, § 6.

Cases that cite this headnote

[2] States

↔ Governor

The Secretary of State upon death of Governor acts as Governor and is empowered to perform all duties of that office, and his official acts performed as acting Governor are valid. A.R.S.Const. art. 5, § 6.

1 Cases that cite this headnote

[3] States

↔ Governor

Upon death of Governor, Secretary of State did not become vested with office of Governor, but duties of office of Governor devolved upon him to be performed as acting Governor. A.R.S. § 41-122; A.R.S.Const. art. 5, § 6.

Cases that cite this headnote

[4] Public Employment

↔ Additional compensation; extra services  
States

↔ In general; holding two offices

The Secretary of State upon death of Governor was not entitled to additional compensation for performance of duties of office of Governor, since obligation of his office was to act as Governor in contingencies provided for by Constitution. A.R.S.Const. art. 5, § 6.

3 Cases that cite this headnote

Attorneys and Law Firms

\*305 \*\*153 Evo De Concini, Atty. Gen., and Perry M. Ling, Chief Asst. Atty. Gen., for plaintiff.

Morgan & Locklear, Stahl & Murphy, and Charles C. Bernstein, all of Phoenix, for defendant.

Opinion

LA PRADE, Justice.

This is an action in quo warranto brought by the attorney general in the name of the state, upon his relation, against the Honorable Dan E. Garvey, who is now and at all times since the first Monday of January, 1947, has been the duly elected, qualified, and acting secretary of state. The complaint alleges that the Honorable Sidney P. Osborn, the duly elected and acting governor of Arizona, died on the 28th day of May, 1948. The relator then alleges that, upon the death of Governor Osborn, the respondent, as secretary of state, purportedly under and by virtue of article 5, section 6 of the constitution of the state of Arizona, unlawfully assumed the office of governor of

the state of Arizona and has since unlawfully held and exercised the same. The relator further alleges that under and by virtue of said section of the constitution Dan E. Garvey did not in law or in fact become governor of Arizona upon the death of Governor Osborn, but by virtue of the section the powers and duties of the office of governor merely devolved upon Mr. Garvey as said secretary of state.

Respondent by his answer denies that he unlawfully assumed the office of governor of the state of Arizona and unlawfully holds and exercises the rights and duties of that office. He contends the facts to be that upon the death of Governor Osborn he by virtue of the constitutional provision above referred to succeeded to the duties, powers, emoluments, and rights of the office of governor, and lawfully holds such office by virtue of the constitutional provision. \*306 He further maintains that he was required to and did assume the duties, powers, and privileges of the office of governor for the remainder of Governor Osborn's term, and that the *office* became vested in him so that he is governor de jure and de facto.

[I] The public business and tranquility demand a prompt judicial inquiry and final determination of the actions of the respondent \*\*154 in admittedly holding and exercising the office of governor. It is for this reason that we have exercised our original jurisdiction in the premises, as we did in *Sullivan v. Moore*, 49 Ariz. 51, 64 P.2d 809 and *State v. Sullivan*, 66 Ariz. 348, 188 P.2d 592, and have promptly determined the issues. Two questions are presented for determination: first, upon the death of Governor Osborn did the respondent become vested with the *office* of governor for the remainder of the term? second, if he did not become vested with the office of Governor, is he entitled to the emoluments of the office by virtue of the fact that he must perform the duties thereof?

The first question can be answered only by reference to the pertinent constitutional and statutory provisions. Article 5, section 6, of the Arizona constitution provides:

'[*Succession to governorship*].—In case of the impeachment of the governor, or his removal from office, death, inability to discharge the duties of his office, resignation, or absence from the state, *the powers and duties of the office shall devolve upon the secretary of state until the disability ceases, or during the remainder of the term.*' (Emphasis supplied.)

The following section of the code, relating to the duties of secretary of state and his assistant, we consider to be pertinent and highly illuminating and informative in our search for a correct determination on the questions involved:

'*Assistant secretary*.—The secretary shall appoint an assistant secretary of state, who, in the absence of the secretary of state, *or when the secretary of state is acting governor*, shall perform the duties of the secretary.' (Emphasis supplied.) Section 4-204, A.C.A.1939.

The questions presented, though a matter of first impression in this state, are not novel. The question of the effect of the succession of an inferior officer to the duties and powers of the office of governor has been exhaustively treated by courts of last resort in many states. The prevailing view is that in such a case the inferior officer does not vacate his office and become governor de jure and de facto, but that the duties and powers of governor merely devolve on him and he retains his former office and becomes, practically speaking, ex officio governor. 24 Am.Jur., Governor, section 10. Under this view it is held that where the duties of the office of governor devolve on the president of the senate, he does not become governor, or cease to be a senator and president of the senate, and that on his resignation as \*307 senator he ceases to be entitled to act as governor. *Clifford v. Heller*, 63 N.J.L. 105, 42 A. 155, 57 L.R.A. 312. For convenience following each citation will appear the constitutional provision of the state whose decision is referred to.

'In case of the death, resignation, or removal from office of the governor, the powers, duties, and emoluments of the office shall devolve upon the president of the senate.' New Jersey, article 5, par. 12, N.J.S.A.

And where such duties devolve on the lieutenant governor, an election of a lieutenant governor to fill the supposed vacancy is unauthorized. *State v. Sadler*, 23 Nev. 356, 47 P. 450; *State v. McBride*, 29 Wash. 335, 70 P. 25.

'In case of the impeachment of the governor, or his removal from office, death, inability to discharge the duties of the said office, resignation or absence from the state, the powers and duties of the office shall devolve upon the lieutenant-governor for the residue of the term, or until the disability shall cease.' Nevada, article 5, section 18.

'In case of the removal, resignation, death, or disability of the governor, the duties of the office shall devolve upon the lieutenant-governor.' Washington, article 3, section 10.

Nor can the lieutenant governor in such an event appoint a successor to himself as lieutenant governor. *People v. Budd*, 114 Cal. 168, 45 P. 1060, 35 L.R.A. 46.

'In case of the impeachment of the Governor, or his removal from office, death, inability to discharge the powers and duties of his office, resignation, or absence from the State, the powers and duties of the office shall devolve upon the Lieutenant Governor for the residue of the term, or \*\*155 until the disability shall cease.' California, article 5, section 16.

Likewise under this rule where a vacancy in the office of governor occurs, and the president pro tempore of the senate acts under a provision that he 'shall be lieutenant governor' in such a case, he does not cease to be a senator, but retains his right to vote in that body. *State v. Stearns*, 72 Minn. 200, 75 N.W. 210.

'The lieutenant governor shall be ex officio president of the Senate; and in case a vacancy should occur, from any cause whatever, in the office of governor, he shall be governor during such vacancy.' Minnesota, article 5, section 6, M.S.A.

And on the election of another as president pro tempore his right to act as lieutenant governor ceases. *People v. Cornforth*, 34 Colo. 107, 81 P. 871.

'In case of the death, impeachment, or conviction of felony or infamous misdemeanor, failure to qualify, resignation, absence from the state or other disability of the governor, the powers, duties and emoluments of the office, for the residue of the term, or until the disability be removed, shall devolve upon the lieutenant-governor.' Colorado, article 4, section 13.

\*308 And it has been held that where the powers, duties, and emoluments devolve on the lieutenant governor for the residue of the term there was no vacancy in either the office of governor or lieutenant governor that could be filled at a general election which intervened before the expiration of the term. *State v. Mitchell*, 97 Mont. 252, 34 P.2d 369.

'In case of the failure to qualify, the impeachment or conviction of felony or infamous crime of the governor, or his death, removal from office, resignation, absence from the state, or inability to discharge the powers and duties of his office, the powers, duties and emoluments of the office, for the residue of the term, or until the disability shall cease, shall devolve upon the lieutenant-governor.' Montana, section 14, article 7.

[2] A vacancy in the office of governor does not arise by the impeachment of the incumbent, his removal from office, or death in the sense that there is no one left with power to discharge the duties imposed upon the governor. *State v. McBride*, supra; *State v. Mitchell*, supra. In *State ex rel. Martin v. Ekern*, 1938, 228 Wis. 645, 280 N.W. 393, 399, it is said:

'When a vacancy, either permanent or temporary, occurs in the office of governor, the powers and duties of that office devolve upon the lieutenant governor for the residue of the term or until the governor, absent or impeached, shall have returned or the disability shall cease. It is clear that the lieutenant governor does not become governor. He remains lieutenant governor, upon whom devolves the powers and duties of governor. In such a contingency no vacancy occurs in the office of lieutenant governor. \* \* \*'

To the same effect see *Futrell v. Oldham*, 107 Ark. 386, 155 S.W. 502, Ann.Cas.1915A, 571. The Arkansas constitutional provision reads as follows:

'In case of the death conviction or impeachment, failure to qualify, resignation, absence from the State or other disability of the Governor, the powers, duties and emoluments of the office for the remainder of the term, or until the disability be removed, or a Governor elected and qualified, shall devolve upon and accrue to the President of the Sentate.' Section 12, article 6.

The same situation exists where the governor is absent from the state or physically unable to discharge the duties of his office. The framers of our constitution never intended that there should be any interim in which the affairs of state were not executed for they said in explicit language that upon the happening of any of the contingencies mentioned in section 6, article 5, supra, the powers and duties of the office of governor were to be immediately transferred to the secretary of state who was then given a mandate to discharge the duties of the office for the residue of the term for which the governor was

elected. He, as secretary of state, acts \*309 as governor and is empowered to perform all the duties of that office, and his official \*\*156 acts performed as acting governor are valid. McCluskey v. Hunter, 33 Ariz. 513, 266 P. 18.

While a legislative interpretation is not binding upon us, it is nevertheless entitled to respectful consideration. We find that as long as 1922 the legislature, in enacting section 4-204, supra, was aware of the contingencies contained in the constitutional provision under consideration, and considered that there would be occasions when the secretary of state was 'acting governor.' The code section specifically provides that when the secretary of state is 'acting governor' the assistant secretary of state shall perform the duties of the secretary.

We have observed that the prevailing view is that an inferior officer does not vacate his office and become governor de jure and de facto where the several constitutions provide merely that the duties and powers of the office devolve upon him. See Annotation, Ann.Cas.1915A, 577, at page 579. Opposed to the authorities just considered are three cases, all from one jurisdiction, namely, Oregon. In the reported case of Chadwick v. Earhart, 11 Or. 389, 4 P. 1180, the court had before it for consideration the constitutional provision reading as follows:

*'In case of the removal of the governor from office, or of his death, resignation, or inability to discharge the duties of the office, the same shall devolve on the secretary of state; and in case of the removal from office, death, resignation, or inability, both of the governor and secretary of state, the president of the senate shall act as governor until the disability be removed or a governor be elected.'* (Emphasis supplied.) Section 8, article 5.

The court in analyzing grammatically the section held that the word 'same' related to and qualified the word 'office' and that in legal effect the section should read 'In case of the removal of the governor from office or of his death, resignation, or inability to discharge the duties of the office, the office itself shall devolve upon the secretary of state.'

In the later case of Olcott v. Hoff, 92 Or. 462, 181 P. 466, 470, the Oregon court again had before it for consideration the same section of the constitution and was asked to review its decision in the Chadwick case. It was called to the attention of the court that many courts had refused to accept its interpretation in the Chadwick

case as sound law. The justice who wrote the prevailing opinion was still of the opinion that the grammatical interpretation made in the Chadwick case was correct. He attempted to distinguish the cases from Wyoming, Nevada, New Jersey, California, Colorado, Minnesota, Washington, and Arkansas by stating:

*'It will be noted that in all of the sections quoted it is not the office, but the powers and duties of the office, which \*310 devolve upon his successor in the event of the death of the governor. The importance of that distinction is clearly pointed out by the recent decision of the supreme court of Arkansas in construing the constitution of that state in the case of Futrell v. Oldham, supra, where the opinion says: 'If the framers of the constitution had intended to provide for the devolution of the office of governor, in case of vacancy by resignation or otherwise, upon the president of the senate, that intention could easily have been directly expressed in appropriate words. But they chose other terms which clearly observe the distinction between the course of succession of the office itself and a mere devolution of the duties and the emoluments of the office for the time being, and deliberately adopted the latter as the best means of having the government administered until the people themselves can elect a governor.'*

Mr. Justice Harris of that court, in a separate opinion concurring in part, made this observation of the Chadwick decision:

*'\* \* \* If article 5, § 8, of the state constitution, were now for the first time presented for judicial construction I would, for reasons which to me are not only persuasive but convincing, take the view that upon the removal, death, resignation, or inability of the governor to discharge the duties of the office, the secretary of state becomes merely ex officio governor. In other words, it is my opinion that a correct construction of the constitution \*\*157 only empowered Chadwick to act as governor until he ceased to be secretary of state and then the duties of the office of the governor devolved upon Earhart, the succeeding secretary of state, until Thayer qualified as governor; or, applying what I conceive to be the meaning of the constitution to the instant case, because and only because he is secretary of state, Ben W. Olcott would perform the duties of governor until his term as secretary of state expires on the first Monday in January, 1921, when his successor's term as secretary of state shall begin, and such successor would then discharge the duties of governor until the speaker of*

the house of representatives at the session to be held in 1921 publishes the vote for governor. \* \* \*

This justice in stating that the doctrine of state decisis should never be resorted to where an opinion was clearly and manifestly erroneous and capable of producing injustice and hardship, nevertheless for other considerations, adhered to the original decision in the Chadwick case.

In State v. Olcott, 94 Or. 633, 187 P. 286, 290, the court was again confronted with a contingency growing out of its previous interpretations. In this case, Mr. Justice Bennett in a specially concurring opinion, made reference to the original decision in the Chadwick case and the observations of Mr. Justice Harris in Olcott v. Hoff, supra:

\*311 'After much consideration and some hesitation, I feel compelled to concur in the opinion of Mr. Justice Johns upon the ground of stare decisis only. It seems to me that the case of Chadwick v. Earhart, 11 Or. 389, 4 P. 1180, is directly in point and is controlling. If it were not for that case and if the question was here as a matter of first impression, I should be governed by the reasoning of Mr. Justice Harris when the question was under consideration in Olcott v. Hoff, which seems to me to present, as a matter of logic, the stronger considerations.'

[3] [4] We do not consider the decision in Chadwick v. Earhart, supra, as persuasive or authoritative. The interpretation of that case was based on the language of the constitutional provision, and we sincerely believe was not justified. In any event our constitutional provision specifically provides that 'the powers and duties of the office shall devolve upon the secretary of state \* \* \*.' This section is not susceptible of the interpretation that the *office* shall devolve upon the secretary of state. Having concluded that the *office* of governor does not devolve upon the secretary of state and that Dan E. Garvey is still secretary of state and only ex officio or acting governor, it is apparent that he is not legally entitled to any extra compensation for the performance of services or duties which pertain to his office of secretary of state. By law the incumbent of an office is bound to perform all of the duties

belonging to it without extra compensation. As was said in United States v. Smith, 27 Fed.Cas. 1139, page 1141, No. 16,321:

'\* \* \* No man is under any necessity to accept an office, but having accepted it, the obligation rests upon him to discharge its duties for the remuneration which the law provides. He accepts it with a knowledge of the pay or salary attached to it, and though its duties may be onerous, and the compensation inadequate, if he chooses to retain the office he must be content with what the law gives.'

The respondent took oath to perform the duties of secretary of state. His duties embrace the responsibility to act as governor in case any of the contingencies provided for in the constitutional provision arise. Walls v. Hall, 202 Ark. 999, 154 S.W.2d 573, 136 A.L.R. 1047.

We, therefore, hold that respondent Garvey is not governor de jure or de facto but merely ex officio or acting governor invested by constitutional mandate with all of the powers and duties of that high office, which devolve upon him by virtue of the fact that he is secretary of state. Respondent, however, is entitled to physical possession of the office space and facilities provided for the chief executive of the state, but as no provision has been made that the emoluments of the office of governor inure to the secretary of state when acting governor he is entitled \*312 \*\*158 only to the compensation provided for the secretary of state.

It is the judgment of this court and it is hereby ordered that the Honorable Dan E. Garvey be and he is hereby precluded from holding or exercising the office of governor of the state of Arizona other than as secretary of state and acting governor. Let the mandate of the court issue forthwith.

STANFORD, C. J., and UDALL, J., concur.

All Citations

67 Ariz. 304, 195 P.2d 153



KeyCite Yellow Flag - Negative Treatment  
Distinguished by State ex rel. O'Connell v. Yelle, Wash., January 23, 1958

12 Wyo. 1  
Supreme Court of Wyoming.

STATE ex rel. CHATTERTON, Acting  
Governor and Secretary of State,

v.

GRANT, State Auditor.

Aug. 20, 1903.

Mandamus by the state, on the relation of Fenimore Chatterton, Acting Governor and Secretary of State, to compel Le Roy Grant, as State Auditor, to issue warrants for and audit relator's claim for salary both as Secretary of State and Acting Governor. On demurrer to the writ. Demurrer overruled.

West Headnotes (4)

[1] Mandamus

⇒ Demurrer to petition or complaint, or to alternative writ

Pleading

⇒ Facts well pleaded

A demurrer in mandamus admits all well pleaded allegations of the petition.

Cases that cite this headnote

[2] Public Employment

⇒ Holding Other Office or Employment; Incompatibility

One holding two separate and distinct offices, not incompatible, may recover the compensation provided by law for each office, in the absence of statute expressly or by necessary implication forbidding it.

2 Cases that cite this headnote

[3] States

⇒ Governor

Where the Secretary of State, upon the death of the Governor, assumes and exercises the duties and powers of the latter office as Acting Governor, pursuant to law, and also continues, as required by law, to exercise the duties of his office of Secretary, he is entitled while performing the duties of both offices to the salary provided and appropriated for each office.

3 Cases that cite this headnote

[4] Public Employment

⇒ Additional compensation; extra services States

⇒ Particular Officers and Employees

Const. art. 4, § 6, declares that if the Governor shall die the Secretary of State shall act as Governor until the vacancy is filled; and section 13 declares that until otherwise provided the Governor shall receive a salary of \$2,500, and the Secretary of State \$2,000, and that the salaries of any of the officers prescribed by such section shall not be increased during the period for which they were elected, and that all fees and profits arising from their offices shall be covered into the state treasury. Section 12 provides that the duties of the Secretary of State shall be prescribed by law, and Rev. St. 1899, §§ 54-69, prescribed such duties, without imposing any of the duties of the office of Governor on the Secretary of State, or referring to the Secretary's duty to act as Governor in any manner. *Held*, that the offices of Governor and Secretary of State were not incompatible, and that on the death of the Governor during his term of office a vacancy in such office existed, to be filled by the Secretary of State, who during his incumbency was entitled to receive the salaries of both offices.

9 Cases that cite this headnote

Attorneys and Law Firms

\*470 P. B. Coolidge, for relator.

J. A. Van Orsdel, Atty. Gen., for respondent.

**Opinion**

POTTER, J.

The sole question involved in this case is whether the relator is entitled to receive the salary provided and appropriated by law for both the offices of Governor and Secretary of State. From the petition herein, it appears that at the general election held November 4, 1902, De Forest Richards was elected to the office of Governor of the state of Wyoming for the term of four years from the first Monday in January, 1903, and on said first Monday in January, 1903, to wit, January 5th, he duly and regularly qualified as such Governor and entered upon the duties of such office. He died April 28, 1903, thereby causing a vacancy in said office, to be filled in the manner required by law. At the same general election the relator, Fenimore Chatterton, was elected to the office of Secretary of State for the same term of four years; and he duly qualified as such, and entered upon the discharge of the duties of that office, on said first Monday in January, 1903, and continues to occupy said office and to perform the duties thereof. Upon the death of Gov. Richards, and on the date thereof, the relator, as required by statute, issued a proclamation announcing the death of the Governor, and that, as is provided by section 6 of article 4 of the Constitution of said state, and section 50 of the Revised Statutes of 1899, he had assumed and entered upon the duties of Governor of the state; and the allegation of the petition is that on said date said relator did assume and enter upon the duties of Governor, and has continued to fill said office, and act as Governor, in addition to his duties as Secretary of State, exercising all the powers and performing all the duties of that office. It is alleged that the relator is eligible to the office, and not under impeachment, and that, his assumption of the office having occurred more than 20 days before the next general election of county officers, the powers and duties of Governor will devolve upon the relator until the next general election, which will occur November 8, 1904. It is alleged that the salaries of both the Governor and Secretary of State for the year 1903 have been appropriated by the Legislature, and are in the Treasury of the state, except the monthly installments for January, February, March, and April, which have been already disbursed; that on the 1st day of June, 1903, the relator presented to the respondent, the duly

elected and qualified Auditor of the State, an itemized account, duly verified as required by law, showing that there was due relator the sum of \$208.33, his salary as Acting Governor for the month of May, 1903, and the further sum of \$166.66, his salary as Secretary of State for the same month, and he then and there demanded of said auditor that he draw his warrant on the State Treasurer for said amounts. Thereupon the auditor refused to draw a warrant for the payment of said account, and indorsed on the statement thereof his refusal, and the reasons therefor, as \*471 follows: "It is understood that this voucher is presented, and that my refusal to pay the same is made, for the purpose of having the Supreme Court of the State of Wyoming decide the question whether or not the Secretary of State is entitled to receive two salaries—the salary of Governor, as Acting Governor, and the salary of Secretary of State. In order that this question may be settled, I hereby refuse payment."

The prayer of the petition is that a writ of mandamus issue, commanding the Auditor to issue and deliver to the relator his two warrants on the Treasurer for the respective amounts claimed. An alternative writ of mandamus was allowed, and the petition is met by a general demurrer, upon which the cause has been heard and must be determined. The demurrer admits all the material allegations that are well pleaded, and doubtless the facts are accurately set forth. The demurrer has been deemed by counsel to raise the only question at issue, viz., the right of relator to the salaries of the two offices. The material constitutional provisions relating to the office of Governor, and the compensation thereof, are as follows:

"The executive power shall be vested in a Governor, who shall hold his office for the term of four (4) years and until his successor is elected and qualified." Article 4, § 1.

"If the Governor be impeached, displaced, resign or die, or from mental or physical disease or otherwise become incapacitated of performing the duties of his office, or be absent from the state, the Secretary of State shall act as Governor until the vacancy is filled or the disability removed." Section 6.

"Until otherwise provided by law, the Governor shall receive an annual salary of two thousand five hundred dollars, the Secretary of State, State Auditor, State Treasurer, and Superintendent of Public Instruction shall each receive an annual salary of two thousand dollars, and the salaries of any of the said officers shall not be

increased or diminished during the period for which they were elected, and all fees and profits arising from any of the said offices shall be covered into the State Treasury.” Section 13.

Sections 4, 5, 7, 8, and 9 of the said article prescribe the duties of the office of Governor. It is unnecessary for the purpose of this opinion to recite those duties in detail; but it may be well to say that the Governor is, by the Constitution, made commander in chief of the military forces of the state, and it is provided that he may call out the same to execute the laws, suppress insurrection, and repel invasion. He may convene the Legislature on extraordinary occasions. He is required to transact all necessary business with the officers of the government, civil and military, and to expedite all such measures as may be resolved upon by the Legislature, and see that the laws are faithfully executed. He is given power to remit fines and forfeitures, and to grant reprieves, commutations, and pardons after conviction, for all offenses except treason and cases of impeachment. He is authorized in case of a vacancy in public office to fill the same by appointment, where no other mode of filling the vacancy is provided by law. Every bill passing the Legislature must be presented to him before it becomes a law, and, if approved by him, he is required to sign it. He is given a veto power over legislative measures. After specifically prescribing a number of the duties of the office of Governor, it is provided by section 12 of the same article as follows: “The powers and duties of the Secretary of State, of State Auditor, Treasurer and Superintendent of Public Instruction shall be as prescribed by law.” And the first Legislature of the state proceeded to define the duties of Secretary of State. Rev. St. 1899, §§ 54–69. None of the duties of the office of Governor were thereby imposed upon the Secretary of State, nor was any reference made therein to the duty of such officer to act as Governor; and it is obvious that the duties and powers of the office of Governor do not ordinarily pertain to the office of Secretary of State.

The statutory provisions on the subject of succession in the office of Governor are as follows:

“In case of the removal, death, resignation or inability of the Governor of the State of Wyoming, the Secretary of State, or if there be none, or in case of his removal, death, resignation or inability, then the President of the last Senate, or if there be none, or in case of his removal, death, resignation, or inability, then the Speaker of the last

House of Representatives, or if there be none, or in case of his removal, death, resignation, or inability, then the State Auditor, or if there be none, or in case of his removal, death, resignation, or inability, then the State Treasurer, shall act as Governor until the disability of the Governor is removed, or a Governor shall be elected.” Rev. St. 1899, § 50.

“Whenever the powers and duties of the office of Governor of the state of Wyoming shall devolve upon any of the persons named in the foregoing section as therein provided, the person upon whom such duties shall devolve, shall issue a proclamation to the effect that the person theretofore an incumbent in said office of Governor, naming him, has ceased to act as such, naming the reason, and stating that such person succeeding to the duties and powers of such office has assumed the duties and powers thereof.” Rev. St. 1899, § 51.

“Whenever the powers and duties of the office of the Governor of the state of Wyoming shall devolve upon a person, as herein before provided, the person acting as Governor shall continue to act as Governor, as aforesaid, until the end of the term of the Governor: provided, such assumption of office is made as aforesaid less than twenty days before the next general election of county officers, preceding the next ensuing general election for state officers; but should such assumption be made as aforesaid previous to twenty days before a general election for county officers, then and in that case, the person acting as Governor as aforesaid, shall issue an additional proclamation calling for the election of a Governor to fill the unexpired term, which election shall take place at the same time as the general election for county officers, and such election, together with the returns and canvass thereof, shall be conducted in all respects as though it was an original election for Governor. When the state canvassing board shall have canvassed the vote of the election as aforesaid, and in the manner provided by law, declared a person at such election to be elected as Governor, such person shall, within thirty days after such canvass, or as soon thereafter as possible, qualify and assume the duties and powers of Governor, and shall be the Governor of the state of Wyoming for the remainder of the unexpired term of Governor.” Rev. St. 1899, § 52.

“The foregoing provisions shall only apply to persons who are eligible to the office of Governor of the state of Wyoming under the Constitution of the state of Wyoming, and who are not under impeachment by the House of

Representatives of the state of Wyoming, at the time the powers and duties shall devolve upon them respectively." Rev. St. 1899, § 53.

These provisions were enacted by the first state Legislature under the following title: "An act to provide for an Acting Governor in case of the removal, death, resignation or inability of the Governor, and to provide for the election of his successor."

Outside the constitutional provisions rendering certain officers ineligible to hold another office during the term for which they may respectively have been elected, there is no statute of this state prohibiting a person from holding and exercising the duties of two offices that are not incompatible, nor, if legally holding such offices, from receiving the compensation that is attached to each by law. It certainly cannot be held that the offices of Governor and Secretary of State are incompatible, in the sense that the same person, if Secretary of State, cannot legally act in the dual capacity, and perform the duties of each office, upon the death, disability, or resignation of the Governor, since the Constitution and statutes expressly require it. No question of compatibility is involved. Whether the same person could be lawfully elected to both offices is not before us for consideration. That contingency will hardly occur. The situation that confronts us is that the law designates the Secretary of State in a case like the present to act as Governor; and he will be required to so act until after the next general election, that will not occur until November, 1904. During that period all the powers of the Governor and all the duties of that responsible office will devolve upon him. He cannot escape them any more than one regularly chosen to the office. In the meantime he has all the powers, and is subject to all the responsibilities, attaching to the office of Secretary of State. There is no express provision of the statute entitling him to the salary of the office of Governor, nor, as already indicated, is there any provision expressly forbidding its payment to him. The relator being the regularly elected and qualified Secretary of State, it must be conceded that he is entitled to receive the salary provided by law to be paid to that officer. In the absence of statute expressly or by necessary implication depriving him of the compensation belonging to that office upon assuming the powers and duties of Governor, he would have a right to it, even if permitted to draw the salary of the other office. In view of our statutes, or rather the absence of statutory provision on the subject, we cannot conceive of any principle upon which the salary attaching to the office of Secretary of

State can be denied him, whatever may be his right to the compensation provided by law for the office of Governor. It seems clear and reasonable that, if he is found entitled to receive the salary of the executive office, he will necessarily be entitled to the salaries of both offices.

It is a general principle that an officer who holds two or more separate and distinct offices, not incompatible with each other, to each of which compensation is attached, may recover the compensation provided by law for each office. *Mechem on Pub. Off.* 859. In considering the case of a person seeking the recovery of salary claimed to be due him as clerk of a committee in Congress, who had during part of the period also occupied a position as clerk in the office of the President, and the effect of certain sections of the statute prohibiting double or extra compensation, the Supreme Court of the United States said: "We are of the opinion that, taking these sections all together, the purpose of this legislation was to prevent a person holding an office or appointment for which the law provides a definite compensation, by way of salary or otherwise, which is intended to cover all the services which, as such officer, he may be called upon to render, from receiving extra compensation, additional allowances, or pay for other services which may be required of him either by act of Congress or by order of the head of his department, or in any other mode, added to or connected with the regular duties of the place which he holds, but that they have no application to the case of two distinct offices, places, or employments, each of which has its own duties and its own compensation, which offices may both be held by one person at the same time. In the latter case he is, in the eye of the law, two officers, or holds two places or appointments, the functions of which are separate and distinct; \*473 and, according to all the decisions, he is in such case entitled to recover the two compensations. In the former case he performs the added duties under his appointment to a single place, and the statute has provided that he shall receive no additional compensation for that class of duties unless it is so provided by special legislation." *United States v. Saunders*, 120 U. S. 126, 7 Sup. Ct. 467, 30 L. Ed. 594. In the case of *Converse v. United States*, 21 How. 463, 16 L. Ed. 192, the court was called upon to construe various provisions of statute limiting the right of certain officers to additional compensation, and with reference to some of them it was said: "But they can by no fair interpretation be held to embrace an employment which has no affinity or connection, either in its character or by law or usage, with the line of his

official duty, and where the service to be performed is of a different character and for a different place, and the amount of compensation regulated by law." But it was held that, as the services for which compensation was claimed were foreign to the regular official duties of the officer, he was entitled to recover; the compensation to be paid for such services having been fixed by law, and the money appropriated to pay it. Upon the general principle above stated, compensation for services rendered in the discharge of the duties of both offices were allowed one occupying the position of chief supervisor of elections and also United States commissioner. *In re Conrad* (C. C.) 15 Fed. 641. And the two duties of crier and messenger, although separate offices, were held not incompatible, and where the same person held both offices he was allowed the compensation of both. *Preston v. United States* (D. C.) 37 Fed. 417. Where the city treasurer was required by law to act ex officio as school treasurer, giving bond for each office, and taking a separate oath of office for each, he was held to be entitled not only to the salary of his office as city treasurer, but also to the salary or compensation of school treasurer. *Scranton Sch. Dist. v. Simpson*, 133 Pa. 202, 19 Atl. 359. It appearing in that case that a statute had been enacted providing that the city treasurer should be ex officio school treasurer, it was held that the latter office had not been abolished, but that the statute merely designated the person who should fill it. It was held in Missouri, where an appropriation was made by law for the payment of compensation to members of the State Board of Equalization, that the Secretary of State, who was constituted a member of the board by the Constitution, was entitled to compensation for services rendered by him in that capacity. *State ex rel. v. Walker*, 97 Mo. 162, 10 S. W. 473. And in South Dakota, where the Secretary of State was, under the law, a member of the brand and mark committee, and the law provided a compensation to be paid each member, said officer was held entitled to such compensation, in addition to his salary as Secretary of State. *State v. Roddle*, 81 N. W. 980. See, also, *State ex rel. v. La Grave* (Nev.) 48 Pac. 193; *Badeau v. U. S.*, 130 U. S. 439, 9 Sup. Ct. 579, 32 L. Ed. 997; *Love v. Baehr*, 47 Cal. 364.

The Attorney General has filed a brief herein in support of the demurrer and he presents an able argument against relator's claim. We do not understand that he disputes the general principle, but his contention is that in acting as Governor the relator is but performing his duty as Secretary of State. The argument is that the duty is one imposed upon the Secretary of State, and is not foreign

to the duties of that office; that his situation is not analogous to the case of a Lieutenant Governor who assumes the office of Governor in case of a vacancy in that office through the death or resignation of the regularly chosen incumbent thereof; that the relator does not become the successor of the deceased Governor, and is not, in fact, Governor, but simply acts in that capacity until, in obedience to the mandate of the statute, a successor may be regularly elected by the people. It is even argued that a vacancy continues to exist, and will so continue until some person is chosen at the next election to serve the balance that may remain of the unexpired term, and that in the meantime the state is and will be without a Governor. In this connection it should be remembered that the statute providing for succession in the office of Governor uses precisely the same language in designating the various officers or persons who shall in certain prescribed contingencies act as Governor. No different words are employed in describing the duty of President of the Senate or Speaker of the House upon the occurrence of the event that would require either of them to assume the duties of Governor. It is evident that the powers and rights of either would not be in any way superior to or different from the powers and rights of the relator under like circumstances. If the relator does not occupy the office of Governor, but merely executes the duties of Secretary of State in assuming the responsibilities and powers of Governor, then it would seem that the same thing would be true of the President of the Senate and Speaker of the House, and that, should either of them be required to act as Governor, he would be merely performing certain duties added for the time being to his office. And it would follow that, although the law has provided no compensation to be paid to those officers except during a session of the Legislature, they would not be entitled to the salary of the Governor, or any other compensation, until the Legislature should make further provision. In this case we are not concerned with a mere temporary disability of the Governor, or his temporary absence from the state, and the occasional assumption of his duties by another while he continues to occupy the office and draw the salary thereof; nor are we \*474 called upon to consider what the rule would be in such cases. The contention of the Attorney General seems to be supported in some measure by the case of *United States v. Smith*, 27 Fed. Cas. 1139 (No. 16,321). That was a suit upon the bond of the Secretary of the territory of Minnesota, and the officer set up in defense an account against the government, including an item for salary due him as

Acting Governor during the absence of that officer. There had not occurred a vacancy in the office, as we read the case, but the Governor was absent from the territory on certain occasions, and during such absence the Secretary acted. The statute authorizing him to do so provided that he should discharge the duties of the executive "in case of the death, removal, resignation, or necessary absence of the Governor from the territory." Act March 3, 1849, c. 121, § 3, 9 Stat. 404. In charging the jury, the district judge said: "The defendant took the office of Secretary knowing that in any of the emergencies specified the duties of Governor would devolve on him. And the law made no provision for any additional compensation in that event. In assuming the office of Secretary of the territory the defendant became bound to act as Governor, if necessary under the law, as fully as he was obliged to discharge any other duty as Secretary. It pertained to the office of Secretary, though not strictly within the legitimate range of its duties. The salary certainly was less than the labor and responsibility required, but this is an evil which this court and jury cannot remedy without usurping legislative power." The learned court moreover held that the item came within the operation of an act of Congress forbidding the allowance to one individual for the salaries of two different offices on account of his having performed the duties thereof at the same time. Notwithstanding that the general language of the court might be held to be applicable to the situation of relator, we think it is not a necessary implication that upon facts like those in the case at bar the court would have expressed the same opinion respecting the character of the duties of the officer. Again, in *State, etc., v. Heller* (N. J. Sup.) 42 Atl. 155, 57 L. R. A. 312, it was said, in view of the language of the Constitution, that although the President of the Senate, in case of a vacancy in the office of Governor, exercises the powers and performs the duties of Governor, and receives the emoluments of that office, he does not become Governor, but that he still holds the office of President of the Senate, with the added duties required of the chief executive imposed upon him. He was held to be the "person administering the government," since the Constitution, in various clauses, used the words "the Governor or person administering the Government." The statute there evidently gave the officer the emoluments of the office, and hence his right thereto was not involved in the case.

We are not altogether satisfied that the question whether the relator is in fact the governor of the state in the same sense as one regularly elected to that office is material

to the determination of his right to the salary of the office. He is at least the Acting Governor. The expression both of the statute and Constitution is that he "shall act as Governor." And the statute requires him to issue a proclamation to the effect that he has "succeeded" to the duties and powers of the office, and has assumed such duties and powers. Moreover, the statute (section 52) refers to the act of the officer in taking upon himself the powers and duties of governor as an "assumption of office." And in case such "assumption of office" is made less than 20 days before the next general election of county officers, preceding the next ensuing general election for state officers, the "person acting as Governor" is required to "continue to act as Governor" until the end of the term. The significance of this requirement is made more manifest when it is remembered that an election for county officers occurs every two years, whereas a regular election for state officers occurs but once in four years; and hence the person so acting as Governor might be required to serve in that capacity more than one-half of the entire term, and until the end thereof, in which event, also, the vacancy, as such (that is, for the existing term), would not be filled at all by an election, but the Acting Governor would be succeeded by one elected for a new and full term. Whether the relator has succeeded to the title of Governor, or not, it must be conceded, we think, that he may appropriately assume at least the title of Acting Governor. Possibly that is his correct title, in the performance of executive functions. It is unnecessary, however, to decide that question.

We are not convinced that the duties of Acting Governor are attached to the office of Secretary of State. It seems to us that the more reasonable view is that the person occupying the office of Secretary of State is designated to act as Governor. This view is impressed upon us and strengthened whether we consider the nature of the duties of the two offices, or the legislation concerning them. We have already alluded to the fact that the Constitution imposes upon the Legislature the duty of prescribing the duties of Secretary of State, while it enumerates many of the powers and duties of the Governor, and the further fact that in the chapter defining the duties of the former office the Legislature omitted any reference to the requirement that the incumbent should in certain contingencies act as Governor. It appears to us to be incontrovertible that the two offices are separate and distinct, each having its own duties and responsibilities.

\*475 The duties and powers of one do not pertain to, nor are they legitimately connected with, the other office.

It is doubtless true that, whenever by law the Secretary is required to attest or countersign any document bearing the signature of the Governor, he continues to do so, and, when necessary, attaches the great seal of the state thereto, notwithstanding that it is the same person who signs in both capacities. It may be conceded, for the purposes of the case, that in a strictly technical sense the relator is not Governor. But it would not necessarily follow, in our judgment, that the salary of the office is not to be paid to him. To all intents and purposes he is the Governor of the state, and in a constitutional sense he is Acting Governor, at least. As such he is required to perform various duties, and is authorized to exercise very great powers, entirely distinct from the duties of his other office—such duties as not only by our written law, but ordinarily, are imposed and conferred solely upon the chief executive officer of a state. It might also be conceded, without seriously impairing the relator's right to the salary in question, that in a limited sense the office of Governor is vacant. But we are not able to subscribe to the proposition that there is an absolute and unqualified vacancy in the office. That would imply either that there is no one lawfully authorized to perform its duties, or that they are temporarily an adjunct of another office. In *State ex rel. v. Henderson*, 4 Wyo. 555, 35 Pac. 520, 22 L. R. A. 751, Chief Justice Groesbeck, speaking for this court, said: "An office cannot be said to be vacant while any person is authorized to act in it, and does so act." That language was employed in determining a question not involved here, viz., the authority of the Governor in a certain case to appoint to an office. We think—and may have something further to say on that subject—that the duties have not become an adjunct of another office. The statute, as already indicated, seems to indicate quite clearly that the Secretary, in entering upon the discharge of the duties, shall assume an office, and that reference is manifestly to some office other than that of Secretary of State. It is a conceded fact, and must be, that the relator is lawfully authorized to perform the duties of the office of Governor.

We deem it unnecessary to discuss technically the question of vacancy in the office. In the sense that the law contemplates that there shall be an incumbent of the office regularly chosen to that position, it may be admitted that a vacancy has occurred, and continues to exist, which can be filled only through an election by the people. But the office is now supplied in the manner provided by the Constitution and statutes, with an incumbent who is legally qualified to exercise its powers and perform the duties which pertain to it; and, although such incumbent

is merely designated as an Acting Governor, he is for all practical purposes in possession of the office and all of its prerogatives.

In this connection it is difficult to perceive much, if any, distinction between the facts in this case, and where, a vacancy occurring in an elective office, the Governor or some other competent authority has appointed some person to fill the office until the next general election, at which time the people are required to choose some one to serve out the remainder of the unexpired term. That is the case in the event of a vacancy in the office of Justice of the Supreme Court, and on three occasions there has occurred such a vacancy, which was filled by appointment of the executive until the following general election, when an incumbent for the balance of the unexpired term was elected. In the case of Governor, instead of an appointment by some other officer until an opportunity regularly arrives for the people to signify their preference, the law itself designates a person who shall act.

Under the Constitution of the state of Oregon, in case of the removal of the Governor, or his death, resignation, or inability to discharge the duties of the office, the same was made to devolve upon the Secretary of State. In the case of *Chadwick v. Earhart*, 11 Or. 389, 4 Pac. 1180, one of the questions, as stated in the opinion, was whether, when the duties of the office of Governor devolve upon the Secretary of State, he has a right to the salary of the office. The court answered the question in the affirmative. It was said in the opinion: "If the office of Governor continue after the Governor ceases to hold the office under this section—if the office be not vacant, but shall be lawfully filled by one acting therein directly as the agent of the state, and not in the character of deputy of a Governor incumbent—it would seem difficult to distinguish such a person from a Governor of right and in fact." And again, in response to the argument that the duties of the office of Governor became annexed to the office of Secretary of State, and were discharged as duties incident to the latter office: "In the first place, it is not shown how an office can be vacant, and yet there be a person, not the deputy or locum tenens of another, empowered by law to discharge the duties of the office, and who does in fact discharge them. It is not explained how in such a case the duties can be separated from the office, so that he who discharges them does not become an incumbent of the office. And, in the second place, how a person can fill the office of Governor without being Governor. It is the function of a public officer to discharge public duties. Such

duties constitute his office. Hence, given a public office, and one who, duly empowered, discharges its duties, and we have an incumbent in that office. Such is the case here. The Secretary of State, by force of the function cast upon him, becomes Governor, and \*476 consequently entitled to the salary appertaining to the office." Counsel endeavors to distinguish the Oregon case from the case at bar on account of the provision in the Constitution of that state that the office shall "devolve" upon the Secretary of State, while the language of our law is that he shall act as Governor. We fail to observe any material distinction. The same section of the Oregon Constitution, in providing for succession in case of the removal, death, resignation, or disability of both the Governor and Secretary of State, declared that in such case "The President of the Senate shall act as Governor." Const. Or. Art. 5, § 8. And in the case cited, in determining the tenure of office as Governor of the Secretary of State, the court mentioned the possibility of the President of the Senate succeeding to the office, and referred to him in language indicating quite clearly that he would be regarded as Governor, for it was said that he would hold the office of Governor, once incumbent, without reference to his office of President of the Senate, and also that he would cease to be President of the Senate when he became Governor. It is evident that the Oregon court itself perceived no distinction between the declaration that the office should devolve, and one that a certain person should act as Governor.

In the case of *People v. Hopkins*, 55 N. Y. 74, it was held that a deputy of the Superintendent of Insurance, upon whom the law imposed the duties of the office during a vacancy in the principal office, and during the absence and inability of the incumbent thereof, was entitled to the salary of a superintendent during the time he discharged the duties of the office. The statutory provision was that the deputy should "possess the powers and perform the duties attached by law to the office of the principal, during a vacancy in such office, and during the absence and inability of his principal." Laws 1859, p. 882, c. 366, § 2. There the deputy was only empowered to perform the duties and possess the powers, etc., during a vacancy in the office. The office was not made otherwise to devolve upon him. Yet he was entitled to the salary. And in this connection it might be pertinent to inquire what considerations ordinarily determine whether or not compensation shall be paid an officer, and the amount thereof. Our own Constitution furnishes an answer. It is provided in section 1 of article 14 that "The Legislature shall, from time to time, fix the amount of such salaries

as are not already fixed by this Constitution, which shall in all cases be in proportion to the value of the services rendered and the duty performed." And in 23 Ency. L. (2d. Ed.) 387, "salary" is defined as "a fixed annual or periodical payment for services, depending upon the amount of service rendered." In fixing a salary to be paid the executive of the state, it would be difficult, we imagine, to show that it was intended by those who framed the fundamental instrument of our state government to bestow the compensation in consideration of the acceptance of the title of Governor. It will hardly be questioned that the salary was intended as compensation for the rendition of services and the performance of duty. The opinion in the case last above cited possesses further interest in view of the argument made in this case to the effect that the relator should not be allowed the salary because he only acts as Governor, and is not Governor in fact. The court, in its opinion, stated that the statute made the deputy, to all intents and purposes, acting superintendent for the time during which there is no other superintendent, and referred to certain precedents, not judicial, but, as stated, furnished by "able jurists, wise statesmen, and rigid economists." It seems that in February, 1828, the office of governor of New York became vacant by the death of De Witt Clinton, and that its powers and duties devolved upon the then Lieutenant Governor. The learned judge states that the question arose whether the officer aforesaid was to be regarded as Acting Governor, and entitled to the salary of the office; and it was held by the Comptroller that he was to be so regarded, and was entitled to the salary. And the same conclusion was reached on a subsequent occasion. The New York Constitution declared that the "powers and duties of the office" should devolve upon the Lieutenant Governor, but the court states that he was regarded as "Acting Governor"; and it is noticeable that not the office, but the "powers and duties" of the office, were made to devolve upon him. It will probably be conceded that the powers and duties of the Governor's office have devolved upon the relator in this case.

The Constitution of Nevada provides, in case of vacancy in the office of Governor, that "the powers and duties of the office shall devolve upon the Lieutenant Governor." Here, again, we have the "powers and duties," rather than the "office," devolving, if there is any distinction. It was held by the Supreme Court of Nevada that a Lieutenant Governor upon whom the powers and duties of Governor had devolved in consequence of the death of the incumbent of that office was entitled to the salary



attached to the office. State ex rel. v. La Grave, 23 Nev. 216, 45 Pac. 243, 35 L. R. A. 233. It seems to have been argued in that case that the relator remained Lieutenant Governor, exercising the powers and duties of Governor. In a concurring opinion, Chief Justice Bigelow expressed a doubt as to whether the Lieutenant Governor became "Governor," in the full sense of the term; but he said that he filled the office, not temporarily, but permanently, and that he became at least permanent Acting Governor for the residue of the term. The learned chief justice referred to the proposition, as a general principle of \*477 justice and right, that, where one legally performs the duties of an office, he should be entitled to the emoluments thereof. And he held that any doubt as to the right of the officer to receive the salary should be resolved in his favor. The question whether, upon the assumption of the duties of Governor by the Lieutenant Governor, a vacancy was created in the latter office, subsequently came before the same court; and it was held that a vacancy did not exist, but that the officer remained Lieutenant Governor, but invested with the powers and duties of Governor. State ex rel. v. Sadler (Nev.) 47 Pac. 450. Under similar constitutional provisions, the declaration being that the "powers and duties" of the office shall devolve upon the Lieutenant Governor, the Supreme Court of California, in People ex rel. v. Budd, 45 Pac. 1060, 34 L. R. A. 46, say: "It will be seen that in case of a vacancy in the office of Governor the vacancy is not to be filled, but the powers and duties devolve upon the Lieutenant Governor, who does not cease to be Lieutenant Governor." And it was held that he could not appoint a Lieutenant Governor, upon the principle, evidently, that there would not be a vacancy in the office on account of the assumption by the incumbent of the duties of Governor. And so in the case at bar it is not contended on either hand that a vacancy has occurred in the office of Secretary of State. No question of salary was involved in the California case above cited. The language of the court seems, however, to sustain the argument of the Attorney General that the vacancy in the office of Governor is not filled in consequence of the assumption of its duties by the Secretary of State.

Our views as to the fact of vacancy in the office have, in a measure, been stated, although, in our opinion, it is immaterial whether there is a technical vacancy or not. We believe it more reasonable to say that the office is to all practical intents and purposes occupied by the

officer upon whom the law has imposed its powers and duties, and that at least he is Acting Governor, and as such comes within the meaning and operation of the law prescribing a salary for the office of Governor. We cannot accept the proposition that the very high and responsible duties of the executive office have been given such a movable character by the law as to be attached in certain contingencies first to the office of Secretary of State, then possibly in succession to the offices of President of the Senate, Speaker of the House of Representatives, Auditor, and State Treasurer. In our judgment, the conclusion more consonant with reason and the rules governing the interpretation of statutes is that the duties and powers remain as incident and attached to the office of Governor continually, and that when exercised and performed by either of the officers authorized by law, in case the regular incumbent has ceased to act, they are exercised and performed as the powers and duties of the office of Governor. Indeed, the language of the law clearly so implies, when it requires the designated officer to act as Governor. He is required to perform all the service that constitutes the consideration for the salary provided by law. In the absence of statute expressly or by necessary implication forbidding the relator from receiving the compensation attached to both offices, we see no reason why the same should not be paid to him upon his proper and lawful demand. There is nothing inequitable in this conclusion. The state has duly appropriated the money to pay the salary, and the money is in the treasury. The services for which the salary is provided are being performed, and have been performed for the period covered by the claim of the relator here in question. He is required to give attention to the duties of two state offices. His responsibilities are largely increased, and every principle of justice requires that he be compensated. This is recognized in many of the states by an express provision of either Constitution or statute allowing the one upon whom the duties of Governor have devolved to be paid the compensation attached by law to the office. The demurrer will be overruled.

CORN, C. J., and KNIGHT, J., concur.

#### All Citations

12 Wyo. 1, 73 P. 470, 2 Am. Ann. Cas. 382

114 Cal. 168  
Supreme Court of California.

PEOPLE ex rel. LYNCH  
v.  
BUDD, Governor.

S. F. 600.

|  
Sept. 3, 1896.

In bank. Application on relation of John C. Lynch against James H. Budd, governor, for a writ of mandate. Denied.

West Headnotes (1)

[1] Public Employment

⇒ Term of person filling vacancy

States

⇒ Term of office, vacancies, and holding over

Under Const. art. 5, § 15, providing that a lieutenant governor shall be elected at the same time and places as the governor, and Const. art. 5, § 8, authorizing the governor, when a vacancy occurs in any office for the filling of which no provision is made by the constitution, to fill such vacancy by granting a commission, which shall expire at the end of the next legislature, or at the "next election by the people," one appointed by the governor to fill a vacancy in the office of lieutenant governor for the filling of a vacancy in which there is no special constitutional provision will hold office till the next gubernatorial election.

22 Cases that cite this headnote

Attorneys and Law Firms

\*\*1060 \*168 J. J. De Haven, for petitioner.

W. W. Foote and Garret W. McEnerney, for respondent.

Opinion

TEMPLE, J.

This is an application for a writ of mandate to compel the governor to include in his proclamation \*169 for the coming election a call to fill the office of lieutenant governor for the unexpired term of Spencer G. Millard, deceased. Respondent has filled the vacancy caused by the death of the lieutenant governor by the appointment of William T. Jeter, who has duly qualified.

In this case both parties concede—as, indeed, the exigencies of each require him to do—that the vacancy caused by the death of Millard was one which the governor had the power to fill. If there can be question of the power of the governor in this respect, therefore, we have not considered it. And no question has been made, nor have we considered, whether a mandate will issue to compel the chief executive to perform an act which, if it be his duty to perform, is enjoined upon him by the constitution as the executive, nor whether he can be compelled to perform any public duty at the instance of one who has no vested right to have it performed, nor any interest special to himself, or other than that which every citizen has in its performance; or, rather, we have not considered whether to issue the mandate asked for would trench upon the province of the executive.

The constitution provides (section 3, art. 4) that members of the assembly shall be elected in 1880 and biennially thereafter. Section 2, art. 5, provides that the governor shall be elected 'at the time and places of voting for members of assembly, and shall hold his office for four years from and after the first day of January subsequent to his election.' Section 15, art. 5, is as follows: 'A lieutenant-governor shall be elected at the same time and places, and in the same manner, as the governor; and his term of office and his qualifications of eligibility shall also be the same. He shall be president of the senate, but shall have only a casting vote therein. If, during a vacancy of the office of governor, the lieutenant-governor shall be impeached, displaced, resign, die, or become incapable of performing the duties of his office, or be absent from the state, the president pro \*170 tempore of the senate shall act as governor until the vacancy be filled or the disability shall cease. The lieutenant-governor shall be disqualified from holding any other office, except as specially provided in this constitution, during the term for which he shall have been elected.' And in the following section it is provided

that in case of the death, resignation, impeachment, absence from the state, or inability to act of the governor, 'the powers and duties of his office shall devolve upon the lieutenant-governor for the residue of the term, or until the disability shall cease.' It will be seen that in case of a vacancy in the office of governor the vacancy is not to be filled, but the powers and duties devolve upon the lieutenant governor, who does not cease to be lieutenant governor. Under such circumstances it would hardly be contended that when the powers and duties of the governor devolve upon the lieutenant governor the latter thereby becomes governor, and can appoint a lieutenant governor. Nor do I think it could be contended that when the president pro tempore of the senate acts as governor he could appoint a person to fill the vacancy in the office of lieutenant governor. If he could, he would then appoint himself out of office, and it would be his duty to do so.

But it is conceded by the parties that upon the death of the lieutenant governor the governor may fill the vacancy by appointment. This is unmistakably within the language of section 8, art. 5, which reads as follows: 'When any office shall from any cause become vacant, and no mode is provided by the constitution and law for filling such vacancy, the governor shall have the power to fill such vacancy by granting a commission, which shall expire at the end of the next legislature or at the next election by the people.' An office has become vacant, and there is no other mode provided by the constitution or laws to fill it. 'The next election by the people' does not mean the \*171 next general election or the next election held by the people, but it must mean that the appointee shall hold until some one has been elected to fill that office. But there is nothing in this provision which indicates when this election shall be held, but only that until some one has been elected to fill the vacancy the appointee shall hold. This section does not direct that such election shall be at the next general election. It provides simply for filling vacancies by appointment, and that such appointees shall hold until the office is filled in the manner provided by law; but does not itself provide for such election or direct when it shall be. If, however, the phrase 'the next election by \*\*1061 the people' is equivalent to the phrase 'the next election,' and we assume that it was intended thereby to indicate the election at which such vacancy would be filled, we would feel compelled to hold that the next election is that which the constitution has provided for filling that particular office; that is, the next gubernatorial election. Many authorities may be cited in support of this

proposition. In *Matthews v. Shawnee Co.*, 34 Kan. 606, 9 Pac. 765, the governor appointed a judge to fill a vacancy. The constitution provided for an appointment to fill the vacancy until the next regular election. Upon a contest the supreme court said: 'The words 'regular election' do not necessarily mean general election, or township election, or any state, county, city, or district election. They simply mean the regular election prescribed by law for the election of the particular officer to be elected.' *State v. Philips*, 30 Fla. 579, 11 South. 925, involved a municipal office. The court said: 'When it is declared that the city council shall fill vacancies until the next regular election, it means until the next regular election provided by the charter for electing the officer whose term has become vacant.' To the same effect are *State v. Gardner*, 3 S. D. 553, 54 N. W. 606; *Sawyer v. Haydon*, 1 Nev. 75; \*172 *People v. Wilson*, 72 N. C. 155; *State v. Cobb*, 2 Kan. 32; and *People v. Mathewson*, 47 Cal. 442. The effect of these decisions is that the term 'next election' means the next election for a lieutenant governor, and that the language used in section 8 cannot be understood as itself directing that at the next succeeding general election the vacancy shall be filled.

Is an election at that time authorized by any law? The constitution contains no provision for holding an election for filling this vacancy, and is silent as to whether the appointee shall hold for the residue of the term. And this is more noticeable because as to some other officers there are explicit directions upon the subject. In regard to justices of this court and judges of the superior court, it is expressly provided that in case of a vacancy the appointee shall hold until the election and qualification of a successor, 'Which election shall take place at the next general election.' Sections 3, 5, art. 6. In regard to railroad commissioners, the provision is that the appointee shall hold office for the residue of the unexpired term. The constitution is equally silent in regard to filling vacancies in other executive offices. A similar state of things existed under the constitution of 1849, and the legislature passed a law for filling such vacancies ('An act concerning offices,' April 28, 1851; St. 1851, p. 415). This act did not provide for the election of a lieutenant governor. Like the governor, he was required, in case of resignation, to resign to the legislature if that body was in session; if not in session, to the secretary of state. Such is also the requirement of the present code. Pol. Code, § 995. Like the old statute, the present code contains no provision in regard to an election to fill a vacancy in the office of lieutenant governor. As to other state officers, the provision is that they shall hold for the balance of the unexpired term. There has

never been in the laws a provision for an election to fill a vacancy occasioned by the death or \*173 resignation of a lieutenant governor. Perhaps it was not supposed that such vacancy would ever be filled, even by appointment. At all events, there is no law, either constitutional or statutory, for such an election. In such case there can be no election. *People v. Weller*, 11 Cal. 49; *People v. Mathewson*, 47 Cal. 442; *Kenfield v. Irwin*, 52 Cal. 164. In *Sawyer v. Haydon*, 1 Nev. 75, it was said: 'We think no court or judge has gone so far as to hold that the people might hold an election or vote for any particular officer at a general election, unless some special provision was made for electing such officer for the particular term for which he is seeking to be elected, either in the constitution or some statutory enactment.' This was also said in *People v. Mathewson*, 47 Cal. 442. The efficacy of an election depends upon the law in pursuance of which it is held, and the fact that an office is elective does not of itself, without some law authorizing and regulating the election, render valid any attempted election. The writ is therefore denied.

We concur: BEATTY, C. J.; McFARLAND, J.; VAN FLEET, J.; HARRISON, J.; HENSHAW, J.

GAROUTTE, J.

I concur in the judgment. The constitution provides that the powers and duties of the office of governor, in case of vacancy, shall devolve upon the lieutenant governor for the residue of the term, or until the disability shall cease. The constitution further provides that in case of a vacancy in both the office of governor and lieutenant governor the president pro tempore of the senate shall act as governor until the vacancy be filled. The constitution does not provide that the president pro tempore of the senate shall perform the duties of the office of lieutenant governor in case a vacancy exists in that office. And this omission to so provide is, to my mind, an unintentional lapse on the part of the framers of the constitution. Such appears to be plain when we consider that there is an express \*174 provision of that instrument casting upon the president pro tempore of the senate authority to perform the duties of the office of governor if there be no lieutenant governor, taken in connection with the many other provisions of that instrument which all point to that conclusion. But no authority is found in the constitution vesting the president pro tempore of the senate with the duties of the lieutenant governor when a vacancy occurs in that office, and hence any such question is foreclosed.

The foregoing conditions being present, a vacancy \*\*1062 occurred in the office of lieutenant governor upon the death of the incumbent, and the governor had the power to fill such vacancy by virtue of section 8, art. 5, of the constitution. That section reads as follows: 'When any office shall from any cause become vacant, and no mode is provided by the constitution and law for filling such vacancy, the governor shall have the power to fill such vacancy by granting a commission, which shall expire at the end of the next legislature or at the next election by the people.' It follows that the result of this litigation in part rests upon the true construction of the words 'the next election by the people.' It is conceded by the present incumbent of the office that the next election by the people since his appointment will be the coming presidential election to be held in November, but he claims the words should be construed to mean 'the next election by the people at which a lieutenant governor is regularly to be elected.' If the framers of an instrument of the dignity and importance of a state constitution had intended such to be the law, it was easy for them to have said so, and they should have so declared in terms. And, in the absence of a declaration of that kind, I do not consider myself authorized to so interpret a phrase of that instrument; certainly not unless the intent of its authors to that effect is plainly apparent; and we look in vain for such intent. Upon a question of statutory construction it was said in *Blythe v. Ayres*, 96 Cal. 582, 31 Pac. 924: 'We are not here to construct \*175 a statute, but to construe a statute. We can neither interpolate nor eliminate, and we are bound to assume that the legislature enacted the law as it now stands with a due comprehension of the meaning of words, and of the rules of statutory construction, and that they incorporated into the act all that was intended, and that they intended that effect should be given to all that was found therein.' And that principle of construction applies with full force here. If any layman of ordinary intelligence, be he merchant, doctor, or mechanic, should have the question submitted to him as to the proper signification of the words here under consideration, to wit, the officer's commission shall expire 'at the next election by the people,' he would say without hesitation that the commission expired at the next general election. Such is the fair and legitimate construction of the language. There are some decisions of courts of other states which in a measure look in an opposite direction from the views here expressed. But these decisions are largely based upon provisions of law not identical with the one here involved. Many of those provisions use the term 'regular election,'

and in such cases stress by the court is laid upon the word 'regular' as a most material element in arriving at the true construction of the language. Notwithstanding the foregoing construction of the constitutional provision is favorable to the petitioner, still the relief he asks must be denied. For, though the appointee's commission expire at 'the next election by the people,' still, in the absence of some law authorizing the election of a lieutenant governor at that time, no election can be held, and I find no such law. A provision of constitution or statute declaring a certain day upon which the commission of an officer

shall expire is in no sense a provision that an election shall be held upon that day to fill the office. Under these conditions the present appointee of the governor will hold until his successor is elected and qualified, regardless of the day \*176 upon which his commission may expire; and his successor can only be elected at a time fixed by law, which time will be at the regular state election in the year 1898.

**All Citations**

114 Cal. 168, 45 P. 1060

## Ranscht, David [AG]

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**From:** Ranscht, David [AG]  
**Sent:** Thursday, December 08, 2016 10:48 AM  
**To:** Thompson, Jeffrey [AG]  
**Subject:** RE: Constitutional issue re: Lt. Gov assuming Gov's powers  
**Attachments:** Advisory Opinion to Acting Governor Johns.pdf; Bryant v English.pdf; Fitzpatrick v McAlister.pdf; State v Heller.pdf; Stratton v Priest.pdf

Here are the cases from the memo.



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**From:** Thompson, Jeffrey [AG]  
**Sent:** Thursday, December 08, 2016 10:14 AM  
**To:** Ranscht, David [AG]  
**Subject:** FW: Constitutional issue re: Lt. Gov assuming Gov's powers  
**Importance:** High

See below.

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**From:** Greenwood, Geoff [AG]  
**Sent:** Thursday, December 08, 2016 10:13 AM  
**To:** Thompson, Jeffrey [AG]  
**Subject:** FW: Constitutional issue re: Lt. Gov assuming Gov's powers  
**Importance:** High

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**From:** Mark O. Lambert [<mailto:marklambert@mchsi.com>]  
**Sent:** Thursday, December 08, 2016 9:54 AM  
**To:** Greenwood, Geoff [AG]; Tabor, Eric [AG]  
**Subject:** Constitutional issue re: Lt. Gov assuming Gov's powers  
**Importance:** High

Eric and Geoff:

326 Ark. 469  
Supreme Court of Arkansas.

Phil STRATTON, Appellant,  
v.  
Sharon PRIEST, Secretary of State, Appellee.  
Charlie Cole Chaffin, Intervenor.

No. 96-1150.  
|  
Oct. 29, 1996.

Following resignation of governor and succession of lieutenant governor to office of governor, plaintiff brought action challenging constitutionality of statute governing special elections to fill vacancy in office of lieutenant governor. Candidate in special election intervened. The Pulaski County Chancery Court, Collins Kilgore, Chancellor, rejected challenge, and plaintiff appealed. The Supreme Court, Jesson, C.J., held that: (1) statute did not violate constitutional provisions for filling vacancy in office of governor, and (2) statute did not conflict with constitutional provision requiring that governor and lieutenant governor be elected at same time in same election.

Affirmed.

Glaze, J., dissented and filed opinion in which Dudley, J., joined.

West Headnotes (3)

[1] Public Employment

↔ Election or appointment

States

↔ Lieutenant Governor

States

↔ Term of office, vacancies, and holding over

Statute governing filling of vacancy in office of lieutenant governor through special election did not violate state constitutional provisions requiring special election to fill vacancy in office of governor when office was vacated with more than 12 months

remaining in governor's term and setting forth order of succession for office of governor if lieutenant governor is unable to succeed to that office; constitutional provisions did not address method of filling vacancy in office of lieutenant governor. Const. Art. 6, § 14; Const.Amend. 6, § 5; A.C.A. § 7-7-105.

Cases that cite this headnote

[2] Constitutional Law

↔ Presumptions and Construction as to Constitutionality

Constitutional Law

↔ Clearly, positively, or unmistakably unconstitutional

Acts of General Assembly are presumed to be constitutional and will only be struck down where there is clear incompatibility between act and State Constitution.

1 Cases that cite this headnote

[3] States

↔ Lieutenant Governor

Statute governing filling of vacancy in office of lieutenant governor through special election did not conflict with state constitutional amendment requiring that governor and lieutenant governor be elected at same time in same election; amendment addressed ordinary situation in which election was held at end of current officeholder's term and did not contemplate situation in which vacancy in office had to be filled. Const.Amend. 6, § 3; A.C.A. § 7-7-105.

Cases that cite this headnote

Attorneys and Law Firms

\*\*321 \*470 Phil Stratton, Conway, for appellant.

J. Winston Bryant, Little Rock, for appellee.

Ted G. Boswell, Bryant, for Charlie Cole Chaffin.

**Opinion**

JESSON, Chief Justice.

On July 15, 1996, Jim Guy Tucker resigned as Governor of the State of Arkansas. Lieutenant Governor Mike Huckabee became Governor, pursuant to Ark. Const., amend. 6, § 4. His succession left a vacancy in the office of Lieutenant Governor. On July 30, 1996, pursuant to Ark.Code Ann. § 7-7-105 (Repl.1993), Governor Huckabee issued a proclamation calling for a special election to fill the vacancy. The election was called for November 5, 1996, the date already scheduled for the 1996 general election.

On August 26, 1996, the appellant filed a complaint in Pulaski County Chancery Court challenging the constitutionality of Ark.Code Ann. § 7-7-105. On September 9, 1996, he filed an amended complaint, seeking a declaration \*\*322 that the statute was in conflict with the Arkansas Constitution and maintaining that any funds spent on the special election would constitute an illegal exaction. He further prayed that the Secretary of State be enjoined from certifying any candidate for Lieutenant Governor on the November 5 election ballot. One of those candidates is Charlie Cole Chaffin, the intervenor in this case. The chancellor rejected the appellant's challenge and ruled that § 7-7-105 does not conflict with the Arkansas Constitution. We agree and affirm.<sup>1</sup>

[1] The appellant contends that § 7-7-105 offends the "orderly succession in the executive branch" provided for in Ark. Const., art. 6, § 14, and Ark. Const., amend. 6, § 5. Article 6, § 14, is an original provision of our 1874 constitution. It required a special election to fill a vacancy in the office of Governor when the office was vacated with more than twelve months remaining in the Governor's term. No provision was made in the 1874 constitution for the office of Lieutenant Governor. Conflicting interpretations of \*471 Section 14 and other sections of Article 6 resulted in a gubernatorial succession crisis in the early part of this century. As a result, Amendment 6 was adopted by a vote of the people in 1914. Amendment 6 created the office of Lieutenant Governor and took up the matter of gubernatorial succession. See *Bryant v. English*, 311 Ark. 187, 843 S.W.2d 308 (1992), for a detailed rendition of the history of these constitutional provisions.

Section 5 of Amendment 6 is entitled "Qualifications and Duties of Lieutenant Governor—Succession to the Governorship." It reads as follows:

The Lieutenant Governor shall possess the same qualifications of eligibility for the office as the Governor. He shall be President of the Senate, but shall have only a casting vote therein in case of a tie vote. If during a vacancy of the office of Governor, the Lieutenant Governor shall be impeached, displaced, resign, die, or become incapable of performing the duties of his office or be absent from the State, the President of the Senate shall act as Governor until the vacancy be filled or the disability shall cease; and if the President of the Senate for any of the above causes shall become incapable of performing the duties pertaining to the office of Governor, the Speaker of the Assembly shall act as Governor until the vacancy be filled or the disability shall cease.

The appellant argues that § 5 requires any vacancy in the office of Lieutenant Governor to be filled by succession, not by election. The appellant misunderstands the purpose and spirit of § 5. It addresses the subject of *gubernatorial succession*. It answers the question, "In case of a vacancy in the office of Governor, who shall be Governor?" The subject of succession to the office of Lieutenant Governor is not addressed.

[2] Acts of the General Assembly are presumed to be constitutional and will only be struck down where there is a clear incompatibility between the act and the state constitution. *Clinton v. Clinton*, 305 Ark. 585, 810 S.W.2d 923 (1991). Neither art. 6, § 14, nor amend. 6, § 5, is concerned with filling vacancies in the office of Lieutenant Governor. Therefore, § 7-7-105 does not conflict with those provisions.

The only reference in the Arkansas Constitution to vacancies in the office of Lieutenant Governor is



contained in Amendment \*472 29. That amendment provides for gubernatorial appointment to fill vacancies in most elected offices. However, it excepts from the Governor's appointment power vacancies in the offices of Lieutenant Governor, member of the General Assembly, and United States Congressional Representative. These are the very offices that are to be filled by special election under § 7-7-105. Thus, the Arkansas Constitution and § 7-7-105 exist in harmony.

[3] The appellant also makes a rather offhand argument that § 7-7-105 is incompatible with § 3 of Amendment 6. He claims that the statute "attempts to nullify the provisions of Amendment 6, § 3, that require \*\*323 the Governor and Lieutenant Governor be elected at the same time in the same election." The appellant probably means to refer to § 2 of Amendment 6, which provides that the Lieutenant Governor "shall be chosen at the same time and for the same term" as the Governor. Section 2 addresses the ordinary situation in which an election is held at the end of the current office-holder's term. It does not contemplate the situation in which a vacancy in office must be filled. Thus, § 7-7-105 and § 2 do not conflict.

In light of our holding, the appellant's request for attorney fees pursuant to Ark.Code Ann. § 26-35-902 (Supp.1995) need not be addressed.

Affirmed.

DUDLEY and GLAZE, JJ., dissent.

ROAF, J., not participating.

GLAZE, Justice, dissents.

The simple answer to this election case is that the chancery court, deciding it below, did not have subject-matter jurisdiction. Therefore, this appeal should be dismissed. Someday in the not-too-distant future, this court will be forced to resolve the subject-matter-jurisdiction issues its more recent cases (including this case) have caused the bench and bar, when determining where to file election actions—in equity or at law.

First, I emphasize that this is an election case, not an illegal exaction one, and that this court has clearly held that the *chancery court has no jurisdiction in matters pertaining to elections. State v. Craighead County Bd. of Election*

*Comm'rs*, 300 Ark. 405, 779 S.W.2d 169 (1989); *see also Curry v. Dawson*, 238 Ark. 310, 379 S.W.2d 287 (1964). Moreover, in *Foster v. Jefferson County Quorum Ct.*, 321 Ark. 105, 901 S.W.2d 809 (1995), this court, quoting from *Jackson v. \*473 Munson*, 288 Ark. 57, 701 S.W.2d 378 (1986), stated the following:

While it is true we have been liberal in permitting illegal exaction suits, we have held that an illegal exaction complaint was not proper where exclusive jurisdiction of the *underlying matter* was conferred on the circuit rather than the chancery court. (Emphasis added.)

In the present case, the appellant's underlying action seeks declaratory relief holding the Governor's proclamation, calling a special election to fill the existing vacancy in the Office of Lieutenant Governor, to be unconstitutional. Assuming entitlement to such relief, his complaint requests that the Secretary of State be enjoined from certifying the votes cast in the candidates' race for that office.

In *Catlett v. Republican Party of Ark.*, 242 Ark. 283, 413 S.W.2d 651 (1967), this court clearly held that cases like the one before us must be filed in and decided by a court of law. *Catlett* has never been overruled. The *Catlett* court clearly enunciated the rule as follows:

[C]ourts of equity have no authority or jurisdiction to interpose for the protection of rights which are merely political, and where no civil or property right is involved. In all such cases, the remedy, if any, must be sought in a court of law. *The extraordinary jurisdiction of courts of chancery can not, therefore, be invoked to protect the right of a citizen to vote or to be voted for at an election, or his right to be a candidate for or to be elected to any office. Nor can it be invoked for the purpose of restraining the holding of an election, or of directing or controlling the mode in which, or of determining the rules of law in pursuance of which, an election shall be held.* (Emphasis added.)

Here, appellant's suit is an attempt to restrain the holding and certifying of the election results in the Lieutenant Governor's race. As is clearly explained in *Catlett*, chancery court has no authority to restrain the holding of an election or control the conduct of an election. Consequently, the chancellor should have dismissed the appellant's complaint.

The appellant was well aware of his jurisdiction problem below after appellees filed a motion to dismiss appellant's complaint for want of equity jurisdiction. Consequently, he added language to his complaint, alleging the Secretary of State's certification of election \*474 results would be an *ultra vires* act and \*\*324 therefore result in an illegal exaction of state funds. In adding this language, appellant seems to rely on our recent case of *Priest v. Polk*, 322 Ark. 673, 912 S.W.2d 902 (1995), a plurality decision, where the court said that the question of subject-matter jurisdiction is determined by the "characterization" of the case.

Appellant's argument simply ignores our *Foster* decision, which holds that an illegal exaction complaint is not proper where exclusive jurisdiction of the underlying matter is conferred in circuit court. It is important to note that, in *State v. Craighead County Bd. of Election Comm'rs*, 300 Ark. 405, 779 S.W.2d 169, this court not only emphasized Arkansas's case law establishing chancery court has no jurisdiction in election matters, but also this court sanctioned mandamus and declaratory relief as the proper methods of enforcing our state's election laws. Mandamus, of course, lies only in circuit court. Accordingly, appellant here should have filed his action

in circuit court, asked that court to declare Arkansas's election law, Ark.Code Ann. § 7-7-105 (Repl.1995), unconstitutional, and requested the Secretary of State be mandated to remove the Lieutenant Governor's race from the ballot or not certify the votes cast in that race.

In sum, our case law simply does not permit a plaintiff (appellant here) to "characterize" (or re-characterize, if you will) his underlying action to be an illegal exaction action when the core issue is enforcement of Arkansas's election laws, namely, whether § 7-7-105 is constitutional and, therefore, provides the people with the political right to vote for a Lieutenant Governor at a special election.

In a concurring opinion in *Polk*, I voiced my concern that subject-matter jurisdiction questions would continue to arise in the filing of these election statutory and constitutional matters unless this court clarifies for the bench and bar what is expected of them. In this regard, the court in my view should follow the clear dictates and principles set out in the *Curry*, *Foster*, *Craighead County*, and *Catlett* cases. The majority decision today simply ignores these cases.

I would dismiss this case for lack of subject-matter jurisdiction.

DUDLEY, J., joins this dissent.

#### All Citations

326 Ark. 469, 932 S.W.2d 321

#### Footnotes

- 1 The appellant filed his notice of appeal on September 26, 1996. The record was filed with this court the next day. We granted the appellant's motion for expedited consideration. Final briefs were filed on October 16, 1996.

63 N.J.L. 105  
Supreme Court of New Jersey.

STATE (CLIFFORD, Prosecutor)

v.

HELLER, Sheriff.

Jan. 4, 1899.

**\*\*155** *Syllabus by the Court.*

**\*105** 1. The legality of the proceedings at the trial of a prisoner convicted of a crime by a court of competent jurisdiction cannot be challenged or reviewed by habeas corpus.

2. On a writ of certiorari allowed with the writ of habeas corpus to bring up a warrant for the execution of the prisoner, purporting to be issued by the executive department of the state government under authority of the act of April 16, 1846, the court will adjudge whether such warrant is valid.

3. When the governor of the state resigns, the powers, duties, and emoluments of the office devolve, under the constitution, upon the president of the senate, but he does not thereby become the governor of the state in the constitutional sense. The president of the senate retains his office of senator, and as president of the senate he exercises the powers and performs the duties of the executive department.

4. When he resigns his office as senator, he ceases to be president of the senate, and thereupon the powers, duties, and emoluments of the executive office devolve in like manner upon the speaker of the house of assembly.

5. The granting of a reprieve and the fixing of a day for the execution of a convicted criminal is by the common law a judicial power, and cannot be exercised by the governor, or person administering the government, except in so far as it is expressly permitted by the constitution.

6. The constitution bestows upon the executive department the power to reprieve, but limits the exercise of that power to a period of 90 days after conviction, which means 90 days after sentence in the court below. As an incident to this granted power, the executive department

may direct the execution to be proceeded with within the 90 days, and in that event the execution takes place not by force of the executive warrant, but in virtue of the judgment of the court.

7. After the lapse of the 90 days, the power of the executive department in this respect ceases.

Application by Edward Clifford against William Heller, sheriff, for release on habeas corpus, and certiorari by Edward Clifford against the same defendant. Petitioner remanded.

West Headnotes (7)

[1] **Habeas Corpus**

⇔ Jurisdictional Defects

The legality of the proceedings at the trial of a person convicted of a crime by a court of competent jurisdiction cannot be challenged or reviewed by habeas corpus, since the statute provides that persons committed or detained by virtue of a final judgment of a competent tribunal of civil or criminal jurisdiction shall not be entitled to the writ.

6 Cases that cite this headnote

[2] **Constitutional Law**

⇔ Encroachment on Judiciary

The governor or person administering the state government, except in so far as permitted by the constitution, cannot grant a reprieve or fix a day for the execution of a convicted criminal, since it is a judicial power.

5 Cases that cite this headnote

[3] **Criminal Law**

⇔ Extent of Review as Determined by Mode Thereof

On a writ of certiorari allowed with the writ of habeas corpus to bring up a warrant for the execution of the prisoner, purporting to be issued by the executive department of the state

government under authority of Act April 16, 1846, the supreme court will adjudge whether such warrant is valid.

2 Cases that cite this headnote

[4] **Pardon and Parole**

⇌ Constitutional and statutory provisions

N.J.S.A.Const.1844, art. 5, § 9, empowering the executive department to grant a reprieve, to extend until the expiration of a time not exceeding 90 days after conviction, limits the time in which to act to 90 days after the conviction.

3 Cases that cite this headnote

[5] **Pardon and Parole**

⇌ Reprieve

Under N.J.S.A.Const.1844, art. 5, § 9, bestowing on the executive department the power to reprieve, but limiting the exercise of it to 90 days after conviction, the executive department may direct the execution to be proceeded with within the 90 days, but in that event the execution takes place by virtue of the judgment of the court.

6 Cases that cite this headnote

[6] **States**

⇌ Governor

Under N.J.S.A.Const. art. 5, § 12, providing that, when the governor of the state resigns, the powers, duties, and emoluments of the office shall devolve on the president of the senate, the president retains his office as senator, and as president of the senate exercises the powers and performs the duties of the executive department.

11 Cases that cite this headnote

[7] **States**

⇌ Governor

Where the governor of the state resigns, and thereby the duties and powers of the office are cast on the president of the senate in his

capacity as president, the latter's resignation as senator also terminates his right to act as governor, so that, in such case, under N.J.S.A.Const. art. 5, § 12, the speaker of the house assumes the powers and duties of the governor.

10 Cases that cite this headnote

**Attorneys and Law Firms**

Warren Dixon and John P. Stockton, for prosecutor.

James S. Erwin and The Attorney General, for the State.

Argued November term, 1898, before DEPUE, VAN SYCKEL, and LIPPINCOTT, JJ.

**Opinion**

\*106 VAN SYCKEL, J.

Edward Clifford was convicted of murder in the first degree in the court of oyer and terminer of the county of Hudson, and sentenced by the said court on the 15th day of September, 1896. The proceedings at the trial were subsequently taken to the court of errors and appeals for review, and by the judgment of that court the judgment of the oyer and terminer was in all respects affirmed. Thereupon the court of oyer and terminer ordered the said Clifford to be executed on the 16th day of February, 1898. On the 14th day of February, 1898, Foster M. Voorhees, president of the senate of New Jersey, under his hand and the great seal of the state of New Jersey, directed the sheriff of the county of Hudson to suspend the execution of said death sentence until the 16th day of March, 1898. Further proceedings were taken on behalf of Clifford in the federal courts, by which the execution of sentence was stayed until November 25, 1898, when David O. Watkins, speaker of the house of assembly of New Jersey, under his hand and the great seal of the state, suspended the execution of said sentence until the 6th day of January, 1899, and ordered the said Clifford to be executed on that day. Clifford is now before this court on habeas corpus, and at his instance a writ of certiorari was allowed to bring before the court the proceedings upon which the state claims to rest the order of David O. Watkins, the validity of which is controverted in this case.

Our habeas corpus act provides that the following, among other, persons mentioned shall not be entitled to prosecute such writ: "Persons committed or detained by virtue of the final judgment or decree of any competent tribunal of civil or criminal jurisdiction or by virtue of any execution issued upon such judgment or decree, unless such judgment or decree be founded upon contract." It is clear, therefore, that the legality of the proceedings at the trial of Clifford cannot be challenged or reviewed by writ \*107 of habeas corpus; and, if the case before us presented no other question, it would be the duty of the court to dismiss the writ as improvidently granted. But the return to the certiorari, and the facts agreed upon, present a question of great importance, in which the validity of the judgment of our courts is in no wise involved. That question is whether David O. Watkins had the power to order the execution of Clifford. If the warrant issued by him was unauthorized, \*\*156 it is the province and the duty of this court to intervene for the purpose of preventing an unlawful execution of the person condemned.

The admitted facts controlling this controversy are as follows: On the 31st day of January, 1898, John W. Griggs, then governor of New Jersey, filed in the office of the secretary of state his resignation as governor, to take effect at the termination of that day. Foster M. Voorhees was then president of the senate of New Jersey, being a senator from the county of Union. He thereupon took the oath, diligently, faithfully, and to the best of his knowledge to administer the government of the state in conformity with the powers delegated to him; which oath was filed in the office of the secretary of state on the 1st of February, 1898. On the 18th of October, 1898, Foster M. Voorhees filed in the office of the secretary of state a paper writing, of which the following is a copy: "State of New Jersey, Executive Department. To the Secretary of State, and to the Governor or Person Administering the Government: I hereby resign my commission as a member of the senate from the county of Union. Foster M. Voorhees." David O. Watkins was then a member of the general assembly of the state of New Jersey from Gloucester county, and speaker of the house of assembly. \*108 On the 18th day of October, 1898, he filed in the office of the secretary of state an oath that he would diligently, faithfully, and to the best of his knowledge, administer the government of the state in conformity with the powers delegated to him. It is insisted on behalf of the prosecutor that when Foster M. Voorhees filed in the office of the secretary

of state the oath before mentioned, he ceased to be a member of the senate, and became governor of the state for the term fixed by the constitution until another governor should be elected; that his resignation of his seat in the senate was unnecessary, and could not in any wise affect the tenure of his office as governor. To support this contention the well-settled rule laid down by Chief Justice Kirkpatrick in *State v. Parkhurst*, 9 N. J. Law, 446, is relied upon: "That, if a person holding an office be appointed to and accept another office incompatible therewith, such acceptance of the second is a virtual surrender of and vacates the first." The argument is that Foster M. Voorhees became governor of New Jersey, and ceased thereby to be senator without resigning the latter office; that his subsequent resignation of the senatorship did not operate as a resignation of his office as governor, or in any wise affect his right to hold said office, or his duty to execute its prescribed functions; that under the constitution the office of governor could become again vacant only by the death, resignation, or removal of Foster M. Voorhees, and, as neither of those contingencies has occurred, there was no vacancy in the office of governor by which David O. Watkins could succeed to that office.

Assuming the premises of the prosecutor to be entirely sound, it seems to result, not only that the resignation of the senatorship by Foster M. Voorhees did not vacate the office of governor, but that the resignation of the senatorship was equivalent to a declaration that he resigned that office, and elected to retain the office of governor, which he did not resign. It is well settled, both in England and in this country, that title to an office cannot be challenged on habeas corpus, or in \*109 any other collateral proceeding. Where the official is in possession of the office, and is executing its powers under color of title, he will be regarded at least as a de facto officer, and as to the public his official acts will be efficacious. That rule, so absolutely essential to the stability of government and the protection of the governed, should be recognized in its full force. The case sub judice is peculiar and novel. The situation is this: If Foster M. Voorhees, as president of the senate, was transferred by force of the constitutional provision to the office of governor, thereby vacating his office of senator, he is still governor of New Jersey, in full possession of the powers of the office, and under obligation to perform its duties; and if he is governor de jure, in possession of the office, David O. Watkins cannot at the same time be governor de facto, and the warrant signed by him is without the slightest legal value. All that appears in the case before us is that Gov. Griggs resigned;

that Foster M. Voorhees, president of the senate, took the oath before stated; that he subsequently resigned his office of senator; that David O. Watkins is speaker of the assembly, and that he took the oath set forth. No act appears on his part to show that he is governor de facto except the oath and the signing of the death warrant. If Foster M. Voorhees was governor, and his resignation of the senatorship was not a vacation of his office as governor, he must still be governor, nothing appearing before us except his resignation as senator to show that he is not still acting and claiming to act as governor. We are constrained, therefore, to resort to an interpretation of the provisions of our state constitution touching this subject, to determine whether David O. Watkins had the right, either de jure or de facto, to do the act which has given rise to this litigation.

The clause of the constitution which provides for the vacancy in the office of governor is as follows: "In case of the death, resignation or removal from office of the governor, \*110 the powers, duties and emoluments of the office shall devolve upon the president of the senate, and in case of his death, resignation or removal, then upon the speaker of the house of assembly, for the time being, until another governor shall be elected, and qualified; but in such case another governor shall be chosen at the next election for members of the legislature, unless such death, resignation or removal shall occur within thirty days immediately preceding such next election, in \*\*157 which case a governor shall be chosen at the second succeeding election for members of the legislature. When a vacancy happens, during the recess of the legislature, in any office which is to be filled by the governor and senate or by the legislature in joint meeting, the governor shall fill such vacancy and the commission shall expire at the end of the next session of the legislature unless a successor shall be sooner appointed; when a vacancy happens in the office of clerk or surrogate of any county, the governor shall fill such vacancy, and the commission shall expire when a successor is elected and qualified." Article 5, cl. 12. In construing this clause of the constitution it must be borne in mind that it was carefully drawn by learned jurists, who knew how to express with exactness and precision the purpose they had in view. The provision is that, in case of the resignation of the governor, the powers, duties, and emoluments of the office shall devolve upon the president of the senate, and not that the president of the senate shall thereby become governor, and hold the title and the office until another governor is elected. If the framers of the fundamental law had intended to transfer the president of

the senate to the executive chair, and thereby to vacate his office of senator, it is reasonable to believe that they would have said so in no uncertain language. The language used is not ambiguous. It declares that the powers, duties, and emoluments of the office shall devolve on the president of the senate; it does not confer upon him the title of the office. The president of the senate exercises the powers of the \*111 governor; the president of the senate performs the duties of the governor; the president of the senate receives the emoluments of that office. He is still president of the senate, with the added duties required of the chief executive of the state imposed upon him. There is no language in the constitution from which it can reasonably be inferred that his office of president of the senate was to be vacated. He retains his office of senator; and as president of the senate, and not as governor, he exercises the added powers and performs the superimposed duties. That such is not only the ordinary acceptation and the reasonable interpretation of the language employed, but also the intention of those who framed this clause, is evinced in other parts of the organic law. In clauses 9 and 10 of article 5 and clauses 2 and 3 of article 8 this language appears: "The governor or person administering the government." Why is this language so sedulously used throughout the constitution? If the president of the senate becomes governor, and ceases to be senator, he is fitly and accurately described in all those clauses by the word "governor," and therefore the words "person administering the government" are not only unnecessary and superfluous, but misdescriptive. The words "person administering the government" were inserted advisedly to describe the president of the senate who might be called upon to administer the government, but who would not thereby become or be governor; and, in the absence of that language, would not be subject to the clauses referred to. Again, article 3 of the constitution provides as follows: "The powers of the government shall be divided into three distinct departments, the legislative, executive and judicial; and no person or persons belonging to or constituting one of these departments, shall exercise any of the powers properly belonging to either of the others, except as herein expressly provided." \*112 What is the significance of the words in this clause, "except as herein expressly provided"? What powers belonging to one department of government were there which it was expressly provided in the constitution might be exercised by one of the other departments? The framers of this article said by this exception, in unmistakable language, there are some powers belonging to one department of

the government which it is expressly provided in this constitution shall be exercised by a person or persons belonging to one of the other departments. In the constitution we find such a provision, and it is the only one in the constitution except the power to reprieve. That provision is the one before referred to in clause 12 of article 5, which provides that the president of the senate, or, in case of his death, resignation, or removal, the speaker of the house, shall exercise the powers of the executive department of the government in the contingency therein specified. It must, therefore, have been the understanding and intention of the constitution makers that the executive powers to be exercised by a member of the legislative department were to be exercised in the capacity of a legislator, and that made the exception in article 3 a necessary provision.

But it is argued that the president of the senate is a judge of the court of impeachment, and may try himself if he is impeached, and pardon himself if convicted. This is clearly a misconception of the situation. As president of the senate he performs the duties of the chief executive, and any malfeasance in that respect is as much a violation of his duty as a senator and as president of the senate as malfeasance in his purely legislative action would be. If impeached, it would be as a senator, and not as governor. He would be tried by the senate, which is the trial court in all cases of impeachment. While there is no express provision in the constitution that a member of the senate shall not sit as a judge on his own trial if impeached, he is nevertheless incompetent, and would be excluded. The principle \*113 that a man shall not be a judge in his own case is accepted universally by judicial tribunals. It is a rule of such fundamental character that it is deemed essential to the well-being of society, and underlies the organic law itself. If any doubt could arise upon this point, a reference to \*\*158 section 3 of article 6 of the constitution should set it at rest. That section provides that all impeachments shall be tried by the senate, and that the members of the senate, when sitting for that purpose, shall each take an oath "truly and impartially to try and determine the charge in question according to evidence." It would be the sublimity of folly to attempt to bind a senator by such an oath when he was sitting in his own case. If the president of the senate was impeached and convicted, he would cease to be senator, and thereupon the powers of the executive would devolve upon the speaker of the house. The fact that the president of the senate exercises both legislative and executive functions in the view herein taken can have no significance in this discussion, when we

advert to the fact that under the first state constitution the governor was not only the chief executive, but he was also president of the legislative council, with a casting vote, and presiding judge of the highest court in the state. The powers of government were more wisely distributed by the constitution of 1844, in which, by article 3, a member of one department could not exercise a power belonging to either of the others, except in the instances where the office of governor became vacant, and the power to reprieve was granted. If anything is needed to establish the correctness of this view, it is found in clause 13 of article 5, which reads as follows: "In case of the impeachment of the governor, his absence from the state or inability to discharge the duties of his office, the powers, duties and emoluments of the office shall devolve upon the president of the senate; and in case of his death, resignation or removal, then upon the speaker \*114 of the house of assembly for the time being, until the governor absent, or impeached, shall return or be acquitted, or until the disqualification or inability shall cease, or until a new governor be elected and qualified." In case of the absence of the governor from the state, precisely the same language is used as in clause 12 in relation to his resignation of the office, and it must necessarily receive the same interpretation. In case of his absence from the state, "the powers, duties, and emoluments of the office shall devolve upon the president of the senate until the governor returns." Will it be seriously contended that, when the governor goes out of the state, the president of the senate becomes governor until the duly-elected governor returns, and thereby vacates and loses his office as senator? That such an interpretation of this language would be adopted could not have been within the contemplation of the able men who incorporated it in this clause relating to a matter of supreme importance. It is true construction, then, when the senate was composed of 10 members of one party and 11 of the other, the governor of the state, by the simple device of passing into an adjoining state, could have vacated the seat of one senator, and thus have deprived the opposing party of a majority in that branch of the legislature. In my judgment, the framers of the constitution meant simply what they said,—that, in case the governor resigned, the president of the senate, as such, should have the powers and perform the duties of the office. Foster M. Voorhees did not become governor upon the resignation of Gov. Griggs. He still continued to be a senator, and president of the senate. He could not resign the office of governor, which he never held. When he resigned and vacated the office of senator, he ceased to

be president of the senate, and could no longer exercise the functions pertaining to the executive department. Therefore, upon his resignation as senator, the powers, duties, and emoluments of the office devolved upon David O. Watkins, the speaker of the house of assembly. \*115 He is de jure the speaker of the house, and of right, as such speaker, exercises the executive powers. He is not governor, either de jure or de facto, in the constitutional sense of that term. The act of 1898 cannot, in any respect, affect this controversy.

The question, therefore, remains to be considered whether the issuing of the warrant for the execution of Clifford was a valid exercise by David O. Watkins of the powers committed to him as speaker of the house of assembly? By the common law, where the judgment was pronounced in the oyer and terminer, a precept for execution was issued to the sheriff in the name and under the hands and seals of the three commissioners before whom judgment was given; but the precepts by justices of the jail delivery need not have been otherwise than by a simple award upon the roll. In later times there was no more done, but, after judgment was entered, the judges subscribed a calendar in paper directing the several judgments of deliverance to the parties acquitted, or the execution of the parties condemned, of which the sheriff was required to take notice openly in court. 2 Hale, P. C. p. 409. It is also quite clear that by the common law the time and place of execution were not named in the sentence; it was left to the judgment and discretion of the sheriff. The execution of the prisoner was directed by the words "sus. per coll." written against his name in a calendar prepared for the purpose. Mr. Chitty says: "The practice of the present day at the assizes is that, when all the other public business of the court is terminated, the clerk makes out in writing four lists of prisoners in the separate columns containing their crimes, verdicts, and sentences, and a blank column, in which the judge writes his pleasure respecting those capitally convicted as to be executed, respited, or transported. If the sheriff receives no special order from the judge, he executes the judgment of the law in the usual manner, according to the directions of the calendar." 1 Chit. Cr. Law, 781. \*\*159 \*116 The only instance of a warrant from the crown was in the case of high treason, where a peer of the realm was tried before parliament. Where all the rest of the judgment save the beheading was pardoned, the execution was to be under the great seal. 3 Co. Just. p. 31; 2 Hale, P. C. pp. 409-412. In felonies we think it clear that the direction for the execution of the sentence was a

judicial act, for these reasons: First, that the judgment of the court was a sufficient warrant; and, secondly, issues extraneous of those raised at the trial might be raised in suspension of the sentence, which required a judicial determination,—as, for instance, where the convict is a female, she may plead that she is quick with child; and, second, if an allegation be made that since the conviction the accused has become insane. In both of these cases, as well as others, there is to be a judicial investigation. 4 Bl. Comm. 395. At common law, reprieve might be granted either by the king, under his power to pardon, or by the court; and every court which had power to award execution had power to grant a reprieve. This reprieve was simply a suspension of the sentence. In *Rex v. Harris*, 1 Ld. Raym. 482, "counsel urged that in criminal causes, where execution is deferred, it cannot be awarded without bringing the prisoner to the bar, to which Holt, C. J., agreed, and he cited *Knightly's Case*, who was indicted for high treason, and, being arraigned at bar in the king's bench, confessed the indictment, and judgment of death was pronounced against him in Easter term, and execution was countermanded, so that Trinity term passed, and then in the long vacation they had designed to execute it, and upon that all the judges of England met to consider what could be done, and it was resolved by all that in regard a term had intervened without execution done it could not be awarded without bringing *Knightly* to the bar; and, per Holt, C. J., it would be the same thing if Trinity term had not passed, but only begun, so that *Knightly* was imprisoned \*117 until Michaelmas term, and in the meantime he obtained a pardon." In *Sir Walter Rawley's Case* the question was whether a privy seal was sufficient for execution. It was resolved on a conference between all the judges that the prisoner ought to be brought to the court, and then demanded if he could say anything, etc., and that it was not a legal course that he should be commanded by a privy seal or great seal to be executed without being demanded what he hath to say, etc. Hut. 21. If the governor can intervene and have execution by virtue of his warrant, the prisoner will be deprived of the right of a judicial determination of matters which in law are subjects of judicial cognizance. If the order which shall carry the judgment of the court into effect is one within judicial control,—as we deem it to be,—then the several constitutional provisions are to be considered. By the constitution of 1776 the governor had no power to pardon or to grant reprieve. Whatever power there was in that respect was vested in the governor and council; that is the court of appeals.



Under the power to pardon at common law the power of the king to reprieve was included, and the power of reprieve was not vested in the governor, but in the governor and council. By the act of November 16, 1820, the governor, with the advice of his privy council, had power to suspend execution of the sentence of death until the rising of the next meeting of the governor and council. By the act of 1821, where such a reprieve was granted, and a pardon was not granted at the next meeting, it was made the duty of the governor and council to appoint a time for the execution of the criminal. Elmer's Dig. p. 118. By the constitution of 1844 the executive, with the concurrence of the chancellor and of the six judges of the court of appeals, or a major part of them, may grant pardons after conviction (article 5, cl. 10); and by article 5, cl. 9, the executive was \*118 given power to grant reprieve to extend until the expiration of a time not exceeding 90 days after conviction. By the act of April 16, 1846, it is provided that, where a reprieve is granted by the governor, the governor shall issue his warrant to the sheriff of the proper county, commanding him to execute the sentence at such time as shall therein be appointed and expressed. Revision, p. 290, § 123. Power to reprieve is limited to a postponement of the execution for 90 days after the conviction; that is, after the sentence in the court below. By article 3 of the constitution of 1844, before set forth, the governor is prohibited from exercising any legislative or judicial power except as in said constitution is expressly provided. The express provision of the constitution on this subject, so far as concerns the executive, is that he shall have power to suspend the sentence of the court for a period not exceeding 90 days. The term "reprieve," as used both in the constitution and in the statute, is merely the postponement of the sentence for a time. It does not and cannot defeat the ultimate execution of the judgment of the court; it merely delays it. In the exercise of the power to reprieve for 90 days, which is the constitutional limit of that power, the governor has, as an incident to that power, the right to say that at the expiration of that time the sheriff shall no longer be stayed, but shall proceed to execute the judgment of the court. The reprieve, to be in proper form, should fix

a day not exceeding 90 days from the sentence, when it shall expire, and direct the execution to be proceeded with at the expiration of that time. The execution takes place then, not by order of the governor, but in virtue of the judgment of the court. The governor simply says: "The prisoner is adjudged to be executed on a certain day. I direct the execution to be postponed until a future day specified, and then the execution is to be proceeded with."

\*119 In *Ex parte Flemming*, 60 Miss. 910, \*\*160 the court said: "The power to respite necessarily carries with it the power to fix another and later day for the execution of the death sentence, since the respite is nothing more than a suspension of the sentence until its own expiration. The subsequent execution takes place, not by virtue of a new sentence, but by reason of the expiration of the temporary suspension of the original sentence which was caused by the respite." *Sterling v. Drake*, 29 Ohio St. 457, is to the like effect. If there was a doubt in respect to the proper procedure in this respect, the long-continued practice of the executive department to make orders for the execution of sentences where there has been a reprieve will justify the construction that such orders may be issued, provided that the time for execution is not extended beyond the 90 days. That practice, commencing in 1853, has been pursued until the present time. The order certified into this court was made after the expiration of the 90 days, and is without any legal or constitutional warrant, and must be set aside. The order made in the case of *Martin* by Gov. Ludlow does not conflict with the views herein expressed. The reprieve and order were both within 90 days from the time of conviction, and, that time having elapsed, *Martin* was executed, not under the governor's warrant, but under an order made by the court of oyer and terminer. The traverse of the sheriff's return to the writ of habeas corpus must be stricken out, and the prisoner remanded. Let rules be entered accordingly.

DEPUE and LIPPINCOTT, JJ., concur.

#### All Citations

63 N.J.L. 105, 34 Vroom 105, 42 A. 155

121 Okla. 83  
Supreme Court of Oklahoma.

FITZPATRICK

v.

McALISTER, Secretary of State Election Board, et al.

No. 17513.

|  
June 28, 1926.

*Syllabus by the Court.*

Article 6 of the Constitution defines the executive department of the state, and names certain officers who shall be vested with executive powers.

Section 2 of said article is as follows: "The supreme executive power" of the state "shall be vested in a chief magistrate, who shall be styled 'the Governor \* \* \* of Oklahoma.'"

Section 4 of said article contains the following provision, to wit: "The Governor, secretary of state, state auditor, and state treasurer shall not be eligible immediately to succeed themselves."

Sections 15 and 16 are in pari materia to the extent that they relate to and form part of, the entire purpose and scheme provided for in article 6, and to such extent only. They are independent of each other to the extent that they deal with, and provide for, the distinctly different conditions which each does provide for.

Said section 15 provides for such vacancies only as may be caused by the elected Governor's temporary absence from his office, and where, though absent from his office, he still retains his right to the office, still possesses his right, upon his return to assume the duties and exercise the powers of his office, and further provides that, during such vacancy, if the Lieutenant Governor becomes incapable of performing the duties of the office, then the President of the Senate may act as Governor, and, in case of his disability, the Speaker of the House may act as Governor during such vacancy, thus making complete and adequate provisions for taking care of the peculiar contingency and condition which it seeks to provide for, viz. vacancies occasioned by a temporary absence or inability of the

Governor, where the Governor still has the right to return to his office and assume its duties, and to this extent section 15 is independent of section 16.

Const. art. 6, § 16, is as follows: "In case of impeachment of the Governor, or of his death, failure to qualify, resignation, removal from the state, or inability to discharge the powers and duties of the office, the said office, with its compensation, shall devolve upon the Lieutenant Governor for the residue of the term or until the disability shall be removed."

Thus section 16 makes provision for a wholly different contingency and condition to that provided for in section 15. Section 16 provides for occasions where the individual rights of the elected Governor, as distinguished from the public rights, have been terminated, where his rights to return to the office and assume its powers have been foreclosed, and, in order to protect the right of the public to a continuation of the functions of government, in such case, section 16 provides that the office of Governor, with its compensation, shall devolve upon the Lieutenant Governor for the residue of the term, thus making complete and adequate provision for the particular contingency and condition \*570 which it seeks to provide for, and to this extent section 16 is independent of section 15.

Const. art. 6, § 16, creates no vacancy, contemplates no vacancy, mentions no vacancy. It simply makes provision for an uninterrupted functioning of the office of chief executive with a duly commissioned officer at the head of such department thereby avoiding a vacancy.

When the elected Governor becomes impeached, as is the condition presented here, the office of Governor automatically devolves upon another. The person on whom such office devolves necessarily fills such office, exercising all the powers, discharging all the duties, and enjoying all the emoluments, compensation, honor and prestige which pertain to such office. The person who thus fills the office of chief magistrate is styled "the Governor of Oklahoma." He is the Governor for the simple reason that he governs. He governs officially for the reason that section 16 expressly vests him with authority to do so. Therefore he is the official Governor, and, being the official Governor, he is rendered ineligible to succeed himself by the inhibition contained in section 4, art. 6, of the Constitution.

*Additional Syllabus by Editorial Staff.*

“Devolve” means to roll or tumble down upon, or descend, to be transmitted by course of events, or by operation of law, to transfer from one person to another (citing Words and Phrases, First and Second Series, “Devolve”).

Appeal from District Court, Oklahoma County; William H. Zwick, Judge.

Suit by Kirby Fitzpatrick against W. C. McAlister, Secretary of the State Election Board, and others for injunction. From a judgment for defendants, plaintiff appeals. Reversed, with directions.

Branson, V. C. J., and Nicholson, C. J., dissenting.

West Headnotes (5)

[1] States

↔ Governor

Constitutional provision relating to devolution of powers and duties of Governor on his inability to discharge duties of his office, due to impeachment, etc., is independent of provision for vacancies caused by elected Governor's temporary absence from office. Const. art. 6, §§ 15, 16.

Cases that cite this headnote

[2] Public Employment

↔ Term limits

States

↔ Eligibility to office

On impeachment of elected Governor, person succeeding him is official Governor, and is ineligible to succeed himself. Const. art. 6, §§ 2, 4, 16.

1 Cases that cite this headnote

[3] Public Employment

↔ Vacancy

Public Employment

↔ Temporary absence or incapacitation

States

↔ Term of office, vacancies, and holding over

States

↔ Resignation, suspension, and removal or impeachment of officers

Constitutional provisions relating to devolution of duties on temporary vacancy in Governor's office or his inability to discharge duties of his office due to impeachment, etc., held in pari materia to extent of relating to and forming part of scheme of government, and independent of each other in so far as they deal with, and provide for, distinctly different conditions. Const. art. 6, §§ 1, 2, 4, 15, 16.

Cases that cite this headnote

[4] Public Employment

↔ Occurrence and Existence; What Creates or Constitutes Vacancy

States

↔ Term of office, vacancies, and holding over

Constitutional provision as to devolution of Governor's powers on his inability to discharge duties of his office, due to impeachment, etc., held to create no vacancy, and to contemplate none. Const. art. 6, § 16; Const. U.S. art. 2, § 1.

Cases that cite this headnote

[5] Public Employment

↔ Impeachment or address

States

↔ Resignation, suspension, and removal or impeachment of officers

When elected Governor is impeached, his office automatically devolves on another who exercises all powers of such office. Const. art. 6, §§ 2, 4, 16.

Cases that cite this headnote

**Attorneys and Law Firms**

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C. B. Stuart and J. D. Lydick, both of Oklahoma City, Jos. C. Stone, of Muskogee, N. A. Gibson, of Tulsa, Frank Dale, of Guthrie, John Barry, of El Reno, and J. H. Gordon, of McAlester, for defendant in error M. E. Trapp.

**Opinion**

HARRISON, J.

This proceeding was begun in the district court to test the eligibility of Mr. M. E. Trapp to succeed himself in the office of Governor.

Mr. Trapp had theretofore filed his application with the state election board as a candidate for nomination for Governor, and plaintiff sought to enjoin said board from certifying Mr. Trapp's name to the state board of affairs, and to enjoin the state board of affairs from having Mr. Trapp's name printed as a candidate for Governor on the official ballots to be voted at the forthcoming primary election to be held in August of this year.

The trial court denied the injunction, and plaintiff appealed. Plaintiff contends that, under the provisions of article 6 of the Constitution, Mr. Trapp is not eligible to the office of Governor. Defendants contend that he is eligible. The controversy arose out of the following facts, viz.:

At the November election, 1922, J. C. Walton was elected Governor, and defendant M. E. Trapp was elected Lieutenant Governor, and both went into office in January, 1923. In November, 1923, Mr. Walton was impeached and removed from office by the Senate sitting as a court of impeachment, and thereupon, by virtue of section 16, art. 6, of the Constitution, the office of Governor devolved upon the Lieutenant Governor, who was defendant Mr. M. E. Trapp, who has occupied the

office of Governor, and exercised the powers of Governor, from the date of said impeachment until the present date, and is now occupying such office with the powers thus conferred by said section 16, and is seeking the nomination for Governor, and to ultimately succeed himself to the office of Governor at the general election in November of this year.

Plaintiff in error contends that under section 16, art. 6, of the Constitution, the office of Governor devolved upon the Lieutenant Governor immediately upon the impeachment of Governor Walton, and that thereupon Lieutenant Governor Trapp became the Governor in fact and in law, and that, having held and filled the office of Governor, and exercised the powers of Governor, and enjoyed the emoluments of the office of Governor from the time said office devolved upon him until the present time, he is not now eligible to succeed himself to the office of Governor at the ensuing term because of the inhibition contained in section 4, art. 6, of the Constitution, which is as follows:

“The Governor, secretary of state, state auditor, and state treasurer shall not be eligible immediately to succeed themselves.”

\*571 On the other hand, it is contended by defendants in error that, upon the impeachment of Mr. Walton, there became a vacancy in the office of Governor, which has never been filled, but which has existed to the present time, and now exists, and that, though the powers, duties, and emoluments of the office of Governor devolved upon Lieutenant Governor Trapp upon the impeachment of Governor Walton, yet Mr. Trapp did not thereby become Governor in every sense of the word, but became merely Acting Governor during a vacancy, and that, not being Governor, but being merely “Acting Governor,” he is therefore not rendered ineligible by the inhibition contained in said section 4, art. 6.

Defendants in error further contend that, by harmonizing the provisions of sections 15 and 16 of said article 6, and construing the two sections together, it will be seen that no vacancy was caused in the office of Lieutenant Governor by the devolution of the office of Governor upon the Lieutenant Governor, and no vacancy now exists in the office of Lieutenant Governor, and that therefore Mr. Trapp is still Lieutenant Governor, but that a vacancy does exist in the office of Governor by reason of Governor

Walton's impeachment and removal from office, and that Mr. Trapp's being merely "Acting Governor" during such vacancy does not fill such vacancy, and therefore the inhibition in said section 4, art. 6, does not apply to him; that said inhibition applies only to an "elected Governor," and does not apply to one upon whom the "office of Governor" has devolved by virtue of said section 16.

From the foregoing may be seen the respective positions of the parties to this controversy, and that the main question to be determined is whether, under the existing conditions, the inhibitive provision in said section 4 applies to Mr. Trapp.

The questions involved have all been briefed and orally argued by the parties hereto, and, in addition to the briefs and oral arguments of parties in the instant case (case No. 17520, J. B. A. Robertson v. State Election Board and M. E. Trapp, 248 P. 583), which involves the identical questions herein presented, and seeks the very same relief herein sought, have also been briefed, and were orally argued and submitted with this case, the briefs in both cases to be used in each.

It is notable that, while numerous authorities have been cited in support of the contentions of the parties, yet no case has been cited where the identical conditions here presented, and the identical questions of law here involved, have ever been passed upon and decided by any court of last resort. We have been unable to find any case ourselves that is at all similar in all of its phases.

Though plaintiff in error is represented by able and diligent counsel, and defendant in error represented by a remarkable array of powerful lawyers, yet no case directly in point has been cited; that is, no case where any candidate has ever aspired to any office in the face of a similar constitutional inhibition against his immediately succeeding himself in office. Hence, in the absence of a controlling decision, it becomes necessary to search the provisions of our Constitution for a solution of the problem presented, guided in so doing by such light as the partially analogous cases cited may afford us. Article 4 of our Constitution distributes the powers of state government into three separate departments, viz. legislative, executive, and judicial.

[1] Article 6 defines the executive department, and names certain state officers who shall be vested with executive power. The provisions of said article 6 pertinent to the questions under consideration are:

Section 1, which says:

"The executive authority of the state shall be vested in a Governor, Lieutenant Governor, secretary of state, state auditor, Attorney General, state treasurer, superintendent of public instruction, state examiner and inspector, chief mine inspector, commissioner of labor, commissioner of charities and corrections, commissioner of insurance, and other officers provided by law and this Constitution, each of whom shall keep his office and public records, books, and papers at the seat of government, and shall perform such duties as may be designated in this Constitution or prescribed by law."

Section 2, which says:

"The supreme executive power shall be vested in a chief magistrate, who shall be styled 'The Governor of the state of Oklahoma.'"

Section 4, which, after prescribing the length of term of office of certain state officers, including the Governor, says:

"The Governor, secretary of state, state auditor, and state treasurer shall not be eligible immediately to succeed themselves."

Section 15, which says:

"The Lieutenant Governor shall possess the same qualifications of eligibility for office as the Governor. He shall be President of the Senate. but shall have only a casting vote therein, and also in joint vote of both houses. If, during a vacancy of the office of Governor, the Lieutenant Governor shall be impeached, displaced, resign, die or be absent from the state, or become incapable of performing the

duties of the office, the President, pro tempore, of the Senate, shall act as Governor until the vacancy be filled or the disability shall cease; and if the President, pro tempore, of the Senate, for any of the above enumerated causes, shall become incapable of performing the duties pertaining to the office of Governor, the Speaker of the House of Representatives shall act as Governor until the vacancy be filled or the disability shall cease. Further provisions for succession to the office of Governor shall be prescribed by law."

\*572 Section 16, which says:

"In case of impeachment of the Governor, or of his death, failure to qualify, resignation, removal from the state, or inability to discharge the powers and duties of the office, the said office, with its compensation, shall devolve upon the Lieutenant Governor for the residue of the term or until the disability shall be removed."

These are the sections of said article 6 which bear directly upon the question before us, viz. whether the defendant M. E. Trapp is eligible to succeed himself in the office of Governor. It is observed that in section 1, art. 6, supra, the Lieutenant Governor is named as one of the executive officers of the state, and is vested with executive authority. He is expressly made a part of the executive department. As to what his executive powers are, and when and how he may exercise them, will be seen in the further course of our analysis.

By section 2, supra, it will be seen that the supreme executive power is in reality vested in a chief magistrate, who shall be styled "the Governor \* \* \* of Oklahoma." The real executive head, therefore, the office in whom the supreme executive power of the state is in intendment and in reality vested, is a chief magistrate. It is in the office of chief magistrate that the supreme executive power is lodged. The person who exercises the supreme executive power of the state does so by virtue of his being the chief magistrate.

The person on whom such office by the Constitution devolves necessarily fills such office, and exercises all powers lodged in such office, and is charged with all the duties pertaining to such office, and enjoys all the emoluments, compensations, honor, and prestige which belong to such office. The person who thus fills the office of chief magistrate is styled "the Governor of Oklahoma." He is the "Governor" for the simple reason that he governs. A Governor is one who governs. He governs officially for the reason that section 16 vests him with authority to do so, and requires him to do. Therefore he is the official Governor. The provision of section 4, supra, speaks for itself. It simply says in simple words:

"The Governor \* \* \* shall not be eligible immediately to succeed himself."

Section 15, supra, prescribes that the Lieutenant Governor shall possess the same qualifications of eligibility for office as the Governor. It also imposes other than executive duties upon the Lieutenant Governor, viz.: He shall be president of the Senate, and shall have a casting vote therein, and a casting vote also in joint session of both houses. These duties are not imposed upon him, nor these powers conferred upon him, because he is one of the executive officers of the state, for they are not executive duties—they are legislative duties. The Constitution does not say why these duties are imposed upon the Lieutenant Governor. It may have prescribed such duties for him because, as a rule in states of the Union, similar duties and powers are generally given to the Lieutenant Governor, and because, under the federal Constitution, the Vice President performs similar duties, such being the general custom and general conception of the proper and harmonious method of running the entire machinery of our government. But, whatever may have been the reason for giving these powers and duties to the Lieutenant Governor, it is a fact that they are given him by our Constitution.

Said section 15 further provides that, if, during a vacancy of the office of Governor, the Lieutenant Governor shall be impeached, or become incapable of performing the duties of the office, the President pro tempore of the Senate shall act as Governor until the vacancy be filled, and, if the President of the Senate, for any reason, becomes incapable of performing the duties pertaining to the office of Governor, then the Speaker of the House shall act as

Governor until the disability ceases. Now let it be observed that the words "shall act as Governor" are not applied to the Lieutenant Governor, but are applied only to the President of the Senate and Speaker of the House in cases where the Lieutenant Governor is under a disability. The words "shall act as Governor," or, as defendants in error put it, "the Acting Governor," are not anywhere in the Constitution applied to the Lieutenant Governor.

They are applied nowhere else, nor to any one else, except to the President of the Senate and Speaker of the House, and to them only in cases where "the Lieutenant Governor becomes incapable of performing the duties of the office." This section nowhere denominates the Lieutenant Governor as a mere "Acting Governor," nor does it imply that he is regarded as only "an Acting Governor." It says, "or become incapable of performing the duties of the office," meaning the office of Governor. Then, in such case, the President of the Senate shall act as Governor, and, if he be disqualified, then the Speaker of the House shall act as Governor. The Lieutenant Governor is nowhere spoken of as "Acting Governor."

[3] But section 16, supra, provides that, in case of impeachment of the Governor, the said office, with its compensation, shall devolve upon the Lieutenant Governor. This section does not say, "upon the Lieutenant Governor who shall act as Governor," but it says:

"The said office, with its compensation, shall devolve upon the Lieutenant Governor for the residue of the term or until the disability shall be removed."

It means that all the powers, duties, and responsibilities of the office of Governor shall devolve upon the Lieutenant Governor, and \*573 that all the emoluments, compensation, honor, dignity, and prestige of the said office shall be his. He is thereby made the chief magistrate in fact by the plain language of the Constitution. He is vested with all the powers, and charged with all the duties and responsibilities, and is given all compensations, which belong to the chief magistrate, in whom the supreme executive power of the state is vested. "The said office, with its compensation, shall devolve upon the Lieutenant Governor."

But, it is insisted by defendants in error, persistently and repeatedly, that the two sections (15 and 16) must be construed together, and that, by construing them together, we find a vacancy in the office of Governor, a vacancy which, they claim, we are not at liberty to read out of the Constitution, a vacancy which is not filled by the Lieutenant Governor, as he is a mere "Acting Governor," a vacancy which the law makes no provision for filling except by an election. But, upon examination of the two sections, we find that, by either construing the two sections together, or by construing them separately, we nowhere find the Lieutenant Governor referred to as "Acting Governor." Furthermore, we nowhere find the words "shall act as Governor," except in cases where the Lieutenant Governor is, for some reason, rendered incapable of performing the duties of Governor. Then the President of the Senate or Speaker of the House shall "act as Governor."

Under section 16, when the Governor is impeached, and his rights become foreclosed, the office devolves upon the Lieutenant Governor.

[6] The word "devolve" is defined by lexicographers and in law dictionaries as meaning to roll or tumble down or descend; to be transmitted by course of events, or by operation of law; to transfer from one person to another; to pass by transmission to another; to pass from a person dying to a person living; to pass from the possessor to a successor. See Webster's Int. Dict. 1923; Funk & Wagnall's Stand. Dict.; Black's Law Dict.: 14 Cyc. 286; Words and Phrases, both First and Second Series; 18 C. J. 1034, and notes.

Hence, when Governor Walton became impeached, when the judgment of the high court of impeachment was pronounced, the official powers of Mr. Walton ended, his rights of tenure were ended, and the office of chief magistrate of the state, the office in which is lodged the supreme executive powers of the state, automatically, instantaneously with the ending, descended upon, passed down to, devolved upon, Mr. Trapp. There was no interim, no vacancy, no delay in the transmission, no interruption in, no suspension of, the functions of government—they passed right on.

By the judgment of impeachment, Mr. Walton's authority ceased; his term and tenure ended; his individual rights were foreclosed; "the said office, with its compensation,"

devolved automatically upon Mr. Trapp. There was no vacancy created, none intended, none contemplated. It was never intended that, under the conditions provided for in section 16, there should be an interim during which the state would have no Governor, and the functions of government be suspended, but, on the contrary, it is wisely provided in said section 16, that, when by operation of law, or by reason of other circumstances, the authority of the elected Governor is terminated, his tenure ended, and his individual rights foreclosed, the said office (the Governor's office), with its compensation, shall devolve upon another, in order that the functions of government may continue without interruption, and the public rights be protected.

Section 16 deals with conditions wholly different and distinct in their very nature from the conditions dealt with in section 15, and to this extent the two sections are independent of each other. It is contended by defendants in error that the two sections must be construed together to give effect to either, and the case of *Ex parte Crump*, 10 Okl. Cr. 133, 135 P. 428, 47 L. R. A. (N. S.) 1036, in which Judge Doyle, who delivered the opinion of the Criminal Court of Appeals, held that the two sections (15 and 16, article 6) are in *pari materia*.

[2] We concur with the learned judge in the view that said sections 15 and 16 are in *pari materia* to the extent that they relate to, and form a part of, the entire purpose of article 6 to the extent that they aid in providing for, and constitute, an element of the entire scheme intended to be provided for in article 6, but to such extent only. They are independent of each other to the extent that they deal with, and completely provide for, the distinctly different conditions which each does provide for.

Section 15 anticipates vacancies such as may be caused by the Governor's absence from the state, and other circumstances which may cause a temporary absence of the Governor from his office, and refers to such occasions as vacancies, but these are occasions where, though the Governor may be absent from his office, though he may be sick or out of the state, and temporarily away from his office, yet he still retains his right to the office. His right to the office has not been terminated, his term nor tenure has not been ended, by operation of law by judicial proceedings, nor by other circumstances. He still has, still possesses, his right to the office, and, upon his return, may assume the duties and exercise the powers of his office. Such instances the Constitution treats as vacancies, and

provides for the filling of such vacancies, and that, when either the President of the Senate or Speaker of the House fills such vacancies, he merely acts as Governor during such vacancy.

[4] But section 16 deals with a wholly different \*574 and distinct condition—a condition which was deemed essential to be separately dealt with, and one which past history has shown to have been necessary to be dealt with, viz. a condition where the chief magistrate, the one who is styled “the Governor of Oklahoma,” has been impeached and removed from office, where his rights have been foreclosed and his term and tenure ended. In such case there is no vacancy; therefore no need to speak of a vacancy. The office immediately devolves upon the Lieutenant Governor. Hence section 16 does not speak of a vacancy.

It is unnecessary to draw a distinction between a “temporary vacancy” and a “permanent vacancy.” It is unnecessary to say whether there is a distinction between the two terms. Section 15 unquestionably has reference to temporary vacancies, and to temporary vacancies only, and deals with, and provides for, temporary vacancies only. Nowhere does article 6 speak of a permanent vacancy. Section 16, in dealing with the conditions which it provides for, does not recognize a vacancy of any kind, but provides that the powers of government may continue right on; that the ship of state, as it were, may continue its course without interruption, and with a duly commissioned chief executive at the helm.

[5] Defendants in error say:

“Section 15 is the sole and only section of the Constitution which authorizes any one to exercise and perform the powers and duties of the office of Governor other than the elected Governor himself.”

This contention has no support from the Constitution. If it were true, then the Lieutenant Governor has no authority under any circumstances to exercise the powers and discharge the duties of Governor and draw a Governor's pay. For it must be clearly seen that section 15 does not in express words give to the Lieutenant Governor any such powers and privileges, but does expressly say that in certain cases the President of the Senate or, in



case of his disability, the Speaker of the House may act as Governor, but it nowhere expressly says that the Lieutenant Governor, under any circumstances, may act as Governor. Hence, if section 15 is the only section which authorizes the Lieutenant Governor to act as Governor, and it be true, as defendants contend, that he has no authority except such as is expressly given him, then he has no authority, under any circumstances, to exercise the powers of Governor, for it is only by implication that section 15 authorizes him to exercise such powers. The following language in said section 15, to wit:

“If, during a vacancy of the office of Governor the Lieutenant Governor shall be impeached, \* \* \* or become incapable of performing the duties of the office, the President, pro tempore, of the Senate, shall act as Governor; \* \* \* and if the President, pro tempore, of the Senate, \* \* \* shall become incapable of performing the duties pertaining to the office of Governor, the Speaker of the House of Representatives shall act as Governor until the vacancy be filled, \* \* \*”

—is the only language in section 15 which even implies that the Lieutenant Governor shall ever, at any time, exercise the powers of Governor, or even “act as Governor.” However, the above language does imply that, in case of a temporary absence of the Governor, that is, such a temporary absence as renders him incapable of discharging his duties, then the Lieutenant Governor may exercise a Governor’s powers and perform a Governor’s duties, unless, for some of the reasons mentioned, he is rendered incapable of doing so, but it is by implication only that he derives such authority from section 15. But, as heretofore pointed out, section 16 expressly says:

“In case of impeachment of the Governor \* \* \* or inability to discharge the powers and duties of the office, the said office, with its compensation, shall devolve upon the Lieutenant Governor.”

As to the contention of defendants in error that the inhibition in section 4, supra, applies to an elected Governor only, and does not apply to one on whom

the office of Governor devolves, we must answer that the Constitution says no such thing. The Constitution says the Governor shall not be eligible immediately to succeed himself. This inhibition is not confined to an elected Governor, at least by any express language, nor is it confined to any particular length of term, nor is its application restricted to a four-year term. It simply says the Governor shall not be eligible immediately to succeed himself. In its literal sense, and its every practical working sense, a Governor is one who governs, and, conversely, one who governs is Governor. The language of section 4 in its literal significance applies to the one who is governing at the time the circumstances arise for an election to succeed himself, and does not except any one from the force of the ineligibility clause merely because he may have been governing for a short period only.

Defendants in error contend that it should apply only to an elected Governor who has served a four-year term, and that it should not apply to a portion of a four-year term; that, if the elected Governor should be impeached one week or one day, before the time for filing as a candidate to succeed himself, under such circumstances it would be absurd to apply the provision of said section 4. As to whether these suggested conditions may ever become possibilities, we are not called upon to decide. The present case does not present such a condition, and it would be mere dictum for us to say what should be done under such remote possibilities. It might suffice to say, however, that, if such \*575 conditions should arise, the courts will cross that bridge when it is reached.

Defendants in error argue also that the plaintiff’s contention would bring about a condition wherein the elected Governor, if he saw fit to do so, in order to prevent the Lieutenant Governor from running for Governor, might resign or be removed or impeached a week or a day before the time for announcing as a candidate, and thereby force the Lieutenant Governor to act as Governor during the remaining week or day of the term, and then, by applying section 4, prevent the Lieutenant Governor from running for office. This is another bridge which the courts will cross when it is reached. In this connection, however, it is perceived that such remote possibilities might as easily come from the opposite direction. For example, an elected Governor might fail to qualify; he might die on the day before his time for taking office. In such case the office of Governor would devolve upon the Lieutenant Governor for four years, and he might serve until the time arrived for filing as a candidate and

resign, and thereby make it the duty of the President of the Senate or Speaker of the House to act as Governor, with an understanding with the President of the Senate or Speaker of the House that no change would be made in governmental policies, nor in the numerous appointive boards and employees, and again announce and run for Lieutenant Governor, with an understanding with some person running for Governor that, if elected, he would not qualify, but would leave the powers and duties of the office of Governor to devolve upon the Lieutenant Governor, who, if he should be elected as Lieutenant Governor, would then have another four-year term in the office of Governor, and the same proceeding might possibly be repeated for a number of terms, at the end of which terms he could run for Governor himself, claiming that he had been only "Acting Governor," thus perpetuating himself in the office of Governor, the very condition which section 4 expressly prohibits. So, while it is seen that these theoretic possibilities may work both ways, yet none of such conditions are before us now, and that bridge will be crossed when it is reached.

We now have before us an actual and clearly defined problem with the provisions of the Constitution as our only rule for solution. The authorities cited afford us very little light. None of them deal with conditions anything like similar to the conditions here presented, and none of them have been construed constitutional provisions identical with ours.

It is unnecessary to give space to the constitutional provisions of other states, nor to a discussion of the effect which such provisions have in other states, nor is it proper for us to interpret the decisions from other states to the extent of saying what effect they have on such states, but we may properly say what application the decisions of another state has to the law of our state, and may properly say what degree of persuasiveness they have upon us in construing the laws of our state, and, as no decisions have been cited exactly in point, and no constitutional provisions construed identical with ours, we are forced to construe our own Constitution with the effect it has upon our state in view. Again referring to the Crump Case, *supra*, and to the case of *People v. Wells*, 2 Cal. 198, which is quoted from with apparent approval by the Criminal Court of Appeals in the Crump Case, and which is separately cited by defendants, we find that neither of those decisions deal with a condition at all similar to the one here presented. In the Crump Case the court was dealing with an occasion of temporary

absence of the Governor from the state; the question being whether during such temporary absence the Lieutenant Governor had authority to issue pardons. The court was dealing with an absence, a vacancy, which was essentially temporary. The facts in the case and the reasoning of the court show that it was essentially temporary, and that the court had such a condition in view; looked at it from that standpoint of a temporary vacancy in reaching its final conclusion. In that case, the absence of the Governor was only a temporary absence, and the vacancy created in his office was only a temporary vacancy. The Governor, though temporarily absent, still had the constitutional right, upon his return, to assume the duties of the office of Governor, but, under the conditions here presented, the impeached Governor has no right to return and oust the present Governor and assume the powers of the office of Governor. Mr. Walton's rights to the office, his tenure of office, his term of office, which as the California case says, belonged to him as an individual, have been terminated and foreclosed by the court of impeachment, but, as was also held in the California case, the people's right to a continuous functioning of the government has not ceased.

These are the conditions which we have here, and section 16 provides for just such conditions. Hence neither the Crump Case nor the California case are controlling in this case further than heretofore indicated. Defendants lay stress upon the concluding words of section 16, to wit, "or until the disability shall be removed." We are dealing with a condition where the disability cannot be removed; the law provides no means for its removal; it has become final; and it is our duty to avoid speculations and deal with the actual condition which confronts us.

Plaintiff in error cites three Oregon cases, viz. *Chadwick v. Earhart*, 11 Or. 389, 4 P. 1180; *Olcott, Gov., v. Hoff, Treas.*, 92 Or. 462, 181 P. 466; *State ex rel. Roberts v. Olcott*, 94 Or. 633, 187 P. 286, in support of his contentions.

We do not feel at liberty to say what effect the decisions of the court of Oregon have upon \*576 the state of Oregon, but it is obvious to us that the conclusions were reached from a different standpoint than the standpoint here presented. The first Oregon case was dealing with the mere sordid question of salary, the question being whether the secretary of state, under certain conditions, was entitled to the Governor's salary, and in the second case also the question of salary appears to have been the bone of contention. In the third case the court

followed the previous holding under the doctrine of stare decisis. However, it was held in the Oregon cases that the person on whom the office of Governor devolves becomes Governor.

The case of Futrell v. Oldham, 107 Ark. 386, 155 S. W. 502, Ann. Cas. 1915A, 571, is cited by defendants in error, but that case is not in point here. In the opinion the court said:

“The case turns on the question whether, on the resignation of the Governor, the then incumbent of the office of President of the Senate succeeded to the vacated office, or whether merely as such President of the Senate the powers, duties and emoluments of the office \* \* \*

Section 16, art. 6, Constitution of Oklahoma:

“In case of impeachment of Governor, or of his death, failure to qualify, resignation, removal from the state, or inability to discharge the powers and duties of the office, the said office, with its compensation, shall devolve upon the Lieutenant Governor for the residue of the term or until the disability shall be removed.”

It will be seen that the only difference between the two Constitutions, both dealing with the same conditions, is that the federal Constitution says, “the same shall devolve on the Vice President,” while the Oklahoma Constitution says, “the said office, with its compensation, shall devolve upon the Lieutenant Governor.” Defendant in error argues that no court has ever decided that the Vice President became President upon the death of the President, and appears to discount the departmental construction which the various departments of the federal government, including the federal Congress, have placed upon the above provisions of the federal Constitution. This construction has stood since April 4, 1841, when, upon the death of President Wm. H. Harrison, Vice President Tyler became President of the United States. For almost a century this construction of the federal Constitution has stood without question. It has been recognized as correct, and acquiesced in, not only by the departments of state and all the states of the Union, but

devolved upon him while he remained President.”

This case is not in point here because it deals with a different condition, and for the further reason that the President of the Senate is not made an executive officer, nor constituted a part of the executive department by the Constitution of Arkansas, as is the Lieutenant Governor constituted by the Oklahoma Constitution. Plaintiff in error also cites section 1, art. 2, of the Constitution of the United States, and the instances, six separate occasions, where, upon the death of the President, the Vice President has succeeded to the office of President and become President of the United States, and has been so recognized. Said section of the federal Constitution is identical with ours, with the exception that ours is the stronger and more definite, as may be seen from the following parallel:

Section 1, art. 2, Constitution of the United States of America:

“In case of the removal of the President from office, or of his death, resignation or inability to discharge the powers and duties of the said office, the same shall devolve on the Vice President.”

officially recognized by every civilized government of the world.

On each occasion where the President of the United States has died, the Vice President has immediately succeeded to the office of President as President of the United States, and thereupon the government of the United States has at once, through its consular offices, notified all governments of the world of the change in Presidents.

Defendant suggests that no court has ever pronounced that to be the law. To our mind, it is so clearly correct that no one has ever presumed to test its correctness in the courts. Therefore it should have greater weight than an ordinary departmental construction, not only because it has stood for almost a century, but because it has been recognized as the correct conception of our system of government, and because, for eighty-five years under this construction, there has been no friction in the machinery of government by reason of such construction. While this construction of the federal Constitution is entitled to weight, yet we are not confined to such construction as our

sole guide in construing our own. The plain language of our Constitution, under the universally accepted meaning of the language used, is sufficient unto itself.

Defendant contends that every man has a right to run for Governor, and if elected, to become Governor once. This we concede, provided he possesses the constitutional qualifications for the office, but he must be thirty years of age; must have been a resident of the state three years; and must not be immediately succeeding himself in the office of Governor. Possessing these qualifications, he may become Governor as often as the people elect him, but, lacking in either of them, his personal ambitions to become Governor are not to be weighed in the scales with the public interest and welfare.

The framers of the Constitution and the people in adopting the inhibition in section 4, supra, must have had reasons for so doing. The Constitution itself does not say what those reasons were, and we shall not assume \*577 to say what they were, but we may say what effect such provision has, and do say that it has a most wholesome and much-needed effect. We judicially know that under the law the Governor of this state has very extensive powers. He is a member of, and ex officio chairman of, several of the most important and powerful boards and commissions of the state. That he has authority to appoint and remove members of many important boards and commissions, and to dictate the employment of every clerk, stenographer, helper, and janitor allowed by law to be employed by such boards. We judicially know that he is ex officio chairman of the state board of equalization, which has power to equalize and fix property values and the rate of taxation; that he has power as chief executive to convoke the Legislature, and to veto acts of the Legislature, to issue pardons to persons who have been duly convicted in the courts, and power to call out the militia and many other far-reaching powers, and we also judicially know that under the law the present incumbent has all of the above-mentioned powers, and as a matter of common knowledge, we know that too long an exercise of such tremendous powers by one man may bring about oppression and detriment to the public welfare, and that too long a tenure of office with the powers which a Governor has may enable him to build up a dangerous, and possibly invincible, political machine with which to perpetuate his powers.

While we do not know, and do not pretend to say, whether the present incumbent or any other Governor has ever

used his powers wrongfully or oppressively, yet we do know that section 4 whatever may have been the reason for its adoption, has the effect of preventing these possible dangers, and do know that it is well to guard against them.

Mr. Trapp is just as much a Governor, in every literal and practical sense and effect, as though he had been elected to the office. He has all the powers, emoluments, and immunities which could be conferred upon him by an election, as well as the same individual rights of tenure and occupancy which an elected Governor has, and, except by impeachment for misconduct, there is no provision of law by which he can be divested of such rights until the end of his term. He is now filling the office which, upon the impeachment of Mr. Walton, devolved upon him by section 16, and section 4 says, "The Governor shall not be eligible immediately to succeed himself."

Discerning our system and plan of government, and our constitutional provisions for the operation of same as we do, the reasons herein given become potent and conclusive.

The judgment of the trial court is therefore reversed, with directions to issue the order of injunction herein sought.

Reversed.

MASON, PHELPS, LESTER, HUNT. CLARK, and RILEY, JJ., concur.

NICHOLSON, C. J., dissents.

BRANSON, V. C. J. (dissenting).

In this court the parties bear the same adversary positions as they bore in the district court. They are, therefore, referred to as plaintiff and defendants.

One Kirby Fitzpatrick, as plaintiff, sued the state board of public affairs, the state election board, and the individual members of each. He prayed relief, enjoining the defendants from causing to be printed on the official Democratic primary ballots to be used throughout the state in the primary, to be held, as required by law, the first Tuesday in August, 1926, the name of M. E. Trapp. The said M. E. Trapp had duly filed his application with the said defendant election board to be placed on such ballots as a candidate for nomination for Governor of Oklahoma,

and his said application to be placed on said ballots had been by said board accepted.

The question of the propriety of the injunctive remedy sought is by none of the parties drawn in question, and the same will, therefore, not be discussed. Only a part of the substance of the pleadings is necessary to be stated for a clear understanding of the issue.

At the regular November election, 1922, one J. C. Walton was duly elected as Governor of the state of Oklahoma. He was inaugurated by taking the constitutional oath on the 8th day of January, 1923, and thereafter continued to fill the office until the 23d day of October, 1923, when the House of Representatives duly assembled, filed impeachment charges with the state Senate, and the state Senate did, by resolution, on said last-named date, suspend him from office; but on the trial the charges were sustained, and judgment entered removing him from office. Section 168, C. O. S. 1921.

At the same time the said Walton was elected Governor, the said M. E. Trapp was duly elected Lieutenant Governor of the state of Oklahoma for the constitutional term of four years, beginning on the 8th day of January, 1923, and on said date the said M. E. Trapp qualified as Lieutenant Governor by taking the constitutional oath of office, and, as defendants contend, has ever since been Lieutenant Governor by reason of his election to said office and his qualification as such officer.

An extended discussion of the one question presented is unnecessary to make lucid the conclusion we reach. That one question is whether the said M. E. Trapp is eligible to be Governor for the term for which he seeks to be nominated and elected, and which term begins under the Constitution the second Monday in January, 1927. The plaintiff alleges that he is ineligible, and contends that, \*578 because of his ineligibility, he should not be placed on the primary ballots as aforesaid; while the defendants, taking the view that he is eligible, have accepted his filing, and intend to place his name, unless prevented from doing so, upon such ballots.

Whether he is eligible depends upon the construction to be placed on certain provisions of the Constitution of the state. The correlation of these said provisions are before this court for the first time, and we must say what they mean, for they are not without ambiguity. We have no exact precedent from the decisions of any other state to ease our task, for, while we find similar provisions in many

Constitutions, we find none of them exact as ours in their entirety. The decisions of other courts hereinafter cited are helpful so far as they deal with provisions similar to certain provisions here in question, but from the point at which they stop we must follow a rule of reason all our own. It is admitted that the ineligibility attaches only to the Governor.

Before considering the particular provisions which bear directly on the dispute, consideration of the provisions of the Constitution as to who may be Governor and how he may become Governor we consider important. Bearing thereon we cite, but give only the substance of, the provisions, constitutional and statutory.

Article 6 (Williams' Oklahoma Constitution) creates the executive department of state government, names the officers in whom executive authority is lodged, and, in a measure, the conditions under which such authority is so lodged. Section 3 thereof makes any male person who has been an elector of the state for three years, and is not less than thirty years of age, eligible to be elected either Governor or Lieutenant Governor. Section 1 thereof provides, among other things:

“The executive authority of the state shall be vested in a Governor, Lieutenant Governor,” etc.

It cannot be considered amiss to point out here that the express language of this section vests executive authority in the Lieutenant Governor of the state. Just when he can exercise the same, and what authority he can exercise, depends upon other provisions of the Constitution hereinafter discussed. Before going to them, however, we think it important to call the attention of the reader to the fact that article 3 (Williams' Oklahoma Constitution) provides for mandatory elections for state and other officers. The provisions of said article 3 of the Constitution as to mandatory elections were vitalized by statutory enactments passed by the first state Legislature of the state. This Legislature convened soon after Statehood day, which was November 16, 1907, and the statute so vitalizing the said article 3 as to the mandatory selection of officers by popular elections is now brought down in our statutes as chapters 40 and 41, C. O. S. 1921. Section 6093, C. O. S. 1921, vitalizes that provision of article 3 of the Constitution which provides for a mandatory primary system. Section 6126 provides for the election of persons so nominated at the primary the

first Tuesday after the first Monday of November of each even numbered year, beginning in 1908.

Reverting again to the Constitution, we find that section 4 of said article 6 provides that the term of office of Governor, and the term of office of the Lieutenant Governor (which runs concurrently), shall be four years from the second Monday of January next after their election, and that it further provides that the Governor shall not be eligible to immediately succeed himself. We come to the question here at issue: Who is the individual made ineligible to immediately succeed himself? The language of the said section is that the Governor is ineligible to immediately succeed himself. The language of section 1 of the same article makes clear that executive authority is vested in both the Governor and the Lieutenant Governor. These sections contemplate that two individuals shall be elected at the same election for the same term of office, and that executive authority shall be vested in each. They are each required to have the same qualifications, but the latter is not cloaked with the same ineligibility as the former. Each is elected by the electors of the state. We think it is not subject to debate that there is no provision in the Constitution or statute whereby the Governor can be appointed by any individual or collection of individuals. There are ample provisions in the Constitution and statutes under which most of the other numerous officers of the state may fill their respective offices by appointment by the Governor, or other designated appointing power, for section 13 of article 6 provides that the Governor shall commission all officers who are not commissioned by law, and, when any office shall become vacant, he shall, unless otherwise provided by law, appoint a person to fill the vacancy until a successor shall have been elected. Under this provision it is not subject to debate that, if the Lieutenant Governor should die, be removed on impeachment, or remove from the state, or otherwise be taken from the office, the Governor is directed by the said section to appoint a Lieutenant Governor, at least until the succeeding election. If the Governor should die, or be removed from office, there is nothing in the Constitution which authorizes the Lieutenant Governor to appoint a Governor.

We then ask ourselves the question: Can there be, under the Constitution of Oklahoma, a constitutional Governor except as the electorate of the state makes one at an election? We find no provision in the Constitution \*579 which says so, nor do we find any which can be fairly so

construed. Being the chief officer of the state, the ordinary meaning of the language used as to him expressly reserved to the people the sole power to make a Governor. Said section 1 of article 6 is different from other Constitutions dealing with the same matter. It vests executive power, not as a function to an office whoever may be holder thereof, but in individuals, and so far as is involved here, in individuals referred to as Governor and Lieutenant Governor. Section 2 of article 6 makes a distinction between the executive power vested by section 1 in the Governor and the executive power vested in the Lieutenant Governor, in that it makes the executive power of the Governor supreme. Said section 2 says:

“The supreme executive power shall be vested in a chief magistrate, who shall be styled ‘the Governor of the state of Oklahoma,’”

—but it cannot be said, with right reason, that, because this section vests supreme executive power in a chief magistrate, styled the Governor of the state of Oklahoma, it thereby robs the Lieutenant Governor of the executive power which the preceding section said should exist in the Lieutenant Governor. We ask ourselves the question: Under what circumstances could executive power be exercised by the Lieutenant Governor, and what power? Unless we desire to read something into said section 4 of article 6, or to read something out of the same, the conclusion is inevitable that a constitutional Governor is a person nominated at a primary, and elected at a general, election for a term of four years. Under said section 2 his right to use the executive power vested in him by section 1 is supreme, and, when it exists at all, it supercedes any executive power vested in the Lieutenant Governor, and such power so vested in the latter is dormant until some condition arises under which he can exercise the same. The Governor exercises supreme executive power from the day of his inauguration for a period of four years, subject to the conditions of sections 15 and 16 of article 6, which are, in substance, to wit, his impeachment, failure to qualify, resignation, removal from the state, or inability to exercise the same, or vacancy in his office. When some one of these contingent conditions arises, it operated to strike down, or suspend, the Governor's executive power.

And, under such circumstances, shall we say that the executive power vested in the Lieutenant Governor cannot then be exercised by him? That part of section 1 in referring to the Lieutenant Governor is meaningless, unless the exercise of executive authority by the

Lieutenant Governor was intended to be conditioned on the happening of some of the provisions enumerated in sections 15 and 16 of article 6. If some of said conditions exist, then under the said sections the performance of the duties of the supreme executive, whatever those may be made by law, are charged to the Lieutenant Governor, but the performance of these duties by him are not, as Governor for the Constitution does not say so, and he was not so elected. The Constitution does not say when the Lieutenant Governor exercises executive authority so given him by section—he does so as Governor—but said section 1, when read in the light of the other sections of article 6, clearly recognizes that the elected Governor may be unable to exercise the same or to fill the office either because of impeachment, conviction on impeachment charges, death, failure to qualify, removal from the state, or some other inability, such as absence from the state, sickness, etc. The constitutional convention, knowing that some of the above disabilities might exist, or that the office might become vacant, and knowing that the same must be continuously filled in the sense that the duties of the office must be performed in the interest of the public good, in effect says that, if from any of these causes he, the Governor, is suffering from inability to discharge the duties of the office, the said office, with its compensation, shall devolve upon the Lieutenant Governor for the remainder of the term or until the disability shall be removed.

From the oral argument presented by counsel for plaintiff, the writer is unable to escape the conclusion that plaintiff's position is that we must turn the question here in dispute solely upon the language of the said section 16, and that part thereof which provides:

“That the said office, with its compensation, shall devolve upon the Lieutenant Governor for the residue of the term or until the disability shall be removed.”

Diligent search can be made of each section of said article 6, creating and dealing with the executive department, and nothing therein can be found of an executive nature to be done by the Lieutenant Governor, except when a contingency arises as contemplated by sections 15 and 16. There is nothing in any section of said article (and no other article) that either expressly or by fair intendment indicates that, on the contingency of said sections arising,

the Lieutenant Governor can exercise executive authority in any status other than as Lieutenant Governor. And can any reason be given why it should be exercised by him other than as Lieutenant Governor when the only section vesting such authority in him says that it is vested in a Lieutenant Governor? The Governor being possessed of supreme executive authority until some contingency, as specified supra, arises, no executive authority can be exercised by the Lieutenant Governor, but, when such contingency does arise, \*580 he performs the duties of the office merely as the occupant of the office of Lieutenant Governor, to which he was elected.

Suppose we accept the contention of the plaintiff referred to in the foregoing paragraph, to the effect that the question must be decided by the language, “that the said office, with its compensation shall devolve upon the Lieutenant Governor,” and do not consider other sections dealing with the same matter (to do this, however, would violate all rules of constitutional and statutory construction), we then are faced with a definition of the word “office” as given in the latest authentic edition of Webster's New International Dictionary as “a right to exercise a public function or employment and receive the emoluments thereto belonging.” (Webster gives another: “In its fullest sense, office embraces the elements of tenure, duration, duties, and emoluments.”) Suppose we substitute the said definition of office in the sentence relied on by the plaintiff. It will then read that the right to exercise the public functions (of the Governor—ours), and receive the emoluments thereto belonging, devolves upon the Lieutenant Governor. Would such sentence demote him as Lieutenant Governor and promote him as constitutional Governor? Would that strip him of his character as one official, and make him another official? No such conclusion can be reached by any fair or logical process of reasoning, and there is no provision in the Constitution of the state whereby a person elected as one official may, by operation of law, take on the status of another official. If we even omit Webster's definition set out, supra, we find in sections 15 and 16 of article 6 that the term “office” and “duties and powers of the office” are shown by the context to have been intended to mean that, when the person elected as Governor or Lieutenant Governor dies, or is otherwise incapacitated, it is only the duties and powers which he might have exercised that can be performed by another and distinct officer.

It must be noted that section 16 draws no distinction between his status in exercising executive authority by

the Lieutenant Governor where there is a permanent disability, such as death or removal from office, and where there is merely a temporary disability on the part of the supreme executive. This was clearly pointed out in the case of *Ex parte Hawkins*, 10 Okl. Cr. R. 396, 136 P. 991, and in *Ex parte Crump*, 10 Okl. Cr. 133, 135 P. 428, 47 L. R. A. (N. S.) 1036, in which the Criminal Court of Appeals of this state construed sections 15 and 16 of article 6, *supra*. In so construing them, that court cited with approval the logical reasoning of the Supreme Court of California in the case of *People v. Wells*, 2 Cal. 198. There is no section of the Constitution, unless we read something into it, which undertakes to make the Lieutenant Governor a constitutional Governor merely because he may exercise powers that would be, but for some contingency as set out above, exercised by the supreme executive. But plaintiff argues vigorously that the Constitution never contemplated that a vacancy should ever exist in the office of Governor. The idea plaintiff expresses is only true in the sense that the Constitution never contemplated that there should not be some one within the state who could exercise executive authority ordinarily exercised by the Governor. But there is nothing to be found therein which indicates that it must always be exercised by the officer known as Governor. This is clear from section 15, which, among other things, says:

“If, during a vacancy of the office of Governor, the Lieutenant Governor shall be impeached, displaced, resign, die or be absent from the state, or become incapable of performing the duties of the office, the President, pro tempore, of the Senate, shall act as Governor until the vacancy be filled or the disability shall cease.”

We think this section clearly shows that the makers of the Constitution contemplated that a vacancy might exist in the office of Governor, either temporary or permanent. When a permanent vacancy occurs, said section clearly directs that the Lieutenant Governor shall exercise the powers and duties of the office, and, if during that time he (the Lieutenant Governor) should be impeached, displaced, resign, die, or be absent from the the state, section 15 directs that the President pro tempore of the Senate shall perform the duties of the office, and also provides for additional succession to such duties. Should we give the said constitutional provisions the construction

contended for by plaintiff, and say, as he desires, that, when the Governor is removed from office, the Lieutenant Governor becomes the constitutional Governor, it would be tantamount to saying that the Lieutenant Governor as such was not given any executive authority, under any contingency, by the language of section 1. Such would lead to confusion, and such confusion, as we believe, the adroit minds of those who framed the Constitution would have prevented had they anticipated this court would read into the Constitution a construction of its provisions that would make a Lieutenant Governor constitutional Governor, though never elected as such. The inability of the Governor to immediately succeed himself is a limitation upon the right given to every citizen of the state to seek this high office who possesses qualifications set out above. Unless clear from the language used, we must not give this restrictive provision a meaning that would so penalize a man, who had been elected only as Lieutenant Governor, when, and if while serving, he should be nominated and elected Governor, he would be disqualified to take the office when inauguration day \*581 arrived, if the Governor had died or been removed between election day and inauguration day. Should we give it the construction plaintiff contends for, then the minute the Governor resigns, is removed on impeachment, or dies, the Lieutenant Governor instantly becomes the constitutional Governor by operation of law, and the office of Lieutenant Governor thereby becomes vacant. If this is the law, under section 13 of said article 6, *supra*, he could immediately appoint a Lieutenant Governor, and, if feeling friendly to the deposed Governor, he could forthwith hand such impeached and removed Governor a commission as the Lieutenant Governor of the state, and then, if the friendship extended that far, out of personal consideration for the Governor so removed, could resign himself as Governor, whereupon the Governor so impeached could forthwith become the constitutional Governor by operation of law. Shall we read these provisions into article 6, which might bring about such conditions when otherwise they would not be possible. If on the removal of the Governor the Lieutenant Governor automatically is removed from the office to which he was elected, and instantly becomes Governor, in the exercise of his appointive power, under section 13, he is directed to appoint some one as Lieutenant Governor, and could do it forthwith, and this would operate to make it impossible that the President pro tempore of the Senate would ever succeed to the performance of the duties of Governor, as was clearly contemplated in the



succession line to such duties as set out in section 15 of the Constitution.

The construction we give leaves effective the ineligibility of the elected Governor to be or become Governor for the term immediately succeeding that for which he was elected and served either in part or in whole, and does not extend the said ineligibility to an individual not specifically made ineligible by section 4. Again, should we give the meaning plaintiff contends for, we would make it possible to defeat such intent of section 4 in this, to wit, that the elected Governor, after serving for approximately three and one-half years, could resign before the primary, the Lieutenant Governor would then become automatically the constitutional Governor, and the Governor elected for the term then running, thus, by his own act, making himself eligible to be Governor for the next term, could forthwith enter the race, and, if elected, would be qualified, for that he would not be immediately succeeding himself, a constitutional Governor having served in the interim. Likewise, in the instant case, if M. E. Trapp is Governor in the constitutional sense of the term, he could forthwith appoint a Lieutenant Governor; then resign. His appointee would then be the constitutional Governor, and Trapp could continue his campaign, and, if elected, could qualify as Governor the second Monday in January, 1927, for the reason that he would not be "immediately succeeding himself," but another constitutional Governor would have filled the office in the interim. No such possibility of juggling with this high office was ever intended, but, when all provisions are considered, the Constitution means that, if A. is honored by being elected Governor for a term of four years, he is ineligible to be Governor the next term which begins four years later. That is what the Constitution says, and it means that, and nothing more. That meaning prevents possible and probable unseemly and disconcerting conditions, and we must adhere to it.

We are driven to these conclusions: First, that under the Constitution of Oklahoma, there cannot be a constitutional Governor, except when elected as such by the electors of the state. Second, that under section 1 executive authority is vested in both the Governor and the Lieutenant Governor, but that under section 2 supreme executive authority is vested in the Governor, and the Lieutenant Governor cannot exercise executive authority until a contingency arises, as set forth in sections 15 and 16 of said article. Third, that under said sections a vacancy may occur and exist in the office of Governor, in

which event the Lieutenant Governor, as such, exercises the executive authority which the Governor, but for the arising of the contingency, would have exercised. Fourth, that, if while so exercising such authority, the Lieutenant Governor is impeached, displaced, resigns, dies, or is absent from the state, etc., the President pro tempore of the Senate may perform such duties. Fifth, that the Lieutenant Governor, who runs and is elected as such, cannot by operation of law be made a constitutional Governor, but is merely a constitutional Lieutenant Governor, and may exercise executive authority when the Chief Executive, to wit, the Governor, is removed, dies, or cannot otherwise act. Sixth, that this construction gives force to the language of section 1, section 2, section 4, section 13, section 15, and section 16, which are all the sections dealing with the subject, and thereby creates no possibility of a confusion in the performance of the executive functions. Neither does it destroy or strike down the succession provided by section 15 of said article to the duties of the office of the executive, such as might occur otherwise.

We think our reasons and conclusions are borne out by these cases: *Sadler State ex rel. v. La Grave*, 23 Nev. 216, 45 P. 243, 35 L. R. A. 233; *State ex rel. Hardin v. Sadler*, 23 Nev. 356, 47 P. 450; *People v. Cornforth*, 34 Colo. 107, 81 P. 871; *Clifford v. Heller*, 63 N. J. Law, 105, 42 A. 155, 57 L. R. A. 312; \*582 *People v. Budd*, 114 Cal. 168, 45 P. 1060, 34 L. R. A. 46; *State v. McBride*, 29 Wash. 335, 70 P. 25; *State ex rel. Chatterton v. Grant*, 12 Wyo. 1, 73 P. 470, 2 Ann. Cas. 382; *Clifford v. Heller*, 63 N. J. Law, 105, 42 A. 155, 57 L. R. A. 312; *Futrell v. Oldham*, 107 Ark. 386, 155 S. W. 502, Ann. Cas. 1915A, 571.

In the above cited case of *People v. Budd*, 114 Cal. 168, 45 P. 1060, 34 L. R. A. 46, the court, in part, says:

"It will be seen that in case of a vacancy in the office of Governor the vacancy is not to be filled, but the powers and duties devolve upon the Lieutenant Governor, who does not cease to be Lieutenant Governor. Under such circumstances it would hardly be contended that when the powers and duties of the Governor devolve upon the Lieutenant Governor the latter thereby becomes Governor, and can appoint a Lieutenant Governor. Nor do I think it could be contended that when the President pro tempore of

the Senate acts as Governor he could appoint a person to fill the vacancy in the office of Lieutenant Governor. If he could, he would then appoint himself out of office, and it would be his duty to do so."

Again, if we consider sections 15 and 16 separately instead of together, do we find anything in section 16 which authorizes M. E. Trapp to be Governor? Under the facts as they were and are, can we not see by an analysis of that section that, when Trapp began to perform the duties of the office, it was not as Governor? No one contends for a moment that mere inability or disability on the part of the elected Governor would make the Lieutenant Governor Governor in fact. Under this section 16 the first thing mentioned is, "In case of impeachment of the Governor, \* \* \* the office 'devolves,' etc., upon the Lieutenant Governor."

What does impeachment mean? And could impeachment have made Trapp Governor? It certainly could if the word "devolve" means what plaintiff contends, for he says that is the one word which made Trapp Governor. This court has definitely said through Justice Harrison in the case of State ex rel. Trapp v. Chambers, District Judge, 96 Okl. 78, 220 P. 890, 30 A. L. R. 1144, that—

" 'Impeachment' of the Governor, within the meaning of section 16, art. 6, of the Constitution, is the adoption of articles of impeachment by the House of Representatives, and the presentation thereof to the Senate, and the indication by that body that the same are accepted for the purpose of permitting prosecution thereof, and the impeachment of the Governor operates to suspend him; the duties and emoluments of the office automatically devolving upon the Lieutenant Governor for the remainder of the term or until the disability is removed by the acquittal of the Governor of the charges preferred against him."

So the word "devolve" clearly from said opinion did not make Trapp Governor while impeachment charges were

pending against Walton, for this court said there: "The duties and emoluments" of the Governor "devolved" upon Trapp.

The second contingency set out in section 16 is, in case of death, the office "devolves." Walton was not then, and is not now, dead, so "devolve" did not make Trapp Governor under that contingency. The third is, in case of his failure to qualify, the office "devolves." Walton did not fail to qualify, and "devolve" could not make Trapp Governor under that contingency. The fourth contingency is in case of resignation, the office "devolves." "Devolve" did not make him Governor for this reason, for Walton did not resign. The fifth contingency is, in case of his removal from the state, the office "devolves." Walton did not remove from the state, so that contingency not having taken place, "devolve" did not make Trapp Governor. The sixth and last contingency of said section 16 is in case of inability to discharge the powers and duties of the office, the office "devolves" upon the Lieutenant Governor "until the disability is removed." This contingency did not permit "devolve" to make Trapp Governor, for there was no "inability" on the part of Walton to discharge the powers and duties of Governor, for that "inability" is a condition that may be removed or terminated, or, in other words, is temporary. It is defined by lexicographers as "an inherent lack of power to perform the thing in question." An illustration would seem to make it clear. For instance, if Walton had been afflicted with insanity, this would have brought about a lack of power to perform the duties of the office which inhered in him personally, and such inability as might be removed such as acquittal on the impeachment charges would have restored him to the right to perform the duties of the office.

Section 16 was given this meaning as far back as 1913, by Judge Henry Furman, a man of recognized learning, and a judge of eminent ability. In the case of Ex parte Hawkins, 10 Okl. Cr. 396, 136 P. 991, he said:

"This case presents simply a cold question of law, and must be decided as such without reference to any other considerations. Article 6, § 16 (Williams' Constitution, § 165) provides in express terms that all of the powers of the Governor shall devolve upon the Lieutenant Governor during the inability of the Governor to discharge the powers and duties of

said office, and until such disability shall be removed. \* \* \* The Governor may go to other states \* \* \* without forfeiting his office. \* \* \* During his absence, or inability to act, the Lieutenant Governor is vested with all of the powers of Governor. \* \* \* The Constitution provides that there shall always be some one within the State clothed with power to perform the duties of Chief Executive. \* \* \* The powers of the Lieutenant Governor to act, during the inability of the Governor, are not derived from the invitation or request of the \*583 Governor; but they rest alone upon the provisions of the Constitution of Oklahoma.”

This comes from the pen of one long since removed from divergent judicial and political views. He was discussing the identical section of the Constitution plaintiff relies on as making a Governor out of a Lieutenant Governor. Judge Furman said in brief that, during an inability of the Governor to act, the Lieutenant Governor came forward, not to say “I am Governor,” but to do the work and perform the duties which the Governor would have done but for the inability. This shows clearly the futility of considering section 16 separate from sections 1 and 15 of the same article.

Plaintiff admitted in oral argument that section 15 should come after section 16; that this mistake was made in enrolling the article by the enrolling clerk. This is only important, if at all, in reading the two sections together. If they are so read in the light of the above authorities, they will in substance be: When the Governor has impeachment charges pending against him, fails to qualify, resigns, removes from the state, or possesses inability to act, or (section 15) if during a vacancy of the office of Governor from any of the above causes which would create a vacancy, or from death, or removal by a judgment of a court of impeachment, the duties and powers of the Governor are held and performed by the Lieutenant Governor, and if during such vacancy the Lieutenant Governor suffers impeachment or removal from office or inability to act, the President pro tempore of the

Senate shall perform the duties, then the Speaker of the House, and then such other persons as the Legislature may provide by law.

Section 168, C. O. S. 1921, on impeachments, provides in closing:

“If two-thirds of the Senators present shall vote yea upon any charge or count contained in the article of impeachment, the accused shall be adjudged guilty [by the Senate as a court of impeachment—ours], and the judgment of the court shall be that he be removed from office.”

That is what created the vacancy in the office of Governor in the present term, and was such a vacancy in such office as is referred to in section 15 of article 6 of the Constitution, and during which that section and section 16 requires that the Lieutenant Governor shall have the power and perform the duties of the office and such of them as would otherwise be required of the Governor. It was such contingency actually occurring which was anticipated by the Constitution as the reason for vesting executive authority in the Lieutenant Governor in section 1 of the same article clearly to be exercised on the contingencies set out in sections 15 and 16.

We feel that the usage grown up in departmental construction of the national government that on a vacancy in the office of the elected President the Vice President becomes President is not even persuasive here, for there is nothing in the Constitution of the United States that makes the elected President, or a successor to him, ineligible to succeed himself, and the question here could never arise as to the presidency.

It must be noted in conclusion that not one decided case from all the states is cited to support the opinion of the court on the question here involved, though there are numerous ones, as set out above on similar questions.

The writer believes the judgment of the trial court should be affirmed.

#### All Citations

121 Okla. 83, 248 P. 569, 1926 OK 584

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311 Ark. 187  
Supreme Court of Arkansas.

Winston BRYANT, Attorney General, Appellant,  
v.

Dr. Arthur ENGLISH, the Republican Party of  
Arkansas, the Democratic Party of Arkansas, and  
Martin Borchert, Appellees and Cross-Appellees,

v.  
Jim Guy TUCKER, Lieutenant  
Governor, Cross-Appellant.

No. 92-1284.

|  
Dec. 4, 1992.

Suit for declaratory judgment was filed requesting interpretation of various provisions of the Constitution of Arkansas regarding succession to the Office of Governor when the Governor resigns with more than 12 months remaining in term of office. The Circuit Court, Pulaski County, John B. Plegge, J., entered judgment declaring that upon resignation of Governor, powers and duties of the Office of Governor, but not office itself devolves upon Lieutenant Governor for the remainder of four-year term. Court also ruled that special election to fill office is not required and that Lieutenant Governor is not authorized to appoint successor to the Office of Governor. Attorney General appealed, and Lieutenant Governor cross-appealed. The Supreme Court, Dudley, J., held that: (1) constitutional amendment provides that the Lieutenant Governor serves as Governor for the residue of the term and not merely until a new Governor is elected at special election, and (2) Office of Governor itself devolves upon Lieutenant Governor.

Affirmed.

Glaze, J., concurred in part and dissented in part with opinion which was joined by Corbin, J.

West Headnotes (5)

[1] **Constitutional Law**  
⇒ Contemporary circumstances  
**Constitutional Law**

⇒ Context of the times

In order to determine meaning and extent of coverage of constitutional amendment, court may look to history of the times and condition existing at time of the adoption of the amendment in order to ascertain the mischief to be remedied and the remedy adopted.

4 Cases that cite this headnote

[2] **Constitutional Law**  
⇒ Operation as to constitutional provisions previously in force

Repeal by implication is accomplished when a constitutional amendment takes up a whole subject anew and covers the entire subject matter of the original Constitution.

3 Cases that cite this headnote

[3] **Constitutional Law**  
⇒ Plain, ordinary, or common meaning

Constitutional amendment is to be interpreted and understood in its most natural and obvious meaning.

1 Cases that cite this headnote

[4] **Public Employment**  
⇒ Term of person filling vacancy

**States**

⇒ Lieutenant Governor

**States**

⇒ Resignation, suspension, and removal or impeachment of officers

Constitutional amendment governing office of Lieutenant Governor provides that when the Governor resigns, the Lieutenant Governor serves as Governor for the residue of the term and not merely until a new Governor is elected at a special election. Const. Amend. No. 6, § 4.

1 Cases that cite this headnote

[5] **Public Employment**

↔ Manner and Mode of Filling Vacancy

**States**

↔ Lieutenant Governor

**States**

↔ Resignation, suspension, and removal or impeachment of officers

Upon resignation of the Governor, the Office of Governor itself devolves upon the Lieutenant Governor, not merely the powers and duties of the Office of Governor. Const.Amend. No. 6, § 4.

1 Cases that cite this headnote

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**Opinion**

\*\*309 DUDLEY, Justice.

On November 6, 1990, Governor Bill Clinton was re-elected to the Office of Governor, and Jim Guy Tucker was elected to the Office of Lieutenant Governor. Both were elected and commissioned to four-year terms of office that commenced on January 15, 1991. On November 3, 1992, a little over twenty-one months later, Governor Clinton was elected to the Office of President of the United States of America. It is anticipated that Governor Clinton will resign from the Office of Governor before January 20, 1993, which is the day the oath of the Office of President of the United States will be

administered. The result will be that a vacancy will exist in the Office of Governor, and more than twelve months will remain on the four-year term to which Governor Clinton was elected.

This suit for a declaratory judgment was filed requesting an interpretation of the various provisions of the Constitution of Arkansas regarding succession to the Office of Governor when the Governor resigns with more than twelve months remaining in the term of office. The trial court entered a judgment declaring that upon the resignation of Governor Clinton, the powers and duties of the Office of Governor, but not the office itself, will devolve upon the Lieutenant Governor for the remainder of the four-year term. The trial court also ruled that a special election to fill the office is not required and that the Lieutenant Governor is not authorized to appoint a successor to the Office of Governor. Attorney General Winston Bryant appeals from the judgment, \*190 and Lieutenant Governor Jim Guy Tucker cross-appeals from that part of the judgment declaring that the Office of Governor does not devolve upon the Lieutenant Governor. On direct appeal, we affirm the trial court's judgment and hold that upon the resignation of a Governor, the powers and duties of the Office of Governor devolve upon the Lieutenant Governor for the remainder of the four-year term, and, on cross-appeal, we reverse and hold that the Office of Governor itself devolves upon the Lieutenant Governor.

I. Procedure

The Declaratory Judgments Act, Ark.Code Ann. §§ 16-111-101—16-111-111 (1987), provides that the purpose of the act is “to afford relief from uncertainty ... with respect to ... status,” and the act is to be liberally construed to that end. The parties stipulated in the trial court that they anticipate that Governor Clinton will resign from the Office of Governor, and the trial court held that a justiciable controversy exists. We have concluded that we should decide the issue because it is a matter of significant public interest and a matter of constitutional law. See *Bennett v. N.A.A.C.P.*, 236 Ark. 750, 370 S.W.2d 79 (1963).

II. Background

Neither the 1836 Constitution of Arkansas nor the 1861 constitution provided for the office of Lieutenant Governor. Those constitutions placed the President of the Senate next in the line of succession for the Office of Governor, and they required a special election if the remaining term of the Governor exceeded a certain period of time. The 1864 constitution, for the first time, created the office of Lieutenant Governor and provided for a statewide election to the office. Ark. Const. of 1864, art. VI, § 19. The 1868 constitution also provided for a Lieutenant Governor and stated that if the Office of Governor became vacant, the Lieutenant Governor served during the "residue of the term." It made no provision for a special election to fill the vacancy. Ark. Const. of 1868, art. VI, § 10.

Unfortunately, the present Constitution of Arkansas, adopted in 1874, did not originally provide for the office of Lieutenant Governor. Article 6, sections 12 and 13 of the present constitution, originally placed the President of the Senate, \*191 followed by the Speaker of the House, in the line of gubernatorial succession, but article 6, section 14 required a special election to fill a vacancy in the Office of Governor when the office was vacated more than twelve months before the expiration of the Governor's \*\*310 term. Article 6, section 12 of the present constitution originally provided that in the event of the "death, conviction or impeachment, failure to qualify, resignation, absence from the State or other disability of the Governor," the powers and duties of the office devolved on the President of the Senate "for the remainder of the term, or until the disability be removed, or a Governor elected and qualified." When construed with the special election procedure of article 6, section 14, the reason for each of these three limitations on the President of the Senate's period of service is obvious. Each limitation on service was tied to a different contingency. If the Governor became disabled, the President of the Senate served as Governor until the disability was removed. If the office became vacant through death, impeachment, or resignation of the Governor less than twelve months before the end of the Governor's term, the President of the Senate served "for the remainder of the term." If the vacancy in office occurred more than twelve months before the end of the Governor's term, the President of the Senate served until "a Governor [was] elected and qualified" at a special election called in accordance with article 6, section 14.

Only days after his inauguration on January 18, 1907, Governor John Sebastian Little suffered a nervous breakdown. Arkansas History Commission, 1 *Annals of Arkansas 1947* 239 (Dallas T. Herndon ed., 1947) [hereinafter *Annals*]. On February 11, 1907, Governor Little wrote Senator John I. Moore, the President of the Senate, and asked him to assume the duties of Governor. Senator Moore served as acting Governor until the adjournment of the General Assembly on May 14, 1907. *Id.* at 239. He was succeeded as acting Governor by Senator X.O. Pindall, who was elected President of the Senate shortly before its adjournment. Senator Pindall served as chief executive for sixteen months from May 15, 1907, until January 11, 1909, when he was replaced by the newly elected President of the Senate, Jesse M. Martin. *Id.* at 240. Senator Martin was acting Governor for three days until the inauguration of George W. Donaghey, who had been elected Governor at the general election of 1908. \*192 *Id.* at 240. In sum, during the two-year period between January 15, 1907, and January 15, 1909, the affairs of Arkansas were in the hands of no less than six governors: Jeff Davis, John Sebastian Little, John I. Moore, X.O. Pindall, Jesse M. Martin, and George Donaghey. *See id.* at 233, 239-41.

The first seven months of 1913 were even more trying; they amounted to a gubernatorial succession crisis. The crisis was triggered when Governor Joe T. Robinson resigned from office following his election to the United States Senate. *Id.* at 247. W.K. Oldham was President of the Senate when Governor Robinson resigned, but because Senator Oldham was prohibited by article 5, section 18 of the constitution from serving past the end of the legislative session, the Senate elected J.M. Futrell as its President prior to adjournment on March 13, 1913. *See id.* at 251. Oldham argued that pursuant to article 6, section 12, he succeeded to the Office of Governor when Governor Robinson resigned and did not cease to be Governor when a new Senate President was elected. Futrell argued that he became Governor by virtue of his election as President of the Senate two days after Governor Robinson's resignation. In *Futrell v. Oldham*, 107 Ark. 386, 155 S.W. 502 (1913), this court ruled in Futrell's favor, holding that under article 6, section 12, the powers and duties of Governor devolved upon the office of the President of the Senate and not upon the individual occupying that office. In sum, during the first seven months of 1913, state government was headed by five different individuals: George Donaghey, Joe T.

Robinson, W.K. Oldham, J.M. Futrell, and George W. Hays. See *Annals, supra*, at 244, 247, 251. This was labeled our “procession” of governors. Dr. David Y. Thomas, 1 *Arkansas and Its People; A History, 1541–1930* 282 (1930). The newspapers of the time spoke of the confusion. The *Arkansas Democrat* of January 31, 1913, contained an article that began, “Political complications in Arkansas are as thick as a London Fog.” The February 8, 1913, *Arkansas Democrat* carried an article that \*\*311 contains the sentence, “Kill off the antiquated method of filling a gubernatorial vacancy.”

### III. Amendment 6

In February 1913, Representative Kidder introduced a House Joint Resolution for a constitutional amendment that \*193 would create the office of Lieutenant Governor. In part, it was a replication of the provision in the 1868 constitution. The March 5, 1913, *Arkansas Democrat* wrote: “There is no sound argument against the office proposed. It fixes the status of the governor's successor and does away with a special election to fill a vacancy.” On March 6, 1913, Amendment 6 to the 1874 constitution was proposed by the General Assembly. See 1913 Ark. Acts 1527. Amendment 6 was submitted to, and approved by, the voters at the 1914 general election. See *Combs v. Gray*, 170 Ark. 956, 281 S.W. 918 (1926), for additional history of the adoption.

[1] [2] [3] Amendment 6, section 4 provides: “In the case of the [resignation] of the Governor, ... the powers and duties of the office, shall devolve upon the Lieutenant Governor for the residue of the term....” In interpreting constitutional amendments, we have said that a court, in order to determine the meaning and the extent of coverage of a constitutional amendment, may look to the history of the times and the condition existing at the time of the adoption of the amendment in order to ascertain the mischief to be remedied and the remedy adopted. *Huxtable v. State*, 181 Ark. 533, 26 S.W.2d 577 (1930). “Amendments to a constitution are not regarded as if they had been parts of the original instrument but are treated as having a force superior to the original to the extent to which they are in conflict.” *Grant v. Hardage*, 106 Ark. 506, 509, 153 S.W. 826, 827 (1913). Repeal by implication is accomplished when a constitutional amendment takes up a whole subject anew and covers the entire subject matter of the original constitution. *McCraw v. Pate*, 254

Ark. 357, 494 S.W.2d 94 (1973); *Berry v. Gordon*, 237 Ark. 547, 376 S.W.2d 279 (1964); *Pulaski County v. Downer*, 10 Ark. 588 (1850). Further, a constitutional amendment is to be interpreted and understood in its most natural and obvious meaning. *Carter v. Cain*, 179 Ark. 79, 14 S.W.2d 250 (1929).

[4] Amendment 6 took up a new subject matter of gubernatorial succession. The citizens wanted to prevent any more gubernatorial succession crises and sought to change the procedure previously set out in article 6. It is impossible to reconcile the natural and obvious meaning of the language of the amendment, quoted above, with the special election procedure set out originally in article 6, section 14 in the factual situation before us. If the appellant Attorney General's suggested meaning were \*194 adopted, and we construed “residue of the term” to only mean the Lieutenant Governor takes office only until the next special election, the constitutional amendment would, in part, amount to an exercise in futility. For these reasons, we hold that amendment 6, section 4 provides that the Lieutenant Governor serves as Governor for the residue of the term and not merely until a new Governor is elected at a special election.

We do not decide whether the special election process set out in article 6 is still viable if the Lieutenant Governor becomes Governor and then vacates the office. That issue is not before us.

[5] The trial court ruled that the “powers and duties of the Office of Governor, but not the Office of Governor” devolved upon the Lieutenant Governor. The trial court's ruling was undoubtedly based on our decision in *Futrell v. Oldham*, 107 Ark. 386, 155 S.W. 502 (1913), and certainly that case contains language stating that, under article 6, the President of the Senate exercised the powers of the Office of Governor, but did not actually become Governor. For several reasons, we think the holding of *Futrell* should be distinguished when the Governor resigns and his place is taken by the Lieutenant Governor under the provisions of amendment 6.

\*\*312 First, the framers of amendment 6 took verbatim from article 6, section 10 of the 1868 constitution the phrase “the powers and duties of the office shall devolve upon the Lieutenant Governor,” and they did so without having the opportunity to read this court's opinion in *Futrell*. The House Joint Resolution proposing



amendment 6 was adopted on March 6, 1913, eighteen days before this court handed down the decision in *Futrell* on March 24, 1913.

Second, in deciding *Futrell*, this court was obviously concerned that the President of the Senate had never been elected by a direct statewide vote—he had been directly elected only by the voters of a local state Senate district. The opinion provides:

The central thought [of article 6, sections 12, 13, and 14] is, that the office of Governor is never to be filled at all except by the direct vote of the people themselves, and provision is made by the Constitution for only a temporary devolution of the duties and emoluments of the office upon \*195 some other functionary while a vacancy exists.

107 Ark. at 394, 155 S.W. at 505. Under amendment 6, section 2, the Lieutenant Governor is now an elected by a direct statewide vote of the people at the same time and for the same term as the Governor.

An equally important distinguishing factor is that today, under amendment 6, section 2, the Lieutenant Governor is a member of the executive branch of the government, but under article 6, as interpreted in *Futrell v. Oldham*, the President of the Senate was a member of the legislative branch and remained such while performing the duties of governor only until an election could be called. The opinion provides:

So, if the person discharging for the time being the duties of Governor is still President of the Senate, he cannot be Governor. He may exercise the powers of the latter office—“exercise the office of Governor,” as it is otherwise expressed in another section, but he does not fill the two offices.

107 Ark. at 391, 155 S.W. at 504.

Under amendment 6 we are not faced with the same problem. In fact, allowing the Lieutenant Governor

to succeed to the Office of Governor eliminates the separation of powers and the dual office-holding problems. If the Lieutenant Governor were not to assume the Office of Governor, he would act as Governor and still preside over the Senate and have the power to cast votes in the event of tie votes. This mixing of executive and legislative powers is avoided when the Lieutenant Governor assumes the Office of Governor and sheds the duties of Senate President. For these reasons, *Futrell v. Oldham* is distinguished.

Amendment 6, section 4 provides that if the Office of Governor becomes vacant, “the powers and duties of the office, shall devolve upon the Lieutenant Governor for the residue of the term.” The next section of the amendment, section 5, provides that if the offices of both Governor and Lieutenant Governor become vacant, the President (pro tempore) of the Senate “shall act as Governor until the vacancy [is] filled.” Similarly, the Speaker of the House “shall act as Governor until the vacancy be filled” if the President of the Senate becomes unable to act as \*196 Governor. The difference in language suggests that the Lieutenant Governor, unlike the President (pro tempore) of the Senate or the Speaker of the House, does not merely act as Governor when the Governor resigns. Rather, it suggests that he becomes the Governor.

It is also of some persuasion that for nearly three-quarters of a century the executive branch has treated a lieutenant governor as governor when he filled a vacant governor's office. The first instance occurred in 1926 when Lieutenant Governor Harvey Parnell succeeded Governor John E. Martineau. *Historical Report of the Secretary of State—Arkansas* 230 (1978). It also occurred when Governor Dale Bumpers resigned from the Office of Governor and Lieutenant Governor Bob Riley was commissioned governor, as well as \*\*313 when Governor David Pryor resigned and Lieutenant Governor Joe Purcell was commissioned as Governor. See Commissions in Secretary of State's Office. In addition, we are persuaded that the drafters of amendment 6, and the voters who approved it, knew that article 6, section 2 would remain in place. It provides: “The supreme executive power of the State shall be vested in a chief magistrate, who shall be styled ‘the Governor of the State of Arkansas.’ ”

Accordingly, we hold that amendment 6, section 4 provides that upon the resignation of the Governor, the

Lieutenant Governor becomes “the Governor of the State of Arkansas.”

One of the parties advanced the argument that amendment 29 of the Constitution of Arkansas requires the Lieutenant Governor to appoint a new governor. We summarily reject the argument and hold that amendment 6 specifically provides for filing a vacancy in the Office of Governor.

Affirmed on direct appeal and reversed on cross-appeal.

GLAZE and CORBIN, JJ., dissent in part and concur in part.

GLAZE, Justice, concurring in part and dissenting in part. I concur in part and dissent in part. My disagreement with the majority court has nothing to do with its holding on the merits. In fact, I totally agree with its decision as it pertains to the merits, but disagree that this court procedurally reached the merits.

This lawsuit is a declaratory judgment action and, as such, \*197 requires that a present actual controversy must exist. In stating this well-recognized principle, this court stated the following:

The Declaratory Judgment Statute is applicable *only where there is a present actual controversy, and all interested persons are made parties, and only where justiciable issues are presented.* It does not undertake to decide the legal effect of laws upon a state of facts which is future, contingent or uncertain. *A declaratory judgment will not be granted unless the danger or dilemma of the plaintiff is present, not contingent on the happening of hypothetical future events; the prejudice to his position must be actual and genuine and not merely possible, speculative, contingent, or remote.* (Emphasis added.)

*Andres v. First Ark. Development Finance Corp.*, 230 Ark. 594, 324 S.W.2d 97 (1959); *see also Files v. Hill*, 268 Ark.

106, 594 S.W.2d 836 (1980); *McFarlin v. Kelly*, 246 Ark. 1237, 442 S.W.2d 183 (1969).

Justice John A. Fogelman stated the following reason for the foregoing rule in a concurring opinion where he said:

The declaratory judgment act is not intended to be the vehicle for advisory opinions to persons not having a justiciable controversy with their apparent adversaries by a court having no jurisdiction. It is far better, in my opinion, that important questions, particularly constitutional ones, be pounded out on the anvil of advocacy by persons whose interests are vitally real, not academic, with all interested parties before the court.

*Block v. Allen*, 241 Ark. 970, 980, 411 S.W.2d 21, 27 (1967).

Let me first point out the obvious—Governor Bill Clinton is *not* a party to this declaratory judgment action. Second, nowhere in the record before this court is it shown that the Governor has resigned or that he intends to resign his office. In an attempt to circumvent this obvious procedural defect in parties and the record, the parties appear to rely upon the Democratic Party of Arkansas's brief wherein it argues as follows:

The fact that Governor Clinton's exact resignation date may not be known is not a bar to determining the \*198 succession issue. Governor Clinton cannot serve both as Governor and President. Article 6, Section 11 of the Arkansas Constitution provides that no “person holding office under the authority of this State, or of the United States, shall exercise the office of Governor, except as herein provided.” Governor Clinton's resignation now that he has been elected President cannot \*\*314 be doubted. Governor Clinton will resign no later than January 20, 1993, in order to assume the Presidency. Thus, it is assured that there will be a vacancy in the Governor's office no later than 58 days after November 23rd. The resulting vacancy in the office of Governor is hardly the hypothetical fact situation feared by the courts.

The parties to this lawsuit *cannot* stipulate or assume how a person not a party or witness in this case might act in

the future; namely, that Governor Clinton will vacate the Governor's office. The majority court is wrong in allowing the parties to make such a stipulation, especially when this factual issue could have been resolved by having made the Governor a party to this action and his resignation could then have been easily confirmed. Nor was the Governor deposed or called as a witness so the resignation issue could be put to rest. Clearly, Governor Clinton has an interest in this cause since this case affects not only his duties and responsibilities as governor, but also involves the emoluments he receives from that office. Until the Governor resigns, the succession issue presented in this cause remains purely hypothetical and contingent upon his vacating the office of Governor.

In an obvious attempt to avoid the Governor's absence in this lawsuit and to cure a record failing to reflect the Governor's resignation, the Democratic Party cites Article 6, Section 11 of the Arkansas Constitution which is captioned "Incompatible Offices" and provides, "No member of Congress, or other person holding office under the authority of this State, or of the United States, shall exercise the office of Governor, except as herein provided." In citing this constitutional language, the Party concludes the Governor's resignation now that he has been elected President cannot be doubted. Of course, this is an assumption or conclusion the parties to this action are unable to make. Clearly, the above constitutional language does not mean Governor Clinton automatically resigns or vacates his office upon \*199 being sworn in as President. In addition, such dual officeholder issues are decided in quo warranto or ouster, not declaratory judgment, proceedings.

My natural inclination is much like the majority court's and the parties' to this case—that (1) the Governor likely will resign sometime prior to January 20, 1993, (2) a vacancy will then exist and (3) the succession problem will be a reality. However, to indulge in this assumption on

the actual facts of this case is to ignore an entire body of law that provides this court only grants declaratory judgment relief when a *present actual controversy exists and all interested persons are made parties*. This court's apparent willingness to address the hypothetical facts present here breaks with clear, prior precedent and, in my view, will permit parties henceforth to stipulate to future facts and events in order to obtain declaratory relief and advisory opinions. This court, instead, should require the presence of Governor Clinton in this lawsuit either as a party or a witness, so a finding as to his resignation from or vacating of office can be established. Only then will an actual controversy exist, allowing this court to decide the succession issue.

One last point—the Democratic Party, recognizing justiciability as a problem, asserts this court nevertheless can declare the law concerning the Governor-succession issue because this is a case of extreme public importance. In support of this assertion, it cites *Robinson v. Arkansas Game and Fish Commission*, 263 Ark. 462, 565 S.W.2d 433 (1978); *Moorman v. Taylor*, 227 Ark. 180, 297 S.W.2d 103 (1957); and *Rockefeller v. Purcell*, 245 Ark. 536, 434 S.W.2d 72 (1968). Suffice it to say, each of these cases, unlike the present case, once involved a justiciable controversy, but the actual controversy later became moot for one reason or another. Here, as already discussed, an actual controversy is yet to occur. The cases cited are simply not on point.

For the reasons above, I would reverse.

CORBIN, J., joins.

#### All Citations

311 Ark. 187, 843 S.W.2d 308

67 So.2d 413  
Supreme Court of Florida, en Banc.

ADVISORY OPINION TO  
ACTING GOVERNOR JOHNS.

Sept. 29, 1953.

On request of acting governor of Florida for an advisory opinion. The Supreme Court held that where state warrants were prepared prior to death of governor of state, and such warrants were signed by comptroller and countersigned in usual manner in name of governor, and warrants were for date subsequent to death of governor, president of the senate, upon whom duties of governor devolved under constitution when governor died, had authority to make executive proclamation adopting, confirming and ratifying such countersignatures as acting governor, and upon such proclamation could cause such warrants to be delivered to payees thereof to be accepted and paid by treasurer of state.

Questions answered.

West Headnotes (2)

[1] States

↔ Governor

Where state warrants were prepared prior to death of Governor of state, and such warrants were signed by Comptroller and countersigned in usual manner in name of Governor, and warrants were for date subsequent to death of Governor, President of the Senate upon whom duties of Governor devolved under Constitution when Governor died, had authority to make executive proclamation adopting, confirming, and ratifying such countersignatures as Acting Governor, and upon such proclamation he could cause such warrants to be delivered to payees thereof to be accepted and paid by Treasurer of state. F.S.A.Const. art. 4, § 19.

2 Cases that cite this headnote

[2] States

↔ Governor

Where Governor of state died, so that duties of Governor devolved upon President of Senate under Constitution, President of the Senate when performing duties of Governor was authorized under Constitution to designate himself as "Acting Governor". F.S.A.Const. art. 4, § 19.

1 Cases that cite this headnote

\*413 PER CURIAM.

Honorable Charley E. Johns

Acting Governor

Tallahassee, Florida

Sir:

We are in receipt of your request of September 29, 1953, for advisory opinion as follows:

'Honorable B. K. Roberts, Chief Justice, and The Justices of the Supreme Court of Florida

'Tallahassee, Florida

'Re: State Warrants heretofore prepared and signed by former Governor McCarty but not delivered; official signature of President of the Senate when duties of Governor devolve upon him.

'Gentlemen:

'It is my painful duty to advise you that His Excellency Governor Dan McCarty has died, and under the Constitution the duties of Governor devolve upon me as President of the Senate.

'Under Section 6, Article 4 of the State Constitution [F.S.A.] I am directed to take care that the laws of this state are faithfully executed and under Section 13 of Article 4, I am authorized to request the written opinion of the Justices of the Supreme Court as to the interpretation of

any portion of the State Constitution about any question affecting my executive duties and powers.

\*414 'Under Section 24 of Article 4 of the State Constitution, funds may be disbursed from the state treasury only upon the order of the Comptroller, countersigned by the Governor in such manner as shall be prescribed by law.

'Section 1, Article 4 of the State Constitution, provides that the supreme executive power of the state shall be vested in the chief magistrate who shall be styled the Governor of Florida.

'Prior to the death of Governor McCarty on September 28, 1953, many thousand state warrants, several thousand of them representing the payroll of state employees, were prepared and Governor McCarty's signature placed thereon in the usual manner with his full knowledge and consent, which warrants have not yet been delivered. My problem is whether or not I should require the reissuance of all of said warrants bearing my signature or permit the delivery of the above mentioned warrants by the State Comptroller.

'I therefore propound to you the following questions and request your advice or opinion concerning the same:

'1. May I under the powers and duties of Governor devolved upon me pursuant to Section 19 of Article 4, direct that the State Comptroller issue and deliver the above mentioned warrants to the payees named therein without my signature appearing thereon?

'2. If the above question is answered in the negative, then may I by executive order or proclamation approve and adopt the signature of Governor McCarty appearing thereon and direct the issuance and delivery of said state warrants to the payees therein named?

'3. In signing official documents and acts, should I sign the same as Governor, as Acting Governor, or in some other form? If in some other form, please advise me the form in which I should sign.

'Respectfully submitted,

'Charley E. Johns

'President of the Senate upon whom has devolved the duties of Governor by virtue of Section 19, Article 4 of the State Constitution'

[1] In response to your questions one and two which, for convenience, are answered jointly, you are advised that as to those warrants prepared prior to the death of Governor Dan T. McCarty, but bearing date subsequent thereto and which have been heretofore signed by the Comptroller and countersigned in the usual manner 'Dan McCarty, Governor', you may make an executive proclamation adopting, confirming and ratifying said countersignatures aforementioned as your own, as Acting Governor under Section 19, Article IV, of the Constitution of Florida; and upon your so proclaiming, you are advised that you are authorized to cause to be delivered such warrants to the payees thereof to be accepted and paid by the Treasurer of the State of Florida and the funds disbursed accordingly.

[2] In response to your question three, you are advised that under Section 19, Article IV, of the Constitution of Florida, the powers and duties of Governor have devolved upon you by virtue of the death of Governor Dan T. McCarty and it is our opinion that, when performing such executive duties, you are authorized to designate yourself as Acting Governor, by virtue of Section 19, Article IV of the Constitution.

Respectfully submitted,

B. K. ROBERTS

Chief Justice

GLENN TERRELL

ELWYN THOMAS

H. L. SEBRING

T. FRANK HOBSON

JOHN E. MATHEWS

E. HARRIS DREW

Justices.

All Citations

67 So.2d 413

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## Ranscht, David [AG]

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**From:** Ranscht, David [AG]  
**Sent:** Wednesday, December 07, 2016 5:38 PM  
**To:** Thompson, Jeffrey [AG]  
**Subject:** Gubernatorial Succession  
**Attachments:** Governor Succession.docx

Here is what I have after about 90 minutes of research. I will continue researching tomorrow.



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## MEMORANDUM

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**To:** Jeff Thompson  
**From:** David Ranscht  
**Date:** December 7, 2016  
**Re:** Gubernatorial Succession Provisions

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\*\*\*The federal 25th Amendment replaces language in original article II, § 1 that used the verb “devolve.”

### Arizona

Ariz. Const. art. 5, § 6 uses the verb “succeed:”

In the event of the death of the governor, or his resignation, removal from office, or permanent disability to discharge the duties of the office, the secretary of state, if holding by election, shall succeed to the office of governor until his successor shall be elected and shall qualify. If the secretary of state be holding otherwise than by election, or shall fail to qualify as governor, the attorney general, the state treasurer, or the superintendent of public instruction, if holding by election, shall, in the order named, succeed to the office of governor. . . . Any successor to the office shall become governor in fact and entitled to all of the emoluments, powers and duties of governor upon taking the oath of office.

In the event of the impeachment of the governor, his absence from the state, or other temporary disability to discharge the duties of the office, the powers and duties of the office of governor shall devolve upon the same person as in case of vacancy, but only until the disability ceases.

Westlaw notes that a proposed amendment to this provision is currently pending voter approval. My review of the amendment indicates that the amendment simply replaces “secretary of state” with “lieutenant governor.”

### Arkansas

Ark. Const. art. 6, § 4. Section 4 provides, “In case of the impeachment of the Governor, or his or her removal from office, death, inability to discharge the powers and duties of the said office,



or resignation, the powers and duties of the office, shall devolve upon the Lieutenant Governor for the residue of the term, or until the disability shall cease.”

Notwithstanding this language, the Arkansas Supreme Court concluded in *Stratton v. Priest*, 932 S.W.2d 321, 321 (Ark. 1996), that the governor’s resignation meant the lieutenant governor “became governor.” The *Stratton* case involved a challenge to the special election that the lieutenant governor ordered to fill the vacancy he left.

The *Stratton* case also followed the Arkansas Supreme Court’s decision in *Bryant v. English*, 843 S.W.2d 308, 309 (Ark. 1992), which followed Bill Clinton’s resignation after his election as President. The court concluded “the Office of Governor itself devolves upon the Lieutenant Governor.” *Id.* The opinion discusses the need to have the state’s chief executive elected by a statewide vote—and so it differentiates between the lieutenant governor and the President of the Senate, who “had been directly elected only by the voters of a local state Senate district.” *Id.* at 312. This, of course, does not solve the problem that occurs if the lieutenant governor becomes governor, appoints someone, and then is incapacitated themselves.

Additionally, the *Bryant* opinion identifies possible “mixing of executive and legislative powers” if the lieutenant governor merely holds the *powers* of governor, but not the office. *Id.* at 312. And it identifies historical practice of treating the “lieutenant governor as governor when he filled a vacant governor’s office.” *Id.* at 312.

### California

Cal. Const. art. 5, § 10: “The Lieutenant Governor **shall become** Governor when a vacancy occurs in the office of Governor.”

California also distinguishes between becoming governor and *acting as* governor: “The Lieutenant Governor shall act as Governor during the impeachment, absence from the State, or other temporary disability of the Governor . . . .” *Id.*

Additionally, California gives its supreme court “exclusive jurisdiction to determine all questions arising under this section.” *Id.*

### Delaware

Del. Const. art. 3, § 20:

In case the person elected Governor shall die or become disqualified before the commencement of his or her term of office, or shall refuse to take the same, or in case of the removal of the Governor from office, or of his or her death, resignation, or inability to discharge **the powers and duties of the said office**, the

same shall devolve on the Lieutenant-Governor; and in case of removal, death, resignation, or inability of both the Governor and Lieutenant-Governor, the Secretary of State, or if there be none, or in case of his or her removal, death, resignation, or inability, then the Attorney-General, or if there be none, or in case of his or her removal, death, resignation, or inability, then the President pro tempore of the Senate or if there be none, or in case of his or her removal, death, resignation, or inability, then the Speaker of the House of Representatives shall act as Governor until the disability of the Governor or Lieutenant-Governor is removed, or a Governor shall be duly elected and qualified.

....

**Whenever the powers and duties of the office of Governor shall devolve upon the Lieutenant-Governor, Secretary of State, or Attorney-General, his or her office shall become vacant; and whenever the powers and duties of the office of Governor shall devolve upon the President pro tempore of the Senate, or the Speaker of the House of Representatives, his or her seat as a member of the General Assembly shall become vacant; and any such vacancy shall be filled as directed by this Constitution; provided, however, that such vacancy shall not be created in case either of the said persons shall be acting as Governor during a temporary disability of the Governor.**

### **Florida**

Lieutenant governor “shall become governor” upon a gubernatorial vacancy. However, lieutenant governor “shall act as governor” when the governor is physically or mentally incapacitated. Fla. Const. art. 4, § 3(a)–(b).

A previous version of the Florida Constitution apparently used “devolve” language. *See Advisory Opinion to Governor*, 217 So. 2d 289, 292 n.\* (Fla. 1968) (noting the relevant language is part of the “1968 revision”); *Advisory Opinion to Acting Governor Johns*, 67 So. 2d 413, 414 (Fla. 1953) (referring to powers devolved upon the lieutenant governor and permitting the lieutenant governor to “designate [him]self as Acting Governor”).

### **Hawaii**

Haw. Const. art. 5, § 4: “When the office of governor is vacant, the lieutenant governor shall become governor. In the event of the absence of the governor from the State, or the governor's inability to exercise and discharge the powers and duties of the governor's office, such powers and duties shall devolve upon the lieutenant governor during such absence or disability.”

Pennsylvania features a similar distinction between vacancy and disability (see below).

### Kansas

Distinguishes between resignation and disability; uses “shall become governor.” Kan. Const. art. 1, § 11: “When the office of governor is vacant, the lieutenant governor shall become governor. In the event of the disability of the governor, the lieutenant governor shall assume the powers and duties of governor until the disability is removed.”

### Maryland

Md. Const. art. 2, § 6(d): the lieutenant governor “shall succeed to th[e] office” when there is a gubernatorial vacancy. However, “The Lieutenant Governor **shall serve as acting Governor**” when the governor is disabled or temporarily unable to perform the duties of the office. *Id.* § 6(b).

### Minnesota

Lieutenant governor “shall be governor” if “a vacancy occurs from any cause whatever in the office of governor.” Minn. Const. art. 5, § 5. Powers “devolve” from governor to lieutenant governor if the governor is unable to discharge the duties of the office. *Id.*

### Missouri

Mo. Const. art. 4, § 11(a): “If the governor-elect dies before taking office, the lieutenant governor-elect shall take the term of the governor-elect. On the death, conviction or impeachment, or resignation of the governor, the lieutenant governor shall become governor for the remainder of the term. If there be no lieutenant governor the president pro tempore of the senate, the speaker of the house, the secretary of state, the state auditor, the state treasurer or the attorney general in succession shall become governor. On the failure to qualify, absence from the state or other disability of the governor, the powers, duties and emoluments of the governor shall devolve upon the lieutenant governor for the remainder of the term or until the disability is removed.”

### New Hampshire

N.H. Const. pt. 2, art. 49 provides the successor shall “act as” governor and also expressly confers the title of “Acting Governor.” New Hampshire also provides for a special election if the vacancy occurs with more than one year before the end of the term.

### New Jersey

N.J. Const. art. 5, § 1, ¶ 6: “In the event of a vacancy in the office of Governor resulting from the death, resignation or removal of a Governor in office, or the death of a Governor-elect, or from any other cause, the Lieutenant Governor shall become Governor, until a new Governor is elected and qualifies.”

In a 19th-century case, possibly occurring before New Jersey had provisions establishing the position of lieutenant governor, the New Jersey Supreme Court concluded a gubernatorial vacancy does not bestow the office itself upon the successor:

The provision is that, in case of the resignation of the governor, the powers, duties, and emoluments of the office shall devolve upon the president of the senate, and not that the president of the senate shall thereby become governor, and hold the title and the office until another governor is elected. If the framers of the fundamental law had intended to transfer the president of the senate to the executive chair, and thereby to vacate his office of senator, it is reasonable to believe that they would have said so in no uncertain language. The language used is not ambiguous. It declares that the powers, duties, and emoluments of the office shall devolve on the president of the senate; it does not confer upon him the title of the office. The president of the senate exercises the powers of the governor; the president of the senate performs the duties of the governor; the president of the senate receives the emoluments of that office. He is still president of the senate, with the added duties required of the chief executive of the state imposed upon him.

*State v. Heller*, 42 A. 155, 157 (N.J. 1899)

#### New York

N.Y. Const. art. 4, § 5: “In case of the removal of the governor from office or of his or her death or resignation, the lieutenant-governor shall become governor for the remainder of the term.”

#### North Carolina

Lieutenant governor “shall become Governor” upon governor’s resignation. N.C. Const. art. III, § 3(1). However, upon the governor’s disability, lieutenant governor “shall be Acting Governor.” *Id.* § 3(3).

#### North Dakota (another “shall succeed to the office” state)

N.D. Const. art. 5, § 11: “The lieutenant governor shall succeed to the office of governor when a vacancy occurs in the office of governor.”

#### Oklahoma

Okla. Const. art. 6, § 16: “In case of impeachment of the Governor, or of his death, failure to qualify, resignation, removal from the State, or inability to discharge the powers and duties of the office, the said office, with its compensation, shall devolve upon the Lieutenant Governor for the residue of the term or until the disability shall be removed.”

In a 1926 case, the Oklahoma Supreme Court concluded that notwithstanding the “devolve” language, the successor becomes governor. *Fitzpatrick v. McAlister*, 248 P. 569, 572–73 (Okla. 1926). A dissent in the case suggested that if the lieutenant governor becomes governor and

appoints a new lieutenant governor, the clear line of succession could be interrupted, preventing the senate president from ever succeeding to the duties of governor. *Id.* at 581 (Branson, V.C.J., dissenting).

### Oregon

Or. Const. art. V, § 8a: “shall become Governor.”

### Pennsylvania

Pa. Const. art. 4, § 13: In the case of the death, conviction on impeachment, failure to qualify or resignation of the Governor, the Lieutenant Governor shall become Governor for the remainder of the term and in the case of the disability of the Governor, the powers, duties and emoluments of the office shall devolve upon the Lieutenant Governor until the disability is removed.”

### South Dakota

S.D. Const. art. 4, § 6: “When the office of Governor shall become vacant through death, resignation, failure to qualify, conviction after impeachment or permanent disability of the Governor, the lieutenant governor **shall succeed to the office and powers** of the Governor. When the Governor is unable to serve by reason of continuous absence from the state, or other temporary disability, the executive power shall devolve upon the lieutenant governor for the residue of the term or until the disability is removed.”

### West Virginia

W. Va. Const. art. 7, § 16: “In case of the death, conviction or impeachment, failure to qualify, resignation, or other disability of the governor, the president of the Senate shall **act as** governor until the vacancy is filled, or the disability removed; and if the president of the Senate, for any of the above named causes, shall become incapable of performing the duties of governor, the same shall devolve upon the speaker of the House of Delegates; and in all other cases where there is no one to act as governor, one shall be chosen by joint vote of the Legislature. Whenever a vacancy shall occur in the office of governor before the first three years of the term shall have expired, a new election for governor shall take place to fill the vacancy.”

Interesting provision in the final sentence that provides a special election must take place depending on when in the term the vacancy occurs.

### Wisconsin

Lieutenant governor “shall become governor” if the governor dies, resigns, or is removed. Wis. Const. art. 5, § 7(1). Lieutenant governor “shall serve as acting governor” if the governor is absent or disabled. *Id.* § 7(2).

Meghan  
Cavix

Good work on the edits. I think the letter is looking pretty good.

Apr 19

Thanks. I think some of the generic case citations (for propositions like "consider the circumstances surrounding enactment) actually really strengthen it.

Apr 19

David  
Ranscht

I think it shows our effort to apply well settled rules of construction to these questions. We are process (not result) oriented.

Apr 19

Which we will probably be accused of regardless... Haha

Apr 19

No doubt.

Apr 19

Governors people are here.

## Thompson, Jeffrey [AG]

---

**From:** Gannon, Matt [AG]  
**Sent:** Wednesday, December 07, 2016 11:30 AM  
**To:** Greenwood, Geoff [AG]; Thompson, Jeffrey [AG]  
**Subject:** Gov succession steps doc  
**Attachments:** Gov succession steps.docx



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1. Resignation of the Governor – Must be made in writing to the General Assembly, if in session, if not, to the Secretary of State. Iowa Code § 69.4(1).
2. Upon resignation, the Office of Governor is considered vacant. § 69.2(1)(d).
3. The vacancy is filled by the Lieutenant Governor. Iowa Const. Art. IV, Sec. 17 (“In the case of the death, impeachment, resignation . . . of the governor, the powers and duties of the office for the residue of the term, . . . shall devolve upon the lieutenant governor.”)
4. Once the Lt. Governor becomes governor, it creates a vacancy in the Lt. Governor’s office because of the prohibition against simultaneously holding more than one elective office. See Iowa Code § 69.2(1)(h).
5. In general, vacancies in state offices are filled by the governor. § 69.8(2).
6. The Code specifically provides, “an appointment by the governor to fill a vacancy in the office of the lieutenant governor shall be for the balance of the unexpired term.” § 69.8(2).

Accordingly, a resignation by Gov. Branstad would create a vacancy that would be filled by Lt. Gov. Reynolds. Once she assumed the office of Governor, a vacancy would be created in the Lt. Governor’s office. The governor has the power and authority to appoint a new Lt. Governor who would serve for the balance of the Branstad/ Reynolds term.

We have reviewed for any relevant case law or Attorney General Opinions, and have not found any that would alter the above analysis.



## Thompson, Jeffrey [AG]

---

**From:** Ranscht, David [AG]  
**Sent:** Thursday, December 08, 2016 5:36 PM  
**To:** Thompson, Jeffrey [AG]; Gavin, Meghan [AG]  
**Subject:** RE: Constitutional issue re: Lt. Gov assuming Gov's powers  
**Attachments:** Governor Succession.docx

Attached is an updated copy of the memo with all other 49 states' provisions. Tomorrow I will work on a chart categorizing them.

David Ranscht  
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-----Original Message-----

**From:** Thompson, Jeffrey [AG]  
**Sent:** Thursday, December 08, 2016 2:41 PM  
**To:** Gavin, Meghan [AG]; Ranscht, David [AG]  
**Subject:** RE: Constitutional issue re: Lt. Gov assuming Gov's powers

Already put a hard copy on your chairs. Found it this morning. Dicta.....

-----Original Message-----

**From:** Gavin, Meghan [AG]  
**Sent:** Thursday, December 08, 2016 2:39 PM  
**To:** Ranscht, David [AG]; Thompson, Jeffrey [AG]  
**Subject:** RE: Constitutional issue re: Lt. Gov assuming Gov's powers

[https://govt.westlaw.com/iaag/Document/I6adbf60af80111df9b8c850332338889?originationContext=Search+Result&listSource=Search&viewType=FullText&navigationPath=Search%2fv3%2fsearch%2fresults%2fnavigation%2fi0ad70f7000000158dfad385267b9973f%3fstartIndex%3d1%26Nav%3dADMINDECISION\\_PUBLICVIEW%26contextData%3d\(sc.Default\)&rank=2&list=ADMINDECISION\\_PUBLICVIEW&transitionType=SearchItem&contextData=\(sc.Search\)&t\\_querytext=Governor+resignation+successor+vacancy+lieutenant+governor+duties+and+responsibilities+&t\\_Method=WIN](https://govt.westlaw.com/iaag/Document/I6adbf60af80111df9b8c850332338889?originationContext=Search+Result&listSource=Search&viewType=FullText&navigationPath=Search%2fv3%2fsearch%2fresults%2fnavigation%2fi0ad70f7000000158dfad385267b9973f%3fstartIndex%3d1%26Nav%3dADMINDECISION_PUBLICVIEW%26contextData%3d(sc.Default)&rank=2&list=ADMINDECISION_PUBLICVIEW&transitionType=SearchItem&contextData=(sc.Search)&t_querytext=Governor+resignation+successor+vacancy+lieutenant+governor+duties+and+responsibilities+&t_Method=WIN)

Here's a relevant opinion free m Pam.

From: Ranscht, David [AG]  
Sent: Thursday, December 08, 2016 12:02 PM  
To: Thompson, Jeffrey [AG]; Gavin, Meghan [AG]  
Subject: RE: Constitutional issue re: Lt. Gov assuming Gov's powers

Cool table indeed.

Here are two more cases (WI and MT). I have a bunch more in a folder to read after lunch.

[cid:image001.png@01D25149.FECA50E0]<<http://www.iowaattorneygeneral.gov/>>

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From: Thompson, Jeffrey [AG]  
Sent: Thursday, December 08, 2016 11:46 AM  
To: Ranscht, David [AG]; Gavin, Meghan [AG]  
Subject: FW: Constitutional issue re: Lt. Gov assuming Gov's powers

See below. Gotta love Wikipedia.

Can we print the cool table?

From: Greenwood, Geoff [AG]  
Sent: Thursday, December 08, 2016 11:13 AM  
To: Thompson, Jeffrey [AG]  
Subject: FW: Constitutional issue re: Lt. Gov assuming Gov's powers

From: Mark O. Lambert [<mailto:marklambert@mchsi.com>]  
Sent: Thursday, December 08, 2016 11:12 AM  
To: Greenwood, Geoff [AG]  
Cc: Tabor, Eric [AG]  
Subject: Re: Constitutional issue re: Lt. Gov assuming Gov's powers

Thanks, Geoff. One more thing, historically, when an Iowa Gov has left office before the end of his term, there has not been a Lt. Gov. appointed. Most of the time, these were very short periods of time, though.

[https://en.wikipedia.org/wiki/List\\_of\\_Governors\\_of\\_Iowa](https://en.wikipedia.org/wiki/List_of_Governors_of_Iowa)

Mark

---

From: "Geoff Greenwood [AG]" <Geoff.Greenwood@iowa.gov<mailto:Geoff.Greenwood@iowa.gov>>  
To: "Mark O. Lambert" <marklambert@mchsi.com<mailto:marklambert@mchsi.com>>, "Eric Tabor [AG]" <Eric.Tabor@iowa.gov<mailto:Eric.Tabor@iowa.gov>>  
Sent: Thursday, December 8, 2016 10:25:12 AM  
Subject: RE: Constitutional issue re: Lt. Gov assuming Gov's powers

Thanks for contacting us, Mark. We're researching it and will add this to the conversation.

Best regards,

[cid:image001.png@01D25149.FECA50E0]<<http://www.iowaattorneygeneral.gov/>>

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From: Mark O. Lambert [<mailto:marklambert@mchsi.com>]  
Sent: Thursday, December 08, 2016 9:54 AM  
To: Greenwood, Geoff [AG]; Tabor, Eric [AG]  
Subject: Constitutional issue re: Lt. Gov assuming Gov's powers  
Importance: High

Eric and Geoff:

In Massachusetts, when Governor William Weld resigned in 1997, Lt. Gov. Paul Cellucci became "Acting Governor" – not "Governor." When Cellucci resigned to become US Ambassador to Canada during the Bush Administration in 2001, his Lt. Gov. Jane Swift became "Acting Governor."

Massachusetts Constitution has a similar provision to the Iowa Constitution:

III.—Whenever the chair of the Governor shall be vacant, by reason of his death, or absence from the Commonwealth, or otherwise, the Lieutenant-Governor, for the time being, shall, during such vacancy, perform all the duties incumbent upon the Governor, and shall have and exercise all the powers and authorities, which by this Constitution the Governor is vested with, when personally present.

Hope this is helpful.

--Mark

Mark Lambert

Attorney at Law

Polk City

515-681-0285

## MEMORANDUM

---

**To:** Jeff Thompson, Meghan Gavin  
**From:** David Ranscht  
**Date:** December 7, 2016 (updated December 8, 2016)  
**Re:** Gubernatorial Succession Provisions

---

### Alabama

Ala. Const. art. V, § 127: “In case of the governor’s removal from office, death or resignation, the lieutenant governor **shall become governor.**”

### Alaska

Alaska Const. art. 3, § 11: “In case of a vacancy in the office of governor for any reason, the lieutenant governor **shall succeed to the office** for the remainder of the term.”

### Arizona

Ariz. Const. art. 5, § 6 uses the verb “succeed:”

In the event of the death of the governor, or his resignation, removal from office, or permanent disability to discharge the duties of the office, the secretary of state, if holding by election, **shall succeed to the office of governor** until his successor shall be elected and shall qualify. If the secretary of state be holding otherwise than by election, or shall fail to qualify as governor, the attorney general, the state treasurer, or the superintendent of public instruction, if holding by election, shall, in the order named, succeed to the office of governor. . . . Any successor to the office shall become governor in fact and entitled to all of the emoluments, powers and duties of governor upon taking the oath of office.

In the event of the impeachment of the governor, his absence from the state, or other temporary disability to discharge the duties of the office, the powers and duties of the office of governor shall devolve upon the same person as in case of vacancy, but only until the disability ceases.

However, before the current language, Arizona also used “devolve.” Under that language, the Arizona Supreme Court concluded “where the duties of the office of governor devolve on the

president of the senate, he does not become governor.” *State v. Garvey*, 195 P.2d 153, 154 (Ariz. 1948).

### Arkansas

Ark. Const. art. 6, § 4. Section 4 provides, “In case of the impeachment of the Governor, or his or her removal from office, death, inability to discharge the powers and duties of the said office, or resignation, the powers and duties of the office, shall devolve upon the Lieutenant Governor for the residue of the term, or until the disability shall cease.”

Notwithstanding this language, the Arkansas Supreme Court concluded in *Stratton v. Priest*, 932 S.W.2d 321, 321 (Ark. 1996), that the governor’s resignation meant the lieutenant governor “became governor.” The *Stratton* case involved a challenge to the special election that the lieutenant governor ordered to fill the vacancy he left.

The *Stratton* case also followed the Arkansas Supreme Court’s decision in *Bryant v. English*, 843 S.W.2d 308, 309 (Ark. 1992), which followed Bill Clinton’s resignation after his election as President. The court concluded “the Office of Governor itself devolves upon the Lieutenant Governor.” *Id.* The opinion discusses the need to have the state’s chief executive elected by a statewide vote—and so it differentiates between the lieutenant governor and the President of the Senate, who “had been directly elected only by the voters of a local state Senate district.” *Id.* at 312. This, of course, does not solve the problem that occurs if the lieutenant governor becomes governor, appoints someone, and then is incapacitated themselves.

Additionally, the *Bryant* opinion identifies possible “mixing of executive and legislative powers” if the lieutenant governor merely holds the *powers* of governor, but not the office. *Id.* at 312. And it identifies historical practice of treating the “lieutenant governor as governor when he filled a vacant governor’s office.” *Id.* at 312.

### California

Cal. Const. art. 5, § 10: “The Lieutenant Governor **shall become** Governor when a vacancy occurs in the office of Governor.”

California also distinguishes between becoming governor and *acting as* governor: “The Lieutenant Governor shall act as Governor during the impeachment, absence from the State, or other temporary disability of the Governor . . . .” *Id.*

But before enacting its current language, California used the word “devolve:”

[I]t is provided that in case of the death, resignation, impeachment, absence from the state, or inability to act of the governor, “the powers and duties of his office shall devolve upon the lieutenant-governor for the residue of the term, or until the

disability shall cease.” It will be seen that in case of a vacancy in the office of governor **the vacancy is not to be filled, but the powers and duties devolve upon the lieutenant governor, who does not cease to be lieutenant governor.** Under such circumstances it would hardly be contended that when the powers and duties of the governor devolve upon the lieutenant governor the latter thereby becomes governor, and can appoint a lieutenant governor.

*People v. Budd*, 45 P. 1060, 1060 (1896).

### Colorado

Colo. Const. art. 4, § 13(1): “In the case of the death, impeachment, conviction of a felony, or resignation of the governor, the office of governor shall be vacant and the lieutenant governor shall take the oath of office and **shall become governor.**”

### Connecticut

Death, resignation, refusal to serve, or removal: lieutenant governor shall be governor. Conn. Const. art. 4, § 18(a).

Impeachment or absence: lieutenant governor “shall exercise the powers and authority and perform the duties appertaining to the office of governor.” *Id.* § 18(b).

### Delaware

Del. Const. art. 3, § 20:

In case the person elected Governor shall die or become disqualified before the commencement of his or her term of office, or shall refuse to take the same, or in case of the removal of the Governor from office, or of his or her death, resignation, or inability to discharge **the powers and duties of the said office**, the same **shall devolve on the Lieutenant-Governor**; and in case of removal, death, resignation, or inability of both the Governor and Lieutenant-Governor, the Secretary of State, or if there be none, or in case of his or her removal, death, resignation, or inability, then the Attorney-General, or if there be none, or in case of his or her removal, death, resignation, or inability, then the President pro tempore of the Senate or if there be none, or in case of his or her removal, death, resignation, or inability, then the Speaker of the House of Representatives shall act as Governor until the disability of the Governor or Lieutenant-Governor is removed, or a Governor shall be duly elected and qualified.

....

**Whenever the powers and duties of the office of Governor shall devolve upon the Lieutenant-Governor, Secretary of State, or Attorney-General, his or her office shall become vacant; and whenever the powers and**

duties of the office of Governor shall devolve upon the President pro tempore of the Senate, or the Speaker of the House of Representatives, his or her seat as a member of the General Assembly shall become vacant; **and any such vacancy shall be filled as directed by this Constitution**; provided, however, that such vacancy shall not be created in case either of the said persons shall be acting as Governor during a temporary disability of the Governor.

### **Florida**

Lieutenant governor “shall become governor” upon a gubernatorial vacancy. However, lieutenant governor “shall act as governor” when the governor is physically or mentally incapacitated. Fla. Const. art. 4, § 3(a)–(b).

A previous version of the Florida Constitution apparently used “devolve” language. *See Advisory Opinion to Governor*, 217 So. 2d 289, 292 n.\* (Fla. 1968) (noting the relevant language is part of the “1968 revision”); *Advisory Opinion to Acting Governor Johns*, 67 So. 2d 413, 414 (Fla. 1953) (referring to powers devolved upon the lieutenant governor and permitting the lieutenant governor to “designate [him]self as Acting Governor”).

### **Georgia**

Temporary disability: lieutenant governor “shall exercise the powers and duties of the Governor.” Ga. Const. art. 5, § 1, ¶ V(a).

Death, resignation, or permanent disability: lieutenant governor “shall become the Governor.” *Id.* § 1, ¶ V(b).

### **Hawaii**

Haw. Const. art. 5, § 4: “When the office of governor is vacant, the lieutenant governor **shall become governor**. In the event of the absence of the governor from the State, or the governor’s inability to exercise and discharge the powers and duties of the governor’s office, such powers and duties shall devolve upon the lieutenant governor during such absence or disability.”

### **Idaho**

If the governor resigns, the “powers, duties, and emoluments of the office . . . **devolve** upon the lieutenant governor.” Idaho Const. art. IV, § 12. No distinction is made between permanent vacancies (resignation/death) and temporary ones (absence/disability).

### **Illinois**

Ill. Const. art. 5, § 6(b): “If the Governor is unable to serve because of death, conviction on impeachment, failure to qualify, resignation or other disability, **the office of Governor shall be**



filled by the officer next in line of succession for the remainder of the term or until the disability is removed.”

If the governor “determines that he may be seriously impeded in the exercise of his powers,” the Constitution provides for an Acting Governor. *Id.* § 6(c).

### Indiana

Lieutenant governor “shall become governor” if governor resigns, but “shall discharge the powers and duties of the office as Acting Governor” if governor is incapacitated. Ind. Const. art. 5, § 10(a).

### Kansas

Kan. Const. art. 1, § 11: “When the office of governor is vacant, the lieutenant governor shall become governor. In the event of the disability of the governor, the lieutenant governor shall assume the powers and duties of governor until the disability is removed.”

### Kentucky

Ky. Const. § 84: “Should the Governor be impeached and removed from office, die, refuse to qualify, resign, certify by entry on his Journal that he is unable to discharge the duties of his office, or be, from any cause, unable to discharge the duties of his office, the Lieutenant Governor **shall exercise all the power and authority appertaining to the office of Governor** until another be duly elected and qualified, or the Governor shall be able to discharge the duties of his office.”

No distinction between permanent vacancies and temporary ones.

### Louisiana

No provision specifically addressing the label attached to gubernatorial succession. The Louisiana Constitution merely provides “the order of succession” when a vacancy occurs. La. Const. art. 4, § 14. However, “When the governor is temporarily absent from the state, the lieutenant governor shall act as governor.” *Id.* § 19.

### Maine

Me. Const. art. 5, pt. 1, § 14: “Whenever the office of Governor shall become vacant because of the death, resignation or removal of a Governor in office, or any other cause, the President of the Senate **shall assume the office** of Governor until another Governor shall be duly qualified.”

### Maryland

Md. Const. art. 2, § 6(d): the lieutenant governor “shall succeed to th[e] office” when there is a gubernatorial vacancy. However, “The Lieutenant Governor **shall serve as acting Governor**”

when the governor is disabled or temporarily unable to perform the duties of the office. *Id.* § 6(b).

### Massachusetts

Mass. Const. pt. 2, ch. II, § II, art. III: “Whenever the chair of the governor shall be vacant, by reason of his death, or absence from the commonwealth, or otherwise, the lieutenant governor, for the time being, shall, during such vacancy, **perform all the duties** incumbent upon the governor, and shall have and exercise all the powers and authorities, which by this constitution the governor is vested with, when personally present.”

### Michigan

Mich. Const. art. 5, § 26: “In case of the conviction of the governor on impeachment, his removal from office, his resignation or his death, the lieutenant governor, the elected secretary of state, the elected attorney general and such other persons designated by law **shall in that order be governor** for the remainder of the governor’s term.”

Westlaw lists the following “note of decision” for this provision: “In the event of a vacancy in the office of governor, the functions of the office devolve upon the lieutenant governor or the next elected official in succession, but the exercise of the functions of the office of governor by the lieutenant governor does not create a vacancy in the office of lieutenant governor which can be filled by appointment.” Op.Atty.Gen.1939-40, p. 69.

I will attempt to track this AG opinion down in the near future (the link is not clickable on Westlaw). A quick review of the Michigan AG’s website indicates opinions are only available online if they were issued after 1963.

### Minnesota

Lieutenant governor “shall be governor” if “a vacancy occurs from any cause whatever in the office of governor.” Minn. Const. art. 5, § 5. Powers “devolve” from governor to lieutenant governor if the governor is unable to discharge the duties of the office. *Id.*

### Mississippi

Miss. Const. art. 5, § 131: “When the office of Governor shall become vacant, by death or otherwise, the Lieutenant Governor **shall possess the powers and discharge the duties** of the office. When the Governor shall be absent from the State, or unable, from protracted illness, to perform the duties of the office, the Lieutenant Governor shall discharge the duties of said office until the Governor be able to resume his duties . . . .”

### Missouri

Mo. Const. art. 4, § 11(a): “If the governor-elect dies before taking office, the lieutenant governor-elect shall take the term of the governor-elect. On the death, conviction or impeachment, or resignation of the governor, the lieutenant governor shall become governor for the remainder of the term. If there be no lieutenant governor the president pro tempore of the senate, the speaker of the house, the secretary of state, the state auditor, the state treasurer or the attorney general in succession shall become governor. On the failure to qualify, absence from the state or other disability of the governor, the powers, duties and emoluments of the governor shall devolve upon the lieutenant governor for the remainder of the term or until the disability is removed.”

### Montana

“If the office of governor becomes vacant by reason of death, resignation, or disqualification, the lieutenant governor shall become governor for the remainder of the term, except as provided in this constitution.” Mont. Const. art. VI, § 14(6).

“When there is a vacancy in the office of governor, the successor shall be the governor. The acting governor shall have the powers and duties of the office of governor only for the period during which he serves.” *Id.* § 14(8). An “acting governor” only happens when the governor requests it of the lieutenant governor or when the governor is disabled. *See id.* § 14(2)–(4).

However, at some point in the past Montana had “devolve” language, and concluded under that language that a governor’s resignation does not create a vacancy in either the office of governor or lieutenant governor. *See State ex rel. Lamey v. Mitchell*, 34 P.2d 369, 370–72 (Mont. 1934).

### Nebraska

Impeachment, removal, resignation death: “shall . . . be Governor.” Neb. Const. art. IV, § 16.  
Absence/disability: “powers and duties of the office . . . shall devolve.” *Id.*

### Nevada

Nevada uses “devolve.” Nev. Const. art. 5, § 18. In a nineteenth-century case, the Nevada Supreme Court stated: “If a vacancy occurs in the office of governor, the powers and duties of the office devolve upon the lieutenant governor, but there is no vacancy created thereby in the office of lieutenant governor. The officer remains lieutenant governor, but invested with the powers and duties of governor.” *State v. Sadler*, 47 P. 450, 450 (1897).

### New Hampshire

N.H. Const. pt. 2, art. 49 provides the successor shall “act as” governor and also expressly confers the title of “Acting Governor.” New Hampshire also provides for a special election if the vacancy occurs with more than one year before the end of the term.

### New Jersey

N.J. Const. art. 5, § 1, ¶ 6: “In the event of a vacancy in the office of Governor resulting from the death, resignation or removal of a Governor in office, or the death of a Governor-elect, or from any other cause, the Lieutenant Governor shall become Governor, until a new Governor is elected and qualifies.”

In a 19th-century case, possibly occurring before New Jersey had provisions establishing the position of lieutenant governor, the New Jersey Supreme Court concluded a gubernatorial vacancy does not bestow the office itself upon the successor:

The provision is that, in case of the resignation of the governor, the powers, duties, and emoluments of the office shall devolve upon the president of the senate, and not that the president of the senate shall thereby become governor, and hold the title and the office until another governor is elected. If the framers of the fundamental law had intended to transfer the president of the senate to the executive chair, and thereby to vacate his office of senator, it is reasonable to believe that they would have said so in no uncertain language. The language used is not ambiguous. It declares that the powers, duties, and emoluments of the office shall devolve on the president of the senate; it does not confer upon him the title of the office. The president of the senate exercises the powers of the governor; the president of the senate performs the duties of the governor; the president of the senate receives the emoluments of that office. He is still president of the senate, with the added duties required of the chief executive of the state imposed upon him.

*State v. Heller*, 42 A. 155, 157 (N.J. 1899)

### New Mexico

Vacancy: “shall succeed to th[e] office.” N.M. Const. art. 5, § 7.

Absence/disability: “shall act as governor.” *Id.*

### New York

N.Y. Const. art. 4, § 5: “In case of the removal of the governor from office or of his or her death or resignation, the lieutenant-governor shall become governor for the remainder of the term.”

### North Carolina

Lieutenant governor “shall become Governor” upon governor’s resignation. N.C. Const. art. III, § 3(1). However, upon the governor’s disability, lieutenant governor “shall be Acting Governor.” *Id.* § 3(3).

### North Dakota (another “shall succeed to the office” state)

N.D. Const. art. 5, § 11: “The lieutenant governor **shall succeed to the office** of governor when a vacancy occurs in the office of governor.”

### Ohio

Death, conviction on impeachment, resignation, or removal: "Lieutenant Governor shall succeed to the office of governor." Ohio Const. art. III, § 15(A).

Disability: "shall serve as governor." *Id.* § 15(B).

"Any person *servicing as* governor for the duration of the Governor's disability shall have the powers, duties, and compensation of the office of governor. Any person who *succeeds* to the office of governor shall have the powers, duties, *title*, and compensation of the office of governor." *Id.* § 15(D).

### Oklahoma

Okla. Const. art. 6, § 16: "In case of impeachment of the Governor, or of his death, failure to qualify, resignation, removal from the State, or inability to discharge the powers and duties of the office, the said office, with its compensation, shall **devolve** upon the Lieutenant Governor for the residue of the term or until the disability shall be removed."

In a 1926 case, the Oklahoma Supreme Court concluded that notwithstanding the "devolve" language, the successor becomes governor. *Fitzpatrick v. McAlister*, 248 P. 569, 572-73 (Okla. 1926). A dissent in the case suggested that if the lieutenant governor becomes governor and appoints a new lieutenant governor, the clear line of succession could be interrupted, preventing the senate president from ever succeeding to the duties of governor. *Id.* at 581 (Branson, V.C.J., dissenting).

### Oregon

Or. Const. art. V, § 8a: "shall become Governor."

### Pennsylvania

Pa. Const. art. 4, § 13: In the case of the death, conviction on impeachment, failure to qualify or resignation of the Governor, the Lieutenant Governor **shall become Governor** for the remainder of the term and in the case of the disability of the Governor, the powers, duties and emoluments of the office **shall devolve** upon the Lieutenant Governor until the disability is removed."

### Rhode Island

R.I. Const. art. IX, § 9: "If the office of the governor shall be vacant by reason of death, resignation, impeachment or inability to serve, the lieutenant governor **shall fill the office** of governor, and exercise the powers and authority appertaining thereto, until a governor is qualified to act, or until the office is filled at the next election."

### South Carolina

S.C. Const. art. IV, § 11: “In the case of the removal of the Governor from office by impeachment, death, resignation, disqualification, disability, or removal from the State, the Lieutenant Governor **shall be Governor**. In case the Governor be impeached, the Lieutenant Governor shall act in his stead and have his powers until judgment in the case shall have been pronounced. In the case of the temporary disability of the Governor and in the event of the temporary absence of the Governor from the State, the Lieutenant Governor shall have full authority to act in an emergency.”

### South Dakota

S.D. Const. art. 4, § 6: “When the office of Governor shall become vacant through death, resignation, failure to qualify, conviction after impeachment or permanent disability of the Governor, the lieutenant governor **shall succeed to the office and powers** of the Governor. When the Governor is unable to serve by reason of continuous absence from the state, or other temporary disability, the executive power **shall devolve** upon the lieutenant governor for the residue of the term or until the disability is removed.”

### Tennessee

Tenn. Const. art. 3, § 12: “In case of the removal of the Governor from office, or of his death, or resignation, the powers and duties of the office shall **devolve** on the Speaker of the Senate . . . .”

### Texas

Temporary inability, disqualification, or absence: “exercise the powers and authority appertaining to the office.” Tex. Const. art. 4, § 16(c).

However, “if the office of Governor becomes vacant, the Lieutenant Governor **becomes Governor** for the remainder of the term being served by the Governor who refused or became unable to serve or vacated the office. On becoming Governor, the person vacates the office of Lieutenant Governor, and the resulting vacancy in the office of Lieutenant Governor shall be filled in the manner provided by [the Texas Constitution].” *Id.* § 16(d).

In a 1951 case, the Texas Court of Criminal Appeals took judicial knowledge of the fact that the governor died in 1949 and the lieutenant governor “succeeded to the office of Governor.” *Ex parte Raulie*, 237 S.W.2d 998, 999 (Tex. Crim. App. 1951).

### Utah

Utah defines vacancy to include resignation. Utah Const. art. 7, § 11(1)(a). If a vacancy occurs, the lieutenant governor “shall become governor.” *Id.* § 11(2). In turn, the Utah Constitution allows the new governor to select a new lieutenant governor. *Id.* § 10(3)(c).



However, before 2008, the Utah Constitution, like Iowa, used “devolve.” The Utah Attorney General issued an advisory opinion in 2003 on the exact question of succession we are now confronting. Utah A.G. Opinion No. 03-001, 2003 WL 21996258. The opinion concluded “devolve” means that the lieutenant governor becomes governor.

### Vermont

The Vermont Constitution simply instructs the legislature to “provide by general law what officer shall act as Governor whenever there shall be a vacancy in” both the offices of governor and lieutenant governor. Vt. Const. ch. II, § 24. The relevant statute is Vt. Stat. tit. 20, § 183, which simply establishes the order.

Additionally, ch. II, § 19 provides that the lieutenant governor “shall be President of the Senate, except when **exercising the office** of Governor.”

### Virginia

Removal from office, disqualification, death, or resignation: “shall become Governor.” Va. Const. art. 5, § 16.

Disability: “Acting Governor.” *Id.*

### Washington

Wash. Const. art. 3, § 10: “In case of the removal, resignation, death or disability of the governor, the duties of the office shall devolve upon the lieutenant governor . . . .”

Under the provision, the Washington Supreme Court has concluded:

The constitution having provided that in case of the death of the governor the duties of the office shall devolve upon the lieutenant governor, **there is no vacancy in the office of governor**. . . . When the lieutenant governor, by virtue of his office and of the command of the constitution, assumed the duties of governor on the death of Gov. Rogers, the office of lieutenant governor did not thereby become vacant, but the officer remained lieutenant governor, intrusted with the powers and duties of governor.

*State v. McBride*, 70 P. 25, 26 (Wash. 1902).

### West Virginia

W. Va. Const. art. 7, § 16: “In case of the death, conviction or impeachment, failure to qualify, resignation, or other disability of the governor, the president of the Senate shall **act as** governor until the vacancy is filled, or the disability removed; and if the president of the Senate, for any of

the above named causes, shall become incapable of performing the duties of governor, the same shall devolve upon the speaker of the House of Delegates; and in all other cases where there is no one to act as governor, one shall be chosen by joint vote of the Legislature. Whenever a vacancy shall occur in the office of governor before the first three years of the term shall have expired, a new election for governor shall take place to fill the vacancy.”

Interesting provision in the final sentence that provides a special election must take place depending on when in the term the vacancy occurs.

### Wisconsin

Lieutenant governor “shall become governor” if the governor dies, resigns, or is removed. Wis. Const. art. 5, § 7(1). Lieutenant governor “shall serve as acting governor” if the governor is absent or disabled. *Id.* § 7(2).

### Wyoming

Wyo. Const. art. 4, § 6: “If the governor be impeached, displaced, resign or die, or from mental or physical disease or otherwise become incapable of performing the duties of his office or be absent from the state, the secretary of state **shall act as governor** until the vacancy is filled or the disability removed.”

In a case involving the provision the Wyoming Supreme Court concluded that “in a technical sense the [success]or is not Governor” and that “in a limited sense the office of Governor is vacant.” *State v. Grant*, 73 P. 470, 475 (Wyo. 1903). The court’s discussion of vacancy is also worthwhile, since the entire question we are confronting is about the technicality and the reason for the provision:

We deem it unnecessary to discuss technically the question of vacancy in the office. In the sense that the law contemplates that there shall be an incumbent of the office regularly chosen to that position, it may be admitted that a vacancy has occurred, and continues to exist, **which can be filled only through an election by the people**. But the office is now supplied in the manner provided by the Constitution and statutes, with an incumbent who is legally qualified to exercise its powers and perform the duties which pertain to it; and, although such incumbent is merely designated as an Acting Governor, he is for all practical purposes in possession of the office and all of its prerogatives.

*Id.* at 475.



## Thompson, Jeffrey [AG]

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KeyCite Yellow Flag - Negative Treatment  
Declined to Follow by Gannon v. State, Kan., March 7, 2014  
818 N.W.2d 1  
Supreme Court of Iowa.

Rozanne E. KING; Alisha Jane King; Dacie S. Houston, Individually and as Mother and Next Friend of Skylar Dwayne Ostrander, Chay Cortez Ostrander, and Adlia William Cortez Flood III; Brandy R. Drake, Individually and as Mother and Next Friend of Logan Genner Luhmann, Susan Maule, Stephanie Maule, and Jacob Maule; Michael Campbell, Individually and as Father and Next Friend of George Campbell and Sophia Campbell; and Laura Campbell, Individually and as Mother and Next Friend of Christopher Rasso, George Campbell, and Sophia Campbell,  
Appellants,

v.

The STATE of Iowa; Chester J. Culver, in His Official Capacity as the Governor of the State of Iowa; The Iowa Department of Education; and Judy Jeffrey, in Her Official Capacity as the Director of the Iowa Department of Education,  
Appellees.

No. 08-2006.

April 20, 2012.

Rehearing Denied May 24, 2012.

**Synopsis**

**Background:** Students brought action against State, alleging that public school system was not adequately serving students in largest or smallest school districts. The District Court, Polk County, Karen A. Romano, J., dismissed action. Students appealed.

**Holdings:** The Supreme Court, Mansfield, J., held that:

[1] students' allegations that State failed to establish statewide public school educational standards, assessments, and teacher training, recruitment, and retention programs were insufficient to state claim for violation of constitutional education clause;

[2] allegations were insufficient to allege disparate treatment, as required to state claim for violation of equal

protection guarantee;

[3] any failure of State to establish statewide educational standards, assessments, and teacher training, recruitment, and retention programs did not amount to deprivation of fundamental right;

[4] State's system for setting educational standards was supported by legitimate government interests;

[5] system was rationally connected to such interests; and

[6] students did not have private right of action for claims against State under statute setting out goals for state educational system.

Affirmed.

Cady, C.J., and Waterman, J., filed specially concurring opinions.

Wiggins, J., dissented and filed opinion in which Hecht and Appel, JJ., joined.

Appel, J., dissented and filed opinion in which Hecht, J., joined.

West Headnotes (29)

[11] **Appeal and Error**  
⇔Grounds for Sustaining Decision Not Considered

On appeal, the Supreme Court will uphold a district court ruling on a ground other than the one upon which the district court relied provided the ground was urged in that court.

12 Cases that cite this headnote

[12] **Appeal and Error**  
⇔Review of constitutional questions

Supreme Court would consider issue of whether students stated claim against State as alternate

ground on which trial court’s dismissal of action could be affirmed, in case in which trial court found that students stated claims for relief under equal protection clause and due process clause but dismissed claims as nonjusticiable political questions; district court had indicated that it believed equal protection and due process claims would be sufficient if they were justiciable, parties had briefed issue below, and political question grounds and failure to state claim grounds were interrelated. Const. Art. 1, §§ 6, 9.

Cases that cite this headnote

<sup>[3]</sup> **Education**  
⇌Pupils or Students

Students’ allegations that State failed to establish statewide public school educational standards, assessments, and teacher training, recruitment, and retention programs were insufficient to state claim for violation of constitutional education clause; clause did not mandate that state’s education system be adequate, efficient, quality, thorough, or uniform. Const. Art. 9, § 8.

1 Cases that cite this headnote

<sup>[4]</sup> **Constitutional Law**  
⇌Context and related clauses

Constitutional provisions, like statutes, need to be read in context.

Cases that cite this headnote

<sup>[5]</sup> **Constitutional Law**  
⇌Political Questions

Courts will not intervene or attempt to adjudicate a challenge to a legislative action

involving a political question.

Cases that cite this headnote

<sup>[6]</sup> **Constitutional Law**  
⇌Interpretation of constitution in general  
**Constitutional Law**  
⇌Making, Interpretation, and Application of Statutes

The exercise of the judiciary’s power to interpret the constitution and to review the constitutionality of the laws and acts of the legislature does not offend the separation of powers doctrine.

Cases that cite this headnote

<sup>[7]</sup> **Constitutional Law**  
⇌Political Questions

A nonjusticiable political question may be found when one or more of the following considerations is present: (1) a textually demonstrable constitutional commitment of the issue to a coordinate political department; (2) a lack of judicially discoverable and manageable standards for resolving the issue; (3) the impossibility of deciding without an initial policy determination of a kind clearly for nonjudicial discretion; (4) the impossibility of a court’s undertaking independent resolution without expressing a lack of the respect due coordinate branches of government; (5) an unusual need for unquestioning adherence to a political decision already made; or (6) the potentiality of embarrassment from multifarious pronouncements by various departments on one question.

Cases that cite this headnote

<sup>[8]</sup> **Constitutional Law**  
⇌Political Questions

Whether a matter involves a nonjusticiable political question is determined on a case-by-case basis and requires an examination of the nature of the underlying claim.

Cases that cite this headnote

<sup>191</sup> **Constitutional Law**  
↔Elementary and Secondary Education  
**Education**  
↔Pupils or Students

Students' allegations against State, asserting failure to establish statewide public school educational standards, assessments, and teacher training, recruitment, and retention programs, were insufficient to allege disparate treatment, as required to state claim for violation of equal protection guarantee, where students did not allege that State had done anything to treat them differently than other students, but rather alleged that State had not taken sufficient affirmative steps to eliminate perceived differences in outcomes. Const. Art. 1, § 6.

1 Cases that cite this headnote

<sup>110f</sup> **Constitutional Law**  
↔Political Questions

Students' allegations that State failed to establish statewide educational standards, assessments, and teacher training, recruitment, and retention programs, in violation of state constitution's equal protection clause, did not amount to nonjusticiable political question; courts typically decided claims brought by individuals who alleged denial of constitutional right to equal protection, and equal protection jurisprudence contained previously-applied standards. Const. Art. 1, § 6.

Cases that cite this headnote

<sup>111</sup> **Constitutional Law**  
↔Discrimination and Classification  
**Constitutional Law**  
↔Education

Any equal protection claim under state constitution, whether in the education context or elsewhere, requires an allegation of disparate treatment, not merely disparate impact. Const. Art. 1, § 6.

3 Cases that cite this headnote

<sup>112</sup> **Constitutional Law**  
↔Similarly situated persons; like circumstances

To allege a viable equal protection claim under state constitution, plaintiffs must allege that the defendants are treating similarly situated persons differently. Const. Art. 1, § 6.

1 Cases that cite this headnote

<sup>113</sup> **Constitutional Law**  
↔Private persons and entities

Disparate treatment by someone other than the state, which the state, because of inaction, failed to prevent, generally does not amount to an equal protection violation under state constitution. Const. Art. 1, § 6.

Cases that cite this headnote

<sup>114</sup> **Constitutional Law**  
↔Rational Basis Standard; Reasonableness

Unless a suspect class or a fundamental right is at issue, equal protection claims are reviewed under the rational basis test. Const. Art. 1, § 6.

6 Cases that cite this headnote

<sup>115]</sup> **Constitutional Law**  
↔Education

For purposes of federal constitutional analysis, education is not a fundamental right under the equal protection clause. U.S.C.A. Const.Amend. 14.

2 Cases that cite this headnote

<sup>116]</sup> **Constitutional Law**  
↔Students  
**Education**  
↔Pupils or Students

Any failure of State to establish statewide educational standards, assessments, and teacher training, recruitment, and retention programs did not amount to deprivation of fundamental right, as required for students to state claim for equal protection violation in action against State, even if education could amount to a fundamental right; no student alleged any denial specific to his own actual education. Const. Art. 1, § 6.

1 Cases that cite this headnote

<sup>117]</sup> **Constitutional Law**  
↔Rational Basis Standard; Reasonableness

The rational basis test in an equal protection claim is a deferential standard. Const. Art. 1, § 6.

5 Cases that cite this headnote

<sup>118]</sup> **Constitutional Law**  
↔Rational Basis Standard; Reasonableness

Under the rational basis test in an equal

protection claim, court must determine whether a challenged classification is rationally related to a legitimate governmental interest; the classification is valid unless the relationship between the classification and the purpose behind it is so weak the classification must be viewed as arbitrary or capricious. Const. Art. 1, § 6.

2 Cases that cite this headnote

<sup>119]</sup> **Constitutional Law**  
↔Equal protection

Under the rational basis test in an equal protection claim, the government is not required or expected to produce evidence to justify its action; to the contrary, the plaintiff must negate every reasonable basis upon which the challenged classification may be sustained. Const. Art. 1, § 6.

1 Cases that cite this headnote

<sup>120]</sup> **Pretrial Procedure**  
↔Insufficiency in general

A rational basis challenge, brought in an equal protection claim, can sometimes be resolved on a motion to dismiss. Const. Art. 1, § 6.

Cases that cite this headnote

<sup>121]</sup> **Constitutional Law**  
↔Elementary and Secondary Education  
**Education**  
↔Pupils or Students

State's system for setting educational standards was supported by legitimate government interests of local control, equity in per-pupil funding, maintenance of existing rural school districts, and conservation of scarce classroom time, and thus system was not violation of

students' equal protection rights, despite assertion that system had improperly failed to establish statewide public school educational standards, assessments, and teacher training, recruitment, and retention programs; legislature could have decided that serving such interests was preferable to an alternate educational system. Const. Art. 1, § 6.

Cases that cite this headnote

[22]

**Constitutional Law**

- ☞Elementary and Secondary Education
- Education**
- ☞Pupils or Students

State's system for setting educational standards was rationally connected to goals of local control, equity in per-pupil funding, maintenance of existing rural school districts, and conservation of scarce classroom time, and thus system did not violate equal protection, despite assertion that system had improperly failed to establish statewide public school educational standards; education had variable and broadly-defined meaning, and there was no true consensus as to educational needs. Const. Art. 1, § 6.

1 Cases that cite this headnote

[23]

**Constitutional Law**

- ☞Education
- Education**
- ☞Pupils or Students

Students' allegations that State failed to establish statewide educational standards or failed to enforce and utilize such standards were insufficient to state claim for substantive due process violation; allegations raised important and legitimate policy questions but did not shock the conscience as representing abusive governmental conduct. Const. Art. 1, § 9.

Cases that cite this headnote

[24]

**Constitutional Law**

- ☞Rights and interests protected; fundamental rights
- Constitutional Law**
- ☞Egregiousness; "shock the conscience" test

Under state constitution, substantive due process prevents the government from engaging in conduct that shocks the conscience or interferes with rights implicit in the concept of ordered liberty. Const. Art. 1, § 9.

1 Cases that cite this headnote

[25]

**Constitutional Law**

- ☞Rights and interests protected; fundamental rights
- Constitutional Law**
- ☞Levels of scrutiny; strict or heightened scrutiny

In a substantive due process claim under state constitutional law, court follows a two-stage analysis; first, it determines the nature of the individual right involved, and then it determines the appropriate level of scrutiny. Const. Art. 1, § 9.

1 Cases that cite this headnote

[26]

**Constitutional Law**

- ☞Reasonableness, rationality, and relationship to object
- Constitutional Law**
- ☞Levels of scrutiny; strict or heightened scrutiny

In a substantive due process claim under state law, if the right at issue is fundamental, strict scrutiny applies; otherwise, the State only has to satisfy the rational basis test. Const. Art. 1, § 9.

1 Cases that cite this headnote

cause of action intrude into an area over which the federal government or a state administrative agency holds exclusive jurisdiction; all four factors generally must weigh in favor of a private right of action for court to find such a right exists.

<sup>127]</sup> **Constitutional Law**  
⇔ Reasonableness, rationality, and relationship to object

When the rational basis test applies in a substantive due process claim under state law, there need only be a reasonable fit between the legislature’s purpose and the means chosen to advance that purpose. Const. Art. 1, § 9.

1 Cases that cite this headnote

1 Cases that cite this headnote

**Attorneys and Law Firms**

\*4 Douglas E. Gross, Rebecca A. Brommel and Haley R. Van Loon of Brown, Winick, \*5 Graves, Gross, Baskerville and Schoenebaum, P.L.C., Des Moines, for appellants.

<sup>128]</sup> **Action**  
⇔ Statutory rights of action

Public school students did not have private right of action for claims against State under statute setting out goals for state educational system, in case in which students alleged that public school system was not adequately serving students in certain school districts; statute merely set forth general statement of policy and used vague, rather than concrete, language, wording of goals reflected legislative purpose to make only policy pronouncement, and allowing a private right of action would have been inconsistent with statute’s purpose of delineating general goals. I.C.A. § 256.37.

Thomas J. Miller, Attorney General, and Jeanie Kunkle Vaudt, Assistant Attorney General, for appellees.

**Opinion**

MANSFIELD, Justice.

A generation ago, in *Johnson v. Charles City Community Schools Board of Education*, 368 N.W.2d 74, 79 (Iowa 1985), we observed that the “state has a clear right to set minimum educational standards for all its children and a corresponding responsibility to see to it that those standards are honored.” Yet we also concluded that a “court is without either the resources or the expertise necessary” to draft minimum educational standards for private religious schools. *Id.* at 80.

1 Cases that cite this headnote

This case concerns Iowa’s standards for *public* schools. It asks us, in effect, to require the state to impose additional public school standards, urging that such action is both constitutionally and statutorily required.

<sup>129]</sup> **Action**  
⇔ Statutory rights of action

In determining whether a private right of action may be inferred from a statute, court considers four factors: (1) is the plaintiff a member of the class for whose benefit the statute was enacted; (2) is there any indication of legislative intent, explicit or implicit, to either create or deny such a remedy; (3) would allowing such a cause of action be consistent with the underlying purpose of the legislation; and (4) would the private

Adhering to the lessons of the *Johnson* case, we decline the invitation. We hold that plaintiffs’ specific challenges to the educational policies of this state are properly directed to the plaintiffs’ elected representatives, rather than the courts. We find the plaintiffs have not stated claims for relief under article IX, division 2, section 3, article I, section 6, or article I, section 9 of the Iowa Constitution, or Iowa Code section 256.37 (2007).

Our decision does not foreclose future constitutional challenges to actions taken by state or local officials in the vital field of public education. We decide only that this



case, brought by these plaintiffs, should not go forward because the factual allegations, even if proved, do not set forth a potential constitutional or statutory violation under the foregoing provisions.

Accordingly, we affirm the district court's dismissal of the plaintiffs' petition.

### I. Facts and Procedural Background.

Because this case was decided on a motion to dismiss, our relevant point of reference is the plaintiffs' petition. The plaintiffs' first amended and substituted petition, which the district court ultimately dismissed, is twenty-three pages long. It includes a two-page summary, entitled "Nature of the Lawsuit," as well as thirteen pages of "Factual Allegations."

The sixteen named plaintiffs are students or parents of students who attended or currently attend public schools in the Davenport, Des Moines, or West Harrison Community School Districts. As explained by plaintiffs' counsel at oral argument, plaintiffs' position is that Iowa's educational system is not adequately serving students in either the largest (e.g., Davenport and Des Moines) or the smallest (e.g., West Harrison) school districts. The case is not brought as a class action.

According to the initial summary contained in the petition, "[t]he quiet, ugly truth is that Iowa's educational system is but a shadow of its glorious past and our leaders are whistling by its graveyard." Plaintiffs allege that there exists a "disparity in educational outcomes [in Iowa] based upon where one goes to school" and there has been a "failure[ ] to provide similar educational opportunities for all of Iowa's students."

Plaintiffs have not named any local school officials as defendants. They have sued, rather, the State of Iowa, the Governor of Iowa, the Iowa Department of Education, and the Director of the Department. In their initial summary, plaintiffs allege that these statewide entities and officials "have failed to establish standards, failed to enforce any standards, failed to \*6 adopt effective educator pay systems, and failed to establish and maintain an adequate education delivery system."

In the ensuing factual allegations, plaintiffs allege that Iowa's statewide laws and rules are "broad educational requirements and accreditation standards for schools within the State of Iowa." They do not, in plaintiffs' view, contain "specific, detailed information regarding the courses that schools must provide or offer to [their] students nor do they set forth any details regarding the

skills that must be attained by students at each grade level." Repeatedly, plaintiffs criticize Iowa for the lack of "state-mandated standards." They maintain that Iowa is the only state without any statewide academic standards. Plaintiffs also fault Iowa for not "providing specific testing of students at various educational levels and in a variety of subject matters like other states," instead relying on the Iowa Test of Basic Skills (ITBS) and the Iowa Test of Educational Development (ITED).

This part of the petition refers to a number of reports and studies.<sup>1</sup> For example, plaintiffs note that according to *Education Week's Quality Counts 2008* report, Iowa received a "C" for educational performance.<sup>2</sup>

Plaintiffs also cite Iowa Department of Education statistics that, in their view, show how students attending the smallest school districts (less than 250 students) are disadvantaged. According to the Department's 2007 *Annual Condition of Education* report, teachers in those districts have, on average, less experience, fewer advanced degrees, and more teaching assignments than their colleagues at the largest school districts, such as Davenport and Des Moines. Iowa Dep't of Educ., *The Annual Condition of Education* at 47, 75, 76 (2007) [hereinafter *The Annual Condition of Education*], available at [http://educateiowa.gov/index.php?option=com\\_docman&task=cat\\_view&gid=646&itemid=1563](http://educateiowa.gov/index.php?option=com_docman&task=cat_view&gid=646&itemid=1563). Unsurprisingly, according to the petition, students in the smallest districts also have fewer curriculum units available to them.<sup>3</sup> *Id.* at 112.

Additionally, students from Iowa's smallest school districts receive, on average, lower ACT scores. In 2007, according to the Department of Education report, the average ACT composite score was 21.3 for students at districts in the lowest enrollment category (less than 250 students). *Id.* at 192. By contrast, the average ACT composite score was 22.5 for students attending districts in the largest enrollment category. *Id.* The petition notes, however, \*7 that the national average ACT composite score was 21.2. *Id.* at 186. Thus, all categories of school districts in Iowa scored above the national average.<sup>4</sup>

Plaintiffs further allege that Iowa's ranking in science and math is "consistently declining"; that Iowa "has continued to decline in the national rankings for math and reading proficiencies and other measures of student achievement"; that "Iowa ranks well below the national average for students taking gateway courses such as Algebra, Algebra 2 or Geometry"; that "Iowa ranks thirty-eighth in the nation for AP [Advanced Placement] test scores"; and that "[m]any Iowa students are not prepared to enter the



workforce or post-secondary education without additional training or remediation when they graduate from high school.”

Some of the factual allegations concern “the circumstances of the plaintiffs.” These allegations do not actually discuss the plaintiffs individually, but rather their school districts. According to the petition, one of the districts, West Harrison, has approximately 500 students. (Thus, it does not fall into the smallest category of school district, i.e., less than 250 students, referenced earlier in the petition.) Among other things, plaintiffs allege that West Harrison had an average ACT composite score of 18.6 in 2006, nearly three and a half points below the average ACT score for all Iowa students; that only ten to twelve percent of West Harrison’s teachers have advanced degrees; that West Harrison does not have anyone on staff to assist high school students with college planning or other career counseling; and that classes at West Harrison do not adequately prepare students for a college level curriculum.

With regard to the Davenport school district, plaintiffs do not find fault with teacher experience, staffing, or class availability, but allege that its average composite ACT score in 2007 was 20.5. No allegations are made as to teacher experience, staffing, class availability, or ACT scores in the Des Moines school district. However, with respect to all three of the school districts, plaintiffs allege that the percentages of students found proficient in math and reading according to ITBS and ITED scores generally have ranged between fifty and seventy percent, a level that plaintiffs appear to believe is unsatisfactory.

The petition has two counts seeking relief. In Count I, plaintiffs request a declaratory judgment. They allege that education is a fundamental right or alternatively that the current education laws (“or lack thereof”) are “irrational, arbitrary, and capricious” and not “rationally related to a legitimate governmental interest.” They also allege that “some students are receiving a more effective education than other students based solely upon where the student resides.” They allege the defendants have “failed to establish and provide access to an effective education” by (1) “failing to establish educational standards,” (2) failing to enforce and utilize such standards, (3) “failing to implement a professional pay system for educators consistent with such standards,” (4) “failing to provide equal access,” and (5) “failing to develop an effective organizational and delivery system and failing to address or abolish the disparities among different school [ ] districts in Iowa.” They allege violations of the due process, equal protection, and education clauses of the Iowa Constitution and Iowa Code section 256.37.

Count II seeks an order of mandamus. It alleges similar failures on the part of the \*8 defendants, but goes on to assert that these failures amount to a breach of duty and requests an order directing the defendants to provide an effective education.

Finally, plaintiffs’ prayer for relief seeks a declaration that the defendants have failed to provide an effective education in accordance with the due process, equal protection, and education clauses and Iowa Code section 256.37. It also requests an order of mandamus or permanent injunction directing the defendants to (1) undertake all suitable means to provide an effective education; (2) develop educational content and performance standards for all Iowa school districts which detail required course offerings, instructor capabilities, and testing requirements, among other things; (3) improve or develop state assessments; (4) develop and enforce professional development programs; (5) implement a career ladder to enhance recruitment and retention of quality teachers; (6) enforce the standards by identifying and enforcing consequences for failure to follow and implement such standards; (7) “develop educational management and governance arrangements to mitigate all procedural and structural impediments to an effective education”; and (8) “[c]lose the achievement gaps among the school[ ] districts in Iowa.”

Plaintiffs’ original petition was filed April 3; their first amended and substituted petition on April 30. On June 21, 2008, the defendants filed a motion to dismiss. In their nine-page motion, the defendants argued: (1) all the constitutional claims raised a nonjusticiable political question; (2) the equal protection and due process claims failed to state a claim; (3) there is no private cause of action under section 256.37; (4) mandamus did not lie; (5) the Governor could not be sued; and (6) the Iowa Administrative Procedures Act was the exclusive means of obtaining review of acts or omissions by the Department of Education.

This motion was resisted on all grounds by plaintiffs; a hearing was held; and on November 21, 2008, the district court granted the defendants’ motion.

In a thoughtful sixteen-page ruling, the district court found the plaintiffs had stated claims for relief under the equal protection clause and the due process clause, but all their constitutional claims presented a nonjusticiable political question, and their statutory claim under section 256.37 failed because that provision does not afford a private right of action. The court also found the plaintiffs had not satisfied the prerequisites for seeking mandamus.

The court dismissed the action in its entirety for these reasons, declining to reach the defendants' remaining asserted grounds for dismissal. Plaintiffs appeal.

## II. Standard of Review.

Our review of a district court ruling on a motion to dismiss is for correction of errors at law. *Kingsway Cathedral v. Iowa Dep't of Transp.*, 711 N.W.2d 6, 7 (Iowa 2006). "A motion to dismiss should only be granted if the allegations in the petition, taken as true, could not entitle the plaintiff to any relief." *Sanchez v. State*, 692 N.W.2d 812, 816 (Iowa 2005). "A motion to dismiss admits the well-pleaded facts in the petition, but not the conclusions." *Kingsway Cathedral*, 711 N.W.2d at 8.

## III. Analysis.

**A. Introduction.** We begin our analysis of this case by discussing, briefly, what it is *not*. For one thing, this is not a school funding case. Plaintiffs do not allege that Iowa has a funding system that discriminates among school districts or even one that funds schools inadequately.<sup>5</sup> \*10 Also, plaintiffs are not questioning any specific law, rule, or policy enacted or promulgated by any of the defendants. This is a case challenging government inaction, not government action. Further, the defendants are not alleged to have engaged in disparate treatment of anyone. Plaintiffs do not claim the defendants have a different policy or standard for different types or categories of schools.

Rather, the entire focus of plaintiffs' lawsuit is on the defendants' alleged "failure" to act on a statewide basis. More specifically, plaintiffs allege that the defendants have failed to establish statewide educational standards, assessments, and teacher training, recruitment, and retention programs. To be sure, plaintiffs claim they have been denied "equal access" as a result of these "failures," but that is an \*11 allegation of disparate *impact*, not disparate *treatment*. There is no allegation that the defendants, for example, have treated the West Harrison school district any differently from other, larger school districts. Simply stated, plaintiffs charge the defendants with not having affirmatively adopted policies that would eliminate existing discrepancies among districts, for example, as to average student test scores.

<sup>11</sup> <sup>12</sup> **B. The Legal Issues Before Us.** As we have indicated many times before, "we will uphold a district court ruling on a ground other than the one upon which the district court relied provided the ground was urged in that court." *Martinek v. Belmont-Klemme Cmty. Sch.*

*Dist.*, 772 N.W.2d 758, 762 (Iowa 2009) (citations omitted); see also *Fennelly v. A-1 Mach. & Tool Co.*, 728 N.W.2d 163, 177 (Iowa 2006); *Emmert v. Neiman*, 245 Iowa 931, 934, 65 N.W.2d 606, 608 (1954) ("We have held many times that in reviewing a ruling sustaining a motion to strike or dismiss, the same should be sustained if any of the grounds advanced are good, even though the one upon which the trial court based its ruling, is not." (citations omitted)).

Here the defendants urged dismissal of the constitutional claims in the district court on the alternative grounds that they were nonjusticiable and that they failed to state a claim. Both parties had a full opportunity to brief (and did brief) those matters below. Although the defendants' *appellate brief* does not specifically urge that we affirm on the basis of failure to state a claim if we find one or more of the claims justiciable, the defendants made that request at oral argument. The parties have provided their district court briefing to us, and neither side has suggested that further briefing is needed. In any event, because both grounds were duly raised before the trial court, we could affirm on either ground even if it were not argued to us. See *Erickson v. Erickson's Estate*, 191 Iowa 1393, 1397, 180 N.W. 664, 665 (1920). The fundamental principle is one of fairness to the parties and the trial court. See *DeVoss v. State*, 648 N.W.2d 56, 62–63 (Iowa 2002). That fairness is assured so long as the grounds on which we are affirming were presented to the trial court so the trial court had an opportunity to rule on them and the opposing party had an opportunity to counter them if it felt it needed to do so. Cf. *Principal Mut. Life Ins. Co. v. Charter Barclay Hosp., Inc.*, 81 F.3d 53, 56 (7th Cir.1996) (noting that it "would not be quite cricket" to decide a case on a ground that had not been raised at all by the appellee before oral argument of the appeal). Also, because the district court has already indicated that it believes the equal protection and due process claims would be sufficient *if* they were justiciable, a remand for it to rule again on the viability of those claims (assuming their justiciability) seems particularly unnecessary and would only prolong the proceedings.

In *State v. Seering*, 701 N.W.2d 655, 660–61 (Iowa 2005), we declined to reach several constitutional arguments that were presented to and not ruled upon by the district court, and that were also not presented to us. That was an appropriate exercise of our discretion, but it is a far cry from the present case. Here the parties not only briefed below whether the equal protection and due process claims should be dismissed for failure to state a claim, the district court also decided these questions. A remand for the district court to rule again on whether the plaintiffs have stated a claim therefore would serve no

purpose. At oral argument, the plaintiffs did not object to this court's considering whether they stated a claim, nor would such an objection have made sense.

Appellants and appellees stand in different positions because the appellant seeks \*12 to overturn the judgment rendered below. See *Ritz v. Wapello Cnty. Bd. of Supervisors*, 595 N.W.2d 786, 789 (Iowa 1999) (stating that "[w]e have recognized ... a distinction between successful and unsuccessful parties for purposes of error preservation" (citations omitted)). Our rules provide that an appellee need not even file a brief in our court. See Iowa R.App. P. 6.903(3) (indicating that the appellee may waive filing a brief). The appellant, by contrast, must file a brief and is limited to the issues raised in that brief. See *id.* r. 6.903(2); *Dilley v. City of Des Moines*, 247 N.W.2d 187, 195 (Iowa 1976) (citing cases). Of course, we may choose to consider only grounds for affirmance raised in the appellee's brief, but we are not required to do so, so long as the ground was raised below. In recent years, we have even on occasion affirmed on grounds not raised below. For example, in *State v. Reyes*, 744 N.W.2d 95, 99–100 (Iowa 2008), we affirmed on a statutory ground that was not raised either below or in the appellate briefs, until we invited supplemental briefing. In *State v. Adams*, we granted further review and invited supplemental briefing on an issue that had not been raised by either party either below or on appeal, and then rendered a decision on that issue. See Order for Supplemental Briefing, *State v. Adams*, 810 N.W.2d 365, 366 (Iowa 2012).

This appeal has been brought to us. The elected branches of our state government are currently engaged in an active debate about state educational policy. They are entitled to know whether this lawsuit may affect their policy choices. It would be an abnegation of our responsibility not to reach a legal question about the sufficiency of the plaintiffs' pleadings that was fully developed and decided by the district court.

Additionally, the political question grounds and the failure to state a claim grounds are interrelated. In either case, we assume the truth of the plaintiffs' factual allegations and determine whether, under those facts, the plaintiffs could be entitled to judicial relief.<sup>6</sup>

<sup>13</sup> **C. The Education Clause.** We first consider plaintiffs' claims under article IX, division 2, section 3 of the Iowa Constitution.<sup>7</sup> In its entirety, this section reads as follows:

*Perpetual support fund. Sec. 3. The General Assembly shall encourage, by all suitable means, the*

*promotion of intellectual, scientific, moral, and agricultural improvement.* The proceeds of all lands that have been, or hereafter may be, granted by the United States to \*13 this State, for the support of schools, which may have been or shall hereafter be sold, or disposed of, and the five hundred thousand acres of land granted to the new States, under an act of Congress, distributing the proceeds of the public lands among the several States of the Union, approved in the year of our Lord one thousand eight hundred and forty-one, and all estates of deceased persons who may have died without leaving a will or heir, and also such percent as has been or may hereafter be granted by Congress, on the sale of lands in this State, shall be, and remain a perpetual fund, the interest of which, together with all rents of the unsold lands, and such other means as the General Assembly may provide, shall be inviolably appropriated to the support of common schools throughout the state.

Iowa Const. art. IX, div. 2, § 3 (1857 original version) (emphasis added). The present controversy concerns the italicized first sentence above, which both parties refer to as "the education clause."<sup>8</sup>

Plaintiffs contend the education clause imposes judicially enforceable obligations on Iowa's legislature to promote education by "all suitable means." Defendants counter that plaintiffs' claims under the clause present a nonjusticiable political question. Otherwise stated, defendants maintain that the education clause reflects a grant of funding authority to the legislature, not a limit upon legislative policy in the field of education.

<sup>14</sup> **Constitutional** provisions, like statutes, need to be read in context. See *Iowa Elec. Light & Power Co. v. Inc. Town of Grand Junction*, 221 Iowa 441, 463, 264 N.W. 84, 95 (1935) (Parsons, J., specially concurring) ("A Constitution should be construed as a whole, just like a statute."). Article IX of the 1857 Constitution of the State of Iowa, entitled, "Education and School Lands," was enacted in two divisions. The first division of article IX, captioned "Education," established a state board of education and conferred on that board powers and duties relating to education policy. In particular, section 1 of that division provided, "The educational interest of the State, including Common Schools and other educational institutions, shall be under the management of a Board of Education...." Iowa Const. art. IX, div. 1, § 1. Section 8 authorized the board of education "to legislate and make all needful rules and regulations in relation to Common Schools," although it also permitted the general assembly to "alter[ ], amend[ ] or repeal[ ]" the board's acts, rules and regulations after they had been adopted. *Id.* art. IX, div. 1, § 8.

The second division of article IX, captioned “School Funds and School Lands,” sets forth provisions relating to the funding of education, especially through the sale of state-owned lands. Whereas the first division entrusted the “educational interest” to the board of education, the second division made clear that funding would be the legislature’s domain. Hence, the first section of the second division states, “[t]he educational and school funds and lands, shall be under the control and management of the General Assembly of this state.” *Id.* art. IX, div. 2, § 1.

The third section of the second division, wherein the education clause is found, is entitled “Perpetual support fund.” *Id.* art. IX, div. 2, § 3. The clause itself then follows. The remaining language of this section, after the education clause, speaks in terms of “a perpetual fund, the interest of which, together with all rents of the unsold lands, and such other means as the General Assembly may provide, shall be inviolably appropriated to the support of Common \*14 schools throughout the State.” *Id.* All this, we believe, supports a construction of the education clause as a funding provision, which allocated to the general assembly the authority to provide money for education, and thereby to “encourage [various forms of improvement] by all suitable means.” *Id.*

We discussed this dichotomy between education policy (covered by the first division of article IX) and education funding (the subject of the second division) at some length in *District Township of the City of Dubuque v. City of Dubuque*, 7 Clarke 262 (1858), decided just a year after the adoption of 1857 constitution. There we found unconstitutional a wide-ranging law enacted by the general assembly to provide for “the public instruction of the state of Iowa” on the ground that “[p]ower to legislate upon the subject of education, is conferred upon the board [of education]” and the legislature can only act in the realm of education policy to alter, amend, or repeal the board’s prior acts. *Dist. Twp.*, 7 Clarke at 271–72, 285–86.” We emphasized that laws “which provide a system of education, sometimes known by the name of ‘school laws’ ... are to originate with the board[,]” whereas laws “for the levying of taxes—those making appropriations of money—and those for the control and management of the educational and school funds and lands—are to be passed by the general assembly.” *Id.* at 286.

A year later, in *Clayton County High School v. Clayton County*, 9 Iowa 175 (1859), reinforcing the lesson of the *Dubuque* case, we held the general assembly lacked constitutional authority to establish high schools. We specifically rejected the argument that such schools “may

rightfully be provided for by the General Assembly, to whom is committed the duty of encouraging, by all suitable means, the promotion of intellectual, scientific, moral and agricultural improvement.” *Clayton Cnty.*, 9 Iowa at 176. Instead we concluded that these schools were “a component part of the educational system of the State; the original establishment of which, as well as its subsequent management and control, has been committed by the constitution to the Board of Education.” *Id.* at 177. In short, at a time when the 1857 constitution was quite fresh in people’s minds, we reached the conclusion that no aspect of the Iowa Constitution, including the education clause, authorized the legislature to provide for public schools (as opposed to merely funding them). Since the contemporary view of our court was that the education clause did not even allow the legislature to *establish* public schools, it seems difficult for us to conceive that the clause could have been seen as a source of enforceable minimum standards for such schools.

This interpretation of the education clause as a grant of funding authority is \*15 further confirmed by section 15 of the *first* division of article IX:

At any time after the year One thousand eight hundred and sixty three, the General Assembly shall have power to abolish or re-organize said Board of Education, and provide for the educational interest of the State in any other manner that to them shall seem best and proper.

Iowa Const. art. IX, div. 1, § 15. In short, section 15 of the first division authorized the general assembly to eliminate the board of education at any time after 1863 and thereafter provide for “the educational interest of the State in any other manner that to them shall seem best and proper.” *Id.* As it turned out, the legislature abolished the board of education at the earliest possible opportunity in 1864. *See* 1864 Iowa Acts ch. 52, § 1.<sup>10</sup>

Placed in context, section 15 reaffirms the dividing line between the first division of article IX, which addressed education policy, and the second division, which identified funding sources. Section 15 made clear that the board of education would control education policy (subject to a possible legislative override) until at least 1863, but thereafter the legislature could take over that responsibility “in any other manner that to them shall seem best and proper.” Iowa Const. art. IX, div. 1, § 15.

One episode from the 1857 constitutional convention

debates also suggests that our founders did not intend for section 3 of the second division to constrain the general assembly's authority with respect to education policy. On March 3, 1857, George Ells of Davenport proposed amending that section to include a guarantee of a free public education. Specifically, he sought to add a clause at the end of the section so it would read, "shall be inviolably appropriated to the support of common schools throughout the state, *in which tuition shall be without charge.*" See 2 *The Debates of the Constitutional Convention; of the State of Iowa* 968 (W. Blair Lord reporter, Davenport, Luse, Lane & Co. 1857) [hereinafter *Debates*] (emphasis added), available at <http://www.state.libraryofiowa.org/services/law-library/iaconst>.

Ells's proposal came under immediate criticism. J.C. Hall of Burlington objected that the issue of free public schools should be left "to be determined in the future, as the public exigencies may require." *Id.* A.H. Marvin of Monticello observed:

We should not, in my opinion, be bound by a constitutional provision to make our common schools free to all, but should let the several districts regulate this matter for themselves. If we do that, I will warrant you that poor children will never be turned out of our common schools.

*Id.* at 969. Harvey Skiff of Newton commented, "If we should incorporate the provision of the gentleman from Scott [Mr. Ells] into our constitution, it would become established as organic law, which could not be repealed." *Id.* Although another delegate (Rufus Clarke of Mt. Pleasant) spoke in favor of the amendment, it was quickly defeated by a vote of twenty-five to eight. *Id.* at 970–72.

This exchange indicates the delegates to the 1857 convention did not believe that section 3, as it was ultimately approved, contained a right to a free public education. And if section 3 did not assure a right to a free public education, it seems untenable to argue that section 3 contained a judicially enforceable right to a free public education *with certain minimum standards of quality*. Iowa's constitutional \*16 delegates had an opportunity to make a guarantee of free public education part of "organic law," *id.* at 969, and declined to do so.<sup>11</sup>

Our decision in *Kleen v. Porter* lends further support to the view that the education clause does not constrain legislative policies in the field of education. 237 Iowa 1160, 23 N.W.2d 904 (1946). *Kleen* was a declaratory

judgment action seeking to have declared unconstitutional two laws that appropriated money from the general fund to school districts on a targeted basis to reimburse certain transportation expenses and bring all districts up to a certain minimum level of per-pupil funding. 237 Iowa at 1161, 23 N.W.2d at 905. The petition asserted that under sections 3 and 7 of the second division of article IX, such appropriations could only be made on a uniform statewide basis in proportion to the numbers of youths between five and twenty-one years old in each district. *Id.*; see also Iowa Const. art. IX, div. 2, § 7 ("The money subject to the support and maintenance of common schools shall be distributed to the districts in proportion to the number of youths, between the ages of five and twenty-one years, in such manner as may be provided by the General Assembly.")<sup>12</sup> We disagreed. We held that the enumeration requirement applied only to appropriations from the "permanent school fund" established by article IX, division 2, not other funding sources. *Kleen*, 237 Iowa at 1165–66, 23 N.W.2d at 907. We construed the first sentence of section 3—"The General Assembly shall encourage, by all suitable means, the promotion of intellectual, scientific, moral, and agricultural improvement"—as designed to give the legislature "broad authority" to augment the income from the permanent school fund *without* being subject to the enumeration requirement in section 7. *Id.* at 1166, 23 N.W.2d at 907. Thus, *Kleen* saw the education clause as a grant of broad funding authority to the general assembly.

In sum, given the wording and location of the education clause in our constitution, and our prior interpretations of that clause, we do not believe plaintiffs have stated a claim thereunder. Plaintiffs' criticisms of state education policy do not amount to a violation of article IX, division 2, section 3.

<sup>151</sup> <sup>161</sup> It is a well-established principle that the courts will not intervene or attempt to adjudicate a challenge to a legislative action involving a "political question." *Des Moines Register & Tribune Co. v. Dwyer*, 542 N.W.2d 491, 495 (Iowa 1996); see also *Powell v. McCormack*, 395 U.S. 486, 518, 89 S.Ct. 1944, 1962, 23 L.Ed.2d 491, 515 (1969). The nonjusticiability of "political questions" is primarily rooted in the separation of powers doctrine, "which requires we leave intact the respective roles and regions of independence of the coordinate branches of government." *Dwyer*, 542 N.W.2d at 495 (citations omitted).

The political question doctrine excludes from judicial review those controversies \*17 which revolve around policy choices and value

determinations constitutionally committed for resolution to the halls of [the General Assembly] or the confines of the Executive Branch. The Judiciary is particularly ill suited to make such decisions, as courts are fundamentally underequipped to formulate [state] policies or develop standards for matters not legal in nature.

*Japan Whaling Ass'n v. Am. Cetacean Soc'y*, 478 U.S. 221, 230, 106 S.Ct. 2860, 2866, 92 L.Ed.2d 166, 178 (1986) (citations and internal quotations omitted). Nonetheless, the exercise of the judiciary's power to interpret the constitution and to review the constitutionality of the laws and acts of the legislature does not offend these principles. *Luse v. Wray*, 254 N.W.2d 324, 327–28 (Iowa 1977); see also *Marbury v. Madison*, 5 U.S. (1 Cranch) 137, 177–78, 2 L.Ed. 60, 73 (1803).

<sup>171</sup> <sup>181</sup> A political question may be found when one or more of the following considerations is present:

(1) a textually demonstrable constitutional commitment of the issue to a coordinate political department; (2) a lack of judicially discoverable and manageable standards for resolving the issue; (3) the impossibility of deciding without an initial policy determination of a kind clearly for nonjudicial discretion; (4) the impossibility of a court's undertaking independent resolution without expressing a lack of the respect due coordinate branches of government; (5) an unusual need for unquestioning adherence to a political decision already made; or (6) the potentiality of embarrassment from multifarious pronouncements by various departments on one question.

*Dwyer*, 542 N.W.2d at 495 (citing *Baker v. Carr*, 369 U.S. 186, 217, 82 S.Ct. 691, 710, 7 L.Ed.2d 663, 686 (1962)). Whether a matter involves a “political question” is determined on a case-by-case basis and requires an examination of the nature of the underlying claim. *Id.* at 495–96.

A number of these factors might support the conclusion that plaintiffs' claim under the education clause presents a political question. To begin with, the text and history of the clause indicate a commitment of authority to the general assembly, rather than a constraint upon it. The clause says the “General Assembly shall encourage....” Unlike most of the clauses in our bill of rights, it is not worded in the negative as a prohibition (e.g., “the General Assembly shall not ...”). See, e.g., Iowa Const. art. I, §§ 3–4, 6–9, 11–19, 21, 23–24. Moreover, as noted above, the education clause must be read in conjunction with the broad policy-making authority conferred by article IX, division 1, section 15, which states that the general assembly shall have power after 1863 to “provide for the educational interest of the state in any other manner that to them shall seem best and proper.” *Kinzer v. Dirs. of Indep. Sch. Dist.*, 129 Iowa 441, 444, 105 N.W. 686, 687 (1906) (citing this constitutional provision and stating that “the Legislature is expressly authorized to provide for the educational interests of the state, in such manner as shall seem best and proper”); see also *Bunger v. Iowa High Sch. Athletic Ass'n*, 197 N.W.2d 555, 563 (Iowa 1972) (same).

Second, it is an open question whether the education clause contains “judicially discoverable and manageable standards.” *Dwyer*, 542 N.W.2d at 495. The clause says that the legislature shall “encourage, by all suitable means, the promotion of intellectual, scientific, moral, and agricultural improvement.” Iowa Const. art. IX., div. 2, § 3. Are courts to become arbiters of “moral improvement?” How are judges to decide that children are deficient in their moral upbringing and what to do about it? Of course, the clause does not \*18 even contain the words “schools” or “education.” Does this mean that we as judges can order the state to foster moral improvement in adults?<sup>13</sup>

As we note above, most of the prior challenges to state education systems have been, in whole or in part, about funding. Courts are accustomed to dealing with questions of financial discrimination. See, e.g., *State v. Dudley*, 766 N.W.2d 606, 621–22 (Iowa 2009) (finding a denial of equal protection when indigent defendants represented by contract attorneys were required to pay more than indigent defendants represented by the public defender's office). But this lawsuit asks the courts to enter into a longstanding debate over the merits of state mandates versus local control in public education. That may require an initial policy determination of a kind clearly for nonjudicial discretion. *Dwyer*, 542 N.W.2d at 495.

Lastly, we consider how other state courts have treated



provisions in their state **constitutions** similar to Iowa's **education** clause. Comparable language appears in the **constitutions** of California, Indiana, and Nevada. Cal. Const. art. IX, § 1 (“[T]he Legislature shall encourage by all suitable means, the promotion of intellectual, scientific, moral, and agricultural improvement.”); Ind. Const. art. 8, § 1 (“[I]t shall be the duty of the General Assembly to encourage, by all suitable means, moral, intellectual, scientific, and agricultural improvement[.]”); Nev. Const. art. 11, § 1 (“The legislature shall encourage by all suitable means the promotion of intellectual, literary, scientific, mining, mechanical, agricultural, and moral improvements [.]”).<sup>14</sup> Only in Indiana has the state supreme court directly addressed justiciability.

In *Bonner ex rel. Bonner v. Daniels*, 907 N.E.2d 516, 518 (Ind.2009), a group of Indiana public school students sought a declaratory judgment to establish that the Indiana **Constitution** imposes an enforceable duty on state government to provide a standard of quality **education** and that the \*19 duty was not being satisfied. Indiana's **Constitution** provides:

Knowledge and learning, generally diffused throughout a community, being essential to the preservation of a free government; *it shall be the duty of the General Assembly to encourage, by all suitable means, moral, intellectual, scientific, and agricultural improvement*; and to provide, by law, for a general and uniform system of Common Schools, wherein tuition shall be without charge, and equally open to all.

Ind. Const. art. 8, § 1 (emphasis added). The court noted that the clause “expresses two duties”—the first being “general and aspirational,” i.e., to encourage moral, intellectual, scientific, and agricultural improvement; the second being “more concrete,” i.e., to provide for free public schools open to all. *Bonner*, 907 N.E.2d at 520. In the court's view “[j]udicial enforceability is more plausible as to the second duty than the first.” *Id.* Thus, the court found that this section required the legislature to establish free public schools, but “does not impose upon government an affirmative duty to achieve any particular standard of resulting **educational** quality. This determination is delegated to the sound legislative discretion of the General Assembly.” *Id.* at 522. Quoting an earlier case, the Indiana Supreme Court concluded that “determining the components of a public **education** is left within the authority of the legislative branch of

government.” *Id.* at 521–22 (quoting *Nagy ex rel. Nagy v. Evansville–Vanderburgh Sch. Corp.*, 844 N.E.2d 481, 491 (Ind.2006)).

Asked at oral argument to furnish an example where an **education** clause similar to Iowa's had been found justiciable, plaintiffs' counsel cited Texas. See *Edgewood Indep. Sch. Dist. v. Meno*, 917 S.W.2d 717, 735–37 (Tex.1995) (holding that the Texas **Constitution** contains a justiciable standard with respect to **education**). But the Texas provision is worded quite differently: “[I]t shall be the duty of the Legislature of the State to establish and make suitable provision for the support and maintenance of an efficient system of public free schools.” Tex. Const. art. VII, § 1. Other than the word “suitable,” the two clauses bear little similarity. The Texas **Constitution** expressly requires the support and maintenance of “an efficient system of public free schools.” Iowa's requires only the “encourage[ment]” of “the promotion of intellectual, scientific, moral, and agricultural improvement.” Compare Iowa Const. art. IX, div. 2, § 3, with Tex. Const. art. VII, § 1. Adding the word “suitable” to either clause, or both, does not alter the basic contrast between an amorphous goal (“intellectual, scientific, moral, and agricultural improvement”) and a more specific one (“the support and maintenance of an efficient system of public free schools”). *Id.*

It bears emphasis that Iowa's **education** clause, unlike the **constitutions** of most other states, does not mandate free public schools.<sup>15</sup> Nor does the **education** clause \*21 require that the state's public **education** system be “adequate,” “efficient,” “quality,” “thorough,” or “uniform.”<sup>16</sup> Our founders did not make these choices.

In the end, though, we need not decide today whether plaintiffs' claims under the **education** clause present a nonjusticiable political question.<sup>17</sup> It is sufficient for present purposes to hold that Iowa's **education** \*22 clause does not afford a basis for relief under the allegations in this case.

<sup>19]</sup> **D. The Equal Protection Clause.** We now turn to plaintiffs' claim that the defendants have violated the equal protection clause of the Iowa **Constitution**.<sup>18</sup> Article I, section 6 provides:

All laws of a general nature shall have a uniform operation; the General Assembly shall not grant to any citizen, or class of citizens, privileges or immunities, which, upon the same terms shall not equally belong to all citizens.

Iowa Const. art. I, § 6.

<sup>10]</sup> At the outset, we do not agree with the district court's

conclusion that plaintiffs' equal protection claim presents a nonjusticiable political question. Typically, we decide claims brought by individuals who allege denial of their constitutional right to equal protection, even when the claim pertains to an area where the legislative branch has been vested with considerable authority. *See, e.g., Luse*, 254 N.W.2d at 328 (holding that an equal protection challenge to a general assembly election contest was justiciable notwithstanding the authority conferred by article III, section 7 to each house to determine such matters). Equal protection jurisprudence has a set of standards that we have applied in the past. *Cf. Dwyer*, 542 N.W.2d at 495 (discussing the elements of a nonjusticiable political question and treating a "lack of judicially discoverable and manageable standards" as one such element).<sup>19</sup> We therefore turn to the merits of plaintiffs' equal protection claim.

We begin our discussion with *Exira Community School District v. State*, 512 N.W.2d 787 (Iowa 1994), a case where we \*23 previously confronted both an equal protection and a substantive due process challenge relating to education (and reached the merits of the challenge). In that case, the Exira Community School District and Exira parent-taxpayers and students sued to invalidate a provision of the state's open enrollment statute<sup>20</sup> that required the school district of residence to pay tuition to the district into which the student had open enrolled. *Exira*, 512 N.W.2d at 789–90. About ten percent of students living in the Exira district had open enrolled into another, larger school district (Audubon). *Id.* at 789. Because the financing mechanism required Exira to transfer funds, this had resulted in a substantial shortfall in available spending for the remaining Exira students and "financial trouble for the district." *Id.* at 793–94. Although we found the Exira district itself lacked standing, *id.* at 790, we reached the merits of the equal protection and substantive due process challenges brought by the parent-taxpayers and students under both the U.S. and the Iowa Constitutions. We summarized their complaints as follows:

They believe the financing mechanism in section 282.18(8) is unreasonable because it requires a transfer of locally generated tax revenues without a showing of need. What the appellants want is a financing scheme that would require a showing that the receiving district "needs" the tax dollars more than the sending district. Otherwise—the appellants argue—a significant loss of students could ultimately destroy a sending district.

....

Appellants' complaint boils down to this. Before

open enrollment, the state had achieved through the financing formula educational equality for every student in Iowa. During the first year of open enrollment, Exira experienced a \$70,000 loss in tax revenues necessary to educate the students remaining in the Exira school district. This resulted in a substantial disparity in funds available for education between Exira and Audubon. This disparity has disturbed the educational equality previously existing.

*Id.* at 793–94.

Significantly, the plaintiffs in *Exira* did not allege that the statute in question infringed upon a fundamental right. *Id.* at 793. Thus, for both equal protection and substantive due process purposes, we applied the rational basis test. *Id.* Quoting an earlier case, we held that when a statute bears " 'a definite, rational relationship to a legitimate purpose,' " it must be allowed to stand. *Id.* (quoting *Kent v. Polk Cnty. Bd. of Supervisors*, 391 N.W.2d 220, 225 (Iowa 1986)). This is true even if the reasonableness of the nexus to the purported end is only " 'fairly debatable.' " *Id.* Further, the challenging party must negate every reasonable basis upon which the statute may be sustained. *Id.*

Applying the rational basis test, we found that the financing mechanism "easily passes constitutional muster" because open enrollment results in greater access to educational opportunities and the legislature's chosen method of financing open enrollment "maintains per pupil equity." *Id.* at 795. Regarding the parent-taxpayers' "relative need" argument, i.e., that the Exira district needed the money it was transferring to Audubon in order to survive, we commented, "In the final analysis, the appellants' relative need argument is really all about a school district's alleged due process right to exist." *Id.* We then responded to this argument as follows:

If it chooses to do so, the legislature can—without constitutional impediment—terminate a school district's existence. \*24 And when the legislature enacted open enrollment legislation, it knew full well that its ultimate effect might mean the demise of some smaller schools. Despite this knowledge, the legislature made a policy decision—right or wrong—to go with open enrollment. It is not for us to judge the wisdom of such a policy. That was a legislative call.

In yielding the call to the legislative branch of government, we are not insensitive to the feelings and strongly-held views of patrons of smaller schools, such as the Exira school. We recognize that individuals and families sense a way of life is in the balance and vehemently challenge any assumption that



centralization of schools improves the quality of education. The proper forum for this debate is however not in the courts, but in the other branches of state government. Our clear duty is to interpret and apply the law given to us, and not to develop or choose among schemes for public education.

*Id.* at 795–96.

At the end of our opinion, we turned specifically to the due process and equal protection claims of the Exira students. We rejected their substantive due process claim, observing, “We know of no authority that says a student’s desire to be educated in a certain school district [i.e., Exira] rises to the level of a right protected by due process.” *Id.* at 796. We added that a student has “a due process right to an adequate education,” but noted, “That right—as we have demonstrated [in our previous rational basis analysis]—is furthered, not diminished, by the funding mechanism in section 282.18(8).” *Id.* We also overruled the students’ equal protection challenge, stating: “Nor do we think such students are treated differently for equal protection purposes. We say this because section 282.18(8) assures every student roughly the same amount of funds for his or her education wherever that student is educated.” *Id.* In short, we concluded that the statute “does indeed have a rational basis,” which “disposes of” both the equal protection and the substantive due process challenges. *Id.*

We believe several lessons can be drawn from *Exira*. First, we recognized that students have a due process right to an adequate education, although we did not characterize it as a fundamental right. *Id.* at 796. (The plaintiffs did not allege that a fundamental right was at issue in their case, *id.* at 793, and we accepted that position for purposes of our decision.) Second, we held there is no due process right to be educated in a particular school district. *Id.* at 796. Third, we found a funding mechanism that assured roughly the same amount of per-pupil funding regardless of the district did not treat students differently or violate equal protection. *Id.* Finally, we expressed the view that debates over whether “centralization of schools improves the quality of education” belonged in the legislature and not the courts. *Id.* at 795–96.

[11] [12] As an initial matter, we note that any equal protection claim, whether in the education context or elsewhere, requires an allegation of disparate treatment, not merely disparate impact. Indeed, plaintiffs’ counsel conceded as much at oral argument. To allege a viable equal protection claim, plaintiffs must allege that the defendants are treating similarly situated persons

differently. Thus, in *State v. Wade*, we rejected an argument that a special sentence for both felony and misdemeanor sex offenders violated equal protection. 757 N.W.2d 618, 625 (Iowa 2008). We explained, “Even though Wade has identified two classes that are similarly situated, Wade’s equal protection argument fails because ... offenders who commit serious misdemeanor sex crimes and \*25 offenders who commit felony sex crimes are not treated differently.” *Id.*; see also *Ames Rental Prop. Ass’n v. City of Ames*, 736 N.W.2d 255, 259 (Iowa 2007) (plaintiffs met this threshold by alleging that tenants who were related and tenants who were unrelated received differential treatment); *Montoy v. State*, 278 Kan. 769, 120 P.3d 306, 308 (2005) (holding that “disparate impact” of Kansas’s school financing scheme on minorities and other classes could not establish an equal protection violation).

[13] A related way of saying the same thing is to point out that equal protection claims require “state action.” Disparate treatment by someone other than the state (which the state, because of its inaction, failed to prevent) generally does not amount to an equal protection violation. See *Principal Cas. Ins. Co. v. Blair*, 500 N.W.2d 67, 69–70 (Iowa 1993) (holding that the presence of an allegedly discriminatory family insurance clause in a private insurance policy did not violate either the Federal or the State Equal Protection Clause because this was “not an action of the state”).<sup>21</sup>

But as we have noted above, the petition contains no allegations of disparate treatment. Plaintiffs do not allege that the defendants have allocated fewer funds to students attending school districts like West Harrison, Davenport, and Des Moines, or that they have imposed different rules or requirements with respect to those districts. Plaintiffs’ theory, rather, is that the defendants have not taken sufficient affirmative steps to eliminate perceived differences in outcomes, e.g., gaps in average student achievement, teacher experience level, and the like. One can describe that theory in various ways, but it is not an allegation of disparate treatment by these defendants. See, e.g., *City of Coralville v. Iowa Utils. Bd.*, 750 N.W.2d 523, 530–31 (Iowa 2008) (rejecting an equal protection challenge to a utility law that applied equally to all communities but with different results in different locales on the ground that it was “in substance a misplaced argument for uniformity of consequences rather than uniformity of operation”).<sup>22</sup> For this reason, plaintiffs’ equal protection claim was properly dismissed.

[14] [15] Even if we could discern some allegation of disparate treatment in plaintiffs’ allegations, we would still not be persuaded that they have stated a claim. Unless

a suspect class or a fundamental right is at issue, equal protection claims are reviewed under the rational basis test. *Sanchez*, 692 N.W.2d at 817. Plaintiffs do not allege that a suspect class is involved, but they claim that education is a fundamental right. For purposes of federal constitutional \*26 analysis, education is not a fundamental right. *San Antonio Indep. Sch. Dist. v. Rodriguez*, 411 U.S. 1, 35, 93 S.Ct. 1278, 1297, 36 L.Ed.2d 16, 44 (1973); see also *Plyler v. Doe*, 457 U.S. 202, 223, 102 S.Ct. 2382, 2398, 72 L.Ed.2d 786, 803 (1982) (“Nor is education a fundamental right; a State need not justify by compelling necessity every variation in the manner in which education is provided to its population.”).

This does not control the analysis under the Iowa Constitution. True, in *Exira*, we quoted from *Rodriguez* and relied on its reasoning. *Exira*, 512 N.W.2d at 794–95. In discussing that decision, we said, “Although important, education is not a fundamental right.” *Id.* at 794. But as we have noted, the *Exira* plaintiffs were not maintaining that the challenged law intruded upon a fundamental right. *Id.* at 793. Thus, we believe it remains an open question whether education is a fundamental right under the Iowa Constitution.

We have recently said,

[N]either this court nor the Supreme Court has created a clear test for determining whether the claimed right is a fundamental right.... [O]nly rights and liberties that are objectively “deeply rooted in this Nation’s history and tradition” and “implicit in the concept of ordered liberty” qualify as fundamental.

*Hensler v. City of Davenport*, 790 N.W.2d 569, 581 (Iowa 2010) (citation omitted) (quoting *Chavez v. Martinez*, 538 U.S. 760, 775, 123 S.Ct. 1994, 2005, 155 L.Ed.2d 984, 999 (2003)); accord *Seering*, 701 N.W.2d at 664 (declining to hold freedom of choice in residence to be a fundamental right even though it is “of keen interest to any individual”). Fundamental rights are generally those explicitly or implicitly contained in the Constitution. *Plyler*, 457 U.S. at 218 n. 15, 102 S.Ct. at 2395 n. 15, 72 L.Ed.2d at 799 n. 15; *Sanchez*, 692 N.W.2d at 817. We have traditionally followed the U.S. Supreme Court’s guidance in determining which rights are deemed fundamental. *Seering*, 701 N.W.2d at 664; *In re Det. of Cubbage*, 671 N.W.2d 442, 447 (Iowa 2003). “Fundamental right” for purposes of constitutional review is not a synonym for “important.” Many important interests, such as the right to choose one’s residence or the right to drive a vehicle, do not qualify as fundamental rights. See *Seering*, 701 N.W.2d at 664; *Sanchez*, 692 N.W.2d at 817.

In *Serrano v. Priest*, 5 Cal.3d 584, 608–09, 96 Cal.Rptr. 601, 487 P.2d 1241 (1971), the California Supreme Court relied on California’s similarly worded education clause as one—but by no means the only—supporting consideration for its conclusion that education was a fundamental right under the California Constitution. Article IX, section 1 of the California Constitution is entitled “Encouragement of education” and reads in its entirety as follows:

A general diffusion of knowledge and intelligence being essential to the preservation of the rights and liberties of the people, the Legislature shall encourage by all suitable means the promotion of intellectual, scientific, moral, and agricultural improvement.

Cal. Const. art. IX, § 1.

While California apparently borrowed some of this wording from the Iowa Constitution, see *Crosby v. Lyon*, 37 Cal. 242, 245 (1869), its education clause is essentially a stand-alone provision. In Iowa, by contrast, the education clause is the first sentence of a funding section entitled “Perpetual support fund” that, in turn, falls within a series of funding provisions. Iowa Const. art. IX, div. 2, § 3.

Contrasting with the reasoning of the California Supreme Court is that of the Indiana Supreme Court. In *Bonner*, the court affirmed the dismissal of the plaintiffs’ \*27 state equal protection and due process claims, determining that there was no fundamental constitutional right to an adequate public education in Indiana. 907 N.E.2d at 522. The court reached this result despite the presence of an education clause similar to Iowa’s in the Indiana Constitution. The court noted that the clause “does not speak in terms of a right or entitlement to education” and that the Indiana Bill of Rights contains no reference to education. *Id.* The same is true in Iowa. The “Bill of Rights” and “Right of Suffrage” in the Iowa Constitution make no mention of education. See Iowa Const. arts. I, II.

<sup>16</sup> We defer to another day the question whether education can amount to a fundamental right under the Iowa Constitution, thereby triggering heightened scrutiny. For present purposes, we conclude simply that the matters alleged in plaintiffs’ petition, even if true, do not amount to a deprivation of such a right. In *Hensler*, we recently acknowledged there is a fundamental parental right to exercise care, custody, and control over children.

790 N.W.2d at 581–82. Yet not all alleged infringements upon this right trigger strict scrutiny. *Id.* at 582. Rather, we required in *Hensler* that the challenged governmental action “directly and substantially intrude into [the parent’s] decision-making authority over her child.” *Id.* at 583. Similarly here, even if we assume there is a fundamental right to a basic education at some level, the plaintiffs’ allegations do not show a denial of that right. No plaintiff alleges anything specific to his or her (or his or her child’s) own actual education. Rather, their allegations are largely a hodgepodge of statistics. Some of these numbers relate to Iowa’s performance as a state and show a deterioration or decline in Iowa’s ranking or a below-average score. Others relate to ACT scores, reading proficiency, and math proficiency ratings in the Davenport, Des Moines, or West Harrison school districts. These data, in the plaintiffs’ view, demonstrate the need for more statewide standards and requirements. But even if all true, they do not amount to a deprivation of a fundamental right as to these plaintiffs.

In *Exira*, we commented that the proper forum for debate over school centralization is “not in the courts, but in the other branches of state government.” 512 N.W.2d at 796. In a way, this case involves another phase of the same debate. These plaintiffs want greater centralization—“state-mandated standards,” state-mandated “specific testing of students at various educational levels in a variety of subject matters,” and a state-mandated “professional pay system for educators.”

Because in this particular case the allegations do not show a deprivation of a fundamental right, even if we assume there is a fundamental right to education at some level, we apply the rational basis test. In previous discussions of both the Federal and the Iowa Equal Protection Clause, we have found a rational basis review applies when “‘social or economic legislation is at issue.’” *Sanchez*, 692 N.W.2d at 817 (quoting *City of Cleburne v. Cleburne Living Ctr.*, 473 U.S. 432, 440, 105 S.Ct. 3249, 3254, 87 L.Ed.2d 313, 320 (1985)). This is when “‘the Equal Protection Clause allows the States wide latitude, and the Constitution presumes that even improvident decisions will eventually be rectified by the democratic processes.’” *Id.*; accord *Midwest Check Cashing, Inc. v. Richey*, 728 N.W.2d 396, 404–05 (Iowa 2007); *Asmus v. Waterloo Cmty. Sch. Dist.*, 722 N.W.2d 653, 658 (Iowa 2006).

[17] [18] [19] The rational basis test is a “deferential standard.” *Ames Rental Prop. Ass’n*, 736 N.W.2d at 259. Under this test, we must determine whether the classification is “rationally related to a legitimate governmental interest.” *Id.* The \*28 classification is valid “unless the relationship between the classification and the

purpose behind it is so weak the classification must be viewed as arbitrary or capricious.” *Id.* The government is not required or expected to produce evidence to justify its action. *Id.* To the contrary, the plaintiff “must negate every reasonable basis upon which the classification may be sustained.” *Bierkamp v. Rogers*, 293 N.W.2d 577, 579–80 (Iowa 1980); see also *State v. Willard*, 756 N.W.2d 207, 213 (Iowa 2008); *Ames Rental Prop. Ass’n*, 736 N.W.2d at 259.

[20] Depending on the circumstances, a rational basis challenge can be resolved on a motion to dismiss. See, e.g., *Sanchez*, 692 N.W.2d at 817–20 (affirming the dismissal of equal protection and due process claims brought by undocumented aliens challenging the state’s refusal to issue driver’s licenses); *Johnston v. Veterans’ Plaza Auth.*, 535 N.W.2d 131, 131–32 (Iowa 1995) (affirming dismissal of plaintiff’s claim and rejecting plaintiff’s contention that the thirty-day appeal timeframe contained in the statutory right to appeal a condemnation appraisal violated equal protection and due process because plaintiff “does not rebut” the possible basis for the distinction suggested by the defendant, “nor does he attempt to negate any other rational basis for the distinction”); *Gard v. Little Sioux Intercounty Drainage Dist.*, 521 N.W.2d 696, 698–99 (Iowa 1994) (affirming the dismissal of a negligence action against drainage district including claim that immunity for district amounted to a denial of equal protection); *Seivert v. Resnick*, 342 N.W.2d 484, 485 (Iowa 1984) (affirming the grant of motion to dismiss by applying the rational basis test to reject a claim that an Iowa statute impermissibly distinguished among tortfeasors). Since the State does not have to produce evidence, and only a “plausible” justification is required, see *Ames Rental Prop. Ass’n*, 736 N.W.2d at 259, there are certainly occasions where a rational basis test can be applied on the pleadings without taking evidence. In this case, unless the well-pleaded facts (if true) would show that Iowa’s educational system is not rationally related to a legitimate state goal, there is no reason for the case to proceed further.

[21] Disregarding plaintiffs’ legal conclusions (for example, that Iowa’s education system is “irrational, arbitrary and capricious” or that the defendants have failed to provide an “effective education”),<sup>23</sup> we are left with the following allegations: (1) Iowa has fewer state standards and requirements than other states (although it has some); (2) Iowa’s schools have a mediocre national ranking on some measures according to some sources; (3) the smaller school districts in Iowa on average have less experienced and credentialed teachers and offer fewer classes; (4) three districts (Davenport, Des Moines, and West Harrison) have substantial percentages of students

who are not demonstrating proficiency in reading and math according to certain standardized tests; and (5) one district (West Harrison) does not do a good job of preparing students for college. Plaintiffs attribute the last four points to the first—that is, they blame the lack of state-mandated standards in various areas for the undistinguished rankings on certain national score charts and the concerns noted with respect to smaller and larger school districts. But for purposes of the rational basis test, we need only find a reasonable relationship to a legitimate state purpose. *See, e.g., Comm. for Educ. Rights*, 220 Ill.Dec. 166, 672 N.E.2d at 1196 (affirming dismissal of complaint on this ground after applying rational basis \*29 test and finding Illinois’s system for funding public education rationally related to the legitimate state purpose of local control).

We can conceive of a rational basis for the set of circumstances described by plaintiffs. The Iowa legislature may have decided that local school board autonomy is preferable in certain instances to state mandates. The legislature may also have concluded that it is more equitable to provide an equal or roughly equal amount of resources to each state school district, on a per capita basis, and then give those school districts the primary responsibility for determining how that money will be spent. *See* Iowa Code § 257.1(2) (providing that “each school district in the state is entitled to receive foundation aid in an amount per pupil equal to the difference between the per pupil foundation tax ... and the combined foundation base per pupil or the combined district cost per pupil, whichever is less”). The legislature may also have decided that it is important to preserve school districts in rural areas, even though the smaller size of those districts may not allow them to offer the same kinds of programs as larger districts. The legislature may have determined that time spent on standardized testing of students—and preparation for such tests—detracts from time spent in other areas of learning. Additionally, the legislature may have decided that school districts in Iowa are aware of their students’ math and reading proficiency rates, but have many other pressing concerns, and that it would be best to defer to the judgment of local administrators regarding the areas that require the most attention.

[22] Local control, equity in per-pupil funding, maintenance of existing rural school districts, and conservation of scarce classroom time and resources are all legitimate governmental interests. As claimed interests, they are “realistically conceivable.” *Miller v. Boone Cnty. Hosp.*, 394 N.W.2d 776, 779 (Iowa 1986). Furthermore, the policies decried by the plaintiffs are at least rationally connected to these goals. While

acknowledging the undeniable importance of education, our court has previously characterized it as an area where there is no true consensus and where needs change over time. Thus, we have said that “education is defined as a broad and comprehensive term with a variable and indefinite meaning.” *In re Petty*, 241 Iowa 506, 511, 41 N.W.2d 672, 675 (1950). We have also observed:

The establishment and the maintenance of an educational system through public schools is an indispensable obligation and function of the State of Iowa. It should be so maintained as to keep abreast with progress generally, and to meet the needs of the times. This applies not only to the courses of study but also to the teaching force. The policy with respect to either should not be an inflexible one.

*Talbot v. Indep. Sch. Dist. of Des Moines*, 230 Iowa 949, 967, 299 N.W. 556, 565 (1941). We cannot say that any state classification scheme identified by the petition is so arbitrary as to be unconstitutional.<sup>24</sup>

\*30 In *Racing Association of Central Iowa v. Fitzgerald (RACI)*, 675 N.W.2d 1, 15–16 (2004), we held that a statute taxing gross gambling receipts from racetracks at a rate nearly twice the rate imposed on gross gambling receipts from riverboats violated the Iowa equal protection clause. We find *RACI* readily distinguishable here. As noted, the plaintiffs do not point to anything the defendants have allegedly done to treat one group of Iowans different from another. Even if disparate treatment were alleged, *RACI* still only requires that the purported rational basis be “realistically conceivable” and have a “basis in fact”; it explicitly “does not require ‘proof’ in the traditional sense.” *RACI*, 675 N.W.2d at 7–8 & n. 4 (quoting *Miller*, 394 N.W.2d at 779). Providing equal resources to school districts while allowing those districts the independence to determine many aspects of educational policy is not merely “realistically conceivable” as a legislative purpose, it is the same legislative purpose we upheld in *Exira*.

*RACI* has not been the death knell for traditional rational basis review. Since *RACI* was decided, we have continued to uphold legislative classifications based on judgments the legislature could have made, without requiring evidence or “proof” in either a traditional or a nontraditional sense. *See Judicial Branch v. Iowa Dist. Ct.*, 800 N.W.2d 569, 578–79 (Iowa 2011) (holding it was

constitutional to remove deferred judgments but not dismissals and acquittals from the public docket and stating that “[t]he legislature could rationally determine that deferred judgments should not be accessible to the public but dismissals and acquittals should be”); *State v. Mitchell*, 757 N.W.2d 431, 438–39 (Iowa 2008) (upholding a law that distinguished between married and unmarried sex offenders and finding that “[t]he legislature could have reasonably determined its chosen classification scheme, which differentiates between cohabitants who are married and those who are unmarried, would rationally advance the government objective of protecting children from sex offenders”); *Ames Rental Prop. Ass’n*, 736 N.W.2d at 259 (upholding an ordinance limiting the number of unrelated persons who could live in a house because “[t]he City is not required or expected to produce evidence to justify its legislative action”).

While some members of this court have dissented from some of those decisions, claiming they are inconsistent with *RACI*, see *Mitchell*, 757 N.W.2d at 442 (Wiggins, J., dissenting), *Ames Rental Property Ass’n*, 736 N.W.2d at 264 (Wiggins, J., dissenting), they are precedents of this court. In fact, since *RACI* was decided, we have considered rational basis equal protection challenges under the Iowa Constitution many times and upheld such a challenge only once. See *Dudley*, 766 N.W.2d at 620–24 (upholding a rational basis challenge to the state’s reimbursement laws for indigent defense without affording either side an opportunity to present evidence). But see *Timberland Partners XXI, LLP v. Iowa Dep’t of Revenue*, 757 N.W.2d 172, 175–77 (Iowa 2008) (rejecting an equal protection challenge to an administrative rule providing that apartments would be taxed at a higher commercial rate and condominiums at a lower residential rate even if both were used for the same commercial purposes); *State v. Willard*, 756 N.W.2d 207, 213–14 (Iowa 2008) (finding residency restrictions for convicted sex offenders do not violate equal protection); *City of Coralville*, 750 N.W.2d at 530–31 (Iowa 2008) (rejecting equal protection challenge to a tariff system); *In re Det. of Hennings*, 744 N.W.2d 333, 339–40 (Iowa 2008) (finding no equal protection violation in denying a right to a bench trial in a sexually violent predator proceeding but not a criminal case); \*31 *Midwest Check Cashing, Inc.*, 728 N.W.2d at 404–05 (finding a rational basis for different treatment of payday loans); *Asmus*, 722 N.W.2d at 658 (rejecting an equal protection challenge to a higher standard for legal causation in workers’ compensation mental injury cases); *State v. Simmons*, 714 N.W.2d 264, 276–78 (Iowa 2006) (holding that making only defendants who plead guilty eligible for a certain reduction in sentence does not violate equal protection);

*Sanchez*, 692 N.W.2d at 817–19 (holding that denying driver’s licenses to illegal aliens does not violate equal protection); *Claude v. Guar. Nat’l Ins. Co.*, 679 N.W.2d 659, 664–66 (Iowa 2004) (holding the statutory distinction between hit-and-run and miss-and-run vehicles for purposes of mandatory uninsured motorist coverage did not violate equal protection).

[23] **E. Substantive Due Process.** Plaintiffs also allege the defendants have violated the due process clause of the Iowa Constitution, which provides that “no person shall be deprived of life, liberty, or property, without due process of law.” Iowa Const. art. I, § 9. For the reasons already discussed with respect to equal protection, we believe plaintiffs’ substantive due process claim is justiciable. We have a familiar analytical framework under which to analyze such claims, and we have reached the merits of such a claim in the field of education before. See *Exira*, 512 N.W.2d at 793–96.

[24] [25] [26] [27] Substantive due process prevents the government “ ‘from engaging in conduct that shocks the conscience or interferes with rights implicit in the concept of ordered liberty.’ ” *Zaber v. City of Dubuque*, 789 N.W.2d 634, 640 (Iowa 2010) (quoting *Atwood v. Vilsack*, 725 N.W.2d 641, 647 (Iowa 2006)); *State v. Hernandez-Lopez*, 639 N.W.2d 226, 237 (Iowa 2002). With a substantive due process claim, we follow a two-stage analysis. *Hensler*, 790 N.W.2d at 580. First, we determine the nature of the individual right involved, then the appropriate level of scrutiny. *Id.* If the right at issue is fundamental, strict scrutiny applies; otherwise, the state only has to satisfy the rational basis test. *Sanchez*, 692 N.W.2d at 819–20. When the rational basis test applies, there need only be a “reasonable fit” between the legislature’s purpose and the means chosen to advance that purpose. *Zaber*, 789 N.W.2d at 640. We have said that “ ‘[t]he doctrine of judicial self-restraint requires us to exercise the utmost care whenever we are asked to break new ground in th[e] field [of substantive due process].’ ” *Sanchez*, 692 N.W.2d at 819 (quoting *Reno v. Flores*, 507 U.S. 292, 302, 113 S.Ct. 1439, 1447, 123 L.Ed.2d 1, 16 (1993)).

As we have already noted, the petition does not allege wrongful acts by the defendants. Instead, it asserts the defendants’ *inaction* has infringed upon plaintiffs’ rights. Generally, plaintiffs allege the State and its officials have failed to establish sufficient state-wide standards or failed to enforce and utilize such standards. Yet this court has indicated the purpose of substantive due process is to protect citizens when the government engages in actual conduct (i.e., governmental action) that infringes or interferes with rights. *In re Det. of Hennings*, 744 N.W.2d

at 337 (“Governmental action violates principles of substantive due process when....”); *Atwood*, 725 N.W.2d at 647 (“Substantive due process principles preclude the government ‘from engaging in conduct....’ ” (citation omitted)); *Sanchez*, 692 N.W.2d at 819 (“Substantive due process ‘provides heightened protection against government interference with certain fundamental rights and liberty interests.’ ” (quoting *Troxel v. Granville*, 530 U.S. 57, 65, 120 S.Ct. 2054, 2060, 147 L.Ed.2d 49, 56 (2000))); *Hernandez-Lopez*, 639 N.W.2d at 238 (“We must then determine whether the government action \*32 infringing....”). We have previously expressed “serious doubt” about the viability of a substantive due process theory based on the notion that the government failed to act. *Midwest Check Cashing, Inc.*, 728 N.W.2d at 404 n. 6.

Regardless, there is an additional reason why we conclude plaintiffs have not alleged facts that, if true, would amount to a denial of substantive due process. As we have already pointed out, we are not deciding today whether there is a fundamental right to a basic education embraced within the Iowa Constitution. If there is such a right, the plaintiffs have not alleged that they have been deprived of it. Therefore, the rational basis test applies.

Typically, when the rational basis test is involved, we evaluate that basis similarly for equal protection and due process purposes. *Midwest Check Cashing, Inc.*, 728 N.W.2d at 405; *Sanchez*, 692 N.W.2d at 820 (concluding that “[f]or the reasons discussed in the equal protection analysis,” a statute meets the rational basis test and does not violate substantive due process). For the rational basis test to be met, there need only be a reasonable fit between the governmental interest and the means utilized to advance that interest. The legislature need not employ the best means of achieving that interest. *Hensler*, 790 N.W.2d at 584. The plaintiff by contrast must negate every reasonable basis upon which the government’s act may be sustained. *Zaber*, 789 N.W.2d at 640.

Our decision in *Exira* illustrates how the rational basis test works in practice. Applying that test, we found the financing provision of the open enrollment statute to be constitutional because it gave “access to educational opportunities” even though “its ultimate effect might mean the demise of some smaller schools.” *Exira*, 512 N.W.2d at 795–96. “It is not for us to judge the wisdom of such a policy. That was a legislative call.” *Id.* at 795. “Our clear duty is to interpret and apply the law given to us, and not to develop or choose among schemes for public education.” *Id.* at 796. In other words, the possibility that the financing provision could be counterproductive and lead to fewer educational

opportunities (due to “the demise of some smaller schools”) was not relevant to a rational basis analysis.

For the reasons already discussed under equal protection, we believe the plaintiffs have not alleged facts that if true would establish a substantive due process violation. They have alleged certain aspects of Iowa’s K–12 educational performance, by some criteria, are mediocre or even below national averages. They have alleged Iowa has fewer statewide standards than other states. They have alleged some urban (Davenport and Des Moines) and rural (West Harrison) districts offer fewer services or, on average, have less favorable educational outcomes than other districts. These allegations undoubtedly raise important and legitimate concerns for education policymakers to consider. But they do not “shock the conscience” as representing abusive governmental conduct. See *State ex rel. Miller v. Smokers Warehouse Corp.*, 737 N.W.2d 107, 111 (Iowa 2007) (stating that substantive due process “ ‘is reserved for the most egregious governmental abuses against liberty or property rights’ ” (quoting *Blumenthal Inv. Trusts v. City of W. Des Moines*, 636 N.W.2d 255, 265 (Iowa 2001))). According to the 2007 Department of Education report cited by plaintiffs in their petition, for 2005–06, Iowa ranked 37th nationally in per-pupil spending, rated substantially above the national average in NAEP fourth and eighth grade reading and mathematics achievement, and rated substantially above the national average in SAT and AP test scores. *The Annual Condition of Education* at 196, 201, 205, 245. Again, these statistics warrant consideration by education \*33 policymakers, but they do not rise to the level of a constitutional violation. We conclude that plaintiffs have not stated a claim for deprivation of substantive due process based on the defendants’ alleged failure to do more to advance the cause of public education in this state.<sup>23</sup>

In rejecting the plaintiffs’ constitutional claims, we emphasize again that this is not a case involving alleged disparities in education funding. Rather, the plaintiffs allege the defendants have a constitutional duty—enforceable by Iowa’s judiciary—to improve the quality of the education they are receiving. In the relatively few instances where such quality-based claims have been asserted and have advanced past a motion to dismiss in other states, that has occurred because the state’s founders enshrined a particular educational mandate in the state constitution. Thus, in *Connecticut Coalition for Justice in Education Funding v. Rell*, the Connecticut Supreme Court relied on a state constitutional provision guaranteeing a right to “free public elementary and secondary schools in the state.” 295 Conn. 240, 990 A.2d 206, 212 n. 1 (2010) (quoting



Conn. Const. art. 8, § 1). As we have discussed, Iowa's delegates voted down an analogous provision in 1857. Similarly, in *Rose v. Council for Better Education, Inc.*, the Kentucky Supreme Court noted that Kentucky's constitution included a constitutional mandate to "provide an efficient system of common schools throughout the state." 790 S.W.2d 186, 189 (Ky.1989); see also Ky. Const. § 183. And in *Abbeville County School District v. State*, the South Carolina Supreme Court invoked a constitutional provision that, like Connecticut's, requires the state's general assembly to "provide for the maintenance and support of a system of free public schools open to all children in the State." 335 S.C. 58, 515 S.E.2d 535, 539 (1999); see also S.C. Const. art. XI, § 3.

Whatever the merits of these other judicial interventions in education, Iowa's constitution is different. As we have already discussed, it does not mandate that the legislature provide either "free public schools" or an "efficient system of common schools." We are confronted with equal protection and due process challenges that should be resolved under a rational basis test. In *Abbeville County School District*, the South Carolina Supreme Court affirmed the dismissal of the plaintiffs' equal protection cause of action under the South Carolina Constitution for failure to state a claim. 515 S.E.2d at 538-39; see also *Comm. for Educ. Rights v. Edgar*, 174 Ill.2d 1, 220 Ill.Dec. 166, 672 N.E.2d 1178, 1196 (1996) (affirming dismissal of equal protection claim brought under the Illinois Constitution and observing that "[w]hile the present school funding scheme might be thought unwise, undesirable or unenlightened from the standpoint of contemporary notions of social justice, these objections must be presented to the General Assembly"); *Bonner*, 907 N.E.2d at 522 (upholding dismissal of equal protection \*34 and due process claims based on the Indiana Constitution); *Fair Sch. Fin. Council of Okla., Inc. v. State*, 746 P.2d 1135, 1150-51 (Okla.1987) (affirming grant of motion for judgment on the pleadings on the plaintiffs' equal protection and due process claims under the Oklahoma Constitution after concluding "there is a rational basis to support the present school finance system").

[28] **F. Iowa Code § 256.37.** The plaintiffs also assert a statutory claim under Iowa Code section 256.37, which provides:

It is the policy of the state of Iowa to provide an education system that prepares the children of this state to meet and exceed the technological, informational, and communications demands of our society. The general assembly finds that the current education system must be transformed to deliver the

enriched educational program that the adults of the future will need to have to compete in tomorrow's world. The general assembly further finds that the education system must strive to reach the following goals:

1. All children in Iowa must start school ready to learn.
2. Iowa's high school graduation rate must increase to at least ninety percent.
3. Students graduating from Iowa's education system must demonstrate competency in challenging subject matter, and must have learned to use their minds well, so they may be prepared for responsible citizenship, further learning, and productive employment in a global economy.
4. Iowa students must be first in the world in science and mathematics achievement.
5. Every adult Iowan must be literate and possess the knowledge and skills necessary to compete in a global economy and exercise the rights and responsibilities of citizenship.
6. Every school in Iowa must be free of drugs and violence and offer a disciplined environment conducive to learning.

[29] This law does not contain an express private right of action, so any cause of action must be implied. Typically, in determining whether a private right of action may be inferred from a statute, we consider four factors:

1. Is the plaintiff a member of the class for whose benefit the statute was enacted?
2. Is there any indication of legislative intent, explicit or implicit, to either create or deny such a remedy?
3. Would allowing such a cause of action be consistent with the underlying purpose of the legislation?
4. Would the private cause of action intrude into an area over which the federal government or a state administrative agency holds exclusive jurisdiction?

*Marcus v. Young*, 538 N.W.2d 285, 288 (Iowa 1995) (citing *Cort v. Ash*, 422 U.S. 66, 78, 95 S.Ct. 2080, 2088, 45 L.Ed.2d 26, 36-37 (1975)). All four factors generally must weigh in favor of a private right of action for us to find such a right exists. *Stotts v. Eveleth*, 688 N.W.2d 803, 808 (Iowa 2004).

Here we agree section 256.37 was enacted for the plaintiffs' benefit, in that many of them are Iowa public school students. But we conclude the second, third, and fourth factors listed above do not support a private right of action, and therefore hold plaintiffs' claim under section 256.37 was properly dismissed.

Regarding the second *Marcus/Cort* factor, the language of section 256.37 does not indicate legislative intent to create a remedy. Rather, the section merely sets forth \*35 a general statement of policy with six "goals" the "education system must strive to reach." Iowa Code § 256.37 (emphasis added). The legislature specifically used the terms "goals" instead of more concrete language such as "standards" or "requirements." Also, the legislature used the aspirational phrase "must strive to reach" instead of a more demanding phrase such as "must reach." *Id.*

Furthermore, the wording of the goals themselves reflects a legislative purpose to make only a policy pronouncement. Throughout the statute, broad and sweeping language such as "all" and "every" is used. *Id.* The goals are thus utopian in nature. For example, the final goal states, "Every school in Iowa must be free of drugs and violence..." *Id.* Did the legislature intend to allow a student to bring suit whenever his or her school is not entirely "free of drugs and violence"? We think not.

The placement of section 37 within Chapter 256 of the Iowa Code also supports the proposition that it is simply a policy statement. Section 256.37 is located within subchapter I, entitled "General Provisions." This subchapter generally describes education policy in Iowa and establishes the Department of Education. Many other sections within the same "General Provisions" subchapter also begin with the language, "It is the policy..." See, e.g., *id.* §§ 256.18, .38.

The third *Marcus/Cort* factor is also unmet here because allowing a private cause of action would be inconsistent with section 256.37's purpose of delineating general goals for Iowa's educational system. Permitting a private right of action under section 256.37 would likely unleash a multiplicity of future lawsuits that would transform aspirational goals into a series of specific mandates. Notably, section 256.37 was enacted as part of legislation that allowed the Department of Education to waive compliance with the minimum education standards for accredited schools under certain circumstances. See 1992 Iowa Acts ch. 1159, § 1.

In addition, the fourth factor is not satisfied because the Department of Education has jurisdiction under Iowa

Code section 256.1 to act in a policymaking capacity and provide statewide supervision of education in the State of Iowa. Iowa Code § 256.1(1) ("The department of education is established to act in a policymaking and advisory capacity and to exercise general supervision over the state system of education..."). A private cause of action under section 256.37 would intrude into an area in which a state administrative agency, the Department of Education, already has exclusive jurisdiction.

Because neither the second, third, nor fourth elements of a private right of action is present here, we affirm the district court's ruling that section 256.37 does not provide a private remedy.

Given our disposition of plaintiffs' substantive claims, we need not reach defendants' additional arguments that mandamus is not an appropriate remedy or that the Governor of Iowa is not a proper defendant.

#### IV. Conclusion.

We affirm the dismissal of plaintiffs' first amended and substituted petition. We do not minimize the importance of the issues raised by the plaintiffs. But a respect for precedent and for our constitution requires that we stay out of this dispute. This court in its past decisions, from *Kleen* to *Johnson* to *Exira*, has historically deferred to the policy decisions made by the political branches of government in this area.<sup>26</sup>

\*36 The sixteen parents and students who brought this suit clearly believe that Iowa's schools would benefit if we had more student testing, more statewide standards, more statewide uniformity, and a performance-based pay system for teachers. These issues are currently being debated throughout our state. The debate participants include legislators, the governor, executive branch officials, school boards, teachers, parents, students, and taxpayers. We believe the democratic process is best suited for resolution of those debates and can best accommodate the competing concerns of the many interested parties.

As we said at the beginning of this opinion, we do not close the door to other actions alleging constitutional violations in the field of education. We uphold only the dismissal of this case.

**AFFIRMED.**



CADY, C.J., and WATERMAN and ZAGER, JJ., join this opinion. CADY, C.J., and WATERMAN, J., file separate concurring opinions. WIGGINS, J., files a dissenting opinion in which HECHT and APPEL, JJ., join. APPEL, J., files a separate dissenting opinion in which HECHT, J., joins.

CADY, Chief Justice (concurring specially).

I concur in the opinion of the majority. I write separately to explain my unwillingness at this time to more fully explore the constitutional claim of a public education in Iowa and to further explain my position on the issues in this case.

At the outset, I feel compelled to acknowledge that education is a tradition that exists today as strongly as ever. A system of public education is clearly needed to allow the youth of this state to learn the essential aspects of judgment, analysis, communication, and creativity. It is needed to empower each generation to meet the economic, social, scientific, political, governmental, personal, and other challenges of an evolving global world. Education is the core of who we are and who we will become. The dissenting opinion of Justice Appel has captured the rich history of this tradition in Iowa and has provided insight into its constitutional stature.

Yet, in response to the specific claim of a constitutional right under the education clause raised in this case, I am restrained at this time from deciding anything more than that section 3 of the second division of article IX of the Iowa Constitution does not alone create a right to a public education. This conclusion is not to say no such right exists under the Iowa Constitution, but I am content to wait for a different case in which the petition both frames the full constitutional underpinnings and is accompanied by pleadings that would allow the underlying facts of the case to become a helpful aid in shaping the parameters to any such right recognized to exist. Of course, in this case, as pointed out by Justice Wiggins, the more fundamental obstacle presented is whether this extremely \*37 important issue should even be addressed by us when the parties chose, at least initially, not to raise it as an issue for appellate review after it was presented and decided by a district court.

The doctrine of judicial restraint expressed by Justice Wiggins is a view I would normally follow. Yet, our rules of judicial restraint are full of nuance and exceptions and ultimately rest on the particular circumstances of each case. As observed in the majority opinion, the principles of judicial restraint also embrace judicial economy, a

doctrine particularly applicable to this case. If the allegations of a case would not be sufficient to establish a claim, assuming they were all true, judicial economy would not be served by sending the case back for the parties to go through the time and expense of further proceedings only for the courts to later declare the plaintiff never had a viable claim in the first place.

Judicial restraint is a doctrine composed of many elements, and it strives for outcomes that are both fair and practical. In this case, it is both fair and practical for us to examine the pleadings to determine if the plaintiffs could ever win their lawsuit if we declared the educational experience mandated by the legislature in this state was a constitutional right. It is fair because the parties fully explored this issue before the district court, and it was ultimately raised and urged at rehearing on appeal. It is practical because the case is before us, and it is in the best interests of all concerned for us to decide the merits of the underlying claim now. Thus, under the particular procedural background of this case, I conclude the doctrine of judicial restraint does not instruct us to refrain from deciding the basic question whether or not the plaintiffs have failed to state a claim for relief. Accordingly, it is appropriate to decide if the allegations are sufficient to support a violation of a fundamental right to an adequate education.

Normally, cases are not resolved on the pleadings. *U.S. Bank v. Barbour*, 770 N.W.2d 350, 353 (Iowa 2009). Moreover, we do not set a high bar for litigants to clear to meet the requirement for a pleading to state a claim for relief. *Id.* at 354 (noting the “fair notice” requirement is met if a petition informs the defendant of the incident giving rise to the claim and the claim’s general nature). Instead, we follow the liberal rule of notice pleading. This rule, however, does not mean all claims clear the bar. *See O’Brien v. DiGrazia*, 544 F.2d 543, 546 n. 3 (1st Cir.1976) (noting that, when plaintiff in civil rights action provides facts to support claim, court does not have duty to “conjure up unpleaded facts that might turn a frivolous claim of unconstitutional official action into a substantial one”); *see also* 5B Charles Alan Wright & Arthur R. Miller, *Federal Practice and Procedure* § 1357, at 548–53 (3d ed.2004) (noting courts “will accept the pleader’s description of what happened to him or her along with any conclusion that can reasonably be drawn therefrom,” but will not accept “conclusory allegations concerning the legal effect of the events the plaintiff has set out if these allegations do not reasonably follow from the pleader’s description of what happened”).

When the viability of a claim for relief is challenged, our pleading rule requires consideration of any conceivable

set of facts, but only those facts that relate to and could prove the allegations made in the petition. The allegations of the petition, if proven by the facts, must show entitlement to relief. Reviewing courts do not, however, consider any conceivable allegations, only any conceivable facts that support the allegations made.

\*38 In this case, the allegations of the petition, even if true, could not establish that students in Iowa today are being denied a basic or minimally adequate education, wherever that elusive standard might land. The plaintiffs have not made a single allegation that could establish they have been deprived of the basic ability to read, write, or communicate, and they have not alleged they have been deprived of their ability to gain an understanding of mathematics, science, economics, government, computer-based technology, or other vital components of a basic education. While the allegations in the petition are detailed and thoughtful, they simply do not show Iowa students are being deprived of an opportunity for an adequate education. For example, the disparities alleged to exist between school districts across Iowa may show slightly different education experiences and outcomes, but those different outcomes do not establish a deprivation of basic education.

Likewise, Iowa's recent decline of college admissions test scores and other proficiency scores do not establish a deprivation of basic education. They merely show the state may have begun to slip, but the level of decline alleged is not so much that a reasonable person could say the slip means students have been altogether deprived of a basic education. Similarly, the absence of certain assessment mechanisms in Iowa, as alleged by the plaintiffs, does not establish the deprivation of basic education. Even Iowa's decline in the national rankings in various subjects does not mean students are being deprived of basic education. Again, it merely shows we are beginning to slip or perhaps other states are beginning to improve. Finally, the broad allegations that Iowa has failed to establish standards, enforce standards, adopt effective teacher pay systems, and establish a delivery system are insufficient. Accepting all the allegations of the petition to be true, the deprivation of basic education cannot be established. There are simply no allegations that students in Iowa cannot read, write, communicate, or perform the other essential aspects of education. There are no allegations that capable students lack an understanding of mathematics, science, economics, government, or computer-based technology.

The petition does contain some statements generally indicting the public education system. For example, the petition states that "[m]any Iowa students are not prepared

to enter the workforce or postsecondary education without additional training or remediation when they graduate from high school." The petition also alleges the educational and accreditation standards of this state "do not ensure that all students" will be able to meet or exceed the future demands of society, be prepared for responsible citizenship, and be prepared for further learning and productive employment in the global economy. The petition also generally declares, "[A]n ineffective education will persist for school children throughout their lifetimes, affecting the rate and extent of their ability to be a responsible citizen, their ability to learn further, and their ability to achieve productive employment in a global economy."

To the extent such claims are actually allegations of a petition, as opposed to hortatory calls to action, they relate to the level of a basic or adequate education. Wherever a basic or adequate education might land within the framework of our constitution, assuming the existence of a right to education, that landing point certainly would not guarantee that "all students" would be able to meet the broad demands of the world in the future. Nor would the right guarantee students would never need to take a remedial course to enter the workforce or postsecondary education.

\*39 Of course, my rejection of the pleadings in the case as a basis to support a constitutional right necessarily leads to the question of what allegations would need to be pled to properly support the constitutional claim of a minimally sufficient public education. Assuming Justice Appel has articulated the source of a constitutional claim to a public education, the fighting issue turns to the meaning of a minimally sufficient education. This is an issue that is indeed difficult and one that I am admittedly without a specific answer at this time. We landed on a minimally sufficient standard in the context of the constitutional right to counsel, and this standard has worked well enough in applying the constitutional right. But, public education is a totally different kettle of fish. The point when a state's educational system becomes minimally insufficient would be difficult to ascertain in the context of a constitutional analysis. Nevertheless, the analysis would need to generally center on the performance of the school system and its collective outcomes and be ultimately judged in relationship to other performance models over a period of years. But, for now, I am simply content that the allegations of the petition in this case fall short and that a trial to obtain the supporting evidence would not help.

Additionally, the allegations of the petition, even if true, do not establish a violation of the equal protection clause.

Even assuming the different educational outcomes alleged in the petition are supported by facts, a rational basis certainly could be articulated to justify the different outcomes. This rational basis is found in the local control given to school districts. Moreover, a rational basis to justify different outcomes does not need to be derived by courts from the record in a case. Importantly, similar to the way facts are assumed to support allegations in a petition to determine if a claim for relief has been stated, courts formulate a rational basis from any information that is "realistically conceivable." *Miller v. Boone Cnty. Hosp.*, 394 N.W.2d 776, 779 (Iowa 1986). Thus, when considering constitutional challenges subject to a rational-basis analysis, courts may consider the existence of any conceivable rational basis. The analysis does not require a factual basis drawn from the record in the case. *Racing Ass'n of Cent. Iowa v. Fitzgerald*, 675 N.W.2d 1, 7-8 & n. 4 (Iowa 2004). Accordingly, this analysis means courts are not required to needlessly wait for a trial before declaring that a particular different outcome in society does not violate the equal protection guarantee. Different outcomes from governmental actions can be observed throughout society, and they violate the equal protection clause only when government does not have an adequate justification for the different treatment. See *Varnum v. Brien*, 763 N.W.2d 862, 879 (Iowa 2009).

In the end, the allegations of the petition, while alarming, simply cannot support the constitutional claim that is urged. Consequently, the courts have no role in the resolution of this important social issue at this time. The petition, if true, may be a call to action, but it is a call under our constitutional structure for the legislature, not the courts. The pleadings simply do not convince me that school children today in Iowa, let alone the school children at the center of this lawsuit, are being deprived or have been deprived of any level of education our constitution would be able to mandate.

WATERMAN, J. (concurring specially).

I concur in the majority's well-reasoned decision on all issues. I write separately to emphasize the importance of judicial restraint when litigants ask courts to overstep their bounds.

\*40 This case was resubmitted for a second oral argument because three new members were added to this court. Plaintiffs' counsel in his eloquent oral argument urged our court to "do its job." We do exactly that today by affirming the dismissal of a well-intentioned, but legally flawed lawsuit. If these individual plaintiffs were allowed to proceed with this case in the courts, and they somehow won the relief they seek, the end result would be judges

running our public schools through structural injunctions that second-guess the educational policy decisions made by the elected branches of government. That is not our role. We do not sit as the supreme school board of the State of Iowa, and we are unwilling in the guise of adjudication to usurp powers the Iowa Constitution cedes to the elected branches to run our public schools. The separation-of-powers doctrine precludes the relief these plaintiffs seek from the courts.

To reinstate this lawsuit would set a dangerous precedent. These plaintiffs ask too much of our court jurisprudentially. It is not for courts to impose particular statewide educational standards by judicial decree. Our limited role as a coequal branch of government requires us to adjudicate cases and in doing so construe the meaning of our constitution; the constitutional power to run our public schools lies with the legislative and executive branches. Courts can and must step in if that power is exercised in a way that infringes on individual rights. See, e.g., *Tinker v. Des Moines Indep. Cmty. Sch. Dist.*, 393 U.S. 503, 514, 89 S.Ct. 733, 740, 21 L.Ed.2d 731, 742 (1969) (holding First Amendment protection for symbolic speech required school officials to allow students to wear black armbands protesting the Vietnam War). Such cases involving individual rights are well within the institutional competence of courts to decide. No such claim is stated in this case. Nor is this case another *Brown v. Board of Education*, 347 U.S. 483, 74 S.Ct. 686, 98 L.Ed. 873 (1954), challenging racial segregation or discrimination. No claim of disparate treatment or any illegal classification such as race is made here. Rather, these plaintiffs seek broad educational reform. Our courts are not institutionally competent to make educational policy judgments. The Department of Education is in the executive branch.

It is worth repeating here Justice Scalia's recent warning against the use of structural injunctions in institutional reform litigation:

Structural injunctions ... turn[ ] judges into long-term administrators of complex social institutions such as schools, prisons, and police departments. Indeed, they require judges to play a role essentially indistinguishable from the role ordinarily played by executive officials....

The drawbacks of structural injunctions have been described at great length elsewhere. This case illustrates one of their most pernicious aspects: that they force judges to engage in a form of factfinding-as-policymaking that is outside the traditional judicial role. The factfinding judges traditionally engage in involves the determination of

past or present facts based (except for a limited set of materials of which courts may take “judicial notice”) exclusively upon a closed trial record. That is one reason why a district judge’s factual findings are entitled to plain-error review: because having viewed the trial first hand he is in a better position to evaluate the evidence than a judge reviewing a cold record. In a very limited category of cases, judges have also traditionally been called upon to make some predictive judgments: which custody will best serve the interests of the child, for example, or whether a particular one-shot injunction will remedy the plaintiff’s grievance. When a judge \*41 manages a structural injunction, however, he will inevitably be required to make very broad empirical predictions necessarily based in large part upon policy views—the sort of predictions regularly made by legislators and executive officials, but inappropriate for the Third Branch.

....

It is important to recognize that the dressing-up of policy judgments as factual findings is not an error peculiar to this case. It is an unavoidable concomitant of institutional-reform litigation. When a district court issues an injunction, it must make a factual assessment of the anticipated consequences of the injunction. And when the injunction undertakes to restructure a social institution, assessing the factual consequences of the injunction is necessarily the sort of predictive judgment that our system of government allocates to other government officials.

But structural injunctions do not simply invite judges to indulge policy preferences. They invite judges to indulge *incompetent* policy preferences. Three years of law school and familiarity with pertinent Supreme Court precedents give no insight whatsoever into the management of social institutions.

*Brown v. Plata*, — U.S. —, —, 131 S.Ct. 1910, 1953–55, 179 L.Ed.2d 969, 1015–16 (2011) (Scalia, J., dissenting) (citations omitted).

These admonitions apply with equal force here. A law degree and some court room experience do not qualify judges to restructure Iowa schools or impose new statewide educational standards. If we reinstate this case, one can easily imagine more lawsuits will be filed by other families with different ideas on how to run the schools. Whatever evidence the King plaintiffs might offer at a trial in this case presumably would make a record very different from the evidentiary trial record to be made by other plaintiffs with conflicting educational policy goals such as vouchers or greater local control. All

such trials would be a waste of time and scarce resources in the absence of a cognizable claim upon which judicial relief may be granted.

We are affirming the dismissal of this case based on the plain meaning of our constitution and our own precedent. Sixteen years ago our court unanimously recognized that it is not our role to “develop or choose among schemes for public education” and that the proper forum for such debates is “in the other branches of state government.” *Exira Cmty. Sch. Dist. v. State*, 512 N.W.2d 787, 796 (Iowa 1994). This view is echoed by many other voices of restraint on the supreme courts of our sister states.<sup>27</sup>

\*42 By contrast, instead of focusing on our own precedent, the dissent embarks on a wide-ranging survey of authorities. For example, the dissent cites several times to the United Nations’ 1948 Universal Declaration of Human Rights, a document that includes a right to leisure time and health care as well as a right to education. The dissent acknowledges this UN Declaration is not binding in United States courts. *See Sosa v. Alvarez-Machain*, 542 U.S. 692, 734–35, 124 S.Ct. 2739, 2767, 159 L.Ed.2d 718, 754–55 (2004). The only education case citing the UN Declaration was accompanied by a vigorous and well-reasoned dissent. *Pauley v. Kelly*, 162 W.Va. 672, 255 S.E.2d 859, 897–900 (1979) (Neely, J., dissenting). No party to this litigation cited the UN Declaration at any point in the proceedings or argued it had any relevance. I fail to see how a 1948 UN Declaration helps our court ascertain the intent of the framers of the Iowa Constitution ratified ninety years earlier. Our court has not previously relied on UN declarations or international law to interpret our 1857 constitution, and I would not start now.

The dissent also discusses numerous historical figures and famous educators. Yet none of them is quoted for the proposition that courts should be running schools. I imagine all of them would be surprised by that notion. The divergence of views of education surveyed by the dissent is another reason why policymaking should be left to the elected branches. How should an Iowa judge or jury in a contested case select from among the disparate academic viewpoints and standards? We all agree public education is vitally important. But that does not warrant courts interfering in how our public schools are run. The lengthy dissent cites no case from any jurisdiction where court-ordered imposition of statewide educational standards improved student outcomes.

The dissent argues we should not decide whether the amended petition states a claim upon which relief may be granted because the appellee who won dismissal below

did not brief that alternative ground for dismissal on appeal. That issue was fully briefed by both sides in the district court and decided by the district court and is appropriately decided by our court today for the reasons set forth in the majority opinion and Chief Justice Cady's special concurrence. The dissenters' position today is at odds with their zeal a mere eighteen months ago to decide an issue the parties in another case failed to brief in district court or on appeal and that the district court never decided. *See Feld v. Borkowski*, 790 N.W.2d 72, 81–82 (Iowa 2010) (Wiggins, J., concurring specially); \*43 *id.* at 82–85 (Appel, J., concurring in part and dissenting in part). The dissenters argue it was appropriate to reach the issue omitted from the briefs in *Feld* because it was inextricably intertwined with the issue briefed on appeal. The same is true in this case—whether these plaintiffs allege claims upon which judicial relief may be granted or rather nonjusticiable political questions is simply two sides of the same coin. Notably, in *Feld*, Justice Wiggins posed several questions that are better asked in this case:

Why should we leave the question unanswered when the district court will be confronted with it on remand? Why are we creating a potential appeal on this issue ... when we can answer the question now? It seems to me, for us not to address the issue creates extra expense for the parties and the court. Accordingly, I would address the issue head on and give the contact sports exception a proper burial.

*Id.* at 82. So too should we give plaintiffs' case "a proper burial" now, instead of remanding for a costly trial to prove allegations that, if true, provide no grounds for judicial relief.<sup>26</sup>

Many generations of Iowans have been justifiably proud of the quality of our state's public school system. The allegations in this lawsuit shine a light on shortcomings, disturbing downward trends, and outcomes that vary from district to district. But notably absent in the voluminous filings in this appeal is any convincing argument judicial intervention will make Iowa schools better. Plaintiffs filed no Brandeis brief providing empirical data that their requested judicial intervention would improve educational outcomes. The plaintiffs in this case are no doubt optimistic and sincere in their beliefs that the educational reforms they seek to impose statewide by judicial fiat will raise ACT scores in many districts. Our courts, however, are not competent to determine whether

a structural injunction imposing a new set of priorities and standards will accomplish those worthy goals or instead lower composite average ACT scores in districts that currently must be doing many things right.

Voters elect our governor, legislators, and school board members. If these plaintiffs do not like how Iowa schools are run, they should turn to the ballot box, not the courts.

WIGGINS, Justice (dissenting).

I would find the plaintiffs' constitutional claims justiciable and remand the case for further proceedings on the merits of those \*44 claims. Therefore, I dissent from Justice Mansfield's opinion<sup>29</sup> and Chief Justice Cady's concurring opinion because they reach the merits of the plaintiffs' claims under the education clause, the due process clause, and the privileges and immunities clause of the Iowa Constitution even though the State did not raise the merits of these issues on appeal. I also dissent from these opinions because they reach the issue that plaintiffs' petition failed to state a claim. Further, I dissent from Justice Waterman's concurring opinion because he finds the constitutional claims nonjusticiable.

A supreme court is "a court of final review and not first view." *Zivotofsky ex rel. Zivotofsky v. Clinton*, 566 U.S. —, —, 132 S.Ct. 1421, 1430, 182 L.Ed.2d 423, — (2012). Our cases stand for the proposition that we may affirm the district court on any basis appearing in the record and urged on appeal by the appellee. *See, e.g., In re Estate of Voss*, 553 N.W.2d 878, 879 n. 1 (Iowa 1996); *Johnston Equip. Corp. v. Indus. Indem.*, 489 N.W.2d 13, 17 (Iowa 1992); *see also Chauffeurs, Teamsters & Helpers, Local Union No. 238 v. Iowa Civil Rights Comm'n*, 394 N.W.2d 375, 378 (Iowa 1986) (stating we may decide issues on appeal not reached by the district court where they have been raised in the district court and fully briefed and argued by the parties on appeal). This rule is rooted in the principle of fairness, and we have consistently applied it in our cases.

For example, in *State v. Seering*, 701 N.W.2d 655 (Iowa 2005), we held the appellee waived certain arguments on appeal even though the issues were raised in and decided by the district court because the appellee failed to present the arguments in his appellate briefs. 701 N.W.2d at 661–62. In *Parkhurst v. White*, 254 Iowa 477, 118 N.W.2d 47 (1962), we held the appellee waived an issue presented to the district court but not briefed on appeal. 254 Iowa at 480–81, 118 N.W.2d at 49. Similarly, in

*American Mutual Liability Insurance Co. v. State Auto. Insurance Association*, 246 Iowa 1294, 72 N.W.2d 88 (1955), we concluded an alternative constitutional claim was not before us because the appellee failed to assert the claim on appeal. 246 Iowa at 1303, 72 N.W.2d at 93.

This case provides further support for the reasons underlying our rule of error preservation. Here, the district court determined the plaintiffs' amended petition alleged facts sufficient to meet our notice pleading standard. See *Hawkeye Foodservice Distribution, Inc. v. Iowa Educators Corp.*, 812 N.W.2d 600, 608 (Iowa 2012) (declining to adopt a heightened pleading standard). The district court then dismissed the plaintiffs' claims as nonjusticiable political questions. On appeal, the plaintiffs' argued in their appellate brief that its claims were not nonjusticiable political questions. The plaintiffs did not argue the merits of their constitutional claims or argue that their petition met our pleading standard. Indeed, because the district court did not address the merits of the constitutional claims and ruled in the plaintiffs' favor on the pleading issue, it would have been unnecessary and strategically unwise to do so unless the defendants raised these issues on appeal. However, the defendants, the prevailing parties below, only argued in their appellate briefs that the plaintiffs' constitutional claims presented nonjusticiable political questions. \*45 The defendants did not argue the plaintiffs' petition failed to meet our pleading standard. Therefore, under our rule of error preservation, the only issue briefed by the parties on appeal, and thus subject to consideration by this court, is the issue of whether the plaintiffs' constitutional claims present nonjusticiable political questions.

In order to reach the merits of the plaintiffs' claims and to determine the plaintiffs' petition failed to state a claim, Justice Mansfield's opinion and Chief Justice Cady's concurring opinion rely on the proposition that we can uphold a district court decision on a ground different from the one upon which the district court based its decision as long as the ground was urged in the district court. See *DeVoss v. State*, 648 N.W.2d 56, 63 (Iowa 2002). As already noted, this proposition stands for only half of our rule regarding error preservation. These opinions ignore the other half of the rule requiring the parties to brief the issues in this court. In fact, the cases upon which Justice Mansfield's opinion relies to support its proposition support the two-part rule. Granted, we examined issues in *Martinek v. Belmond-Klemme Community School District*, 772 N.W.2d 758 (Iowa 2009), *Fennelly v. A-I Machine & Tool Co.*, 728 N.W.2d 163 (Iowa 2006), and *Emmert v. Neiman*, 245 Iowa 931, 65 N.W.2d 606 (1954), that the district court did not address. However, a review of the appellate briefs in these cases, which are on file at

the state law library, reveals that the parties on appeal briefed the alternate or additional grounds upon which we relied.

Justice Mansfield's opinion also relies on *Erickson v. Erickson's Estate*, 191 Iowa 1393, 180 N.W. 664 (1920), for its proposition that we can affirm on a ground raised in the trial court but not argued in this court. However, *Erickson* is but a relic of an earlier time. Although we have never expressly overruled *Erickson*, it seems nearly a century of case law has destroyed its precedential value. Surely *Johnston Equipment Corporation* and *Voss* articulate rules of error preservation that have at the very least impliedly overruled *Erickson*. In reaching these issues, Justice Mansfield's opinion has effectively overruled the ninety years of case law since *Erickson* and returned us to its archaic principle. After this decision, if an appellant wants to further inform the court as to its argument, it seems the appellant must expand upon every argument raised at the district court in its appellate brief, regardless of whether the district court ruled in its favor on a particular issue and unprompted by any action by the appellee. Otherwise, the appellant risks this court deciding an issue no party expected this court to decide. In other words, every issue presented to the district court, no matter how irrelevant to its decision it may seem, becomes relevant on appeal.

Further, neither the merits of the plaintiffs' constitutional arguments nor the sufficiency of the pleadings are inextricably intertwined with the issue of whether the plaintiffs' claim sets forth a political question.<sup>30</sup> The district court decided the political \*46 question issue without reference to the other issues concerning the education, due process, and privileges and immunities clauses of the Iowa Constitution. We can and should do the same.

Justice Mansfield's opinion may argue the parties raised these issues on appeal because they discussed them during oral argument. However, the opinion's rationale that the parties preserved these issues for our consideration on appeal fails for two reasons. First, on resubmission Justice Mansfield precipitated the references to these unbriefed issues by asking questions on these issues not raised in this appeal.<sup>31</sup> Justice Mansfield's opinion cannot claim the parties preserved these issues by raising them through questioning by the court. Second, our case law is unwavering in the proposition that we will not decide or consider issues raised for the first time during oral argument. See *Dilley v. City of Des Moines*, 247 N.W.2d 187, 195 (Iowa 1976) (citing cases for this proposition dating back to 1959).

There is a sound reason for this latter proposition. Chief Judge Posner noted, “[I]t would not be quite cricket of us to place [our] decision on the ground” that was not raised until the oral argument on appeal because the other party may have been lulled into thinking its opponent was fighting the case on another issue. *Principal Mut. Life Ins. Co. v. Charter Barclay Hosp., Inc.*, 81 F.3d 53, 56 (7th Cir.1996).

Justice Mansfield’s opinion and Chief Justice Cady’s concurring opinion are perfect examples of this principle. Their analysis regarding the education clause, due process clause, and privileges and immunities clause of the Iowa Constitution are entirely their own. For example, when discussing the merits of the plaintiffs’ claim under the education clause, Justice Mansfield’s opinion provides its own analysis of article IX, division 2, section 3 of the Iowa Constitution. This section provides, in relevant part, “The General Assembly shall encourage, by all suitable means, the promotion of intellectual, scientific, moral, and agricultural improvement.” Iowa Const. art. IX, div. 2, § 3 (1857 original version).

Justice Mansfield’s opinion and the concurring opinion of Chief Justice Cady fail to consider article IX, division 1, section 12, which states:

The Board of Education shall provide for the education of all the youths of the State, through a system of Common Schools and such school shall be organized and kept in each school district at least three months in each year. Any district failing, for two consecutive years, to organize and keep up a school as aforesaid may be deprived of their portion of the school fund.

*Id.* art. IX, div. 1, § 12.

Although the legislature abolished the board of education referred to in section 12 in 1864 and replaced it with the superintendent of education, the predecessor to the present department of education, the citizens of this state never repealed the substance of 1857 article IX, division 1, \*47 section 12. See 1864 Iowa Acts ch. 52 §§ 1–15. In fact, this court used the substantive provisions of article IX, division 1, section 12 to integrate Iowa schools four years after the legislature abolished the board of education. See *Clark v. Bd. of Dir.*, 24 Iowa 266, 274 (1868) (quoting article IX, division 1, section 12 by stating “that provision shall be made ‘for the education of

*all the youths of the State* through a system of common schools,’ which constitutional declaration has been effectuated by enactments providing for the ‘instruction of youth between the ages of five and twenty-one years’”). In *Clark*, the court recognized the Iowa constitutional rights of all children to obtain an education and that the education provided by the state must be provided equally to all children. *Id.* at 272–77. The analyses in Justice Mansfield’s opinion and the concurring opinion of Chief Justice Cady of this important issue without allowing the parties to properly brief and argue it deprives the plaintiffs of their day in court.<sup>32</sup> As Justice Stevens of the Supreme Court noted, “[T]he adversary process functions most effectively when we rely on the initiative of lawyers, rather than the *activism* of judges, to fashion the questions for review.” *New Jersey v. T.L.O.*, 468 U.S. 1214, 1216, 104 S.Ct. 3583, 3585, 82 L.Ed.2d 881, 883 (1984) (Stevens, J., dissenting) (emphasis added).

Justice Mansfield’s opinion and the concurring opinion of Chief Justice Cady perfectly illustrate the reasons for Justice Stevens’ warning. These opinions address the merits of the plaintiffs’ claims in order to dismiss the case. In doing so, these opinions fail to fully explore the parameters of the right to an education guaranteed by the Iowa Constitution. These opinions pick article IX, division 2, section 3 of the Iowa Constitution to evaluate the merits of the case even though the parties did not brief or raise this section on appeal. To compound their mistake, these opinions fail to address the education clause found in article IX, division 1, section 12 of the Iowa Constitution on the grounds the parties did not raise it in the district court. In other words, to reach a desired result, these opinions pick and choose which arguments to make and which arguments not to make under their own error preservation rule. To me, it is inconsistent to decide the case on appeal on issues and arguments the parties did not raise below, but to deny the plaintiffs their day in court to develop all of their arguments fully, including those arguments they could have made under article IX, division 1, section 12 of the Iowa Constitution.

These opinions also frame their own arguments regarding equal protection and due process without the input of the attorneys on appeal and subsequently knock those arguments down to reach a desired result in this case. The fairest way to resolve these issues is not for the court to pick and choose *sua sponte* which issues and arguments to decide and which to ignore, but rather to remand the case to the district court for the parties to frame \*48 and fully brief all arguments relevant to this important issue.

An additional reason we do not decide issues raised for the first time during oral argument is that it would be

unfair to second-guess the strategy of the State. It may have made a conscious decision not to raise the alternative ground on appeal. See *Fencl v. City of Harpers Ferry*, 620 N.W.2d 808, 811–12 (Iowa 2000) (stating that “we may still affirm if there is an alternative ground, raised in the district court and urged on appeal, that can support the court’s decision”). Maybe the State wanted to focus the appeal on what it thought was its best chance for affirmance. By not urging an alternative ground on appeal, the State may have conceded that it would not win on its motion to dismiss for failure to state a cause of action under our liberal notice pleading rules. It is possible the State decided it wanted to win on a summary judgment instead of procedural grounds. It also may have decided it would have had a better chance of prevailing on a motion for summary judgment after better developing a record. See, e.g., *Fitzgerald v. Racing Ass’n of Cent. Iowa*, 539 U.S. 103, 110, 123 S.Ct. 2156, 2161, 156 L.Ed.2d 97, 105 (2003) (deciding a constitutional claim in favor of the State after a motion for summary judgment); *Varnum v. Brien*, 763 N.W.2d 862, 907 (Iowa 2009) (deciding a statute was unconstitutional after developing the record in a summary judgment proceeding); *Ames Rental Prop. Ass’n v. City of Ames*, 736 N.W.2d 255, 263 (Iowa 2007) (deciding an ordinance was constitutional after developing the record in a summary judgment proceeding); *City of Waterloo v. Selden*, 251 N.W.2d 506, 510 (Iowa 1977) (finding the summary judgment record affirmatively established at least one rational basis, and therefore, the statute was constitutional).

Finally, an appeal is between the attorneys and the parties they represent. Our law clerks and judges should not be doing the work of counsel or making strategic decisions on which issues to appeal. See *United States v. Wagner*, 103 F.3d 551, 552 (7th Cir.1996). We are not advocates and should not usurp a party’s strategy.

The public has criticized this court for reaching out and deciding issues not raised or briefed on appeal. This is another case for the critics to add to their list. We cannot have a rule of law that we reach out and decide an issue not briefed or pressed by the parties on appeal in order to achieve a desired result. Only time will tell if the court will apply this rule in a principled fashion or if the court will use it to achieve results favored by the shifting majorities of the court. In particular, it would be a most unfortunate development to see a liberal approach to preservation to deny individual rights, and a “gotcha” or cramped approach to preservation in order to avoid consideration of issues that would tend to vindicate individual rights. See, e.g., *Mulhern v. Catholic Health Initiatives*, 799 N.W.2d 104, 123 (Iowa 2011) (Wiggins,

J., dissenting) (explaining the majority decided the case on an issue not tried in the district court or argued on appeal).

I do not see how we can continue to assert in criminal cases that error not preserved on appeal is “waived,” or how we can say the failure to cite authority in a criminal case leads to waiver when, in this case, we have no briefing whatsoever on issues other than on the political question issue.

Further, because Justice Mansfield’s opinion and concurring opinion of Chief Justice Cady reach the merits of the constitutional issues, they appear to overrule our decision in \*49 *Racing Association of Central Iowa v. Fitzgerald (RACI)*, 675 N.W.2d 1 (Iowa 2004), without the benefits of an appellate brief by the parties. In those cases, we said, in deciding a state constitutional equal protection challenge, we first determine whether the legislature had a valid reason to treat similarly situated persons differently. *RACI*, 675 N.W.2d at 7. Next, we decide if this reason has a basis in fact. *Id.* at 8.

There is no way we can do a proper analysis under our existing law as to whether the reason for the disparity has a basis in fact without the plaintiffs’ evidence and arguments on the issue. It appears members of the court want to overrule *RACI*. It is their prerogative to do so. However, without the plaintiffs briefing the issue, members of the court are promoting their own agenda. It would have been nice if the plaintiffs had weighed in on these issues.

There will be time enough to sort through the complicated issues in this case. We do a disservice to the ordinary judicial process by deciding this case without briefing in this court and without a fuller development in the district court. As noted by the Missouri Supreme Court in the context of an education case, “It is unwise for courts to shortcut procedural requirements necessary to fully and fairly address the substantive issues in cases of great public significance, when those same procedures would be required without pause in cases of lesser magnitude.” *Comm. for Educ. Equal. v. State*, 878 S.W.2d 446, 454 (Mo.1994). In fact, I was unable to find any case dealing with a state’s education clause that reached this important issue when the parties did not brief it on appeal.

Justice Mansfield’s opinion also cites the political activity of the other branches of government as a reason to address the issues that were not appealed. I would answer the justification given by Justice Mansfield’s opinion by noting the judicial branch is different from the other branches of government. The legislative and executive



branches set their own agenda and decide what issues they want to address. The judicial branch is different. We do not decide issues unless a party in a legal action has raised the issues in the district court, has fully briefed the issues on appeal, and has asked us to reach the issues on appeal. In short, we do not set our own agenda.

We only decide issues raised and briefed by the parties. To do otherwise is nothing more than Justice Mansfield's opinion and the concurring opinion of Chief Justice Cady setting their own error preservation rules to reach issues not urged on appeal. Here, the State did not brief the issues reached by Justice Mansfield's opinion and the concurring opinion of Chief Justice Cady in this appeal. Moreover, the State did not ask us to reach those issues. The mere fact the legislative and executive branches are dealing with education issues does not give this court the license to weigh in on those issues.

This important case calls for judicial restraint. Members of the court should not be espousing their own views on issues not raised or briefed in this court. Accordingly, I would remand the case to the district court for further proceedings on the constitutional claims.

HECHT and APPEL, JJ., join this dissent.

APPEL, Justice (dissenting).

I respectfully dissent.

I concur with Justice Wiggins's opinion. In light of the virtually unprecedented determination of Justice Mansfield's opinion to reach out to uphold the district court on grounds other than those decided by the district court and that the parties chose not to present on appeal, I proceed to state \*50 my views on why these alternative grounds do not provide a basis for dismissal in this case at the very inception of the lawsuit.

In my view, education is a fundamental interest or right under the Iowa Constitution. Deprivations of a basic or adequate education should be subject to heightened judicial review, and other material differences in education should be subject to judicial review under a meaningful rational basis test. I further believe the pleading, though not very clear, is sufficient to survive a motion to dismiss at this stage of the proceedings under our well-established liberal pleading rules. I would therefore reverse the district court and remand the case for further proceedings.

### I. Overview of Plaintiffs' Petition.

The plaintiffs in this case are from both rural and urban school districts alleging shortcomings in the education provided by the State. They allege, among other things, that the State has failed to provide them with "equal access to an effective education" and that the State has failed "to establish and maintain an adequate education delivery system."

The plaintiffs' petition in this case alleges the State's educational requirements and accreditation standards do not ensure that students "will be able to meet and exceed the technological, informational and communication demands of society so that they can be prepared for responsible citizenship, further learning and productive employment in a global economy." They claim that many Iowa students "are not prepared to enter the workforce or post-secondary education without additional training or remediation."

The plaintiffs support their adequacy claim with various statistics. They allege, for instance, that under the National Assessment of Academic Progress standards, only thirty-three percent of Iowa fourth grade students are proficient in math, and only thirty-seven percent of students are proficient in reading. It is alleged that similar proficiency levels are achieved for eighth graders.

The plaintiffs also allege that the smallest school districts in Iowa are disadvantaged in that they have teachers with less experience and that the teachers have nearly double the teaching assignments compared with teachers in larger school districts. They also claim rural students have far fewer curriculum units available to students. They allege that there is a disparity in educational outcomes based upon where one lives.

The plaintiffs assert that the lack of adequate education violates the education provisions of article IX of the Iowa Constitution; the privileges and immunities clause of the Iowa Constitution; the due process clause of the Iowa Constitution; and statutory standards established in Iowa Code section 256.37, which declares that it is the policy of the state "to provide an education system that prepares the children of this state to meet and exceed the technological, informational, and communications demands of our society." The plaintiffs seek declaratory relief as well as a writ of mandamus, and the district court was urged to retain continuing jurisdiction for the purpose of enforcing its orders and judgments.

## II. Historical Roles of National and State Government in Educating Children.

**A. Introduction.** In order to provide the necessary context for consideration of the constitutional issues raised in Justice Mansfield's opinion (but not in the appellate briefs), I review the contrasting roles of the state and national governments in the provision of education to children. As will be seen below, although the national government traditionally has supported \*51 education of children through land grants and financial assistance, the responsibility for providing education to children has been the duty of state and local governments.

**B. The Limited Role of the National Government in the Education of Children.** The education of children had little to do with the American Revolution. The grievances against King George III in the Declaration of Independence had nothing to do with the education of children. The education of children was not mentioned in the Articles of Confederation or in the United States Constitution. The only mention of education in the debates at the constitutional convention was a suggestion by Madison and Pickney that Congress be expressly authorized to establish a university, a proposal that was rejected. James Madison, *Notes of Debates in the Federal Convention of 1787*, at 477–78, 639 (Bicentennial ed., W.W. Norton & Co., Inc. 1987); see Lawrence A. Cremin, *American Education: The National Experience 1783–1876*, at 127 (1980) [hereinafter Cremin].

The lack of discussion of education of children in revolutionary and constitutional contexts does not mean that the founders were unconcerned about education. The contrary is true. From the very beginning, the founders were advocates of expanding children's education.

For example, Thomas Jefferson, while serving in the Virginia legislature, was a fierce advocate of a Bill for the More General Diffusion of Knowledge, which would have established a system of free schools supported by tuition and scholarships for poor boys. Ian C. Friedman, *Education Reform* 8 (2004). In a letter to George Washington, Jefferson explained it was axiomatic that liberty could never be safe but “in the hands of the people themselves, and that too of the people with a certain degree of instruction.” Gordon C. Lee, *Learning and Liberty: The Jeffersonian Tradition in Education, in Crusade Against Ignorance: Thomas Jefferson on Education* 19 (1961). “This,” Jefferson wrote, “is the business of the state to effect, and on a general plan.” *Id.*

John Adams was the principal author of the

Massachusetts Constitution of 1780. As adopted, the Massachusetts Constitution of 1780 provided, “Wisdom and knowledge, as well as virtue, diffused generally among the body of the people, being necessary for the preservation of their rights and liberties,” the legislature has a duty to “cherish” the interests of science and literature. Mass. Const. of 1780, pt. II, ch. 5, § 2.

Benjamin Rush, a signer of the Declaration of Independence and member of the Continental Congress, addressed the Pennsylvania legislature with his essays, “A Plan for the Establishment of Public Schools and the Diffusion of Knowledge in Pennsylvania” and “Thoughts upon the Mode of Education Proper in a Republic.” Frederick M. Hess, *The Same Thing Over and Over: How School Reformers Get Stuck in Yesterday's Ideas* 44 (2010). Rush called for a free school in every township and universal education at public expense, reasoning that all citizens, rich and poor, would have a role in selecting the nation's leaders and that, as a result, everyone was entitled to at least a minimal amount of education in reading, writing, and arithmetic. *Id.* at 44–45.

Jefferson, Adams, and Rush had at least three things in common. First, they were advocates of education of children. Second, they saw education of children as linked to the successful operation of democratic government. But for my purposes, the most important point is that they viewed *the states* as the governmental structure to deliver education to citizens.

\*52 During the formative years of our country, the federal government supported the education of children by providing resources to assist state and local governments in providing education to citizens. First, the federal government provided public land for school uses in the states through the Land Ordinance of 1785, which required land to be set aside for school uses. 28 Journals of the Continental Congress 378 (May 20, 1785). Second, in its organizations of the territories and admission of states, Congress demanded educational progress. In the Northwest Ordinance of 1787, Congress required public education to be “forever encouraged” in the covered territories. Northwest Ordinance, 32 Journals of the Continental Congress 340 (July 13, 1787). The federal government itself, however, had no direct role in the education of children, but simply provided important financial support through land grants to states and local governments who bore the responsibility of providing education.

The encouragement of public education took on added meaning when a territory applied to become a state. Under Article IV, Section 4 of the United States

Constitution, Congress was empowered to admit states only if they had a "Republican Form of Government." U.S. Const. art. IV, § 4. As states were admitted to the Union, it became "a working assumption that public education was an essential feature of a republican government based upon the will of the people." David Tyack, Thomas James & Aaron Benavot, *Law and the Shaping of Public Education, 1785–1954*, at 20 (1987).

Prominent antebellum education leaders such as Horace Mann of Massachusetts, Calvin Wiley of North Carolina, Caleb Mills of Indiana, Samuel Lewis of Ohio, John D. Pierce of Michigan, Robert Breckinridge of Kentucky, Ninian Edwards of Illinois, Henry Barnard of Connecticut and Rhode Island, and John Swett of California all recognized the role of the states in providing education to children and youth. See David B. Tyack, *Turning Points in American Educational History* 125 (1967). These prominent advocates of universal education sought to advance their cause not through pontifications in the halls of Congress, but in the local lyceum and through mechanisms of state and local government.

**C. The Duty of State Government to Provide Education to Children.** In contrast to the limited role of the federal government, the states had direct responsibility of providing education. The difference in involvement between the federal government and the state governments on educational matters was a night and day contrast until very recently. Further, education traditionally has been one of the most important functions of state government. A brief survey of Iowa history demonstrates these points.

While revolutionary leaders tended to emphasize education of the elite, the movement for universal education through common schools emphasizing republican virtues began in the early nineteenth century and was in full bloom during the 1830s as the movement for expanded suffrage advanced. The focus of the common school movement was on state and local governments. See generally Frederick M. Binder, *The Age of the Common School, 1830–1865* (1974); Cremin; Carl F. Kaestle, *Pillars of the Republic: Common Schools and American Society, 1780–1860* (1983).

Even in the territorial days, the importance of education as a responsibility of territorial government was recognized in Iowa. Governor Henry Dodge of the Wisconsin Territory (which included Iowa at the time) recognized the relation between education and democratic government. In \*53 his first inaugural address, Governor Dodge, in urging the territorial assembly to provide for the establishment of local academies for the

education of youth, spoke in obligatory terms:

It is a duty we owe to the rising generation to endeavor to devise means to improve the condition of those that are to succeed us; the permanence of our institutions, must depend upon the intelligence of the great mass of the people.

1 Benjamin F. Shambaugh, *The Messages and Proclamations of the Governors of Iowa* 9 (1903) [hereinafter Shambaugh].

Once Iowa became a territory of its own apart from Wisconsin, Robert Lucas, the first Iowa territorial governor and a delegate of the 1844 constitutional convention, was a strong advocate of education. In his first message to the legislature of the Territory of Iowa, Lucas addressed education and particularly the need for a system of free common schools. John C. Parish, *Iowa Biographical Series: Robert Lucas* 286 (1907) [hereinafter Parish]. Lucas stated: "There is no subject to which I wish to call your attention more emphatically, than the subject of establishing, at the commencement of our political existence, a well digested system of common schools." 1 Shambaugh at 78; John Purcell Street, *Iowa Department of Public Instruction: Its Origins and Development*, 30 *Annals of Iowa* 397, 398 (1950) [hereinafter Street]. Lucas called on the territorial assembly to "build up a good system as fast as the population and wealth of the territory would warrant." 1 Clarence Ray Aurner, *History of Education in Iowa* 368 (1914) [hereinafter Aurner]. The first territorial assembly responded to his call by enacting legislation calling for the establishment of common schools in school districts in the respective counties. 1 Edgar R. Harlan, *A Narrative History of the People of Iowa* 133 (1931) [hereinafter Harlan].

Yet, territorial government did not provide the ideal framework for development of a system of local education. Advocates of statehood appealed to the parents of children, noting that lands reserved by the federal government for education purposes could not be obtained without statehood. James Alton James, *Constitution and Admission of Iowa into the Union* 15 (1900). Once Iowa was admitted to statehood, Iowa received a grant of five hundred thousand acres of land from the United States for school purposes. George Chandler, *Iowa and the Nation* 17 (Chicago, A. Flanagan 1895).

It is thus not surprising that education was emphasized in

the first Iowa Constitutions. Article X of the constitutions of 1844 and 1846 dealt with education. The 1844 and 1846 constitutions provided that the general assembly “shall encourage, by all suitable means, the promotion of intellectual, scientific, moral, and agricultural improvement” through “a system of common schools.” Iowa Const. art. X, §§ 2–3 (1846); Iowa Const. art. X, §§ 2–3 (1844). According to a contemporaneous account of the 1846 constitutional convention:

Most ample provision is made for educating the rising generation. This is a feature which cannot be too highly prized.—It speaks volumes for the character of our population, and argues well for the prosperity of the people and the success of the great enterprise in which they are about to embark. Let the moral and mental culture [unintelligible in original] and the free institutions of our country will be safe in their hands.

*Fragments of the Debates of the Iowa Constitutional Conventions of 1844 and 1846*, at 339 (Benjamin F. Shambaugh ed., 1900) (internal quotation marks omitted).

The inclusion of provisions in the early Iowa Constitutions related to education was not surplusage or cosmetic features. \*54 One of the advantages of statehood was the establishment of machinery to develop a coherent educational system. Beginning with the admission of Ohio as a state in 1803, Congress required that all subsequent states provide for education in their state constitutions as a condition of admission to statehood. Gerald Unks, *The Illusion of Intrusion: A Chronicle of Federal Aid to Public Education*, 49 *Educ. F.* 133, 136 (1985). After 1815, only New Mexico attempted to gain admission into the Union without an education clause, and Congress refused to go along. New Mexico then added an education clause and was subsequently admitted into the Union. *See* Inst. for Educ. Equity & Opportunity, *Education in the 50 States: A Deskbook of the History of State Constitutions and Laws about Education* 29 (2008).

The very first act of the First General Assembly of Iowa was a measure related to school funds, demonstrating the importance of education to the fledgling state. 1 *Aurner* at 16–17. The importance of the educational function of government is reflected by the fact that the Chief Justice of the Iowa Supreme Court, Charles Mason, was a member of the first Iowa Board of Education. 2 *Aurner*

at 415 n. 105.

The state’s first Superintendent of Education, Thomas Hart Benton, Jr., a nephew of the famous Senator from Missouri, was a national leader in the education movement, serving on the executive committee of the American Association for the Advancement of Education. Street, 30 *Annals of Iowa* at 400; *Proceedings of the Fifth Session of the American Association for the Advancement of Education* 3 (New York, Hartford Press 1856). Benton served as president of the Education Convention of Iowa, which met in 1848 in the old stone capitol at Iowa City, “to promote by every laudable means the diffusion of knowledge in regard to education and especially to aid in establishing and perpetuating a system of common school instruction.” Parish at 286–87. Benton later remarked in an 1861 report to the board of education that “[a] wagon can better dispense with one wheel than a neighborhood with the school house.” R.A. Harkness, *Notes on Iowa Educational Work from 1860 to 1888*, 12 *Iowa Normal Monthly* No. 7, at 298 (1889). One of Benton’s successors, Oran Fanville, remarked in 1865 that “universal education is the central idea of republicanism.” *Id.* at 299.

Iowa’s early state governors, like Robert Lucas, were advocates for education. In 1848, Governor Ansel Briggs recognized the constitutional significance of education, stating:

The people of Iowa have ever manifested an earnest and commendable zeal in the spread of education, and, especially, in the establishment of an efficient and permanent system of Common Schools. Of such prominent importance is this subject in their estimation, that they have made the most ample provisions in the Constitution for the spread of education and the support of common schools....

1 *Shambaugh* at 370.

In 1852, Governor Hempstead, who was also a delegate of the 1844 constitutional convention, addressed education in his first biennial message to the Iowa legislature. He noted that “no subject can claim a more pressing interest than that of public instruction.” *Id.* at 430. He further declared:

The first great object should be to

place within the reach of every child in the state, the opportunity of acquiring those indispensable elements of education, which shall fit him for the enlightened discharge of civil and social duties to which he may be called.

*Id.* at 431. Governor Hempstead further emphasized the constitutional obligations \*55 of the state, noting that the Iowa Constitution required that the general assembly encourage, by all suitable means, the promotion of intellectual, scientific, moral, and agricultural improvement. *Id.*

In 1856, Governor James Grimes emphasized education in his inaugural address. Governor Grimes stated that “[t]o accomplish these high aims of government, the first requisite is ample provision for the education of the youth of this State.” 2 Shambaugh at 7. He further declared that “[t]he State should see to it that the elements of education, like the elements of universal nature, are above, around, and beneath all.” *Id.* Governor Grimes noted that “[i]t is agreed that the safety and perpetuity of our republican institutions depends upon the diffusion of intelligence among the masses of the people.” *Id.*

In 1856, the general assembly authorized the governor to appoint a commission of three persons to revise and improve the school laws of Iowa and to report to the general assembly. Street, 30 Annals of Iowa at 402. The commission was headed by Horace Mann, the President of Antioch College in Ohio and one of the most noted educators in the United States. *Id.* Mann strongly believed in the “[a]bsolute right to an education of every human being that comes into the world, and which, of course, proves the correlative duty of every government to see that the means of that education are provided for all.” *Serrano v. Priest*, 5 Cal.3d 584, 96 Cal.Rptr. 601, 487 P.2d 1241, 1266 (1971) (citation and internal quotation marks omitted). The commission investigated the state of education in other states and ultimately issued a report containing its findings and recommendations. I Aurner at 31.

The report of the Mann Commission declared that every youth was entitled to an education “in the elements of knowledge.” *Id.* at 32. Further, anyone desirous of further progress should be offered necessary opportunities. *Id.* The report called for provision of common schools, high schools, and the university. *Id.* at 33. It called for supervision to be provided by a state superintendent of public instruction, subject to the advice of a state board of education. *Id.* at 35. Perhaps because of Mann’s

association with the state, a commentator two decades later declared that “Iowa may be called the Massachusetts of the West.... [T]he cause nearest the hearts of her people is ‘universal education.’ ” *Editorial Preface*, 12 Iowa Normal Monthly No. 7, at 1 (1889).

At the constitutional convention of 1857, considerable emphasis was placed on education. Discussing education, James Wilson declared:

We know that after all the intelligence of the people is the great bulwark to the stability and permanency of our institutions, and looking upon it in that light, it is our duty, our absolute and imperative duty, to provide the best method and the best means for carrying into effect the common school system of the state.

2 *The Debates of the Constitutional Convention of the State of Iowa 750* (W. Blair Lord reporter, Davenport, Luse, Lane & Co. 1857) [hereinafter *Debates*], available at <http://www.statelibraryofiowa.org/services/collections/law-library/iaconst/>. Similarly, J.C. Hall asserted that “[t]he educational department of our State is a very important one. It embraces one-half of the inhabitants of the State, and for good or for evil it is productive of the most important effects upon our population.” *Id.* at 725. Further, George W. Ells urged:

[I]n laying the foundation for an educational system, we must discard all narrow views and prejudices, and not only provide for the wants of the present generation, but for all future generations. I desire to see the common \*56 schools of this State so constituted that a thorough knowledge of all the natural sciences will be taught in the most practical manner. Should this point be attained they will contrast most favorably with the superficial education that characterizes a vast number of graduates of chartered colleges of these United States.

1 *Debates* at 602.

In light of the emphasis the Iowa framers placed on

education, two divisions were adopted that dealt with the subject. The first division dealt primarily with the responsibilities of a state board of education, which was vested with authority to oversee the development of public education in the state. Iowa Const. art. IX, div. 1 (1857 original version). The second division related to financing of public education. *Id.* art. IX, div. 2. With respect to the constitutional provision that “the General Assembly shall encourage, by all suitable means, the promotion of intellectual, scientific, moral, and agricultural improvement,” *id.* art. IX, div. 2, § 3, one scholar has noted that “[a]s a positive provision no clause has had a wider application in popular benefits,” Harlan at 185. It is observed that “[a]n educational system, based upon common schools ... was one of the cornerstones of the new commonwealth” and that Iowa was taking a stand that at the time was distinctively “progressive.” Harlan at 185.

From 1857 to 1864, the state board of education performed its constitutional duties. In 1864, however, the newly elected governor, William Stone, recommended abolition of the state board of education. Governor Stone stated the purpose of creating the board of education was to establish a permanent and satisfactory system of public education in Iowa. 3 Shambaugh at 7. Governor Stone urged the discontinuation of the board because the purpose had been accomplished. *Id.* In 1864, the general assembly abolished the board of education and established a superintendent of public instruction. *See* 1864 Iowa Acts ch. 52, § 1.

Nothing in the historical record suggests that the abolition of the board of education reflected a lessened constitutional commitment to education. Experience under the 1857 constitution demonstrated that vesting legislative power over educational matters with the board, but the power of the purse with the general assembly, proved awkward at best. But the commitment to education remained. According to a leading Iowa historian:

There was a belief so widespread as to be almost universal that, narrow as were the powers of the State, instruction so differed from all things else that every child in the community was entitled to a chance at the public cost to obtain the essentials of the thing called education.

I George F. Parker, *Iowa Pioneer Foundations* 455 (1940).

Governors subsequently continued to be strong advocates for education after the state board was abolished. Governor Cyrus Clay Carpenter in his first inaugural address on January 11, 1872, stated in connection with education that “[n]ext to political freedom, the most important element of a good government is an intelligent people.” 4 Shambaugh at 8. While recognizing the progress that had been made, he called for the establishment of a Normal School, or teachers college, to train teachers for their important task. *Id.* at 8–9.

The relationship between education and freedom was repeated by Governor Buren Robinson Sherman in his January 12, 1882 inaugural address. Governor Sherman declared:

The education of the masses is the surest reliance of the State, and everywhere free schools exist. Through their \*57 powerful enlightening influences and strong progression the integrity of our political fabric, the security to the enterprise of the citizen, and the equality and happiness of the people are solidly assured. Popular education has become firmly entrenched in the confidence of the nation, and there is no feature of our whole system so near to the general heart, nor regarded with such affectionate anxiety as the free public schools of the country.

5 Shambaugh at 241.

Further, Governor Sherman observed “our educational system” through all time “will prove the very sheet-anchor to our liberties, as the free-ballot is the corner-stone to our political structure.” *Id.* at 242.

Governor William Larrabee took up education in his first inaugural address on January 14, 1886. He declared, “If it is true, as I hold it to be, that ignorance, poverty and crime are intimately related, it is the duty of every state to educate.” 6 Shambaugh at 14. He noted that “[a] republic can survive war, famine and pestilence, but it cannot survive the intelligence of its people.” *Id.* at 15.

In the Progressive Era, many educational reformers emphasized the need to eliminate politics from education, develop a regime of experts, and offer highly differentiated education to youth based upon their ability



and future role in society. It was an era of the “**Education Commission**.” Iowa had three of them. A school commission in 1907 recommended, among other things, approval of curriculum by the superintendent of public instruction. Street, 30 *Annals of Iowa* at 445. In 1911, the “**Better Iowa Schools Commission**” met and recommended increased power and efficiency in the department of public instruction, the employment of a “**rural school inspector**” under the department of public instruction, and that the office of superintendent of public instruction be converted into a nonpartisan electoral post. *Id.* at 446. In 1939, a school code commission reviewed the laws of Iowa and produced a report; a second school code commission was convened in 1941 and produced another report. *Id.* at 447–48. The latter code commissions called for strengthening the county administration of schools, that the cost of transporting pupils be paid in whole or in part by the state, that one quarter of the cost of public school **education** should be paid from state funds to relieve property taxes and “**equalize educational opportunity**,” and “[t]hat teachers be given greater security of tenure.” *Id.* at 448–49.

While the philosophy of the progressive movement emphasized different themes than the common school movement, the emphasis on **education** as being critical to democratic values was a constant. As noted by Iowa Superintendent of Public Instruction P.E. McClenahan, “[e]**ducation** is a function of the state, and popular **education** is the only means of attaining social, political, and individual freedom.” P.E. McClenahan, Report of the Department of Public Instruction 9 (June 30, 1922).

The emphasis on the need for quality **education** surfaced again in the post WWII years. In September of 1954, President Eisenhower sent a letter to all state governors calling for statewide conferences on the status of **education**, and Iowa responded with a statewide conference in Des Moines in December 1954. Letter from Dwight D. Eisenhower to Governors (September 20, 1954) in Program from the Iowa State Conference on **Education** (Dec. 9–10, 1954). In the 1960s, Iowa’s Department of Public Instruction called for an “**educational revolution**,” noting that **education** is no longer “a purely local concern” but “a *state* responsibility.” Iowa Dep’t of Public Instruction, 63d Biennial Report 16 \*58 (1966) (emphasis added). Governor Robert Ray in 1981–1982 served as chair of the **Education Commission of the States**, an organization dedicated to help *states* develop effective policies and practices in public **education**. See **Education Commission of the States** (Mar. 21, 2012), <http://www.ecs.org>.

In recent years, there has been what has been labeled a standards and accountability movement in **education**. In 1983, President Reagan’s Department of **Education** issued a report entitled, “**A Nation at Risk: The Imperative for Educational Reform**,” which called for higher standards and more accountability in **education** generally. In 1989, President George Bush convened a meeting of the nation’s governors in Charlottesville, Virginia to address the perceived shortcomings in **education**. Recently, a summit on **education** was held attended by national **educational** leaders and Iowa **educators** and administrators. Governor Branstad, who has found inspiration in Robert Lucas’s traditional commitment to **education**,<sup>33</sup> has proposed important changes to the Iowa **education** system, which will be the subject of public discussion and potential legislative action in the coming years.

This brief and nonexhaustive overview demonstrates that, in contrast to the federal government, **education** has played a central role in Iowa state government. While the federal government from time to time has shown an interest in **education** and has been indirectly involved in fostering it, the states have performed the fundamentally different role of primary provider of **education**.

From a historical perspective, the provision of **education** by Iowa state government has been seen as one of its primary and most celebrated functions. Recognition of the centrality and importance of the role of state government in providing **education** has transcended our political parties and has been passed on from one generation of Iowa political leaders to another up to and including our present political leadership.

### III. Relationship of Education to Democratic Government, Personal Liberty, and Human Dignity.

The historical centrality of **education** to our state cannot be underestimated. In order to fully understand the importance of **education**, however, a review of the three important functions of **education** provides additional perspective. First, **education** is vital to democratic government. Second, **education** is a prerequisite for meaningful enjoyment of fundamental **constitutional** rights, including enjoyment of “**life, liberty, and property**.” Third, it is an essential part of the development of an autonomous personality that is a prerequisite for human dignity.

At the dawn of our nation, de Tocqueville recognized that “the instruction of the people powerfully contributes to the support of a democratic process.” 1 Alexis de

Tocqueville, *Democracy in America* 342 (D. Appleton & Co.1904). Thomas Mann emphasized that education can never be less than such

“as is indispensable for the civil functions of a witness or a juror; as is necessary for the voter in municipal and national affairs; and finally, as is requisite for the faithful and conscientious discharge of all those duties which devolve \*59 upon the inheritor of a portion of the sovereignty of this great republic.”

*McDuffy v. Sec’y of Exec. Office of Educ.*, 415 Mass. 545, 615 N.E.2d 516, 555 (1993) (quoting *The Massachusetts System of Common Schools: Tenth Annual Report of the Massachusetts Board of Education* 17 (1849)). President Grant drove the point home when speaking in Des Moines on September 25, 1875, when he declared that “the free school is the promoter of that intelligence which is to preserve us as a free nation.” Jacob Armstrong Swisher, *Iowa Biographical Series: Leonard Fletcher Parker* 69 (1927). Grant further noted that if another contest of national existence were to arrive in the future, it would be “between patriotism and intelligence on the one side, and superstition, ambition and ignorance on the other.” *Id.* at 69–70.

The relationship of education to democratic government was recognized by John W. Studebaker, a distinguished Iowan who served as Des Moines School Superintendent before being appointed United States Commissioner of Education. Studebaker observed that “good government through democratic processes can be preserved ... only by definitely planned development of the means of public enlightenment.” John W. Studebaker, *The American Way: Democracy at Work in the Des Moines Forums* 15–16 (1935).

The United States Supreme Court recognized the linkage between education and democracy in *San Antonio Independent School District v. Rodriguez*, 411 U.S. 1, 36, 93 S.Ct. 1278, 1298, 36 L.Ed.2d 16, 44 (1973), when it noted that democracy depends upon “an informed electorate: a voter cannot cast his ballot intelligently unless his reading skills and thought processes have been adequately developed.” A corollary of the right to vote is the right to be educated so as to exercise that right in an effective manner. See Susan H. Bitensky, *Theoretical Foundations for a Right to Education Under the U.S. Constitution: A Beginning to the End of the National Education Crisis*, 86 Nw. U.L.Rev. 550, 606 (1992)

[hereinafter Bitensky].

Certainly the parade of Iowa’s governors cited earlier would wholeheartedly endorse the concept that education is critically important to the functioning of democratic government. Today, without an educated people, spectacle, celebrity culture, escalating emotional outburst, and demand for instant gratification will replace rationality, tolerance, and mutual respect in the voting booths and in the public square.

In addition, education is now critical to meaningful enjoyment of life in Iowa and the United States. The prospects of a person who is uneducated are now marginal at best. Farming is increasingly industrialized and requires knowledge of markets, fertilizers, hybrids, and planning techniques. Manufacturing jobs are no longer unskilled, but require sophisticated knowledge, training, and skills. Ditches are no longer dug by hand. If a citizen is to have a meaningful right to enjoy the constitutionally protected interests in life, liberty, and property, the citizen must have an adequate education. Justice Cardozo captured the idea in his typically lyrical prose:

“We are free only if we know, and so in proportion to our knowledge. There is no freedom without choice, and there is no choice without knowledge—or none that is not illusory. Implicit, therefore, in the very notion of liberty is the liberty of the mind to absorb and to beget.”

Bitensky, 86 Nw. U.L.Rev. at 550 (quoting Benjamin N. Cardozo, *The Paradoxes of Legal Science* 104 (photo reprint 1982) (1928)).

The importance of education in empowering individuals to participate meaningfully in life did not escape school officials in \*60 Iowa small towns. For instance, the bold statement “Knowledge is Power” was emblazoned on the third story of a school house in Persia, Iowa in 1885. See Camilla Dieber and Peggy Beedle, *Country Schools for Iowa* 9 (2002).

Finally, education is essential to the development of an autonomous individual that is the essence of human dignity. The Universal Declaration of Human Rights, which has been ratified by the United States, declares that the right to education is a human right and that the purpose of the human right is to provide for the “full development of the human personality.” Universal



Declaration of Human Rights, G.A. Res. 217(III) A, art. 26, § 2, U.N. Doc. A/RES/217(III) (Dec. 10, 1948).<sup>34</sup> As one commentator has noted, **education** “takes on the status of a human right because it is integral to and enhances human dignity through its fruits of knowledge, wisdom, and understanding” and “a prerequisite for individuals to function as fully human beings in modern society.” Richard Pierre Claude, *The Right to Education and Human Rights Education, in Human Rights in the World Community: Issues and Actions* 211 (Richard Pierre Claude & Burns H. Veston eds., 3d ed.2006). A lack of **education** severely undermines the capacity of the individual to make meaningful life choices with respect to marriage and family, self-expression, political voice, religious observance, and economic role and ambition.<sup>35</sup>

\*61 I am firmly convinced that **education** is not just an important interest. It is a one-of-a-kind interest. It goes to the very heart of democratic government, to the essence of enjoyment of life itself, and to the core of human dignity. Without **education**, \*62 our democratic government will be undermined, the quality of life will deteriorate beyond recognition, and the realization of autonomous personality required for human dignity will become virtually impossible.

#### IV. Overview of Iowa Constitutional Provisions.

**A. Positive Educational Provisions of the Iowa Constitution.** As indicated above, the United States Constitution says nothing about **education**. This is not surprising since it was universally assumed by the founders that the **education** of children and youth was the obligation of the state and local government.

Article IX of the Iowa Constitution of 1857 dealing with **education** contains two divisions. The first division provides, among other things, that “[t]he **educational** interest of the State, including Common Schools ... shall be under the management of a Board of **Education**.” Iowa Const. art. IX, div. 1, § 1. The board was required to “provide for the **education** of all the youths of the State, through a system of Common Schools.” *Id.* art. IX, div. 1, § 12.

Article IX of the 1857 Iowa Constitution also contains a second division. The first sentence of section three of the second division parallels the substantive provisions of the 1846 constitution by providing that “[t]he General Assembly shall encourage, by all suitable means, the promotion of intellectual, scientific, moral, and agricultural improvement.” *Id.* art. IX, div. 2, § 3.

The second sentence of section three is more complicated than the first sentence. It provides, in relevant part, that the federal funds, funds from estates with no heirs, and funds that the general assembly may provide, “shall be inviolably appropriated to the support of Common schools throughout the State.” *Id.*

During the debates surrounding the **education** articles in the 1857 constitution, the convention rejected a proposal that schools should be “free of charge and equally open to all.” 2 *Debates* at 825. The reason for this rejection, however, was not based on a view that **education** was not fundamentally important, but instead to ensure that schools in Iowa could be racially segregated. Mr. Gillaspy, an opponent to the provision, declared that “[i]f the people of this state are disposed to appropriate money for the **education** of the blacks, let them do it in separate and distinct schools...” *Id.* In response, William Penn Clark declared that “our duty goes for providing every child in the State with an **education**.” *Id.* at 826. Eventually, a substitute amendment was offered that provided “for the **education** of all the youths of the state, through a system of common schools.” *Id.* at 935. Thus, while the rejection of the proposed provision that schools be “free of charge and equally open to all” demonstrates the racial prejudices held by some members of the constitutional convention, it does not in any way undercut the importance the Iowa framers placed on accessible public **education** generally.

Article IX, division one, section fifteen provided the general assembly with an escape from vesting responsibility for **education** in the hands of an independent board of **education**. Under section fifteen, the general assembly was vested with the power after 1863 “to abolish or reorganize said Board of **Education**, and provide for the **educational** interest of the State in any other manner that to them shall seem best and proper.” Iowa Const. art. IX, div. 1, § 15. In 1864, the general assembly did just that. As a result, the constitutional provisions of article IX, division one, section \*63 one, vesting the power to provide **education** in the board of **education** have no current effect.

The question arises what we should make of the action of the general assembly abolishing the board of **education**. It is clear that the action renders inoperative the constitutional provisions vesting power over **education** with the board of **education**, including the provision that “[t]he Board of **Education** shall provide for the **education** of all the youths ... through a system of Common Schools.” See *id.* art IX., div. 1, § 12 (emphasis added). While the board’s constitutional duty to maintain common schools was clearly repealed, the duty of the

state to “provide for the educational interest,” which by definition included “Common Schools,” was not affected. See *id.* art. IX, div. 1, §§ 1, 15.

That the only effect of the legislative abolition of the board of education was to shift responsibilities for the provision of education as required by article IX is demonstrated by the case of *Clark v. Board of Directors*, 24 Iowa 266 (1868). *Clark*, which was decided four years after the abolition of the board, addressed the validity of racial segregation in Iowa public schools. *Clark*, 24 Iowa at 269–70. In concluding that racial segregation in public schools was unlawful, we cited and relied upon article IX, division 1, section 12, which provides that the board of education shall provide “for the education of all the youths of the State, through a system of common schools.” *Id.* at 274 (quoting Iowa Const. art. IX, div. 1, § 12). Clearly, the 1864 abolition of the board of education did not affect the substantive requirements contained in article IX, but merely shifted authority by abolishing the board and creating a Superintendent of Public Instruction. See *id.*; 1864 Iowa Acts ch. 52, §§ 1–2, 5 (declaring that “the Board of Education of the State of Iowa is hereby abolished,” providing for a Superintendent of Public Instruction, and charging the Superintendent with the general supervision of “all the Common Schools of the State”); see also *Hume v. Indep. Sch. Dist.*, 180 Iowa 1233, 1241, 164 N.W. 188, 191 (1917) (citing but not relying on article IX, division 1, section 12); *Burdick v. Babcock*, 31 Iowa 562, 571 (1871) (Cole, J., concurring) (stating “[o]ur constitution has clothed the legislature with the power, and has expressly devolved upon it the duty of ‘providing for the education of all the youths of the State through a system of common schools’” (quoting Iowa Const. art. IX, div. 1, § 12)).

The ongoing obligation of the state is also reflected in the language of article IX, sections one and fifteen, but also demonstrated by the provisions of article IX, division two, section three, which provides for a “perpetual fund” that is “inviolably appropriated to the support of Common schools throughout the State.” Iowa Const. art. IX, div. 2, § 3. It would make no sense to have a “perpetual fund” that is “inviolably appropriated to the support of Common schools throughout the State” if the state, in its discretion, could abolish common schools. See *id.* (emphasis added).

Thus, the Iowa Constitution requires a system of common schools to educate all youths throughout the state, but in terms of the management of such common schools, it allows the general assembly to “provide for the educational interest of the State” in a manner other than through the board of education. See *id.* art. IX, div. 1, § 15. After 1863, the legislature was free to choose to

manage its common schools through a superintendent of public instruction, a department of education, a committee of scholars, or in “any other manner that to them shall seem best and proper.” See *id.*

\*64 The explicit Iowa constitutional provisions related to “provid[ing] for the education of all the youths of the State, through a system of Common Schools” and advancing “the educational interest of the State, including Common Schools,” stand in stark contrast to the complete lack of explicit provisions in the United States Constitution related to education and reflect the fundamentally different traditional roles of state and federal governments when it comes to the education of children and youth. The Federal Constitution is generally a limited constitution with the federal government only granted powers specifically authorized. In contrast, the states have plenary legislative authority and have positive commitments in the constitutional frameworks. In Iowa, one of the positive commitments in the Iowa Constitution is to the educational mission. Scholars have suggested that the positive rights tradition of state constitutions differs markedly from the negative rights tradition of federal constitutional analysis. See Helen Hershkoff, *Positive Rights and State Constitutions: The Limits of Federal Rationality Review*, 112 Harv. L.Rev. 1131, 1134–37 (1999) [hereinafter Hershkoff]. While the enforcement of negative rights contained in the United States Constitution generally has not required affirmative action by government, *DeShaney v. Winnebago Cnty. Dep’t of Soc. Servs.*, 489 U.S. 189, 199, 109 S.Ct. 998, 1006, 103 L.Ed.2d 249, 261 (1989), quite the opposite is true with respect to positive obligations of state governments that, by definition, require the state to take affirmative action to meet its constitutional responsibilities.

**B. Privileges and Immunities Clause of the Iowa Constitution.** The Iowa Constitution has a privileges and immunities clause. The provision is found in article I, section 6. This section provides:

All laws of a general nature shall have a uniform operation; the General Assembly shall not grant to any citizen, or class of citizens, privileges or immunities, which, upon the same terms shall not equally belong to all citizens.

Iowa Const. art. I, § 6. The Iowa privileges and immunities clause predates the Federal Privileges and Immunities and Equal Protection Clauses of the Fourteenth Amendment.



There has been much written about the relationship between state privileges and immunities clauses and the Federal Equal Protection Clause.<sup>36</sup> While the privileges and immunities clauses have generally not been construed narrowly, there is the notion that privileges and immunities clauses were designed, in part, to prevent narrow classes of people from getting special advantages from government, what might be in today's popular parlance be called crony capitalism.

To Iowa's first Territorial Governor Robert Lucas, however, the privileges and immunities clause of the Northwest Ordinance was linked to the right of citizens to obtain an education. In his first inaugural speech, Lucas juxtaposed the privileges and immunities clause with his comments upon the need to develop education in the territory. 1 Shambaugh at 78. Lucas saw \*65 the right to education as among the "privileges" of citizens of the Iowa territory.

In the nineteenth century, the United States Supreme Court was inhospitable to claims brought under the Privileges and Immunities Clause and the related Equal Protection Clause in the Federal Constitution. In *The Slaughter-House Cases*, 83 U.S. (16 Wall.) 36, 21 L.Ed. 394 (1872), the Court gave the Federal Privileges and Immunities Clause of the Fourteenth Amendment an extraordinarily narrow interpretation. In *Plessy v. Ferguson*, 163 U.S. 537, 16 S.Ct. 1138, 41 L.Ed. 256 (1896), the United States Supreme Court announced the separate but equal doctrine, which stood as law for over fifty years until it was finally overturned in *Brown v. Board of Education*, 347 U.S. 483, 74 S.Ct. 686, 98 L.Ed. 873 (1954). While the United States Supreme Court was minimizing the Federal Privileges and Immunities Clause and narrowly interpreting equal protection, however, the Iowa Supreme Court was breathing life and meaning into state constitutional provisions related to equality.

The dramatic story begins prior to statehood. In its first reported case, *In re Ralph*, 1 Morris 1 (Iowa 1839), the Supreme Court of the Territory of Iowa held that a slave who was voluntarily permitted to leave Missouri and travel to Iowa was a free man as the law should "extend equal protection to men of all colors and conditions." *In re Ralph*, 1 Morris at 6. This holding, of course, was the precise opposite of the approach taken by the United States Supreme Court in *Dred Scott v. Sandford*, 60 U.S. (19 How.) 393, 15 L.Ed. 691 (1856), twenty years later.

After statehood, the tradition of *In re Ralph* was extended in *Clark*. As discussed above, *Clark* held that a person cannot be denied admission to a public school on account

of race. *Clark*, 24 Iowa at 274. Although *Clark* was based on statutory grounds, the decision included sweeping language with constitutional overtones. *Id.* at 277. In *Coger v. Northwestern Union Packet Co.*, 37 Iowa 145, 153–55 (1873), this court, relying upon article I, section 1 of the Iowa Constitution, refused to endorse the separate but equal doctrine and instead held that persons of color were entitled to be admitted as a steamboat passenger on equal terms to white patrons. See Iowa Const. art. I, § 1 (1857) ("All men are, by nature, free and equal").

Since the very beginning, we have interpreted Iowa's privileges and immunities clause in a fashion dramatically different than the interpretation offered by the United States Supreme Court in *The Slaughter-House Cases*. In more recent years, we have often looked to federal equal protection precedent for its persuasive power in interpreting our privileges and immunities provision. *Callender v. Skiles*, 591 N.W.2d 182, 187 (Iowa 1999). We have, however, jealously guarded our right to engage in analysis under the Iowa Constitution that is independent from the interpretations of the United States Supreme Court under the Federal Equal Protection Clause. *Chi. Title Ins. Co. v. Huff*, 256 N.W.2d 17, 23 (Iowa 1977); *Davenport Water Co. v. Iowa State Commerce Comm'n*, 190 N.W.2d 583, 593 (Iowa 1971), *superseded by statute*, Iowa Code § 17A.19(7) (1975), *as recognized in Interstate Power Co. v. Iowa State Commerce Comm'n*, 463 N.W.2d 699, 702 (Iowa 1990). On a number of occasions, we have departed from directly applicable federal precedent and engaged in independent analysis. See, e.g., *Racing Ass'n of Cent. Iowa v. Fitzgerald (RACI)*, 675 N.W.2d 1, 7 (Iowa 2004); *Bierkamp v. Rogers*, 293 N.W.2d 577, 581–82 (Iowa 1980). When federal precedent was lacking, we have relied on state constitutional grounds to decide important \*66 issues. See *Varnum v. Brien*, 763 N.W.2d 862, 906 (Iowa 2009).

Our independent role in our application of equal protection concepts pursuant to the privileges and immunities clause of the Iowa Constitution is a firmly established feature of our legal tradition from the very first days of statehood, is consistent with the evolving law in other states, and is part of a celebrated tradition in Iowa.

**C. Substantive Due Process of the Iowa Constitution.** The plaintiffs make a substantive due process claim under article I, section 9 of the Iowa Constitution. Article I, section 9 states, in relevant part, that "no person shall be deprived of life, liberty, or property, without due process of law." Iowa Const. art. I, § 9.

The Iowa constitutional provision is parallel to a similar provision of the Fifth and Fourteenth Amendments of the United States Constitution. As with other state constitutional provisions, we zealously guard our ability to interpret the Iowa Constitution differently than the interpretations of the United States Supreme Court under the federal due process provision. *State v. Feregrino*, 756 N.W.2d 700, 704 n. 1 (Iowa 2008).

In *Meyer v. Nebraska*, 262 U.S. 390, 403, 43 S.Ct. 625, 628, 67 L.Ed. 1042, 1046–47 (1923), the United States Supreme Court overturned a conviction of a school teacher who taught foreign languages in public schools. In passing, the Court identified the right to acquire useful knowledge as a liberty interest protected by the Fourteenth Amendment. *Meyer*, 262 U.S. at 399–400, 43 S.Ct. at 626–27, 67 L.Ed. at 1045. While not overruled, the outcome in *Meyer* was based on due process methodology of the *Lochner* era and may not be reliable precedent.

The United States Supreme Court, however, has employed substantive due process in a number of contexts in more recent years that may be instructive in the present case. For instance, in *Youngberg v. Romeo*, 457 U.S. 307, 324, 102 S.Ct. 2452, 2462, 73 L.Ed.2d 28, 42–43 (1982), the Supreme Court declared that persons subject to civil commitment “enjoy[ ] constitutionally protected interests in conditions of reasonable care and safety, reasonably nonrestrictive confinement conditions, and such training as may be required by those interests.” Justice Blackmun’s opinion in *Jackson v. Indiana*, 406 U.S. 715, 738, 92 S.Ct. 1845, 1858, 32 L.Ed.2d 435, 450–51 (1972), suggested that due process requires that the nature and duration of commitment must have a reasonable relationship to the reasons for commitment.

A case of potential significance is *Wyatt v. Aderholt*, 503 F.2d 1305 (5th Cir.1974). *Aderholt* involved a class action alleging that a state school designed to habilitate the mentally handicapped was not providing meaningful care. *Aderholt*, 503 F.2d at 1306. Judge Wisdom characterized the issue as whether “federal district courts have the power to order state mental institutions to provide minimum levels of psychiatric care and treatment to persons civilly committed to the institutions.” *Id.* The *Aderholt* court unanimously decided the question in the affirmative. *Id.* at 1319. It rejected the claims of Governor George Wallace that providing adequate treatment for persons civilly confined was a question of available funds. *Id.* at 1317–19.

In light of these analogies, it can be asserted that, because education is compulsory, it involves liberty and its

deprivation triggers a due process right that the infringement of liberty be reasonably related to the intended purpose, namely, education. See Bitensky, 86 Nw. U.L.Rev. at 596 n. 277; Gershon M. Ratner, \*67 *A New Legal Duty For Urban Public Schools: Effective Education in Basic Skills*, 63 Tex. L.Rev. 777, 823–28 (1985) [hereinafter Ratner]; Note, *A Right to Learn? Improving Educational Outcomes Through Substantive Due Process*, 120 Harv. L.Rev. 1323, 1328–32 (2007).

Our prior precedents recognize a due process interest in adequate education. In *Exira Community School District v. State*, 512 N.W.2d 787, 796 (Iowa 1994), we noted that a student has a due process right to an “adequate education.” Thus, a finding in this case that there is a due process right under the Iowa Constitution would not be breaking new theoretical ground, but simply applying the tools present in existing precedent.

## V. Overview of Education Cases.

**A. Introduction.** In this section, I provide an overview of two important cases related to education, *Serrano v. Priest*, 5 Cal.3d 584, 96 Cal.Rptr. 601, 487 P.2d 1241 (1971) (*Serrano I*), and *San Antonio Independent School District v. Rodriguez*, 411 U.S. 1, 93 S.Ct. 1278, 36 L.Ed.2d 16 (1973). These cases set the stage for a more detailed analysis of the rich sources of state constitutional law regarding educational issues.

The survey will show that, even if this court were to apply the *San Antonio* framework for determining whether an interest is “fundamental” for equal protection purposes, such a fundamental interest would be present in light of the explicit Iowa constitutional provisions related to education. Further, the survey will show that, while the cases are divided, many state supreme courts have found a fundamental interest in education because of the strong historical role of state government in providing education to children and because of the critical functional role of education in a democratic government.

### B. The California State Supreme Court Decision in *Serrano I*.

1. *Introduction.* The first major case to consider a challenge to a state system of education on equal protection grounds was *Serrano I*. In *Serrano I*, school children and their parents challenged the constitutionality of public school financing in the State of California. *Serrano I*, 96 Cal.Rptr. 601, 487 P.2d at

1244. The plaintiffs claimed that reliance on property taxes to fund public schools caused substantial disparities in the quality and nature of educational opportunities available to them. *Id.* The district court granted the defendants' demurrer (motion to dismiss) and the plaintiffs appealed. *Id.* at 1245.

2. *California's education clause.* The *Serrano I* court rejected the claim that California's funding of public schools violated the education clause of the California Constitution. *Id.* at 1249; see Cal. Const. art. IX, § 5. The court held that while California was required to maintain a "system" of common schools, a "system" of common schools meant only a prescribed course of study and educational progression from grade to grade. *Serrano I*, 96 Cal.Rptr. 601, 487 P.2d at 1248–49. The *Serrano I* court reasoned that the education clause, standing alone, did not require equality of spending. *Id.*

3. *Equal protection under the Fourteenth Amendment.* The *Serrano I* court next turned to the claim that California's education system violated the Equal Protection Clause of the Fourteenth Amendment of the United States Constitution. Citing the poll tax case of *Harper v. Virginia State Board of Elections*, 383 U.S. 663, 86 S.Ct. 1079, 16 L.Ed.2d 169 (1966), the court concluded that the reliance on property taxes that produced financial disparities available to school districts amounted to a classification based upon wealth of the district. \*68 *Serrano I*, 96 Cal.Rptr. 601, 487 P.2d at 1250. The court rejected the state's argument that because the discrimination was based on district wealth, no equal protection claim could be brought. *Id.* at 1251–52. The court further concluded that when a classification was based on wealth, no allegation of purposeful or intentional discrimination was required. *Id.* at 1253–55. The court noted that in *Harper*, the poll tax was neutral on its face but was clearly discriminatory in effect. *Id.* at 1254. The court further noted that while the United States Supreme Court had not yet weighed in on the issue, the California Supreme Court had previously held that de facto racial segregation violated the Fourteenth Amendment. *Id.* at 1255 (citing *S.F. Unified Sch. Dist. v. Johnson*, 3 Cal.3d 937, 92 Cal.Rptr. 309, 479 P.2d 669 (1971), and *Jackson v. Pasadena City Sch. Dist.*, 59 Cal.2d 876, 31 Cal.Rptr. 606, 382 P.2d 878 (1963)).

The *Serrano I* court also addressed the question of whether the asserted educational interest of the plaintiffs amounted to a fundamental interest for purposes of equal protection analysis. *Serrano I*, 96 Cal.Rptr. 601, 487 P.2d at 1255–59. The court noted that education plays an indispensable role in modern industrial society in two respects. Education, according to the court, "is a major

determinant of an individual's chances for economic and social success." *Id.* at 1255–56. Second, education has "a unique influence on a child's development as a citizen and his participation in political and community life." *Id.* at 1256. The court compared education with other fundamental rights such as the right to have a free transcript or a court appointed lawyer. *Id.* at 1257–58. The court concluded that education compared favorably in importance. *Id.* According to the court, education, aside from reducing the crime rate, supports "each and every other value of a democratic society—participation, communication, and social mobility, to name but a few." *Id.* at 1258 (citing the seminal work of John E. Coons, William H. Clune III & Stephen D. Sugarman, *Educational Opportunity: A Workable Constitutional Test for State Financial Structures*, 57 Cal. L.Rev. 305 (1969)).

Having determined that the financing scheme in California discriminated against school districts on the basis of wealth and affected fundamental interests, the *Serrano I* court proceeded to apply a compelling state interest standard to determine its validity. *Serrano I*, 96 Cal.Rptr. 601, 487 P.2d at 1259–63. Not surprisingly, the court found the scheme invalid under the demanding test. *Id.* at 1263. The court rejected the asserted state interest of local control, noting that local control could be preserved regardless of the method of financing public education. *Id.* at 1260. With respect to the claim that the system encouraged decentralized decision making at the local level, the court found that "such fiscal freewill is a cruel illusion for the poor school districts." *Id.* According to the court,

so long as the assessed valuation within a district's boundaries is a major determinant of how much it can spend for its schools, only a district with a large tax base will be truly able to decide how much it really cares about education.

*Id.* A poor district, according to the court, cannot tax itself into an excellence that its tax rolls cannot provide. *Id.*

4. *Privileges and immunities and uniformity clauses of the California Constitution.* While the *Serrano I* court focused primarily on the Equal Protection Clause of the Fourteenth Amendment, footnote eleven of the opinion indicated that a violation of the California Constitution article I, sections 11 and 21 were also present. *Id.* at 1249 n. 11. Section 11 provided that "[a]ll laws of a general nature shall have a uniform operation," \*69 while section 21 provided that "[n]o special privileges or

immunities shall ever be granted ... nor shall any citizen, or class of citizens, be granted privileges or immunities which, upon the same terms, shall not be granted to all citizens.' ” *Id.* (quoting article I, sections 11 and 21 of the California Constitution). The *Serrano I* court observed in the footnote that ordinarily the court construed these state provisions as “ ‘substantially the equivalent’ of the equal protection clause of the Fourteenth Amendment.” *Id.* (quoting *Dep’t of Mental Hygiene v. Kirchner*, 62 Cal.2d 586, 43 Cal.Rptr. 329, 400 P.2d 321, 322 (1965)).

5. *Summary.* As a result, the *Serrano I* court reversed the dismissal of the action by the trial court primarily on federal constitutional grounds. On remand, the court stated that the district court should engage in further proceedings, and if it entered judgment against the defendants, it could do so “in such a way as to permit an orderly transition from an unconstitutional to a constitutional system of school financing.” *Id.* at 1266.

### C. Federal Developments: *San Antonio*.

1. *Introduction.* The United States Supreme Court took up the issue of disparities of education in *San Antonio*. In this case, school children and their parents brought a class action on behalf of all children who live in school districts with low property valuations attacking the Texas method of financing public education. *Rodriguez v. San Antonio Indep. Sch. Dist.*, 337 F.Supp. 280, 281 (W.D.Tex.1971).

After a trial in which testimony and documentary evidence was presented, a three judge panel of district court judges, relying in part on *Serrano I*, concluded that the plaintiffs had demonstrated that the Texas scheme of financing public education violated the Equal Protection Clause of the Fourteenth Amendment. *Id.* Noting that wealthy school districts had more educational options than poorer ones, the district court concluded that “the quality of public education may not be a function of wealth, other than the wealth of the state as a whole.” *Id.* at 284. By a narrow 5–4 margin, the United States Supreme Court reversed the district court. *San Antonio*, 411 U.S. at 6, 93 S.Ct. at 1282, 36 L.Ed.2d at 27.

2. *Focus of San Antonio: Does strict scrutiny apply to parity claims under the Equal Protection Clause?* In an opinion by Justice Powell, the *San Antonio* majority first concluded that the plaintiffs failed to make a showing of wealth discrimination sufficient to trigger strict scrutiny. *Id.* at 22–23, 93 S.Ct. at 1291, 36 L.Ed.2d at 36–37. The *San Antonio* majority concluded that the class of persons in the school districts attended by plaintiffs was ill defined. *Id.* Although the school districts generally had

less wealth, students within the school districts were not uniformly poor. *Id.* According to the *San Antonio* majority, there was no basis in the record to conclude that the poorest people were concentrated in the poorest districts. *Id.* at 23, 93 S.Ct. at 1291, 36 L.Ed.2d at 37 (emphasis added). As a result, the class of plaintiffs was not sufficiently related to wealth to trigger strict scrutiny.

In reaching its conclusion, the *San Antonio* majority noted that no claim had been made that the plaintiffs suffered “an absolute deprivation of the desired benefit.” *Id.* The *San Antonio* majority emphasized that “the Equal Protection Clause does not require absolute equality or precisely equal advantages.” *Id.* at 24, 93 S.Ct. at 1291, 36 L.Ed.2d at 37. The *San Antonio* majority further observed that Texas authorities asserted the plaintiffs were receiving an “adequate” education \*70 and that “[n]o proof was offered at trial persuasively discrediting or refuting the State’s assertion.”<sup>37</sup> *Id.* at 24, 93 S.Ct. at 1292, 36 L.Ed.2d at 38.

In contrast to the California Supreme Court in *Serrano I*, the *San Antonio* majority also determined that while education was an important interest, it did not amount to a fundamental interest under the Federal Constitution. Citing *Brown*, the *San Antonio* majority recognized “the vital role of education in a free society.” *Id.* at 30, 93 S.Ct. at 1295, 36 L.Ed.2d at 41. Yet, the Court noted the power of the dissent in *Shapiro v. Thompson*, 394 U.S. 618, 89 S.Ct. 1322, 22 L.Ed.2d 600 (1969), in which Justice Harlan cautioned that fundamental rights doctrine should not extend to “ ‘[v]irtually every state statute’ ” that affects important rights. *Id.* at 31, 93 S.Ct. at 1295, 36 L.Ed.2d at 41 (quoting *Shapiro*, 394 U.S. at 661, 89 S.Ct. at 1345, 22 L.Ed.2d at 631 (Harlan, J., dissenting), overruled in part on other grounds by *Edelman v. Jordan*, 415 U.S. 651, 671, 94 S.Ct. 1347, 1359–60, 39 L.Ed.2d 662, 677 (1974)).

In order to cabin the fundamental rights doctrine, the *San Antonio* majority held that a fundamental right under the Federal Equal Protection Clause is one that is explicitly or implicitly afforded protection in the United States Constitution. *Id.* at 33, 93 S.Ct. at 1297, 36 L.Ed.2d at 43. Fundamental rights under the Federal Constitution thus do not arise from an “ad hoc determination as to the social or economic importance of that right.” *Id.* at 32, 93 S.Ct. at 1296, 36 L.Ed.2d at 42.

The *San Antonio* majority’s test of what amounts to a fundamental interest is noteworthy because it highlights the difference between Federal and State Constitutions. Under the test of the *San Antonio* majority, it is clear that education is not a fundamental interest under the Federal



**Constitution** because nowhere is **education** explicitly or implicitly mentioned in the text. The opposite, of course, is true of state **constitutions**, which routinely contain explicit **constitutional** provisions relating to **education** that invariably include a duty to provide **education** to its citizens. A state court desiring to follow the *San Antonio* formulation for determining whether an interest is fundamental would be compelled to find such an interest in light of the prominent and explicit role of **education** in the state **constitution**.

As in its discussion regarding the question of whether the plaintiffs demonstrated discrimination on the basis of wealth, the *San Antonio* majority emphasized in its discussion of fundamental interests that “[e]ven if it were conceded that some identifiable quantum of **education** is a **constitutionally** protected prerequisite to the meaningful exercise of either right” there was no indication in the record that the present level of expenditures in the schools which the plaintiffs attended fell short. *Id.* at 36–37, 93 S.Ct. at 1298–99, 36 L.Ed.2d at 45. The *San Antonio* majority noted that “no charge fairly could be made that the system fails to provide each child with an opportunity to acquire the basic minimum skills necessary for the enjoyment of the rights of speech and of full \*71 participation in the political process.” *Id.* at 37, 93 S.Ct. at 1299, 36 L.Ed.2d at 45.

3. *Impact of federalism and deference to states.* The *San Antonio* majority noted that “a century of Supreme Court adjudication under the Equal Protection Clause affirmatively supports” the application of a rational basis test to the Texas **educational** finance structure. *Id.* at 40, 93 S.Ct. at 1300, 36 L.Ed.2d at 47. The *San Antonio* majority stressed that the field of taxation had been a traditional area of deference. *Id.* Further, the *San Antonio* majority recognized that the field of **education** involved a number of complex issues that ordinarily should be left to the legislative process. *Id.* at 42–43, 93 S.Ct. at 1301–02, 36 L.Ed.2d at 48–49.

Any Supreme Court review of legislation involves deference issues, and many **constitutional** questions before the Court can be quite complex. What made the case especially troubling to the *San Antonio* majority was the strong federalism concerns underlying its conclusion that strict scrutiny of state school finance laws was inappropriate. The *San Antonio* majority noted the implications of the case for the relationship between national and state power under the federal system. *Id.* at 44, 93 S.Ct. at 1302, 36 L.Ed.2d at 49. The *San Antonio* majority declared “it would be difficult to imagine” a case with greater impact on the federal system than the case before the Court in which the Court is urged to “abrogate

systems of financing public **education** presently in existence in virtually every State.” *Id.*

4. *Application of rational basis test.* After determining that the proper standard of review was the traditional rational basis standard, the *San Antonio* majority proceeded to consider the merits of the plaintiffs’ claim. The three judge district court had concluded based on a substantial record that the Texas system failed even “to establish a reasonable basis” for a system that results in different levels of per pupil expenditure. *Rodriguez*, 337 F.Supp. at 284.

The *San Antonio* majority disagreed with the district court, concluding that local control provided a sufficient rational basis for the funding scheme. The *San Antonio* majority emphasized that the Texas system of school finance assured “a basic **education**” for every child in the state. *San Antonio*, 411 U.S. at 49, 93 S.Ct. at 1305, 36 L.Ed.2d at 52. Local control, according to the *San Antonio* majority, is vital to continued public support for **education**, and it means the freedom to devote more funds to **education** through local taxes. *Id.* at 49–50, 93 S.Ct. at 1305, 36 L.Ed.2d at 52. The *San Antonio* majority noted that while poor school districts had reduced ability to make free decisions regarding how much they spend on **education**, they still “retain under the present system a large measure of authority as to how available funds will be allocated.” *Id.* at 51, 93 S.Ct. at 1306, 36 L.Ed.2d at 53. The state’s interest in maintenance of local control in **education** thus satisfied the rational basis test under the Federal Equal Protection Clause.

5. *Dissents.* The majority opinion in *San Antonio* drew dissents from Justices Brennan, White, and Marshall. Justice Brennan challenged the holding of the majority that **education** did not amount to a fundamental interest. He noted that **education** was inextricably linked to **constitutional** rights of voting and free speech and that, as a result, **education** amounted to a fundamental interest for purposes of equal protection. *Id.* at 62–63, 93 S.Ct. at 1312, 36 L.Ed.2d at 60 (Brennan, J., dissenting).

Justice White attacked the majority’s conclusion that local control justified the Texas finance scheme. *Id.* at 64–65, 93 S.Ct. at 1312–13, 36 L.Ed.2d at 61–62 (White, J., dissenting). He asserted that \*72 while local control might be a valid state interest, the means chosen by Texas did not advance it. Specifically, Justice White noted that districts with a low tax base did not have an effective local option choice of increasing funds available for **education**. *Id.* He further concluded that a class was obviously present for equal protection purposes, namely, the persons who find themselves in a low property value

school district. *Id.* at 69, 93 S.Ct. at 1315, 36 L.Ed.2d at 64.

Justice Marshall, joined by Justice Douglas, provided the lengthiest dissent. He found it an inescapable fact that if one school district has more funds available per pupil than another, the former will have a greater choice in educational planning than the latter. *Id.* at 83–84, 93 S.Ct. at 1322, 36 L.Ed.2d at 72 (Marshall, J., dissenting). He attacked the majority's notion that Texas provided an "adequate" education, noting that the Court had never before suggested that because some "adequate" level of benefits is provided to all, discrimination in the provision of services is acceptable. *Id.* at 88–89, 93 S.Ct. at 1325, 36 L.Ed.2d at 74–75. He rejected the rigidified tiered approach to equal protection, calling instead for the adoption of a more flexible test that balanced the interests of the party challenging the classification against the state's purported interest in sustaining the statute. *Id.* at 98–110, 93 S.Ct. at 1330–36, 36 L.Ed.2d at 81–88. In any event, Justice Marshall concluded that education certainly was a "fundamental" interest in light of its unique status in society and its nexus with other protected constitutional rights. *Id.* at 111, 93 S.Ct. at 1336–37, 36 L.Ed.2d at 88.

6. *Summary.* The *San Antonio* majority rejected a federal equal protection claim when the plaintiff sought parity in educational expenditures. The *San Antonio* majority was particularly concerned that if strict scrutiny would apply to such sweeping claims, thousands of state statutes would be invalidated. The Court expressly reserved the question, however, of whether strict scrutiny would apply where a state deprived children of an adequate education.

Further, the *San Antonio* Court adopted a standard for determining whether an asserted interest or right is fundamental. While not binding on a state court, the methodology, if followed, would lead to the conclusion that education, which is the subject of explicit state constitutional provisions, is a fundamental interest for equal protection purposes.

**D. The California State Court Response: *Serrano II*.** After *San Antonio*, the California Supreme Court in *Serrano v. Priest*, 18 Cal.3d 728, 135 Cal.Rptr. 345, 557 P.2d 929 (1976) (*Serrano II*), was asked to reconsider its decision that the California system of financing education was constitutionally infirm. During the trial proceedings resulting from *Serrano I*, *San Antonio* was decided. The trial court, however, concluded that the financing scheme violated the privileges and immunities and uniform laws clauses of the California Constitution. *Serrano II*, 135 Cal.Rptr. 345, 557 P.2d at 931. The

defendants appealed. *Id.*

In *Serrano II*, the California Supreme Court declined to follow *San Antonio* in its interpretation of the state constitution. *Id.*, 135 Cal.Rptr. 345, 557 P.2d at 951. The *Serrano II* court emphasized that while the state equal protection provisions were "substantially the equivalent" of the guarantees of the Fourteenth Amendment, they possessed "an independent vitality which, in a given case, may demand an analysis different from that which would obtain if only the federal standard were applicable." *Id.*, 135 Cal.Rptr. 345, 557 P.2d at 950. The *Serrano II* court noted that considerations of federalism, which played an important part in *San Antonio*, \*73 had no application to the judgment of a state supreme court. *Id.*, 135 Cal.Rptr. 345, 557 P.2d at 948–49. Further, while the *Serrano II* court did not claim expertise on school financing, it noted it had the benefit of 4000 pages of testimonial transcript, replete with the opinions of experts, and exhaustive findings of the district court. *Id.*, 135 Cal.Rptr. 345, 557 P.2d at 952. In determining whether a right is "fundamental" for purposes of the California equal protection clause, the *Serrano II* court rejected the *San Antonio* test. *Id.* Instead, the *Serrano II* court declared that it would determine which legislative classifications were subject to strict scrutiny based upon the impact on those rights and liberties which "lie at the core of our free and representative form of government." *Id.*

#### E. Subsequent Education Cases Based on State Constitutions.

1. *Overview of state court cases subsequent to San Antonio.* After *Serrano I*, *San Antonio*, and *Serrano II*, a significant number of states considered challenges to state schemes of providing education. Plaintiffs challenging state educational frameworks in state courts generally launched double-barreled attacks.<sup>38</sup> First, plaintiffs claimed that the educational structures violated the state education clauses in the state constitutions. Second, the plaintiffs asserted that the state education schemes violated equal protection under the state constitutions. These theories, while pled separately, often operated in tandem with one another. In a few states, plaintiffs have also included challenges to educational structures based on substantive due process.<sup>39</sup>

While the cases often turn upon the specific language of statutes and the nature of the factual records that are developed, the post-*San Antonio* state supreme court cases in which plaintiffs challenging state educational frameworks prevail are in the majority,<sup>40</sup> while those denying relief \*74 constitute a substantial minority.<sup>41</sup>



Interestingly, the jurisdictions where state supreme courts have departed from *San Antonio* include Texas, where the state supreme court invalidated the same school financing arrangements that the United States Supreme Court approved in *San Antonio*. See *Edgewood Indep. Sch. Dist. v. Kirby*, 777 S.W.2d 391, 392 (Tex.1989). In the minority of cases lost by plaintiffs, some may be characterized as providing mixed results, such as where the courts recognized or at least reserved the possibility of a successful claim but found the facts insufficient to support them.<sup>42</sup> Many of the cases also triggered strong dissents.<sup>43</sup>

Many of the decisions are also based upon extensive records developed by trial courts.<sup>44</sup> In some cases where the trial courts dismissed **education** claims without developing an evidentiary record, reversal has occurred. See, e.g., *Idaho Sch. for Equal Educ. Opportunity v. Evans*, 850 P.2d 724, 734–35 (Idaho 1993).

2. *Obstacles to judicial review: Political question and justiciability doctrines.* The post-*San Antonio* state court cases have considered a number of obstacles to judicial review. The main obstacles are the political question doctrine and the related doctrine of justiciability.

With respect to the political question doctrine, state courts receptive to **education** \*75 claims have generally found that courts have a duty to decide cases brought before them by the parties. The duty of courts to declare what the law is has sometimes been expressed in forceful terms. For example, the Kentucky Supreme Court in *Rose* declared that “[t]o avoid deciding the case because of ‘legislative discretion’ ... would be a denigration of our own **constitutional** duty. To allow the General Assembly ... to decide whether its actions are **constitutional** is literally unthinkable.” *Rose v. Council for Better Educ., Inc.*, 790 S.W.2d 186, 209 (Ky.1989). Similarly, in *DeRolph v. State*, the Ohio Supreme Court declared:

We will not dodge our responsibility by asserting that this case involves a nonjusticiable political question. To do so is unthinkable. We refuse to undermine our role as judicial arbiters and to pass our responsibilities onto the lap of the General Assembly.

78 Ohio St.3d 193, 677 N.E.2d 733, 737 (1997); see also *Conn. Coal. for Justice in Educ. Funding, Inc. v. Rell*, 295 Conn. 240, 990 A.2d 206, 223 (2010) (noting “‘it is well within the province of the judiciary to determine

whether a coordinate branch of government has conducted itself in accordance with ‘the authority conferred upon it by the **constitution**’ ” (quoting *Office of the Governor v. Select Comm. of Inquiry*, 271 Conn. 540, 858 A.2d 709, 730 (2004))); *Evans*, 850 P.2d at 734 (“[W]e decline to accept the respondents’ argument that the other branches of government be allowed to interpret the **constitution** for us. That would be an abject abdication of our role in the American system of government.”); *McDaniel v. Thomas*, 248 Ga. 632, 285 S.E.2d 156, 157 (1981) (noting court was not called to decide which policy was “better,” but only if existing method of financing public **education** met state **constitutional** requirements); *Columbia Falls Elementary Sch. Dist. No. 6 v. State*, 326 Mont. 304, 109 P.3d 257, 261 (2005) (“As the final guardian and protector of the right to **education**, it is incumbent upon the court to assure that the system enacted by the Legislature enforces, protects and fulfills the right.”); *Leandro v. State*, 346 N.C. 336, 488 S.E.2d 249, 253 (1997) (“When a government action is challenged as unconstitutional, the courts have a duty to determine whether that action exceeds **constitutional** limits.”). A minority of state courts, however, view **education** clause and equal protection clause challenges as raising political questions.<sup>45</sup>

3. *Analysis of education clauses in state constitutions.* As indicated above, nearly all of the state **constitutions** contain provisions related to **education**. The clauses come in a number of shapes and sizes that have been categorized by commentators. Some of the clauses are characterized as “weak,” while others are thought to be more robust.<sup>46</sup>

A significant number of **constitutions** that require the legislature to provide for a “thorough and efficient,” “liberal,” “general and uniform,” “general, suitable, and efficient,” “a system of free common schools,” or an “efficient” system of schools, have been held to provide the basis for a judicially enforceable mandatory obligation to provide children with a certain level or quality of **education**.<sup>47</sup> One \*76 court, however, has found that a requirement that “there shall always be free public elementary and secondary schools” is sufficient to establish a minimum qualitative requirement. See *Rell*, 990 A.2d at 227, 281–82.

On the other hand, there are cases declining to find an enforceable mandatory duty to provide an adequate **education** based on **constitutional** provisions that provide for “a system of common schools,”<sup>48</sup> a requirement that schools be “thorough and uniform,”<sup>49</sup> a requirement to make “adequate provision ... for a uniform

system of free public schools,"<sup>50</sup> a provision establishing a "a primary obligation" for "the provision of an adequate education,"<sup>51</sup> a provision requiring the state to "establish and maintain a ... thorough system of public, free common schools,"<sup>52</sup> and a provision requiring a "general and uniform system of Common Schools."<sup>53</sup>

4. *Overview of state education cases considering challenges based on substantive due process.* At least one court has considered challenges to state educational frameworks based on substantive due process under state constitutions. In Alabama, for instance, the Alabama Supreme Court has adopted a more rigorous standard of substantive due process than employed by the United States Supreme Court. See *Mount Royal Towers, Inc. v. Ala. State Bd. of Health*, 388 So.2d 1209, 1213–15 (Ala.1980). In the lower court opinion attached as an appendix in *Opinion of the Justices*, 624 So.2d 107 (Ala.1993), the Alabama circuit court declared that "it is well-settled in this state that when the state deprives citizens of liberty for the purposes of benefiting them with a service, due process requires that the service be provided to them in an adequate form." *Op. of the Justices*, 624 So.2d at 161. This approach, however, was later overruled by the Alabama Supreme Court in *Ex parte James*, 836 So.2d 813, 819 (Ala.2002).

5. *Issues arising in state education cases based on state equal protection clauses.* In state education cases arising under state privileges and immunities or state equal protection challenges, several issues repetitively appear in the cases. They include the standard of review, whether a party attacking an education scheme must show intentional discrimination, and whether the plaintiffs have identified a class sufficient to support an equal protection claim.

A critical issue is the standard of review. A significant number of state supreme court cases have found that education gives rise to a fundamental interest under state constitutions. These cases reach this result in a number of ways. Some of them explicitly adopt the fundamental interest framework advanced in *San Antonio* and find that because education \*77 is expressly or impliedly rooted in their state constitutions, it arises to a fundamental interest for equal protection purposes. See *Washakie Cnty. Sch. Dist. No. One v. Herschler*, 606 P.2d 310, 333 (Wyo.1980). Others depart from the *San Antonio* framework and either apply a more generous test, finding a fundamental interest based on the underlying importance of education generally,<sup>54</sup> or a narrower test than in *San Antonio* in order to avoid a finding of fundamental interest.<sup>55</sup>

In contrast to these cases, some state supreme courts have followed *San Antonio* and applied a rational basis standard to education challenges. In most of these cases, the state frameworks have been upheld.<sup>56</sup> But not in every case. In several cases, state supreme courts have applied a rational basis "with teeth" test and have invalidated state education structures on that basis.<sup>57</sup>

A second issue is whether the plaintiff has the burden of showing disparate treatment. With respect to disparate treatment, the state courts that address the issue generally build on the dissent in *San Antonio*, which notes that the class consists of persons residing in low property tax jurisdictions who are treated differently than those in tax rich geographic locations. See *San Antonio*, 411 U.S. at 69–70, 93 S.Ct. at 1315, 36 L.Ed.2d at 64 (White, J., dissenting); *Serrano I*, 96 Cal.Rptr. 601, 487 P.2d at 1261 (state's general freedom to discriminate based on geographical basis will be significantly curtailed by the Equal Protection Clause); *Tenn. Small Sch. Sys. v. McWherter*, 851 S.W.2d 139, 154 (Tenn.1993) (citing substantial disparity based on school districts).

A final issue frequently arising in equal protection analysis is the power of the state's asserted interest in local control in the education arena. As noted in *Serrano I* and subsequent cases, local control is a "cruel illusion" if disparities are imposed on poor districts due to the limitations placed on them by the system itself. *Serrano I*, 96 Cal.Rptr. 601, 487 P.2d at 1260; see also *DuPree v. Alma Sch. Dist. No. 30*, 279 Ark. 340, 651 S.W.2d 90, 93 (1983). If there are disparities in educational opportunity, a factual question arises: Are the disparities due to local decisions, or are they caused by the state system of financing and providing of education? See *Roosevelt Elementary Sch. Dist. No. 66 v. Bishop*, 179 Ariz. 233, 877 P.2d 806, 815 (1994) (holding question of whether disparities caused by local decision making or by public school system raises factual question for trial court).

6. *Issues related to the type and scope of relief.* A critical issue in education cases is the type of relief sought by the plaintiffs. Some plaintiffs seek what some commentators have identified as parity in educational opportunity.<sup>58</sup> Others seek only an "adequate" or a "sound, basic" education. The choice of relief can have dramatic implications for the litigation.

\*78 Plaintiffs who seek parity do not require precisely the same educational opportunities, but substantially the same opportunities, as others. The strength of parity theory is that it is perfectly understandable and judicially manageable, namely, that the educational program in school districts needs to be substantially the same. The



problems, however, are multiple. Parity theory often requires that the state abandon traditional reliance on local property taxes to fund education. Plaintiffs seeking parity thus raise a specter of “Robin Hood” remedies whereby wealthier school districts are required to transfer educational funds to poorer districts, with the result that the quality of education in more fortunate school districts suffers.

In part because of the difficulties of parity theory, plaintiffs have developed an alternate theory that does not seek parity but instead adequacy. The advantage of adequacy theory is obvious: it does not require that any wealthy school district transfer funds or sacrifice its program, but merely requires the state to ensure that it provides an adequate education to all students. The adequacy approach does not require the complete abandonment of local property taxes.

The major challenge with adequacy theory is the development of a proper standard. For example, in *Abbeville County School District v. State*, 335 S.C. 58, 515 S.E.2d 535, 540 (1999), the South Carolina Supreme Court found a right to a “minimally adequate education.” According to the South Carolina Supreme Court, a minimally adequate education included:

- 1) the ability to read, write, and speak the English language, and knowledge of mathematics and physical science;
- 2) a fundamental knowledge of economic, social, and political systems, and of history and governmental processes; and
- 3) academic and vocational skills.

*Abbeville Cnty. Sch. Dist.*, 515 S.E.2d at 540.

The Kentucky Supreme Court in *Rose* developed a more detailed seven-factor test. The Kentucky Supreme Court has stated that in order to provide an adequate education, the state must establish a system of education with the ultimate goal of providing to each and every child seven capabilities:

- (i) sufficient oral and written communication skills to enable students to function in a complex and rapidly changing civilization;
- (ii) sufficient knowledge of economic, social, and political systems to enable the student to make informed choices;
- (iii) sufficient understanding of

governmental processes to enable the student to understand the issues that affect his or her community, state, and nation; (iv) sufficient self-knowledge and knowledge of his or her mental and physical wellness; (v) sufficient grounding in the arts to enable each student to appreciate his or her cultural and historical heritage; (vi) sufficient training or preparation for advanced training in either academic or vocational fields so as to enable each child to choose and pursue life work intelligently; and (vii) sufficient levels of academic or vocational skills to enable public school students to compete favorably with their counterparts in surrounding states, in academics or in the job market.

*Rose*, 790 S.W.2d at 212; *Leandro*, 488 S.E.2d at 255 (adopting an adaptation of the *Rose* standards); see also *Campaign for Fiscal Equity, Inc. v. State*, 100 N.Y.2d 893, 769 N.Y.S.2d 106, 801 N.E.2d 326, 330 (2003) (adopting standard of adequacy).

A third approach to adequacy was taken by the Arkansas Supreme Court in *Lake View School District No. 25 v. Huckabee*, 351 Ark. 31, 91 S.W.3d 472 (2002). In *Lake View*, the Arkansas Supreme Court \*79 declared in order to provide an “adequate” education, the state must provide standards, develop a system to determine whether the goals are being met, and establish a system of accountability to determine whether funds that are being spent are providing educational opportunity. *Lake View*, 91 S.W.3d at 500.

In addition to type of relief, a second issue arises regarding the scope of relief. Many courts in the first instance after finding constitutional violations merely provide declaratory relief and exercise continuing jurisdiction to review legislative responses to court rulings. For example, in *Lake View*, the court stressed that it had no intention “to monitor or superintend the public schools of this state.” *Id.* at 511. The court instead affirmed a lower court order granting declaratory relief and indicated that it would not hesitate to review the state’s school funding system once again in an appropriate case. *Id.*; see also *Horton v. Meskill*, 172 Conn. 615, 376 A.2d 359, 375 (1977) (noting that while it is emphatically the duty of the court to declare what the law is, remedies could be limited to declaratory relief out of respect for

other branches of government); *Rose*, 790 S.W.2d at 214 (declining to direct specific action); *Campaign for Fiscal Equity, Inc.*, 769 N.Y.S.2d 106, 801 N.E.2d at 344–45 (discussing dialogue with legislature). Initially, at least, the remedies of these courts do not intrude deeply on the legislative process other than to declare legal requirement. Over time, however, courts have become more involved in crafting specific legislative remedies in the face of legislative inaction or intransigence. See, e.g., *Abbott ex rel. Abbott v. Burke*, 199 N.J. 140, 971 A.2d 989, 994–96 (2009).

## VI. Application of State Constitutional Principles in Iowa.

**A. Threshold Question.** The district court determined that the issues raised in this case were nonjusticiable political questions. I disagree. We are called upon, in this case, to decide what the law means. This is the heart of judicial review. We are not called upon to exercise the authority expressly delegated to another branch of government. See, e.g., *Rell*, 990 A.2d at 217–25. We are called upon to do our job. See Martin H. Redish, *Judicial Review and the “Political Question,”* 79 Nw. U.L.Rev. 1031, 1059–60 (1984); see generally Louis Henkin, *Is There a “Political Question” Doctrine?*, 85 Yale L.J. 597 (1976). Notwithstanding some contrary dicta dusted about in Justice Mansfield’s opinion, there is clearly no “political question” posed in this case.

**B. State Education Clause.** The Iowa education clause is categorized by some scholars as a fairly strong education clause.<sup>39</sup> Regardless of this characterization, it seems clear that education in Iowa is a highly valued constitutional interest. Iowa would not have gained admission to the Union as a state without an education clause. An article of the 1857 constitution was devoted exclusively to education. Although the Iowa Constitution authorized \*80 the general assembly to repeal provisions vesting authority over school matters in a board of education, this constitutional option related solely to the manner in which the state’s constitutional interest in education would be implemented. The Iowa Constitution, read in context, requires a system of “Common schools throughout the State.” See Iowa Const. art. IX, div. 2, § 3. We said as much in *Clark*, where we emphasized that the State had an obligation under article IX, division 1, section 12 to provide “for the education of all the youths of the State, through a system of common schools.” *Clark*, 24 Iowa at 274 (quoting Iowa Const. art. IX, div. 1, § 12).

Our constitutional provisions without question are as strong as others in which a constitutional right to an adequate education has been found. See, e.g., *Rell*, 990 A.2d at 210–12 (simply stating there shall be “free public elementary and secondary schools” in the state); *McDuffy*, 615 N.E.2d at 517, 526 (stating that it shall be the duty of legislators “to cherish” public schools and grammar schools); *Campaign for Fiscal Equity, Inc.*, 769 N.Y.S.2d 106, 801 N.E.2d at 328 (“a system of free common schools”). The strong emphasis on education in the text (establishing “Common schools throughout the State”) and in our state government tradition cannot be doubted. For these reasons, the State at oral argument conceded that it could not constitutionally refuse to provide public education to children and youth.

The State’s concession was not a blunder but the product of inescapable logic and a desire to avoid looking foolish. The Iowa constitutional provisions in article IX cannot be read to suggest that the legislature has the discretion to withdraw from public education and close the public schools. But, if there is a requirement that the State provide a public education for children and youth through “Common schools throughout the State,” it certainly must be implied that the education provided in the common schools must be a meaningful education and not just some empty formalism. There must be some substance to the mandatory duty, some concrete reality, some meat on the bones. Just as the “right to counsel” under the Federal and State Constitutions means the right to “effective” assistance of counsel, *McMann v. Richardson*, 397 U.S. 759, 771 & n. 14, 90 S.Ct. 1441, 1449 & n. 14, 25 L.Ed.2d 763, 773 & n. 14 (1970), the duty of the state to provide common schools throughout the state requires that the education in the schools meet minimum standards of adequacy.

Nothing in *Kleen v. Porter*, 237 Iowa 1160, 23 N.W.2d 904 (1946), is to the contrary. *Kleen* involved a question of providing additional funds for public schools, but did not address in any way the duty of the state to maintain common schools throughout the state. *Kleen*, 237 Iowa at 1167–69, 23 N.W.2d at 908–09. In fact, by citing article IX, division 1, section 12, *Kleen* supports the view of an ongoing obligation to provide a system of common schools to all youth. See *id.* at 1162, 23 N.W.2d at 905.

Further, while Justice Mansfield’s opinion makes much of the fact that the framers did not include the word “free” in the education clause, this is hardly dispositive of whether there is a mandatory duty to make meaningful public education available in the common schools to everyone who desires an education. Charges that prevented a person from obtaining a public education in common

schools would surely go the way of the poll tax. *See Harper*, 383 U.S. at 666–68, 86 S.Ct. at 1081–82, 16 L.Ed.2d at 172–73.

Justice Mansfield's opinion states that because the plaintiffs did not cite article IX, division 1, section 12 of the Iowa Constitution in their trial brief, it can ignore \*81 the provision by regarding the argument as waived. Article IX, division 2, section 3, however, cannot be torn away from the previous constitutional provision. To begin with, the language of article IX, division 2, section 3 requiring the legislature to "encourage, by all suitable means, the promotion of intellectual, scientific, moral, and agricultural improvement" in my view incorporates within its scope the obligation to establish "a system of Common Schools" as required by article IX, division 1, section 12. My incorporation theory is strongly supported by reference in article IX, division 2, section 3 to a perpetual fund for "Common schools throughout the State," namely, the "system of Common Schools" referred to in article IX, division 1, section 12. In my view, Justice Mansfield's opinion seeks to separate the twins that were joined at birth in a way that elevates form over substance. *See Office of Consumer Advocate v. Iowa State Commerce Comm'n*, 465 N.W.2d 280, 283–84 (Iowa 1991) (holding error is preserved under Due Process Clause even though the party merely cited to the Fourteenth Amendment, stating to rule otherwise would "elevate[ ] form over substance"). In addition, it is difficult to understand how Justice Mansfield's opinion finds that the education, due process, and privileges and immunities issues, though not briefed on appeal, are properly before the court as "interrelated" with the issue of justiciability, while the substantive obligations of article IX, division 1, section 12 and article IX, division 2, section 3 are not.

In any event, there is no question that the issue of whether education is a fundamental interest under the privileges and immunities clause of the Iowa Constitution was preserved in the trial court, and according to Justice Mansfield's opinion, may be considered on appeal even though the matter has not been briefed before this court. Therefore, even assuming the claim under article IX, division 1, section 12 is "waived," the issue of applicability of the privileges and immunities clause remains very much alive under the issue preservation reasoning of Justice Mansfield's opinion. Any right to an education under article IX is coextensive to the fundamental right to an education under the privileges and immunities clause, the only difference being the right to an education under article IX does not require a classification.

**C. Privileges and Immunities Clause.** The first issue for consideration under Iowa's privileges and immunities clause is whether education may be characterized as a fundamental interest under the traditional framework. If one utilizes the test enunciated in *San Antonio*, the answer is plainly yes. According to *San Antonio*, a fundamental interest is present when an interest is explicitly or implicitly protected by constitutional provisions. *See San Antonio*, 411 U.S. at 33, 93 S.Ct. at 1297, 36 L.Ed.2d at 43. Plainly, the Iowa education articles meet the test. Further, under *San Antonio*, the question of whether there is a fundamental interest in a minimally adequate education was expressly reserved. *Id.* at 36–37, 93 S.Ct. at 1298–99, 36 L.Ed.2d at 44–45. Thus, even applying the federal constitutional test, a student's interest in an adequate education would be a fundamental interest under the Iowa Constitution in light of the explicit provisions for education.

Further, aside from the *San Antonio* test, I conclude education is a fundamental interest under other tests fashioned by state supreme courts. The express Iowa constitutional provisions; the centrality of education to our state's history; the strong and unqualified traditional support for education of Iowa's political leaders; the inextricable relationship between education and other key constitutional rights, namely, the right to vote, the right to serve on juries, the right to petition government, \*82 and the undeniable proposition that an individual has little prospect of enjoying life, liberty, and property without an education in the postmodern world; and the centrality of education to human dignity; all convince me that education must be considered a fundamental interest under Iowa's privileges and immunities clause. *See Serrano I*, 96 Cal.Rptr. 601, 487 P.2d at 1255–59; *Robinson v. Cahill*, 69 N.J. 133, 351 A.2d 713, 720 (1975). To characterize the interest in education as something other than fundamental seems like a play on words.<sup>60</sup> I would thus join the supreme courts of Arkansas, California, Connecticut, Kentucky, Minnesota, New Jersey, Tennessee, Washington, West Virginia, Virginia, and Wisconsin in finding that education is an interest that may trigger heightened scrutiny under state privileges and immunities or equal protection clauses.<sup>61</sup>

In fact, the motivating reasons for not finding education "fundamental" has nothing to do with its importance or essential character. Instead, courts are sometimes reluctant to characterize education as "fundamental" because they fear the consequences of strict scrutiny, which has been described as strict in theory but fatal in fact. *See, e.g., McDaniel*, 285 S.E.2d at 167 (citing need to avoid inflexible constitutional restraints that result from strict scrutiny); Norman Dorsen, *Equal Protection of*

*the Laws*, 74 Colum. L.Rev. 357, 362 (1974) (noting that the “sharp dichotomy between the rational basis and strict scrutiny tests produces back-door evasions of the two-tiered formula”); Gerald Gunther, *Foreword: In Search of Evolving Doctrine on a Changing Court: A Model for a Newer Equal Protection*, 86 Harv. L.Rev. 1, 8 (1972) [hereinafter Gunther] (first suggesting strict in theory, fatal in fact formulation); Martha M. McCarthy, *Is The Equal Protection Clause Still A Viable Tool for Effecting Educational Reform?*, 6 J.L. & Educ. 159, 178 (1977) (noting rigor of strict scrutiny test has caused courts to limit rights identified as suspect or fundamental so as not to unduly invade legislative power). The fatal-in-fact feature of strict scrutiny is thought to be inappropriate in situations involving complex matters such as education.

I find merit in the argument that strict scrutiny as traditionally applied by the United States Supreme Court and by this court should not be used to evaluate *all* educational differences between school districts. For instance, a marginal or insubstantial difference between school districts—such as the failure to offer a handful of noncore courses, or the lack of certain helpful but hardly essential extracurricular activities—should not trigger a strict scrutiny analysis. This concern over the consequences of strict scrutiny, however, can be addressed by limiting heightened review only to asserted violations of a right to an adequate or basic education.

\*83 The concept of heightened protection for an adequate or basic education but not for all educational differences has support in the caselaw of other states. For example, both the Minnesota and Wisconsin Supreme Courts have adopted such an approach in their efforts to sort through the constitutional issues related to education. See *Skeen v. State*, 505 N.W.2d 299, 315 (Minn.1993); *Kukor v. Grover*, 148 Wis.2d 469, 436 N.W.2d 568, 579 (1989).

By limiting heightened scrutiny to the deprivation of an adequate or basic education and by employing a lesser degree of scrutiny to legislative classifications that do not impinge on an adequate education, state officials would have ample breathing room for their important policy-making role, yet still require that the state provide all students with a meaningful educational opportunity.

The next question which arises is the content of a basic or adequate education that triggers heightened scrutiny. Based on the reasoning of the adequacy cases cited above, I conclude that a basic or adequate education must be sufficient to allow a person to participate meaningfully in democracy through the right to vote, the right to petition government, and jury duty, and to have meaningful

prospects of enjoying “life, liberty, and property.” In order to achieve these ends, education must be sufficient to allow an individual a meaningful opportunity to participate in economic life in the postmodern world. See *Campaign for Fiscal Equity, Inc.*, 769 N.Y.S.2d 106, 801 N.E.2d at 330–32; *Hoke Cnty. Bd. of Educ. v. State*, 358 N.C. 605, 599 S.E.2d 365, 379–81 (2004); *Abbeville Cnty. Sch. Dist.*, 515 S.E.2d at 540; *Rose*, 790 S.W.2d at 211–13. In order to satisfy these demands, I would adopt a variant of the factors in *Rose* and other adequacy cases: An educational program must, among other things, include effectively teaching the ability to read and write, to communicate effectively, to perform in mathematical computations, to have exposure to scientific principles, to have a basic understanding of economics and government, and to learn how to use computer-based technology that is so indispensable in the postmodern world. An education program need not guarantee results to meet the constitutional test, but it must provide a meaningful educational opportunity to participate in the political, social, and economic life.

I would not, however, adopt the approach of the Arkansas Supreme Court in *Lake View*. While the adoption of standards, systems of monitoring, and systems of accountability might help ensure compliance with the substantive constitutional requirements outlined in this opinion, I would not mandate the precise manner in which the State performs its constitutional obligation. I would decline to enter the fray of educational philosophy other than as required to ensure that children have a reasonable opportunity to a basic education and that all other material differences in educational opportunity be justified by a rational basis as described below.

The defense to privileges-and-immunities-type claims is, of course, invariably “local control.” But local control is not an automatic trump card that applies as a matter of law in all cases involving educational interests as Justice Mansfield’s opinion seems to believe. Instead, whether “local control” will be sufficient to carry the day will depend upon a number of determinations. First, the court must determine, as a matter of fact, whether the alleged shortcomings in education are present. Second, the court must determine if the plaintiff can prove that state action has caused the deprivations. Third, assuming that deprivations are present and they are caused by the state, the question arises whether the deprivation is sufficient to undermine the right to an \*84 adequate or basic education. If the shortcomings deprive the plaintiffs of a basic education, then heightened scrutiny will apply to the classification. To the extent “local control” is asserted as the legitimate basis for a classification, the decision to provide different services must be a discretionary choice

of local administrators and not the result of state law or legal structure that forces local decision makers into Hobson's choices. See *Tenn. Small School Sys.*, 851 S.W.2d at 154–55 (the issue is not whether local control is a good thing, but whether the statutory framework actually promotes it or undercuts it). Local control, however, must not be a “euphemism masking gross inequalities in the abilities of school districts to meet their needs.” *Lujan v. Colo. State Bd. of Educ.*, 649 P.2d 1005, 1040 (Colo.1982) (Lohr, J., dissenting).<sup>62</sup>

My approach to Iowa's privileges and immunities clause is not necessarily a departure from federal precedent. As noted in *San Antonio* and *Papasan*, the question of whether there is a fundamental right to a minimally adequate education is still open under the Federal Equal Protection Clause. See *Papasan v. Allain*, 478 U.S. 265, 285, 106 S.Ct. 2932, 2944, 92 L.Ed.2d 209, 232 (1986); *San Antonio*, 411 U.S. at 36–37, 93 S.Ct. at 1298–99, 36 L.Ed.2d at 44–45. Moreover, applying the *San Antonio* test of what amounts to a fundamental interest (explicit or implicit protection in the constitution itself), my conclusion seems inescapable. In any event, even if my approach affords greater protection to education under our privileges and immunities clause than is available under the Federal Equal Protection Clause, this is not unusual. State courts in at least twenty-one states have interpreted their equality clauses more expansively than the United States Supreme Court's interpretation of equal protection. See Jeffrey M. Shaman, *The Evolution of Equality in State Constitutional Law*, 34 Rutgers L.J. 1013, 1031 (2003).

To the extent plaintiffs show a classification affecting education that does not impinge upon their fundamental right to an adequate education, I conclude that a type of rational basis test should apply. A simple declaration that such nonfundamental classifications are subject to rational basis review is not the end of the matter. As has been repeatedly and widely recognized, there are many variations and permutations of the rational basis test.<sup>63</sup>

\*85 For example, the United States Supreme Court has clearly applied a number of materially different rational basis tests. A first type of rational basis test employed by the Supreme Court is the one utilized by Justice Mansfield's opinion, where a statute is examined to determine if there is “any conceivable basis” to support it. The Supreme Court also sometimes engages in what has been called “a second order” rational basis review where there is inquiry into whether, as a matter of fact, the claimed purposes of the statute have adequate factual support. See *Romer v. Evans*, 517 U.S. 620, 626–35, 116 S.Ct. 1620, 1624–28, 134 L.Ed.2d 855, 862–68 (1996)

(applying more substantial rational basis test in invalidating Colorado constitutional amendment to prohibit government from enacting antidiscrimination ordinances by calling asserted purposes “implausible”); *City of Cleburne v. Cleburne Living Ctr.*, 473 U.S. 432, 448, 105 S.Ct. 3249, 3258, 87 L.Ed.2d 313, 325 (1985) (citing lack of evidence in “the record” to justify denying occupants use of site); *U.S. Dep't of Agric. v. Moreno*, 413 U.S. 528, 535–36, 93 S.Ct. 2821, 2826, 37 L.Ed.2d 782, 788–89 (1973) (invalidating antifraud regulation excluding households with unrelated individuals from receiving food stamps based on “unsubstantiated” assumptions); Robert C. Farrell, *Successful Rational Basis Claims in the Supreme Court from the 1971 Term Through Romer v. Evans*, 32 Ind. L.Rev. 357, 358 (1999) (identifying two sets of rationality cases decided by United States Supreme Court with no connection between them); Robert C. Farrell, *The Two Versions of Rational-Basis Review and Same-Sex Relationships*, 86 Wash. L.Rev. 281, 282 (2011) (characterizing Supreme Court rational basis review cases as Jekyll and Hyde- or Janus-like); R. Randall Kelso, *Standards of Review Under the Equal Protection Clause and Related Constitutional Doctrines Protecting Individual Rights: The “Base Plus Six” Model and Modern Supreme Court Practice*, 4 U. Pa. J. Const. L. 225, 227–37 (2002) (describing three types of rational basis tests).

There have long been calls for the United States Supreme Court to abandon its approach to “any conceivable basis” rational basis scrutiny. In a seminal law review article published in 1972, Gerald Gunther urged the Court to develop a more meaningful approach to equal protection that included more stringent rational basis review. See Gunther, 86 Harv. L.Rev. at 20–24. In a series of opinions, Justice Marshall and Justice Stevens have pointed out the inconsistencies in the Court's cases and advocated an honest reevaluation of the doctrine. See *City of Cleburne*, 473 U.S. at 451–55, 105 S.Ct. at 3260–63, 87 L.Ed.2d at 327–30 (1985) (Stevens, J., concurring); *Mass. Bd. of Ret. v. Murgia*, 427 U.S. 307, 321–22, 96 S.Ct. 2562, 2571–72, 49 L.Ed.2d 520, 529–30 (1976) (Marshall, J., dissenting). So far, the United States Supreme Court has not explicitly resolved the tensions in its cases.

\*86 Aside from inconsistency, there is another reason for state supreme courts to depart from federal precedent when analyzing equal protection-type claims. A major factor in the highly deferential rational basis standard developed by the United States Supreme Court is the desire to honor federalism and to avoid imposing national solutions onto the states. Justice Harlan warned long ago that national application of federal standards to the states

in order to give the states elbow room in their criminal processes would lead to a dilution of substantive constitutional protections. *Baldwin v. New York*, 399 U.S. 117, 118, 90 S.Ct. 1914, 1915, 26 L.Ed.2d 446, 447 (1970) (Harlan, J., concurring in part and dissenting in part). Indeed, federalism constraints were a motivating factor in the Supreme Court's refusal to impose strict scrutiny in *San Antonio*. Because of the federalism concerns, the Federal Equal Protection Clause tends to be among the most underenforced of constitutional provisions. See Hershkoff, 112 Harv. L.Rev. at 1134–38; Lawrence Gene Sager, *Fair Measure: The Legal Status of Underenforced Constitutional Norms*, 91 Harv. L.Rev. 1212, 1218 (1978). The federalism concern, of course, is wholly absent when state courts consider claims under the state constitutions.

As a result, it is not surprising that a number of state supreme courts have declined to follow the federal model and have developed their own approach to equal protection or privileges and immunities review.<sup>64</sup> Many of the more than a dozen states that have privileges and immunities type language rely to some extent on the tiered federal model, but there are many variations. Several states have rejected the “any conceivable basis” rationality standard for more exacting judicial review of some legislative classifications. See, e.g., *Trujillo v. City of Albuquerque*, 125 N.M. 721, 965 P.2d 305, 314 (1998); *MacCallum v. Seymour*, 165 Vt. 452, 686 A.2d 935, 938–39 (1996). Other states, for instance, have adopted a unitary test that balances the nature of the right, the extent to which the government intrudes upon the right, and the need for the restriction. See, e.g., *Dep't of Revenue v. Cosio*, 858 P.2d 621, 629 (Alaska 1993); *Planned Parenthood of Cent. N.J. v. Farmer*, 165 N.J. 609, 762 A.2d 620, 632–43 (2000). Other states have adopted a system of means-focused scrutiny that appears more intensive than the most lenient standard sometimes applied by the United States Supreme Court. See, e.g., *State v. Mowrey*, 134 Idaho 751, 9 P.3d 1217, 1221 (2000).

The variability in “rational basis” tests is demonstrated in the state education cases. Some courts, like Indiana, have declared over a strong dissent that, as a matter of law, local control is an adequate rational basis to justify a state framework for providing education. Other states, however, like Arkansas, have found after the development of substantial factual records that their system of state funding fails to meet even the rational basis test. See, e.g., *DuPree*, 651 S.W.2d at 95.

There is much to be said for a more searching rational basis review. The “any conceivable basis” test tends to be

no review at all. The cases show some striking examples, like Louisiana legislation where only licensed florists may arrange flowers, defended as a health measure, and an \*87 Oklahoma statute preventing anyone other than a person with a license in mortuary science from selling caskets. See Clark Neily, *No Such Thing: Litigating Under the Rational Basis Test*, 1 N.Y.U. J.L. & Liberty 898, 906 (2005).

The suggestion that the incantation of the phrase “local control” is sufficient to decide this case at this stage as a matter of law cannot stand scrutiny. When an allegation of a violation of our privileges and immunities clause in the field of education is alleged, we should turn a cocked ear, not a blind eye. When local control is asserted as a justification for differences in educational quality, we should consider whether local educational leaders are, in fact, making local choices entitled to deference, or whether they are forced into Hobson's choices because of an educational structure that prevents them from delivering a quality education. The concept was well expressed by one observer, who noted that “[e]verywhere, local autonomy is compromised by centralized authority.... Practically, the rhetoric of local autonomy is difficult to take seriously given overwhelming evidence of the fiscal, political, and judicial domination of local governments by higher tiers of the state.” Gordon L. Clark, *Judges and the Cities: Interpreting Local Autonomy* 113–14 (1985) (citation omitted). In other words, the question we should ask is this: Is local control really at work, or is it a euphemism masking inequalities in the ability of school districts to provide educational opportunities to its students? See *Lujan*, 649 P.2d at 1040 (Lohr, J., dissenting).

Justice Mansfield's opinion employs the label “local control” without analysis of exactly what that means. In *San Antonio*, local control was favored because it encouraged citizen participation in decision making, permitted the structuring of school programs to fit local needs, and encouraged “experimentation, innovation, and a healthy competition for educational excellence.” *San Antonio*, 411 U.S. at 50, 93 S.Ct. at 1305, 36 L.Ed.2d at 52–53. Should we declare, as a matter of law, that the distinctions between the various school districts in this case were the result of these factors? Is it not possible that, in this case, the state regulatory framework in actuality deprives local school boards of local control in the sense that they do not have the practical ability to make considered policy choices? Would the responsible school officials in the districts where the plaintiffs reside claim that the alleged dramatic differences in teacher experience, course loads per teacher, and curriculum offerings were the result of a local, discretionary choice or



would they cite systemic limitations? Does the way education is structured in Iowa promote local control or restrict it? We will, of course, never know the answer to these questions in light of the summary dismissal of the case without the development of a factual record.

In *RACI*, we conducted a meaningful rational basis review. *Fitzgerald*, 675 N.W.2d at 7–8. We were not content to rest solely on the pleadings, but conducted a factual inquiry to see whether the purported justifications, while conceivable, were in fact sufficient to support a statutory distinction. Specifically, we noted that the conceivable state interest must have “a basis in fact.” *Id.*

In my view, we should apply a meaningful rational basis test in this case with respect to classifications which adversely affect the plaintiffs but do not arise to deprivations of an adequate education. It allows substantial deference to decisions of other branches of government, but imposes a reality check to prevent arbitrary and irrational distinctions from creeping into educational structures in the name of “local control.”<sup>65</sup>

**\*88 D. Due Process Clause.** I have no doubt that there is a potential due process claim in light of the compulsory nature of school attending. We said as much in *Exira*. The notion is uncontroversial that where a liberty interest is impaired—and surely it is impaired by mandatory school attendance—the deprivation of liberty must be rationally related to a legitimate state objective. *Youngberg*, 457 U.S. at 324, 102 S.Ct. at 2462, 73 L.Ed.2d at 42–43. There is also no doubt that education is a legitimate state objective. The question under due process is whether the education received by the person whose liberty is impaired is rationally related to the state’s legitimate interest in educating citizens. Any application of the due process clause, however, would give the state a wide range of permissible action in providing education to its charges. There is no due process right to a specific kind of education, but only a sufficiently reasonable educational effort to justify the intrusion on the liberty interest.

**E. Application of Law to Facts Alleged in the Petition.** Having established the necessary legal framework, the question remains whether the petition alleges sufficient facts to survive a motion to dismiss. Our pleading caselaw requires a general notice of the nature of the claim, but does not require pleading of detailed facts. *Davis v. Ottumwa YMCA*, 438 N.W.2d 10, 13 (Iowa 1989). We have stated that pleading is sufficient if it apprises the opposing party of the nature of the incident out of which the claim arose and the general nature of the action. *Haugland v. Schmidt*, 349 N.W.2d 121, 123 (Iowa 1984). We have stated that “[i]n Iowa, very little is required by

way of pleading to provide notice.” *Wilker v. Wilker*, 630 N.W.2d 590, 595 (Iowa 2001). Notice pleading in Iowa does not require pleading of ultimate facts that support the elements of the cause of action but only facts sufficient to apprise the defendant of fair notice of the claim. *Schmidt v. Wilkinson*, 340 N.W.2d 282, 283–84 (Iowa 1983).

Our principles of pleading were well stated in *U.S. Bank v. Barbour*, 770 N.W.2d 350, 353–54 (Iowa 2009), in which we stated that “[n]early every case will survive a motion to dismiss” and that the “fair notice” requirement is met if the petition “informs the defendant of the incident giving rise to the claim and of the claim’s general nature.” We recently affirmed our approach in *Hawkeye Foodservice Distribution, Inc. v. Iowa Educators Corp.*, 812 N.W.2d 600, 609 (Iowa 2012), in which we rejected an effort to institute a heightened pleading requirement sometimes used by the United States Supreme Court, *see, e.g., Ashcroft v. Iqbal*, 556 U.S. 662, 678–79, 129 S.Ct. 1937, 1949–50, 173 L.Ed.2d 868, 883–84 (2009), and *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570, 127 S.Ct. 1955, 1973–74, 167 L.Ed.2d 929, 949 (2007), and reaffirmed our traditional generous pleading approach.

**\*89** I conclude that the plaintiffs’ claim should not be dismissed at this stage. The plaintiffs claim they are being deprived of an “effective education” and an “adequate education.” They claim their education is so deficient that students “are not prepared to enter the workforce or post-secondary education” and are not “prepared for responsible citizenship, further learning and productive employment in a global economy.” They have also pled differences in the quality of education in their school districts in terms of teacher experience, course loads, and course offerings. In light of our pleading rules, which have been held to provide that “very little is required by way of pleading to provide notice,” these allegations are sufficient to raise a claim of adequacy that cannot be precluded as a matter of law at this stage of the proceedings. *See Wilker*, 630 N.W.2d at 595; *Herschler*, 606 P.2d at 316 (attack on “system” is sufficient to survive motion to dismiss); *see also Lujan*, 649 P.2d at 1010 (appellees did not plead or prove denial of educational opportunity); *Hornbeck v. Somerset Cnty. Bd. of Educ.*, 295 Md. 597, 458 A.2d 758, 780 (1983) (no allegation of deprivation of a right to adequate education).

In any event, there is no question that the plaintiffs state a claim reviewable under a rational basis test, which in my view requires factual development of the relationship between the purported purposes of the policies that cause the differences between school districts and whether the means chosen rationally advance them. Preexisting

commitment to the ideology of “Our Localism” does not form a legally sufficient basis for rejecting a more nuanced inquiry when an interest as important as education is involved.<sup>66</sup>

It may well be, of course, that the plaintiffs may fail, in whole or in part, to prove their case. But they are entitled to attempt to prove it. A motion to dismiss is not a vehicle to dismiss claims that some on an appellate court may perceive as weak. The only issue when considering a motion to dismiss is the “petitioner’s right of access to the district court, not the merits of his allegations.” *Rieff v. Evans*, 630 N.W.2d 278, 284 (Iowa 2001) (citation and internal quotation marks omitted). The approach taken in Justice Mansfield’s opinion to the pleading in this case is a marked departure from our pleading requirements generally and has no precedential value except to dispose of this case.

**F. Remedies.** It is sometimes suggested that remedial difficulties require the judiciary to abandon the field of enforcing state constitutional commands related to education. Ordinarily, respect for the coordinate branches of government requires a court not to unduly intrude onto the workings of the other branches. As a result, in a case such as this one, there is little to be gained, and much to be lost, by premature entry of detailed mandatory orders. If a constitutional violation is found, there will be a number of different possibilities that the legislature may wish to consider to solve the problem. As long as the ultimate action complies with the constitutional commands, this court has no interest in invading the discretion of the legislature. As Justice Jackson stated years ago, a holding of invalidity under the Equal Protection Clause “does not disable any governmental body from dealing with the subject at hand.” *Ry. Express Agency v. New York*, 336 U.S. 106, 112, 69 S.Ct. 463, 466, 93 L.Ed. 533, 540 (1949) (Jackson, J., concurring).

\*90 The case against “The Structural Injunction” in the education context was made by Chief Justice Roy Moore, formerly of the Alabama Supreme Court, in *Ex parte James*. In that case, Chief Justice Moore went to great lengths to undermine the power of judicial review and to suggest that the courts must generally defer to political branches of government. *Ex parte James*, 836 So.2d at 856 (Moore, C.J., concurring in the result in part and dissenting in part).

I do not find, however, that problems related to remedies should oust this court’s ability to consider the substantive merits of this case. Such an approach would establish an unwise precedent. Broadside statements regarding “The Structural Injunction,” for instance, threaten to undermine

not only the result in this case, but bedrock cases such as *Brown, Gideon v. Wainwright*, 372 U.S. 335, 83 S.Ct. 792, 9 L.Ed.2d 799 (1963), the courageous holding in *Aderholt*, and countless less celebrated cases dealing with the nitty gritty of obtaining constitutional compliance with respect to overcrowded prison systems and grossly inadequate mental health facilities. Sweeping declarations regarding remedies also ignore the highly nuanced approaches of many state courts to remedial issues related to the provision of adequate education that emphasize collaboration over confrontation. See, e.g., *Reli*, 990 A.2d at 221–23 (discussing need for flexible, graduate remedies); *Campaign for Fiscal Equity, Inc.*, 769 N.Y.S.2d 106, 801 N.E.2d at 344–49 (N.Y.2003) (discussing flexible remedies in education context).

While a prudent and respectful approach to potential remedies makes sense, this case should not be a springboard for this court to adopt a radical doctrine that threatens many decades of jurisprudence. A disabling doctrine of sharply curtailed remedies would reduce the guarantees of the State and Federal Constitutions that protect individual liberties and establish affirmative duties to hollow platitudes. This indirect substantive evisceration of our State and Federal Constitutions is a project that may appeal to others, but not to me.

## VII. Conclusion.

In my view, regardless of whether the plaintiffs have pled and/or preserved a claim under article IX of the Iowa Constitution or stated a claim under the Due Process Clauses of the Iowa and Federal Constitutions. I believe it is inescapable that education is a fundamental interest under the state constitutional guarantee of equal protection. Because of the sensitive nature of educational decision making, however, I would differentiate between a basic or adequate education and other elements of education that fall outside that category. I would apply heightened scrutiny with respect to claims of deprivation of adequate education and only a rational basis type scrutiny to other claims.

Having determined these legal issues, I would apply our traditionally liberal pleading standards to the plaintiffs’ petition. The petition is not very precise and does not clearly outline what government action is causing what deprivation. Nevertheless, I am not prepared to say at this stage that there is no possibility that the plaintiffs will be able to show an entitlement to relief. Rather than rush to judgment in this case without the development of an adequate factual record, I would deny the motion to dismiss and remand the case to the district court for

further proceedings.

#### All Citations

818 N.W.2d 1, 283 Ed. Law Rep. 390

HECHT, J., joins this dissent.

#### Footnotes

- 1 See *Tellabs, Inc. v. Makor Issues & Rights, Ltd.*, 551 U.S. 308, 322, 127 S.Ct. 2499, 2509, 168 L.Ed.2d 179, 193 (2007) (in ruling on a motion to dismiss, courts must ordinarily consider documents incorporated into the complaint by reference); *Hallett Constr. Co. v. Iowa State Highway Comm'n*, 261 Iowa 290, 295, 154 N.W.2d 71, 74 (1967) (highway specifications that were incorporated in the petition by reference were deemed part of the petition and could be considered in a default proceeding). Because this action was brought in 2008, the materials cited by plaintiffs date from 2008 or earlier.
- 2 This was a middling performance, according to this source. The national average was a C. See *Iowa—State Highlights 2008, Education Week's Quality Counts* (Editorial Projects in Educ. Research Ctr., Bethesda, Md.), 2008, at 2, available at <http://www.edweek.org/ew/toc/2008/01/10/index.html>.
- 3 On the other hand, the 2007 report indicates that students at the smallest school districts benefit, on average, from much smaller class size. *The Annual Condition of Education*, at 122. For example, the relevant comparisons are 11.9 versus 20.5 students per class for kindergarten, 11.8 versus 21.4 per class for first grade, 13.1 versus 21.6 for second grade, and 13.7 versus 22.7 for third grade. *Id.*
- 4 The 2007 report further reveals that Iowa's average ACT composite score of 22.3 was tied with Wisconsin for second place in the nation. *Id.* at 185.
- 5 Approximately forty-one other state supreme courts have considered broad constitutional challenges to the state education system. The vast majority of these cases have been primarily concerned with the state's method of funding education—i.e., allegations that funding is either inequitable, inadequate, or both. See *Opinion of the Justices*, 624 So.2d 107, 112 n. 5 (Ala.1993) (funding "a major focus of plaintiffs' case"), *abrogated by Ex parte James*, 836 So.2d 813, 819 (Ala.2002) (ultimately finding challenge nonjusticiable); *Matanuska–Susitna Borough Sch. Dist. v. State*, 931 P.2d 391, 394 (Ak.1997) (challenge to Alaska's public school funding laws; summary judgment for the state upheld); *Roosevelt Elementary Sch. Dist. No. 66 v. Bishop*, 179 Ariz. 233, 877 P.2d 806, 815–16 (1994) (finding Arizona's system of funding public education unconstitutional under the Arizona Constitution); *Lake View Sch. Dist. No. 25 v. Huckabee*, 351 Ark. 31, 91 S.W.3d 472, 500 (2002) (finding Arkansas's method of funding education violated the Arkansas Constitution) (mandate recalled on other grounds by *Lake View Sch. Dist. No. 25 v. Huckabee*, 355 Ark. 617, 142 S.W.3d 643 (2004) (per curiam) and *Lake View Sch. Dist. No. 25 v. Huckabee*, 362 Ark. 520, 210 S.W.3d 28 (2005)); *Serrano v. Priest*, 18 Cal.3d 728, 135 Cal.Rptr. 345, 557 P.2d 929, 957–58 (1976) (holding California violated the California Constitution in its manner of financing public schools); *Lobato v. State*, 218 P.3d 358, 364 (Colo.2009) (allowing challenge to Colorado's school financing system to proceed); *Horton v. Meskill*, 172 Conn. 615, 376 A.2d 359, 374–75 (1977) (holding that the state has a constitutional obligation to provide "substantially equal" free public education in terms of state funding); *Coal. for Adequacy & Fairness in Sch. Funding, Inc. v. Chiles*, 680 So.2d 400, 405–08 (Fla.1996) (upholding dismissal of lawsuit claiming that the state had failed to allocate adequate resources to public schools); *McDaniel v. Thomas*, 248 Ga. 632, 285 S.E.2d 156, 168 (1981) (rejecting challenge to Georgia's system of financing public education); *Idaho Sch. for Equal Educ. Opportunity v. State*, 142 Idaho 450, 129 P.3d 1199, 1209 (2005) (affirming trial court's conclusion that Idaho's current method of funding as it related to school facilities violated the Idaho Constitution); *Comm. for Educ. Rights v. Edgar*, 174 Ill.2d 1, 220 Ill.Dec. 166, 672 N.E.2d 1178, 1196–97 (1996) (affirming dismissal of lawsuit challenging Illinois's system of financing public schools); *Bonner ex rel. Bonner v. Daniels*, 907 N.E.2d 516, 522–23 (Ind.2009) (holding that state public education finance scheme did not violate Indiana Constitution); *Montoy v. State*, 278 Kan. 769, 120 P.3d 306, 308 (2005) (reversing finding of equal protection violations but upholding district court finding that Kansas's statutory scheme for funding the public schools violated a separate provision of the Kansas Constitution); *Charlet v. Legislature*, 713 So.2d 1199, 1207 (La.Ct.App.1998) (granting summary judgment upon finding the state followed constitutionally proscribed mechanisms for providing school funding); *Sch. Admin. Dist. No. 1 v. Comm'r, Dep't of Educ.*, 659 A.2d 854, 857 (Me.1995) (rejecting challenge to reductions in state education funding); *Hornbeck v. Somerset Cnty. Bd. of Educ.*, 295 Md. 597, 458 A.2d 758, 790 (1983) (holding that Maryland's system of financing public education was not unconstitutional); *Milliken v. Green*, 390 Mich. 389, 212 N.W.2d 711, 720–21 (1973) (rejecting challenge to discrepancies in school funding resulting from Michigan's manner of financing public school education); *Skeen v.*

*State*, 505 N.W.2d 299, 320 (Minn.1993) (holding Minnesota's current method for funding the education system did not violate the Minnesota Constitution); *Comm. for Educ. Equal. v. State*, 294 S.W.3d 477, 495 (Mo.2009) (finding no constitutional violation in Missouri's school funding formula); *Columbia Falls Elementary Sch. Dist. No. 6 v. State*, 326 Mont. 304, 109 P.3d 257, 263 (2005) (finding Montana's method of funding schools violates Montana's constitutional mandate to provide "quality" schools); *Helena Elementary Sch. Dist. No. 1 v. State*, 236 Mont. 44, 769 P.2d 684, 690–91 (1989) (finding Montana's method of funding public schools unconstitutional under the Montana Constitution); *Neb. Coal. for Educ. Equity & Adequacy v. Heineman*, 273 Neb. 531, 731 N.W.2d 164, 183 (2007) (holding plaintiffs' challenges to inadequate funding to present nonjusticiable political questions); *Claremont Sch. Dist. v. Governor*, 142 N.H. 462, 703 A.2d 1353, 1360 (1997) (finding the state's system crafted to fund public education to be unconstitutional); *Abbott ex rel. Abbott v. Burke*, 149 N.J. 145, 693 A.2d 417, 432–33 (1997) (holding funding provisions for regular education expenditures to be unconstitutional); *Robinson v. Cahill*, 62 N.J. 473, 303 A.2d 273, 295–98 (1973) (determining that New Jersey's method of funding education which relied on local taxation for approximately sixty-seven percent of public school costs and led to great disparities in dollar input per pupil violated the New Jersey Constitution); *Bd. of Educ. v. Nyquist*, 57 N.Y.2d 27, 453 N.Y.S.2d 643, 439 N.E.2d 359, 363–70 (1982) (holding New York's school financing system does not violate the State or Federal Constitution); *Hoke Cnty. Bd. of Educ. v. State*, 358 N.C. 605, 599 S.E.2d 365, 390–91 (2004) (finding state's method of funding and providing for school districts violated the state constitution); *Bismarck Pub. Sch. Dist. 1 v. State*, 511 N.W.2d 247, 263 (N.D.1994) (failing to declare that the overall impact of the statutory method for distributing funding for education was unconstitutional under the state constitution); *Bd. of Educ. v. Walter*, 58 Ohio St.2d 368, 390 N.E.2d 813, 825–26 (1979) (finding "the General Assembly has not so abused its broad discretion in enacting the present system of financing education as to render the statutes in question unconstitutional"); *Okla. Educ. Ass'n v. State ex rel. Okla. Legislature*, 158 P.3d 1058, 1066 (Okla.2007) (holding challenges to state funding system presented nonjusticiable political questions); *Coal. for Equitable Sch. Funding, Inc. v. State*, 311 Or. 300, 811 P.2d 116, 121–22 (1991) (holding the method of funding public schools did not violate Oregon's Constitution); *Danson v. Casey*, 484 Pa. 415, 399 A.2d 360, 367 (1979) (finding the state's financing scheme did not violate the Pennsylvania Constitution); *City of Pawtucket v. Sundlun*, 662 A.2d 40, 61–62 (R.I.1995) (upholding Rhode Island's funding system); *Richland Cnty. v. Campbell*, 294 S.C. 346, 364 S.E.2d 470, 472 (1988) (holding system for financing and funding schools did not violate the South Carolina Constitution); *Davis v. State*, 804 N.W.2d 618, 641 (S.D.2011) (finding South Dakota's system of funding education did not violate the education clause of the South Dakota Constitution); *Dean v. Coddington*, 81 S.D. 140, 131 N.W.2d 700, 703 (1964) (upholding educational funding statute as constitutional); *Tenn. Small Sch. Systems v. McWherter*, 851 S.W.2d 139, 156 (Tenn.1993) (finding the state's statutory funding scheme was unconstitutional); *Neeley v. W. Orange-Cove Consol. Indep. Sch. Dist.*, 176 S.W.3d 746, 754 (Tex.2005) (holding state public school finance system was constitutional); *Brigham v. State*, 166 Vt. 246, 692 A.2d 384, 397 (1997) (determining the state's system of financing public education violated the Vermont Constitution); *Scott v. Commonwealth*, 247 Va. 379, 443 S.E.2d 138, 141–42 (1994) (holding Virginia's Constitution was not violated by the school funding system); *Seattle Sch. Dist. No. 1 v. State*, 90 Wash.2d 476, 585 P.2d 71, 105 (1978) (finding state's current school financing system to be unconstitutional); *Vincent v. Voight*, 236 Wis.2d 588, 614 N.W.2d 388, 415 (2000) (holding Wisconsin's school finance system was constitutional); *Campbell Cnty. Sch. Dist. v. State*, 181 P.3d 43, 84 (Wyo.2008) (upholding state's financing system as constitutional).

However, a few state supreme courts have favorably considered (at least for motion to dismiss purposes) claims that focus upon the quality of education, as opposed to funding. See *Conn. Coal. for Justice in Educ. Funding, Inc. v. Reil*, 295 Conn. 240, 990 A.2d 206, 210–11, 271 (2010) (holding the plaintiffs' allegations that they had not received suitable educational opportunities stated cognizable claims in light of Connecticut's constitutional mandate for "free public elementary and secondary schools"); *Rose v. Council for Better Educ., Inc.*, 790 S.W.2d 186, 189 (Ky.1989) (holding that the Kentucky General Assembly had not complied with its constitutional mandate to "provide an efficient system of common schools"); *Abbeville Cnty. Sch. Dist. v. State*, 335 S.C. 58, 515 S.E.2d 535, 539–40 (1999) (holding that plaintiffs had stated a claim under the South Carolina Constitution's education clause requiring that "the General Assembly shall provide for the maintenance and support of a system of free public education").

6 This case was originally argued in March 2010, before three current members joined this court. It was then reargued in June 2011. Even at the first oral argument, some of the questioning related to the merits of plaintiffs' claims, including the following questions taken from the recording:

*I take it this is a bit of an attack on local control, correct me if I'm wrong?*

*Aren't you in essence saying that a local school board then would not have the authority to say: well we want to set our tax rates at a certain level; we are concerned about economic development in this rural setting, we don't want to get the taxes up high; we choose not to promote advanced placement courses and instead we want to have a broad based athletic program.*

*Supposing there were a uniform standard, number one wouldn't that pose a risk of a lower standard as the legislature considers what's uniform across the board that they want to bring the rural districts up and maybe the urban districts down?*

Secondly, supposing that standard were established could a wealthier district then elect to apply a richer environment?  
(Emphasis added.)

7 Plaintiffs do not argue, either here or below, that they have claims under division 1 of article IX of the Iowa Constitution.

8 We have not used that term previously in any case.

9 Among the provisions which this court declared unconstitutional was a provision for schools segregated on the basis of race. See 1858 Iowa Acts ch. 52, § 30(4). Later, in *Clark v. Board of Directors*, 24 Iowa 266 (1868), we struck down the segregated schools of a particular school district. Our decision there was based on interpretation of language originally passed by the board of education in 1860 in the wake of the *Dubuque* decision and subsequently reaffirmed on several occasions by the legislature. *Clark*, 24 Iowa at 271–73. The language in question required “the instruction of youth between the ages of five and twenty-one years.” *Id.* at 271. We reasoned that this language prohibited the exclusion of persons of color from the common schools. *Id.* at 276. Our opinion cited section 12 of the first division of article IX—one of the original constitutional provisions relating to the board—as providing authority for the board’s 1860 enactment. *Id.* at 271. In this case, plaintiffs have not cited or relied upon section 12 or any of the other original constitutional provisions in the first division relating to the board of education.

10 We are not called upon to decide in this case whether the abolition of the board of education gave the legislature plenary authority to address education policy or whether that authority is subject to any limits that previously applied to the board of education.

11 Earlier in the convention, Marvin had proposed an amendment that would have provided, “And the legislature shall provide for raising funds sufficient so that schools shall be kept in each district at least six months in each year, which schools shall be free of charge and equally open to all.” 2 *Debates*, at 825. That amendment also was rejected, following a debate that had unfortunate racial overtones. *Id.* at 825–30.

Unlike the earlier Marvin amendment, the later Ells amendment was directed to section 3 of the second division. There is no indication in the debates that the Ells amendment was rejected for racial reasons. *Id.* at 968–72.

12 This section was repealed by constitutional amendment in 1984.

13 In *Dickinson v. Porter*, we rejected an equal protection challenge to a state law that funded a tax credit for certain agricultural lands. 240 Iowa 393, 35 N.W.2d 66 (1949). In finding that the law’s classification rested on a reasonable basis, i.e., to “benefit and encourage agriculture,” we cited the education clause as an example of a state public policy to promote agriculture. *Id.* at 408–09, 35 N.W.2d at 76. The *Dickinson* case had nothing to do with education.

14 The education clauses of the constitutions of Connecticut, Massachusetts, and New Hampshire are not similar to Iowa’s. They employ language that is both more forceful and more specific. Connecticut’s clause provides, “There shall always be free public elementary and secondary schools in the state. The general assembly shall implement this principle by appropriate legislation.” Conn. Const. art. 8, § 1. Massachusetts’ clause states:

Wisdom, and knowledge, as well as virtue, diffused generally among the body of the people, being necessary for the preservation of their rights and liberties; and as these depend on spreading the opportunities and advantages of education in the various parts of the country, and among the different orders of the people, *it shall be the duty of legislatures and magistrates, in all future periods of this commonwealth, to cherish the interests of literature and the sciences, and all seminaries of them; especially the university at Cambridge, public schools and grammar schools in the towns....*

Mass. Const. pt. 2 ch. V, § 2 (emphasis added). New Hampshire’s provides:

Knowledge and learning, generally diffused through a community, being essential to the preservation of a free government; and spreading the opportunities and advantages of education through the various parts of the country, being highly conducive to promote this end; *it shall be the duty of the legislators and magistrates, in all future periods of this government, to cherish the interest of literature and the sciences, and all seminaries and public schools ...*

N.H. Const. pt. 2, art. 83 (emphasis added).

15 See Alaska Const. art. VII, § 1 (“The legislature shall by general law establish and maintain a system of public schools open to all children of the State....”); Ariz. Const. art. XI, § 1 (“The legislature shall enact such laws as shall provide for the establishment and maintenance of a general and uniform public school system....”); Ark. Const. art. 14, § 1 (“[T]he

State shall ever maintain a general, suitable and efficient system of free public schools...."); Colo. Const. art. IX, § 2 ("The general assembly shall, as soon as practicable, provide for the establishment and maintenance of a thorough and uniform system of free public schools throughout the state...."); Conn. Const. art. 8, § 1 ("There shall always be free public elementary and secondary schools in the state. The general assembly shall implement this principle by appropriate legislation."); Del. Const. art. X, § 1 ("The General Assembly shall provide for the establishment and maintenance of a general and efficient system of free public schools...."); Fla. Const. art. IX, § 1(a) ("It is ... a paramount duty of the state to make adequate provision for the education of all children residing within its borders. Adequate provision shall be made by law for a uniform, efficient, safe, secure, and high quality system of free public schools that allows students to obtain a high quality education...."); Ga. Const. art. VIII, § I, para. I ("The provision of an adequate public education for the citizens shall be a primary obligation of the State of Georgia. Public education for the citizens prior to the college or postsecondary level shall be free and shall be provided for by taxation."); Haw. Const. art. X, § 1 ("The State shall provide for the establishment, support and control of a statewide system of public schools free from sectarian control...."); Idaho Const. art. IX, § 1 ("[I]t shall be the duty of the legislature of Idaho, to establish and maintain a general, uniform and thorough system of public, free common schools."); Ill. Const. art. X, § 1 ("The State shall provide for an efficient system of high quality public educational institutions and services. Education in public schools through the secondary level shall be free."); Ind. Const. art. 8, § 1 ("[I]t shall be the duty of the General Assembly to encourage, by all suitable means, moral, intellectual, scientific, and agricultural improvement; and to provide, by law, for a general and uniform system of Common Schools, wherein tuition shall be without charge, and equally open to all."); Kan. Const. art. 6, § 1 ("The legislature shall provide for intellectual, educational, vocational and scientific improvement by establishing and maintaining public schools, educational institutions and related activities which may be organized and changed in such manner as may be provided by law."); Ky. Const. § 183 ("The General Assembly shall, by appropriate legislation, provide for an efficient system of common schools throughout the State."); La. Const. art. VIII, § 1 ("The legislature shall provide for the education of the people of the state and shall establish and maintain a public educational system."); Me. Const. art. VIII, pt. 1, § 1 ("[T]he Legislature are authorized, and it shall be their duty to require, the several towns to make suitable provision, at their own expense, for the support and maintenance of public schools...."); Md. Const. art. VIII, § 1 ("The General Assembly, at its First Session after the adoption of this Constitution, shall by Law establish throughout the State a thorough and efficient System of Free Public Schools; and shall provide by taxation, or otherwise, for their maintenance."); Mich. Const. art. VIII, § 2 ("The legislature shall maintain and support a system of free public elementary and secondary schools as defined by law."); Minn. Const. art. XIII, § 1 ("The stability of a republican form of government depending mainly upon the intelligence of the people, it is the duty of the legislature to establish a general and uniform system of public schools. The legislature shall make such provisions by taxation or otherwise as will secure a thorough and efficient system of public schools throughout the state."); Mo. Const. art. IX, § 1(a) ("[T]he general assembly shall establish and maintain free public schools for the gratuitous instruction of all persons in this state within ages not in excess of twenty-one years as prescribed by law."); Mont. Const. art. X, § 1 ("The legislature shall provide a basic system of free quality public elementary and secondary schools."); Neb. Const. art. VII, § 1 ("The Legislature shall provide for the free instruction in the common schools of this state of all persons between the ages of five and twenty-one years."); Nev. Const. art. 11, § 2 ("The legislature shall provide for a uniform system of common schools, by which a school shall be established and maintained in each school district at least six months in every year...."); N.J. Const. art. VIII, § 4, ¶ 1 ("The Legislature shall provide for the maintenance and support of a thorough and efficient system of free public schools for the instruction of all the children in the State between the ages of five and eighteen years."); N.M. Const. art. XII, § 1 ("A uniform system of free public schools sufficient for the education of, and open to, all the children of school age in the state shall be established and maintained."); N.Y. Const. art. XI, § 1 ("The legislature shall provide for the maintenance and support of a system of free common schools, wherein all the children of this state may be educated."); N.C. Const. art. I, § 15 ("The people have a right to the privilege of education, and it is the duty of the State to guard and maintain that right."); *id.* art. IX, § 2(1) ("The General Assembly shall provide ... for a general and uniform system of free public schools, which shall be maintained at least nine months in every year, and wherein equal opportunities shall be provided for all students."); N.D. Const. art. 8, § 1 ("[T]he legislative assembly shall make provision for the establishment and maintenance of a system of public schools which shall be open to all children of the state of North Dakota and free from sectarian control."); Ohio Const. art. VI, § 3 ("Provision shall be made by law for the organization, administration and control of the public school system of the state supported by public funds...."); Or. Const. art. VIII, § 3 ("The Legislative Assembly shall provide by law for the establishment of a uniform, and general system of Common schools."); Pa. Const. art. III, § 14 ("The General Assembly shall provide for the maintenance and support of a thorough and efficient system of public education to serve the needs of the Commonwealth."); S.C. Const. art. XI, § 3 ("The General Assembly shall provide for the maintenance and support of a system of free public schools open to all children in the State...."); S.D. Const. art. VIII, § 1 ("[I]t shall be the duty of the Legislature to establish and maintain a general and uniform system of public schools wherein tuition shall be without charge, and equally open to all; and to adopt all suitable means to secure to the people the advantages and opportunities of education."); Tenn. Const. art. XI, § 12 ("The General Assembly shall provide for the maintenance, support and eligibility standards of a system of free public schools."); Tex. Const. art. VII, § 1 ("A general diffusion of knowledge being essential to the preservation of the liberties and rights of the people, it shall be the duty of the Legislature of the State to establish and make suitable

provision for the support and maintenance of an efficient system of public free schools.”); Utah Const. art. X, § 1 (“The Legislature shall provide for the establishment and maintenance of the state’s education systems including: (a) a public education system, which shall be open to all children of the state....”); Vt. Const. ch. II, § 68 (“[A] competent number of schools ought to be maintained in each town unless the general assembly permits other provisions for the convenient instruction of youth.”); Va. Const. art. VIII, § 1 (“The General Assembly shall provide for a system of free public elementary and secondary schools for all children of school age throughout the Commonwealth, and shall seek to ensure that an educational program of high quality is established and continually maintained.”); Wash. Const. art. 9, § 1 (“It is the paramount duty of the state to make ample provision for the education of all children residing within its borders....”), § 2 (“The legislature shall provide for a general and uniform system of public schools.”); W.Va. Const. art. XII, § 1 (“The Legislature shall provide, by general law, for a thorough and efficient system of free schools.”); Wyo. Const. art. 7, § 1 (“The legislature shall provide for the establishment and maintenance of a complete and uniform system of public instruction, embracing free elementary schools of every needed kind and grade....”).

16 See Ariz. Const. art. XI, § 1; Ark. Const. art. 14, § 1; Colo. Const. art. IX, § 2; Del. Const. art. X, § 1; Fla. Const. art. IX, § 1(a); Ga. Const. art. VIII, § 1; Idaho Const. art. IX, § 1; Ill. Const. art. X, § 1; Ky. Const. § 183; Md. Const. art. VIII, § 1; Minn. Const. art. XIII, § 1; Mont. Const. art. X, § 1(3); Nev. Const. art. 11, § 2; N.J. Const. art. VIII, § 4, ¶ 1; N.M. Const. art. XII, § 1; N.C. Const. art. IX, § 2(1); Or. Const. art. VIII, § 3; Pa. Const. art. III, § 14; Tex. Const. art. VII, § 1; Va. Const. art. VIII, § 1; Wash. Const. art. 9, § 2; W.Va. Const. art. XII, § 1; Wyo. Const. art. 7, § 1.

17 Although we interpreted the meaning of the education clause in *Kleen*, that does not foreclose the possibility that the claims now before us raise a political question. *Kleen* involved a question of legislative spending authority. 237 Iowa at 1161, 23 N.W.2d at 905. We interpreted the education clause as a grant of “broad authority” to the legislature. *Id.* at 1166, 23 N.W.2d at 907. This case involves the question whether the education clause provides justiciable rights and thus limits the legislature.

There is a political question doctrine in Iowa as elsewhere. See, e.g., *Dwyer*, 542 N.W.2d at 495–96; *State ex rel. Turner v. Scott*, 269 N.W.2d 828, 831–32 (Iowa 1978). Sometimes, “doing our job” involves recognizing that the clause in question delegates authority to another branch of government. But we defer to another day whether claims by public school students and parents under the education clause relating to the quality of their education present a nonjusticiable political question.

18 We have regularly referred to article I, section 6 as the “equal protection clause” of the Iowa Constitution. See, e.g., *Rojas v. Pine Ridge Farms, L.L.C.*, 779 N.W.2d 223, 229 (Iowa 2010); *War Eagle Vill. Apartments v. Plummer*, 775 N.W.2d 714, 723 (Iowa 2009); *Varnum v. Brien*, 763 N.W.2d 862, 872 (Iowa 2009); *State v. Wade*, 757 N.W.2d 618, 621 (Iowa 2008); *State v. Mitchell*, 757 N.W.2d 431, 435 (Iowa 2008); *Timberland Partners XXI, LLP v. Iowa Dep’t of Revenue*, 757 N.W.2d 172, 173–74 (Iowa 2008); *Houck v. Iowa Bd. of Pharmacy Exam’rs*, 752 N.W.2d 14, 21 (Iowa 2008); *In re Det. of Hennings*, 744 N.W.2d 333, 338–39 (Iowa 2008); *Ames Rental Prop. Ass’n v. City of Ames*, 736 N.W.2d 255, 261 (Iowa 2007); *In re S.A.J.B.*, 679 N.W.2d 645, 648 (Iowa 2004). On a few occasions, none more recent than 2001, we have referred to it as the “privileges and immunities clause.” See *Perkins v. Bd. of Supervisors*, 636 N.W.2d 58, 71 (Iowa 2001); *Utilicorp United Inc. v. Iowa Utils. Bd.*, 570 N.W.2d 451, 455 (Iowa 1997); *Bennett v. City of Redfield*, 446 N.W.2d 467, 474 (Iowa 1989); *Koch v. Kostichek*, 409 N.W.2d 680, 683 (Iowa 1987).

While labels should not affect the underlying analysis, it is important to recognize that article I, section 6, like the Federal Equal Protection Clause, deals with equality and uniformity—i.e., laws “of a general nature” having “a uniform operation” and the legislature not granting privileges to a citizen or class of citizens that “upon the same terms [do] not equally belong to all citizens.” In this respect, it resembles the Equal Protection Clause of the Fourteenth Amendment to the U.S. Constitution. By the same token, it differs dramatically from the Privileges and Immunities Clause of the Fourteenth Amendment to the U.S. Constitution which by its terms protects certain privileges and immunities of “citizens of the United States” from being abridged by the states. U.S. Const. amend. XIV, § 1. The Fourteenth Amendment Privileges and Immunities Clause shields certain rights of national citizenship from state interference. *Saenz v. Roe*, 526 U.S. 489, 501–504, 119 S.Ct. 1518, 1525–27, 143 L.Ed.2d 689, 704–05 (1999).

19 We are not holding that a claim under the equal protection clause can never present a nonjusticiable political question. See, e.g., *Vieth v. Jubelirer*, 541 U.S. 267, 281–306, 124 S.Ct. 1769, 1778–92, 158 L.Ed.2d 546, 560–76 (2004) (stating the view of four Justices that partisan gerrymandering claims under the Federal Equal Protection Clause and other U.S. constitutional provisions constitute a nonjusticiable political question).

20 The provision is now found at Iowa Code section 282.18(7).

21 This is not imposing an “intent” requirement. We are not saying the State needs to have intentionally discriminated against students from West Harrison, or Davenport, or Des Moines, for example. But the State must have done

something that treats these students differently from other students, as opposed to merely having failed to enact statewide standards and requirements favored by the plaintiffs. In a disparate funding case, the unequal funding can itself constitute the denial of equal protection, but plaintiffs do not allege there are any discrepancies of funding in Iowa.

- 22 Plaintiffs allege that they are being denied “equal access” to education, but these catchwords obscure a critical point. Nothing in the petition alleges that the defendants (i.e., the state government and state officials of Iowa) have passed any law, adopted any regulation, or undertaken any measure that treats students differently from one district to another. To the contrary, plaintiffs fault the defendants for not implementing statewide standards that would affirmatively eradicate district-to-district differences—e.g., in average student performance or average teacher qualification. “Failure to equalize differences” is not the same as treating people differently.
- 23 If there is a constitutional right to an “effective education,” then alleging that the defendants have failed to provide such an education amounts to a mere legal conclusion.
- 24 In *Midwest Check Cashing, Inc.*, the plaintiff brought an equal protection challenge to a state law that limited payday loans but allegedly did not limit them enough. 728 N.W.2d at 403 (“these limitations are not as protective as Richey would like”). We expressed “serious[ ] doubt” that the plaintiff had shown sufficient state action for equal protection or substantive due process purposes or that she had been sufficiently classified for equal protection purposes. *Id.* at 404 n. 6. In any event, we found the law met the rational basis test. *Id.* at 404–05. This case is somewhat similar, in that plaintiffs are complaining about the state’s *failure to act*, not state action itself. As we have already discussed, we do not believe the petition alleges actual disparate treatment by the state government as is necessary for an equal protection claim, but even if it did, the facts alleged do not demonstrate the absence of a rational basis.
- 25 We believe the only relevant due process concept here is one of substantive due process, not procedural due process. Procedural due process requires that certain procedures be afforded (e.g., notice and an opportunity to be heard) before the government deprives a citizen of a liberty or property interest. *Smokers Warehouse Corp.*, 737 N.W.2d at 111. The plaintiffs are not complaining about the *procedures* by which educational laws and requirements have been enacted in Iowa or applied to themselves. They do not dispute that those policy choices have been made democratically by the people’s elected representatives in the legislative and executive branches. Their quarrel is with the substance of Iowa’s educational policies. *Id.* (holding that where the plaintiffs do not clearly identify the nature of their due process claim, “we assume it is a substantive due process argument because they do not discuss any notice or hearing deficiencies”).
- 26 We do not think a resolution of this case requires us to review the history of education generally or what past Iowa governors have said on the subject. We are judges, not historians. For judges, some history, such as our own precedent, is highly relevant. But there are risks when we draw on political history as source material for judicial decisionmaking. One risk is that we may unwittingly diminish the importance of more relevant historical events, such as the ratification debates on the Iowa Constitution, by submerging them in other political history that has only background importance. Another risk is that political trends might then be used to justify the outcome in a particular case. It is not surprising to us that Iowa’s governors have believed education to be a critical responsibility of government. But demonstrating that education has been a vital concern of the political branches of government does not answer the present question whether this particular case ought to proceed through the judicial branch.
- 27 See, e.g., *Comm. for Educ. Rights v. Edgar*, 174 Ill.2d 1, 220 Ill.Dec. 166, 672 N.E.2d 1178, 1189 (1996) (“[Q]uestions relating to the quality of education are solely for the legislative branch to answer.”); *Hornbeck v. Somerset Cnty. Bd. of Educ.*, 295 Md. 597, 458 A.2d 758, 790 (1983) (“The quantity and quality of educational opportunities to be made available to the State’s public school children is a determination committed to the legislature or to the people....”); *Neb. Coal. for Educ. Equity & Adequacy v. Heineman*, 273 Neb. 531, 731 N.W.2d 164, 181 (2007) (“[I]t is beyond our ken to determine what is adequate funding for public schools. This court is simply not the proper forum for resolving broad and complicated policy decisions or balancing competing political interests.”); *Londonderry Sch. Dist. SAU No. 12 v. State*, 154 N.H. 153, 907 A.2d 988, 996 (2006) (noting “concern that this court or any court not take over the legislature’s role in shaping educational and fiscal policy”); *Okl. Educ. Ass’n v. State ex rel. Okla. Legislature*, 158 P.3d 1058, 1066 (Okla.2007) (“[T]he important role of education in our society does not allow us to override the constitutional restrictions placed on our judicial authority.”); *Marrero ex rel. Tabalas v. Commonwealth*, 559 Pa. 14, 739 A.2d 110, 113–14 (1999) (“[T]his court is ... unable to judicially define what constitutes an ‘adequate’ education or what funds are ‘adequate’ to support such a program.”); *City of Pawtucket v. Sundlun*, 662 A.2d 40, 62 (R.I.1995) (“[T]he level of state educational funding is largely a matter for the Legislature, which possesses the ‘expertise and familiarity with local problems implicated in the raising and disposition of public revenues associated with public education.’” (quoting *Hornbeck*, 458 A.2d at 786)); *Abbeville Cnty. Sch. Dist. v. State*, 335 S.C. 58, 515 S.E.2d 535, 541 (1999) (“We do not intend the courts of this State to become super-legislatures or super-school boards.”); *Kukor v. Grover*, 148 Wis.2d 469, 436 N.W.2d 568, 583 (1989) (“Because issues such as equality in education are peppered



with political perceptions and emotionally laden views, we have carefully restrained our consideration of the constitutional issues before us...."); see also *San Antonio Indep. Sch. Dist. v. Rodriguez*, 411 U.S. 1, 42, 93 S.Ct. 1278, 1301, 36 L.Ed.2d 16, 48 (1973) ("In addition to matters of fiscal policy, this case also involves the most persistent and difficult questions of educational policy, another area in which this Court's lack of specialized knowledge and experience counsels against premature interference with the informed judgments made at the state and local levels.").

- 28 Justice Wiggins' dissent asserts our majority decision "appears to overrule" *Racing Ass'n of Central Iowa v. Fitzgerald (RACI II)*, 675 N.W.2d 1 (Iowa 2004). *RACI II* as a practical matter has been limited to its facts. I would expressly overrule *RACI II* as plainly erroneous. The *RACI II* majority, purporting to apply the federal rational-basis test, held that a tax differential for casino slot machine revenue violated the equal protection clause of the Iowa Constitution on remand after the unanimous United States Supreme Court had held the differential did not violate federal equal protection. 675 N.W.2d at 3. The *RACI II* majority thereby essentially took the position that the nine justices of the United States Supreme Court were irrational in applying the same rational-basis test in the same case, despite the well-settled and long-standing tradition of judicial deference to legislative economic regulation and tax classifications. *RACI II* was wrongly decided for the reasons set forth in the eloquent separate dissents by Justices Cady and Carter. See *id.* at 16–17 (Carter, J., dissenting); *id.* at 17–28 (Iowa 2002) (Cady, J., dissenting); see also *Racing Ass'n of Cent. Iowa v. Fitzgerald (RACI I)*, 648 N.W.2d 555, 563–64 (Iowa 2002) (Neuman, J., dissenting, joined by Carter and Cady, JJ.); *Fitzgerald v. Racing Ass'n of Cent. Iowa*, 539 U.S. 103, 123 S.Ct. 2156, 156 L.Ed.2d 97 (2003) (reversing *RACI I* on federal equal protection grounds).
- 29 Justice Mansfield's opinion appears to be a plurality opinion because it reaches the merits of the plaintiffs' claims under the education clause, due process clause, and privileges and immunities clause of the Iowa Constitution. Although Justice Waterman concurs in the opinion, he does so by finding the plaintiffs' claims to be nonjusticiable political questions just as the district court did.
- 30 In special concurrences, members of this court urged the majority to abandon the contact-sports exception when neither party so urged in their briefs. See *Feld v. Borkowski*, 790 N.W.2d 72, 81 (Iowa 2010) (Wiggins, J., specially concurring); *id.* at 82 (Appel, J., concurring in part and dissenting in part). The specially concurring members argued the issue of abandonment of the contact-sports exception was inextricably intertwined with the case because, under the particular circumstances of the case, resolution of the contact-sports-exception-issue was necessary for the proper disposition of the case on retrial. *Feld*, 790 N.W.2d at 85 (Appel, J., concurring in part and dissenting in part); see also *Piper Aircraft Co. v. Reyno*, 454 U.S. 235, 246–47 n. 12, 102 S.Ct. 252, 261 n. 12, 70 L.Ed.2d 419, 430 n. 12 (1981) (courts may consider questions outside the scope of the issues of the order granting review when resolution of those issues is necessary to properly dispose of the case). However, the majority rejected the arguments made in the special concurrences in *Feld*, and thus, the law of this State required a party to brief and argue an issue in this court before we would consider it on appeal. Even if the special concurrences in *Feld* were applicable in this case, the merits of the issues reached by Justice Mansfield's opinion and the concurring opinion of Chief Justice Cady were not inextricably intertwined with the political question issues raised by this appeal. The majority and special concurrences seem to signal a shift in our error preservation rules.
- 31 Within the first three minutes of the plaintiffs' oral argument, Justice Mansfield began asking questions about the equal protection clause.
- 32 Justice Mansfield's opinion and the concurring opinion of Chief Justice Cady ignore this constitutional argument because it was not raised in the district court. To me, it is inconsistent to decide the case on appeal on issues and arguments that were not raised below, but to deny the plaintiffs their day in court to develop all of their arguments fully, including those arguments they could have made under article IX, division 1, section 12 of the Iowa Constitution. After all, the State did not appeal the merits of this case. If these opinions had not reached beyond the arguments presented by the parties on appeal and we had decided this appeal in favor of the plaintiffs solely on the issue of political question, it is logical to conclude the plaintiffs would have had the opportunity to develop more fully their arguments in the district court on remand.
- 33 In his inaugural address in 1987, Governor Branstad, in calling for educational reform, stated that "our commitment to education is not new" and cited "our first territorial Governor, Robert Lucas." 1987 S.J. 94. Governor Branstad further made reference to the state's "historic commitment to education." *Id.* at 95.
- 34 My citation to the education provisions of the Universal Declaration of Human Rights has drawn criticism today. The criticism might more appropriately be aimed at Eleanor Roosevelt, who chaired the drafting committee that produced the Declaration, or to the members of the United States Senate, which ratified it. I recognize that the Declaration was designed to be nonbinding—indeed, the decision to use the term "Declaration" was modeled on the United States

Declaration of Independence. Of course, I do not suggest that the participants in the Iowa constitutional conventions relied on the Declaration, which was approved a hundred years later. I do suggest, however, that the Declaration reinforces the widely accepted view that education is broadly regarded as a basic human right and that it is integrally related to the development of the individual. That point, it seems, has not been assailed.

35 In looking at legal questions from a broad perspective for nonbinding but instructive lessons, I am in good company. The leaders of the American Revolution and the founding fathers certainly did. See, e.g., Bernard Bailyn, *The Ideological Origins of the American Revolution* 23–44 (Enlarged ed. 1992) (citing extensive use of foreign authorities in publications associated with the American Revolution); James Madison, *Notes of the Debates in the Federal Convention of 1787*, at 54, 59, 63, 76, 83, 100, 126, 132, 136–37, 141, 143, 145, 161, 205, 207, 214–15, 223, 241, 255–56, 307, 334, 359, 364, 418, 463 (Bicentennial ed., W.W. Norton & Co. 1987) (discussing French judiciary; pluralistic military command in Holland; Roman tribunals; the union of England and Scotland; Dutch seduction into the views of France; lessons of Dutch, Swiss, Helvetic, Germanic, Lycian, and Belgic confederacies; dangers of corruption, as illustrated by leadership in Sweden, France, and England; Polish and German elections; analogy to the law of nations in fashioning relationship between the state and federal governments; experience in Persia, Austria, France, Switzerland, and Russia; commerce involving France, England, and Spain; means of defense against a foreign danger in Rome and Europe as examples of instruments of tyranny; importance of an efficient government, as illustrated by German and Grecian experiences; Polish elections; military cooperation between France and Holland; Athenians and foreign affairs; the Kingdom of France as governing by force; separation of powers and the Ephori at Sparta; structures in preexisting state constitutions; England and Great Britain); see also *The Federalist No. 18* (Alexander Hamilton & James Madison) (stating the “Achaean league ... was another society of Grecian republics, which supplies us with valuable instruction”), *No. 19* (Alexander Hamilton & James Madison) (referencing the governments of Greece, Sweden, Germany, and the United Netherlands), *No. 39* (James Madison) (discussing the characteristics of a republican form of government and comparing the governments of Holland, Venice, Poland, and England), *No. 43* (James Madison) (discussing Sparta, Greece, and Crete), *No. 52* (James Madison) (referencing Irish elections), *No. 75* (Alexander Hamilton) (citing examples of the Roman Tribuneship, the Polish Diet, and the States-General of the Netherlands). In addition, the founders were all familiar with international authorities such as Vattel, Grotius, Montesquieu, Burlamaqui, and Pufendorf. See generally Donald S. Lutz, *The Relative Influence of European Writers on Late Eighteenth-Century American Political Thought*, 78 Am. Pol. Sci. Rev. 189, 193–94 (1984).

References to international law and experience have been made by distinguished Justices of the United States Supreme Court, including, but not limited to, Justices Marshall, Story, Holmes, Frankfurter, Jackson, Rehnquist, Breyer, Ginsberg, and Kennedy. See, e.g., *Roper v. Simmons*, 543 U.S. 551, 577–78, 125 S.Ct. 1183, 1199–1200, 161 L.Ed.2d 1, 26–27 (2005) (Kennedy, J.); *Grutter v. Bollinger*, 539 U.S. 306, 344, 123 S.Ct. 2325, 2347, 156 L.Ed.2d 304, 342 (2003) (Ginsburg, J., concurring); *Printz v. United States*, 521 U.S. 898, 976–77, 117 S.Ct. 2365, 2405, 138 L.Ed.2d 914, 970–71 (1997) (Breyer, J., dissenting); *Washington v. Glucksberg*, 521 U.S. 702, 718 n. 16, 117 S.Ct. 2258, 2266 n. 16, 138 L.Ed.2d 772, 786 n. 16 (1997) (Rehnquist, C.J.); *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579, 651–52, 72 S.Ct. 863, 878, 96 L.Ed. 1153, 1207–08 (1952) (Jackson, J., concurring); *Rochin v. California*, 342 U.S. 165, 170–71 & n. 4, 72 S.Ct. 205, 208–09 & n. 4, 96 L.Ed. 183, 189 & n. 4 (1952) (Frankfurter, J.); *Block v. Hirsh*, 256 U.S. 135, 155, 158, 41 S.Ct. 458, 459–60, 65 L.Ed. 865, 870, 872 (1921) (Holmes, J.); *Brown v. United States*, 12 U.S. (8 Cranch) 110, 128–36, 3 L.Ed. 504, 510 (1814) (Marshall, C.J.); *Brown*, 12 U.S. (8 Cranch) at 131–38, 3 L.Ed. at 511–14 (Story, J., dissenting).

Similarly, state court cases have often cited international norms in a wide variety of cases. See, e.g., *Sterling v. Cupp*, 290 Or. 611, 625 P.2d 123, 131 & n. 21 (1981) (citing the Universal Declaration of Human Rights in reviewing constitutionality of state law allowing female officers to perform body searches of male inmates); *Egert v. City of Seattle*, 81 Wash.2d 840, 505 P.2d 801, 802 (1973) (citing the Universal Declaration of Human Rights in vindicating the right to freedom of movement); *Pauley v. Kelly*, 162 W.Va. 672, 255 S.E.2d 859, 864 n. 5 (1979) (citing the Universal Declaration of Human Rights in support for state constitutional right to education).

The framers of the Iowa Constitution applied a broad perspective to their task as well, specifically in the field of education. George W. Ells, in debating the importance of education during the 1857 constitutional convention, observed:

[I]n those countries of Europe where education has taken the deepest root, and been the most generally diffused among the masses, that the people are correspondingly steady, firm and abiding in their attachment to free and liberal institutions of all kinds. The Germans are a striking illustration of the truth of this assertion. With them, education is the rule, and ignorance the exception; while with the volatile Frenchman, the reverse is true.

1 *Debates* at 602. It is not surprising that our caselaw has on occasion cited maxims or norms of international law. See *Langlas v. Iowa Life Ins. Co.*, 245 Iowa 713, 718, 63 N.W.2d 885, 888 (1954) (citing international law treatise in case involving insurance claim arising out of Korean war); *Case v. Olson*, 234 Iowa 869, 874, 14 N.W.2d 717, 720 (1944) (citing international law of war in case involving application of soldiers' preference clause in civil service statute); *Hill v. Baker*, 32 Iowa 302, 310 (1871) (execution of deed held invalid as contrary to international law); *Morrison v. Springer*, 15 Iowa 304, 316 (1863) (citing maxims of international law in jurisdictional matter).

Consistent with the legal traditions exemplified by the framers of both the Iowa and Federal Constitutions, the

University of Iowa College of Law has a program in international and comparative law. Its website states that international and comparative law "provides an essential theoretical foundation for all lawyers by affording unique insight into the nature of law and legal process." See The University of Iowa College of Law, International and Comparative Law Program (last visited April 5, 2012), <http://www.law.uiowa.edu/international/>.

- 36 See, e.g., David Schuman, *The Right to "Equal Privileges and Immunities": A State's Version of "Equal Protection,"* 13 *Vt. L.Rev.* 221 (1988) [hereinafter Schuman]; Jeffrey M. Shaman, *The Evolution of Equality in State Constitutional Law*, 34 *Rutgers L.J.* 1013 (2003) [hereinafter Shaman]; Jonathan Thompson, *The Washington Constitution's Prohibition on Special Privileges and Immunities: Real Bite for "Equal Protection" Review of Regulatory Legislation?*, 69 *Temp. L.Rev.* 1247 (1996); Robert F. Williams, *Foreword: The Importance of an Independent State Constitutional Equality Doctrine in School Finance Cases and Beyond*, 24 *Conn. L.Rev.* 675 (1992).
- 37 In *Papasan v. Allain*, 478 U.S. 265, 285, 106 S.Ct. 2932, 2944, 92 L.Ed.2d 209, 232 (1986), Justice White noted that the issue of whether there was a fundamental right to a minimally adequate education was not definitively resolved in *San Antonio*. See also Preston C. Green & Bruce D. Baker, *Circumventing Rodriguez: Can Plaintiffs Use the Equal Protection Clause to Challenge School Finance Disparities Caused by Inequitable State Distribution Policies?*, 7 *Tex. F. on C.L. & C.R.* 141, 150 (2002) (noting unresolved question of federal law).
- 38 See, e.g., *Op. of the Justices*, 624 So.2d 107, 112 (Ala.1993); *Roosevelt Elementary Sch. Dist. No. 66 v. Bishop*, 179 *Ariz.* 233, 877 P.2d 806, 811–12 (1994); *DuPree v. Alma Sch. Dist. No. 30*, 279 *Ark.* 340, 651 S.W.2d 90, 91 (1983); *Lujan v. Colo. State Bd. of Educ.*, 649 P.2d 1005, 1010–11 (Colo.1982); *Horton v. Meskill*, 172 *Conn.* 615, 376 A.2d 359, 361 (1977); *McDaniel v. Thomas*, 248 *Ga.* 632, 285 S.E.2d 156, 157 (1981); *Thompson v. Engelking*, 96 *Idaho* 793, 537 P.2d 635, 636 (1975); *Comm. for Educ. Rights v. Edgar*, 174 *Ill.2d* 1, 220 *Ill.Dec.* 166, 672 N.E.2d 1178, 1182 (1996); *Unified Sch. Dist. No. 229 v. State*, 256 *Kan.* 232, 885 P.2d 1170, 1173 (1994); *Rose v. Council for Better Educ., Inc.*, 790 S.W.2d 186, 190 (Ky.1989); *Hornbeck v. Somerset Cnty. Bd. of Educ.*, 295 *Md.* 597, 458 A.2d 758, 764 (1983); *McDuffy*, 615 N.E.2d at 522; *Helena Elementary Sch. Dist. No. 1 v. State*, 236 *Mont.* 44, 769 P.2d 684, 685 (1989); *Campaign for Fiscal Equity, Inc. v. State*, 86 *N.Y.2d* 307, 631 *N.Y.S.2d* 565, 655 N.E.2d 661, 663 (1995); *Leandro v. State*, 346 *N.C.* 336, 488 S.E.2d 249, 252 (1997); *City of Pawtucket v. Sundlun*, 662 A.2d 40, 42 (R.I.1995); *Abbeville Cnty. Sch. Dist. v. State*, 335 *S.C.* 58, 515 S.E.2d 535, 538 (1999); *Tenn. Small Sch. Sys. v. McWhorter*, 851 *S.W.2d* 139, 140 (Tenn.1993); *Edgewood Indep. Sch. Dist. v. Kirby*, 777 *S.W.2d* 391, 392 (Tex. 1989); *Brigham v. State*, 166 *Vt.* 246, 692 A.2d 384, 385 (1997); *Scott v. Commonwealth*, 247 *Va.* 379, 443 S.E.2d 138, 140 (1994); *Pauley*, 255 S.E.2d at 861; *Kukor v. Grover*, 148 *Wis.2d* 469, 436 N.W.2d 568, 570 (1989).
- 39 *Ala. Coal. for Equity, Inc. v. Hunt*, CV-90-883-R, CV-91-0117, 1993 WL 204083 (Ala.Cir.Ct. April 1, 1993).
- 40 See *Bishop*, 877 P.2d at 816; *DuPree*, 651 S.W.2d at 93; *Horton*, 376 A.2d at 374–75; *Rose*, 790 S.W.2d at 189; *McDuffy*, 615 N.E.2d at 555–56; *Helena Elementary Sch. Dist. No. 1*, 769 P.2d at 685; *Claremont Sch. Dist. v. Governor*, 138 *N.H.* 183, 635 A.2d 1375, 1376 (1993); *Campaign for Fiscal Equity, Inc.*, 631 *N.Y.S.2d* 565, 655 N.E.2d at 663; *Leandro*, 488 S.E.2d at 255; *Abbeville Cnty. Sch. Dist.*, 515 S.E.2d at 538; *Tenn. Small Sch. Sys.*, 851 S.W.2d at 141; *Kirby*, 777 S.W.2d at 392; *Brigham*, 692 A.2d at 385; *Seattle Sch. Dist. No. 1 v. State*, 90 *Wash.2d* 476, 585 P.2d 71, 92 (1978); *Pauley*, 255 S.E.2d at 878; *Washakie Cnty. Sch. Dist. No. One v. Herschler*, 606 P.2d 310, 337 (Wyo.1980).
- 41 See *Matanuska-Susitna Borough Sch. Dist. v. State*, 931 P.2d 391, 394 (Alaska 1997); *Lujan*, 649 P.2d at 1010–11; *Coal. for Adequacy & Fairness in Sch. Funding, Inc. v. Chiles*, 680 So.2d 400, 402 (Fla.1996), superseded by amendment, Florida Const. art. IX, § 1 (1998 amend.), as recognized in *Bush v. Holmes*, 919 So.2d 392 (Fla.2006); *McDaniel*, 285 S.E.2d at 168; *Comm. for Educ. Rights*, 220 *Ill.Dec.* 166, 672 N.E.2d at 1180–81; *Montoy v. State*, 278 *Kan.* 769, 120 P.3d 306, 308 (2005); *Sch. Admin. Dist. No. 1 v. Comm'r*, 659 A.2d 854, 855 (Me.1995); *Hornbeck*, 458 A.2d at 790; *Skeen v. State*, 505 N.W.2d 299, 320 (Minn.1993); *Neb. Coal. for Educ. Equity & Adequacy v. Heineman*, 273 *Neb.* 531, 731 N.W.2d 164, 169 (2007); *Okla. Educ. Ass'n v. State ex rel. Okla. Legislature*, 158 P.3d 1058, 1061 (Okla.2007); *Sundlun*, 662 A.2d at 42.
- 42 *Matanuska-Susitna Borough Sch. Dist.*, 931 P.2d at 399–401 (holding equal protection claim challenging school finance was subject to sliding scale scrutiny under state equal protection clause, but no evidence presented to show that plaintiffs were disparately affected by finance system); *Sch. Admin. Dist. No. 1*, 659 A.2d at 857 n. 5 (stating allegations did not claim education fell beneath the basic minimum skills necessary for the enjoyment of rights of speech and full participation in the political process); *Skeen*, 505 N.W.2d at 302–03 (noting the plaintiffs conceded that they received an adequate education, therefore satisfying the fundamental right to a general and adequate education); *Scott*, 443 S.E.2d at 142 (holding education is a fundamental right, but finding no violation on the facts); *Kukor*, 436 N.W.2d at 579 (finding equal opportunity in education is a fundamental right, but no violation on facts).

- 43 See, e.g., *Coal. for Adequacy & Fairness*, 680 So.2d at 410–11 (Anstead, J., dissenting in part); *Montoy*, 120 P.3d at 311–18 (Beier, J., concurring); *Lujan*, 649 P.2d at 1028–32 (Dubofsky, J., dissenting); *Lujan*, 649 P.2d at 1032–48 (Lohr, J., dissenting); *Rose*, 790 S.W.2d at 220–29 (Vance, J., dissenting); *Hombeck*, 458 A.2d at 791–805 (Cole, J., dissenting); *McDuffy*, 615 N.E.2d at 556–57 (O'Connor, J., concurring in part & dissenting in part); *Kukor*, 436 N.W.2d at 587–94 (Bablitch, J., dissenting).
- 44 See, e.g., *Lake View Sch. Dist. No. 25 v. Huckabee*, 351 Ark. 31, 91 S.W.3d 472, 479 (2002) (noting the trial involved nineteen days, thirty-six witnesses, and 187 exhibits); *DuPree*, 651 S.W.2d at 95 (noting trial with thirty-nine witnesses, 287 exhibits, and 7400 pages of testimony); *Horton*, 376 A.2d at 361 (citing “thorough and exhaustive record submitted by the trial court”).
- 45 See, e.g., *Ex parte James*, 836 So.2d 813, 819 (Ala.2002); *Comm. for Educ. Rights*, 220 Ill.Dec. 166, 672 N.E.2d at 1193; *Neb. Coal. for Educ. Equity & Adequacy*, 731 N.W.2d at 183; *Okla. Educ. Ass'n*, 158 P.3d at 1066; *Sundlun*, 662 A.2d at 62.
- 46 See Ratner, 63 Tex. L.Rev. at 814–16 (placing Iowa's constitutional provisions in a third category containing “a stronger and more specific education mandate” than in the first two groups, but less strong than a fourth group).
- 47 See *Op. of the Justices*, 624 So.2d at 110–11 (“liberal”); *Lake View*, 91 S.W.3d at 495 (“general, suitable, and efficient”); *Bishop*, 877 P.2d at 808 (“general and uniform”); *Rose*, 790 S.W.2d at 212–13 (“efficient”); *Hombeck*, 458 A.2d at 780 (“thorough and efficient”); *Campaign for Fiscal Equity*, 631 N.Y.S.2d 565, 655 N.E.2d at 665 (“a system of free common schools”); *DeRolph*, 728 N.E.2d at 1001 (“thorough and efficient”); *Tenn. Small Sch. Sys.*, 851 S.W.2d at 150–51 (“a system of free common schools”).
- 48 See *Serrano I*, 96 Cal.Rptr. 601, 487 P.2d at 1248–49.
- 49 See *Lujan*, 649 P.2d at 1010–11.
- 50 See *Coal. for Adequacy & Fairness*, 680 So.2d at 406.
- 51 See *McDaniel*, 285 S.E.2d at 165.
- 52 See *Evans*, 850 P.2d at 734.
- 53 See *Bonner ex rel. Bonner v. Daniels*, 907 N.E.2d 516, 520 (Ind.2009).
- 54 See *Serrano II*, 135 Cal.Rptr. 345, 557 P.2d at 951; *Robinson v. Cahill*, 69 N.J. 133, 351 A.2d 713, 720 (1975).
- 55 See *Thompson*, 537 P.2d at 644–45; *Comm. for Educ. Rights*, 220 Ill.Dec. 166, 672 N.E.2d at 1194–95.
- 56 See, e.g., *Lujan*, 649 P.2d at 1022–23. It should be noted, however, that in *Lujan* the plaintiffs failed to plead or prove a denial of educational opportunity. This amounts to the failure to plead and prove an adequacy claim. *Id.* at 1018; see also *McDaniel*, 285 S.E.2d at 156.
- 57 See, e.g., *DuPree*, 651 S.W.2d at 93; *Tenn. Small Sch. Sys.*, 851 S.W.2d at 154.
- 58 See, e.g., William E. Thro, *Judicial Paradigms of Educational Equality*, 174 Educ. Law Rep. 1, 7 (2003).
- 59 William E. Thro, Note, *To Render Them Safe: The Analysis of State Constitutional Provisions in Public School Finance Reform Litigation*, 75 Va. L.Rev. 1639, 1666 & n. 118 (1989) (characterizing Iowa's education provisions as a Category III provision that provides a “stronger and more specific” mandate than Categories I and II, but less specific than Category IV). On the other hand, another commentator has noted that other states, such as Virginia, Montana, Louisiana, and Washington, have education clauses that seem to demand a higher quality of education than the Iowa



provisions and suggests that the Iowa provision is among state constitutional provisions "[s]etting [l]ower [s]tandards." See Molly McUsic, *The Use of Education Clauses in School Finance Reform Litigation*, 28 Harv. J. on Legis. 307, 334–37 (1991).

60 As noted above, the Universal Declaration of Human Rights, article 26, describes the right to a public education as a human right. The Universal Declaration has been ratified by the United States. The case of *The Paquete Habana*, 175 U.S. 677, 20 S.Ct. 290, 44 L.Ed. 320 (1900), stands for the proposition that international treaty obligations are binding upon United States courts. The West Virginia Supreme Court relied on the Universal Declaration in declaring that education is a fundamental right under its state constitution. *Pauley*, 255 S.E.2d at 863 n. 5, 878.

61 See, e.g., *DuPree*, 651 S.W.2d at 93; *Serrano II*, 135 Cal.Rptr. 345, 557 P.2d at 952; *Horton*, 376 A.2d at 373; *Rose*, 790 S.W.2d at 206; *Skeen*, 505 N.W.2d at 313–14; *Robinson*, 351 A.2d at 720; *Tenn. Small Sch. Sys.*, 851 S.W.2d at 154–56; *Scott*, 443 S.E.2d at 142; *Seattle Sch. Dist. No. 1*, 585 P.2d at 92; *Pauley*, 255 S.E.2d at 878; *Kukor*, 436 N.W.2d at 579.

62 There is a suggestion that to find any meaningful judicial role in the field of education under a state constitution would set a "dangerous" precedent. Such an extreme characterization is belied by court decisions in rulings in many states, including Texas, New York, California, South Carolina, New Jersey, Arkansas, West Virginia, Kentucky, and Washington. The suggestion of dangerousness would likely be surprising to the four sober dissenting Justices of the United States Supreme Court in *San Antonio*. While the decisions of the various state supreme courts and the opinions of the four dissenting Justices in *San Antonio* are not, of course, "dangerous," they may be controversial. Of course, judicial decisions are driven by applicable legal principles and underlying facts, not by public approval or disapproval.

63 See, e.g., Robert C. Farrell, *Successful Rational Basis Claims in the Supreme Court from the 1971 Term Through Romer v. Evans*, 32 Ind. L.Rev. 357, 382 (1999) (noting different rational basis tests); Jennifer L. Greenblatt, *Putting the Government to the (Heightened, Intermediate, or Strict) Scrutiny Test: Disparate Application Shows Not All Rights and Powers Are Created Equal*, 10 Fla. Coastal L.Rev. 421, 477 (2009) (United States Supreme Court has plainly strayed from three-tiered approach); Gunther, 86 Harv. L.Rev. at 17–24 (noting dissatisfaction with tiers and tendency to intervene without strict scrutiny); R. Randall Kelso, *Standards of Review Under the Equal Protection Clause and Related Constitutional Doctrines Protecting Individual Rights: The "Base Plus Six" Model and Modern Supreme Court Practice*, 4 U. Pa. J. Const. L. 225, 230–33 (2002) (identifying three different types of rational basis review in United States Supreme Court cases); Raffi S. Baroutjian, Note, *The Advent of the Multifactor, Sliding-Scale Standard of Equal Protection Review: Out with the Traditional Three-Tier Method of Analysis, in with Romer v. Evans*, 30 Loy. L.A. L.Rev. 1277, 1301–05 (1997) (citing *Romer v. Evans*, 517 U.S. 620, 116 S.Ct. 1620, 134 L.Ed.2d 855 (1996), as example of stricter rational basis review under Federal Equal Protection Clause); Peter S. Smith, Note, *The Demise of Three-Tier Review: Has the United States Supreme Court Adopted A "Sliding Scale" Approach Toward Equal Protection Jurisprudence?*, 23 J. Contemp. L. 475, 480–88 (1997) (citing Justice Marshall dissents advocating sliding scale approach); Neelum J. Wadhvani, Note, *Rational Reviews, Irrational Results*, 84 Tex. L.Rev. 801, 803 (2006) (noting waffling between rational basis test—where any conceivable government interests is sufficient—and more stringent test, which includes inquiry regarding whether the actual government action taken is justifiable).

64 For a rich description of state constitutional provisions related to equal treatment under the law and the power of state courts to interpret them independently of federal law, see 1 Jennifer Friesen, *State Constitutional Law: Litigating Individual Rights, Claims, and Defenses* § 3:01, at 3–2 through 3–15 (4th ed.2006). See also Schuman, 13 Vt. L.Rev. at 221–22; Shaman, 34 Rutgers L.J. at 1029–56.

65 The claim that this court should not function as an elected school board creates a straw person. No one advocated interference with the daily administration of school boards in this case or in the dozens of other state court cases that have found a fundamental right to a basic education. While we must maintain a healthy respect for the other branches of government, we must fearlessly perform our role as judges to ensure that the other branches of government perform their duties in a manner consistent with the Iowa Constitution. Indeed, the very purpose of the privileges and immunities clause in the Iowa Constitution is to restrain elected officials from treating citizens differently in ways that do not make sense. Bromides about elections and ballot boxes do not assist the court in its performance of the difficult but essential role of judicial review established by *Marbury v. Madison*, 5 U.S. (1 Cranch) 137, 177, 2 L.Ed. 60, 73 (1803). To suggest that elected bodies always have the last word in educational matters is, of course, the argument raised in opposition to *Brown*.

66 The term "Our Localism" was coined by Richard Briffault in two important scholarly articles, Richard Briffault, *Our Localism: Part I—The Structure of Local Government Law*, 90 Colum. L.Rev. 1 (1990), and Richard Briffault, *Our Localism: Part II—Localism and Legal Theory*, 90 Colum. L.Rev. 346 (1990).

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**Thompson, Jeffrey [AG]**

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**From:** Westlaw@westlaw.com  
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## Thompson, Jeffrey [AG]

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**From:** Ranscht, David [AG]  
**Sent:** Thursday, February 02, 2017 5:39 PM  
**To:** Gavin, Meghan [AG]; Thompson, Jeffrey [AG]  
**Subject:** Misc Research Tidbits  
**Attachments:** 2009 Iowa Acts CH0057.pdf; Old Iowa Incompatibility Cases.pdf

The language in 69.8 that specifies a vacancy in LG is filled by appointment was enacted in 2009—session law is attached. The amendment is section 73 of the session law. Interestingly, the same bill also amended section 43.77, which discusses what constitutes a *ballot* vacancy. The amendment removed lieutenant governor from section 43.77. Most of the bill was about changes in administration of elections, so this provision appears to squeeze barely within the one-subject rule. The bill passed unanimously in both houses.  
(<https://www.legis.iowa.gov/legislation/billTracking/billHistory?ga=83&billName=HF475>)

I added to the stack of papers on Jeff's chair the relevant pages from the constitutional debates preceding the 1857 Constitution.

Also attached are two older Iowa cases (in one PDF) that seem to address how we would determine whether a person who holds two offices holds *incompatible* offices. They may apply to 69.2(1)(h), which says a vacancy occurs if an incumbent holds more than one elective office at the same level of government. Or, they may not apply at all if we determine the gov/LG are really one office.



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2. A person licensed under section 157.3 who enrolls in a barber school shall be granted full credit for each course successfully completed which meets the requirements of the barber school, which shall be credited toward the two thousand one hundred hour requirement, and the ten-month period does not apply. A person who has been a student in a school of cosmetology arts and sciences licensed under chapter 157 may enroll in a barber school and shall be granted, at the discretion of the school, at least half credit and up to full credit for each course successfully completed which meets the requirements of the barber school.

Sec. 10. Section 158.16, Code 2009, is amended to read as follows:  
158.16 PENALTY.

A person convicted of violating any of the provisions of this chapter shall be fined not to exceed one hundred thousand dollars.

Sec. 11. Section 691.6C, Code 2009, is amended to read as follows:  
691.6C STATE MEDICAL EXAMINER ADVISORY COUNCIL.

A state medical examiner advisory council is established to advise and consult with the state medical examiner on a range of issues affecting the organization and functions of the office of the state medical examiner and the effectiveness of the medical examiner system in the state. Membership of the state medical examiner advisory council shall be determined by the state medical examiner, in consultation with the director of public health, and shall include, but not necessarily be limited to, representatives from the office of the attorney general, the Iowa county attorneys association, the Iowa medical society, the Iowa association of pathologists, the Iowa association of county medical examiners, the departments of public safety and public health, the statewide emergency medical system, and the Iowa funeral directors association. The advisory council shall meet ~~on a quarterly or more frequent basis~~ on a regular basis, and shall be organized and function as established by the state medical examiner by rule.

Sec. 12. Sections 135.30, 148B.8, 155.7, 155.17, and 155.18, Code 2009, are repealed.

Sec. 13. EFFECTIVE DATE. The section of this Act amending section 153.13, being deemed of immediate importance, takes effect upon enactment.

Approved April 10, 2009

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## CHAPTER 57

### ELECTIONS AND VOTER REGISTRATION

*H.F. 475*

**AN ACT** making technical changes to the laws relating to elections and voter registration, making a penalty applicable, and including effective date and applicability date provisions.

*Be It Enacted by the General Assembly of the State of Iowa:*

Section 1. Section 2.27, Code 2009, is amended to read as follows:  
2.27 CANVASS OF VOTES FOR GOVERNOR.

The general assembly shall meet in joint session on the same day the assembly first convenes in January of 1979 and every four years thereafter as soon as both houses have been organized, and canvass the votes cast for governor and lieutenant governor and determine the election.

When the canvass is completed, the oath of office shall be administered to the persons or person so declared elected. Upon being inaugurated the governor shall deliver to the joint assembly any message the governor may deem expedient.

Sec. 2. Section 8A.412, subsection 11, Code 2009, is amended to read as follows:

11. Professional employees under the supervision of the attorney general, the state public defender, the secretary of state, the auditor of state, the treasurer of state, and the public employment relations board. However, employees of the consumer advocate division of the department of justice, other than the consumer advocate, are subject to the merit system.

Sec. 3. Section 39A.2, subsection 1, paragraph f, Code 2009, is amended to read as follows:

f. VOTING EQUIPMENT TAMPERING. Intentionally alters or damages any computer software or any physical part of a voting ~~machine~~ equipment, automatic tabulating equipment, or any other part of a voting system.

Sec. 4. Section 43.4, unnumbered paragraph 4, Code 2009, is amended to read as follows:

Within fourteen days after the date of the caucus the county central committee shall certify to the county commissioner the names of those elected as party committee members and delegates to the county convention. The commissioner shall retain precinct caucus records for twenty-two months. In addition, within fourteen days after the date of the precinct caucus, the chairperson of the county central committee shall deliver to the county commissioner all completed voter registration forms received at the caucus.

Sec. 5. Section 43.5, Code 2009, is amended to read as follows:

43.5 APPLICABLE STATUTES.

The provisions of chapters 39, ~~39A~~, 47, 48A, 49, 50, 51, 52, 53, 57, 58, 59, 61, 62, 68A, and 722 shall apply, so far as applicable, to all primary elections, except as hereinafter provided.

Sec. 6. NEW SECTION. 43.31 FORM OF OFFICIAL BALLOT — IMPLEMENTATION BY RULE.

The state commissioner shall adopt rules in accordance with chapter 17A to implement sections 43.27 through 43.30, section 43.36, sections 49.30 through 49.41, section 49.57, and any other provision of the law prescribing the form of the official ballot.

Sec. 7. Section 43.45, subsection 3, Code 2009, is amended by striking the subsection.

Sec. 8. Section 43.77, subsection 4, Code 2009, is amended to read as follows:

4. A vacancy has occurred in the office of senator in the Congress of the United States, ~~lieutenant-governor, secretary of state, auditor of state, treasurer of state, secretary of agriculture, or attorney general~~, under the circumstances described in section 69.13, less than eighty-nine days before the primary election and not less than eighty-nine days before the general election.

Sec. 9. Section 44.5, Code 2009, is amended to read as follows:

44.5 NOTICE OF OBJECTIONS.

When objections are filed notice shall ~~forthwith~~ immediately be given to the ~~affected~~ affected candidate ~~affected thereby.~~ The notice shall be addressed to the candidate's place of residence as given in the certificate of nomination, stating that objections have been made to said the certificate, also stating. The notice shall include the time and place such of the hearing at which the objections will be considered. The hearing shall be held not later than one week after the objection is filed.

Sec. 10. Section 45.1, subsections 2, 3, 4, 5, and 6, Code 2009, are amended to read as follows:

2. Nominations for candidates for a representative in the United States house of representatives may be made by nomination petitions signed by not less than the number of eligible electors equal to the number of signatures required in subsection 1 divided by the number of con-

gressional districts. Signers of the petition shall be eligible electors who are residents of the congressional district.

3. Nominations for candidates for the state senate may be made by nomination petitions signed by not less than one hundred eligible electors who are residents of the senate district.

4. Nominations for candidates for the state house of representatives may be made by nomination petitions signed by not less than fifty eligible electors who are residents of the representative district.

5. Nominations for candidates for offices filled by the voters of a whole county may be made by nomination petitions signed by eligible electors who are residents of the county equal in number to at least one percent of the number of registered voters in the county on July 1 in the year preceding the year in which the office will appear on the ballot, or by at least two hundred fifty eligible electors who are residents of the county, whichever is less.

6. Nominations for candidates for the office of county supervisor elected by the voters of a supervisor district may be made by nomination petitions signed by eligible electors who are residents of the supervisor district equal in number to at least one percent of the number of registered voters in the supervisor district on July 1 in the year preceding the year in which the office will appear on the ballot, or by at least one hundred fifty eligible electors who are residents of the supervisor district, whichever is less.

Sec. 11. Section 46.22, Code 2009, is amended to read as follows:  
46.22 VOTING.

Voting at judicial elections shall be by separate paper ballot, or optical scan ballot, or by voting machine in the space provided for public measures. If separate paper ballots are used, the election judges shall offer a ballot to each voter. If optical scan ballots are used, either a separate ballot or a distinct heading may be used to distinguish the judicial ballot. Separate ballot boxes for the general election ballots and the judicial election ballots are not required. The general election ballot and the judicial election ballot may be voted in the same voting booth.

Sec. 12. Section 47.3, Code 2009, is amended to read as follows:  
47.3 ELECTION EXPENSES.

1. The costs of conducting a special election called by the governor, general election, and the primary election held prior to the general election shall be paid by the county.

2. The cost of conducting other elections shall be paid by the political subdivision for which the election is held. The costs shall include, but not be limited to, the printing of the ballots and the election register, publication of notices, printing of declaration of eligibility affidavits, compensation for precinct election boards, canvass materials, and the preparation and installation of voting ~~machines~~ equipment. The county commissioner of elections shall certify to the county board of supervisors a statement of cost for an election. The cost shall be assessed by the county board of supervisors against the political subdivision for which the election was held.

3. a. Costs of registration and administrative and clerical costs shall not be charged as a part of the election costs.

b. If ~~voting machines~~ automatic tabulating equipment is used in any election, the county commissioner of elections shall not charge any political subdivision of the state a rental fee for the use of any ~~voting machines~~ automatic tabulating equipment.

4. The cost of maintenance of voter registration records and of preparation of election registers and any other voter registration lists required by the commissioner in the discharge of the duties of that office shall be paid by the county. Administrative and clerical costs, incurred by the registrar in discharging the duties of that office shall be paid by the state.

Sec. 13. Section 47.6, subsection 3, paragraph a, Code 2009, is amended to read as follows:

a. A city council ~~or a~~ county board of supervisors, school district board of directors, or merged area board of directors that has authorized a public measure to be submitted to the voters at a special election held pursuant to section 39.2, subsection 4, shall file the full text

of the public measure with the commissioner no later than 5:00 p.m. on the forty-sixth day before the election.

Sec. 14. Section 48A.2, subsection 5, Code 2009, is amended to read as follows:

5. "Voter registration form" means an application to register to vote which must be completed by or on behalf of any person registering to vote. The voter registration form may also be used to make changes to an existing voter registration record.

Sec. 15. Section 48A.8, subsection 1, Code 2009, is amended to read as follows:

1. An eligible elector may ~~register to vote by completing a mail request that a voter registration form be mailed to the elector.~~ The completed form may be mailed or delivered by the registrant or the registrant's designee to the commissioner in the county where the person resides. A separate voter registration form shall be signed by each individual registrant.

Sec. 16. Section 48A.25A, subsection 1, Code 2009, is amended to read as follows:

1. a. Upon receipt of an application for voter registration ~~by mail, the state registrar of voters commissioner of registration~~ shall compare the Iowa driver's license number, the Iowa nonoperator's identification card number, or the last four numerals of the social security number provided by the registrant with the records of the state department of transportation. To be verified, the voter registration record shall contain the same name, date of birth, and Iowa driver's license number or Iowa nonoperator's identification card number or whole or partial social security number as the records of the state department of transportation. If the information cannot be verified, the application shall be ~~rejected recorded and the registrant shall be notified of the reason for the rejection~~ the status of the voter's record shall be designated as pending status. The commissioner of registration shall notify the applicant that the applicant is required to present identification described in section 48A.8, subsection 2, before voting for the first time in the county. If the information can be verified, a record shall be made of the verification and the application shall be ~~accepted~~ status of the voter's record shall be designated as active status.

b. This subsection shall not apply to applications received from registrants pursuant to section 48A.7A.

Sec. 17. Section 48A.26, subsections 1 and 3, Code 2009, are amended to read as follows:

1. a. ~~Within~~ Except as otherwise provided in paragraph "b", within seven working days of receipt of a voter registration form or change of information in a voter registration record the commissioner shall send an acknowledgment to the registrant at the mailing address shown on the registration form. The acknowledgment shall be sent by nonforwardable mail.

b. ~~For a voter registration form or change of information in a voter registration record submitted at a precinct caucus, the commissioner shall send an acknowledgment within forty-five days of receipt of the form or change of information.~~

3. If the registration form is missing required information pursuant to section 48A.11, subsection 8, the acknowledgment shall advise the applicant what additional information is required. The commissioner shall enclose a new registration ~~by mail~~ form for the applicant to use. If the registration form has no address, the commissioner shall make a reasonable effort to determine where the acknowledgment should be sent. ~~If the incomplete application is received during the twelve days before the close of registration for an election, the commissioner shall provide the registrant with an opportunity to complete the form before the close of registration.~~ If the incomplete registration form is received during the period in which registration is closed pursuant to section 48A.9 but by 5:00 p.m. on the Saturday before the election for general and primary elections or by 5:00 p.m. on the Friday before the election for all other elections, the commissioner shall send a notice advising the applicant of election day and in-person absentee registration procedures under section 48A.7A.

Sec. 18. Section 48A.27, subsection 4, paragraphs b and c, Code 2009, are amended to read as follows:

b. If the information provided by the vendor indicates that a registered voter has moved to

another address within the county, the commissioner shall change the registration records to show the new residence address, and shall also mail a notice of that action to both the former and new addresses address. The notice shall be sent by forwardable mail, and shall include a postage prepaid preaddressed return form by which the registered voter may verify or correct the address information.

c. If the information provided by the vendor indicates that a registered voter has moved to an address outside the county, the commissioner shall make the registration record inactive, and shall mail a notice to the registered voter at both the former and new addresses address.

(1) The notice shall be sent by forwardable mail, and shall include a postage paid preaddressed return card on which the registered voter may state the registered voter's current address.

(2) The notice shall contain a statement in substantially the following form:

"Information received from the United States postal service indicates that you are no longer a resident of, and therefore not eligible to vote in (name of county) County, Iowa. If this information is not correct, and you still live in (name of county) County, please complete and mail the attached postage paid card at least ten days before the primary or general election and at least eleven days before any other election at which you wish to vote. If the information is correct and you have moved, please contact a local official in your new area for assistance in registering there. If you do not mail in the card, you may be required to show identification before being allowed to vote in (name of county) County. If you do not return the card, and you do not vote in an election in (name of county) County, Iowa, on or before (date of second general election following the date of the notice) your name will be removed from the list of voters in that county. ~~To ensure you receive this notice, it is being sent to both your most recent registration address and to your new address as reported by the postal service.~~"

Sec. 19. Section 48A.31, Code 2009, is amended to read as follows:

48A.31 DECEASED PERSONS RECORD.

The state registrar of vital statistics shall transmit or cause to be transmitted to the state registrar of voters, once each calendar quarter, a certified list of all persons seventeen and one-half years of age and older in the state whose deaths have been reported to the bureau of vital records of the Iowa department of public health since the previous list of decedents was certified to the state registrar of voters. The list shall be submitted according to the specifications of the state registrar of voters, ~~who shall determine whether each listed decedent was registered to vote in this state. If the decedent was registered in a county which uses its own data processing facilities for voter registration recordkeeping, the registrar shall notify the commissioner in that county who shall cancel the decedent's registration. If the decedent was registered in a county for which voter registration recordkeeping is performed under contract by the registrar, the registrar shall immediately cancel the registration and notify the commissioner of the county in which the decedent was registered to vote of the cancellation. The commissioner shall, in the month following the end of a calendar quarter, run the statewide voter registration system's matching program to determine whether a listed decedent was registered to vote in the county and shall immediately cancel the registration of any person named on the list of decedents.~~

Sec. 20. Section 48A.37, subsection 2, Code 2009, is amended to read as follows:

2. Electronic records shall include a status code designating whether the records are active, inactive, incomplete, pending, or canceled. Inactive records are records of registered voters to whom notices have been sent pursuant to section 48A.28, subsection 3, and who have not returned the card or otherwise responded to the notice, and those records have been designated inactive pursuant to section 48A.29. Inactive records are also records of registered voters to whom notices have been sent pursuant to section 48A.26A and who have not responded to the notice. Incomplete records are records missing required information pursuant to section 48A.11, subsection 8. Pending records are records of applicants whose applications have not been verified pursuant to section 48A.25A. Canceled records are records that have been can-

celed pursuant to section 48A.30. All other records are active records. An inactive record shall be made active when the registered voter requests an absentee ballot, votes at an election, registers again, or reports a change of name, address, telephone number, or political party or organization affiliation. An incomplete record shall be made active when a completed application is received from the applicant and verified pursuant to section 48A.25A. A pending record shall be made active upon verification or upon the voter providing identification pursuant to section 48A.8.

Sec. 21. Section 48A.38, Code 2009, is amended by adding the following new subsection: NEW SUBSECTION. 1A. The registrar shall update information on participation in an election no later than sixty days after each election.

Sec. 22. Section 49.19, Code 2009, is amended to read as follows:  
49.19 UNPAID OFFICIALS, PAPER BALLOTS OPTIONAL FOR CERTAIN CITY ELECTIONS.

The commissioner may appoint unpaid election precinct officials to election boards, as provided by sections 49.15, 49.16, and 49.20, or elect not to use ~~voting machines~~ automatic tabulating equipment even though ~~they are~~ it is available, as permitted by section 49.26, or both, for any election held for a city, even if the city has a population of more than three thousand five hundred, if there is no contest for any office on the ballot and no public question is being submitted to the voters at that election.

Sec. 23. Section 49.25, subsections 1, 2, and 3, Code 2009, are amended to read as follows:  
1. ~~In any county or portion of a county for which voting machines have been acquired under section 52.2 the~~ The commissioner shall determine pursuant to section 49.26, subsection 2, in advance of each ~~an~~ election conducted for a city of three thousand five hundred or less population, or any school district, and individually for each precinct, whether voting ballots voted in that election shall be counted by ~~machine~~ automatic tabulating equipment or by paper ballot precinct election officials. ~~In counties in which conventional paper ballots are not used~~ If automatic tabulating equipment will be used, the commissioner shall furnish voting equipment for use by voters with disabilities.

2. The commissioner shall furnish to each precinct, in advance of each election, ~~voting machines meeting the requirements of chapter 52 or voting booths, as the case may be,~~ in the following number:

a. At each regularly scheduled election, at least one for every three hundred fifty voters who voted in the last preceding similar election held in the precinct.

b. At any special election at which the ballot contains only a single public measure or only candidates for a single office or position, the number determined by the commissioner.

3. The commissioner shall furnish to each precinct ~~where voting is to be by paper ballot or optical scan ballot, rather than by voting machine,~~ the necessary ballot boxes, suitably equipped with seals or locks and keys, and voting booths. ~~The voting booths shall be approved by the board of examiners for voting machines and optical scan voting systems and shall provide for voting in secrecy.~~ At least one voting booth in each precinct shall be accessible to persons with disabilities. ~~If the lighting in the polling place is inadequate, the voting booths used in that precinct shall include lights.~~ Ballot boxes shall be locked or sealed before the polls open and shall remain locked or sealed until the polls are closed, except as provided in section 51.7 or to provide necessary service to a malfunctioning ~~portable vote tallying device~~ automatic tabulating equipment. If a ballot box is opened prior to the closing of the polls, two precinct election officials not of the same party shall be present and observe the ballot box being opened.

Sec. 24. Section 49.26, Code 2009, is amended to read as follows:  
49.26 COMMISSIONER TO DECIDE METHOD OF VOTING—COUNTING OF BALLOTS.  
1. In all elections regulated by this chapter, the voting shall be by paper ballots printed and distributed as provided by law, or by voting ~~machines~~ systems meeting the requirements of chapter 52.

~~2. a. When voting machines are available for an election precinct, the~~ The commissioner shall determine in advance of each election conducted for a city of three thousand five hundred or less population or for any school district in which voting occurs in that precinct whether voting there shall be by machine or paper ballot whether the ballots will be counted by automatic tabulating equipment or by the precinct election officials. ~~If In making such a determination, the commissioner concludes, on the basis of~~ shall consider voter turnout for recent similar elections and factors considered likely to affect voter turnout for the forthcoming election.

~~b. If the commissioner concludes that voting will probably be so light as to make preparation and use of paper counting of ballots by the precinct elections officials less expensive than preparation and use of a voting machine~~ automatic tabulating equipment, paper ballots shall be used. ~~The commissioner may use ballots and instructions similar to those used when the ballots are counted by automatic tabulating equipment.~~

~~3. In counties in which automatic tabulating equipment is available, the commissioner shall determine in advance of each election whether the ballots will be counted by the automatic tabulating equipment or by the precinct election officials. The commissioner may use ballots and instructions similar to those used when the ballots are counted by automatic tabulating equipment.~~

Sec. 25. Section 49.28, subsection 3, Code 2009, is amended by striking the subsection.

Sec. 26. Section 49.43, Code 2009, is amended to read as follows:

49.43 CONSTITUTIONAL AMENDMENT OR OTHER PUBLIC MEASURE.

1. If possible, all public measures and constitutional amendments to be voted upon by an elector shall be included on a single ballot which shall also include all offices to be voted upon. However, if it is necessary, a separate ballot may be used as provided in section 49.30, subsection 1.

~~In precincts using paper ballots all public measures to be voted upon by a voter at a given election shall be printed upon one ballot of some color other than white. In precincts using voting machines all public measures shall be placed on the machine.~~

2. Constitutional amendments and other public measures may be summarized by the commissioner as provided in sections 49.44 and 52.25.

Sec. 27. Section 49.44, unnumbered paragraph 2, Code 2009, is amended by striking the paragraph.

Sec. 28. Section 49.48, Code 2009, is amended to read as follows:

49.48 NOTICE FOR JUDICIAL OFFICERS AND CONSTITUTIONAL AMENDMENTS.

The state commissioner of elections shall prescribe a notice to inform voters of the location on the ballot of the form for retaining or removing judicial officers and for ratifying or defeating proposed constitutional amendments. The notice shall be conspicuously attached to the ~~voting machine or to the ballot.~~

Sec. 29. Section 49.53, subsection 1, Code 2009, is amended to read as follows:

1. The commissioner shall not less than four nor more than twenty days before the day of each election, except those for which different publication requirements are prescribed by law, publish notice of the election. The notice shall contain a facsimile of the portion of the ballot containing the first rotation as prescribed by section 49.31, subsection 2, and shall show the names of all candidates or nominees and the office each seeks, and all public questions, to be voted upon at the election. The sample ballot published as a part of the notice may at the discretion of the commissioner be reduced in size relative to the actual ballot but such reduction shall not cause upper case letters appearing in candidates' names or in summaries of public measures on the published sample ballot to be less than ~~ninety percent of the size of such upper case letters appearing on the actual ballot~~ nine point type. The notice shall also state the date of the election, the hours the polls will be open, the location of each polling place at which voting is to occur in the election, ~~the location of the polling places designated as early~~

ballot pick-up sites, and the names of the precincts voting at each polling place, but the statement need not set forth any fact which is apparent from the portion of the ballot appearing as a part of the same notice. The notice shall include the full text of all public measures to be voted upon at the election.

Sec. 30. Section 49.56, Code 2009, is amended to read as follows:

49.56 MAXIMUM COST OF PRINTING.

The cost of printing the official election ballots and printed supplies ~~for voting machines~~ shall not exceed the usual and customary rates that the printer charges its regular customers.

Sec. 31. Section 49.57, subsections 5 and 6, Code 2009, are amended to read as follows:

5. On ballots that will be counted by ~~electronic~~ automatic tabulating equipment, ballots shall include a voting target next to the name of each candidate. The position, shape, and size of the targets shall be appropriate for the equipment to be used in counting the votes. Where paper ballots are used, a square may be printed at the beginning of each line in which the name of a candidate is printed, except as otherwise provided.

6. A portion of the ballot, ~~which can be shown to the precinct officials without revealing any of the marks made by the voter,~~ shall include the words "Official ballot", the unique identification number or name assigned by the commissioner to the ballot style, the date of the election, and a facsimile of the signature of the commissioner who has caused the ballot to be printed pursuant to section 49.51.

Sec. 32. NEW SECTION. 49.57A FORM OF OFFICIAL BALLOT — IMPLEMENTATION BY RULE.

The state commissioner shall adopt rules in accordance with chapter 17A to implement sections 49.30 through 49.41, section 49.57, and any other provision of the law prescribing the form of the official ballot.

Sec. 33. Section 49.77, subsection 3, paragraph b, Code 2009, is amended to read as follows:

b. A precinct election official may require of the voter unknown to the official, identification ~~upon which the voter's signature or mark appears in the form prescribed by the state commissioner by rule.~~ If identification is established to the satisfaction of the precinct election officials, the person may then be allowed to vote.

Sec. 34. Section 49.84, Code 2009, is amended to read as follows:

49.84 MARKING AND RETURN OF BALLOT.

1. a. After receiving the ballot, the voter shall immediately go ~~alone to one of the next available~~ voting booths ~~booth~~, and without delay mark the ballot. All voters shall vote in booths. ~~No special lines shall be used to separate voters who state that they wish to vote only a portion of the ballot.~~

b. Before leaving the voting booth, the voter shall ~~fold the ballot or~~ may enclose it the ballot in a secrecy folder to conceal the marks on the ballot. ~~The voter shall deliver the ballot to one of the precinct election officials. No identifying mark or symbol shall be endorsed on the back of the voter's ballot.~~

c. If the precinct has a ~~portable vote tallying system which~~ automatic tabulating equipment ~~that~~ will not permit more than one ballot to be inserted at a time, the voter may insert the ballot into the tabulating device; otherwise, the election official shall place the ballot in the ballot box. An identifying mark or symbol shall not be endorsed on the voter's ballot.

2. This section does not prohibit a voter from taking minor children into the voting booth with the voter.

Sec. 35. Section 49.90, Code 2009, is amended to read as follows:

49.90 ASSISTING VOTER.

Any voter who may declare upon oath that the voter is blind, cannot read the English lan-



guage, or is, by reason of any physical disability other than intoxication, unable to cast a vote without assistance, shall, upon request, be assisted by the two officers as provided in section 49.89, or alternatively by any other person the voter may select in casting the vote. The officers, or the person selected by the voter, shall cast the vote of the voter requiring assistance, and shall thereafter give no information regarding the vote cast. If any elector because of a disability cannot enter the building where the polling place for the elector's precinct of residence is located, the two officers shall take a paper ballot to the vehicle occupied by the elector with a disability and allow the elector to cast the ballot in the vehicle. ~~If an elector with a disability cannot cast a ballot on a voting machine, the elector shall be allowed to cast a paper ballot, which shall be opened immediately after the closing of the polling place by the two precinct election officials designated under section 49.89, who shall register the votes cast thereon on a voting machine in the polling place before the votes cast there are tallied pursuant to section 50.16. To preserve so far as possible the confidentiality of each ballot of an elector with a disability, the two officers shall proceed substantially in the same manner as provided in section 53.24. In precincts where all voters use paper ballots, those Ballots cast by voters with disabilities shall be deposited in the regular ballot box, or inserted in the tabulating device, and counted in the usual manner.~~

Sec. 36. Section 49.99, subsection 2, Code 2009, is amended to read as follows:

2. If a voter writes the name of a person more than once in the proper places on a ballot ~~or on a voting machine~~ for an office to which more than one person is to be elected, all but one of those votes for that person for that office are void and shall not be counted.

Sec. 37. Section 49.127, Code 2009, is amended to read as follows:

49.127 COMMISSIONER TO EXAMINE MACHINES EQUIPMENT.

It shall be the duty of each commissioner to determine that all voting machines are equipment is operational and functioning properly and that all materials necessary for the conduct of the election are in the commissioner's possession and are correct.

Sec. 38. Section 50.15A, subsection 1, Code 2009, is amended to read as follows:

1. In order to provide the public with an early source of election results before the official canvass of votes, the state commissioner of elections, in cooperation with the commissioners of elections, shall conduct an unofficial canvass of election results following the closing of the polls on the day of a general election. The unofficial canvass shall report election results for national offices, statewide offices, the office of state representative, the office of state senator, and other offices or public measures at the discretion of the state commissioner of elections. The unofficial canvass shall also report the total number of ballots cast at the general election.

Sec. 39. Section 50.22, unnumbered paragraph 3, Code 2009, is amended to read as follows:

If a provisional ballot is rejected, the person casting the ballot shall be notified by the commissioner within ten days of the reason for the rejection, on the form prescribed by the state commissioner pursuant to section 53.25, and the envelope containing the provisional ballot shall be preserved unopened and disposed of in the same manner as spoiled ballots. The provisional ballots which are accepted shall be counted in the manner prescribed by section ~~53.24~~ 53.23, subsection 5. The commissioner shall make public the number of provisional ballots rejected and not counted, at the time of the canvass of the election.

Sec. 40. Section 50.24, Code 2009, is amended to read as follows:

50.24 CANVASS BY BOARD OF SUPERVISORS.

1. The county board of supervisors shall meet to canvass the vote on the first Monday or Tuesday after the day of each election to which this chapter is applicable, unless the law authorizing the election specifies another date for the canvass. If that Monday or Tuesday is a public holiday, section 4.1, subsection 34, controls.

2. Upon convening, the board shall open and canvass the tally lists and shall prepare ab-

stracts stating, ~~in words written at length~~, the number of votes cast in the county, or in that portion of the county in which the election was held, for each office and on each question on the ballot for the election. The board shall contact the chairperson of the special precinct board before adjourning and include in the canvass any absentee ballots which were received after the polls closed in accordance with section 53.17 and which were canvassed by the special precinct board after election day. The abstract shall further indicate the name of each person who received votes for each office on the ballot, and the number of votes each person named received for that office, and the number of votes for and against each question submitted to the voters at the election. The votes of all write-in candidates who each received less than ~~two~~ five percent of the votes cast for an office shall be reported collectively under the heading "scattering".

3. The board shall certify an election canvass summary report prepared by the commissioner. The election canvass summary report shall include the results of the election, including scatterings, overvotes, and undervotes, by precinct for each contest and public measure that appeared on the ballot of the election being canvassed.

4. The board shall also prepare a certificate showing the total number of people who cast ballots in the election. For general elections and elections held pursuant to section 69.14, a copy of the certificate shall be forwarded to the state commissioner.

5. Any obvious clerical errors in the tally lists from the precincts shall be corrected by the supervisors. Complete records of any changes shall be recorded in the minutes of the canvass.

Sec. 41. Section 50.30, subsection 1, unnumbered paragraph 1, Code 2009, is amended to read as follows:

The commissioner shall, within ~~ten~~ thirteen days after the election, forward to the state commissioner one of the duplicate abstracts of votes for each of the following offices:

Sec. 42. NEW SECTION. 50.30A ELECTION CANVASS SUMMARY FORWARDED TO STATE COMMISSIONER.

The commissioner shall, within thirteen days after each primary and general election, forward to the state commissioner a true and exact copy of the election canvass summary report certified by the county board of canvassers.

Sec. 43. Section 50.39, Code 2009, is amended to read as follows:

50.39 ABSTRACT.

It shall make an abstract stating, ~~in words written at length~~, the number of ballots cast for each office, the names of all the persons voted for, for what office, the number of votes each received, and whom it declares to be elected, and if a public question has been submitted to the voters of the state, the number of ballots cast for and against the question and a declaration of the result as determined by the canvassers; which abstract shall be signed by the canvassers in their official capacity and as state canvassers, and have the seal of the state affixed.

Sec. 44. Section 50.48, subsection 4, paragraphs a and c, Code 2009, are amended to read as follows:

a. When all members of the recount board have been selected, the board shall undertake and complete the required recount as expeditiously as reasonably possible. The commissioner or the commissioner's designee shall supervise the handling of ballots ~~or voting machine documents~~ to ensure that the ballots ~~and other documents~~ are protected from alteration or damage. The board shall open only the sealed ballot containers from the precincts specified to be recounted in the request or by the recount board. The board shall recount only the ballots which were voted and counted for the office in question, including any disputed ballots returned as required in section 50.5. ~~If an electronic automatic tabulating system equipment~~ was used to count the ballots, the recount board may request the commissioner to retabulate the ballots using the electronic automatic tabulating system equipment. The same program used for tabulating the votes on election day shall be used at the recount unless the program is believed

or known to be flawed. ~~If a voting machine was used, the paper record required in section 52.7, subsection 2, shall be the official record used in the recount. However, if the commissioner believes or knows that the paper records produced from a machine have been compromised due to damage, mischief, malfunction, or other cause, the printed ballot images produced from the internal audit log for that machine shall be the official record used in the recount.~~

c. ~~The ballots or voting machine documents shall be resealed by the recount board before adjournment and shall be preserved as required by section 50.12. At the conclusion of the recount, the recount board shall make and file with the commissioner a written report of its findings, which shall be signed by at least two members of the recount board. The recount board shall complete the recount and file its report not later than the eighteenth day following the county board's canvass of the election in question.~~

Sec. 45. Section 51.15, Code 2009, is amended by striking the section and inserting in lieu thereof the following:

51.15 APPLICABILITY OF LAW.

This chapter shall apply to all elections in which the commissioner has determined that paper ballots shall be used and counted by precinct election officials pursuant to section 49.26.

Sec. 46. Section 52.1, subsection 1, Code 2009, is amended to read as follows:

1. ~~At all elections conducted under chapter 49, and at any other election unless specifically prohibited by the statute authorizing the election the commissioner directs otherwise pursuant to section 49.26, votes may~~ shall be cast, registered, recorded, and counted by means of ~~either voting machines or~~ optical scan voting systems, in accordance with this chapter.

Sec. 47. Section 52.1, subsection 2, paragraph g, Code 2009, is amended by striking the paragraph.

Sec. 48. Section 52.3, Code 2009, is amended to read as follows:

52.3 TERMS OF PURCHASE — TAX LEVY.

The county board of supervisors, on the adoption and purchase of ~~a voting machine or an~~ optical scan voting system, may issue bonds under section 331.441, subsection 2, paragraph "b", subparagraph (1).

Sec. 49. Section 52.4, Code 2009, is amended to read as follows:

52.4 EXAMINERS — TERM — REMOVAL.

1. The state commissioner of elections shall appoint three members to a board of examiners for voting systems, not more than two of whom shall be from the same political party. The examiners shall hold office for staggered terms of six years, subject to removal at the pleasure of the state commissioner of elections.

2. At least one of the examiners shall have been trained in computer programming and operations. The other two members shall be directly involved in the administration of elections and shall have experience in the use of ~~voting machines and~~ optical scan voting systems.

Sec. 50. Section 52.5, Code 2009, is amended to read as follows:

52.5 TESTING AND EXAMINATION OF VOTING EQUIPMENT.

1. A person or corporation owning or being interested in ~~a voting machine or an~~ optical scan voting system may request that the state commissioner call upon the board of examiners to examine and test the ~~machine or~~ system. Within seven days of receiving a request for examination and test, the state commissioner shall notify the board of examiners of the request in writing and set a time and place for the examination and test.

2. The state commissioner shall formulate, with the advice and assistance of the examiners, and adopt rules governing the testing and examination of any ~~voting machine or~~ optical scan voting system by the board of examiners. The rules shall prescribe the method to be used in determining whether the ~~machine or~~ system is suitable for use within the state and perfor-

mance standards for voting equipment in use within the state. The rules shall provide that all optical scan voting systems and voting machines approved for use by the examiners after April 9, 2003, shall meet voting systems performance and test standards, as adopted by the federal election commission on April 30, 2002, and as deemed adopted by Pub. L. No. 107-252, § 222. The rules shall include standards for determining when recertification is necessary following modifications to the equipment or to the programs used in tabulating votes, and a procedure for rescinding certification if a system or machine is found not to comply with performance standards adopted by the state commissioner.

3. The state commissioner may employ a competent person or persons to assist the examiners in their evaluation of the equipment and to advise the examiners as to the sufficiency of the equipment. Consultant fees shall be paid by the person who requested the certification. Following the examination and testing of the ~~voting machine or~~ optical scan voting system, the examiners shall report to the state commissioner describing the testing and examination of the ~~machine or~~ system and upon the capacity of the ~~machine or~~ system to register the will of voters, its accuracy and efficiency, and with respect to its mechanical perfections and imperfections. Their report shall be filed in the office of the state commissioner and shall state whether in their opinion the kind of ~~machine or~~ system so examined can be safely used by voters at elections under the conditions prescribed in this chapter. If the report states that the ~~machine or~~ system can be so used, it shall be deemed approved by the examiners, and ~~machines or~~ systems of its kind may be adopted for use at elections as provided in this section. Any form of ~~voting machine or~~ system not so approved cannot be used at any election.

4. Before actual use by a county of a particular optical scan voting system which has been approved for use in this state, the state commissioner shall formulate, with the advice and assistance of the examiners, and adopt rules governing the development of vote counting programs and all procedures used in actual counting of votes by means of that system.

Sec. 51. Section 52.6, Code 2009, is amended to read as follows:

52.6 COMPENSATION.

1. Each examiner is entitled to one hundred fifty dollars for compensation and expenses in making such ~~an~~ examination and report under section 52.5, to be paid by the person or corporation applying for such ~~the~~ examination. ~~No examiner shall have any interest whatever in any machine or system reported upon. Provided that~~ However, each examiner shall receive not to exceed fifteen hundred dollars and reasonable expenses in any one year; and all sums collected for such examinations over and above said maximum salaries and expenses shall be turned in to the state treasury.

2. ~~An examiner shall not have any interest whatever in any optical scan voting system reported upon.~~

Sec. 52. Section 52.8, Code 2009, is amended to read as follows:

52.8 EXPERIMENTAL USE.

The board of supervisors of any county may provide for the experimental use at an election in one or more districts, of a ~~voting machine or~~ an optical scan voting system which it might lawfully adopt, without a formal adoption ~~thereof~~ of the system; and its use at such election shall be as valid for all purposes as if it had been lawfully adopted.

Sec. 53. Section 52.19, Code 2009, is amended to read as follows:

52.19 INSTRUCTIONS.

In case any elector after entering the voting machine booth shall ask for further instructions concerning the manner of voting, two precinct election officials of opposite political parties shall give such instructions to the elector; but no precinct election official or other election officer or person assisting an elector shall in any manner request, suggest, or seek to persuade or induce any such elector to vote any particular ticket, or for any particular candidate, or for or against any particular amendment, question, or proposition. After receiving such instructions, ~~such~~ the elector shall vote as in the case of an unassisted voter.

Sec. 54. Section 52.23, Code 2009, is amended to read as follows:

~~52.23 WRITTEN STATEMENTS OF ELECTION — OTHER PAPERS.~~

~~1. After the total vote for each candidate has been ascertained, and before leaving the room or voting place, the precinct election officials shall make and sign the tally list required in section 50.16. One copy of the printed results from each tabulating device shall be signed by all precinct election officials present and shall be attached to the tally list from the precinct. The printed results attached to the tally list shall reflect all votes cast in the precinct, including overvotes and undervotes, for each candidate and public measure on the ballot.~~

~~2. The inspection sheets from each machine used in the election and one copy of the printed results from each machine shall be signed by all precinct election officials and, with any paper or papers upon which write-in votes were recorded by voters, shall be securely sealed in an envelope marked with the name and date of the election, the precinct, and the serial numbers of the machines from which the enclosed results were removed. This envelope shall be preserved, unopened, for twenty-two months following elections for federal offices and for six months following elections for all other offices unless a recount is requested pursuant to section 50.48 or an election contest is pending. The envelope shall be destroyed in the same manner as ballots pursuant to section 50.13. Additional copies of the results, if any, shall be delivered to the commissioner with the other supplies from the election pursuant to section 50.17.~~

Sec. 55. Section 52.24, Code 2009, is amended to read as follows:

~~52.24 WHAT STATUTES APPLY — SEPARATE BALLOTS.~~

~~All of the provisions of the election law not inconsistent with the provisions of this chapter shall apply with full force to all counties adopting the use of voting machines. Nothing in this chapter shall be construed as prohibiting the use of a separate ballot for public measures.~~

Sec. 56. Section 52.25, Code 2009, is amended to read as follows:

~~52.25 SUMMARY OF AMENDMENT OR PUBLIC MEASURE.~~

~~1. The question of a constitutional convention, amendments, and public measures including bond issues may be voted on voting machines and on ballots in the following manner:~~

~~1. a. The entire convention question, amendment, or public measure shall be printed and displayed prominently in at least four places one place within the voting precinct, and inside each voting booth, the printing to be in conformity with the provisions of chapter 49.~~

~~2. b. The question, amendment, or measure, and summaries thereof, shall be printed on the special paper ballots or on the inserts used in the voting machines. In no case shall the font size be less than ten point type.~~

~~3. 2. The public measure shall be summarized by the commissioner, except that:~~

~~a. In the case of the question of a constitutional convention, or of an amendment or measure to be voted on in the entire state, the summary shall be worded by the state commissioner of elections as required by section 49.44.~~

~~b. In the case of a public question to be voted on in a political subdivision lying in more than one county, the summary shall be worded by the commissioner responsible under section 47.2 for conducting that election.~~

Sec. 57. Section 52.27, Code 2009, is amended to read as follows:

~~52.27 COMMISSIONER TO PROVIDE OPTICAL SCAN VOTING EQUIPMENT.~~

~~The commissioner having jurisdiction of any precinct for which the board of supervisors has adopted voting by means of an optical scan voting system shall, as soon as practicable thereafter, provide for use at each election held in the precinct optical scan ballots and ballot marking devices in appropriate numbers. The commissioner shall have custody of all equipment required for use of the optical scan voting system, and shall be responsible for maintaining it in good condition and for storing it between elections. All provisions of chapter 49 relative to times and circumstances under which voting machines are to be used in any election and the number of voting machines to be provided shall also govern the use of optical scan voting systems, when applicable.~~

Sec. 58. Section 52.28, Code 2009, is amended to read as follows:

52.28 OPTICAL SCAN VOTING SYSTEM BALLOT FORMS.

The commissioner of each county in which the use of an optical scan voting system in one or more precincts has been authorized shall print optical scan ballots using black ink on white paper and shall determine the arrangement of candidates' names and public questions upon the ballot or ballots used with the system. The ballot information shall be arranged as required by chapters 43 and 49, and by any relevant provisions of any statutes which specify the form of ballots for special elections, so far as possible within the constraints of the physical characteristics of the optical scan voting system in use in that county. The state commissioner may adopt rules requiring a reasonable degree of uniformity among counties in arrangement of optical scan voting system ballots.

Sec. 59. Section 52.29, Code 2009, is amended to read as follows:

52.29 OPTICAL SCAN VOTING SYSTEM SAMPLE BALLOTS.

The commissioner shall provide for each precinct where an optical scan voting system is in use at least four one sample optical scan ballots ballot which shall be an exact copies copy of the official ballots as printed for that precinct. The sample ballots shall be arranged in the form of a diagram showing the optical scan ballot as it will appear to the voter in that precinct on election day. The sample ballots ballot shall be posted prominently within the polling place, and shall be open to public inspection during the hours the polls are open on election day. If the ballot used on election day has offices or questions appearing on the back of the ballot, both sides of the sample ballot shall be displayed.

Sec. 60. Section 52.41, Code 2009, is amended to read as follows:

52.41 ELECTRONIC TRANSMISSION OF ELECTION RESULTS.

With the advice of the board of examiners for voting ~~machines and electronic voting systems~~, the state commissioner shall adopt by rule standards for the examination and testing of devices for the electronic transmission of election results. All voting systems which contain devices for the electronic transmission of election results submitted to the examiners for examination and testing after July 1, 2003, shall comply with these standards.

Sec. 61. Section 53.2, subsections 5, 6, and 7, Code 2009, are amended to read as follows:

5. An application for a primary election ballot which specifies a party different from that recorded on the registered voter's voter registration record, or if the voter's voter registration record does not indicate a party affiliation, shall be accepted as a change or declaration of party affiliation. The commissioner shall approve the change or declaration and enter a notation of the change on the registration records at the time the absentee ballot request is noted on the voter's registration record. A notice shall be sent with the ballot requested informing the voter that the voter's registration record will be changed to show that the voter is now affiliated with the party whose ballot the voter requested. If an application for a primary election ballot does not specify a party and the voter registration record of the voter from whom the application is received shows that the voter is affiliated with a party, the voter shall be mailed the ballot of the party indicated on the voter's registration record.

6. If an application for an absentee ballot is received from an eligible elector who is not a registered voter the commissioner shall send the eligible elector a voter registration form under section 48A-8 and an another absentee ballot application form to the eligible elector. If the application is received so late that it is unlikely that the registration form can be returned in time to be effective on election day, the commissioner shall enclose with the absentee ballot a notice to that effect, informing the voter of the registration time limits in section 48A-9. The commissioner shall record on the elector's application that the elector is not currently registered to vote. If the registration form is properly returned by the time provided by section 48A-9, the commissioner shall record on the elector's application the date of receipt of the registration form and enter a notation of the registration on the registration records. If the application is received after the time registration closes pursuant to section 48A-9 but by 5:00 p.m.

on the Saturday before the election for general and primary elections or by 5:00 p.m. on the Friday before the election for all other elections, the commissioner shall notify the applicant by mail of the election day and in-person absentee registration provisions of section 48A.7A. In addition to notification by mail, the commissioner shall also attempt to contact the applicant by any other method available to the commissioner.

7. A registered voter who has not moved from the county in which the elector is registered to vote may submit a change of name, telephone number, or address on the absentee ballot application form ~~prescribed in section 48A.8~~ when casting requesting an absentee ballot. Upon receipt of a properly completed form, the commissioner shall enter a notation of the change on the registration records.

Sec. 62. Section 53.8, subsection 1, Code 2009, is amended to read as follows:

1. Upon receipt of an application for an absentee ballot and immediately after the absentee ballots are printed, the commissioner shall mail an absentee ballot to the applicant within twenty-four hours, except as otherwise provided in subsection 3. The absentee ballot shall be enclosed in an unsealed envelope bearing a serial number and affidavit. The absentee ballot and unsealed envelope shall be enclosed in or with a carrier return envelope marked postage paid which bears the same serial number as the unsealed envelope. The absentee ballot, unsealed envelope, and carrier return envelope shall be enclosed in a third envelope to be sent to the registered voter. If the ballot cannot be folded so that all of the votes cast on the ballot will be hidden, the commissioner shall also enclose a secrecy envelope with the absentee ballot.

Sec. 63. Section 53.8, subsection 2, paragraph a, Code 2009, is amended to read as follows:

a. The commissioner shall enclose with the absentee ballot a statement informing the applicant that the sealed carrier return envelope may be mailed to the commissioner by the registered voter or the voter's designee or may be personally delivered to the commissioner's office by the registered voter or the voter's designee. The statement shall also inform the voter that the voter may request that the voter's designee complete a receipt when retrieving the ballot from the voter. A blank receipt shall be enclosed with the absentee ballot.

Sec. 64. Section 53.17, subsections 1 and 2, Code 2009, are amended to read as follows:

1. The sealed envelope containing the absentee ballot shall be enclosed in a carrier return envelope which shall be securely sealed. The sealed carrier return envelope shall be returned to the commissioner by one of the following methods:

a. The sealed carrier return envelope may be delivered by the registered voter, by the voter's designee, or by the special precinct election officials designated pursuant to section 53.22, subsection 1, to the commissioner's office no later than the time the polls are closed on election day. However, if delivered by the voter's designee, the envelope shall be delivered within seventy-two hours of retrieving it from the voter or before the closing of the polls on election day, whichever is earlier.

b. The sealed carrier return envelope may be mailed to the commissioner by the registered voter or by the voter's designee. If mailed by the voter's designee, the envelope must be mailed within seventy-two hours of retrieving it from the voter or within time to be postmarked not later than the day before the election, whichever is earlier.

2. In order for the ballot to be counted, the carrier return envelope must be received in the commissioner's office before the polls close on election day or be clearly postmarked by an officially authorized postal service not later than the day before the election and received by the commissioner not later than noon on the Monday following the election.

Sec. 65. Section 53.18, subsections 1 and 2, Code 2009, are amended to read as follows:

1. When the return carrier envelope containing the completed absentee ballot is received by the commissioner, the commissioner shall at once record receipt of such ballot. Absentee ballots shall be stored in a secure place until they are delivered to the absentee and special voters precinct board.

2. If the commissioner receives the return ~~carrier~~ envelope containing the completed absentee ballot by ~~five 5:00~~ p.m. on the Saturday before the election for general and primary elections and by ~~five 5:00~~ p.m. on the Friday before the election for all other elections, the commissioner shall open the envelope to review the affidavit for any deficiencies. If the affidavit contains a deficiency that would cause the ballot to be rejected, the commissioner shall, within twenty-four hours of the time the envelope was received, notify the voter of that fact and that the voter may correct the deficiency by ~~five 5:00~~ p.m. on the day before the election.

Sec. 66. Section 53.20, subsection 2, Code 2009, is amended to read as follows:

2. Results from the special precinct shall be reported separately from the results of the ballots cast at the polls on election day. The commissioner shall for general elections also report the results of the special precinct by the resident precincts of the voters who cast absentee and provisional ballots. For all other elections, the commissioner may report the results of the special precinct by the resident precincts of the voters who cast absentee and provisional ballots, or may report the absentee results as a single precinct. ~~The separate residence precinct reports shall be provided in one of the following ways:~~

~~a. The commissioner may manually sort the absentee ballots by precinct upon receipt of completed ballots. Each group of ballots from an individual precinct shall be tallied together.~~

~~b. The commissioner may prepare a separate absentee ballot style for each precinct in the county and shall program the voting system to produce reports by the resident precincts of the voters. For the general election and for any election in which the commissioner determines in advance of the election to report the results of the special precinct by the resident precincts of the voters who cast absentee and provisional ballots, the commissioner shall prepare a separate absentee ballot style for each precinct in the county and shall program the voting system to produce reports by the resident precincts of the voters.~~

Sec. 67. Section 53.21, subsection 2, paragraph b, Code 2009, is amended to read as follows:

b. The voter shall enclose one copy of the above statement in the return ~~carrier~~ envelope with the affidavit envelope and retain a copy for the voter's records.

Sec. 68. Section 53.22, subsection 5, paragraph b, Code 2009, is amended to read as follows:

b. Absentee ballots voted under this subsection shall be delivered to the commissioner no later than the time the polls are closed on election day. If the ballot is returned by mail the ~~carrier return~~ envelope must be received by the time the polls close, or clearly postmarked by an officially authorized postal service not later than the day before the election and received by the commissioner no later than the time established for the canvass by the board of supervisors for that election.

Sec. 69. Section 53.25, Code 2009, is amended to read as follows:

53.25 REJECTING BALLOT.

1. If the absentee voter's affidavit is ~~found to be insufficient~~ lacks the voter's signature, if the applicant is not a duly registered voter on election day in such the precinct where the absentee ballot was cast, if the affidavit envelope contains more than one ballot of any one kind, or if the voter has voted in person, such vote shall ~~not be accepted or counted~~ rejected by the absentee and special voters precinct board. If the affidavit envelope is open, or has been opened and resealed, or if the ballot is not enclosed in the affidavit envelope, and an affidavit envelope with the same serial number and marked "Replacement ballot" is not attached as provided in section 53.18, the vote shall ~~not be accepted or counted~~ rejected by the absentee and special voters precinct board.

2. If the absentee ballot is rejected prior to the opening of the affidavit envelope, the voter casting the ballot shall be notified by a precinct election official by the time the canvass is completed of the reason for the rejection on a form prescribed by the state commissioner of elections.



Sec. 70. Section 53.30, Code 2009, is amended to read as follows:

53.30 BALLOTS, BALLOT ENVELOPES, AND OTHER INFORMATION PRESERVED.

At the conclusion of each meeting of the absentee and special voter's precinct board, the board shall securely seal all ballots counted by them in the manner prescribed in section 50.12. The ballot envelopes, including the envelope having the registered voter's affidavit on it, the return carrier envelope, and secrecy envelope bearing the signatures of precinct election officials, as required by section 53.23, shall be preserved. All applications for absentee ballots, ballots rejected without being opened, absentee ballot logs, and any other documents pertaining to the absentee ballot process shall be preserved until such time as the documents may be destroyed pursuant to section 50.19.

Sec. 71. Section 53.40, subsection 1, paragraph c, Code 2009, is amended to read as follows:

c. A request shall show the residence (including street address, if any) of the voter, ~~and the age of the voter, and length of residence in the city or township, county and state,~~ and shall designate the address to which the ballot is to be sent, ~~and in~~. In the case of the primary election, the request shall also show the party affiliation of such the voter. Such The request shall be made to the commissioner of the county of the voter's residence, provided that. However, if the request is made by the voter to any elective state, city, or county official, the ~~said~~ official shall forward it to the commissioner of the county of the voter's residence, and such request so forwarded shall have the same force and effect as if made ~~direct~~ directly to the commissioner by the voter.

Sec. 72. Section 53.53, subsection 4, paragraph b, Code 2009, is amended to read as follows:

b. The voter's application for a regular absentee ballot was received by the commissioner less than fourteen days prior to the election. However, if the voter's application for a regular absentee ballot is not received by the commissioner and if the federal write-in absentee ballot is not prohibited by another provision of this subsection, a federal write-in absentee ballot cast by the voter and received by the commissioner is valid.

Sec. 73. Section 69.8, subsection 2, Code 2009, is amended to read as follows:

2. STATE OFFICES. In all state offices, judges of courts of record, officers, trustees, inspectors, and members of all boards or commissions, and all persons filling any position of trust or profit in the state, by the governor, except when some other method is specially provided. An appointment by the governor to fill a vacancy in the office of lieutenant governor shall be for the balance of the unexpired term. An appointment made under this subsection to a state office subject to section 69.13 shall be for the period until the vacancy is filled by election pursuant to law.

Sec. 74. Section 256.11, subsection 5, paragraph b, Code 2009, is amended to read as follows:

b. Five units of the social studies including instruction in voting statutes and procedures, voter registration requirements, the use of paper ballots and voting ~~machines~~ systems in the election process, and the method of acquiring and casting an absentee ballot. All students shall complete a minimum of one-half unit of United States government and one unit of United States history. The one-half unit of United States government shall include the voting procedure as described in this lettered paragraph and section 280.9A. The government instruction shall also include a study of the Constitution of the United States and the Bill of Rights contained in the Constitution and an assessment of a student's knowledge of the Constitution and the Bill of Rights.

Sec. 75. Section 260C.15, subsection 1, Code 2009, is amended to read as follows:

1. Regular elections held by the merged area for the election of members of the board of directors as required by section 260C.11, ~~for the renewal of the twenty and one fourth cents per~~

~~thousand dollars of assessed valuation levy authorized in section 260C.22, or for any other matter authorized by law and designated for election by the board of directors of the merged area, shall be held on the date of the school election as fixed by section 277.1. However, elections held for the renewal of the twenty and one-fourth cents per thousand dollars of assessed valuation levy authorized in section 260C.22 shall be held either on the date of the school election as fixed by section 277.1 or at a special election held on the second Tuesday in September of the even-numbered year.~~ The election notice shall be made a part of the local school election notice published as provided in section 49.53 in each local school district where voting is to occur in the merged area election and the election shall be conducted by the county commissioner of elections pursuant to chapters 39 through 53 and section 277.20.

Sec. 76. Section 260C.22, subsection 1, paragraph a, Code 2009, is amended to read as follows:

a. In addition to the tax authorized under section 260C.17, the voters in a merged area may at the regular school election or at a special election held on the second Tuesday in September of the even-numbered year vote a tax not exceeding twenty and one-fourth cents per thousand dollars of assessed value in any one year for a period not to exceed ten years for the purchase of grounds, construction of buildings, payment of debts contracted for the construction of buildings, purchase of buildings and equipment for buildings, and the acquisition of libraries, for the purpose of paying costs of utilities, and for the purpose of maintaining, remodeling, improving, or expanding the community college of the merged area. If the tax levy is approved under this section, the costs of utilities shall be paid from the proceeds of the levy. The tax shall be collected by the county treasurers and remitted to the treasurer of the merged area as provided in section 331.552, subsection 29. The proceeds of the tax shall be deposited in a separate and distinct fund to be known as the voted tax fund, to be paid out upon warrants drawn by the president and secretary of the board of directors of the merged area district for the payment of costs incurred in providing the school facilities for which the tax was voted.

Sec. 77. Section 275.18, subsection 3, Code 2009, is amended to read as follows:

3. The area education agency administrator shall furnish to the commissioner a map of the proposed reorganized area which must be approved by the commissioner as suitable for posting. The map shall be displayed prominently in at least ~~four places~~ one place within the voting precinct, and inside each voting booth, ~~or on the left-hand side inside the curtain of each voting machine.~~

Sec. 78. Section 280.9A, subsections 1 and 2, Code 2009, are amended to read as follows:

1. The board of directors of each local public school district and the authorities in charge of each nonpublic school shall require that all students in grades nine through twelve complete, as a condition of graduation, instruction in American history and the governments of Iowa and the United States, including instruction in voting statutes and procedures, voter registration requirements, the use of paper ballots and ~~voting machines~~ systems in the election process, and the method of acquiring and casting an absentee ballot.

2. The county auditor, upon request and at a site chosen by the county auditor, shall make available to schools within the county voting ~~machines~~ equipment or sample ballots that are generally used within the county, at times when ~~these machines~~ this equipment or sample ballots are not in use for their recognized purpose.

Sec. 79. Section 294.8, Code 2009, is amended to read as follows:

294.8 PENSION SYSTEM.

~~Any A~~ school district located in whole or in part within a city having a population of twenty-five thousand one hundred or more may establish a pension and annuity retirement system for the public school teachers of such district ~~provided said system.~~ However, in cities having a population less than seventy-five thousand, establishment of the system shall be ratified by a vote of the people at a general regular school election.

Sec. 80. Section 298.2, subsection 4, unnumbered paragraph 1, Code 2009, is amended to read as follows:

The board may on its own motion, and upon the written request of not less than one hundred eligible electors or thirty percent of the number of eligible electors voting at the last regular school election, whichever is greater, shall, direct the county commissioner of elections to provide for submitting the proposition of levying the voter-approved physical plant and equipment levy for a period of time authorized by the voters in the notice of election, not to exceed ten years, in the notice of the regular school election. The proposition is adopted if a majority of those voting on the proposition at the election approves it. The voter-approved physical plant and equipment levy shall be funded either by a physical plant and equipment property tax or by a combination of a physical plant and equipment property tax and a physical plant and equipment income surtax, as determined by the board. However, if the board intends to enter into a rental or lease arrangement under section 279.26, or intends to enter into a loan agreement under section 297.36, only a property tax shall be levied for those purposes. Subject to the limitations of section 298.14, if the board uses a combination of a physical plant and equipment property tax and a physical plant and equipment surtax, for each fiscal year the board shall determine the percent of income surtax to be imposed expressed as full percentage points, not to exceed twenty percent.

Sec. 81. Section 298.9, Code 2009, is amended to read as follows:  
298.9 SPECIAL LEVIES.

If the voter-approved physical plant and equipment levy, consisting solely of a physical plant and equipment property tax levy, is approved by the voters at ~~the regular school an~~ election held on a date specified in section 39.2, subsection 4, paragraph "c", and certified to the board of supervisors after the regular levy is made, the board shall at its next regular meeting levy the tax and cause it to be entered upon the tax list to be collected as other school taxes. If the certification is filed prior to May 1, the annual levy shall begin with the tax levy of the year of filing. If the certification is filed after May 1 in a year, the levy shall begin with the levy of the fiscal year succeeding the year of the filing of the certification.

Sec. 82. Section 301.24, Code 2009, is amended to read as follows:  
301.24 PETITION — ELECTION.

Whenever a petition signed by one hundred eligible electors residing in the school district or a number of eligible electors residing in the school district equal to at least ten percent of the number of voters in the last preceding regular school election, whichever is greater, is filed with the secretary ~~thirty~~ sixty days or more before the regular school election, asking that the question of providing free textbooks for the use of pupils in the school district's attendance centers be submitted to the voters at the next regular school election, the secretary shall cause notice of ~~such the~~ such the proposition to be given in the notice of ~~such the~~ such the election.

Sec. 83. Section 331.201, subsection 3, Code 2009, is amended to read as follows:

3. The office of supervisor is an elective office except that if a vacancy occurs on the board, a successor shall may be appointed to the unexpired term as provided in ~~chapter 69~~ section 69.14A.

Sec. 84. Section 331.383, Code 2009, is amended to read as follows:  
331.383 DUTIES AND POWERS RELATING TO ELECTIONS.

The board shall ensure that the county commissioner of elections conducts primary, general, city, school, and special elections in accordance with applicable state law. The board shall canvass elections in accordance with sections 43.49 to 43.51, 43.60 to 43.62, 46.24, 50.13, 50.24 to 50.29, 50.44 to 50.47, 260C.39, 275.25, 277.20, 376.1, 376.7, and 376.9. The board shall prepare and deliver a list of persons nominated in accordance with section 43.55, provide for a recount in accordance with section 50.48, provide for election precincts in accordance with sections 49.3, 49.4, 49.6 to 49.8, and 49.11, pay election costs as provided in section 47.3, participate in election contests as provided in sections 62.1A and 62.9, and perform other election

duties required by state law. The board may authorize additional precinct election officials as provided in section 51.1, provide for the use of a ~~voting machine or an~~ optical scan voting system as provided in sections 52.2, 52.3, and 52.8, and exercise other election powers as provided by state law.

Sec. 85. Section 331.425, subsection 2, Code 2009, is amended to read as follows:

2. The election shall be held on the ~~second~~ first Tuesday in March and be conducted by the county commissioner of elections in accordance with the law.

Sec. 86. Section 331.427, subsection 3, paragraph c, Code 2009, is amended to read as follows:

c. Purchase of voting ~~machines~~ systems and equipment under chapter 52.

Sec. 87. Section 331.441, subsection 2, paragraph b, subparagraph (1), Code 2009, is amended to read as follows:

(1) ~~Voting machines or an~~ An optical scan voting system.

Sec. 88. Section 331.502, subsection 17, Code 2009, is amended to read as follows:

17. Make available to schools, voting ~~machines~~ equipment or sample ballots for instructional purposes as provided in section 280.9A.

Sec. 89. Section 364.2, subsection 4, paragraph b, Code 2009, is amended to read as follows:

b. Such an ordinance shall not become effective unless approved at an election. The proposal may be submitted by the council on its own motion to the voters at any city election. Upon receipt of a valid petition as defined in section 362.4 requesting that a proposal be submitted to the voters, the council shall submit the proposal at the next regular city election or at a special election called for that purpose before the next regular city election. However, the city council may dispense with such election as to the grant, amendment, extension, or renewal of an electric light and power, heating, or gasworks franchise unless there is a valid petition requesting submission of the proposal to the voters, or the party seeking such franchise, grant, amendment, extension, or renewal requests an election. If a majority of those voting approves the proposal, the city may proceed as proposed. The complete text of the ordinance shall be included on the ballot if conventional paper ballots are used. If an optical scan voting system ~~or voting machine~~ is used, the proposal shall be stated on the optical scan ballot ~~and on the machine~~, and the full text of the ordinance posted for the voters pursuant to section 52.25. All absentee voters shall receive the full text of the ordinance.

Sec. 90. Section 368.19, subsection 2, Code 2009, is amended to read as follows:

2. The city shall provide to the commissioner of elections a map of the area to be incorporated, discontinued, annexed, severed, or consolidated, which must be approved by the commissioner as suitable for posting. The map shall be displayed prominently in at least ~~four~~ one places ~~one place~~ within the voting precinct, and inside each voting booth, ~~or on the left hand side inside the curtain of each voting machine.~~

Sec. 91. Section 372.13, subsection 2, paragraph b, Code 2009, is amended to read as follows:

b. (1) By a special election held to fill the office for the remaining balance of the unexpired term. If the council opts for a special election or a valid petition is filed under paragraph "a", the special election may be held concurrently with any pending election as provided by section 69.12 if by so doing the vacancy will be filled not more than ninety days after it occurs. Otherwise, a special election to fill the office shall be called by the council at the earliest practicable date. The council shall give the county commissioner at least thirty-two days' written notice of the date chosen for the special election. The council of a city where a primary election may

be required shall give the county commissioner at least sixty days' written notice of the date chosen for the special election. A special election held under this subsection is subject to sections 376.4 through 376.11, but the dates for actions in relation to the special election shall be calculated with regard to the date for which the special election is called. However, a nomination petition must be filed not less than twenty-five days before the date of the special election and, where a primary election may be required, a nomination petition must be filed not less than ~~fifty-two~~ fifty-three days before the date of the special election.

(2) If there are concurrent vacancies on the council and the remaining council members do not constitute a quorum of the full membership, a special election shall be called by the county commissioner at the earliest practicable date. The remaining council members shall give notice to the county commissioner of the absence of a quorum. If there are no remaining council members, the city clerk shall give notice to the county commissioner of the absence of a council. If the office of city clerk is vacant, the city attorney shall give notice to the county commissioner of the absence of a clerk and a council. Notice of the need for a special election shall be given under this paragraph by the end of the following business day.

Sec. 92. Section 373.6, subsection 1, Code 2009, is amended to read as follows:

1. If a proposed charter for consolidation is received not later than ~~sixty-seventy-eight~~ days before the next general election, the council of the participating city with the largest population shall not later than sixty-nine days before the general election, direct the county commissioner of elections to submit to the registered voters of the participating cities at the next general election the question of whether the proposed charter shall be adopted. A summary of the proposed charter shall be published in a newspaper of general circulation in each city participating in the charter commission process at least ten but not more than twenty days before the date of the election. The proposed charter shall be effective in regard to a city only if a majority of the electors of the city voting approves the proposed charter.

Sec. 93. Section 376.4, Code 2009, is amended to read as follows:

376.4 CANDIDACY.

1. a. An eligible elector of a city may become a candidate for an elective city office by filing with the city clerk a valid petition requesting that the elector's name be placed on the ballot for that office. The petition must be filed not more than seventy-one days and not less than forty-seven days before the date of the election, and must be signed by eligible electors equal in number to at least two percent of those who voted to fill the same office at the last regular city election, but not less than ten persons. However, for those cities which may be required to hold a primary election, the petition must be filed not more than eighty-five days and not less than sixty-eight days before the date of the regular city election. ~~A person may sign nomination petitions for more than one candidate for the same office, and the signature is not invalid solely because the person signed nomination petitions for one or more other candidates for the office.~~ Nomination petitions shall be filed not later than ~~five o'clock~~ 5:00 p.m. on the last day for filing.

b. The petitioners for an individual seeking election from a ward must be residents of the ward at the time of signing the petition. An individual is not eligible for election from a ward unless the individual is a resident of the ward at the time the individual files the petition and at the time of election.

2. a. The petition must include ~~space for the signature~~ signatures of the petitioners, a statement of their place of residence, and the date on which they signed the petition. ~~A person may sign nomination petitions for more than one candidate for the same office, and the signature is not invalid solely because the person signed nomination petitions for one or more other candidates for the office.~~

b. The petition must include the affidavit of the individual for whom it is filed, stating the individual's name, the individual's residence, that the individual is a candidate and eligible for the office, and that if elected the individual will qualify for the office. The affidavit shall also state that the candidate is aware that the candidate is disqualified from holding office if the

candidate has been convicted of a felony or other infamous crime and the candidate's rights have not been restored by the governor or by the president of the United States.

3. If the city clerk is not readily available during normal office hours, the city clerk shall designate other employees or officials of the city who are ordinarily available to accept nomination papers under this section. On the final date for filing nomination papers the office of the city clerk shall remain open until five 5:00 p.m.

4. The city clerk shall review each petition and affidavit of candidacy for completeness following the standards in section 45.5 and shall accept the petition for filing if on its face it appears to have the requisite number of signatures and if it is timely filed. The city clerk shall note upon each petition and affidavit accepted for filing the date and time that they were filed. The clerk shall return any rejected nomination papers to the person on whose behalf the nomination papers were filed.

5. Nomination papers filed with the city clerk shall be available for public inspection. The city clerk shall deliver all nomination petitions papers together with the text of any public measure being submitted by the city council to the electorate to the county commissioner of elections not later than five o'clock 5:00 p.m. on the day following the last day on which nomination petitions can be filed.

6. Any person on whose behalf nomination petitions have been filed under this section may withdraw as a candidate by filing a signed statement to that effect as prescribed in section 44.9. Objections to the legal sufficiency of petitions shall be filed in accordance with the provisions of sections 44.4, 44.5, and 44.8.

Sec. 94. Section 384.12, subsection 20, paragraphs a and b, Code 2009, are amended to read as follows:

a. The election may be held as specified in this subsection if notice is given by the city council, not later than thirty-two days before the second first Tuesday in March, to the county commissioner of elections that the election is to be held.

b. An election under this subsection shall be held on the second first Tuesday in March and be conducted by the county commissioner of elections in accordance with the law.

Sec. 95. Section 468.511, subsections 2 and 3, Code 2009, are amended to read as follows:

2. For the purpose of this subchapter, applications for ballots shall be made on blanks substantially in the following form:

Application for ballot to be voted at the .....

(Name of District) District Election on ..... (Date)

State of ..... )

..... County ) ss.

I, ..... (Applicant), do solemnly swear that I am a landowner in the .....  
 (Name of District) District and that I am a duly qualified voter entitled to vote in said election,  
 and that on account of ..... (business, illness, residence outside of the county, etc.)  
 I cannot be at the polls on election day, and I hereby make application for an official ballot or  
 ballots to be voted by me at such election, and that I will return said ballot or ballots to the offi-  
 cer issuing same before the day of said election.

Signed .....

Date .....

Residence (street number if any) .....

City ..... State .....

Subscribed and sworn to before me this ..... day of ..... (month), ..... (year)

3. For the purpose of this subchapter, the affidavit on the reverse side of the envelopes used for enclosing the marked ballots shall be substantially as follows:

State of ..... )

..... County ) ss.

I, ..... (Applicant), do solemnly swear that I am a landowner in the .....  
 (Name of District) District and that I am a duly qualified voter to vote in the election of trustees

of said district and that I shall be prevented from attending the polls on the day of election because of ..... (business, illness, residence outside of the county, etc.) and that I have marked the enclosed ballot in secret.

Signed .....

Subscribed and sworn to before me this ..... day of ..... (month), ..... (year), and that I hereby certify that the affiant exhibited the enclosed ballot to me unmarked; that the affiant then in my presence and in the presence of no other person and in such manner that I could not see the affiant's vote, marked such ballot, enclosed and sealed the same in this envelope; and that the affiant was not solicited or advertised by me for or against any candidate or measure.

.....  
.....  
(Official Title)

Sec. 96. Sections 43.26, 48A.40, 49.35, 49.42A, 50.2, 52.7, 52.9, 52.10, 52.17, 52.18, 52.20, and 53.24, Code 2009, are repealed.

Sec. 97. EFFECTIVE AND APPLICABILITY DATES.

1. The section of this Act amending section 48A.27, being deemed of immediate importance, takes effect upon enactment and applies to notices mailed on or after the effective date.
2. The section of this Act amending section 298.9, being deemed of immediate importance, takes effect upon enactment.

Approved April 10, 2009

**CHAPTER 58**

**PROPERTY TAX ABATEMENTS OR REFUNDS  
— RELIGIOUS, LITERARY, OR CHARITABLE SOCIETY**

*S.F. 43*

**AN ACT** relating to the abatement or refund of property taxes for certain religious, literary, and charitable societies and including effective and retroactive applicability date provisions.

*Be It Enacted by the General Assembly of the State of Iowa:*

Section 1. **ABATEMENT OR REFUND OF PROPERTY TAXES.** Notwithstanding the requirement for the filing of a claim for property tax exemption by February 1, as provided in section 427.1, subsection 14, the board of supervisors of a county having a population of more than twenty-one thousand but not more than twenty-one thousand three hundred, based upon the latest federal decennial census, shall abate or refund the property taxes owed, with all interest, fees, and costs that were due and payable during the fiscal years beginning July 1, 2007, and July 1, 2008, on the land and buildings of a religious, literary, or charitable society that acquired the property by gift or purchase and that did not receive a property tax exemption due to the inability or failure to file for the exemption. To receive the abatement or refund provided for in this section, the religious, literary, or charitable society shall apply to the county board of supervisors by August 1, 2009, and provide appropriate information establishing that the lands and buildings for which the abatement or refund is sought were used by the society

155 Iowa 271  
Supreme Court of Iowa.

STATE EX REL. CRAWFORD

v.

ANDERSON.

May 8, 1912.

Appeal from District Court, Winnebago County; J. F. Clyde, Judge.

The facts are stated in the opinion. Reversed and remanded.

West Headnotes (3)

[1] **Public Employment**

⇒ Holding Other Office or Employment; Incompatibility

Incompatibility between offices depends upon whether one is subordinated to the other and whether the duties of the two are inherently inconsistent, with regard to the public interest.

8 Cases that cite this headnote

[2] **Public Employment**

⇒ Acceptance of other position or office

By the common law a person occupying one office, who accepts another incompatible with it, ipso facto vacates the first office, and hence the vacancy so existing is not confined to statutory causes.

6 Cases that cite this headnote

[3] **Public Employment**

⇒ Acceptance of other position or office

Under Code, §§ 691, 692, 1073, 5097, 5098, 5217, 5585, 5586, the office of justice of the peace for a township held incompatible with the previously held office of mayor of incorporated town therein so as to vacate the first office.

6 Cases that cite this headnote

**Attorneys and Law Firms**

\*128 George Cosson, Atty. Gen., L. A. Jensen, Co. Atty., and N. J. Lee, Sp. Counsel, for appellant.

**Opinion**

SHERWIN, J.

This is an action in quo warranto to test the right of the defendant to hold the office of mayor of Forest City, Iowa. The facts upon which the action is based are briefly these: Defendant was elected mayor in March, 1910. He duly qualified for and discharged the duties of the office. In November, 1910, he was elected to the office of justice of the peace in and for Forest township, and qualified and entered upon the duties of said office. The incorporated town of Forest City lies within the territorial limits of Forest township, but is not coextensive therewith. In his answer the defendant admitted the facts \*129 stated, and further admitted that at that time he was acting as mayor and justice of the peace and discharging the duties of both offices. A demurrer to the answer was overruled, and, the state electing to stand upon its demurrer, the petition was dismissed, and the state appeals.

It is conceded by appellant that there are no constitutional or statutory provisions violated in holding both of these offices at the same time. But it is contended that the two offices are incompatible, and that it is contrary to public policy to permit one person to exercise the functions of both.

[1] In Bryan v. Cattell, 15 Iowa, 538, this court held that, in determining whether a vacancy exists in an office, we are not confined to statutory causes, but may declare it vacant if it is incompatible with the office held. It is a well-settled rule of common law that if a person, while occupying one office, accept another incompatible with the first, he ipso facto vacates the first office, "and his title thereto is thereby terminated without any other act or proceeding." Magie v. Stoddard, 25 Conn. 565, 68 Am. Dec. 375; People v. Hanifan, 96 Ill. 420; Bishop v. State, 149 Ind. 223, 48 N. E. 1038, 39 L. R. A. 278, 63 Am. St. Rep. 270; Stubbs v. Lee, 64 Me. 195, 18 Am. Rep. 251; Attorney General v. Common Council of Detroit, 112 Mich. 145, 70 N. W.



450, 37 L. R. A. 211; Bryan v. Cattell, supra, and many other cases.

[2] The principal difficulty that has confronted the courts in cases of this kind has been to determine what constitutes incompatibility of offices, and the consensus of judicial opinion seems to be that the question must be determined largely from a consideration of the duties of each, having, in so doing, a due regard for the public interest. It is generally said that incompatibility does not depend upon the incidents of the office, as upon physical inability to be engaged in the duties of both at the same time. Bryan v. Cattell, supra. But that the test of incompatibility is whether there is an inconsistency in the functions of the two, as where one is subordinate to the other "and subject in some degree to its revisory power," or where the duties of the two offices "are inherently inconsistent and repugnant." State v. Bus, 135 Mo. 338, 36 S. W. 639, 33 L. R. A. 616; Attorney General v. Common Council of Detroit, supra; State v. Goff, 15 R. I. 505, 9 Atl. 226, 2 Am. St. Rep. 921. A still different definition has been adopted by several courts. It is held that incompatibility in office exists "where the nature and duties of the two offices are such as to render it improper, from considerations of public policy, for an incumbent to retain both." Bryan v. Cattell, supra; Stubbs v. Lee, supra; State v. Feibleman, 28 Ark. 424; People v. Green, 58 N. Y. 304; State v. Jones, 130 Wis. 572, 110 N. W. 431, 8 L. R. A. (N. S.) 1107, 118 Am. St. Rep. 1042, 10 Ann. Cas. 696; Mechem, Public Officers, § 420. In State v. Jones, supra, the offices of county judge and justice of the peace were held to be incompatible, upon the ground that preliminary examinations in criminal prosecutions might be held before either, and the occupancy of both offices by one person would reduce the number of judicial officers having such jurisdiction. This decision was based on State ex rel. Knox v. Hadley, 7 Wis. 700, in which the decision was evidently based upon the ground of public policy. In 2 Ann. Cas., in the note on page 380, will be found a long list of cases in which offices have been held incompatible.

[3] The statute (Code § 1073) provides that two justices of the peace shall be elected for each township in the county. Section 691 gives the mayor of an incorporated town or city, in criminal matters, the jurisdiction of a justice of the peace, coextensive with the county, and in civil cases, the same jurisdiction within the city or town as a justice of the peace has within the township. The statute therefore provides for three magistrates within

every township which embraces an incorporated town or city, giving them concurrent jurisdiction in all criminal matters, except for the violation of an ordinance of such town, or city, and in civil cases, concurrent jurisdiction in the city or town. Section 692 provides that the proceedings before a mayor, as far as applicable, shall be in accordance with the law regulating similar proceedings before a justice of the peace, except in prosecutions under ordinances. Under Code, §§ 5097 and 5098, a mayor of a town, or city, is a magistrate with power to hear complaints, or preliminary information, issue warrants, and discharge other duties therein enumerated. It is apparent from these several provisions of the law that the law-making power considered it for the public good and convenience to have three judicial officers in every township containing within its geographical limits an incorporated city, or town, and that in criminal prosecutions under the statute, these officers should have the same jurisdiction. And if this be true, can this plain purpose be thwarted by permitting one man to hold two of these offices? We think not, because the two offices are, in our judgment, incompatible when viewed in the light of the public policy expressed in the statutes creating them and defining their powers and duties. To hold otherwise would be to say that, in certain instances, there should be but two magistrates in the township, and it would then follow that other provisions of the statute would become wholly without force or effect. Thus, in both civil and criminal cases, with the exception already noted, a change of venue may be taken from the mayor (sections 692, 5217, 5585), and in criminal \*130 cases, where a preliminary examination is being had, section 5217 provides that the case must be sent to the nearest magistrate in the township if there be one. There is no qualification to this provision, and if the other justice of the peace lived outside of the incorporated town, the statute could not be complied with, because the nearest justice would be the magistrate from whom it was sought to take the change. The same result would, or at least might, be necessary under the provisions of section 5586, which says that, in case of change of place of trial, the case shall be sent to the next nearest justice in the township, unless he has been an attorney in the action, or is a relative of one of the parties, or a party to the action. Denial of these legal rights should not be made possible by permitting one man to hold these two offices at one and the same time.

The judgment of the district court is therefore reversed,  
and the case remanded for proceedings in harmony with  
this opinion.

**All Citations**

155 Iowa 271, 136 N.W. 128, Am. Ann. Cas. 1915A, 523

Reversed and remanded.

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KeyCite Yellow Flag - Negative Treatment  
Distinguished by People ex rel. Ward v. Drake, N.Y.A.D. 4 Dept.,  
October 13, 1899

15 Iowa 538  
Supreme Court of Iowa.

BRYAN  
v.  
CATTELL, Auditor of State.

Apr. 6, 1864.

West Headnotes (15)

[1] Public Employment

⇔ State-federal and local-federal conflicts  
The offices of district attorney and captain  
in the service of the United States are not  
necessarily incompatible.

Cases that cite this headnote

[2] Public Employment

⇔ Creation and Abolition of Position or  
Office

Public Employment

⇔ Officers

Public Employment

⇔ Duties

The Legislature, when not inhibited by the  
Constitution, has power to abolish an office,  
to increase or decrease the duties imposed  
upon an incumbent, and to add to or take  
from his salary; and may also add to or change  
the methods by which vacancies may occur,  
and make such changes applicable to existing  
offices and those who hold them.

1 Cases that cite this headnote

[3] Public Employment

⇔ Acceptance of other position or office

Chapter 54 of the Laws of 1862 applied to  
those officers who, before the time of its  
taking effect, accepted commissions in the

military service, as well as to those who  
should thereafter receive such commissions;  
and it operated to vacate civil offices, the  
incumbents of which, at the time of its taking  
effect, also held military offices.

Cases that cite this headnote

[4] Public Employment

⇔ Holding Other Office or Employment;  
Incompatibility

Incompatibility in offices exists where the  
nature and duties of the two offices are such  
as to render it improper, from considerations  
of public policy, for one incumbent to retain  
both. It does not necessarily arise when the  
incumbent places himself for the time being in  
a position where it is impossible to discharge  
the duties of both offices.

13 Cases that cite this headnote

[5] Public Employment

⇔ Acceptance of other position or office

Acts 1862, c. 54, providing that every civil  
office shall be vacated by the acceptance of  
a commission to any military office which  
requires the incumbent to exercise his military  
duties out of the state for a period not less than  
60 days, applies as well to officers receiving  
commissions in the army before the act took  
effect as to those taking them afterwards; and  
under it civil offices were vacated, where the  
incumbent, at the time it took effect, held a  
military office.

2 Cases that cite this headnote

[6] Public Employment

⇔ Acceptance of other position or office

Prior to Acts 1862, c. 54, acceptance of the  
office of captain in the service of the United  
States by a district attorney did not vacate the  
latter office.

Cases that cite this headnote

[7] Public Employment

⇔ Deductions and offsets

When a public officer of the state, absent from his duties, has not legally vacated his office, he is entitled to his salary during such absence; the statutes making no deduction therefor.

Cases that cite this headnote

[8] **Public Employment**

⇔ Deductions and offsets

When the statute providing for the compensation of an officer makes no provision for a deduction for absence or neglect of duty, he is entitled to the salary for the time he legally remains in office, without reference to any neglect in the discharge of the duties thereof.

3 Cases that cite this headnote

[9] **Mandamus**

⇔ State or national boards and officers

The district court has power to issue a writ of mandamus commanding an officer of the state to perform an official duty which involves no exercise of discretion, where the performance of such duty has been omitted.

2 Cases that cite this headnote

[10] **Mandamus**

⇔ Ministerial acts in general

The District Court has power to enforce, by writ of mandamus, the discharge of an official duty involving no exercise of discretion, by an executive officer of the State.

Cases that cite this headnote

[11] **Mandamus**

⇔ Claims of public officers and employees

A mandamus is a proper remedy to compel the issue of a warrant on the treasurer for the payment of the salary of a public officer.

1 Cases that cite this headnote

[12] **Mandamus**

⇔ Warrants or orders

The District Court may, by writ of mandamus, compel the Auditor of State to issue his warrant on the Treasurer of State for a sum due a public officer on his salary.

1 Cases that cite this headnote

[13] **Constitutional Law**

⇔ Labor, employment, and public officials

The courts have jurisdiction to compel a state auditor or comptroller to issue a warrant for a sum due a public officer for salary.

Cases that cite this headnote

[14] **Constitutional Law**

⇔ Compensation

**Constitutional Law**

⇔ Tenure or term of employment

The legislature, when not inhibited by the constitution, may abolish an office, increase or decrease the duties and salary thereof, and change the methods in which vacancies may occur, and make such changes applicable to existing offices and those holding them.

Cases that cite this headnote

[15] **Constitutional Law**

⇔ Compensation

**Constitutional Law**

⇔ Tenure or term of employment

Except so far as the constitution may protect them from interference, offices are neither grants, nor contracts, nor obligations which cannot be changed or impaired. The term, duties, and compensation thereof are subject to the legislative will. The office may be abolished, or the duties and compensation incident thereto may be taken away from the incumbent, and given to another.

1 Cases that cite this headnote

\*\*1 \*538 *Appeal from Polk District Court.*

MANDAMUS. It appears from the pleadings and the agreed statement of facts, that the plaintiff was elected to \*539 the office of District Attorney for the 5th judicial district for four years from the first day of January, 1859. He was duly commissioned, qualified, and entered upon the discharge of his duties. In July, 1861, he was commissioned captain of company D, 1st Iowa Volunteer Cavalry, for three years or during the war; was mustered into the service, and so continued until after the commencement of these proceedings,— his legal residence remaining, however, in Warren county, in said district. His salary was paid him regularly until the 1st of January, 1862. After accepting his commission as captain, or at least prior to said 1st of January, 1862, and until after making this application, he was absent from the State in the military service of the United States, and did not during that time discharge any of the duties of the office to which he was elected. On the 1st of April, 1862, John Leonard was appointed by the Governor to fill the vacancy declared by the executive to exist in said office of District Attorney, who qualified, entered upon and actually discharged the duties thereof, receiving each quarter thereafter the salary as appropriated by law.

This proceeding was instituted in January, 1863, to compel the Auditor of State to issue warrants on the State Treasurer for the salary due and owing, as is claimed, the said plaintiff for the quarters ending the first days of April, July and October, 1862. The defendant, by the Attorney-General, denied the jurisdiction of the Court, and upon this and several other grounds resisted the allowance of the writ. On the hearing, the peremptory writ was ordered, and respondent appeals.

## Attorneys and Law Firms

C. C. Nourse, Attorney-General, for the appellant.

## Opinion

I. The District Court has no jurisdiction over the Auditor and Treasurer of State. The Constitution makes it the duty of the Auditor to settle all claims against the State \*540 Treasury, and to draw warrants for money directed by law to be paid out of the Treasury. The law provides for no appeal from the decision of the Auditor, and he is not a person or tribunal inferior to the District Court.

Const., art. 3, § 1; art. 4, § 22; Revision, 1860, chap. 7, § 71; *The United States v. Guthrie*, 17 How., 287; *The Case of Dennett*, 32 Maine, 508; 8 Ga., 360; *Hosmer v. Surveyor, &c.*, 7 Texas, 764.

II. This Court cannot control the discretion or review the judicial determination of the Auditor, on *mandamus*. His duties are not purely ministerial. *Decatur v. Paulding*, 14 Pet., 515; *The United States v. Seaman*, 17 How., 225.

III. The right to an office cannot be tried on *mandamus*. *Quo warranto* is the proper remedy. *The People v. Stevens*, 5 Hill, 629; 7 How. Pr. R., 128.

IV. The acceptance of a commission from the Governor of the State as captain in the military service of the United States operated as a resignation of the office of District Attorney. *The People, ex rel., v. Carrigue*, 2 Hill, 93; *Will. Municipal Corp.*, 240; *Rodman v. Harcourt*, 4 B. Monr., 224; *King v. Patterson*, 4 B. & A., 1; *Johnson v. Maystron*, 1 H. B., 261.

\*\*2 V. Chapter 54 of the acts of the 9th General Assembly, Laws of 1862, applied to officers who, at the date of its approval, had accepted commissions in the military service, as well as to those who should thereafter accept commissions. The Legislature may, as to unearned salaries, either increase or diminish the salary or abolish the office unless there is some specific constitutional prohibition *Connor v. The Mayor, &c.*, 1 Seld., 285.

*Casady & Polk* for the appellee, contended: 1. That the Courts may, by *mandamus*, compel an executive officer to discharge an official duty which involves the exercise of no discretion, citing *Auditor v. Hardin*, 8 B. Monr., 648; \*541 *Kendall v. The United States*, 12 Pet., 610; *The Auditor v. Adams*, 13 B. Monr., 150; *Divine v. Harvie*, 7 Monr., 443; *Resile v. Walker*, 11 How., 272; *Burnett v. The Auditor of Portage County*, 12 Ohio, 54; *The State v. Moffit*, 5 Id., 358; *Smith v. The Commissioners of Portage County*, 9 Id., 26; *The State, ex rel., v. The Treasurer of Wood County*, 17 Id., 184; *The State, ex rel., v. The Auditor of Hamilton County*, 19 Id., 116. 2. That the act of 1862, if construed to apply to officers who accepted military commissions prior to its enactment, is of doubtful constitutionality. *Puchaw v. Spencer*, 2 Ind., 486; 1 Kent's Com., 455; *Bouv. Law Dict.*, "Retrospective." 3. That the offices of district attorney and of captain in the volunteer service are not, in legal contemplation, incompatible. *District Township of Dubuque v. The City of Dubuque*, 7 Iowa, 262; *Bouv. Law Dict.*, "Incompatibility."

WRIGHT, Ch. J.

By the Attorney-General it is claimed: *First*, that the District Court of Polk county had no jurisdiction to award this writ for the purpose, and under the circumstances disclosed in the record. *Second*. If the court had jurisdiction, then that the Auditor decided correctly in refusing to draw the warrants on the plaintiff's demand, and the writ should, therefore, have been denied.

In obedience to what we understand to be the nature and character of this writ, the power of the judiciary, and the adjudications upon the subject, we are clearly of the opinion that the jurisdictional objection is not well taken. This writ issues upon the order of a court of competent jurisdiction, and when from the District Court, it commands an inferior tribunal, corporation, board or person, to do or not to do an act, the performance or omission of which the law specially enjoins as a duty, resulting from an office, trust or station. The Supreme Court may also issue it when necessary to the District Court, or in any \*542 other case where it is necessary to enable it to exercise its legitimate power. The law also declares that the writ may be granted on the petition of any private party aggrieved, without the concurrence of the prosecutor for the State. Rev., §§ 3761-3764. The objection made is, that the District Court of the county where the Auditor of State resides, has no power to order this writ; that he is not an inferior tribunal, board or person, within the meaning of the statute. It is obvious that the Supreme Court could not order the writ, for it would not go to the District Court, nor would it be necessary to enable it to exercise any legitimate power. If the jurisdiction exists anywhere, therefore, it must be in the tribunal selected in this instance.

\*\*3 The powers of the State government are divided into three separate departments (the executive, legislative and judicial), and no person charged with the exercise of powers properly belonging to one department shall exercise functions appertaining to either of the others, except as in the Constitution is expressly directed or permitted. Const., § 1, art. 3. The Auditor of State belongs to the executive department. § 22, art. 4. And from these provisions the argument is that in ordering this writ, the District Court assumed that the executive department was inferior to the judicial, or that the Auditor, who is the general accountant of the State, was an inferior officer or person. The argument, however, mistakes the

meaning of the constitutional provisions quoted, and as a consequence reaches a wrong conclusion.

No one now doubts the power of the judicial department to declare void an act of the Legislature, if in conflict with the Constitution, though the act may have been passed with all the required formalities, and received the executive sanction. And yet we have never heard it suggested that in this, the judicial was exercising functions appertaining to the legislative department. Nor has it to our knowledge \*543 ever been supposed that in exercising such power, the courts assumed that the legislative and executive were inferior to the judicial power. The Constitution, by the inhibition in question, designed (we state the proposition by way of illustration), to prevent the executive of the State from being at the same time a judge of the Supreme Court; a member of this Court from being, during his term of service, Secretary of State, or Treasurer; a member of the Senate or House from being Governor; the judicial department from discharging duties or exercising the functions devolving upon or appertaining to the executive. Thus, the Governor cannot adjudicate cases pending in this Court, nor can this Court grant pardons and reprieves. So neither can this Court make the law, nor can the Legislature assess fines, or render judgments. To some tribunal, however, must be entrusted the power of passing upon the legality of the acts of those filling these several departments, and especially the executive and legislative. And to assume that if this power is exercised, there is an interference with the functions of such other departments, awards conclusiveness to their action. For such action either is or is not conclusive. No one pretends that it is always free from examination or correction. If claimed to be illegal, what tribunal, under our form of government, determines it? Most clearly the judicial. And yet such examination cannot be had, according to the argument now under consideration, without improperly interfering with the functions of another co-ordinate department, without infringing upon the Constitution.

MARSHALL, Ch. J., in *Page v. Hardin*, 8 B. Monr., 648 (in an opinion, we may remark, very ably, and quite applicable to many of the questions made in this case), referring to the very point now under consideration, uses this language: "But his (the Auditor's) determination against the claim cannot be conclusive, because the right, if it exists, \*544 is a legal right; founded in the law, and therefore to be ascertained and maintained by the law; whence it follows that there must be some legal remedy above, and independent of the Auditor's will

or judgment for the enforcement of the right, and the redress of the wrong by its being withheld. The remedy is, in our system, to be found in the resort, by the ordinary modes, to the judicial power as administered in courts of justice. This, as between individuals, is the final test of legal right and wrong, and not the less so because in any case the right claimed or wrong alleged may be of such a character as to bring in question the efficacy of official acts done by the jurisdiction of other departments of the government. Not that the judicial power, or the judicial department, is superior to others, or that the depositaries of that power are necessarily more enlightend than all others, but because it has been found essential to the preservation of individual rights, and to the regular and equal operation of free government, that the three great departments should be entrusted to different bodies of magistrates, and that one of them should be a judicial department, having for its peculiar province or duty the administration and exposition of the laws in their application to individuals, and especially in the ascertainment and enforcement of rights, and the repression and redress of wrongs. \* \* \* The executive department, and all of its officers are as much bound by the constitution and laws as the legislative, and have no more power to violate the rights of individuals secured by law. The power, obviously judicial, of ascertaining and expressing the legal rights of individuals, is in effect the power of protecting those rights from violation by the act or authority, either of individuals or of the legislative departments; and it necessarily involves the function of deciding in every case properly before it what are the legal rights of the parties, and how far in point of law, that is under the constitution and laws, those rights have been effected \*545 by any and every act, relied on for their support or destruction. \* \* \* The judiciary pretends to no direct control over the action of the Legislature, or of the supreme executive. But it may decide upon the validity of the acts of either, affecting private rights. And by the writ of *mandamus* it may coerce a ministerial officer, though of the executive department, to the performance of a legal duty for the effectuation of a legal right." And we may remark that those thoughts have peculiar pertinency under our law. For it will be remembered that the writ may issue on the petition of the party aggrieved. The proceeding is not here, as in England, and in most of the States, in the name of the Government. In the King's Bench, where the King is deemed to be potentially present (and where, only, in England, it can be enforced), the proceeding "stands on the foot of contempt, and is

intended to reform official delinquency." 13 Pet., 607. Here the proceeding may be in the name of the party aggrieved, and while the substance of the law governing the writ and the practice under it, except where expressly modified by statute, is to be found in the common law, individuals may invoke the order to enforce a legal duty, or to secure their legal rights.

\*\*4 In *Kendall v. The United States*, 12 Pet., 526 (see p. 609), which was a proceeding by *mandamus* to compel appellant, as Postmaster-General, to carry to the credit of the parties applying for the writ a credit found due them under the law, according to the decision of the Solicitor of the Treasury, Mr. Justice THOMPSON says: "We do not think the proceedings in this case interfere, in any respect whatever, with the rights or duties of the executive, or that it involves any conflict of powers between the executive and judicial departments of the government. The *mandamus* does not seek to direct or control the Postmaster-General in the discharge of an official duty partaking in any respect of an executive character, but to \*546 enforce the performance of a mere ministerial act, which neither he nor the President had any authority to deny or control." And though the Chief Justice, and Justices BALDWIN and CATRON, differed with the majority in that case, we do not understand them to advance any position in the least conflicting with the doctrine just quoted. Indeed, Justice BALDWIN expressly says, that "the act was one which might properly be enforced by *mandamus*;" but denied that the Circuit Court of the District of Columbia had authority by law to issue the writ. It is nowhere suggested that the exercise of the power by the judicial department would interfere with any function properly appertaining to the executive. And in this connection we remark that the case of *Brashear v. Mason*, 6 How., 92, differs from that just cited as well as the present, in the important fact that there, as the Court held, the writ was asked "to guide and control the judgment or discretion of the Secretary of the Navy in matters committed to his care in the ordinary discharge of his official duties;" and the writ was denied in *Decatur v. Paulding*, 16 Pet., 497, upon substantially the same ground. In the latter case, the point above quoted, as ruled in 12 Pet., 524, is expressly affirmed.

In *United States v. Guthrie*, 17 How., 284, much relied upon by the Attorney-General, Justice DANIEL, who prepared the majority opinion, expressly held, that the point now under consideration did not arise, though discussed by counsel, but that the only legitimate inquiry

was whether a person could be arrested in the Court below to command the withdrawal of a sum of money from the federal treasury, to be applied in satisfaction of disputed or controverted claims against the United States.

Dismissing this part of the case with the suggestion that the word inferior, as used in the statute, has reference to or qualifies tribunal, and not person--that the word officer is not used, and that within the purview of the \*547 law there can be no such thing as an inferior or superior person--we pass to the consideration of the second proposition. And briefly stated, it is, that the Auditor, in rejecting this claim, did not act ministerially, merely; that he had many questions to determine; that he had a discretion, and that this discretion could not be controlled or reviewed by *mandamus*. If the premises are correct, the conclusion is manifestly correct. Rev., § 3763.

\*\*5 The law declares that the salary of the District Attorney shall be audited and paid like that of other State officers. Rev., § 380. These salaries were formerly to be paid quarterly (now monthly), upon warrants to be drawn therefor by the Auditor of State upon the Treasurer. The Auditor's duty is to draw such warrants, as it is money "directed by law to be paid, as the same may become payable." §§ 41, 70. His duty, then, is a plain and simple one. He has no discretion. If the Governor, Secretary of State, or any other State officer, applies for such warrant, his duty is plainly and clearly marked out. True, he might, out of abundant caution, in case of doubt (as in this instance), withhold the same. And we go even further, and say that he not only might do so, but in some cases duty and the interest of the State would dictate this course. But this not because he has really any legal discretion in the premises, but to avoid prejudice to the State, by first taking the opinion of a legal tribunal. But because he does decline is no reason for claiming that, as he has exercised what is styled his discretion, he cannot afterwards be compelled to do the act. If so, then as before stated, his decision would amount to a finality, and *mandamus* could not reach him in any case. Such a determination cannot be construed as affecting the legal rights or duties of the parties. The Auditor's duties are legal, and may in some manner, sooner or later, be brought to the legal test. A warrant legally due and demanded, he should issue. True, he \*548 has the physical power to refuse, and might, as in this case, without being chargeable with the least moral delinquency, or the slightest imputation of want of capacity, do so. But in all this he is but the agent of the law, and is subject to its ultimate coercion for such refusal. In

the language of the Kentucky case (*Page v. Hardin, supra*), "If the right claimed is sustained by the law, the writ of *mandamus* is the interposition of a tribunal appointed by the law for the ascertainment and enforcement of such rights, by the application of a remedy essential in a general point of view to the regular operation of the laws, and rendered necessary in the particular instance for the effectuation of a right."

The case above cited, in 12 Pet., 524, fully accords with these views. All the cases, as well as the statute, recognize a distinction between those acts resting in discretion, and such as are plainly, clearly, definitely prescribed by law. Thus the Auditor is required to settle all claims against the treasury, and when the law recognizes a claim but no appropriation has been made, he is nevertheless to settle it, and to give the claimant a certificate, and report the same to the next general assembly. (§ 71, ch. 5.) Now, his judgment or discretion as to the amount he should allow on such settlement, could not be controlled by *mandamus* but he could be compelled to act, or after he had thus settled the amount due the claimant, he could be compelled to grant the required certificate. Or, take a case where the law makes an appropriation, and the settlement of the claim is referred to the Auditor, he cannot be compelled to allow a particular sum, but may be compelled to issue his warrant for the sum which he does audit or allow. And whether there is a discretion is, of course, to be determined by the courts, in each case, where the process of *mandamus* is invoked. If there is, then, though ever so unwisely exercised, there can be no interference. If not, then the omission or performance of an \*549 act, specially enjoined by law, as resulting from the office, may be compelled. It seems to us, that the duty in this case did not rest in discretion, and that the Court had jurisdiction.

\*\*6 We are then to inquire, in the second place, whether plaintiff was entitled to the salary claimed. And notwithstanding several questions are discussed in this connection by counsel, the space already occupied demands that we should dispose of them briefly.

The Revision, § 662, declares that every civil office shall be vacant upon the happening of the following events: 1. Resignation. 2. Death. 3. Removal. 4. Refusal or neglect to qualify. 5. The decision of a competent tribunal declaring the same. 6. Ceasing to be a resident of the State, District, &c., in which the duties are to be exercised, or for which the incumbent may have been elected. 7. Failure to elect.



8. Forfeiture as declared by any law of the State. 9. Conviction of an infamous crime. By chapter 54, Laws of 1862, this section was amended by adding as a tenth or further clause: "The acceptance of a commission to any military office, either in the militia of this State, or in the volunteer service of the United States, which requires the incumbent in the civil office to exercise his military duties out of the State for a period not less than sixty days." This latter act, by its terms, took effect April 2, 1862.

Appellant claims that the acceptance of another office, incompatible with that held, creates a vacancy; that this is true upon general principles and the genius and character of our form of government, if not included in any express provision of the statute; that the office of captain in the volunteer service is incompatible with the office of district attorney, and that when plaintiff accepted the captaincy in July, 1861, he surrendered the other office, and had no longer any right to the salary. By the appellee, it is maintained that the office of captain is not, within the \*550 meaning of the law, incompatible with that of district attorney, but that if it is, then as incompatibility is not named in the statute as one of the methods in which a vacancy may arise, it cannot be so regarded by the Courts.

Our opinion is, that we are not confined to the statutory causes or events in determining whether a vacancy exists. If a party accepts another office, which, within the meaning of the law and the cases, is incompatible with that which he holds, we have no doubt but that the first one would become vacant. Thus, as is well said by appellant, if a Judge of the District Court should accept a seat upon this bench, a vacancy would be created in the first office, and yet the statute certainly does not in terms cover such a case. So, if the Auditor of State should take the office of Treasurer; and many other cases that might be stated.

But what is meant by incompatible? Does it cover every case where the incumbent places himself in such a position that he cannot, for the time being, discharge the duties of the first office? Or does it embrace those cases where the nature of the duties of the two offices are such as to render it improper, from considerations of public policy, for him to retain both? We have no statutory declaration, in general language, prescribing what offices, from their nature, are incompatible. Looking to the common law, we are of the opinion that the incompatibility must be such as arises from the nature of the offices, or their relation to each other. Or, as Mr. BOUVIER has it: "They are such as are subordinate to, or interfering with, each other; for

example, a man cannot be at once judge and clerk of the same court." BAILEY, J., in *Rex v. Tizzard* (17 Eng. C. L., 193), says: "The two offices are incompatible, where the holder cannot, in every instance, discharge the duties of each. And that incompatibility, as here used, must be such as arises from the nature of the duties, in view of the relation of the two offices to each \*551 other, seems to have its foundation in reason. If appellant's proposition is correct, then plaintiff would have surrendered his office, if he had volunteered and gone into the service as a private. The acceptance of a captaincy would not change it, for his obligation to continue in the service would be no greater in the one case than the other. The effect of such a rule would be to have the vacancy depend not upon the acceptance of an office, but upon a particular employment. And yet this will scarcely be claimed. Not only so, but it by no means necessarily follows that a person in the military service might not discharge all the substantial duties of the attorneyship. It is scarcely probable that he could or would, and yet he might. Suppose the plaintiff in this case had been permitted by his superior officers to return, and attend all the courts of his district, would it have been claimed that because he was captain, he was disqualified from discharging such duties? Or suppose he had been so connected with the service that his regiment had been retained in the State, or stationed in the county of his residence, would his right to discharge the duties of the former office have been disputed? It seems to us clearly not. And if not, it is plain that there is nothing in the nature of the two offices incompatible with each other. The objection rests more upon how and where the duties of the second office are to be exercised, than upon any necessary conflict between such offices. The argument carried out would declare a vacancy, if the officer accepted an agency, the duties of which took him beyond the State for an indefinite time.

\*\*7 But it is suggested that plaintiff, during the whole time for which this entry is claimed, was absent from the State, and failed and neglected to discharge any of the duties of his office. And this has presented the greatest obstacle to the allowance of plaintiff's claim for the time covered by the months of January, February and March, \*552 1862. It seems to us, the dictate of reason and good conscience, that the State should not be required to pay for services never rendered; that public officers should be paid their salaries when and only when they discharged the duties imposed upon them by law; that the same rule should apply to the State as to individuals, and that no Court ought to consent to the auditing of

a demand against the State where it was admitted that the claimant made no pretense of having rendered the services for which he claims. It must be remembered, however, that we are dealing with a practical, and not an abstract, question. And practically, the difficulty in the view suggested is, that it would be impossible to tell where the true line should be drawn. That is to say, how long an absence from official duties—how great delinquency shall work a forfeiture of salary. In the absence of statute, shall it be one day, or one week, or one month, or one year? Where shall faithfulness end, and delinquency begin? Add to these considerations the fact that it is frequently impossible to tell to what extent the services of the officers were necessary, at the time covered by the supposed delinquency, and the propriety of the rule which entitles the officer to his salary so long as he remains in office, becomes reasonably manifest. The better and safer rule doubtless is, that if he is in point of law actually in office, he has a legal right to the salary pertaining to it. His conduct may be such as to render him liable to removal, but when the statute makes no deduction for absence or neglect of duty, and the State takes no step as a consequence of such absence or delinquency, we suppose it is the legal right of the officer to demand the full salary allowed him by law. Different questions might and would of course arise when it was claimed that there had been a relinquishment of the office, or that the party, by removal from the State, or by resignation or the like, had abandoned it. Such questions \*553 do not arise, however, in this case, and for the three months named, therefore, we hold that plaintiff was entitled to his salary.

As to the subsequent time, still other questions arise. The right of the Governor to fill vacancies occurring in this office is conceded. But it is also claimed and conceded, that he has no power to create a vacancy; that there must be a vacancy before the right or power to fill it arises. The question then is, whether, after the taking effect of chapter 54, Laws of 1862, there was a vacancy in this office, and whether, at the time, the Governor had the power to fill the same.

This argument is advanced: The citizens of the State, including those holding the civil offices, of certain ages, are liable to perform military duty, and may be drafted; that they must answer the call, or be held liable as deserters; that if they respond, then, under this law, they forfeit all right to any offices held by them, and that a statute presenting such an alternative is of doubtful constitutional validity. As to this position, we need only

say that plaintiff's service was voluntary, not compulsory, and the rights of an officer when drafted, it will be time enough to consider when the question arises.

**\*\*8** That it is competent for the Legislature to abolish an office, increase or decrease the duties devolving upon the incumbent, add to or take from his salary, when not inhibited by the Constitution, we entertain no doubt. We are equally clear that it is within the legislative power to add to or change the methods in which vacancies may occur, and make such changes applicable to existing offices, and those holding them. And it was doubtless upon this theory, and this construction of the Act of 1862, that the Governor appointed Leonard on the 1st of April of that year. If he had the power to do this, then the person so appointed, and not the plaintiff, was entitled \*554 to the salary. If not, then plaintiff's right would not be affected, for the payment of the salary to one not legally entitled to it, could not interfere with the rights of the legal incumbent. And not without some doubt, our opinion is, that the Governor had the power to make the appointment, and that after the 1st of April, or the quarter ending at that time, the Auditor properly denied plaintiff's claim.

If, within a reasonable time after the passage of this law, plaintiff had relinquished his position of captain in the military service, and returned to the actual discharge of his civil office, and claimed its emoluments, the case would have presented a question of more difficulty. We cannot believe, however, that the act was intended to apply solely to those who might subsequently accept the commission named. It is known as a part of the history of the State, that several instances of this kind had occurred, and were then existing. The consequence was, that the administration of the laws was being seriously interfered with, and the design was to afford a remedy. Persons holding these offices and military commissions at the same time, had no vested right in them. In view of the public welfare, and the correct administration of the laws, the Legislature could provide for filling the civil offices. And when those in the military service continued in the discharge of the duties thus devolving, making no claim for months afterwards to hold the civil position, we think they should be and are estopped from demanding the State salary, and that they cannot gainsay the right of the Executive to fill the office, as in case of a vacancy.

Plaintiff's claim should have been allowed up to April 1, 1862, and after that it was properly disallowed. With this

modification, the order below is affirmed, appellee paying costs of appeal.

**All Citations**

15 Iowa 538, 1864 WL 223

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## Thompson, Jeffrey [AG]

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**From:** Ranscht, David [AG]  
**Sent:** Friday, February 10, 2017 2:30 PM  
**To:** Thompson, Jeffrey [AG]  
**Subject:** Draft Answers  
**Attachments:** Draft Answers.docx

Although there is not a specific paragraph to this effect in the memo as it stands now, I also realized that article IV, section 19 states the people further down the line "act as" governor, while "devolve" applies only to the lieutenant. That provision was amended to its current form as part of the 1988 amendments. Several other states noted that the difference in language suggests the lieutenant governor is not merely acting governor.

## MEMORANDUM

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**To:** Jeff Thompson, Meghan Gavin  
**From:** David Ranscht  
**Date:** February 6, 2017  
**Re:** Draft Answers to Gubernatorial Succession Questions

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On February 1, 2017, the Attorney General's Office received a request from state Senator David Johnson for a formal legal opinion regarding several provisions of the Iowa Constitution. Senator Johnson requested the opinion because President Donald Trump announced he intends to nominate Iowa Governor Terry Branstad as a United States Ambassador. To serve as an ambassador, Governor Branstad would have to resign his position as Governor of Iowa. Senator Johnson requests an expedited attorney general opinion exploring the succession provisions of the Iowa Constitution. Essentially, Senator Johnson asks the Attorney General's Office to opine on what happens if and when Governor Branstad submits his resignation. Although some past Iowa governors have resigned, these specific questions have not arisen in Iowa before.

### I. OPERATIVE CONSTITUTIONAL PROVISIONS

The relevant provision of the Iowa Constitution is article IV, section 17, which is entitled "Lieutenant governor to act as governor." It provides:

In case of the death, impeachment, resignation, removal from office, or other disability of the governor, the powers and duties of the office for the residue of the term, or until he shall be acquitted, or the disability removed, shall devolve upon the lieutenant governor.

Iowa Const. art. IV, § 17. This provision has never been amended.

Several other state constitutions contain similar language that centers around the verb "devolve." *See, e.g.*, Ark. Const. art. 6, § 4; Idaho Const. art. IV, § 12; Nev. Const. art. 5, § 18; Okla. Const. art. 6, § 16; Tenn. Const. art. 3, § 12; Wash. Const. art. 3, § 10. Additionally, although they do not contain the verb "devolve," some state constitutions provide—like article IV, section 17 of the Iowa Constitution—that if a governor resigns, the lieutenant governor shall have the powers, authorities, and duties of governor. *See, e.g.*, Ky. Const. § 84; Mass. Const. pt. 2, ch. II, § II, art. III; Miss. Const. art. 5, § 131.

In contrast, many state constitutions distinguish between permanent disabilities and temporary disabilities. Permanent disabilities occur when a governor dies or resigns, whereas temporary disabilities could include physical or mental incapacity, or absence from the state. In those states, generally the lieutenant governor becomes governor when a permanent disability occurs but gubernatorial powers devolve (or the lieutenant governor acts as governor) during any period of temporary disability. *See, e.g.*, Ala. Const. art. V, § 127; Alaska Const. art. 3, §§ 9, 11; Ariz. Const. art. 5, § 6; Cal. Const. art. 5, § 10; Colo. Const. art. 4, § 13 (1), (5); Conn. Const. art. 4, § 18(a)–(b); Fla. Const. art. 4, § 3(a)–(b); Ga. Const. art. 5, § 1, ¶ V(a)–(b); Haw. Const. art. 5, § 4; Ind. Const. art. 5, § 10(a); Kan. Const. art. 1, § 11; Me. Const. art. 5, pt. 1, §§ 14–15; Md. Const. art. 2, § 6(b), (d); Mich. Const. art. 5, § 26; Minn. Const. art. 5, § 5; Mo. Const. art. 4, § 11(a); Neb. Const. art. IV, § 16; N.J. Const. art. 5, § 1, ¶¶ 6–7; N.M. Const. art. 5, § 7; N.Y. Const. art. 4, § 5; N.C. Const. art. III, § 3(1), (3); Ohio Const. art. III, § 15(A)–(B); Pa. Const. art. 4, § 13; S.D. Const. art. 4, § 6; Tex. Const. art. 4, § 16(c)–(d); Utah Const. art. 7, § 11(2), (5); Va. Const. art. 5, § 16; Wis. Const. art. 5, § 7(1)–(2). Article IV, section 17 of the Iowa Constitution does not make a similar distinction; its provisions apply to all disabilities, whether temporary or permanent. *See* Iowa Const. art. IV, § 17.

Several other provisions of article IV of the Iowa Constitution bear upon the question of gubernatorial succession. Article IV, section 1 provides that “The supreme executive power of this state shall be vested in a chief magistrate, who shall be styled the governor of the state of Iowa.” Article IV, section 10 grants the governor authority to fill any office that becomes vacant if the constitution and laws do not provide a mode for filling such vacancy. Article IV, section 18 provides that the lieutenant governor “shall have the duties provided by law and those duties of the governor assigned to the lieutenant governor by the governor.” Finally, the Iowa Constitution contemplates a contingency that becomes active when multiple state officers are incapable of performing gubernatorial duties:

If there be a vacancy in the office of the governor and the lieutenant governor shall by reason of death, impeachment, resignation, removal from office, or other disability become incapable of performing the duties pertaining to the office of governor, the president of the senate shall act as governor until the vacancy is filled or the disability is removed; and if the president of the senate, for any of the above causes, shall be incapable of performing the duties pertaining to the office of governor the same shall devolve upon the speaker of the house of representatives; and if the speaker of the house of representatives, for any of the above causes, shall be incapable of performing the duties pertaining to the office of governor, the justices of the supreme court shall convene the general assembly by proclamation and the general assembly shall organize by the election of a president by the senate and a speaker by the house of representatives. The general

assembly shall thereupon immediately proceed to the election of a governor and lieutenant governor in joint convention.

Iowa Const. art. IV, § 19.

In 1844, when Iowa first offered a state constitution for ratification by the people, a newspaper editorial expressed disappointment that much of it was written “in very confused and bungling language” that rendered the drafters’ intent “almost or quite doubtful.” *Its Style*, The Iowa Standard, Vol. IV, No. 46 (Nov. 14, 1844), reprinted in *Press Comments and Other Materials on the Constitutions of 1844 and 1846*, at 214 (Benjamin F. Shambaugh ed., 1900). Though modern readers might feel similarly about the current Iowa Constitution, constitutional history illuminates the framework the drafters established—and why they established it.

## II. CONSTITUTIONAL HISTORY

### A. Iowa History

#### 1. The 1857 Convention

Iowa enacted its current constitution in 1857. As the constitutional convention began, one delegate proposed that an Executive Committee dedicated to formulating the executive branch of government consider “providing for the election of a Lieutenant Governor who, by virtue of his office, shall . . . exercise all the powers and have the title of Governor in case of the death, removal, or other disability of the Governor.” 1 *The Debates of the Constitutional Convention of the State of Iowa*, at 39 (W. Blair Lord rep., 1857) [hereinafter *The Debates*]. The previous Iowa Constitution of 1846 made no provision for a lieutenant governor. The 1857 convention agreed to the resolution. *Id.*

When it came time to debate provisions of article IV, a representative from the Committee read the proposed provisions to the convention. *Id.* at 76–78. The provisions did not include section descriptions or titles. *See id.* In other words, the convention did not understand article IV, section 17 to provide that the lieutenant governor “acts as” governor. That descriptive heading came later. Instead, by the words of the resolution at the outset of the convention, the drafters understood that the lieutenant governor would “have the title of Governor” if the Governor left office. *Id.* at 39.

When considering statutes, the Iowa Supreme Court has stated that a section heading “cannot limit the plain meaning of the text.” *Atchison, Topeka & Santa Fe Ry. Co. v. Bair*, 338 N.W.2d 338, 344 (Iowa 1983). That important limitation, which prevents a code editor’s choice of language from frustrating the intent of a statute, is even more significant when considering a

constitutional provision. But even if the heading of article IV, section 17—which does not use operative language from article IV, section 17 itself—sheds *some* light on the framers’ intent in drafting the provision, *see T & K Roofing Co. v. Iowa Dep’t of Educ.*, 593 N.W.2d 159, 163 (Iowa 1999), other available materials better establish what the Iowa Constitution’s framers really understood “devolve” to mean and what they intended the gubernatorial succession framework to look like.

Notably, despite the resolution at the outset of the 1857 convention, Iowa considered having no lieutenant governor at all. During debate on article IV, delegate Warren proposed an amendment to article IV, section 17 that replaced the words “Lieutenant Governor” with “Secretary of State.” 1 *The Debates*, at 587. Delegate Clarke of Johnson County<sup>1</sup> proposed instead “that the duties of the office of Governor, in case of a vacancy, shall devolve upon the president of the Senate.” *Id.* The convention passed the amendment as Clarke proposed it, inserting the words “president of the Senate” in place of “Lieutenant Governor.” *Id.* Accordingly, the convention also deleted other provisions referring to the lieutenant governor’s duties and place in the line of succession. *See id.* at 587–88.

But not every delegate was convinced the convention had made the right decision. The next morning, delegate Gray asked his colleagues “to consider well the importance of the matter before striking” the provisions for a lieutenant governor. *Id.* at 591. He noted many other states’ constitution provided for the office of lieutenant governor and indicated “there are some advantages connected with the office.” *Id.*

Among those advantages was the fact that the lieutenant governor “will be elected directly by the people, instead of by the Legislature.” *Id.* Gray found that important because “We all seem to agree in placing elections, as far as possible, directly in the power of the people.” *Id.* Delegate Clarke of Henry County agreed:

Gentlemen [of the convention] do not reflect that they may be taking from the people the power of selecting their own chief magistrate. When a man is a candidate for the office of Lieutenant Governor, the people always vote for him with the understanding that circumstances may arise which will make him their Governor. But if you give to the Senate the power of selecting the man who may be the Governor of the people, you take from the people this power and put it into the hands of the Senate.

*Id.* at 591–92.

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<sup>1</sup> “There were two men named Mr. Clarke and one named Mr. Clark at the Iowa convention.” *State v. Senn*, 882 N.W.2d 1, 13 n.7 (Iowa 2016); *see* 1 *The Debates*, at 6.



Delegate Gray's remarks sparked renewed debate on the subject, and some delegates changed their minds. For example, delegate Wilson offered that although he had originally voted to eliminate the position of lieutenant governor, "upon reflection . . . the advantages in favor of [having a lieutenant governor] are far superior to the disadvantages." *Id.* at 593. Most significant, however, were Mr. Clark's remarks:

I voted yesterday to strike out the office of Lieutenant-Governor. I had not reflected upon it well, and I am inclined to the opinion that I did not vote right. Upon hearing the argument thus far upon the question, and upon reflection, I am disposed to favor the office of Lieut.-Governor, for one reason, if there were no other: I believe that an executive officer, whoever he may be that shall perform the duties of that office, whether Governor or Lieutenant-Governor, ought to be elected directly by the people, in all cases, at least so far as it is possible to provide for it. We elect the Governor by the direct votes of the people—by the popular will—by the popular voice. In case of his removal or disability, I see no reason why the person filling his place should not be elected directly by the whole people as much as the Governor himself.

*Id.* at 594. Mr. Clark's clear concern was ensuring that the person exercising the state's executive power, "whether Governor or Lieutenant-Governor," has a majority of the citizenry's blessing to do so. *See id.*

After some further debate, the convention voted 19–14 against the amendment that would have struck the office of lieutenant governor. *Id.* at 595. Accordingly, the convention also restored other provisions relating to the office of lieutenant governor. *See id.* at 596.

## 2. Iowa Governors Who Resigned

Governor Kirkwood resigned in 1877 to become a United States Senator. Then-Lieutenant Governor Newbold "entered on the discharge of the duties of the executive" for the remainder of the term (just under a year) but did not appoint a new lieutenant governor "because the lieutenant-governorship was not vacant." William H. Fleming, *The Second Officer in the Government, reprinted in Annals of Iowa: A Historical Quarterly*, Vol. XIII, No. 1, at 533 (1921) [hereinafter *Annals of Iowa*]. A later history of Iowa referred to Newbold as the "ninth Governor of Iowa" and stated he "became Governor" when Kirkwood resigned. 4 Benjamin F. Gue, *History of Iowa: From the Earliest Times to the Beginning of the Twentieth Century* 199–200 (1903).

Governor Cummins resigned in 1908 to become a United States Senator. Then-Lieutenant Governor Garst "entered on the performance of executive duties" for the remainder of

the term (just under two months) but did not appoint a new lieutenant governor. *Annals of Iowa*, at 534.

Governor Hughes resigned in 1969 to become a United States Senator. Then-Lieutenant Governor Fulton assumed the duties of governor for the remainder of the term (just over two weeks) but did not appoint a new lieutenant governor.

Additionally, in 1954, Governor Beardsley died in office. Although Governor Beardsley did not resign, his death—like a resignation—was a permanent “disability” under the Iowa Constitution. Then-Lieutenant Governor Elthon assumed the duties of governor for the remainder of the term (just under two months). However, Elthon did not appoint a new lieutenant governor.

### 3. Interpretation and Subsequent Amendments

In 1923, Governor Kendall requested an opinion from the Attorney General’s Office because he received medical advice recommending he take an extended vacation and abstain from performing his official duties. 1923 Att’y Gen. Ann. Rep. 349, 349 (Iowa Att’y Gen. Aug. 23, 1923). The length of his expected absence was indefinite but would likely be two to three months. *Id.* He asked the Attorney General’s Office to opine on “whether or not the Lieutenant Governor can, during [the] temporary absence, perform the duties of Governor.” *Id.*

The Attorney General concluded “that during the temporary disability of the governor, that the lieutenant governor may act as governor.” *Id.* at 348. The opinion differentiates between the governor permanently leaving office and the governor stepping aside temporarily:

From a consideration of [article IV of the Iowa Constitution] it will be observed that in case of death, resignation, or removal from office of the governor, that the lieutenant-governor succeeds him as governor of the state for the residue of the term. It will further appear that when there is a temporary disability of the governor, the lieutenant-governor acts in his stead during the period of time such disability continues. In the first instance, the lieutenant-governor becomes governor. In the second instance he simply acts as governor during the temporary disability of his chief.

*Id.* The opinion makes that distinction in part because “terms of a constitution, like those of a statute, are always to be given their natural and obvious meaning. That is, the meaning in which they are commonly and ordinarily understood.” *Id.* at 347–46.<sup>2</sup> The Attorney General further

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<sup>2</sup> Because the 1923 volume of attorney general opinions was compiled in chronological order, the volume is paginated in reverse order.

advised Governor Kendall that, when stepping aside, he should make clear “there is no resignation or permanent abandonment of the office of governor.” *Id.* at 343–42.

The 1923 opinion has not been rescinded or disavowed. Neither the legislature nor the people of Iowa sought to amend the Iowa Constitution to establish that the Attorney General’s interpretation was incorrect.

However, the people later amended article IV of the Iowa Constitution. Originally, article IV, section 19 established a succession order if, while acting as governor, the lieutenant governor died, resigned, was impeached or displaced, or otherwise became incapable of performing the duties of the office. The 1952 amendment to article IV, section 19 established the current language, with one exception: it referred not just to the president of the Senate, but the president pro tempore. Accordingly, the 1952 amendment removed the reference to the lieutenant governor “acting as” governor—and that language remains today. However, the 1952 amendment did not remove language in article IV, section 15—which establishes the lieutenant governor’s compensation—that referred to the lieutenant governor acting as governor.

In 1972, several provisions of article IV were changed, but they did not affect gubernatorial succession. Originally, article IV, sections 2 and 3 provided the governor and lieutenant governor served two-year terms. The 1972 amendment increased both terms to four years. It also amended article IV, section 15 to reflect the four-year terms.

The most significant constitutional amendments occurred in 1988. Those amendments, which remain in force today, provided for the first time that the governor and lieutenant governor are elected together, on one ticket, “as if these two offices were one and the same.” Iowa Const. art. IV, § 3. Before 1988, it was possible for the governor and lieutenant governor to represent different political parties. The amendment brought to fruition a constitutional delegate’s statement at the 1857 convention: “The governor and lieutenant-governor will always, I presume, be the same in politics, and why not have the successor of the governor of the same politics, instead of bringing in one of the antagonistic party?” 1 *The Debates*, at 593.

The 1988 amendments also recast the lieutenant governor’s duties. Under original article IV, section 18, the lieutenant governor was president of the senate and possessed a tiebreaking vote. If the lieutenant governor was absent, impeached, or exercising the office of Governor, the Senate was instructed to choose a president pro tempore to preside and break ties.

However, the 1988 amendments revised article IV, section 18 to provide that the lieutenant governor “shall have the duties provided by law and those duties of the governor assigned to the lieutenant governor by the governor.” In other words, the 1988 amendments removed the lieutenant governor’s status as president of the Senate. Accordingly, the 1988

amendments also altered article IV, section 19 to establish that if there is a gubernatorial vacancy and the lieutenant governor is incapable of performing the duties of the office, those duties devolve on the president of the Senate—not the president pro tempore.

Finally, although it is not a constitutional amendment, the Iowa legislature amended section 69.8 of the Iowa Code in 2009. 2009 Iowa Acts ch. 57, § 73. The amendment added a sentence to section 69.8 providing that “[a]n appointment by the governor to fill a vacancy in the office of lieutenant governor shall be for the balance of the unexpired term.” The provision was the only substantive amendment to chapter 69 in a bill that predominantly altered the logistics and administration of ballots and elections.

### B. *Federal History*

The original language of article IV, section 17 of the Iowa Constitution matched language existing in the United States Constitution at the time. In 1857, when the Iowa Constitution was ratified, article II, section 1, clause 6 of the United States Constitution read: “In Case of the Removal of the President from Office, or of his Death, Resignation, or Inability to discharge the Powers and Duties of the said Office, the Same shall devolve on the Vice President . . . .”

Under that language, numerous presidential vacancies occurred. Each time, the Vice President became President despite the word “devolve.” Two of these instances occurred before 1857: John Tyler in 1841 and Millard Fillmore in 1850. Thus, because of this history, the delegates to the 1857 Iowa constitutional convention likely understood the word “devolve” to mean that the successor became president—or on the state level, became governor.

A federal court decision from 1867 confirms this understanding:

Three times, since the adoption of the constitution, the president has died, and, under [article II, section 1, clause 6], the powers and duties of the office of president have devolved upon the vice president. All branches of the government have, under such circumstances, recognized the vice president as holding the office of president, as authorized to assume its title . . . . It has never been supposed that, under the provision of the constitution, the vice president, in acting as president, acted as the servant, or agent, or locum tenens of the deceased president, or in any other capacity than as holding the office of president fully, for the time being, by virtue of express authority emanating from the United States.

*Merriam v. Clinch*, 17 F. Cas. 68, 70 (C.C.S.D.N.Y. 1867).

However, neither Tyler nor Fillmore appointed a new vice president. Nor did any of the other vice presidents who succeeded to the presidency before 1967: Andrew Johnson in 1865, Chester Arthur in 1881, Theodore Roosevelt in 1901, Calvin Coolidge in 1923, Harry Truman in 1945, and Lyndon Johnson in 1963.

In 1967, the 25th Amendment superseded the original language from article II, section 1. Now, if the President dies, resigns, or is removed, “the Vice President shall become President.” U.S. Const. art. 25, § 1. Furthermore, when the vice president becomes president, a vacancy occurs in the office of vice president, and the new “President shall nominate a Vice President who shall take office upon confirmation by a majority of both Houses of Congress.” *Id.* § 2. The 25th Amendment also established that the vice president acts as president when the president is temporarily unable to discharge the duties of the office. *Id.* § 3. Although the Iowa Constitution originally mirrored the United States Constitution and has been amended since 1967, the succession provisions have not changed to match the 25th Amendment.

### C. *Other States’ Histories*

While other states’ constitutions and experiences do not alone determine conclusively what the Iowa Constitution means, the language used and any decisions involving that language can be valuable to a linguistic analysis. Indeed, some members of the 1857 constitutional convention expressly advocated that the convention should consider other states’ provisions and experiences. For example, delegate Gray noted in support of keeping the position of lieutenant governor that many other states had such an office. 1 *The Debates*, at 591. Likewise, delegate Clarke of Henry County indicated other states’ experiences lent to the convention a wisdom the individual members would not otherwise have:

We may certainly look to the experience of other States. This matter has been somewhat scoffed at here. Gentlemen pretend to have within them a light superior to any they can borrow. I am willing to look to the experience and wisdom of other States; and, as [Mr. Gray] has observed, I find that, in a majority of the free States, this system prevails; and if this office [of lieutenant governor] is found beneficial elsewhere, . . . why should we not introduce this provision into our Constitution?

*Id.* at 592. Although the *existence* of a lieutenant governor is now well established, these delegates’ comments support the general notion that other states’ constitutional provisions and history can illuminate, influence, or suggest what Iowa’s language means.

As detailed above, several other state constitutions contain the word “devolve”—but that number used to be higher. See *Olcott v. Hoff*, 181 P. 466, 468 (Or. 1919) (collecting states that,

as of 1919, provided “the powers and duties of [governor] devolve upon the lieutenant governor”). In several instances, the state constitution was amended after a judicial decision interpreting the previous language. And in one instance, the state constitution was amended to crystallize an attorney general’s opinion—even though the amendment accomplished only what the attorney general opined the previous language already did.

### 1. Arizona

Arizona distinguishes between permanent and temporary disabilities. If the governor dies, resigns, or is removed from office, “the secretary of state . . . shall succeed to the office of governor.” Ariz. Const. art. 5, § 6. If the governor is temporarily disabled, the powers and duties “devolve upon the same person as in case of vacancy, but only until the disability ceases.” *Id.*

Before the current language, Arizona used language materially similar to the Iowa Constitution, which utilized the word “devolve” for both permanent and temporary disabilities. *See State ex rel. De Concini v. Garvey*, 195 P.2d 153, 154 (Ariz. 1948) (quoting the relevant provision of the Arizona Constitution as it existed at the time). While that language was in force, the governor of Arizona died. *Id.* at 153. The attorney general filed a lawsuit asserting that the successor (the secretary of state) “did not in law or in fact become governor of Arizona . . . , but by virtue of the section the powers and duties of the office of governor merely devolved upon” him. *Id.* The secretary of state asserted he was “governor de jure and de facto.” *Id.*

The Arizona Supreme Court acknowledged that “public business and tranquility demand a prompt judicial inquiry.” *Id.* It noted the “prevailing view” at the time that “the inferior officer does not vacate his office and become governor de jure and de facto, but that the duties and powers of governor merely devolve on him and he retains his former office.” *Id.* at 154. It ultimately followed that path, concluding that the secretary state was “acting governor.” *Id.* at 158.

The court’s decision contains two other important conclusions. First, even though the successor was acting governor, he was “entitled to physical possession of the office space and facilities provided” for the governor. *Id.* at 157–58. Second, the court concluded the successor’s duties in his current position “embrace the responsibility to act as governor in case any of the contingencies provided for in the constitutional provision arise.” *Id.* at 157.

After 1948, the Arizona Constitution was amended to its current language. The fact that the people amended the constitution suggests they believed the court’s interpretation of the word “devolve” was incorrect.

## 2. Arkansas

The Arkansas Constitution's succession provision is materially identical to article IV, section 17 of the Iowa Constitution. That provision became significant when then-Governor Bill Clinton was elected President of the United States and indicated his intention to resign as Governor of Arkansas. *See Bryant v. English*, 843 S.W.2d 308, 309 (Ark. 1992). In *Bryant*, the Arkansas Supreme Court concluded that when Clinton resigned, the office of governor would devolve upon the lieutenant governor such that the lieutenant governor became governor. *See id.* at 311. The court found support for its conclusion from several circumstances.

First, a previous Arkansas decision (under a previous constitutional provision when the position of lieutenant governor did not exist) expressed concern that the person tasked with exercising the powers and duties of governors might not be elected by a statewide vote. *Id.* at 312. That concern was alleviated with a constitutional amendment that created the position of lieutenant governor, so there was no issue with allowing the lieutenant governor to become governor, not just acting governor. *See id.*

Second, the court pointed out that if the lieutenant governor was only acting governor, he could continue presiding over the Senate, and that raised separation-of-powers concerns. *See id.* However, if the lieutenant governor became governor, those concerns would be avoided. *See id.* In Iowa, the lieutenant governor has no legislative powers; the 1988 amendment removed "presiding over the Senate" from the lieutenant governor's duties.

Third, the court noted the chain of succession provided the powers would "devolve" upon the lieutenant governor, but if they were unable to exercise the powers and duties of the office, the president of the senate would "act as" governor. *Id.* The difference in language suggested "devolve" did not mean the lieutenant governor would merely act as governor. *See id.*

Finally, in Arkansas, historical practice had treated the lieutenant governor as governor (not acting governor) after the governor resigned. *Id.* at 312–13. That practice comported with the Arkansas Constitution's command that the supreme executive power vests in a chief magistrate styled the Governor of the State of Arkansas. *Id.* at 313. In other words, the person who has the powers *is* Governor. *See id.* Iowa has a similar provision and a similar historical practice. Iowa Const. art. IV, § 1.

## 3. California

California distinguishes between permanent and temporary disabilities. Cal. Const. art. 5, § 10. When a permanent disability occurs, "The Lieutenant Governor shall become Governor." *Id.* However, like Iowa, California formerly used the word "devolve." Under that language, the

California Supreme Court concluded that the lieutenant governor (1) did not actually become governor and (2) could not appoint a new lieutenant governor:

[I]t is provided that in case of the death, resignation, impeachment, absence from the state, or inability to act of the governor, “the powers and duties of his office shall devolve upon the lieutenant-governor for the residue of the term, or until the disability shall cease.” It will be seen that in case of a vacancy in the office of governor the vacancy is not to be filled, but the powers and duties devolve upon the lieutenant governor, who does not cease to be lieutenant governor. Under such circumstances it would hardly be contended that when the powers and duties of the governor devolve upon the lieutenant governor the latter thereby becomes governor, and can appoint a lieutenant governor.

*People ex rel. Lynch v. Budd*, 45 P. 1060, 1060 (Cal. 1896). The people have since amended the constitution to include its current language.

#### 4. Colorado

Colorado distinguishes between permanent and temporary disabilities. Colo. Const. art. 4, § 13. The Colorado Constitution also provides that a lieutenant governor who “accedes to the office of governor” may select a new lieutenant governor subject to “confirmation by a majority vote of both houses of the general assembly.” *Id.* § 13(4).

However, the Colorado Constitution formerly contained provisions matching the Iowa Constitution. *See People ex rel. Parks v. Cornforth*, 81 P. 871, 872 (Colo. 1905) (quoting the relevant provisions of the state constitution as they existed at the time). While that language was in force, a succession controversy arose. *See id.*

The governor resigned in 1905, and the lieutenant governor “qualified as governor.” *Id.* The president pro tempore of the senate then “qualified as lieutenant governor.” *Id.* However, at the end of the legislative session, the senate elected a new president pro tempore. *Id.* The question that reached the Colorado Supreme Court asked whether the previous president pro tempore remained lieutenant governor, or whether he only held that office because of his position as president pro tempore. *See id.*

The court concluded “the president pro tem. does not become the lieutenant governor” and that “[i]f the framers of [the] Constitution had intended that the president pro tem. of the Senate should become lieutenant governor de jure in the contingency under consideration, they could easily have said so.” *Id.* at 872–73. Accordingly, the court concluded only the new president pro tempore was empowered to perform the lieutenant governor’s duties. *Id.* at 875.



In 1974—after the federal 25th Amendment—Colorado repealed and reenacted its succession provisions, changing them to the current language.

## 5. Michigan

If the governor resigns, the lieutenant governor shall be governor for the remainder of the term. However, for temporary disabilities, “the powers and duties of the office of the governor shall devolve . . . .” Mich. Const. art. V, § 26. That language differs from the Iowa Constitution, but in 1939, the relevant provision of the Michigan Constitution (then article VI, section 16) was materially similar to current article IV, section 17 of the Iowa Constitution. *See* 1939 Att’y Gen. Ann. Rep. 69, 71 (Mich. Att’y Gen. Mar. 28, 1939) (quoting the provision in force at the time).

That year, after the governor of Michigan died, the attorney general’s office issued an attorney general opinion regarding succession “[b]ecause of serious consequences which might follow a prolonged silence on the subject.” *Id.* at 69. The opinion sought to clarify whether there was “now a vacancy in the office of lieutenant governor.” *Id.*

The attorney general answered that question “no,” adhering to the “most approved view” that when a governor dies or resigns, “no vacancy is created in the minor office by operation of law.” *Id.* No vacancy occurs because

it was never intended that the line of succession should be broken, or that any person, who has not received the sanction of the electors by direct vote, should be appointed to a position which would entitle him, in certain eventualities, to the high office of governor.

*Id.* In other words, “plain rules of common sense” made it clear “that the people never intended to intrust the responsibilities of the governorship to one who has not been elected to state office.” *Id.* at 72.

The attorney general also noted the Michigan Constitution’s similarity to the United States Constitution and recognized that “when the Vice President has succeeded to the office of President, it has never been claimed that he thereby vacated the office of Vice President.” *Id.* at 73. Based on the core of democracy—election by the people—and historical practice, the opinion ultimately concluded that,

upon death of the governor of the State of Michigan, his powers and duties devolve upon the lieutenant governor; that the office of lieutenant governor is not thereby vacated; that the Constitution, by plain and unambiguous language, provides for a line of succession, from the governor, to the lieutenant governor,

and to the secretary of state, a line of succession which cannot be broken by the appointment of a lieutenant governor to fill a supposed vacancy. No vacancy exists.

*Id.* at 73.

#### 6. Montana

“If the office of governor becomes vacant by reason of death, resignation, or disqualification, the lieutenant governor shall become governor for the remainder of the term, except as provided in this constitution.” Mont. Const. art. VI, § 14(6).

“When there is a vacancy in the office of governor, the successor shall be the governor. The acting governor shall have the powers and duties of the office of governor only for the period during which he serves.” *Id.* § 14(8). An “acting governor” only happens when the governor requests it of the lieutenant governor or when the governor is disabled. *See id.* § 14(2)–(4).

However, before the current language, Montana (like Iowa) used the word “devolve.” *See State ex rel. Lamey v. Mitchell*, 34 P.2d 369, 370 (Mont. 1934) (quoting the provision in force at the time). After an election in 1932, the governor resigned in 1933. *Id.* The Montana Supreme Court concluded “when the Governor resigns or is permanently removed from office, there is no vacancy in the office of Governor in the sense that there is no one left with power to discharge the duties.” *Id.* The court further explained the state’s constitutional structure:

When the framers of the Constitution provided for the election of a Governor and a Lieutenant Governor as members of the executive department of the state, but conferred upon the latter no executive power or authority other than in the contingencies mentioned in [the succession provision], they manifested the intention that the people elect two qualified heads of that department—the one active, the other his lieutenant, ready at a moment’s notice to assume the duties of the office, should his superior officer, for any reason, either temporarily or permanently, become unable to perform them.

*Id.* at 371–72 (citation omitted).

The court also concluded that when a governor resigns or dies, there is no vacancy in the office of lieutenant governor. *Id.* at 372. The court explained,

When the duties, powers, and emoluments of the office of Governor devolve upon the Lieutenant Governor, it cannot be said that he vacates his office of Lieutenant

Governor, and, unless he does so, there is no vacancy in his office. His assumption of the duties of Governor does not create, and neither can he make, a vacancy, as he is discharging the functions of Governor by the mandate of the Constitution, and that by reason of being Lieutenant Governor. If the framers of the Constitution had intended that there should be a vacancy in the office of Lieutenant Governor upon the resignation, death, or permanent removal of the Governor, they could have easily said so.

*Id.*

Two aspects of the succession structure cemented the court's conclusion. First, if there were a lieutenant governor vacancy, the lieutenant governor / new governor could appoint a lieutenant governor, which would interrupt the line of successors chosen by the voters. This "was never contemplated and never intended by the framers of the Constitution, or the people who adopted it." *Id.* Second, because the provision covered both permanent and temporary disabilities, if the lieutenant governor's office always became vacant, another conundrum would arise. Specifically, if the governor suffered a temporary disability and the lieutenant governor took over, any person subsequently appointed to the post of lieutenant governor would essentially be squeezed out once the temporary disability ended. *See id.*

#### 7. Nevada

Nevada's succession provision is materially identical to Iowa's. *Compare* Iowa Const. art. IV, § 17, *with* Nev. Const. art. 5, § 18. The Nevada Supreme Court considered the provision after the governor died in 1896. *State ex rel. Hardin v. Sadler*, 47 P. 450, 450 (Nev. 1897). The court concluded there was no vacancy in the office of lieutenant governor:

If a vacancy occurs in the office of governor, the powers and duties of the office devolve upon the lieutenant governor, but there is no vacancy created thereby in the office of lieutenant governor. The officer remains lieutenant governor, but invested with the powers and duties of governor.

*Id.* The Nevada Constitution has not changed since 1897.

#### 8. New Jersey

New Jersey distinguishes between permanent and temporary disabilities; for permanent disabilities, "the Lieutenant Governor shall become Governor," while for temporary ones, the powers of the office devolve. N.J. Const. art. 5, § 1, ¶¶ 6–7. However, the New Jersey Constitution previously contained a provision like Iowa's—although there was no such thing as a

lieutenant governor at the time. *See State v. Heller*, 42 A. 155, 156 (N.J. 1899) (quoting the provision in force at the time, which established that the governor's powers and duties devolved upon the president of the senate). Under that language, a succession dispute arose.

In 1898, the governor of New Jersey resigned. *Id.* The president of the senate took an oath assuming gubernatorial powers and duties but later resigned "as a member of the senate." *Id.* The speaker of the house, who was next in the succession order, then asserted *he* was now entitled to exercise the powers and duties of governor. *See id.* However, the president of the senate asserted he remained governor and his resignation only affected his senate seat. *See id.* The New Jersey Supreme Court concluded the president of the senate was only governor through his position as senate president:

In construing [the succession] clause of the constitution it must be borne in mind that it was carefully drawn by learned jurists, who knew how to express with exactness and precision the purpose they had in view. The provision is that, in case of the resignation of the governor, the powers, duties, and emoluments of the office shall devolve upon the president of the senate, and not that the president of the senate shall thereby become governor . . . . If the framers of the fundamental law had intended to transfer the president of the senate to the executive chair, and thereby to vacate his office of senator, it is reasonable to believe that they would have said so in no uncertain language. The language used is not ambiguous. It declares that the powers, duties, and emoluments of the office shall devolve on the president of the senate; it does not confer upon him the title of the office. The president of the senate exercises the powers of the governor; the president of the senate performs the duties of the governor; the president of the senate receives the emoluments of that office. He is still president of the senate, with the added duties required of the chief executive of the state imposed upon him. There is no language in the constitution from which it can reasonably be inferred that his office of president of the senate was to be vacated. He retains his office of senator; and as president of the senate, and not as governor, he exercises the added powers and performs the superimposed duties.

*Id.* at 156–57. Accordingly, when he resigned his senate position, he also resigned his ability to exercise the powers and duties of the governor and the speaker of the house became entitled to exercise those powers and duties. *Id.* at 158.

There are two other important aspects of the New Jersey court's decision. First, it concluded the successor did not actually become governor because other provisions in the state constitution referred to the governor "or person administering the government." *Id.* at 157. Therefore, if the successor actually became governor, those words would be superfluous. *Id.*

The Iowa Constitution does not contain similar language that would become superfluous if the lieutenant governor *is* governor following the governor's resignation.

Second, the court highlighted the constitutional provision's flexible nature, applying to both permanent and temporary disabilities. If the successor's previous position automatically became vacant, even during a temporary disability, they would lose it when the temporary disability ended. *Id.* at 158. The court concluded that meaning of the language "could not have been within the contemplation of the able men who incorporated it in this clause relating to a matter of supreme importance." *Id.*

## 9. New York

New York distinguishes between permanent and temporary disabilities. When a permanent disability occurs, the lieutenant governor becomes governor, but when a temporary disability occurs, the lieutenant governor acts as governor. N.Y. Const. art. IV, § 5. In 1943, the state's attorney general opined that a statute allowing some appointments could not be applied to a lieutenant governor vacancy because it "would lead to the anomalous result that a Governor by appointing a Lieutenant-Governor and then resigning could impose upon the people his own choice as their Governor." 1943 N.Y. Op. Att'y Gen. No. 378, 1943 WL 54210, at \*4 (N.Y. Att'y Gen. Aug. 2, 1943).

In 2008, the governor resigned, and in accordance with the constitution, the lieutenant governor became governor. *See Skelos v. Paterson*, 915 N.E.2d 1141, 1142 (N.Y. 2009). Although the state constitution provides that if both the office of governor and the office of lieutenant governor are vacant, the president of the senate shall act as governor, N.Y. Const. art. IV, § 6, the senate deadlocked and could not elect a temporary president, *see Skelos*, 915 N.E.2d at 1142. Accordingly, each political party recognized a different temporary president, which made it unclear "which one of the rival temporary presidents stood next in the line of gubernatorial succession." *Skelos*, 915 N.E.2d at 1142. The governor attempted to break the deadlock by simply appointing a new lieutenant governor. *Id.* However, a state legislator filed a lawsuit seeking (1) a declaration that the appointment was unconstitutional and (2) an injunction preventing the governor from appointing anyone to the office of lieutenant governor. *Id.*

When the case reached the New York Court of Appeals, the court recognized it was undisputed that the lieutenant governor became governor and thereby left a vacancy in the office of lieutenant governor. *Id.* at 1144. It then rejected the contention "that the Constitution requires that a vacancy in the office of Lieutenant Governor be preserved until the next . . . election" and applied a state statute—the one the attorney general had opined 60 years earlier could not apply—to fill a gap left by the constitution. *Id.* The court reasoned it made little sense to have

“an extended vacancy running the balance of an elective term” when the constitution contained a provision intending to assure vacancies were filled. *Id.* at 1144–45.

The court also concluded what it called “the elective principle” could not control the result of the case:

While there can be no quarrel with the proposition that, generally, election must be the preferred means of filling vacancies in elective office, it does not follow that the elective principle is preeminent when it comes to filling a vacancy in the office of Lieutenant Governor.

*Id.* at 1145. It concluded that a constitutional amendment placing the governor and lieutenant governor on the same ticket subordinated the elective principle “to assure the structural integrity and efficacy of the executive branch.” *Id.* It acknowledged that subordinating the elective principle created the possibility an unelected individual could occupy the state’s highest office, but it concluded that was a permissible result because all rules of succession are “inevitably imperfect” and “invariably compromise elective principles” at *some* stage. *Id.* at 1146. In other words, it deferred to the legislature’s judgment in passing a statute that applied. *See id.* (“For now, the Legislature . . . has specified that the vacancy is to be filled not by election but by gubernatorial appointment alone—a determination that the Legislature is always free to revisit.”).

The decision was not unanimous. The dissenting opinion principally highlighted the possibility “that the citizens . . . will one day find themselves governed by a person who has never been subjected to scrutiny by the electorate, and who could in turn appoint his or her own unelected Lieutenant Governor.” *Id.* at 1147 (Pigott, J., dissenting). Justice Pigott asserted that was “contrary to the text of the New York Constitution and affords Governors unprecedented power.” *Id.*

Justice Pigott relied on historical practice, noting “no one gave a thought or harbored a suggestion” that the new governor could appoint a replacement lieutenant governor because “no Governor in the history of the State had done so.” *Id.*; *see also id.* at 1152 & n.3 (collecting 10 occasions since New York’s founding “when the position of Lieutenant Governor has become vacant” but noting none of the vacancies were filled by appointment). He also noted the constitution did not expressly provide an appointment power—but it *did* “provide a clear line of succession,” which could not be circumvented. *See id.* at 1150. He asserted the majority erred by grouping the position of lieutenant governor—one of the state’s highest offices—into what was effectively a catchall statute addressing other minor state officials. *Id.* In Justice Pigott’s view, the lieutenant governor was not addressed in the statute because the constitution already provided a method of succession. *See id.*



Finally, Justice Pigott explored constitutional amendments that affected the lieutenant governor. First, in 1945, the constitution was amended to indicate “precisely what was to occur when there was a vacancy in the office of Lieutenant Governor alone;” it indicated the temporary senate president was to perform all the duties of lieutenant governor during the vacancy. *See id.* at 1154–55. Second, in 1953, the constitution was amended to require that the governor and lieutenant governor be elected together, on one ticket—just as Iowa did in 1988. *See id.* at 1155. Accommodating those changes, Justice Pigott suggested it was improper “that a Lieutenant Governor could be appointed by a Governor with no input from the electorate and no vetting by the legislative branch of government.” *Id.*

There has been some academic criticism of the *Skelos* decision. *See* Patrick A. Woods, Comment, *Automatic Lieutenant Gubernatorial Succession: Preventing Legislative Gridlock Without Sacrificing the Elective Principle*, 76 Alb. L. Rev. 2301, 2303 (2013) (asserting *Skelos* “removes any electoral check from those selected to fill the position of lieutenant-governor and leaves structural problems unresolved”). But it is not universally panned. *See* Richard Briffault, *Skelos v. Paterson: The Surprisingly Strong Case for the Governor’s Surprising Power to Appoint a Lieutenant Governor*, 73 Alb. L. Rev. 675, 676–77 (2010) (asserting that the *Skelos* majority was right despite disagreement from the sitting attorney general, “a former chief judge, a former lieutenant governor, a former attorney general, and a leading academic expert on the state constitution”).

## 10. Oklahoma

Oklahoma’s succession provision is similar to Iowa’s, using the word “devolve”—although one difference is that in Oklahoma, “the office” devolves, while in Iowa, the powers and duties do. *Compare* Iowa Const. art. IV, § 17, *with* Okla. Const. art. 6, § 16. In a 1926 case, the Oklahoma Supreme Court concluded the office of Governor automatically devolves upon another, who by virtue of filling that office becomes the chief magistrate styled the governor of Oklahoma. *Fitzpatrick v. McAlister*, 248 P. 569, 572 (Okla. 1926). In other words, the person who has the powers is governor. In particular, the court noted the difference between the word “devolve,” which applied only to the lieutenant governor, and “act as Governor,” which applied only to those further down the line of succession. *See id.* Because of that difference in language, the court concluded the word “devolve” actually conferred the title and office.

The court found support for its conclusion in federal history:

[U]pon the death of President Wm. H. Harrison, Vice President Tyler became President of the United States. For almost a century this construction of the federal Constitution has stood without question. It has been recognized as correct,

and acquiesced in, not only by the departments of state and all the states of the Union, but officially recognized by every civilized government in the world.

On each occasion where the President of the United States has died, the Vice President has immediately succeeded to the office of President as President of the United States, and thereupon the government of the United States has at once, through its consular offices, notified all governments of the world of the change in Presidents.

Defendant suggests that no court has ever pronounced that to be the law. To our mind, it is so clearly correct that no one has ever presumed to test its correctness in the courts. Therefore it should have greater weight than an ordinary departmental construction, not only because it has stood for almost a century, but because it has been recognized as the correct conception of our system of government, and because, for eighty-five years under this construction, there has been no friction in the machinery of government by reason of such construction.

*Id.* at 576.

The decision was not unanimous. A dissenting opinion suggested the lieutenant governor would perform gubernatorial duties “merely as the occupant of the office of Lieutenant Governor, to which he was elected.” *Id.* at 580 (Branson, V.C.J., dissenting). The dissent also highlighted the possibility that if the lieutenant governor became governor and thereby vacated the office of lieutenant governor, he could appoint a replacement. *See id.* at 581. That was problematic, the dissent asserted, because it would “make it impossible that the President pro tempore of the Senate would ever succeed to the performance of the duties of Governor, as was clearly contemplated in the succession line to such duties as set out in . . . the Constitution.” *Id.*

#### 11. Oregon

In Oregon, the successor “shall become Governor.” Or. Const. art. V, § 8a. However, the Oregon Constitution formerly provided that the duties of governor would “devolve on the secretary of state” and if the secretary of state was disabled, “the president of the senate shall act as governor.” *See Chadwick v. Earhart*, 4 P. 1180, 1180 (Or. 1884) (quoting the provision as it existed at the time). In other words, the Oregon Constitution distinguished between devolution and an acting governor.

In *Chadwick*, one party contended that



the duties of the office of governor became annexed to the office of secretary of state, and are discharged as duties incident to the latter office; in other words, that the duties of the office, but not the office itself, devolve upon the secretary of state.

*Id.* The court was skeptical, noting that argument seemed to require “either that the office of governor should continue vacant . . . ; or, second, that the office be filled, and yet he who fills it be in nowise governor, but continue to be merely secretary of state.” *Id.*

Accordingly, the court concluded the successor became governor:

In the first place, it is not shown how an office can be vacant, and yet there be a person, not the deputy or locum tenens of another, empowered by law to discharge the duties of the office, and who does, in fact, discharge them. It is not explained how, in such a case, the duties can be separated from the office so that he who discharges them does not become an incumbent of the office. And, in the second place, how a person can fill the office of governor without being governor. It is the function of a public officer to discharge public duties. Such duties constitute his office.

*Id.* at 1181. A later decision adhered to *Chadwick* and concluded that upon the governor’s death, “by reason of the fact that Mr. Olcott was secretary of state he automatically became governor.” *Olcott*, 181 P. at 482. The court concluded “when the people elected Mr. Olcott secretary of state, by the very terms of the constitution they elected him to become governor” if the incumbent died. *Id.* at 483.

## 12. Utah

Utah defines vacancy to include resignation and disability that extends for the remainder of the term. Utah Const. art. VII, § 11(1)(a). If a vacancy occurs, the lieutenant governor “shall become governor.” *Id.* § 11(2). The Utah Constitution also provides that if a disability is only temporary, the lieutenant governor shall discharge the powers and duties. *Id.* § 11(5)(a). And, it establishes that when the lieutenant governor becomes governor, a vacancy occurs in the office of lieutenant governor. *Id.* § 10(3)(a)(i).

However, before 2008, the Utah Constitution, like Iowa, used only “devolve.” The Utah Attorney General issued an advisory opinion in 2003 on the question of succession. Utah A.G. Opinion No. 03-001, 2003 WL 21996258 (Aug. 18, 2003). The opinion concluded (1) “devolve” means that the lieutenant governor becomes governor, and (2) a vacancy occurs in the office of lieutenant governor that the governor is entitled to fill by appointment. *Id.* at \*1, 3. The attorney

general relied in part on the federal history involving the word “devolve.” Because four vice presidents had become president before Utah adopted a constitution, at the time the state adopted one, “it was understood, in theory and in practice, that the Constitutional language ‘shall devolve’ meant ‘succession’ such that the Lieutenant Governor would become the Governor.” *Id.* at \*1.

The attorney general also noted that in 1980, the citizens of Utah adopted constitutional amendments that required the governor and lieutenant governor to run on the same ticket and clarified the line of succession of executive authority. *Id.* Those amendments were presented to the voters as mirroring the succession of the federal government—which by this time had adopted the 25th Amendment providing the vice president becomes president. *Id.*

Despite the attorney general’s conclusions about the existing language, the Utah Constitution was later amended to its current language to cement the attorney general’s understanding of the constitutional structure.

### 13. Washington

Washington’s succession provision is similar to Iowa’s, using the word “devolve.” *Compare* Iowa Const. art. IV, § 17, *with* Wash. Const. art. 3, § 10. The Washington Supreme Court confronted the provision in a 1902 case presenting the question whether the death of the governor creates a vacancy in either the office of governor or lieutenant governor. *State ex rel. Murphy v. McBride*, 70 P. 25, 25 (Wash. 1902). The court concluded,

The constitution having provided that in case of the death of the governor the duties of the office shall devolve upon the lieutenant governor, there is no vacancy in the office of governor. . . . When the lieutenant governor, by virtue of his office and of the command of the constitution, assumed the duties of governor on the death of Gov. Rogers, the office of lieutenant governor did not thereby become vacant, but the officer remained lieutenant governor, intrusted with the powers and duties of governor.

*Id.* at 26.

### 14. Wisconsin

In Wisconsin, the lieutenant governor “shall become governor” if the governor dies, resigns, or is removed. Wis. Const. art. 5, § 7(1). The lieutenant governor “shall serve as acting governor” if the governor is absent or disabled. *Id.* § 7(2). But the language was not always

what it is today. In 1938, it matched article IV, section 17 of the Iowa Constitution. *See State ex rel. Martin v. Ekern*, 280 N.W. 393, 398 (Wis. 1938) (quoting the provision in force at the time).

Under that provision, the Wisconsin Supreme Court acknowledged that the question of succession was “most important and of great public concern and interest” because the people of the state were “vitaly interested in seeing that no important office, such as that of lieutenant governor, be intruded into by any person who has not lawful authority to hold the office or to perform the duties thereof.” *Id.* at 394. It ultimately concluded that when a vacancy occurs in the office of governor, “the lieutenant governor does not become governor. He remains lieutenant governor, upon whom devolves the powers and duties of governor. In such a contingency no vacancy occurs in the office of lieutenant governor.” *Id.* at 399.

### 15. Wyoming

Wyoming does not use either the word “devolve” or the phrase “become Governor.” Instead, it provides that the secretary of state “shall act as governor.” Wyo. Const. art. 4, § 6. In 1903, the governor died, and a dispute arose about the secretary of state’s compensation while fulfilling his constitutional duty to act as governor. *State ex rel. Chatterton v. Grant*, 73 P. 470, 470 (Wyo. 1903). The court concluded the secretary of state performed duties both in that role and as governor, and accordingly was entitled to compensation for both positions. *See id.* at 472. However, the court also noted it did not observe a material distinction between “devolve” and “act as.” *Id.* at 476.

## III. SYNTHESIS

Several themes pervade the historical accounts. One major recurring theme is what the New York court referred to as the elective principle—the notion that the people should not be subject to the rule of a person none of them elected. Iowa’s constitutional delegates voiced this principle during the debates in 1857, and it has repeatedly surfaced when other states’ provisions came before courts in those states.

Another theme is historical understanding. The notion that “it’s always been this way” is assuredly not reason, standing alone, to continue a particular practice; something can be legally incorrect even if it’s longstanding. *See Griffin v. Pate*, 884 N.W.2d 182, 208 (Iowa 2016) (Hecht, J., dissenting) (rejecting the notion that a practice should continue just “because ‘that’s the way it’s always been in Iowa’ or because ‘that’s the way it’s done elsewhere’ ”). But it *can* illuminate the understanding Iowa’s framers had at the time they were drafting the Iowa Constitution; it can shed light on the words’ original intent even though original intent is not the end of the analysis. *See id.* at 198–202 (majority opinion) (beginning analysis of a constitutional provision by determining what it was understood to mean at the time of enactment before tracing its interpretation over time). In that respect, the history of *presidential* succession before 1857, and the language in the United States Constitution at the time, provides a worthy indication of what Iowa’s framers likely meant by the word “devolve.”

A final theme is the importance of linguistic difference. Many states have changed their respective succession provisions, either because a court determined succession did not work in the way the people actually intended or perhaps just to update language. Additionally, some states differentiate between permanent and temporary disabilities—but Iowa’s provision applies to both and must carry an interpretation commensurate with that flexibility. Of particular importance here is the fact that the 25th Amendment was adopted in 1967, and the Iowa Constitution has seen multiple amendments since then—yet the Iowa Constitution was not changed to mirror it.

To be sure, reasonable minds can debate the meaning of the constitution. The histories discussed above in some instances contain competing answers; some say the successor becomes governor, while others say the successor is merely acting governor. Some grant a successor the power to appoint a new lieutenant governor; others don’t. There is room to disagree. However, there are several factors that carry the most persuasive weight in determining what *Iowa’s* answers are.

First, the elective principle was clearly important to the Iowa drafters. It has remained important, because even though Iowans have amended article IV of the Iowa Constitution, in doing so they retained the principle that both the governor and lieutenant governor “shall be elected.” Iowa Const. art. IV, § 2. Accordingly, the elective principle deserves paramount consideration. As several courts determined, it would frustrate the elective principle *and* the constitutional succession order if a governor could always appoint a new lieutenant.

Second, the series of amendments to the Iowa Constitution delineate the contours of the lieutenant governor’s duties. By placing the governor and lieutenant governor together on one ticket and removing the lieutenant governor’s duty to preside over the senate, the people displayed their intent that the lieutenant governor be ready as a standby—just in case. The lieutenant governor’s duties are as provided by law, and one of those duties flows from the constitution: the duty to become governor in the event of a vacancy. The duty is already encompassed in the office of lieutenant governor.

Finally, history carries significant weight in two respects. It illustrates that at the time article IV, section 17 was enacted, “devolve” meant that the successor becomes governor. It also suggests that the 1988 amendments consciously avoided duplicating the language of the 25th Amendment because the people of Iowa wished to uphold the elective principle.

In light of the resources and documents discussed in this memo, the answers to Senator Johnson’s questions about gubernatorial succession in the event of Governor Branstad’s resignation are as follows.

1. If Governor Branstad resigns, Lieutenant Governor Reynolds becomes Governor. She succeeds to the office, title, position, and powers of Governor because the person possessing the powers is styled the Governor of Iowa. Iowa Const. art. IV, § 1.
2. Article IV, section 17 itself does not contain the phrase “act as governor.” That section heading was added later and, like a statutory heading, cannot circumvent the plain

meaning of the actual language. The framers' intent in selecting the word "devolve" was to match the United States Constitution, and under the United States Constitution, the government experienced two presidential successions before 1857 in which the vice president became president. Thus, the framers understood "devolve" to mean "become."

3. If Governor Branstad resigns, no vacancy occurs in the office of lieutenant governor. Essentially, the offices of governor and lieutenant governor merge. The voters elected Governor Branstad and Lieutenant Governor Reynolds with the understanding that Lieutenant Governor Reynolds would step in if a particular contingency—specified in article IV, section 17—occurred. One of the lieutenant governor's duties is to become Governor if that contingency occurs. Accordingly, Lieutenant Governor Reynolds becomes Governor because she is already Lieutenant Governor. Because there is no vacancy in the office of lieutenant governor, Iowa Code section 69.8 does not apply.
4. Because there is no vacancy in the office of lieutenant governor, there is nothing to fill. Accordingly, Governor Reynolds could not appoint a successor lieutenant governor.

## Thompson, Jeffrey [AG]

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**From:** Westlaw@westlaw.com  
**Sent:** Tuesday, February 14, 2017 4:22 PM  
**To:** Thompson, Jeffrey [AG]  
**Subject:** Cliff v. Parsons  
**Attachments:** Cliff v Parsons.rtf

Meghan Gavin sent you content from Westlaw.  
Please see the attached file.

Item: Cliff v. Parsons  
Citation: 90 Iowa 665  
Sent On: Tuesday, February 14, 2017  
Sent By: Meghan Gavin  
Client ID: GOVERNOR

Note:

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90 Iowa 665  
Supreme Court of Iowa.

CLIFF  
v.  
PARSONS ET AL.

Jan. 24, 1894.

senate is exclusively in each senate, which may remove him at any time without notice or hearing.

3 Cases that cite this headnote

Appeal from district court, Polk county; W. F. Conrad, Judge.

Action to oust the defendant Parsons from the office of secretary of the senate of the 24th general assembly of Iowa, to adjudge the plaintiff entitled thereto, and to reinstate him therein. Also to enjoin the defendant Mitchell, speaker of the house of representatives, from certifying that defendant Parsons has been elected or is secretary of said senate, and the defendant J. A. Lyon, auditor of state, from issuing warrants to said Parsons for any part of the compensation arising from said office. The defendant Parsons having answered, plaintiff filed a demurrer to the second and fourth counts thereof, and, the demurrer being overruled, plaintiff elected to stand on said demurrer, and appeals.

**Attorneys and Law Firms**

\*599 Henry S. Wilcox, for appellant.

J. M. Parsons, for appellees.

**Opinion**

GIVEN, J.

1. The petition shows that the plaintiff was authorized, by an order of one of the judges of the district court in and for Polk county, to bring this action; the county attorney of said county refusing to do so. The relator states his cause of action follows: "That on or about the \_\_\_\_ day of Jan., A. D. 1892, the relator, J. W. Cliff, was by the senate of the 24th general assembly of the state of Iowa duly elected to the office of secretary of said senate, as a permanent officer thereof, to hold said office during the regular session of said senate and 24th general assembly. That on or about the \_\_\_\_ day of January, A. D. 1892, the said relator duly qualified, and entered upon the discharge of his duties, and has ever since discharged faithfully the duties of said office, except when prevented by the defendant Parsons and those in conspiracy and collusion with him; and said relator has at all times been ready and willing, and is now ready and willing, to discharge the duties of said office during the term for which he was elected, and is entitled to receive as compensation the sum of seven dollars per day during said regular session, and whatever sum shall be appropriated by said general assembly for work in transcribing and indexing the journal of said senate. That on or about the \_\_\_\_ day of January, A. D. 1892, the defendant Parsons entered into a conspiracy with L. R. Bolter, S. L. Bestow, \_\_\_\_ Yeomans, and others, for the purpose of illegally and forcibly despoiling said relator of his rights to said office and the emoluments pertaining thereto, and on the \_\_\_\_ day of January, 1892, in pursuance of said conspiracy the said parties did wrongfully, illegally, and by force seize and cause to be seized the person of the said relator, and by force and

West Headnotes (1)

- [1] **Public Employment**
  - ☞ Selection by officers
  - Public Employment**
  - ☞ State, local, and other non-federal personnel in general
  - States**
  - ☞ Resignation, suspension, and removal or impeachment of officers

Const. art. 3, § 7, provides that "each house shall choose its own officers and judge of the qualifications, election and return of its own members." Code, § 13, provides that "the speaker of the house of representatives shall hold his office until the first day of the meeting of a regular session next after that at which he was elected, and that all other officers elected by either house shall hold their offices only during the session at which they were elected." *Held*, that the power to appoint a secretary of the

arms ejected him from his place at the desk of said senate, and have ever since by force kept and excluded him therefrom, and from the possession of the paraphernalia of said office, and have by force placed the said Parsons in possession of said desk and the paraphernalia of said office, and the said Parsons now claims to have been duly elected to said office, and to be entitled to the salary and emoluments thereof; but plaintiff says he is not entitled to said office or its emoluments, because the said relator's term had not expired, and there is no cause for removing him, and his forcible ejection was without authority of law, and therefore void. That the defendant Mitchell is the speaker of the house of representatives of the said 24th general assembly, and he is about to certify, jointly with the lieutenant governor of Iowa, that the said Parsons has been duly elected to the office of secretary of said senate, and the defendant J. A. Lyons, auditor of said state, is about to issue warrants to said Parsons \*600 for the emoluments of said office, and both of said officers will so do unless restrained by order of this court, and by their so doing plaintiff will suffer great and irreparable injury. That the relator is not only entitled to said salary, but he is also a taxpayer of the said state, and will suffer great and irreparable injury unless said Speaker Mitchell and Auditor Lyons be restrained from thus aiding and assisting the said Parsons in procuring the emoluments of said office."

The defendant Parsons filed his answer in four counts. In the first he denies every allegation not expressly admitted. The second count is as follows: "Count 2. Defendant Parsons, further answering, states the facts herein to be as follows: That at the organization of the house of the twenty-fourth general assembly of Iowa his codefendant W. O. Mitchell was elected speaker of the house of representatives, and at said time one Poyneer was lieutenant governor of the state of Iowa; that the relator herein, J. W. Cliff, was a candidate for secretary of the senate of Iowa, and on the 14th day of January, 1892, subsequent to the permanent organization, the said Poyneer, on a vote of 24 senators, declared the said relator elected secretary of the senate; that at said time 25 of the senators voted on the call of the roll for secretary of the senate, there being absent or not voting 25 members of the senate; that subsequently, upon the canvass of the vote of the electors of the state of Iowa, the Hon. S. L. Bestow was declared elected lieutenant governor of Iowa, and was duly inaugurated, and entered upon the discharge of his duties as such on the 20th day of January, 1892; that on the 21st day of January 1892, at two o'clock P. M., the senate met, and the Hon. S. L. Bestow presiding; that at said time the following proceedings were had in relation to the office of secretary of the senate, and the same were as shown by the journal of the senate, which is as follows, to wit: 'Senator Bolter offered the following resolution:

"Resolved by the senate, that J. W. Cliff, now acting as chief secretary of this body, be, and is hereby, relieved from any further duty as such acting secretary, and that he is required and ordered to turn over and deliver to such person as the senate may elect to such office of chief clerk all bills, resolutions, books, and records now in said Cliff's possession pertaining to said office of chief clerk of the senate." ' And the question being on the adoption of the resolution, 24 senators and president of the senate voted in the affirmative, and 24 senators voted in the negative, and so the resolution was adopted and declared carried by the lieutenant governor presiding as president of the senate; whereupon the following resolution was introduced by Sen. Bolter: 'Resolved, that Samuel N. Parsons, of Linn county, be, and is hereby, elected to the office of permanent and chief secretary of the Iowa senate during the 24th general assembly of this state.' The roll being called on the adoption of this resolution, there were 24 senators voted in the affirmative, and the roll of the senate being called showed 38 senators present, so the resolution was adopted, and the same was declared adopted by the president of the senate, and Samuel N. Parsons was declared elected permanent secretary of the senate, and immediately appeared at the bar of the senate, and took the oath of office of secretary of the senate, and was duly installed in such office, and entered upon the discharge of his duties as such, and has ever since been, and at present is, engaged in the discharge of his duties as such officer." In the third count he denies the alleged conspiracy, and alleges that by reason of the passage of the resolution set out in the second count the relator became divested of all rights to said office, and to any emoluments thereof. The fourth count of the answer is as follows: "Count 4. The defendant, further answering, says that this court has no jurisdiction to hear, try, and determine this cause, involving as it does the office of the secretary of the senate of Iowa; that by the constitution of Iowa the senate has the right to determine who are its officers, and it has determined that the defendant herein was and is secretary of the Iowa state senate of the 24th general assembly from and since the 21st day of January, 1892; that this suit is brought for the purpose of harassing the defendant, who has performed all the duties pertaining to the said office of secretary of the senate; and that in defending against the injunction issued in this case the defendant has been compelled to go to great expense in employing counsel and making preparations to dissolve the injunction, to wit, in the sum of one hundred dollars, (\$100.00.)" The relator filed a demurrer to the answer as follows: "The plaintiff demurs to the second count of the defendant Parsons' answer, because the facts therein stated do not constitute a defense to the plaintiff's claim, in this: (1) The said count shows that relator was duly elected to the office of secretary of the senate as a part of



its permanent organization, and fails to show that he was lawfully removed from said office, or that there was any vacancy which the senate had power to fill. (2) The plaintiff demurs to the fourth count of defendant Parsons' answer, because the facts therein stated do not constitute a defense to plaintiff's claim, in that it is a claim for damages, which has no foundation in law, and cannot properly be made in this action."

2. Section 7 of article 3 of the constitution of Iowa is as follows: "Each house shall choose its own officers and judge of the qualifications, election and return of its own members. A contested election shall be determined in such manner as shall be directed by law." Here we have undoubted authority in the senate to choose, in such way as it pleases, its own officers. The law with \*601 respect to the removal of subordinate officers is well stated in 19 Amer. & Eng. Enc. Law, p. 562f\*, as follows: "In the absence of constitutional provisions or statutory regulations, where the tenure is not fixed by law, and where the office is held at the pleasure of the appointing power, the power of removal is incident to the power of appointment; and it is well settled in such case that an officer may be removed without notice of hearing. This doctrine applies, however, where the office is held at the pleasure of the appointing power only. Where the tenure of the office is fixed by law, or where the concurrence or consent of a different body or officer is required to the removal, or where the right to removal can be exercised only for specified cause or for cause generally, the appointing power cannot arbitrarily remove the officer. And, where the removal is to be had for cause, the power cannot be exercised until the officer has been duly notified, and opportunity given him to be heard in his own defense." This statement of the law is well supported in the cases cited in the footnotes, and is not questioned in this case; therefore we deem it unnecessary to make further citations. If nothing further appeared, it would hardly be questioned but that the senate can choose and remove its own officers at pleasure.

Appellant cites and relies upon section 13 of the Code, which is as follows: "The speaker of the house of representatives shall hold his office until the first day of the meeting of a regular session next after that at which he was elected. All other officers elected by either house shall hold their offices only during the session at which they were elected." Appellant contends that by this section the term of office of the secretary of the senate is

fixed by law to continue during the session at which he was elected, and therefore that he cannot be removed without cause, notice, and hearing. It will be observed that the language employed as to these "other officers" is different from that with respect to the speaker, and different from that usually employed in fixing the term of an office. This statute says the speaker "shall hold his office until the first day of the meeting of the regular session next after that of which he was elected," while as to the other officers it is said they "shall hold their offices only during the session at which they were elected." The one fixes a time to which the office shall be held, and that time is the term or tenure of that office; the other does not fix a time to which the office shall be held, but a time beyond which it shall not be held. The employment of this unusual language in this connection is quite significant in arriving at legislative intention. The word "only" seems to have been purposely used by the two houses in enacting this section in harmony with the constitutional provision that each house shall choose its own officers. Neither house has power to control the other in choosing its officers, nor in fixing their tenure of office, nor has any general assembly power to control the right of either house of any subsequent general assembly in this respect. To say that this section 13 fixes the term of the secretary of the senate to continue during the session is to abridge, by statute, the constitutional powers of the senate to choose its own officers in such manner, and for such time, as it pleases. To say, however, that this statute does not fix a term during which the secretary shall hold his office leaves it in harmony with the powers conferred on the senate by the constitution. Whether either house might extend the term of officers other than the speaker beyond the session at which they were elected, so as to cover any succeeding session of the same general assembly, we do not determine, as that question is not before us. Our conclusions are that no term is fixed by law during which the secretary of the senate shall hold his office, that the power to appoint is exclusively in each senate, that the office is held during the pleasure of the senate appointing, and therefore the senate has power to remove without notice or hearing. Affirmed.

#### All Citations

90 Iowa 665, 57 N.W. 599

**Thompson, Jeffrey [AG]**

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**From:** Thompson, Jeffrey [AG]  
**Sent:** Thursday, February 23, 2017 11:45 AM  
**To:** Ranscht, David [AG]  
**Cc:** Gavin, Meghan [AG]  
**Subject:** Re: Updated governor answers

Thanks David. Let's plan to talk tomorrow morning.

Sent from my iPhone

On Feb 23, 2017, at 11:30 AM, Ranscht, David [AG] <[David.Ranscht2@iowa.gov](mailto:David.Ranscht2@iowa.gov)> wrote:

Here is a redline copy with some tweaks throughout and some attempt to make distinctions from AR, NY, and UT.

<Draft Answers.docx>

## MEMORANDUM

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**To:** Jeff Thompson, Meghan Gavin  
**From:** David Ranscht  
**Date:** February 6, 2017 (updated February 23, 2017)  
**Re:** Draft Answers to Gubernatorial Succession Questions

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On February 1, 2017, the Attorney General's Office received a request from state Senator David Johnson for a formal legal opinion regarding several provisions of the Iowa Constitution and the Iowa Code. Senator Johnson requested the opinion because President Donald Trump announced he intends to nominate Iowa Governor Terry Branstad as a United States Ambassador. To serve as an ambassador, Governor Branstad would have to resign his position as Governor of Iowa.

Senator Johnson requests an ~~expedited~~-attorney general opinion exploring the succession provisions of the Iowa Constitution. See Iowa Code § 13.2(e) (setting forth the attorney general's authority to give written opinions when requested by a state officer); Iowa Admin. Code r. 61—1.5 (providing additional standards for requesting attorney general opinions). Essentially, Senator Johnson asks the Attorney General's Office to opine on what happens if and when Governor Branstad submits his resignation. Although some past Iowa governors have resigned, these specific questions have not arisen in Iowa before.

### I. OPERATIVE CONSTITUTIONAL PROVISIONS

The relevant provision of the Iowa Constitution is article IV, section 17, which is currently entitled "Lieutenant governor to act as governor." It provides:

In case of the death, impeachment, resignation, removal from office, or other disability of the governor, the powers and duties of the office for the residue of the term, or until he shall be acquitted, or the disability removed, shall devolve upon the lieutenant governor.

Iowa Const. art. IV, § 17. This provision has never been amended. "[T]he purpose of art. IV, § 17 is to ensure that the citizens of Iowa are not without a person capable of performing the constitutional and statutory duties imposed upon a governor." 1980 Op. Att'y Gen. 550, 1980 WL 25903, at \*3 (Iowa Att'y Gen. Jan. 2, 1980).

Several other state constitutions contain similar language that centers around the verb “devolve.” *See, e.g.*, Ark. Const. art. 6, § 4; Idaho Const. art. IV, § 12; Nev. Const. art. 5, § 18; Okla. Const. art. 6, § 16; Tenn. Const. art. 3, § 12; Wash. Const. art. 3, § 10. Additionally, although they do not contain the verb “devolve,” some state constitutions provide—like article IV, section 17 of the Iowa Constitution—that if a governor resigns, the lieutenant governor shall have the powers, authorities, and duties of governor. *See, e.g.*, Ky. Const. § 84; Mass. Const. pt. 2, ch. II, § II, art. III; Miss. Const. art. 5, § 131.

In contrast, many state constitutions distinguish between permanent disabilities and temporary disabilities. Permanent disabilities occur when a governor dies or resigns, whereas temporary disabilities could include physical or mental incapacity, or absence from the state. In those states, generally the lieutenant governor becomes governor when a permanent disability occurs but gubernatorial powers devolve (or the lieutenant governor acts as governor) during any period of temporary disability. *See, e.g.*, Ala. Const. art. V, § 127; Alaska Const. art. 3, §§ 9, 11; Ariz. Const. art. 5, § 6; Cal. Const. art. 5, § 10; Colo. Const. art. 4, § 13 (1), (5); Conn. Const. art. 4, § 18(a)–(b); Fla. Const. art. 4, § 3(a)–(b); Ga. Const. art. 5, § 1, ¶ V(a)–(b); Haw. Const. art. 5, § 4; Ind. Const. art. 5, § 10(a); Kan. Const. art. 1, § 11; Me. Const. art. 5, pt. 1, §§ 14–15; Md. Const. art. 2, § 6(b), (d); Mich. Const. art. 5, § 26; Minn. Const. art. 5, § 5; Mo. Const. art. 4, § 11(a); Neb. Const. art. IV, § 16; N.J. Const. art. 5, § 1, ¶¶ 6–7; N.M. Const. art. 5, § 7; N.Y. Const. art. 4, § 5; N.C. Const. art. III, § 3(1), (3); Ohio Const. art. III, § 15(A)–(B); Pa. Const. art. 4, § 13; S.D. Const. art. 4, § 6; Tex. Const. art. 4, § 16(c)–(d); Utah Const. art. 7, § 11(2), (5); Va. Const. art. 5, § 16; Wis. Const. art. 5, § 7(1)–(2). Article IV, section 17 of the Iowa Constitution does not make a similar distinction; its provisions apply to all disabilities, whether temporary or permanent. *See* Iowa Const. art. IV, § 17.

Several other provisions of article IV of the Iowa Constitution bear upon the question of gubernatorial succession. Article IV, section 1 provides that “The supreme executive power of this state shall be vested in a chief magistrate, who shall be styled the governor of the state of Iowa.” *See also* 1980 Op. Att’y Gen. 550, 1980 WL 25903, at \*3 (“The term ‘governor’ refers to an office and not merely to a particular person.”). Article IV, section 10 grants the governor authority to fill any office that becomes vacant if the constitution and laws do not provide a mode for filling such vacancy. Article IV, section 18 provides that the lieutenant governor “shall have the duties provided by law and those duties of the governor assigned to the lieutenant governor by the governor.” Finally, the Iowa Constitution contemplates a contingency that becomes active when multiple state officers are incapable of performing gubernatorial duties:

If there be a vacancy in the office of the governor and the lieutenant governor shall by reason of death, impeachment, resignation, removal from office, or other disability become incapable of performing the duties pertaining to the

office of governor, the president of the senate shall act as governor until the vacancy is filled or the disability is removed; and if the president of the senate, for any of the above causes, shall be incapable of performing the duties pertaining to the office of governor the same shall devolve upon the speaker of the house of representatives; and if the speaker of the house of representatives, for any of the above causes, shall be incapable of performing the duties pertaining to the office of governor, the justices of the supreme court shall convene the general assembly by proclamation and the general assembly shall organize by the election of a president by the senate and a speaker by the house of representatives. The general assembly shall thereupon immediately proceed to the election of a governor and lieutenant governor in joint convention.

Iowa Const. art. IV, § 19.

In 1844, when Iowa first offered a state constitution for ratification by the people, a newspaper editorial expressed disappointment that much of it was written “in very confused and bungling language” that rendered the drafters’ intent “almost or quite doubtful.” *Its Style*, The Iowa Standard, Vol. IV, No. 46 (Nov. 14, 1844), *reprinted in Press Comments and Other Materials on the Constitutions of 1844 and 1846*, at 214 (Benjamin F. Shambaugh ed., 1900). Though modern readers might feel similarly about the current Iowa Constitution, constitutional history illuminates the framework the drafters established—and why they established it.

## II. CONSTITUTIONAL HISTORY

### A. Iowa History

#### 1. The 1857 Convention

Iowa enacted its current constitution in 1857. As the constitutional convention began, one delegate proposed that an Executive Committee dedicated to formulating the executive branch of government consider “providing for the election of a Lieutenant Governor who, by virtue of his office, shall . . . exercise all the powers and have the title of Governor in case of the death, removal, or other disability of the Governor.” 1 *The Debates of the Constitutional Convention of the State of Iowa*, at 39 (W. Blair Lord rep., 1857) [hereinafter *The Debates*]. The previous Iowa Constitution of 1846 made no provision for a lieutenant governor. The 1857 convention agreed to the resolution. *Id.*

When it came time to debate provisions of article IV, a representative from the Committee read the proposed provisions to the convention. *Id.* at 76–78. The provisions did not include section descriptions or titles. *See id.* In other words, the convention did not understand



article IV, section 17 to provide that the lieutenant governor “acts as” governor. That descriptive heading came later. Instead, by the words of the resolution at the outset of the convention, the drafters understood that the lieutenant governor would “have the title of Governor” if the Governor left office. *Id.* at 39.

When considering statutes, the Iowa Supreme Court has stated that a section heading “cannot limit the plain meaning of the text.” *Atchison, Topeka & Santa Fe Ry. Co. v. Bair*, 338 N.W.2d 338, 344 (Iowa 1983). That important limitation, which prevents a code editor’s choice of language from frustrating the intent of a statute, is even more significant when considering a constitutional provision. But even if the heading of article IV, section 17—which does not use operative language from article IV, section 17 itself—sheds *some* light on the framers’ intent in drafting the provision, *see T & K Roofing Co. v. Iowa Dep’t of Educ.*, 593 N.W.2d 159, 163 (Iowa 1999), other available materials better establish what the Iowa Constitution’s framers really understood “devolve” to mean and what they intended the gubernatorial succession framework to look like.

Notably, despite the resolution at the outset of the 1857 convention, Iowa considered having no lieutenant governor at all. During debate on article IV, delegate Warren proposed an amendment to article IV, section 17 that replaced the words “Lieutenant Governor” with “Secretary of State.” 1 *The Debates*, at 587. Delegate Clarke of Johnson County<sup>1</sup> proposed instead “that the duties of the office of Governor, in case of a vacancy, shall devolve upon the president of the Senate.” *Id.* The convention passed the amendment as Clarke proposed it, inserting the words “president of the Senate” in place of “Lieutenant Governor.” *Id.* Accordingly, the convention also deleted other provisions referring to the lieutenant governor’s duties and place in the line of succession. *See id.* at 587–88.

But not every delegate was convinced the convention had made the right decision. The next morning, delegate Gray asked his colleagues “to consider well the importance of the matter before striking” the provisions for a lieutenant governor. *Id.* at 591. He noted many other states’ constitution provided for the office of lieutenant governor and indicated “there are some advantages connected with the office.” *Id.* Among those advantages was the fact that the lieutenant governor “will be elected directly by the people, instead of by the Legislature.” *Id.* Gray found that important because “We all seem to agree in placing elections, as far as possible, directly in the power of the people.” *Id.* Delegate Clarke of Henry County agreed:

Gentlemen [of the convention] do not reflect that they may be taking from the people the power of selecting their own chief magistrate. When a man is a candidate for the office of Lieutenant Governor, the people always vote for him

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<sup>1</sup> “There were two men named Mr. Clarke and one named Mr. Clark at the Iowa convention.” *State v. Senn*, 882 N.W.2d 1, 13 n.7 (Iowa 2016); *see* 1 *The Debates*, at 6.

with the understanding that circumstances may arise which will make him their Governor. But if you give to the Senate the power of selecting the man who may be the Governor of the people, you take from the people this power and put it into the hands of the Senate.

| *Id.* at 591–92. This is known as the “elective principle.”

Delegate Gray’s remarks sparked renewed debate on the subject, and some delegates changed their minds. For example, delegate Wilson offered that although he had originally voted to eliminate the position of lieutenant governor, “upon reflection . . . the advantages in favor of [having a lieutenant governor] are far superior to the disadvantages.” *Id.* at 593. Most significant, however, were Mr. Clark’s remarks:

I voted yesterday to strike out the office of Lieutenant-Governor. I had not reflected upon it well, and I am inclined to the opinion that I did not vote right. Upon hearing the argument thus far upon the question, and upon reflection, I am disposed to favor the office of Lieut.-Governor, for one reason, if there were no other: I believe that an executive officer, whoever he may be that shall perform the duties of that office, whether Governor or Lieutenant-Governor, ought to be elected directly by the people, in all cases, at least so far as it is possible to provide for it. We elect the Governor by the direct votes of the people—by the popular will—by the popular voice. In case of his removal or disability, I see no reason why the person filling his place should not be elected directly by the whole people as much as the Governor himself.

*Id.* at 594. Mr. Clark’s clear concern was ensuring that the person exercising the state’s executive power, “whether Governor or Lieutenant-Governor,” has a majority of the citizenry’s blessing to do so. *See id.*

After some further debate, the convention voted 19–14 against the amendment that would have struck the office of lieutenant governor. *Id.* at 595. Accordingly, the convention also restored other provisions relating to the office of lieutenant governor. *See id.* at 596.

## 2. Iowa Governors Who Resigned

Governor Kirkwood resigned in 1877 to become a United States Senator. Then-Lieutenant Governor Newbold “entered on the discharge of the duties of the executive” for the remainder of the term (just under a year) but did not appoint a new lieutenant governor “because the lieutenant-governorship was not vacant.” William H. Fleming, *The Second Officer in the Government, reprinted in Annals of Iowa: A Historical Quarterly*, Vol. XIII, No. 1, at 533

(1921) [hereinafter *Annals of Iowa*]. A later history of Iowa referred to Newbold as the “ninth Governor of Iowa” and stated he “became Governor” when Kirkwood resigned. 4 Benjamin F. Gue, *History of Iowa: From the Earliest Times to the Beginning of the Twentieth Century* 199–200 (1903).

Governor Cummins resigned in 1908 to become a United States Senator. Then-Lieutenant Governor Garst “entered on the performance of executive duties” for the remainder of the term (just under two months) but did not appoint a new lieutenant governor. *Annals of Iowa*, at 534.

Governor Hughes resigned in 1969 to become a United States Senator. Then-Lieutenant Governor Fulton assumed the duties of governor for the remainder of the term (just over two weeks) but did not appoint a new lieutenant governor.

Additionally, in 1954, Governor Beardsley died in office. Although Governor Beardsley did not resign, his death—like a resignation—was a permanent “disability” under the Iowa Constitution. Then-Lieutenant Governor Elthon assumed the duties of governor for the remainder of the term (just under two months). However, Elthon did not appoint a new lieutenant governor.

### 3. Interpretation and Subsequent Amendments

In 1923, Governor Kendall requested an opinion from the Attorney General’s Office because he received medical advice recommending he take an extended vacation and abstain from performing his official duties. 1923 Att’y Gen. Ann. Rep. 349, 349 (Iowa Att’y Gen. Aug. 23, 1923). The length of his expected absence was indefinite but would likely be two to three months. *Id.* He asked the Attorney General’s Office to opine on “whether or not the Lieutenant Governor can, during [the] temporary absence, perform the duties of Governor.” *Id.*

The Attorney General concluded “that during the temporary disability of the governor, that the lieutenant governor may act as governor.” *Id.* at 348. The opinion differentiates between the governor permanently leaving office and the governor stepping aside temporarily:

From a consideration of [article IV of the Iowa Constitution] it will be observed that in case of death, resignation, or removal from office of the governor, that the lieutenant-governor succeeds him as governor of the state for the residue of the term. It will further appear that when there is a temporary disability of the governor, the lieutenant-governor acts in his stead during the period of time such disability continues. In the first instance, the lieutenant-



governor becomes governor. In the second instance he simply acts as governor during the temporary disability of his chief.

*Id.* The opinion makes that distinction in part because “terms of a constitution, like those of a statute, are always to be given their natural and obvious meaning. That is, the meaning in which they are commonly and ordinarily understood.” *Id.* at 347–46.<sup>2</sup> The Attorney General further advised Governor Kendall that, when stepping aside, he should make clear “there is no resignation or permanent abandonment of the office of governor.” *Id.* at 343–42.

The 1923 opinion has not been rescinded or disavowed. Neither the legislature nor the people of Iowa sought to amend the Iowa Constitution to establish that the Attorney General’s interpretation was incorrect.

However, the people later amended article IV of the Iowa Constitution. Originally, article IV, section 19 established a succession order if, while acting as governor, the lieutenant governor died, resigned, was impeached or displaced, or otherwise became incapable of performing the duties of the office. The 1952 amendment to article IV, section 19 established the current language, with one exception: it referred not just to the president of the Senate, but the president pro tempore. Accordingly, the 1952 amendment removed the reference to the lieutenant governor “acting as” governor—and that language remains today. However, the 1952 amendment did not remove language in article IV, section 15—which establishes the lieutenant governor’s compensation—that referred to the lieutenant governor acting as governor.

In 1972, several provisions of article IV were changed, but they did not affect gubernatorial succession. Originally, article IV, sections 2 and 3 provided the governor and lieutenant governor served two-year terms. The 1972 amendment increased both terms to four years. It also amended article IV, section 15 to reflect the four-year terms.

The most significant constitutional amendments occurred in 1988. Those amendments, which remain in force today, provided for the first time that the governor and lieutenant governor are elected together, on one ticket, “as if these two offices were one and the same.” Iowa Const. art. IV, § 3. Before 1988, it was possible for the governor and lieutenant governor to represent different political parties. The amendment brought to fruition a constitutional delegate’s statement at the 1857 convention: “The governor and lieutenant-governor will always, I presume, be the same in politics, and why not have the successor of the governor of the same politics, instead of bringing in one of the antagonistic party?” 1 *The Debates*, at 593.

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<sup>2</sup> Because the 1923 volume of attorney general opinions was compiled in chronological order, the volume is paginated in reverse order.

The 1988 amendments also recast the lieutenant governor’s duties. Under original article IV, section 18, the lieutenant governor was president of the senate and possessed a tiebreaking vote. If the lieutenant governor was absent, impeached, or exercising the office of Governor, the Senate was instructed to choose a president pro tempore to preside and break ties.

However, the 1988 amendments revised article IV, section 18 to provide that the lieutenant governor “shall have the duties provided by law and those duties of the governor assigned to the lieutenant governor by the governor.” In other words, the 1988 amendments removed the lieutenant governor’s status as president of the Senate. Accordingly, the 1988 amendments also altered article IV, section 19 to establish that if there is a gubernatorial vacancy and the lieutenant governor is incapable of performing the duties of the office, those duties devolve on the president of the Senate—not the president pro tempore.

Finally, although it is not a constitutional amendment, the Iowa legislature amended section 69.8 of the Iowa Code in 2009. 2009 Iowa Acts ch. 57, § 73. The amendment added a sentence to section 69.8 providing that “[a]n appointment by the governor to fill a vacancy in the office of lieutenant governor shall be for the balance of the unexpired term.” The provision was the only substantive amendment to chapter 69 in a bill that predominantly altered other chapters delineating the logistics and administration of ballots and elections.

## B. *Federal History*

The original language of article IV, section 17 of the Iowa Constitution matched language existing in the United States Constitution at the time. In 1857, when the Iowa Constitution was ratified, article II, section 1, clause 6 of the United States Constitution read: “In Case of the Removal of the President from Office, or of his Death, Resignation, or Inability to discharge the Powers and Duties of the said Office, the Same shall devolve on the Vice President . . . .”

Under that language, numerous presidential vacancies occurred. Each time, the Vice President became President despite the word “devolve.” Two of these instances occurred before 1857: John Tyler in 1841 and Millard Fillmore in 1850. Thus, because of this history, the delegates to the 1857 Iowa constitutional convention likely understood the word “devolve” to mean that the successor became president—or on the state level, became governor.

A federal court decision from 1867 confirms this understanding:

Three times, since the adoption of the constitution, the president has died, and, under [article II, section 1, clause 6], the powers and duties of the office of president have devolved upon the vice president. All branches of the government have, under such circumstances, recognized the vice president as holding the

office of president, as authorized to assume its title . . . . It has never been supposed that, under the provision of the constitution, the vice president, in acting as president, acted as the servant, or agent, or locum tenens of the deceased president, or in any other capacity than as holding the office of president fully, for the time being, by virtue of express authority emanating from the United States.

*Merriam v. Clinch*, 17 F. Cas. 68, 70 (C.C.S.D.N.Y. 1867).

However, neither Tyler nor Fillmore appointed a new vice president. Nor did any of the other vice presidents who succeeded to the presidency before 1967: Andrew Johnson in 1865, Chester Arthur in 1881, Theodore Roosevelt in 1901, Calvin Coolidge in 1923, Harry Truman in 1945, and Lyndon Johnson in 1963.

In 1967, the 25th Amendment superseded the original language from article II, section 1. Now, if the President dies, resigns, or is removed, “the Vice President shall become President.” U.S. Const. art. 2, § 1. Furthermore, when the vice president becomes president, a vacancy occurs in the office of vice president, and the new “President shall nominate a Vice President who shall take office upon confirmation by a majority of both Houses of Congress.” *Id.* § 2. The 25th Amendment also established that the vice president acts as president when the president is temporarily unable to discharge the duties of the office. *Id.* § 3. Although the Iowa Constitution originally mirrored the United States Constitution and has been amended since 1967, the succession provisions have not changed to match the 25th Amendment.

### C. *Other States’ Histories*

While other states’ constitutions and experiences do not alone determine conclusively what the Iowa Constitution means, the language used and any decisions involving that language can be valuable to a linguistic analysis. Indeed, some members of the 1857 constitutional convention expressly advocated that the convention should consider other states’ provisions and experiences. For example, delegate Gray noted in support of keeping the position of lieutenant governor that many other states had such an office. 1 *The Debates*, at 591. Likewise, delegate Clarke of Henry County indicated other states’ experiences lent to the convention a wisdom the individual members would not otherwise have:

We may certainly look to the experience of other States. This matter has been somewhat scoffed at here. Gentlemen pretend to have within them a light superior to any they can borrow. I am willing to look to the experience and wisdom of other States; and, as [Mr. Gray] has observed, I find that, in a majority of the free States, this system prevails; and if this office [of lieutenant governor] is

found beneficial elsewhere, . . . why should we not introduce this provision into our Constitution?

*Id.* at 592. Although the *existence* of a lieutenant governor is now well established, these delegates' comments support the general notion that other states' constitutional provisions and history can illuminate, influence, or suggest what Iowa's language means.

As detailed above, several other state constitutions contain the word “devolve”—but that number used to be higher. *See Olcott v. Hoff*, 181 P. 466, 468 (Or. 1919) (collecting states that, as of 1919, provided “the powers and duties of [governor] devolve upon the lieutenant governor”). In several instances, the state constitution was amended after a judicial decision interpreting the previous language. And in one instance, the state constitution was amended to crystallize an attorney general's opinion—even though the amendment accomplished only what the attorney general opined the previous language already did.

#### 1. Arizona

Arizona distinguishes between permanent and temporary disabilities. If the governor dies, resigns, or is removed from office, “the secretary of state . . . shall succeed to the office of governor.” Ariz. Const. art. 5, § 6. If the governor is temporarily disabled, the powers and duties “devolve upon the same person as in case of vacancy, but only until the disability ceases.” *Id.*

Before the current language, Arizona used language materially similar to the Iowa Constitution, which utilized the word “devolve” for both permanent and temporary disabilities. *See State ex rel. De Concini v. Garvey*, 195 P.2d 153, 154 (Ariz. 1948) (quoting the relevant provision of the Arizona Constitution as it existed at the time). While that language was in force, the governor of Arizona died. *Id.* at 153. The attorney general filed a lawsuit asserting that the successor (the secretary of state) “did not in law or in fact become governor of Arizona . . . , but by virtue of the section the powers and duties of the office of governor merely devolved upon” him. *Id.* The secretary of state asserted he was “governor de jure and de facto.” *Id.*

The Arizona Supreme Court acknowledged that “public business and tranquility demand a prompt judicial inquiry.” *Id.* It noted the “prevailing view” at the time that “the inferior officer does not vacate his office and become governor de jure and de facto, but that the duties and powers of governor merely devolve on him and he retains his former office.” *Id.* at 154. It ultimately followed that path, concluding that the secretary state was “acting governor.” *Id.* at 158.

The court's decision contains two other important conclusions. First, even though the successor was acting governor, he was "entitled to physical possession of the office space and facilities provided" for the governor. *Id.* at 157–58. Second, the court concluded the successor's duties in his current position "embrace the responsibility to act as governor in case any of the contingencies provided for in the constitutional provision arise." *Id.* at 157.

After 1948, the Arizona Constitution was amended to its current language. The fact that the people amended the constitution suggests they believed the court's interpretation of the word "devolve" was incorrect.

## 2. Arkansas

The Arkansas Constitution's succession provision is materially identical to article IV, section 17 of the Iowa Constitution. That provision became significant when then-Governor Bill Clinton was elected President of the United States and indicated his intention to resign as Governor of Arkansas. *See Bryant v. English*, 843 S.W.2d 308, 309 (Ark. 1992). In *Bryant*, the Arkansas Supreme Court concluded that when Clinton resigned, the office of governor would devolve upon the lieutenant governor such that the lieutenant governor became governor. *See id.* at 311. The court found support for its conclusion from several circumstances.

First, a previous Arkansas decision (under a previous constitutional provision when the position of lieutenant governor did not exist) expressed concern that the person tasked with exercising the powers and duties of governors might not be elected by a statewide vote. *Id.* at 312. That concern was alleviated with a constitutional amendment that created the position of lieutenant governor, so there was no issue with allowing the lieutenant governor to become governor, not just acting governor. *See id.*

Second, the court pointed out that if the lieutenant governor was only acting governor, he could continue presiding over the Senate, and that raised separation-of-powers concerns. *See id.*; *see also* Ark. Const. art. VI, § 5. However, if the lieutenant governor became governor, those concerns would be avoided. *See Bryant*, 843 S.W.2d at 312~~*id.*~~ In Iowa, the lieutenant governor has no legislative powers; the 1988 amendment removed "presiding over the Senate" from the lieutenant governor's duties.

Third, the court noted the chain of succession provided the powers would "devolve" upon the lieutenant governor, but if they were unable to exercise the powers and duties of the office, the president of the senate would "act as" governor. *Id.* The difference in language suggested "devolve" did not mean the lieutenant governor would merely act as governor. *See id.*

Finally, in Arkansas, historical practice had treated the lieutenant governor as governor (not acting governor) after the governor resigned. *Id.* at 312–13. That practice comported with the Arkansas Constitution’s command that the supreme executive power vests in a chief magistrate styled the Governor of the State of Arkansas. *Id.* at 313. In other words, the person who has the powers *is* Governor. *See id.* Iowa has a similar provision and a similar historical practice. Iowa Const. art. IV, § 1.

In Arkansas, when the lieutenant governor becomes governor, a vacancy occurs in the office of lieutenant governor that is filled by a special election. Ark. Code § 7-7-105; see *Stratton v. Priest*, 932 S.W.2d 321 (Ark. 1996) (addressing a constitutional challenge to section 7-7-105). Furthermore, the position of lieutenant governor is specifically exempted from the governor’s general appointment power. In other words, Arkansas’s procedure upholds the elective principle. Although the drafters of the Iowa Constitution clearly subscribed to the elective principle, there is no statute analogous to Arkansas Code section 7-7-105 in the Iowa Code.

### 3. California

California distinguishes between permanent and temporary disabilities. Cal. Const. art. 5, § 10. When a permanent disability occurs, “The Lieutenant Governor shall become Governor.” *Id.* However, like Iowa, California formerly used the word “devolve.” Under that language, the California Supreme Court concluded that the lieutenant governor (1) did not actually become governor and (2) could not appoint a new lieutenant governor:

[I]t is provided that in case of the death, resignation, impeachment, absence from the state, or inability to act of the governor, “the powers and duties of his office shall devolve upon the lieutenant-governor for the residue of the term, or until the disability shall cease.” It will be seen that in case of a vacancy in the office of governor the vacancy is not to be filled, but the powers and duties devolve upon the lieutenant governor, who does not cease to be lieutenant governor. Under such circumstances it would hardly be contended that when the powers and duties of the governor devolve upon the lieutenant governor the latter thereby becomes governor, and can appoint a lieutenant governor.

*People ex rel. Lynch v. Budd*, 45 P. 1060, 1060 (Cal. 1896). The people have since amended the constitution to include its current language.

### 4. Colorado

Colorado distinguishes between permanent and temporary disabilities. Colo. Const. art. 4, § 13. The Colorado Constitution also provides that a lieutenant governor who “accedes to the office of governor” may select a new lieutenant governor subject to “confirmation by a majority



vote of both houses of the general assembly.” *Id.* § 13(4). However, the Colorado Constitution formerly contained provisions matching the Iowa Constitution. *See People ex rel. Parks v. Cornforth*, 81 P. 871, 872 (Colo. 1905) (quoting the relevant provisions of the state constitution as they existed at the time). While that language was in force, a succession controversy arose. *See id.*

The governor resigned in 1905, and the lieutenant governor “qualified as governor.” *Id.* The president pro tempore of the senate then “qualified as lieutenant governor.” *Id.* However, at the end of the legislative session, the senate elected a new president pro tempore. *Id.* The question that reached the Colorado Supreme Court asked whether the previous president pro tempore remained lieutenant governor, or whether he only held that office because of his position as president pro tempore. *See id.*

The court concluded “the president pro tem. does not become the lieutenant governor” and that “[i]f the framers of [the] Constitution had intended that the president pro tem. of the Senate should become lieutenant governor de jure in the contingency under consideration, they could easily have said so.” *Id.* at 872–73. Accordingly, the court concluded only the new president pro tempore was empowered to perform the lieutenant governor’s duties. *Id.* at 875.

In 1974—after the federal 25th Amendment—Colorado repealed and reenacted its succession provisions, changing them to the current language.

## 5. Michigan

If the governor resigns, the lieutenant governor shall be governor for the remainder of the term. However, for temporary disabilities, “the powers and duties of the office of the governor shall devolve—.” Mich. Const. art. V, § 26. That language differs from the Iowa Constitution, but in 1939, the relevant provision of the Michigan Constitution (then article VI, section 16) was materially similar to current article IV, section 17 of the Iowa Constitution. *See* 1939 Op. Att’y Gen. Ann.-Rep.-69, 71 (Mich. Att’y Gen. Mar. 28, 1939) (quoting the provision in force at the time).

That year, after the governor of Michigan died, the attorney general’s office issued an attorney general opinion regarding succession “[b]ecause of serious consequences which might follow a prolonged silence on the subject.” *Id.* at 69. The opinion sought to clarify whether there was “now a vacancy in the office of lieutenant governor.” *Id.*

The attorney general answered that question “no,” adhering to the “most approved view” that when a governor dies or resigns, “no vacancy is created in the minor office by operation of law.” *Id.* No vacancy occurs because

it was never intended that the line of succession should be broken, or that any person, who has not received the sanction of the electors by direct vote, should be appointed to a position which would entitle him, in certain eventualities, to the high office of governor.

*Id.* In other words, “plain rules of common sense” made it clear “that the people never intended to intrust the responsibilities of the governorship to one who has not been elected to state office.” *Id.* at 72.

The attorney general also noted the Michigan Constitution’s similarity to the United States Constitution and recognized that, as of 1939, “when the Vice President has succeeded to the office of President, it has never been claimed that he thereby vacated the office of Vice President.” *Id.* at 73. Based on the elective principle at the core of democracy—election by the people—and historical practice, the opinion ultimately concluded that,

upon death of the governor of the State of Michigan, his powers and duties devolve upon the lieutenant governor; that the office of lieutenant governor is not thereby vacated; that the Constitution, by plain and unambiguous language, provides for a line of succession, from the governor, to the lieutenant governor, and to the secretary of state, a line of succession which cannot be broken by the appointment of a lieutenant governor to fill a supposed vacancy. No vacancy exists.

*Id.* at 73.

## 6. Montana

“If the office of governor becomes vacant by reason of death, resignation, or disqualification, the lieutenant governor shall become governor for the remainder of the term, except as provided in this constitution.” Mont. Const. art. VI, § 14(6).

“When there is a vacancy in the office of governor, the successor shall be the governor. The acting governor shall have the powers and duties of the office of governor only for the period during which he serves.” *Id.* § 14(8). An “acting governor” only happens when the governor requests it of the lieutenant governor or when the governor is disabled. *See id.* § 14(2)–(4).

However, before the current language, Montana (like Iowa) used the word “devolve.” *See State ex rel. Lamey v. Mitchell*, 34 P.2d 369, 370 (Mont. 1934) (quoting the provision in



force at the time). After an election in 1932, the governor resigned in 1933. *Id.* The Montana Supreme Court concluded “when the Governor resigns or is permanently removed from office, there is no vacancy in the office of Governor in the sense that there is no one left with power to discharge the duties.” *Id.* The court further explained the state’s constitutional structure:

When the framers of the Constitution provided for the election of a Governor and a Lieutenant Governor as members of the executive department of the state, but conferred upon the latter no executive power or authority other than in the contingencies mentioned in [the succession provision], they manifested the intention that the people elect two qualified heads of that department—the one active, the other his lieutenant, ready at a moment’s notice to assume the duties of the office, should his superior officer, for any reason, either temporarily or permanently, become unable to perform them.

*Id.* at 371–72 (citation omitted).

The court also concluded that when a governor resigns or dies, there is no vacancy in the office of lieutenant governor. *Id.* at 372. The court explained,

When the duties, powers, and emoluments of the office of Governor devolve upon the Lieutenant Governor, it cannot be said that he vacates his office of Lieutenant Governor, and, unless he does so, there is no vacancy in his office. His assumption of the duties of Governor does not create, and neither can he make, a vacancy, as he is discharging the functions of Governor by the mandate of the Constitution, and that by reason of being Lieutenant Governor. If the framers of the Constitution had intended that there should be a vacancy in the office of Lieutenant Governor upon the resignation, death, or permanent removal of the Governor, they could have easily said so.

*Id.*

Two aspects of the succession structure cemented the court’s conclusion. First, if there were a lieutenant governor vacancy, the lieutenant governor / new governor could appoint a lieutenant governor, which would interrupt the line of successors chosen by the voters. This “was never contemplated and never intended by the framers of the Constitution, or the people who adopted it.” *Id.* Second, because the provision covered both permanent and temporary disabilities, if the lieutenant governor’s office always became vacant, another conundrum would arise. Specifically, if the governor suffered a temporary disability and the lieutenant governor took over, any person subsequently appointed to the post of lieutenant governor would essentially be squeezed out once the temporary disability ended. *See id.*

## 7. Nevada

Nevada's succession provision is materially identical to Iowa's. *Compare* Iowa Const. art. IV, § 17, *with* Nev. Const. art. 5, § 18. The Nevada Supreme Court considered the provision after the governor died in 1896. *State ex rel. Hardin v. Sadler*, 47 P. 450, 450 (Nev. 1897). The court concluded there was no vacancy in the office of lieutenant governor:

If a vacancy occurs in the office of governor, the powers and duties of the office devolve upon the lieutenant governor, but there is no vacancy created thereby in the office of lieutenant governor. The officer remains lieutenant governor, but invested with the powers and duties of governor.

*Id.* The Nevada Constitution has not changed since 1897.

## 8. New Jersey

New Jersey distinguishes between permanent and temporary disabilities; for permanent disabilities, “the Lieutenant Governor shall become Governor,” while for temporary ones, the powers of the office devolve. N.J. Const. art. 5, § 1, ¶¶ 6–7. However, the New Jersey Constitution previously contained a provision like Iowa's—although there was no such thing as a lieutenant governor at the time. *See State v. Heller*, 42 A. 155, 156 (N.J. 1899) (quoting the provision in force at the time, which established that the governor's powers and duties devolved upon the president of the senate). Under that language, a succession dispute arose.

In 1898, the governor of New Jersey resigned. *Id.* The president of the senate took an oath assuming gubernatorial powers and duties but later resigned “as a member of the senate.” *Id.* The speaker of the house, who was next in the succession order, then asserted *he* was now ~~entitled to exercise the powers and duties of governor.~~ *See id.* However, the president of the senate asserted he remained governor and his resignation only affected his senate seat. *See id.* The New Jersey Supreme Court concluded the president of the senate was only governor through his position as senate president:

In construing [the succession] clause of the constitution it must be borne in mind that it was carefully drawn by learned jurists, who knew how to express with exactness and precision the purpose they had in view. The provision is that, in case of the resignation of the governor, the powers, duties, and emoluments of the office shall devolve upon the president of the senate, and not that the president of the senate shall thereby become governor . . . . If the framers of the fundamental

law had intended to transfer the president of the senate to the executive chair, and thereby to vacate his office of senator, it is reasonable to believe that they would have said so in no uncertain language. The language used is not ambiguous. It declares that the powers, duties, and emoluments of the office shall devolve on the president of the senate; it does not confer upon him the title of the office. The president of the senate exercises the powers of the governor; the president of the senate performs the duties of the governor; the president of the senate receives the emoluments of that office. He is still president of the senate, with the added duties required of the chief executive of the state imposed upon him. There is no language in the constitution from which it can reasonably be inferred that his office of president of the senate was to be vacated. He retains his office of senator; and as president of the senate, and not as governor, he exercises the added powers and performs the superimposed duties.

*Id.* at 156–57. Accordingly, when he resigned his senate position, he also resigned his ability to exercise the powers and duties of the governor and the speaker of the house became entitled to exercise those powers and duties. *Id.* at 158.

There are two other important aspects of the New Jersey court’s decision. First, it concluded the successor did not actually become governor because other provisions in the state constitution referred to the governor “or person administering the government.” *Id.* at 157. Therefore, if the successor actually became governor, those words would be superfluous. *Id.* The Iowa Constitution does not contain similar language that would become superfluous if the lieutenant governor *is* governor following the governor’s resignation.

Second, the court highlighted the constitutional provision’s flexible nature, applying to both permanent and temporary disabilities. If the successor’s previous position automatically became vacant, even during a temporary disability, they would lose it when the temporary disability ended. *Id.* at 158. The court concluded that meaning of the language “could not have been within the contemplation of the able men who incorporated it in this clause relating to a matter of supreme importance.” *Id.*

## 9. New York

New York distinguishes between permanent and temporary disabilities. When a permanent disability occurs, the lieutenant governor becomes governor, but when a temporary disability occurs, the lieutenant governor acts as governor. N.Y. Const. art. IV, § 5. In 1943, the state’s attorney general opined that a statute allowing some appointments could not be applied to a lieutenant governor vacancy because it “would lead to the anomalous result that a Governor by appointing a Lieutenant-Governor and then resigning could impose upon the people his own

choice as their Governor.” 1943 N.Y. Op. Att’y Gen. No. 378, 1943 WL 54210, at \*4 (N.Y. Att’y Gen. Aug. 2, 1943).

In 2008, the governor resigned, and in accordance with the constitution, the lieutenant governor became governor. *See Skelos v. Paterson*, 915 N.E.2d 1141, 1142 (N.Y. 2009). Although the state constitution provides that if both the office of governor and the office of lieutenant governor are vacant, the president of the senate shall act as governor, N.Y. Const. art. IV, § 6, the senate deadlocked and could not elect a temporary president, *see Skelos*, 915 N.E.2d at 1142. Accordingly, each political party recognized a different temporary president, which made it unclear “which one of the rival temporary presidents stood next in the line of gubernatorial succession.” *Skelos*, 915 N.E.2d at 1142. The governor attempted to break the deadlock by simply appointing a new lieutenant governor. *Id.* However, a state legislator filed a lawsuit seeking (1) a declaration that the appointment was unconstitutional and (2) an injunction preventing the governor from appointing anyone to the office of lieutenant governor. *Id.*

When the case reached the New York Court of Appeals, the court ~~recognized it was undisputed~~ stated there could be no dispute that the lieutenant governor became governor and thereby left a vacancy in the office of lieutenant governor. *Id.* at 1144. It then rejected the contention “that the Constitution requires that a vacancy in the office of Lieutenant Governor be preserved until the next . . . election” and applied a state statute—the one the attorney general had opined 60 years earlier could not apply—to fill a gap left by the constitution. *Id.* The court reasoned it made little sense to have “an extended vacancy running the balance of an elective term” when the constitution contained a provision intending to assure vacancies were filled. *Id.* at 1144–45.

The court also concluded ~~what it called~~ “the elective principle”<sup>22</sup> could not control the result of the case:

While there can be no quarrel with the proposition that, generally, election must be the preferred means of filling vacancies in elective office, it does not follow that the elective principle is preeminent when it comes to filling a vacancy in the office of Lieutenant Governor.

*Id.* at 1145. It concluded that a constitutional amendment placing the governor and lieutenant governor on the same ticket subordinated the elective principle “to assure the structural integrity and efficacy of the executive branch.” *Id.* It acknowledged that subordinating the elective principle created the possibility an unelected individual could occupy the state’s highest office, but it concluded that was a permissible result because all rules of succession are “inevitably imperfect” and “invariably compromise elective principles” at *some* stage. *Id.* at 1146. In other words, it deferred to the legislature’s judgment in passing a statute that applied. *See id.* (“For

now, the Legislature . . . has specified that the vacancy is to be filled not by election but by gubernatorial appointment alone—a determination that the Legislature is always free to revisit.”).

The decision was not unanimous. The dissenting opinion principally highlighted the possibility “that the citizens . . . will one day find themselves governed by a person who has never been subjected to scrutiny by the electorate, and who could in turn appoint his or her own unelected Lieutenant Governor.” *Id.* at 1147 (Pigott, J., dissenting). Justice Pigott asserted that was “contrary to the text of the New York Constitution and affords Governors unprecedented power.” *Id.*

Justice Pigott relied on historical practice, noting “no one gave a thought or . . . harbored a suggestion” that the new governor could appoint a replacement lieutenant governor because “no Governor in the history of the State had done so.” *Id.*; see also *id.* at 1152 & n.3 (collecting 10 occasions since New York’s founding “when the position of Lieutenant Governor has become vacant” but noting none of the vacancies were filled by appointment). He also noted the constitution did not expressly provide an appointment power—but it *did* “provide a clear line of succession,” which could not be circumvented. See *id.* at 1150. He asserted the majority erred by grouping the position of lieutenant governor—one of the state’s highest offices—into what was effectively a catchall statute addressing other minor state officials. *Id.*; cf. *Whitman v. Am. Trucking Ass’n*, 531 U.S. 457, 468 (2001) (noting Congress does not “hide elephants in mouseholes”). In Justice Pigott’s view, the lieutenant governor was not addressed in the statute because the constitution already provided a method of succession. See *id.* *Skelos*, 915 N.E.2d at 1150.

Finally, Justice Pigott explored constitutional amendments that affected the lieutenant governor. First, in 1945, the constitution was amended to indicate “precisely what was to occur when there was a vacancy in the office of Lieutenant Governor alone;” it indicated the temporary senate president was to perform all the duties of lieutenant governor during the vacancy. See *id.* at 1154–55. Second, in 1953, the constitution was amended to require that the governor and lieutenant governor be elected together, on one ticket—just as Iowa did in 1988. See *id.* at 1155. Accommodating those changes, Justice Pigott suggested it was improper “that a Lieutenant Governor could be appointed by a Governor with no input from the electorate and no vetting by the legislative branch of government.” *Id.*

There has been some academic criticism of the *Skelos* decision. See Patrick A. Woods, Comment, *Automatic Lieutenant Gubernatorial Succession: Preventing Legislative Gridlock Without Sacrificing the Elective Principle*, 76 Alb. L. Rev. 2301, 2303 (2013) (asserting *Skelos* “removes any electoral check from those selected to fill the position of lieutenant-governor and leaves structural problems unresolved”). But it is not universally panned. See Richard Briffault,



*Skelos v. Paterson: The Surprisingly Strong Case for the Governor's Surprising Power to Appoint a Lieutenant Governor*, 73 Alb. L. Rev. 675, 676–77 (2010) (asserting that the *Skelos* majority was right despite disagreement from the sitting attorney general, “a former chief judge, a former lieutenant governor, a former attorney general, and a leading academic expert on the state constitution”).

In any event, the decision appeared to assume that there was a vacancy in the office of lieutenant governor despite earlier caselaw from other states holding almost unanimously that the lieutenant governor's ascension does not leave a vacancy in the office of lieutenant governor. That assumption may leave the decision on shaky analytical ground.

There are a few other differences between New York's framework and Iowa's. First, the lieutenant governor's duties include presiding over the senate in New York, but not in Iowa. Second, the New York Constitution provides for vacancies in the lieutenant governor's office alone, with no vacancy in the governor's office. N.Y. Const. art. IV, § 6. The Iowa Constitution is not as specific. Finally, the New York Constitution directs the legislature to provide for filling vacancies. N.Y. Const. art. XIII, § 3. By contrast, the Iowa Constitution contains no similar instructions for the legislature.

#### 10. Oklahoma

Oklahoma's succession provision is similar to Iowa's, using the word “devolve”—although one difference is that in Oklahoma, “the office” devolves, while in Iowa, the powers and duties do. *Compare* Iowa Const. art. IV, § 17, *with* Okla. Const. art. 6, § 16. In a 1926 case, the Oklahoma Supreme Court concluded the office of Governor automatically devolves upon another, who by virtue of filling that office becomes the chief magistrate styled the governor of Oklahoma. *Fitzpatrick v. McAlister*, 248 P. 569, 572 (Okla. 1926). In other words, the person who has the powers is governor. In particular, the court noted the difference between the word “devolve,” which applied only to the lieutenant governor, and “act as Governor,” which applied only to those further down the line of succession. *See id.* Because of that difference in language, the court concluded the word “devolve” actually conferred the title and office.

The court found support for its conclusion in federal history:

[U]pon the death of President Wm. H. Harrison, Vice President Tyler became President of the United States. For almost a century this construction of the federal Constitution has stood without question. It has been recognized as correct, and acquiesced in, not only by the departments of state and all the states of the Union, but officially recognized by every civilized government in the world.

On each occasion where the President of the United States has died, the Vice President has immediately succeeded to the office of President as President of the United States, and thereupon the government of the United States has at once, through its consular offices, notified all governments of the world of the change in Presidents.

Defendant suggests that no court has ever pronounced that to be the law. To our mind, it is so clearly correct that no one has ever presumed to test its correctness in the courts. Therefore it should have greater weight than an ordinary departmental construction, not only because it has stood for almost a century, but because it has been recognized as the correct conception of our system of government, and because, for eighty-five years under this construction, there has been no friction in the machinery of government by reason of such construction.

*Id.* at 576.

The decision was not unanimous. A dissenting opinion suggested the lieutenant governor would perform gubernatorial duties “merely as the occupant of the office of Lieutenant Governor, to which he was elected.” *Id.* at 580 (Branson, V.C.J., dissenting). The dissent also highlighted the possibility that if the lieutenant governor became governor and thereby vacated the office of lieutenant governor, he could appoint a replacement. *See id.* at 581. That was problematic, the dissent asserted, because it would “make it impossible that the President pro tempore of the Senate would ever succeed to the performance of the duties of Governor, as was clearly contemplated in the succession line to such duties as set out in . . . the Constitution.” *Id.*

## 11. Oregon

In Oregon, the successor “shall become Governor.” Or. Const. art. V, § 8a. However, the Oregon Constitution formerly provided that the duties of governor would “devolve on the secretary of state” and if the secretary of state was disabled, “the president of the senate shall act as governor.” *See Chadwick v. Earhart*, 4 P. 1180, 1180 (Or. 1884) (quoting the provision as it existed at the time). In other words, the Oregon Constitution distinguished between devolution and an acting governor.

In *Chadwick*, one party contended that

the duties of the office of governor became annexed to the office of secretary of state, and are discharged as duties incident to the latter office; in other words, that

the duties of the office, but not the office itself, devolve upon the secretary of state.

*Id.* The court was skeptical, noting that argument seemed to require “either that the office of governor should continue vacant . . . ; or, second, that the office be filled, and yet he who fills it be in nowise governor, but continue to be merely secretary of state.” *Id.*

Accordingly, the court concluded the successor became governor:

In the first place, it is not shown how an office can be vacant, and yet there be a person, not the deputy or locum tenens of another, empowered by law to discharge the duties of the office, and who does, in fact, discharge them. It is not explained how, in such a case, the duties can be separated from the office so that he who discharges them does not become an incumbent of the office. And, in the second place, how a person can fill the office of governor without being governor. It is the function of a public officer to discharge public duties. Such duties constitute his office.

*Id.* at 1181. A later decision adhered to *Chadwick* and concluded that upon the governor’s death, “by reason of the fact that Mr. Olcott was secretary of state he automatically became governor.” *Olcott*, 181 P. at 482. The court concluded “when the people elected Mr. Olcott secretary of state, by the very terms of the constitution they elected him to become governor” if the incumbent died. *Id.* at 483.

## 12. Utah

Utah defines vacancy to include resignation and disability that extends for the remainder of the term. Utah Const. art. VII, § 11(1)(a). If a vacancy occurs, the lieutenant governor “shall become governor.” *Id.* § 11(2). The Utah Constitution also provides that if a disability is only temporary, the lieutenant governor shall discharge the powers and duties. *Id.* § 11(5)(a). And, it establishes that when the lieutenant governor becomes governor, a vacancy occurs in the office of lieutenant governor. *Id.* § 10(3)(a)(i).

However, before 2008, the Utah Constitution, like Iowa, used only “devolve.” The Utah Attorney General issued an advisory opinion in 2003 on the question of succession. Utah A.G. Opinion No. 03-001, 2003 WL 21996258 (Aug. 18, 2003). The opinion concluded (1) “devolve” means that the lieutenant governor becomes governor, and (2) a vacancy occurs in the office of lieutenant governor that the governor is entitled to fill by appointment. *Id.* at \*1, 3. The attorney general relied in part on the federal history involving the word “devolve.” Because four vice presidents had become president before Utah adopted a constitution, at the time the state adopted



one, “it was understood, in theory and in practice, that the Constitutional language ‘shall devolve’ meant ‘succession’ such that the Lieutenant Governor would become the Governor.” *Id.* at \*1.

The attorney general also noted that in 1980, the citizens of Utah adopted constitutional amendments that required the governor and lieutenant governor to run on the same ticket and clarified the line of succession of executive authority. *Id.* Those amendments were presented to the voters as mirroring the succession of the federal government—which by this time had adopted the 25th Amendment providing the vice president becomes president. *Id.*

Despite the attorney general’s conclusions about the existing language, the Utah Constitution was later amended to its current language to cement the attorney general’s understanding of the constitutional structure. Furthermore, the attorney general may have reached his opinion about a lieutenant governor vacancy because (1) the legislature codified its finding that the lieutenant governor is a significant position, Utah Code § 67-1a-1; and (2) the lieutenant governor is the state’s chief election officer, so it would be important to have someone in the position, see Utah Code § 67-1a-2. The Iowa Code does not contain a similar emphasis on the lieutenant governor’s importance, and here, the secretary of state is the chief election officer. Those differences may provide a basis on which to distinguish Utah’s conclusions.

### 13. Washington

Washington’s succession provision is similar to Iowa’s, using the word “devolve.” *Compare* Iowa Const. art. IV, § 17, *with* Wash. Const. art. 3, § 10. The Washington Supreme Court confronted the provision in a 1902 case presenting the question whether the death of the governor creates a vacancy in either the office of governor or lieutenant governor. *State ex rel. Murphy v. McBride*, 70 P. 25, 25 (Wash. 1902). The court concluded,

The constitution having provided that in case of the death of the governor the duties of the office shall devolve upon the lieutenant governor, there is no vacancy in the office of governor. . . . When the lieutenant governor, by virtue of his office and of the command of the constitution, assumed the duties of governor on the death of Gov. Rogers, the office of lieutenant governor did not thereby become vacant, but the officer remained lieutenant governor, intrusted with the powers and duties of governor.

*Id.* at 26.

### 14. Wisconsin

In Wisconsin, the lieutenant governor “shall become governor” if the governor dies, resigns, or is removed. Wis. Const. art. 5, § 7(1). The lieutenant governor “shall serve as acting governor” if the governor is absent or disabled. *Id.* § 7(2). But the language was not always what it is today. In 1938, it matched article IV, section 17 of the Iowa Constitution. *See State ex rel. Martin v. Ekern*, 280 N.W. 393, 398 (Wis. 1938) (quoting the provision in force at the time).

Under that provision, the Wisconsin Supreme Court acknowledged that the question of succession was “most important and of great public concern and interest” because the people of the state were “vitaly interested in seeing that no important office, such as that of lieutenant governor, be intruded into by any person who has not lawful authority to hold the office or to perform the duties thereof.” *Id.* at 394. It ultimately concluded that when a vacancy occurs in the office of governor, “the lieutenant governor does not become governor. He remains lieutenant governor, upon whom devolves the powers and duties of governor. In such a contingency no vacancy occurs in the office of lieutenant governor.” *Id.* at 399.

### 15. Wyoming

Wyoming does not use either the word “devolve” or the phrase “become Governor.” Instead, it provides that the secretary of state “shall act as governor.” Wyo. Const. art. 4, § 6. In 1903, the governor died, and a dispute arose about the secretary of state’s compensation while fulfilling his constitutional duty to act as governor. *State ex rel. Chatterton v. Grant*, 73 P. 470, 470 (Wyo. 1903). The court concluded the secretary of state performed duties both in that role and as governor, and accordingly was entitled to compensation for both positions. *See id.* at 472. However, the court also noted it did not observe a material distinction between “devolve” and “act as.” *Id.* at 476.

## III. SYNTHESIS

Several themes pervade the historical accounts. One major recurring theme is ~~what the New York court referred to as the~~ elective principle—the notion that the people should not be subject to the rule of a person none of them elected. Iowa’s constitutional delegates voiced this principle during the debates in 1857, and it has repeatedly surfaced when other states’ provisions came before courts in those states. *See, e.g., Bryant*, 843 S.W.2d at 312; *State ex rel. Lamey v. Mitchell*, 34 P.2d at 372; *Skelos*, 915 N.E.2d at 1145.

Another theme is historical understanding. The notion that “it’s always been this way” is assuredly not reason, standing alone, to continue a particular practice; something can be legally incorrect even if it’s longstanding. *See Griffin v. Pate*, 884 N.W.2d 182, 208 (Iowa 2016) (Hecht, J., dissenting) (rejecting the notion that a practice should continue just “because ‘that’s the way it’s always been in Iowa’ or because ‘that’s the way it’s done elsewhere’ ”). But it *can*

illuminate the understanding Iowa's framers had at the time they were drafting the Iowa Constitution; it can shed light on the words' original intent even though original intent is not the end of the analysis. *See id.* at 198–202 (majority opinion) (beginning analysis of a constitutional provision by determining what it was understood to mean at the time of enactment before tracing its interpretation over time). In that respect, the history of *presidential* succession before 1857, and the language in the United States Constitution at the time, provides a worthy indication of what Iowa's framers likely meant by the word “devolve.”

A final theme is the importance of linguistic difference. Many states have changed their respective succession provisions, either because a court determined succession did not work in the way the people actually intended or perhaps just to update language. Additionally, some states differentiate between permanent and temporary disabilities—but Iowa's provision applies to both and must carry an interpretation commensurate with that flexibility. *See State ex rel. Lamey v. Mitchell*, 34 P.2d at 372; *Heller*, 42 A. at 158. Of particular importance here is the fact that the 25th Amendment was adopted in 1967, and the Iowa Constitution has seen multiple amendments since then—yet the Iowa Constitution was not changed to mirror it.

To be sure, reasonable minds can debate the meaning of the constitution. The histories discussed above in some instances contain competing answers; some say the successor becomes governor, while others say the successor is merely acting governor. Some grant a successor the power to appoint a new lieutenant governor; others don't. There is room to disagree. However, there are several factors that carry the most persuasive weight in determining what *Iowa's* answers are.

First, the elective principle was clearly important to the Iowa drafters. *See 1 The Debates*, at 591–94. And it has remained important, because even though Iowans have amended article IV of the Iowa Constitution, in doing so they retained the principle that both the governor and lieutenant governor “shall be elected.” Iowa Const. art. IV, § 2. Accordingly, the elective principle deserves paramount consideration. As several courts determined, it would frustrate the elective principle *and* the constitutional succession order if a governor could always appoint a new lieutenant.

Second, the series of amendments to the Iowa Constitution delineate the contours of the lieutenant governor's duties. By placing the governor and lieutenant governor together on one ticket and removing the lieutenant governor's duty to preside over the senate, the people displayed their intent that the lieutenant governor be ready as a standby—just in case. *See State ex rel. Lamey v. Mitchell*, 34 P.2d at 371–72. The lieutenant governor's duties are as provided by law, and one of those duties flows from the constitution: the duty to become governor in the event of a vacancy. The duty is already encompassed in the office of lieutenant governor.

Finally, history carries significant weight in two respects. It illustrates that at the time article IV, section 17 was enacted, “devolve” meant that the successor becomes governor. It also suggests that the 1988 amendments consciously avoided duplicating the language of the 25th Amendment because the people of Iowa wished to uphold the elective principle.

In light of the resources and documents discussed in this memo, the answers to Senator Johnson’s questions about gubernatorial succession in the event of Governor Branstad’s resignation are as follows.

1. If Governor Branstad resigns, Lieutenant Governor Reynolds becomes Governor. She succeeds to the office, title, position, and powers of Governor because the person possessing the powers is styled the Governor of Iowa. Iowa Const. art. IV, § 1.
2. Article IV, section 17 itself does not contain the phrase “act as governor.” That section heading was added later and, ~~like a statutory heading,~~ cannot circumvent the plain meaning of the actual language. The framers’ intent in selecting the word “devolve” was to match the United States Constitution, and under the United States Constitution, the government experienced two presidential successions before 1857 in which the vice president became president. Thus, the framers understood “devolve” to mean “become.”
3. If Governor Branstad resigns, no vacancy occurs in the office of lieutenant governor. Essentially, the offices of governor and lieutenant governor merge. The voters elected Governor Branstad and Lieutenant Governor Reynolds with the understanding that Lieutenant Governor Reynolds would step in if a particular contingency—specified in article IV, section 17—occurred. One of the lieutenant governor’s duties is to become Governor if that contingency occurs. Accordingly, Lieutenant Governor Reynolds becomes Governor because she is already Lieutenant Governor. Because there is no vacancy in the office of lieutenant governor, Iowa Code section 69.8 does not apply.
4. Because there is no vacancy in the office of lieutenant governor, there is nothing to fill. Accordingly, Governor Reynolds could not appoint a successor lieutenant governor.

## Thompson, Jeffrey [AG]

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**From:** Ranscht, David [AG]  
**Sent:** Monday, April 03, 2017 12:33 PM  
**To:** Gavin, Meghan [AG]; Thompson, Jeffrey [AG]  
**Subject:** RE: Lt Gov stuff  
**Attachments:** Shall Be Styled.docx

Here is a chart categorizing states by whether they have a provision like our article IV, section 1—providing the powers are vested in a chief magistrate who shall be styled the governor.

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-----Original Message-----

**From:** Gavin, Meghan [AG]  
**Sent:** Monday, April 03, 2017 10:37 AM  
**To:** Thompson, Jeffrey [AG]; Ranscht, David [AG]  
**Subject:** RE: Lt Gov stuff

<http://www.independentmail.com/story/news/local/2017/01/18/sc-supreme-court-ruling-may-pave-way-bryant-become-lieutenant-governor/96736648/>

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**From:** Thompson, Jeffrey [AG]  
**Sent:** Monday, April 03, 2017 10:24 AM  
**To:** Ranscht, David [AG]; Gavin, Meghan [AG]  
**Subject:** Lt Gov stuff

South Carolina just went through the succession issues with Nicki Haley leaving. Could one of you find the S.C. constitution and any pertinent cases? Thanks.

**The supreme executive power of this state shall be vested in a chief magistrate, who shall be styled the governor of the state of Iowa.** Iowa Const. art. IV, § 1.

Do other states have similar provisions?

Yes, materially identical ("a chief magistrate")	No provision	No—power vested in <i>the</i> governor	No—power vested in <i>a</i> governor
Alabama	Arizona	Alaska	Delaware
Arkansas	Minnesota	California	Florida
Kentucky	Vermont (enumerates governor's powers and expressly says Lt. Gov. is empowered to perform them "in the governor's absence")	Colorado	Hawaii
Massachusetts: "There shall be a supreme executive magistrate, who shall be styled, the governor of the Commonwealth of Massachusetts . . . ."		Connecticut	Indiana
Nevada		Georgia	Kansas
Oklahoma		Idaho	Maine
South Carolina		Illinois	Maryland
		Louisiana: "The governor shall be the chief executive officer of the state."	Mississippi
		Michigan	Missouri
		Montana	New Jersey

		Nebraska	Oregon
		New Mexico	Rhode Island
		New York	Tennessee
		North Carolina	Virginia
		North Dakota	Washington
		Ohio	Wisconsin
		Pennsylvania	Wyoming
		South Dakota	
		Texas (just provides that governor shall be chief executive officer of the state)	
		Utah	
		West Virginia	

New Hampshire is not included in the table above because it has a hybrid provision: "There shall be a supreme executive magistrate, who shall be styled the Governor of the State of New Hampshire, and whose title shall be His Excellency. The executive power of the state is vested in the governor." N.H. Const. pt. 2, art. 41. Perhaps it fits in the "vested in *the* governor" category. Massachusetts might fall along the same lines.

## **Thompson, Jeffrey [AG]**

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**From:** Ranscht, David [AG]  
**Sent:** Friday, December 09, 2016 3:19 PM  
**To:** Thompson, Jeffrey [AG]; Gavin, Meghan [AG]  
**Subject:** RE: Constitutional issue re: Lt. Gov assuming Gov's powers  
**Attachments:** Category Chart.docx; Governor Succession.docx; State Chart.docx

Couple interesting things from making the charts today:

1. In Oklahoma, the provision says "the office" devolves, not just the "powers and duties." That may explain the holding in the 1926 case.
2. I double checked some provisions and discovered a few I had categorized as "shall become" actually make the distinction between permanent vacancy and temporary disability.

My count as of now is:

- 13 "devolve" or "act as governor" (including Iowa)
- 3 that use a phrase like "shall become governor" either without making a distinction between permanent vacancy and temporary disability, or that don't really have a provision covering temporary disability
- 34 that distinguish between permanent vacancy and temporary disability, and use different language for the two situations

The charts are attached along with an updated memo.

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-----Original Message-----

**From:** Thompson, Jeffrey [AG]  
**Sent:** Thursday, December 08, 2016 2:41 PM  
**To:** Gavin, Meghan [AG]; Ranscht, David [AG]  
**Subject:** RE: Constitutional issue re: Lt. Gov assuming Gov's powers

Already put a hard copy on your chairs. Found it this morning. Dicta.....

-----Original Message-----

**From:** Gavin, Meghan [AG]



Sent: Thursday, December 08, 2016 2:39 PM  
To: Ranscht, David [AG]; Thompson, Jeffrey [AG]  
Subject: RE: Constitutional issue re: Lt. Gov assuming Gov's powers

[https://govt.westlaw.com/iaag/Document/I6adbf60af80111df9b8c850332338889?originationContext=Search+Result&listSource=Search&viewType=FullText&navigationPath=Search%2fv3%2fsearch%2fresults%2fnavigation%2fi0ad70f7000000158dfad385267b9973f%3fstartIndex%3d1%26Nav%3dADMINDECISION\\_PUBLICVIEW%26contextData%3d\(sc.Default\)&rank=2&list=ADMINDECISION\\_PUBLICVIEW&transitionType=SearchItem&contextData=\(sc.Search\)&t\\_querytext=Governor+resignation+successor+vacancy+lieutenant+governor+duties+and+responsibilities+&t\\_Method=WIN](https://govt.westlaw.com/iaag/Document/I6adbf60af80111df9b8c850332338889?originationContext=Search+Result&listSource=Search&viewType=FullText&navigationPath=Search%2fv3%2fsearch%2fresults%2fnavigation%2fi0ad70f7000000158dfad385267b9973f%3fstartIndex%3d1%26Nav%3dADMINDECISION_PUBLICVIEW%26contextData%3d(sc.Default)&rank=2&list=ADMINDECISION_PUBLICVIEW&transitionType=SearchItem&contextData=(sc.Search)&t_querytext=Governor+resignation+successor+vacancy+lieutenant+governor+duties+and+responsibilities+&t_Method=WIN)

Here's a relevant opinion free m Pam.

---

From: Ranscht, David [AG]  
Sent: Thursday, December 08, 2016 12:02 PM  
To: Thompson, Jeffrey [AG]; Gavin, Meghan [AG]  
Subject: RE: Constitutional issue re: Lt. Gov assuming Gov's powers

Cool table indeed.

Here are two more cases (WI and MT). I have a bunch more in a folder to read after lunch.

[cid:image001.png@01D25149.FECA50E0]<<http://www.iowaattorneygeneral.gov/>>

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From: Thompson, Jeffrey [AG]  
Sent: Thursday, December 08, 2016 11:46 AM  
To: Ranscht, David [AG]; Gavin, Meghan [AG]  
Subject: FW: Constitutional issue re: Lt. Gov assuming Gov's powers

See below. Gotta love Wikipedia.

Can we print the cool table?

From: Greenwood, Geoff [AG]

Sent: Thursday, December 08, 2016 11:13 AM  
To: Thompson, Jeffrey [AG]  
Subject: FW: Constitutional issue re: Lt. Gov assuming Gov's powers

From: Mark O. Lambert [mailto:marklambert@mchsi.com]  
Sent: Thursday, December 08, 2016 11:12 AM  
To: Greenwood, Geoff [AG]  
Cc: Tabor, Eric [AG]  
Subject: Re: Constitutional issue re: Lt. Gov assuming Gov's powers

Thanks, Geoff. One more thing, historically, when an Iowa Gov has left office before the end of his term, there has not been a Lt. Gov. appointed. Most of the time, these were very short periods of time, though.  
[https://en.wikipedia.org/wiki/List\\_of\\_Governors\\_of\\_Iowa](https://en.wikipedia.org/wiki/List_of_Governors_of_Iowa)

Mark

---

From: "Geoff Greenwood [AG]" <Geoff.Greenwood@iowa.gov<mailto:Geoff.Greenwood@iowa.gov>>  
To: "Mark O. Lambert" <marklambert@mchsi.com<mailto:marklambert@mchsi.com>>, "Eric Tabor [AG]" <Eric.Tabor@iowa.gov<mailto:Eric.Tabor@iowa.gov>>  
Sent: Thursday, December 8, 2016 10:25:12 AM  
Subject: RE: Constitutional issue re: Lt. Gov assuming Gov's powers

Thanks for contacting us, Mark. We're researching it and will add this to the conversation.

Best regards,

[cid:image001.png@01D25149.FECA50E0]<<http://www.iowaattorneygeneral.gov/>>

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From: Mark O. Lambert [mailto:marklambert@mchsi.com]  
Sent: Thursday, December 08, 2016 9:54 AM  
To: Greenwood, Geoff [AG]; Tabor, Eric [AG]

Subject: Constitutional issue re: Lt. Gov assuming Gov's powers

Importance: High

Eric and Geoff:

In Massachusetts, when Governor William Weld resigned in 1997, Lt. Gov. Paul Cellucci became "Acting Governor" – not "Governor." When Cellucci resigned to become US Ambassador to Canada during the Bush Administration in 2001, his Lt. Gov. Jane Swift became "Acting Governor."

Massachusetts Constitution has a similar provision to the Iowa Constitution:

III.--Whenever the chair of the Governor shall be vacant, by reason of his death, or absence from the Commonwealth, or otherwise, the Lieutenant-Governor, for the time being, shall, during such vacancy, perform all the duties incumbent upon the Governor, and shall have and exercise all the powers and authorities, which by this Constitution the Governor is vested with, when personally present.

Hope this is helpful.

--Mark

Mark Lambert

Attorney at Law

Polk City

515-681-0285

State	"Devolve" or similar	"Become" or "succeed"	Distinction	Notes
Alabama			X	
Alaska			X	
Arizona			X	Formerly used only "devolve" and a court decision concluded when the duties of the office devolve, the successor "does not become governor." <i>State ex rel. De Concini v. Garvey</i> , 195 P.2d 153, 154 (Ariz. 1948).
Arkansas	X			"Devolve" still means lieutenant governor becomes governor. <i>Bryant v. English</i> , 843 S.W.2d 308, 309 (Ark. 1992).
California			X	Formerly used only "devolve" and a court decision concluded that verb does not confer the office. <i>People ex rel. Lynch v. Budd</i> , 45 P. 1060, 1060 (Cal. 1896).
Colorado			X	
Connecticut			X	
Delaware			X	Devolution is defined to mean the lieutenant governor's office becomes vacant, but not while lieutenant governor is "acting as Governor during a temporary disability of the Governor."
Florida			X	Formerly used only "devolve" and a court decision referred under that provision to "acting governor." <i>Advisory Opinion to Acting Governor Johns</i> , 67 So. 2d 413, 414 (Fla. 1953).
Georgia			X	
Hawaii			X	
Idaho	X			
Illinois			X	
Indiana			X	
Iowa	X			
Kansas			X	
Kentucky	X			
Louisiana			X	
Maine			X	
Maryland			X	

Massachusetts	X			
Michigan			X	A 1940 AG opinion discusses “devolve” but the Michigan Constitution now distinguishes between permanent vacancy and temporary disability.
Minnesota			X	
Mississippi			X	When vacancy is permanent, lt. gov. possesses powers and discharges duties. When vacancy is temporary, lt. gov. only discharges duties.
Missouri			X	
Montana			X	Formerly used only “devolve” and a court decision concluded a governor’s resignation does not create a vacancy in either the office of governor or lieutenant governor. <i>State ex rel. Lamey v. Mitchell</i> , 34 P.2d 369, 370–72 (Mont. 1934).
Nebraska			X	
Nevada	X			
New Hampshire	X			
New Jersey			X	Formerly used only “devolve” and a court decision under that language concluded the verb does not confer the office itself. <i>State v. Heller</i> , 42 A. 155, 157 (N.J. 1899).
New Mexico			X	
New York			X	
North Carolina			X	
North Dakota		X		
Ohio			X	
Oklahoma	X			A court decision has concluded that the successor actually becomes governor. <i>Fitzpatrick v. McAlister</i> , 248 P. 569, 572–73 (Okla. 1926). This may be because the Oklahoma Constitution says “the office” devolves, not just the powers.
Oregon		X		
Pennsylvania			X	
Rhode Island		X		
S. Carolina			X	

South Dakota			X	
Tennessee	X			
Texas			X	
Utah			X	Formerly used "devolve" and a 2003 AG Opinion concluded the verb nonetheless meant lt. gov. actually becomes governor. Utah Constitution was amended after 2003 to current state.
Vermont	X			
Virginia			X	
Washington	X			A court decision concluded when the governor dies, there is no vacancy in the office of governor. <i>State v. McBride</i> , 70 P. 25, 26 (Wash. 1902).
West Virginia	X			
Wisconsin			X	A court decision concluded "the lieutenant governor does not become governor" when powers and duties devolve upon the lieutenant governor. <i>State ex rel. Martin v. Ekern</i> , 280 N.W. 393, 399 (Wis. 1938).
Wyoming	X			

## MEMORANDUM

---

**To:** Jeff Thompson, Meghan Gavin  
**From:** David Ranscht  
**Date:** December 7, 2016 (updated December 8, 2016)  
**Re:** Gubernatorial Succession Provisions

---

### Alabama

Ala. Const. art. V, § 127: “In case of the governor's removal from office, death or resignation, the lieutenant governor shall become governor.” However, powers devolve in times of disability.

### Alaska

Alaska Const. art. 3, § 11: “In case of a vacancy in the office of governor for any reason, the lieutenant governor shall succeed to the office for the remainder of the term.” However, under Alaska Const. art. 3, § 9, the lieutenant governor “serve[s] as acting governor” during times the governor is temporarily absent from office.

### Arizona

Ariz. Const. art. 5, § 6:

In the event of the death of the governor, or his resignation, removal from office, or permanent disability to discharge the duties of the office, the secretary of state, if holding by election, shall succeed to the office of governor until his successor shall be elected and shall qualify. . . . Any successor to the office shall become governor in fact and entitled to all of the emoluments, powers and duties of governor upon taking the oath of office.

In the event of the impeachment of the governor, his absence from the state, or other temporary disability to discharge the duties of the office, the powers and duties of the office of governor shall devolve upon the same person as in case of vacancy, but only until the disability ceases.

Before the current language, Arizona also used “devolve.” Under that language, the Arizona Supreme Court concluded “where the duties of the office of governor devolve on the president of the senate, he does not become governor.” *State v. Garvey*, 195 P.2d 153, 154 (Ariz. 1948).

## Arkansas

Ark. Const. art. 6, § 4. Section 4 provides, “In case of the impeachment of the Governor, or his or her removal from office, death, inability to discharge the powers and duties of the said office, or resignation, the powers and duties of the office, shall devolve upon the Lieutenant Governor for the residue of the term, or until the disability shall cease.”

Notwithstanding this language, the Arkansas Supreme Court concluded in *Stratton v. Priest*, 932 S.W.2d 321, 321 (Ark. 1996), that the governor’s resignation meant the lieutenant governor “became governor.” The *Stratton* case involved a challenge to the special election that the lieutenant governor ordered to fill the vacancy he left.

The *Stratton* case also followed the Arkansas Supreme Court’s decision in *Bryant v. English*, 843 S.W.2d 308, 309 (Ark. 1992), which followed Bill Clinton’s resignation after his election as President. The court concluded “the Office of Governor itself devolves upon the Lieutenant Governor.” *Id.* The opinion discusses the need to have the state’s chief executive elected by a statewide vote—and so it differentiates between the lieutenant governor and the President of the Senate, who “had been directly elected only by the voters of a local state Senate district.” *Id.* at 312. This, of course, does not solve the problem that occurs if the lieutenant governor becomes governor, appoints someone, and then is incapacitated themselves.

Additionally, the *Bryant* opinion identifies possible “mixing of executive and legislative powers” if the lieutenant governor merely holds the *powers* of governor, but not the office. *Id.* at 312. And it identifies historical practice of treating the “lieutenant governor as governor when he filled a vacant governor’s office.” *Id.* at 312.

## California

Cal. Const. art. 5, § 10: “The Lieutenant Governor shall become Governor when a vacancy occurs in the office of Governor.”

California also distinguishes between becoming governor and *acting as* governor: “The Lieutenant Governor shall act as Governor during the impeachment, absence from the State, or other temporary disability of the Governor . . . .” *Id.*

But before enacting its current language, California used the word “devolve:”

[I]t is provided that in case of the death, resignation, impeachment, absence from the state, or inability to act of the governor, “the powers and duties of his office shall devolve upon the lieutenant-governor for the residue of the term, or until the disability shall cease.” It will be seen that in case of a vacancy in the office of governor **the vacancy is not to be filled, but the powers and duties devolve**



**upon the lieutenant governor, who does not cease to be lieutenant governor.** Under such circumstances it would hardly be contended that when the powers and duties of the governor devolve upon the lieutenant governor the latter thereby becomes governor, and can appoint a lieutenant governor.

*People v. Budd*, 45 P. 1060, 1060 (Cal. 1896).

### Colorado

Colo. Const. art. 4, § 13(1): “In the case of the death, impeachment, conviction of a felony, or resignation of the governor, the office of governor shall be vacant and the lieutenant governor shall take the oath of office and shall become governor.” However, for absence or disability, the powers devolve. *Id.* § 13(5). A lieutenant governor who “accedes to the office of governor” may select a new lieutenant governor. *Id.* § 13(4).

### Connecticut

Death, resignation, refusal to serve, or removal: lieutenant governor shall be governor. Conn. Const. art. 4, § 18(a).

Impeachment or absence: lieutenant governor “shall exercise the powers and authority and perform the duties appertaining to the office of governor.” *Id.* § 18(b).

### Delaware

Del. Const. art. 3, § 20:

In case the person elected Governor shall die or become disqualified before the commencement of his or her term of office, or shall refuse to take the same, or in case of the removal of the Governor from office, or of his or her death, resignation, or inability to discharge **the powers and duties of the said office**, the same **shall devolve on the Lieutenant-Governor**; and in case of removal, death, resignation, or inability of both the Governor and Lieutenant-Governor, the Secretary of State, or if there be none, or in case of his or her removal, death, resignation, or inability, then the Attorney-General, or if there be none, or in case of his or her removal, death, resignation, or inability, then the President pro tempore of the Senate or if there be none, or in case of his or her removal, death, resignation, or inability, then the Speaker of the House of Representatives shall act as Governor until the disability of the Governor or Lieutenant-Governor is removed, or a Governor shall be duly elected and qualified.

....

**Whenever the powers and duties of the office of Governor shall devolve upon the Lieutenant-Governor, Secretary of State, or Attorney-General, his or her office shall become vacant; and whenever the powers and**

duties of the office of Governor shall devolve upon the President pro tempore of the Senate, or the Speaker of the House of Representatives, his or her seat as a member of the General Assembly shall become vacant; **and any such vacancy shall be filled as directed by this Constitution**; provided, however, that such vacancy shall not be created in case either of the said persons shall be acting as Governor during a temporary disability of the Governor.

### **Florida**

Lieutenant governor “shall become governor” upon a gubernatorial vacancy. However, lieutenant governor “shall act as governor” when the governor is physically or mentally incapacitated. Fla. Const. art. 4, § 3(a)–(b).

A previous version of the Florida Constitution apparently used “devolve” language. *See Advisory Opinion to Governor*, 217 So. 2d 289, 292 n.\* (Fla. 1968) (noting the relevant language is part of the “1968 revision”); *Advisory Opinion to Acting Governor Johns*, 67 So. 2d 413, 414 (Fla. 1953) (referring to powers devolved upon the lieutenant governor and permitting the lieutenant governor to “designate [him]self as Acting Governor”).

### **Georgia**

Temporary disability: lieutenant governor “shall exercise the powers and duties of the Governor.” Ga. Const. art. 5, § 1, ¶ V(a).

Death, resignation, or permanent disability: lieutenant governor “shall become the Governor.” *Id.* § 1, ¶ V(b).

### **Hawaii**

Haw. Const. art. 5, § 4: “When the office of governor is vacant, the lieutenant governor shall become governor. In the event of the absence of the governor from the State, or the governor’s inability to exercise and discharge the powers and duties of the governor’s office, such powers and duties shall devolve upon the lieutenant governor during such absence or disability.”

### **Idaho**

If the governor resigns, the “powers, duties, and emoluments of the office . . . devolve upon the lieutenant governor.” Idaho Const. art. IV, § 12. No distinction is made between permanent vacancies (resignation/death) and temporary ones (absence/disability).

### **Illinois**

Ill. Const. art. 5, § 6(b): “If the Governor is unable to serve because of death, conviction on impeachment, failure to qualify, resignation or other disability, the office of Governor shall be

filled by the officer next in line of succession for the remainder of the term or until the disability is removed.”

If the governor “determines that he may be seriously impeded in the exercise of his powers,” the Constitution provides for an Acting Governor. *Id.* § 6(c).

### **Indiana**

Lieutenant governor “shall become governor” if governor resigns, but “shall discharge the powers and duties of the office as Acting Governor” if governor is incapacitated. Ind. Const. art. 5, § 10(a).

### **Kansas**

Kan. Const. art. 1, § 11: “When the office of governor is vacant, the lieutenant governor shall become governor. In the event of the disability of the governor, the lieutenant governor shall assume the powers and duties of governor until the disability is removed.”

### **Kentucky**

Ky. Const. § 84: “Should the Governor be impeached and removed from office, die, refuse to qualify, resign, certify by entry on his Journal that he is unable to discharge the duties of his office, or be, from any cause, unable to discharge the duties of his office, the Lieutenant Governor shall exercise all the power and authority appertaining to the office of Governor until another be duly elected and qualified, or the Governor shall be able to discharge the duties of his office.”

No distinction between permanent vacancies and temporary ones.

### **Louisiana**

No provision specifically addressing the label attached to gubernatorial succession. The Louisiana Constitution merely provides “the order of succession” when a vacancy occurs. La. Const. art. 4, § 14. However, “When the governor is temporarily absent from the state, the lieutenant governor shall act as governor.” *Id.* § 19.

### **Maine**

Me. Const. art. 5, pt. 1, § 14: “Whenever the office of Governor shall become vacant because of the death, resignation or removal of a Governor in office, or any other cause, the President of the Senate shall assume the office of Governor until another Governor shall be duly qualified.”

However, if the governor is mentally or physical disabled, the President of the Senate “shall exercise the powers and duties” of Governor. *Id.* § 15.

### **Maryland**

Md. Const. art. 2, § 6(d): the lieutenant governor “shall succeed to th[e] office” when there is a gubernatorial vacancy. However, “The Lieutenant Governor shall serve as acting Governor” when the governor is temporarily disabled. *Id.* § 6(b).

### **Massachusetts**

Mass. Const. pt. 2, ch. II, § II, art. III: “Whenever the chair of the governor shall be vacant, by reason of his death, or absence from the commonwealth, or otherwise, the lieutenant governor, for the time being, shall, during such vacancy, perform all the duties incumbent upon the governor, and shall have and exercise all the powers and authorities, which by this constitution the governor is vested with, when personally present.”

### **Michigan**

Mich. Const. art. 5, § 26: “In case of the conviction of the governor on impeachment, his removal from office, his resignation or his death, the lieutenant governor, the elected secretary of state, the elected attorney general and such other persons designated by law shall in that order be governor for the remainder of the governor’s term.”

However, “If the governor or the person in line of succession to serve as governor is absent from the state, or suffering under an inability, the powers and duties of the office of the governor shall devolve . . . .” *Id.*

Westlaw lists the following “note of decision” for this provision: “In the event of a vacancy in the office of governor, the functions of the office devolve upon the lieutenant governor or the next elected official in succession, but the exercise of the functions of the office of governor by the lieutenant governor does not create a vacancy in the office of lieutenant governor which can be filled by appointment.” Op.Atty.Gen.1939-40, p. 69.

### **Minnesota**

Lieutenant governor “shall be governor” if “a vacancy occurs from any cause whatever in the office of governor.” Minn. Const. art. 5, § 5. Powers “devolve” from governor to lieutenant governor if the governor is unable to discharge the duties of the office. *Id.*

### **Mississippi**

Miss. Const. art. 5, § 131: “When the office of Governor shall become vacant, by death or otherwise, the Lieutenant Governor shall possess the powers and discharge the duties of the office. When the Governor shall be absent from the State, or unable, from protracted illness, to perform the duties of the office, the Lieutenant Governor shall discharge the duties of said office until the Governor be able to resume his duties . . . .”

### Missouri

Mo. Const. art. 4, § 11(a): “If the governor-elect dies before taking office, the lieutenant governor-elect shall take the term of the governor-elect. On the death, conviction or impeachment, or resignation of the governor, the lieutenant governor shall become governor for the remainder of the term. If there be no lieutenant governor the president pro tempore of the senate, the speaker of the house, the secretary of state, the state auditor, the state treasurer or the attorney general in succession shall become governor. On the failure to qualify, absence from the state or other disability of the governor, the powers, duties and emoluments of the governor shall devolve upon the lieutenant governor for the remainder of the term or until the disability is removed.”

### Montana

“If the office of governor becomes vacant by reason of death, resignation, or disqualification, the lieutenant governor shall become governor for the remainder of the term, except as provided in this constitution.” Mont. Const. art. VI, § 14(6).

“When there is a vacancy in the office of governor, the successor shall be the governor. The acting governor shall have the powers and duties of the office of governor only for the period during which he serves.” *Id.* § 14(8). An “acting governor” only happens when the governor requests it of the lieutenant governor or when the governor is disabled. *See id.* § 14(2)–(4).

However, at some point in the past Montana had “devolve” language, and concluded under that language that a governor’s resignation does not create a vacancy in either the office of governor or lieutenant governor. *See State ex rel. Lamey v. Mitchell*, 34 P.2d 369, 370–72 (Mont. 1934).

### Nebraska

Impeachment, removal, resignation death: “shall . . . be Governor.” Neb. Const. art. IV, § 16.  
Absence/disability: “powers and duties of the office . . . shall devolve.” *Id.*

### Nevada

Nevada uses “devolve.” Nev. Const. art. 5, § 18. In a nineteenth-century case, the Nevada Supreme Court stated: “If a vacancy occurs in the office of governor, the powers and duties of the office devolve upon the lieutenant governor, but there is no vacancy created thereby in the office of lieutenant governor. The officer remains lieutenant governor, but invested with the powers and duties of governor.” *State v. Sadler*, 47 P. 450, 450 (Nev. 1897).

### New Hampshire

N.H. Const. pt. 2, art. 49 provides the successor shall “act as” governor and also expressly confers the title of “Acting Governor.” New Hampshire also provides for a special election if the vacancy occurs with more than one year before the end of the term.

### New Jersey

N.J. Const. art. 5, § 1, ¶ 6: “In the event of a vacancy in the office of Governor resulting from the death, resignation or removal of a Governor in office, or the death of a Governor-elect, or from any other cause, the Lieutenant Governor shall become Governor, until a new Governor is elected and qualifies.”

However, a temporary disability means the powers devolve. *See id.* ¶ 7.

In a 19th-century case, possibly occurring before New Jersey had provisions establishing the position of lieutenant governor, the New Jersey Supreme Court concluded a gubernatorial vacancy does not bestow the office itself upon the successor:

The provision is that, in case of the resignation of the governor, the powers, duties, and emoluments of the office shall devolve upon the president of the senate, and not that the president of the senate shall thereby become governor, and hold the title and the office until another governor is elected. If the framers of the fundamental law had intended to transfer the president of the senate to the executive chair, and thereby to vacate his office of senator, it is reasonable to believe that they would have said so in no uncertain language. The language used is not ambiguous. It declares that the powers, duties, and emoluments of the office shall devolve on the president of the senate; it does not confer upon him the title of the office. The president of the senate exercises the powers of the governor; the president of the senate performs the duties of the governor; the president of the senate receives the emoluments of that office. He is still president of the senate, with the added duties required of the chief executive of the state imposed upon him.

*State v. Heller*, 42 A. 155, 157 (N.J. 1899).

### New Mexico

Vacancy: “shall succeed to th[e] office.” N.M. Const. art. 5, § 7.

Absence/disability: “shall act as governor.” *Id.*

### New York

N.Y. Const. art. 4, § 5: “In case of the removal of the governor from office or of his or her death or resignation, the lieutenant-governor shall become governor for the remainder of the term.”

However, in the same provision, inability to discharge duties means the lieutenant governor “shall act as governor.”

### North Carolina

Lieutenant governor “shall become Governor” upon governor’s resignation. N.C. Const. art. III, § 3(1). However, upon the governor’s disability, lieutenant governor “shall be Acting Governor.” *Id.* § 3(3).

### North Dakota

N.D. Const. art. 5, § 11: “The lieutenant governor shall succeed to the office of governor when a vacancy occurs in the office of governor.”

### Ohio

Death, conviction on impeachment, resignation, or removal: “Lieutenant Governor shall succeed to the office of governor.” Ohio Const. art. III, § 15(A).

Disability: “shall serve as governor.” *Id.* § 15(B).

“Any person *servicing as* governor for the duration of the Governor’s disability shall have the powers, duties, and compensation of the office of governor. Any person who *succeeds* to the office of governor shall have the powers, duties, *title*, and compensation of the office of governor.” *Id.* § 15(D).

### Oklahoma

Okla. Const. art. 6, § 16: “In case of impeachment of the Governor, or of his death, failure to qualify, resignation, removal from the State, or inability to discharge the powers and duties of the office, the said office, with its compensation, shall devolve upon the Lieutenant Governor for the residue of the term or until the disability shall be removed.”

In a 1926 case, the Oklahoma Supreme Court concluded that notwithstanding the “devolve” language, the successor becomes governor. *Fitzpatrick v. McAlister*, 248 P. 569, 572–73 (Okla. 1926). A dissent in the case suggested that if the lieutenant governor becomes governor and appoints a new lieutenant governor, the clear line of succession could be interrupted, preventing the senate president from ever succeeding to the duties of governor. *Id.* at 581 (Branson, V.C.J., dissenting).

Perhaps an explanation here is that “the office” devolves, not just the powers and duties.

### Oregon

Or. Const. art. V, § 8a: “shall become Governor.”

### Pennsylvania

Pa. Const. art. 4, § 13: In the case of the death, conviction on impeachment, failure to qualify or resignation of the Governor, the Lieutenant Governor shall become Governor for the remainder of the term and in the case of the disability of the Governor, the powers, duties and emoluments of the office shall devolve upon the Lieutenant Governor until the disability is removed.”

### Rhode Island

R.I. Const. art. IX, § 9: “If the office of the governor shall be vacant by reason of death, resignation, impeachment or inability to serve, the lieutenant governor shall fill the office of governor, and exercise the powers and authority appertaining thereto, until a governor is qualified to act, or until the office is filled at the next election.”

### South Carolina

S.C. Const. art. IV, § 11: “In the case of the removal of the Governor from office by impeachment, death, resignation, disqualification, disability, or removal from the State, the Lieutenant Governor shall be Governor. In case the Governor be impeached, the Lieutenant Governor shall act in his stead and have his powers until judgment in the case shall have been pronounced. In the case of the temporary disability of the Governor and in the event of the temporary absence of the Governor from the State, the Lieutenant Governor shall have full authority to act in an emergency.”

### South Dakota

S.D. Const. art. 4, § 6: “When the office of Governor shall become vacant through death, resignation, failure to qualify, conviction after impeachment or permanent disability of the Governor, the lieutenant governor shall succeed to the office and powers of the Governor. When the Governor is unable to serve by reason of continuous absence from the state, or other temporary disability, the executive power shall devolve upon the lieutenant governor for the residue of the term or until the disability is removed.”

### Tennessee

Tenn. Const. art. 3, § 12: “In case of the removal of the Governor from office, or of his death, or resignation, the powers and duties of the office shall devolve on the Speaker of the Senate . . . .”

### Texas

Temporary inability, disqualification, or absence: “exercise the powers and authority appertaining to the office.” Tex. Const. art. 4, § 16(c).

However, “if the office of Governor becomes vacant, the Lieutenant Governor **becomes Governor** for the remainder of the term being served by the Governor who refused or became unable to serve or vacated the office. On becoming Governor, the person vacates the office of Lieutenant Governor, and the resulting vacancy in the office of Lieutenant Governor shall be filled in the manner provided by [the Texas Constitution].” *Id.* § 16(d).

In a 1951 case, the Texas Court of Criminal Appeals took judicial knowledge of the fact that the governor died in 1949 and the lieutenant governor “succeeded to the office of Governor.” *Ex parte Raulie*, 237 S.W.2d 998, 999 (Tex. Crim. App. 1951).



## Utah

Utah defines vacancy to include resignation and disability that extends for the remainder of the term. Utah Const. art. 7, § 11(1)(a). If a vacancy occurs, the lieutenant governor “shall become governor.” *Id.* § 11(2). The Utah Constitution also provides that if a disability is only temporary, the lieutenant governor shall discharge the powers and duties. *Id.* § 11(5)(a).

Before 2008, the Utah Constitution, like Iowa, used only “devolve.” The Utah Attorney General issued an advisory opinion in 2003 on the exact question of succession. Utah A.G. Opinion No. 03-001, 2003 WL 21996258. The opinion concluded “devolve” means that the lieutenant governor becomes governor. Nonetheless, the Utah Constitution was later amended.

## Vermont

The Vermont Constitution instructs the legislature to “provide by general law what officer shall act as Governor whenever there shall be a vacancy in” both the offices of governor and lieutenant governor. Vt. Const. ch. II, § 24. The relevant statute is Vt. Stat. tit. 20, § 183, which simply establishes the order.

Additionally, ch. II, § 19 provides that the lieutenant governor “shall be President of the Senate, except when exercising the office of Governor.”

## Virginia

Removal from office, disqualification, death, or resignation: “shall become Governor.” Va. Const. art. 5, § 16. Disability: “Acting Governor.” *Id.*

## Washington

Wash. Const. art. 3, § 10: “In case of the removal, resignation, death or disability of the governor, the duties of the office shall devolve upon the lieutenant governor . . . .”

Under the provision, the Washington Supreme Court has concluded:

The constitution having provided that in case of the death of the governor the duties of the office shall devolve upon the lieutenant governor, **there is no vacancy in the office of governor.** . . . . When the lieutenant governor, by virtue of his office and of the command of the constitution, assumed the duties of governor on the death of Gov. Rogers, the office of lieutenant governor did not thereby become vacant, but the officer remained lieutenant governor, intrusted with the powers and duties of governor.

*State v. McBride*, 70 P. 25, 26 (Wash. 1902).

### West Virginia

W. Va. Const. art. 7, § 16: “In case of the death, conviction or impeachment, failure to qualify, resignation, or other disability of the governor, the president of the Senate shall **act as** governor until the vacancy is filled, or the disability removed; and if the president of the Senate, for any of the above named causes, shall become incapable of performing the duties of governor, the same shall devolve upon the speaker of the House of Delegates; and in all other cases where there is no one to act as governor, one shall be chosen by joint vote of the Legislature. Whenever a vacancy shall occur in the office of governor before the first three years of the term shall have expired, a new election for governor shall take place to fill the vacancy.”

Interesting provision in the final sentence that provides a special election must take place depending on when in the term the vacancy occurs.

### Wisconsin

Lieutenant governor “shall become governor” if the governor dies, resigns, or is removed. Wis. Const. art. 5, § 7(1). Lieutenant governor “shall serve as acting governor” if the governor is absent or disabled. *Id.* § 7(2).

### Wyoming

Wyo. Const. art. 4, § 6: “If the governor be impeached, displaced, resign or die, or from mental or physical disease or otherwise become incapable of performing the duties of his office or be absent from the state, the secretary of state shall act as governor until the vacancy is filled or the disability removed.”

In a case involving the provision the Wyoming Supreme Court concluded that “in a technical sense the [success]or is not Governor” and that “in a limited sense the office of Governor is vacant.” *State v. Grant*, 73 P. 470, 475 (Wyo. 1903). The court’s discussion of vacancy is also worthwhile, since the entire question we are confronting is about the technicality and the reason for the provision:

We deem it unnecessary to discuss technically the question of vacancy in the office. In the sense that the law contemplates that there shall be an incumbent of the office regularly chosen to that position, it may be admitted that a vacancy has occurred, and continues to exist, **which can be filled only through an election by the people**. But the office is now supplied in the manner provided by the Constitution and statutes, with an incumbent who is legally qualified to exercise its powers and perform the duties which pertain to it; and, although such incumbent is merely designated as an Acting Governor, he is for all practical purposes in possession of the office and all of its prerogatives.

*Id.* at 475.

“Devolve” only (or equivalent) (not including Iowa)	“become” or “succeed” only (re: resignation)	Distinction	Language has changed
Arkansas—but in that state, “devolve” has been held to mean that the lieutenant governor nonetheless becomes governor. <i>See Bryant v. English</i> , 843 S.W.2d 308, 309 (Ark. 1992).	North Dakota— “shall succeed to the office”	Alabama	U.S. Const.
Idaho	Oregon—“shall become governor”	Alaska	Arizona—formerly used only “devolve” but now distinguishes between permanent and temporary vacancies.
Kentucky—“shall exercise all the power and authority appertaining to the office”	Rhode Island—“shall fill the office”	Colorado	California—formerly used only “devolve” but now distinguishes between permanent and temporary vacancies.
Massachusetts— “perform all the duties”		Connecticut	Florida—formerly used only “devolve” but now distinguishes between permanent and temporary vacancies.
Nevada—a vacancy means the lieutenant governor “remains lieutenant governor, but invested with the powers and duties of governor.” <i>State v. Sadler</i> , 47 P. 450, 450 (Nev. 1897).		Delaware—powers and duties that devolve means the lt. gov.’s office “shall become vacant,” but no vacancy occurs if the lt. gov. “is acting as Governor during a temporary disability of the Governor.”	Michigan—a 1940 AG opinion discusses “devolve” but the Michigan Constitution now distinguishes between permanent and temporary vacancies.
New Hampshire— confers the title of “acting Governor.”		Georgia	Montana—formerly used only “devolve” but now distinguishes between permanent and temporary vacancies.

<p>Oklahoma—but in that state, “the office” devolves, not just the powers and duties. A court decision has concluded that the successor actually becomes governor. <i>Fitzpatrick v. McAlister</i>, 248 P. 569, 572–73 (Okla. 1926).</p>		<p>Hawaii</p>	<p>New Jersey—formerly used just “devolve” but now distinguishes between permanent vacancy and temporary disability</p>
<p>Tennessee</p>		<p>Illinois</p>	<p>Utah—formerly used “devolve” and a 2003 AG opinion concluded “devolve” means the lieutenant governor actually becomes governor. Nonetheless, the Utah Constitution was amended after 2003 and now distinguishes between permanent vacancies and temporary disabilities</p>
<p>Vermont—uses “act as Governor” and “exercising the office”</p>		<p>Indiana</p>	
<p>Washington</p> <p>A court decision concluded when the governor dies, “there is no vacancy in the office of governor.” <i>State v. McBride</i>, 70 P. 25, 26 (Wash. 1902).</p>		<p>Kansas</p>	
<p>West Virginia—“act as governor”</p>		<p>Louisiana</p>	
		<p>Maine</p>	
		<p>Maryland</p>	
		<p>Minnesota</p>	

		Mississippi—when vacancy is permanent, “the Lieutenant Governor shall possess the powers and discharge the duties of the office.” When vacancy is temporary, lieutenant governor only discharges duties.	
		Missouri	
		Nebraska	
		New Mexico	
		New York	
		North Carolina	
		Ohio	
		Pennsylvania	
		South Carolina	
		South Dakota	
		Texas	
		Virginia	
		Wisconsin	

TOTALS

“Devolve” or equivalent 12 (13 including Iowa)

- 2 of those states (AR/OK) have court decisions concluding “devolve” still confers the office
- Oklahoma is potentially distinguishable because there, “the office” devolves, not just the powers and duties
- 3 of those states (NV/WA/WY) have court decisions concluding it doesn’t

“Shall become:” 3

Distinction between permanent vacancy and temporary disability: 27

Changes from “devolve” to distinguish between permanent vacancy and temporary disability: 7 (AZ/CA/FL/MI/MT/NJ/UT)

- 1 of those states (UT) features an AG opinion concluding “devolve” still confers the office, but the state constitution was nonetheless amended to be clearer
- 6 of those states (AZ/CA/FL/MI/MT/NJ) have court decisions concluding “devolve” doesn’t confer the office and the constitution has since been amended.

OVERALL: 13 “devolve” (including IA); 3 “shall become;” 34 distinctions.

## Thompson, Jeffrey [AG]

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**From:** Ranscht, David [AG]  
**Sent:** Thursday, December 08, 2016 10:48 AM  
**To:** Thompson, Jeffrey [AG]  
**Subject:** RE: Constitutional issue re: Lt. Gov assuming Gov's powers  
**Attachments:** Advisory Opinion to Acting Governor Johns.pdf; Bryant v English.pdf; Fitzpatrick v McAlister.pdf; State v Heller.pdf; Stratton v Priest.pdf

Here are the cases from the memo.



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**From:** Thompson, Jeffrey [AG]  
**Sent:** Thursday, December 08, 2016 10:14 AM  
**To:** Ranscht, David [AG]  
**Subject:** FW: Constitutional issue re: Lt. Gov assuming Gov's powers  
**Importance:** High

See below.

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**From:** Greenwood, Geoff [AG]  
**Sent:** Thursday, December 08, 2016 10:13 AM  
**To:** Thompson, Jeffrey [AG]  
**Subject:** FW: Constitutional issue re: Lt. Gov assuming Gov's powers  
**Importance:** High

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**From:** Mark O. Lambert [<mailto:marklambert@mchsi.com>]  
**Sent:** Thursday, December 08, 2016 9:54 AM  
**To:** Greenwood, Geoff [AG]; Tabor, Eric [AG]  
**Subject:** Constitutional issue re: Lt. Gov assuming Gov's powers  
**Importance:** High

Eric and Geoff:

In Massachusetts, when Governor William Weld resigned in 1997, Lt. Gov. Paul Cellucci became “Acting Governor” – not “Governor.” When Cellucci resigned to become US Ambassador to Canada during the Bush Administration in 2001, his Lt. Gov. Jane Swift became “Acting Governor.”

Massachusetts Constitution has a similar provision to the Iowa Constitution:

III.--Whenever the chair of the Governor shall be vacant, by reason of his death, or absence from the Commonwealth, or otherwise, the Lieutenant-Governor, for the time being, shall, during such vacancy, perform all the duties incumbent upon the Governor, and shall have and exercise all the powers and authorities, which by this Constitution the Governor is vested with, when personally present.

Hope this is helpful.

--Mark

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Attorney at Law  
Polk City  
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326 Ark. 469  
Supreme Court of Arkansas.

Phil STRATTON, Appellant,  
v.

Sharon PRIEST, Secretary of State, Appellee.  
Charlie Cole Chaffin, Intervenor.

No. 96-1150.  
|  
Oct. 29, 1996.

Following resignation of governor and succession of lieutenant governor to office of governor, plaintiff brought action challenging constitutionality of statute governing special elections to fill vacancy in office of lieutenant governor. Candidate in special election intervened. The Pulaski County Chancery Court, Collins Kilgore, Chancellor, rejected challenge, and plaintiff appealed. The Supreme Court, Jesson, C.J., held that: (1) statute did not violate constitutional provisions for filling vacancy in office of governor, and (2) statute did not conflict with constitutional provision requiring that governor and lieutenant governor be elected at same time in same election.

Affirmed.

Glaze, J., dissented and filed opinion in which Dudley, J., joined.

#### West Headnotes (3)

##### [1] Public Employment

⇔ Election or appointment

##### States

⇔ Lieutenant Governor

##### States

⇔ Term of office, vacancies, and holding over

Statute governing filling of vacancy in office of lieutenant governor through special election did not violate state constitutional provisions requiring special election to fill vacancy in office of governor when office was vacated with more than 12 months

remaining in governor's term and setting forth order of succession for office of governor if lieutenant governor is unable to succeed to that office; constitutional provisions did not address method of filling vacancy in office of lieutenant governor. Const. Art. 6, § 14; Const. Amend. 6, § 5; A.C.A. § 7-7-105.

Cases that cite this headnote

##### [2] Constitutional Law

⇔ Presumptions and Construction as to Constitutionality

##### Constitutional Law

⇔ Clearly, positively, or unmistakably unconstitutional

Acts of General Assembly are presumed to be constitutional and will only be struck down where there is clear incompatibility between act and State Constitution.

1 Cases that cite this headnote

##### [3] States

⇔ Lieutenant Governor

Statute governing filling of vacancy in office of lieutenant governor through special election did not conflict with state constitutional amendment requiring that governor and lieutenant governor be elected at same time in same election; amendment addressed ordinary situation in which election was held at end of current officeholder's term and did not contemplate situation in which vacancy in office had to be filled. Const. Amend. 6, § 3; A.C.A. § 7-7-105.

Cases that cite this headnote

#### Attorneys and Law Firms

\*\*321 \*470 Phil Stratton, Conway, for appellant.

J. Winston Bryant, Little Rock, for appellee.

Ted G. Boswell, Bryant, for Charlie Cole Chaffin.



**Opinion**

JESSON, Chief Justice.

On July 15, 1996, Jim Guy Tucker resigned as Governor of the State of Arkansas. Lieutenant Governor Mike Huckabee became Governor, pursuant to Ark. Const., amend. 6, § 4. His succession left a vacancy in the office of Lieutenant Governor. On July 30, 1996, pursuant to Ark.Code Ann. § 7-7-105 (Repl.1993), Governor Huckabee issued a proclamation calling for a special election to fill the vacancy. The election was called for November 5, 1996, the date already scheduled for the 1996 general election.

On August 26, 1996, the appellant filed a complaint in Pulaski County Chancery Court challenging the constitutionality of Ark.Code Ann. § 7-7-105. On September 9, 1996, he filed an amended complaint, seeking a declaration \*\*322 that the statute was in conflict with the Arkansas Constitution and maintaining that any funds spent on the special election would constitute an illegal exaction. He further prayed that the Secretary of State be enjoined from certifying any candidate for Lieutenant Governor on the November 5 election ballot. One of those candidates is Charlie Cole Chaffin, the intervenor in this case. The chancellor rejected the appellant's challenge and ruled that § 7-7-105 does not conflict with the Arkansas Constitution. We agree and affirm.<sup>1</sup>

[1] The appellant contends that § 7-7-105 offends the "orderly succession in the executive branch" provided for in Ark. Const., art. 6, § 14, and Ark. Const., amend. 6, § 5. Article 6, § 14, is an original provision of our 1874 constitution. It required a special election to fill a vacancy in the office of Governor when the office was vacated with more than twelve months remaining in the Governor's term. No provision was made in the 1874 constitution for the office of Lieutenant Governor. Conflicting interpretations of \*471 Section 14 and other sections of Article 6 resulted in a gubernatorial succession crisis in the early part of this century. As a result, Amendment 6 was adopted by a vote of the people in 1914. Amendment 6 created the office of Lieutenant Governor and took up the matter of gubernatorial succession. See *Bryant v. English*, 311 Ark. 187, 843 S.W.2d 308 (1992), for a detailed rendition of the history of these constitutional provisions.

Section 5 of Amendment 6 is entitled "Qualifications and Duties of Lieutenant Governor—Succession to the Governorship." It reads as follows:

The Lieutenant Governor shall possess the same qualifications of eligibility for the office as the Governor. He shall be President of the Senate, but shall have only a casting vote therein in case of a tie vote. If during a vacancy of the office of Governor, the Lieutenant Governor shall be impeached, displaced, resign, die, or become incapable of performing the duties of his office or be absent from the State, the President of the Senate shall act as Governor until the vacancy be filled or the disability shall cease; and if the President of the Senate for any of the above causes shall become incapable of performing the duties pertaining to the office of Governor, the Speaker of the Assembly shall act as Governor until the vacancy be filled or the disability shall cease.

The appellant argues that § 5 requires any vacancy in the office of Lieutenant Governor to be filled by succession, not by election. The appellant misunderstands the purpose and spirit of § 5. It addresses the subject of *gubernatorial succession*. It answers the question, "In case of a vacancy in the office of Governor, who shall be Governor?" The subject of succession to the office of Lieutenant Governor is not addressed.

[2] Acts of the General Assembly are presumed to be constitutional and will only be struck down where there is a clear incompatibility between the act and the state constitution. *Clinton v. Clinton*, 305 Ark. 585, 810 S.W.2d 923 (1991). Neither art. 6, § 14, nor amend. 6, § 5, is concerned with filling vacancies in the office of Lieutenant Governor. Therefore, § 7-7-105 does not conflict with those provisions.

The only reference in the Arkansas Constitution to vacancies in the office of Lieutenant Governor is

contained in Amendment \*472 29. That amendment provides for gubernatorial appointment to fill vacancies in most elected offices. However, it excepts from the Governor's appointment power vacancies in the offices of Lieutenant Governor, member of the General Assembly, and United States Congressional Representative. These are the very offices that are to be filled by special election under § 7-7-105. Thus, the Arkansas Constitution and § 7-7-105 exist in harmony.

[3] The appellant also makes a rather offhand argument that § 7-7-105 is incompatible with § 3 of Amendment 6. He claims that the statute "attempts to nullify the provisions of Amendment 6, § 3, that require \*\*323 the Governor and Lieutenant Governor be elected at the same time in the same election." The appellant probably means to refer to § 2 of Amendment 6, which provides that the Lieutenant Governor "shall be chosen at the same time and for the same term" as the Governor. Section 2 addresses the ordinary situation in which an election is held at the end of the current office-holder's term. It does not contemplate the situation in which a vacancy in office must be filled. Thus, § 7-7-105 and § 2 do not conflict.

In light of our holding, the appellant's request for attorney fees pursuant to Ark.Code Ann. § 26-35-902 (Supp.1995) need not be addressed.

Affirmed.

DUDLEY and GLAZE, JJ., dissent.

ROAF, J., not participating.

GLAZE, Justice, dissents.

The simple answer to this election case is that the chancery court, deciding it below, did not have subject-matter jurisdiction. Therefore, this appeal should be dismissed. Someday in the not-too-distant future, this court will be forced to resolve the subject-matter-jurisdiction issues its more recent cases (including this case) have caused the bench and bar, when determining where to file election actions—in equity or at law.

First, I emphasize that this is an election case, not an illegal exaction one, and that this court has clearly held that the *chancery court has no jurisdiction in matters pertaining to elections. State v. Craighead County Bd. of Election*

*Comm'rs*, 300 Ark. 405, 779 S.W.2d 169 (1989); *see also Curry v. Dawson*, 238 Ark. 310, 379 S.W.2d 287 (1964). Moreover, in *Foster v. Jefferson County Quorum Ct.*, 321 Ark. 105, 901 S.W.2d 809 (1995), this court, quoting from *Jackson v. \*473 Munson*, 288 Ark. 57, 701 S.W.2d 378 (1986), stated the following:

While it is true we have been liberal in permitting illegal exaction suits, we have held that an illegal exaction complaint was not proper where exclusive jurisdiction of the *underlying matter* was conferred on the circuit rather than the chancery court. (Emphasis added.)

In the present case, the appellant's underlying action seeks declaratory relief holding the Governor's proclamation, calling a special election to fill the existing vacancy in the Office of Lieutenant Governor, to be unconstitutional. Assuming entitlement to such relief, his complaint requests that the Secretary of State be enjoined from certifying the votes cast in the candidates' race for that office.

In *Catlett v. Republican Party of Ark.*, 242 Ark. 283, 413 S.W.2d 651 (1967), this court clearly held that cases like the one before us must be filed in and decided by a court of law. *Catlett* has never been overruled. The *Catlett* court clearly enunciated the rule as follows:

[C]ourts of equity have no authority or jurisdiction to interpose for the protection of rights which are merely political, and where no civil or property right is involved. In all such cases, the remedy, if any, must be sought in a court of law. *The extraordinary jurisdiction of courts of chancery can not, therefore, be invoked to protect the right of a citizen to vote or to be voted for at an election, or his right to be a candidate for or to be elected to any office. Nor can it be invoked for the purpose of restraining the holding of an election, or of directing or controlling the mode in which, or of determining the rules of law in pursuance of which, an election shall be held.* (Emphasis added.)

Here, appellant's suit is an attempt to restrain the holding and certifying of the election results in the Lieutenant Governor's race. As is clearly explained in *Catlett*, chancery court has no authority to restrain the holding of an election or control the conduct of an election. Consequently, the chancellor should have dismissed the appellant's complaint.

The appellant was well aware of his jurisdiction problem below after appellees filed a motion to dismiss appellant's complaint for want of equity jurisdiction. Consequently, he added language to his complaint, alleging the Secretary of State's certification of election \*474 results would be an *ultra vires* act and \*\*324 therefore result in an illegal exaction of state funds. In adding this language, appellant seems to rely on our recent case of *Priest v. Polk*, 322 Ark. 673, 912 S.W.2d 902 (1995), a plurality decision, where the court said that the question of subject-matter jurisdiction is determined by the "characterization" of the case.

Appellant's argument simply ignores our *Foster* decision, which holds that an illegal exaction complaint is not proper where exclusive jurisdiction of the underlying matter is conferred in circuit court. It is important to note that, in *State v. Craighead County Bd. of Election Comm'rs*, 300 Ark. 405, 779 S.W.2d 169, this court not only emphasized Arkansas's case law establishing chancery court has no jurisdiction in election matters, but also this court sanctioned mandamus and declaratory relief as the proper methods of enforcing our state's election laws. Mandamus, of course, lies only in circuit court. Accordingly, appellant here should have filed his action

in circuit court, asked that court to declare Arkansas's election law, Ark.Code Ann. § 7-7-105 (Repl.1995), unconstitutional, and requested the Secretary of State be mandated to remove the Lieutenant Governor's race from the ballot or not certify the votes cast in that race.

In sum, our case law simply does not permit a plaintiff (appellant here) to "characterize" (or re-characterize, if you will) his underlying action to be an illegal exaction action when the core issue is enforcement of Arkansas's election laws, namely, whether § 7-7-105 is constitutional and, therefore, provides the people with the political right to vote for a Lieutenant Governor at a special election.

In a concurring opinion in *Polk*, I voiced my concern that subject-matter jurisdiction questions would continue to arise in the filing of these election statutory and constitutional matters unless this court clarifies for the bench and bar what is expected of them. In this regard, the court in my view should follow the clear dictates and principles set out in the *Curry*, *Foster*, *Craighead County*, and *Catlett* cases. The majority decision today simply ignores these cases.

I would dismiss this case for lack of subject-matter jurisdiction.

DUDLEY, J., joins this dissent.

**All Citations**

326 Ark. 469, 932 S.W.2d 321

**Footnotes**

1 The appellant filed his notice of appeal on September 26, 1996. The record was filed with this court the next day. We granted the appellant's motion for expedited consideration. Final briefs were filed on October 16, 1996.

63 N.J.L. 105  
Supreme Court of New Jersey.

STATE (CLIFFORD, Prosecutor)

v.

HELLER, Sheriff.

Jan. 4, 1899.

**\*\*155 Syllabus by the Court.**

**\*105** 1. The legality of the proceedings at the trial of a prisoner convicted of a crime by a court of competent jurisdiction cannot be challenged or reviewed by habeas corpus.

2. On a writ of certiorari allowed with the writ of habeas corpus to bring up a warrant for the execution of the prisoner, purporting to be issued by the executive department of the state government under authority of the act of April 16, 1846, the court will adjudge whether such warrant is valid.

3. When the governor of the state resigns, the powers, duties, and emoluments of the office devolve, under the constitution, upon the president of the senate, but he does not thereby become the governor of the state in the constitutional sense. The president of the senate retains his office of senator, and as president of the senate he exercises the powers and performs the duties of the executive department.

4. When he resigns his office as senator, he ceases to be president of the senate, and thereupon the powers, duties, and emoluments of the executive office devolve in like manner upon the speaker of the house of assembly.

5. The granting of a reprieve and the fixing of a day for the execution of a convicted criminal is by the common law a judicial power, and cannot be exercised by the governor, or person administering the government, except in so far as it is expressly permitted by the constitution.

6. The constitution bestows upon the executive department the power to reprieve, but limits the exercise of that power to a period of 90 days after conviction, which means 90 days after sentence in the court below. As an incident to this granted power, the executive department

may direct the execution to be proceeded with within the 90 days, and in that event the execution takes place not by force of the executive warrant, but in virtue of the judgment of the court.

7. After the lapse of the 90 days, the power of the executive department in this respect ceases.

Application by Edward Clifford against William Heller, sheriff, for release on habeas corpus, and certiorari by Edward Clifford against the same defendant. Petitioner remanded.

West Headnotes (7)

[1] **Habeas Corpus**

⇌ Jurisdictional Defects

The legality of the proceedings at the trial of a person convicted of a crime by a court of competent jurisdiction cannot be challenged or reviewed by habeas corpus, since the statute provides that persons committed or detained by virtue of a final judgment of a competent tribunal of civil or criminal jurisdiction shall not be entitled to the writ.

6 Cases that cite this headnote

[2] **Constitutional Law**

⇌ Encroachment on Judiciary

The governor or person administering the state government, except in so far as permitted by the constitution, cannot grant a reprieve or fix a day for the execution of a convicted criminal, since it is a judicial power.

5 Cases that cite this headnote

[3] **Criminal Law**

⇌ Extent of Review as Determined by Mode Thereof

On a writ of certiorari allowed with the writ of habeas corpus to bring up a warrant for the execution of the prisoner, purporting to be issued by the executive department of the state

government under authority of Act April 16, 1846, the supreme court will adjudge whether such warrant is valid.

2 Cases that cite this headnote

[4] **Pardon and Parole**

⇔ Constitutional and statutory provisions

N.J.S.A.Const.1844, art. 5, § 9, empowering the executive department to grant a reprieve, to extend until the expiration of a time not exceeding 90 days after conviction, limits the time in which to act to 90 days after the conviction.

3 Cases that cite this headnote

[5] **Pardon and Parole**

⇔ Reprieve

Under N.J.S.A.Const.1844, art. 5, § 9, bestowing on the executive department the power to reprieve, but limiting the exercise of it to 90 days after conviction, the executive department may direct the execution to be proceeded with within the 90 days, but in that event the execution takes place by virtue of the judgment of the court.

6 Cases that cite this headnote

[6] **States**

⇔ Governor

Under N.J.S.A.Const. art. 5, § 12, providing that, when the governor of the state resigns, the powers, duties, and emoluments of the office shall devolve on the president of the senate, the president retains his office as senator, and as president of the senate exercises the powers and performs the duties of the executive department.

11 Cases that cite this headnote

[7] **States**

⇔ Governor

Where the governor of the state resigns, and thereby the duties and powers of the office are cast on the president of the senate in his

capacity as president, the latter's resignation as senator also terminates his right to act as governor, so that, in such case, under N.J.S.A.Const. art. 5, § 12, the speaker of the house assumes the powers and duties of the governor.

10 Cases that cite this headnote

**Attorneys and Law Firms**

Warren Dixon and John P. Stockton, for prosecutor.

James S. Erwin and The Attorney General, for the State.

Argued November term, 1898, before DEPUE, VAN SYCKEL, and LIPPINCOTT, JJ.

**Opinion**

\*106 VAN SYCKEL, J.

Edward Clifford was convicted of murder in the first degree in the court of oyer and terminer of the county of Hudson, and sentenced by the said court on the 15th day of September, 1896. The proceedings at the trial were subsequently taken to the court of errors and appeals for review, and by the judgment of that court the judgment of the oyer and terminer was in all respects affirmed. Thereupon the court of oyer and terminer ordered the said Clifford to be executed on the 16th day of February, 1898. On the 14th day of February, 1898, Foster M. Voorhees, president of the senate of New Jersey, under his hand and the great seal of the state of New Jersey, directed the sheriff of the county of Hudson to suspend the execution of said death sentence until the 16th day of March, 1898. Further proceedings were taken on behalf of Clifford in the federal courts, by which the execution of sentence was stayed until November 25, 1898, when David O. Watkins, speaker of the house of assembly of New Jersey, under his hand and the great seal of the state, suspended the execution of said sentence until the 6th day of January, 1899, and ordered the said Clifford to be executed on that day. Clifford is now before this court on habeas corpus, and at his instance a writ of certiorari was allowed to bring before the court the proceedings upon which the state claims to rest the order of David O. Watkins, the validity of which is controverted in this case.

Our habeas corpus act provides that the following, among other, persons mentioned shall not be entitled to prosecute such writ: "Persons committed or detained by virtue of the final judgment or decree of any competent tribunal of civil or criminal jurisdiction or by virtue of any execution issued upon such judgment or decree, unless such judgment or decree be founded upon contract." It is clear, therefore, that the legality of the proceedings at the trial of Clifford cannot be challenged or reviewed by writ \*107 of habeas corpus; and, if the case before us presented no other question, it would be the duty of the court to dismiss the writ as improvidently granted. But the return to the certiorari, and the facts agreed upon, present a question of great importance, in which the validity of the judgment of our courts is in no wise involved. That question is whether David O. Watkins had the power to order the execution of Clifford. If the warrant issued by him was unauthorized, \*\*156 it is the province and the duty of this court to intervene for the purpose of preventing an unlawful execution of the person condemned.

The admitted facts controlling this controversy are as follows: On the 31st day of January, 1898, John W. Griggs, then governor of New Jersey, filed in the office of the secretary of state his resignation as governor, to take effect at the termination of that day. Foster M. Voorhees was then president of the senate of New Jersey, being a senator from the county of Union. He thereupon took the oath, diligently, faithfully, and to the best of his knowledge to administer the government of the state in conformity with the powers delegated to him; which oath was filed in the office of the secretary of state on the 1st of February, 1898. On the 18th of October, 1898, Foster M. Voorhees filed in the office of the secretary of state a paper writing, of which the following is a copy: "State of New Jersey, Executive Department. To the Secretary of State, and to the Governor or Person Administering the Government: I hereby resign my commission as a member of the senate from the county of Union. Foster M. Voorhees." David O. Watkins was then a member of the general assembly of the state of New Jersey from Gloucester county, and speaker of the house of assembly. \*108 On the 18th day of October, 1898, he filed in the office of the secretary of state an oath that he would diligently, faithfully, and to the best of his knowledge, administer the government of the state in conformity with the powers delegated to him. It is insisted on behalf of the prosecutor that when Foster M. Voorhees filed in the office of the secretary

of state the oath before mentioned, he ceased to be a member of the senate, and became governor of the state for the term fixed by the constitution until another governor should be elected; that his resignation of his seat in the senate was unnecessary, and could not in any wise affect the tenure of his office as governor. To support this contention the well-settled rule laid down by Chief Justice Kirkpatrick in *State v. Parkhurst*, 9 N. J. Law, 446, is relied upon: "That, if a person holding an office be appointed to and accept another office incompatible therewith, such acceptance of the second is a virtual surrender of and vacates the first." The argument is that Foster M. Voorhees became governor of New Jersey, and ceased thereby to be senator without resigning the latter office; that his subsequent resignation of the senatorship did not operate as a resignation of his office as governor, or in any wise affect his right to hold said office, or his duty to execute its prescribed functions; that under the constitution the office of governor could become again vacant only by the death, resignation, or removal of Foster M. Voorhees, and, as neither of those contingencies has occurred, there was no vacancy in the office of governor by which David O. Watkins could succeed to that office.

Assuming the premises of the prosecutor to be entirely sound, it seems to result, not only that the resignation of the senatorship by Foster M. Voorhees did not vacate the office of governor, but that the resignation of the senatorship was equivalent to a declaration that he resigned that office, and elected to retain the office of governor, which he did not resign. It is well settled, both in England and in this country, that title to an office cannot be challenged on habeas corpus, or in \*109 any other collateral proceeding. Where the official is in possession of the office, and is executing its powers under color of title, he will be regarded at least as a de facto officer, and as to the public his official acts will be efficacious. That rule, so absolutely essential to the stability of government and the protection of the governed, should be recognized in its full force. The case sub judice is peculiar and novel. The situation is this: If Foster M. Voorhees, as president of the senate, was transferred by force of the constitutional provision to the office of governor, thereby vacating his office of senator, he is still governor of New Jersey, in full possession of the powers of the office, and under obligation to perform its duties; and if he is governor de jure, in possession of the office, David O. Watkins cannot at the same time be governor de facto, and the warrant signed by him is without the slightest legal value. All that appears in the case before us is that Gov. Griggs resigned;

that Foster M. Voorhees, president of the senate, took the oath before stated; that he subsequently resigned his office of senator; that David O. Watkins is speaker of the assembly, and that he took the oath set forth. No act appears on his part to show that he is governor de facto except the oath and the signing of the death warrant. If Foster M. Voorhees was governor, and his resignation of the senatorship was not a vacation of his office as governor, he must still be governor, nothing appearing before us except his resignation as senator to show that he is not still acting and claiming to act as governor. We are constrained, therefore, to resort to an interpretation of the provisions of our state constitution touching this subject, to determine whether David O. Watkins had the right, either de jure or de facto, to do the act which has given rise to this litigation.

The clause of the constitution which provides for the vacancy in the office of governor is as follows: "In case of the death, resignation or removal from office of the governor, \*110 the powers, duties and emoluments of the office shall devolve upon the president of the senate, and in case of his death, resignation or removal, then upon the speaker of the house of assembly, for the time being, until another governor shall be elected, and qualified; but in such case another governor shall be chosen at the next election for members of the legislature, unless such death, resignation or removal shall occur within thirty days immediately preceding such next election, in \*\*157 which case a governor shall be chosen at the second succeeding election for members of the legislature. When a vacancy happens, during the recess of the legislature, in any office which is to be filled by the governor and senate or by the legislature in joint meeting, the governor shall fill such vacancy and the commission shall expire at the end of the next session of the legislature unless a successor shall be sooner appointed; when a vacancy happens in the office of clerk or surrogate of any county, the governor shall fill such vacancy, and the commission shall expire when a successor is elected and qualified." Article 5, cl. 12. In construing this clause of the constitution it must be borne in mind that it was carefully drawn by learned jurists, who knew how to express with exactness and precision the purpose they had in view. The provision is that, in case of the resignation of the governor, the powers, duties, and emoluments of the office shall devolve upon the president of the senate, and not that the president of the senate shall thereby become governor, and hold the title and the office until another governor is elected. If the framers of the fundamental law had intended to transfer the president of

the senate to the executive chair, and thereby to vacate his office of senator, it is reasonable to believe that they would have said so in no uncertain language. The language used is not ambiguous. It declares that the powers, duties, and emoluments of the office shall devolve on the president of the senate; it does not confer upon him the title of the office. The president of the senate exercises the powers of the \*111 governor; the president of the senate performs the duties of the governor; the president of the senate receives the emoluments of that office. He is still president of the senate, with the added duties required of the chief executive of the state imposed upon him. There is no language in the constitution from which it can reasonably be inferred that his office of president of the senate was to be vacated. He retains his office of senator; and as president of the senate, and not as governor, he exercises the added powers and performs the superimposed duties. That such is not only the ordinary acceptation and the reasonable interpretation of the language employed, but also the intention of those who framed this clause, is evinced in other parts of the organic law. In clauses 9 and 10 of article 5 and clauses 2 and 3 of article 8 this language appears: "The governor or person administering the government." Why is this language so sedulously used throughout the constitution? If the president of the senate becomes governor, and ceases to be senator, he is fitly and accurately described in all those clauses by the word "governor," and therefore the words "person administering the government" are not only unnecessary and superfluous, but misdescriptive. The words "person administering the government" were inserted advisedly to describe the president of the senate who might be called upon to administer the government, but who would not thereby become or be governor; and, in the absence of that language, would not be subject to the clauses referred to. Again, article 3 of the constitution provides as follows: "The powers of the government shall be divided into three distinct departments, the legislative, executive and judicial; and no person or persons belonging to or constituting one of these departments, shall exercise any of the powers properly belonging to either of the others, except as herein expressly provided." \*112 What is the significance of the words in this clause, "except as herein expressly provided"? What powers belonging to one department of government were there which it was expressly provided in the constitution might be exercised by one of the other departments? The framers of this article said by this exception, in unmistakable language, there are some powers belonging to one department of

the government which it is expressly provided in this constitution shall be exercised by a person or persons belonging to one of the other departments. In the constitution we find such a provision, and it is the only one in the constitution except the power to reprieve. That provision is the one before referred to in clause 12 of article 5, which provides that the president of the senate, or, in case of his death, resignation, or removal, the speaker of the house, shall exercise the powers of the executive department of the government in the contingency therein specified. It must, therefore, have been the understanding and intention of the constitution makers that the executive powers to be exercised by a member of the legislative department were to be exercised in the capacity of a legislator, and that made the exception in article 3 a necessary provision.

But it is argued that the president of the senate is a judge of the court of impeachment, and may try himself if he is impeached, and pardon himself if convicted. This is clearly a misconception of the situation. As president of the senate he performs the duties of the chief executive, and any malfeasance in that respect is as much a violation of his duty as a senator and as president of the senate as malfeasance in his purely legislative action would be. If impeached, it would be as a senator, and not as governor. He would be tried by the senate, which is the trial court in all cases of impeachment. While there is no express provision in the constitution that a member of the senate shall not sit as a judge on his own trial if impeached, he is nevertheless incompetent, and would be excluded. The principle \*113 that a man shall not be a judge in his own case is accepted universally by judicial tribunals. It is a rule of such fundamental character that it is deemed essential to the well-being of society, and underlies the organic law itself. If any doubt could arise upon this point, a reference to \*\*158 section 3 of article 6 of the constitution should set it at rest. That section provides that all impeachments shall be tried by the senate, and that the members of the senate, when sitting for that purpose, shall each take an oath "truly and impartially to try and determine the charge in question according to evidence." It would be the sublimity of folly to attempt to bind a senator by such an oath when he was sitting in his own case. If the president of the senate was impeached and convicted, he would cease to be senator, and thereupon the powers of the executive would devolve upon the speaker of the house. The fact that the president of the senate exercises both legislative and executive functions in the view herein taken can have no significance in this discussion, when we

advert to the fact that under the first state constitution the governor was not only the chief executive, but he was also president of the legislative council, with a casting vote, and presiding judge of the highest court in the state. The powers of government were more wisely distributed by the constitution of 1844, in which, by article 3, a member of one department could not exercise a power belonging to either of the others, except in the instances where the office of governor became vacant, and the power to reprieve was granted. If anything is needed to establish the correctness of this view, it is found in clause 13 of article 5, which reads as follows: "In case of the impeachment of the governor, his absence from the state or inability to discharge the duties of his office, the powers, duties and emoluments of the office shall devolve upon the president of the senate; and in case of his death, resignation or removal, then upon the speaker \*114 of the house of assembly for the time being, until the governor absent, or impeached, shall return or be acquitted, or until the disqualification or inability shall cease, or until a new governor be elected and qualified." In case of the absence of the governor from the state, precisely the same language is used as in clause 12 in relation to his resignation of the office, and it must necessarily receive the same interpretation. In case of his absence from the state, "the powers, duties, and emoluments of the office shall devolve upon the president of the senate until the governor returns." Will it be seriously contended that, when the governor goes out of the state, the president of the senate becomes governor until the duly-elected governor returns, and thereby vacates and loses his office as senator? That such an interpretation of this language would be adopted could not have been within the contemplation of the able men who incorporated it in this clause relating to a matter of supreme importance. It is true construction, then, when the senate was composed of 10 members of one party and 11 of the other, the governor of the state, by the simple device of passing into an adjoining state, could have vacated the seat of one senator, and thus have deprived the opposing party of a majority in that branch of the legislature. In my judgment, the framers of the constitution meant simply what they said,—that, in case the governor resigned, the president of the senate, as such, should have the powers and perform the duties of the office. Foster M. Voorhees did not become governor upon the resignation of Gov. Griggs. He still continued to be a senator, and president of the senate. He could not resign the office of governor, which he never held. When he resigned and vacated the office of senator, he ceased to



be president of the senate, and could no longer exercise the functions pertaining to the executive department. Therefore, upon his resignation as senator, the powers, duties, and emoluments of the office devolved upon David O. Watkins, the speaker of the house of assembly. \*115 He is de jure the speaker of the house, and of right, as such speaker, exercises the executive powers. He is not governor, either de jure or de facto, in the constitutional sense of that term. The act of 1898 cannot, in any respect, affect this controversy.

The question, therefore, remains to be considered whether the issuing of the warrant for the execution of Clifford was a valid exercise by David O. Watkins of the powers committed to him as speaker of the house of assembly? By the common law, where the judgment was pronounced in the oyer and terminer, a precept for execution was issued to the sheriff in the name and under the hands and seals of the three commissioners before whom judgment was given; but the precepts by justices of the jail delivery need not have been otherwise than by a simple award upon the roll. In later times there was no more done, but, after judgment was entered, the judges subscribed a calendar in paper directing the several judgments of deliverance to the parties acquitted, or the execution of the parties condemned, of which the sheriff was required to take notice openly in court. 2 Hale, P. C. p. 409. It is also quite clear that by the common law the time and place of execution were not named in the sentence; it was left to the judgment and discretion of the sheriff. The execution of the prisoner was directed by the words "sus. per coll." written against his name in a calendar prepared for the purpose. Mr. Chitty says: "The practice of the present day at the assizes is that, when all the other public business of the court is terminated, the clerk makes out in writing four lists of prisoners in the separate columns containing their crimes, verdicts, and sentences, and a blank column, in which the judge writes his pleasure respecting those capitally convicted as to be executed, respited, or transported. If the sheriff receives no special order from the judge, he executes the judgment of the law in the usual manner, according to the directions of the calendar." 1 Chit. Cr. Law, 781. \*\*159 \*116 The only instance of a warrant from the crown was in the case of high treason, where a peer of the realm was tried before parliament. Where all the rest of the judgment save the beheading was pardoned, the execution was to be under the great seal. 3 Co. Just. p. 31; 2 Hale, P. C. pp. 409-412. In felonies we think it clear that the direction for the execution of the sentence was a

judicial act, for these reasons: First, that the judgment of the court was a sufficient warrant; and, secondly, issues extraneous of those raised at the trial might be raised in suspension of the sentence, which required a judicial determination,—as, for instance, where the convict is a female, she may plead that she is quick with child; and, second, if an allegation be made that since the conviction the accused has become insane. In both of these cases, as well as others, there is to be a judicial investigation. 4 Bl. Comm. 395. At common law, reprieve might be granted either by the king, under his power to pardon, or by the court; and every court which had power to award execution had power to grant a reprieve. This reprieve was simply a suspension of the sentence. In *Rex v. Harris*, 1 Ld. Raym. 482, "counsel urged that in criminal causes, where execution is deferred, it cannot be awarded without bringing the prisoner to the bar, to which Holt, C. J., agreed, and he cited *Knightly's Case*, who was indicted for high treason, and, being arraigned at bar in the king's bench, confessed the indictment, and judgment of death was pronounced against him in Easter term, and execution was countermanded, so that Trinity term passed, and then in the long vacation they had designed to execute it, and upon that all the judges of England met to consider what could be done, and it was resolved by all that in regard a term had intervened without execution done it could not be awarded without bringing *Knightly* to the bar; and, per Holt, C. J., it would be the same thing if Trinity term had not passed, but only begun, so that *Knightly* was imprisoned \*117 until Michaelmas term, and in the meantime he obtained a pardon." In *Sir Walter Rawley's Case* the question was whether a privy seal was sufficient for execution. It was resolved on a conference between all the judges that the prisoner ought to be brought to the court, and then demanded if he could say anything, etc., and that it was not a legal course that he should be commanded by a privy seal or great seal to be executed without being demanded what he hath to say, etc. Hut. 21. If the governor can intervene and have execution by virtue of his warrant, the prisoner will be deprived of the right of a judicial determination of matters which in law are subjects of judicial cognizance. If the order which shall carry the judgment of the court into effect is one within judicial control,—as we deem it to be,—then the several constitutional provisions are to be considered. By the constitution of 1776 the governor had no power to pardon or to grant reprieve. Whatever power there was in that respect was vested in the governor and council; that is the court of appeals.

Under the power to pardon at common law the power of the king to reprieve was included, and the power of reprieve was not vested in the governor, but in the governor and council. By the act of November 16, 1820, the governor, with the advice of his privy council, had power to suspend execution of the sentence of death until the rising of the next meeting of the governor and council. By the act of 1821, where such a reprieve was granted, and a pardon was not granted at the next meeting, it was made the duty of the governor and council to appoint a time for the execution of the criminal. Elmer's Dig. p. 118. By the constitution of 1844 the executive, with the concurrence of the chancellor and of the six judges of the court of appeals, or a major part of them, may grant pardons after conviction (article 5, cl. 10); and by article 5, cl. 9, the executive was \*118 given power to grant reprieve to extend until the expiration of a time not exceeding 90 days after conviction. By the act of April 16, 1846, it is provided that, where a reprieve is granted by the governor, the governor shall issue his warrant to the sheriff of the proper county, commanding him to execute the sentence at such time as shall therein be appointed and expressed. Revision, p. 290, § 123. Power to reprieve is limited to a postponement of the execution for 90 days after the conviction; that is, after the sentence in the court below. By article 3 of the constitution of 1844, before set forth, the governor is prohibited from exercising any legislative or judicial power except as in said constitution is expressly provided. The express provision of the constitution on this subject, so far as concerns the executive, is that he shall have power to suspend the sentence of the court for a period not exceeding 90 days. The term "reprieve," as used both in the constitution and in the statute, is merely the postponement of the sentence for a time. It does not and cannot defeat the ultimate execution of the judgment of the court; it merely delays it. In the exercise of the power to reprieve for 90 days, which is the constitutional limit of that power, the governor has, as an incident to that power, the right to say that at the expiration of that time the sheriff shall no longer be stayed, but shall proceed to execute the judgment of the court. The reprieve, to be in proper form, should fix

a day not exceeding 90 days from the sentence, when it shall expire, and direct the execution to be proceeded with at the expiration of that time. The execution takes place then, not by order of the governor, but in virtue of the judgment of the court. The governor simply says: "The prisoner is adjudged to be executed on a certain day. I direct the execution to be postponed until a future day specified, and then the execution is to be proceeded with."

\*119 In *Ex parte Flemming*, 60 Miss. 910, \*\*160 the court said: "The power to respite necessarily carries with it the power to fix another and later day for the execution of the death sentence, since the respite is nothing more than a suspension of the sentence until its own expiration. The subsequent execution takes place, not by virtue of a new sentence, but by reason of the expiration of the temporary suspension of the original sentence which was caused by the respite." *Sterling v. Drake*, 29 Ohio St. 457, is to the like effect. If there was a doubt in respect to the proper procedure in this respect, the long-continued practice of the executive department to make orders for the execution of sentences where there has been a reprieve will justify the construction that such orders may be issued, provided that the time for execution is not extended beyond the 90 days. That practice, commencing in 1853, has been pursued until the present time. The order certified into this court was made after the expiration of the 90 days, and is without any legal or constitutional warrant, and must be set aside. The order made in the case of *Martin* by Gov. Ludlow does not conflict with the views herein expressed. The reprieve and order were both within 90 days from the time of conviction, and, that time having elapsed, *Martin* was executed, not under the governor's warrant, but under an order made by the court of oyer and terminer. The traverse of the sheriff's return to the writ of habeas corpus must be stricken out, and the prisoner remanded. Let rules be entered accordingly.

DEPUE and LIPPINCOTT, JJ., concur.

#### All Citations

63 N.J.L. 105, 34 Vroom 105, 42 A. 155

121 Okla. 83  
Supreme Court of Oklahoma.

FITZPATRICK

v.

McALISTER, Secretary of State Election Board, et al.

No. 17513.

|

June 28, 1926.

*Syllabus by the Court.*

Article 6 of the Constitution defines the executive department of the state, and names certain officers who shall be vested with executive powers.

Section 2 of said article is as follows: "The supreme executive power" of the estate "shall be vested in a chief magistrate, who shall be styled 'the Governor \* \* \* of Oklahoma.'"

Section 4 of said article contains the following provision, to wit: "The Governor, secretary of state, state auditor, and state treasurer shall not be eligible immediately to succeed themselves."

Sections 15 and 16 are in pari materia to the extent that they relate to and form part of, the entire purpose and scheme provided for in article 6, and to such extent only. They are independent of each other to the extent that they deal with, and provide for, the distinctly different conditions which each does provide for.

Said section 15 provides for such vacancies only as may be caused by the elected Governor's temporary absence from his office, and where, though absent from his office, he still retains his right to the office, still possesses his right, upon his return to assume the duties and exercise the powers of his office, and further provides that, during such vacancy, if the Lieutenant Governor becomes incapable of performing the duties of the office, then the President of the Senate may act as Governor, and, in case of his disability, the Speaker of the House may act as Governor during such vacancy, thus making complete and adequate provisions for taking care of the peculiar contingency and condition which it seeks to provide for, viz. vacancies occasioned by a temporary absence or inability of the

Governor, where the Governor still has the right to return to his office and assume its duties, and to this extent section 15 is independent of section 16.

Const. art. 6, § 16, is as follows: "In case of impeachment of the Governor, or of his death, failure to qualify, resignation, removal from the state, or inability to discharge the powers and duties of the office, the said office, with its compensation, shall devolve upon the Lieutenant Governor for the residue of the term or until the disability shall be removed."

Thus section 16 makes provision for a wholly different contingency and condition to that provided for in section 15. Section 16 provides for occasions where the individual rights of the elected Governor, as distinguished from the public rights, have been terminated, where his rights to return to the office and assume its powers have been foreclosed, and, in order to protect the right of the public to a continuation of the functions of government, in such case, section 16 provides that the office of Governor, with its compensation, shall devolve upon the Lieutenant Governor for the residue of the term, thus making complete and adequate provision for the particular contingency and condition \*570 which it seeks to provide for, and to this extent section 16 is independent of section 15.

Const. art. 6, § 16, creates no vacancy, contemplates no vacancy, mentions no vacancy. It simply makes provision for an uninterrupted functioning of the office of chief executive with a duly commissioned officer at the head of such department thereby avoiding a vacancy.

When the elected Governor becomes impeached, as is the condition presented here, the office of Governor automatically devolves upon another. The person on whom such office devolves necessarily fills such office, exercising all the powers, discharging all the duties, and enjoying all the emoluments, compensation, honor and prestige which pertain to such office. The person who thus fills the office of chief magistrate is styled "the Governor of Oklahoma." He is the Governor for the simple reason that he governs. He governs officially for the reason that section 16 expressly vests him with authority to do so. Therefore he is the official Governor, and, being the official Governor, he is rendered ineligible to succeed himself by the inhibition contained in section 4, art. 6, of the Constitution.

*Additional Syllabus by Editorial Staff.*

“Devolve” means to roll or tumble down upon, or descend, to be transmitted by course of events, or by operation of law, to transfer from one person to another (citing Words and Phrases, First and Second Series, “Devolve”).

Appeal from District Court, Oklahoma County; William H. Zwick, Judge.

Suit by Kirby Fitzpatrick against W. C. McAlister, Secretary of the State Election Board, and others for injunction. From a judgment for defendants, plaintiff appeals. Reversed, with directions.

Branson, V. C. J., and Nicholson, C. J., dissenting.

West Headnotes (5)

[1] States

⇔ Governor

Constitutional provision relating to devolution of powers and duties of Governor on his inability to discharge duties of his office, due to impeachment, etc., is independent of provision for vacancies caused by elected Governor's temporary absence from office. Const. art. 6, §§ 15, 16.

Cases that cite this headnote

[2] Public Employment

⇔ Term limits

States

⇔ Eligibility to office

On impeachment of elected Governor, person succeeding him is official Governor, and is ineligible to succeed himself. Const. art. 6, §§ 2, 4, 16.

1 Cases that cite this headnote

[3] Public Employment

⇔ Vacancy

Public Employment

⇔ Temporary absence or incapacitation

States

⇔ Term of office, vacancies, and holding over

States

⇔ Resignation, suspension, and removal or impeachment of officers

Constitutional provisions relating to devolution of duties on temporary vacancy in Governor's office or his inability to discharge duties of his office due to impeachment, etc., held in pari materia to extent of relating to and forming part of scheme of government, and independent of each other in so far as they deal with, and provide for, distinctly different conditions. Const. art. 6, §§ 1, 2, 4, 15, 16.

Cases that cite this headnote

[4] Public Employment

⇔ Occurrence and Existence; What Creates or Constitutes Vacancy

States

⇔ Term of office, vacancies, and holding over

Constitutional provision as to devolution of Governor's powers on his inability to discharge duties of his office, due to impeachment, etc., held to create no vacancy, and to contemplate none. Const. art. 6, § 16; Const. U.S. art. 2, § 1.

Cases that cite this headnote

[5] Public Employment

⇔ Impeachment or address

States

⇔ Resignation, suspension, and removal or impeachment of officers

When elected Governor is impeached, his office automatically devolves on another who exercises all powers of such office. Const. art. 6, §§ 2, 4, 16.

Cases that cite this headnote

### Attorneys and Law Firms

Roger L. Stephens, Fred L. Hoyt, and Reuben M. Roddie, all of Oklahoma City, for plaintiff in error.

Geo. F. Short, Atty. Gen., and J. Berry King, Asst. Atty. Gen., for state election board and state board of affairs.

C. B. Stuart and J. D. Lydick, both of Oklahoma City, Jos. C. Stone, of Muskogee, N. A. Gibson, of Tulsa, Frank Dale, of Guthrie, John Barry, of El Reno, and J. H. Gordon, of McAlester, for defendant in error M. E. Trapp.

### Opinion

HARRISON, J.

This proceeding was begun in the district court to test the eligibility of Mr. M. E. Trapp to succeed himself in the office of Governor.

Mr. Trapp had theretofore filed his application with the state election board as a candidate for nomination for Governor, and plaintiff sought to enjoin said board from certifying Mr. Trapp's name to the state board of affairs, and to enjoin the state board of affairs from having Mr. Trapp's name printed as a candidate for Governor on the official ballots to be voted at the forthcoming primary election to be held in August of this year.

The trial court denied the injunction, and plaintiff appealed. Plaintiff contends that, under the provisions of article 6 of the Constitution, Mr. Trapp is not eligible to the office of Governor. Defendants contend that he is eligible. The controversy arose out of the following facts, viz.:

At the November election, 1922, J. C. Walton was elected Governor, and defendant M. E. Trapp was elected Lieutenant Governor, and both went into office in January, 1923. In November, 1923, Mr. Walton was impeached and removed from office by the Senate sitting as a court of impeachment, and thereupon, by virtue of section 16, art. 6, of the Constitution, the office of Governor devolved upon the Lieutenant Governor, who was defendant Mr. M. E. Trapp, who has occupied the

office of Governor, and exercised the powers of Governor, from the date of said impeachment until the present date, and is now occupying such office with the powers thus conferred by said section 16, and is seeking the nomination for Governor, and to ultimately succeed himself to the office of Governor at the general election in November of this year.

Plaintiff in error contends that under section 16, art. 6, of the Constitution, the office of Governor devolved upon the Lieutenant Governor immediately upon the impeachment of Governor Walton, and that thereupon Lieutenant Governor Trapp became the Governor in fact and in law, and that, having held and filled the office of Governor, and exercised the powers of Governor, and enjoyed the emoluments of the office of Governor from the time said office devolved upon him until the present time, he is not now eligible to succeed himself to the office of Governor at the ensuing term because of the inhibition contained in section 4, art. 6, of the Constitution, which is as follows:

“The Governor, secretary of state, state auditor, and state treasurer shall not be eligible immediately to succeed themselves.”

\*571 On the other hand, it is contended by defendants in error that, upon the impeachment of Mr. Walton, there became a vacancy in the office of Governor, which has never been filled, but which has existed to the present time, and now exists, and that, though the powers, duties, and emoluments of the office of Governor devolved upon Lieutenant Governor Trapp upon the impeachment of Governor Walton, yet Mr. Trapp did not thereby become Governor in every sense of the word, but became merely Acting Governor during a vacancy, and that, not being Governor, but being merely “Acting Governor,” he is therefore not rendered ineligible by the inhibition contained in said section 4, art. 6.

Defendants in error further contend that, by harmonizing the provisions of sections 15 and 16 of said article 6, and construing the two sections together, it will be seen that no vacancy was caused in the office of Lieutenant Governor by the devolution of the office of Governor upon the Lieutenant Governor, and no vacancy now exists in the office of Lieutenant Governor, and that therefore Mr. Trapp is still Lieutenant Governor, but that a vacancy does exist in the office of Governor by reason of Governor

Walton's impeachment and removal from office, and that Mr. Trapp's being merely "Acting Governor" during such vacancy does not fill such vacancy, and therefore the inhibition in said section 4, art. 6, does not apply to him; that said inhibition applies only to an "elected Governor," and does not apply to one upon whom the "office of Governor" has devolved by virtue of said section 16.

From the foregoing may be seen the respective positions of the parties to this controversy, and that the main question to be determined is whether, under the existing conditions, the inhibitive provision in said section 4 applies to Mr. Trapp.

The questions involved have all been briefed and orally argued by the parties hereto, and, in addition to the briefs and oral arguments of parties in the instant case (case No. 17520, J. B. A. Robertson v. State Election Board and M. E. Trapp, 248 P. 583), which involves the identical questions herein presented, and seeks the very same relief herein sought, have also been briefed, and were orally argued and submitted with this case, the briefs in both cases to be used in each.

It is notable that, while numerous authorities have been cited in support of the contentions of the parties, yet no case has been cited where the identical conditions here presented, and the identical questions of law here involved, have ever been passed upon and decided by any court of last resort. We have been unable to find any case ourselves that is at all similar in all of its phases.

Though plaintiff in error is represented by able and diligent counsel, and defendant in error represented by a remarkable array of powerful lawyers, yet no case directly in point has been cited; that is, no case where any candidate has ever aspired to any office in the face of a similar constitutional inhibition against his immediately succeeding himself in office. Hence, in the absence of a controlling decision, it becomes necessary to search the provisions of our Constitution for a solution of the problem presented, guided in so doing by such light as the partially analogous cases cited may afford us. Article 4 of our Constitution distributes the powers of state government into three separate departments, viz. legislative, executive, and judicial.

[1] Article 6 defines the executive department, and names certain state officers who shall be vested with executive power. The provisions of said article 6 pertinent to the questions under consideration are:

Section 1, which says:

"The executive authority of the state shall be vested in a Governor, Lieutenant Governor, secretary of state, state auditor, Attorney General, state treasurer, superintendent of public instruction, state examiner and inspector, chief mine inspector, commissioner of labor, commissioner of charities and corrections, commissioner of insurance, and other officers provided by law and this Constitution, each of whom shall keep his office and public records, books, and papers at the seat of government, and shall perform such duties as may be designated in this Constitution or prescribed by law."

Section 2, which says:

"The supreme executive power shall be vested in a chief magistrate, who shall be styled 'The Governor of the state of Oklahoma.'"

Section 4, which, after prescribing the length of term of office of certain state officers, including the Governor, says:

"The Governor, secretary of state, state auditor, and state treasurer shall not be eligible immediately to succeed themselves."

Section 15, which says:

"The Lieutenant Governor shall possess the same qualifications of eligibility for office as the Governor. He shall be President of the Senate. but shall have only a casting vote therein, and also in joint vote of both houses. If, during a vacancy of the office of Governor, the Lieutenant Governor shall be impeached, displaced, resign, die or be absent from the state, or become incapable of performing the

duties of the office, the President, pro tempore, of the Senate, shall act as Governor until the vacancy be filled or the disability shall cease; and if the President, pro tempore, of the Senate, for any of the above enumerated causes, shall become incapable of performing the duties pertaining to the office of Governor, the Speaker of the House of Representatives shall act as Governor until the vacancy be filled or the disability shall cease. Further provisions for succession to the office of Governor shall be prescribed by law."

\*572 Section 16, which says:

"In case of impeachment of the Governor, or of his death, failure to qualify, resignation, removal from the state, or inability to discharge the powers and duties of the office, the said office, with its compensation, shall devolve upon the Lieutenant Governor for the residue of the term or until the disability shall be removed."

These are the sections of said article 6 which bear directly upon the question before us, viz. whether the defendant M. E. Trapp is eligible to succeed himself in the office of Governor. It is observed that in section 1, art. 6, supra, the Lieutenant Governor is named as one of the executive officers of the state, and is vested with executive authority. He is expressly made a part of the executive department. As to what his executive powers are, and when and how he may exercise them, will be seen in the further course of our analysis.

By section 2, supra, it will be seen that the supreme executive power is in reality vested in a chief magistrate, who shall be styled "the Governor \* \* \* of Oklahoma." The real executive head, therefore, the office in whom the supreme executive power of the state is in intendment and in reality vested, is a chief magistrate. It is in the office of chief magistrate that the supreme executive power is lodged. The person who exercises the supreme executive power of the state does so by virtue of his being the chief magistrate.

The person on whom such office by the Constitution devolves necessarily fills such office, and exercises all powers lodged in such office, and is charged with all the duties pertaining to such office, and enjoys all the emoluments, compensations, honor, and prestige which belong to such office. The person who thus fills the office of chief magistrate is styled "the Governor of Oklahoma." He is the "Governor" for the simple reason that he governs. A Governor is one who governs. He governs officially for the reason that section 16 vests him with authority to do so, and requires him to do. Therefore he is the official Governor. The provision of section 4, supra, speaks for itself. It simply says in simple words:

"The Governor \* \* \* shall not be eligible immediately to succeed himself."

Section 15, supra, prescribes that the Lieutenant Governor shall possess the same qualifications of eligibility for office as the Governor. It also imposes other than executive duties upon the Lieutenant Governor, viz.: He shall be president of the Senate, and shall have a casting vote therein, and a casting vote also in joint session of both houses. These duties are not imposed upon him, nor these powers conferred upon him, because he is one of the executive officers of the state, for they are not executive duties—they are legislative duties. The Constitution does not say why these duties are imposed upon the Lieutenant Governor. It may have prescribed such duties for him because, as a rule in states of the Union, similar duties and powers are generally given to the Lieutenant Governor, and because, under the federal Constitution, the Vice President performs similar duties, such being the general custom and general conception of the proper and harmonious method of running the entire machinery of our government. But, whatever may have been the reason for giving these powers and duties to the Lieutenant Governor, it is a fact that they are given him by our Constitution.

Said section 15 further provides that, if, during a vacancy of the office of Governor, the Lieutenant Governor shall be impeached, or become incapable of performing the duties of the office, the President pro tempore of the Senate shall act as Governor until the vacancy be filled, and, if the President of the Senate, for any reason, becomes incapable of performing the duties pertaining to the office of Governor, then the Speaker of the House shall act as

Governor until the disability ceases. Now let it be observed that the words "shall act as Governor" are not applied to the Lieutenant Governor, but are applied only to the President of the Senate and Speaker of the House in cases where the Lieutenant Governor is under a disability. The words "shall act as Governor," or, as defendants in error put it, "the Acting Governor," are not anywhere in the Constitution applied to the Lieutenant Governor.

They are applied nowhere else, nor to any one else, except to the President of the Senate and Speaker of the House, and to them only in cases where "the Lieutenant Governor becomes incapable of performing the duties of the office." This section nowhere denominates the Lieutenant Governor as a mere "Acting Governor," nor does it imply that he is regarded as only "an Acting Governor." It says, "or become incapable of performing the duties of the office," meaning the office of Governor. Then, in such case, the President of the Senate shall act as Governor, and, if he be disqualified, then the Speaker of the House shall act as Governor. The Lieutenant Governor is nowhere spoken of as "Acting Governor."

[3] But section 16, supra, provides that, in case of impeachment of the Governor, the said office, with its compensation, shall devolve upon the Lieutenant Governor. This section does not say, "upon the Lieutenant Governor who shall act as Governor," but it says:

"The said office, with its compensation, shall devolve upon the Lieutenant Governor for the residue of the term or until the disability shall be removed."

It means that all the powers, duties, and responsibilities of the office of Governor shall devolve upon the Lieutenant Governor, and \*573 that all the emoluments, compensation, honor, dignity, and prestige of the said office shall be his. He is thereby made the chief magistrate in fact by the plain language of the Constitution. He is vested with all the powers, and charged with all the duties and responsibilities, and is given all compensations, which belong to the chief magistrate, in whom the supreme executive power of the state is vested. "The said office, with its compensation, shall devolve upon the Lieutenant Governor."

But, it is insisted by defendants in error, persistently and repeatedly, that the two sections (15 and 16) must be construed together, and that, by construing them together, we find a vacancy in the office of Governor, a vacancy which, they claim, we are not at liberty to read out of the Constitution, a vacancy which is not filled by the Lieutenant Governor, as he is a mere "Acting Governor," a vacancy which the law makes no provision for filling except by an election. But, upon examination of the two sections, we find that, by either construing the two sections together, or by construing them separately, we nowhere find the Lieutenant Governor referred to as "Acting Governor." Furthermore, we nowhere find the words "shall act as Governor," except in cases where the Lieutenant Governor is, for some reason, rendered incapable of performing the duties of Governor. Then the President of the Senate or Speaker of the House shall "act as Governor."

Under section 16, when the Governor is impeached, and his rights become foreclosed, the office devolves upon the Lieutenant Governor.

[6] The word "devolve" is defined by lexicographers and in law dictionaries as meaning to roll or tumble down or descend; to be transmitted by course of events, or by operation of law; to transfer from one person to another; to pass by transmission to another; to pass from a person dying to a person living; to pass from the possessor to a successor. See Webster's Int. Dict. 1923; Funk & Wagnall's Stand. Dict.; Black's Law Dict.: 14 Cyc. 286; Words and Phrases, both First and Second Series; 18 C. J. 1034, and notes.

Hence, when Governor Walton became impeached, when the judgment of the high court of impeachment was pronounced, the official powers of Mr. Walton ended, his rights of tenure were ended, and the office of chief magistrate of the state, the office in which is lodged the supreme executive powers of the state, automatically, instantaneously with the ending, descended upon, passed down to, devolved upon, Mr. Trapp. There was no interim, no vacancy, no delay in the transmission, no interruption in, no suspension of, the functions of government—they passed right on.

By the judgment of impeachment, Mr. Walton's authority ceased; his term and tenure ended; his individual rights were foreclosed; "the said office, with its compensation,"



devolved automatically upon Mr. Trapp. There was no vacancy created, none intended, none contemplated. It was never intended that, under the conditions provided for in section 16, there should be an interim during which the state would have no Governor, and the functions of government be suspended, but, on the contrary, it is wisely provided in said section 16, that, when by operation of law, or by reason of other circumstances, the authority of the elected Governor is terminated, his tenure ended, and his individual rights foreclosed, the said office (the Governor's office), with its compensation, shall devolve upon another, in order that the functions of government may continue without interruption, and the public rights be protected.

Section 16 deals with conditions wholly different and distinct in their very nature from the conditions dealt with in section 15, and to this extent the two sections are independent of each other. It is contended by defendants in error that the two sections must be construed together to give effect to either, and the case of *Ex parte Crump*, 10 Okl. Cr. 133, 135 P. 428, 47 L. R. A. (N. S.) 1036, in which Judge Doyle, who delivered the opinion of the Criminal Court of Appeals, held that the two sections (15 and 16, article 6) are in *pari materia*.

[2] We concur with the learned judge in the view that said sections 15 and 16 are in *pari materia* to the extent that they relate to, and form a part of, the entire purpose of article 6 to the extent that they aid in providing for, and constitute, an element of the entire scheme intended to be provided for in article 6, but to such extent only. They are independent of each other to the extent that they deal with, and completely provide for, the distinctly different conditions which each does provide for.

Section 15 anticipates vacancies such as may be caused by the Governor's absence from the state, and other circumstances which may cause a temporary absence of the Governor from his office, and refers to such occasions as vacancies, but these are occasions where, though the Governor may be absent from his office, though he may be sick or out of the state, and temporarily away from his office, yet he still retains his right to the office. His right to the office has not been terminated, his term nor tenure has not been ended, by operation of law by judicial proceedings, nor by other circumstances. He still has, still possesses, his right to the office, and, upon his return, may assume the duties and exercise the powers of his office. Such instances the Constitution treats as vacancies, and

provides for the filling of such vacancies, and that, when either the President of the Senate or Speaker of the House fills such vacancies, he merely acts as Governor during such vacancy.

[4] But section 16 deals with a wholly different \*574 and distinct condition—a condition which was deemed essential to be separately dealt with, and one which past history has shown to have been necessary to be dealt with, viz. a condition where the chief magistrate, the one who is styled “the Governor of Oklahoma,” has been impeached and removed from office, where his rights have been foreclosed and his term and tenure ended. In such case there is no vacancy; therefore no need to speak of a vacancy. The office immediately devolves upon the Lieutenant Governor. Hence section 16 does not speak of a vacancy.

It is unnecessary to draw a distinction between a “temporary vacancy” and a “permanent vacancy.” It is unnecessary to say whether there is a distinction between the two terms. Section 15 unquestionably has reference to temporary vacancies, and to temporary vacancies only, and deals with, and provides for, temporary vacancies only. Nowhere does article 6 speak of a permanent vacancy. Section 16, in dealing with the conditions which it provides for, does not recognize a vacancy of any kind, but provides that the powers of government may continue right on; that the ship of state, as it were, may continue its course without interruption, and with a duly commissioned chief executive at the helm.

[5] Defendants in error say:

“Section 15 is the sole and only section of the Constitution which authorizes any one to exercise and perform the powers and duties of the office of Governor other than the elected Governor himself.”

This contention has no support from the Constitution. If it were true, then the Lieutenant Governor has no authority under any circumstances to exercise the powers and discharge the duties of Governor and draw a Governor's pay. For it must be clearly seen that section 15 does not in express words give to the Lieutenant Governor any such powers and privileges, but does expressly say that in certain cases the President of the Senate or, in

case of his disability, the Speaker of the House may act as Governor, but it nowhere expressly says that the Lieutenant Governor, under any circumstances, may act as Governor. Hence, if section 15 is the only section which authorizes the Lieutenant Governor to act as Governor, and it be true, as defendants contend, that he has no authority except such as is expressly given him, then he has no authority, under any circumstances, to exercise the powers of Governor, for it is only by implication that section 15 authorizes him to exercise such powers. The following language in said section 15, to wit:

“If, during a vacancy of the office of Governor the Lieutenant Governor shall be impeached, \* \* \* or become incapable of performing the duties of the office, the President, pro tempore, of the Senate, shall act as Governor; \* \* \* and if the President, pro tempore, of the Senate, \* \* \* shall become incapable of performing the duties pertaining to the office of Governor, the Speaker of the House of Representatives shall act as Governor until the vacancy be filled, \* \* \*”

—is the only language in section 15 which even implies that the Lieutenant Governor shall ever, at any time, exercise the powers of Governor, or even “act as Governor.” However, the above language does imply that, in case of a temporary absence of the Governor, that is, such a temporary absence as renders him incapable of discharging his duties, then the Lieutenant Governor may exercise a Governor’s powers and perform a Governor’s duties, unless, for some of the reasons mentioned, he is rendered incapable of doing so, but it is by implication only that he derives such authority from section 15. But, as heretofore pointed out, section 16 expressly says:

“In case of impeachment of the Governor \* \* \* or inability to discharge the powers and duties of the office, the said office, with its compensation, shall devolve upon the Lieutenant Governor.”

As to the contention of defendants in error that the inhibition in section 4, supra, applies to an elected Governor only, and does not apply to one on whom

the office of Governor devolves, we must answer that the Constitution says no such thing. The Constitution says the Governor shall not be eligible immediately to succeed himself. This inhibition is not confined to an elected Governor, at least by any express language, nor is it confined to any particular length of term, nor is its application restricted to a four-year term. It simply says the Governor shall not be eligible immediately to succeed himself. In its literal sense, and its every practical working sense, a Governor is one who governs, and, conversely, one who governs is Governor. The language of section 4 in its literal significance applies to the one who is governing at the time the circumstances arise for an election to succeed himself, and does not except any one from the force of the ineligibility clause merely because he may have been governing for a short period only.

Defendants in error contend that it should apply only to an elected Governor who has served a four-year term, and that it should not apply to a portion of a four-year term; that, if the elected Governor should be impeached one week or one day, before the time for filing as a candidate to succeed himself, under such circumstances it would be absurd to apply the provision of said section 4. As to whether these suggested conditions may ever become possibilities, we are not called upon to decide. The present case does not present such a condition, and it would be mere dictum for us to say what should be done under such remote possibilities. It might suffice to say, however, that, if such \*575 conditions should arise, the courts will cross that bridge when it is reached.

Defendants in error argue also that the plaintiff’s contention would bring about a condition wherein the elected Governor, if he saw fit to do so, in order to prevent the Lieutenant Governor from running for Governor, might resign or be removed or impeached a week or a day before the time for announcing as a candidate, and thereby force the Lieutenant Governor to act as Governor during the remaining week or day of the term, and then, by applying section 4, prevent the Lieutenant Governor from running for office. This is another bridge which the courts will cross when it is reached. In this connection, however, it is perceived that such remote possibilities might as easily come from the opposite direction. For example, an elected Governor might fail to qualify; he might die on the day before his time for taking office. In such case the office of Governor would devolve upon the Lieutenant Governor for four years, and he might serve until the time arrived for filing as a candidate and

resign, and thereby make it the duty of the President of the Senate or Speaker of the House to act as Governor, with an understanding with the President of the Senate or Speaker of the House that no change would be made in governmental policies, nor in the numerous appointive boards and employees, and again announce and run for Lieutenant Governor, with an understanding with some person running for Governor that, if elected, he would not qualify, but would leave the powers and duties of the office of Governor to devolve upon the Lieutenant Governor, who, if he should be elected as Lieutenant Governor, would then have another four-year term in the office of Governor, and the same proceeding might possibly be repeated for a number of terms, at the end of which terms he could run for Governor himself, claiming that he had been only "Acting Governor," thus perpetuating himself in the office of Governor, the very condition which section 4 expressly prohibits. So, while it is seen that these theoretic possibilities may work both ways, yet none of such conditions are before us now, and that bridge will be crossed when it is reached.

We now have before us an actual and clearly defined problem with the provisions of the Constitution as our only rule for solution. The authorities cited afford us very little light. None of them deal with conditions anything like similar to the conditions here presented, and none of them have been construed constitutional provisions identical with ours.

It is unnecessary to give space to the constitutional provisions of other states, nor to a discussion of the effect which such provisions have in other states, nor is it proper for us to interpret the decisions from other states to the extent of saying what effect they have on such states, but we may properly say what application the decisions of another state has to the law of our state, and may properly say what degree of persuasiveness they have upon us in construing the laws of our state, and, as no decisions have been cited exactly in point, and no constitutional provisions construed identical with ours, we are forced to construe our own Constitution with the effect it has upon our state in view. Again referring to the Crump Case, *supra*, and to the case of *People v. Wells*, 2 Cal. 198, which is quoted from with apparent approval by the Criminal Court of Appeals in the Crump Case, and which is separately cited by defendants, we find that neither of those decisions deal with a condition at all similar to the one here presented. In the Crump Case the court was dealing with an occasion of temporary

absence of the Governor from the state; the question being whether during such temporary absence the Lieutenant Governor had authority to issue pardons. The court was dealing with an absence, a vacancy, which was essentially temporary. The facts in the case and the reasoning of the court show that it was essentially temporary, and that the court had such a condition in view; looked at it from that standpoint of a temporary vacancy in reaching its final conclusion. In that case, the absence of the Governor was only a temporary absence, and the vacancy created in his office was only a temporary vacancy. The Governor, though temporarily absent, still had the constitutional right, upon his return, to assume the duties of the office of Governor, but, under the conditions here presented, the impeached Governor has no right to return and oust the present Governor and assume the powers of the office of Governor. Mr. Walton's rights to the office, his tenure of office, his term of office, which as the California case says, belonged to him as an individual, have been terminated and foreclosed by the court of impeachment, but, as was also held in the California case, the people's right to a continuous functioning of the government has not ceased.

These are the conditions which we have here, and section 16 provides for just such conditions. Hence neither the Crump Case nor the California case are controlling in this case further than heretofore indicated. Defendants lay stress upon the concluding words of section 16, to wit, "or until the disability shall be removed." We are dealing with a condition where the disability cannot be removed; the law provides no means for its removal; it has become final; and it is our duty to avoid speculations and deal with the actual condition which confronts us.

Plaintiff in error cites three Oregon cases, viz. *Chadwick v. Earhart*, 11 Or. 389, 4 P. 1180; *Olcott, Gov., v. Hoff, Treas.*, 92 Or. 462, 181 P. 466; *State ex rel. Roberts v. Olcott*, 94 Or. 633, 187 P. 286, in support of his contentions.

We do not feel at liberty to say what effect the decisions of the court of Oregon have upon \*576 the state of Oregon, but it is obvious to us that the conclusions were reached from a different standpoint than the standpoint here presented. The first Oregon case was dealing with the mere sordid question of salary, the question being whether the secretary of state, under certain conditions, was entitled to the Governor's salary, and in the second case also the question of salary appears to have been the bone of contention. In the third case the court

followed the previous holding under the doctrine of stare decisis. However, it was held in the Oregon cases that the person on whom the office of Governor devolves becomes Governor.

The case of Futrell v. Oldham, 107 Ark. 386, 155 S. W. 502, Ann. Cas. 1915A, 571, is cited by defendants in error, but that case is not in point here. In the opinion the court said:

“The case turns on the question whether, on the resignation of the Governor, the then incumbent of the office of President of the Senate succeeded to the vacated office, or whether merely as such President of the Senate the powers, duties and emoluments of the office \* \* \*

Section 16, art. 6, Constitution of Oklahoma:

“In case of impeachment of Governor, or of his death, failure to qualify, resignation, removal from the state, or inability to discharge the powers and duties of the office, the said office, with its compensation, shall devolve upon the Lieutenant Governor for the residue of the term or until the disability shall be removed.”

It will be seen that the only difference between the two Constitutions, both dealing with the same conditions, is that the federal Constitution says, “the same shall devolve on the Vice President,” while the Oklahoma Constitution says, “the said office, with its compensation, shall devolve upon the Lieutenant Governor.” Defendant in error argues that no court has ever decided that the Vice President became President upon the death of the President, and appears to discount the departmental construction which the various departments of the federal government, including the federal Congress, have placed upon the above provisions of the federal Constitution. This construction has stood since April 4, 1841, when, upon the death of President Wm. H. Harrison, Vice President Tyler became President of the United States. For almost a century this construction of the federal Constitution has stood without question. It has been recognized as correct, and acquiesced in, not only by the departments of state and all the states of the Union, but

devolved upon him while he remained President.”

This case is not in point here because it deals with a different condition, and for the further reason that the President of the Senate is not made an executive officer, nor constituted a part of the executive department by the Constitution of Arkansas, as is the Lieutenant Governor constituted by the Oklahoma Constitution. Plaintiff in error also cites section 1, art. 2, of the Constitution of the United States, and the instances, six separate occasions, where, upon the death of the President, the Vice President has succeeded to the office of President and became President of the United States, and has been so recognized. Said section of the federal Constitution is identical with ours, with the exception that ours is the stronger and more definite, as may be seen from the following parallel:

Section 1, art. 2, Constitution of the United States of America:

“In case of the removal of the President from office, or of his death, resignation or inability to discharge the powers and duties of the said office, the same shall devolve on the Vice President.”

officially recognized by every civilized government of the world.

On each occasion where the President of the United States has died, the Vice President has immediately succeeded to the office of President as President of the United States, and thereupon the government of the United States has at once, through its consular offices, notified all governments of the world of the change in Presidents.

Defendant suggests that no court has ever pronounced that to be the law. To our mind, it is so clearly correct that no one has ever presumed to test its correctness in the courts. Therefore it should have greater weight than an ordinary departmental construction, not only because it has stood for almost a century, but because it has been recognized as the correct conception of our system of government, and because, for eighty-five years under this construction, there has been no friction in the machinery of government by reason of such construction. While this construction of the federal Constitution is entitled to weight, yet we are not confined to such construction as our

sole guide in construing our own. The plain language of our Constitution, under the universally accepted meaning of the language used, is sufficient unto itself.

Defendant contends that every man has a right to run for Governor, and if elected, to become Governor once. This we concede, provided he possesses the constitutional qualifications for the office, but he must be thirty years of age; must have been a resident of the state three years; and must not be immediately succeeding himself in the office of Governor. Possessing these qualifications, he may become Governor as often as the people elect him, but, lacking in either of them, his personal ambitions to become Governor are not to be weighed in the scales with the public interest and welfare.

The framers of the Constitution and the people in adopting the inhibition in section 4, supra, must have had reasons for so doing. The Constitution itself does not say what those reasons were, and we shall not assume \*577 to say what they were, but we may say what effect such provision has, and do say that it has a most wholesome and much-needed effect. We judicially know that under the law the Governor of this state has very extensive powers. He is a member of, and ex officio chairman of, several of the most important and powerful boards and commissions of the state. That he has authority to appoint and remove members of many important boards and commissions, and to dictate the employment of every clerk, stenographer, helper, and janitor allowed by law to be employed by such boards. We judicially know that he is ex officio chairman of the state board of equalization, which has power to equalize and fix property values and the rate of taxation; that he has power as chief executive to convoke the Legislature, and to veto acts of the Legislature, to issue pardons to persons who have been duly convicted in the courts, and power to call out the militia and many other far-reaching powers, and we also judicially know that under the law the present incumbent has all of the above-mentioned powers, and as a matter of common knowledge, we know that too long an exercise of such tremendous powers by one man may bring about oppression and detriment to the public welfare, and that too long a tenure of office with the powers which a Governor has may enable him to build up a dangerous, and possibly invincible, political machine with which to perpetuate his powers.

While we do not know, and do not pretend to say, whether the present incumbent or any other Governor has ever

used his powers wrongfully or oppressively, yet we do know that section 4 whatever may have been the reason for its adoption, has the effect of preventing these possible dangers, and do know that it is well to guard against them.

Mr. Trapp is just as much a Governor, in every literal and practical sense and effect, as though he had been elected to the office. He has all the powers, emoluments, and immunities which could be conferred upon him by an election, as well as the same individual rights of tenure and occupancy which an elected Governor has, and, except by impeachment for misconduct, there is no provision of law by which he can be divested of such rights until the end of his term. He is now filling the office which, upon the impeachment of Mr. Walton, devolved upon him by section 16, and section 4 says, "The Governor shall not be eligible immediately to succeed himself."

Discerning our system and plan of government, and our constitutional provisions for the operation of same as we do, the reasons herein given become potent and conclusive.

The judgment of the trial court is therefore reversed, with directions to issue the order of injunction herein sought.

Reversed.

MASON, PHELPS, LESTER, HUNT. CLARK, and RILEY, JJ., concur.

NICHOLSON, C. J., dissents.

BRANSON, V. C. J. (dissenting).

In this court the parties bear the same adversary positions as they bore in the district court. They are, therefore, referred to as plaintiff and defendants.

One Kirby Fitzpatrick, as plaintiff, sued the state board of public affairs, the state election board, and the individual members of each. He prayed relief, enjoining the defendants from causing to be printed on the official Democratic primary ballots to be used throughout the state in the primary, to be held, as required by law, the first Tuesday in August, 1926, the name of M. E. Trapp. The said M. E. Trapp had duly filed his application with the said defendant election board to be placed on such ballots as a candidate for nomination for Governor of Oklahoma,

and his said application to be placed on said ballots had been by said board accepted.

The question of the propriety of the injunctive remedy sought is by none of the parties drawn in question, and the same will, therefore, not be discussed. Only a part of the substance of the pleadings is necessary to be stated for a clear understanding of the issue.

At the regular November election, 1922, one J. C. Walton was duly elected as Governor of the state of Oklahoma. He was inaugurated by taking the constitutional oath on the 8th day of January, 1923, and thereafter continued to fill the office until the 23d day of October, 1923, when the House of Representatives duly assembled, filed impeachment charges with the state Senate, and the state Senate did, by resolution, on said last-named date, suspend him from office; but on the trial the charges were sustained, and judgment entered removing him from office. Section 168, C. O. S. 1921.

At the same time the said Walton was elected Governor, the said M. E. Trapp was duly elected Lieutenant Governor of the state of Oklahoma for the constitutional term of four years, beginning on the 8th day of January, 1923, and on said date the said M. E. Trapp qualified as Lieutenant Governor by taking the constitutional oath of office, and, as defendants contend, has ever since been Lieutenant Governor by reason of his election to said office and his qualification as such officer.

An extended discussion of the one question presented is unnecessary to make lucid the conclusion we reach. That one question is whether the said M. E. Trapp is eligible to be Governor for the term for which he seeks to be nominated and elected, and which term begins under the Constitution the second Monday in January, 1927. The plaintiff alleges that he is ineligible, and contends that, \*578 because of his ineligibility, he should not be placed on the primary ballots as aforesaid; while the defendants, taking the view that he is eligible, have accepted his filing, and intend to place his name, unless prevented from doing so, upon such ballots.

Whether he is eligible depends upon the construction to be placed on certain provisions of the Constitution of the state. The correlation of these said provisions are before this court for the first time, and we must say what they mean, for they are not without ambiguity. We have no exact precedent from the decisions of any other state to ease our task, for, while we find similar provisions in many

Constitutions, we find none of them exact as ours in their entirety. The decisions of other courts hereinafter cited are helpful so far as they deal with provisions similar to certain provisions here in question, but from the point at which they stop we must follow a rule of reason all our own. It is admitted that the ineligibility attaches only to the Governor.

Before considering the particular provisions which bear directly on the dispute, consideration of the provisions of the Constitution as to who may be Governor and how he may become Governor we consider important. Bearing thereon we cite, but give only the substance of, the provisions, constitutional and statutory.

Article 6 (Williams' Oklahoma Constitution) creates the executive department of state government, names the officers in whom executive authority is lodged, and, in a measure, the conditions under which such authority is so lodged. Section 3 thereof makes any male person who has been an elector of the state for three years, and is not less than thirty years of age, eligible to be elected either Governor or Lieutenant Governor. Section 1 thereof provides, among other things:

"The executive authority of the state shall be vested in a Governor, Lieutenant Governor," etc.

It cannot be considered amiss to point out here that the express language of this section vests executive authority in the Lieutenant Governor of the state. Just when he can exercise the same, and what authority he can exercise, depends upon other provisions of the Constitution hereinafter discussed. Before going to them, however, we think it important to call the attention of the reader to the fact that article 3 (Williams' Oklahoma Constitution) provides for mandatory elections for state and other officers. The provisions of said article 3 of the Constitution as to mandatory elections were vitalized by statutory enactments passed by the first state Legislature of the state. This Legislature convened soon after Statehood day, which was November 16, 1907, and the statute so vitalizing the said article 3 as to the mandatory selection of officers by popular elections is now brought down in our statutes as chapters 40 and 41, C. O. S. 1921. Section 6093, C. O. S. 1921, vitalizes that provision of article 3 of the Constitution which provides for a mandatory primary system. Section 6126 provides for the election of persons so nominated at the primary the

first Tuesday after the first Monday of November of each even numbered year, beginning in 1908.

Reverting again to the Constitution, we find that section 4 of said article 6 provides that the term of office of Governor, and the term of office of the Lieutenant Governor (which runs concurrently), shall be four years from the second Monday of January next after their election, and that it further provides that the Governor shall not be eligible to immediately succeed himself. We come to the question here at issue: Who is the individual made ineligible to immediately succeed himself? The language of the said section is that the Governor is ineligible to immediately succeed himself. The language of section 1 of the same article makes clear that executive authority is vested in both the Governor and the Lieutenant Governor. These sections contemplate that two individuals shall be elected at the same election for the same term of office, and that executive authority shall be vested in each. They are each required to have the same qualifications, but the latter is not cloaked with the same ineligibility as the former. Each is elected by the electors of the state. We think it is not subject to debate that there is no provision in the Constitution or statute whereby the Governor can be appointed by any individual or collection of individuals. There are ample provisions in the Constitution and statutes under which most of the other numerous officers of the state may fill their respective offices by appointment by the Governor, or other designated appointing power, for section 13 of article 6 provides that the Governor shall commission all officers who are not commissioned by law, and, when any office shall become vacant, he shall, unless otherwise provided by law, appoint a person to fill the vacancy until a successor shall have been elected. Under this provision it is not subject to debate that, if the Lieutenant Governor should die, be removed on impeachment, or remove from the state, or otherwise be taken from the office, the Governor is directed by the said section to appoint a Lieutenant Governor, at least until the succeeding election. If the Governor should die, or be removed from office, there is nothing in the Constitution which authorizes the Lieutenant Governor to appoint a Governor.

We then ask ourselves the question: Can there be, under the Constitution of Oklahoma, a constitutional Governor except as the electorate of the state makes one at an election? We find no provision in the Constitution \*579 which says so, nor do we find any which can be fairly so

construed. Being the chief officer of the state, the ordinary meaning of the language used as to him expressly reserved to the people the sole power to make a Governor. Said section 1 of article 6 is different from other Constitutions dealing with the same matter. It vests executive power, not as a function to an office whoever may be holder thereof, but in individuals, and so far as is involved here, in individuals referred to as Governor and Lieutenant Governor. Section 2 of article 6 makes a distinction between the executive power vested by section 1 in the Governor and the executive power vested in the Lieutenant Governor, in that it makes the executive power of the Governor supreme. Said section 2 says:

“The supreme executive power shall be vested in a chief magistrate, who shall be styled ‘the Governor of the state of Oklahoma,’”

—but it cannot be said, with right reason, that, because this section vests supreme executive power in a chief magistrate, styled the Governor of the state of Oklahoma, it thereby robs the Lieutenant Governor of the executive power which the preceding section said should exist in the Lieutenant Governor. We ask ourselves the question: Under what circumstances could executive power be exercised by the Lieutenant Governor, and what power? Unless we desire to read something into said section 4 of article 6, or to read something out of the same, the conclusion is inevitable that a constitutional Governor is a person nominated at a primary, and elected at a general, election for a term of four years. Under said section 2 his right to use the executive power vested in him by section 1 is supreme, and, when it exists at all, it supercedes any executive power vested in the Lieutenant Governor, and such power so vested in the latter is dormant until some condition arises under which he can exercise the same. The Governor exercises supreme executive power from the day of his inauguration for a period of four years, subject to the conditions of sections 15 and 16 of article 6, which are, in substance, to wit, his impeachment, failure to qualify, resignation, removal from the state, or inability to exercise the same, or vacancy in his office. When some one of these contingent conditions arises, it operated to strike down, or suspend, the Governor's executive power.

And, under such circumstances, shall we say that the executive power vested in the Lieutenant Governor cannot then be exercised by him? That part of section 1 in referring to the Lieutenant Governor is meaningless, unless the exercise of executive authority by the

Lieutenant Governor was intended to be conditioned on the happening of some of the provisions enumerated in sections 15 and 16 of article 6. If some of said conditions exist, then under the said sections the performance of the duties of the supreme executive, whatever those may be made by law, are charged to the Lieutenant Governor, but the performance of these duties by him are not, as Governor for the Constitution does not say so, and he was not so elected. The Constitution does not say when the Lieutenant Governor exercises executive authority so given him by section—he does so as Governor—but said section 1, when read in the light of the other sections of article 6, clearly recognizes that the elected Governor may be unable to exercise the same or to fill the office either because of impeachment, conviction on impeachment charges, death, failure to qualify, removal from the state, or some other inability, such as absence from the state, sickness, etc. The constitutional convention, knowing that some of the above disabilities might exist, or that the office might become vacant, and knowing that the same must be continuously filled in the sense that the duties of the office must be performed in the interest of the public good, in effect says that, if from any of these causes he, the Governor, is suffering from inability to discharge the duties of the office, the said office, with its compensation, shall devolve upon the Lieutenant Governor for the remainder of the term or until the disability shall be removed.

From the oral argument presented by counsel for plaintiff, the writer is unable to escape the conclusion that plaintiff's position is that we must turn the question here in dispute solely upon the language of the said section 16, and that part thereof which provides:

“That the said office, with its compensation, shall devolve upon the Lieutenant Governor for the residue of the term or until the disability shall be removed.”

Diligent search can be made of each section of said article 6, creating and dealing with the executive department, and nothing therein can be found of an executive nature to be done by the Lieutenant Governor, except when a contingency arises as contemplated by sections 15 and 16. There is nothing in any section of said article (and no other article) that either expressly or by fair intendment indicates that, on the contingency of said sections arising,

the Lieutenant Governor can exercise executive authority in any status other than as Lieutenant Governor. And can any reason be given why it should be exercised by him other than as Lieutenant Governor when the only section vesting such authority in him says that it is vested in a Lieutenant Governor? The Governor being possessed of supreme executive authority until some contingency, as specified supra, arises, no executive authority can be exercised by the Lieutenant Governor, but, when such contingency does arise, \*580 he performs the duties of the office merely as the occupant of the office of Lieutenant Governor, to which he was elected.

Suppose we accept the contention of the plaintiff referred to in the foregoing paragraph, to the effect that the question must be decided by the language, “that the said office, with its compensation shall devolve upon the Lieutenant Governor,” and do not consider other sections dealing with the same matter (to do this, however, would violate all rules of constitutional and statutory construction), we then are faced with a definition of the word “office” as given in the latest authentic edition of Webster's New International Dictionary as “a right to exercise a public function or employment and receive the emoluments thereto belonging.” (Webster gives another: “In its fullest sense, office embraces the elements of tenure, duration, duties, and emoluments.”) Suppose we substitute the said definition of office in the sentence relied on by the plaintiff. It will then read that the right to exercise the public functions (of the Governor—ours), and receive the emoluments thereto belonging, devolves upon the Lieutenant Governor. Would such sentence demote him as Lieutenant Governor and promote him as constitutional Governor? Would that strip him of his character as one official, and make him another official? No such conclusion can be reached by any fair or logical process of reasoning, and there is no provision in the Constitution of the state whereby a person elected as one official may, by operation of law, take on the status of another official. If we even omit Webster's definition set out, supra, we find in sections 15 and 16 of article 6 that the term “office” and “duties and powers of the office” are shown by the context to have been intended to mean that, when the person elected as Governor or Lieutenant Governor dies, or is otherwise incapacitated, it is only the duties and powers which he might have exercised that can be performed by another and distinct officer.

It must be noted that section 16 draws no distinction between his status in exercising executive authority by



the Lieutenant Governor where there is a permanent disability, such as death or removal from office, and where there is merely a temporary disability on the part of the supreme executive. This was clearly pointed out in the case of *Ex parte Hawkins*, 10 Okl. Cr. R. 396, 136 P. 991, and in *Ex parte Crump*, 10 Okl. Cr. 133, 135 P. 428, 47 L. R. A. (N. S.) 1036, in which the Criminal Court of Appeals of this state construed sections 15 and 16 of article 6, supra. In so construing them, that court cited with approval the logical reasoning of the Supreme Court of California in the case of *People v. Wells*, 2 Cal. 198. There is no section of the Constitution, unless we read something into it, which undertakes to make the Lieutenant Governor a constitutional Governor merely because he may exercise powers that would be, but for some contingency as set out above, exercised by the supreme executive. But plaintiff argues vigorously that the Constitution never contemplated that a vacancy should ever exist in the office of Governor. The idea plaintiff expresses is only true in the sense that the Constitution never contemplated that there should not be some one within the state who could exercise executive authority ordinarily exercised by the Governor. But there is nothing to be found therein which indicates that it must always be exercised by the officer known as Governor. This is clear from section 15, which, among other things, says:

“If, during a vacancy of the office of Governor, the Lieutenant Governor shall be impeached, displaced, resign, die or be absent from the state, or become incapable of performing the duties of the office, the President, pro tempore, of the Senate, shall act as Governor until the vacancy be filled or the disability shall cease.”

We think this section clearly shows that the makers of the Constitution contemplated that a vacancy might exist in the office of Governor, either temporary or permanent. When a permanent vacancy occurs, said section clearly directs that the Lieutenant Governor shall exercise the powers and duties of the office, and, if during that time he (the Lieutenant Governor) should be impeached, displaced, resign, die, or be absent from the the state, section 15 directs that the President pro tempore of the Senate shall perform the duties of the office, and also provides for additional succession to such duties. Should we give the said constitutional provisions the construction

contended for by plaintiff, and say, as he desires, that, when the Governor is removed from office, the Lieutenant Governor becomes the constitutional Governor, it would be tantamount to saying that the Lieutenant Governor as such was not given any executive authority, under any contingency, by the language of section 1. Such would lead to confusion, and such confusion, as we believe, the adroit minds of those who framed the Constitution would have prevented had they anticipated this court would read into the Constitution a construction of its provisions that would make a Lieutenant Governor constitutional Governor, though never elected as such. The inability of the Governor to immediately succeed himself is a limitation upon the right given to every citizen of the state to seek this high office who possesses qualifications set out above. Unless clear from the language used, we must not give this restrictive provision a meaning that would so penalize a man, who had been elected only as Lieutenant Governor, when, and if while serving, he should be nominated and elected Governor, he would be disqualified to take the office when inauguration day \*581 arrived, if the Governor had died or been removed between election day and inauguration day. Should we give it the construction plaintiff contends for, then the minute the Governor resigns, is removed on impeachment, or dies, the Lieutenant Governor instantly becomes the constitutional Governor by operation of law, and the office of Lieutenant Governor thereby becomes vacant. If this is the law, under section 13 of said article 6, supra, he could immediately appoint a Lieutenant Governor, and, if feeling friendly to the deposed Governor, he could forthwith hand such impeached and removed Governor a commission as the Lieutenant Governor of the state, and then, if the friendship extended that far, out of personal consideration for the Governor so removed, could resign himself as Governor, whereupon the Governor so impeached could forthwith become the constitutional Governor by operation of law. Shall we read these provisions into article 6, which might bring about such conditions when otherwise they would not be possible. If on the removal of the Governor the Lieutenant Governor automatically is removed from the office to which he was elected, and instantly becomes Governor, in the exercise of his appointive power, under section 13, he is directed to appoint some one as Lieutenant Governor, and could do it forthwith, and this would operate to make it impossible that the President pro tempore of the Senate would ever succeed to the performance of the duties of Governor, as was clearly contemplated in the

succession line to such duties as set out in section 15 of the Constitution.

The construction we give leaves effective the ineligibility of the elected Governor to be or become Governor for the term immediately succeeding that for which he was elected and served either in part or in whole, and does not extend the said ineligibility to an individual not specifically made ineligible by section 4. Again, should we give the meaning plaintiff contends for, we would make it possible to defeat such intent of section 4 in this, to wit, that the elected Governor, after serving for approximately three and one-half years, could resign before the primary, the Lieutenant Governor would then become automatically the constitutional Governor, and the Governor elected for the term then running, thus, by his own act, making himself eligible to be Governor for the next term, could forthwith enter the race, and, if elected, would be qualified, for that he would not be immediately succeeding himself, a constitutional Governor having served in the interim. Likewise, in the instant case, if M. E. Trapp is Governor in the constitutional sense of the term, he could forthwith appoint a Lieutenant Governor; then resign. His appointee would then be the constitutional Governor, and Trapp could continue his campaign, and, if elected, could qualify as Governor the second Monday in January, 1927, for the reason that he would not be "immediately succeeding himself," but another constitutional Governor would have filled the office in the interim. No such possibility of juggling with this high office was ever intended, but, when all provisions are considered, the Constitution means that, if A. is honored by being elected Governor for a term of four years, he is ineligible to be Governor the next term which begins four years later. That is what the Constitution says, and it means that, and nothing more. That meaning prevents possible and probable unseemly and disconcerting conditions, and we must adhere to it.

We are driven to these conclusions: First, that under the Constitution of Oklahoma, there cannot be a constitutional Governor, except when elected as such by the electors of the state. Second, that under section 1 executive authority is vested in both the Governor and the Lieutenant Governor, but that under section 2 supreme executive authority is vested in the Governor, and the Lieutenant Governor cannot exercise executive authority until a contingency arises, as set forth in sections 15 and 16 of said article. Third, that under said sections a vacancy may occur and exist in the office of Governor, in

which event the Lieutenant Governor, as such, exercises the executive authority which the Governor, but for the arising of the contingency, would have exercised. Fourth, that, if while so exercising such authority, the Lieutenant Governor is impeached, displaced, resigns, dies, or is absent from the state, etc., the President pro tempore of the Senate may perform such duties. Fifth, that the Lieutenant Governor, who runs and is elected as such, cannot by operation of law be made a constitutional Governor, but is merely a constitutional Lieutenant Governor, and may exercise executive authority when the Chief Executive, to wit, the Governor, is removed, dies, or cannot otherwise act. Sixth, that this construction gives force to the language of section 1, section 2, section 4, section 13, section 15, and section 16, which are all the sections dealing with the subject, and thereby creates no possibility of a confusion in the performance of the executive functions. Neither does it destroy or strike down the succession provided by section 15 of said article to the duties of the office of the executive, such as might occur otherwise.

We think our reasons and conclusions are borne out by these cases: *Sadler State ex rel. v. La Grave*, 23 Nev. 216, 45 P. 243, 35 L. R. A. 233; *State ex rel. Hardin v. Sadler*, 23 Nev. 356, 47 P. 450; *People v. Cornforth*, 34 Colo. 107, 81 P. 871; *Clifford v. Heller*, 63 N. J. Law, 105, 42 A. 155, 57 L. R. A. 312; \*582 *People v. Budd*, 114 Cal. 168, 45 P. 1060, 34 L. R. A. 46; *State v. McBride*, 29 Wash. 335, 70 P. 25; *State ex rel. Chatterton v. Grant*, 12 Wyo. 1, 73 P. 470, 2 Ann. Cas. 382; *Clifford v. Heller*, 63 N. J. Law, 105, 42 A. 155, 57 L. R. A. 312; *Futrell v. Oldham*, 107 Ark. 386, 155 S. W. 502, Ann. Cas. 1915A, 571.

In the above cited case of *People v. Budd*, 114 Cal. 168, 45 P. 1060, 34 L. R. A. 46, the court, in part, says:

"It will be seen that in case of a vacancy in the office of Governor the vacancy is not to be filled, but the powers and duties devolve upon the Lieutenant Governor, who does not cease to be Lieutenant Governor. Under such circumstances it would hardly be contended that when the powers and duties of the Governor devolve upon the Lieutenant Governor the latter thereby becomes Governor, and can appoint a Lieutenant Governor. Nor do I think it could be contended that when the President pro tempore of

the Senate acts as Governor he could appoint a person to fill the vacancy in the office of Lieutenant Governor. If he could, he would then appoint himself out of office, and it would be his duty to do so."

Again, if we consider sections 15 and 16 separately instead of together, do we find anything in section 16 which authorizes M. E. Trapp to be Governor? Under the facts as they were and are, can we not see by an analysis of that section that, when Trapp began to perform the duties of the office, it was not as Governor? No one contends for a moment that mere inability or disability on the part of the elected Governor would make the Lieutenant Governor Governor in fact. Under this section 16 the first thing mentioned is, "In case of impeachment of the Governor, \* \* \* the office 'devolves,' etc., upon the Lieutenant Governor."

What does impeachment mean? And could impeachment have made Trapp Governor? It certainly could if the word "devolve" means what plaintiff contends, for he says that is the one word which made Trapp Governor. This court has definitely said through Justice Harrison in the case of *State ex rel. Trapp v. Chambers*, District Judge, 96 Okl. 78, 220 P. 890, 30 A. L. R. 1144, that—

" 'Impeachment' of the Governor, within the meaning of section 16, art. 6, of the Constitution, is the adoption of articles of impeachment by the House of Representatives, and the presentation thereof to the Senate, and the indication by that body that the same are accepted for the purpose of permitting prosecution thereof, and the impeachment of the Governor operates to suspend him; the duties and emoluments of the office automatically devolving upon the Lieutenant Governor for the remainder of the term or until the disability is removed by the acquittal of the Governor of the charges preferred against him."

So the word "devolve" clearly from said opinion did not make Trapp Governor while impeachment charges were

pending against Walton, for this court said there: "The duties and emoluments" of the Governor "devolved" upon Trapp.

The second contingency set out in section 16 is, in case of death, the office "devolves." Walton was not then, and is not now, dead, so "devolve" did not make Trapp Governor under that contingency. The third is, in case of his failure to qualify, the office "devolves." Walton did not fail to qualify, and "devolve" could not make Trapp Governor under that contingency. The fourth contingency is in case of resignation, the office "devolves." "Devolve" did not make him Governor for this reason, for Walton did not resign. The fifth contingency is, in case of his removal from the state, the office "devolves." Walton did not remove from the state, so that contingency not having taken place, "devolve" did not make Trapp Governor. The sixth and last contingency of said section 16 is in case of inability to discharge the powers and duties of the office, the office "devolves" upon the Lieutenant Governor "until the disability is removed." This contingency did not permit "devolve" to make Trapp Governor, for there was no "inability" on the part of Walton to discharge the powers and duties of Governor, for that "inability" is a condition that may be removed or terminated, or, in other words, is temporary. It is defined by lexicographers as "an inherent lack of power to perform the thing in question." An illustration would seem to make it clear. For instance, if Walton had been afflicted with insanity, this would have brought about a lack of power to perform the duties of the office which inhered in him personally, and such inability as might be removed such as acquittal on the impeachment charges would have restored him to the right to perform the duties of the office.

Section 16 was given this meaning as far back as 1913, by Judge Henry Furman, a man of recognized learning, and a judge of eminent ability. In the case of *Ex parte Hawkins*, 10 Okl. Cr. 396, 136 P. 991, he said:

"This case presents simply a cold question of law, and must be decided as such without reference to any other considerations. Article 6, § 16 (Williams' Constitution, § 165) provides in express terms that all of the powers of the Governor shall devolve upon the Lieutenant Governor during the inability of the Governor to discharge the powers and duties of

said office, and until such disability shall be removed. \* \* \* The Governor may go to other states \* \* \* without forfeiting his office. \* \* \* During his absence, or inability to act, the Lieutenant Governor is vested with all of the powers of Governor. \* \* \* The Constitution provides that there shall always be some one within the State clothed with power to perform the duties of Chief Executive. \* \* \* The powers of the Lieutenant Governor to act, during the inability of the Governor, are not derived from the invitation or request of the \*583 Governor; but they rest alone upon the provisions of the Constitution of Oklahoma.”

This comes from the pen of one long since removed from divergent judicial and political views. He was discussing the identical section of the Constitution plaintiff relies on as making a Governor out of a Lieutenant Governor. Judge Furman said in brief that, during an inability of the Governor to act, the Lieutenant Governor came forward, not to say “I am Governor,” but to do the work and perform the duties which the Governor would have done but for the inability. This shows clearly the futility of considering section 16 separate from sections 1 and 15 of the same article.

Plaintiff admitted in oral argument that section 15 should come after section 16; that this mistake was made in enrolling the article by the enrolling clerk. This is only important, if at all, in reading the two sections together. If they are so read in the light of the above authorities, they will in substance be: When the Governor has impeachment charges pending against him, fails to qualify, resigns, removes from the state, or possesses inability to act, or (section 15) if during a vacancy of the office of Governor from any of the above causes which would create a vacancy, or from death, or removal by a judgment of a court of impeachment, the duties and powers of the Governor are held and performed by the Lieutenant Governor, and if during such vacancy the Lieutenant Governor suffers impeachment or removal from office or inability to act, the President pro tempore of the

Senate shall perform the duties, then the Speaker of the House, and then such other persons as the Legislature may provide by law.

Section 168, C. O. S. 1921, on impeachments, provides in closing:

“If two-thirds of the Senators present shall vote yea upon any charge or count contained in the article of impeachment, the accused shall be adjudged guilty [by the Senate as a court of impeachment—ours], and the judgment of the court shall be that he be removed from office.”

That is what created the vacancy in the office of Governor in the present term, and was such a vacancy in such office as is referred to in section 15 of article 6 of the Constitution, and during which that section and section 16 requires that the Lieutenant Governor shall have the power and perform the duties of the office and such of them as would otherwise be required of the Governor. It was such contingency actually occurring which was anticipated by the Constitution as the reason for vesting executive authority in the Lieutenant Governor in section 1 of the same article clearly to be exercised on the contingencies set out in sections 15 and 16.

We feel that the usage grown up in departmental construction of the national government that on a vacancy in the office of the elected President the Vice President becomes President is not even persuasive here, for there is nothing in the Constitution of the United States that makes the elected President, or a successor to him, ineligible to succeed himself, and the question here could never arise as to the presidency.

It must be noted in conclusion that not one decided case from all the states is cited to support the opinion of the court on the question here involved, though there are numerous ones, as set out above on similar questions.

The writer believes the judgment of the trial court should be affirmed.

#### All Citations

121 Okla. 83, 248 P. 569, 1926 OK 584

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311 Ark. 187  
Supreme Court of Arkansas.

Winston BRYANT, Attorney General, Appellant,  
v.

Dr. Arthur ENGLISH, the Republican Party of  
Arkansas, the Democratic Party of Arkansas, and  
Martin Borchert, Appellees and Cross-Appellees,

v.  
Jim Guy TUCKER, Lieutenant  
Governor, Cross-Appellant.

No. 92-1284.

Dec. 4, 1992.

Suit for declaratory judgment was filed requesting interpretation of various provisions of the Constitution of Arkansas regarding succession to the Office of Governor when the Governor resigns with more than 12 months remaining in term of office. The Circuit Court, Pulaski County, John B. Plegge, J., entered judgment declaring that upon resignation of Governor, powers and duties of the Office of Governor, but not office itself devolves upon Lieutenant Governor for the remainder of four-year term. Court also ruled that special election to fill office is not required and that Lieutenant Governor is not authorized to appoint successor to the Office of Governor. Attorney General appealed, and Lieutenant Governor cross-appealed. The Supreme Court, Dudley, J., held that: (1) constitutional amendment provides that the Lieutenant Governor serves as Governor for the residue of the term and not merely until a new Governor is elected at special election, and (2) Office of Governor itself devolves upon Lieutenant-Governor.

Affirmed.

Glaze, J., concurred in part and dissented in part with opinion which was joined by Corbin, J.

West Headnotes (5)

- [1] **Constitutional Law**  
  - ⇔ Contemporary circumstances**Constitutional Law**

⇔ Context of the times

In order to determine meaning and extent of coverage of constitutional amendment, court may look to history of the times and condition existing at time of the adoption of the amendment in order to ascertain the mischief to be remedied and the remedy adopted.

4 Cases that cite this headnote

- [2] **Constitutional Law**  
  - ⇔ Operation as to constitutional provisions previously in force
Repeal by implication is accomplished when a constitutional amendment takes up a whole subject anew and covers the entire subject matter of the original Constitution.

3 Cases that cite this headnote

- [3] **Constitutional Law**  
  - ⇔ Plain, ordinary, or common meaning
Constitutional amendment is to be interpreted and understood in its most natural and obvious meaning.

1 Cases that cite this headnote

- [4] **Public Employment**  
  - ⇔ Term of person filling vacancy**States**  
  - ⇔ Lieutenant Governor**States**  
  - ⇔ Resignation, suspension, and removal or impeachment of officers
Constitutional amendment governing office of Lieutenant Governor provides that when the Governor resigns, the Lieutenant Governor serves as Governor for the residue of the term and not merely until a new Governor is elected at a special election. Const.Amend. No. 6, § 4.

1 Cases that cite this headnote

- [5] **Public Employment**

⇨ Manner and Mode of Filling Vacancy

States

⇨ Lieutenant Governor

States

⇨ Resignation, suspension, and removal or impeachment of officers

Upon resignation of the Governor, the Office of Governor itself devolves upon the Lieutenant Governor, not merely the powers and duties of the Office of Governor. Const. Amend. No. 6, § 4.

1 Cases that cite this headnote

### Attorneys and Law Firms

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### Opinion

\*\*309 DUDLEY, Justice.

On November 6, 1990, Governor Bill Clinton was re-elected to the Office of Governor, and Jim Guy Tucker was elected to the Office of Lieutenant Governor. Both were elected and commissioned to four-year terms of office that commenced on January 15, 1991. On November 3, 1992, a little over twenty-one months later, Governor Clinton was elected to the Office of President of the United States of America. It is anticipated that Governor Clinton will resign from the Office of Governor before January 20, 1993, which is the day the oath of the Office of President of the United States will be

administered. The result will be that a vacancy will exist in the Office of Governor, and more than twelve months will remain on the four-year term to which Governor Clinton was elected.

This suit for a declaratory judgment was filed requesting an interpretation of the various provisions of the Constitution of Arkansas regarding succession to the Office of Governor when the Governor resigns with more than twelve months remaining in the term of office. The trial court entered a judgment declaring that upon the resignation of Governor Clinton, the powers and duties of the Office of Governor, but not the office itself, will devolve upon the Lieutenant Governor for the remainder of the four-year term. The trial court also ruled that a special election to fill the office is not required and that the Lieutenant Governor is not authorized to appoint a successor to the Office of Governor. Attorney General Winston Bryant appeals from the judgment, \*190 and Lieutenant Governor Jim Guy Tucker cross-appeals from that part of the judgment declaring that the Office of Governor does not devolve upon the Lieutenant Governor. On direct appeal, we affirm the trial court's judgment and hold that upon the resignation of a Governor, the powers and duties of the Office of Governor devolve upon the Lieutenant Governor for the remainder of the four-year term, and, on cross-appeal, we reverse and hold that the Office of Governor itself devolves upon the Lieutenant Governor.

### I. Procedure

The Declaratory Judgments Act, Ark. Code Ann. §§ 16-111-101—16-111-111 (1987), provides that the purpose of the act is “to afford relief from uncertainty ... with respect to ... status,” and the act is to be liberally construed to that end. The parties stipulated in the trial court that they anticipate that Governor Clinton will resign from the Office of Governor, and the trial court held that a justiciable controversy exists. We have concluded that we should decide the issue because it is a matter of significant public interest and a matter of constitutional law. See *Bennett v. N.A.A.C.P.*, 236 Ark. 750, 370 S.W.2d 79 (1963).

### II. Background

Neither the 1836 Constitution of Arkansas nor the 1861 constitution provided for the office of Lieutenant Governor. Those constitutions placed the President of the Senate next in the line of succession for the Office of Governor, and they required a special election if the remaining term of the Governor exceeded a certain period of time. The 1864 constitution, for the first time, created the office of Lieutenant Governor and provided for a statewide election to the office. Ark. Const. of 1864, art. VI, § 19. The 1868 constitution also provided for a Lieutenant Governor and stated that if the Office of Governor became vacant, the Lieutenant Governor served during the "residue of the term." It made no provision for a special election to fill the vacancy. Ark. Const. of 1868, art. VI, § 10.

Unfortunately, the present Constitution of Arkansas, adopted in 1874, did not originally provide for the office of Lieutenant Governor. Article 6, sections 12 and 13 of the present constitution, originally placed the President of the Senate, \*191 followed by the Speaker of the House, in the line of gubernatorial succession, but article 6, section 14 required a special election to fill a vacancy in the Office of Governor when the office was vacated more than twelve months before the expiration of the Governor's \*\*310 term. Article 6, section 12 of the present constitution originally provided that in the event of the "death, conviction or impeachment, failure to qualify, resignation, absence from the State or other disability of the Governor," the powers and duties of the office devolved on the President of the Senate "for the remainder of the term, or until the disability be removed, or a Governor elected and qualified." When construed with the special election procedure of article 6, section 14, the reason for each of these three limitations on the President of the Senate's period of service is obvious. Each limitation on service was tied to a different contingency. If the Governor became disabled, the President of the Senate served as Governor until the disability was removed. If the office became vacant through death, impeachment, or resignation of the Governor less than twelve months before the end of the Governor's term, the President of the Senate served "for the remainder of the term." If the vacancy in office occurred more than twelve months before the end of the Governor's term, the President of the Senate served until "a Governor [was] elected and qualified" at a special election called in accordance with article 6, section 14.

Only days after his inauguration on January 18, 1907, Governor John Sebastian Little suffered a nervous breakdown. Arkansas History Commission, 1 *Annals of Arkansas 1947* 239 (Dallas T. Herndon ed., 1947) [hereinafter *Annals*]. On February 11, 1907, Governor Little wrote Senator John I. Moore, the President of the Senate, and asked him to assume the duties of Governor. Senator Moore served as acting Governor until the adjournment of the General Assembly on May 14, 1907. *Id.* at 239. He was succeeded as acting Governor by Senator X.O. Pindall, who was elected President of the Senate shortly before its adjournment. Senator Pindall served as chief executive for sixteen months from May 15, 1907, until January 11, 1909, when he was replaced by the newly elected President of the Senate, Jesse M. Martin. *Id.* at 240. Senator Martin was acting Governor for three days until the inauguration of George W. Donaghey, who had been elected Governor at the general election of 1908. \*192 *Id.* at 240. In sum, during the two-year period between January 15, 1907, and January 15, 1909, the affairs of Arkansas were in the hands of no less than six governors: Jeff Davis, John Sebastian Little, John I. Moore, X.O. Pindall, Jesse M. Martin, and George Donaghey. *See id.* at 233, 239-41.

The first seven months of 1913 were even more trying; they amounted to a gubernatorial succession crisis. The crisis was triggered when Governor Joe T. Robinson resigned from office following his election to the United States Senate. *Id.* at 247. W.K. Oldham was President of the Senate when Governor Robinson resigned, but because Senator Oldham was prohibited by article 5, section 18 of the constitution from serving past the end of the legislative session, the Senate elected J.M. Futrell as its President prior to adjournment on March 13, 1913. *See id.* at 251. Oldham argued that pursuant to article 6, section 12, he succeeded to the Office of Governor when Governor Robinson resigned and did not cease to be Governor when a new Senate President was elected. Futrell argued that he became Governor by virtue of his election as President of the Senate two days after Governor Robinson's resignation. In *Futrell v. Oldham*, 107 Ark. 386, 155 S.W. 502 (1913), this court ruled in Futrell's favor, holding that under article 6, section 12, the powers and duties of Governor devolved upon the office of the President of the Senate and not upon the individual occupying that office. In sum, during the first seven months of 1913, state government was headed by five different individuals: George Donaghey, Joe T.



Robinson, W.K. Oldham, J.M. Futrell, and George W. Hays. See *Annals, supra*, at 244, 247, 251. This was labeled our “procession” of governors. Dr. David Y. Thomas, 1 *Arkansas and Its People; A History, 1541–1930* 282 (1930). The newspapers of the time spoke of the confusion. The *Arkansas Democrat* of January 31, 1913, contained an article that began, “Political complications in Arkansas are as thick as a London Fog.” The February 8, 1913, *Arkansas Democrat* carried an article that \*\*311 contains the sentence, “Kill off the antiquated method of filling a gubernatorial vacancy.”

### III. Amendment 6

In February 1913, Representative Kidder introduced a House Joint Resolution for a constitutional amendment that \*193 would create the office of Lieutenant Governor. In part, it was a replication of the provision in the 1868 constitution. The March 5, 1913, *Arkansas Democrat* wrote: “There is no sound argument against the office proposed. It fixes the status of the governor’s successor and does away with a special election to fill a vacancy.” On March 6, 1913, Amendment 6 to the 1874 constitution was proposed by the General Assembly. See 1913 Ark. Acts 1527. Amendment 6 was submitted to, and approved by, the voters at the 1914 general election. See *Combs v. Gray*, 170 Ark. 956, 281 S.W. 918 (1926), for additional history of the adoption.

[1] [2] [3] Amendment 6, section 4 provides: “In the case of the [resignation] of the Governor, ... the powers and duties of the office, shall devolve upon the Lieutenant Governor for the residue of the term....” In interpreting constitutional amendments, we have said that a court, in order to determine the meaning and the extent of coverage of a constitutional amendment, may look to the history of the times and the condition existing at the time of the adoption of the amendment in order to ascertain the mischief to be remedied and the remedy adopted. *Huxtable v. State*, 181 Ark. 533, 26 S.W.2d 577 (1930). “Amendments to a constitution are not regarded as if they had been parts of the original instrument but are treated as having a force superior to the original to the extent to which they are in conflict.” *Grant v. Hardage*, 106 Ark. 506, 509, 153 S.W. 826, 827 (1913). Repeal by implication is accomplished when a constitutional amendment takes up a whole subject anew and covers the entire subject matter of the original constitution. *McCraw v. Pate*, 254

Ark. 357, 494 S.W.2d 94 (1973); *Berry v. Gordon*, 237 Ark. 547, 376 S.W.2d 279 (1964); *Pulaski County v. Downer*, 10 Ark. 588 (1850). Further, a constitutional amendment is to be interpreted and understood in its most natural and obvious meaning. *Carter v. Cain*, 179 Ark. 79, 14 S.W.2d 250 (1929).

[4] Amendment 6 took up a new subject matter of gubernatorial succession. The citizens wanted to prevent any more gubernatorial succession crises and sought to change the procedure previously set out in article 6. It is impossible to reconcile the natural and obvious meaning of the language of the amendment, quoted above, with the special election procedure set out originally in article 6, section 14 in the factual situation before us. If the appellant Attorney General’s suggested meaning were \*194 adopted, and we construed “residue of the term” to only mean the Lieutenant Governor takes office only until the next special election, the constitutional amendment would, in part, amount to an exercise in futility. For these reasons, we hold that amendment 6, section 4 provides that the Lieutenant Governor serves as Governor for the residue of the term and not merely until a new Governor is elected at a special election.

We do not decide whether the special election process set out in article 6 is still viable if the Lieutenant Governor becomes Governor and then vacates the office. That issue is not before us.

[5] The trial court ruled that the “powers and duties of the Office of Governor, but not the Office of Governor” devolved upon the Lieutenant Governor. The trial court’s ruling was undoubtedly based on our decision in *Futrell v. Oldham*, 107 Ark. 386, 155 S.W. 502 (1913), and certainly that case contains language stating that, under article 6, the President of the Senate exercised the powers of the Office of Governor, but did not actually become Governor. For several reasons, we think the holding of *Futrell* should be distinguished when the Governor resigns and his place is taken by the Lieutenant Governor under the provisions of amendment 6.

\*\*312 First, the framers of amendment 6 took verbatim from article 6, section 10 of the 1868 constitution the phrase “the powers and duties of the office shall devolve upon the Lieutenant Governor,” and they did so without having the opportunity to read this court’s opinion in *Futrell*. The House Joint Resolution proposing

amendment 6 was adopted on March 6, 1913, eighteen days before this court handed down the decision in *Futrell* on March 24, 1913.

Second, in deciding *Futrell*, this court was obviously concerned that the President of the Senate had never been elected by a direct statewide vote—he had been directly elected only by the voters of a local state Senate district. The opinion provides:

The central thought [of article 6, sections 12, 13, and 14] is, that the office of Governor is never to be filled at all except by the direct vote of the people themselves, and provision is made by the Constitution for only a temporary devolution of the duties and emoluments of the office upon \*195 some other functionary while a vacancy exists.

107 Ark. at 394, 155 S.W. at 505. Under amendment 6, section 2, the Lieutenant Governor is now an elected by a direct statewide vote of the people at the same time and for the same term as the Governor.

An equally important distinguishing factor is that today, under amendment 6, section 2, the Lieutenant Governor is a member of the executive branch of the government, but under article 6, as interpreted in *Futrell v. Oldham*, the President of the Senate was a member of the legislative branch and remained such while performing the duties of governor only until an election could be called. The opinion provides:

So, if the person discharging for the time being the duties of Governor is still President of the Senate, he cannot be Governor. He may exercise the powers of the latter office—“exercise the office of Governor,” as it is otherwise expressed in another section, but he does not fill the two offices.

107 Ark. at 391, 155 S.W. at 504.

Under amendment 6 we are not faced with the same problem. In fact, allowing the Lieutenant Governor

to succeed to the Office of Governor eliminates the separation of powers and the dual office-holding problems. If the Lieutenant Governor were not to assume the Office of Governor, he would act as Governor and still preside over the Senate and have the power to cast votes in the event of tie votes. This mixing of executive and legislative powers is avoided when the Lieutenant Governor assumes the Office of Governor and sheds the duties of Senate President. For these reasons, *Futrell v. Oldham* is distinguished.

Amendment 6, section 4 provides that if the Office of Governor becomes vacant, “the powers and duties of the office, shall devolve upon the Lieutenant Governor for the residue of the term.” The next section of the amendment, section 5, provides that if the offices of both Governor and Lieutenant Governor become vacant, the President (pro tempore) of the Senate “shall act as Governor until the vacancy [is] filled.” Similarly, the Speaker of the House “shall act as Governor until the vacancy be filled” if the President of the Senate becomes unable to act as \*196 Governor. The difference in language suggests that the Lieutenant Governor, unlike the President (pro tempore) of the Senate or the Speaker of the House, does not merely act as Governor when the Governor resigns. Rather, it suggests that he becomes the Governor.

It is also of some persuasion that for nearly three-quarters of a century the executive branch has treated a lieutenant governor as governor when he filled a vacant governor's office. The first instance occurred in 1926 when Lieutenant Governor Harvey Parnell succeeded Governor John E. Martineau. *Historical Report of the Secretary of State—Arkansas* 230 (1978). It also occurred when Governor Dale Bumpers resigned from the Office of Governor and Lieutenant Governor Bob Riley was commissioned governor, as well as \*\*313 when Governor David Pryor resigned and Lieutenant Governor Joe Purcell was commissioned as Governor. See Commissions in Secretary of State's Office. In addition, we are persuaded that the drafters of amendment 6, and the voters who approved it, knew that article 6, section 2 would remain in place. It provides: “The supreme executive power of the State shall be vested in a chief magistrate, who shall be styled ‘the Governor of the State of Arkansas.’”

Accordingly, we hold that amendment 6, section 4 provides that upon the resignation of the Governor, the

Lieutenant Governor becomes “the Governor of the State of Arkansas.”

One of the parties advanced the argument that amendment 29 of the Constitution of Arkansas requires the Lieutenant Governor to appoint a new governor. We summarily reject the argument and hold that amendment 6 specifically provides for filing a vacancy in the Office of Governor.

Affirmed on direct appeal and reversed on cross-appeal.

GLAZE and CORBIN, JJ., dissent in part and concur in part.

GLAZE, Justice, concurring in part and dissenting in part. I concur in part and dissent in part. My disagreement with the majority court has nothing to do with its holding on the merits. In fact, I totally agree with its decision as it pertains to the merits, but disagree that this court procedurally reached the merits.

This lawsuit is a declaratory judgment action and, as such, \*197 requires that a present actual controversy must exist. In stating this well-recognized principle, this court stated the following:

The Declaratory Judgment Statute is applicable *only where there is a present actual controversy, and all interested persons are made parties, and only where justiciable issues are presented.* It does not undertake to decide the legal effect of laws upon a state of facts which is future, contingent or uncertain. *A declaratory judgment will not be granted unless the danger or dilemma of the plaintiff is present, not contingent on the happening of hypothetical future events; the prejudice to his position must be actual and genuine and not merely possible, speculative, contingent, or remote.* (Emphasis added.)

*Andres v. First Ark. Development Finance Corp.*, 230 Ark. 594, 324 S.W.2d 97 (1959); *see also Files v. Hill*, 268 Ark.

106, 594 S.W.2d 836 (1980); *McFarlin v. Kelly*, 246 Ark. 1237, 442 S.W.2d 183 (1969).

Justice John A. Fogelman stated the following reason for the foregoing rule in a concurring opinion where he said:

The declaratory judgment act is not intended to be the vehicle for advisory opinions to persons not having a justiciable controversy with their apparent adversaries by a court having no jurisdiction. It is far better, in my opinion, that important questions, particularly constitutional ones, be pounded out on the anvil of advocacy by persons whose interests are vitally real, not academic, with all interested parties before the court.

*Block v. Allen*, 241 Ark. 970, 980, 411 S.W.2d 21, 27 (1967).

Let me first point out the obvious—Governor Bill Clinton is *not* a party to this declaratory judgment action. Second, nowhere in the record before this court is it shown that the Governor has resigned or that he intends to resign his office. In an attempt to circumvent this obvious procedural defect in parties and the record, the parties appear to rely upon the Democratic Party of Arkansas's brief wherein it argues as follows:

The fact that Governor Clinton's exact resignation date may not be known is not a bar to determining the \*198 succession issue. Governor Clinton cannot serve both as Governor and President. Article 6, Section 11 of the Arkansas Constitution provides that no “person holding office under the authority of this State, or of the United States, shall exercise the office of Governor, except as herein provided.” Governor Clinton's resignation now that he has been elected President cannot \*\*314 be doubted. Governor Clinton will resign no later than January 20, 1993, in order to assume the Presidency. Thus, it is assured that there will be a vacancy in the Governor's office no later than 58 days after November 23rd. The resulting vacancy in the office of Governor is hardly the hypothetical fact situation feared by the courts.

The parties to this lawsuit *cannot* stipulate or assume how a person not a party or witness in this case might act in

the future; namely, that Governor Clinton will vacate the Governor's office. The majority court is wrong in allowing the parties to make such a stipulation, especially when this factual issue could have been resolved by having made the Governor a party to this action and his resignation could then have been easily confirmed. Nor was the Governor deposed or called as a witness so the resignation issue could be put to rest. Clearly, Governor Clinton has an interest in this cause since this case affects not only his duties and responsibilities as governor, but also involves the emoluments he receives from that office. Until the Governor resigns, the succession issue presented in this cause remains purely hypothetical and contingent upon his vacating the office of Governor.

In an obvious attempt to avoid the Governor's absence in this lawsuit and to cure a record failing to reflect the Governor's resignation, the Democratic Party cites Article 6, Section 11 of the Arkansas Constitution which is captioned "Incompatible Offices" and provides, "No member of Congress, or other person holding office under the authority of this State, or of the United States, shall exercise the office of Governor, except as herein provided." In citing this constitutional language, the Party concludes the Governor's resignation now that he has been elected President cannot be doubted. Of course, this is an assumption or conclusion the parties to this action are unable to make. Clearly, the above constitutional language does not mean Governor Clinton automatically resigns or vacates his office upon \*199 being sworn in as President. In addition, such dual officeholder issues are decided in quo warranto or ouster, not declaratory judgment, proceedings.

My natural inclination is much like the majority court's and the parties' to this case—that (1) the Governor likely will resign sometime prior to January 20, 1993, (2) a vacancy will then exist and (3) the succession problem will be a reality. However, to indulge in this assumption on

the actual facts of this case is to ignore an entire body of law that provides this court only grants declaratory judgment relief when a *present actual controversy exists and all interested persons are made parties*. This court's apparent willingness to address the hypothetical facts present here breaks with clear, prior precedent and, in my view, will permit parties henceforth to stipulate to future facts and events in order to obtain declaratory relief and advisory opinions. This court, instead, should require the presence of Governor Clinton in this lawsuit either as a party or a witness, so a finding as to his resignation from or vacating of office can be established. Only then will an actual controversy exist, allowing this court to decide the succession issue.

One last point—the Democratic Party, recognizing justiciability as a problem, asserts this court nevertheless can declare the law concerning the Governor-succession issue because this is a case of extreme public importance. In support of this assertion, it cites *Robinson v. Arkansas Game and Fish Commission*, 263 Ark. 462, 565 S.W.2d 433 (1978); *Moorman v. Taylor*, 227 Ark. 180, 297 S.W.2d 103 (1957); and *Rockefeller v. Purcell*, 245 Ark. 536, 434 S.W.2d 72 (1968). Suffice it to say, each of these cases, unlike the present case, once involved a justiciable controversy, but the actual controversy later became moot for one reason or another. Here, as already discussed, an actual controversy is yet to occur. The cases cited are simply not on point.

For the reasons above, I would reverse.

CORBIN, J., joins.

#### All Citations

311 Ark. 187, 843 S.W.2d 308

67 So.2d 413  
Supreme Court of Florida, en Banc.

ADVISORY OPINION TO  
ACTING GOVERNOR JOHNS.

Sept. 29, 1953.

On request of acting governor of Florida for an advisory opinion. The Supreme Court held that where state warrants were prepared prior to death of governor of state, and such warrants were signed by comptroller and countersigned in usual manner in name of governor, and warrants were for date subsequent to death of governor, president of the senate, upon whom duties of governor devolved under constitution when governor died, had authority to make executive proclamation adopting, confirming and ratifying such countersignatures as acting governor, and upon such proclamation could cause such warrants to be delivered to payees thereof to be accepted and paid by treasurer of state.

Questions answered.

West Headnotes (2)

[1] States  
↔ Governor

Where state warrants were prepared prior to death of Governor of state, and such warrants were signed by Comptroller and countersigned in usual manner in name of Governor, and warrants were for date subsequent to death of Governor, President of the Senate upon whom duties of Governor devolved under Constitution when Governor died, had authority to make executive proclamation adopting, confirming, and ratifying such countersignatures as Acting Governor, and upon such proclamation he could cause such warrants to be delivered to payees thereof to be accepted and paid by Treasurer of state. F.S.A.Const. art. 4, § 19.

2 Cases that cite this headnote

[2] States  
↔ Governor

Where Governor of state died, so that duties of Governor devolved upon President of Senate under Constitution, President of the Senate when performing duties of Governor was authorized under Constitution to designate himself as "Acting Governor". F.S.A.Const. art. 4, § 19.

1 Cases that cite this headnote

\*413 PER CURIAM.

Honorable Charley E. Johns  
Acting Governor  
Tallahassee, Florida

Sir:

We are in receipt of your request of September 29, 1953, for advisory opinion as follows:

'Honorable B. K. Roberts, Chief Justice, and The Justices of the Supreme Court of Florida

'Tallahassee, Florida

'Re: State Warrants heretofore prepared and signed by former Governor McCarty but not delivered; official signature of President of the Senate when duties of Governor devolve upon him.

'Gentlemen:

'It is my painful duty to advise you that His Excellency Governor Dan McCarty has died, and under the Constitution the duties of Governor devolve upon me as President of the Senate.

'Under Section 6, Article 4 of the State Constitution [F.S.A.] I am directed to take care that the laws of this state are faithfully executed and under Section 13 of Article 4, I am authorized to request the written opinion of the Justices of the Supreme Court as to the interpretation of

any portion of the State Constitution about any question affecting my executive duties and powers.

\*414 'Under Section 24 of Article 4 of the State Constitution, funds may be disbursed from the state treasury only upon the order of the Comptroller, countersigned by the Governor in such manner as shall be prescribed by law.

'Section 1, Article 4 of the State Constitution, provides that the supreme executive power of the state shall be vested in the chief magistrate who shall be styled the Governor of Florida.

'Prior to the death of Governor McCarty on September 28, 1953, many thousand state warrants, several thousand of them representing the payroll of state employees, were prepared and Governor McCarty's signature placed thereon in the usual manner with his full knowledge and consent, which warrants have not yet been delivered. My problem is whether or not I should require the reissuance of all of said warrants bearing my signature or permit the delivery of the above mentioned warrants by the State Comptroller.

'I therefore propound to you the following questions and request your advice or opinion concerning the same:

'1. May I under the powers and duties of Governor devolved upon me pursuant to Section 19 of Article 4, direct that the State Comptroller issue and deliver the above mentioned warrants to the payees named therein without my signature appearing thereon?

'2. If the above question is answered in the negative, then may I by executive order or proclamation approve and adopt the signature of Governor McCarty appearing thereon and direct the issuance and delivery of said state warrants to the payees therein named?

'3. In signing official documents and acts, should I sign the same as Governor, as Acting Governor, or in some other form? If in some other form, please advise me the form in which I should sign.

'Respectfully submitted,

'Charley E. Johns

'President of the Senate upon whom has devolved the duties of Governor by virtue of Section 19, Article 4 of the State Constitution'

[1] In response to your questions one and two which, for convenience, are answered jointly, you are advised that as to those warrants prepared prior to the death of Governor Dan T. McCarty, but bearing date subsequent thereto and which have been heretofore signed by the Comptroller and countersigned in the usual manner 'Dan McCarty, Governor', you may make an executive proclamation adopting, confirming and ratifying said countersignatures aforementioned as your own, as Acting Governor under Section 19, Article IV, of the Constitution of Florida; and upon your so proclaiming, you are advised that you are authorized to cause to be delivered such warrants to the payees thereof to be accepted and paid by the Treasurer of the State of Florida and the funds disbursed accordingly.

[2] In response to your question three, you are advised that under Section 19, Article IV, of the Constitution of Florida, the powers and duties of Governor have devolved upon you by virtue of the death of Governor Dan T. McCarty and it is our opinion that, when performing such executive duties, you are authorized to designate yourself as Acting Governor, by virtue of Section 19, Article IV of the Constitution.

Respectfully submitted,

B. K. ROBERTS

Chief Justice

GLENN TERRELL

ELWYN THOMAS

H. L. SEBRING

T. FRANK HOBSON

JOHN E. MATHEWS

E. HARRIS DREW

Justices.

**All Citations**

67 So.2d 413

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## Thompson, Jeffrey [AG]

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**From:** Ranscht, David [AG]  
**Sent:** Thursday, December 08, 2016 12:02 PM  
**To:** Thompson, Jeffrey [AG]; Gavin, Meghan [AG]  
**Subject:** RE: Constitutional issue re: Lt. Gov assuming Gov's powers  
**Attachments:** State ex rel Lamey v Mitchell.pdf; State ex rel Martin v Ekern.pdf

Cool table indeed.

Here are two more cases (WI and MT). I have a bunch more in a folder to read after lunch.



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**From:** Thompson, Jeffrey [AG]  
**Sent:** Thursday, December 08, 2016 11:46 AM  
**To:** Ranscht, David [AG]; Gavin, Meghan [AG]  
**Subject:** FW: Constitutional issue re: Lt. Gov assuming Gov's powers

See below. Gotta love Wikipedia.

Can we print the cool table?

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**From:** Greenwood, Geoff [AG]  
**Sent:** Thursday, December 08, 2016 11:13 AM  
**To:** Thompson, Jeffrey [AG]  
**Subject:** FW: Constitutional issue re: Lt. Gov assuming Gov's powers

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**From:** Mark O. Lambert [<mailto:marklambert@mchsi.com>]  
**Sent:** Thursday, December 08, 2016 11:12 AM  
**To:** Greenwood, Geoff [AG]  
**Cc:** Tabor, Eric [AG]  
**Subject:** Re: Constitutional issue re: Lt. Gov assuming Gov's powers



Thanks, Geoff. One more thing, historically, when an Iowa Gov has left office before the end of his term, there has not been a Lt. Gov. appointed. Most of the time, these were very short periods of time, though.

[https://en.wikipedia.org/wiki/List\\_of\\_Governors\\_of\\_Iowa](https://en.wikipedia.org/wiki/List_of_Governors_of_Iowa)

Mark

---

**From:** "Geoff Greenwood [AG]" <[Geoff.Greenwood@iowa.gov](mailto:Geoff.Greenwood@iowa.gov)>  
**To:** "Mark O. Lambert" <[marklambert@mchsi.com](mailto:marklambert@mchsi.com)>, "Eric Tabor [AG]" <[Eric.Tabor@iowa.gov](mailto:Eric.Tabor@iowa.gov)>  
**Sent:** Thursday, December 8, 2016 10:25:12 AM  
**Subject:** RE: Constitutional issue re: Lt. Gov assuming Gov's powers

Thanks for contacting us, Mark. We're researching it and will add this to the conversation.

Best regards,



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**From:** Mark O. Lambert [<mailto:marklambert@mchsi.com>]  
**Sent:** Thursday, December 08, 2016 9:54 AM  
**To:** Greenwood, Geoff [AG]; Tabor, Eric [AG]  
**Subject:** Constitutional issue re: Lt. Gov assuming Gov's powers  
**Importance:** High

Eric and Geoff:

In Massachusetts, when Governor William Weld resigned in 1997, Lt. Gov. Paul Cellucci became "Acting Governor" – not "Governor." When Celluci resigned to become US Ambassador to Canada during the Bush Administration in 2001, his Lt. Gov. Jane Swift became "Acting Governor."

Massachusetts Constitution has a similar provision to the Iowa Constitution:

III.--Whenever the chair of the Governor shall be vacant, by reason of his death, or absence from the Commonwealth, or otherwise, the Lieutenant-Governor, for the time being, shall, during such vacancy, perform all the duties incumbent upon the Governor, and shall have and exercise all the powers and authorities, which by this Constitution the Governor is vested with, when personally present.

Hope this is helpful.

228 Wis. 645  
Supreme Court of Wisconsin.

STATE ex rel. MARTIN

v.

EKERN.

June 21, 1938.

Original action. Petition for leave to bring quo warranto proceedings in this court.

Petition granted.

West Headnotes (10)

[1] Courts  
⇔ Wisconsin

Whether office of Lieutenant Governor is held by one without lawful authority is a question publici juris, and is one which relates to the sovereignty of the state, its franchises or prerogatives, or the liberties of its people. Const. art. 5, § 7.

Cases that cite this headnote

[2] Courts  
⇔ Quo warranto

The original jurisdiction of the Supreme Court was properly invoked in quo warranto proceedings to determine whether Lieutenant Governor held office by lawful authority, since question sought to be determined was publici juris and related to the sovereignty of the state, its franchises or prerogatives, or the liberties of its people.

1 Cases that cite this headnote

[3] Public Employment  
⇔ Occurrence and Existence; What Creates or Constitutes Vacancy

The term "vacancy," as applied to an office, has no technical meaning.

2 Cases that cite this headnote

[4] Quo Warranto  
⇔ Use of name of state

Quo Warranto  
⇔ Private persons

A private person who was a citizen, elector, and taxpayer of the state could, upon refusal of Attorney General to bring action, bring an action in the name of the state for the purpose of determining whether appointee to the office of Lieutenant Governor was lawfully in office, since action was for the purpose of vindicating a public right, and upon refusal of Attorney General to bring action legality of appointment could be tested in no other way. St.1937, §§ 17.01(1), 294.04, 370.01(1).

1 Cases that cite this headnote

[5] States  
⇔ Governor

The office of Governor is one of high dignity in which the people have a paramount interest.

Cases that cite this headnote

[6] States  
⇔ Lieutenant Governor

The office of Lieutenant Governor is of great importance because upon incumbent may at any time devolve the powers and duties of the Governor. Const. art. 5, § 7.

1 Cases that cite this headnote

[7] States  
⇔ Lieutenant Governor

Under constitutional provisions relating to the office of Lieutenant Governor, where vacancy occurs in the office of Governor, the powers and duties of that office devolve upon the Lieutenant Governor for the remainder to the term or until the Governor, absent or impeached, shall have returned or the

disability shall cease; but the Lieutenant Governor does not become Governor, and remains Lieutenant Governor, upon whom devolves the powers and duties of Governor, and in such contingency no vacancy occurs in the office of Lieutenant Governor. St.1937, §§ 17.01(1), 17.27(1-4); Const. art. 5, §§ 1, 2, 7, 8; art. 13, §§ 9, 10.

3 Cases that cite this headnote

[8] States

⇨ Lieutenant Governor

Under statutes authorizing Governor to fill vacancy in any office in the state where no other provision is made for filling the same, Governor was authorized to fill vacancy created by the resignation of Lieutenant Governor by appointing successor to take vacated office. St.1937, §§ 17.01(1), 17.27(1-4); Const. art. 5, §§ 1, 2, 7, 8; art. 13, §§ 9, 10.

2 Cases that cite this headnote

[9] Statutes

⇨ Plain Language; Plain, Ordinary, or Common Meaning

Words and phrases of a statute would be construed according to a common and approved usage. St.1937. § 370.01(1).

Cases that cite this headnote

[10] Stipulations

⇨ Stipulations as to pleadings and service thereof

Where party stipulated that in event court granted leave to citizen to commence action to test legality of appointment of Lieutenant Governor, petition should be considered as a complaint to which opposing party demurred, on determination that action was properly brought, stipulation became effective and petition would be considered as a complaint to which opposing party demurred.

Cases that cite this headnote

Demurrer to the petition, considered as a complaint, is sustained.

On May 19, 1938, James W. Martin of Ozaukee county, pursuant to the procedural rules laid down in In re Exercise of Original Jurisdiction of Supreme Court, 201 Wis. 123, 229 N.W. 643, petitioned this court for leave to bring, in the name of the state of Wisconsin, an original action of quo warranto, for the purpose of having determined by what authority Herman L. Ekern holds the office of lieutenant governor of this state, and if it be found that he holds that office without lawful authority, to oust and exclude him therefrom. Upon the filing of the petition an order \*394 was made by Mr. Chief Justice ROSENBERY requiring Mr. Ekern to show cause why the petitioner should not be given leave to bring, in the name of the state, an original action in this court. Pursuant to that order, the petition was heard on May 31, 1938. The question whether leave to commence the action should be granted was argued by the attorneys for the petitioner and for Mr. Ekern. The court thereupon took a recess and conferred on the question of granting the prayer of the petition. After a brief conference, the court was of the view that the question presented required studious and painstaking consideration. Upon reconvening, the court stated that it would take the matter under advisement. It was then suggested, that if the petitioner and the respondent would stipulate, that in the event the court granted leave to commence the action, the petition should be considered as a complaint, to which the respondent demurred, the court would then hear arguments on the merits. The parties so stipulated and the merits were argued.

The petition in substance alleges: That the petitioner is a citizen, resident, taxpayer and elector of Ozaukee county; that prior to the making of his petition he demanded in writing of Orland S. Loomis, the attorney general of this state, that he bring the action in the name of the state, but that the attorney general refused so to do, and therefore the petitioner asks leave to bring the action as a private person in the name of the state; that on November 3, 1936, Philip F. LaFollette, was elected governor of the state of Wisconsin and Henry A. Gunderson was elected lieutenant governor thereof; that Philip F. LaFollette took the oath of office as governor on January 4, 1937, and ever since has been the governor of this state; that on the same day Henry A. Gunderson took the oath as

lieutenant governor and continued to act as such officer until October 18, 1937, when he resigned; that by reason of the resignation of Henry A. Gunderson as lieutenant governor, a vacancy occurred in that office, without the right, authority or warrant in law to have the same filled by appointment; that on May 16, 1938, Philip F. LaFollette, as governor of this state, appointed Herman L. Ekern to the office of lieutenant governor of this state; that Mr. Ekern accepted said appointment and on May 17, 1938, took the oath of office, assumed the duties thereof and ever since then has held the office and exercised the duties thereof; that the act of Philip F. LaFollette in appointing Herman L. Ekern to the office of lieutenant governor, was without warrant in law and therefore a clear usurpation and abuse of power; and that Mr. Ekern, in taking said office and in acting as lieutenant governor usurped and intruded into said office without warrant in law. The petition, considered as a complaint, demands judgment that the appointment of Herman L. Ekern to the office of lieutenant governor be declared void; that he be adjudged guilty of usurping and intruding into and unlawfully holding said office; that he be ousted and excluded therefrom and that the office of lieutenant governor be declared vacant.

#### Attorneys and Law Firms

Rubin, Zabel & Rupp, of Milwaukee (Wm. B. Rubin and W. C. Zabel, both of Milwaukee, of counsel), for petitioner.

Orland S. Loomis, Atty. Gen., and Ralph M. Hoyt, Sp. Counsel, and Walter D. Corrigan, Sr., Sp. Counsel, both of Milwaukee, for defendant.

#### Opinion

NELSON, Justice.

The first question for determination is whether this court should grant leave to the petitioner to bring an original action in the name of the state of Wisconsin. Such leave is asked because the attorney general has refused to bring the action. The question which the petitioner seeks to have determined is most important and of great public concern and interest. Obviously the people of this state are vitally interested in seeing that no important office, such as that of lieutenant governor, be intruded into by any person who has not lawful authority to hold the office or to perform the duties thereof.

[1] [2] [3] The office of governor is one of high dignity in which the people have a paramount interest, Attorney General ex rel. Bashford v. Barstow, 4 Wis. 567. The office of lieutenant governor is likewise of great importance because upon the incumbent thereof may at any time devolve the powers and duties of the governor. Sec. 7, art. 5, Const. That the question sought to be determined is publici juris and is one which relates to "the sovereignty of the state, its franchises or prerogatives, or the liberties of its people," cannot be gainsaid. Attorney General v. Railroad Cos., 35 Wis. 425; Attorney General v. Eau Claire, 37 Wis. 400; In re Income Tax Cases, 148 Wis. 456, 134 N.W. 673, 135 N.W. 164; In \*395 re Exercise of Original Jurisdiction of Supreme Court, supra.

[4] Assuming for the moment that under the circumstances alleged, the petitioner is a proper person to bring the action in the name of the state, we think it clear, that under the rules stated in the four cases just cited, the petitioner properly invokes the original jurisdiction of this court. In a very early case the question: Why was original jurisdiction of these high prerogative writs given to the supreme court? was propounded and answered thus:

"Because these are the very armor of sovereignty. Because they are designed for the very purpose of protecting the sovereignty and its ordained officers from invasion or intrusion, and also to nerve its arm to protect its citizens in their liberties, and to guard its prerogatives and franchises against usurpation. The convention might well apprehend that it would never do to dissipate and scatter these elements of the State sovereignty among five, ten, twenty or forty inferior tribunals, and wait their tardy progress through them to the supreme tribunal, upon whose decision must finally depend their efficacy!" Attorney General v. Blossom, 1 Wis. 277 (\*317) at page 287 (\*330).

The petitioner asks leave to bring this action in behalf of the state, by virtue of the provisions of sec. 294.04, Stats., which so far as here material provides:

"(1) An action may be brought by the attorney-general in the name of the state, upon his own information or upon the complaint of any private party, against the parties offending in the following cases:

“(a) When any person shall usurp, intrude into or unlawfully hold or exercise any public office, civil or military. \*\*\*

“(2) Such action may be brought in the name of the state by a private person on his own complaint when the attorney-general refuses to act or when the office usurped pertains to a county, town, city, village or school district.” [5] [6] Sec. 294.04 was enacted by the legislature as sec. 336, of ch. 120, Laws of 1856, and as a part of our code. Ever since its enactment it has continued in force without amendment except that the word “school” was inserted before the word “district” in the last line thereof. Giving to the words and phrases of that statute a construction according to their common and approved usage, sec. 370.01 (1), it would seem that their meaning is so clear and unambiguous as not to require construction. That statute was construed by this court in 1875. In *State ex rel. Wood v. Baker*, 38 Wis. 71, 81, Mr. Chief Justice Ryan, speaking for the court said:

“Sec. 6, ch. 160, R.S., relates to proceedings in the nature of quo warranto for usurpation of office; and authorizes the attorney general to bring an action in the name of the state ‘upon his own information or upon the complaint of any private person.’ Interpreted by the constitution and translated into legal phraseology, we take this to mean that, in such cases, the attorney general may file an information in the nature of quo warranto, ex officio or upon the relation of a private person. The word ‘complaint’ cannot mean a pleading so called in the code, but seems to be used in a general sense, as a substitute for relation; and the attorney general certainly proceeds ex officio when he acts on his own information only. So far, therefore, we see no material change of the law. The section, however, goes on to provide that such an action may be brought ‘in the name of the state, by a private person, on his own complaint, when the attorney general refused to act, or when the office usurped pertains to a county, town, city or district.’ Before such a statute, the courts of the state might perhaps, in proper cases, have authorized proceedings in the name of the attorney general, if that officer wrongfully refused to act, and it was necessary to proceed in his name. *Att’y. Gen’l. ex rel. Bashford v. Barstow*, 4 Wis., 567. Be that as it may, this branch of the section gives a new proceeding by private parties, in the name of the state, without use of the attorney general’s name or office, in cases of local office,

and in all cases in which that officer may refuse to act. This proceeding is plainly in the nature of a civil action, although in the name of state. 3 Black. Com., 263.”

That the construction given to that statute at the time was the only one that reasonably could be given to it seems clear. However, the respondent contends that the words “a private citizen” do not mean any private citizen but only a private person who is entitled to the office. That contention is based upon the holding of this court in *State ex rel. Heim v. Williams*, 114 Wis. 402, 405, 90 N.W. 452. \*396 Mr. Justice Dodge, speaking for the court in that case, in respect to the right of the relator there to maintain the action, and in respect to sec. 3466, Stats. 1898 (now sec. 297.04) said (page 453):

“But our statute has recognized or created an additional province for such a suit by providing (section 3466, Rev.St. 1898): ‘Such action may be brought in the name of the state by a private person on his own complaint when the attorney general refuses to act.’ Under that statute it has provided (section 3463) that the proceeding is by ‘civil action,’ thus making it subject to section 2605: ‘Every action must be prosecuted in the name of the real party in interest;’ or, to transpose the idea, that a party, in order to prosecute, must have a real interest in the object to be accomplished. *State ex rel. Peacock v. Orvis*, 20 Wis. 235; *State ex rel. Chase v. McKinney*, 25 Wis. 416; *State ex rel. Wood v. Baker*, 38 Wis. 71, 81; *State ex rel. Att’y. Gen’l. v. Cunningham*, 81 Wis. 440, 471, 487, 51 N.W. 724, 15 L.R.A. 561; *State ex rel. Glenn v. Stein*, 13 Neb. 529, 14 N.W. 481; *Att’y. Gen. ex rel. Lawrence v. Trombly*, 89 Mich. 50, 58, 50 N.W. 744. The relator, though using the name of the state to sue, neither alleges nor claims any but a private interest. He does not assume to champion the rights of the public, which would be presented were the attorney general here present on behalf of the state, but predicates his right to such wholly upon his title to the office. If he has not such title, then he has no interest in a judgment ousting the respondent from the office, save such as is common to all citizens or members of the community. That title is denied, and therefore becomes the first subject for inquiry and decision.”

That language apparently has remained unchallenged up to the present time, probably for the reason that no similar action has been brought. Only twice has that case been referred to. *State ex rel. Harley v. Lindemann*, 132 Wis. 47, 111 N.W. 214; and *State ex rel. Kleist v. Donald*, 164 Wis. 545, 160 N.W. 1067. In the first case mentioned, it was

cited to the proposition that (page 215) "there can be no question but what the offices alleged to have been usurped are public offices and pertain to the city of Milwaukee and the public schools therein, within the meaning of the statute quoted. Upon the facts thus admitted it is well settled that the relator may rightfully maintain this action in the name of the state." In the second case mentioned, it was cited in connection with a contention of the relator which was not considered sound.

In State ex rel. Heim v. Williams, supra, the cause of action which the relator asserted was so obviously without merit that the court may have failed to consider the full implications of the language used. The court no doubt intended by the following language: "The relator, though using the name of the state to sue, neither alleges nor claims any but a private interest. He does not assume to champion the rights of the public, which would be presented were the attorney general here present on behalf of the state, but predicates his right to sue wholly upon his title to the office," strictly to base its holding on the allegations of the complaint. An examination of the complaints, original and amended, (Vol. 695, Cases and Briefs) reveals that the relator there in bringing the action had only one purpose in mind and that was to obtain the office for himself. This court gave no thought or consideration in that case to the proposition that a vindication of a public right was also involved. In Re Income Tax Cases, supra, this court, in speaking of the original jurisdiction of this court, said: (page 500, 134 N.W. page 686)

"This transcendent jurisdiction is a jurisdiction reserved for the use of the state itself when it appears to be necessary to vindicate or protect its prerogatives or franchises or the liberties of its people. The state uses it to punish or prevent wrongs to itself or to the whole people. The state is always the plaintiff, and the only plaintiff, whether the action be brought by the Attorney General, or, against his consent, on the relation of a private individual under the permission and direction of the court. It is never the private relator's suit. He is a mere incident. He brings the public injury to the attention of the court, and the court, by virtue of the power granted by the Constitution, commands that the suit be brought by and for the state. The private relator may have a private interest which may be extinguished (if it be severable from the public interest), yet still the state's action proceeds to vindicate the public right. The fact that in many cases, as, for example, cases of unlawful imprisonment, the private wrong and the \*397

public wrong are so closely identified that the ending of the private wrong necessarily puts an end to the public wrong, makes no difference with the principle."

What the court there said is, in our view, clearly correct and is particularly applicable here where the petitioner seeks to vindicate no private right but only the public right to have its offices filled and held only by those who are legally elected or appointed thereto, and to have the powers and duties thereof exercised and performed only by those entitled to such offices. While it is not specifically stated in the petition that leave is asked to bring the action for the purpose of vindicating a public right, that is obviously the primary and only purpose of the action which the petitioner asks leave to bring. So construing the petition, as we think it clearly must be construed, we have a petition in which a private person, a citizen, elector and taxpayer of this state asks leave to bring an action in the name of the state for the purpose of vindicating a public, not a private right, upon the refusal of the attorney general to bring it. In a situation like this, where an appointment has been made to fill a vacancy in office, there never can be a petitioner or relator who has any claim or title to such office. Unless a citizen, upon the refusal of the attorney general to bring the action, can obtain leave to bring an action in the name of the state to determine whether such appointment is lawful, then the lawfulness of the appointment will never be determined and the alleged wrongful usurpation or unlawful intrusion into the office cannot be questioned. Let us assume that a lieutenant governor tenders his resignation to the legislature, as he is required to do if the legislature is in session, sec. 17.01 (1), Stats.; that the legislature then proceeds by joint resolution, without authority of law, to make an appointment to fill the vacancy; and that the attorney general, upon request of a private person, refuses to bring an action to determine whether such appointee is the lieutenant governor of this state, or a usurper and intruder into such office. Could it be argued that leave should not be granted to a private person to bring an action in the name of the state for the purpose of determining whether such lieutenant governor so elected or appointed is a de jure officer or a mere usurper? We think not. Similar examples readily suggest themselves. Without further discussion, we are of the opinion that the prayer of the petition for leave to bring the action should be granted.

[7] The conclusion of the court that leave to bring the action should be granted renders the stipulation made at our bar, and heretofore mentioned, effective. The petition,

from now on, will be considered as a complaint to which the respondent has demurred. The petitioner will now be referred to as the relator and the respondents as the defendant.

So many of the allegations of the complaint as are material, may be summarized as follows: Philip F. LaFollette was elected governor of the state of Wisconsin on November 3, 1936, and Henry A. Gunderson was elected lieutenant governor of this state at the same time. Both Philip F. LaFollette and Henry A. Gunderson, on January 4, 1937, took their oaths of office as governor and lieutenant governor respectively. Philip F. LaFollette, at all times since January 4, 1937, has been the governor of this state. On October 16, 1937, Henry A. Gunderson resigned as lieutenant governor. On May 16, 1938, Philip F. LaFollette, as governor, appointed the defendant, Herman L. Ekern, to the office of lieutenant governor. Herman L. Ekern, on May 17, 1938, took the prescribed oath of office, assumed the duties of the office and ever since has exercised the functions thereof.

The relator asserts that Philip F. LaFollette, as governor of this state, was without legal authority to appoint the defendant to the office of lieutenant governor and that the defendant has ever since his appointment and qualification usurped and intruded into the office of lieutenant governor.

The sole question for decision is whether the governor of this state, under the constitution and laws passed in pursuance thereof, has the authority to appoint one having the required qualifications to the office of lieutenant governor. The controversy which has arisen requires a reference to and a construction of the following provisions of our constitution and laws which concededly are applicable.

Sec. 1, art. 5. "The executive power shall be vested in a governor, who shall hold his office for two years; a lieutenant governor shall be elected at the same time, and for the same term."

Sec. 2, art. 5. "No person except a citizen of the United States and a qualified \*398 elector of the state shall be eligible to the office of governor or lieutenant governor."

Sec. 7, art. 5. "In case of the impeachment of the governor, or his removal from office, death, inability from mental or physical disease, resignation, or absence from the state,

the powers and duties of the office shall devolve upon the lieutenant governor for the residue of the term or until the governor, absent or impeached, shall have returned, or the disability shall cease. \*\*\*"

Sec. 8, art. 5. "The lieutenant governor shall be president of the senate, but shall have only a casting vote therein. If, during a vacancy in the office of governor, the lieutenant governor shall be impeached, displaced, resign, die, or from mental or physical disease become incapable of performing the duties of his office, or be absent from the state, the secretary of state shall act as governor until the vacancy shall be filled or the disability shall cease."

Sec. 9, art. 13. "All county officers whose election or appointment is not provided for by this constitution shall be elected by the electors of the respective counties, or appointed by the boards of supervisors, or other county authorities, as the legislature shall direct. All city, town and village officers whose election or appointment is not provided for by this constitution shall be elected by the electors of such cities, towns and villages, or of some division thereof, or appointed by such authorities thereof as the legislature shall designate for that purpose. All other officers whose election or appointment is not provided for by this constitution, and all officers whose offices may hereafter be created by law, shall be elected by the people or appointed, as the legislature may direct."

Sec. 10, art. 13. "The legislature may declare the cases in which any office shall be deemed vacant, and also the manner of filling the vacancy, where no provision is made for that purpose in this constitution."

Sec. 17.27(4), Stats. "*Any other vacancy.* In case of a vacancy in any office in the state where no other provision is made for filling the same, it shall be filled by appointment by the governor."

It is conceded that there is no provision in our constitution or laws which specifically provides for the filling of a vacancy in the office of lieutenant governor.

[8] The relator contends that under our constitution there can never be a vacancy in the office of the lieutenant governor because sec. 8, art. 5, provides that "if, during a vacancy in the office of governor, the lieutenant governor shall be impeached, displaced, resign, die, or from mental or physical disease become incapable of performing the duties of his office, or be absent from the state, the secretary of state shall act as governor until the vacancy shall be filled or the disability shall cease" and because

that provision of the constitution prevents a vacancy in the office of lieutenant governor. The contention, in our opinion, is not sound. That Henry A. Gunderson resigned as lieutenant governor is alleged in the complaint. That since he resigned he has not been lieutenant governor is conceded. That there was a vacancy in the office of lieutenant governor is conceded. That there was a vacancy in the office of lieutenant governor from October 18, 1937, to May 16, 1938, seems so clear as to require no discussion. The term "vacancy" as applied to an office has no technical meaning. In *State ex rel. Lamey v. Mitchell*, 97 Mont. 252, 34 P.2d 369, 371, it was said:

"The word 'vacancy' as applied to an office, has no technical meaning. An office is not vacant so long as it is supplied, in the manner provided by the Constitution or law, with an incumbent who is legally qualified to exercise the powers and perform the duties which pertain to it; and, conversely, it is vacant, in the eye of the law, whenever it is unoccupied by a legally qualified incumbent, who has a lawful right to continue therein until the happening of some future event." See, also, *State ex rel. Murphy v. McBride*, 29 Wash. 335, 70 P. 25.

But it is argued that there can be no vacancy in an office when there is a person who is qualified and authorized to perform the duties thereof. Citing *State ex rel. Lamey v. Mitchell*, supra, a case in which alleged vacancies in the offices of governor and lieutenant governor were considered.

The provision: "if, during a vacancy in the office of governor, the lieutenant governor shall be impeached, displaced, resign, die, or from mental or physical disease become incapable of performing the duties of his office, or be absent from the state, the secretary of state shall act as governor until the vacancy shall be filled or the disability shall cease," clearly recognizes (1) that there may be a vacancy in the office of lieutenant governor as the result of impeachment, displacement, resignation, death or mental or physical disease, which renders \*399 him incapable of performing the duties of his office, or as a result of his absence from the state, but not as a result of the powers and duties of the office of governor devolving upon him, and (2) that upon the happening of any of those contingencies, during a vacancy in the office of governor, the secretary of state shall act as governor until the vacancy shall be filled or the disability shall cease. The phrase, "or the disability shall cease," may be

referable either to the disability of the governor or the lieutenant governor, and the phrase "until the vacancy shall be filled" may likewise be referable to a vacancy in the office of governor or to a vacancy in the office of lieutenant governor, which occurs "during a vacancy in the office of governor."

[9] When a vacancy, either permanent or temporary, occurs in the office of governor, the powers and duties of that office devolve upon the lieutenant governor for the residue of the term or until the governor, absent or impeached, shall have returned or the disability shall cease. It is clear that the lieutenant governor does not become governor. He remains lieutenant governor, upon whom devolves the powers and duties of governor. In such a contingency no vacancy occurs in the office of lieutenant governor. *State ex rel. Lamey v. Mitchell*, supra; *State ex rel. Hardin v. Sadler*, 23 Nev. 356, 47 P. 450; *People ex rel. Lynch v. Budd*, 114 Cal. 168, 45 P. 1060, 34 L.R.A. 46. It is likewise clear that if, during a vacancy in the office of governor, a vacancy occurs in the office of lieutenant governor, the secretary of state shall act as governor. He does not become either governor or lieutenant governor. He does not perform the duties of lieutenant governor except as he acts as governor. He does not cease to be secretary of state. Under our constitution the secretary of state can act as governor only when there occurs, during a vacancy in the office of governor, a vacancy also in the office of lieutenant governor. To hold otherwise would amount to judicially changing the language of our constitution. It is our opinion that the office of lieutenant governor unquestionably became vacant upon the resignation of Mr. Gunderson which vacancy could be filled, if there be authority under the constitution and laws to fill it by appointment. Sec. 10, art. 13, provides that "the legislature may declare the cases in which any office shall be deemed vacant, and also the manner of filling the vacancy, where no provision is made for that purpose in this constitution." As hereinbefore stated, no provision is made in our constitution for the filling of a vacancy in the office of lieutenant governor. It is conceded that prior to the enactment of ch. 422, Laws of 1921, there was no law which authorized the filling of a vacancy in the office of lieutenant governor. Sec. 17.27 (4) was enacted in 1921, upon the advice of the revisor of statutes. In submitting the bill which contained the following language which the legislature subsequently enacted into law:

"A new subsection is added to section 17.27 of the statutes to read:



“(17.27) (4) Any other vacancy. In case of a vacancy in any office in the state where no other provision is made for filling the same, it shall be filled by appointment by the governor,” the revisor appended the following:

“Note: This is a blanket provision to take care of any omission in the laws for filling vacancies.”

It is contended by the relator that in construing sec. 17.27 (4), the court should apply the rule that specific provisions of a statute should prevail over general provisions upon the same subject. *Degutes v. State*, 189 Wis. 435, 207 N.W. 948; *Wisconsin Gas & Electric Co. v. City of Ft. Atkinson*, 193 Wis. 232, 213 N.W. 873, 52 A.L.R. 1033. The rule in our opinion is not applicable because there is no specific provision in our constitution or laws relating to the filling of a vacancy in the office of lieutenant governor, and consequently there is no conflict between a specific law and a general law.

[10] The relator further contends that in construing this statute we should apply, as an aid to construction, the doctrine of *noscitur a sociis*. It is pointed out that while the statute was enacted by the legislature as a new subsection it was numbered sec. 17.27 (4) and that its application should therefore be restricted to the vacancies mentioned in paragraph (1), (2) and (3), of sec. 17.27. See *Boardman v. State*, 203 Wis. 173, 233 N.W. 556; *City of Milwaukee v. Kassen*, 203 Wis. 383, 234 N.W. 352; *Fox v. Milwaukee Mechanics' Ins. Co.*, 210 Wis. 213, 246 N.W. 511. The contention might have some merit had paragraph (4) been adopted at the same time that paragraphs (1), (2) and

(3), were enacted. Paragraph (4), clearly, was denominated by the revisor as “a blanket provision to take care of any omission in the laws for filling vacancies.” That is quite significant. Paragraph (4) is clear and unambiguous. It is \*400 all-inclusive. It authorizes the governor to fill a vacancy in any office in the state where no other provision is made for filling the same. Its plain provisions are broad enough to include an appointment to the office of lieutenant governor when a vacancy exists in that office. We cannot give to it a construction which would except from its provisions a vacancy in the office of lieutenant governor.

Nor can we say that the construction, which in our opinion must be given to paragraph (4), is so violative of the spirit of our constitution and the fundamental concepts therein expressed, as to impel a holding that the legislature never intended to authorize the governor to appoint a lieutenant governor when a vacancy occurs in that office. It is therefore our conclusion that the governor was authorized to appoint Herman L. Ekern to the office of lieutenant governor, which became vacant upon the resignation of Henry A. Gunderson and that therefore the complaint does not state a cause of action.

The demurrer to the complaint is sustained.

#### All Citations

228 Wis. 645, 280 N.W. 393

KeyCite Yellow Flag - Negative Treatment  
Distinguished by State ex rel. Ayres v. Gray, Fla., December 11, 1953  
97 Mont. 252  
Supreme Court of Montana.

STATE ex rel. LAMEY  
v.  
MITCHELL, Secretary of State, and six other cases.

Nos. 7306-7311, and 7313.

|  
June 13, 1934.

Original separate mandamus proceedings by the State, on the relation of Arthur F. Lamey, J. W. Speer, Hugh R. Adair, W. R. Church, and Howard A. Johnson, and original separate mandamus proceedings by Frank A. Hazelbaker and H. R. Eickemeyer, against Sam W. Mitchell, Secretary of State.

Writs denied, and proceedings dismissed.

West Headnotes (8)

[1] **Mandamus**  
⇔ Elections and Proceedings Relating Thereto  
Mandamus held not to lie to compel Secretary of State to file primary nominating petitions of candidates for Governor and Lieutenant Governor, where, upon resignation of Governor, Lieutenant Governor assumed duties of Governor, since neither office was vacant (Const. art. 7, §§ 1, 14-16).

Cases that cite this headnote

[2] **Public Employment**  
⇔ Occurrence and Existence; What Creates or Constitutes Vacancy  
Office is not "vacant" when there is person clothed with authority to perform its duties.

1 Cases that cite this headnote

[3] **States**  
⇔ Lieutenant Governor  
When Governor resigns or is permanently removed from office, there is no "vacancy" in office of Governor in sense that there is no one left with power to discharge duties imposed upon Governor, since Lieutenant Governor then acts as Governor and is empowered to perform duties of that office (Const. art. 7, § 14).

1 Cases that cite this headnote

[4] **States**  
⇔ Lieutenant Governor  
Lieutenant Governor upon happening of contingencies removing Governor from office is entitled to act as Governor, as against contention that, while also acting as Lieutenant Governor, he is holding two offices, since in absence of Lieutenant Governor, president pro tempore of senate performs duties of Lieutenant Governor until vacancy is filled or disability removed (Const. art. 7, §§ 1, 14-16).

1 Cases that cite this headnote

[5] **States**  
⇔ Lieutenant Governor  
Lieutenant Governor's acting as Governor upon Governor's resignation does not violate constitutional provision that all political power is vested in and derived from people, in that it deprives them of right to elect Governor, since people are presumed to know law and must be presumed to have chosen Lieutenant Governor with knowledge that during term for which he and Governor were elected, Lieutenant Governor might be called upon to exercise powers of Governor for residue of term (Const. art. 3, § 1; art. 7, §§ 1, 14).

1 Cases that cite this headnote

[6] **Public Employment**

⇒ Term of person filling vacancy

**States**

⇒ Term of office, vacancies, and holding over

Word "term," within Constitution providing that under certain conditions duties and emoluments of office of Governor for residue of term shall devolve upon Lieutenant Governor, applies to office and not to incumbent thereof (Const. art. 7, § 14).

5 Cases that cite this headnote

**[7] Public Employment**

⇒ Occurrence and Existence; What Creates or Constitutes Vacancy

**States**

⇒ Term of office, vacancies, and holding over

Upon resignation, death, or permanent removal of Governor, there is no "vacancy" in office of Lieutenant Governor who acts as Governor, since by assuming Governor's office, Lieutenant Governor does not vacate his office (Rev. Codes 1921, § 511; Const. art. 7, §§ 1, 14-16).

2 Cases that cite this headnote

**[8] Statutes**

⇒ Legislative Construction

Legislative interpretation, though not binding on court, is entitled to consideration.

Cases that cite this headnote

**Attorneys and Law Firms**

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Albert J. Galen, of Helena (Brown & Jones, of Billings, J. A. Poore, of Butte, W. J. Paul, of Deer Lodge, Earle Genzberger, of Butte, John L. Campbell, of Missoula, T. C. Busha, of Great Falls, Marron & Foor, of Wolf Point, Gilbert, Gilbert & McFadden, of Dillon, C. A. Linn, of White Sulphur Springs, Robert A. O'Hara, of Hamilton, and Loud & Choate and George W. Farr, all of Miles City, of counsel), for plaintiff Hazelbaker.

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Raymond T. Nagle, Atty. Gen., and Enor K. Matson, Asst. Atty. Gen., for Mitchell, Secretary of State, in each of the cases.

**Opinion**

McKINNON, District Judge (sitting in place of ANGSTMAN, Justice).

Relators ask for writs of mandate to compel the Secretary of State to file their primary nominating petitions and to print their names on the ballot for the primary election to be held July, 1934.

At the general election in 1932, Hon. J. E. Erickson and Hon. Frank H. Cooney were elected Governor and Lieutenant Governor, respectively, of the state of Montana. On the 13th day of March, 1933, Erickson resigned. On the 6th day of June, 1934, the relators tendered to the Secretary of State their primary nominating petitions for the primary election to be held July 17, 1934, for the following offices, namely, for Governor, J. W. Speer, as Republican candidate; A. F. Lamey, as Democratic candidate. For Lieutenant Governor on the Republican ticket, Frank A. Hazelbaker and Howard A. Johnson; and on the Democratic ticket, Hugh R. Adair, W. Ray Church, and H. Eickemeyer. All these petitions were refused by the Secretary of State, and each candidate has asked that the Secretary of State be

compelled to file his petition, and that his name appear on the ballot at the primary nominating election for the particular office above mentioned.

These six applications for writs of mandate were consolidated for the purpose of argument, and will be so treated in this opinion. One question is presented for decision, namely: Is there a vacancy in either the office of Governor or Lieutenant Governor?

Section 1 of article 7 of the Constitution provides: "The executive department shall consist of a governor, lieutenant-governor, secretary of state, attorney general, state treasurer, state auditor and superintendent of public instruction, each of whom shall hold his office for four years, or until his successor is elected and qualified. \*\*\* They shall perform such duties as are prescribed in this constitution and by the laws of the state. \*\*\*"

[1] It will be noted by the foregoing provision that the term of the Governor and the Lieutenant Governor is four years, or until their successor is elected and qualified. The word "term" applies to the office and not to the person. State ex rel. Kuhl v. Kaiser, 95 Mont. 550, 27 P.(2d) 1113; State ex rel. Morgan v. Knight, 76 Mont. 71, 245 P. 267.

Section 14 of article 7 reads: "In case of the failure to qualify, the impeachment or conviction of felony or infamous crime of the governor, or his death, removal from office, resignation, absence from the state, or inability to discharge the powers and duties of his office, the powers, duties and emoluments of the office, for the residue of the term, or until the disability shall cease, shall devolve upon the lieutenant-governor."

[2] It will thus be seen that when the Governor resigns or is permanently removed from office, there is no vacancy in the office of Governor in the sense that there is no one left with power to discharge the duties imposed upon the Governor. The same situation exists where the Governor is absent from the state or physically unable to discharge the duties of his office. The framers of the Constitution never intended that there should be any interim in which the affairs of the state should not be executed, for they said in explicit language that on the happening of any of the contingencies mentioned in section 14, supra, the powers, duties, and emoluments of the office were to be immediately transferred to the Lieutenant Governor, who is then given a mandate to discharge the duties of the office for the residue of the term for which the Governor was

elected. He, as Lieutenant Governor, acts as Governor and is empowered to perform the duties of that office.

[3] While the legislative interpretation is not binding on us, it is nevertheless entitled to respectful consideration. We find that as early as 1895 the Legislature of this state treated the Lieutenant Governor, when he performed the duties of Governor, as acting Governor. This is disclosed in section 132, Revised Codes of 1921, as follows: "When the lieutenant-governor acts as governor, he is entitled to receive during the time he so acts, the compensation which the governor, if acting, would be entitled to receive for such time; but during such time he is not entitled, as lieutenant-governor, to any other compensation or mileage."

[4] There can be no vacancy in an office when there is a person clothed with authority to perform its duties. In State ex rel. Chenoweth v. Acton, 31 Mont. 37, 77 P. 299, 300, the \*371 court, speaking through Mr. Commissioner Callaway, said: "The word 'vacancy,' as applied to an office, has no technical meaning. An office is not vacant so long as it is supplied, in the manner provided by the Constitution or law, with an incumbent who is legally qualified to exercise the powers and perform the duties which pertain to it; and, conversely, it is vacant, in the eye of the law, whenever it is unoccupied by a legally qualified incumbent, who has a lawful right to continue therein until the happening of some future event."

In State ex rel. Murphy v. McBride, 29 Wash. 335, 70 P. 25, 26, a Governor and a Lieutenant Governor were elected at the general election in November, 1900, for the term of four years. On December 26, 1901, the Governor died, and it was urged that there was a vacancy in the office of Governor and also in the office of Lieutenant Governor. The constitutional provision (art. 3, § 10) which was under consideration read as follows: "In case of the removal, resignation, death, or disability of the governor, the duties of the office shall devolve upon the lieutenant-governor, and in case of a vacancy in both the offices of governor and lieutenant-governor, the duties of governor shall devolve upon the secretary of state, who shall act as governor until the disability be removed or a governor be elected." It will be noted that this constitutional provision does not provide that upon the resignation of the Governor, the Lieutenant Governor shall serve for the residue of the term. The court, in discussing the question of vacancy, said: "It is a well-

settled rule that an office is not vacant so long as it is supplied, in the manner provided by the constitution or laws, with an incumbent who is legally authorized to exercise the power and perform the duties which pertain to it. \*\*\* The constitution having provided that in case of the death of the governor the duties of the office shall devolve upon the lieutenant governor, there is no vacancy in the office of governor. It is not necessary to discuss the meaning of the provision 'who shall act as governor until the disability be removed or a governor be elected,' because that provision, as used here, clearly refers only to the secretary of state, in case that officer should assume the duties of governor under the contingency named. What is said above applies equally to the lieutenant governor. When the lieutenant governor, by virtue of his office and of the command of the constitution, assumed the duties of governor on the death of Gov. Rogers, the office of lieutenant governor did not thereby become vacant, but the officer remained lieutenant governor, intrusted with the powers and duties of governor."

Our attention has been called to the language of this court in *State ex rel. McGowan v. Sedgwick*, 46 Mont. 187, 127 P. 94, in which it is stated that upon the resignation of the Governor, there is a vacancy in that office, but we do not consider it binding, for the reason that that was not the question under consideration in that case.

[5] It is urged that upon the happening of any of the contingencies mentioned in section 14, supra, the Lieutenant Governor by exercising the powers and duties of the Governor acts also as Lieutenant Governor, and that he cannot hold two offices. This argument is answered by section 15 of article 7 of the Constitution, as follows: "The lieutenant-governor shall be president of the senate, but shall vote only when the senate is equally divided. In case of the absence or disqualification of the lieutenant-governor, from any cause which applies to the governor, or when he shall hold the office of governor, then the president pro tempore of the senate shall perform the duties of the lieutenant-governor until the vacancy is filled or the disability removed."

The argument is also answered in the case of *State ex rel. Murphy v. McBride*, supra, in which the court says: "It is argued, however, that since it is made the duty of the lieutenant governor, under the constitution, to be presiding officer of the state senate (section 16, art. 3), and as such to approve all bills passed by that body, he must, as governor, review and approve or reject bills which as

lieutenant governor he has already approved. These duties are, no doubt, inconsistent; but this argument, we think, is fully met by another provision of the constitution, which provides, at section 10, art. 2, in substance, that when the lieutenant governor shall act as governor the senate shall choose a temporary president. The lieutenant governor, therefore, when the duties of governor devolve upon him, is relieved of the duties of presiding officer of the senate." See, also, *Clifford v. Heller*, 63 N. J. Law, 105, 111, 42 A. 155, 57 L. R. A. 312; *Futrell v. Oldham*, 107 Ark. 386, 392, 155 S. W. 502, Ann. Cas. 1915A, 571.

When the framers of the Constitution provided for the election of a Governor and a Lieutenant Governor as members of the executive department of the state (section 1, art. 7), but conferred upon the latter no executive power or authority other than in the \*372 contingencies mentioned in section 14, supra, they manifested the intention that the people elect two qualified heads of that department—the one active, the other his lieutenant, ready at a moment's notice to assume the duties of the office, should his superior officer, for any reason, either temporarily or permanently, become unable to perform them. This to the end that the important functions of state government should not falter or halt for an instant.

[6] It cannot be said that this arrangement violates section 1 of article 3, to the effect that all political power is vested in and derived from the people, in that it deprives them of the right of electing a Governor; as the people are presumed to know the law and are certainly conversant with human frailty, they must be presumed to have chosen a Lieutenant Governor with the knowledge that, at any time during the term for which he and the Governor were elected, he might be called upon to exercise the powers and discharge the duties of governor "for the residue of the term."

[7] Neither do we think that upon resignation, death, or permanent removal of the Governor there is a vacancy in the office of Lieutenant Governor. In any such event he, as Lieutenant Governor, shoulders immediately the duties of Governor, and while "he holds the office of governor," the president pro tempore of the senate performs the duties which theretofore devolved upon the Lieutenant Governor. When the duties, powers, and emoluments of the office of Governor devolve upon the Lieutenant Governor, it cannot be said that he vacates his office of Lieutenant Governor, and, unless he does so, there is no vacancy in his office. Section 511, Rev. Codes 1921. His assumption of the duties of the office of Governor

does not create, and neither can he make, a vacancy, as he is discharging the functions of Governor by the mandate of the Constitution, and that by reason of being Lieutenant Governor. If the framers of the Constitution had intended that there should be a vacancy in the office of Lieutenant Governor upon the resignation, death, or permanent removal of the Governor, they could have easily said so. They chose, however, to say that upon the happening of either of those contingencies the Lieutenant Governor should assume the duties of the office and discharge them for the residue of the term.

It would be idle to say that upon the resignation of the Governor there was thereby created a vacancy in the office of Lieutenant Governor, in view of the specific language of sections 14 and 15, supra. If that be true, then the Lieutenant Governor, upon assuming the powers and duties of the Governor, would be entitled to appoint a Lieutenant Governor. In this manner he could divest the people of their representative chosen by the Legislature, namely, the president pro tempore, to preside during the absence of the Lieutenant Governor. In our opinion this was never contemplated and never intended by the framers of the Constitution, or the people who adopted it.

Then, again, if the Governor were absent from the state or unable temporarily to perform the duties of his office, it could hardly be argued that while the Lieutenant Governor was discharging the duties of the office of Governor, he could appoint a Lieutenant Governor. In such a case the "disability" of the Governor may cease at any time, and he thereupon assumes the duties of his office.

[8] In view of the fact that it is our opinion that there is neither a vacancy in the office of Governor nor the office of Lieutenant Governor, other questions presented in these cases need not be considered.

The writs are denied, and the several proceedings dismissed.

CALLAWAY, C. J., and MATTHEWS and ANDERSON, JJ., concur.

STEWART, J., concurring in the result reached.

**All Citations**

97 Mont. 252, 34 P.2d 369

**Thompson, Jeffrey [AG]**

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716 F.3d 1213  
United States Court of Appeals,  
Ninth Circuit.

Paul A. ISAACSON, M.D.; William Clewell, M.D.;  
Hugh Miller, M.D., Plaintiffs–Appellants,

v.

Tom HORNE, Attorney General of Arizona, in his  
official capacity; William Gerard Montgomery,  
County Attorney for Maricopa County, in his  
official capacity; Barbara Lawall, County Attorney  
for Pima County, in her official capacity; Arizona  
Medical Board; Lisa Wynn, Executive Director of  
the Arizona Medical Board, in her official capacity,  
Defendants–Appellees.

No. 12–16670.

Argued and Submitted Nov. 5, 2012.

Filed May 21, 2013.

**Synopsis**

**Background:** Physicians brought action challenging constitutionality of Arizona statute prohibiting abortions where the probable gestational age was at least 20 weeks. The United States District Court for the District of Arizona, James A. Teilborg, J., denied physicians’ request for declaratory and injunctive relief and entered judgment in favor of the State, 884 F.Supp.2d 961, and the physicians appealed.

**Holdings:** The Court of Appeals, Berzon, Circuit Judge, held that:

[1] physicians alleged a sufficiently concrete injury to give them Article III standing to challenge the statute on their own behalf and on behalf of their patients;

[2] statute violated right of women to make ultimate decision to terminate a pregnancy prior to fetal viability; and

[3] statute’s medical emergency exception did not transform the statute from an impermissible prohibition on abortion into a permissible regulation of abortion procedure.

Reversed.

Kleinfeld, Senior Circuit Judge, filed concurring opinion.

West Headnotes (23)

[1] **Injunction**  
⇨ Consolidation issues

A district court may consolidate a preliminary injunction hearing with a trial on the merits, but only when it provides the parties with clear and unambiguous notice of the intended consolidation either before the hearing commences or at a time which will afford the parties a full opportunity to present their respective cases. Fed.Rules Civ.Proc.Rule 65, 28 U.S.C.A.

1 Cases that cite this headnote

[2] **Federal Courts**  
⇨ Determination of question of jurisdiction

The Court of Appeals has an independent obligation to examine its own jurisdiction.

Cases that cite this headnote

[3] **Constitutional Law**  
⇨ Abortion and birth control

Physicians alleged a sufficiently concrete injury to give them Article III standing to challenge, on their own behalf and on behalf of their patients, constitutionality of Arizona statute banning providers from performing abortions on women whose pregnancies had reached 20 weeks gestation, where physicians alleged that they performed and would continue to perform pre-viability abortions on patients at or after 20 weeks gestation, for which they would face criminal penalties if the 20-week law went into



effect. U.S.C.A. Const. Art. 3, § 1 et seq.; A.R.S. § 36-2159.

1 Cases that cite this headnote

<sup>141</sup> **Federal Civil Procedure**  
☞ In general; injury or interest  
**Federal Civil Procedure**  
☞ Causation; redressability

To satisfy Article III standing, plaintiffs must demonstrate that they suffer concrete injury that is actual or imminent, not conjectural or hypothetical; that there is a causal connection between this injury and the challenged statute; and that the injury will likely be redressed by a favorable decision. U.S.C.A. Const. Art. 3, § 1 et seq.

Cases that cite this headnote

<sup>151</sup> **Abortion and Birth Control**  
☞ Civil liability and proceedings; injunction

A physician has standing to challenge an abortion law that poses for him a threat of criminal prosecution. U.S.C.A. Const. Art. 3, § 1 et seq.

4 Cases that cite this headnote

<sup>161</sup> **Federal Civil Procedure**  
☞ Rights of third parties or public

Courts ordinarily do not allow third parties to litigate the rights of others.

1 Cases that cite this headnote

<sup>171</sup> **Abortion and Birth Control**

☞ Right to abortion in general; choice  
**Abortion and Birth Control**  
☞ Fetal age and viability; trimester  
**Constitutional Law**  
☞ Abortion

A woman has a constitutional right to choose to terminate her pregnancy before the fetus is viable without undue interference by the state; this right is encompassed within a woman's right to personal privacy, and is a rule of law and a component of liberty the Court of Appeals cannot renounce. U.S.C.A. Const.Amend. 14.

Cases that cite this headnote

<sup>181</sup> **Abortion and Birth Control**  
☞ Scope and standard of review  
**Constitutional Law**  
☞ Fourteenth Amendment in general

A woman's right to terminate her pregnancy is not absolute; rather, the right protects the woman from unduly burdensome interference with her freedom to decide whether to terminate her pregnancy. U.S.C.A. Const.Amend. 14.

Cases that cite this headnote

<sup>191</sup> **Abortion and Birth Control**  
☞ Public policy and governmental interest  
**Constitutional Law**  
☞ Fourteenth Amendment in general

A woman's right to terminate her pregnancy must be considered against important state interests in safeguarding health, in maintaining medical standards, and in protecting potential life. U.S.C.A. Const.Amend. 14.

Cases that cite this headnote

<sup>1101</sup> **Abortion and Birth Control**  
☞ Fetal age and viability; trimester

**Constitutional Law**

↔Fourteenth Amendment in general

Before viability, the State's interests are not strong enough to support a prohibition of abortion or the imposition of a substantial obstacle to the woman's effective right to elect the procedure. U.S.C.A. Const.Amend. 14.

2 Cases that cite this headnote

The "undue burden"/"substantial obstacle" mode of analyzing a state's regulation of abortion has no place where the state is forbidding certain women from choosing pre-viability abortions rather than specifying the conditions under which such abortions are to be allowed. U.S.C.A. Const.Amend. 14.

1 Cases that cite this headnote

[11]

**Abortion and Birth Control**

↔Fetal age and viability; trimester

**Constitutional Law**

↔Fourteenth Amendment in general

Neither the legislature nor the courts may proclaim one of the elements entering into the ascertainment of viability—be it weeks of gestation or fetal weight or any other single factor—as the determinant of when the State has a compelling interest in the life or health of the fetus. U.S.C.A. Const.Amend. 14.

Cases that cite this headnote

[14]

**Abortion and Birth Control**

↔Fetal age and viability; trimester

**Constitutional Law**

↔Fourteenth Amendment in general

A woman has a right to choose to terminate her pregnancy at any point before viability—not just before 20 weeks gestational age—and the State may not proscribe that choice. U.S.C.A. Const.Amend. 14.

4 Cases that cite this headnote

[12]

**Abortion and Birth Control**

↔Fetal age and viability; trimester

**Constitutional Law**

↔Fourteenth Amendment in general

Arizona statute prohibiting abortion beginning at 20 weeks gestation, before the fetus is viable, violated right of women to make ultimate decision to terminate a pregnancy prior to fetal viability. U.S.C.A. Const.Amend. 14; A.R.S. § 36-2159.

4 Cases that cite this headnote

[15]

**Abortion and Birth Control**

↔Fetal age and viability; trimester

**Constitutional Law**

↔Fourteenth Amendment in general

Regardless of whether exceptions are made for particular circumstances, a State may not prohibit any woman from making the ultimate decision to terminate her pregnancy before viability. U.S.C.A. Const.Amend. 14.

Cases that cite this headnote

[13]

**Abortion and Birth Control**

↔Scope and standard of review

**Constitutional Law**

↔Fourteenth Amendment in general

[16]

**Abortion and Birth Control**

↔Health and safety of patient

**Constitutional Law**

↔Fourteenth Amendment in general

Even with a medical emergency exception, a proscription on a woman's choice to undergo an

abortion remains invalid. U.S.C.A. Const.Amend. 14.

Cases that cite this headnote

Cases that cite this headnote

<sup>[20]</sup> **Constitutional Law**  
☞Abortion and birth control

<sup>[17]</sup> **Abortion and Birth Control**  
☞Health and safety of patient  
**Constitutional Law**  
☞Abortion, Contraception, and Birth Control

Physicians could bring pre-enforcement, as-applied challenge to Arizona statute prohibiting abortion beginning at 20 weeks gestation, even though the statute had not yet been applied to them. U.S.C.A. Const.Amend. 14; A.R.S. § 36-2159.

Medical emergency exception in Arizona statute prohibiting abortion beginning at 20 weeks gestation did not transform the statute from an impermissible prohibition on abortion into a permissible regulation of abortion procedure. U.S.C.A. Const.Amend. 14; A.R.S. § 36-2159.

4 Cases that cite this headnote

3 Cases that cite this headnote

<sup>[21]</sup> **Constitutional Law**  
☞Facial invalidity  
**Constitutional Law**  
☞Invalidity as applied

<sup>[18]</sup> **Abortion and Birth Control**  
☞Health and safety of patient  
**Constitutional Law**  
☞Fourteenth Amendment in general

The distinction between facial and as applied challenges is not so well defined that it has some automatic effect or that it must always control the pleadings and disposition in every case involving a constitutional challenge; instead, the distinction matters primarily as to the remedy appropriate if a constitutional violation is found.

While a health exception is necessary to save an otherwise constitutional post-viability abortion ban from challenge, it cannot save an unconstitutional prohibition on the exercise of a woman's right to choose to terminate her pregnancy before viability. U.S.C.A. Const.Amend. 14.

1 Cases that cite this headnote

1 Cases that cite this headnote

<sup>[22]</sup> **Constitutional Law**  
☞Facial invalidity  
**Constitutional Law**  
☞Invalidity as applied

<sup>[19]</sup> **Abortion and Birth Control**  
☞Regulation in general  
**Constitutional Law**  
☞Fourteenth Amendment in general

Facial and as-applied constitutional challenges differ in the extent to which the invalidity of a statute need be demonstrated.

An abortion prohibition's constitutionality is measured by its impact on those whom it affects, not by the number of people affected. U.S.C.A. Const.Amend. 14.

3 Cases that cite this headnote

[23] **Constitutional Law**  
↔Facial invalidity  
**Constitutional Law**  
↔Invalidity as applied

The facial versus as-applied distinction is relevant when a claimed statutory defect applies to a sub-category of the people affected by the law, and the court must determine whether that particular sub-category may challenge the statute as a whole, including its application to people who are not similarly situated.

Cases that cite this headnote

#### West Codenotes

**Held Unconstitutional**  
A.R.S. § 36–2159.

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Appeal from the United States District Court for the District of Arizona, James A. Teilborg, District Judge, Presiding.

Before: MARY M. SCHROEDER, ANDREW J. KLEINFELD, and MARSHA S. BERZON, Circuit Judges.

**\*1217 OPINION**

BERZON, Circuit Judge:

Our question is whether the Constitution permits the Arizona legislature to prohibit abortion beginning at twenty weeks gestation, before the fetus is viable. We hold that it does not.

Arizona House Bill 2036 (“H.B.2036” or “the Act”), enacted in April 2012, forbids, except in a medical emergency, abortion of a fetus determined to be of a gestational age of at least twenty weeks. Arizona law separately prohibits abortions after fetal viability unless necessary to preserve the pregnant woman’s life or health. *See* Ariz.Rev.Stat. § 36–2301.01(A)(1). The challenged provision in Section 7 of H.B.2036 (“Section 7” or “the twenty-week law”)<sup>1</sup> extends the abortion ban earlier in pregnancy, to the period between twenty weeks gestation and fetal viability. Because Section 7 deprives the women to whom it applies of the ultimate decision to terminate their pregnancies prior to fetal viability, it is unconstitutional under a long line of invariant Supreme Court precedents.

<sup>1</sup> Section 7 of H.B.2036 encompasses provisions to be codified at Arizona Revised Statutes § 36–2158 and § 36–2159. As this lawsuit challenges only the provision to be codified at § 36–2159, all references to Section 7 in this opinion denote only the challenged portion thereof.

Since *Roe v. Wade*, 410 U.S. 113, 93 S.Ct. 705, 35 L.Ed.2d 147 (1973), the Supreme Court case law concerning the constitutional protection accorded women with respect to the decision whether to undergo an abortion has been unalterably clear regarding one basic point, although it has varied in other respects: a woman has a constitutional right to choose to terminate her pregnancy before the fetus is viable. A prohibition on the exercise of that right is *per se* unconstitutional. While the state may *regulate* the mode and manner of abortion prior to fetal viability, it may not *proscribe* a woman from electing abortion, nor may it impose an undue burden on her choice through regulation.

The challenged Arizona statute’s medical emergency exception does not transform the law from a prohibition on abortion into a regulation of abortion procedure. Allowing a *physician* to decide if abortion is medically necessary is not the same as allowing a *woman* to decide whether to carry her own pregnancy to term. Moreover, regulations involve limitations as to the mode and manner of abortion, not preclusion of the choice to terminate a pregnancy altogether. Arizona’s twenty-week law is a preclusion prior to fetal viability and is thus invalid under binding Supreme Court precedent.

The district court erred in denying declaratory and injunctive relief and entering judgment in favor of the State. We therefore reverse.

## Background

### I.

On April 12, 2012, Arizona Governor Jan Brewer signed H.B.2036 into law, amending title 36, chapter 20, article 1 of the Arizona Revised Statutes, which governs the availability and performance of abortions in the state. The Act was to go into effect on August 2, 2012, but we granted an emergency injunction on August 1, 2012, staying enforcement of the challenged provision pending this appeal.

The challenged portion of Section 7, codified at Arizona Revised Statutes § 36–2159, reads:

A. Except in a medical emergency, a person shall not perform, induce or attempt to perform or induce an abortion unless the physician or the referring physician has first made a determination of the probable gestational age of the \*1218 unborn child. In making that determination, the physician or referring physician shall make any inquiries of the pregnant woman and perform or cause to be performed all medical examinations, imaging studies and tests as a reasonably prudent physician in the community, knowledgeable about the medical facts and conditions of both the woman and the unborn child involved, would consider necessary to perform and consider in making an accurate diagnosis with respect to gestational age.

B. Except in a medical emergency, a person shall not knowingly perform, induce or attempt to perform or induce an abortion on a pregnant woman if the probable gestational age of her unborn child has been determined to be at least twenty weeks.

Ariz.Rev.Stat. § 36–2159. Arizona law defines “medical emergency” as:

a condition that, on the basis of the physician’s good faith clinical judgment, so complicates the medical condition of a pregnant woman as to necessitate the immediate abortion of her

pregnancy to avert her death or for which a delay will create serious risk of substantial and irreversible impairment of a major bodily function.

Ariz.Rev.Stat. § 36-2151(6). The stated purpose of the Act is to “[p]rohibit abortions at or after twenty weeks of gestation, except in cases of a medical emergency, based on the documented risks to women’s health and the strong medical evidence that unborn children feel pain during an abortion at that gestational age.” H.B.2036, sec. 9(B)(1).<sup>2</sup> The Act lists a number of legislative findings in support of the assertions in the purpose provision, with citations to medical research articles. See H.B.2036, sec. 9(A)(1)-(7).

<sup>2</sup> “Gestational age,” as used by the Arizona legislature and throughout this opinion, refers to the age of a fetus calculated from the first day of the pregnant woman’s last menstrual period. See Ariz.Rev.Stat. § 36-2151(4).

## II.

The plaintiffs in this action are three board-certified obstetrician-gynecologists who practice in Arizona (“the Physicians”). In July 2012, they filed suit in the United States District Court for the District of Arizona, seeking declaratory and injunctive relief against enforcement of Section 7 on behalf of themselves and of their patients wishing to terminate pre-viability<sup>3</sup> pregnancies at or after twenty weeks.<sup>4</sup> Their complaint named three state defendants and two county defendants: the Attorney General of Arizona, Tom Horne; the Arizona Medical Board; and the Executive Director of the Arizona Medical Board, Lisa Wynn (collectively “State Defendants”); the County Attorney for Pima County, Barbara LaWall; and the County Attorney for Maricopa County, William Montgomery.

<sup>3</sup> As used throughout this opinion, “viability” refers to “the time at which there is a realistic possibility of maintaining and nourishing a life outside the womb.” *Planned Parenthood v. Casey*, 505 U.S. 833, 870, 112 S.Ct. 2791, 120 L.Ed.2d 674 (1992) (citing *Roe*, 410 U.S. at 163, 93 S.Ct. 705).

<sup>4</sup> The parties to this suit agree that no fetus is viable at twenty weeks gestational age and that a healthy fetus typically attains viability at twenty-three or twenty-four

weeks, at the earliest.

In their respective practices, each of the Physicians performs abortions before fetal viability and at and after twenty weeks gestational age. They assert that their patients seek pre-viability abortions “for a variety of reasons, including that continuation of the pregnancy poses a threat to their health, that the fetus has been diagnosed with a medical condition or anomaly, or that they are losing the pregnancy \*1219 (‘miscarrying’).” Under Arizona’s twenty-week law, the complaint alleges, these women will be unable to terminate their pregnancies before fetal viability unless they have a medical emergency falling within the Act’s narrow exception. Therefore, the Physicians assert, the law violates their patients’ Fourteenth Amendment substantive due process rights.

The Physicians moved for a preliminary injunction, which the State Defendants and Defendant Montgomery opposed. Defendant Montgomery also filed a motion to dismiss the action. After Defendant LaWall expressed support for the preliminary injunction, Defendant Montgomery sought her dismissal as a party defendant.<sup>5</sup>

<sup>5</sup> Because Defendant LaWall neither opposed the Physicians’ motion for a preliminary injunction nor argued in favor of Section 7 before this court, references in this opinion to Defendants’ arguments refer only to the State Defendants and/or to Defendant Montgomery.

On July 25, 2012, the district court held a hearing on the Physicians’ motion for a preliminary injunction and the motions to dismiss. Following the hearing, and without any prior notice to the parties, the court *sua sponte* and retroactively consolidated the preliminary injunction hearing with a trial on the merits and issued a final decision denying all relief. The order denied the Physicians’ requests for both preliminary and permanent injunctions and for a declaratory judgment. The court simultaneously denied Defendants’ motion to dismiss the action and denied as moot the motion to dismiss Defendant LaWall.

The district court’s decision was premised on three central conclusions: First, although the Physicians characterized their suit as an as-applied challenge because limited to those post-twenty-week abortions that occur before viability, the court held that the suit is properly considered a facial challenge. The court recognized that the application of Section 7 challenged by the Physicians is



the law's only effective application: to prohibit pre-viability abortions from twenty weeks gestation.<sup>6</sup>

<sup>6</sup> As noted *supra*, prior to the adoption of H.B.2036, Arizona law already prohibited post-viability abortions. See Ariz.Rev.Stat. § 36-2301.01(A)-(B) ("A physician shall not knowingly perform an abortion of a viable fetus unless ... [t]he physician states in writing before the abortion is performed that the abortion is necessary to preserve the life or health of the woman, specifying the medical indications for and the probable health consequences of the abortion.... This section does not apply if there is a medical emergency.").

Second, the court held that Section 7 regulates, rather than prohibits, abortion at and after twenty weeks gestational age, principally because it contains a medical emergency exception permitting some abortions after twenty weeks gestation. The law "is not a ban on previability abortions," the court stated, "but is rather a limit on some previability abortions between 20 weeks gestational age and viability."

Finally, the court determined that, considered as a regulation rather than a prohibition, the challenged provision of H.B.2036 may "prompt a few women, who are considering abortion as an option, to make the ultimate decision earlier than they might otherwise have made it," but the law does not impose a substantial obstacle to abortions, because it does not strip women of the ability to choose to terminate their pregnancies *before* twenty weeks. This "time limitation" on the right to obtain a pre-viability abortion, the district court concluded, is justified by legitimate state interests in fetal life and the health of pregnant women.

For the reasons summarized above, the district court concluded that the Physicians' facial challenge to Section 7 fails. \*1220 In the district court's view, an as-applied challenge by an affected pregnant woman would be the proper vehicle for determining whether the law unconstitutionally deprives a woman of "the right to make the abortion choice previability."

The Physicians timely appealed.

## Discussion

### I.

We begin by addressing two preliminary issues.

First, the district court presumed the parties "agree that the facts at issue in this case are not materially in dispute, and agree that the Court needs no additional evidence or legal argument to reach its decision." On that basis, the court invoked Federal Rule of Civil Procedure 65(a)(2) and consolidated the preliminary injunction hearing with a trial on the merits when it issued its opinion.

[1] "A district court may consolidate a preliminary injunction hearing with a trial on the merits," but only when it provides the parties with "clear and unambiguous notice [of the intended consolidation] either before the hearing commences or at a time which will afford the parties a full opportunity to present their respective cases." *Air Line Pilots Ass'n Int'l v. Alaska Airlines, Inc.*, 898 F.2d 1393, 1397 (9th Cir.1990) (alteration in original) (quoting *Univ. of Tex. v. Camenisch*, 451 U.S. 390, 395, 101 S.Ct. 1830, 68 L.Ed.2d 175 (1981)) (internal quotation marks omitted); see also Fed.R.Civ.P. 65(a)(2). No such notice occurred here, nor is there any indication that the parties requested or favored consolidation. In fact, Defendant Montgomery specifically registered in advance his objection to "the hearing being turned into a hearing on a permanent injunction under Rule 65," citing time pressures that would prevent assembly of necessary data in support of his arguments.

Were the factual record or the district court's factual findings of pertinence to our decision, we would be troubled by the procedure followed. But neither party has challenged the district court's approach. And because we ultimately agree with the Physicians that this case is fully controlled by binding precedent, the truncated nature of the record does not matter to our decision. We therefore do not consider this procedural matter further. For the same reason, we do not address whether the district court's "findings" are supported by the record or discuss the degree of deference owed to the legislative findings recited in the Act.<sup>7</sup>

<sup>7</sup> We note, however, that the sort of "legislative facts" addressed by the parties and by the district court are often considered by appellate courts from publicly available primary sources even if not developed in the record. See, e.g., *McCormack v. Hiedeman*, 694 F.3d 1004, 1016-18 & nn. 8-9, 1022 n. 12 (9th Cir.2012) (citing medical studies regarding the health effects of abortion and statistics on the availability and performance of abortions in Idaho and nationally); *Roe*, 410 U.S. at 149 n. 44, 93 S.Ct. 705 (citing medical research regarding morbidity and mortality rates for abortions and childbirth); *Gonzales v. Carhart*, 550 U.S. 124, 173 n. 3, 127 S.Ct. 1610, 167 L.Ed.2d 480

(2007) (Ginsburg, J., dissenting) (citing numerous medical articles regarding obstacles to abortion and associated risks); see also Allison Orr Larsen, *Confronting Supreme Court Fact Finding*, 98 Va. L. Rev. 1255, 1262 (2012) (presenting research documenting “over one hundred examples of Supreme Court opinions from the last fifteen years that make assertions of legislative fact supported by an authority never mentioned in any of the briefs”).

[2] [3] Second, the district court did not address the Physicians’ standing to bring a challenge on their own behalf and that of their patients. “We nonetheless recognize our independent obligation to examine our own jurisdiction,” *Indep. Living Ctr. of S. Cal. v. Shewry*, 543 F.3d 1050, 1064 (9th Cir.2008) (internal quotation marks omitted), \*1221 and therefore, as the issue came up at oral argument, briefly address the Physicians’ Article III standing.

[4] To satisfy Article III standing, the Physicians must demonstrate that they suffer concrete injury that is actual or imminent, not conjectural or hypothetical; that there is a causal connection between this injury and the challenged statute; and that the injury will likely be redressed by a favorable decision. See *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560–61, 112 S.Ct. 2130, 119 L.Ed.2d 351 (1992).

[5] In their complaint and accompanying affidavits, the Physicians allege that they have performed and will continue to perform pre-viability abortions on patients at or after twenty weeks gestation, for which they would face criminal penalties should the twenty-week law go into effect. “A physician has standing to challenge an abortion law that poses for him a threat of criminal prosecution.” *Diamond v. Charles*, 476 U.S. 54, 65, 106 S.Ct. 1697, 90 L.Ed.2d 48 (1986). Whether the Physicians continue to perform pre-viability abortions past twenty weeks and risk prosecution under the statute or desist from performing them to avoid penalties, their liberty is concretely affected. See *Planned Parenthood of Idaho, Inc. v. Wasden*, 376 F.3d 908, 916–17 (9th Cir.2004). Therefore, the Physicians have alleged a sufficiently concrete injury to challenge the provision banning providers from performing abortions on women whose pregnancies have reached twenty weeks gestation.

[6] The Physicians do not seek relief on the basis of their own right to perform abortions, however, but on the basis of the constitutional right of their patients. Courts ordinarily do not allow third parties to litigate the rights of others. “Since at least *Singleton v. Wulff*, however, it has been held repeatedly that physicians may acquire *ius tertii*

standing to assert their patients’ due process rights in facial challenges to abortion laws.” *Id.* at 917 (citing *Singleton v. Wulff*, 428 U.S. 106, 117–18, 96 S.Ct. 2868, 49 L.Ed.2d 826 (1976) (plurality opinion)). Recognizing the confidential nature of the physician-patient relationship and the difficulty for patients of directly vindicating their rights without compromising their privacy, the Supreme Court has entertained both broad facial challenges and pre-enforcement as-applied challenges to abortion laws brought by physicians on behalf of their patients. See, e.g., *Stenberg v. Carhart*, 530 U.S. 914, 922–23, 120 S.Ct. 2597, 147 L.Ed.2d 743 (2000); *Planned Parenthood v. Casey*, 505 U.S. 833, 845, 112 S.Ct. 2791, 120 L.Ed.2d 674 (1992); *City of Akron v. Akron Ctr. for Reprod. Health*, 462 U.S. 416, 440 n. 30, 103 S.Ct. 2481, 76 L.Ed.2d 687 (1983), *overruled on other grounds by Casey*, 505 U.S. at 882, 112 S.Ct. 2791 (plurality opinion); *Planned Parenthood of Cent. Mo. v. Danforth*, 428 U.S. 52, 62 & n. 2, 96 S.Ct. 2831, 49 L.Ed.2d 788 (1976).

There is no dispute that the injury of which the Physicians complain is traceable to the challenged statute. Nor is there any doubt that a favorable decision, enjoining enforcement of the twenty-week law, would redress the injury. As the Physicians who bring this challenge to Section 7 therefore have standing to sue, we may consider the constitutional arguments they raise on behalf of their patients seeking pre-viability abortions at or after twenty weeks gestation. See *Wasden*, 376 F.3d at 918.

## II.

### A.

[7] A woman has a constitutional right to choose to terminate her pregnancy before the fetus is viable without undue interference by the state. See \*1222 *Casey*, 505 U.S. at 846, 112 S.Ct. 2791.<sup>8</sup> This right is encompassed within a woman’s right to personal privacy, see *Roe*, 410 U.S. at 153–54, 93 S.Ct. 705; see also *Wasden*, 376 F.3d at 921 (recognizing that “[a]dult women have a Fourteenth Amendment right to terminate a pre-viability pregnancy”), and “is a rule of law and a component of liberty we cannot renounce,” *Casey*, 505 U.S. at 871, 112 S.Ct. 2791 (plurality opinion). At bottom, the right recognized by *Roe* and reaffirmed by *Casey* is “the woman’s right to make the *ultimate decision*.” *Id.* at 877, 112 S.Ct. 2791 (emphasis added).



<sup>8</sup> The three-Justice lead opinion in *Casey* is in some sections the opinion of the Court and in other sections a limiting concurrence. Although Part IV of the opinion, enunciating the undue burden test, was endorsed by only three Justices, as the narrowest ground for the Court's holding it is as binding on this court as would be a majority opinion. See *Wasden*, 376 F.3d at 921 n. 11 (citing *Marks v. United States*, 430 U.S. 188, 193, 97 S.Ct. 990, 51 L.Ed.2d 260 (1977); *Planned Parenthood of Wis. v. Doyle*, 162 F.3d 463, 473 (7th Cir.1998)). Unless otherwise specified, all references to *Casey* are to the parts of the joint opinion representing the opinion of the Court.

<sup>181</sup> <sup>191</sup> A woman's right to terminate her pregnancy is not, however, absolute. "Roe did not declare an unqualified 'constitutional right to an abortion.' ... Rather, the right protects the woman from unduly burdensome interference with her freedom to decide whether to terminate her pregnancy." *Maher v. Roe*, 432 U.S. 464, 473–74, 97 S.Ct. 2376, 53 L.Ed.2d 484 (1977) (emphasis added). A woman's right must be considered against important state interests in "safeguarding health, in maintaining medical standards, and in protecting potential life." *Roe*, 410 U.S. at 154, 93 S.Ct. 705.

Under the trimester framework originally established in *Roe*, those interests could not justify any regulation of abortion during the first trimester of pregnancy. Prior to twelve weeks gestation, the Court held, "the abortion decision and its effectuation must be left to the medical judgment of the pregnant woman's attending physician." *Id.* at 164, 93 S.Ct. 705. During the second trimester, *Roe* concluded, the state's interest in the health of the pregnant woman is sufficiently compelling to permit regulation of "the abortion procedure in ways that are reasonably related to maternal health." *Id.* The state's interest in "the potentiality of human life," however, only becomes compelling at the point of viability; thereafter, *Roe* held, the state "may, if it chooses, regulate and even proscribe, abortion except where it is necessary, in appropriate medical judgment, for the preservation of the life or health of the mother." *Id.* at 164–65, 93 S.Ct. 705.

<sup>1101</sup> *Casey* jettisoned this trimester framework and the strict scrutiny standard applied in *Roe*, see *Casey*, 505 U.S. at 871–73, 112 S.Ct. 2791 (plurality opinion), holding that state interests in women's health and fetal life are present and "substantial" from the outset of pregnancy, *id.* at 846, 112 S.Ct. 2791 (joint opinion), 876, 112 S.Ct. 2791 (plurality opinion). But *Casey* reaffirmed—and *Gonzales v. Carhart*, 550 U.S. 124, 127 S.Ct. 1610, 167 L.Ed.2d 480 (2007), has since reiterated—*Roe*'s central holding: "Before viability, the

State's interests are not strong enough to support a prohibition of abortion or the imposition of a substantial obstacle to the woman's effective right to elect the procedure." *Casey*, 505 U.S. at 846, 112 S.Ct. 2791; *Gonzales*, 550 U.S. at 145, 127 S.Ct. 1610. That principle is binding upon us and decides this case.

## B.

Defendants contend otherwise, characterizing the viability line first drawn in *Roe*, reaffirmed in *Casey*, and recognized again in *Gonzales*, as dicta rather than \*1223 controlling Supreme Court precedent. That characterization is most certainly incorrect.

*Roe* identified fetal viability as the earliest point in pregnancy when the state's interest becomes sufficiently compelling to justify not just regulation of the abortion procedure, but proscription of abortion unless necessary to preserve the life or health of the mother. *Roe*, 410 U.S. at 163–65, 93 S.Ct. 705. Since *Roe*, the Supreme Court and lower federal courts have repeated over and over again that viability remains the fulcrum of the balance between a pregnant woman's right to control her body and the state's interest in preventing her from undergoing an abortion.

*Colautti v. Franklin*, for example, emphasized: "Viability is the critical point. And [the Court has] recognized no attempt to stretch the point of viability one way or the other." 439 U.S. 379, 389, 99 S.Ct. 675, 58 L.Ed.2d 596 (1979). *City of Akron v. Akron Center for Reproductive Health* echoed *Roe*'s holding that viability marks the point after which the state may proscribe abortion; before then, only regulation is permissible. 462 U.S. at 419–20 & n. 1, 428, 103 S.Ct. 2481. And while *Webster v. Reproductive Health Services* upheld a law requiring doctors to test for viability from twenty weeks gestational age on, 492 U.S. 490, 519–20, 109 S.Ct. 3040, 106 L.Ed.2d 410 (1989), it did not alter the principle that viability—not gestational age—remains the "critical point," *id.* at 529, 109 S.Ct. 3040 (O'Connor, J., concurring).<sup>9</sup>

<sup>9</sup> The central difference between the Arizona statute here challenged and the Missouri statute at issue in *Webster* is that the Arizona law not only requires testing of gestational age prior to the performance of an abortion, but also predicates the permissibility of an abortion on gestational age. The statute at issue in *Webster* required doctors to perform tests necessary to determine gestational age, but it predicated the permissibility of

abortion on the physician's assessment of fetal viability, not gestational age. See *Webster*, 492 U.S. at 500-01, 109 S.Ct. 3040.

Although the plurality opinion in *Casey* abandoned *Roe*'s trimester framework, 505 U.S. at 873, 112 S.Ct. 2791, the Court yet again affirmed "*Roe*'s central holding, that *viability* marks the earliest point at which the State's interest in fetal life is constitutionally adequate to justify a legislative ban on nontherapeutic abortions," *id.* at 860, 112 S.Ct. 2791 (joint opinion) (emphasis added). The plurality opinion explained that the Court was again drawing the line at viability "so that before that time the woman has a right to choose to terminate her pregnancy," emphasizing that "there is no line other than viability which is more workable." *Id.* at 870, 112 S.Ct. 2791 (plurality opinion).

Echoing the joint opinion in *Casey*, *Stenberg* took as the starting point of its analysis the "established principle[ ]" that, "before 'viability ... the woman has a right to choose to terminate her pregnancy.'" 530 U.S. at 921, 120 S.Ct. 2597 (quoting *Casey*, 505 U.S. at 870, 112 S.Ct. 2791 (plurality opinion)) (emphasis added).<sup>10</sup>

<sup>10</sup> Although the Court in *Stenberg* quoted from the plurality opinion in Part IV of *Casey*, the same principle is enunciated in Part I of the joint opinion, which is the opinion of the Court: "Before viability, the State's interests are not strong enough to support a prohibition of abortion or the imposition of a substantial obstacle to the woman's effective right to elect the procedure." *Casey*, 505 U.S. at 846, 112 S.Ct. 2791.

Finally, the Supreme Court's most recent abortion decision, *Gonzales*, preserved the viability line as the limit on prohibitions of abortion, applying *Casey* rather than overturning it. *Gonzales* left in place the earlier rulings that,

\*1224 [b]efore viability, a State 'may not prohibit any woman from making the ultimate decision to terminate her pregnancy.' It also may not impose upon this right an undue burden, which exists if a regulation's 'purpose or effect is to place a substantial obstacle in the path of a woman seeking an abortion before the fetus attains viability.'

*Gonzales*, 550 U.S. at 146, 156, 127 S.Ct. 1610 (emphasis added) (citation omitted) (quoting *Casey*, 505 U.S. at 878-79, 112 S.Ct. 2791 (plurality opinion)). From those premises, *Gonzales* went on to consider the

constitutionality of the Partial-Birth Abortion Ban Act of 2003, 18 U.S.C. § 1531, framing the question before it as "whether the Act, measured by its text in this facial attack, imposes a substantial obstacle to late-term, but previability, abortions." *Id.* at 156, 127 S.Ct. 1610.

This court, similarly, has reaffirmed and applied the viability line in abortion cases. In *Guam Society of Obstetricians & Gynecologists v. Ada*, 962 F.2d 1366 (9th Cir.1992), we acknowledged that the core of *Roe*, including its holding that the state may not proscribe abortion before fetal viability, survived *Webster*. See *id.* at 1372-74. Because the challenged statute at issue in *Guam* criminalized abortions prior to viability, we held it unconstitutional. *Id.* Both *Wasden* and *McCormack v. Hiedeman*, 694 F.3d 1004 (9th Cir.2012), took as their starting points a woman's "Fourteenth Amendment right to terminate a pre-viability pregnancy." *Wasden*, 376 F.3d at 921; accord *McCormack*, 694 F.3d at 1015, 1018 (enjoining enforcement of a statute that imposed a substantial obstacle to abortion of a nonviable fetus).<sup>11</sup>

<sup>11</sup> In addition to the enjoined statute, the plaintiff in *McCormack* also challenged another Idaho law, the Pain-Capable Unborn Child Protection Act ("the PUCPA"). Like the Arizona statute at issue here, the PUCPA bans abortions from twenty weeks gestational age. See *McCormack*, 694 F.3d at 1009; Idaho Code §§ 18-505-18-507. We did not reach the constitutionality of the ban, however, because the plaintiff lacked standing to challenge it. *McCormack*, 694 F.3d at 1024-25.

Other federal courts have also emphasized the importance of the viability line when evaluating the constitutionality of state abortion laws. For example, the Tenth Circuit struck down a ban on abortions after twenty weeks gestation because, by irrebuttably presuming viability at twenty weeks, the law prohibited the abortion of fetuses that may not be viable. See *Jane L. v. Bangerter*, 102 F.3d 1112, 1115-18 (10th Cir.1996). The Sixth Circuit determined a state abortion law unconstitutional because it prohibited several of the most common pre-viability abortion methods, effectively precluding women from terminating their pregnancies before fetal viability. See *Northland Family Planning Clinic, Inc. v. Cox*, 487 F.3d 323, 337 (6th Cir.2007).

As *Roe* and its many progeny make clear, viability, although not a fixed point, is the critical point. The Supreme Court has recognized that viability varies among pregnancies and that improvements in medical technology will both push later in pregnancy the point at which abortion is safer than childbirth and advance earlier in



gestation the point of fetal viability. *See Casey*, 505 U.S. at 860, 112 S.Ct. 2791. Indeed, such trends led Justice O'Connor to remark, prior to *Casey*, that "the *Roe* framework ... is on a collision course with itself." *Akron*, 462 U.S. at 458, 103 S.Ct. 2481 (O'Connor, J., dissenting). But while "time has overtaken some of *Roe*'s factual assumptions," prompting the abandonment of the trimester framework, "no changes of fact have rendered viability more or less appropriate as the point at which the balance of interests tips." *Casey*, 505 U.S. at 860–61, 112 S.Ct. 2791. Evolving medical \*1225 realities have not eroded *Roe*'s central legal holding—that "viability marks the earliest point at which the State's interest in fetal life is constitutionally adequate to justify a legislative ban on nontherapeutic abortions." *Id.* at 860, 112 S.Ct. 2791. *Casey* could not have been clearer when it stated:

The soundness or unsoundness of that constitutional judgment in no sense turns on whether viability occurs at approximately 28 weeks, as was usual at the time of *Roe*, at 23 to 24 weeks, as it sometimes does today, or at some moment even slightly earlier in pregnancy, as it may if fetal respiratory capacity can somehow be enhanced in the future. *Whenever it may occur, the attainment of viability may continue to serve as the critical fact, just as it has done since Roe was decided.*

*Id.* (emphasis added).

<sup>111</sup> While viability is a "flexible" point, *see Danforth*, 428 U.S. at 61, 96 S.Ct. 2831, it is medically determinable, *id.* at 64–65, 96 S.Ct. 2831. Precisely because viability varies from pregnancy to pregnancy, the Supreme Court has held repeatedly that "the determination of whether a particular fetus is viable is, and must be, a matter for the judgment of the responsible attending physician." *Colautti*, 439 U.S. at 396, 99 S.Ct. 675 (citing *Danforth*, 428 U.S. at 64, 96 S.Ct. 2831). That is why a state may not fix viability at a specific point in pregnancy. *See Colautti*, 439 U.S. at 388–89, 99 S.Ct. 675; *Danforth*, 428 U.S. at 64–65, 96 S.Ct. 2831. "[N]either the legislature nor the courts may proclaim one of the elements entering into the ascertainment of viability—be it weeks of gestation or fetal weight or any other single factor—as the determinant of when the State has a compelling interest in the life or health of the fetus." *Colautti*, 439 U.S. at 388–89, 99 S.Ct. 675; *see also McCormack*, 694 F.3d at 1014 n. 5.

<sup>112</sup> The parties here agree that no fetus is viable at twenty weeks gestational age. The district court so recognized, declaring it undisputed that viability usually occurs between twenty-three and twenty-four weeks gestation. Accordingly, Arizona's ban on abortion from twenty weeks necessarily prohibits pre-viability abortions. Section 7 is therefore, without more, invalid.

### III.

#### A.

<sup>113</sup> The district court justified its contrary conclusion by characterizing the challenged Arizona law as a regulation, rather than a prohibition, of pre-viability abortions. The court then reasoned that the statute does not impose an "undue burden," under the standard enunciated in *Casey* for determining the validity of rules regarding the manner in which pre-viability abortions are to be provided. *Casey* specified that a law imposes an undue burden on a woman's right to choose to terminate her pregnancy if it "has the *purpose or effect* of placing a substantial obstacle in the path of a woman seeking an abortion of a nonviable fetus." *Casey*, 505 U.S. at 877, 112 S.Ct. 2791 (plurality opinion) (emphasis added); *see also Gonzales*, 550 U.S. at 156, 127 S.Ct. 1610. Where it does so, the "power of the State reach[es] into the heart of the liberty protected by the Due Process Clause." *Casey*, 505 U.S. at 874, 112 S.Ct. 2791 (plurality opinion). But this "undue burden"/"substantial obstacle" mode of analysis has no place where, as here, the state is *forbidding* certain women from choosing pre-viability abortions rather than specifying the conditions under which such abortions are to be allowed.

Arizona's twenty-week law deprives women of the right to choose abortion at all after twenty weeks gestation. Given \*1226 inaccuracies in calculating actual gestational age, the period between twenty weeks from the first day of a woman's last menstrual cycle and the point of fetal viability may be a month or more. *See* Amicus Brief of the Am. Coll. of Obstetricians & Gynecologists & Am. Cong. of Obstetricians & Gynecologists in Support of Plaintiffs–Appellants and Reversal at 4 n.4, *Isaacson v. Horne*, No. 12–16670 (9th Cir. Sept. 13, 2012) ("ACOG Amicus Brief"). There is therefore no doubt that the twenty-week law operates as a ban on pre-viability abortion and that it cannot stand under the viability rule enunciated repeatedly by the Supreme Court, this circuit,

and other circuits: “Before viability, a State may not prohibit any woman from making the ultimate decision to terminate her pregnancy.” *Gonzales*, 550 U.S. at 146, 127 S.Ct. 1610 (internal quotation marks omitted); *accord Casey*, 505 U.S. at 846, 112 S.Ct. 2791.

Defendants and the district court rely most heavily on *Gonzales* for their contrary characterization of the Arizona law. But unlike the statute at issue in *Gonzales*, Section 7 does not just restrict a woman’s right to choose a particular *method* of terminating her pregnancy before viability; it eliminates a woman’s “right to choose abortion itself.” *Stenberg*, 530 U.S. at 930, 120 S.Ct. 2597. Even though the fetus is not yet viable at twenty weeks, only a physician can elect to perform an abortion from that point, and only in the case of a medical emergency as narrowly defined under the Arizona statute. During the period between the twenty-week mark and viability, the pregnant woman “lacks all choice in the matter” of whether to carry her pregnancy to term. *Casey*, 505 U.S. at 850, 112 S.Ct. 2791. Under the Supreme Court’s consistent holdings, that distinction makes all the difference to the validity of the Arizona statute.

This consequence—the elimination of a woman’s choice as to post-twenty-week, pre-viability abortions—is not merely collateral to the Arizona law’s purpose. Section 7 does not have only the “incidental effect of making it more difficult or more expensive to procure an abortion.” *Id.* at 874, 112 S.Ct. 2791 (plurality opinion). Nor does it merely “create a structural mechanism by which the State, or the parent or guardian of a minor, may express profound respect for the life of the unborn.” *Id.* at 877, 112 S.Ct. 2791. Instead, the stated purpose of H.B.2036 is to “[p]rohibit” a woman from electing abortion once the fetus reaches twenty weeks gestational age. H.B.2036, sec. 9(B)(1). Given that Arizona law already forbids *post*-viability abortions, *see* Ariz.Rev.Stat. § 36–2301.01, the principal effect, and, necessarily, the primary intent, of the challenged statute is to prohibit *pre*-viability abortions at and after twenty weeks.

## B.

The district court nonetheless—again, erroneously, given the binding precedent we have surveyed—applied not the bright-line rule that the state may not proscribe abortion before viability, but instead the “undue burden” standard elaborated in *Casey* for quite different sorts of statutes. None of the factors on which the court rested its undue burden analysis—the continued availability of abortion prior to twenty weeks, the medical emergency exception

in H.B.2036, the rarity of abortion after twenty weeks, or the state’s asserted interests in the law—can save a pre-viability *ban*, such as Arizona’s twenty-week law, from constitutional infirmity.

## 1.

First, the district court held that, because a woman can obtain a pre-viability abortion *prior* to twenty weeks, the challenged \*1227 law does not deprive her of the “ultimate decision” to terminate her pregnancy, but merely places a “time limitation” on that choice. The availability of abortions earlier in pregnancy does not, however, alter the nature of the burden that Section 7 imposes on a woman once her pregnancy is at or after twenty weeks but prior to viability. And a prohibition on abortion at and after twenty weeks does not merely “encourage” women to make a decision regarding abortion earlier than Supreme Court cases require; it forces them to do so.

<sup>[14]</sup> Under the twenty-week law, a woman who seeks to terminate her pregnancy must do so before twenty weeks gestational age or forfeit her right to choose whether to carry her pregnancy to term. The Supreme Court has expressly rejected such attempts to “stretch the point of viability” earlier in pregnancy, or to peg it to a precise gestational date. *See Colautti*, 439 U.S. at 389, 99 S.Ct. 675; *Danforth*, 428 U.S. at 64, 96 S.Ct. 2831. Under controlling Supreme Court precedent, a woman has a right to choose to terminate her pregnancy *at any point* before viability—not just before twenty weeks gestational age—and the State may not proscribe that choice.

## 2.

<sup>[15]</sup> <sup>[16]</sup> <sup>[17]</sup> Second, the district court misconstrued the significance of the statute’s medical emergency exception. Because Section 7 incorporates an exception for medical emergencies, the district court concluded that it merely limits, rather than prohibits, pre-viability abortions from twenty weeks on. But the law’s emergency exception does not transform it from a ban into a limitation as to the mode or manner of conducting abortions. Again, *Casey* is crystal clear on this point: “Regardless of whether exceptions are made for particular circumstances, a State may not prohibit *any woman* from making the ultimate decision to terminate her pregnancy before viability.” 505 U.S. at 879, 112 S.Ct. 2791



(plurality opinion) (emphasis added). As *Casey* instructs, even with a medical emergency exception, a proscription on a woman's choice to undergo an abortion remains invalid. *Id.* By permitting abortions from twenty weeks to viability only at the decision of a medical professional as to an immediate medical necessity, Section 7 prohibits women from electing to terminate their pregnancies prior to fetal viability. *See id.* at 846, 112 S.Ct. 2791 (joint opinion).

Moreover, to be constitutional, even laws that proscribe post-viability abortions, such as Arizona Revised Statutes § 36-2301.01, must contain a health exception. *See Roe*, 410 U.S. at 164-65, 93 S.Ct. 705; *Stenberg*, 530 U.S. at 930, 120 S.Ct. 2597. "An adequate health exception ... is a *per se* constitutional requirement.... To preclude a woman from receiving a medically necessary abortion is to impose an unconstitutional burden." *Wasden*, 376 F.3d at 922-23. As *Casey* put it, "the essential holding of *Roe* forbids a State to interfere with a woman's choice to undergo an abortion procedure if continuing her pregnancy would constitute a threat to her health." 505 U.S. at 880, 112 S.Ct. 2791. Accordingly, the absence of an adequate medical exception may make an otherwise permissible prohibition on post-viability abortion unconstitutional. *See, e.g., Stenberg*, 530 U.S. at 930, 120 S.Ct. 2597. But the converse is not true: The presence of a medical exception does not make an otherwise impermissible prohibition constitutional. The adequacy of the medical exception has no bearing on whether the prohibition is permissible in the first place. The twenty-week law is unconstitutional because it bans abortion at a pre-viability stage of pregnancy; no health exception, no matter how broad, could save it.<sup>12</sup>

<sup>12</sup> The Physicians note that the language of the medical exception in the Arizona law, *see* Ariz.Rev.Stat. § 36-2151(6), parallels that upheld in *Casey*, where the concern was delay, not prohibition, of abortions, under a 24-hour waiting period and informed consent provision. *See Casey*, 505 U.S. at 879-81, 112 S.Ct. 2791; *id.* at 885-87, 112 S.Ct. 2791 (plurality opinion). The focus on "immediate" danger in the current context, the Physicians contend, could require doctors to postpone abortions until medical risks pose an imminent threat to a pregnant woman's health, when the possibility of medical complications from abortion may be greater. Defendants dispute this understanding of the scope of the medical exception. As it is not relevant to our conclusion, we do not settle this disagreement concerning the precise implications of the statute's medical exception.

Because the medical emergency exception will not cover

all women who seek pre-viability abortions at or after twenty weeks, the challenged provision continues to operate as a complete bar to the rights of some women to choose to terminate their pregnancies before the fetus is viable. Significantly, the emergency exception does not authorize abortions in cases of fetal anomaly or pregnancy failure, which do not pose an immediate threat to the woman's health. *See* Ariz.Rev.Stat. § 36-2151(6).

<sup>118]</sup> In sum, while a health exception is necessary to save an otherwise constitutional post-viability abortion ban from challenge, it cannot save an unconstitutional prohibition on the exercise of a woman's right to choose to terminate her pregnancy before viability.

### 3.

<sup>119]</sup> Nor does the district court's observation that pre-viability abortions at and after twenty weeks are relatively rare have any relevance to the law's constitutional validity. A prohibition's constitutionality is measured by its impact on those whom it affects, not by the number of people affected. *Casey* is lucid on this point as well: "The analysis does not end with the one percent of women upon whom the statute operates; it begins there.... The proper focus of constitutional inquiry is the group for whom the law is a restriction, not the group for whom the law is irrelevant." 505 U.S. at 894, 112 S.Ct. 2791.

### 4.

To the litany of justifications given by the district court for failing to follow the Supreme Court's clear rule that no woman may be entirely precluded from choosing to terminate her pregnancy at any time prior to viability, Defendants add one more: They argue that the twenty-week law "might be constitutional based solely on the state's compelling interest in maternal health." Current medical knowledge, Defendants contend, indicates "abortion by 20 weeks has higher rates of mortality and health complications for the mother than carrying the unborn child to term." Consequently, they reason, the state may proscribe abortions from twenty weeks because "there is no right to *unsafe* abortion" (emphasis added).

Once more, this suggestion runs squarely up against *Roe* and its progeny, including *Casey*. Recognizing an

important state interest in maternal health, *Roe* held that “a State may regulate the abortion procedure to the extent that the regulation reasonably relates to the preservation and protection of maternal health.” 410 U.S. at 163, 93 S.Ct. 705 (emphasis added). Toward this end, the Supreme Court has repeatedly countenanced informed consent requirements directed at protecting the health of pregnant women without precluding a woman’s ability to balance the risk to her own health, once known, against other considerations.<sup>13</sup> See, e.g., \*1229 Casey, 505 U.S. at 881–84, 112 S.Ct. 2791 (plurality opinion); *Danforth*, 428 U.S. at 67, 96 S.Ct. 2831. *Casey*, for example, upheld a requirement that doctors inform their patients of the consequences of abortion to their own health (as well as to the fetus). See 505 U.S. at 882–83, 112 S.Ct. 2791 (plurality opinion). Just as for other medical procedures that carry risks of morbidity or mortality, the requirement upheld in *Casey* left women to decide, in consultation with their medical providers, whether they wish to undertake known risks.<sup>14</sup> Under the challenged Arizona law, however, if a pregnant woman is at or after twenty weeks gestation, she no longer can decide whether she is willing to undertake the risks to her own health posed by abortion; the State has made that choice for her.

<sup>13</sup> The Physicians and *amici curiae* writing on their behalf contend that medical evidence supports neither Defendants’ assertions regarding the relative risks of abortion nor Defendants’ claims concerning fetal capacity to experience pain from twenty weeks gestation. See, e.g., ACOG Amicus Brief at 14–15 & nn. 13–14 (arguing that abortion is safer than childbirth and that the Arizona legislature’s findings address medical risks associated with abortion, not the relative risks of those procedures compared to childbirth); see also *McCormack*, 694 F.3d at 1016 n. 8 (noting that numerous studies denounce any link between abortion and the pregnant woman’s later mental health). Again, we do not consider which medical experts have the better of the disputes over the underlying medical facts regarding either the pregnant woman or the fetus, as our decision rests on binding legal principles.

<sup>14</sup> Notably, the Arizona Supreme Court has emphasized that, in the context of informed consent, “the decision to undergo an operation belongs to the patient.” *Hales v. Pittman*, 118 Ariz. 305, 314, 576 P.2d 493 (1978). A more recent case, *Simat Corp. v. Arizona Health Care Cost Containment System*, recognized that the privacy clause of the Arizona Constitution guarantees Arizonans the right “to care for their health and to choose or refuse the treatment they deem best for themselves.” 203 Ariz. 454, 458 n. 2, 56 P.3d 28 (2002) (citing *Rasmussen v. Fleming*, 154 Ariz. 207, 215, 741 P.2d 674 (1987)).

Defendants correctly point out that the existence of medical or scientific uncertainty regarding either the safety of abortion after twenty weeks gestational age or fetal capacity to feel pain does not preclude the Arizona legislature from setting standards for the manner and means through which abortions are to be provided. See *Gonzales*, 550 U.S. at 163–64, 127 S.Ct. 1610. Such uncertainty “does not foreclose the exercise of legislative power in the abortion context any more than it does in other contexts.” *Id.* at 164, 127 S.Ct. 1610. But neither does it expand legislative power beyond constitutional bounds.

The short of the matter is that, because Arizona’s twenty-week law acts as a prohibition of, and not merely a limitation on the manner and means of, pre-viability abortions, under long-established Supreme Court law no state interest is strong enough to support it. See *Casey*, 505 U.S. at 846, 112 S.Ct. 2791. Section 7 effectively shifts from viability to twenty weeks gestation the point at which the state’s asserted interests override a woman’s right to choose whether to carry a pregnancy to term. Supreme Court precedent does not countenance such a shift.

#### IV.

Finally, we turn to a question to which the district court devoted considerable attention but which we conclude ultimately has no bearing on the outcome of the legal issue before us: whether the Physicians’ suit is properly construed as a facial or as-applied challenge to the Arizona statute.

<sup>[20]</sup> The Physicians maintain that they challenge the twenty-week law only as it applies to pre-viability abortions at or after twenty weeks gestation; they do not allege Section 7 is unconstitutional as applied to later-term abortions of viable fetuses, \*1230 which none of the Physicians performs. Described in this fashion, the complaint appears to be “a paradigmatic as-applied attack [that] challenges only one of the rules in a statute, a subset of the statute’s applications, or the application of the statute to a specific factual circumstance.” *Hoye v. City of Oakland*, 653 F.3d 835, 857 (9th Cir.2011).<sup>15</sup> But as the district court observed, the twenty-week law only has practical significance under Arizona law until viability, because Arizona separately bans post-viability abortion under § 36–2301.01. This lawsuit is not challenging the



independent ban on post-viability abortions, and so, realistically, challenges Section 7 on its face—that is, in all the situations in which it would actually be determinative.

<sup>15</sup> That the statute has not yet been applied to any of the plaintiffs does not preclude them from bringing a pre-enforcement, as-applied challenge. Many such challenges have been entertained in the past. *See, e.g., Casey*, 505 U.S. at 845, 112 S.Ct. 2791; *Wasden*, 376 F.3d at 914; *Planned Parenthood of S. Ariz. v. Lawall*, 180 F.3d 1022, 1024–27 (9th Cir.1999) (applying *Casey*'s “undue burden standard” in evaluating a facial challenge to an abortion regulation). Nor do the plaintiffs have an obligation, as the district court implied, to argue that the statute *would be* constitutional under some set of facts, but was “only unconstitutional as-applied to Plaintiffs.” If they can show that it is unconstitutional as to the patients on whose behalf they sue, then plaintiffs have met their burden for an as-applied challenge.

<sup>121</sup> The precise characterization of the Physicians' complaint, however, has little bearing on the resolution of the legal question before us. “[T]he distinction between facial and as-applied challenges is not so well defined that it has some automatic effect or that it must always control the pleadings and disposition in every case involving a constitutional challenge.” *Citizens United v. Fed. Election Comm'n*, 558 U.S. 310, 331, 130 S.Ct. 876, 175 L.Ed.2d 753 (2010). Instead, the distinction matters primarily as to the remedy appropriate if a constitutional violation is found. *Id.* The substantive legal tests used in facial and as-applied challenges are “invariant,” *Hoye*, 653 F.3d at 857, and so our question remains whether the statute deprives a woman of the right to choose to terminate her pregnancy before viability. That it does so in all cases, or only in some cases to which it applies, may affect the breadth of the relief to which plaintiffs are entitled, but not our jurisdiction to entertain the suit or the constitutional standard we apply.

<sup>122</sup> The posture of the challenge also can bear on the showing that plaintiffs must make to prevail. “Facial and as-applied challenges differ in *the extent to which the invalidity of a statute need be demonstrated.*” *Legal Aid Servs. of Or. v. Legal Servs. Corp.*, 608 F.3d 1084, 1096 (9th Cir.2010) (citation and internal quotation marks omitted). Here, however, there is no practical difference between the two approaches.

As we have discussed, given the controlling, substantive legal standards, Section 7 is invalid as applied to every woman affected by its prohibition on abortions. In other

words, there is a one hundred percent correlation between those whom the statute affects and its constitutional invalidity as applied to them. That universal correlation is sufficient to require declaring the statute entirely invalid, even under the strict standard enunciated in *United States v. Salerno*, 481 U.S. 739, 107 S.Ct. 2095, 95 L.Ed.2d 697 (1987), and applicable *except* in First Amendment and abortion cases, as there is “no set of circumstances” to which the statute applies under which it would be valid. *Id.* at 745, 107 S.Ct. 2095. And, given the one hundred percent correlation, there is no doubt the special rule that applies to facial challenges in abortion \*1231 cases—that plaintiffs need only show the law challenged is invalid “in a large fraction of the cases in which [the statute] is relevant,” *Casey*, 505 U.S. at 895, 112 S.Ct. 2791—is also met. *See also Lawall*, 180 F.3d at 1027.

<sup>123</sup> In contrast, the facial versus as-applied distinction is relevant when a claimed statutory defect applies to a sub-category of the people affected by the law, and the court must determine whether that particular sub-category may challenge the statute as a whole, including its application to people who are not similarly situated. Here, because of the one hundred percent correlation, that usual concern with invalidating an abortion statute on its face—that the injunctive relief goes beyond the circumstances in which the statute is invalid to include situations in which it may not be—does not arise.

In *Gonzales*, for example, the Court considered whether the impact of the Partial-Birth Abortion Ban Act on people for whom the banned abortion method may be medically necessary was grounds to hold not only that the ban was unconstitutional as applied to those individuals, but that it was entirely unconstitutional and could not be applied at all because it lacked a medical exception. *See Gonzales*, 550 U.S. at 161–63, 127 S.Ct. 1610. The Court concluded that an as-applied challenge was the proper vehicle through which to seek relief for the very small subgroup of affected women as to whom the absence of a medical exception might render the statute invalid. *See id.* at 167–68, 127 S.Ct. 1610. Here, however, the substantive constitutional law renders the twenty-week law invalid as to every woman who would choose to have an abortion but is precluded from doing so by Section 7.

The Physicians are therefore entitled to the relief they seek, enjoining the challenged provision of Section 7 in its entirety.

## Conclusion

Under controlling Supreme Court precedent, Arizona may not deprive a woman of the choice to terminate her pregnancy at any point prior to viability. Section 7 effects such a deprivation, by prohibiting abortion from twenty weeks gestational age through fetal viability. The twenty-week law is therefore unconstitutional under an unbroken stream of Supreme Court authority, beginning with *Roe* and ending with *Gonzales*. Arizona simply cannot proscribe a woman from choosing to obtain an abortion before the fetus is viable.

We therefore **REVERSE** the district court's denial of declaratory and injunctive relief.

KLEINFELD, Senior Circuit Judge, concurring:

The current state of the law compels me to concur.

Arizona defends the statute on two grounds: that the risk to pregnant women is considerably greater after 20 weeks gestation, and that fetuses feel pain at least by 20 weeks. The State has presented substantial medical evidence to support its legislative findings on both points. The very undeveloped record affords no basis for rejecting these propositions. But they do not suffice to justify the statute in the current state of constitutional law. Were the statute limited to protecting fetuses from unnecessary infliction of excruciating pain before their death, Arizona might regulate abortions at or after 20 weeks by requiring anesthetization of the fetuses about to be killed, much as it requires anesthetization of prisoners prior to killing them when the death penalty is carried out.<sup>1</sup> *Gonzales v. Carhart* similarly suggested \*1232 that if a particularly inhumane abortion procedure, removing the child from the uterus intact and then killing it after it had left the uterus and entered the vaginal canal, were "truly necessary in some circumstances, it appears likely an injection that kills the fetus is an alternative."<sup>2</sup>

<sup>1</sup> See, e.g., *Dickens v. Brewer*, 631 F.3d 1139, 1142 (9th Cir.2011) ("Arizona uses a three-drug lethal injection cocktail that consists of three chemicals—sodium thiopental, pancuronium bromide and potassium chloride—administered sequentially. Sodium thiopental is a fast-acting barbiturate that anesthetizes the inmate and permits the other chemicals to be administered without causing pain.")

<sup>2</sup> *Gonzales v. Carhart*, 550 U.S. 124, 164, 127 S.Ct. 1610, 167 L.Ed.2d 480 (2007).

The plaintiffs argue that some extremely serious birth defects cannot be detected until after 20 weeks. If that were all that were problematic about the statute, we could apply the doctrine of constitutional avoidance, and read the statutory phrasing to permit post-20 week abortions for serious fetal anomalies. "The elementary rule is that every reasonable construction must be resorted to, in order to save a statute from unconstitutionality."<sup>3</sup> The statutory phrase "serious risk of substantial and irreversible impairment of a major bodily function"<sup>4</sup> could, albeit with some strain, be read to mean impairment of the fetus's bodily functions. Even if not, birth of a severely deformed child is highly likely to impair all of a mother's bodily and mental functions for the rest of her life, because of the extraordinary burdens the child's disabilities and illnesses will likely cause a loving mother to suffer. A hellish life of pain may be likely for both mother and child, in the case of the birth defects described in plaintiffs' affidavits. A prohibition on abortion "would be unconstitutional ... if it subjected women to significant health risks."<sup>5</sup>

<sup>3</sup> *Id.* at 153, 127 S.Ct. 1610 (quotations omitted).

<sup>4</sup> Ariz.Rev.Stat. § 36-2301.01(C)(2).

<sup>5</sup> *Gonzales*, 550 U.S. at 161, 127 S.Ct. 1610 (quotations omitted).

But plaintiffs do not limit their challenge to such cases, they just use them as emotionally appealing anecdotes for why abortions may be desirable after 20 weeks. Because their challenge is facial, not an as-applied challenge involving specific birth defects, our decision cannot be based only on cases involving severe birth defects undetectable until the 20 to 23 week period.

The State argues that we ought to reject this facial challenge and await an as-applied challenge. The State correctly argues that the challengers, in a facial challenge, must show that there can be "no set of circumstances ... under which the Act would be valid."<sup>6</sup> This is why plaintiffs are not entitled to prevail in this facial challenge case by showing that in some cases, such as the gross fetal deformity not detectable until after 20 weeks, the statute poses an "undue burden."

<sup>6</sup> *Id.* at 167, 127 S.Ct. 1610 (quoting *Ohio v. Akron*



*Center for Reproductive Health*, 497 U.S. 502, 514, 110 S.Ct. 2972, 111 L.Ed.2d 405 (1990)). The Court in *Gonzales* notes, but does not resolve, the tension between the “no set of facts” standard in *Akron* and the “large fraction of the cases” standard in *Planned Parenthood v. Casey*, 505 U.S. 833, 112 S.Ct. 2791, 120 L.Ed.2d 674 (1992).

Because this is a facial challenge, we have to consider the opposite question, whether there can be any case in which the burden is not “undue.” To do so, we must hypothesize cases in which the statutory “burden” on abortion might be less obviously troubling. So let us suppose that the statute allows abortions on fetuses that are perfectly normal, as most are, and that the reason for the mother’s decision to obtain a late abortion is that her partner, upon noticing her previously undisclosed \*1233 pregnancy, pressures her to do so. The question we must answer in this facial challenge case is whether a state may prohibit a post-20 week but pre-viability abortion where the mother’s choice results not from detection of a likely birth defect, not from health risks to the fetus or the mother, but from her decision made in the context of the ordinary pressures of life. Such cases probably occur in substantial numbers, because ambivalence, moral strain, economic strain, and relationship strain may sometimes accompany pregnancy.

What controls this case is that the parties do not dispute that the 20-week line Arizona has drawn is three or four weeks prior to viability. Defendants do not argue that the 20 to 23 or 24 week fetuses protected by the statute are viable, and offer no evidence to that effect. We are bound, in this particular case, by the absence of any factual dispute as to whether the fetuses to be killed between gestational ages 20 and 23 or 24 weeks are viable. The decision in this case cannot, of course, establish the factual medical question of whether they are viable, because non-viability is the underlying factual assumption of both parties in today’s case. For this case, Arizona concedes non-viability.

Viability is the “critical fact” that controls constitutionality.<sup>7</sup> That is an odd rule, because viability changes as medicine changes. As *Planned Parenthood v. Casey* noted, between *Roe v. Wade*<sup>8</sup> in 1973 and the time *Casey* was decided in 1992, viability dropped from 28 weeks to 23 or 24 weeks, because medical science became more effective at preserving the lives of premature babies.<sup>9</sup> The briefs make good arguments for why viability should not have the constitutional significance it does, but under controlling Supreme Court decisions, it does indeed have that significance. And even

though medical science for premature babies may advance to where they are viable three or four weeks earlier, Arizona does not claim that science has done so.

<sup>7</sup> *Planned Parenthood v. Casey*, 505 U.S. 833, 860, 112 S.Ct. 2791, 120 L.Ed.2d 674 (1992).

<sup>8</sup> *Roe v. Wade*, 410 U.S. 113, 93 S.Ct. 705, 35 L.Ed.2d 147 (1973).

<sup>9</sup> *Casey*, 505 U.S. at 860, 112 S.Ct. 2791.

Thus this case has to be decided on the assumption that the statute applies to non-viable fetuses, and that the statute before us prohibits abortions of non-viable fetuses past 20 weeks of gestation except for medical emergencies. We evaluate whether that prohibition is, under *Casey*, an “undue burden.” The woman who does not have a “medical emergency” cannot obtain an abortion after 20 weeks from an Arizona physician. The question for us is whether the current state of constitutional law prohibits the states from imposing that restriction. It does.

Though *Casey* was a plurality opinion leaving some room for interpretation,<sup>10</sup> a majority of the Supreme Court in *Gonzales* spoke clearly, albeit partially in dicta,<sup>11</sup> as to the current state of the law. Here are several propositions of law by which, under *Casey* and *Gonzales*, we are bound:

<sup>10</sup> *Casey*, 505 U.S. 833, 112 S.Ct. 2791.

<sup>11</sup> *U.S. v. Montero-Camargo*, 208 F.3d 1122, 1132 n. 17 (9th Cir.2000) (“We do not treat considered dicta from the Supreme Court lightly. Rather, we accord it appropriate deference.... Supreme Court dicta have a weight that is greater than ordinary judicial dicta as prophecy of what that Court might hold; accordingly, we do not blandly shrug them off because they were not a holding.”) (quotations omitted).

1. “[T]he government has a legitimate and substantial interest in preserving and promoting fetal life”;<sup>12</sup>

<sup>12</sup> *Gonzales*, 550 U.S. at 145, 127 S.Ct. 1610.

2. “Before viability, the State’s interests are not strong enough to support a \*1234 prohibition of abortion or the imposition of a substantial obstacle”;<sup>13</sup>

<sup>13</sup> *Id.* (quotations omitted).

3. There is a constitutional “right of the woman to choose to have an abortion before viability and to obtain it without undue interference from the State”;<sup>14</sup>

<sup>14</sup> *Id.*

4. “*Casey* rejected both *Roe* ‘s rigid trimester framework and the interpretation of *Roe* that considered all previability regulations of abortion unwarranted”;<sup>15</sup>

<sup>15</sup> *Id.* at 146, 127 S.Ct. 1610.

5. “Before viability, a State may not prohibit any woman from making the ultimate decision to terminate her pregnancy”;<sup>16</sup>

<sup>16</sup> *Id.* (quotations omitted).

6. An “undue burden,” prohibited by *Casey* even though less than an absolute prohibition, exists if a “regulation’s purpose or effect is to place a substantial obstacle in the path of a woman seeking an abortion before the fetus attains viability”;<sup>17</sup>

<sup>17</sup> *Id.*

7. *Gonzales* accepts as appropriate government objectives prohibiting inhumane procedures that “coarsen society,” recognizing that a government may consider “effects on the medical community,” and “may use its voice and its regulatory authority to show its profound respect for the life within the woman”;<sup>18</sup>

<sup>18</sup> *Id.* at 157, 127 S.Ct. 1610.

8. The “undue burden” test does not prohibit laws that have a valid purpose but an “incidental effect of making [abortion] more difficult or expensive to procure,”<sup>19</sup> and the woman seeking to abort even a previability fetus is not constitutionally entitled to do so completely free of interference from the state, but any state interference cannot be “undue.”<sup>20</sup>

<sup>19</sup> *Id.* at 158, 127 S.Ct. 1610 (quotations omitted).

<sup>20</sup> *Id.* at 145, 127 S.Ct. 1610 (quotations omitted).

Our circuit law is to similar effect, of course.<sup>21</sup>

<sup>21</sup> See *McCormack v. Hiedeman*, 694 F.3d 1004 (9th Cir.2012); *Planned Parenthood of Idaho, Inc. v. Wasden*, 376 F.3d 908 (9th Cir.2004).

Arizona has unquestionably put a “substantial obstacle” in the path of a woman seeking to abort a previability fetus. Unless she has a “medical emergency,” no one can perform it on her. True, she might be able to go to another state for it, but I am unaware of any case in which one state may deprive someone of a constitutional right because the individual could exercise it in another state. And aborting previability fetuses is, under the current state of the law, a constitutional right. True, the state has a legitimate interest in protecting the fetus from pain. Although plaintiffs’ amici claim that a previability fetus feels no pain, the state’s experts’ affidavits claim that it does, and legislatures have “wide discretion to pass legislation in areas where there is medical and scientific uncertainty.”<sup>22</sup> But protection of the fetus from pain, even the pain of having a doctor stick scissors in the back of its head and then having the doctor “open[ ] up the scissors [and stick in] a high-powered suction tube into the opening, and suck[ ] the baby’s brains out” was not enough in *Gonzales* to justify a complete prohibition.<sup>23</sup>

<sup>22</sup> *Gonzales*, 550 U.S. at 163, 127 S.Ct. 1610.

<sup>23</sup> *Id.* at 139, 127 S.Ct. 1610.

\*1235 As for Arizona’s claimed interest in the mother’s health, people are free to do many things risky to their health, such as surgery to improve their quality of life but unnecessary to preserve life. There appears to be no authority for making an exception to this general liberty regarding one’s own health for abortion.

I have alluded to administration of the death penalty to convicts because in one respect it is analogous. Many people have very substantial moral, philosophical, practical, and religious objections to one or both. Of

course the analogy is limited, because convicts sentenced to death have committed horrendous crimes, but fetuses have committed no crimes. But the analogy applies to the extent that regardless of the objections we may have, a lower court is bound to apply Supreme Court authority, which allows executions and requires states to permit abortions. And under the authority by which we, and the state legislatures, are bound, the Arizona prohibition is unconstitutional.

**All Citations**

716 F.3d 1213, 13 Cal. Daily Op. Serv. 5033, 2013 Daily Journal D.A.R. 6421

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KeyCite Yellow Flag - Negative Treatment  
Distinguished by Tarhuni v. Lynch, D.Or., September 8, 2015  
788 F.3d 1017  
United States Court of Appeals,  
Ninth Circuit.

Jennie Linn McCORMACK, Plaintiff-Appellee,  
Richard Hearn, M.D., on his own behalf and on  
behalf of his patients,  
Intervenor-Plaintiff-Appellee,  
v.  
Stephen F. HERZOG, Bannock County  
Prosecuting Attorney, Defendant-Appellant.

No. 13-35401.

Argued and Submitted July 18, 2014.

Filed May 29, 2015.

**Synopsis**

**Background:** Woman who, after successfully terminating her pregnancy by taking drug purchased over Internet, was charged with felony misconduct under Idaho law, brought putative class action challenging constitutionally of Idaho abortion laws, and she moved for preliminary injunctive relief. Physician intervened as a plaintiff to assert his own challenge to those laws, as well as challenge on behalf of his patients. The United States District Court for the District of Idaho, B. Lynn Winmill, Chief Judge, 2011 WL 4436548 and 417 Fed.Appx. 270, entered order enjoining prosecuting attorney from enforcing one statutory subsection against woman, but finding that woman did not have standing to challenge other provisions, and parties appealed. The Court of Appeals, Pregerson, Circuit Judge, 694 F.3d 1004, affirmed in part and reversed and remanded in part. On remand, the District Court, Winmill, Chief Judge, 900 F.Supp.2d 1128, granted plaintiff's motion for summary judgment, and appeal was taken.

**Holdings:** The Court of Appeals, Pregerson, Circuit Judge, held that:

<sup>[1]</sup> offer by prosecuting attorney's office of transactional immunity from prosecution to woman who had obtained a nonsurgical abortion in alleged violation of Idaho's Pain-Capable Unborn Child Protection Act (PUCPA) did not moot woman's challenge to constitutionality of statute

in question;

<sup>[2]</sup> woman had standing to challenge constitutionality of provision;

<sup>[3]</sup> physician had third-party standing to assert rights of his patients in challenging constitutionality of provisions of the Idaho Pain-Capable Unborn Child Protection Act (PUCPA);

<sup>[4]</sup> provision of Idaho's Pain-Capable Unborn Child Protection Act (PUCPA) that prohibited abortion of fetuses 20 or more weeks postfertilization, regardless of whether fetus had attained viability, was unconstitutional on its face;

<sup>[5]</sup> provision which required that all second-trimester abortions occur in hospital, and which subjected licensed medical providers to civil and criminal penalties if they failed to abide by this provision, was also unconstitutional on its face; and

<sup>[6]</sup> provision regulating first-trimester abortions was unconstitutionally vague.

Affirmed.

West Headnotes (27)

<sup>[1]</sup> **Federal Courts**  
⇌Jurisdiction

Mootness is question of law, which the Court of Appeals reviews de novo.

Cases that cite this headnote

<sup>[2]</sup> **Federal Courts**  
⇌Inception and duration of dispute; recurrence; "capable of repetition yet evading review"

Case becomes moot whenever it loses its character as present, live controversy.

2 Cases that cite this headnote

<sup>[3]</sup> **Federal Courts**  
↔ Available and effective relief

Question for court in deciding whether cause of action is moot is not whether precise relief sought at the time case was filed is still available, but whether there can be any effective relief.

2 Cases that cite this headnote

<sup>[4]</sup> **Federal Courts**  
↔ Standing

Questions of standing are reviewed de novo, but underlying factual findings are reviewed for clear error.

Cases that cite this headnote

<sup>[5]</sup> **Federal Courts**  
↔ Inception and duration of dispute; recurrence; “capable of repetition yet evading review”

Case may become moot if subsequent events make it absolutely clear that allegedly wrongful behavior cannot reasonably be expected to recur.

4 Cases that cite this headnote

<sup>[6]</sup> **Federal Courts**  
↔ Presumptions and burden of proof

Heavy burden of persuading court that challenged conduct cannot reasonably be expected to start up again lies with the party asserting mootness.

2 Cases that cite this headnote

<sup>[7]</sup> **Federal Courts**  
↔ Voluntary cessation of challenged conduct

Under the “voluntary cessation” exception to mootness doctrine, offer by prosecuting attorney’s office of transactional immunity from prosecution to woman who had obtained a nonsurgical abortion in alleged violation of Idaho’s Pain-Capable Unborn Child Protection Act (PUCPA) did not moot woman’s challenge to constitutionality of statute in question, given the suspicious timing of this offer of immunity, in apparent attempt to moot woman’s cause of action, and given that the prosecuting attorney’s office did not acknowledge that there was any constitutional problem with provision in question and was not barred, by its unaccepted offer of immunity, from ever refiling charges in future. West’s I.C.A. § 18-606.

1 Cases that cite this headnote

<sup>[8]</sup> **Federal Courts**  
↔ Voluntary cessation of challenged conduct  
**Federal Courts**  
↔ Presumptions and burden of proof

Under the “voluntary cessation” exception to mootness doctrine, a defendant claiming that its voluntary compliance moots case bears formidable burden of showing that it is absolutely clear allegedly wrongful behavior cannot reasonably be expected to recur.

4 Cases that cite this headnote

<sup>[9]</sup> **Federal Courts**  
↔ Change in law

While a statutory change is usually enough to render a case moot, an executive action that is not governed by any clear or codified

procedures cannot moot a claim.

1 Cases that cite this headnote

3 Cases that cite this headnote

[10]

**Federal Courts**

☞Collateral consequences

**Federal Courts**

☞Inception and duration of dispute; recurrence; “capable of repetition yet evading review”

“Collateral legal consequences” and “capable of repetition, yet evading review” exceptions to mootness doctrine applied, to permit court to consider woman’s challenge to constitutionally of provision of Idaho’s Pain-Capable Unborn Child Protection Act (PUCPA) under which she was prosecuted for having drug-induced abortion, even after prosecuting attorney’s office, while still asserting constitutionality of provision in question, offered the woman transactional immunity from prosecution for violating provision; substantial controversy remained between parties having adverse interests regarding constitutionality of this provision, which was of sufficient immediacy and reality to warrant declaratory relief, and woman could become pregnant again, and term of her pregnancy was of limited duration. West’s I.C.A. § 18-606.

1 Cases that cite this headnote

[12]

**Constitutional Law**

☞Requirement that complainant be injured

To have standing to challenge constitutionality of statute, plaintiff must demonstrate a realistic danger of sustaining direct injury as result of statute’s operation or enforcement.

2 Cases that cite this headnote

[13]

**Constitutional Law**

☞Abortion and birth control

Woman who had previously been prosecuted under provision of Idaho’s Pain-Capable Unborn Child Protection Act (PUCPA) for having a drug-induced abortion had standing to challenge constitutionality of that provision, even after prosecuting attorney’s office had made an unaccepted offer of transactional immunity from prosecution based on this abortion, given that prosecuting attorney’s office continued to defend constitutionality of provision, and woman remained subject to lingering risk of prosecution based on this past abortion. West’s I.C.A. § 18-606.

Cases that cite this headnote

[11]

**Federal Civil Procedure**

☞In general; injury or interest

**Federal Civil Procedure**

☞Causation; redressability

To have standing in Constitutional sense, plaintiff must demonstrate (1) that he or she has personally suffered an actual or imminent, and not conjectural or hypothetical, injury as result of the allegedly illegal conduct, (2) that causal link exists between his or her injury and the challenged action, and (3) that injury is one that is likely to be redressed by favorable decision of federal court.

[14]

**Abortion and Birth Control**

☞Civil liability and proceedings; injunction

Physician who intended to prescribe FDA-approved abortifacients to his patients to assist them in terminating their pregnancies by non-surgical means prior to viability had third-party standing to assert rights of his patients in challenging constitutionality of provisions of the Idaho Pain-Capable Unborn Child Protection Act (PUCPA) that prevented women from obtaining such pre-viability, drug-induced abortions. West’s I.C.A. §§

18-505, 18-609.

2 Cases that cite this headnote

[15]

**Abortion and Birth Control**

⇨Civil liability and proceedings; injunction

To determine whether physician has third-party standing to assert rights of patients in abortion context, court must determine: (1) whether physician alleges "injury in fact" to himself or herself, and (2) whether physician is proper proponent of legal rights on which he or she bases suit.

1 Cases that cite this headnote

[16]

**Constitutional Law**

⇨Abortion, Contraception, and Birth Control

Woman has Fourteenth Amendment right to terminate a pre-viability pregnancy, and to obtain it without undue interference from the state. U.S.C.A. Const.Amend. 14.

1 Cases that cite this headnote

[17]

**Abortion and Birth Control**

⇨Scope and standard of review

**Abortion and Birth Control**

⇨Fetal age and viability; trimester

State may express its interest in potential life by regulating abortions, as long as the regulations do not pose undue burden on woman's ability to seek abortion before fetus attains viability.

Cases that cite this headnote

[18]

**Abortion and Birth Control**

⇨Health and safety of patient

**Abortion and Birth Control**

⇨Information and consent; counseling

While the state may ensure that woman's choice to undergo abortion is an informed one, and may protect health and safety of woman seeking an abortion, the state may not prohibit woman from making ultimate decision of whether to undergo an abortion.

1 Cases that cite this headnote

[19]

**Federal Courts**

⇨Summary judgment

Court of Appeals reviews de novo a district court's grant of summary judgment.

1 Cases that cite this headnote

[20]

**Abortion and Birth Control**

⇨Scope and standard of review

Facial challenge to constitutionality of abortion statute will succeed where, in large fraction of cases in which statute is relevant as having some actual effect, it will operate as substantial obstacle to woman's choice to undergo an abortion.

1 Cases that cite this headnote

[21]

**Municipal Corporations**

⇨Uncertainty as to penalty

There is heightened need for definiteness when ordinance imposes criminal penalties on individual behavior or implicates constitutionally protected rights.

Cases that cite this headnote

[22] **Abortion and Birth Control**  
☞Fetal age and viability; trimester

Provision of Idaho’s Pain-Capable Unborn Child Protection Act (PUCPA) that prohibited abortion of fetuses 20 or more weeks postfertilization, regardless of whether fetus had attained viability, was unconstitutional on its face, as placing substantial obstacle in path of women seeking an abortion before fetus obtained viability. West’s I.C.A. § 18-505.

Cases that cite this headnote

[23] **Abortion and Birth Control**  
☞Clinics, facilities, and practitioners  
**Abortion and Birth Control**  
☞Emergency contraception; abortifacients  
**Abortion and Birth Control**  
☞Abortion Offenses; Nature and Elements

Provision of Idaho’s Pain-Capable Unborn Child Protection Act (PUCPA) which required that all second-trimester abortions occur in hospital, and which subjected licensed medical providers to civil and criminal penalties if they failed to abide by this provision, was unconstitutional on its face as violative of rights of women who wished to obtain previability, drug-induced abortions from physician who indicated his willingness to prescribe FDA-approved abortifacients to his patients to assist them in terminating their pregnancies. West’s I.C.A. § 18-608(2).

Cases that cite this headnote

[24] **Abortion and Birth Control**  
☞Methods, modes and procedures  
**Abortion and Birth Control**  
☞Clinics, facilities, and practitioners  
**Abortion and Birth Control**  
☞Methods, modes and procedures in general

Provision of Idaho’s Pain-Capable Unborn Child Protection Act (PUCPA) which required that all first-trimester abortions take place only in hospital, physician’s office, or clinic that is “properly” staffed and equipped for performance of such procedures, after physician has made “satisfactory” arrangements with one or more acute care hospitals within reasonable proximity to be available to handle any complications arising from procedure, was unconstitutionally vague in violation of rights of physician who wished to assist his patients in terminating their pregnancies non-surgically by prescribing FDA-approved abortifacients; vagueness of the terms “properly” and “satisfactory” was not cured by fact that physician could be charged with felony for violating this provision only if he did so “knowingly.” West’s I.C.A. §§ 18-605, 18-608(1).

Cases that cite this headnote

[25] **Constitutional Law**  
☞Ordinances

To avoid unconstitutional vagueness, ordinance must (1) define offense with sufficient definiteness that ordinary people can understand what conduct is prohibited, and (2) establish standards to permit police to enforce the law in non-arbitrary, non-discriminatory manner.

Cases that cite this headnote

[26] **Criminal Law**  
☞Construction and Operation in General

If statute subjects violators to criminal penalties, need for clear definitions is even more exacting.

Cases that cite this headnote

[27] **Constitutional Law**



↔ Statutes

When the uncertainty induced by statute threatens to inhibit exercise of constitutionally protected rights, law is even more likely to be found unconstitutionally vague.

1 Cases that cite this headnote

**Attorneys and Law Firms**

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Lawrence J. Joseph, Washington, D.C., for Amicus Curiae Eagle Forum Education and Legal Defense Fund.

Appeal from the United States District Court for the District of Idaho, B. Lynn Winmill, Chief District Judge, Presiding. D.C. No. 4:11–cv–00433–BLW.

Before: HARRY PREGERSON and KIM McLANE WARDLAW, Circuit Judges, and DONALD E. WALTER, Senior District Judge.\*

\* The Honorable Donald E. Walter, Senior District Judge for the U.S. District Court for the Western District of Louisiana, sitting by designation.

**OPINION**

PREGERSON, Circuit Judge:

In this 42 U.S.C. § 1983 action, Stephen Herzog, the

Prosecuting Attorney of Bannock County, Idaho, appeals the district court's order denying his motion for partial summary judgment and granting the joint motion for partial summary judgment in favor of appellees Jennie McCormack ("McCormack") and Dr. Richard Hearn ("Dr. Hearn").

Before the district court, Jennie McCormack claimed that Idaho Code Title 18, Chapters 5—the Pain–Capable Unborn Child Protection Act ("PUCPA")—and 6, which regulate the performance of abortions, violate various provisions of the United States Constitution. McCormack's \*1022 attorney is Dr. Hearn, who is also an Idaho licensed physician who intends to provide his patients with pre-viability medical abortions. Dr. Hearn, as a third party-intervenor, *also* challenged the constitutionality of §§ 18–505 and 18–608, which fall within Chapters 5 and 6 of Idaho Code Title 18.

We have jurisdiction pursuant to 28 U.S.C. § 1291. For the reasons set forth below, we affirm.

**BACKGROUND**

This case had its genesis in an Idaho state criminal prosecution when, on May 18, 2011, the then Prosecuting Attorney for Bannock County, Idaho, Mark Hiedeman,<sup>1</sup> filed a criminal complaint against Jennie McCormack. The complaint charged McCormack with violating Idaho Code § 18–606,<sup>2</sup> for knowingly submitting to an abortion not authorized under the statute, or purposely self-terminating a pregnancy. McCormack admitted to the police that she self-induced an abortion after ingesting a pack of five pills.<sup>3</sup> A physician examined the fetus and estimated its gestational age to have been between nineteen and twenty-three weeks, "but with difficult certainty."

<sup>1</sup> Stephen Herzog ("Herzog") succeeded Mark Hiedeman as Prosecuting Attorney on January 14, 2013, and was automatically substituted as the defendant pursuant to Fed.R.Civ.P. 25(d).

<sup>2</sup> Section 18–606 provides that a woman who submits to an abortion in a manner not authorized by statute, or acts as an accomplice to such an abortion, will be guilty of a felony, fined, and/or imprisoned for not less than one year, and not more than five.

<sup>3</sup> McCormack knew that abortions are not available in southeast Idaho, where she lived. McCormack was aware that abortions are available in Salt Lake City, Utah, and cost between \$400 and \$2,000, depending on the stage of the pregnancy. McCormack learned that medications could be used to perform abortions and that the medications were significantly less expensive than surgical abortions. McCormack's sister allegedly found unspecified abortion pills online, paid \$200 for them, and had them shipped to McCormack in Idaho.

Then on September 7, 2011, an Idaho state judge dismissed the criminal complaint without prejudice for lack of probable cause.

On September 16, 2011, McCormack filed a class action in the United States District Court for the District of Idaho against the then Prosecuting Attorney Hiedeman, "seeking a determination that section 18-606, as well as other provisions of Title 18, Chapters 5 and 6 of the Idaho Code, which also regulate abortion[s], violate various provisions of the United States Constitution."

On November 14, 2011, Chief United States District Judge for the District of Idaho, B. Lynn Winmill, granted McCormack's motion for preliminary injunctive relief and enjoined then Prosecuting Attorney Hiedeman from enforcing § 18-606 (criminalizing submitting to an abortion), as interpreted together with § 18-608(1).<sup>4</sup> The district court, however, held that McCormack did not have standing to challenge § 18-608(2)<sup>5</sup> or § 18-505.<sup>6</sup>

<sup>4</sup> Section 18-608(1) requires a physician to perform all first trimester abortions in a "properly staffed and equipped" hospital, medical office, or clinic. The physician must also make "satisfactory arrangements with one or more acute care hospitals within reasonable proximity," in case of complications or emergencies related to the abortion.

<sup>5</sup> Section 18-608(2) requires all second trimester abortions to take place in a hospital.

<sup>6</sup> Section 18-505 categorically bans abortions of fetuses of twenty or more weeks postfertilization except in particular circumstances.

\*1023 On August 22, 2012, Prosecuting Attorney Hiedeman determined that he would not re-file a criminal complaint against McCormack for allegedly violating §

18-606 because he felt that it was unlikely that his office would develop additional evidence. About two months later, the Prosecuting Attorney offered McCormack transactional immunity from prosecution for the alleged December 2010 abortion. McCormack declined to sign the agreement.

On February 23, 2012, McCormack's attorney, Dr. Hearn, moved to intervene "on his own behalf and on the behalf of his patients." Dr. Hearn is a licensed physician as well as an attorney in Idaho, and has stated his intent to provide medical abortions by "prescrib[ing] FDA approved medications to women in Bannock County, Idaho such as McCormack who ... seek to medically (non-surgically) terminate their pregnancies prior to fetal viability in violation of the restrictions contained in Idaho Code Title 18, Chapters 5 and 6." Medical abortions induced by pills are distinct from surgical or therapeutic abortions which usually take place in a medical clinic or a hospital. Since 1997, Dr. Hearn has continuously registered with the Federal Drug Enforcement Agency and the Idaho State Board of Pharmacy, which allows him to legally prescribe medication in Bannock County. Dr. Hearn has not provided medical abortions in the past, does not have a medical office in which to treat patients, and has practiced as a full-time attorney since 1997.

The district court granted Dr. Hearn's motion to intervene. Dr. Hearn filed an amended complaint-in-intervention that similarly challenged the constitutionality of certain provisions of Idaho Code Title 18, Chapters 5 and 6. Pursuant to 42 U.S.C. § 1983, Dr. Hearn sought to enjoin the Prosecuting Attorney from criminally prosecuting or threatening to prosecute any woman who seeks an abortion or any health provider for violating Idaho Code Title 18, Chapters 5 and 6. Dr. Hearn also sought a declaratory judgment striking down the relevant Idaho statutes' criminal sanctions as unconstitutional facially and as applied to women seeking an abortion in Bannock County, Idaho, or any health provider who provides assistance to such women.

On September 11, 2012, we affirmed the district court's grant of a preliminary injunction that enjoined the Prosecuting Attorney from prosecuting McCormack under §§ 18-606 and 18-608(1), and expanded the injunction to include § 18-608(2) because McCormack faced a "genuine threat of prosecution under th[is] subsection of the statute." *McCormack v. Hiedeman*, 694 F.3d 1004, 1020-21 (9th Cir.2012) (*McCormack I*). We limited the preliminary injunction, however, to affect only McCormack (as opposed to all women affected by § 18-606), *id.* at 1019-20, and further held that McCormack lacked standing to seek pre-enforcement

relief against the enforcement of PUCPA on the basis of future pregnancies, *id.* at 1022–25.

On October 16, 2012, before the district court McCormack and Dr. Hearn jointly moved for partial summary judgment to declare three Idaho statutes— § 18–606, in conjunction with § 18–608(1) or (2); § 18–605,<sup>7</sup> in conjunction with § 18–608(1) or (2); and § 18–505, in conjunction with § 18–507 or § 18–508—unconstitutional, \*1024 and to permanently enjoin the Prosecuting Attorney from enforcing the statutes.

<sup>7</sup> Section 18–605 establishes civil and criminal penalties for persons who perform abortions other than as permitted by the remainder of Title 18, Chapter 6 of the Idaho Code. In particular, § 18–605(3) states that the licensed or certified health care provider must “knowingly” violate the statute to be guilty of a felony.

On March 6, 2013, the district court granted McCormack and Dr. Hearn’s joint motion for partial summary judgment and denied Prosecuting Attorney Herzog’s cross-motion for partial summary judgment. On March 20, 2013, McCormack and Dr. Hearn moved to dismiss all remaining claims against Herzog and to enter a final judgment. The district court granted the motion and entered final judgment on May 2, 2013, declaring the challenged statutes unconstitutional, and enjoining Herzog from prosecuting McCormack or Dr. Hearn under the challenged statutes.

Herzog timely appeals the district court’s final judgment.

## DISCUSSION

### A. This court has jurisdiction.

#### 1. Standard of Review

<sup>[1]</sup> <sup>[2]</sup> <sup>[3]</sup> “Mootness is a question of law reviewed de novo.” *Siskiyou Reg’l Educ. Project v. U.S. Forest Serv.*, 565 F.3d 545, 559 (9th Cir.2009) (quoting *Barter Fair v. Jackson County*, 372 F.3d 1128, 1133 (9th Cir.2004)). “A case becomes moot whenever it loses its character as a present, live controversy.... The question is not whether the precise relief sought at the time [the case] was filed is still available. The question is whether there can be any effective relief.” *Id.* (quoting *Earth Island Inst. v. United States Forest Serv.*, 442 F.3d 1147, 1157 (9th Cir.2006)).

<sup>[4]</sup> Questions of standing are also reviewed de novo, but underlying factual findings are reviewed for clear error. *Preminger v. Peake*, 552 F.3d 757, 762 n. 3 (9th Cir.2008).

#### 2. McCormack’s challenge to § 18–606 is not moot.

Herzog asserts that McCormack’s challenge to § 18–606 is moot because the Prosecuting Attorney granted McCormack transactional immunity for the alleged 2010 abortion.

<sup>[5]</sup> <sup>[6]</sup> “A case might become moot if subsequent events make it absolutely clear that the allegedly wrongful behavior could not reasonably be expected to recur. The heavy burden of persuading the court that the challenged conduct cannot reasonably be expected to start up again lies with the party asserting mootness.” *Friends of the Earth, Inc. v. Laidlaw Envtl. Servs. (TOC), Inc.*, 528 U.S. 167, 189, 120 S.Ct. 693, 145 L.Ed.2d 610 (2000) (internal quotation marks and citation omitted). Herzog, therefore, must demonstrate that his office will never again prosecute McCormack under § 18–606, or that the court is no longer capable of “affect[ing] the rights of litigants in the case before [it].” *Lewis v. Cont’l Bank Corp.*, 494 U.S. 472, 477, 110 S.Ct. 1249, 108 L.Ed.2d 400 (1990) (citing *North Carolina v. Rice*, 404 U.S. 244, 246, 92 S.Ct. 402, 30 L.Ed.2d 413 (1971)).

<sup>[7]</sup> Herzog’s office offered McCormack transactional immunity from prosecution for her alleged 2010 abortion, which McCormack declined to accept.<sup>8</sup> The district court questioned the validity of the offer of transactional immunity because the timing of the offer suggests an attempt to “moot McCormack’s claims and thereby avoid this litigation—and its challenge to the constitutionality of sections 18–606 and—608.” The district court further determined that other factors also suggested a live controversy:

<sup>8</sup> Like the district court, we assume, but do not decide, that the Prosecuting Attorney’s offer to not prosecute McCormack is a transactional immunity agreement.

\*1025 (1) The specific relief McCormack seeks—declaratory relief that § 18–606, interpreted with §§ 18–608(1) and 18–608(2), is facially unconstitutional—is still available.

(2) McCormack continues to assert that the provisions are unconstitutional.



(3) Prosecuting Attorney Herzog continues to assert that the provisions are not unconstitutional.

Moreover, the district court determined that “[t]here is a significant public interest in settling the legality of these provisions, and the existence of this interest ‘militates against a mootness conclusion.’ ” (citing *Olagues v. Russoniello*, 770 F.2d 791, 794–95 (9th Cir.1985)).

McCormack argues that her claims are not moot because they fall under three exceptions to the mootness doctrine: (a) “voluntary cessation,” (b) “collateral legal consequences,” and (c) “capable of repetition, yet evading review.”

<sup>181</sup> (a) McCormack is correct that this case falls within the “voluntary cessation” exception. Herzog acknowledges that under the “voluntary cessation” exception, it is well-settled that “a defendant claiming that its voluntary compliance moots a case bears the formidable burden of showing that it is absolutely clear the allegedly wrongful behavior could not reasonably be expected to recur.” *Friends of the Earth*, 528 U.S. at 190, 120 S.Ct. 693. Yet Herzog argues that the court should presume that the government is acting in good faith, that the Bannock County Prosecuting Attorney office’s decision against re-filing criminal charges was made in “the interests of justice,” and that the office’s sparse history of bringing criminal charges under § 18–606 demonstrates a lack of “biased calculus.” A presumption of good faith, however, cannot overcome a court’s wariness of applying mootness under “protestations of repentance and reform, especially when abandonment seems timed to anticipate suit, and there is probability of resumption.” *United States v. W.T. Grant Co.*, 345 U.S. 629, 632 n. 5, 73 S.Ct. 894, 97 L.Ed. 1303 (1953) (quoting *United States v. Oregon State Medical Society*, 343 U.S. 326, 333, 72 S.Ct. 690, 96 L.Ed. 978 (1952)).

<sup>191</sup> Furthermore, while a statutory change “is usually enough to render a case moot,” an executive action that is not governed by any clear or codified procedures cannot moot a claim. *Bell v. City of Boise*, 709 F.3d 890, 898–900 (9th Cir.2013) (quoting *Chem. Prod. And Distrib. Ass’n v. Helliker*, 463 F.3d 871, 878 (9th Cir.2006)). “Even assuming Defendants have no intention to alter or abandon the [offer of transactional immunity], the ease with which the [Prosecuting Attorney] could do so counsels against a finding of mootness.” *Id.* at 900. The discretionary decision to not re-file criminal charges against McCormack is neither “entrenched” nor “permanent.” *Id.*

transactional immunity, the district court noted that Herzog has “never repudiated the statute as unconstitutional, and he did not cease McCormack’s prosecution because he believed the prosecution was unlawful.” Instead, Herzog’s office first determined that it had insufficient evidence to re-file criminal charges against McCormack. Then, Herzog’s office offered McCormack transactional immunity from prosecution after our court affirmed the district court’s decision that the Idaho statutes imposed an undue burden on a woman’s ability to terminate her pregnancy. The offer of immunity does not by itself make it “absolutely clear” that the prosecution of McCormack would never recur. *Friends of the Earth*, 528 U.S. at 170, 120 S.Ct. 693; see also *Olagues*, 770 F.2d at 795 (finding a continuing case or controversy where the government “did not voluntarily cease the challenged activity because [it] felt that the investigation \*1026 was improper[, but, r]ather, [the government] terminated the investigation solely because it failed to produce evidence supporting any further investigative activities.”).

<sup>1101</sup> (b) The “collateral legal consequences” exception also applies. “[A]lthough the primary injury may have passed”—Herzog has offered transactional immunity to McCormack—there still exists “ ‘a substantial controversy, between parties having adverse legal interests, of sufficient immediacy and reality to warrant the issuance of a declaratory judgment.’ ” *E.E.O.C. v. Fed. Exp. Corp.*, 558 F.3d 842, 847 (9th Cir.2009) (quoting *In re Burrell*, 415 F.3d 994, 999 (9th Cir.2005)). Herzog continues to maintain the constitutionality of § 18–606, and declaratory relief remains available and unaffected.

(c) Finally, as the district court determined, McCormack would also be eligible for the “capable of repetition, yet evading review” exception to the mootness doctrine. Like any other woman challenging a potentially applicable abortion law, McCormack may become pregnant again, and her term of pregnancy is of limited duration. Herzog counters that McCormack lacks standing to challenge § 18–606 on the basis of future pregnancies. Yet Herzog is conflating the mootness of McCormack’s claim with her standing to bring the claim. As elaborated below, McCormack may not have standing to challenge the provision on the basis of future pregnancies, but that does not moot her current action. See *Friends of the Earth*, 528 U.S. at 191, 120 S.Ct. 693 (explaining that a post-complaint resolution will not moot an action, “despite the fact that [the plaintiff] would have lacked initial standing had she filed the complaint after the [resolution]”).

In addition to the suspicious timing of the offer of

Thus, the district court correctly held that McCormack's claim is not moot.

3. *McCormack has standing based on a lingering risk of prosecution under § 18-606.*

Prosecuting Attorney Herzog asserts that McCormack lacks standing to challenge § 18-606 on the basis of future pregnancies.

<sup>[11]</sup> <sup>[12]</sup> Article III standing requires that McCormack establish (1) that she personally has suffered an "actual or imminent, not conjectural or hypothetical" injury as a result of the allegedly illegal conduct; (2) a causal link between her injury and the challenged action; and (3) that the injury must likely be "redressed by a favorable decision" of a federal court. *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-61, 112 S.Ct. 2130, 119 L.Ed.2d 351 (1992) (internal quotation marks and citations omitted). "A plaintiff who challenges a statute must demonstrate a realistic danger of sustaining a direct injury as a result of the statute's operation or enforcement." *Babbitt v. United Farm Workers Nat'l Union*, 442 U.S. 289, 298, 99 S.Ct. 2301, 60 L.Ed.2d 895 (1979) (citing *O'Shea v. Littleton*, 414 U.S. 488, 494, 94 S.Ct. 669, 38 L.Ed.2d 674 (1974)).

<sup>[13]</sup> In *McCormack I*, we held that McCormack does not have standing to challenge PUCPA "based on a possible future pregnancy" because "in McCormack's case there are too many 'possibilities that may not take place and all may not combine.'" 694 F.3d at 1025 (quoting *Roe v. Wade*, 410 U.S. 113, 128, 93 S.Ct. 705, 35 L.Ed.2d 147 (1973)). And McCormack conceded that *Roe* and other related cases have held that the possibility of future pregnancy "may be too speculative and conjectural for standing."<sup>9</sup>

<sup>9</sup> Indeed, "there are circumstances in which the prospect that a [party] will engage in (or resume) [its] conduct may be too speculative to support standing, but not too speculative to overcome mootness." *Friends of the Earth*, 528 U.S. at 190, 120 S.Ct. 693. Therefore, even if McCormack may not have standing to challenge § 18-606 on the basis of future pregnancies, that does not moot her initial claim that she asserted when she properly had standing. *Id.* ("Standing doctrine functions to ensure, among other things, that the scarce resources of the federal courts are devoted to disputes in which the parties have a concrete stake. In contrast, by the time mootness is an issue, the case has been brought and litigated, often ... for years. To abandon the case at an advanced stage may prove more wasteful than frugal.")

\*1027 Nevertheless, McCormack continues to have standing based on the ongoing risk of prosecution for the termination of her past pregnancy. The district court properly noted that "[a]t the outset of this litigation, McCormack had standing to challenge the constitutionality of section 18-606 in conjunction with both section 18-608(1) and section 18-608(2) ... because she faced prosecution and continued to be threatened with prosecution." And McCormack presently has standing to challenge §§ 18-606 and 18-608 because, as discussed in section A.2 above, the Prosecuting Attorney's offer of immunity does not guarantee that the prosecution of McCormack would never recur. Because McCormack currently has standing based on a lingering risk of prosecution under § 18-606, her injury is not conjectural or hypothetical.

Lastly, the risk of continued enforcement of § 18-606 against McCormack is still redressable by declaratory relief. Accordingly, McCormack has standing to challenge the enforcement of § 18-606 against her for her past alleged abortion.

**B. Dr. Hearn has standing to challenge §§ 18-505 and 18-608.**

<sup>[14]</sup> <sup>[15]</sup> The district court properly found that Dr. Hearn, as an Idaho licensed physician intending to provide pre-viability medical abortions, has standing to challenge §§ 18-505 and 18-608. We review the district court's standing decision de novo. *Gospel Missions of America v. City of Los Angeles*, 328 F.3d 548, 553 (9th Cir.2003). To determine whether a physician has third-party standing to assert the rights of patients in the abortion context, the panel must determine: (1) whether the physician alleges "injury in fact" to himself or herself; and (2) whether the physician is a proper proponent of the legal rights on which he or she bases the suit. *Singleton v. Wulff*, 428 U.S. 106, 112, 96 S.Ct. 2868, 49 L.Ed.2d 826 (1976).

Herzog concedes that we have held that a physician possesses standing on his own behalf and on that of his patients to challenge the validity of another Idaho abortion statute. *Planned Parenthood of Idaho, Inc. v. Wasden*, 376 F.3d 908, 917 (9th Cir.2004) ("[P]hysicians and clinics performing abortions are routinely recognized as having standing to bring broad facial challenges to abortion statutes."). The Supreme Court has also repeatedly held that a physician may "assert the rights of women patients as against governmental interference" in the abortion context. *Singleton*, 428 U.S. at 118, 96 S.Ct. 2868 (recognizing that "there seems little loss in terms of effective advocacy from allowing [an assertion of a



woman's right to an abortion] by a physician"); *see also Planned Parenthood of Se. Pa. v. Casey*, 505 U.S. 833, 845, 112 S.Ct. 2791, 120 L.Ed.2d 674 (1992) (allowing abortion providers to challenge a state statute on behalf of third-party women who seek abortion services); *Griswold v. Connecticut*, 381 U.S. 479, 481, 85 S.Ct. 1678, 14 L.Ed.2d 510 (1965) (holding that physicians have standing to assert the constitutional rights of patients to whom they prescribed contraceptive devices).

Prosecuting Attorney Herzog attempts to distinguish Dr. Hearn from other physicians who have been recognized as having standing. Herzog asserts that Dr. Hearn cannot challenge the validity of §§ 18–505 \*1028 and 18–608 because he has not established that he can provide abortions in a “medically appropriate manner.” Herzog claims that Dr. Hearn seeks to provide access to abortifacients, *i.e.*, medication to induce abortions, under a regime that has negative health and potentially life-threatening consequences and a finding of standing cannot be “squarely adverse to the interests of the patient.”

First, Dr. Hearn has stated his clear intention to “prescribe FDA approved medications to women in Bannock County, Idaho such as Plaintiff McCormack who ... seek to medically terminate their pregnancies in violation of the restrictions contained in Idaho Code Title 18, Chapters 5 and 6 ... prior to fetal viability.” Furthermore, Dr. Hearn intends to perform medical abortions outside a clinical or hospital setting through the second trimester. We have recognized that a physician's statement of intent is sufficient to establish standing, when the physician is at risk of criminal prosecution under the relevant statutes. *Wasden*, 376 F.3d at 916–17 (“by stat[ing] his clear intent[ ] to continue to perform abortions ... [a physician] has alleged a sufficiently concrete and imminent injury—possible prosecution and imprisonment—to challenge the provisions that ban abortion providers from [providing medical abortions to women prior to fetal viability.]”). Further, Dr. Hearn need not even claim a “specific intent to violate the statute.” *Id.* at 917 (noting that a plaintiff need only “reasonable fear a statute would be enforced against it if it engaged in certain conduct”) (citation omitted).

Second, Dr. Hearn's intent to provide FDA-approved medication to women to terminate their pregnancies prior to fetal viability does not need to be supported by a demonstration of the “medical appropriateness” of his ability to provide medical abortions. Whether Dr. Hearn can provide medical abortions in “an appropriate clinical setting” is irrelevant to whether he, as an Idaho licensed physician, can effectively represent the constitutional

right to terminate a pregnancy before viability. The Supreme Court has looked to the professional relationship between a physician and a patient, *Griswold*, 381 U.S. at 481, 85 S.Ct. 1678, the economic harm on abortion providers, *Singleton*, 428 U.S. at 112–13, 96 S.Ct. 2868, and a physician's “direct stake” in the abortion process, *Diamond v. Charles*, 476 U.S. 54, 67, 106 S.Ct. 1697, 90 L.Ed.2d 48 (1986), when determining standing. But an inquiry into the “medical appropriateness” of an abortion provider's practice is not only unprecedented, but is also too ambiguous, and thus unwarranted.

Since 1997, Dr. Hearn has continuously been registered with the Federal Drug Enforcement Agency and the Idaho State Board of Pharmacy. And his ability to legally prescribe FDA-approved abortion medication in Bannock County is sufficient to demonstrate an “actual and imminent” injury—the risk of criminal prosecution for prescribing abortion pills prior to viability.

Accordingly, the district court properly determined that Dr. Hearn has standing to assert his patients' rights in cases challenging abortion restrictions, and we will consider Dr. Hearn's claims.

**C. The statutes pose an undue burden on a woman's ability to obtain an abortion, and the criminal sanctions for abortion providers are unconstitutionally vague.**

<sup>[16]</sup> <sup>[17]</sup> <sup>[18]</sup> A woman has a Fourteenth Amendment right to terminate a pre-viability pregnancy, “and to obtain it without undue interference from the State.” *Casey*, 505 U.S. at 846, 112 S.Ct. 2791. However, this right is not absolute, and the state may express its interest in potential life by regulating abortions, so long as the regulations do not pose an “undue burden” \*1029 on a woman's ability to seek an abortion before the fetus attains viability. *Id.* at 874, 112 S.Ct. 2791. Although the state may ensure that the woman's choice is informed, and protect the health and safety of a woman seeking an abortion, the state may not prohibit a woman from making the “ultimate decision” to undergo an abortion. *Id.* at 878–79, 112 S.Ct. 2791.

*1. Standard of Review*

<sup>[19]</sup> <sup>[20]</sup> <sup>[21]</sup> We review de novo a district court's grant of summary judgment. *Nunez v. City of San Diego*, 114 F.3d 935, 940 (9th Cir.1997). “[A] facial challenge to an abortion statute will succeed where, in a large fraction of the cases in which the statute is relevant, it will operate as a substantial obstacle to a woman's choice to undergo an

abortion.” *Wasden*, 376 F.3d at 921 (internal quotation marks, brackets, and citation omitted). And the “large fraction” is computed by focusing on “those upon whom a challenged law would have some actual effect, rather than all women ... seeking an abortion.” *Id.* There is also a heightened need for definiteness “when the ordinance imposes criminal penalties on individual behavior or implicates constitutionally protected rights.” *Nunez*, 114 F.3d at 940.

2. *Section 18–505 is facially unconstitutional because it categorically bans some abortions before viability.*

<sup>122]</sup> Section 18–505 prohibits abortions of fetuses of twenty or more weeks postfertilization. The twenty-week ban applies regardless of whether the fetus has attained viability.

The Supreme Court reaffirmed in *Casey* that an undue burden exists if the purpose or effect of a provision of law places a substantial obstacle in the path of a woman seeking an abortion before the fetus obtains viability. *Casey*, 505 U.S. at 846, 112 S.Ct. 2791. In *Planned Parenthood of Cent. Mo. v. Danforth*, 428 U.S. 52, 64, 96 S.Ct. 2831, 49 L.Ed.2d 788 (1976), the Court further explained that “it is not the proper function of the legislature or the courts to place viability, which essentially is a medical concept, at a specific point in the gestation period.” Because § 18–505 places an arbitrary time limit on when women can obtain abortions, the statute is unconstitutional. We also recently held unconstitutional an Arizona law banning abortions after the twenty week gestational age because the law operated as a ban on a woman’s constitutional right to a pre-viability abortion. *Isaacson v. Horne*, 716 F.3d 1213, 1225–1227 (9th Cir.2013).

Prosecuting Attorney Herzog concedes that “[n]o dispute exists that medical induction abortions can occur between the twentieth week of pregnancy and fetal viability.” Yet Herzog attempts to reframe the issue as whether the statute imposes an undue burden on Dr. Hearn’s proposed plan to provide medical abortions in the patient’s home after the twentieth week of pregnancy. Although Dr. Hearn’s proposed plan would be detrimentally affected by the enforcement of § 18–505, the broader effect of the statute is a categorical ban on *all* abortions between twenty weeks gestational age and viability. This is directly contrary to the Court’s central holding in *Casey* that a woman has the right to “choose to have an abortion *before viability* and to obtain it without undue interference from the State.” *Casey*, 505 U.S. at 846, 112 S.Ct. 2791 (emphasis added).

Thus, the district court did not err in finding § 18–505 facially unconstitutional.

3. *Section 18–608(2) is facially unconstitutional because it requires hospitalizations for all second-trimester abortions.*

<sup>123]</sup> Section 18–608(2) requires that all second-trimester abortions occur in a hospital. \*1030 If the licensed medical provider fails to abide by § 18–608(2), he or she will be subject to civil and criminal penalties, as outlined in § 18–605.

The Supreme Court has twice invalidated requirements that physicians perform all second-trimester abortions in hospitals. See *Planned Parenthood Ass’n of Kansas City, Mo., Inc. v. Ashcroft*, 462 U.S. 476, 103 S.Ct. 2517, 76 L.Ed.2d 733 (1983); *City of Akron v. Akron Center for Reproductive Health, Inc.*, 462 U.S. 416, 103 S.Ct. 2481, 76 L.Ed.2d 687 (1983) (overturned on other grounds). “[S]uch a requirement unreasonably infringes upon a woman’s constitutional right to obtain an abortion.” *Planned Parenthood Ass’n of Kansas City, Mo., Inc.*, 462 U.S. at 482, 103 S.Ct. 2517 (internal quotation marks omitted).

Prosecuting Attorney Herzog attempts to distinguish the present case from this controlling Supreme Court precedent by arguing that both the absolute and percentage terms of second trimester abortions in Idaho are “quite small.” Between 2007 and 2011, about 1.2 percent of abortions in Idaho were performed during or after the fourteenth week of pregnancy and only about 21.5 percent of those abortions were non-surgical. But Herzog draws the court’s attention to irrelevant figures. The percentage of non-surgical second trimester abortions is certainly small, but for “a large fraction of the cases in which [the statute] is relevant,” required hospitalization will operate as a substantial obstacle. *Casey*, 505 U.S. at 895, 112 S.Ct. 2791.

Herzog also asserts that Dr. Hearn is not “competent professionally” to provide medical abortions outside of a hospital setting. However, we think that an inquiry into the “medical appropriateness” of Dr. Hearn’s proposed prescriptions of abortion pills is not properly part of our analysis, especially given the vagueness of that phrase.

Therefore, the district court did not err in finding § 18–608(2) facially unconstitutional.

4. *Section 18–608(1) in conjunction with § 18–605 is*

*unconstitutionally vague.*

[24] Section 18–608 outlines where certain abortions are permitted. Specifically, § 18–608(1) requires abortions during the first trimester to take place in a hospital, physician’s office, or clinic that is:

*properly* staffed and equipped for the performance of such procedures and respecting which the responsible physician or physicians have made *satisfactory* arrangements with one or more acute care hospitals within reasonable proximity thereof providing for the prompt availability of hospital care as may be required due to complications or emergencies that might arise.

Idaho Code Ann. § 18–608(1) (emphasis added).

Section 18–605 establishes civil and criminal penalties for persons who perform abortions other than as permitted by the remainder of Title 18, Chapter 6 of the Idaho Code. In particular, § 18–605(3) states that the licensed or certified health care provider must “knowingly” violate the statute to be guilty of a felony.

Herzog contests the district court’s determination that § 18–608(1) is unconstitutionally vague, arguing that: (1) whether a medical office is “properly staffed” and whether “satisfactory arrangements” with a hospital have been made “connote objectively determinable facts,” and (2) the § 18–605 enforcement provisions require the alleged violation to be performed “knowingly.” We are not persuaded.

\*1031 [25] [26] [27] “To avoid unconstitutional vagueness, an ordinance must (1) define the offense with sufficient definiteness that ordinary people can understand what conduct is prohibited; and (2) establish standards to permit police to enforce the law in a non-arbitrary, non-discriminatory manner.” *Nunez*, 114 F.3d at 940. If a statute subjects violators to criminal penalties, the need for clear definitions “is even more exacting.” *Forbes v. Napolitano*, 236 F.3d 1009, 1011 (9th Cir.2000). The Supreme Court has held that “a criminal statute that fails to give a person of ordinary intelligence fair notice that his contemplated conduct is forbidden by the statute or is so indefinite that it encourages arbitrary and erratic arrests and convictions is void for vagueness.” *Colautti v. Franklin*, 439 U.S. 379, 390, 99 S.Ct. 675, 58 L.Ed.2d 596 (1979) (internal quotation marks and citations omitted). “[W]here the uncertainty induced by the statute threatens to inhibit the exercise of constitutionally protected rights[,]” the law is even more likely to be found unconstitutionally vague. *Id.* at 391, 99 S.Ct. 675.

In *Gonzales v. Carhart*, 550 U.S. 124, 147–48, 127 S.Ct. 1610, 167 L.Ed.2d 480 (2007), the Supreme Court

considered whether the Partial–Birth Abortion Ban Act of 2003, 18 U.S.C. § 1531 (2000 ed., Supp. IV), was unconstitutionally vague. The Act defines the unlawful abortion in explicit terms and includes very specific “anatomical landmarks” to put abortion providers on notice as to what type of abortions are prohibited. *Gonzales*, 550 U.S. at 147–48, 127 S.Ct. 1610. The Court found that the Act sets forth “relatively clear guidelines as to prohibited conduct and provides objective criteria to evaluate whether a doctor has performed a prohibited procedure[.] ... [u]nlike the statutory language in *Stenberg v. Carhart*, 530 U.S. 914, 120 S.Ct. 2597, 147 L.Ed.2d 743 (2000) ] that prohibited the delivery of a substantial portion of the fetus.” *Id.* at 149, 127 S.Ct. 1610 (internal quotation marks omitted).

Unlike the terms in the Act at issue in *Gonzales*, the terms “properly” and “satisfactory,” as used in § 18–608(1), lack precise definition, and “subject[ ] physicians to sanctions based not on their own objective behavior, but on the subjective viewpoints of others.” *Tucson Woman’s Clinic v. Eden*, 379 F.3d 531, 555 (9th Cir.2004) (internal quotation marks omitted). Neither term is defined in the statute, nor are they terms of art with specific definitions in the medical context.

We have found a statute unconstitutionally vague that required that patients “be treated with consideration, respect, and full recognition of the patient’s dignity and individuality” because “understandings of what ‘consideration,’ ‘respect,’ ‘dignity,’ and ‘individuality’ mean are widely variable, ... [making the statute too] vague and subjective for providers to know how they should behave in order to comply, as well as too vague to limit arbitrary enforcement.” *Id.* at 554–55 (internal quotation marks omitted). Here, the terms “properly” and “satisfactory” are similarly subjective and open to multiple interpretations.

The district court noted that the dictionary definitions of the terms also are unhelpful in curing the statute’s vagueness. “Properly” means “suitably, fitly, rightly, correctly.” WEBSTER’S THIRD INT’L DICTIONARY 1818 (3d ed.1976). “Satisfactory” means “sufficient to meet a condition or obligation.” *Id.* at 2017. Instead of providing clarity, the definitions raise the same questions as the terms themselves: proper, satisfactory, fit, right, or sufficient according to whom or what standard?

Unlike the specific “anatomical landmarks” in the statute at issue in *Gonzales*, § 18–608(1) fails to provide a specific standard to measure or determine what is “proper” or “satisfactory.” The district \*1032 court correctly recognized the “trap” of these imprecise terms:



they “could well impose criminal liability on activity that offends some people’s sense of what is ‘properly staffed and equipped’ or what arrangements are ‘satisfactory,’ but may appear to others as more than adequate.”

Moreover, the scienter requirement in § 18–605(3) (a medical provider must “knowingly violate[ ] the provision[ ]” to be guilty of a felony), does not make the widely variable definitions of “properly” and “satisfactory” any less vague. Because the enforcement of the statute relies on “wholly subjective judgments without statutory definitions,” a physician could argue that he believed he complied with § 18–608(1). *United States v. Williams*, 553 U.S. 285, 306, 128 S.Ct. 1830, 170 L.Ed.2d 650 (2008). Additionally, “this lack of clarity may operate to inhibit [a physician’s provision of legal abortion services] because individuals will not know whether the ordinance allows their conduct, and may choose not to exercise their rights for fear of being criminally punished.” *Hunt v. City of Los Angeles*, 638 F.3d 703, 713 (9th Cir.2011).

Herzog also attempts to import the “reasonable physician” standard from Idaho’s medical practice liability statute (which is not being challenged in this case) to argue that a standard of objective reasonableness for physicians generally applies to all instances of civil liability—including § 18–608. However, violators of § 18–608 are not just subject to civil penalties, but also to criminal prosecution under § 18–605. And whereas the legislature definitively outlined a reasonable physician standard in the medical malpractice statute, it failed to do so in the abortion statute. Without clear language that gives physicians adequate notice of how to comply with the statute, § 18–608(1), as interpreted with § 18–605, is unconstitutionally vague. *See Colautti*, 439 U.S. at 391, 99 S.Ct. 675 (finding a statute void for vagueness “where the uncertainty induced by the statute threatens to inhibit the exercise of constitutionally protected rights,” even where the law could have some constitutional applications).

Lastly, Herzog argues that if our court finds § 18–608(1) impermissibly vague, we should sever the unconstitutional words from the statute pursuant to § 18–616, the law’s severability clause. The Idaho Supreme Court has held that “when the unconstitutional portion of a statute is not integral or indispensable, it will recognize and give effect to a severability clause.” *Simpson v. Cenarrusa*, 130 Idaho 609, 944 P.2d 1372, 1377 (1997).

Assuming the terms “properly” and “satisfactory” are severable, striking these words from the statute would not remedy the constitutional infirmities of the statute.

Removing the ambiguous terms would result in the following language:

Abortions permitted by this subsection shall only be lawful if and when performed in a hospital or in a physician’s regular office or a clinic which office or clinic is \_\_\_\_\_ staffed and equipped for the performance of such procedures and respecting which the responsible physician or physicians have made \_\_\_\_\_ arrangements with one or more acute care hospitals within reasonable proximity thereof providing for the prompt availability of hospital care as may be required due to complications or emergencies that might arise.

The appropriate amount of staff and equipment for an abortion remains unclear, as there may be differing opinions about what is sufficient. It also is unclear what types of arrangements must be made with acute care hospitals to comply with the statute. “Given the potential for harassment of abortion providers, it is particularly important that enforcement of any unconstitutionally \*1033 vague provisions of the scheme be enjoined.” *Tucson Woman’s Clinic*, 379 F.3d at 554. Thus, the lack of definitive standards for performing legal first trimester abortions causes § 18–608(1) to remain unconstitutionally vague.

## CONCLUSION

For the foregoing reasons, we affirm the district court’s judgment. McCormack’s challenge to § 18–606 is not moot because her claims fall under three exceptions to the mootness doctrine: (a) “voluntary cessation,” (b) “collateral legal consequences,” and (c) “capable of repetition, yet evading review.” McCormack has standing based on the lingering risk of prosecution under § 18–606. Dr. Hearn has standing based on his intention to provide medical abortions through the second trimester outside a clinical or hospital setting and based on his possible prosecution under § 18–505 and § 18–608. Section 18–505 is facially unconstitutional because it categorically bans some abortions before viability. Section 18–608(2) is facially unconstitutional because it places an undue burden on a woman’s ability to obtain an abortion by requiring hospitalizations for all second-trimester abortions. Section 18–608(1) in

conjunction with § 18-605 is unconstitutionally vague.

**AFFIRMED.**

**All Citations**

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## Tabor, Eric [AG]

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**From:** Ranscht, David [AG]  
**Sent:** Thursday, June 08, 2017 1:39 PM  
**To:** Tabor, Eric [AG]  
**Subject:** FW: Emailing: [DRAFT]The Johnsonletter.wpd  
**Attachments:** [DRAFT]The Johnsonletter.wpd

As we discussed.

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-----Original Message-----

**From:** Thompson, Jeffrey [AG]  
**Sent:** Thursday, February 23, 2017 4:01 PM  
**To:** Ranscht, David [AG]; Gavin, Meghan [AG]  
**Subject:** Emailing: [DRAFT]The Johnsonletter.wpd

David and Meghan,

Here is an attempt at a "short" high-level executive summary type letter. Still some holes. Check it out and we can talk about this concept tomorrow.

Jeff

Your message is ready to be sent with the following file or link attachments:

[DRAFT]The Johnsonletter.wpd

Note: To protect against computer viruses, e-mail programs may prevent sending or receiving certain types of file attachments. Check your e-mail security settings to determine how attachments are handled.

[DRAFT]

The Honorable David Johnson  
State Senator  
PO Box 279  
Ocheyedan, Iowa 51354

Dear Senator Johnson:

In your letter of February 1, 2017, you reference Governor Terry Branstad's recent nomination to serve as United States Ambassador to China and then ask nine specific questions relating to the effect of his potential resignation as Governor. I agree that your questions implicate important legal issues pertaining to Iowa's constitutional framework for the succession of executive power. Moreover, these issues have not previously been directly addressed by this office nor have they previously been decided by the Iowa Supreme Court. Thus, I provide this Letter Opinion to provide guidance on three key legal issues raised by your inquiry:

First Issue: If the Governor of Iowa resigns, does the Lieutenant Governor become Governor?

Short Answer: Yes. The Iowa Constitution provides that the executive power of the State is vested in a "chief magistrate" who shall be "styled" the "Governor of the State of Iowa." Iowa Const. art. IV section 1. The Iowa Constitution further provides that, upon the resignation of a sitting Governor, the powers and duties of the office "devolve upon" – fall or transfer down to – the Lieutenant Governor. Iowa Const. art. IV section 19. Thus, under Iowa's constitutional framework, when the Governor resigns and the executive power of the State transfers to and "vests" in the Lieutenant Governor, the Lieutenant Governor becomes Governor. Four Iowa Governors have either resigned or died while in office. In each instance, the Lieutenant Governor who assumed the powers and duties of the office was referred to as "Governor" and treated as Governor in every respect.

Second Issue: Must the Lieutenant Governor "qualify" as Governor by taking a new oath?

Short Answer: No. The powers and duties of the office of Governor – the executive power of the State – are transferred to the Lieutenant Governor as a matter of law by operation of the constitutional framework for succession of executive power. When a Lieutenant Governor is elected and qualifies by taking an oath before the general assembly to discharge the duties of the office, those duties include assuming the powers and duties of the office of Governor – that is becoming Governor – should a constitutional contingency arise. Thus, no new oath before the general assembly is required. Nevertheless, each of the four Iowa Lieutenant Governors who succeeded to the office of Governor after the resignation or death of a sitting Governor chose to take a new oath of office – in one form or another – when they assumed their new duties.

Third Issue: May the Lieutenant Governor, upon becoming Governor, appoint a new Lieutenant Governor?

Short Answer: No. Iowa's constitutional framework for the executive power of the State begins with the proposition that both the Governor and the Lieutenant Governor "shall be elected" and shall be selected "as if these two offices are one and the same." Iowa Const. Art. IV sections 2 and 3. When an elected Governor resigns and the executive powers of the State "devolve upon" – fall or transfer down to – the Lieutenant Governor, the Lieutenant Governor becomes Governor because she is the elected Lieutenant Governor. Iowa Const. art. IV section 17. There is no vacancy created in the office of Lieutenant Governor. Moreover, the Iowa Constitution specifically provides for a line of succession in the event an elected Lieutenant Governor is not able to assume the powers and duties of the office of Governor when a constitutional contingency arises – first the President of the Senate, then Speaker of the House, then a joint convention of the General Assembly elects a new Governor and a new Lieutenant Governor. Iowa Const. art. IV section 19. The appointment of a new Lieutenant Governor would violate both the elective principal that resides at the core of our constitutional framework and the constitutional line of succession for the executive power of the State. None of the four Iowa Lieutenant Governors who succeeded to the office of Governor after the resignation or death of a sitting Governor appointed a new Lieutenant Governor.

The answers provided above arise from a careful consideration of the succession framework set forth in the words and structure of the Iowa Constitution – beginning with its 1857 form the amendments in 1952 and 1988 to the pertinent sections. The historical fact that in each instance of a resignation or death of an Iowa Governor the Lieutenant Governor who succeeded to the powers and duties of the office was called Governor and treated as Governor in every respect but did not appoint a new Lieutenant Governor affirms that our reading of the Iowa Constitution aligns with a long-standing and well-accepted interpretation of the "devolve" framework. As does the historical fact that under the pre-25th Amendment framework of the United States Constitution – the powers and duties of the office shall "devolve" on the Vice President – in each of the eight cases where a President died in office the Vice President who succeeded to the powers and duties of the office was called "President" and treated as President in every respect but did not appoint a new Vice President.

Moreover, the debates of the 1857 constitutional convention fully support our reliance upon the principal that the authors of the Iowa Constitution intended a framework for succession that would guarantee – to the extent possible – that a successor to the elected Governor also be an official elected by the people of Iowa. [cite] Indeed, the convention considered abolishing the office of Lieutenant Governor, but chose not to because the office provided for succession in a manner that protected this elective principal. [cite]

Finally, while we are not bound by decisions examining the same or similar provisions in the constitutions of other states, a survey of these interpretations provides support for our reading of the "devolve" framework for succession. The majority of cases find that a lieutenant governor upon whom the powers and duties of the executive "devolve" becomes governor. [cites] The

majority of cases also find that there is no vacancy in the office of lieutenant governor. [cites]  
Those cases that diverge from our reading we find either unpersuasive or distinguishable. [cites].

[conclusion]

**Ranscht, David [AG]**

---

**From:** Stefanie Thomas <SThomas@2501grand.com>  
**Sent:** Monday, May 01, 2017 4:19 PM  
**To:** Ranscht, David [AG]  
**Subject:** Re: Miller to Release, Discuss AG Opinion on Gubernatorial Succession

So cool that you were there! And photogenic no less!

Sent from my iPhone

On May 1, 2017, at 11:48 AM, Ranscht, David [AG] <[David.Ranscht2@iowa.gov](mailto:David.Ranscht2@iowa.gov)> wrote:

Yours truly may or may not be there...

**David Ranscht**  
**Assistant Attorney General**  
Office of the Attorney General of Iowa  
Licensing & Administrative Law Division  
<image001.png> 1305 E. Walnut St.  
Des Moines, Iowa 50319  
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---

**From:** Gavin, Meghan [AG]  
**Sent:** Monday, May 01, 2017 10:35 AM  
**To:** Ranscht, David [AG]  
**Subject:** FW: Miller to Release, Discuss AG Opinion on Gubernatorial Succession

---

**From:** Greenwood, Geoff [AG]  
**Sent:** Monday, May 01, 2017 10:02 AM  
**Subject:** Miller to Release, Discuss AG Opinion on Gubernatorial Succession

**IOWA DEPARTMENT OF JUSTICE**  
**OFFICE OF THE ATTORNEY GENERAL**  
Thomas J. Miller, Attorney General  
[www.iowaAttorneyGeneral.gov](http://www.iowaAttorneyGeneral.gov)

CONTACT: Geoff Greenwood • Communications Director • 515-281-6699 • [geoff.greenwood@iowa.gov](mailto:geoff.greenwood@iowa.gov)

## Media Advisory

### **Miller to Release, Discuss AG Opinion on Gubernatorial Succession**

*Formal attorney general legal opinion addresses whether lieutenant governor  
becomes governor, authority to appoint new lieutenant governor*

(DES MOINES, Iowa) Attorney General Tom Miller today will release a formal attorney general opinion, in response to a request by Sen. David Johnson, I-Ocheyedan, regarding gubernatorial succession.

- WHAT:** News conference
- WHO:** Attorney General Tom Miller
- WHERE:** Attorney General's Office, Hoover Building, Second Floor
- DATE:** TODAY – May 1, 2017
- TIME:** 1:30 p.m.
- CALL IN #:** 866-685-1580, conference code 515 281 4213 (\*6 to mute, #6 to unmute)
- NOTE:** The news conference will be streamed live at [youtube.com/agiowa](https://youtube.com/agiowa).
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[geoff.greenwood@iowa.gov](mailto:geoff.greenwood@iowa.gov).

###



## Ranscht, David [AG]

---

**From:** Tabor, Eric [AG]  
**Sent:** Monday, May 01, 2017 2:07 PM  
**To:** Thompson, Jeffrey [AG]; Gavin, Meghan [AG]; Ranscht, David [AG]  
**Subject:** FW: RELEASE: Gov. Branstad, Lt. Gov. Reynolds respond to Attorney General Miller's reversal of opinion

---

**From:** Press Releases from Iowa Governor's Office [mailto:IowaGovernorsOffice@public.govdelivery.com]  
**Sent:** Monday, May 01, 2017 2:04 PM  
**To:** Tabor, Eric [AG]  
**Subject:** RELEASE: Gov. Branstad, Lt. Gov. Reynolds respond to Attorney General Miller's reversal of opinion

## OFFICE OF THE GOVERNOR Governor Terry E. Branstad ★ Lt. Governor Kim Reynolds

FOR IMMEDIATE RELEASE: Monday, May 1, 2017  
CONTACT: Governor's Office 515-281-5211

# Gov. Branstad, Lt. Gov. Reynolds respond to Attorney General Miller's reversal of opinion

(DES MOINES) – Today, after learning of Attorney General Tom Miller's reversal of opinion, Gov. Terry Branstad and Lt. Gov. Kim Reynolds issued the following statements, and provided both facts and background information to the public on the case for a new Lt. Governor.

### Gov. Terry Branstad

"Tom Miller was crystal clear last December when he said Lt. Governor Reynolds could act upon existing law and appoint a Lt. Governor when she becomes Governor upon my resignation.

'Our office has researched the law and consulted with the Governor's office. We concur with the Governor's conclusion that, upon resignation of Governor Branstad, Lt. Governor Reynolds will become Governor and will have the authority to appoint a new Lt. Governor.' – Tom Miller's Office, December 13, 2016.

No new facts or laws have changed since December 13, 2016. Tom Miller has allowed politics to cloud his judgment and is ignoring Iowa law. This politically motivated opinion defies common sense. Iowans expect a Governor and Lt. Governor working on their behalf. This is disappointing."

### Lt. Gov. Kim Reynolds

"In December, Attorney General Tom Miller researched the law and concurred with the Secretary of State and our office that, upon Gov. Branstad's resignation, I become Governor and have the authority to appoint a new Lt. Governor. Since then, I've been moving forward with that understanding. Now, five months later, just one day before Governor Branstad testifies before the U.S. Senate Foreign Relations Committee, the Attorney General has reversed himself, but the law hasn't changed. The law still states that as Governor, I vacate my role as Lt. Governor and am able to appoint a new Lt. Governor. With the law on our side we will move forward with his first conclusion as we examine our options in light of Tom Miller's reversal."

**Ben Hammes, Communications Director**

"The power of a Governor to appoint a new Lt. Governor was put into the law in 2009 by the democrats. That law says: 'An appointment by the governor to fill a vacancy in the office of lieutenant governor shall be for the balance of the unexpired term.' This bill passed unanimously by both parties and signed into law by a democrat Governor. Now, just because the democrats do not control the Governor's office, Attorney General Miller wants to pretend like this law does not exist, and issue a non-binding opinion. Quite frankly, this is what Iowans are sick and tired of. The Attorney General should be upholding the law, not ignoring it."

\*\*\*\*\*

**Background Information:**

Attorney General Miller now says that Lt. Gov. Reynolds will be both Governor and Lt. Governor at the same time and that Lt. Gov. Reynolds will not be able to appoint a new Lt. Governor. That defies common sense and the law.

- (1) When Gov. Branstad resigns, the Iowa Constitution states that his powers will devolve upon Lt. Gov. Reynolds. Lt. Gov. Reynolds will become Governor. Attorney General Miller agrees with this conclusion.
- (2) Iowa law prevents someone from holding two offices at the same time. Because Kim Reynolds will become Governor, she will automatically vacate the Office of the Lt. Governor.
- (3) In 2009, the Iowa Legislature (led by democrats) passed a statute to clarify that if there is a vacancy in the Office of Lt. Governor, the Governor appoints someone to fill that vacancy. That law is clear: "An appointment by the governor to fill a vacancy in the office of lieutenant governor shall be for the balance of the unexpired term."
- (4) When Terry Branstad resigns, Kim Reynolds becomes Governor; the Office of Lt. Governor is then vacant, and under the Iowa Code (passed unanimously by the Legislature) Gov. Reynolds appoints someone to fill that vacancy.

Similar situations have occurred before in other states. For example:

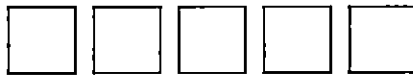
- (1) In 2003, President Bush picked Utah Gov. Michael Leavitt to head the EPA. The state's Attorney General, in a thorough legal opinion, concluded that Leavitt's Lt. Governor became Governor and vacated the Lt. Governor's Office. The new Governor, then, was free to appoint a new Lt. Governor (and he did).

- (2) Similarly, when then-Gov. Bill Clinton became president in 1993, the Arkansas Supreme Court ruled — based upon constitutional provisions that are nearly identical to Iowa's — that his Lt. Governor became Governor. The Office of the Lt. Governor was then vacant, and Mike Huckabee filled that vacancy mid-term.
- (3) Finally, and most recently, the New York's highest court ruled that when Gov. Elliot Spitzer resigned, Lt. Governor David Patterson became Governor, vacated the Office of Lt. Governor, and was free to appoint a new Lt. Governor.

In December 2016, Attorney General Miller agreed with this view of the law. Since then, the Constitution hasn't changed. Neither has the Iowa Code. While Attorney General Miller's opinion is not binding on anybody, Iowans should ask why Attorney General Miller suddenly reversed course.

###

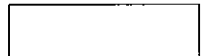
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**From:** NEWS [AG]  
**Sent:** Monday, May 01, 2017 11:46 AM  
**Subject:** Lieutenant Governor to Serve as Governor, But Lacks Authority to Appoint Lieutenant, Attorney General Opinion Concludes

**IOWA DEPARTMENT OF JUSTICE  
OFFICE OF THE ATTORNEY GENERAL  
Thomas J. Miller, Attorney General  
[www.iowaattorneygeneral.gov](http://www.iowaattorneygeneral.gov)**

CONTACT: Geoff Greenwood | Communications Director | 515-281-6699 | [geoff.greenwood@iowa.gov](mailto:geoff.greenwood@iowa.gov)

FOR IMMEDIATE RELEASE  
May 1, 2017

**Lieutenant Governor to Serve as Governor, But Lacks Authority to Appoint Lieutenant, Attorney General Opinion Concludes**

*Formal opinion responds to request by state senator as Governor Branstad prepares to resign for ambassadorship*

DES MOINES – Attorney General Tom Miller Monday issued a formal legal opinion stating that if a governor resigns, the lieutenant governor becomes governor for all intents and purposes, but does not have legal authority to appoint a new lieutenant governor.

Sen. David Johnson, I-Ocheyedan, requested the opinion following Governor Terry Branstad’s announcement that, if confirmed by the U.S. Senate, he will serve as U.S. ambassador to China.

The 23-page opinion, following extensive legal and historical research, concludes, “...the powers and duties of the office of Governor fall upon the lieutenant governor.” The conclusion is based on an Iowa Constitution provision addressing a governor’s resignation, which states, “...the powers and duties of the office...shall devolve upon the lieutenant governor.” Under that provision, the opinion adds, “The lieutenant governor takes on this authority because she is lieutenant governor.”

Significantly, according to Miller, Article IV, section 1 provides that “The supreme executive power of this state shall be vested in a chief magistrate, who shall be styled the governor of the state of Iowa.”

While the “the lieutenant governor becomes governor and has the title of Governor,” the opinion further adds that that person does not have constitutional authority to appoint a new lieutenant governor. “In other words, upon a governor’s resignation, the lieutenant governor will hold both the offices of Governor and Lieutenant Governor. There is no vacancy to be filled,” according to the opinion.

“This opinion conveys that, in a sense, the two offices merge,” Miller said. “This is consistent with numerous cases in other states that addressed this question,” Miller added. “It is also consistent with a close reading of

the Iowa governor's succession provision—Article IV, section 19 of the Iowa Constitution, which establishes a precise order of gubernatorial succession without providing for the appointment of a lieutenant governor.”

Miller's opinion notes that in all four previous instances when an Iowa governor resigned or died while in office, the lieutenant governor was always considered governor, but never appointed or named a new lieutenant governor. The opinion also concludes, “The framers intended that those in the gubernatorial line of succession be elected.”

At the federal level, prior to Congress amending the U.S. Constitution in 1967 to establish that the vice president becomes president and grants the president authority to appoint a new vice president with Congressional approval, no vice president who assumed the powers and duties of a president who died while in office appointed a new vice president.

The formal opinion departs from a public statement Miller's office issued in December, following an informal legal review in response to media inquiries, which stated the office concurred with “Governor Branstad's conclusion that...in her capacity as Governor, Governor Reynolds will have the authority to appoint a new lieutenant governor.”

The December statement was based, in part, on an Iowa Code section addressing vacancies of office holders. Miller's formal opinion concludes this statute does not apply when a governor resigns and the powers and duties devolve upon the lieutenant governor.

#### **About Attorney General Opinions**

A formal attorney general opinion addresses legal questions relating to a public official's duties by interpreting laws and offering legal guidance.

While not a legal precedent, a formal attorney general opinion is similar to one and stands until a court or later opinion overrules it or new legislation is enacted to change a statute in question. Opinions are not legally binding, but courts generally give them careful consideration and deference.

###

## Ranscht, David [AG]

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**From:** Ranscht, David [AG]  
**Sent:** Monday, May 01, 2017 11:48 AM  
**To:** 'Stefanie Thomas'  
**Subject:** FW: Miller to Release, Discuss AG Opinion on Gubernatorial Succession

Yours truly may or may not be there...



**David Ranscht**  
**Assistant Attorney General**  
Office of the Attorney General of Iowa  
Licensing & Administrative Law Division  
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**From:** Gavin, Meghan [AG]  
**Sent:** Monday, May 01, 2017 10:35 AM  
**To:** Ranscht, David [AG]  
**Subject:** FW: Miller to Release, Discuss AG Opinion on Gubernatorial Succession

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**From:** Greenwood, Geoff [AG]  
**Sent:** Monday, May 01, 2017 10:02 AM  
**Subject:** Miller to Release, Discuss AG Opinion on Gubernatorial Succession

**IOWA DEPARTMENT OF JUSTICE**  
**OFFICE OF THE ATTORNEY GENERAL**  
Thomas J. Miller, Attorney General  
[www.iowaAttorneyGeneral.gov](http://www.iowaAttorneyGeneral.gov)

CONTACT: Geoff Greenwood • Communications Director • 515-281-6699 • [geoff.greenwood@iowa.gov](mailto:geoff.greenwood@iowa.gov)

FOR IMMEDIATE RELEASE  
May 1, 2017

## Media Advisory

# Miller to Release, Discuss AG Opinion on Gubernatorial Succession

*Formal attorney general legal opinion addresses whether lieutenant governor becomes governor, authority to appoint new lieutenant governor*

(DES MOINES, Iowa) Attorney General Tom Miller today will release a formal attorney general opinion, in response to a request by Sen. David Johnson, I-Ocheyedan, regarding gubernatorial succession.

**WHAT:** News conference

**WHO:** Attorney General Tom Miller

**WHERE:** Attorney General's Office, Hoover Building, Second Floor

**DATE:** TODAY – May 1, 2017

**TIME:** 1:30 p.m.

**CALL IN #:** 866-685-1580, conference code 515 281 4213 (\*6 to mute, #6 to unmute)

**NOTE:** The news conference will be streamed live at [youtube.com/agiowa](https://youtube.com/agiowa).

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[geoff.greenwood@iowa.gov](mailto:geoff.greenwood@iowa.gov).

###

## Ranscht, David [AG]

---

**From:** Stephanie A. Koltookian <Koltookian.Stephanie@bradshawlaw.com>  
**Sent:** Monday, May 01, 2017 10:43 AM  
**To:** Ranscht, David [AG]  
**Subject:** RE: Miller to Release, Discuss AG Opinion on Gubernatorial Succession

Sweet. Don't forget to send this to your mom.

---

**From:** Ranscht, David [AG] [<mailto:David.Ranscht2@iowa.gov>]  
**Sent:** Monday, May 01, 2017 10:42 AM  
**To:** Stephanie A. Koltookian  
**Subject:** FW: Miller to Release, Discuss AG Opinion on Gubernatorial Succession

Got a copy.



**David Ranscht**  
**Assistant Attorney General**  
Office of the Attorney General of Iowa  
Licensing & Administrative Law Division  
1305 E. Walnut St.  
Des Moines, Iowa 50319  
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FOR IMMEDIATE RELEASE

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## Ranscht, David [AG]

---

**From:** Ranscht, David [AG]  
**Sent:** Monday, May 01, 2017 10:41 AM  
**To:** 'ljranscht@hotmail.com'; 'maranscht@viterbo.edu'  
**Cc:** 'sara.ranscht@gmail.com'  
**Subject:** FW: Miller to Release, Discuss AG Opinion on Gubernatorial Succession

Late notice, but this is what I was discussing briefly over Easter weekend. Tune in if you're curious!



**David Ranscht**  
**Assistant Attorney General**  
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CONTACT: Geoff Greenwood • Communications Director • 515-281-6699 • [geoff.greenwood@iowa.gov](mailto:geoff.greenwood@iowa.gov)

FOR IMMEDIATE RELEASE  
May 1, 2017

### Media Advisory

## Miller to Release, Discuss AG Opinion on Gubernatorial Succession

*Formal attorney general legal opinion addresses whether lieutenant governor becomes governor, authority to appoint new lieutenant governor*

(DES MOINES, Iowa) Attorney General Tom Miller today will release a formal attorney general opinion, in response to a request by Sen. David Johnson, I-Ocheyedan, regarding gubernatorial succession.

**WHAT:** News conference

**WHO:** Attorney General Tom Miller

**WHERE:** Attorney General's Office, Hoover Building, Second Floor

**DATE:** TODAY – May 1, 2017

**TIME:** 1:30 p.m.

**CALL IN #:** 866-685-1580, conference code 515 281 4213 (\*6 to mute, #6 to unmute)

**NOTE:** The news conference will be streamed live at [youtube.com/agiowa](http://youtube.com/agiowa).

Raw HD video will be made available upon request. Send request to:  
[geoff.greenwood@iowa.gov](mailto:geoff.greenwood@iowa.gov).

###

**Ranscht, David [AG]**

---

**From:** The Iowa State Bar Association <isba@iowabar.org>  
**Sent:** Wednesday, April 26, 2017 1:32 PM  
**To:** Ranscht, David [AG]  
**Subject:** Iowa Lawyer Weekly: Four Supreme Court Opinions; Submit court savings ideas; YLD forum archiving online

**Hello David!**

You are receiving this e-newsletter because you are a member of The Iowa State Bar Association.

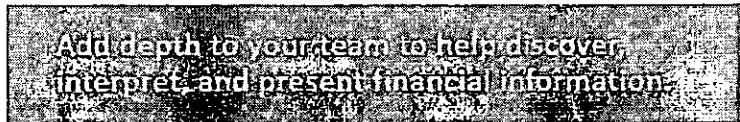
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## Submit your ideas for court savings as Judicial Branch finalizes its budget

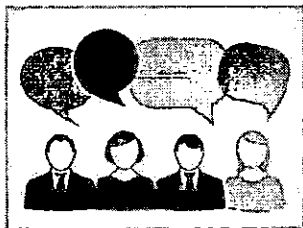


The 2017 Legislative Session wrapped up this past Saturday, and the final outcome of budgetary decisions was that the Iowa Judicial Branch was appropriated \$175,686,612 in operational funds and \$3,100,000 in jury and witness revolving funds, for a total of \$178,786,612 for fiscal year 2018. This is basically the same budget of last fiscal year and will require very close management by the judicial branch to avoid significant changes in the operation of the court system.

[View entire story](#)

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## YLD "Ask an Advocate" forum off to successful start, answers to be archived online



The ISBA Young Lawyers Division "Ask an Advocate" anonymous question forum has been up and running for three weeks with great success.

[View entire story](#)

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## Iowa Supreme Court requests comments on proposed new child support guidelines



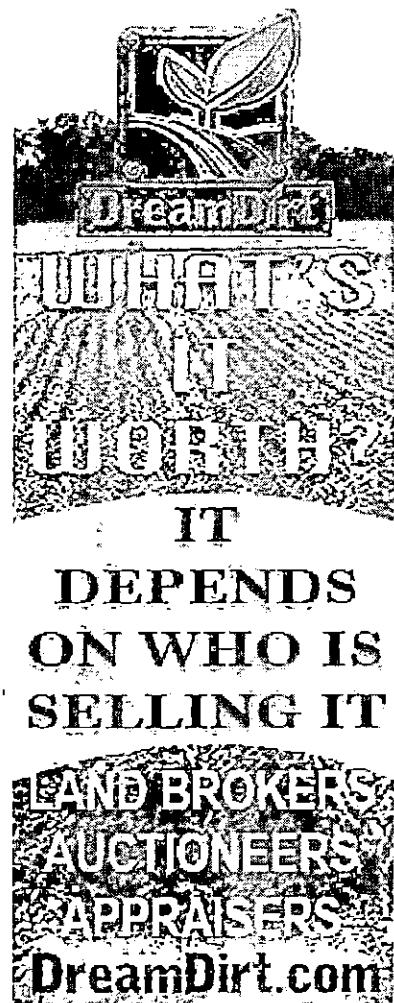
The Iowa Supreme Court released two orders April 21 requesting comments on 14 recommended changes to chapter nine of the Iowa Court Rules from the Iowa Child Support Guidelines Review

Committee.

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## Watch Iowa's top trial attorneys in



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## action during ABOTA “Masters in Trial” program



The ISBA is assisting in the sponsorship of the ABOTA Foundation’s “Masters in Trial” demonstration coming up in May in Des Moines. The program is designed to educate attorneys in the art of trial advocacy by showing how some of the most successful trial lawyers in the state conduct a trial. All of the trial

team counsel are ABOTA members and are well-known and highly respected in their fields.

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## Governor signs Law Day proclamation



Iowa Governor Terry Branstad signed a proclamation marking Monday, May 1, as Law Day in Iowa. He signed the proclamation in his formal office on Tuesday, surrounded by representatives from the legal

insurance company ARAG, representatives from the Polk County Bar Association and ISBA Vice President Tom Levis.

[View entire story](#)

## Iowa Dept. of Inspections and Appeals seeking Independent Reviewers



The Iowa Department of Inspections and Appeals Health Facilities Division put out a request for attorneys to do contract work on their behalf related to health care facility inspections. The department is seeking licensed Iowa

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attorneys to hold informal conferences with health care facilities desiring to contest a state citation; or with assisted living programs, elder group homes and adult day service programs that wish to contest the department's final findings.

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## Register today for the ISBA Commercial and Bankruptcy Section's annual CLE

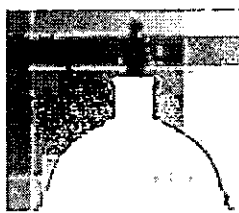


**L. Ashley Zubal, Commercial and Bankruptcy Section CLE Committee Chair**

The Commercial and Bankruptcy Section's CLE event will be held May 12 at ISBA Headquarters in Des Moines. We would be pleased to have you join us for this year's seminar featuring an engaging lineup of speakers, including five bankruptcy judge presenters from the Southern District of Iowa, District of South Dakota, District of North Dakota and District of Nebraska, who will provide insight and tips on areas including proper notice and procedure, time frames and sanction issues.

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## IN OTHER NEWS

### **Iowa Attorney General urges President, Congress to maintain funding for drug treatment**

Iowa's attorney general is joining colleagues from several other states in urging the president and congressional leaders to maintain funding for drug treatment in their effort to replace the Affordable Care Act (ACA).

*Iowa Public Radio*

### **Gail B. Agrawal appointed the inaugural N. William Hines Dean and Professor of Law**

The University of Iowa College of Law is pleased to announce the N. William Hines Deanship. Dean Gail B. Agrawal has been appointed the inaugural N. William Hines Dean and Professor of Law. She, along with N. William Hines, were recognized at the Iowa Inspired campaign closing event on April 7, 2017.

**Justices split over defendants' right to mental health expert witness**

As a hurry-up execution schedule plays out in Arkansas this week, the U.S. Supreme Court and Arkansas Supreme Court have stepped in to block two of the eight executions initially scheduled for an 11-day period.

NPR

**Volunteers accompany US immigrants to court to allay fears**

When Salvadoran immigrant Joselin Marroquin-Torres became flustered in front of a federal immigration judge in New York and forgot to give her asylum application, a woman she had just met stood up to provide it.

KWWL

**Transfer** ● ● ● ● ● **Annual Meeting**  
**Agenda** ○ ○ ○ ○ ○ June 19-21  
**Location** ○ ○ ○ Iowa Events Center  
**Motivation** ● ● ● Des Moines

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**Ranscht, David [AG]**

**From:** The Iowa State Bar Association <isba@iowabar.org>  
**Sent:** Wednesday, April 19, 2017 2:31 PM  
**To:** Ranscht, David [AG]  
**Subject:** Iowa Lawyer Weekly: Four Supreme Court Opinions; IDR advises on divorce; Virtual legal needs volunteers

**Hello David!**

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## New Dept. of Revenue publication outlines tax implications of divorce

Iowa Department of  
**REVENUE**



marriage.

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The Iowa Department of Revenue has published a new guide on its website that tax and family law attorneys may find useful to share with clients. Entitled "The Tax Implications of Divorce," it covers such topics as confidentiality, joint returns, property tax issues, inheritance tax and common law

---

## Iowa legislative session nearing end



Lawmakers anticipate wrapping up the 2017 legislative session by the end of this week, once they finalize the state budget for fiscal year 2018. You can view the latest ISBA Affirmative Legislative Agenda chart,

which indicates the most recent developments on the bills approved by the Board of Governors this year.

[View entire story](#)

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## Panel discussion will tackle unprofessional conduct toward female attorneys



The ISBA and the Polk County Women Attorneys are teaming up for a panel discussion tackling the topic of unprofessional conduct toward female attorneys, from the perspective of both the bench and

bar. The panel, held this Friday, April 21, from 8:30-11:30 a.m., will present strategies for addressing and preventing such conduct and will discuss how both standards and practices have changed over the past few decades.

[View entire story](#)

An advertisement for DreamDirt.com. It features a stylized logo at the top with a plant growing from a box labeled "DreamDirt". Below the logo, the text "WHAT'S IN IT WORTH?" is written in large, bold, block letters. Underneath, the words "LAND BROKERS", "AUCTIONEERS", and "APPRAISERS" are listed in a similar font. At the bottom, the website "DreamDirt.com" is displayed in a large, bold font.

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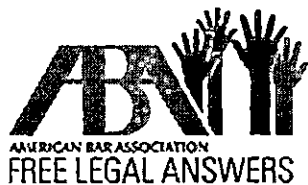
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## Volunteer attorneys needed for virtual pro bono legal clinic



Looking for the opportunity to provide short-term, pro bono legal service from anywhere at your convenience? IA Free Legal Answers is part of a nationwide, ABA pro bono initiative called ABA Free Legal Answers. Since August 2016, over 2,200 attorneys in the 30 participating states have registered to respond to questions. Last month, the ISBA Governors approved the launch of IA Free Legal Answers via the ISBA's Find-A-Lawyer website.

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(515) 259-3667

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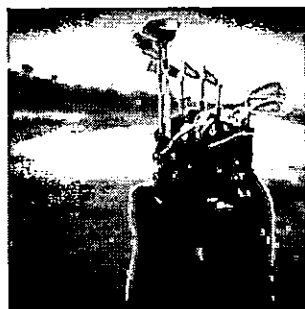
## Spring Tax Institute covers wide range of topics



The 63rd Annual Spring Tax Institute, co-sponsored by the University of Iowa College of Law CLE Programs and the Taxation Section of The Iowa State Bar Association, is set for April 28 at the University Club in Iowa City.

[View entire story](#)

## Drake, Iowa to compete for bragging rights in 13th Annual Dean's Cup



The 13th Annual Dean's Cup challenge pitting Drake University Law School alumni and students against graduates and students from the University of Iowa College of Law will tee up Monday, May 15, at Finkbine Golf Course in Iowa City. Funds raised from the event will be given to Iowa Legal Aid to support its

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work with indigent lowans, which numbered nearly 38,000 in 2016.

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## Make your voice heard on civil legal aid funding



All ISBA members are encouraged to show their support for full funding for the Legal Services Corporation by signing this online petition that will be presented to Iowa lawmakers in

Washington, D.C.

[View entire story](#)

---

## Final day to register for Access to Justice event



On Friday, April 21, the University of Iowa College of Law is hosting a summit on Access to Justice in Iowa. To register, please complete this online form by the end of the day today, April 19.

[View entire story](#)

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## Commercial and Bankruptcy Law Seminar

In-person or Live Webinar

May 12

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## IN OTHER NEWS

### Warning to courthouses: Layoffs, furloughs 'on the table'

The chief administrator for the judicial branch of state government is warning court employees across the state of possible layoffs or reduced courthouse hours, if a proposed GOP judicial branch budget is approved at the statehouse.

*Iowa Public Radio*

### Florida Bar wants to regulate Avvo and other legal marketers. Will state supreme court allow it?

In 2015, the Florida Supreme Court directed the Florida Bar to solve a particular problem with for-profit lawyer referral services that purport to help consumers find law firms. A special Bar committee that spent more than a year investigating dozens of



Florida referral services had reported in 2012 on all kinds of ethical pitfalls: improper solicitation of clients, undisclosed conflicts of interest, even unlicensed practice of law.

*Reuters*

**Gorsuch asks his first questions in Supreme Court oral arguments**

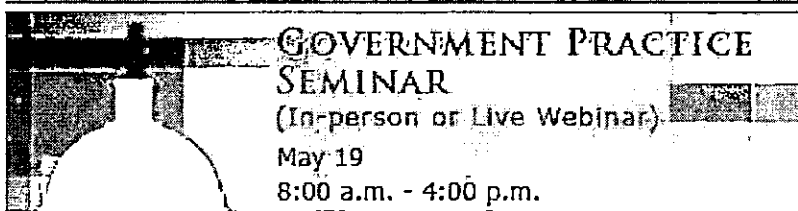
The U.S. Supreme Court's newest justice took the bench on Monday and began asking questions less than 15 minutes after oral arguments began.

*ABA Journal*

**Prosecutors seek reversal of Charles City man's conviction**

State prosecutors have asked the Iowa Supreme Court to reverse a Charles City man's 2016 conviction for sexual abuse of a teen boy.

*Waterloo-Cedar Falls Courier*




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## Ranscht, David [AG]

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**From:** Ranscht, David [AG]  
**Sent:** Tuesday, April 18, 2017 12:10 PM  
**To:** Gavin, Meghan [AG]; Thompson, Jeffrey [AG]  
**Subject:** Cedar Rapids Gazette editorial

<http://www.thegazette.com/subject/opinion/blogs/24-hour-dorman/in-iowa-the-mystery-of-the-lieutenant-governor-circa-1857-20170416>

Interesting.



**David Ranscht**  
**Assistant Attorney General**  
Office of the Attorney General of Iowa  
Licensing & Administrative Law Division  
1305 E. Walnut St.  
Des Moines, Iowa 50319  
Main: (515) 281-5164 | Direct: (515) 281-7175  
Email: [david.ranscht2@iowa.gov](mailto:david.ranscht2@iowa.gov) | [www.iowaattorneygeneral.gov](http://www.iowaattorneygeneral.gov)

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**Ranscht, David [AG]**

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**From:** The Iowa State Bar Association <cle@iowabar.org>  
**Sent:** Tuesday, April 18, 2017 8:00 AM  
**To:** Ranscht, David [AG]  
**Subject:** Five Succession Planning Seminars Scheduled

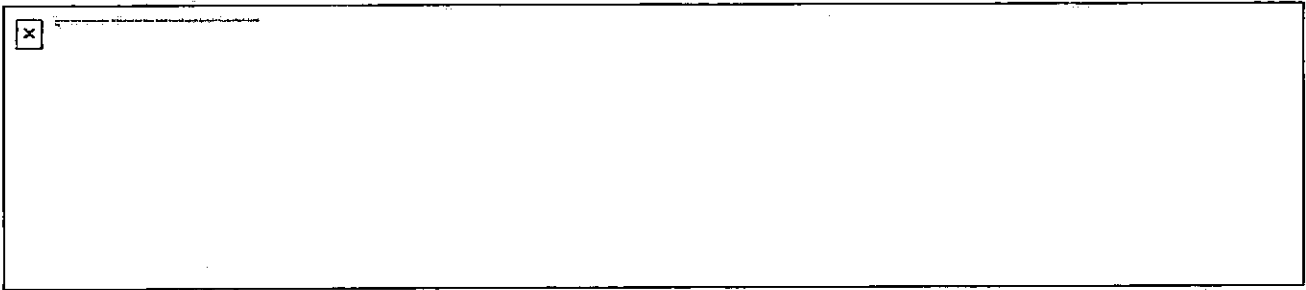
Good afternoon David,

We look forward to your participation at one of the following succession planning events.

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## Rebroadcasts of Lawyer Death and Disability Planning Seminar

May 5 - Clear Lake (rebroadcast)  
May 16 - Waterloo (rebroadcast)  
May 18 - Davenport (rebroadcast)  
May 23 - South Sioux City, NE (rebroadcast)  
May 24 - Council Bluffs (rebroadcast)

The ISBA is holding regional seminars this spring to help members understand the new succession planning process mandated by **Iowa Court Rule 39.18** that goes into effect on Jan. 1, 2018.

Iowa Court Rule 39.18 now requires attorneys in private practice to complete their annual questionnaire, pursuant to **rule 39.11**, whereby the attorney identifies the attorney's designated representative to act in the attorney's stead in the event of death or disability. While attorneys are no longer required to execute a written supplemental succession plan, they are encouraged to so.

The Iowa Academy of Trust & Estate Counsel has prepared and is making available a **form succession plan agreement**.

For more information, including registration, select the location of your choice below:

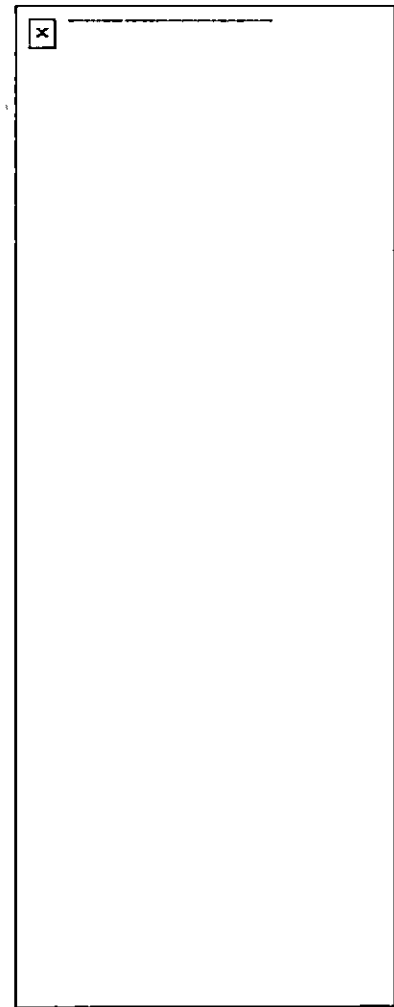
[Clear Lake - May 5](#)

[Waterloo - May 16](#)

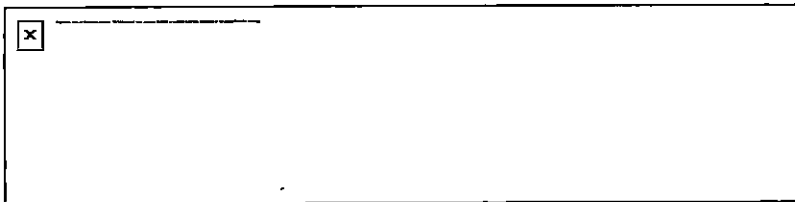
[Davenport - May 18](#)

[South Sioux City - May 23](#)

[Council Bluffs - May 24](#)



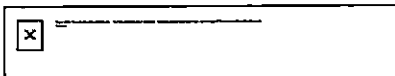
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**Ranscht, David [AG]**

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**From:** Greenwood, Geoff [AG]  
**Sent:** Monday, May 01, 2017 6:47 PM  
**To:** Tabor, Eric [AG]; Thompson, Jeffrey [AG]  
**Cc:** Gavin, Meghan [AG]; Ranscht, David [AG]  
**Subject:** FW: thank you

**From:** Laura Belin [<mailto:desmoinesdem@bleedingheartland.com>]  
**Sent:** Monday, May 01, 2017 3:16 PM  
**To:** Greenwood, Geoff [AG]  
**Subject:** thank you

Hello Geoff,

Thanks again for the heads up about the call-in opportunity.

I don't have their individual e-mail addresses, but please pass along my appreciation to the solicitor general and the other staff members who worked closely on today's formal opinion. It was very well-researched.

The reaction from the governor's office is disappointing but demonstrates how much political pressure was on the Attorney General's Office to reach a different conclusion. Thank you for standing up for the rule of law.

Yours,

Laurie  
1705 Plaza Circle  
Windsor Heights, IA 50324  
(515) 276-6971

<http://www.bleedingheartland.com>

**Ranscht, David [AG]**

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**From:** The Iowa State Bar Association <isba@iowabar.org>  
**Sent:** Wednesday, April 12, 2017 1:32 PM  
**To:** Ranscht, David [AG]  
**Subject:** Iowa Lawyer Weekly: Four Supreme Court Opinions; New Iowa Docs forms; Virtual legal clinic launch

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## Three new forms added to IowaDocs, update required



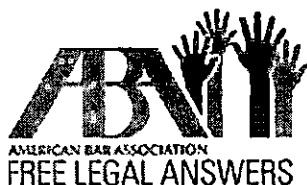
Three new real estate forms were added this week to the ISBA's IowaDocs® 2017 library. All desktop users will have access to the following forms, once they do the April 10, 2017 IowaDocs® update:

- Notice to Quit Pursuant to Iowa Code §562A.27A, #375
- Notice of Termination of Tenancy Iowa Code §562A and Demand for Possession, #376
- Farm Lease - Fixed Cash Rent, #134

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## Virtual, pro bono legal clinic launching in Iowa this month



Looking for the opportunity to provide short-term, pro bono legal service from anywhere at your convenience? IA Free Legal Answers is part of a nationwide, ABA pro bono initiative called ABA Free Legal Answers. Since August 2016, over 2,200 attorneys in the 30 participating states have registered to respond to questions. Last month, the ISBA Governors approved the launch of IA Free Legal Answers via the ISBA's Find-A-Lawyer website.

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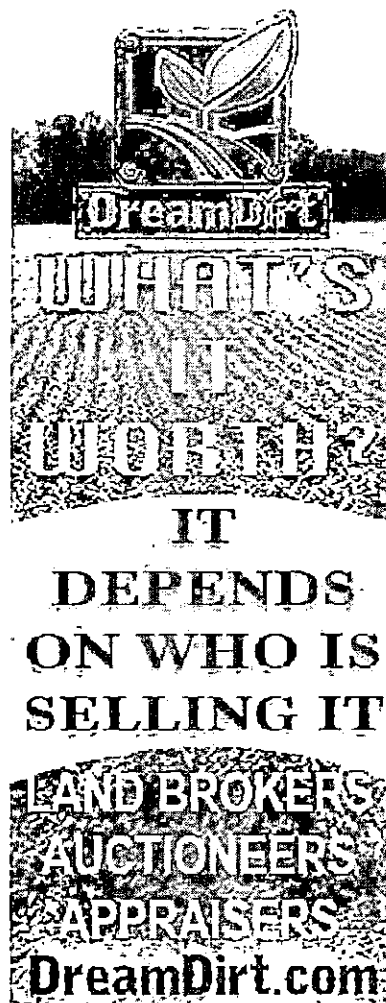
## Special data breach coverage now offered by ISBA-endorsed insurance provider



The FBI has identified law firms as a major target of hackers. In response, CNA, the country's eighth largest commercial insurance company, now offers firms with up to five attorneys a new Lawyers Data Breach and Network Security Endorsement available on

their Lawyers Professional Liability (LPL) policy.

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## ISBA-endorsed health insurance provider offers solutions for those affected by loss of individual insurance plans in 2018



Reynolds & Reynolds, Inc., the ISBA's endorsed provider of health insurance products, is offering multiple solutions for Iowa Bar members who may be losing coverage for themselves or their employees as a result of Wellmark Blue Cross Blue Shield's and Aetna's decisions to exit the individual health insurance marketplace in Iowa. The decisions by the two major insurance companies mean individual plans that were written after Jan. 1, 2014 will be terminated at the end of this year.

[View entire story](#)

An advertisement for MVS McKee, Voorhees &amp; Sease, P.C. The ad features the firm's name and website (www.11pmvs.com) on the left. On the right, there is a graphic with the text 'YOUR PLANS PATENT IS OUR SPECIALTY' and 'YOUR WORLDWIDE IP PARTNER SINCE 1924'. Below the graphic, there is a list of services including 'LITIGATION', 'ENTERTAINMENT LAW', 'TRADE MARKS', 'PATENTS', 'COPYRIGHTS', and 'TRADE SECRETS'.

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## Windows support for Vista officially ends



Windows Vista

Microsoft's support of Windows Vista officially ended April 11. As a result of this change, IowaDocs support for Vista will also end no later than July 1.

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## Free guide simplifies law firm accounting



Clio, the ISBA-endorsed supplier of practice management software, is offering a free guide to making the accounting function of the law office easier. Entitled "5 Steps to Easy(ier) Legal Accounting," the nine-page guide walks users through the process of setting up a chart of accounts, choosing an accounting tool and handling trust accounts.

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An advertisement for the ISBA CLE Index. The ad features the text 'ISBA CLE INDEX' at the top. Below this, there is a list of features: 'Absolutely free', 'Instant access', 'Webinar audio and video', 'Great for research', 'Ten years of CLE outlines', and 'Easily searchable'. At the bottom of the ad, there is a logo for the Iowa State Bar Association and the website 'iowabar.org/CLEindex'.

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## Juvenile and Criminal Law CLEs next week



The ISBA's annual Juvenile and Criminal Law CLEs, set for April 19 and 20, will once again be available at a discount to attorneys interested in attending both seminars.

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<b>JUVENILE LAW SEMINAR April 19</b>	<b>CRIMINAL LAW SEMINAR April 20</b>
--	--

Register for both and save  
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## IN OTHER NEWS

### Number of LSAT test-takers is up, but the surge isn't helping law schools

The number of people who take the LSAT has increased for the last three tests. But the surge is not yet benefiting law schools.  
*ABA Journal*

### Widow sues Adventureland worker in husband's death

The wife of an Adventureland worker killed last year while working on the Raging River ride has filed a wrongful death lawsuit against another Adventureland employee, claiming a failure to follow several protocols caused her husband's fatal injuries.  
*Des Moines Register*

### Western Iowa Tech to offer free legal clinic April 22

The Western Iowa Tech Community College Legal Assistant Association, Iowa Legal Aid and area attorneys will be offering a free legal clinic for low-income individuals and families needing assistance.  
*Sioux City Journal*

### Iowa native one of 19 judges who will decide Kosovo war crimes cases

Charles L. Smith, a Missouri Valley, Iowa, native and former chief judge of Iowa's Fourth Judicial District, is one of 19 judges — and the only American — to be named international judges of the Kosovo Specialist Chambers.  
*Omaha World-Herald*

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**Ranscht, David [AG]**

---

**From:** Dozier, Sharon <sharon.dozier@idph.iowa.gov>  
**Sent:** Thursday, April 06, 2017 11:45 AM  
**To:** Marshall, Mike [IDPH]; Ranscht, David [AG]  
**Subject:** Fwd: Board Appointee Contact Information  
**Attachments:** Board of Dietetics.pdf

This includes the confirmation from the Governor's Office for the academic appointment to the Board of Dietetics.

*Sharon Dozier*

Board Executive | Bureau of Professional Licensure | Division of Administration & Professional Licensure | Iowa Department of Public Health | 321 E. 12th St. | Lucas State Office Bldg. | Des Moines, IA 50319-0075 | Office: 515-281-6352 | Fax: 515-281-3121 | [Sharon.dozier@idph.iowa.gov](mailto:Sharon.dozier@idph.iowa.gov)

----- Forwarded message -----

**From:** Hohnstein, Nathan <[nathan.hohnstein@iowa.gov](mailto:nathan.hohnstein@iowa.gov)>  
**Date:** Fri, Mar 10, 2017 at 11:27 AM  
**Subject:** Board Appointee Contact Information  
**To:** Sharon Dozier <[sharon.dozier@idph.iowa.gov](mailto:sharon.dozier@idph.iowa.gov)>

Sharon,

Attached is the contact information for the Governor's appointments from March 1st. If you have questions feel free to give me a call.

On a separate issue, for any future resignations immediately let Tracie and I know. We want to stay on top of vacancies and work with you in filling your board as soon as possible.

With that, I just want to thank you for your help as it makes our job a lot easier. Furthermore, don't hesitate in calling me if you have questions or concerns.

Thanks,  
Nathan

--

**Nathan Hohnstein** | Deputy Director of Boards & Commissions

Office of the Governor, State of Iowa

Gov. Terry Branstad & Lt. Gov. Kim Reynolds

515-725-3504 | [nathan.hohnstein@iowa.gov](mailto:nathan.hohnstein@iowa.gov)

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[www.ltgovernor.iowa.gov](http://www.ltgovernor.iowa.gov)

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On Wed, Apr 5, 2017 at 10:21 AM, Ranscht, David [AG] <[David.Ranscht2@iowa.gov](mailto:David.Ranscht2@iowa.gov)> wrote:

FYI—I didn't see you on Wes's email (unless he BCC'd you). I have not responded yet.



**David Ranscht**  
**Assistant Attorney General**  
Office of the Attorney General of Iowa

Licensing & Administrative Law Division  
1305 E. Walnut St.

Des Moines, Iowa 50319

Main: (515) 281-5164 | Direct: (515) 281-7175  
Email: [david.ranscht2@iowa.gov](mailto:david.ranscht2@iowa.gov) | [www.iowaattorneygeneral.gov](http://www.iowaattorneygeneral.gov)

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---

**From:** Wes Ehrecke [<mailto:wese@iowagaming.org>]

**Sent:** Wednesday, April 05, 2017 10:17 AM

**To:** Ranscht, David [AG]; Peterzalek, Jeffrey [AG]

**Subject:** Available to meet this afternoon? Iowa Gaming Association v. Iowa Racing and Gaming Commission - Trial Scheduling Order and Discovery Plan

David,

C: Jeff;

I was forwarded your Monday email. The IGA has some questions and concerns regarding your suggesting to file a motion for summary judgement; that I would like to discuss with you today. Would you have time to meet this afternoon; perhaps at 4:00 p.m.? Otherwise I have a few other windows available earlier this afternoon to visit by phone.

Thank you for the opportunity to discuss this issue and strive to have a better understanding of next steps in this process.

Have a great day.

Wes Ehrecke, FASAE, CAE  
President & CEO  
Iowa Gaming Association  
515-229-5056 (cell)  
[wese@iowagaming.org](mailto:wese@iowagaming.org)

---

**From:** Ranscht, David [AG] [<mailto:David.Ranscht2@iowa.gov>]  
**Sent:** Monday, April 03, 2017 3:24 PM  
**To:** Franklin, Sarah K.; Peterzalek, Jeffrey [AG]  
**Subject:** RE: Iowa Gaming Association v. Iowa Racing and Gaming Commission - Trial Scheduling Order and Discovery Plan

Hi Sarah,

This discovery plan looks acceptable. I know it has kind of languished while waiting to see what action the legislature would take, if any.

Now that the legislature *has* acted, though, we may not need to set a trial date or go through any discovery. As I'm sure you're aware, the legislature recently passed and the governor signed HF 462, which directly addresses the types of records at issue in this case. However, the law is not retroactive.

So, after some consultation with the Commission, we anticipate filing a motion for summary judgment soon, based on the legislative change. Because the bill isn't retroactive and specifically categorizes casino audits as their own exception, that means these audits weren't confidential at the time they were requested and didn't fit into an existing exception.

Just wanted to let you know so that a filing didn't catch you by surprise. Feel free to call if you have questions.

Thanks,



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---

**From:** Franklin, Sarah K. [<mailto:SarahFranklin@davisbrownlaw.com>]  
**Sent:** Wednesday, December 07, 2016 5:32 PM  
**To:** Peterzalek, Jeffrey [AG]; Ranscht, David [AG]  
**Subject:** Iowa Gaming Association v. Iowa Racing and Gaming Commission - Trial Scheduling Order and Discovery Plan

Jeffrey and David,

Attached please find our proposed Trial Scheduling and Discovery Plan in the Iowa Gaming Association v. Iowa Racing and Gaming Commission matter. Please review this and let me know if you have any changes. Once I hear from you, I will file this with the Court.

I don't know that a formal discovery conference is needed in this case, but am happy to schedule a call to further discuss discovery if you think it would be useful.

Thanks,  
Sarah



**Sarah K. Franklin** | Attorney | 515-288-2500 | [www.DavisBrownLaw.com](http://www.DavisBrownLaw.com)  
The Davis Brown Tower | 215 10th Street, Suite 1300 | Des Moines, Iowa 50309 | Fax: 515-243-0654

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## Ranscht, David [AG]

---

**From:** Ranscht, David [AG]  
**Sent:** Tuesday, April 04, 2017 12:48 PM  
**To:** Franklin, Sarah K.; Peterzalek, Jeffrey [AG]  
**Cc:** Jannes, Chris P.; Coonan, Tim R.  
**Subject:** RE: Iowa Gaming Association v. Iowa Racing and Gaming Commission - Trial Scheduling Order and Discovery Plan

Of course. No problem. That's why we sent the heads-up.



**David Ranscht**  
**Assistant Attorney General**  
Office of the Attorney General of Iowa  
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**From:** Franklin, Sarah K. [<mailto:SarahFranklin@davisbrownlaw.com>]  
**Sent:** Tuesday, April 04, 2017 10:29 AM  
**To:** Ranscht, David [AG]; Peterzalek, Jeffrey [AG]  
**Cc:** Jannes, Chris P.; Coonan, Tim R.  
**Subject:** RE: Iowa Gaming Association v. Iowa Racing and Gaming Commission - Trial Scheduling Order and Discovery Plan

Hi David,

Thanks for the email. Before you file anything, would give us a chance to confer with our client? We will be in touch later this week.

Thanks,  
Sarah



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**From:** Ranscht, David [AG] [<mailto:David.Ranscht2@iowa.gov>]  
**Sent:** Monday, April 3, 2017 3:24 PM  
**To:** Franklin, Sarah K.; Peterzalek, Jeffrey [AG]  
**Subject:** RE: Iowa Gaming Association v. Iowa Racing and Gaming Commission - Trial Scheduling Order and Discovery Plan

Hi Sarah,

This discovery plan looks acceptable. I know it has kind of languished while waiting to see what action the legislature would take, if any.

Now that the legislature *has* acted, though, we may not need to set a trial date or go through any discovery. As I'm sure you're aware, the legislature recently passed and the governor signed HF 462, which directly addresses the types of records at issue in this case. However, the law is not retroactive.

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Just wanted to let you know so that a filing didn't catch you by surprise. Feel free to call if you have questions.

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**From:** Franklin, Sarah K. [<mailto:SarahFranklin@davisbrownlaw.com>]  
**Sent:** Wednesday, December 07, 2016 5:32 PM  
**To:** Peterzalek, Jeffrey [AG]; Ranscht, David [AG]  
**Subject:** Iowa Gaming Association v. Iowa Racing and Gaming Commission - Trial Scheduling Order and Discovery Plan

Jeffrey and David,

Attached please find our proposed Trial Scheduling and Discovery Plan in the Iowa Gaming Association v. Iowa Racing and Gaming Commission matter. Please review this and let me know if you have any changes. Once I hear from you, I will file this with the Court.

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## Ranscht, David [AG]

---

**From:** Ranscht, David [AG]  
**Sent:** Monday, April 03, 2017 12:33 PM  
**To:** Gavin, Meghan [AG]; Thompson, Jeffrey [AG]  
**Subject:** RE: Lt Gov stuff  
**Attachments:** Shall Be Styled.docx

Here is a chart categorizing states by whether they have a provision like our article IV, section 1—providing the powers are vested in a chief magistrate who shall be styled the governor.

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-----Original Message-----

**From:** Gavin, Meghan [AG]  
**Sent:** Monday, April 03, 2017 10:37 AM  
**To:** Thompson, Jeffrey [AG]; Ranscht, David [AG]  
**Subject:** RE: Lt Gov stuff

<http://www.independentmail.com/story/news/local/2017/01/18/sc-supreme-court-ruling-may-pave-way-bryant-become-lieutenant-governor/96736648/>

---

**From:** Thompson, Jeffrey [AG]  
**Sent:** Monday, April 03, 2017 10:24 AM  
**To:** Ranscht, David [AG]; Gavin, Meghan [AG]  
**Subject:** Lt Gov stuff

South Carolina just went through the succession issues with Nicki Haley leaving. Could one of you find the S.C. constitution and any pertinent cases? Thanks.



## Ranscht, David [AG]

---

**From:** Ranscht, David [AG]  
**Sent:** Monday, April 03, 2017 11:19 AM  
**To:** Gavin, Meghan [AG]; Thompson, Jeffrey [AG]  
**Subject:** RE: Lt Gov stuff

Here's the court opinion. (It doesn't say much.)

<http://www.sccourts.org/opinions/HTMLFiles/SC/27699.pdf>

And here's the proposed amendment that passed in 2012 and 2014.

[http://www.scstatehouse.gov/sess119\\_2011-2012/bills/3152.htm](http://www.scstatehouse.gov/sess119_2011-2012/bills/3152.htm)

[http://www.scstatehouse.gov/sess120\\_2013-2014/bills/446.htm](http://www.scstatehouse.gov/sess120_2013-2014/bills/446.htm)

It looks mostly like what we did in 1988. One weird thing I noticed is that in the laundry list of reasons why the lieutenant governor would be "removed" (impeachment, resignation, etc.), "becoming governor" is not one of them, as some other states have said.

David Ranscht  
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## Ranscht, David [AG]

---

**From:** Thompson, Jeffrey [AG]  
**Sent:** Monday, April 03, 2017 10:59 AM  
**To:** Ranscht, David [AG]; Gavin, Meghan [AG]  
**Subject:** FW: Follow-up

See below. Let's talk about which cases.

**From:** Johnson, Larry [mailto:larry.johnson@iowa.gov]  
**Sent:** Monday, April 03, 2017 10:41 AM  
**To:** Thompson, Jeffrey [AG]; Boussetot, Michael [IGOV]  
**Subject:** Follow-up

Hi Jeff - I just wanted to follow-up on the ten cases you were referring to last week. If you had a minute to send the case name and citations that'd be great.

Thanks, Jeff.  
Larry

--

**Larry Johnson, Jr.** | Legal Counsel

Office of the Governor, State of Iowa

Gov. Terry Branstad & Lt. Gov. Kim Reynolds

515.725.3506 | [larry.johnson@iowa.gov](mailto:larry.johnson@iowa.gov)

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## Ranscht, David [AG]

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**From:** Gavin, Meghan [AG]  
**Sent:** Monday, April 03, 2017 10:35 AM  
**To:** Thompson, Jeffrey [AG]; Ranscht, David [AG]  
**Subject:** RE: Lt Gov stuff

South Carolina recently amended its constitution to specifically grant the governor the power to appoint a Lt governor. Currently, the law calls for a complete domino. The president pro tem of the senate was elevated to Lt. governor.

Word of caution - this is google research since I can't access westlaw on my tablet.

### SECTION 11. Death, resignation, removal of Governor.

Section effective until the general election of 2018 and upon the joint election of the Governor and Lieutenant Governor. See also, section effective beginning with the general election of 2018 and upon the joint election of the Governor and Lieutenant Governor.

In the case of the removal of the Governor from office by impeachment, death, resignation, disqualification, disability, or removal from the State, the Lieutenant Governor shall be Governor. In case the Governor be impeached, the Lieutenant Governor shall act in his stead and have his powers until judgment in the case shall have been pronounced. In the case of the temporary disability of the Governor and in the event of the temporary absence of the Governor from the State, the Lieutenant Governor shall have full authority to act in an emergency. (1972 (57) 3171; 1973 (58) 48.) SECTION 11.

### Death, resignation, removal of Governor, Lieutenant Governor.

Section effective beginning with the general election of 2018 and upon the joint election of the Governor and Lieutenant Governor. See also, section effective until the general election of 2018 and upon the joint election of the Governor and Lieutenant Governor.

In the case of the removal of the Governor from office by impeachment, death, resignation, disqualification, disability, or removal from the State, the Lieutenant Governor shall be Governor. In case the Governor be impeached, the Lieutenant Governor shall act in his stead and have his powers until judgment in the case shall have been pronounced. In the case of the temporary disability of the Governor and in the event of the temporary absence of the Governor from the State, the Lieutenant Governor shall have full authority to act in an emergency. In the case of the removal of the Lieutenant Governor from office by impeachment, death, resignation, disqualification, disability, or removal from the State, the Governor shall appoint, with the advice and consent of the Senate, a successor to fulfill the unexpired term.

---

**From:** Thompson, Jeffrey [AG]  
**Sent:** Monday, April 03, 2017 10:24 AM  
**To:** Ranscht, David [AG]; Gavin, Meghan [AG]  
**Subject:** Lt Gov stuff

South Carolina just went through the succession issues with Nicki Haley leaving. Could one of you find the S.C. constitution and any pertinent cases? Thanks.

## Ranscht, David [AG]

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**Sent:** Monday, April 03, 2017 10:24 AM  
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## Ranscht, David [AG]

---

**From:** Thompson, Jeffrey [AG]  
**Sent:** Wednesday, March 08, 2017 9:10 AM  
**To:** Tabor, Eric [AG]  
**Cc:** Ranscht, David [AG]; Gavin, Meghan [AG]  
**Subject:** Re: A new Pieces of Iowa's Past has been published: Lieutenant Governors Who Have Become Governor

Interesting timing. Note that Lt govs were elected separately to two year terms back then. I don't see any appointments.

Sent from my iPhone

On Mar 8, 2017, at 8:54 AM, Tabor, Eric [AG] <[Eric.Tabor@iowa.gov](mailto:Eric.Tabor@iowa.gov)> wrote:

FYI

---

**From:** [fblists@legis.iowa.gov](mailto:fblists@legis.iowa.gov) [<mailto:fblists@legis.iowa.gov>]  
**Sent:** Wednesday, March 08, 2017 8:05 AM  
**To:** [TOUR\\_GUIDE\\_TIDBITS@LISTSERV.LEGIS.IOWA.GOV](mailto:TOUR_GUIDE_TIDBITS@LISTSERV.LEGIS.IOWA.GOV)  
**Subject:** A new Pieces of Iowa's Past has been published: Lieutenant Governors Who Have Become Governor

Document type: Pieces of Iowa's Past

Document title: Lieutenant Governors Who Have Become Governor

Document published location: <https://www.legis.iowa.gov/docs/publications/TB/855445.pdf>

Please do not reply to this e-mail as this e-mail account is not monitored.

**Ranscht, David [AG]**

---

**From:** Tabor, Eric [AG]  
**Sent:** Wednesday, March 08, 2017 8:54 AM  
**To:** Thompson, Jeffrey [AG]; Ranscht, David [AG]; Gavin, Meghan [AG]  
**Subject:** FW: A new Pieces of Iowa's Past has been published: Lieutenant Governors Who Have Become Governor

FYI

---

**From:** lfblists@legis.iowa.gov [mailto:lfblists@legis.iowa.gov]  
**Sent:** Wednesday, March 08, 2017 8:05 AM  
**To:** TOUR\_GUIDE\_TIDBITS@LISTSERV.LEGIS.IOWA.GOV  
**Subject:** A new Pieces of Iowa's Past has been published: Lieutenant Governors Who Have Become Governor

Document type: Pieces of Iowa's Past

Document title: Lieutenant Governors Who Have Become Governor

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Please do not reply to this e-mail as this e-mail account is not monitored.



## Ranscht, David [AG]

---

**From:** Ranscht, David [AG]  
**Sent:** Wednesday, March 01, 2017 10:08 AM  
**To:** Oetker, Matt [AG]  
**Subject:** FW: Important Legislation FYI - HSB138  
**Attachments:** Session Timetable.pdf

FYI



**David Ranscht**  
**Assistant Attorney General**  
Office of the Attorney General of Iowa  
Licensing & Administrative Law Division  
1305 E. Walnut St.  
Des Moines, Iowa 50319  
Main: (515) 281-5164 | Direct: (515) 281-7175  
Email: [david.ranscht2@iowa.gov](mailto:david.ranscht2@iowa.gov) | [www.iowaattorneygeneral.gov](http://www.iowaattorneygeneral.gov)

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---

**From:** Hart, Jennifer [<mailto:jennifer.hart@idph.iowa.gov>]  
**Sent:** Wednesday, March 01, 2017 9:33 AM  
**To:** Bob Kunkel; Carol Crane; Don Hansen; Jason Hayes; Jim Cooper; Kevin Kiene; Sue Pleva; Toni Knight; Young, Kane [IDPH]; Young, Brian [DPS]  
**Cc:** Stone, Carmily [IDPH]; Ranscht, David [AG]  
**Subject:** Re: Important Legislation FYI - HSB138

Just realized I forgot to send an update...In case you have not heard HSB 138 died in subcommittee.

It is still possible another bill could come out or something could get attached to a leadership bill so we are continuing to monitor session closely.

The first funnel deadline in Friday, which means for any bills to stay alive, it must be passed out of one committee in either House or Senate. There are some exceptions for certain kinds of bills. If you are interested, I am attaching a copy of the Session Timetable which shows some of the funnel deadlines and exceptions....

We will be able to have a discussion about it at our meeting on March 21.

Talk to you at Noon for our teleconference!

On Wed, Feb 22, 2017 at 11:25 AM, Hart, Jennifer <[jennifer.hart@idph.iowa.gov](mailto:jennifer.hart@idph.iowa.gov)> wrote:  
I want to give everyone an important "heads up" regarding a new study bill that came out this week. The bill can be downloaded/viewed here: <https://www.legis.iowa.gov/legislation/BillBook?ga=87&ba=HSB138>

Our understanding is the study bill was drafted by someone in the Governor's office. We just learned of it late yesterday. It does a number of things, but starting on page 37 through page 78, the bill proposes to eliminate the Plumbing and Mechanical Systems Board, and move the board functions and activities to the Dept. of

Public Safety, where a new 8-member advisory council would be formed for electrical, plumbing, and mechanical systems. The bill does not eliminate the need for licensing, nor does it create inspections, etc. it just essentially moves chapter 105 to oversight by the Dept. of Public Safety.

I want to make you all aware so that you are not surprised by any calls or questions. Our current department talking points are listed below.

1. The department is reviewing HSB 138 that was released by the legislature on Feb 21st and will be working with industry partners and legislators to define and understand the potential impacts of the bill.
2. No definitive answers are available at this time, we ask for your patience over the coming days and weeks as the bill is discussed by the legislature.
3. The department is moving forward with plans for the upcoming license renewal deadline of July 1, 2017, to ensure licensees will be able to renew their licenses and continue working.
4. As more details are available the department will communicate with licensees through the website and listserv messages.

Please do not reply all to this message (need to make sure we do not violate open meetings law by having a discussion via email:). However, feel free to contact me individually if you have additional questions or concerns. We are trying to put together a list of questions for legislators as we work through reading and understanding the bill. (For example, the advisory council does not have mechanical representation.) At this point we do not know a lot but will be closely monitoring the bill as it moves through subcommittee and will keep you all apprised...

--

Jennifer Hart

Executive Officer I | Bureau of Environmental Health Services |

Division of ADPER & EH | Iowa Dept. of Public Health |

321 E. 12<sup>th</sup> Street | Des Moines, IA 50319 |

Phone: (515)281-6881 | Fax: (515)281-6114 | Email: [jennifer.hart@idph.iowa.gov](mailto:jennifer.hart@idph.iowa.gov)

*Protecting and Improving the Health of Iowans*

--

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## Ranscht, David [AG]

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**Cc:** Stone, Carmily [IDPH]; Ranscht, David [AG]  
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## Ranscht, David [AG]

---

**From:** Willits, Emily [AG]  
**Sent:** Tuesday, February 28, 2017 11:29 AM  
**To:** AG Administrative Law  
**Subject:** Licensing reform

FYI – There is a new licensing bill that has been introduced. The explanation is pasted below. Let me know if you have comments/feedback.

<https://www.legis.iowa.gov/docs/publications/LGI/87/HSB174.pdf>

### EXPLANATION

The inclusion of this explanation does not constitute agreement with the explanation's substance by the members of the general assembly.

This bill relates to certain state regulations, including certificate of need requirements, the practice of certain professions, and the oversight of state preserves. The bill is organized into divisions.

**CERTIFICATE OF NEED REQUIREMENT.** This division removes the requirement for a hospital to apply to the Iowa department of public health for a certificate of need prior to the offering or development of a new or changed institutional health service unless the hospital plans to expand its swing-bed capacity above 25 beds or plans to add any nursing facility beds or skilled nursing beds. The division also requires a certificate of need for the construction, development, or other establishment of a hospital in a county with a population of less than 80,000, or a hospital in a county with a population of greater than 80,000 if the hospital is within 35 miles of a hospital located in a county with a population of less than 80,000.

The division exempts facilities that provide services to a person with a primary diagnosis of mental illness, as defined in Code section 229.1, from the certificate of need requirement.

The division takes effect upon enactment.

**PRACTICE OF DENTISTRY MODIFICATION AND INTERIOR DESIGN EXAMINING BOARD REPEAL.** This division eliminates the interior design examining board and removes all registration requirements for interior designers.

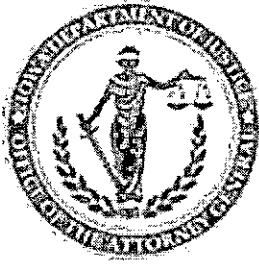
The division removes tooth whitening from the practice of dentistry as provided in Code section 153.13.

**REPEAL OF STATE ADVISORY BOARD FOR PRESERVES.** This division eliminates the state advisory board for preserves and assigns the duties of the board to the natural resource commission of the department of natural resources.

**ELECTRICAL EXAMINING BOARD.** This division reassigns the regulatory authority of the electrical examining board to the department of public safety, which shall regulate the licensure of electricians. The division changes the electrical examining board to an electrical examining advisory council, which shall have authority to approve administrative rules relating to professions governed by Code chapter 103 before they are adopted by the department.

**LICENSING MORATORIUM AND TASK FORCE.** This division prohibits an executive branch administrative unit from imposing new licensing regulations for a profession not regulated prior to July 1, 2017. The division also establishes a professional licensing task force made up of legislators, executive branch department representatives, a representative of the governor's office, and public members with professional licensure experience to review all aspects of professional licensure in the state.

**IOWA CAPITAL INVESTMENT BOARD.** This division of the bill eliminates the Iowa capital investment board established in Code section 15E.63 and transfers the duties and authority of that board to the economic development authority.



**Emily Willits**

**Director, Licensing & Administrative Law Division**

Office of the Attorney General of Iowa

1305 E. Walnut St.

Des Moines, Iowa 50319

Main: (515) 281-5164 | Direct: (515) 281-6403

Email: [Emily.Willits@iowa.gov](mailto:Emily.Willits@iowa.gov) | [www.iowaattorneygeneral.gov](http://www.iowaattorneygeneral.gov)

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## Ranscht, David [AG]

---

**From:** Thompson, Jeffrey [AG]  
**Sent:** Thursday, February 23, 2017 11:45 AM  
**To:** Ranscht, David [AG]  
**Cc:** Gavin, Meghan [AG]  
**Subject:** Re: Updated governor answers

Thanks David. Let's plan to talk tomorrow morning.

Sent from my iPhone

On Feb 23, 2017, at 11:30 AM, Ranscht, David [AG] <[David.Ranscht2@iowa.gov](mailto:David.Ranscht2@iowa.gov)> wrote:

Here is a redline copy with some tweaks throughout and some attempt to make distinctions from AR, NY, and UT.

<Draft Answers.docx>



## Ranscht, David [AG]

---

**From:** Adams, Heather [AG]  
**Sent:** Wednesday, February 22, 2017 10:45 AM  
**To:** AG Licensing  
**Cc:** Tabor, Eric [AG]  
**Subject:** RE: Smaller, Smarter Gov't Bill

Introduced as HSB 138



**Heather L. Adams**  
**Assistant Attorney General**  
Office of the Attorney General of Iowa  
1305 E. Walnut St.  
Des Moines, Iowa 50319  
Main: (515) 281-5164 | Direct: (515) 281-3441  
Email: [Heather.Adams@iowa.gov](mailto:Heather.Adams@iowa.gov) | [www.iowaattorneygeneral.gov](http://www.iowaattorneygeneral.gov)

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---

**From:** Adams, Heather [AG]  
**Sent:** Monday, February 20, 2017 2:43 PM  
**To:** AG Licensing  
**Cc:** Tabor, Eric [AG]  
**Subject:** FW: Smaller, Smarter Gov't Bill

Let me know if you have any reactions to share after you've read the bill, thanks!



**Heather L. Adams**  
**Assistant Attorney General**  
Office of the Attorney General of Iowa  
1305 E. Walnut St.  
Des Moines, Iowa 50319  
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---

**From:** Clabaugh, Gerd [<mailto:gerd.clabaugh@idph.iowa.gov>]  
**Sent:** Monday, February 20, 2017 2:35 PM  
**To:** Thompson, Deborah [IDPH]; Reisetter, Sarah [IDPH]; Sharp, Ken [IDPH]; Adams, Heather [AG]  
**Subject:** Fwd: Smaller, Smarter Gov't Bill

FYI. I don't think this has been released yet, so please don't share it further. But I would be interested in your reactions to what's being proposed. Thanks

**Gerd W. Clabaugh**

Director | Iowa Department of Public Health | 321 E. 12th Street | Lucas State Office Bldg. | Des Moines, IA 50319 | Office: 515-281-8474 | [gerd.clabaugh@idph.iowa.gov](mailto:gerd.clabaugh@idph.iowa.gov)

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----- Forwarded message -----

From: **Pottebaum, Nic** <[nic.pottebaum@iowa.gov](mailto:nic.pottebaum@iowa.gov)>  
Date: Mon, Feb 20, 2017 at 2:11 PM  
Subject: Fwd: Smaller, Smarter Gov't Bill  
To: Gerd Clabaugh <[gerd.clabaugh@idph.iowa.gov](mailto:gerd.clabaugh@idph.iowa.gov)>

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From: **Pottebaum, Nic** <[nic.pottebaum@iowa.gov](mailto:nic.pottebaum@iowa.gov)>  
Date: Mon, Feb 20, 2017 at 2:09 PM  
Subject: Smaller, Smarter Gov't Bill  
To: Deborah Thompson <[deborah.thompson@idph.iowa.gov](mailto:deborah.thompson@idph.iowa.gov)>

See attachment.

--

**Nicholas Pottebaum** | Policy Advisor  
Office of the Governor, State of Iowa  
Gov. Terry Branstad & Lt. Gov. Kim Reynolds  
515.725.3505 | [Nic.Pottebaum@iowa.gov](mailto:Nic.Pottebaum@iowa.gov)  
[www.governor.iowa.gov](http://www.governor.iowa.gov)  
[www.ltgovernor.iowa.gov](http://www.ltgovernor.iowa.gov)

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**Ranscht, David [AG]**

---

**From:** NEWS [AG]  
**Sent:** Tuesday, February 21, 2017 2:12 PM  
**Subject:** Miller Statement on AFSCME Lawsuit

**IOWA DEPARTMENT OF JUSTICE  
OFFICE OF THE ATTORNEY GENERAL  
Thomas J. Miller, Attorney General  
[www.iowaattorneygeneral.gov](http://www.iowaattorneygeneral.gov)**

CONTACT: Geoff Greenwood | Communications Director | 515-281-6699 | [geoff.greenwood@iowa.gov](mailto:geoff.greenwood@iowa.gov)

**FOR IMMEDIATE RELEASE**  
February 21, 2017

**Statement from Attorney General Tom Miller on AFSCME Lawsuit over  
Collective Bargaining Law**

*Miller to ask Executive Council to approve outside legal counsel to defend state*

DES MOINES – Attorney General Tom Miller today announced that he will ask the Iowa Executive Council to seek outside legal counsel to defend the state against the lawsuit challenging the constitutionality of House File 291, the collective bargaining bill signed into law on Friday.

The American Federation of State, County and Municipal Employees (AFSCME) Iowa Council 61 filed the lawsuit Monday in Polk County District Court.

The Executive Council, comprised of the governor, secretary of state, state treasurer, secretary of agriculture and state auditor, must approve the appointment of outside counsel to represent the state.

“As the new collective bargaining law has the potential to existentially threaten the viability of public sector unions—many of the very same organizations that have supported me in the past—I am recommending that the Executive Council seek outside legal representation to defend this lawsuit in order to avoid any questions about a potential conflict,” Miller said. “While the extraordinarily professional and skilled attorneys in my office have vigorously defended Governor Branstad and the legislature in past lawsuits involving AFSCME, I think it’s most prudent in this highly charged legal dispute to avoid any appearance of politics clouding our office’s legal representation and judgment.”

###

## Ranscht, David [AG]

---

**From:** Adams, Heather [AG]  
**Sent:** Monday, February 20, 2017 3:01 PM  
**To:** Adams, Heather [AG]  
**Cc:** AG Licensing  
**Subject:** Re: Smaller, Smarter Gov't Bill

Upon my quick review, it seems that the intent for the professions which will be registered is not to treat them as the department currently does for EMS providers, who are certified and required to follow competency and safety standards adopted by the department by rule, but instead to treat them like hair braiders, who simply register with the department.

Heather L. Adams  
Assistant Attorney General  
(515)281-3441  
[Heather.Adams@iowa.gov](mailto:Heather.Adams@iowa.gov)

On Feb 20, 2017, at 2:42 PM, Adams, Heather [AG] <[Heather.Adams@iowa.gov](mailto:Heather.Adams@iowa.gov)> wrote:

Let me know if you have any reactions to share after you've read the bill, thanks!

**Heather L. Adams**

**Assistant Attorney General**

<image001.png> **Office of the Attorney General of Iowa**  
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To: Deborah Thompson <[deborah.thompson@idph.iowa.gov](mailto:deborah.thompson@idph.iowa.gov)>

See attachment.

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[www.ltgovernor.iowa.gov](http://www.ltgovernor.iowa.gov)

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<1681XL\_1487354663286 (1).pdf>



## Ranscht, David [AG]

---

**From:** Adams, Heather [AG]  
**Sent:** Monday, February 20, 2017 2:43 PM  
**To:** AG Licensing  
**Cc:** Tabor, Eric [AG]  
**Subject:** FW: Smaller, Smarter Gov't Bill  
**Attachments:** 1681XL\_1487354663286 (1).pdf

Let me know if you have any reactions to share after you've read the bill, thanks!



**Heather L. Adams**  
**Assistant Attorney General**  
Office of the Attorney General of Iowa  
1305 E. Walnut St.  
Des Moines, Iowa 50319  
Main: (515) 281-5164 | Direct: (515) 281-3441  
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---

**From:** Clabaugh, Gerd [mailto:[gerd.clabaugh@idph.iowa.gov](mailto:gerd.clabaugh@idph.iowa.gov)]  
**Sent:** Monday, February 20, 2017 2:35 PM  
**To:** Thompson, Deborah [IDPH]; Reisetter, Sarah [IDPH]; Sharp, Ken [IDPH]; Adams, Heather [AG]  
**Subject:** Fwd: Smaller, Smarter Gov't Bill

FYI. I don't think this has been released yet, so please don't share it further. But I would be interested in your reactions to what's being proposed. Thanks

**Gerd W. Clabaugh**  
Director | Iowa Department of Public Health | 321 E. 12th Street | Lucas State Office Bldg. | Des Moines, IA 50319 |  
Office: 515-281-8474 | [gerd.clabaugh@idph.iowa.gov](mailto:gerd.clabaugh@idph.iowa.gov)

***Protecting and Improving the Health of Iowans***

----- Forwarded message -----

**From:** Pottebaum, Nic <[nic.pottebaum@iowa.gov](mailto:nic.pottebaum@iowa.gov)>  
**Date:** Mon, Feb 20, 2017 at 2:11 PM  
**Subject:** Fwd: Smaller, Smarter Gov't Bill  
**To:** Gerd Clabaugh <[gerd.clabaugh@idph.iowa.gov](mailto:gerd.clabaugh@idph.iowa.gov)>

----- Forwarded message -----

From: **Pottebaum, Nic** <[nic.pottebaum@iowa.gov](mailto:nic.pottebaum@iowa.gov)>

Date: Mon, Feb 20, 2017 at 2:09 PM

Subject: Smaller, Smarter Gov't Bill

To: Deborah Thompson <[deborah.thompson@idph.iowa.gov](mailto:deborah.thompson@idph.iowa.gov)>

See attachment.

--  
**Nicholas Pottebaum** | Policy Advisor  
Office of the Governor, State of Iowa  
Gov. Terry Branstad & Lt. Gov. Kim Reynolds  
515.725.3505 | [Nic.Pottebaum@iowa.gov](mailto:Nic.Pottebaum@iowa.gov)  
[www.governor.iowa.gov](http://www.governor.iowa.gov)  
[www.ltgovernor.iowa.gov](http://www.ltgovernor.iowa.gov)

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## Ranscht, David [AG]

---

**From:** Adams, Heather [AG]  
**Sent:** Monday, February 20, 2017 2:08 PM  
**To:** AG Licensing  
**Cc:** Tabor, Eric [AG]  
**Subject:** FW: Governor's Legislative Program Bill Sent to Leadership February 20, 2017  
**Attachments:** 1681XL.pdf



**Heather L. Adams**  
**Assistant Attorney General**  
Office of the Attorney General of Iowa  
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---

**From:** Thompson, Deborah [<mailto:deborah.thompson@idph.iowa.gov>]  
**Sent:** Monday, February 20, 2017 2:02 PM  
**To:** Clabaugh, Gerd [IDPH]; Reisetter, Sarah [IDPH]; Spangler, Marcia [IDPH]; Sharp, Ken [IDPH]  
**Cc:** Adams, Heather [AG]; Caskey, Jennifer [IDPH]  
**Subject:** Fwd: FW: Governor's Legislative Program Bill Sent to Leadership February 20, 2017

FYI - the Smaller, Smarter Government bill is being circulated. I don't think it's been introduced yet but they've given it to leadership in both chambers.

Thanks,

Deborah

**Deborah H. Thompson, MPA**  
Policy Advisor & Legislative Liaison | Iowa Department of Public Health  
321 E. 12th St | Des Moines, IA 50319 | Mobile: 515-240-0530 | [deborah.thompson@idph.iowa.gov](mailto:deborah.thompson@idph.iowa.gov)

*Promoting and Protecting the Health of Iowans*

----- Forwarded message -----

**From:** Ohms, Kenneth [LEGIS] <[Kenneth.Ohms@legis.iowa.gov](mailto:Kenneth.Ohms@legis.iowa.gov)>  
**Date:** Mon, Feb 20, 2017 at 1:49 PM  
**Subject:** FW: Governor's Legislative Program Bill Sent to Leadership February 20, 2017  
**To:** "Thompson, Deborah [IDPH]" <[deborah.thompson@idph.iowa.gov](mailto:deborah.thompson@idph.iowa.gov)>



FYI

---

**From:** Laust, Sandra [LEGIS]

**Sent:** Monday, February 20, 2017 1:45 PM

**To:** Bakker, Eric [LEGIS]; Bouselot, Michael [IGOV]; Dalluge, Zach [LEGIS]; Dickinson, Glen [LEGIS]; Dorsey, Chris [LEGIS]; Earnhardt, Mary [LEGIS]; Failor, Ed [LEGIS]; Fiihr, Dean [LEGIS]; Friedrichsen, Jake [LEGIS]; Hunter, Caleb [LEGIS]; Kattenhorn, Debbie [LEGIS]; Lunde, Joel [IDOM]; Oller, Liddy [LEGIS]; Phillips, Tony [LEGIS]; Roederer, David [IDOM]; Stopulos, Ted [IGOV]; Tadlock, Colin [LEGIS]

**Subject:** Governor's Legislative Program Bill Sent to Leadership February 20, 2017

The following Governor's legislative program bill approved for release by the Department of Management, is attached:

**LSB 1681xl Professional Licensing Regulation**

Sandra Laust

Legislative Services Agency

(515) 281-3566

---

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## Ranscht, David [AG]

---

**From:** Thompson, Jeffrey [AG]  
**Sent:** Wednesday, February 15, 2017 5:05 PM  
**To:** Gavin, Meghan [AG]; Ranscht, David [AG]  
**Subject:** RE: Arkansas, Oklahoma, and Oregon

Thanks. Let's try to find time to talk tomorrow.

Reread original and current Art. IV sec 19 carefully.

---

**From:** Gavin, Meghan [AG]  
**Sent:** Wednesday, February 15, 2017 1:34 PM  
**To:** Thompson, Jeffrey [AG]; Ranscht, David [AG]  
**Subject:** Arkansas, Oklahoma, and Oregon

You asked me to look into whether the new governor appointed a lieutenant governor after the court concluded that the lt. governor "became" governor.

Short answer – No for each state.

Arkansas – Arkansas held a special election to fill the position of lt. governor after the lt. governor became governor following the election of President Clinton. Mike Huckabee won that special election. However, Arkansas is like Iowa pre-1988, where the lt. governor is elected separately from the governor.

Oklahoma – After the court in Oklahoma determined that the lt governor became governor in 1926, the office of lt. governor was "vacant" and held open until the next election. Just a few years later, the Governor of Oklahoma was impeached and the lt. governor again became governor, leaving the lt. governor office vacant.

Oregon – The Court in Oregon determined that the SOS became governor in 1877. For over a year Chadwick held BOTH the office of governor and the SOS until the next election.



**Meghan Gavin**  
**Assistant Attorney General**  
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Des Moines, Iowa 50319  
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## **Ranscht, David [AG]**

---

**From:** Thompson, Jeffrey [AG]  
**Sent:** Wednesday, February 15, 2017 1:55 PM  
**To:** Gavin, Meghan [AG]; Ranscht, David [AG]  
**Subject:** RE: Arkansas, Oklahoma, and Oregon

Thanks.

---

**From:** Gavin, Meghan [AG]  
**Sent:** Wednesday, February 15, 2017 1:34 PM  
**To:** Thompson, Jeffrey [AG]; Ranscht, David [AG]  
**Subject:** Arkansas, Oklahoma, and Oregon

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## Ranscht, David [AG]

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**From:** Gavin, Meghan [AG]  
**Sent:** Wednesday, February 15, 2017 1:34 PM  
**To:** Thompson, Jeffrey [AG]; Ranscht, David [AG]  
**Subject:** Arkansas, Oklahoma, and Oregon

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Oregon – The Court in Oregon determined that the SOS became governor in 1877. For over a year Chadwick held BOTH the office of governor and the SOS until the next election.



### Meghan Gavin

#### Assistant Attorney General

Office of the Attorney General of Iowa

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## Ranscht, David [AG]

---

**From:** Thompson, Jeffrey [AG]  
**Sent:** Friday, February 10, 2017 4:08 PM  
**To:** Ranscht, David [AG]  
**Cc:** Gavin, Meghan [AG]  
**Subject:** RE: Draft Answers

David,

This is great work. Everything we need to make the case. I've given it to Eric so he can see the scope of the support for our position. Let's talk Monday.

Have a good weekend.

---

**From:** Ranscht, David [AG]  
**Sent:** Friday, February 10, 2017 2:30 PM  
**To:** Thompson, Jeffrey [AG]  
**Subject:** Draft Answers

Although there is not a specific paragraph to this effect in the memo as it stands now, I also realized that article IV, section 19 states the people further down the line "act as" governor, while "devolve" applies only to the lieutenant. That provision was amended to its current form as part of the 1988 amendments. Several other states noted that the difference in language suggests the lieutenant governor is not merely acting governor.



## Ranscht, David [AG]

---

**From:** Thompson, Jeffrey [AG]  
**Sent:** Friday, February 10, 2017 2:54 PM  
**To:** Ranscht, David [AG]  
**Subject:** RE: Draft Answers

Thanks. I agree that this distinction is important – the other people in line of succession have other “jobs” while the only real purpose for the Lt. Gov is to take over for Gov.

---

**From:** Ranscht, David [AG]  
**Sent:** Friday, February 10, 2017 2:30 PM  
**To:** Thompson, Jeffrey [AG]  
**Subject:** Draft Answers

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## Ranscht, David [AG]

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**From:** Ranscht, David [AG]  
**Sent:** Friday, February 10, 2017 2:30 PM  
**To:** Thompson, Jeffrey [AG]  
**Subject:** Draft Answers  
**Attachments:** Draft Answers.docx

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**Ranscht, David [AG]**

---

**From:** Wayne Dolezal <wayne@musl.com>  
**Sent:** Wednesday, February 08, 2017 9:44 AM  
**To:** Wayne Dolezal  
**Subject:** Legal News - Ticket Courier Law passed and signed in NJ  
**Attachments:** NJ Courier Bill - S2370 - 06-16-16 - TEXT as introrefd.pdf

*Thanks to Tom Tulloch for a copy of the Bill.*

**Christie OKs letting you get N.J. lottery tickets delivered to your home**

NJ.Com

February 07, 2017 at 11:10 AM

TRENTON -- New Jerseyans soon won't have to leave their homes to play the state lottery.

Gov. Chris Christie on Monday signed a bill into law that will allow for Garden State residents to pay to have private couriers deliver lottery tickets to their door.

Supporters of the measure (S2370/A3904) say it will make the lottery more accessible to people who are constrained to their homes or find it inconvenient to visit a store.

State Assemblyman John Burzichelli (D-Burlington), a main sponsor of the legislation, noted that many other goods -- such food, water, and clothing -- are already delivered to "make peoples' lives easier."

"This bill is aimed at saving players' time and broadening a customer base that provides revenue for services that benefit all New Jersey residents," Burzichelli said in a statement Monday.

Couriers may charge a fee for their services, but they cannot collect any portion of people's lottery winnings. Couriers can deliver only New Jersey lottery tickets.

All couriers must register with the State Lottery Commission, and those that don't face a penalty.

Christie vetoed a similar bill in 2015. At the time, the Republican governor said there is "no evidence of a demand for this service in New Jersey or that this bill would increase lottery sales."

Christie did not explain Monday why he signed this version of the measure.

The law takes effect Nov. 1.

Wayne E. Dolezal  
Deputy Executive Director  
Multi-State Lottery Association  
(515) 453-1412

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## Ranscht, David [AG]

---

**From:** Ranscht, David [AG]  
**Sent:** Thursday, February 02, 2017 5:39 PM  
**To:** Gavin, Meghan [AG]; Thompson, Jeffrey [AG]  
**Subject:** Misc Research Tidbits  
**Attachments:** 2009 Iowa Acts CH0057.pdf; Old Iowa Incompatibility Cases.pdf

The language in 69.8 that specifies a vacancy in LG is filled by appointment was enacted in 2009—session law is attached. The amendment is section 73 of the session law. Interestingly, the same bill also amended section 43.77, which discusses what constitutes a *ballot* vacancy. The amendment removed lieutenant governor from section 43.77. Most of the bill was about changes in administration of elections, so this provision appears to squeeze barely within the one-subject rule. The bill passed unanimously in both houses.

(<https://www.legis.iowa.gov/legislation/billTracking/billHistory?ga=83&billName=HF475>)

I added to the stack of papers on Jeff's chair the relevant pages from the constitutional debates preceding the 1857 Constitution.

Also attached are two older Iowa cases (in one PDF) that seem to address how we would determine whether a person who holds two offices holds *incompatible* offices. They may apply to 69.2(1)(h), which says a vacancy occurs if an incumbent holds more than one elective office at the same level of government. Or, they may not apply at all if we determine the gov/LG are really one office.



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## Ranscht, David [AG]

---

**From:** Gavin, Meghan [AG]  
**Sent:** Thursday, February 02, 2017 4:06 PM  
**To:** Thompson, Jeffrey [AG]; Ranscht, David [AG]  
**Subject:** 1982 Election

Okay I think I have figured out the catalyst for the 1988 amendment. In 1982 in Governor Branstad's first election, for the first time in Iowa history the people elected a republican governor and a democrat Lt. governor. Twice previously, we had elected a republican Lt. governor with a democratic governor.

[https://en.wikipedia.org/wiki/Robert\\_T.\\_Anderson](https://en.wikipedia.org/wiki/Robert_T._Anderson)

I haven't found any contemporaneous evidence that anything in the 1988 amendment was designed to address the question of whether a new Lt. governor could be appointed.

## Ranscht, David [AG]

---

**From:** Rich, Terry <trich@ialottery.com>  
**Sent:** Friday, January 27, 2017 10:23 AM  
**To:** Nye, Brenda [ILOT]; Coppess, Cam [ILOT]; Ranscht, David [AG]; Strasser, Hale [ILOT]; Lundquist, John [AG]; Loss, Larry [ILOT]; Neubauer, Mary [ILOT]; Neubauer, Mary [ILOT]; Porter, Rob K [ILOT]; TeBockhorst, Teri [ILOT]  
**Subject:** Fwd: Cedar Rapids Article with an overview of our discussion today

## The Gazette: Iowa state employees being asked to give up raises

Iowa legislators voting on bills to cut \$118 million by June 30

Hundreds of state public employee union members are being asked to forego a 1.25 percent pay increase they've been receiving since Jan. 1 without getting any assurance from the state it would prevent layoffs.

About 19,000 state employees represented by AFSCME will begin voting in early February whether to accept the state's request to give up the raise agreed to in collective bargaining, according to Danny Homan, president of AFSCME Iowa Council 61.

For an AFSCME member in the midrange of the state pay scale, giving up the raise would amount to about 35 cents per hour or \$61 a month, Homan estimated.

Members of the State Police Officers Council and Iowa United Professionals already have rejected the request made by Iowa Department of Administrative Services Director Janet Phipps. A decision on adjusting wages for non-contract employees will be made by the Governor's Office and the Department of Management, she said.

If all three unions had agreed to the wage adjustment, it would have saved the state about \$10 million, Phipps said, about half that in the general fund.

The asks come as lawmakers are in the midst of adopting measures to cut nearly \$118 Million from the state budget in the next five months because of a projected shortage of revenue.

AFSCME members will begin voting Feb. 6 on whether to concede their raise, Homan said. Just as he did when Democratic Gov. Chet Culver asked employees to take mandatory unpaid days, Homan took the state request to bargaining unit chairs. They voted unanimously to put it to a full membership vote.

The difference between the previous Culver request, and also one from Democratic Gov. Tom Vilsack, is that GOP Gov. Terry Branstad's administration is promising nothing in return, according to both Homan and Phipps.

"There is no quid pro quo," Phipps said. "We're asking them to be a part of a solution by contributing to an adjustment that has to be made."

State agencies likely are including the possibility of layoffs as they make plans to deal with budget adjustments approved Thursday by the Senate and scheduled for a vote Monday in the House, Phipps said.

However, in a letter to AFSCME members, Homan said he was told foregoing the wage increase “could potentially result in fewer layoffs this fiscal year.”

It’s a no-win situation for AFSCME members, Homan said, adding that one member described it as a choice between being shot in the foot and being shot in the head. If they approve the wage adjustment, state employees will lose that income. If not, they face layoffs in order for the state to make up a projected shortfall between now and the end of the fiscal year on June 30.

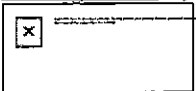
Homan was adamant the budget shortfall is not his members’ fault. It’s the fault of Branstad and House Republicans who gave a fertilizer plant in Lee County \$100 million in economic development benefits, created more corporate tax cuts and privatized Medicaid, he said.

“I don’t know why they’re blaming the guys who were plowing roads last night or the correctional officers at the Iowa Medical and Classification Center who keep dangerous people off the streets and the people at mental health institutes caring for our most vulnerable people,” Homan said.

“But instead of taking money out of the rainy day fund, they are going to balance this budget on the backs of public employees,” he said.

**Terry Rich/ President and CEO**

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13001 University Avenue  
Clive, IA 50325  
O 515.725.7880  
C 515.240.5660  
[trich@ialottery.com](mailto:trich@ialottery.com)



## Ranscht, David [AG]

---

**From:** Willits, Emily [AG]  
**Sent:** Monday, December 19, 2016 4:33 PM  
**To:** Baustian, Teresa [AG]; Ranscht, David [AG]; Dawson, Luke [AG]; Barloon, Rebecca [AG]  
**Subject:** RE: New Board and Commission Member Orientation

All – I just wanted to let you know that there is space for you to attend this tomorrow after the lunch for Roxie. Emily

---

**From:** Baustian, Teresa [AG]  
**Sent:** Friday, December 09, 2016 1:36 PM  
**To:** Ranscht, David [AG]; Dawson, Luke [AG]; Barloon, Rebecca [AG]; Willits, Emily [AG]  
**Subject:** RE: New Board and Commission Member Orientation

Same as with others---would like to attend, after the office lunch.



**Teresa Baustian**  
**Assistant Attorney General**  
Office of the Attorney General of Iowa  
1305 E. Walnut St.  
Des Moines, Iowa 50319  
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---

**From:** Ranscht, David [AG]  
**Sent:** Friday, December 09, 2016 1:31 PM  
**To:** Dawson, Luke [AG]; Barloon, Rebecca [AG]; Willits, Emily [AG]; Baustian, Teresa [AG]  
**Subject:** RE: New Board and Commission Member Orientation

Add me as #3 interesting in attending.



**David Ranscht**  
**Assistant Attorney General**  
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Licensing & Administrative Law Division  
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Main: (515) 281-5164 | Direct: (515) 281-7175  
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**From:** Dawson, Luke [AG]  
**Sent:** Friday, December 09, 2016 1:00 PM  
**To:** Barloon, Rebecca [AG]; Willits, Emily [AG]; Ranscht, David [AG]; Baustian, Teresa [AG]  
**Subject:** RE: New Board and Commission Member Orientation

I would also like to attend!

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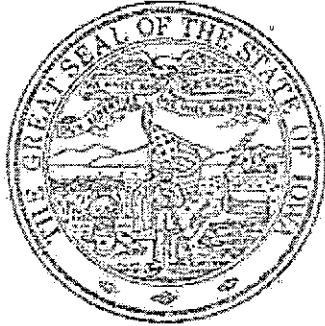
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**To:** Willits, Emily [AG]  
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Nathan

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Nathan Hohnstein

Deputy Director of Boards & Commissions

Office of Governor Terry E. Branstad

## Ranscht, David [AG]

---

**From:** Gavin, Meghan [AG]  
**Sent:** Sunday, December 11, 2016 5:12 PM  
**To:** Ranscht, David [AG]; Thompson, Jeffrey [AG]  
**Subject:** 1988 Amendment

It occurred to me that we should look at the legislative history for the 1988 amendment to see if the intention was to modernize succession as well as allow for the joint election of the governor and lieutenant governor. I've pulled the online version but will ask the state librarian to pull the complete versions tomorrow. I have a discovery conference in front of judge Hansen first thing tomorrow morning but am otherwise available.

Since the Lt governor receives the compensation for the governor when performing that offices duties, is the debate focused on the title?

Thanks,  
Meghan

## Ranscht, David [AG]

---

**From:** Ranscht, David [AG]  
**Sent:** Friday, December 09, 2016 3:19 PM  
**To:** Thompson, Jeffrey [AG]; Gavin, Meghan [AG]  
**Subject:** RE: Constitutional issue re: Lt. Gov assuming Gov's powers  
**Attachments:** Category Chart.docx; Governor Succession.docx; State Chart.docx

Couple interesting things from making the charts today:

1. In Oklahoma, the provision says "the office" devolves, not just the "powers and duties." That may explain the holding in the 1926 case.
2. I double checked some provisions and discovered a few I had categorized as "shall become" actually make the distinction between permanent vacancy and temporary disability.

My count as of now is:

- 13 "devolve" or "act as governor" (including Iowa)
- 3 that use a phrase like "shall become governor" either without making a distinction between permanent vacancy and temporary disability, or that don't really have a provision covering temporary disability
- 34 that distinguish between permanent vacancy and temporary disability, and use different language for the two situations

The charts are attached along with an updated memo.

David Ranscht  
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-----Original Message-----

**From:** Thompson, Jeffrey [AG]  
**Sent:** Thursday, December 08, 2016 2:41 PM  
**To:** Gavin, Meghan [AG]; Ranscht, David [AG]  
**Subject:** RE: Constitutional issue re: Lt. Gov assuming Gov's powers

Already put a hard copy on your chairs. Found it this morning. Dicta.....

-----Original Message-----

**From:** Gavin, Meghan [AG]

Sent: Thursday, December 08, 2016 2:39 PM  
To: Ranscht, David [AG]; Thompson, Jeffrey [AG]  
Subject: RE: Constitutional issue re: Lt. Gov assuming Gov's powers

[https://govt.westlaw.com/iaag/Document/I6adbf60af80111df9b8c850332338889?originationContext=Search+Result&listSource=Search&viewType=FullText&navigationPath=Search%2fv3%2fsearch%2fresults%2fnavigation%2fi0ad70f700000158dfad385267b9973f%3fstartIndex%3d1%26Nav%3dADMINDECISION\\_PUBLICVIEW%26contextData%3d\(sc.Default\)&rank=2&list=ADMINDECISION\\_PUBLICVIEW&transitionType=SearchItem&contextData=\(sc.Search\)&t\\_querytext=Governor+resignation+successor+vacancy+lieutenant+governor+duties+and+responsibilities&t\\_Method=WIN](https://govt.westlaw.com/iaag/Document/I6adbf60af80111df9b8c850332338889?originationContext=Search+Result&listSource=Search&viewType=FullText&navigationPath=Search%2fv3%2fsearch%2fresults%2fnavigation%2fi0ad70f700000158dfad385267b9973f%3fstartIndex%3d1%26Nav%3dADMINDECISION_PUBLICVIEW%26contextData%3d(sc.Default)&rank=2&list=ADMINDECISION_PUBLICVIEW&transitionType=SearchItem&contextData=(sc.Search)&t_querytext=Governor+resignation+successor+vacancy+lieutenant+governor+duties+and+responsibilities&t_Method=WIN)

Here's a relevant opinion from Pam.

---

From: Ranscht, David [AG]  
Sent: Thursday, December 08, 2016 12:02 PM  
To: Thompson, Jeffrey [AG]; Gavin, Meghan [AG]  
Subject: RE: Constitutional issue re: Lt. Gov assuming Gov's powers

Cool table indeed.

Here are two more cases (WI and MT). I have a bunch more in a folder to read after lunch.

[cid:image001.png@01D25149.FECA50E0]<<http://www.iowaattorneygeneral.gov/>>

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From: Thompson, Jeffrey [AG]  
Sent: Thursday, December 08, 2016 11:46 AM  
To: Ranscht, David [AG]; Gavin, Meghan [AG]  
Subject: FW: Constitutional issue re: Lt. Gov assuming Gov's powers

See below. Gotta love Wikipedia.

Can we print the cool table?

From: Greenwood, Geoff [AG]

Sent: Thursday, December 08, 2016 11:13 AM  
To: Thompson, Jeffrey [AG]  
Subject: FW: Constitutional issue re: Lt. Gov assuming Gov's powers

From: Mark O. Lambert [mailto:marklambert@mchsi.com]  
Sent: Thursday, December 08, 2016 11:12 AM  
To: Greenwood, Geoff [AG]  
Cc: Tabor, Eric [AG]  
Subject: Re: Constitutional issue re: Lt. Gov assuming Gov's powers

Thanks, Geoff. One more thing, historically, when an Iowa Gov has left office before the end of his term, there has not been a Lt. Gov. appointed. Most of the time, these were very short periods of time, though.  
[https://en.wikipedia.org/wiki/List\\_of\\_Governors\\_of\\_Iowa](https://en.wikipedia.org/wiki/List_of_Governors_of_Iowa)

Mark

---

From: "Geoff Greenwood [AG]" <Geoff.Greenwood@iowa.gov<mailto:Geoff.Greenwood@iowa.gov>>  
To: "Mark O. Lambert" <marklambert@mchsi.com<mailto:marklambert@mchsi.com>>, "Eric Tabor [AG]" <Eric.Tabor@iowa.gov<mailto:Eric.Tabor@iowa.gov>>  
Sent: Thursday, December 8, 2016 10:25:12 AM  
Subject: RE: Constitutional issue re: Lt. Gov assuming Gov's powers

Thanks for contacting us, Mark. We're researching it and will add this to the conversation.

Best regards,

[cid:image001.png@01D25149.FECA50E0]<<http://www.iowaattorneygeneral.gov/>>

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Office of the Attorney General of Iowa  
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From: Mark O. Lambert [mailto:marklambert@mchsi.com]  
Sent: Thursday, December 08, 2016 9:54 AM  
To: Greenwood, Geoff [AG]; Tabor, Eric [AG]

Subject: Constitutional issue re: Lt. Gov assuming Gov's powers  
Importance: High

Eric and Geoff:

In Massachusetts, when Governor William Weld resigned in 1997, Lt. Gov. Paul Cellucci became "Acting Governor" – not "Governor." When Celluci resigned to become US Ambassador to Canada during the Bush Administration in 2001, his Lt. Gov. Jane Swift became "Acting Governor."

Massachusetts Constitution has a similar provision to the Iowa Constitution:

III.--Whenever the chair of the Governor shall be vacant, by reason of his death, or absence from the Commonwealth, or otherwise, the Lieutenant-Governor, for the time being, shall, during such vacancy, perform all the duties incumbent upon the Governor, and shall have and exercise all the powers and authorities, which by this Constitution the Governor is vested with, when personally present.

Hope this is helpful.

--Mark

Mark Lambert

Attorney at Law

Polk City

515-681-0285

## Ranscht, David [AG]

---

**From:** Baustian, Teresa [AG]  
**Sent:** Friday, December 09, 2016 1:36 PM  
**To:** Ranscht, David [AG]; Dawson, Luke [AG]; Barloon, Rebecca [AG]; Willits, Emily [AG]  
**Subject:** RE: New Board and Commission Member Orientation

Same as with others---would like to attend, after the office lunch.



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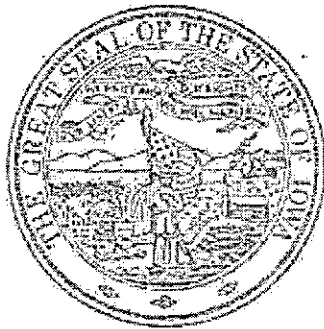
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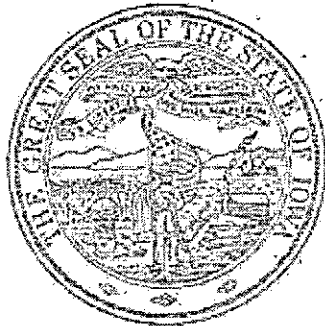
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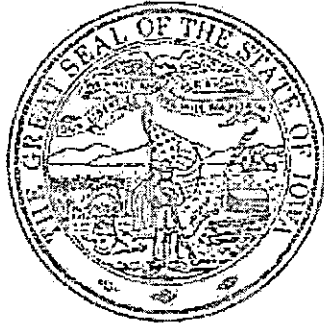
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**[Nathan.Hohnstein@iowa.gov](mailto:Nathan.Hohnstein@iowa.gov) or (515) 725-3504**

**A reminder e-mail, detailed directions and parking information will  
be sent out the week before the seminar. At this time, an RSVP is  
requested.**

--

Nathan Hohnstein

Deputy Director of Boards & Commissions

Office of Governor Terry E. Branstad

**Ranscht, David [AG]**

---

**From:** Willits, Emily [AG]  
**Sent:** Friday, December 09, 2016 12:34 PM  
**To:** Ranscht, David [AG]; Barloon, Rebecca [AG]; Dawson, Luke [AG]; Baustian, Teresa [AG]  
**Subject:** New Board and Commission Member Orientation  
**Attachments:** Agenda 2016.pdf

Hi – Since the four of you are relatively new to Ad Law, I wanted to pass along the agenda for the New Board and Commission Member Orientation that the Governor’s office hosts each year. It is scheduled for Dec. 20. The Governor’s staff person told me they are near capacity, but they could probably accommodate us if any of you are interested in attending the orientation.

Let me know if you would like to attend, and I will pass your name along.

Thanks, Emily

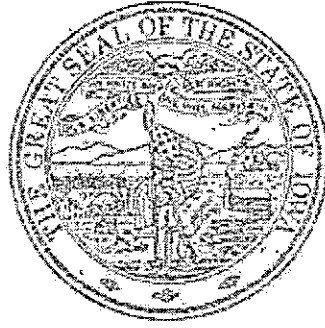
**From:** Hohnstein, Nathan [mailto:nathan.hohnstein@iowa.gov]  
**Sent:** Thursday, December 01, 2016 10:40 AM  
**To:** Willits, Emily [AG]  
**Subject:** IMPORTANT: New Board and Commission Member Orientation

Wanted to give you an personal invite for the seminar on the 20th. I've attached the tentative schedule for the day. Let me know if you have questions.

Nathan

---

**Office of Governor Terry Branstad  
& Lt. Governor Kim Reynolds**



**You are invited to attend the 2016 Governor's Seminar &  
Reception for newly appointed Board and Commission  
Members**

**When: Tuesday, December 20th, 1:00 – 4:00 PM**

**Where: State Historical Building Auditorium**

**600 E. Locust, Des Moines, Iowa**

**Following the seminar, you are invited to join Governor Branstad and  
Lt. Governor Reynolds for a reception at Terrace Hill (2300 Grand  
Avenue) from 4:30-6:00pm. Light refreshments and Hors d'oeuvre will  
be served.**

**Please RSVP at**

**[Nathan.Hohnstein@iowa.gov](mailto:Nathan.Hohnstein@iowa.gov) or (515) 725-3504**

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Nathan Hohnstein

Deputy Director of Boards & Commissions

Office of Governor Terry E. Branstad

## Ranscht, David [AG]

---

**From:** Ranscht, David [AG]  
**Sent:** Thursday, December 08, 2016 5:36 PM  
**To:** Thompson, Jeffrey [AG]; Gavin, Meghan [AG]  
**Subject:** RE: Constitutional issue re: Lt. Gov assuming Gov's powers  
**Attachments:** Governor Succession.docx

Attached is an updated copy of the memo with all other 49 states' provisions. Tomorrow I will work on a chart categorizing them.

David Ranscht  
Assistant Attorney General  
Office of the Attorney General of Iowa  
Licensing & Administrative Law Division  
1305 E. Walnut St.  
Des Moines, Iowa 50319  
Main: (515) 281-5164 | Direct: (515) 281-7175  
Email: david.ranscht2@iowa.gov | www.iowaattorneygeneral.gov

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**Sent:** Thursday, December 08, 2016 2:41 PM  
**To:** Gavin, Meghan [AG]; Ranscht, David [AG]  
**Subject:** RE: Constitutional issue re: Lt. Gov assuming Gov's powers

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**Sent:** Thursday, December 08, 2016 2:39 PM  
**To:** Ranscht, David [AG]; Thompson, Jeffrey [AG]  
**Subject:** RE: Constitutional issue re: Lt. Gov assuming Gov's powers

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Here are two more cases (WI and MT). I have a bunch more in a folder to read after lunch.

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From: Greenwood, Geoff [AG]  
Sent: Thursday, December 08, 2016 11:13 AM  
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From: Mark O. Lambert [<mailto:marklambert@mchsi.com>]  
Sent: Thursday, December 08, 2016 11:12 AM  
To: Greenwood, Geoff [AG]  
Cc: Tabor, Eric [AG]  
Subject: Re: Constitutional issue re: Lt. Gov assuming Gov's powers



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[https://en.wikipedia.org/wiki/List\\_of\\_Governors\\_of\\_Iowa](https://en.wikipedia.org/wiki/List_of_Governors_of_Iowa)

Mark

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From: "Geoff Greenwood [AG]" <Geoff.Greenwood@iowa.gov<mailto:Geoff.Greenwood@iowa.gov>>  
To: "Mark O. Lambert" <marklambert@mchsi.com<mailto:marklambert@mchsi.com>>, "Eric Tabor [AG]" <Eric.Tabor@iowa.gov<mailto:Eric.Tabor@iowa.gov>>  
Sent: Thursday, December 8, 2016 10:25:12 AM  
Subject: RE: Constitutional issue re: Lt. Gov assuming Gov's powers

Thanks for contacting us, Mark. We're researching it and will add this to the conversation.

Best regards,

[cid:image001.png@01D25149.FECA50E0]<<http://www.iowaattorneygeneral.gov/>>

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Importance: High

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Hope this is helpful.

--Mark

Mark Lambert

Attorney at Law

Polk City

515-681-0285

## Ranscht, David [AG]

---

**From:** Gavin, Meghan [AG]  
**Sent:** Thursday, December 08, 2016 3:00 PM  
**To:** Ranscht, David [AG]; Thompson, Jeffrey [AG]  
**Subject:** FW: Annals of Iowa - Google Books. Interesting history, all predations 1923

More historical info.

---

**From:** Meghan Gavin [megsgavs@gmail.com]  
**Sent:** Thursday, December 08, 2016 2:59 PM  
**To:** Gavin, Meghan [AG]  
**Subject:** Fwd: Annals of Iowa - Google Books. Interesting history, all predations 1923

Sent from my iPhone

Begin forwarded message:

**From:** Pam <pamgriebel@aol.com<mailto:pamgriebel@aol.com>>  
**Date:** December 8, 2016 at 2:48:41 PM CST  
**To:** Meghan Gavin <MegsGavs@gmail.com<mailto:MegsGavs@gmail.com>>  
**Subject:** Annals of Iowa - Google Books. Interesting history, all predations 1923

<https://books.google.com/books?id=tUtIAAAAYAAJ&pg=PA531&lpg=PA531&dq=if+iowa+governor+resigns+does+lt+governor+become+governor+or+just+perform+duties+of+the+office&source=bl&ots=fRDBBzV08D&sig=0ARFc70rQD6J7WBxRwsGT4F0YSY&hl=en&sa=X&ved=0ahUKEwjn0ceVuuXQAhWCi1QKHcPcCgMQ6AEIPzAE#v=onepage&q=if%20iowa%20governor%20resigns%20does%20lt%20governor%20become%20governor%20or%20just%20perform%20duties%20of%20the%20office&f=false>

Sent from my iPad

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Polk City

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**Attachments:** State ex rel Lamey v Mitchell.pdf; State ex rel Martin v Ekern.pdf

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Main: (515) 281-5164 | Direct: (515) 281-7175  
Email: [david.ranscht2@iowa.gov](mailto:david.ranscht2@iowa.gov) | [www.iowaattorneygeneral.gov](http://www.iowaattorneygeneral.gov)

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---

**From:** Thompson, Jeffrey [AG]  
**Sent:** Thursday, December 08, 2016 11:46 AM  
**To:** Ranscht, David [AG]; Gavin, Meghan [AG]  
**Subject:** FW: Constitutional issue re: Lt. Gov assuming Gov's powers

See below. Gotta love Wikipedia.

Can we print the cool table?

---

**From:** Greenwood, Geoff [AG]  
**Sent:** Thursday, December 08, 2016 11:13 AM  
**To:** Thompson, Jeffrey [AG]  
**Subject:** FW: Constitutional issue re: Lt. Gov assuming Gov's powers

---

**From:** Mark O. Lambert [<mailto:marklambert@mchsi.com>]  
**Sent:** Thursday, December 08, 2016 11:12 AM  
**To:** Greenwood, Geoff [AG]  
**Cc:** Tabor, Eric [AG]  
**Subject:** Re: Constitutional issue re: Lt. Gov assuming Gov's powers

Thanks, Geoff. One more thing, historically, when an Iowa Gov has left office before the end of his term, there has not been a Lt. Gov. appointed. Most of the time, these were very short periods of time, though.

[https://en.wikipedia.org/wiki/List\\_of\\_Governors\\_of\\_Iowa](https://en.wikipedia.org/wiki/List_of_Governors_of_Iowa)

Mark

---

**From:** "Geoff Greenwood [AG]" <[Geoff.Greenwood@iowa.gov](mailto:Geoff.Greenwood@iowa.gov)>  
**To:** "Mark O. Lambert" <[marklambert@mchsi.com](mailto:marklambert@mchsi.com)>, "Eric Tabor [AG]" <[Eric.Tabor@iowa.gov](mailto:Eric.Tabor@iowa.gov)>  
**Sent:** Thursday, December 8, 2016 10:25:12 AM  
**Subject:** RE: Constitutional issue re: Lt. Gov assuming Gov's powers

Thanks for contacting us, Mark. We're researching it and will add this to the conversation.

Best regards,



**Geoff Greenwood**  
**Communications Director**  
Office of the Attorney General of Iowa  
1305 E. Walnut St.  
Des Moines, Iowa 50319  
Main: (515) 281-5164 | Direct: (515) 281-6699  
Email: [geoff.greenwood@iowa.gov](mailto:geoff.greenwood@iowa.gov) | [www.iowaattorneygeneral.gov](http://www.iowaattorneygeneral.gov)

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**From:** Mark O. Lambert [<mailto:marklambert@mchsi.com>]  
**Sent:** Thursday, December 08, 2016 9:54 AM  
**To:** Greenwood, Geoff [AG]; Tabor, Eric [AG]  
**Subject:** Constitutional issue re: Lt. Gov assuming Gov's powers  
**Importance:** High

Eric and Geoff:

In Massachusetts, when Governor William Weld resigned in 1997, Lt. Gov. Paul Cellucci became "Acting Governor" – not "Governor." When Celluci resigned to become US Ambassador to Canada during the Bush Administration in 2001, his Lt. Gov. Jane Swift became "Acting Governor."

Massachusetts Constitution has a similar provision to the Iowa Constitution:

III.--Whenever the chair of the Governor shall be vacant, by reason of his death, or absence from the Commonwealth, or otherwise, the Lieutenant-Governor, for the time being, shall, during such vacancy, perform all the duties incumbent upon the Governor, and shall have and exercise all the powers and authorities, which by this Constitution the Governor is vested with, when personally present.

Hope this is helpful.

## Ranscht, David [AG]

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[https://en.wikipedia.org/wiki/List\\_of\\_Governors\\_of\\_Iowa](https://en.wikipedia.org/wiki/List_of_Governors_of_Iowa)

Mark

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**To:** "Mark O. Lambert" <[marklambert@mchsi.com](mailto:marklambert@mchsi.com)>, "Eric Tabor [AG]" <[Eric.Tabor@iowa.gov](mailto:Eric.Tabor@iowa.gov)>  
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**Importance:** High

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Hope this is helpful.

--Mark

Mark Lambert  
Attorney at Law  
Polk City  
515-681-0285

## Ranscht, David [AG]

---

**From:** Thompson, Jeffrey [AG]  
**Sent:** Thursday, December 08, 2016 10:14 AM  
**To:** Ranscht, David [AG]  
**Subject:** FW: Constitutional issue re: Lt. Gov assuming Gov's powers

**Importance:** High

See below.

---

**From:** Greenwood, Geoff [AG]  
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**To:** Thompson, Jeffrey [AG]  
**Subject:** FW: Constitutional issue re: Lt. Gov assuming Gov's powers  
**Importance:** High

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**Importance:** High

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Hope this is helpful.

--Mark

Mark Lambert  
Attorney at Law  
Polk City  
515-681-0285

**Ranscht, David [AG]**

---

**From:** NEWS [AG]  
**Sent:** Wednesday, December 07, 2016 12:37 PM  
**Subject:** Miller Statement on Branstad Nomination as Ambassador to China

**IOWA DEPARTMENT OF JUSTICE  
OFFICE OF THE ATTORNEY GENERAL  
Thomas J. Miller, Attorney General  
[www.iowaattorneygeneral.gov](http://www.iowaattorneygeneral.gov)**

CONTACT: Geoff Greenwood | Communications Director | 515-281-6699 | [geoff.greenwood@iowa.gov](mailto:geoff.greenwood@iowa.gov)

FOR IMMEDIATE RELEASE  
December 7, 2016

**Miller Statement on Branstad Nomination as Ambassador to China**

*Miller: "I know he'll serve the U.S. well and will carry his deep passion for our state and our nation to China."*

DES MOINES – Attorney General Tom Miller today released the following statement regarding the announcement by President-Elect Donald Trump's transition team that Governor Terry Branstad will be nominated to serve as U.S. ambassador to China:

"I congratulate Governor Branstad for the tremendous honor of being asked to represent our nation's interests in China. I know he'll serve the U.S. well and will carry his deep passion for our state and our nation to China. I am confident the Governor will work very hard on trade partnerships, and that's good for Iowa farmers and our state's economy."

###

## Thompson, Jeffrey [AG]

---

**From:** Thompson, Jeffrey [AG]  
**Sent:** Monday, April 03, 2017 11:11 AM  
**To:** Johnson, Larry [IGOV]; Busselot, Michael [IGOV]  
**Subject:** RE: Follow-up

Sure. Will do.

**From:** Johnson, Larry [mailto:larry.johnson@iowa.gov]  
**Sent:** Monday, April 03, 2017 10:41 AM  
**To:** Thompson, Jeffrey [AG]; Busselot, Michael [IGOV]  
**Subject:** Follow-up

Hi Jeff - I just wanted to follow-up on the ten cases you were referring to last week. If you had a minute to send the case name and citations that'd be great.

Thanks, Jeff.  
Larry

--

**Larry Johnson, Jr.** | Legal Counsel

Office of the Governor, State of Iowa

Gov. Terry Branstad & Lt. Gov. Kim Reynolds

515.725.3506 | [larry.johnson@iowa.gov](mailto:larry.johnson@iowa.gov)

[www.governor.iowa.gov](http://www.governor.iowa.gov)

[www.ltgovernor.iowa.gov](http://www.ltgovernor.iowa.gov)



## Thompson, Jeffrey [AG]

---

**From:** Thompson, Jeffrey [AG]  
**Sent:** Monday, April 03, 2017 10:59 AM  
**To:** Ranscht, David [AG]; Gavin, Meghan [AG]  
**Subject:** FW: Follow-up

See below. Let's talk about which cases.

**From:** Johnson, Larry [mailto:larry.johnson@iowa.gov]  
**Sent:** Monday, April 03, 2017 10:41 AM  
**To:** Thompson, Jeffrey [AG]; Bousset, Michael [IGOV]  
**Subject:** Follow-up

Hi Jeff - I just wanted to follow-up on the ten cases you were referring to last week. If you had a minute to send the case name and citations that'd be great.

Thanks, Jeff.  
Larry

--

**Larry Johnson, Jr.** | Legal Counsel

Office of the Governor, State of Iowa

Gov. Terry Branstad & Lt. Gov. Kim Reynolds

515-725-3506 | [larry.johnson@iowa.gov](mailto:larry.johnson@iowa.gov)

[www.governor.iowa.gov](http://www.governor.iowa.gov)

[www.ltgovernor.iowa.gov](http://www.ltgovernor.iowa.gov)

## Thompson, Jeffrey [AG]

---

**From:** Thompson, Jeffrey [AG]  
**Sent:** Friday, December 09, 2016 10:44 AM  
**To:** Johnson, Larry [IGOV]  
**Subject:** Re: Would you be available to talk today after 9:15? Thanks.

Ok. See you at 11.

Sent from my iPhone

On Dec 9, 2016, at 10:43 AM, Johnson, Larry [IGOV] <[Larry.Johnson@iowa.gov](mailto:Larry.Johnson@iowa.gov)> wrote:

That'd be great. Thanks, Jeff.

Larry Johnson, Jr.  
Legal Counsel  
Office of Governor Terry E. Branstad  
515-725-3506  
[Larry.Johnson@iowa.gov](mailto:Larry.Johnson@iowa.gov)

---

**From:** Thompson, Jeffrey [AG]  
**Sent:** Friday, December 09, 2016 10:36 AM  
**To:** Johnson, Larry [IGOV]  
**Subject:** Re: Would you be available to talk today after 9:15? Thanks.

I'd be happy to walk-over to capital.

Sent from my iPhone

On Dec 9, 2016, at 9:24 AM, Johnson, Larry [IGOV] <[Larry.Johnson@iowa.gov](mailto:Larry.Johnson@iowa.gov)> wrote:

11 works. If you think it works better to meet in person – let me know – I'd be happy to come over there. Thanks.

Larry Johnson, Jr.  
Legal Counsel  
Office of Governor Terry E. Branstad  
515-725-3506  
[Larry.Johnson@iowa.gov](mailto:Larry.Johnson@iowa.gov)

---

**From:** Thompson, Jeffrey [AG]  
**Sent:** Friday, December 09, 2016 8:42 AM  
**To:** Johnson, Larry [IGOV]  
**Subject:** Re: Would you be available to talk today after 9:15? Thanks.

Yes. Late morning would be best. Does around 11 work?

Sent from my iPhone

On Dec 9, 2016, at 8:38 AM, Johnson, Larry [IGOV] <[Larry.Johnson@iowa.gov](mailto:Larry.Johnson@iowa.gov)> wrote:

Larry Johnson, Jr.  
Legal Counsel  
Office of Governor Terry E. Branstad  
515-725-3506  
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## Thompson, Jeffrey [AG]

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**From:** Johnson, Larry [IGOV]  
**Sent:** Friday, December 09, 2016 8:39 AM  
**To:** Thompson, Jeffrey [AG]  
**Subject:** Would you be available to talk today after 9:15? Thanks.

Larry Johnson, Jr.  
Legal Counsel  
Office of Governor Terry E. Branstad  
515-725-3506  
Larry.Johnson@Iowa.gov

## Thompson, Jeffrey [AG]

---

**From:** Busselot, Michael [IGOV]  
**Sent:** Wednesday, December 07, 2016 12:53 PM  
**To:** Thompson, Jeffrey [AG]  
**Cc:** Johnson, Larry [IGOV]  
**Subject:** Re: Congratulations to Gov. Branstad

Very kind of you. Will do.

Sent from my iPhone

On Dec 7, 2016, at 12:52 PM, Thompson, Jeffrey [AG] <[Jeffrey.Thompson@iowa.gov](mailto:Jeffrey.Thompson@iowa.gov)> wrote:

Michael and Larry,

Wow. What a great development. For Gov., for Iowa, for USA. Please pass on my personal congratulations.

Sincerely,  
Jeff

## Thompson, Jeffrey [AG]

---

**From:** Ambrozic, Jane [AG]  
**Sent:** Monday, December 12, 2016 9:20 AM  
**To:** Tabor, Eric [AG]; Thompson, Jeffrey [AG]; Steward, David [AG]; Larson, Jacob [AG]; Willits, Emily [AG]  
**Subject:** Water Meetings

I believe the schedule is now complete:

Tuesday – December 13<sup>th</sup>

9:00 a.m. Bill Northey

10:30 a.m. Steve Zumbaugh

1:30 p.m. Sean McMahon

3:00 p.m. Farm Bureau

Wednesday – December 14<sup>th</sup>

9:00 a.m. Des Moines Partnership

10:30 a.m. Governor's office

3:00 p.m. Rick Malm & Bill Stowe



**Jane Ambrozic**  
**Executive Secretary**

Office of the Attorney General of Iowa  
1305 E. Walnut St.  
Des Moines, Iowa 50319  
Main: (515) 281-5164 | Direct: (515) 281-5166  
Email: [Jane.Ambrozic@iowa.gov](mailto:Jane.Ambrozic@iowa.gov) | [www.iowaattorneygeneral.gov](http://www.iowaattorneygeneral.gov)

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**Thompson, Jeffrey [AG]**

---

**From:** American Security Today <twaitt=americansecuritytoday.com@mail102.atl51.rsgsv.net>  
on behalf of American Security Today <twaitt@americansecuritytoday.com>  
**Sent:** Tuesday, April 04, 2017 6:34 AM  
**To:** Thompson, Jeffrey [AG]  
**Subject:** Plot to Kill Pope, TX Deputy Killed, AST April Dig Mag, Off World Data Storage & More (Video)

Cutting-Edge Products and Technologies to help Keep Our Nation  
Safe, One City at a Time

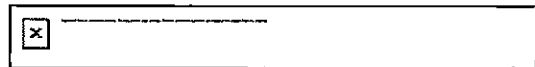
[View this email in your browser](#)



April 4, 2017

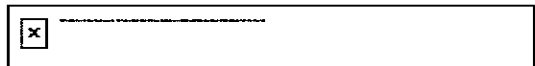


**[NJ Teen Admits Plot to Kill  
Pope Francis During First US  
Visit](#)**



Santos Colon, Jr., 17, of New Jersey, **pled guilty today as an adult** related to a plot he devised involving utilizing a sniper to shoot the Pope during his Papal mass & setting off explosive devices in the surrounding areas... **[Read More](#)**

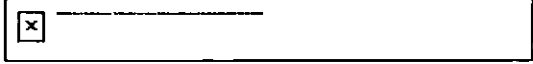
**[TX Deputy Dies in Courthouse  
Shooting, Reward Offered \(Video\)](#)**



Baytown Crime Stoppers & the Office of the Governor's Criminal Justice Division are offering a reward of \$50K for info leading to the ID & arrest of the person/s

involved in the murder of Secretary Clinton  
Deputy Clint Greenwood... [Read More](#)

**AST Fully Interactive April 2017  
Digital Magazine (Multi-Video)**



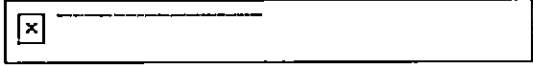
**65 Pages of In-Depth Coverage of  
the Newest Physical & Cyber  
Technologies in the Government  
Security Market.**

**Featuring Guest Editorial Pieces  
from Industry Leaders TerrorMate,  
SpotterRF, Riverdale WireWall,  
Axis Communications,  
Boon Edam & More.**

**- AST April Digital Magazine -**

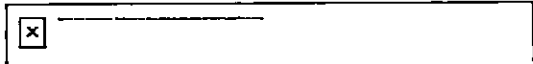


**SAAB Receives Next-Gen Anti-  
Ship Missile Order (Video)**



Saab's next generation anti-ship missile  
system will be integrated on the new  
Gripen E fighters & the Visby class  
corvettes, with improved combat range, an  
upgraded target seeker & the ability to  
combat a wide spectrum of  
naval &... [Read More](#)

**PlateSmart Bus Intel Tool for**

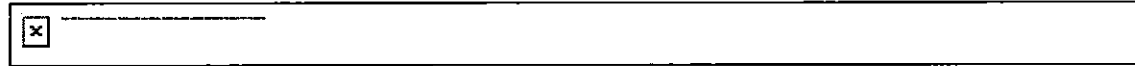
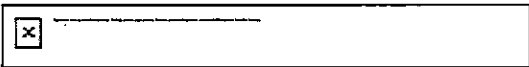


**ALFA at ISC West (Learn More)**

PlateSmart, the industry leader in vehicle ID & video analytics driven by Artificial Intelligence (AI) & two time Winner of the 2016 'ASTORS' Homeland Security Awards Program, will be joining Milestone & Pelco in showing... [Read More](#)

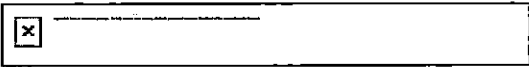
**Women Supporting al-Shabaab Terror Org (Learn More)**

Muna Osman Jama of Reston, VA & Hinda Osman Dhirane of Kent, WA, have been sentenced to 12 & 11 years, for sending money to financiers of al-Shabaab & organized the 'Group of Fifteen' a private chatroom that Jama... [Read More](#)



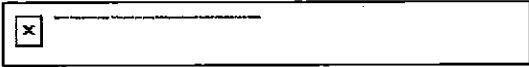
**AlertMedia Emerg Notification Deployed by Salvation Army**

AlertMedia enables orgs to interact with their audience from any mobile device, consolidating unlimited comm channels, (i.e., voice, text, native apps, e-mail, social media & Slack) into one simple user experience. AlertMedia... [Read More](#)



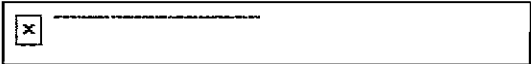
**ERO Deport Officer Brings Professionalism to Job Every Day**

Ling P. Moser is a deportation officer with ICE ERO in San Francisco. She has



worked as a **field chief**, **systems coordinator**, **victim witness coordinator**, **fugitive ops officer** & with **Alternatives to Detention program**, all in the San Francisco... [Read More](#)

**Going Offworld to Escape Data Constraints & Security Concerns**



**Science fiction is becoming science fact. Space-based cloud storage networks provide gov't & private firms an independent cloud infrastructure platform, completely isolating & protecting sensitive data from the outside world...** [Read More](#)



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**Thompson, Jeffrey [AG]**

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**From:** American Security Today <twaitt=americansecuritytoday.com@mail77.suw17.mcsv.net>  
on behalf of American Security Today <twaitt@americansecuritytoday.com>  
**Sent:** Tuesday, February 28, 2017 6:33 AM  
**To:** Thompson, Jeffrey [AG]  
**Subject:** \$54B Defense Increase, ISIS's UAV Threat to West, DNA Tool NY Won't Let Cops Use (Video)

Cutting-Edge Products and Technologies to help Keep Our Nation  
Safe, One City at a Time

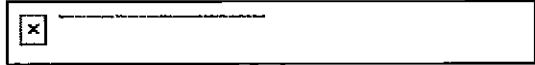
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February 28, 2017

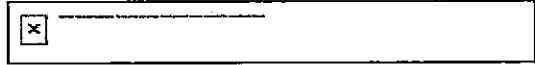


***Trump Seeks \$54B Increase in Defense Spending (See Video)***



**President Trump** will seek a 'historic' **increase in defense spending** in his upcoming budget plan, he called a '**public safety and national security budget**' in addressing the **nation's governors at the White House**, pursuing cuts... [\*\*Read More\*\*](#)

***Game of 'Drones': UAV's Growing Threat to West (Videos)***



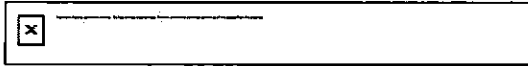
**ISIS' use of weaponized UAVs** are a **growing security threat to the West**, according to **jihadist media monitoring** conducted by Jane's by IHS Markit. **ISIS is**



being high-tech drones & captured video  
of devastating (See Video)... [Read More](#)

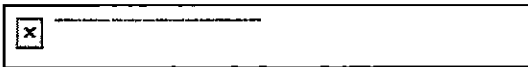
**Fed, State Law Enforce**  
**Together Save Lives (Learn**  
**More - Video)**

Tucson CBP, AMO & AAZDPS rescued  
migrants during 3 complex operations in the  
last 6 weeks in Arizona's rugged desert,  
demonstrating the quick & efficient use of  
a resources to rescue people regardless  
of national... [Read More](#)



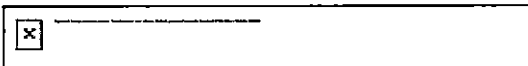
**The Tool NY Won't Let Cops**  
**Use to Crack Cold Cases**  
**(Video)**

A familial DNA search uses crime-scene  
evidence to track suspects whose own  
genetic fingerprints aren't in any  
databases & has proven invaluable to the  
11 states that allow familial DNA  
searches leading to arrests of... [Read](#)  
[More](#)



**Saab CBRN Solution for**  
**INTERPOL BioTerrorism**  
**Prevention Unit**

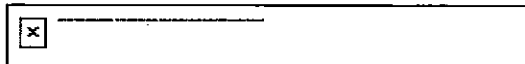
Saab is to customize CBRN sampling  
equip & a certified safe transport



Commander for Chemical, Biological,  
Radiological & Nuclear samples &  
HAZMAT materials from the field to the lab  
for use in combatting  
bioterrorism... [Read More](#)

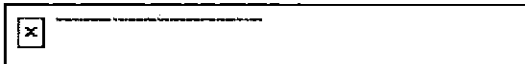
**[FORTIS Exoskeleton Improves  
Navy Shipyard Ops \(See in Action\)](#)**

NCMS concluded that industrial exoskele-  
tons, like Lockheed Martin's FORTIS,  
could mitigate injuries by making tools  
effectively weightless during operation,  
in final report IHAS for Improved Shipyard  
Operations released to... [Read More](#)



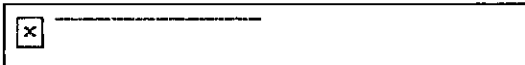
**[VA Man to Jail for Trying to  
Join ISIL & Lying to FBI \(Learn  
More\)](#)**

Mahmoud Elhassan, originally from Sudan,  
aided & abetted Joseph Hassan  
Farrokh in an attempt to travel from the US  
to Syria in order to fight on behalf of ISIL,  
with Elhassan planning to follow at a later  
date. Both men... [Read More](#)



**[Tech Comp Saves up to \\$200K  
with Netwrix Auditor \(See  
Video\)](#)**

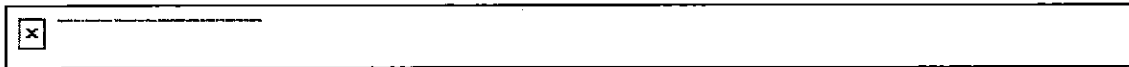
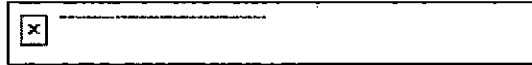
Netwrix, the first vendor to introduce a  
visibility & governance platform for



...system cloud security, has ensured  
security of Consilink's protected health  
info (PHI), streamlined their HIPAA  
compliance for audits &... [Read More](#)

**Envistacom's Mission-Critical  
IT Networks for DISA (Learn  
More)**

DISA Global Ops Command has opened  
the largest cyber ops center with the DoD  
& Envistacom designed, installed,  
configured & tested three communication  
networks for the DISA facility, including  
passive OLAN, based on... [Read More](#)



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**Thompson, Jeffrey [AG]**

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**From:** American Security Today  
<twaitt=americansecuritytoday.com@mail234.atl221.rsgsv.net> on behalf of American Security Today <twaitt@americansecuritytoday.com>  
**Sent:** Friday, January 06, 2017 6:32 AM  
**To:** Thompson, Jeffrey [AG]  
**Subject:** Hate Crime Charges Follow FB Attack on Mentally Ill Man in Chicago (Video)

Cutting-Edge Products and Technologies to help Keep Our Nation  
Safe, One City at a Time

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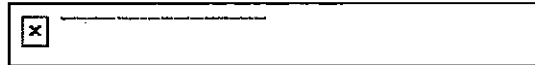
January 6, 2017



**[Hate Crime Charges Follow FB Live Attack in Chicago \(Video\)](#)**

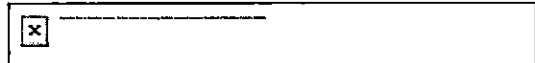
*By The Washington Post*

Authorities in Chicago charged **four people with hate crimes** Thursday following the emergence of a **disturbing video** showing them shouting obscenities about President-elect Donald Trump and... **[Read More](#)**



**[SpotterRF Piles Up Awards for A2000 Drone Detecting Radar](#)**

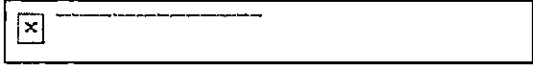
SpotterRF caps off the year with **worldwide praise** for its new **industry leading A2000**, providing cost-effective wide area deterrence against the **growing threat** of low flying UAV (**drones**) proliferating



...  
efforts to improve FAA rule changes  
allow... [Read More](#)

**[Penn State Upgrading Security with Integrated Solution \(Video\)](#)**

Penn State has invested in Tyco Security Products for a system-wide upgrade to centralize the college's video surveillance & access control functions, with installation of wireless locks in its residence halls & other areas of its campuses... [Read More](#)



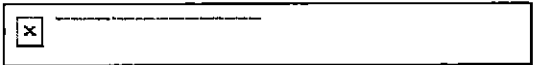
**[SWIFT Task Force Arrests Two of NM's Most Wanted](#)**

US Marshals assigned to the South West Invest Fugitive Team (SWIFT) Task Force arrested fugitives Damon Hatanaka & Kenneth Alcon, who were both wanted for violent felonies and were featured on the NM Most Wanted... [Read More](#)



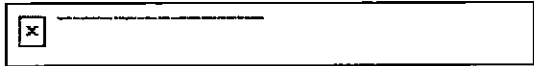
**[Transforming JFK Int'l Airport for 21st Century \(Learn More\)](#)**

Governor Cuomo unveiled a vision plan that lays out a comprehensive framework to transform JFK into a interconnected, world-class airport. The proposed vision addresses three key areas: Expanding rail mass transit to meet projected pass... [Read](#)

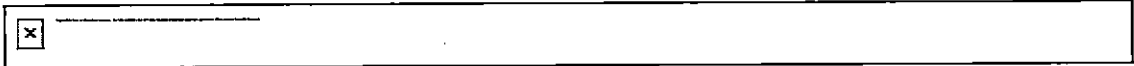


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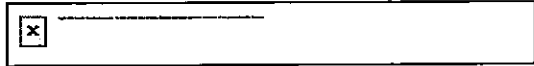
**[Robotics Bring Innovation to Air Transport \(See in Action\)](#)**



Robotics & AI open new possibilities for the future, from **saving costs** to helping **human co-workers be more productive**. Robotics remains a key R&D area for **SITA Lab**, SITA's innovation arm, from easing **baggage check-in & handling** to... **[Read More](#)**



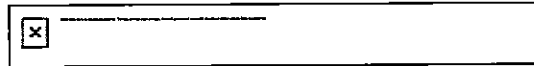
**[Safariland Selects Spectra Shield for New LE Vests \(Video\)](#)**



Safariland, has chosen **Honeywell's Spectra Shield ballistic** materials to create new vests designed for **female law enforce officers**. Traditional vest models are designed for male or **neutral body shapes**. Honeywell's premium Spectra... **[Read More](#)**

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**[DOT Announces \\$75M for Bus Rapid Transit in San Francisco](#)**



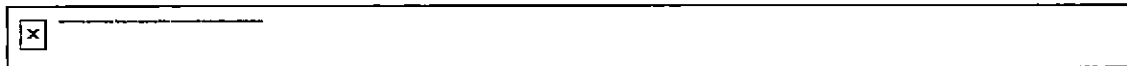
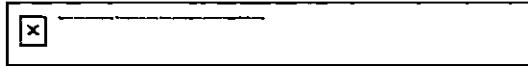
The DOT has awarded of \$75M in grants for construction of the **Van Ness Bus Rapid Transit Project**, to **improve transit service** in one of the **busiest bus corridors** in San

...and more, improving access to jobs,  
health care & opportunity... [Read More](#)

**Gallagher Releases New  
'Mobile Connect' (See in Action)**

Harnessing Bluetooth tech, Gallagher's state-of-the-art 'Mobile Connect' transforms a mobile phone in to an access device – empowering businesses to use mobile tech in place of traditional access cards.

Partners Nok Nok Labs & FIDO... [Read More](#)



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## Thompson, Jeffrey [AG]

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**From:** Ashley.Howell@iowacourts.gov  
**Sent:** Wednesday, May 03, 2017 3:24 PM  
**To:** Rita Bettis  
**Cc:** Thompson, Jeffrey [AG]; Joseph Fraioli; Ogden, Thomas [AG]  
**Subject:** Re: [EXTERNAL] Re: EQCE081503: PLANNED PARENTHOOD OF THE HEARTLAND V TERRY BRANSTAD ET AL

The order has been filed. Thanks everyone you will be in Courtroom 310

Ashley Howell  
Judicial Specialist for Judge Jeffrey D. Farrell  
Courtroom 310  
(515)286-3855  
Polk County Courthouse  
500 Mulberry Avenue  
Des Moines, Iowa 50309

ashley.howell@iowacourts.gov

---

**From:** Rita Bettis <rita.bettis@aclu-ia.org>  
**To:** Ashley.Howell@iowacourts.gov, "Thompson, Jeffrey [AG]" <Jeffrey.Thompson@iowa.gov>, Thomas.Ogden@iowa.gov  
**Cc:** Joseph Fraioli <JOSEPH.FRAIOLI@aclu-ia.org>  
**Date:** 05/03/2017 02:36 PM  
**Subject:** [EXTERNAL] Re: EQCE081503: PLANNED PARENTHOOD OF THE HEARTLAND V TERRY BRANSTAD ET AL

---

Dear Ms. Howell,  
We have conferred with our opposing counsel, cc'ed. We all agree that the 1:30 time you proposed on the phone would give everyone adequate time.  
Thank you,

**Rita Bettis**  
Legal Director  
ACLU of Iowa  
505 Fifth Avenue, Ste. 901  
Des Moines, IA 50309-2316  
(515)-243-3988 ext. 115

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On Wed, May 3, 2017 at 1:41 PM, <Ashley.Howell@iowacourts.gov> wrote:



How long do the parties anticipate they will need for this hearing?

Ashley Howell  
Judicial Specialist for Judge Jeffrey D. Farrell  
Courtroom 310  
(515)286-3855  
Polk County Courthouse  
500 Mulberry Avenue  
Des Moines, Iowa 50309

[ashley.howell@iowacourts.gov](mailto:ashley.howell@iowacourts.gov)

## Thompson, Jeffrey [AG]

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**From:** Ashley.Howell@iowacourts.gov  
**Sent:** Wednesday, May 03, 2017 2:07 PM  
**To:** Thompson, Jeffrey [AG]  
**Subject:** Fw: EQCE081503: PLANNED PARENTHOOD OF THE HEARTLAND V TERRY BRANSTAD ET AL

Jeff

I have been informed by Court Administration that you are on this case? If so I did not include you on the below email so I wanted to make sure and get your opinion.

Ashley Howell  
Judicial Specialist for Judge Jeffrey D. Farrell  
Courtroom 310  
(515)286-3855  
Polk County Courthouse  
500 Mulberry Avenue  
Des Moines, Iowa 50309

ashley.howell@iowacourts.gov  
----- Forwarded by Ashley Howell/District5/JUDICIAL on 05/03/2017 02:05 PM -----

**From:** Ashley Howell/District5/JUDICIAL  
**To:** rita.bettis@aclu-ia.org, JOSEPH.FRAIOLI@ACLU-IA.ORG  
**Date:** 05/03/2017 01:41 PM  
**Subject:** EQCE081503: PLANNED PARENTHOOD OF THE HEARTLAND V TERRY BRANSTAD ET AL

---

How long do the parties anticipate they will need for this hearing?

Ashley Howell  
Judicial Specialist for Judge Jeffrey D. Farrell  
Courtroom 310  
(515)286-3855  
Polk County Courthouse  
500 Mulberry Avenue  
Des Moines, Iowa 50309

ashley.howell@iowacourts.gov

## Thompson, Jeffrey [AG]

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**From:** Dan Schweitzer <DSCHWEITZER@NAAG.ORG>  
**Sent:** Friday, March 17, 2017 11:21 AM  
**To:** Dan Schweitzer  
**Cc:** Vickie.Wise@ky.gov  
**Subject:** Inquiry re Miller v. Alabama (Montgomery v. Louisiana) follow-up issue

**Importance:** High

To: Criminal Amicus Contacts

Vickie Wise of the Kentucky Attorney General's office has asked me to circulate the following inquiry:

---

Since the SCOTUS rulings in *Miller* and *Montgomery*, numerous inmates are filing declaratory actions in Kentucky claiming entitlement to relief. Most cases have the same fact pattern and are distinguishable because the defendant (although convicted as a juvenile) did not receive a mandatory Life Without Parole sentence.

However, a case has been filed that is procedurally different. In this case the juvenile defendant was initially sentenced to death but the sentence was subsequently commuted to LWOP (before *Roper*) because the Governor did not believe it was appropriate to sentence juveniles to death. This defendant now argues he is entitled to relief because the factors listed for consideration in *Miller* and *Montgomery* were not considered in his case. We believe this situation is still distinguishable because the LWOP sentence was not mandatory and was not imposed by a jury. Because of the *Roper* decision, we thought other states may have defendants similarly situated (wherein their death sentences were commuted to Life Without Parole).

We are therefore seeking the following information: Have you had any *Miller/Montgomery* challenges involving juveniles under death sentences when *Roper* was decided that subsequently became sentences of life without parole? If so, can you provide me any relevant information, including briefs you wrote and court decisions?

Thanks in advance for any assistance that you can provide. Please respond to:

Vickie L. Wise, Executive Director  
Assistant Attorney General  
Office of Criminal Appeals  
Phone: (502) 696-5342  
[Vickie.Wise@ky.gov](mailto:Vickie.Wise@ky.gov)

**Thompson, Jeffrey [AG]**

---

**From:** Dan Schweitzer <DSCHWEITZER@NAAG.ORG>  
**Sent:** Thursday, March 16, 2017 11:14 AM  
**To:** Dan Schweitzer  
**Subject:** More State SG News

I'm really closing the loop this time. I am pleased to report that Oklahoma AG Hunter has appointed Mithun Mansinghani, Acting Solicitor General (previously Deputy Solicitor General), as the new Solicitor General. Below is the announcement of the appointment.

---

**From:** Oklahoma Attorney General's Office [<mailto:OKAG@public.govdelivery.com>]  
**Sent:** Wednesday, March 15, 2017 3:39 PM  
**Subject:** AG Hunter Announces Staff Appointments



**MIKE HUNTER**

**ATTORNEY GENERAL OF OKLAHOMA**

---

March 15, 2017  
**For Immediate Release**  
Contact: Johnny Moyer  
[johnny.moyer@oag.ok.gov](mailto:johnny.moyer@oag.ok.gov), 405-521-3921

**Attorney General Hunter Announces Staff Appointments**

*Names Solicitor General, Senior Deputy and Head of Tulsa Office*

**OKLAHOMA CITY** – Attorney General Mike Hunter announced three new executive staff appointments on Wednesday: Mithun Mansinghani as Solicitor General, Tom Gruber as Senior Deputy Attorney General and Joy Mohorovicic as Managing Attorney of the Tulsa office.

“Mithun, Tom and Joy will each serve the State of Oklahoma well,” Attorney General Hunter said. “Each is uniquely qualified for their respective position and will distinguish themselves in their new roles.”

Mansinghani is promoted to Solicitor General and will represent the State's interests before federal and state appellate courts. He will also represent the State in interactions with the federal government and other states. Previously, Mansinghani served as Deputy Solicitor General, worked in private practice in Washington, D.C., and clerked for the U.S. Court of Appeals for the 5<sup>th</sup> Circuit. He holds an undergraduate degree from Rice University and law degree from Harvard Law School, where he served as an editor of the Harvard Law Review.

Gruber joins the Attorney General's Office as Senior Deputy Attorney General and will supervise the Legal Counsel Division and Tobacco Enforcement Unit. Gruber is a former First Assistant Attorney General to Drew Edmondson, two-term elected District Attorney and Chairman of the Constitutional Ethics Commission. He holds a B.A. in history from Northwestern Oklahoma State University in his hometown of Alva, and juris doctor from The University of Oklahoma School of Law.

Mohorovicic is promoted to Managing Attorney of the Tulsa Office of the Attorney General. In addition to her case load as an Assistant Attorney General for the Workers Compensation and Insurance Fraud Unit, she will be responsible for the general management and oversight of the Tulsa office and serve as a liaison for Deputy AG's who have staff stationed in Tulsa. Mohorovicic previously served as Assistant District Attorney for District 27 and managed the Wagoner County office, as well as Assistant District Attorney for Tulsa County. She holds an undergraduate degree from Oral Roberts University and law degree from the University of Tulsa College of Law.

###

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**From:** Dan Schweitzer  
**Sent:** Friday, March 10, 2017 12:24 PM  
**To:** Dan Schweitzer  
**Subject:** RE: State SG News

Closing the loop, I am pleased to report that Connecticut AG Jepsen has appointed Assistant Attorney General Jane Rosenberg to be its new Solicitor General. Below is the announcement of the appointment.



STATE OF CONNECTICUT  
**ATTORNEY GENERAL GEORGE JEPSEN**

**AG Jepsen Names Jane Rosenberg Connecticut's New Solicitor General**

*For immediate release*

FRIDAY, MARCH 10, 2017

HARTFORD – Attorney General George Jepsen today announced that long-time Assistant Attorney General Jane Rosenberg has been promoted within the Connecticut Office of the Attorney General to serve as an Associate Attorney General and the state's Solicitor General.

Rosenberg succeeds former Solicitor General Gregory T. D'Auria, who earlier this week was unanimously confirmed by the state Senate and House of Representatives, and was subsequently sworn in, as an Associate Judge of the Connecticut Supreme Court. As Solicitor General, Rosenberg will serve as a member of the Attorney General's senior staff and will oversee all of the office's appellate casework and the issuance of formal opinions.

"Jane Rosenberg is held in the highest regard by her colleagues in the office and across Connecticut's legal community for her intellect, temperament and accomplishments," said Attorney General Jepsen. "She has a thoughtful and deliberate approach that is extremely well-suited to the important role of Solicitor General. We're indebted to now-Justice Gregory D'Auria for his superb work as our first ever Solicitor General, and we have every confidence that Jane will continue the successful management of our appellate practice."

"I'm very grateful for this opportunity and for the confidence that Attorney General Jepsen has in me," said Rosenberg, "and I look forward to continuing to serve the people of Connecticut in this new and exciting role."

Rosenberg graduated from Yale University in 1979 and earned her *juris doctorate* from the University of Pennsylvania Law School in 1984. She worked for two years as an associate in the corporate law department at the Robinson & Cole law firm before first joining the Connecticut Office of the Attorney General in 1987 under former Attorney General Joseph Lieberman.

After a two-year separation, Rosenberg rejoined the Office of the Attorney General as an assistant attorney general in 1992, where she worked on numerous cases including the state's tobacco litigation. Since 2001, Rosenberg has worked in the office's Special Litigation Department, which represents and advises client agencies that include the state's constitutional offices. Rosenberg has represented state officials in both state and federal courts and has briefed, or briefed and argued, more than 70 appeals in state and federal court, including appeals challenging the constitutionality of state laws.

A native of Canton, Mass., Rosenberg and her family have lived in Glastonbury since 1986.

###

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**From:** Dan Schweitzer  
**Sent:** Thursday, March 09, 2017 11:35 AM  
**To:** Dan Schweitzer  
**Subject:** RE: State SG News

I am also pleased to report that yesterday the Connecticut legislature unanimously confirmed the appointment of Connecticut Solicitor General Gregory D'auria to the Connecticut Supreme Court. Congratulations to Greg.

I will let you know when the Connecticut AG office appoints a new Solicitor General.

---

**From:** Dan Schweitzer  
**Sent:** Tuesday, March 07, 2017 1:00 PM

**To:** Dan Schweitzer  
**Subject:** State SG News

To: Civil Amicus Contacts

This is to let you know that the AG offices of Arizona, Georgia, Hawaii, Maryland, Missouri, North Carolina, North Dakota, and Vermont have appointed new Solicitors General over the past few months. In addition, Oklahoma Solicitor General Patrick Wyrick was appointed to the Oklahoma Supreme Court; his Deputy SG, Mithun Mansinghani, is serving as Acting Solicitor General.

Here are the details:

**Arizona.** Dominic Draye, who had been serving as Deputy Solicitor General, was appointed Solicitor General to replace John Lopez, who was appointed to the Arizona Supreme Court. See <https://www.azag.gov/press-release/ag-brnovich-appoints-solicitor-general>

**Georgia.** Sarah Warren, who had been serving as Deputy Solicitor General, was appointed Solicitor General to replace Britt Grant, who was appointed to the Georgia Supreme Court. See <http://law.ga.gov/press-releases/2016-12-08/attorney-general-chris-carr-announces-new-leadership-team>

**Hawaii.** Clyde Wadsworth was appointed Solicitor General to replace Girard Lau, who retired after 30 years of distinguished service for the state. See <http://governor.hawaii.gov/newsroom/latest-news/atg-news-release-new-solicitor-general-clyde-wadsworth-named/>

**Maryland.** Maryland reestablished the position of Solicitor General, appointing Steven Sullivan, who had been serving as Chief of the Civil Litigation Division.

**Missouri.** John Sauer was appointed State Solicitor (and First Assistant Attorney General). He replaced Jim Layton, who provided more than 20 years of distinguished service to the state and is now practicing at Tueth Keeney in St. Louis.

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Welcome aboard!

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Washington, DC 20036  
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## Thompson, Jeffrey [AG]

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**From:** Dan Schweitzer <DSCHWEITZER@NAAG.ORG>  
**Sent:** Friday, March 10, 2017 11:24 AM  
**To:** Dan Schweitzer  
**Subject:** RE: State SG News

Closing the loop, I am pleased to report that Connecticut AG Jepsen has appointed Assistant Attorney General Jane Rosenberg to be its new Solicitor General. Below is the announcement of the appointment.



### STATE OF CONNECTICUT ATTORNEY GENERAL GEORGE JEPSEN

## AG Jepsen Names Jane Rosenberg Connecticut's New Solicitor General

*For immediate release*

FRIDAY, MARCH 10, 2017

HARTFORD – Attorney General George Jepsen today announced that long-time Assistant Attorney General Jane Rosenberg has been promoted within the Connecticut Office of the Attorney General to serve as an Associate Attorney General and the state's Solicitor General.

Rosenberg succeeds former Solicitor General Gregory T. D'Auria, who earlier this week was unanimously confirmed by the state Senate and House of Representatives, and was subsequently sworn in, as an Associate Judge of the Connecticut Supreme Court. As Solicitor General, Rosenberg will serve as a member of the Attorney General's senior staff and will oversee all of the office's appellate casework and the issuance of formal opinions.

"Jane Rosenberg is held in the highest regard by her colleagues in the office and across Connecticut's legal community for her intellect, temperament and accomplishments," said Attorney General Jepsen. "She has a thoughtful and deliberate approach that is extremely well-suited to the important role of Solicitor General. We're indebted to now-Justice Gregory D'Auria for his superb work as our first ever Solicitor General, and we have every confidence that Jane will continue the successful management of our appellate practice."

"I'm very grateful for this opportunity and for the confidence that Attorney General Jepsen has in me," said Rosenberg, "and I look forward to continuing to serve the people of Connecticut in this new and exciting role."

Rosenberg graduated from Yale University in 1979 and earned her *juris doctorate* from the University of Pennsylvania Law School in 1984. She worked for two years as an associate in the corporate law department at the Robinson & Cole law firm before first joining the Connecticut Office of the Attorney General in 1987 under former Attorney General Joseph Lieberman.

After a two-year separation, Rosenberg rejoined the Office of the Attorney General as an assistant attorney general in 1992, where she worked on numerous cases including the state's tobacco litigation. Since 2001, Rosenberg has worked in the office's Special Litigation Department, which represents and advises client agencies that include the state's

-constitutional offices. Rosenberg has represented state officials in both state and federal courts and has briefed, or briefed and argued, more than 70 appeals in state and federal court, including appeals challenging the constitutionality of state laws.

A native of Canton, Mass., Rosenberg and her family have lived in Glastonbury since 1986.

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I will let you know when the Connecticut AG office appoints a new Solicitor General.

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**Ben Battles.** Ben most recently served as an Assistant Attorney General in the office's Appellate Unit and, before that, in its Human Services Division. Before joining the office, he practiced at Boies, Schiller & Flexner and Cahill Gordon & Reindel, and served as a law clerk for the Honorable Morton Greenberg, U.S. Circuit Judge for the Third Circuit Court of Appeals, and the Honorable Dora Irizarry, U.S. District Judge for the Eastern District of New York. Ben is a graduate of the University of Vermont and Brooklyn Law School, where he was Executive Articles Editor of the *Brooklyn Law Review*.

Welcome aboard!

Dan

\*\*\*\*\*

Dan Schweitzer  
Director and Chief Counsel  
NAAG Center for Supreme Court Advocacy  
2030 M Street, NW, 8th Floor  
Washington, DC 20036  
(202) 326-6010  
(202) 785-0410 - fax  
[dschweitzer@naag.org](mailto:dschweitzer@naag.org)

## Thompson, Jeffrey [AG]

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**From:** Dan Schweitzer <DSCHWEITZER@NAAG.ORG>  
**Sent:** Tuesday, March 07, 2017 12:00 PM  
**To:** Dan Schweitzer  
**Subject:** State SG News

To: Civil Amicus Contacts

This is to let you know that the AG offices of Arizona, Georgia, Hawaii, Maryland, Missouri, North Carolina, North Dakota, and Vermont have appointed new Solicitors General over the past few months. In addition, Oklahoma Solicitor General Patrick Wyrick was appointed to the Oklahoma Supreme Court; his Deputy SG, Mithun Mansinghani, is serving as Acting Solicitor General.

Here are the details:

**Arizona.** Dominic Draye, who had been serving as Deputy Solicitor General, was appointed Solicitor General to replace John Lopez, who was appointed to the Arizona Supreme Court. See <https://www.azag.gov/press-release/ag-brnovich-appoints-solicitor-general>

**Georgia.** Sarah Warren, who had been serving as Deputy Solicitor General, was appointed Solicitor General to replace Britt Grant, who was appointed to the Georgia Supreme Court. See <http://law.ga.gov/press-releases/2016-12-08/attorney-general-chris-carr-announces-new-leadership-team>

**Hawaii.** Clyde Wadsworth was appointed Solicitor General to replace Girard Lau, who retired after 30 years of distinguished service for the state. See <http://governor.hawaii.gov/newsroom/latest-news/atg-news-release-new-solicitor-general-clyde-wadsworth-named/>

**Maryland.** Maryland reestablished the position of Solicitor General, appointing Steven Sullivan, who had been serving as Chief of the Civil Litigation Division.

**Missouri.** John Sauer was appointed State Solicitor (and First Assistant Attorney General). He replaced Jim Layton, who provided more than 20 years of distinguished service to the state and is now practicing at Tueth Keeney in St. Louis.

**North Carolina.** Matt Sawchak was appointed Solicitor General to replace John Maddrey, who is now serving as General Counsel to the North Carolina Department of Administration. See <http://www.ncdoj.gov/News-and-Alerts/News-Releases-and-Advisories/Press-Releases/Attorney-General-Stein-Announces-Senior-Team.aspx>

**North Dakota.** Matthew Sagsveen, who had been serving as Director of the Natural Resources and Indian Affairs Division, was appointed Solicitor General to replace Doug Bahr, who provided more than 15 years of distinguished service for the state and is now practicing at Crowley Fleck in Bismarck.

**Vermont.** Ben Battles, who had been serving as Assistant Attorney General in the Appellate Unit, was appointed Solicitor General to replace Bridget Asay, who provided 18 years of distinguished service to the state and recently started a boutique law firm in Montpelier called Donofrio Asay PLC.

Here are the backgrounds of the new SGs (from press releases or otherwise):

**Dominic Draye**. Since 2015, Dominic Draye has served as the Deputy Solicitor General. In that capacity, he represented the State in a wide range of appeals, including defending the State's policy of withholding driver's licenses to DACA beneficiaries. Draye also led a 10-state coalition challenging the EPA's new ozone regulations and defended Arizona's identity theft and forgery laws. Prior to his current position, Draye worked in the Washington D.C. office of Kirkland & Ellis LLP. At Kirkland, his practice focused on legal issues and appeals in a broad range of topics. Before joining the firm, Draye clerked for Hon. Edith H. Jones of the United States Court of Appeals for the Fifth Circuit. He attended the University of Pennsylvania Law School.

**Sarah Warren**. Sarah previously served as Deputy Solicitor General and Special Counsel for Water Litigation, where she represented Georgia in the United States Supreme Court in an equitable apportionment action filed by Florida over water in the ACF Basin (*Florida v. Georgia*). Before joining the Department of Law, Sarah was a litigation partner at Kirkland & Ellis LLP in Washington, D.C., where she was outside counsel to Georgia in *Florida v. Georgia*. She also represented clients in litigation before state and federal courts in matters involving commercial disputes, products liability, class-action defense, contracts and First Amendment and defamation. Sarah served as a law clerk to then-Chief Judge J.L. Edmondson of the United States Court of Appeals for the Eleventh Circuit and to the Honorable Richard J. Leon of the United States District Court for the District of Columbia. Before law school, Sarah served as Deputy Press Secretary for the White House Office of Management and Budget (2005), and before that on President George W. Bush's debate prep team for his 2004 re-election campaign.

An Atlanta native, Sarah received her B.A. in Public Policy and Spanish, magna cum laude, from Duke University and her J.D. from Duke Law School magna cum laude. While at Duke Law, Sarah was Editor in Chief of Law and Contemporary Problems and was on the Executive Committee of the Federalist Society. Sarah currently serves on the Duke Law School Board of Visitors and is an Executive Board member for the Atlanta Chapter of the Federalist Society.

**Clyde Wadsworth**. Previously, Wadsworth was of counsel to Alston Hunt Floyd & Ing in Honolulu. With more than 30 years of litigation experience, he has a Martindale-Hubbell AV-Preeminent rating and has been nationally recognized as one of America's Best Lawyers in commercial litigation. In addition, he has served as pro bono counsel in several significant cases brought to safeguard LGBT civil rights. In 2014, he successfully argued Hawaii's marriage equality case, *Jackson v. Abercrombie*, before the U.S. Ninth Circuit Court of Appeals. He is a past recipient of the Lambda Legal Liberty Award. Wadsworth received his bachelor's degree (*magna cum laude*) in politics from Princeton University and his law degree from UCLA, where he served as an editor of the UCLA Law Review.

**Steven Sullivan**. Steve has been with the Attorney General's Civil Litigation Division since 1996, and for the past 7 years has served as Chief of the Division, supervising all civil litigation throughout the Office. Earlier in his career, Steve served as law clerk to Judge George C. Edwards, United States Court of Appeals for the Sixth Circuit, before practicing law at firms in Washington, D.C. and Charlottesville, Virginia. Steve is a graduate of Dartmouth College and Harvard Law School, with an M.A. in English literature from the University of Virginia.

Steve has litigated at all levels of State and federal courts. In the U.S. Supreme Court, he argued *Shapiro v. McManus*, 136 S. Ct. 450 (2015), and assisted at oral argument in *Comptroller of the Treasury of Maryland v. Wynne*, 135 S. Ct. 1787 (2015), and *Coleman v. Court of Appeals of Maryland*, 132 S. Ct. 1327 (2012). Steve has briefed and argued federal and state appellate cases on a broad range of issues including the Commerce

Clause, equal protection, preemption, redistricting, antitrust, land use, tax, and administrative law. Since 2011, Steve has served as a member of the Maryland Court of Appeals Standing Committee on Rules of Practice and Procedure. He is a co-recipient of the National Association of Attorneys General Award for Best Brief in the Supreme Court, 2008 Term, for merits *amicus* brief in *Ricci v. DeStefano*, 557 U.S. 557 (2009). He is also the recipient of the Attorney General of Maryland's Alexander Cummings Award for excellence in appellate advocacy, Exceptional Leadership award, and Exceptional Service award.

**John Sauer**. As a former federal prosecutor, Mr. Sauer first-chaired several federal jury trials, and he successfully briefed and argued numerous appeals in federal appellate court. Mr. Sauer has represented clients in complex civil litigation in state and federal courts across the country. Mr. Sauer has practiced in the U.S. Supreme Court, the U.S. Court of Appeals for the Eighth Circuit, the U.S. District Court for the Eastern District of Missouri, several other federal district and appellate courts, and state courts of last resort. His experience includes complex commercial disputes, class actions, regulatory challenges, First Amendment claims, constitutional issues, complex fraud and white-collar cases, public corruption, racketeering, domestic terrorism, gender-motivated crimes, and statutory and regulatory interpretation.

Mr. Sauer is a Rhodes Scholar and a magna cum laude graduate of Harvard Law School. He served as a law clerk to Associate Justice Antonin Scalia of the United States Supreme Court and to Circuit Judge J. Michael Luttig of the U.S. Court of Appeals for the Fourth Circuit. Mr. Sauer received the David J. Dixon Appellate Advocacy Award in 2013. This award recognizes outstanding achievement in appellate practice by young lawyer members of the bar. Mr. Sauer has been lead counsel in 19 appeals in the U.S. Court of Appeals for the Eighth circuit. He has presented oral arguments in 12 cases and won a favorable resolution in 18 of 19 cases. Many of his appeals focused on complex questions of federal statutory and constitutional interpretation.

**Matt Sawchak** was a partner at Ellis & Winters focusing on appeals, business litigation and antitrust. *Business North Carolina* has twice profiled Matt as the top antitrust lawyer in North Carolina. Matt also is the former chair of the North Carolina Bar Association's Appellate Rules Committee. Prior to entering private practice in 1990, Matt clerked for Justice Clarence Thomas on the United States Court of Appeals for the District of Columbia Circuit. Before his judicial clerkship, he clerked in the Office of the Solicitor General of the United States. Matt is a graduate of Harvard University and Duke University School of Law, where he was Editor-in-Chief of the Law Review.

**Matthew Sagsveen**. Matt, in addition to being Solicitor General, is Director of Civil Litigation and continues to serve as the Director of the Natural Resources and Indian Affairs Division in the North Dakota Attorney General's Office, where he has worked since 2000. He was hired to work in the Attorney General's office after graduating from the University of North Dakota School of Law in 1999 and completing a one year clerkship with the South Central Judicial District in 2000. Matt is also serving his second term on the Bismarck School Board and sits on the church council for Lutheran Church of the Cross in Bismarck. He earned his bachelor's degree in political science from Concordia College. He later earned a J.D. from the University of North Dakota.

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**Thompson, Jeffrey [AG]**

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**From:** Dan Schweitzer <DSCHWEITZER@NAAG.ORG>  
**Sent:** Wednesday, December 14, 2016 12:45 PM  
**To:** Dan Schweitzer  
**Subject:** State SGs Appointed as Judges

To: Civil Amicus Contacts

I wanted to pass along some happy news. Two of our own have recently been appointed to their respective states' highest courts. And two others have been appointed to their states' appellate court. Here are the details.

On November 9, Georgia Governor Nathan Deal appointed Georgia Solicitor General Britt Grant to the Georgia Supreme Court. He also appointed Britt's predecessor as SG, Nels Peterson, to the Georgia Supreme Court.

On November 28, Arizona Governor Doug Ducey appointed Arizona Solicitor General John Lopez to serve on the Arizona Supreme Court.

In addition, this past August 31 and September 7, the Massachusetts Governor's Council confirmed Massachusetts State Solicitor Peter Sacks and Assistant Attorney General (and former NAAG Supreme Court Fellow) Sookyoung Shin to the Massachusetts Appeals Court.

We congratulate them all and wish them the best on what will surely be distinguished tenures on the bench.

Looking forward, Georgia Attorney General Chris Carr has appointed Deputy Solicitor General Sarah Warren to replace Britt at the start of the new year. And Massachusetts Attorney General Maura Healey appointed former Assistant State Solicitor Bessie Dewar to replace Peter.

Dan

\*\*\*\*\*  
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[dschweitzer@naag.org](mailto:dschweitzer@naag.org)



**Thompson, Jeffrey [AG]**

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**From:** efilings@mail@iowacourts.gov  
**Sent:** Friday, April 28, 2017 10:10 AM  
**To:** Thompson, Jeffrey [AG]  
**Subject:** Courtesy NEF RE: LACE128389

\*\*\*\*\* IMPORTANT NOTICE - READ THIS INFORMATION \*\*\*\*\*  
NOTICE OF ELECTRONIC FILING OR PRESENTATION [NEF]

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**A filing has been submitted to the court RE: LACE128389**

**Judge:**

**Official File Stamp:** 04-27-2017:16:28:38  
**Court:** TRIAL COURT  
Scott  
**Case Title:** WOODS, BREAN, ET AL., V. STATE OF IOWA  
**Document(s) Submitted:** ORDER APPROVING WITHDRAWAL OF COUNSEL atty nathan legue  
withdrawn  
**Filed by or in behalf of:** Mark R Lawson

You may review this filing by clicking on the following link to take you to your cases.

This notice was automatically generated by the courts auto-notification system.

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**The electronic filing system has served the following people:**

NATHAN MICHAEL LEGUE for BREAN A WOODS, BECCA FREDERICK  
CHASE ANDREW CARTEE for BREAN A WOODS, BECCA FREDERICK  
MEGHAN LEE GAVIN for STATE OF IOWA, IOWA DEPARTMENT OF EDUCATION, IOWA  
GENERAL ASSEMBLY, TERRY BRANSTAD  
JORDAN GENEVIEVE ESBROOK for STATE OF IOWA, IOWA DEPARTMENT OF EDUCATION,  
IOWA GENERAL ASSEMBLY, TERRY BRANSTAD  
CATHERINE ZAMORA CARTEE for BREAN A WOODS, BECCA FREDERICK  
JEFFREY SCOTT THOMPSON for STATE OF IOWA, IOWA DEPARTMENT OF EDUCATION,  
IOWA GENERAL ASSEMBLY, TERRY BRANSTAD

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**PARTIES NOT SERVED BY EDMS**

**The Iowa Electronic Document Management System will not serve the following parties because they are not registered filers. Per rule 16.317(1)(b), the filing party must serve a paper copy of the filed document(s) on the following parties in the manner required by Iowa Court Rules. \***

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**Note:** The rules define the clerk of court as responsible for service of court-generated documents. Additionally

on small claims cases that by statute can be served by certified mail, when the filer has selected and paid for certified mail in the electronic filing system or at the clerk of court office, the clerk of court is responsible for service of the original notice and answer and appearance by certified mail in accordance with the Code of Iowa.

\*The moving party or the individual who filed it is responsible for service of a document if it was not served by the electronic filing system. That includes, but is not limited to, service of all petitions and original notices [rule 16.316(3)], service of documents on all parties seeking to intervene in confidential cases [16.321(1)(c)], and service of all documents on non-registered parties [16.317(1)(b)].

PLEASE DO NOT REPLY TO THIS EMAIL. Responses go to an email box that is not monitored. To receive help, follow the instruction on the 'Support' link on the efilng website.

**Thompson, Jeffrey [AG]**

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**From:** efilings@mail@iowacourts.gov  
**Sent:** Thursday, April 27, 2017 10:53 AM  
**To:** Thompson, Jeffrey [AG]  
**Subject:** Courtesy NEF RE: LACE128389

\*\*\*\*\* IMPORTANT NOTICE - READ THIS INFORMATION \*\*\*\*\*

**NOTICE OF ELECTRONIC FILING OR PRESENTATION [NEF]**

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**A filing has been submitted to the court RE: LACE128389**

**Judge:**

**Official File Stamp:** 04-27-2017:10:52:09  
**Court:** TRIAL COURT  
Scott  
**Case Title:** WOODS, BREAN, ET AL., V. STATE OF IOWA  
**Document(s) Submitted:** PROPOSED OTHER ORDER Order Granting Withdrawal  
**Filed by or in behalf of:** Nathan Legue

You may review this filing by clicking on the following link to take you to your cases.

This notice was automatically generated by the courts auto-notification system.

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**The electronic filing system has served the following people:**

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JORDAN GENEVIEVE ESBROOK for STATE OF IOWA, IOWA DEPARTMENT OF EDUCATION,  
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IOWA GENERAL ASSEMBLY, TERRY BRANSTAD

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**Thompson, Jeffrey [AG]**

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**From:** efilings@mail@iowacourts.gov  
**Sent:** Wednesday, April 26, 2017 2:04 PM  
**To:** Thompson, Jeffrey [AG]  
**Subject:** Courtesy NEF RE: LACE128389

\*\*\*\*\* IMPORTANT NOTICE - READ THIS INFORMATION \*\*\*\*\*  
NOTICE OF ELECTRONIC FILING OR PRESENTATION [NEF]

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**A filing has been submitted to the court RE: LACE128389**

**Judge:**

**Official File Stamp:** 04-26-2017:14:04:08  
**Court:** TRIAL COURT  
Scott  
**Case Title:** WOODS, BREAN, ET AL., V. STATE OF IOWA  
**Document(s) Submitted:** PROPOSED OTHER ORDER Order Granting Withdrawal  
**Filed by or in behalf of:** Nathan Legue

You may review this filing by clicking on the following link to take you to your cases.

This notice was automatically generated by the courts auto-notification system.

---

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**Thompson, Jeffrey [AG]**

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**From:** efilings@mail@iowacourts.gov  
**Sent:** Tuesday, April 25, 2017 3:58 PM  
**To:** Thompson, Jeffrey [AG]  
**Subject:** Courtesy NEF RE: LACE128389

\*\*\*\*\* IMPORTANT NOTICE - READ THIS INFORMATION \*\*\*\*\*  
NOTICE OF ELECTRONIC FILING OR PRESENTATION [NEF]

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**A filing has been submitted to the court RE: LACE128389**

**Judge:**

**Official File Stamp:** 04-25-2017:09:17:01  
**Court:** TRIAL COURT  
Scott  
**Case Title:** WOODS, BREAN, ET AL., V. STATE OF IOWA  
**Document(s) Submitted:** OTHER ORDER order rescheduling hrg 5-31-17 9am  
**Filed by or in behalf of:** Mark D Cleve

You may review this filing by clicking on the following link to take you to your cases.

This notice was automatically generated by the courts auto-notification system.

---

**The electronic filing system has served the following people:**

NATHAN MICHAEL LEGUE for BREAN A WOODS, BECCA FREDERICK  
CHASE ANDREW CARTEE for BREAN A WOODS, BECCA FREDERICK  
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IOWA GENERAL ASSEMBLY, TERRY BRANSTAD

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**Thompson, Jeffrey [AG]**

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**From:** efilings@mail@iowacourts.gov  
**Sent:** Tuesday, April 25, 2017 3:57 PM  
**To:** Thompson, Jeffrey [AG]  
**Subject:** Courtesy NEF RE: LACE128389

\*\*\*\*\* IMPORTANT NOTICE - READ THIS INFORMATION \*\*\*\*\*  
NOTICE OF ELECTRONIC FILING OR PRESENTATION [NEF]

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**A filing has been submitted to the court RE: LACE128389**

**Judge:**

**Official File Stamp:** 04-25-2017:09:15:13  
**Court:** TRIAL COURT  
Scott  
**Case Title:** WOODS, BREAN, ET AL., V. STATE OF IOWA  
**Document(s) Submitted:** ORDER SETTING HEARING motion to dismiss hrg resched 5-31-17 9am  
**Filed by or in behalf of:** Mark D Cleve

You may review this filing by clicking on the following link to take you to your cases.

This notice was automatically generated by the courts auto-notification system.

---

**The electronic filing system has served the following people:**

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**Thompson, Jeffrey [AG]**

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**From:** efilng.mail@iowacourts.gov  
**Sent:** Monday, April 10, 2017 1:34 PM  
**To:** Thompson, Jeffrey [AG]  
**Subject:** Courtesy NEF RE: LACE128389

\*\*\*\*\* IMPORTANT NOTICE - READ THIS INFORMATION \*\*\*\*\*  
NOTICE OF ELECTRONIC FILING OR PRESENTATION [NEF]

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**A filing has been submitted to the court RE: LACE128389**

**Judge:**

**Official File Stamp:** 04-10-2017:13:34:07  
**Court:** TRIAL COURT  
Scott  
**Case Title:** WOODS, BREAN, ET AL., V. STATE OF IOWA  
**Document(s) Submitted:** MOTION Motion for Leave to Amend  
- ATTACHMENT First Amended Petition at Law and Jury Demand  
**Filed by or in behalf of:** Nathan Legue

You may review this filing by clicking on the following link to take you to your cases.

This notice was automatically generated by the courts auto-notification system.

---

**The electronic filing system has served the following people:**

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---

**PARTIES NOT SERVED BY EDMS**

**The Iowa Electronic Document Management System will not serve the following parties because they are not registered filers. Per rule 16.317(1)(b), the filing party must serve a paper copy of the filed document(s) on the following parties in the manner required by Iowa Court Rules. \***

---

**Note:** The rules define the clerk of court as responsible for service of court-generated documents. Additionally

on small claims cases that by statute can be served by certified mail, when the filer has selected and paid for certified mail in the electronic filing system or at the clerk of court office, the clerk of court is responsible for service of the original notice and answer and appearance by certified mail in accordance with the Code of Iowa.

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PLEASE DO NOT REPLY TO THIS EMAIL. Responses go to an email box that is not monitored. To receive help, follow the instruction on the 'Support' link on the efilings website.

**Thompson, Jeffrey [AG]**

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**From:** efilings@mail@iowacourts.gov  
**Sent:** Thursday, February 16, 2017 1:13 PM  
**To:** Thompson, Jeffrey [AG]  
**Subject:** Courtesy NEF RE: LACE128389

\*\*\*\*\* IMPORTANT NOTICE - READ THIS INFORMATION \*\*\*\*\*  
NOTICE OF ELECTRONIC FILING OR PRESENTATION [NEF]

---

**A filing has been submitted to the court RE: LACE128389**

**Judge:**

**Official File Stamp:** 02-16-2017:12:59:22  
**Court:** TRIAL COURT  
Scott  
**Case Title:** WOODS, BREAN, ET AL., V. STATE OF IOWA  
**Document(s) Submitted:** ORDER FOR TRIAL SCHEDULING CONFERENCE Trial Scheduling  
Conference 04/28/2017 08:35 AM DIST.  
**Filed by or in behalf of:** Marlita Greve

You may review this filing by clicking on the following link to take you to your cases.

This notice was automatically generated by the courts auto-notification system.

---

**The electronic filing system has served the following people:**

NATHAN MICHAEL LEGUE for BREAN A WOODS, BECCA FREDERICK  
CHASE ANDREW CARTEE for BREAN A WOODS, BECCA FREDERICK  
MEGHAN LEE GAVIN for STATE OF IOWA, IOWA DEPARTMENT OF EDUCATION, IOWA  
GENERAL ASSEMBLY, TERRY BRANSTAD  
JORDAN GENEVIEVE ESBROOK for STATE OF IOWA, IOWA DEPARTMENT OF EDUCATION,  
IOWA GENERAL ASSEMBLY, TERRY BRANSTAD  
CATHERINE ZAMORA CARTEE for BREAN A WOODS, BECCA FREDERICK  
JEFFREY SCOTT THOMPSON for STATE OF IOWA, IOWA DEPARTMENT OF EDUCATION,  
IOWA GENERAL ASSEMBLY, TERRY BRANSTAD

---

**PARTIES NOT SERVED BY EDMS**

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---

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**Thompson, Jeffrey [AG]**

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**From:** efilng.mail@iowacourts.gov  
**Sent:** Monday, February 06, 2017 10:20 AM  
**To:** Thompson, Jeffrey [AG]  
**Subject:** Courtesy NEF RE: LACE128389

\*\*\*\*\* IMPORTANT NOTICE - READ THIS INFORMATION \*\*\*\*\*  
NOTICE OF ELECTRONIC FILING OR PRESENTATION [NEF]

---

**A filing has been submitted to the court RE: LACE128389**

**Judge:**

**Official File Stamp:** 02-06-2017:09:56:10  
**Court:** TRIAL COURT  
Scott  
**Case Title:** WOODS, BREAN, ET AL., V. STATE OF IOWA  
**Document(s) Submitted:** OTHER EVENT Defendants' Reply to Plaintiffs' Resistance to Motion to Dismiss  
**Filed by or in behalf of:** Meghan Gavin

You may review this filing by clicking on the following link to take you to your cases.

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**The electronic filing system has served the following people:**

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CHASE ANDREW CARTEE for BREAN A WOODS, BECCA FREDERICK  
MEGHAN LEE GAVIN for STATE OF IOWA, IOWA DEPARTMENT OF EDUCATION, IOWA GENERAL ASSEMBLY, TERRY BRANSTAD  
JORDAN GENEVIEVE ESBROOK for STATE OF IOWA, IOWA DEPARTMENT OF EDUCATION, IOWA GENERAL ASSEMBLY, TERRY BRANSTAD  
CATHERINE ZAMORA CARTEE for BREAN A WOODS, BECCA FREDERICK  
JEFFREY SCOTT THOMPSON for STATE OF IOWA, IOWA DEPARTMENT OF EDUCATION, IOWA GENERAL ASSEMBLY, TERRY BRANSTAD

---

**PARTIES NOT SERVED BY EDMS**

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---

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**Thompson, Jeffrey [AG]**

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**From:** efilings@mail@iowacourts.gov  
**Sent:** Monday, January 30, 2017 3:17 PM  
**To:** Thompson, Jeffrey [AG]  
**Subject:** Courtesy NEF RE: LACE128389

\*\*\*\*\* IMPORTANT NOTICE - READ THIS INFORMATION \*\*\*\*\*  
NOTICE OF ELECTRONIC FILING OR PRESENTATION [NEF]

---

**A filing has been submitted to the court RE: LACE128389**

**Judge:**

**Official File Stamp:** 01-30-2017:14:27:00

**Court:** TRIAL COURT  
Scott

**Case Title:** WOODS, BREAN, ET AL., V. STATE OF IOWA

**Document(s) Submitted:** ORDER SETTING HEARING MOTION TO DISMISS 04/11/2017 @ 09:00 AM

**Filed by or in behalf of:** Mary E Howes

You may review this filing by clicking on the following link to take you to your cases.

This notice was automatically generated by the courts auto-notification system.

---

**The electronic filing system has served the following people:**

NATHAN MICHAEL LEGUE for BREAN A WOODS, BECCA FREDERICK  
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MEGHAN LEE GAVIN for STATE OF IOWA, IOWA DEPARTMENT OF EDUCATION, IOWA GENERAL ASSEMBLY, TERRY BRANSTAD  
JORDAN GENEVIEVE ESBROOK for STATE OF IOWA, IOWA DEPARTMENT OF EDUCATION, IOWA GENERAL ASSEMBLY, TERRY BRANSTAD  
CATHERINE ZAMORA CARTEE for BREAN A WOODS, BECCA FREDERICK  
JEFFREY SCOTT THOMPSON for STATE OF IOWA, IOWA DEPARTMENT OF EDUCATION, IOWA GENERAL ASSEMBLY, TERRY BRANSTAD

---

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**Thompson, Jeffrey [AG]**

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**From:** efilng.mail@iowacourts.gov  
**Sent:** Monday, January 30, 2017 2:24 PM  
**To:** Thompson, Jeffrey [AG]  
**Subject:** Courtesy NEF RE: LACE128389

\*\*\*\*\* IMPORTANT NOTICE - READ THIS INFORMATION \*\*\*\*\*  
NOTICE OF ELECTRONIC FILING OR PRESENTATION [NEF]

---

**A filing has been submitted to the court RE: LACE128389**

**Judge:**

**Official File Stamp:** 01-30-2017:14:23:57  
**Court:** TRIAL COURT  
Scott  
**Case Title:** WOODS, BREAN, ET AL., V. STATE OF IOWA  
**Document(s) Submitted:** PROPOSED ORDER SETTING HEARING  
**Filed by or in behalf of:** Catherine Z Cartee

You may review this filing by clicking on the following link to take you to your cases.

This notice was automatically generated by the courts auto-notification system.

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**The electronic filing system has served the following people:**

NATHAN MICHAEL LEGUE for BREAN A WOODS, BECCA FREDERICK  
CHASE ANDREW CARTEE for BREAN A WOODS, BECCA FREDERICK  
MEGHAN LEE GAVIN for STATE OF IOWA, IOWA DEPARTMENT OF EDUCATION, IOWA  
GENERAL ASSEMBLY, TERRY BRANSTAD  
JORDAN GENEVIEVE ESBROOK for STATE OF IOWA, IOWA DEPARTMENT OF EDUCATION,  
IOWA GENERAL ASSEMBLY, TERRY BRANSTAD  
CATHERINE ZAMORA CARTEE for BREAN A WOODS, BECCA FREDERICK  
JEFFREY SCOTT THOMPSON for STATE OF IOWA, IOWA DEPARTMENT OF EDUCATION,  
IOWA GENERAL ASSEMBLY, TERRY BRANSTAD

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**Thompson, Jeffrey [AG]**

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**From:** efilings@mail@iowacourts.gov  
**Sent:** Friday, January 27, 2017 7:47 PM  
**To:** Thompson, Jeffrey [AG]  
**Subject:** Courtesy NEF RE: LACE128389

\*\*\*\*\* IMPORTANT NOTICE - READ THIS INFORMATION \*\*\*\*\*  
NOTICE OF ELECTRONIC FILING OR PRESENTATION [NEF]

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**A filing has been submitted to the court RE: LACE128389**

**Judge:**

**Official File Stamp:** 01-27-2017:19:46:10  
**Court:** TRIAL COURT  
Scott  
**Case Title:** WOODS, BREAN, ET AL., V. STATE OF IOWA  
**Document(s) Submitted:** RESISTANCE Resistance to Defendants' Motion to Dismiss  
**Filed by or in behalf of:** Nathan Legue

You may review this filing by clicking on the following link to take you to your cases.

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**The electronic filing system has served the following people:**

NATHAN MICHAEL LEGUE for BREAN A WOODS, BECCA FREDERICK  
CHASE ANDREW CARTEE for BREAN A WOODS, BECCA FREDERICK  
MEGHAN LEE GAVIN for STATE OF IOWA, IOWA DEPARTMENT OF EDUCATION, IOWA  
GENERAL ASSEMBLY, TERRY BRANSTAD  
JORDAN GENEVIEVE ESBROOK for STATE OF IOWA, IOWA DEPARTMENT OF EDUCATION,  
IOWA GENERAL ASSEMBLY, TERRY BRANSTAD  
CATHERINE ZAMORA CARTEE for BREAN A WOODS, BECCA FREDERICK  
JEFFREY SCOTT THOMPSON for STATE OF IOWA, IOWA DEPARTMENT OF EDUCATION,  
IOWA GENERAL ASSEMBLY, TERRY BRANSTAD

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**Thompson, Jeffrey [AG]**

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**From:** efilings@mail@iowacourts.gov  
**Sent:** Thursday, January 26, 2017 9:27 AM  
**To:** Thompson, Jeffrey [AG]  
**Subject:** Courtesy NEF RE: LACE128389

\*\*\*\*\* IMPORTANT NOTICE - READ THIS INFORMATION \*\*\*\*\*  
NOTICE OF ELECTRONIC FILING OR PRESENTATION [NEF]

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**A filing has been submitted to the court RE: LACE128389**

**Judge:**

**Official File Stamp:** 01-26-2017:09:26:29  
**Court:** TRIAL COURT  
Scott  
**Case Title:** WOODS, BREAN, ET AL., V. STATE OF IOWA  
**Document(s) Submitted:** APPEARANCE Appearance  
**Filed by or in behalf of:** Nathan Legue

You may review this filing by clicking on the following link to take you to your cases.

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CHASE ANDREW CARTEE for BREAN A WOODS, BECCA FREDERICK  
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GENERAL ASSEMBLY, TERRY BRANSTAD  
JORDAN GENEVIEVE ESBROOK for STATE OF IOWA, IOWA DEPARTMENT OF EDUCATION,  
IOWA GENERAL ASSEMBLY, TERRY BRANSTAD  
CATHERINE ZAMORA CARTEE for BREAN A WOODS, BECCA FREDERICK  
JEFFREY SCOTT THOMPSON for STATE OF IOWA, IOWA DEPARTMENT OF EDUCATION,  
IOWA GENERAL ASSEMBLY, TERRY BRANSTAD

---

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**Thompson, Jeffrey [AG]**

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**From:** efilings@mail@iowacourts.gov  
**Sent:** Wednesday, January 25, 2017 9:03 AM  
**To:** Thompson, Jeffrey [AG]  
**Subject:** Courtesy NEF RE: 15-2099

\*\*\*\*\* IMPORTANT NOTICE - READ THIS INFORMATION \*\*\*\*\*  
NOTICE OF ELECTRONIC FILING OR PRESENTATION [NEF]

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**A filing has been made in the following case:** 15-2099

**Official File Stamp:** 01-25-2017:09:02:21  
**Court:** Appellate Court  
**Case Title:** Homan v. Branstad  
**Document(s) Submitted** **Filed by or on behalf of**  
AMENDED OPINION David S. Wiggins

You may review this filing by clicking on the following link to take you to your cases.

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The electronic filing system has served the following people

THOMPSON, JEFFREY SCOTT for BRANSTAD TERRY E  
BAUMGARTNER, SARAH MARIE for MCCOY, MATTHEW, HOMAN,  
DANNY, TAYLOR, RICH, KEARNS, JERRY, SMITH, MARK,  
COURTNEY, THOMAS, PETERSEN, JANET ANN, HUNTER, BRUCE,  
HANSON, CURT, BISIGNANO, TONY, QUIRMBACH, HERMAN,  
DEARDEN, DICK, STAED, ARTHUR MATTHEW, ABDUL-SAMAD,  
AKO, OLDSON, JO, GAINES, RUTH ANN, STECKMAN, SHARON,  
TAYLOR, TODD E., GASKILL, MARY, RUNNING-MARQUARDT,  
KIRSTEN, BROWN-POWERS, TIMI, JACOBY, DAVE, JOCHUM, PAM,  
GRONSTAL, MICHAEL EDWARD, BEARINGER, BRUCE  
BOULTON, NATHANIEL RANDELL for MCCOY, MATTHEW,  
HOMAN, DANNY, TAYLOR, RICH, KEARNS, JERRY, SMITH, MARK,  
COURTNEY, THOMAS, PETERSEN, JANET ANN, HUNTER, BRUCE,  
HANSON, CURT, BISIGNANO, TONY, QUIRMBACH, HERMAN,  
DEARDEN, DICK, STAED, ARTHUR MATTHEW, ABDUL-SAMAD,  
AKO, OLDSON, JO, GAINES, RUTH ANN, STECKMAN, SHARON,  
TAYLOR, TODD E., GASKILL, MARY, RUNNING-MARQUARDT,  
KIRSTEN, BROWN-POWERS, TIMI, JACOBY, DAVE, JOCHUM, PAM,  
GRONSTAL, MICHAEL EDWARD, BEARINGER, BRUCE  
HEDBERG, MARK T. for MCCOY, MATTHEW, HOMAN, DANNY,

TAYLOR, RICH, KEARNS, JERRY, SMITH, MARK, COURTNEY,  
THOMAS, PETERSEN, JANET ANN, HUNTER, BRUCE, HANSON,  
CURT, BISIGNANO, TONY, QUIRMBACH, HERMAN, DEARDEN,  
DICK, STAED, ARTHUR MATTHEW, ABDUL-SAMAD, AKO,  
OLDSON, JO, GAINES, RUTH ANN, STECKMAN, SHARON, TAYLOR,  
TODD E., GASKILL, MARY, RUNNING-MARQUARDT, KIRSTEN,  
BROWN-POWERS, TIMI, JACOBY, DAVE, JOCHUM, PAM,  
GRONSTAL, MICHAEL EDWARD, BEARINGER, BRUCE  
GAVIN, MEGHAN LEE for BRANSTAD TERRY E

The moving party or the individual who filed this document is responsible for serving the following people in accordance with Iowa Code and Iowa Court Rules, including Chapter 16 Rules Pertaining to the Use of the Electronic Document Management System\*:

The filer is responsible for serving the following people in accordance with the Iowa Code and Iowa Court Rules, including Chapter 16 Rules Pertaining to the Use of the Electronic Document Management System\*:

**Note:** The clerk of court is responsible for service of court-generated documents. See generally rule 16.320(2)

\*The filer is responsible for service of a document if it was not served by the electronic filing system. See generally rule 16.317 and 16.321.

**Thompson, Jeffrey [AG]**

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**From:** efilings@mail@iowacourts.gov  
**Sent:** Wednesday, January 25, 2017 9:02 AM  
**To:** Thompson, Jeffrey [AG]  
**Subject:** Courtesy NEF RE: 15-2099

\*\*\*\*\* IMPORTANT NOTICE - READ THIS INFORMATION \*\*\*\*\*  
NOTICE OF ELECTRONIC FILING OR PRESENTATION [NEF]

---

**A filing has been made in the following case:** 15-2099

**Official File Stamp:** 01-25-2017:09:01:44  
**Court:** Appellate Court  
**Case Title:** Homan v. Branstad  
**Document(s) Submitted** **Filed by or on behalf of**  
OPINION CORRECTION NOTICE David S. Wiggins

You may review this filing by clicking on the following link to take you to your cases.

This notice was automatically generated by the courts auto-notification system.

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The electronic filing system has served the following people

THOMPSON, JEFFREY SCOTT for BRANSTAD TERRY E  
BAUMGARTNER, SARAH MARIE for MCCOY, MATTHEW, HOMAN,  
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TAYLOR, TODD E., GASKILL, MARY, RUNNING-MARQUARDT,  
KIRSTEN, BROWN-POWERS, TIMI, JACOBY, DAVE, JOCHUM, PAM,  
GRONSTAL, MICHAEL EDWARD, BEARINGER, BRUCE  
BOULTON, NATHANIEL RANDELL for MCCOY, MATTHEW,  
HOMAN, DANNY, TAYLOR, RICH, KEARNS, JERRY, SMITH, MARK,  
COURTNEY, THOMAS, PETERSEN, JANET ANN, HUNTER, BRUCE,  
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KIRSTEN, BROWN-POWERS, TIMI, JACOBY, DAVE, JOCHUM, PAM,  
GRONSTAL, MICHAEL EDWARD, BEARINGER, BRUCE

HEDBERG, MARK T. for MCCOY, MATTHEW, HOMAN, DANNY, TAYLOR, RICH, KEARNS, JERRY, SMITH, MARK, COURTNEY, THOMAS, PETERSEN, JANET ANN, HUNTER, BRUCE, HANSON, CURT, BISIGNANO, TONY, QUIRMBACH, HERMAN, DEARDEN, DICK, STAED, ARTHUR MATTHEW, ABDUL-SAMAD, AKO, OLDSON, JO, GAINES, RUTH ANN, STECKMAN, SHARON, TAYLOR, TODD E., GASKILL, MARY, RUNNING-MARQUARDT, KIRSTEN, BROWN-POWERS, TIMI, JACOBY, DAVE, JOCHUM, PAM, GRONSTAL, MICHAEL EDWARD, BEARINGER, BRUCE GAVIN, MEGHAN LEE for BRANSTAD TERRY E

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\*The filer is responsible for service of a document if it was not served by the electronic filing system. See generally rule 16.317 and 16.321.

**Thompson, Jeffrey [AG]**

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**From:** efilings@mail@iowacourts.gov  
**Sent:** Tuesday, January 24, 2017 12:01 PM  
**To:** Thompson, Jeffrey [AG]  
**Subject:** Courtesy NEF RE: LACE128389

\*\*\*\*\* IMPORTANT NOTICE - READ THIS INFORMATION \*\*\*\*\*  
NOTICE OF ELECTRONIC FILING OR PRESENTATION [NEF]

---

**A filing has been submitted to the court RE: LACE128389**

**Judge:**

**Official File Stamp:** 01-24-2017:09:52:06  
**Court:** TRIAL COURT  
Scott  
**Case Title:** WOODS, BREAN, ET AL., V. STATE OF IOWA  
**Document(s) Submitted:** ORDER FOR TRIAL SCHEDULING CONFERENCE Trial Scheduling  
Conference 02/17/2017 08:35 AM DIST.  
**Filed by or in behalf of:** Marlita Greve

You may review this filing by clicking on the following link to take you to your cases.

This notice was automatically generated by the courts auto-notification system.

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**The electronic filing system has served the following people:**

CHASE ANDREW CARTEE for BREAN A WOODS, BECCA FREDERICK  
MEGHAN LEE GAVIN for STATE OF IOWA, IOWA DEPARTMENT OF EDUCATION, IOWA  
GENERAL ASSEMBLY, TERRY BRANSTAD  
JORDAN GENEVIEVE ESBROOK for STATE OF IOWA, IOWA DEPARTMENT OF EDUCATION,  
IOWA GENERAL ASSEMBLY, TERRY BRANSTAD  
CATHERINE ZAMORA CARTEE for BREAN A WOODS, BECCA FREDERICK  
JEFFREY SCOTT THOMPSON for STATE OF IOWA, IOWA DEPARTMENT OF EDUCATION,  
IOWA GENERAL ASSEMBLY, TERRY BRANSTAD

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**PARTIES NOT SERVED BY EDMS**

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**Note:** The rules define the clerk of court as responsible for service of court-generated documents. Additionally on small claims cases that by statute can be served by certified mail, when the filer has selected and paid for

certified mail in the electronic filing system or at the clerk of court office, the clerk of court is responsible for service of the original notice and answer and appearance by certified mail in accordance with the Code of Iowa.

\*The moving party or the individual who filed it is responsible for service of a document if it was not served by the electronic filing system. That includes, but is not limited to, service of all petitions and original notices [rule 16.316(3)], service of documents on all parties seeking to intervene in confidential cases [16.321(1)(c)], and service of all documents on non-registered parties [16.317(1)(b)].

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**Thompson, Jeffrey [AG]**

---

**From:** efilings@mail@iowacourts.gov  
**Sent:** Tuesday, January 10, 2017 10:44 AM  
**To:** Thompson, Jeffrey [AG]  
**Subject:** Courtesy NEF RE: LACE128389

\*\*\*\*\* IMPORTANT NOTICE - READ THIS INFORMATION \*\*\*\*\*  
NOTICE OF ELECTRONIC FILING OR PRESENTATION [NEF]

---

**A filing has been submitted to the court RE: LACE128389**

**Judge:**

**Official File Stamp:** 01-10-2017:10:43:57  
**Court:** TRIAL COURT  
Scott  
**Case Title:** WOODS, BREAN, ET AL., V. STATE OF IOWA  
**Document(s) Submitted:** APPEARANCE  
**Filed by or in behalf of:** Chase Cartee

You may review this filing by clicking on the following link to take you to your [cases](#).

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---

**The electronic filing system has served the following people:**

MEGHAN LEE GAVIN for STATE OF IOWA, IOWA DEPARTMENT OF EDUCATION, IOWA GENERAL ASSEMBLY, TERRY BRANSTAD

JORDAN GENEVIEVE ESBROOK for STATE OF IOWA, IOWA DEPARTMENT OF EDUCATION, IOWA GENERAL ASSEMBLY, TERRY BRANSTAD

CATHERINE ZAMORA CARTEE for BREAN A WOODS, BECCA FREDERICK

JEFFREY SCOTT THOMPSON for STATE OF IOWA, IOWA DEPARTMENT OF EDUCATION, IOWA GENERAL ASSEMBLY, TERRY BRANSTAD

---

**PARTIES NOT SERVED BY EDMS**

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---

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**Thompson, Jeffrey [AG]**

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**From:** efilng.mail@iowacourts.gov  
**Sent:** Tuesday, January 10, 2017 9:29 AM  
**To:** Thompson, Jeffrey [AG]  
**Subject:** Courtesy NEF RE: LACE128389

\*\*\*\*\* IMPORTANT NOTICE - READ THIS INFORMATION \*\*\*\*\*  
NOTICE OF ELECTRONIC FILING OR PRESENTATION [NEF]

---

**A filing has been submitted to the court RE: LACE128389**

**Judge:**

**Official File Stamp:** 01-09-2017:16:03:41  
**Court:** TRIAL COURT  
Scott  
**Case Title:** WOODS, BREAN, ET AL., V. STATE OF IOWA  
**Document(s) Submitted:** APPEARANCE Defendants' Appearance  
**Filed by or in behalf of:** Meghan Gavin

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---

**The electronic filing system has served the following people:**

MEGHAN LEE GAVIN for STATE OF IOWA, IOWA DEPARTMENT OF EDUCATION, IOWA GENERAL ASSEMBLY, TERRY BRANSTAD

JORDAN GENEVIEVE ESBROOK for STATE OF IOWA, IOWA DEPARTMENT OF EDUCATION, IOWA GENERAL ASSEMBLY, TERRY BRANSTAD

CATHERINE ZAMORA CARTEE for BREAN A WOODS, BECCA FREDERICK

JEFFREY SCOTT THOMPSON for STATE OF IOWA, IOWA DEPARTMENT OF EDUCATION, IOWA GENERAL ASSEMBLY, TERRY BRANSTAD

MEGHAN GAVIN

---

**PARTIES NOT SERVED BY EDMS**

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---

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**Thompson, Jeffrey [AG]**

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**From:** efilings@mail@iowacourts.gov  
**Sent:** Wednesday, December 07, 2016 3:45 PM  
**To:** Thompson, Jeffrey [AG]  
**Subject:** Courtesy NEF RE: 15-2099

\*\*\*\*\* IMPORTANT NOTICE - READ THIS INFORMATION \*\*\*\*\*  
NOTICE OF ELECTRONIC FILING OR PRESENTATION [NEF]

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**A filing has been made in the following case:** 15-2099

**Official File Stamp:** 12-07-2016:00:00:00  
**Court:** Appellate Court  
**Case Title:** Homan v. Branstad  
**Event(s):**

**Document(s) Filed**                      **Filed by or on behalf of**  
PROCEDENDO

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---

The electronic filing system has served the following people

THOMPSON, JEFFREY SCOTT for BRANSTAD TERRY E  
BAUMGARTNER, SARAH MARIE for MCCOY, MATTHEW, HOMAN,  
DANNY, TAYLOR, RICH, KEARNS, JERRY, SMITH, MARK,  
COURTNEY, THOMAS, PETERSEN, JANET ANN, HUNTER, BRUCE,  
HANSON, CURT, BISIGNANO, TONY, QUIRMBACH, HERMAN,  
DEARDEN, DICK, STAED, ARTHUR MATTHEW, ABDUL-SAMAD,  
AKO, OLDSON, JO, GAINES, RUTH ANN, STECKMAN, SHARON,  
TAYLOR, TODD E., GASKILL, MARY, RUNNING-MARQUARDT,  
KIRSTEN, BROWN-POWERS, TIMI, JACOBY, DAVE, JOCHUM, PAM,  
GRONSTAL, MICHAEL EDWARD, BEARINGER, BRUCE  
BOULTON, NATHANIEL RANDELL for MCCOY, MATTHEW,  
HOMAN, DANNY, TAYLOR, RICH, KEARNS, JERRY, SMITH, MARK,  
COURTNEY, THOMAS, PETERSEN, JANET ANN, HUNTER, BRUCE,  
HANSON, CURT, BISIGNANO, TONY, QUIRMBACH, HERMAN,  
DEARDEN, DICK, STAED, ARTHUR MATTHEW, ABDUL-SAMAD,  
AKO, OLDSON, JO, GAINES, RUTH ANN, STECKMAN, SHARON,  
TAYLOR, TODD E., GASKILL, MARY, RUNNING-MARQUARDT,  
KIRSTEN, BROWN-POWERS, TIMI, JACOBY, DAVE, JOCHUM, PAM,

GRONSTAL, MICHAEL EDWARD, BEARINGER, BRUCE  
HEDBERG, MARK T. for MCCOY, MATTHEW, HOMAN, DANNY,  
TAYLOR, RICH, KEARNS, JERRY, SMITH, MARK, COURTNEY,  
THOMAS, PETERSEN, JANET ANN, HUNTER, BRUCE, HANSON,  
CURT, BISIGNANO, TONY, QUIRMBACH, HERMAN, DEARDEN,  
DICK, STAED, ARTHUR MATTHEW, ABDUL-SAMAD, AKO,  
OLDSON, JO, GAINES, RUTH ANN, STECKMAN, SHARON, TAYLOR,  
TODD E., GASKILL, MARY, RUNNING-MARQUARDT, KIRSTEN,  
BROWN-POWERS, TIMI, JACOBY, DAVE, JOCHUM, PAM,  
GRONSTAL, MICHAEL EDWARD, BEARINGER, BRUCE  
GAVIN, MEGHAN LEE for BRANSTAD TERRY E

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**Note:** The clerk of court is responsible for service of court-generated documents. See generally rule 16.320(2)

\*The filer is responsible for service of a document if it was not served by the electronic filing system. See generally rule 16.317 and 16.321.

**Thompson, Jeffrey [AG]**

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**From:** efilings@mail@iowacourts.gov  
**Sent:** Wednesday, December 07, 2016 3:46 PM  
**To:** Thompson, Jeffrey [AG]  
**Subject:** Courtesy NEF RE: CVCV050143

\*\*\*\*\* IMPORTANT NOTICE - READ THIS INFORMATION \*\*\*\*\*  
NOTICE OF ELECTRONIC FILING OR PRESENTATION [NEF]

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**A filing has been submitted to the court RE: CVCV050143**

**Judge:** DOUGLAS F STASKAL

**Official File Stamp:** 12-07-2016:15:45:23

**Court:** TRIAL COURT  
Polk

**Case Title:** HOMAN, TAYLOR, ET AL VS BRANSTAD AND PALMER

**Document(s) Submitted:** SUPREME COURT OPINION

**Filed by or in behalf of:** David Wiggins

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NATHANIEL RANDELL BOULTON for TONY BISIGNANO, JANET ANN PETERSEN, RUTH ANN GAINES, BRUCE HUNTER, MICHAEL EDWARD GRONSTAL, TODD E TAYLOR, AKO ABDUL SAMAD, DANNY HOMAN, ARTHUR MATTHEW STAED, HERMAN QUIRMBACH, DICK DEARDEN, JO OLDSON, SHARON STECKMAN, KIRSTEN RUNNING MARQUARDT, MARY GASKILL, RICH TAYLOR, TIMI BROWN POWERS, JERRY KEARNS, DAVE JACOBY, MARK SMITH, THOMAS COURTNEY, CURT HANSON, MATT MCCOY, BRUCE BEARINGER, PAM JOCHUM

MARK TERRY HEDBERG for TONY BISIGNANO, JANET ANN PETERSEN, RUTH ANN GAINES, BRUCE HUNTER, MICHAEL EDWARD GRONSTAL, TODD E TAYLOR, AKO ABDUL SAMAD, DANNY HOMAN, ARTHUR MATTHEW STAED, HERMAN QUIRMBACH, DICK DEARDEN, JO OLDSON, SHARON STECKMAN, KIRSTEN RUNNING MARQUARDT, MARY GASKILL, RICH TAYLOR, TIMI BROWN POWERS, JERRY KEARNS, DAVE JACOBY, MARK SMITH, THOMAS COURTNEY, CURT HANSON, MATT MCCOY, BRUCE BEARINGER, PAM JOCHUM

**PARTIES NOT SERVED BY EDMS**

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DIANE MARIE STAHLER for CHARLES PALMER, TERRY E BRANSTAD

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**Thompson, Jeffrey [AG]**

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**From:** efilings@mail@iowacourts.gov  
**Sent:** Wednesday, December 07, 2016 3:46 PM  
**To:** Thompson, Jeffrey [AG]  
**Subject:** Courtesy NEF RE: CVCV050143

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NOTICE OF ELECTRONIC FILING OR PRESENTATION [NEF]

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**A filing has been submitted to the court RE: CVCV050143**

**Judge:** DOUGLAS F STASKAL

**Official File Stamp:** 12-07-2016:15:45:22

**Court:** TRIAL COURT  
Polk

**Case Title:** HOMAN, TAYLOR, ET AL VS BRANSTAD AND PALMER

**Document(s) Submitted:** PROCEDENDO

**Filed by or in behalf of:** SupremeCC

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NATHANIEL RANDELL BOULTON for TONY BISIGNANO, JANET ANN PETERSEN, RUTH ANN GAINES, BRUCE HUNTER, MICHAEL EDWARD GRONSTAL, TODD E TAYLOR, AKO ABDUL SAMAD, DANNY HOMAN, ARTHUR MATTHEW STAED, HERMAN QUIRMBACH, DICK DEARDEN, JO OLDSON, SHARON STECKMAN, KIRSTEN RUNNING MARQUARDT, MARY GASKILL, RICH TAYLOR, TIMI BROWN POWERS, JERRY KEARNS, DAVE JACOBY, MARK SMITH, THOMAS COURTNEY, CURT HANSON, MATT MCCOY, BRUCE BEARINGER, PAM JOCHUM

MARK TERRY HEDBERG for TONY BISIGNANO, JANET ANN PETERSEN, RUTH ANN GAINES, BRUCE HUNTER, MICHAEL EDWARD GRONSTAL, TODD E TAYLOR, AKO ABDUL SAMAD, DANNY HOMAN, ARTHUR MATTHEW STAED, HERMAN QUIRMBACH, DICK DEARDEN, JO OLDSON, SHARON STECKMAN, KIRSTEN RUNNING MARQUARDT, MARY GASKILL, RICH TAYLOR, TIMI BROWN POWERS, JERRY KEARNS, DAVE JACOBY, MARK SMITH, THOMAS COURTNEY, CURT HANSON, MATT MCCOY, BRUCE BEARINGER, PAM JOCHUM

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## Thompson, Jeffrey [AG]

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**From:** Gavin, Meghan [AG]  
**Sent:** Monday, April 03, 2017 10:37 AM  
**To:** Thompson, Jeffrey [AG]; Ranscht, David [AG]  
**Subject:** RE: Lt Gov stuff

<http://www.independentmail.com/story/news/local/2017/01/18/sc-supreme-court-ruling-may-pave-way-bryant-become-lieutenant-governor/96736648/>

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**From:** Thompson, Jeffrey [AG]  
**Sent:** Monday, April 03, 2017 10:24 AM  
**To:** Ranscht, David [AG]; Gavin, Meghan [AG]  
**Subject:** Lt Gov stuff

South Carolina just went through the succession issues with Nicki Haley leaving. Could one of you find the S.C. constitution and any pertinent cases? Thanks.

## Thompson, Jeffrey [AG]

---

**From:** Gavin, Meghan [AG]  
**Sent:** Monday, April 03, 2017 10:35 AM  
**To:** Thompson, Jeffrey [AG]; Ranscht, David [AG]  
**Subject:** RE: Lt Gov stuff

South Carolina recently amended its constitution to specifically grant the governor the power to appoint a Lt governor. Currently, the law calls for a complete domino. The president pro tem of the senate was elevated to Lt. governor.

Word of caution - this is google research since I can't access westlaw on my tablet.

SECTION 11. Death, resignation, removal of Governor.

Section effective until the general election of 2018 and upon the joint election of the Governor and Lieutenant Governor. See also, section effective beginning with the general election of 2018 and upon the joint election of the Governor and Lieutenant Governor.

In the case of the removal of the Governor from office by impeachment, death, resignation, disqualification, disability, or removal from the State, the Lieutenant Governor shall be Governor. In case the Governor be impeached, the Lieutenant Governor shall act in his stead and have his powers until judgment in the case shall have been pronounced. In the case of the temporary disability of the Governor and in the event of the temporary absence of the Governor from the State, the Lieutenant Governor shall have full authority to act in an emergency. (1972 (57) 3171; 1973 (58) 48.) SECTION 11.

Death, resignation, removal of Governor, Lieutenant Governor.

Section effective beginning with the general election of 2018 and upon the joint election of the Governor and Lieutenant Governor. See also, section effective until the general election of 2018 and upon the joint election of the Governor and Lieutenant Governor.

In the case of the removal of the Governor from office by impeachment, death, resignation, disqualification, disability, or removal from the State, the Lieutenant Governor shall be Governor. In case the Governor be impeached, the Lieutenant Governor shall act in his stead and have his powers until judgment in the case shall have been pronounced. In the case of the temporary disability of the Governor and in the event of the temporary absence of the Governor from the State, the Lieutenant Governor shall have full authority to act in an emergency. In the case of the removal of the Lieutenant Governor from office by impeachment, death, resignation, disqualification, disability, or removal from the State, the Governor shall appoint, with the advice and consent of the Senate, a successor to fulfill the unexpired term.

---

**From:** Thompson, Jeffrey [AG]  
**Sent:** Monday, April 03, 2017 10:24 AM  
**To:** Ranscht, David [AG]; Gavin, Meghan [AG]  
**Subject:** Lt Gov stuff

South Carolina just went through the succession issues with Nicki Haley leaving. Could one of you find the S.C. constitution and any pertinent cases? Thanks.

## Thompson, Jeffrey [AG]

---

**From:** Gavin, Meghan [AG]  
**Sent:** Wednesday, February 15, 2017 1:34 PM  
**To:** Thompson, Jeffrey [AG]; Ranscht, David [AG]  
**Subject:** Arkansas, Oklahoma, and Oregon

You asked me to look into whether the new governor appointed a lieutenant governor after the court concluded that the lt. governor "became" governor.  
Short answer – No for each state.

Arkansas – Arkansas held a special election to fill the position of lt. governor after the lt. governor became governor following the election of President Clinton. Mike Huckabee won that special election. However, Arkansas is like Iowa pre-1988, where the lt. governor is elected separately from the governor.

Oklahoma – After the court in Oklahoma determined that the lt governor became governor in 1926, the office of lt. governor was "vacant" and held open until the next election. Just a few years later, the Governor of Oklahoma was impeached and the lt. governor again became governor, leaving the lt. governor office vacant.

Oregon – The Court in Oregon determined that the SOS became governor in 1877. For over a year Chadwick held BOTH the office of governor and the SOS until the next election.



**Meghan Gavin**  
**Assistant Attorney General**  
Office of the Attorney General of Iowa  
1305 E. Walnut St.  
Des Moines, Iowa 50319  
Main: (515) 281-5164 | Direct: (515) 281-6736  
Email: [Meghan.Gavin@iowa.gov](mailto:Meghan.Gavin@iowa.gov) | [www.iowaattorneygeneral.gov](http://www.iowaattorneygeneral.gov)

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## Thompson, Jeffrey [AG]

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**From:** Gavin, Meghan [AG]  
**Sent:** Thursday, February 02, 2017 4:06 PM  
**To:** Thompson, Jeffrey [AG]; Ranscht, David [AG]  
**Subject:** 1982 Election

Okay I think I have figured out the catalyst for the 1988 amendment. In 1982 in Governor Branstad's first election, for the first time in Iowa history the people elected a republican governor and a democrat lt. governor. Twice previously, we had elected a republican lt. governor with a democratic governor.

[https://en.wikipedia.org/wiki/Robert\\_T.\\_Anderson](https://en.wikipedia.org/wiki/Robert_T._Anderson)

I haven't found any contemporaneous evidence that anything in the 1988 amendment was designed to address the question of whether a new lt. governor could be appointed.

## Thompson, Jeffrey [AG]

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**From:** Gavin, Meghan [AG]  
**Sent:** Sunday, December 11, 2016 5:12 PM  
**To:** Ranscht, David [AG]; Thompson, Jeffrey [AG]  
**Subject:** 1988 Amendment

It occurred to me that we should look at the legislative history for the 1988 amendment to see if the intention was to modernize succession as well as allow for the joint election of the governor and lieutenant governor. I've pulled the online version but will ask the state librarian to pull the complete versions tomorrow. I have a discovery conference in front of judge Hansen first thing tomorrow morning but am otherwise available.

Since the Lt governor receives the compensation for the governor when performing that offices duties, is the debate focused on the title?

Thanks,  
Meghan

## Thompson, Jeffrey [AG]

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**From:** Gavin, Meghan [AG]  
**Sent:** Friday, December 09, 2016 1:03 PM  
**To:** Thompson, Jeffrey [AG]  
**Subject:** RE: Research - succession

Will do.

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**From:** Thompson, Jeffrey [AG]  
**Sent:** Friday, December 09, 2016 12:38 PM  
**To:** Gavin, Meghan [AG]  
**Subject:** Research - succession

Since David is doing survey of state constitutions and cases would you focus on finding law review or other secondary sources? We will need to plan a meeting to discuss first thing next week.

Sent from my iPhone

## Thompson, Jeffrey [AG]

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**From:** Gavin, Meghan [AG]  
**Sent:** Thursday, December 08, 2016 3:00 PM  
**To:** Ranscht, David [AG]; Thompson, Jeffrey [AG]  
**Subject:** FW: Annals of Iowa - Google Books. Interesting history, all predations 1923

More historical info.

---

**From:** Meghan Gavin [megsgavs@gmail.com]  
**Sent:** Thursday, December 08, 2016 2:59 PM  
**To:** Gavin, Meghan [AG]  
**Subject:** Fwd: Annals of Iowa - Google Books. Interesting history, all predations 1923

Sent from my iPhone

Begin forwarded message:

**From:** Pam <pamgriebel@aol.com<mailto:pamgriebel@aol.com>>  
**Date:** December 8, 2016 at 2:48:41 PM CST  
**To:** Meghan Gavin <MegsGavs@gmail.com<mailto:MegsGavs@gmail.com>>  
**Subject:** Annals of Iowa - Google Books. Interesting history, all predations 1923.

<https://books.google.com/books?id=tUtIAAAAYAAJ&pg=PA531&lpg=PA531&dq=if+iowa+governor+resigns+does+it+governor+become+governor+or+just+perform+duties+of+the+office&source=bl&ots=fRDBBzV08D&sig=0ARFc70rQD6J7WBxRwsGT4FOYSY&hl=en&sa=X&ved=0ahUKEwjn0ceVuuXQAhWCi1QKHcPcCgMQ6AEIPzAE#v=onepage&q=if%20iowa%20governor%20resigns%20does%20it%20governor%20become%20governor%20or%20just%20perform%20duties%20of%20the%20office&f=false>

Sent from my iPad

## Thompson, Jeffrey [AG]

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**From:** Gavin, Meghan [AG]  
**Sent:** Thursday, December 08, 2016 2:39 PM  
**To:** Ranscht, David [AG]; Thompson, Jeffrey [AG]  
**Subject:** RE: Constitutional issue re: Lt. Gov assuming Gov's powers

[https://govt.westlaw.com/iaag/Document/I6adbf60af80111df9b8c850332338889?originationContext=Search+Result&listSource=Search&viewType=FullText&navigationPath=Search%2fv3%2fsearch%2fresults%2fnavigation%2fi0ad70f7000000158dfad385267b9973f%3fstartIndex%3d1%26Nav%3dADMINDECISION\\_PUBLICVIEW%26contextData%3d\(sc.Default\)&rank=2&list=ADMINDECISION\\_PUBLICVIEW&transitionType=SearchItem&contextData=\(sc.Search\)&t\\_querytext=Governor+resignation+successor+vacancy+lieutenant+governor+duties+and+responsibilities&t\\_Method=WIN](https://govt.westlaw.com/iaag/Document/I6adbf60af80111df9b8c850332338889?originationContext=Search+Result&listSource=Search&viewType=FullText&navigationPath=Search%2fv3%2fsearch%2fresults%2fnavigation%2fi0ad70f7000000158dfad385267b9973f%3fstartIndex%3d1%26Nav%3dADMINDECISION_PUBLICVIEW%26contextData%3d(sc.Default)&rank=2&list=ADMINDECISION_PUBLICVIEW&transitionType=SearchItem&contextData=(sc.Search)&t_querytext=Governor+resignation+successor+vacancy+lieutenant+governor+duties+and+responsibilities&t_Method=WIN)

Here's a relevant opinion free m Pam.

---

**From:** Ranscht, David [AG]  
**Sent:** Thursday, December 08, 2016 12:02 PM  
**To:** Thompson, Jeffrey [AG]; Gavin, Meghan [AG]  
**Subject:** RE: Constitutional issue re: Lt. Gov assuming Gov's powers

Cool table indeed.

Here are two more cases (WI and MT). I have a bunch more in a folder to read after lunch.

[cid:image001.png@01D25149.FECA50E0]<<http://www.iowaattorneygeneral.gov/>>

David Ranscht  
Assistant Attorney General  
Office of the Attorney General of Iowa  
Licensing & Administrative Law Division  
1305 E. Walnut St.  
Des Moines, Iowa 50319  
Main: (515) 281-5164 | Direct: (515) 281-7175  
Email: [david.ranscht2@iowa.gov](mailto:david.ranscht2@iowa.gov)<<mailto:david.ranscht2@iowa.gov>> |  
[www.iowaattorneygeneral.gov](http://www.iowaattorneygeneral.gov/)<<http://www.iowaattorneygeneral.gov/>>

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**From:** Thompson, Jeffrey [AG]  
**Sent:** Thursday, December 08, 2016 11:46 AM  
**To:** Ranscht, David [AG]; Gavin, Meghan [AG]  
**Subject:** FW: Constitutional issue re: Lt. Gov assuming Gov's powers



See below. Gotta love Wikipedia.

Can we print the cool table?

From: Greenwood, Geoff [AG]  
Sent: Thursday, December 08, 2016 11:13 AM  
To: Thompson, Jeffrey [AG]  
Subject: FW: Constitutional issue re: Lt. Gov assuming Gov's powers

From: Mark O. Lambert [mailto:marklambert@mchsi.com]  
Sent: Thursday, December 08, 2016 11:12 AM  
To: Greenwood, Geoff [AG]  
Cc: Tabor, Eric [AG]  
Subject: Re: Constitutional issue re: Lt. Gov assuming Gov's powers

Thanks, Geoff. One more thing, historically, when an Iowa Gov has left office before the end of his term, there has not been a Lt. Gov. appointed. Most of the time, these were very short periods of time, though.  
[https://en.wikipedia.org/wiki/List\\_of\\_Governors\\_of\\_Iowa](https://en.wikipedia.org/wiki/List_of_Governors_of_Iowa)

Mark

---

From: "Geoff Greenwood [AG]" <Geoff.Greenwood@iowa.gov<mailto:Geoff.Greenwood@iowa.gov>>  
To: "Mark O. Lambert" <marklambert@mchsi.com<mailto:marklambert@mchsi.com>>, "Eric Tabor [AG]" <Eric.Tabor@iowa.gov<mailto:Eric.Tabor@iowa.gov>>  
Sent: Thursday, December 8, 2016 10:25:12 AM  
Subject: RE: Constitutional issue re: Lt. Gov assuming Gov's powers

Thanks for contacting us, Mark. We're researching it and will add this to the conversation.

Best regards,

[cid:image001.png@01D25149.FECA50E0]<<http://www.iowaattorneygeneral.gov/>>

Geoff Greenwood  
Communications Director  
Office of the Attorney General of Iowa  
1305 E. Walnut St.  
Des Moines, Iowa 50319  
Main: (515) 281-5164 | Direct: (515) 281-6699  
Email: [geoff.greenwood@iowa.gov](mailto:geoff.greenwood@iowa.gov) |  
[www.iowaattorneygeneral.gov](http://www.iowaattorneygeneral.gov/)<<http://www.iowaattorneygeneral.gov/>>

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immediately by reply email or telephone. Any unintended transmission of this email message does not constitute a waiver of any applicable privilege or protection. Thank you.

From: Mark O. Lambert [mailto:marklambert@mchsi.com]  
Sent: Thursday, December 08, 2016 9:54 AM  
To: Greenwood, Geoff [AG]; Tabor, Eric [AG]  
Subject: Constitutional issue re: Lt. Gov assuming Gov's powers  
Importance: High

Eric and Geoff:

In Massachusetts, when Governor William Weld resigned in 1997, Lt. Gov. Paul Cellucci became "Acting Governor" – not "Governor." When Celluci resigned to become US Ambassador to Canada during the Bush Administration in 2001, his Lt. Gov. Jane Swift became "Acting Governor."

Massachusetts Constitution has a similar provision to the Iowa Constitution:

III.--Whenever the chair of the Governor shall be vacant, by reason of his death, or absence from the Commonwealth, or otherwise, the Lieutenant-Governor, for the time being, shall, during such vacancy, perform all the duties incumbent upon the Governor, and shall have and exercise all the powers and authorities, which by this Constitution the Governor is vested with, when personally present.

Hope this is helpful.

--Mark

Mark Lambert

Attorney at Law

Polk City

515-681-0285

## Thompson, Jeffrey [AG]

---

**From:** Greenwood, Geoff [AG]  
**Sent:** Wednesday, May 03, 2017 2:37 PM  
**To:** Thompson, Jeffrey [AG]; Tabor, Eric [AG]  
**Subject:** FW: Open Records Request for General Miller

---

**From:** Noble, Jason [mailto:jnoble2@registermedia.com]  
**Sent:** Wednesday, May 03, 2017 2:25 PM  
**To:** Greenwood, Geoff [AG]  
**Subject:** FW: Open Records Request for General Miller

Hi, Geoff, can you say whether your office has actually received this open records request and how you'll respond to it? Is work product in the development of an attorney general's opinion subject to the open records law? How long do you expect it will take to provide the documents and how much will it cost? What does General Miller think about receiving this request from the Iowa GOP?

Thanks,

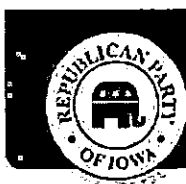
Jason Noble  
Chief Political Reporter  
The Des Moines Register  
o: 515-286-2532  
c: 515-441-0600  
[jnoble2@dmreg.com](mailto:jnoble2@dmreg.com)  
[@jasonnobleDMR](#)

---

**From:** Iowa GOP Press [mailto:media=iowagop.org@mail72.sea21.rsgsv.net] **On Behalf Of** Iowa GOP Press  
**Sent:** Wednesday, May 03, 2017 1:35 PM  
**To:** Noble, Jason <[jnoble2@registermedia.com](mailto:jnoble2@registermedia.com)>  
**Subject:** Open Records Request for General Miller

Republican Party of Iowa Press Release

[View this email in your browser](#)



Republican Party  
of IOWA

"First in the Nation"

# Kaufmann Statement on Open Records Request from AG Miller's Office

For IMMEDIATE RELEASE

May 3, 2017

Today the Republican Party of Iowa filed an open records request with Attorney General Tom Miller's office. "In Miller's politically tainted press conference Monday where he radically reversed his position on Lt Governor Reynolds' authority to appoint a Lt. Governor herself, he repeatedly referenced the arguments of his staff in convincing him to flip flop. Iowans have a right to know all that went into this dramatic reversal," **said RPI Chairman Jeff Kaufmann.**

General Miller does not use email, so we have requested relevant documents from his staff, including: Jeff Thompson, Eric Tabor, Geoff Greenwood, Kevin McCarthy, Nathan Blake, Rob Sand, John McCormally, Meghan Gavin, and David Ranscht.

"Since General Miller stated "we've worked hard on this" and "A lot of research has been done" on this issue for nearly five months, we're certain there will be volumes of records responsive to this request," **added Kaufmann.** "With such a dramatic and coincidentally timed reversal of his opinion, the public has a right to know who lobbied him on this issue, what public officials were for and against this stunning reversal, and what outside influences leaned on him to take this politically motivated action. "

Finally, we've requested any prior drafts of his opinion. His central argument, that Lt Governor Reynolds will be both Governor and Lt. Governor simultaneously, is so ridiculous that four times since he was elected, General Miller issued formal AG opinions acknowledging the prohibition of what he is advocating now.

"AG Miller's reversal the evening before Governor Branstad's confirmation hearing is stunning, unprecedented, and reeks of politics. I look forward to the AG's prompt reply to our request," **concluded Kaufmann.**



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Communications Team

[media@iowagop.org](mailto:media@iowagop.org)

515-282-8105

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Republican Party of Iowa  
621 E. 9th St.  
Des Moines, IA 50309

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## Thompson, Jeffrey [AG]

---

**From:** Greenwood, Geoff [AG]  
**Sent:** Tuesday, May 02, 2017 4:37 PM  
**To:** Ed Tibbetts  
**Subject:** RE: Did you get my email earlier?

Ed:

I got a chance to read the piece you referred to. As this is hypothetical, it's not something we feel is appropriate to answer at this stage.

Thanks for your understanding,

Geoff

---

**From:** Ed Tibbetts [mailto:ETibbetts@qctimes.com]  
**Sent:** Tuesday, May 02, 2017 12:13 PM  
**To:** Greenwood, Geoff [AG]  
**Subject:** RE: Did you get my email earlier?

Also, Geoff:

I'm curious if the lieutenant governor would be able to appoint a successor if she simply resigns her position as lieutenant governor, thus creating a vacancy? Pete McRoberts brought this up in a blog post.

Ed

---

**From:** Greenwood, Geoff [AG] [mailto:Geoff.Greenwood@iowa.gov]  
**Sent:** Tuesday, May 02, 2017 12:11 PM  
**To:** Ed Tibbetts  
**Subject:** RE: Did you get my email earlier?

He's been tied up, so I'll try to check with him early this afternoon.

Thanks,

Geoff

---

**From:** Ed Tibbetts [mailto:ETibbetts@qctimes.com]  
**Sent:** Tuesday, May 02, 2017 11:49 AM  
**To:** Greenwood, Geoff [AG]  
**Subject:** Did you get my email earlier?

**Ed Tibbetts**  
Newsroom  
Quad-City Times  
563-383-2327  
[qctimes.com](http://qctimes.com)



**QCT media group**  
print • digital • mobile • social  
qctmediagroup.com

## Thompson, Jeffrey [AG]

---

**From:** Greenwood, Geoff [AG]  
**Sent:** Tuesday, May 02, 2017 2:35 PM  
**To:** Thompson, Jeffrey [AG]; Tabor, Eric [AG]  
**Subject:** Follow-up questions

**Importance:** High

Jeff & Eric:

Could you provide some clarity with these two similar questions:

1. Geoff, a number of people are telling me that the Attorney General's opinion leaves an easy out for Kim Reynolds by saying the offices of governor and lieutenant governor merge, rather than concluding that under Article IV, Section 17, she would be only "acting governor." Once she is sworn in as governor, she can formally resign the position of lieutenant governor. Then the 2009 law allows her to fill the vacancy in the lieutenant governor's office. Does your office have a comment on why this reasoning is invalid?

2. I'm curious if the lieutenant governor would be able to appoint a successor if she simply resigns her position as lieutenant governor, thus creating a vacancy? Pete McRoberts brought this up in a [blog post](#).

Thanks,

Geoff



**Geoff Greenwood**  
**Communications Director**  
Office of the Attorney General of Iowa  
1305 E. Walnut St.  
Des Moines, Iowa 50319  
Main: (515) 281-5164 | Direct: (515) 281-6699  
Email: [geoff.greenwood@iowa.gov](mailto:geoff.greenwood@iowa.gov) | [www.iowaattorneygeneral.gov](http://www.iowaattorneygeneral.gov)

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## Thompson, Jeffrey [AG]

---

**From:** Greenwood, Geoff [AG]  
**Sent:** Tuesday, May 02, 2017 12:47 PM  
**To:** Tabor, Eric [AG]; Thompson, Jeffrey [AG]  
**Subject:** Fwd: Did you get my email earlier?

Sent from my iPhone

Begin forwarded message:

**From:** Ed Tibbetts <[ETibbetts@gctimes.com](mailto:ETibbetts@gctimes.com)>  
**Date:** May 2, 2017 at 12:12:47 PM CDT  
**To:** "Greenwood, Geoff [AG]" <[Geoff.Greenwood@iowa.gov](mailto:Geoff.Greenwood@iowa.gov)>  
**Subject:** RE: Did you get my email earlier?

Also, Geoff:

I'm curious if the lieutenant governor would be able to appoint a successor if she simply resigns her position as lieutenant governor, thus creating a vacancy? Pete McRoberts brought this up in a blog post.

Ed

---

**From:** Greenwood, Geoff [AG] [<mailto:Geoff.Greenwood@iowa.gov>]  
**Sent:** Tuesday, May 02, 2017 12:11 PM  
**To:** Ed Tibbetts  
**Subject:** RE: Did you get my email earlier?

He's been tied up, so I'll try to check with him early this afternoon.

Thanks,

Geoff

---

**From:** Ed Tibbetts [<mailto:ETibbetts@gctimes.com>]  
**Sent:** Tuesday, May 02, 2017 11:49 AM  
**To:** Greenwood, Geoff [AG]  
**Subject:** Did you get my email earlier?

**Ed Tibbetts**  
Newsroom  
Quad-City Times  
563-383-2327  
[gctimes.com](http://gctimes.com)



## Thompson, Jeffrey [AG]

---

**From:** Greenwood, Geoff [AG]  
**Sent:** Tuesday, May 02, 2017 11:03 AM  
**To:** Tabor, Eric [AG]; Thompson, Jeffrey [AG]  
**Subject:** FW: Yesterday's opinion

---

**From:** Ed Tibbetts [mailto:ETibbetts@qctimes.com]  
**Sent:** Tuesday, May 02, 2017 10:59 AM  
**To:** Greenwood, Geoff [AG]  
**Subject:** Yesterday's opinion

Hi, Geoff:

I had some technical difficulties during yesterday's news conference, so I didn't get a chance to ask a question of the attorney general. I'd like to know why he would not challenge the lieutenant governor if she tries to appoint a replacement? He said he wouldn't, but I did not hear an explanation for that position.

Thanks,

Ed

**Ed Tibbetts**  
Newsroom  
Quad-City Times  
563-383-2327  
[qctimes.com](http://qctimes.com)



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## Thompson, Jeffrey [AG]

---

**From:** Greenwood, Geoff [AG]  
**Sent:** Tuesday, May 02, 2017 9:07 AM  
**To:** Thompson, Jeffrey [AG]; Tabor, Eric [AG]  
**Subject:** FW: thank you

**From:** Laura Belin [mailto:[desmoinesdem@bleedingheartland.com](mailto:desmoinesdem@bleedingheartland.com)]  
**Sent:** Tuesday, May 02, 2017 9:04 AM  
**To:** Greenwood, Geoff [AG]  
**Subject:** Re: thank you

Geoff, a number of people are telling me that the Attorney General's opinion leaves an easy out for Kim Reynolds by saying the offices of governor and lieutenant governor merge, rather than concluding that under Article IV, Section 17, she would be only "acting governor."

Once she is sworn in as governor, she can formally resign the position of lieutenant governor. Then the 2009 law allows her to fill the vacancy in the lieutenant governor's office.

Does your office have a comment on why this reasoning is invalid?

Thanks,

Laurie

On Mon, May 1, 2017 at 3:42 PM, Laura Belin <[desmoinesdem@bleedingheartland.com](mailto:desmoinesdem@bleedingheartland.com)> wrote:  
No worries, I could still hear what was happening.

On Mon, May 1, 2017 at 3:20 PM, Greenwood, Geoff [AG] <[Geoff.Greenwood@iowa.gov](mailto:Geoff.Greenwood@iowa.gov)> wrote:

You're welcome. I know you've been following this closely, and it seemed to make sense for you to hear it first-hand. Unfortunately, someone on the call did not mute their phone and it must have been terribly distracting on the call.

As to the political potshots, it is disappointing. But we hope the opinion speaks for itself.

Geoff

**From:** Laura Belin [mailto:[desmoinesdem@bleedingheartland.com](mailto:desmoinesdem@bleedingheartland.com)]  
**Sent:** Monday, May 01, 2017 3:16 PM

**To:** Greenwood, Geoff [AG]  
**Subject:** thank you

Hello Geoff,

Thanks again for the heads up about the call-in opportunity.

I don't have their individual e-mail addresses, but please pass along my appreciation to the solicitor general and the other staff members who worked closely on today's formal opinion. It was very well-researched.

The reaction from the governor's office is disappointing but demonstrates how much political pressure was on the Attorney General's Office to reach a different conclusion. Thank you for standing up for the rule of law.

Yours,

Laurie

1705 Plaza Circle

Windsor Heights, IA 50324

(515) 276-6971

<http://www.bleedingheartland.com>

## Thompson, Jeffrey [AG]

---

**From:** Greenwood, Geoff [AG]  
**Sent:** Monday, May 01, 2017 6:47 PM  
**To:** Tabor, Eric [AG]; Thompson, Jeffrey [AG]  
**Cc:** Gavin, Meghan [AG]; Ranscht, David [AG]  
**Subject:** FW: thank you

**From:** Laura Belin [mailto:desmoinesdem@bleedingheartland.com]  
**Sent:** Monday, May 01, 2017 3:16 PM  
**To:** Greenwood, Geoff [AG]  
**Subject:** thank you

Hello Geoff,

Thanks again for the heads up about the call-in opportunity.

I don't have their individual e-mail addresses, but please pass along my appreciation to the solicitor general and the other staff members who worked closely on today's formal opinion. It was very well-researched.

The reaction from the governor's office is disappointing but demonstrates how much political pressure was on the Attorney General's Office to reach a different conclusion. Thank you for standing up for the rule of law.

Yours,

Laurie  
1705 Plaza Circle  
Windsor Heights, IA 50324  
(515) 276-6971

<http://www.bleedingheartland.com>

**Thompson, Jeffrey [AG]**

---

**From:** Greenwood, Geoff [AG]  
**Sent:** Monday, May 01, 2017 10:02 AM  
**Subject:** Miller to Release, Discuss AG Opinion on Gubernatorial Succession

**IOWA DEPARTMENT OF JUSTICE  
OFFICE OF THE ATTORNEY GENERAL  
Thomas J. Miller, Attorney General  
[www.iowaAttorneyGeneral.gov](http://www.iowaAttorneyGeneral.gov)**

CONTACT: Geoff Greenwood • Communications Director • 515-281-6699 • [geoff.greenwood@iowa.gov](mailto:geoff.greenwood@iowa.gov)

FOR IMMEDIATE RELEASE  
May 1, 2017

**Media Advisory**

**Miller to Release, Discuss AG Opinion on Gubernatorial Succession**  
*Formal attorney general legal opinion addresses whether lieutenant governor becomes governor, authority to appoint new lieutenant governor*

(DES MOINES, Iowa) Attorney General Tom Miller today will release a formal attorney general opinion, in response to a request by Sen. David Johnson, I-Ocheyedan, regarding gubernatorial succession.

**WHAT:** News conference

**WHO:** Attorney General Tom Miller

**WHERE:** Attorney General's Office, Hoover Building, Second Floor

**DATE:** TODAY – May 1, 2017

**TIME:** 1:30 p.m.

**CALL IN #:** 866-685-1580, conference code 515 281 4213 (\*6 to mute, #6 to unmute)

**NOTE:** The news conference will be streamed live at [youtube.com/agiowa](http://youtube.com/agiowa).

Raw HD video will be made available upon request. Send request to:  
[geoff.greenwood@iowa.gov](mailto:geoff.greenwood@iowa.gov).

###

## Thompson, Jeffrey [AG]

---

**From:** Greenwood, Geoff [AG]  
**Sent:** Wednesday, April 26, 2017 8:57 AM  
**To:** Thompson, Jeffrey [AG]  
**Subject:** FW: Question on Sen. Johnson's request for opinion on Branstad-Reynolds; succession

The rumor mill is churning...

---

**From:** Petroski, William [mailto:[bpetrosk@registermedia.com](mailto:bpetrosk@registermedia.com)]  
**Sent:** Wednesday, April 26, 2017 8:47 AM  
**To:** Greenwood, Geoff [AG]  
**Cc:** Tabor, Eric [AG]  
**Subject:** Question on Sen. Johnson's request for opinion on Branstad-Reynolds; succession

Geoff/Eric:

We heard a report late yesterday that the Iowa attorney general's office has been delaying the release of the opinion requested by Sen. Johnson because the attorney general's office anticipates a lawsuit over the succession plans, and therefore will not be issuing a formal legal opinion on this matter. Is this correct?

Thank you,

Bill Petroski

Des Moines Register

515-284-8547



## Thompson, Jeffrey [AG]

---

**From:** Greenwood, Geoff [AG]  
**Sent:** Tuesday, April 25, 2017 4:39 PM  
**To:** Thompson, Jeffrey [AG]; Tabor, Eric [AG]  
**Subject:** FW: Opinion on governor's transition

FYI...

---

**From:** Foley, Ryan J. [mailto:RJFoley@ap.org]  
**Sent:** Tuesday, April 25, 2017 4:19 PM  
**To:** Greenwood, Geoff [AG]  
**Subject:** Opinion on governor's transition

Hi, Geoff:

I just spoke with state Sen. David Johnson, who says AG's office staff led him to believe that a response to his Feb. 1 letter about the governor's transition would come by the end of last week.

"I'm still waiting," he told me. He added that it's a critical question given that the Senate foreign relations committee is moving forward with Branstad's confirmation hearings next week.

Separately, I have also heard that a "draft opinion" has been circulated that says the lieutenant governor will become "acting governor" and will not have the authority to appoint a new No. 2.

If the draft opinion has circulated, I believe it is now an open record and urge you to release it to the public without further delay.

Thank you,

Ryan

Ryan J. Foley  
Correspondent, The Associated Press  
103 E. College St., Suite 208  
Iowa City, IA 52240  
319-337-5615 (o)  
319-400-2213 (c)  
319-337-6126 (fax)  
Twitter: @rjfoley

## Thompson, Jeffrey [AG]

---

**From:** Greenwood, Geoff [AG]  
**Sent:** Thursday, February 16, 2017 9:00 AM  
**To:** Tabor, Eric [AG]; Thompson, Jeffrey [AG]  
**Subject:** FW: official opinion to Senator Johnson

FYI...

**From:** Laura Belin [mailto:desmoinesdem@bleedingheartland.com]  
**Sent:** Thursday, February 16, 2017 8:50 AM  
**To:** Greenwood, Geoff [AG]  
**Subject:** official opinion to Senator Johnson

Hello Geoff,

A short while ago on the Iowa Senate floor, Senator David Johnson said he has not yet received a written response from Attorney General Miller regarding the senator's questions about the succession of power.

When will Attorney General Miller reply to Senator Johnson?

Will Attorney General Miller provide a full written opinion answering the nine questions?

I am requesting a copy of Attorney General Miller's response as soon as it is available.

Thanks,

Laurie Belin  
1705 Plaza Circle  
Windsor Heights, IA 50324  
(515) 276-6971

**Thompson, Jeffrey [AG]**

---

**From:** Greenwood, Geoff [AG]  
**Sent:** Friday, February 10, 2017 10:27 AM  
**To:** Thompson, Jeffrey [AG]  
**Cc:** Tabor, Eric [AG]  
**Subject:** RE: David Johnson inquiry

Will do. Thanks.

---

**From:** Thompson, Jeffrey [AG]  
**Sent:** Friday, February 10, 2017 10:27 AM  
**To:** Greenwood, Geoff [AG]  
**Cc:** Tabor, Eric [AG]  
**Subject:** Re: David Johnson inquiry

I'd tell him we are still looking at the issue and have not provided a response.

Sent from my iPhone

On Feb 10, 2017, at 10:21 AM, Greenwood, Geoff [AG] <[Geoff.Greenwood@iowa.gov](mailto:Geoff.Greenwood@iowa.gov)> wrote:

I'll let him know we are preparing a response but have not yet responded.

---

**From:** Kauffman, Clark [<mailto:ckauffma@registermedia.com>]  
**Sent:** Friday, February 10, 2017 10:20 AM  
**To:** Greenwood, Geoff [AG]  
**Subject:** David Johnson inquiry

Geoff,  
Can you tell me whether the AG's has responded yet to Sen. David Johnson's Feb. 1 letter to the AG asking for an official opinion with regard to the lieutenant governor taking over as governor of the state. In his letter, he indicates he expects an answer by Feb. 15....  
Clark

## Thompson, Jeffrey [AG]

---

**From:** Greenwood, Geoff [AG]  
**Sent:** Friday, February 10, 2017 10:21 AM  
**To:** Thompson, Jeffrey [AG]; Tabor, Eric [AG]  
**Subject:** FW: David Johnson inquiry

I'll let him know we are preparing a response but have not yet responded.

---

**From:** Kauffman, Clark [mailto:ckauffma@registermedia.com]  
**Sent:** Friday, February 10, 2017 10:20 AM  
**To:** Greenwood, Geoff [AG]  
**Subject:** David Johnson inquiry

Geoff,

Can you tell me whether the AG's has responded yet to Sen. David Johnson's Feb. 1 letter to the AG asking for an official opinion with regard to the lieutenant governor taking over as governor of the state. In his letter, he indicates he expects an answer by Feb. 15....

Clark

## Thompson, Jeffrey [AG]

---

**From:** Greenwood, Geoff [AG]  
**Sent:** Wednesday, February 01, 2017 1:35 PM  
**To:** Tabor, Eric [AG]; Thompson, Jeffrey [AG]  
**Subject:** Fwd: Question regarding Sen. David Johnson's request for opinion on Gov. Branstad's resignation/transition

Sent from my iPhone

Begin forwarded message:

**From:** "Petroski, William" <[bpetrosk@registermedia.com](mailto:bpetrosk@registermedia.com)>  
**Date:** February 1, 2017 at 1:04:22 PM CST  
**To:** "Greenwood, Geoff [AG]" <[Geoff.Greenwood@iowa.gov](mailto:Geoff.Greenwood@iowa.gov)>  
**Subject:** Question regarding Sen. David Johnson's request for opinion on Gov. Branstad's resignation/transition

Geoff:

Sen. David Johnson provided us with a copy of a letter he sent today to Attorney General Miller regarding Gov. Branstad's plans to resign and have the office assumed by Lt.. Gov. Reynolds. Can you give us a comment on behalf of Attorney General Miller whether you have answers to those questions at this point, or whether you plan to respond with a formal opinion to Sen. Johnson?

Thank you,  
Bill Petroski  
Des Moines Register  
515-314-2798  
[bpetrosk@dmreg.com](mailto:bpetrosk@dmreg.com)

## Thompson, Jeffrey [AG]

---

**From:** Greenwood, Geoff [AG]  
**Sent:** Monday, January 30, 2017 2:00 PM  
**To:** Peterzalek, Jeffrey [AG]; Thompson, Jeffrey [AG]  
**Subject:** FW: scheduled deposition in Hedlund case

---

**From:** Foley, Ryan J. [mailto:RJFoley@ap.org]  
**Sent:** Monday, January 30, 2017 1:53 PM  
**To:** Hammes, Ben [IGOV]  
**Cc:** Greenwood, Geoff [AG]  
**Subject:** RE: scheduled deposition in Hedlund case

Thanks, Ben. Geoff, can you help?  
Ryan

**From:** Hammes, Ben [mailto:ben.hammes@iowa.gov]  
**Sent:** Monday, January 30, 2017 1:32 PM  
**To:** Foley, Ryan J.  
**Cc:** Greenwood, Geoff  
**Subject:** Re: scheduled deposition in Hedlund case

Hi Ryan,

I have to refer you to the Attorney General's office on this matter. Geoff Greenwood is cc'd to this email.

Thanks,  
Ben

On Mon, Jan 30, 2017 at 1:28 PM, Foley, Ryan J. <RJFoley@ap.org> wrote:

Hi, Ben:

According to court records, it appears that Gov. Branstad is scheduled to have his deposition taken in the Larry Hedlund civil lawsuit on March 24 at 9 a.m.

Has he agreed to that date, and if so, does that mean he's still going to be around Iowa then?

Thank you,

Ryan

Ryan J. Foley

Correspondent, The Associated Press

103 E. College St., Suite 208

Iowa City, IA 52240

319-337-5615 (o)

319-400-2213 (c)

319-337-6126 (fax)

Twitter: @rjfoley

--

**Ben Hammes** | Communications Director

Office of the Governor, State of Iowa

Gov. Terry Branstad & Lt. Gov. Kim Reynolds

515.725.3507 | [ben.hammes@iowa.gov](mailto:ben.hammes@iowa.gov)

[www.governor.iowa.gov](http://www.governor.iowa.gov)

[www.ltgovernor.iowa.gov](http://www.ltgovernor.iowa.gov)

## Thompson, Jeffrey [AG]

---

**From:** Greenwood, Geoff [AG]  
**Sent:** Monday, January 16, 2017 10:04 AM  
**To:** Thompson, Jeffrey [AG]; Ferguson, Tom [AG]; Bennett, Michael [AG]  
**Subject:** Fwd: muscatine mayor/council ag office involvement

?

Begin forwarded message:

**From:** "Stevens, Mark" <MStevens@kwqc.com>  
**Date:** January 16, 2017 at 10:01:11 AM CST  
**To:** "Greenwood, Geoff [AG]" <Geoff.Greenwood@iowa.gov>  
**Subject:** muscatine mayor/council ag office involvement

Hi Geoff,

Per our conversation, I'm just following up on an email the station received regarding the AG's office getting involved with the Muscatine Council/Mayor legal fight. The tip said this:

"To my understanding other than the petitions that are being circulated on Facebook there is a petition that is being drafted up and will be presented to the Iowa Attorney General office as well as Branstads office. I read yesterday that the Iowa AGs office sent an order to our County Attorney and he refuses to abide what the AGs office informed him to do."

I'm just trying to sort through the weeds on this and see who has done what.

Thanks,

Mark Stevens  
Investigative Reporter/Photographer  
KWQC-TV 6 News  
(563) 650-3851  
@KWQCMark



## Thompson, Jeffrey [AG]

---

**From:** Greenwood, Geoff [AG]  
**Sent:** Tuesday, December 20, 2016 5:54 PM  
**To:** desmoines dem  
**Subject:** RE: AG opinion on Reynolds as governor or "acting governor"

Laurie:

I appreciate your additional inquiry, but I think this office has sufficiently answered the broader questions about our legal position on the succession issue.

Best regards,

Geoff

---

**From:** desmoines dem [mailto:desmoinesdem@yahoo.com]  
**Sent:** Monday, December 19, 2016 7:55 AM  
**To:** Greenwood, Geoff [AG]  
**Subject:** Re: AG opinion on Reynolds as governor or "acting governor"

Geoff, sorry for the delay in circling back. Where does it say in Iowa Code that "the lieutenant governor, after taking office as governor, appoints a new lieutenant governor"? I see where the governor appoints a new LG if there is a vacancy in the LG position, but that says nothing about "the lieutenant governor, after taking office as governor."

In the Griffin case, Jeffrey Thompson told the Iowa Supreme Court that it was very significant Iowa lawmakers did not change the "infamous crimes" language when they amended the same part of the Iowa Constitution to remove the word "idiot." It strikes me as significant that lawmakers in the 1950s and 1980s did not change language referring to the LG performing the duties of the office of governor. They could have changed the wording to make it more like the US Constitution's language regarding the presidential succession, but they did not.

Why doesn't Attorney General Tom Miller want to ask the Iowa Supreme Court to weigh in on this issue? Doing so would allow the justices to provide a definitive interpretation of the Iowa Constitution. There is plenty of time for the justices to prepare an opinion. Governor Branstad does not intend to step down until he is confirmed as ambassador to China, which will take 4-8 months.

Thanks,

Laurie

On Tuesday, December 13, 2016 4:06 PM, "Greenwood, Geoff [AG]" <[Geoff.Greenwood@iowa.gov](mailto:Geoff.Greenwood@iowa.gov)> wrote:

Laurie:

Here's a little more explanation.

Notably, Iowa courts have never addressed this issue.

In all four historical cases of vacancies by Iowa governors, the lieutenant governor who succeeded the governor was viewed and regarded in all respects as the governor.

Our office carefully reviewed the Iowa Constitution.

A significant formal attorney general opinion from 1923 states that (in case of death, resignation or removal from office of the governor) the lieutenant governor becomes governor (I attached the opinion and highlighted the pertinent section on page 2).

Case law, statutory, and constitutional analyses from other states are consistent with this provision.

Finally, the Iowa Code supports this position. State law establishes that, the lieutenant governor, after taking office as governor, appoints a new lieutenant governor.

This research leads us to concur with Governor Branstad's conclusion that, upon his resignation, Lt. Governor Reynolds will become Governor. In her capacity as Governor, Governor Reynolds will have the authority to appoint a new lieutenant governor.

Geoff

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**From:** desmoines dem [<mailto:desmoinesdem@yahoo.com>]  
**Sent:** Monday, December 12, 2016 8:04 PM  
**To:** Greenwood, Geoff [AG]  
**Subject:** Re: AG opinion on Reynolds as governor or "acting governor"

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Also, can Attorney General Miller explain why Joshua Newbold did not appoint a lieutenant governor during the nearly a year that he performed the duties of governor?

[List of Governors of Iowa - Wikipedia](#)





### List of Governors of Iowa - Wikipedia

In Massachusetts, where the wording in the state constitution is similar, a lieutenant governor who assumed the duties of the governor under similar circumstances has been called "acting governor."

Laurie

On Monday, December 12, 2016 4:27 PM, "Greenwood, Geoff [AG]" <[Geoff.Greenwood@iowa.gov](mailto:Geoff.Greenwood@iowa.gov)> wrote:

Hi Laurie,

Our office has researched the law and consulted with the Governor's office. We concur with the Governor's conclusion that, upon the resignation of Governor Branstad, Lt. Governor Reynolds will become Governor and will have the authority to appoint a new Lieutenant Governor.

Thanks,

Geoff



**Geoff Greenwood**  
**Communications Director**  
Office of the Attorney General of Iowa  
1305 E. Walnut St.  
Des Moines, Iowa 50319  
Main: (515) 281-5164 | Direct: (515) 281-6699  
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**Sent:** Monday, December 12, 2016 9:04 AM  
**To:** Greenwood, Geoff [AG]  
**Subject:** AG opinion on Reynolds as governor or "acting governor"

Hello Geoff,

What is the time frame for Attorney General Miller to issue an opinion on 1) whether Kim Reynolds will become governor or merely "acting governor" after Governor Branstad leaves for China, and 2) whether Reynolds will be able to appoint a new lieutenant governor in that scenario? I am requesting a copy of that opinion as soon as it becomes available

I saw you told Jason Noble last week, "We're going to have to review this and confer with the governor's office." Does that mean Attorney General Miller plans to clear his opinion with the governor's staff ahead of time? Or will his analysis of Iowa Constitution Section 4 be independent?

I assume the governor's office will want Kim Reynolds to have the title of governor as well as the powers of the office.

Thanks in advance for any information or clarification you can provide.

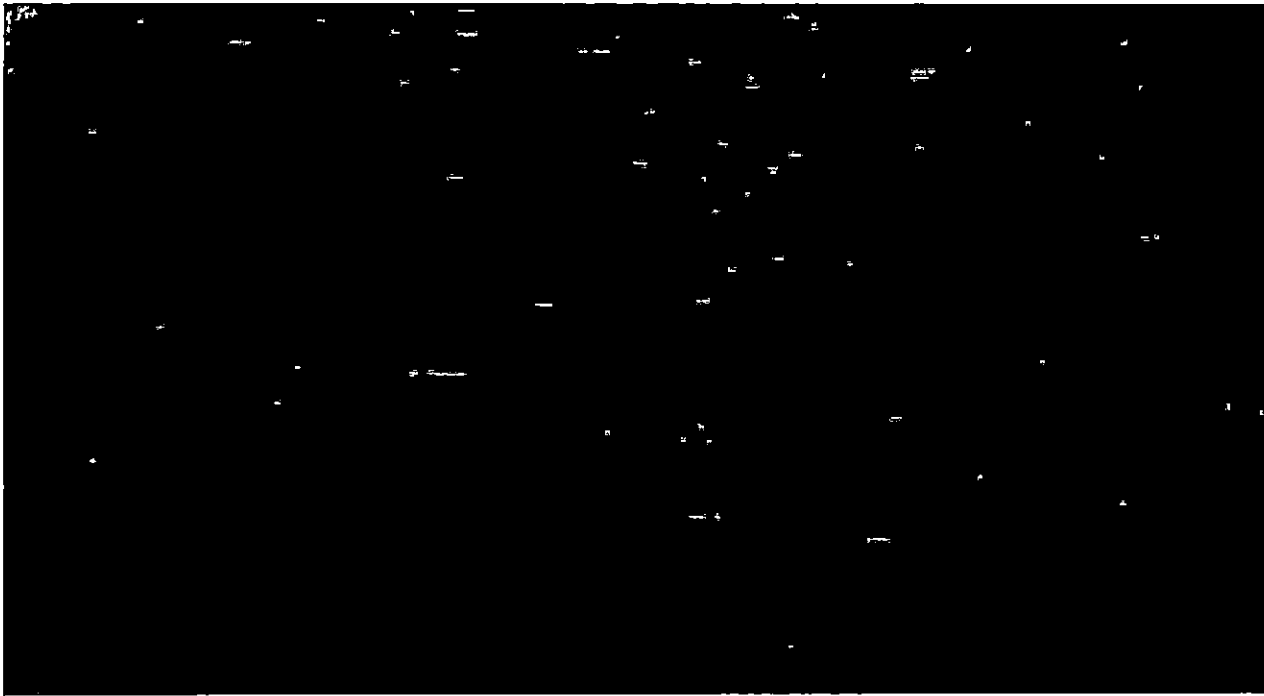
Yours,

Laurie Belin  
1705 Plaza Circle  
Windsor Heights, IA 50324  
(515) 276-6971

<http://www.bleedingheartland.com>

[As Branstad prepares for China, transfer of power process unfolds](#)





**As Branstad prepares for China, transfer of power process unfolds**

Iowa officials say they need more time to determine how governmental power is transferred to I.I. Gov. Kim Reynolds.

---

## Thompson, Jeffrey [AG]

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**Sent:** Monday, December 19, 2016 8:54 AM  
**To:** Tabor, Eric [AG]; Thompson, Jeffrey [AG]  
**Subject:** FW: AG opinion on Reynolds as governor or "acting governor"

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This research leads us to concur with Governor Branstad's conclusion that, upon his resignation, Lt. Governor Reynolds will become Governor. In her capacity as Governor, Governor Reynolds will have the authority to appoint a new lieutenant governor.

Geoff

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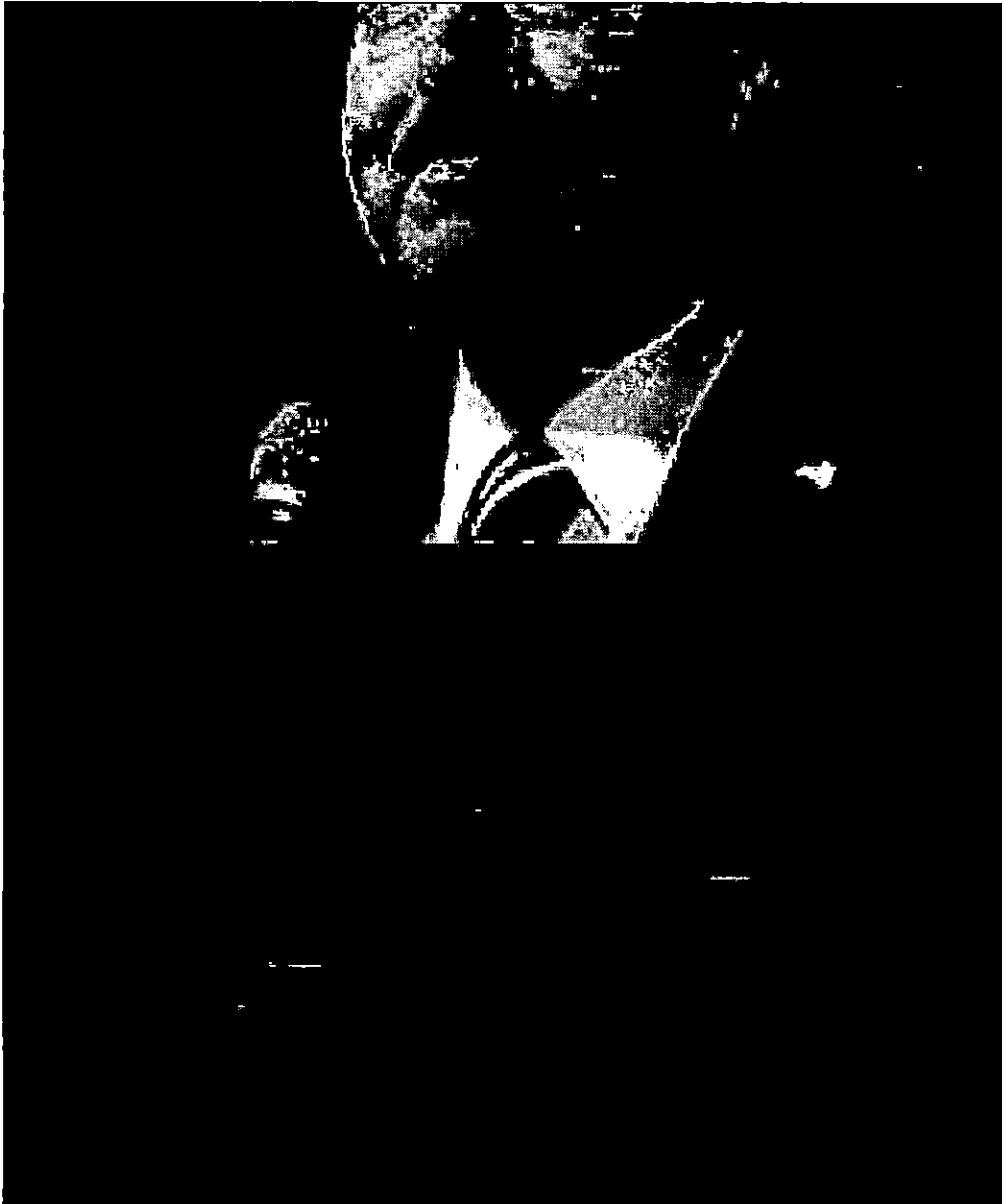
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**List of Governors of Iowa - Wikipedia**

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Laurie

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Thanks,

Geoff



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Des Moines, Iowa 50319  
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Thanks in advance for any information or clarification you can provide.

Yours,

Laurie Belin  
1705 Plaza Circle  
Windsor Heights, IA 50324  
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[As Branstad prepares for China, transfer of power process unfolds](#)





**As Branstad prepares for China, transfer of power process unfolds**

Iowa officials say they need more time to determine how governmental power is transferred to Lt. Gov. Kim Reynolds.

## Thompson, Jeffrey [AG]

---

**From:** Greenwood, Geoff [AG]  
**Sent:** Tuesday, December 13, 2016 1:57 PM  
**To:** Tabor, Eric [AG]; Thompson, Jeffrey [AG]  
**Subject:** FW: Question

---

**From:** Erin Murphy [mailto:Erin.Murphy@lee.net]  
**Sent:** Tuesday, December 13, 2016 1:44 PM  
**To:** Greenwood, Geoff [AG]  
**Subject:** RE: Question

Hey, Geoff. I don't wish to pester, but just circling back on this only because I'm hoping to piece this together today, and wanted to make sure you saw it.

**Erin Murphy**  
Lee Enterprises  
Des Moines Bureau chief

W: 515-422-9061  
C: 515-681-7388  
T: @ErinDMurphy

---

**From:** Erin Murphy  
**Sent:** Tuesday, December 13, 2016 9:35 AM  
**To:** 'Rod Boshart' <Rod.Boshart@thegazette.com>  
**Cc:** 'Greenwood, Geoff [AG]' <Geoff.Greenwood@iowa.gov>  
**Subject:** RE: Question

Geoff:  
I'm following up on this, trying to put a bow on this whole thing. In particular, I'm interested in the new lieutenant governor piece.  
Can you point me to the sections of the code and constitution that gave the AG's office clarity on this?

**Erin Murphy**  
Lee Enterprises  
Des Moines Bureau chief

W: 515-422-9061  
C: 515-681-7388  
T: @ErinDMurphy

---

**From:** Rod Boshart [mailto:Rod.Boshart@thegazette.com]  
**Sent:** Tuesday, December 13, 2016 7:27 AM  
**To:** Erin Murphy <Erin.Murphy@lee.net>  
**Subject:** FW: Question

---

**From:** Greenwood, Geoff [AG] [mailto:Geoff.Greenwood@iowa.gov]  
**Sent:** Monday, December 12, 2016 4:29 PM  
**To:** Rod Boshart  
**Subject:** RE: Question

Rod,

Following up on your question from Friday.

Our office has researched the law and consulted with the Governor's office. We concur with the Governor's conclusion that, upon the resignation of Governor Branstad, Lt. Governor Reynolds will become Governor and will have the authority to appoint a new Lieutenant Governor.

Thanks,

Geoff



**Geoff Greenwood**  
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---

**From:** Greenwood, Geoff [AG]  
**Sent:** Friday, December 09, 2016 10:12 AM  
**To:** 'Rod Boshart'  
**Subject:** RE: Question

Not yet. We're still doing some research and conferring with the Governor's office.

---

**From:** Rod Boshart [mailto:Rod.Boshart@thegazette.com]  
**Sent:** Friday, December 09, 2016 9:44 AM  
**To:** Greenwood, Geoff [AG]  
**Subject:** Question

Has the AG's office reached any conclusions on how the transfer of power will work when Gov. Branstad steps down and Lt. Gov. Reynolds steps into her new role?

## Thompson, Jeffrey [AG]

---

**From:** Greenwood, Geoff [AG]  
**Sent:** Tuesday, December 13, 2016 9:51 AM  
**To:** Tabor, Eric [AG]; Thompson, Jeffrey [AG]  
**Subject:** FW: Question

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**Sent:** Tuesday, December 13, 2016 9:35 AM  
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W: 515-422-9061  
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## Thompson, Jeffrey [AG]

---

**From:** Greenwood, Geoff [AG]  
**Sent:** Monday, December 12, 2016 9:09 PM  
**To:** Tabor, Eric [AG]; Thompson, Jeffrey [AG]  
**Subject:** Fwd: AG opinion on Reynolds as governor or "acting governor"

Begin forwarded message:

**From:** desmoines dem <[desmoinesdem@yahoo.com](mailto:desmoinesdem@yahoo.com)>  
**Date:** December 12, 2016 at 8:03:48 PM CST  
**To:** "Greenwood, Geoff [AG]" <[Geoff.Greenwood@iowa.gov](mailto:Geoff.Greenwood@iowa.gov)>  
**Subject: Re: AG opinion on Reynolds as governor or "acting governor"**  
**Reply-To:** desmoines dem <[desmoinesdem@yahoo.com](mailto:desmoinesdem@yahoo.com)>

Geoff, I'm seeking further explanation on the basis for that reading of the Iowa Constitution. Wouldn't the framers and lawmakers who later amended the text have said that the lieutenant governor would become the governor, instead of using phrases like, "The lieutenant governor, while acting as governor, shall be paid the compensation and expenses prescribed for the governor"?

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Laurie

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Thanks,

Geoff



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As Branstad prepares for China, transfer of power process unfolds





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## Thompson, Jeffrey [AG]

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**Sent:** Monday, December 12, 2016 4:55 PM  
**To:** Tabor, Eric [AG]; Thompson, Jeffrey [AG]  
**Subject:** FW: governor transition

---

**From:** Greenwood, Geoff [AG]  
**Sent:** Monday, December 12, 2016 4:24 PM  
**To:** 'Pfannenstiel, Brianne'  
**Subject:** RE: governor transition

Brianne,

Sorry about the delay.

Our office has researched the law and consulted with the Governor's office. We concur with the Governor's conclusion that, upon the resignation of Governor Branstad, Lt. Governor Reynolds will become Governor and will have the authority to appoint a new Lieutenant Governor.

Thanks,

Geoff



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**From:** Pfannenstiel, Brianne [<mailto:bpfann@dmreg.com>]  
**Sent:** Monday, December 12, 2016 11:08 AM  
**To:** Greenwood, Geoff [AG]  
**Subject:** governor transition

Hi Geoff,

We spoke with the governor at his press conference this morning, and he said his office has worked with the AG's office and is confident Lt. Gov. Kim Reynolds will replace Gov. Branstad as governor and will be able to appoint her own successor, per the code section we talked about. Wanted to run that by your office to see if the AG agrees, or whether you believe there is still ambiguity.

Thanks for the help!

Brianne

**Brianne Pfannenstiel**  
Statehouse Reporter  
*The Des Moines Register*  
515-803-0348  
[bpfann@dmreg.com](mailto:bpfann@dmreg.com)  
@brianneDMR

## Thompson, Jeffrey [AG]

---

**From:** Greenwood, Geoff [AG]  
**Sent:** Monday, December 12, 2016 9:36 AM  
**To:** Thompson, Jeffrey [AG]  
**Subject:** FW: AG opinion on Reynolds as governor or "acting governor"

FYI...

---

**From:** desmoines dem [mailto:desmoinesdem@yahoo.com]  
**Sent:** Monday, December 12, 2016 9:04 AM  
**To:** Greenwood, Geoff [AG]  
**Subject:** AG opinion on Reynolds as governor or "acting governor"

Hello Geoff,

What is the time frame for Attorney General Miller to issue an opinion on 1) whether Kim Reynolds will become governor or merely "acting governor" after Governor Branstad leaves for China, and 2) whether Reynolds will be able to appoint a new lieutenant governor in that scenario? I am requesting a copy of that opinion as soon as it becomes available

I saw you told Jason Noble last week, "We're going to have to review this and confer with the governor's office." Does that mean Attorney General Miller plans to clear his opinion with the governor's staff ahead of time? Or will his analysis of Iowa Constitution Section 4 be independent?

I assume the governor's office will want Kim Reynolds to have the title of governor as well as the powers of the office.

Thanks in advance for any information or clarification you can provide.

Yours,

Laurie Belin  
1705 Plaza Circle  
Windsor Heights, IA 50324  
(515) 276-6971

<http://www.bleedingheartland.com>

As Branstad prepares for China, transfer of power process unfolds





**As Branstad prepares for China,  
transfer of power process  
unfolds**

Iowa officials say they need more time to determine how governmental power is transferred to Lt. Gov. Kim Reynolds.



## Thompson, Jeffrey [AG]

---

**From:** Greenwood, Geoff [AG]  
**Sent:** Monday, December 12, 2016 9:34 AM  
**To:** Tabor, Eric [AG]; Thompson, Jeffrey [AG]  
**Subject:** FW: addendum

FYI...

---

**From:** desmoines dem [mailto:desmoinesdem@yahoo.com]  
**Sent:** Monday, December 12, 2016 9:31 AM  
**To:** Greenwood, Geoff [AG]  
**Subject:** addendum

Geoff, Lieutenant Governor Reynolds told reporters at this morning's press conference that she plans to be sworn in as governor and to fill the LG position. That seems premature, so I'm seeking comment from the Attorney General's Office on whether there is any basis yet for Reynolds to say that.

Thanks,

Laurie

**Thompson, Jeffrey [AG]**

---

**From:** Greenwood, Geoff [AG]  
**Sent:** Friday, December 09, 2016 10:26 AM  
**To:** Thompson, Jeffrey [AG]  
**Cc:** Hammes, Ben [IGOV]  
**Subject:** FW: Question

FYI...

---

**From:** Greenwood, Geoff [AG]  
**Sent:** Friday, December 09, 2016 10:12 AM  
**To:** 'Rod Boshart'  
**Subject:** RE: Question

Not yet. We're still doing some research and conferring with the Governor's office.

---

**From:** Rod Boshart [<mailto:Rod.Boshart@thegazette.com>]  
**Sent:** Friday, December 09, 2016 9:44 AM  
**To:** Greenwood, Geoff [AG]  
**Subject:** Question

Has the AG's office reached any conclusions on how the transfer of power will work when Gov. Branstad steps down and Lt. Gov. Reynolds steps into her new role?

## Thompson, Jeffrey [AG]

---

**From:** Greenwood, Geoff [AG]  
**Sent:** Thursday, December 08, 2016 2:02 PM  
**To:** Thompson, Jeffrey [AG]  
**Subject:** FW: Constitutional issue re: Lt. Gov assuming Gov's powers

---

**From:** Mark O. Lambert [mailto:marklambert@mchsi.com]  
**Sent:** Thursday, December 08, 2016 2:01 PM  
**To:** Greenwood, Geoff [AG]  
**Cc:** Tabor, Eric [AG]  
**Subject:** Re: Constitutional issue re: Lt. Gov assuming Gov's powers

Geoff and Eric,

Just one more thing (I promise!). I note the Iowa Constitution says upon a vacancy in the position of Governor, the Governor's power shall "devolve" to the Lt. Governor. (It does not say the Lt. Gov. assumes the office of Governor). I think this wording is important.

Note this dictionary definition of "devolve":

de·volve  
[də'vɔlv]

### VERB

1. transfer or delegate (power) to a lower level, especially from central government to local or regional administration:

"measures to devolve power to the provinces" ·

[\[more\]](#)

"devolved and decentralized government"

synonyms: [delegate](#) · [depute](#) · pass (down/on) · [download](#) ·

[\[more\]](#)

[hand down/over/on](#) · [transfer](#) · [transmit](#) · [assign](#) · [consign](#) · [convey](#) · [entrust](#) · [turn over](#) · [give](#) · [cede](#) · [surrender](#) · [relinquish](#) · [deliver](#) · [bestow](#) · [grant](#)

- o (devolve on/upon/to)

(of duties or responsibility) pass to (a body or person at a lower level):

"his duties devolved on a comrade"

- o formal

(devolve into).

degenerate or be split into:

"the Empire devolved into separate warring states"

Powered by Oxford Dictionaries · © Oxford University Press

Ok, I just find this fascinating. Good luck with your research!

Mark

---

**From:** "Geoff Greenwood [AG]" <[Geoff.Greenwood@iowa.gov](mailto:Geoff.Greenwood@iowa.gov)>  
**To:** "Mark O. Lambert" <[marklambert@mchsi.com](mailto:marklambert@mchsi.com)>  
**Cc:** "Eric Tabor [AG]" <[Eric.Tabor@iowa.gov](mailto:Eric.Tabor@iowa.gov)>  
**Sent:** Thursday, December 8, 2016 11:13:41 AM  
**Subject:** RE: Constitutional issue re: Lt. Gov assuming Gov's powers

Thanks, Mark.

---

**From:** Mark O. Lambert [<mailto:marklambert@mchsi.com>]  
**Sent:** Thursday, December 08, 2016 11:12 AM  
**To:** Greenwood, Geoff [AG]  
**Cc:** Tabor, Eric [AG]  
**Subject:** Re: Constitutional issue re: Lt. Gov assuming Gov's powers

Thanks, Geoff. One more thing, historically, when an Iowa Gov has left office before the end of his term, there has not been a Lt. Gov. appointed. Most of the time, these were very short periods of time, though.  
[https://en.wikipedia.org/wiki/List\\_of\\_Governors\\_of\\_Iowa](https://en.wikipedia.org/wiki/List_of_Governors_of_Iowa)

Mark

---

**From:** "Geoff Greenwood [AG]" <[Geoff.Greenwood@iowa.gov](mailto:Geoff.Greenwood@iowa.gov)>  
**To:** "Mark O. Lambert" <[marklambert@mchsi.com](mailto:marklambert@mchsi.com)>, "Eric Tabor [AG]" <[Eric.Tabor@iowa.gov](mailto:Eric.Tabor@iowa.gov)>  
**Sent:** Thursday, December 8, 2016 10:25:12 AM  
**Subject:** RE: Constitutional issue re: Lt. Gov assuming Gov's powers

Thanks for contacting us, Mark. We're researching it and will add this to the conversation.

Best regards,



**Geoff Greenwood**  
**Communications Director**  
Office of the Attorney General of Iowa  
1305 E. Walnut St.  
Des Moines, Iowa 50319  
Main: (515) 281-5164 | Direct: (515) 281-6699  
Email: [geoff.greenwood@iowa.gov](mailto:geoff.greenwood@iowa.gov) | [www.iowaattorneygeneral.gov](http://www.iowaattorneygeneral.gov)

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---

**From:** Mark O. Lambert [<mailto:marklambert@mchsi.com>]  
**Sent:** Thursday, December 08, 2016 9:54 AM  
**To:** Greenwood, Geoff [AG]; Tabor, Eric [AG]  
**Subject:** Constitutional issue re: Lt. Gov assuming Gov's powers  
**Importance:** High

Eric and Geoff:

In Massachusetts, when Governor William Weld resigned in 1997, Lt. Gov. Paul Cellucci became “Acting Governor” – not “Governor.” When Cellucci resigned to become US Ambassador to Canada during the Bush Administration in 2001, his Lt. Gov. Jane Swift became “Acting Governor.”

Massachusetts Constitution has a similar provision to the Iowa Constitution:

III.--Whenever the chair of the Governor shall be vacant, by reason of his death, or absence from the Commonwealth, or otherwise, the Lieutenant-Governor, for the time being, shall, during such vacancy, perform all the duties incumbent upon the Governor, and shall have and exercise all the powers and authorities, which by this Constitution the Governor is vested with, when personally present.

Hope this is helpful.

--Mark

Mark Lambert  
Attorney at Law  
Polk City  
515-681-0285

## Thompson, Jeffrey [AG]

---

**From:** Greenwood, Geoff [AG]  
**Sent:** Thursday, December 08, 2016 11:13 AM  
**To:** Thompson, Jeffrey [AG]  
**Subject:** FW: Constitutional issue re: Lt. Gov assuming Gov's powers

---

**From:** Mark O. Lambert [mailto:marklambert@mchsi.com]  
**Sent:** Thursday, December 08, 2016 11:12 AM  
**To:** Greenwood, Geoff [AG]  
**Cc:** Tabor, Eric [AG]  
**Subject:** Re: Constitutional issue re: Lt. Gov assuming Gov's powers

Thanks, Geoff. One more thing, historically, when an Iowa Gov has left office before the end of his term, there has not been a Lt. Gov. appointed. Most of the time, these were very short periods of time, though.  
[https://en.wikipedia.org/wiki/List\\_of\\_Governors\\_of\\_Iowa](https://en.wikipedia.org/wiki/List_of_Governors_of_Iowa)

Mark

---

**From:** "Geoff Greenwood [AG]" <Geoff.Greenwood@iowa.gov>  
**To:** "Mark O. Lambert" <marklambert@mchsi.com>, "Eric Tabor [AG]" <Eric.Tabor@iowa.gov>  
**Sent:** Thursday, December 8, 2016 10:25:12 AM  
**Subject:** RE: Constitutional issue re: Lt. Gov assuming Gov's powers

Thanks for contacting us, Mark. We're researching it and will add this to the conversation.

Best regards,



**Geoff Greenwood**  
**Communications Director**  
Office of the Attorney General of Iowa  
1305 E. Walnut St.  
Des Moines, Iowa 50319  
Main: (515) 281-5164 | Direct: (515) 281-6699  
Email: [geoff.greenwood@iowa.gov](mailto:geoff.greenwood@iowa.gov) | [www.iowaattorneygeneral.gov](http://www.iowaattorneygeneral.gov)

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---

**From:** Mark O. Lambert [mailto:marklambert@mchsi.com]  
**Sent:** Thursday, December 08, 2016 9:54 AM  
**To:** Greenwood, Geoff [AG]; Tabor, Eric [AG]  
**Subject:** Constitutional issue re: Lt. Gov assuming Gov's powers  
**Importance:** High

Eric and Geoff:

In Massachusetts, when Governor William Weld resigned in 1997, Lt. Gov. Paul Cellucci became “Acting Governor” – not “Governor.” When Cellucci resigned to become US Ambassador to Canada during the Bush Administration in 2001, his Lt. Gov. Jane Swift became “Acting Governor.”

Massachusetts Constitution has a similar provision to the Iowa Constitution:

III.--Whenever the chair of the Governor shall be vacant, by reason of his death, or absence from the Commonwealth, or otherwise, the Lieutenant-Governor, for the time being, shall, during such vacancy, perform all the duties incumbent upon the Governor, and shall have and exercise all the powers and authorities, which by this Constitution the Governor is vested with, when personally present.

Hope this is helpful.

--Mark

Mark Lambert  
Attorney at Law  
Polk City  
515-681-0285

## Thompson, Jeffrey [AG]

---

**From:** Greenwood, Geoff [AG]  
**Sent:** Thursday, December 08, 2016 10:13 AM  
**To:** Thompson, Jeffrey [AG]  
**Subject:** FW: Constitutional issue re: Lt. Gov assuming Gov's powers

**Importance:** High

---

**From:** Mark O. Lambert [mailto:marklambert@mchsi.com]  
**Sent:** Thursday, December 08, 2016 9:54 AM  
**To:** Greenwood, Geoff [AG]; Tabor, Eric [AG]  
**Subject:** Constitutional issue re: Lt. Gov assuming Gov's powers  
**Importance:** High

Eric and Geoff:

In Massachusetts, when Governor William Weld resigned in 1997, Lt. Gov. Paul Cellucci became “Acting Governor” – not “Governor.” When Cellucci resigned to become US Ambassador to Canada during the Bush Administration in 2001, his Lt. Gov. Jane Swift became “Acting Governor.”

Massachusetts Constitution has a similar provision to the Iowa Constitution:

III.--Whenever the chair of the Governor shall be vacant, by reason of his death, or absence from the Commonwealth, or otherwise, the Lieutenant-Governor, for the time being, shall, during such vacancy, perform all the duties incumbent upon the Governor, and shall have and exercise all the powers and authorities, which by this Constitution the Governor is vested with, when personally present.

Hope this is helpful.

--Mark

Mark Lambert  
Attorney at Law  
Polk City  
515-681-0285



## Thompson, Jeffrey [AG]

---

**From:** Greenwood, Geoff [AG]  
**Sent:** Wednesday, December 07, 2016 4:46 PM  
**To:** Thompson, Jeffrey [AG]  
**Subject:** FW: Succession--add'l info

---

**From:** Pfannenstiel, Brianne [mailto:bpfann@dmreg.com]  
**Sent:** Wednesday, December 07, 2016 4:41 PM  
**To:** Greenwood, Geoff [AG]  
**Subject:** RE: Succession--add'l info

Geoff – quick follow up question for you. If we look at the Constitutional interpretation of this, since Reynolds stays Lt. Gov. and assumes the duties of governor, there is no vacancy to fill. Is that correct?

Give me a call back if you can, or an emailed response is fine to. On deadline, though, so would like to hear back ASAP.

Brianne

---

**From:** Greenwood, Geoff [AG] [mailto:Geoff.Greenwood@iowa.gov]  
**Sent:** Wednesday, December 07, 2016 11:43 AM  
**To:** Pfannenstiel, Brianne  
**Subject:** Succession--add'l info

Hey Brianne:

We looked up the pertinent section of the Iowa Constitution, which we didn't really discuss in the call. Here's kind of a legal flowchart that may help make things clear, including the Iowa Code sections you already looked up:

1. Resignation of the Governor – Must be made in writing to the General Assembly, if in session, if not, to the Secretary of State. Iowa Code § 69.4(1).
2. Upon resignation, the Office of Governor is considered vacant. § 69.2(1)(d).
3. The vacancy is filled by the Lieutenant Governor. Iowa Const. Art. IV, Sec. 17 (“In the case of the death, impeachment, resignation . . . of the governor, the powers and duties of the office for the residue of the term, . . . shall devolve upon the lieutenant governor.”)
4. Once the Lt. Governor becomes governor, it creates a vacancy in the Lt. Governor's office because of the prohibition against simultaneously holding more than one elective office. See Iowa Code § 69.2(1)(h).
5. In general, vacancies in state offices are filled by the governor. § 69.8(2).
6. The Code specifically provides, “an appointment by the governor to fill a vacancy in the office of the lieutenant governor shall be for the balance of the unexpired term.” § 69.8(2).

Accordingly, a resignation by Gov. Branstad would create a vacancy that would be filled by Lt. Gov. Reynolds. Once she assumed the office of Governor, a vacancy would be created in the Lt. Governor's office. The governor has the power and authority to appoint a new Lt. Governor who would serve for the balance of the Branstad/ Reynolds term.

Hopefully this helps.

Geoff



**Geoff Greenwood**

**Communications Director**

Office of the Attorney General of Iowa

1305 E. Walnut St.

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Main: (515) 281-5164 | Direct: (515) 281-6699

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## Thompson, Jeffrey [AG]

---

**From:** Johnson, Larry <larry.johnson@iowa.gov>  
**Sent:** Wednesday, April 05, 2017 2:41 PM  
**To:** Thompson, Jeffrey [AG]  
**Subject:** Re: Cases and other materials

Thank you.

On Wed, Apr 5, 2017 at 2:31 PM, Thompson, Jeffrey [AG] <[Jeffrey.Thompson@iowa.gov](mailto:Jeffrey.Thompson@iowa.gov)> wrote:  
Larry,

Here is collection of cases. Also couple of AG opinions. There are others but these are most representative of the field.

Sent from my iPhone

Begin forwarded message:

From: "Ranscht, David [AG]" <[David.Ranscht2@iowa.gov](mailto:David.Ranscht2@iowa.gov)<<mailto:David.Ranscht2@iowa.gov>>>  
To: "Thompson, Jeffrey [AG]" <[Jeffrey.Thompson@iowa.gov](mailto:Jeffrey.Thompson@iowa.gov)<<mailto:Jeffrey.Thompson@iowa.gov>>>  
Subject: Cases and other materials

Jeff,

Attached are the materials you asked me to send to you.

[cid:image001.png@01D2AE16.BF014250]<<http://www.iowaattorneygeneral.gov/>>

David Ranscht  
Assistant Attorney General  
Office of the Attorney General of Iowa  
Licensing & Administrative Law Division  
1305 E. Walnut St.  
Des Moines, Iowa 50319  
Main: (515) 281-5164 | Direct: (515) 281-7175  
Email: [david.ranscht2@iowa.gov](mailto:david.ranscht2@iowa.gov)<<mailto:david.ranscht2@iowa.gov>> |  
[www.iowaattorneygeneral.gov](http://www.iowaattorneygeneral.gov/)<<http://www.iowaattorneygeneral.gov/>>

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--

**Larry Johnson, Jr.** | Legal Counsel

Office of the Governor, State of Iowa

Gov. Terry Branstad & Lt. Gov. Kim Reynolds

515.725.3506 | [larry.johnson@iowa.gov](mailto:larry.johnson@iowa.gov)

[www.governor.iowa.gov](http://www.governor.iowa.gov)

[www.ltgovernor.iowa.gov](http://www.ltgovernor.iowa.gov)

## Thompson, Jeffrey [AG]

---

**From:** Johnson, Larry <larry.johnson@iowa.gov>  
**Sent:** Monday, April 03, 2017 10:41 AM  
**To:** Thompson, Jeffrey [AG]; Boussetot, Michael [IGOV]  
**Subject:** Follow-up

Hi Jeff - I just wanted to follow-up on the ten cases you were referring to last week. If you had a minute to send the case name and citations that'd be great.

Thanks, Jeff.  
Larry

--

**Larry Johnson, Jr.** | Legal Counsel

Office of the Governor, State of Iowa

Gov. Terry Branstad & Lt. Gov. Kim Reynolds

515.725.3506 | [larry.johnson@iowa.gov](mailto:larry.johnson@iowa.gov)

[www.governor.iowa.gov](http://www.governor.iowa.gov)

[www.ltgovernor.iowa.gov](http://www.ltgovernor.iowa.gov)

## Thompson, Jeffrey [AG]

---

**From:** Johnson, Larry <larry.johnson@iowa.gov>  
**Sent:** Wednesday, March 29, 2017 9:53 AM  
**To:** Thompson, Jeffrey [AG]  
**Subject:** Re: Follow-up Discussion on Succession

Jeff - Thanks for reaching out. Does any time from 10-noon work for you tomorrow, Thursday?

On Tue, Mar 28, 2017 at 12:07 PM, Thompson, Jeffrey [AG] <[Jeffrey.Thompson@iowa.gov](mailto:Jeffrey.Thompson@iowa.gov)> wrote:

Do you have time in the next few days for a follow-up discussion?

--

**Larry Johnson, Jr.** | Legal Counsel

Office of the Governor, State of Iowa

Gov. Terry Branstad & Lt. Gov. Kim Reynolds

515-725-3506 | [larry.johnson@iowa.gov](mailto:larry.johnson@iowa.gov)

[www.governor.iowa.gov](http://www.governor.iowa.gov)

[www.ltgovernor.iowa.gov](http://www.ltgovernor.iowa.gov)

## Thompson, Jeffrey [AG]

---

**From:** Kathuria, Sacha <SKathuria@midwesterngovernors.org>  
**Sent:** Thursday, January 12, 2017 11:34 AM  
**To:** Madsen, GeorgAnna [TOS]  
**Cc:** Thompson, Jeffrey [AG]  
**Subject:** RE: Department of Energy RAPID Toolkit

Dear Mr. Thompson,

As mentioned in my previous email to Ms. Madsen, the Midwestern Governors Association is currently working with the National Renewable Energy Laboratory (NREL) to expand the Department of Energy's Regulatory and Information Desktop (RAPID) Toolkit. The Toolkit is based on a wiki-platform and includes regulatory information about bulk transmission siting regulations, etc. It can be found here: <http://en.openei.org/wiki/RAPID/BulkTransmission> The purpose is to allow easy access to information for stakeholders. To that end, we need some additional information for Iowa so that we can ensure the state's entry on the Toolkit is accurate. NREL has specifically asked the following questions regarding the role of the Executive Council and we would much appreciate your help in answering them:

1. Iowa Department of Natural Resources: Iowa Code § 461A.25 states: "If the recommendation is for a lease in excess of five years, with the exception of agricultural lands specifically dealt with in Article I, section 24 of the Constitution of the State of Iowa, the council shall advertise for bids. If a bid is accepted, the lease shall be let or executed by the council in accordance with the most desirable bid." In what form must the Natural Resource Council (NRC) place its advertisement for bids (newspaper, letters, online, etc.)?
2. How long must NRC advertise for?
3. How must bidders submit their bids to NRC? What information must bidders include in their bids? How long do bidders have to submit their bids to NRC?
4. What factors does NRC use to determine which bid is "the most desirable bid"?

If you could please help us answer these questions by January 20<sup>th</sup> it would be much appreciated. Please let me know if you have any questions. Thank you.

Best Regards,  
Sacha Kathuria

---

**From:** Madsen, GeorgAnna [TOS] [mailto:Georganna.Madsen@iowa.gov]  
**Sent:** Thursday, December 08, 2016 12:19 PM  
**To:** Kathuria, Sacha  
**Cc:** Thompson, Jeffrey [AG]  
**Subject:** RE: Department of Energy RAPID Toolkit

Sacha: I will forward a copy of your message to Jeffrey Thompson, Solicitor General, Attorney General's office who is the legal advisor to the Executive Council for a reply.

GeorgAnna Madsen  
Executive Secretary  
Treasurer of State - State Capitol  
1007 E. Grand Avenue Rm 114 – Des Moines, Iowa 50319  
(515-281-5368) • [w] [www.iowatreasurer.gov](http://www.iowatreasurer.gov)



---

**From:** Kathuria, Sacha [mailto:SKathuria@midwesterngovernors.org]  
**Sent:** Thursday, December 08, 2016 11:08 AM  
**To:** Madsen, GeorgAnna [TOS]  
**Subject:** Department of Energy RAPID Toolkit

Dear Ms. Madsen,

The Iowa Department of Natural Resources suggested I contact you. The Midwestern Governors Association is expanding the Department of Energy's Regulatory and Information Permitting Information Desktop (RAPID) Toolkit to include the Midwestern states. The Toolkit can be found here: <http://en.openei.org/wiki/RAPID/BulkTransmission> As a part of this effort we are working with the National Renewable Energy Laboratory (NREL). NREL has a few questions about the role of the Executive Council and the NRC, which I have posted below:

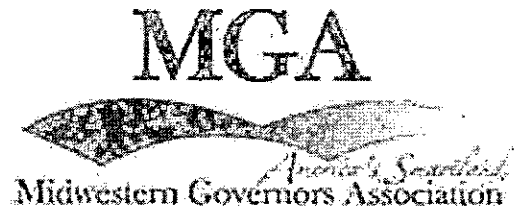
1. Iowa Department of Natural Resources: Iowa Code § 461A.25 states: "If the recommendation is for a lease in excess of five years, with the exception of agricultural lands specifically dealt with in Article I, section 24 of the Constitution of the State of Iowa, the council shall advertise for bids. If a bid is accepted, the lease shall be let or executed by the council in accordance with the most desirable bid." In what form must the Natural Resource Council (NRC) place its advertisement for bids (newspaper, letters, online, etc.)?
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3. How must bidders submit their bids to NRC? What information must bidders include in their bids? How long do bidders have to submit their bids to NRC?
4. What factors does NRC use to determine which bid is "the most desirable bid"?

I would much appreciate it if you could please help us obtain these clarifications. Please let me know if you have any questions. Thank you.

Best Regards,  
Sacha Kathuria

Sacha A. Kathuria, Esq.  
Program Manager  
Midwestern Governors Association  
2025 M Street, NW  
Suite 800  
Washington, DC 20036  
Tel: 202-367-2414  
[skathuria@midwesterngovernors.org](mailto:skathuria@midwesterngovernors.org)  
[www.midwesterngovernors.org](http://www.midwesterngovernors.org)





*For information about the Midwestern Governors Association and its work promoting America's Smartland, please visit [www.midwesterngovernors.org](http://www.midwesterngovernors.org)*

## Thompson, Jeffrey [AG]

---

**From:** Laura Belin <desmoinesdem@bleedingheartland.com>  
**Sent:** Wednesday, March 15, 2017 9:55 PM  
**To:** Tabor, Eric [AG]  
**Cc:** Greenwood, Geoff [AG]; Thompson, Jeffrey [AG]  
**Subject:** Re: seeking comment/clarification

Thanks for letting me know, Eric.

Laurie

On Wed, Mar 15, 2017 at 4:35 PM, Tabor, Eric [AG] <[Eric.Tabor@iowa.gov](mailto:Eric.Tabor@iowa.gov)> wrote:

Laurie – Attorney General Miller is committed to responding to Senator David Johnson before Governor Branstad resigns. Eric

### Eric Tabor



**Chief Deputy Attorney General**  
Office of the Attorney General of Iowa  
1305 E. Walnut St.

Des Moines, Iowa 50319

Main: (515) 281-5164 | Direct: (515) 281-5191  
Email: [Eric.Tabor@iowa.gov](mailto:Eric.Tabor@iowa.gov) | [www.iowaattorneygeneral.gov](http://www.iowaattorneygeneral.gov)

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**From:** Laura Belin [<mailto:desmoinesdem@bleedingheartland.com>]  
**Sent:** Tuesday, March 14, 2017 4:09 PM  
**To:** Tabor, Eric [AG]  
**Subject:** Fwd: seeking comment/clarification

Hello Eric,

I'm forwarding this to you, having received an out of office auto-reply from Geoff.

Thanks,

Laurie

----- Forwarded message -----

From: **Laura Belin** <[desmoinesdem@bleedingheartland.com](mailto:desmoinesdem@bleedingheartland.com)>

Date: Tue, Mar 14, 2017 at 4:05 PM

Subject: seeking comment/clarification

To: "Greenwood, Geoff [AG]" <[Geoff.Greenwood@iowa.gov](mailto:Geoff.Greenwood@iowa.gov)>

Geoff,

Can you tell me whether the Attorney General's Office is working on an expedited basis to provide the written opinion requested by Senator David Johnson?

If the answer is yes, when do you expect the opinion to be ready? Can Attorney General Miller commit to answering Senator Johnson's questions this month, or at least before Governor Branstad resigns, which seems likely to happen in April or May?

If the answer is no, can you explain why Attorney General Miller is unwilling to respond in a timely way to these questions?

The coming transfer of power is an extraordinary situation of obvious statewide importance. If Lieutenant Governor Reynolds appoints a new lieutenant governor, that person will be next in line to perform the governor's duties, in apparent contradiction to language in the Iowa Constitution placing the Iowa Senate president next in line.

I understand that legal research can take time, but you indicated in our earlier correspondence that the Attorney General's staff had thoroughly researched these matters before your December 12 announcement that Attorney General Miller concurred with the governor's reading of the Iowa Constitution.

Thanks in advance for any information you can provide about a timetable. If Attorney General Miller will not commit to issuing his written opinion before Governor Branstad resigns, I want to let my readers know. (Several have asked me what is happening on this.)

Yours,

Laurie

1705 Plaza Circle

Windsor Heights, IA 50324

(515) 276-6971

<http://www.bleedingheartland.com>

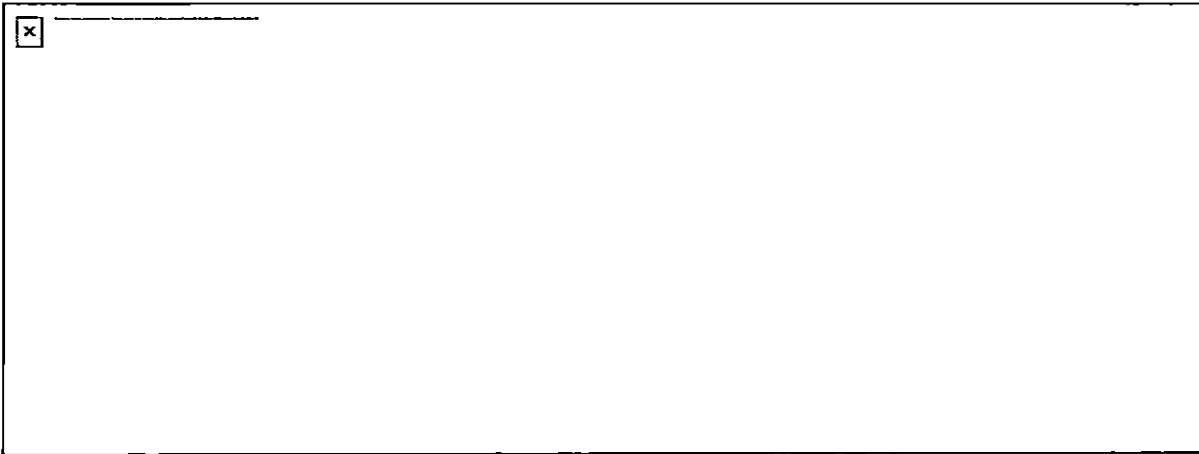
**Thompson, Jeffrey [AG]**

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**From:** Lewis Rice <hmartin@lewisrice.com>  
**Sent:** Monday, February 06, 2017 1:56 PM  
**To:** Thompson, Jeffrey [AG]  
**Subject:** Governor Greitens Makes Missouri the Nation's 28th "Right-to-Work" State



To view this email in your web browser, click [here](#).



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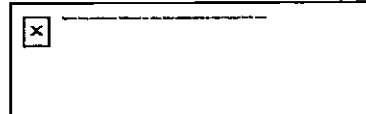
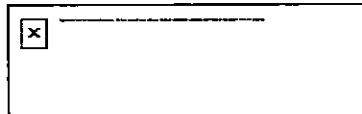
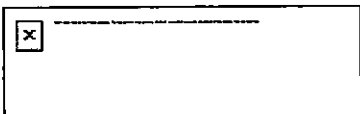
## Governor Greitens Makes Missouri the Nation's 28th "Right-to-Work" State

February 06, 2017

On February 6, 2017, Missouri Governor Eric Greitens made good on his campaign promise by signing legislation that makes Missouri the nation's 28th "right-to-work" (RTW) state. [Read more>>](#)

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Lewis Rice Labor and Employment attorneys represent management in employment-related litigation in federal and state courts in a variety of matters, including union issues such as collective bargaining negotiations, union avoidance, unfair labor practice charges, unlawful union activities, and labor arbitrations. Please feel free to reach out to a Lewis Rice Labor & Employment attorney if you have any questions or concerns regarding Missouri's new RTW law, or [click here](#) to learn more about our practice.



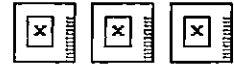
**Robert J. Golterman**  
rgolterman@lewisrice.com  
(314) 444-7745

**John J. Moellering**  
jmoellering@lewisrice.com  
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mhaas@lewisrice.com  
(314) 444-1325

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600 Washington Ave., Ste. 2500 | St. Louis, MO 63101 | 314.444.7600 | lewisrice.com

## Thompson, Jeffrey [AG]

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**From:** Madsen, GeorgAnna [TOS]  
**Sent:** Thursday, December 08, 2016 11:18 AM  
**To:** 'Kathuria, Sacha'  
**Cc:** Thompson, Jeffrey [AG]  
**Subject:** RE: Department of Energy RAPID Toolkit

Sacha: I will forward a copy of your message to Jeffrey Thompson, Solicitor General, Attorney General's office who is the legal advisor to the Executive Council for a reply.

GeorgAnna Madsen  
Executive Secretary  
Treasurer of State - State Capitol  
1007 E. Grand Avenue Rm 114 – Des Moines, Iowa 50319  
(515-281-5368) • [w] [www.iowatreasurer.gov](http://www.iowatreasurer.gov)



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**From:** Kathuria, Sacha [mailto:SKathuria@midwesterngovernors.org]  
**Sent:** Thursday, December 08, 2016 11:08 AM  
**To:** Madsen, GeorgAnna [TOS]  
**Subject:** Department of Energy RAPID Toolkit

Dear Ms. Madsen,

The Iowa Department of Natural Resources suggested I contact you. The Midwestern Governors Association is expanding the Department of Energy's Regulatory and Information Permitting Information Desktop (RAPID) Toolkit to include the Midwestern states. The Toolkit can be found here: <http://en.openei.org/wiki/RAPID/BulkTransmission> As a part of this effort we are working with the National Renewable Energy Laboratory (NREL). NREL has a few questions about the role of the Executive Council and the NRC, which I have posted below:

1. Iowa Department of Natural Resources: Iowa Code § 461A.25 states: "If the recommendation is for a lease in excess of five years, with the exception of agricultural lands specifically dealt with in Article I, section 24 of the Constitution of the State of Iowa, the council shall advertise for bids. If a bid is accepted, the lease shall be let or executed by the council in accordance with the most desirable bid." In what form must the Natural Resource Council (NRC) place its advertisement for bids (newspaper, letters, online, etc.)?
2. How long must NRC advertise for?
3. How must bidders submit their bids to NRC? What information must bidders include in their bids? How long do bidders have to submit their bids to NRC?
4. What factors does NRC use to determine which bid is "the most desirable bid"?

I would much appreciate it if you could please help us obtain these clarifications. Please let me know if you have any questions. Thank you.

Best Regards,  
Sacha Kathuria

Sacha A. Kathuria, Esq.  
Program Manager  
Midwestern Governors Association  
2025 M Street, NW  
Suite 800  
Washington, DC 20036  
Tel: 202-367-2414  
[skathuria@midwesterngovernors.org](mailto:skathuria@midwesterngovernors.org)  
[www.midwesterngovernors.org](http://www.midwesterngovernors.org)



*For information about the Midwestern Governors Association and its work promoting  
America's Smartland, please visit [www.midwesterngovernors.org](http://www.midwesterngovernors.org)*



## Thompson, Jeffrey [AG]

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**From:** McCarthy, Kevin [AG]  
**Sent:** Wednesday, April 19, 2017 8:51 PM  
**To:** Tabor, Eric [AG]; Thompson, Jeffrey [AG]; Greenwood, Geoff [AG]; Ambrozic, Jane [AG]  
**Subject:** Sentencing Reform

Our reform efforts just passed 50-0 in the Senate and are headed to the Governor. It passed 97-0 last night before midnight in the House. Eliminates all mandatory minimums for C felony drug crimes prospectively and does away with all C drug crimes retroactively to allow the Board of Parole to use their discretion. Changes the current disparity between crack and powder cocaine from a current disparate ten to one ratio to a 2.5 to 1 by raising the weight threshold for crack four times its current level. This year plus last year's bills together are the most progressive criminal reforms in the last half century and will reduce racial disparity in our prisons.

Sent from my iPhone

## Thompson, Jeffrey [AG]

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**From:** NEWS [AG]  
**Sent:** Monday, May 01, 2017 11:46 AM  
**Subject:** Lieutenant Governor to Serve as Governor, But Lacks Authority to Appoint Lieutenant, Attorney General Opinion Concludes

**IOWA DEPARTMENT OF JUSTICE  
OFFICE OF THE ATTORNEY GENERAL  
Thomas J. Miller, Attorney General  
[www.iowaattorneygeneral.gov](http://www.iowaattorneygeneral.gov)**

CONTACT: Geoff Greenwood | Communications Director | 515-281-6699 | [geoff.greenwood@iowa.gov](mailto:geoff.greenwood@iowa.gov)

FOR IMMEDIATE RELEASE  
May 1, 2017

### **Lieutenant Governor to Serve as Governor, But Lacks Authority to Appoint Lieutenant, Attorney General Opinion Concludes**

*Formal opinion responds to request by state senator as Governor Branstad prepares to resign for ambassadorship*

DES MOINES – Attorney General Tom Miller Monday issued a formal legal opinion stating that if a governor resigns, the lieutenant governor becomes governor for all intents and purposes, but does not have legal authority to appoint a new lieutenant governor.

Sen. David Johnson, I-Ocheyedan, requested the opinion following Governor Terry Branstad’s announcement that, if confirmed by the U.S. Senate, he will serve as U.S. ambassador to China.

The 23-page opinion, following extensive legal and historical research, concludes, “...the powers and duties of the office of Governor fall upon the lieutenant governor.” The conclusion is based on an Iowa Constitution provision addressing a governor’s resignation, which states, “...the powers and duties of the office...shall devolve upon the lieutenant governor.” Under that provision, the opinion adds, “The lieutenant governor takes on this authority because she is lieutenant governor.”

Significantly, according to Miller, Article IV, section 1 provides that “The supreme executive power of this state shall be vested in a chief magistrate, who shall be styled the governor of the state of Iowa.”

While the “the lieutenant governor becomes governor and has the title of Governor,” the opinion further adds that that person does not have constitutional authority to appoint a new lieutenant governor. “In other words, upon a governor’s resignation, the lieutenant governor will hold both the offices of Governor and Lieutenant Governor. There is no vacancy to be filled,” according to the opinion.

“This opinion conveys that, in a sense, the two offices merge,” Miller said. “This is consistent with numerous cases in other states that addressed this question,” Miller added. “It is also consistent with a close reading of

the Iowa governor's succession provision—Article IV, section 19 of the Iowa Constitution, which establishes a precise order of gubernatorial succession without providing for the appointment of a lieutenant governor.”

Miller's opinion notes that in all four previous instances when an Iowa governor resigned or died while in office, the lieutenant governor was always considered governor, but never appointed or named a new lieutenant governor. The opinion also concludes, “The framers intended that those in the gubernatorial line of succession be elected.”

At the federal level, prior to Congress amending the U.S. Constitution in 1967 to establish that the vice president becomes president and grants the president authority to appoint a new vice president with Congressional approval, no vice president who assumed the powers and duties of a president who died while in office appointed a new vice president.

The formal opinion departs from a public statement Miller's office issued in December, following an informal legal review in response to media inquiries, which stated the office concurred with “Governor Branstad's conclusion that...in her capacity as Governor, Governor Reynolds will have the authority to appoint a new lieutenant governor.”

The December statement was based, in part, on an Iowa Code section addressing vacancies of office holders. Miller's formal opinion concludes this statute does not apply when a governor resigns and the powers and duties devolve upon the lieutenant governor.

#### **About Attorney General Opinions**

A formal attorney general opinion addresses legal questions relating to a public official's duties by interpreting laws and offering legal guidance.

While not a legal precedent, a formal attorney general opinion is similar to one and stands until a court or later opinion overrules it or new legislation is enacted to change a statute in question. Opinions are not legally binding, but courts generally give them careful consideration and deference.

###

**Thompson, Jeffrey [AG]**

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**From:** NEWS [AG]  
**Sent:** Tuesday, February 21, 2017 2:12 PM  
**Subject:** Miller Statement on AFSCME Lawsuit

**IOWA DEPARTMENT OF JUSTICE  
OFFICE OF THE ATTORNEY GENERAL**  
Thomas J. Miller, Attorney General  
[www.iowaattorneygeneral.gov](http://www.iowaattorneygeneral.gov)

CONTACT: Geoff Greenwood | Communications Director | 515-281-6699 | [geoff.greenwood@iowa.gov](mailto:geoff.greenwood@iowa.gov)

FOR IMMEDIATE RELEASE  
February 21, 2017

**Statement from Attorney General Tom Miller on AFSCME Lawsuit over  
Collective Bargaining Law**

*Miller to ask Executive Council to approve outside legal counsel to defend state*

DES MOINES – Attorney General Tom Miller today announced that he will ask the Iowa Executive Council to seek outside legal counsel to defend the state against the lawsuit challenging the constitutionality of House File 291, the collective bargaining bill signed into law on Friday.

The American Federation of State, County and Municipal Employees (AFSCME) Iowa Council 61 filed the lawsuit Monday in Polk County District Court.

The Executive Council, comprised of the governor, secretary of state, state treasurer, secretary of agriculture and state auditor, must approve the appointment of outside counsel to represent the state.

“As the new collective bargaining law has the potential to existentially threaten the viability of public sector unions—many of the very same organizations that have supported me in the past—I am recommending that the Executive Council seek outside legal representation to defend this lawsuit in order to avoid any questions about a potential conflict,” Miller said. “While the extraordinarily professional and skilled attorneys in my office have vigorously defended Governor Branstad and the legislature in past lawsuits involving AFSCME, I think it’s most prudent in this highly charged legal dispute to avoid any appearance of politics clouding our office’s legal representation and judgment.”

###

**Thompson, Jeffrey [AG]**

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**From:** NEWS [AG]  
**Sent:** Wednesday, December 07, 2016 12:37 PM  
**Subject:** Miller Statement on Branstad Nomination as Ambassador to China

**IOWA DEPARTMENT OF JUSTICE  
OFFICE OF THE ATTORNEY GENERAL  
Thomas J. Miller, Attorney General  
[www.iowaattorneygeneral.gov](http://www.iowaattorneygeneral.gov)**

CONTACT: Geoff Greenwood | Communications Director | 515-281-6699 | [geoff.greenwood@iowa.gov](mailto:geoff.greenwood@iowa.gov)

FOR IMMEDIATE RELEASE  
December 7, 2016

**Miller Statement on Branstad Nomination as Ambassador to China**

*Miller: "I know he'll serve the U.S. well and will carry his deep passion for our state and our nation to China."*

DES MOINES – Attorney General Tom Miller today released the following statement regarding the announcement by President-Elect Donald Trump's transition team that Governor Terry Branstad will be nominated to serve as U.S. ambassador to China:

"I congratulate Governor Branstad for the tremendous honor of being asked to represent our nation's interests in China. I know he'll serve the U.S. well and will carry his deep passion for our state and our nation to China. I am confident the Governor will work very hard on trade partnerships, and that's good for Iowa farmers and our state's economy."

###

## Thompson, Jeffrey [AG]

**From:** Polk County Bar Association <info@pcbaonline.ccsend.com> on behalf of Polk County Bar Association <cphillips@pcbaonline.org>  
**Sent:** Friday, April 21, 2017 12:03 PM  
**To:** Thompson, Jeffrey [AG]  
**Subject:** Are you stressed? | Wing man | Get CLEs | Honor winners | More

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# The Advocate

April/May 2017

## In This Issue

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[Golf with us for a good cause](#)

[Why not become a golf sponsor](#)

[Notice of Magistrate vacancies](#)

[See what you've missed](#)

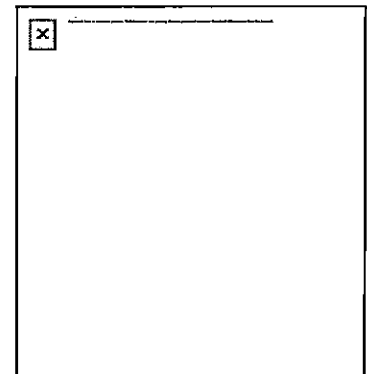
## From the President . . . .

*Pressure*

*You  
have to  
learn to  
pace  
yourself*

*Pressure*

*You're  
just like  
everybo  
dy else*



*PCBA President Bridget  
Penick*

*Pressure*

*You've only had to run so far  
So good*

*But you will come to a place  
Where the only thing you feel  
Are loaded guns in your face  
And you'll have to deal with*

*Pressure*

This President's Message is tardy. I apologize. It was on my To Do list, but it fell to the bottom. I know I am not the only PCBA member who

## Upcoming Events

**April 28:** PCBA Spring CLE

**May 2:** Bench & Bar Spring Social

**May 9:** PCBA Law Day Luncheon

**June 9:** PCBA Golf Outing

**June 13:** PCBA Law Clerk Luncheon

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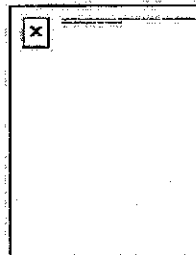
[www.pcbaonline.org](http://www.pcbaonline.org)



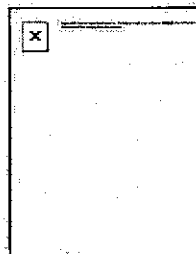
## On the Move

**Shayla L. McCormally** and **Maureen C. Cosgrove** have formed McCormally & Cosgrove, P.L.L.C. in Des Moines.

Shayla maintains a general practice, including civil litigation, family law, surrogacy and personal injury. She earned her J.D. from the University of Iowa College of Law in 2007. Her previous experience includes working at Wandro & Associates, P.C. and as a trial attorney with the United States Department of Justice.



Shayla  
McCormally



often feels pulled in a dozen directions at the same time, with the sense that I am just spinning my wheels trying to keep juggling all the balls in the air. **PRESSURE.**

I have learned that April, coincidentally, is Stress Awareness Month. Recognized since 1992, each April, health care professionals and health promotion experts across the country join forces to increase public awareness about both the causes and cures for our modern stress epidemic. We also see various tornado and severe weather drills at this time each spring, to try to prepare us for the possibility of a natural disaster. But what prepares us to deal with the **PRESSURE** of the practice of law?

While I'm sure each occupation has its stressors, we know all too well the mounting pressure we face in our practice, whether private practice, in house, government, or elsewhere. The demand for faster, less costly legal advice, coupled with the blessing and curse of technology that allows us to be connected and accessible 24/7 sends thousands of lawyers each year into a tailspin of stress and pressure. Add in family, health, community stressors and even the uncertainty of our national security and changes in politics and government—it's a recipe for disaster that no April tornado drill or disaster preparedness training can touch.

It is no surprise to scan the Iowa Supreme Court's disciplinary decisions and find that many lawyers who find themselves in front of the Grievance Commission have succumbed to the pressure and sought solace in controlled substances, only deepening the downward spiral. The ABA reports that more than 50% of all disciplinary cases involve impaired lawyers. Lawyers abuse alcohol at a 50-80% higher rate than the general

Maureen maintains a general practice that includes litigation and transactional work in the areas of family law, business law, personal injury, and probate. She earned her J.D. from Hamline University School of Law in 2009. Maureen has been a corporate attorney, an assistant with the Iowa Attorney General's Office, and an associate at the Baer Law Office in Des Moines, Iowa

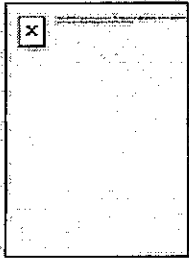
Maureen Cosgrove

general practice and transactional family law, business

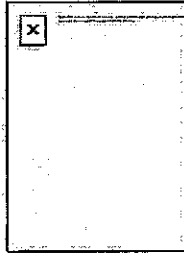
population.

Although we often refer to ourselves as "attorneys and counselors," I am not proclaiming to be one who can expertly help my fellow lawyers deal with such pressure. Sure, there are the usual tips that seem to be window dressing and overly obvious:

**Read more ...**



Brent Cashatt

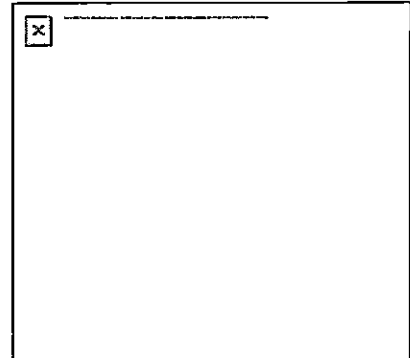


Stacey Warren

**Brent Cashatt and Stacey Warren** have announced their new law practice: CashattWarren Family Law, a boutique law firm specializing in complex divorces, child custody issues, and situations with large scale or complicated asset management and separation. A husband/wife combination, Cashatt and Warren are the only two lawyers in the state of Iowa recognized by a worldwide association of practicing lawyers, the International Academy of Family Lawyers, as the most experienced and skilled family law specialists in their respective countries. In addition, both Cashatt and Warren are recognized Fellows in the American Academy of Matrimonial Lawyers. Cashatt is currently serving as the Vice President of the Board of Governors and has chaired the Admissions Committee. Cashatt and Warren are in the middle of a build-out of their office space in the East Village.

## Hail our wing-eating hero!

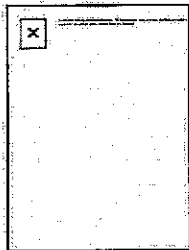
Our intrepid PCB A Past President Nathan Overberg



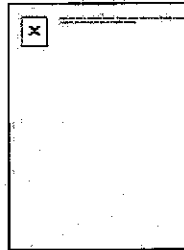
Nathan Overberg rolls up his sleeves and prepares to beat the wing-eating competition.

g has proved to be a wing eater extraordinaire - and an awesome fundraiser to boot! Nathan took top honors at the recent charity wing-eating Eat-a Thon competition at the Drake neighborhood Jethro's BBQ and raised some \$3,300 for the PCBA Volunteer Lawyer's Project.

Thank you to everyone who donated and to Nathan for being such a good sport to eat so many wings! [Click here to see photos from the event.](#)



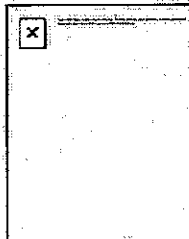
Paige Thorson



Colleen MacRae

**Paige Thorson, Colleen MacRae, and Rebecca Moore** have joined Nyemaster Goode's Des Moines office.

Paige is in Nyemaster's Government Affairs Department representing clients before the Iowa Legislature, Governor's office, and state agencies. Her work as legislative counsel involves a broad spectrum of public policy issues including health care, insurance, economic development, utilities, and renewable energy. Prior to joining



Rebecca Moore

## Help us honor our Law Day winners

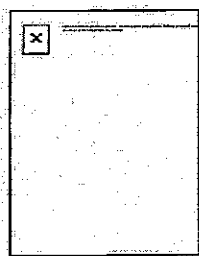


the firm, Paige served in various positions in Iowa state government for the Department on Aging, Office of the State Long-Term Care Ombudsman, and Department of Human Services. Most recently, she served as the policy advisor and legislative liaison for the Iowa Department of Human Services. Paige received her J.D. from Drake University in 2010. She can be contacted at (515) 283-8194 or pthorson@nyemaster.com.

Colleen is in Nyemaster's Business, Finance, and Real Estate Department where she assists clients with the formation of businesses, corporate restructuring, and contract drafting and negotiations. She provides counseling and transactional services to financial institutions in connection with regulatory compliance, operations and a variety of acquisitions. Colleen's practice also includes real estate leasing and economic development and prior to joining the firm, Colleen represented clients in environmental matters including permitting, land use, and water quality. She can be contacted at (515) 283-8175 or cmacrae@nyemaster.com.

Rebecca is in Nyemaster's Tax, Estate Planning, and Employee Benefits Department. Rebecca's practice includes assisting clients with estate planning, trust and estate administration, and tax issues. Before joining Nyemaster, she was a partner at Buchanan law office in Algona, Iowa. Rebecca obtained her undergraduate degree in Political Science and Sociology at Iowa State University. She can be contacted at (515) 283-3175 or rmoore@nyemaster.com.

International law firm **Dorsey & Whitney LLP** has opened an office in Dallas, Texas, to bring on a team of Dallas-based lawyers who are practitioners in mezzanine finance, private equity and a broad range of other corporate finance, M&A and securities work. With more than 530 lawyers worldwide, Dorsey now has 14 offices strategically located across the United States, three in China, two in Canada and one in London.



Allison Kerndt

Nyemaster Goode, P.C. has announced that **Allison E. Kerndt** has joined the firm as a shareholder in its rapidly growing Intellectual Property Department. Allison focuses her practice on advising clients on issues related to the management of their intellectual property portfolios. Her experience spans a wide range of technical areas, including pharmaceutical, chemical, and cosmetic arts, biomedical devices, electronic devices, and business methods. She is experienced in the preparation and prosecution of patent and trademark applications and is registered to practice before the United States Patent and Trademark Office. Allison received her J.D., with distinction, from The University of Iowa College of Law in 2005. She has more than a decade of experience in intellectual property, which includes a judicial clerkship with the United States Court of



The PCBA and ARAG are proud to sponsor our annual Law Day competition to give Polk County K-12 students an opportunity to showcase their creative talents, learn about the law and have the opportunity to win prizes! This year's competition included coloring, poster, and essay categories for kindergarten through fifth grade students in Polk County; and visual arts, music and performing arts, essay, and poetry categories for sixth through twelfth grade students.

This year's theme, *The Fourteenth Amendment: Transforming American Democracy*, provided the opportunity to explore the many ways that the Fourteenth Amendment has reshaped American law and society.

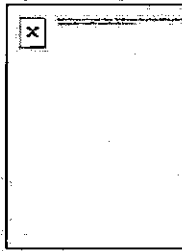
Student winners will be honored at the PCBA & ARAG Law Day Awards Luncheon on **May 9** at the Downtown Marriott Hotel featuring keynote speaker The Hon. Romonda Belcher, District Associate Judge, Fifth Judicial District. [Click here for details and to download the reservation form.](#)

## Consider becoming a Law Day sponsor

Please consider supporting our Law Day program and enriching the experience for Polk County area students. For just \$100, you or your firm can sponsor a winning student,

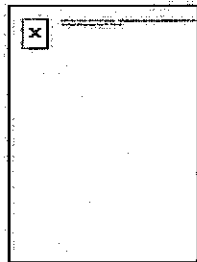
Appeals for the Federal Circuit, the court that hears appeals of all patent litigation in the country. Allison can be reached at (515) 283-3193 or [akerndt@nyemaster.com](mailto:akerndt@nyemaster.com).

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**Christopher J. Jessen** has joined Belin McCormick, P.C. as an associate in the litigation practice group. Christopher will handle a broad range of litigation matters with a particular emphasis on complex commercial litigation. He joins the law firm after serving as the judicial clerk for the Honorable Christopher McDonald of the Iowa Court of Appeals. Christopher is a 2016 graduate of the Drake University Law School where he earned Order of the Coif recognition, graduating with highest honors. He was Research Editor of the *Drake Law Review*.



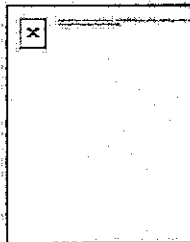
Christopher Jessen

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**Rob Poggenklass** has joined the staff of Iowa Legal Aid's Central Iowa Regional Office. He is a 2010 graduate of William & Mary School of Law. Originally from Iowa, Rob returned to the state after working with the Public Defender's office in Newport News, Virginia, and the American Civil Liberties Union of Virginia.



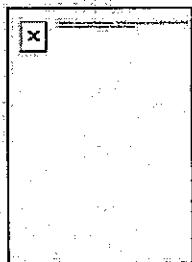
Rob Poggenklass

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**Kristie Kunstman-Stern** has been hired as a Staff Attorney in Iowa Legal Aid's Central Iowa Regional Office. She is a 1997 graduate of the University of Dayton School of Law in Dayton, Ohio. Prior to joining the staff of Iowa Legal Aid, Ms. Kunstman-Stern was the Director of Legal Services at the Center for Law & Social Work in Chicago, Illinois. She has also worked with the Office of the Public Guardian in Chicago.



Kristie Kunstman-Stern

### Kudos



David Luginbill

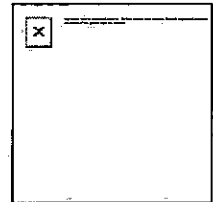
Attorney **David Luginbill** has become a Fellow of the American College of Trial Lawyers, one of the premier legal associations in North America. The induction ceremony took place recently before an audience of approximately 600 persons during the 2017 Spring Meeting of the College in Boca Raton, Florida. David is a partner in the firm of Ahlers & Cooney, P.C. With 40 years of litigation experience, he has lead counsel experience trying

the student's teacher, and the student's parent or parents. Sponsors may also sit with the winning students at our Law Day luncheon, as space allows, and they will be recognized in the written program. [Click here for details.](#)

### Member Spotlight: Who will be next?

The PCBA Membership Committee is accepting nominations for future "Member Spotlight" features.

Please email your nominations to Maggie Hanson at [maggiehanson@davisbrownlaw.com](mailto:maggiehanson@davisbrownlaw.com).



### Something for everyone at Spring CLE

You won't want to miss our Spring General Practice CLE on **Friday, April 28**, at the Downtown Marriott Hotel, where a wide variety of important topics will be covered.

This event is FREE for current members, but there is a \$25 charge for printed materials (note that the materials will also be posted in the Members Only area of our website following the event). We have received approval for 7.5 State CLE credit hours with 1 hour Ethics and 1 hour Federal credit.

[Click here to download the registration form and the agenda.](#)

**You are cordially invited**

complex and difficult high-stakes litigation and routinely handles litigation through trial and/or appeal for clients in a wide range of litigation matters. He has represented national and international clients, as well as clients located in Iowa. David received his law degree from Drake University.

As reported in the February 15, 2017 issue of the *Bond Buyer's Midwest Yearend Review*, Ahlers & Cooney, P.C. ranked No. 1 in Iowa for Bond Counsel: Competitive Issues for 2016, with \$1,599,700,000 in total issuance. See:

[http://cdn.bondbuyer.com/media/pdfs/BB021517\\_Mid\\_West.pdf](http://cdn.bondbuyer.com/media/pdfs/BB021517_Mid_West.pdf)

With one exception, Ahlers & Cooney, P.C. has led the state of Iowa as bond counsel on competitive issues since 2006.

***Don't miss an opportunity to share your news and special announcements with fellow PCBA Members! [Click here.](#)***

The PCBA Bench & Bar Committee invites you to attend our spring social on **Tuesday, May 2**, from 4:30 to 7:30 p.m., at the ISBA Conference Center, 625 East Court Avenue in Des Moines. Please join us in recognizing the newly appointed judges. Complimentary Hors d'Oeuvres and beverages will be served.

### **You won't want to miss June luncheon**

Join us on **Tuesday, June 13**, at noon for our annual law clerk luncheon. Our speakers are Pat McNulty from Greffe & Sidney, PLC and Theresa Weeg, Iowa Attorney General's Office (retired) who will share their experiences working with the International Criminal Tribunal for the former Yugoslavia.

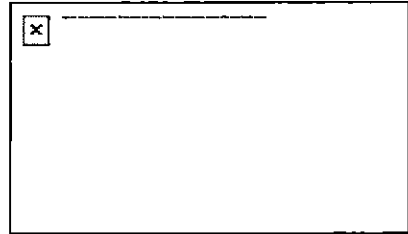
The luncheon will be held at the Wakonda Club, 3915 Fleur Dr., in Des Moines, and the cost is \$25 with advance reservation and \$27 at the door. Please note that seating is limited and we may not be able to accommodate walk ins, so be sure to make your reservation early. [Click here for complete details and a reservation form.](#)

### **Get the latest Courts phone chart**

The updated Polk County Court phone chart has just been released and we have made it available to PCBA members on our website. To get the latest court room assignments, phone numbers, and court attendant and court reporter contacts for each judge, [just click here.](#) Member login required.

## Our box office is now open

One of the many benefits of belonging to the



Polk County Bar Association is access to discounted tickets on top-quality Broadway productions at the Des Moines Civic Center. Each year, we purchase season tickets - and we will also buy group tickets if there are enough people interested for a particular show - and we pass the savings on to you!

Take a look at the shows listed below. If you are interested in attending, just email [Sonja Diener](mailto:Sonja.Diener@pcba.org) and let her know which shows and how many tickets for each show you would like. You don't have to buy tickets for every show - you can pick and choose. This is not an obligation to buy. It just gives us an idea of how many group tickets, in addition to the season's tickets, we will need to buy. If you have questions, just call our office at (515) 697-7880.

### Willis Broadway series tickets

All shows are at 7:30 p.m. on a Thursday. \$73.50 each:

Oct. 12, 2017 - *Something Rotten*

Nov. 2, 2017 - *The Color Purple*

Dec. 7, 2017 - *Waitress*

Feb. 22, 2018 - *On Your Feet! The Emilio & Gloria Estefan Musical*

April 5, 2018 - *The Humans*

Please note that *Hamilton* is SOLD OUT. All the tickets that we can receive are spoken for. We hope to be able to buy more tickets, but that is not guaranteed. If you would like

to be put on our very long list of people interested in tickets, just send an email to [sdiener@pcbaonline.org](mailto:sdiener@pcbaonline.org). No more than three tickets per person please. And again, there is no guarantee that we will be able to buy more tickets.

#### **Add On Shows**

All shows are at 7:30 p.m. We will buy these only if enough people are interested. We don't know the price or location of seats yet.

Friday, Jan. 26, 2018 - *Stomp*

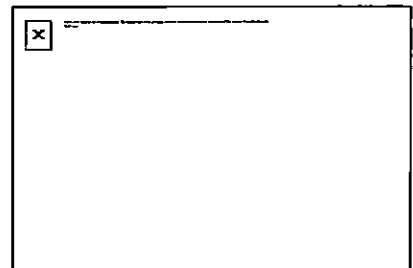
Friday, March 9, 2018 - *Chicago*

Thursday, April 19, 2018 - *Les Miserables*

Saturday, May 12, 2018 - *Leslie Odom Jr. in Concert with the Des Moines Symphony*

#### **Golf with us for a good cause**

It's time to dust off those golf clubs and



join us for the PCBA's annual Bench and Bar Golf Outing to benefit the Volunteer Lawyers Project. This year's event will be held on **Friday, June 9**, at the Waveland Golf Course in Des Moines. Registration begins at noon with a shotgun start at 1 p.m.

If you register before May 6, you can take advantage of our early bird special and pay only \$100 per person, which includes green fees, cart, and dinner following golf. You can also order a box lunch for \$10.

[Click here for details and to](#)

[download the registration form.](#)

### **Why not become a golf sponsor?**

This year, the PCBA Volunteer Lawyers Project is offering two sponsorship levels for our Bench & Bar Golf Tournament. The Gold level is an exclusive hole sponsorship which includes one large sign at each hole and one Foursome as part of the package. The cost is \$1,000. Only 18 Gold sponsorships are available. The Silver level sponsorship is \$500 and includes signage on display at the tournament starting box.

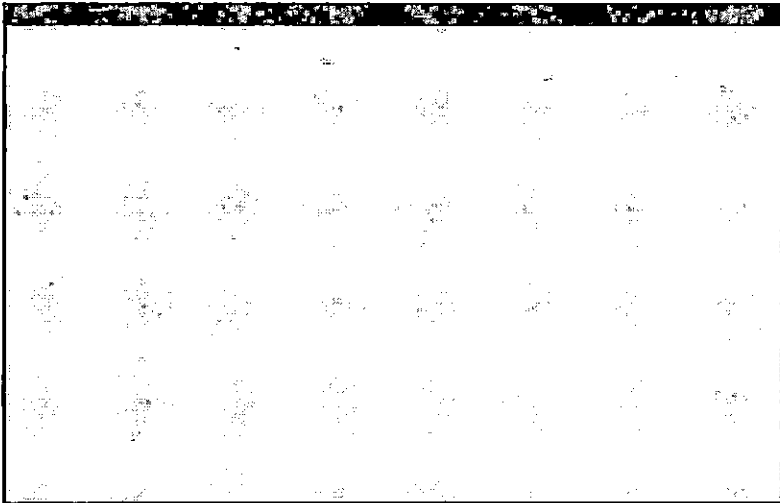
[Click here for sponsorship details](#) and [click here for a sponsorship invoice.](#)

### **Notice of Magistrate vacancies**

There are nine magistrate vacancies in judicial election district 5-C (Polk County) as a result of the July 31, 2017 expiration of the terms of office of the six current magistrates and the allocation of three additional positions to Polk County. The term of office of a magistrate is four years. The terms of office of the magistrates appointed to fill these vacancies will begin on August 1, 2017 and expire on July 31, 2021. Appointments to fill these vacancies will be made on or before June 1, 2017. The deadline for submitting applications is Tuesday, May 2, at 4 p.m. [Click here for complete details.](#)

### **See what you've missed**

The PCBA monthly luncheons are a great way to network, keep on top of current events, and get up close and personal with Iowa movers and shakers. Recent speakers have included The Honorable Mark Cady and Court of Appeals Chief Judge



The Honorable David Danilson who explored current Judicial Branch issues; State Representative Zach Nunn, Matthew Eslick (Nyemaster Goode), and Jesse Johnston (Dickinson Law) who shared their Mock Trial experiences; and Iowa State University Men's Head Basketball coach Steve Prohm who gave a behind-the-scenes look at the Cyclone's winning season.

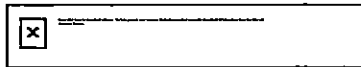
[Click here to see photos of each of these events.](#)

Polk County Bar Association, 625 East Court Ave., Suite 100, Des Moines, IA 50309-2007

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## Thompson, Jeffrey [AG]

**From:** Polk County Bar Association <info@pcbaonline.ccsend.com> on behalf of Polk County Bar Association <cphillips@pcbaonline.org>  
**Sent:** Friday, February 17, 2017 5:33 AM  
**To:** Thompson, Jeffrey [AG]  
**Subject:** Bridget's tattoo | Get up close with the Bench | Need CLEs? | Job postings | More

Having trouble viewing this email? [Click here](#)

# The Advocate

February/March 2017

## In This Issue

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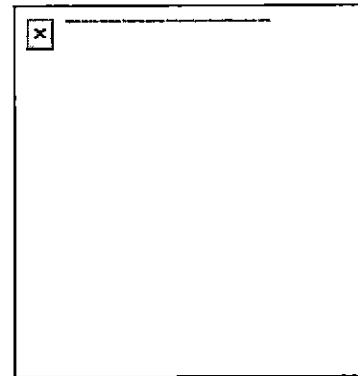
[Changes impact deployed parents](#)

[Follow MVS during National Ag Week](#)

[In memoriam: Harley A. Whitfield](#)

## From the President . . . .

I have a tattoo of the scales of justice on my shoulder blade. I was inspired by Robert DeNiro's tattoo sprawling across his back in Cape Fear, but I was not gutsy enough for that for my first (or any) tattoo. As a lawyer, I suppose it may seem too cutesy, or perhaps it is seen as shameless self-promotion. It is a permanent reminder, though, of the integrity of our U.S. justice system.



*PCBA President Bridget Penick*

The scales of justice symbolize the idea of the fair distribution of law, with no influence of bias, privilege or corruption. Given recent events in this country, I could not be more proud of our judiciary and my fellow lawyers upholding and embodying what the scales of justice represent.

I am writing this message on Valentine's Day, and I was fortunate to have a Valentine's lunch date with more than a dozen judges and justices and dozens of Polk County Bar Association lawyers. I shared a table with our speakers, Iowa Supreme



## Upcoming Events

**March 14:** PCBA Luncheon  
**April 11:** PCBA Luncheon  
**April 28:** PCBA Spring CLE  
**May 9:** PCBA Annual Mtg & Law Day Luncheon  
**June 13:** PCBA Law Clerk Luncheon

## Meet Your Representatives

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### Board of Directors

### Board of Governors Committees

## Visit our Website

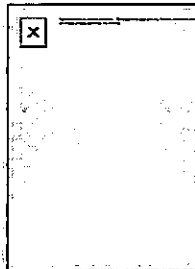
[www.pcbaonline.org](http://www.pcbaonline.org)



## On the Move

### Holly Logan

recently joined the Davis Brown Law Firm as Special Counsel in the Litigation Division. For more than 15 years, Holly has practiced in the areas of white collar criminal defense, internal investigations, and business litigation. She has defended individuals, companies, and boards of directors in governmental investigations and at trial. Prior to joining Davis Brown, Holly practiced at her own boutique white collar and business litigation firm in Des Moines. She earned her J.D. from the



Logan

Court Chief Justice Mark Cady and Iowa Court of Appeals Chief Judge David Danilson. As I chatted with them informally and then listened to their prepared remarks, I was reminded of how incredibly proud I am that Iowa has merit selection instead of judicial elections, to minimize politics swaying our scales of justice in one way or the other. As Chief Justice Cady noted, the U.S. Chamber of Commerce ranked Iowa's court system as 4th in the nation. The State of Nevada has adopted a court of appeals system mirrored after Iowa's mode.

As Chief Danilson (sort of) joked, the Iowa Court of Appeals is like the second chair lawyer at trial who does the majority of the work but gets none of the recognition. **Read more (and see the tattoo).**

## Something for everyone at Feb. CLE

The PCBA Bench and Bar Committee invites you to attend its Spring CLE on February 23 from 1:30 p.m. to 4:45 p.m. at the ISBA Conference Center. The topics are: Juvenile Justice, Iowa Access to Justice Commission, Cyber-security Risk Management Basics, and a Legislative Update. We anticipate three hours of State CLE credit to be approved. Following the seminar, there will be a Networking Social with complimentary Hors d'Oeuvres and beverages.

The CLE is free for current PCBA members. If you are not a member, you may join the PCBA on the day of the seminar in order to attend for free. **Click here for the registration form.** If you are unable to attend the seminar, you are welcome to join us for the Networking Social following the CLE, which will begin at 4:45 p.m.

## More CLE opportunities coming up

Mark your calendar for two additional noon hour CLE seminars sponsored by the PCBA Bench and Bar Committee.

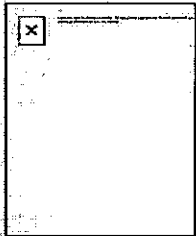
The first, on **Monday, March 27**, from noon to 1 p.m., at the Polk County Justice Center, will feature Christopher Patterson, District Court Administrator, on the Court Complex overview; Anne Sheeley, Polk County Clerk of

University of Iowa College of Law where she graduated with Distinction.

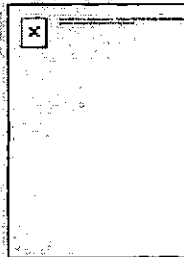
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**Lara Q. Plaisance**

has joined Hopkins & Huebner, P.C. as a shareholder attorney in the Des Moines office. Lara earned her J.D. from University of Missouri-Kansas City School of Law. She will practice primarily in workers' compensation.



Plaisance



Hilligas

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**Aaron Hilligas** has joined Ahlers & Cooney, P.C. as an Associate Attorney. Aaron is a member of the firm's Employment & Labor Law practice area, serving public entities, higher education and K-12

educational institutions. He advises clients on a variety of labor and employment related matters and represents employers in collective bargaining agreement negotiations, in cases before the Public Employment Relations Board, and in grievance arbitrations. Prior to Ahlers & Cooney, Aaron worked in the Office of the General Counsel for the National Labor Relations Board (NLRB) for the Division of Advice, as well as in-house as an attorney with labor organizations covering a variety of industries in the public and private sectors, including K-12 and higher education. He received his Juris Doctor in 2002 from the University of Wisconsin.

### Kudos

Attorneys **Jason Comisky** and **Kristin Billingsley Cooper** were recently elected shareholders at Ahlers & Cooney, P.C.

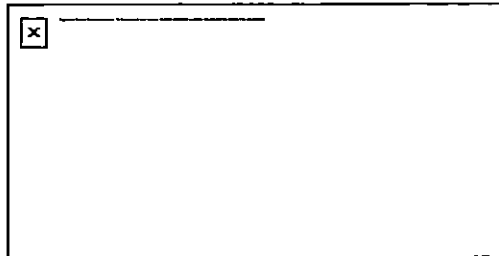
Court on Case Processing; and

Hon. Rachael Seymour, District Associate Judge - 5th Judicial District on Juvenile Court.

The second, on **Thursday, April 20**, from noon to 1 p.m., at the U.S. District Court, will feature Judge Helen Adams who will discuss proposed local federal rules. [Click here to download the registration form.](#)

### Students wanted for Law Day contest

Each year, the Polk County Bar Association teams up with ARAG to give Polk County



students in grades K through 12 a chance to get creative with the law as part of our Law Day celebration. Chief among the activities is the visual arts, music, essay, and poetry competitions.

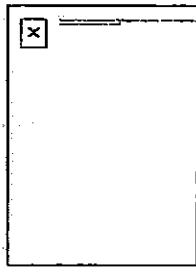
This year's theme, *The 14th Amendment: Transforming American Democracy*, enables students to explore the many ways that the 14th Amendment has reshaped American law and society. Ratified during Reconstruction a century and a half ago, the Fourteenth Amendment serves as the cornerstone of landmark civil rights legislation, the foundation for numerous federal court decisions protecting fundamental rights, and a source of inspiration for all those who advocate for equal justice under law.

[Click here for complete details.](#) The deadline for entries is April 10, and the winning students will be honored at the PCBA Annual Meeting and Law Day Luncheon on May 9.

### We're looking for Law Day sponsors

Please consider supporting our Law Day program and enriching the experience for Polk County area students. For just \$100, you or your firm can sponsor a winning student, the student's teacher, and the student's parent or parents. Sponsors may

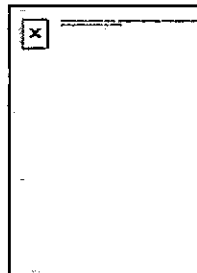
Jason is a member of the firm's Public Finance & Law and Corporate, Business & Tax practice areas, and also serves as the Procurement/ Contracting Practice Group Leader. Jason



Comisky

works closely with cities and counties on urban renewal and economic development issues, and he provides general legal services to small businesses and individuals, such as mergers and acquisitions, business formations, contracts, estate planning, estate administration, and real estate transactions. Prior to joining Ahlers & Cooney in 2014, Jason practiced law in Dubuque and Fort Dodge, Iowa. He is a graduate of the University of Iowa College of Law.

Kristin works primarily in the firm's Public Finance and Law area, with a focus on municipal finance, including municipal bonding, economic development and urban renewal.



Billingsley  
Cooper

Kristin also works in the Corporate, Business and Tax practice area, providing business services for both public and private entities in real estate and other business transactions. She also assists Iowa colleges and universities with higher education business matters. Kristin joined the firm as an associate in 2011. Previously, she worked as a legal intern for the Honorable Celeste F. Bremer at the Southern District of Iowa, and then as a summer associate with the firm. Prior to law school, Kristin assisted real estate clients as a commercial real estate agent, providing services in buying, selling, and leasing commercial real estate. Kristin is a graduate of Drake University Law School.

also sit with the winning students at our Law Day luncheon, as space allows, and they will be recognized in the written program. [Click here for details.](#)

### Member Spotlight: Who will be next?

The PCBA Membership Committee is accepting nominations for future "Member Spotlight" features. Please email your nominations to Jessica Cleerman at [cleerj1@nationwide.com](mailto:cleerj1@nationwide.com).

### Save the date: Spring CLE is April 28

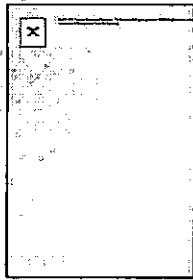
Mark your calendar now so you don't miss our Spring General Practice CLE on **Friday, April 28**, at the Downtown Marriott Hotel. This event is FREE for current members. There is a \$25 charge for printed materials, but they will also be posted in the Members Only area of our website following the event.

We anticipate approval for 7.5 State CLE credit hours with 1 hour Ethics and 1 hour Federal credit. Watch our website for agenda details as they are finalized. Meanwhile, [click here to download the registration form.](#)

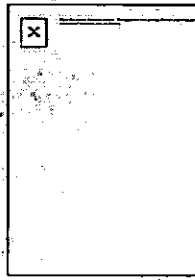
### Check out these job vacancies

York Risk Services Group is seeking a Senior Casualty Claims Adjuster to investigate, evaluate, and adjust Public Entity claims; and Stinson Leonard Street LLP is seeking a Transactional Attorney with experience in the areas of corporate law, business transactions, secured lending transactions, and/or commercial real estate to join its Mankato, Minnesota office. [Get the details on our website \(member login required\)](#). And don't forget to let us know if you have job opportunities to post. Contact [sdiener@pcbaonline.org](mailto:sdiener@pcbaonline.org) with details.

### Get the latest Courts phone chart



Piepmeier



Sieverding

The Davis Brown Law Firm has announced that **Amy Piepmeier, Craig Sieverding, and Emily Stork** have been elected shareholders, effective January 2017.



Stork

Amy is a member of the firm's business division, practicing primarily in the areas of securities law and corporate transactions. She regularly counsels public and private companies regarding equity and debt financing structure and transactions, including private placements and registered offerings, SEC reporting and regulation, Sarbanes-Oxley compliance, corporate governance matters, contract negotiation and other business and transactional matters.

Craig is a member of the firm's business division, focusing on the health care industry. He represents and provides counsel to a wide variety of health care providers, including health systems, hospitals, long-term care facilities, and home health care agencies, on regulatory and compliance, licensing, audits and investigations, data privacy and security, contracting, and reimbursement matters.

Emily is a member of the firm's business division and maintains a general real estate practice. She represents both commercial and residential clients in matters including wind energy acquisition and development, abstract examinations

The new Polk County Court phone chart is now available and we have it available on our website for you! [Click here to download the chart](#), which includes the law clerks and three new judicial specialists. *Member login required.*

### Have you renewed your membership?

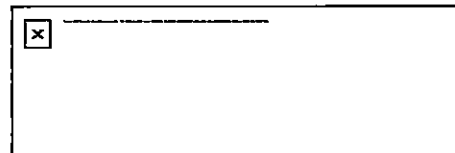
One of the best things you can do for your career is to belong to the Polk County Bar Association. Your PCBA membership entitles you to FREE CLE seminars to sharpen your skills, monthly luncheons to explore current issues, access to the court-sponsored mediation program, news and information you can't get anywhere else, discounts on programs and services, and much, much more. [Click here to learn more and to download the renewal form.](#)

And, as a bonus, first-time PCBA members and those who renew their membership for 2017 are entitled to attend one of our informative and timely PCBA luncheons on us - FREE of CHARGE - No strings attached! If you have questions about your membership, contact PCBA Executive Director Carol Phillips. [Click here for details and to download the membership form.](#)

*P.S. You can now pay your dues by credit card online!*

### Symposium to explore poverty issues

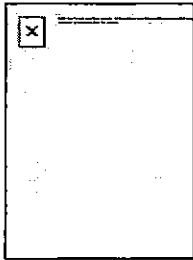
The 31st Annual Des Moines Civil & Human Rights Symposium is scheduled for March 15 in the Des Moines University Student Education Center. The theme for this year's symposium is *Poverty affects us all*, and a number of sessions will be of particular interest to the legal community.



The symposium runs from 8 a.m. to 4:45 p.m. Admission is free and includes breakfast and lunch. This event is approved for 4.5 hours of CLE credits. For more information, [click here to download a flyer.](#)

and title opinions/title commitments, easements and covenants, closings, and leases among others.

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Wallace

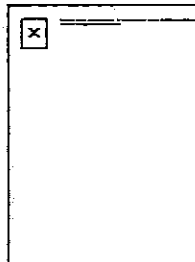
Belin McCormick, P.C. attorneys voted for Matt Wallace to become a shareholder of the Des Moines law firm effective January 1. Matt is a member of the corporate practice group and he has

negotiated for buyers and sellers, across several industries, in transactions small and large. He combines his understanding of the law, Master's degree in accounting, and business acumen to solve issues for his clients. Matt graduated with honors from the University of Chicago Law School. He was a member of the University of Chicago Law Review.

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Two associate attorneys with Nyemaster Goode - **Neal Coleman** and **Katie Graham** - have been admitted to the firm as shareholders effective January 1.

Neal is a shareholder with the Business, Finance and Real Estate Department. Neal's practice focuses primarily on commercial transactions, general representation of business organizations in all phases of an entity's life cycle, and real estate law, with a particular emphasis on commercial real estate financing transactions. He graduated with honors from the University of Texas at Austin in 2011.



Coleman

## Changes impact deployed parents

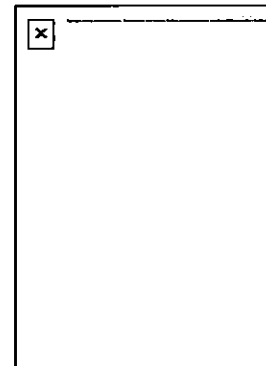
Beginning July 1, 2016 Iowa Code Chapter 598C provides a mechanism by which service member parents who are deployed may ask that a nonparent take over their parenting responsibility during their deployment. The nonparent must be an adult family member of the child or an adult with whom the child has a close and substantial relationship. The deployment must be more than 90 days but less than 18 months. The deployment must be one where family members cannot go with the service member. [Click here for a Q & A.](#)

## Follow MVS during National Ag Week

Follow the [Filewrapper Blog](#), written by McKee, Voorhees, and Sease, PLC, Intellectual Property Attorney Caitlin M. Andersen during National Ag Week, March 19-25. The blogs will offer an in-depth look at how technology and intellectual property influence both crop and animal production agriculture. National Ag Week is sponsored each year by the Agriculture Council of America and aims to recognize and celebrate the many impacts agriculture has on the world.

## In memoriam: Harley A. Whitfield

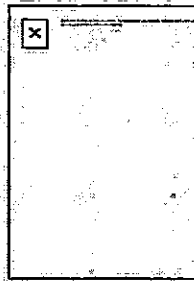
Harley A. Whitfield, 86, passed away on January 9 at Sarasota Memorial Hospital in Sarasota, Florida. Harley was a resident of Des Moines until retiring and moving to Spirit Lake, Iowa. Harley was born October 7, 1930, to Allen and Irma Cowan Whitfield. Allen was the founding partner of Whitfield & Allen in 1928, the predecessor to Whitfield & Eddy Law.



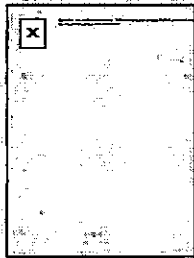
Harley A. Whitfield

Following his service as a lieutenant in the Air Force, Harley attended Drake University Law School, graduating with honors in 1956 and earning membership in the Order of the Coif. Harley practiced with Whitfield & Eddy Law and its predecessor firms from 1956 until his retirement in 1995, specializing in business and corporate law. He led the firm as the chairman of its Executive Committee for many years, with exceptional business and political acumen.

Katie is a shareholder in the firm's Litigation Department. Katie is a trial attorney, and her practice focuses primarily on litigating employment matters involving allegations of age, gender, disability, race, and religious discrimination, sexual harassment, common law retaliatory discharge, and violations of the FMLA and FLSA. She graduated with high honors from Drake University Law School in 2011.



Graham



Drake



Scales

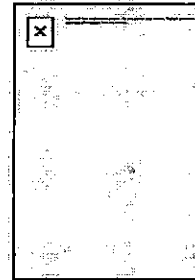
Whitfield & Eddy Law has announced that **Jennifer L. Drake** and **William C. Scales** are the newest members of the firm effective January 1.

Jennifer joined the firm in 2016 and is active in the Real Estate and Construction Practice Groups. She represents commercial and residential real estate owners, developers, brokers, and managers in negotiations, contracts, leases, and financial transactions. She received her J.D. from Drake University Law School in 2003.

William represents businesses and individuals in all phases of civil litigation and also represents creditors in bankruptcy proceedings. He is an associate fellow in the Litigation Counsel of America and was selected for inclusion in the Great Plains Super Lawyers in the area of Banking as a Rising Star in 2015-2016. He joined the firm as a Law Clerk from 2009-2011 and was an associate attorney from 2011-2016. He received his J.D.

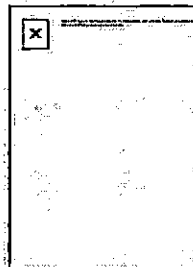
## More Kudos

**Brandon W. Clark**, chair of the Copyright, Entertainment, and Media Law Practice Group at McKee, Voorhees & Sease, PLC, has received the Industry Supporter of the Year award by the Greater Des Moines Music Coalition. Brandon represents a wide variety of clients including artists, songwriters, producers, record labels, and more generally, creators. Brandon worked at both record labels and music publishing companies before joining McKee, Voorhees & Sease in 2015. In addition, he is an adjunct professor at Drake University where he teaches Copyright Law and a course on the music industry entitled, Performing Arts Management.

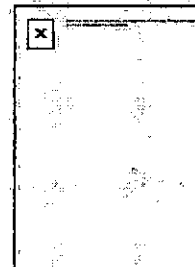


Clark

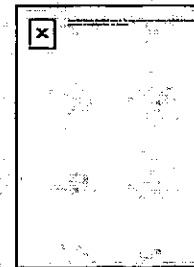
**McKee, Voorhees & Sease, P.L.C.** has been selected for the 2016 Des Moines Small Business Excellence Award in the Lawyers classification by the Des Moines Small Business Excellence Award Program. McKee, Voorhees & Sease helps its clients obtain and protect their intellectual property rights through patents, trademark and copyright registrations both domestically and internationally.



McDermott



Cartmill



Barber

**Matt McDermott** has been elected president of Belin McCormick, P.C. Matt is a shareholder of the firm, and he focuses on civil and criminal trials and appeals. He handles a wide variety of litigation matters. Matt earned his law degree at the University of California at Berkeley in 2003 (California Law Review).

Attorneys **Nola Cartmill** and **Nate Barber** join Matt on the three-person Belin McCormick, P.C. Management Committee. Nola earned her law degree from Harvard University in 2009, and Nate earned his law degree from the University of California, Berkeley in 2002 (Order of the Coif, California Law Review).

from Drake University Law School in  
2011.

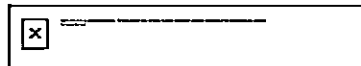
*Don't miss an opportunity to share  
your news and special  
announcements with fellow PCBA  
Members! [Click here.](#)*

Polk County Bar Association, 625 East Court Ave., Suite 100, Des Moines, IA 50309-  
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## Thompson, Jeffrey [AG]

**From:** Polk County Bar Association <info@pcbaonline.ccsend.com> on behalf of Polk County Bar Association <cphillips@pcbaonline.org>  
**Sent:** Thursday, December 15, 2016 6:06 AM  
**To:** Thompson, Jeffrey [AG]  
**Subject:** Stay humble and kind | Social Club | Family Law | CLE materials | More

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# The Advocate

December/January 2017

## In This Issue

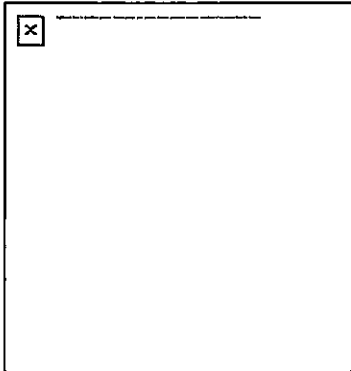
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- [Note these new Workers' Compensation numbers](#)

## Upcoming Events

### From the President . . . .

#### Always stay humble and kind

So much has happened in this world - this country - this state - this county - since my last president's message in early October. I'll refrain from political commentary on the presidential election, but focus on the positive and express gratitude at the results of the judicial retention election. Thank you to each of you who helped educate a friend or family member on the purpose of our judicial retention election process. Thanks to all who attended the ribbon cutting for the Polk County Justice Center. Congratulations to the National Bar Association for the groundbreaking on "A Monumental Journey."



*PCBA President Bridget Penick*

Anyone who knows me knows that music is important to me. Only a handful of you who know me well may recall that I was a country music DJ at KCUI while attending Central College. Blame it all on my roots, but country song lyrics speak to me. As we are in the midst of the holiday season, yet also in the midst of a very divided and



Jan. 10: PCBA Luncheon  
Feb. 14: Bench & Bar Luncheon  
March 14: PCBA Luncheon  
April 11: PCBA Luncheon  
May 9: PCBA Annual Mtg & Law Day Luncheon

## Meet Your Representatives

### Officers

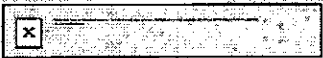
### Board of Directors

### Board of Governors

### Committees

## Visit our Website

[www.pcbaonline.org](http://www.pcbaonline.org)



## On the Move

Whitfield & Eddy Law has welcomed **Sean M. Callison** as an associate attorney in the Des Moines office. He is a member of the firm's business and banking, construction, labor and employment, trucking, and litigation practice groups. He has written about the use of unmanned aircraft (drones), in the construction industry and presented on the topic as well. Sean is a recent graduate of Drake University Law School and was a law clerk at the firm from 2014 - 2016.



**Stephanie A. Koltookian, Abigail M. Hillers** and **Robert J. Thole** have joined Bradshaw, Fowler, Proctor &

embittered country, (and yes, as I tried but was unable to get great tickets to the Soul 2 Soul concert coming to Des Moines next summer), I find myself singing these lyrics of late:

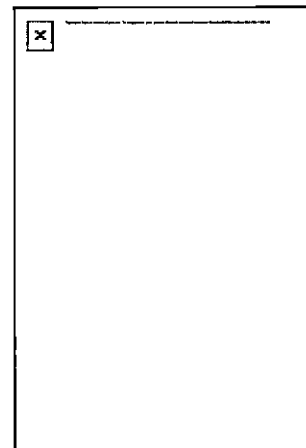
*"When those dreams you're dreamin' come to you  
When the work you put in is realized  
Let yourself feel the pride  
But always stay humble and kind."*

- From "Humble and Kind", written by Lori McKenna and performed by Tim McGraw

As lawyers, we dutifully attend CLEs and amass our ethics credits. We hear speeches about civility. We know we are duty-bound to act with "professional courtesy and professional integrity in the fullest sense of those terms." Iowa Standards for Professional Conduct, Rule 33.1(1). Are we collectively fulfilling this obligation? Are you personally living it? Or, has the negativity and turmoil in the last few months led us astray? [Read more....](#)

## All about the Des Moines Social Club

Mark your calendar and plan to join us on **Tuesday, Jan. 10**, for the first PCBA luncheon of the new year featuring Pete De Kock, executive director of the Des Moines Social Club. Pete joined the Social Club as Executive Director in 2015. He leads the DMSC team with specific responsibilities around org strategy, team building, fundraising, community partnerships, and finances. He is a graduate of Grinnell College and Harvard University, where he studied political and social ethics.

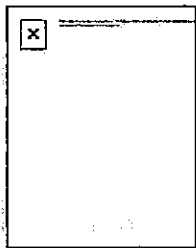
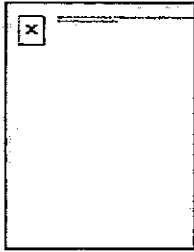


*Pete De Kock*

The luncheon will be held at the ISBA Building, 625 E. Court, from noon to 1 p.m. Tickets are \$17 in advance and \$19 at the door, but keep in mind that space is limited and we may not be able to accommodate walk ins. [Click here for details and a](#)

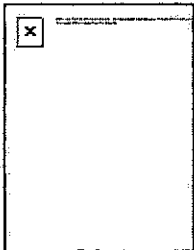
Fairgrave, P.C., in Des Moines, Iowa.

**Stephanie** joined the firm as an associate attorney in the firm's litigation division. She earned her J.D. from The University of Iowa College of Law in May 2015. Prior to joining the Bradshaw Law Firm, Stephanie clerked for Justice Thomas D. Waterman of the Iowa Supreme Court.



**Abigail** joined the firm as an associate attorney in the firm's transactional division, representing clients in the area of Wills, Trusts, Estate Planning, Probate Law, and Real Estate Law. She earned her J.D. from Valparaiso University Law School in 2009. Prior to joining the Bradshaw Law Firm, Abigail worked as a wealth management and trust officer, and general counsel, for a local bank.

**Robert** has joined the litigation division of the firm as an associate attorney. He earned his J.D. from Drake University Law School in May 2012. While attending law school, Robert clerked for both the Bradshaw Law Firm and the Honorable Robert B. Hanson of the 5th Judicial District in Polk County, Iowa. Prior to joining the Bradshaw Law Firm, Robert was engaged in private practice in Des Moines.



## Kudos

**Fredrikson & Byron** has been ranked in the Tier 1 of Metropolitan "Best Law Firm" in 28 practice areas by *U.S. News - Best Lawyers®* in 2017

[reservation form](#) or call 243-3904.

## Get up close with the Court

We invite you to be our valentine and attend the PCBA Bench & Bar Luncheon on **Tuesday, Feb. 14**, at noon. This year's featured guests will be Iowa Supreme Court Chief Justice Mark Cady and Court of Appeals Chief Judge David Danilson. Watch the PCBA website for details as they become available.

## Attention Family Law attorneys

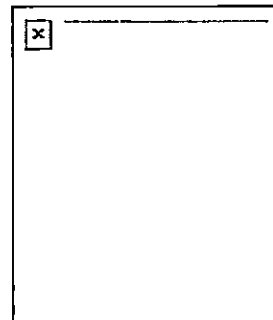
The Polk County Bar Association Family Law Committee invites you to attend the annual transition meeting with the Family Law Judges, which is scheduled for **Tuesday, Dec. 20**, from noon until 1:30 p.m. at the Polk County Courthouse, 500 Mulberry Street, in Courtroom 302. Chief Judge Arthur Gamble, Judges Eliza Ovrom, Douglas Staskal and the newly appointed Judge will be in attendance to discuss the transition and answer any questions that you may have.

## Member Spotlight: Nathan Mundy

*This is the latest in a series of features on our own PCBA members. The PCBA Membership Committee is accepting nominations for future "Member Spotlight" segments. Please email your nominations to Jessica Cleerman at [cleerj1@nationwide.com](mailto:cleerj1@nationwide.com).*

### Tell us about yourself:

I am Nathan Mundy and I am an attorney in private practice in Des Moines. I am married to another attorney, Anna Mundy, who is in-house at Principal Financial Group. We met at Drake Law School in 2004 and were married in 2007. We have two wonderful boys, Jack (5) and Ben (1). We live in Des Moines on the Northwest side with our Wheaten Terrier,



including the Des Moines office ranking for Immigration Law and Litigation - Labor & Employment. To be eligible for a ranking, a firm must have at least one lawyer recognized by The Best Lawyers in America© 2017 in that practice area and metro. This year the following Des Moines attorneys were named Best Lawyers: **Bret A. Dublinske, Bridget R. Penick and J. Marc Ward.**

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**Nyemaster Goode, P.C.**, has been recognized in the seventh edition (2017) of the "Best Law Firm" rankings recently released by *U.S. News & World Report and Best Lawyers®*. Nyemaster Goode achieved 39 practice rankings, including 26 "Tier 1" rankings. Here are the rankings for the Des Moines office: **Tier 1:** Appellate Practice, Banking and Finance Law, Business Organizations (including LLCs and Partnerships), Closely Held Companies and Family Businesses Law, Commercial Litigation, Corporate Law, Employee Benefits (ERISA) Law, Employment Law - Management, Family Law, Government Relations Practice, Insurance Law, Litigation - Bankruptcy, Litigation - Labor and Employment, Litigation - Tax, Mergers & Acquisitions Law, Non-Profit/Charities Law, Personal Injury Litigation - Defendants, Real Estate Law, Tax Law, Trusts & Estates Law, and Workers' Compensation Law - Employers. **Tier 2:** Bankruptcy and Creditor Debtor Rights/Insolvency and Reorganization Law, Corporate Governance Law, Financial Services Regulation Law, Franchise Law, Health Care Law, Immigration Law, Labor Law - Management, Litigation - Banking & Finance, Litigation - Real Estate, Mortgage Banking Foreclosure Law, and Product Liability Litigation - Defendants. **Tier 3:** Administrative/Regulatory Law.

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**Belin McCormick, P.C.** has earned Tier 1 ranking from Best Lawyers "Best Law Firms" in 21 categories. The 26-attorney Des Moines law firm, has added "Litigation - Tax" to its Tier

Tessie.

I was born on an Air Force base in Mountain Home, Idaho. We lived there for two years until we moved to Cannon Air Force Base in New Mexico. We moved to Des Moines when I was in first grade and I have lived here ever since. I went to Lincoln High School where I was All-Conference in football, ran track including a role on the team for the 1600m medley relay at the State Track Meet, participated in show choir, some small theater roles, and the State-Champion All-Male Dance Team. I was moderately successful in the academic classroom.

I received a football scholarship to play at St. Ambrose University in Davenport, IA. While I only played football for two years, it did introduce me to the next phase in my life, the law. There I majored in Political Science and Philosophy and founded the SAU Chapter of the Phi Alpha Delta Law Fraternity and re-started the Mock Trial Program as its captain. I also served on the Student Government Association and was on the committee that drafted the SGA Mission Statement. I was also an alumni ambassador to our vast regional alumni network.

**[Read more....](#)**

x

## **Justice Center is open for business**

A number of PCBA members were on hand on Nov. 14 when the Polk County Board of Supervisors hosted a ribbon cutting for the grand opening of the Polk County Justice Center. The building is one of three downtown buildings undergoing extensive renovation as part of an \$81 million referendum that was passed by voters in November of 2013. [Click here to read Judge Arthur Gamble's remarks at the historic event.](#)

## **Fall CLE materials are now online**

Some 275 PCBA members gathered at the

1 recognition. The 2017 Tier One designated specialty areas where Belin McCormick, P.C. are recognized: Appellate Practice, Banking and Finance Law, Commercial Litigation, Communications Law, Corporate Law, Employment Law - Management, Environmental Law, Financial Services Regulation Law, Labor Law - Management, Litigation - Banking & Finance, Litigation - Environmental, Litigation - Municipal, Litigation - Labor & Employment, Litigation - Real Estate, Litigation - Tax, Litigation - Trusts & Estates, Mergers & Acquisitions Law, Personal Injury - Defendants Real Estate Law, Tax Law, and Trusts & Estates Law.

Davis Brown associate attorney **Margaret (Maggie) Hanson** recently received news that her request for clemency for a pro bono client was approved by President Obama. The Office for the Pardon Attorney, U.S. Department of Justice, personally called Maggie to share that her client's sentence would be commuted. Senior Shareholder **Nikki Mordini** accepted the request and advised Maggie as well as **Sarah Crane, Sarah Franklin, Emily Stork, and Elizabeth Van Arkel** in the preparation of the petitions. Paralegal **Natalie Rivera** assisted greatly in the effort.

Davis Brown attorneys **Emily Stork** and **Elizabeth Van Arkel** have also received word from the U.S. Department of Justice Pardon Attorney that petitions they submitted for clemency were approved by President Obama.

International law firm **Dorsey & Whitney LLP** announced that *U.S. News - Best Lawyers®* recognized the Commercial Litigation, Health Care Law, and Public Finance Law practices in Dorsey's Des Moines office for inclusion in its "Best Law Firms" rankings for 2017. The practices received a tier 1 ranking,

Downtown Des Moines Marriott on November 18 to network and stay on top of their profession at the Fall general practice seminar. As always, the CLE provided a full day of thought-provoking presentations covering a wide array of topics pertinent to the practice of law in Iowa. The program, which was offered FREE to members, was approved for 7.5 hours of State CLE credit, including 1 hour Ethics and 3 hours Federal. [Click here to download the materials.](#) **Member login required.**

## Students wanted for Law Day contest

Each year, the Polk County Bar Association teams up with ARAG to give Polk County students a

chance to get creative with the law as part of our Law Day celebration. Chief among the activities is the visual arts, music, essay and poetry competition for students in grades 6 through 12.

This year's theme, The Fourteenth Amendment: Transforming American Democracy, provides the opportunity for students to explore the many ways that the Fourteenth Amendment has reshaped American law and society. Through its Citizenship, Due Process and Equal Protection clauses, this transformative amendment advanced the rights of all Americans. It also played a pivotal role in extending the reach of the Bill of Rights to the states. Ratified during Reconstruction a century and a half ago, the Fourteenth Amendment serves as the cornerstone of landmark civil rights legislation, the foundation for numerous federal court decisions protecting fundamental rights, and a source of inspiration for all those who advocate for equal justice under law.

The deadline for entries is April 10. [Click here for complete details.](#) The winning students will be honored at the PCBA Annual Meeting and Law Day Luncheon on Tuesday, May 9.



Fredrikson & Byron received a nearly perfect score of 95 percent on the 2017 Corporate Equality Index (CEI), a national benchmarking survey and report on corporate policies and practices relating to lesbian, gay, bisexual and transgender (LGBT) workplace equality, administered by the Human Rights Campaign (HRC). Fredrikson's score reflects a commitment to LGBT workplace equality, with respect to tangible policies, benefits and practices.

*Don't miss an opportunity to share your news and special announcements with fellow PCBA Members! [Click here.](#)*

## **It's time to renew your membership**

One of the best things you can do for your career is to belong to the Polk County Bar Association. Your PCBA membership entitles you to FREE CLE seminars to sharpen your skills, monthly luncheons to explore current issues, access to the court-sponsored mediation program, news and information you can't get anywhere else, discounts on programs and services, and much, much more. [Click here to learn more and to download the renewal form.](#)

And, as a bonus, first-time PCBA members and those who renew their membership for 2017 are entitled to attend one of our informative and timely PCBA Luncheons on us - FREE of CHARGE - No strings attached! [Click here for more information from PCBA President Bridget Penick](#) and [click here to download our membership form.](#)

P.S. You can now pay your dues by credit card online!

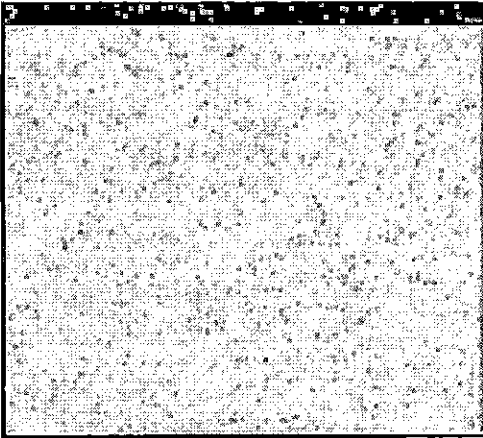
## **Support the Volunteer Lawyers Project and get a tax deduction**

As 2016 draws to a close, our attention turns to year-end finances and tax returns. Don't forget that you can make a contribution to the Polk County Bar Association Volunteer Lawyers Project before the end of the year and get a tax deduction.

The PCBA VLP is a charitable organization established with the mission of providing legal services to low income residents of Polk County. With your help, PCBA VLP is one of the most successful volunteer lawyer programs in the country, with Polk County lawyers donating approximately 5,000 hours of their time annually.

Unfortunately, demand for PCBA VLP services has never been higher while our funding continues to decline. To help make it easier to support our efforts, The PCBA VLP now offers you the ability to make donations on a monthly, quarterly, or annual basis - all you need to do is check the appropriate option on your PCBA membership renewal form. And don't forget that the PCBA VLP is a tax-exempt, charitable organization. That means any donation you make is tax deductible. You can also designate the PCBA VLP as the recipient on your United Way donation.

[Click here to learn more from PCBA VLP President](#)



Alex Johnson.

**Note these new Workers' Compensation phone numbers**

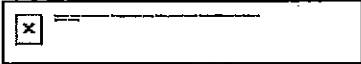
The Workers' Compensation Division of Iowa Workforce Development has its own unique toll-free and local phone numbers effective Nov. 1. They are **800-645-4583** and **515-725-4120**.

Polk County Bar Association, 625 East Court Ave., Suite 100, Des Moines, IA 50309-2007

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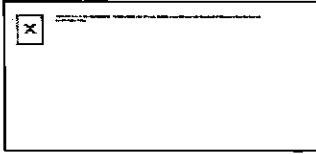


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## Thompson, Jeffrey [AG]

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**From:** Public Policy Law360 <news-q@law360.com>  
**Sent:** Friday, January 27, 2017 3:35 AM  
**To:** Thompson, Jeffrey [AG]  
**Subject:** Trump Promises Border Tax, NAFTA Rewrite, More Trade Deals



PUBLIC POLICY

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Friday, January 27, 2017



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### TOP NEWS

#### **Trump Promises Border Tax, NAFTA Rewrite, More Trade Deals**

American relations with Mexico could change drastically in the coming months, with President Donald Trump promising Thursday to renegotiate the North American Free Trade Agreement and to institute an import tax as part of larger reforms.

##### Analysis

#### **Dems' \$1T Infrastructure Plan Tees Up Fights Over Funding**

Despite politicians on both sides of the aisle agreeing that government investment in infrastructure should be a priority, Senate Democrats' recent \$1 trillion infrastructure proposal is likely just the opening salvo in what will be a pitched political battle centering on how to pay for upgrades to the nation's roads, railways and ports, experts say.

#### **Trump, GOP Allies Aim To Kill Dodd-Frank By Year's End**

A top Republican lawmaker on Thursday vowed to repeal the Dodd-Frank Act and replace it with a new financial regulatory system within a year, now that President Donald Trump has named it a top administration priority.

##### Analysis

#### **Lipnic May Nudge EEOC Toward Less Burdensome Policies**

Victoria Lipnic, who was appointed Wednesday as the U.S. Equal Employment Opportunity Commission's acting chairwoman, could slide the agency toward policies that better balance its anti-discrimination goals with more employer-friendly policies, experts say.

#### **Trump Taps Miscimarra As Acting NLRB Chair**

President Donald Trump has appointed Republican Philip A. Miscimarra as acting chairman of the National Labor Relations Board, the agency confirmed Thursday.

#### **NM Sen. Wants Answers On Freeze Of EPA Grants, Contracts**

A U.S. senator from New Mexico on Thursday said he has sent President Donald Trump a letter asking for answers on reports that his administration ordered a freeze to grants and contracts at the U.S. Environmental Protection Agency.

#### **Only Gov't Can Unredact Bulk Data Opinions: Secret Court**

### LAW FIRMS

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Arnold & Porter Kaye Scholer  
Bernstein Litowitz  
Bingham McCutchen  
Bond Dickinson  
Cohelan Khoury  
Cotman IP  
Covington & Burling  
Cozen O'Connor  
Crowell & Moring  
Dentons  
Dewey & LeBoeuf  
Dinsmore & Shohl  
Drinker Biddle  
Duane Morris  
Earthjustice  
Epstein Becker Green  
Evans Petree  
Gardy & Notis  
Gibson Dunn  
Goldstein & Russell  
Goodwin  
Grant & Eisenhofer  
Gupta Wessler  
Hogan Lovells  
Holland & Knight  
Hunton & Williams  
Jones Day  
King & Spalding

The nation's secret surveillance court on Wednesday killed a bid by the American Civil Liberties Union and Yale's Media Freedom and Information Access Clinic for access to redacted portions of decisions that the court has made public addressing bulk data collection, saying any requests to declassify whatever information is still under wraps must be made to the federal government.

### **GOP To Push ACA Repeal, Tax Reform This Year**

Congressional leaders along with President Donald Trump said Thursday that they plan on pushing through an Affordable Care Act repeal and tax system overhaul in the next six months, delaying initial expectations for immediate repeal of the health care law.

## **BANKING & SECURITIES**

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### **SEC Names Michael Piwowar Acting Head, Awaits Nominee**

Commissioner Michael Piwowar will serve as the acting chair of the U.S. Securities and Exchange Commission while President Donald Trump's pick to head the securities regulator awaits Senate confirmation, according to the SEC's site.

### **CFTC's General Counsel To Step Down**

The U.S. Commodity Futures Trading Commission's general counsel is leaving the agency after nearly four years of guiding the commodities regulator on a number of Dodd-Frank Act reforms and defending the agency in several major cases, acting CFTC Chair J. Christopher Giancarlo announced Thursday.

## **ENERGY & ENVIRONMENTAL**

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### **Murray Wants \$3M In Fees From EPA After Coal Jobs Win**

Murray Energy Corp. asked a West Virginia federal judge Wednesday to award it \$3 million in attorneys' fees in its successful battle to force the U.S. Environmental Protection Agency to study the effect of regulations on coal jobs.

### **Trump Taps LaFleur As Acting Chairman Of FERC**

President Donald Trump has officially tapped Cheryl LaFleur as acting chairman of the Federal Energy Regulatory Commission, a move that will coincide with Chairman Norman Bay's resignation.

### **Carper Slams Pruitt's Post-Hearing Answers As Inadequate**

The top Democrat on the U.S. Senate Committee on Environment and Public Works on Wednesday slammed President Donald Trump's pick to lead the Environmental Protection Agency for providing answers "shockingly devoid of substance" in response to written questions related to his upcoming confirmation vote.

## **TRANSPORTATION & INFRASTRUCTURE**

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### **Uber Lands First Permanent Ride Hailing License In Pa.**

Pennsylvania's Public Utilities Commission on Thursday unanimously made Uber the first ride-hailing company to operate in the state with official permanent status, following 2016 legislation that allowed the industry to operate statewide.

## **EMPLOYMENT**

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### **DOL Nom Puzder's Franchisees Slammed With Worker Suits**

Marino Tortorella  
Mayer Brown  
McGuireWoods  
Morgan Lewis  
Motley Rice  
Ogletree Deakins  
Outten & Golden  
Perkins Coie  
Pillsbury Winthrop  
Reed Smith  
Ropes & Gray  
Sanford Heisler  
Sedgwick LLP  
Seyfarth Shaw  
Simpson Thacher  
Squire Patton Boggs  
Stoel Rives  
Sullivan & Cromwell  
Venable LLP  
Weiner Brodsky  
Wilk Auslander  
Wilkinson Barker  
WilmerHale  
Womble Carlyle

## **COMPANIES**

AT&T Inc.  
Aetna Inc.  
Alibaba Group Holdings Ltd.  
American Civil Liberties Union  
Apache Corporation  
Bank of America Corporation  
Barclays Capital Inc.  
Berkshire Hathaway Inc.  
Burford Capital LLC  
CTIA  
Chevron Corporation  
Competitive Carriers Association  
D-Link Corporation  
Dell Inc.  
Deutsche Bank AG  
E. I. du Pont de Nemours and Company (DuPont)  
Edison Electric Institute Inc.  
Energy Transfer Partners, L.P.  
Finisar Corporation  
Gawker Media LLC



Franchisees of fast food brands run by Labor Secretary nominee Andy Puzder have been named in more than 30 wage, harassment and labor suits filed with state and federal authorities in the last few days, labor advocacy group Fight for \$15 announced Thursday, the same day Puzder's confirmation hearing was delayed a third time.

### **EPA Rights Office Finds Mich. Discriminated Against Blacks**

The U.S. Environmental Protection Agency's Office of Civil Rights has found that a Michigan state agency discriminated against blacks during the public hearing process regarding a permit for a wood-burning power plant.

## COMPETITION

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### **Sessions Says He Will Enforce FCPA, Review Health Mergers**

Sen. Jeff Sessions told members of the Senate Judiciary Committee in answers made public Thursday that if he is confirmed as U.S. attorney general he will enforce the Foreign Corrupt Practices Act, regardless of President Donald Trump's previous criticism of the law.

## PRIVACY & CONSUMER PROTECTION

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### **Top Dem Lawmakers Seek To Back CFPB In Leadership Case**

Two top Democratic lawmakers on Thursday asked to intervene in litigation challenging the constitutionality of the Consumer Financial Protection Bureau's structure, arguing that the Trump administration was unlikely to provide the vigorous defense that the bureau deserves.

#### Analysis

### **New FTC Chair To Shift Data Security Focus To Actual Harm**

With her appointment as acting chairwoman Wednesday, Maureen Ohlhausen is likely to steer the Federal Trade Commission away from privacy and consumer protection issues where consumer harm isn't crystal clear, and could finally answer businesses' long-standing calls for clarity on what exactly constitutes "reasonable" data security efforts.

## GOVERNMENT CONTRACTS

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### **Performance Overtakes Tenure In DOD's Layoff Calculations**

The U.S. Department of Defense on Thursday unveiled its new, congressionally mandated civilian layoff policy that will place performance evaluations at the top of the chart when calculating who should stay and who should go under any potential reduction in force of the military's civilian workers.

### **Trump Picks Businessman Philip Bilden As Navy Secretary**

President Donald Trump has tapped venture capitalist and former Navy Intelligence Captain Philip Bilden to serve as the administration's Secretary of the Navy, the White House announced Wednesday.

## TAX

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### **Group Of Major Business Players Backs GOP Tax Blueprint**

The GOP plan to slash the corporate tax rate to 20 percent while taxing imports will "boost our economy, foster investment in the U.S. and create good-paying American jobs," a tax reform group whose members include Bank of America Corp., The Coca-Cola Co. and Google Inc. said Thursday.

Goldman Sachs Group Inc.  
Google Inc.  
HarbourVest Partners LLC  
Humana Inc.  
Koch Industries Inc.  
Macy's Inc.  
Murray Energy Corp.  
National Association of Broadcasters  
National Grid PLC  
National Rifle Association of America  
National Telephone Cooperative Association  
New York Times Co.  
New York University  
PHH Corporation  
Regency Energy Partners LP  
Safeway Inc.  
Schlumberger Limited  
Self-Help Credit Union  
SolarCity Corp.  
The Coca-Cola Company  
U.S. Chamber of Commerce  
Verizon Communications  
Wells Fargo & Co.  
Wyndham Worldwide Corporation

## GOVERNMENT AGENCIES

Bureau of Indian Affairs  
Bureau of Industry and Security  
Bureau of Safety and Environmental Enforcement  
California Attorney General's Office  
Commodity Futures Trading Commission  
Congressional Budget Office  
Congressional Research Service  
Consumer Financial Protection Bureau  
Defense Intelligence Agency  
Enterprise Rancheria of Maidu Indians  
Equal Employment Opportunity Commission  
Federal Communications Commission

## NATIVE AMERICAN

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### Calif. High Court To Hear Tribe's Suit Over Rival's Casino OK

California's top court agreed on Wednesday to review a decision upholding a ruling that rejected a Native American tribe's challenge to the California governor's role in authorizing another tribe's competing casino project, in which the tribe bringing the case alleges that the governor usurped the state Legislature's powers.

## TELECOMMUNICATIONS

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### FCC Chief's First Official Meeting Is With Advocacy Groups

Newly minted Federal Communications Commission Chairman Ajit Pai announced Wednesday that his first official meeting as chairman will be with consumer advocacy groups, including LGBT and minority groups, following Pai's policy remarks about bridging the "digital divide" between Americans.

### NY Wins \$170M In Broadband Funds Turned Down By Verizon

The Federal Communications Commission on Thursday signed off on \$170 million in additional rural broadband development funding for New York, voting in favor of the state's request to recapture Connect America Fund money rejected by Verizon.

### NH Pols Push FCC For Broadband Funding In Rural Areas

New Hampshire's congressional delegation asked the new head of the Federal Communications Commission Wednesday to move forward with a second phase of funding to improve mobile voice and internet service in areas without it.

### AT&T Denies FCC Role On Cybersecurity

A white paper from the Federal Communications Commission's Public Safety and Homeland Security Bureau in the waning days of the Obama administration is wrong to claim the FCC has a cybersecurity role and to assume broadband providers are unmotivated to protect networks, AT&T Inc. said Wednesday.

### Broadcasters Lobby FCC To Refine Auction Repack Report

The Federal Communications Commission — when mulling potential changes to reporting requirements for broadcast television stations' repackaging effort following an incentive auction to clear a chunk of spectrum for wireless use — should not suggest that stations must operate with diminished coverage, the National Association of Broadcasters said Wednesday.

## PEOPLE

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### Alston & Bird Adds Mars Inc. Head Lobbyist In DC

Alston & Bird has bolstered its Washington, D.C. legislative and public policy team with the addition of the former Mars, Inc. federal government affairs director, according to an announcement.

## EXPERT ANALYSIS

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### What To Look For In Trump And May's 1st Meeting

Among the goals of Prime Minister Theresa May and President Donald Trump in Friday's meeting at the White House will be setting a course for a future U.K.-U.S. trade deal. The policies of both leaders will be on the line, say Jim Kearney of Womble Carlyle Sandridge & Rice LLP and Peter Snaith of Bond Dickinson LLP.

Federal Deposit Insurance Corp.  
Federal Energy Regulatory Commission  
Federal Trade Commission  
Fish and Wildlife Service  
International Monetary Fund  
Michigan Department of Environmental Quality  
NAFTA  
National Communications System  
National Labor Relations Board  
National Security Agency  
North Carolina Department of Environmental Quality  
Occupational Safety and Health Administration  
Occupational Safety and Health Review Commission  
Office of Foreign Assets Control  
Securities and Exchange Commission  
U.S. Army  
U.S. Coast Guard  
U.S. Department of Defense  
U.S. Department of Health and Human Services  
U.S. Department of Justice  
U.S. Department of Labor  
U.S. Department of Transportation  
U.S. Department of the Interior  
U.S. Department of the Treasury  
U.S. Environmental Protection Agency  
U.S. Navy  
U.S. Office of Government Ethics  
U.S. Senate  
U.S. Supreme Court  
United Auburn Indian Community

## **Selling Access: Trump And The Legacy Of Bob McDonnell**

With a green light from the U.S. Supreme Court's decision in McDonnell last year, President Donald Trump and his family are free to use access to Washington power as a bargaining chip in his private business dealings, says Randall Eliason, a former federal prosecutor.

## **Understanding Trump Pipeline Memo On US-Sourced Materials**

Among the executive orders and presidential memoranda focused on pipeline projects that President Donald Trump signed on Monday was one that called for any future pipeline work to use "materials and equipment produced in the United States." The memorandum provides some interpretive guidance, but leaves other important terms unclear, say attorneys from King & Spalding LLP.

## **The Implications Of Lifting Sanctions Against Sudan**

Earlier this month, the outgoing Obama administration announced that long-standing comprehensive sanctions against Sudan would be suspended effective Jan. 17, 2017, and that the sanctions would be revoked in six months if the progress of the past six months continued. Mayer Brown LLP attorneys discuss the implications of these actions.

## **Late Innings: Top Enviro Decisions From Final Days Of 2016**

December 2016 saw several major environmental decisions made by federal and state courts. Anthony Cavender of Pillsbury Winthrop Shaw Pittman LLP offers insight into these important cases and the impact they could have in 2017 and beyond.

## **LEGAL INDUSTRY**

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### **Why Rainmakers Are Helping Rich Firms Get Richer**

Rainmakers at weaker law firms are making their way to stronger and more profitable firms, according to a recent report by Major Lindsey & Africa, a trend that experts say is being triggered by more than simply money.

### **Calif. Legal Funding Rule Won't Shed More Light On Deals**

While proponents of transparency in the litigation funding field are cheering a California federal court's new disclosure rule for class action cases, experts warned they shouldn't expect much change in a district where judges already have high expectations when it comes to knowing lawyers' financial arrangements.

### **Law360's Weekly Verdict: Legal Lions & Lambs**

Three plaintiffs law firms grabbed the top spot on this week's legal lions list after an appellate court reinstated their client's objections to an \$11.2 billion merger between two energy companies while Jones Day and Crowell & Moring LLP landed on the legal lambs list when a federal judge blocked a \$37 billion proposed merger between their respective clients, Aetna and Humana.

### **Nashville Federal Judge Resigns, Headed To Private Firm**

The chief federal judge in Nashville is leaving the bench to join a civil rights and public interest law firm, leaving President Donald Trump with a second a Tennessee federal judgeship to appoint.

### **Allen & Overy Revenue Rises, Partner Pay Remains The Same**

Revenues at Allen & Overy LLP rose 2.3 percent to £1.31 billion (\$1.65 billion) in fiscal year 2015-2016, but average profit per full partner remained virtually

unchanged at £1.2 million, due in part to a rise in staffing costs, a new report filed in the U.K. showed.

### **With 23 Sedgwick Attys, Drinker Biddle Enters Texas Market**

Drinker Biddle & Reath LLP has made its entrance into the Texas market, the firm announced on Thursday, as it brought onboard 23 attorneys who formerly worked for Sedgwick LLP in Dallas — bringing the total number of departing Sedgwick attorneys to 40 in two days.

### **Call For Participants: Law360's 2017 Editorial Advisory Boards**

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## Thompson, Jeffrey [AG]

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**From:** Ranscht, David [AG]  
**Sent:** Tuesday, April 18, 2017 12:10 PM  
**To:** Gavin, Meghan [AG]; Thompson, Jeffrey [AG]  
**Subject:** Cedar Rapids Gazette editorial

<http://www.thegazette.com/subject/opinion/blogs/24-hour-dorman/in-iowa-the-mystery-of-the-lieutenant-governor-circa-1857-20170416>

Interesting.



**David Ranscht**  
**Assistant Attorney General**  
Office of the Attorney General of Iowa  
Licensing & Administrative Law Division  
1305 E. Walnut St.  
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Main: (515) 281-5164 | Direct: (515) 281-7175  
Email: [david.ranscht2@iowa.gov](mailto:david.ranscht2@iowa.gov) | [www.iowaattorneygeneral.gov](http://www.iowaattorneygeneral.gov)

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## Thompson, Jeffrey [AG]

---

**From:** Ranscht, David [AG]  
**Sent:** Monday, April 03, 2017 11:19 AM  
**To:** Gavin, Meghan [AG]; Thompson, Jeffrey [AG]  
**Subject:** RE: Lt Gov stuff

Here's the court opinion. (It doesn't say much.)

<http://www.sccourts.org/opinions/HTMLFiles/SC/27699.pdf>

And here's the proposed amendment that passed in 2012 and 2014.

[http://www.scstatehouse.gov/sess119\\_2011-2012/bills/3152.htm](http://www.scstatehouse.gov/sess119_2011-2012/bills/3152.htm)

[http://www.scstatehouse.gov/sess120\\_2013-2014/bills/446.htm](http://www.scstatehouse.gov/sess120_2013-2014/bills/446.htm)

It looks mostly like what we did in 1988. One weird thing I noticed is that in the laundry list of reasons why the lieutenant governor would be "removed" (impeachment, resignation, etc.), "becoming governor" is not one of them, as some other states have said.

David Ranscht  
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-----Original Message-----

**From:** Gavin, Meghan [AG]  
**Sent:** Monday, April 03, 2017 10:37 AM  
**To:** Thompson, Jeffrey [AG]; Ranscht, David [AG]  
**Subject:** RE: Lt Gov stuff

<http://www.independentmail.com/story/news/local/2017/01/18/sc-supreme-court-ruling-may-pave-way-bryant-become-lieutenant-governor/96736648/>

---

**From:** Thompson, Jeffrey [AG]  
**Sent:** Monday, April 03, 2017 10:24 AM  
**To:** Ranscht, David [AG]; Gavin, Meghan [AG]  
**Subject:** Lt Gov stuff

South Carolina just went through the succession issues with Nicki Haley leaving. Could one of you find the S.C. constitution and any pertinent cases? Thanks.

## Thompson, Jeffrey [AG]

---

**From:** Rita Bettis <rita.bettis@aclu-ia.org>  
**Sent:** Wednesday, May 03, 2017 2:36 PM  
**To:** Ashley.Howell@iowacourts.gov; Thompson, Jeffrey [AG]; Ogden, Thomas [AG]  
**Cc:** Joseph Fraioli  
**Subject:** Re: EQCE081503: PLANNED PARENTHOOD OF THE HEARTLAND V TERRY BRANSTAD ET AL

Dear Ms. Howell,  
We have conferred with our opposing counsel, cc'ed. We all agree that the 1:30 time you proposed on the phone would give everyone adequate time.  
Thank you,

**Rita Bettis**  
Legal Director  
ACLU of Iowa  
505 Fifth Avenue, Ste. 901  
Des Moines, IA 50309-2316  
(515)-243-3988 ext. 115



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On Wed, May 3, 2017 at 1:41 PM, <[Ashley.Howell@iowacourts.gov](mailto:Ashley.Howell@iowacourts.gov)> wrote:  
How long do the parties anticipate they will need for this hearing?

Ashley Howell  
Judicial Specialist for Judge Jeffrey D. Farrell  
Courtroom 310  
(515)286-3855  
Polk County Courthouse  
500 Mulberry Avenue  
Des Moines, Iowa 50309

[ashley.howell@iowacourts.gov](mailto:ashley.howell@iowacourts.gov)



## Thompson, Jeffrey [AG]

---

**From:** Rita Bettis <rita.bettis@aclu-ia.org>  
**Sent:** Wednesday, May 03, 2017 2:09 PM  
**To:** Thompson, Jeffrey [AG]; Ogden, Thomas [AG]  
**Subject:** Fwd: EQCE081503: PLANNED PARENTHOOD OF THE HEARTLAND V TERRY BRANSTAD ET AL

Dear Jeff and Thomas,

Please see email, below. We are thinking that we likely would not need more than 2 hours, but depending on the Judge's questions, we could go longer, especially since we may need to go through the various affidavits in some detail. How long do you anticipate you might need?

Once I hear from you, I'll cc you in my response, if you like, and say that we've conferred and anticipate a total time of X hours, depending on the Judge's questions.

Thanks!

Rita

### Rita Bettis

Legal Director

ACLU of Iowa

505 Fifth Avenue, Ste. 901

Des Moines, IA 50309-2316

(515)-243-3988 ext. 115



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From: <[Ashley.Howell@iowacourts.gov](mailto:Ashley.Howell@iowacourts.gov)>

Date: Wed, May 3, 2017 at 1:41 PM

Subject: EQCE081503: PLANNED PARENTHOOD OF THE HEARTLAND V TERRY BRANSTAD ET AL

To: [rita.bettis@aclu-ia.org](mailto:rita.bettis@aclu-ia.org), [JOSEPH.FRAIOLI@aclu-ia.org](mailto:JOSEPH.FRAIOLI@aclu-ia.org)

How long do the parties anticipate they will need for this hearing?

Ashley Howell

Judicial Specialist for Judge Jeffrey D. Farrell

Courtroom 310

[\(515\)286-3855](tel:(515)286-3855)

Polk County Courthouse

500 Mulberry Avenue

Des Moines, Iowa 50309

[ashley.howell@iowacourts.gov](mailto:ashley.howell@iowacourts.gov)

## Thompson, Jeffrey [AG]

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**From:** Route Fifty <hello@e.routefifty.com>  
**Sent:** Thursday, May 04, 2017 12:02 PM  
**To:** Thompson, Jeffrey [AG]  
**Subject:** How Do State and Local Programs Fare in the Fiscal 2017 Federal Spending Deal?

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Dear Jeffrey,

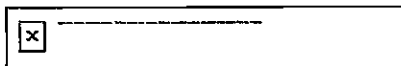
As an individual who works in state, local or municipal government, we'd like to tell you more about our local government focused publication, *Route Fifty*. Just last month, we launched a revamped home for *Route Fifty's* editorial content, which will offer new ways to explore our blog posts, articles and in-depth features through a cleaner interface, including on mobile devices.

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## Thompson, Jeffrey [AG]

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**From:** Tabor, Eric [AG]  
**Sent:** Monday, May 01, 2017 2:07 PM  
**To:** Thompson, Jeffrey [AG]; Gavin, Meghan [AG]; Ranscht, David [AG]  
**Subject:** FW: RELEASE: Gov. Branstad, Lt. Gov. Reynolds respond to Attorney General Miller's reversal of opinion

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**From:** Press Releases from Iowa Governor's Office [mailto:IowaGovernorsOffice@public.govdelivery.com]  
**Sent:** Monday, May 01, 2017 2:04 PM  
**To:** Tabor, Eric [AG]  
**Subject:** RELEASE: Gov. Branstad, Lt. Gov. Reynolds respond to Attorney General Miller's reversal of opinion

## OFFICE OF THE GOVERNOR Governor Terry E. Branstad ★ Lt. Governor Kim Reynolds

FOR IMMEDIATE RELEASE: Monday, May 1, 2017  
CONTACT: Governor's Office 515-281-5211

# Gov. Branstad, Lt. Gov. Reynolds respond to Attorney General Miller's reversal of opinion

(DES MOINES) – Today, after learning of Attorney General Tom Miller's reversal of opinion, Gov. Terry Branstad and Lt. Gov. Kim Reynolds issued the following statements, and provided both facts and background information to the public on the case for a new Lt. Governor.

### Gov. Terry Branstad

"Tom Miller was crystal clear last December when he said Lt. Governor Reynolds could act upon existing law and appoint a Lt. Governor when she becomes Governor upon my resignation.

'Our office has researched the law and consulted with the Governor's office. We concur with the Governor's conclusion that, upon resignation of Governor Branstad, Lt. Governor Reynolds will become Governor and will have the authority to appoint a new Lt. Governor.' – Tom Miller's Office, December 13, 2016.

No new facts or laws have changed since December 13, 2016. Tom Miller has allowed politics to cloud his judgment and is ignoring Iowa law. This politically motivated opinion defies common sense. Iowans expect a Governor and Lt. Governor working on their behalf. This is disappointing."

### Lt. Gov. Kim Reynolds

"In December, Attorney General Tom Miller researched the law and concurred with the Secretary of State and our office that, upon Gov. Branstad's resignation, I become Governor and have the authority to appoint a new Lt. Governor. Since then, I've been moving forward with that understanding. Now, five months later, just one day before Governor Branstad testifies before the U.S. Senate Foreign Relations Committee, the Attorney General has reversed himself, but the law hasn't changed. The law still states that as Governor, I vacate my role as Lt. Governor and am able to appoint a new Lt. Governor. With the law on our side we will move forward with his first conclusion as we examine our options in light of Tom Miller's reversal."

**Ben Hammes, Communications Director**

"The power of a Governor to appoint a new Lt. Governor was put into the law in 2009 by the democrats. That law says: 'An appointment by the governor to fill a vacancy in the office of lieutenant governor shall be for the balance of the unexpired term.' This bill passed unanimously by both parties and signed into law by a democrat Governor. Now, just because the democrats do not control the Governor's office, Attorney General Miller wants to pretend like this law does not exist, and issue a non-binding opinion. Quite frankly, this is what Iowans are sick and tired of. The Attorney General should be upholding the law, not ignoring it."

\*\*\*\*\*

**Background Information:**

Attorney General Miller now says that Lt. Gov. Reynolds will be both Governor and Lt. Governor at the same time and that Lt. Gov. Reynolds will not be able to appoint a new Lt. Governor. That defies common sense and the law.

- (1) When Gov. Branstad resigns, the Iowa Constitution states that his powers will devolve upon Lt. Gov. Reynolds. Lt. Gov. Reynolds will become Governor. Attorney General Miller agrees with this conclusion.
- (2) Iowa law prevents someone from holding two offices at the same time. Because Kim Reynolds will become Governor, she will automatically vacate the Office of the Lt. Governor.
- (3) In 2009, the Iowa Legislature (led by democrats) passed a statute to clarify that if there is a vacancy in the Office of Lt. Governor, the Governor appoints someone to fill that vacancy. That law is clear: "An appointment by the governor to fill a vacancy in the office of lieutenant governor shall be for the balance of the unexpired term."
- (4) When Terry Branstad resigns, Kim Reynolds becomes Governor; the Office of Lt. Governor is then vacant, and under the Iowa Code (passed unanimously by the Legislature) Gov. Reynolds appoints someone to fill that vacancy.

Similar situations have occurred before in other states. For example:

- (1) In 2003, President Bush picked Utah Gov. Michael Leavitt to head the EPA. The state's Attorney General, in a thorough legal opinion, concluded that Leavitt's Lt. Governor became Governor and vacated the Lt. Governor's Office. The new Governor, then, was free to appoint a new Lt. Governor (and he did).

- (2) Similarly, when then-Gov. Bill Clinton became president in 1993, the Arkansas Supreme Court ruled — based upon constitutional provisions that are nearly identical to Iowa's — that his Lt. Governor became Governor. The Office of the Lt. Governor was then vacant, and Mike Huckabee filled that vacancy mid-term.
- (3) Finally, and most recently, the New York's highest court ruled that when Gov. Elliot Spitzer resigned, Lt. Governor David Patterson became Governor, vacated the Office of Lt. Governor, and was free to appoint a new Lt. Governor.

In December 2016, Attorney General Miller agreed with this view of the law. Since then, the Constitution hasn't changed. Neither has the Iowa Code. While Attorney General Miller's opinion is not binding on anybody, Iowans should ask why Attorney General Miller suddenly reversed course.

###

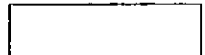
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## Thompson, Jeffrey [AG]

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**From:** Tabor, Eric [AG]  
**Sent:** Wednesday, April 26, 2017 9:14 AM  
**To:** Thompson, Jeffrey [AG]  
**Subject:** FW: Litigation over Iowa 20-weeks law

**Importance:** High

FYI

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**From:** John Bursch [mailto:jbursch@burschlaw.com]  
**Sent:** Wednesday, April 26, 2017 8:18 AM  
**To:** Tabor, Eric [AG]  
**Subject:** Litigation over Iowa 20-weeks law  
**Importance:** High

Good morning Eric. My name is John Bursch, and you may remember me from the NAAG amici contacts list when I served as Michigan Solicitor General from 2011-13. I am now back in private practice, though still actively litigating on behalf of states. (I represent Indiana in defending its law prohibiting the possession or transfer of aborted fetal body parts or tissue; Arizona, Michigan, and New Jersey in federal-court, consent-decree matters; and Michigan in the presidential-election recount litigation.)

I read this morning about the Iowa Legislature's approval of a new pro-life law and wanted to pro-actively reach out to see if I might be able to assist you and General Miller in defending the litigation that is bound to come once the Governor signs the bill. A summary of my experience is available at <http://www.burschlaw.com/>, and my contact information is below; is there a good time to talk in the next week or two?

Best regards,

John

John J. Bursch  
BURSCH LAW PLLC  
9339 Cherry Valley Ave SE, #78 | Caledonia, MI 49316  
616.450.4235 | [jbursch@burschlaw.com](mailto:jbursch@burschlaw.com)  
[www.burschlaw.com](http://www.burschlaw.com)

## Thompson, Jeffrey [AG]

---

**From:** Tabor, Eric [AG]  
**Sent:** Tuesday, April 25, 2017 11:39 AM  
**To:** Adams, Heather [AG]; Gavin, Meghan [AG]  
**Cc:** Thompson, Jeffrey [AG]  
**Subject:** FW: HF 524 should be reviewed by Tom Miller before Gov. Branstad signs it into law

Once we have time to digest the bill, let's discuss. Thanks. Eric



**Eric Tabor**  
**Chief Deputy Attorney General**  
Office of the Attorney General of Iowa  
1305 E. Walnut St.  
Des Moines, Iowa 50319  
Main: (515) 281-5164 | Direct: (515) 281-5191  
Email: [Eric.Tabor@iowa.gov](mailto:Eric.Tabor@iowa.gov) | [www.iowaattorneygeneral.gov](http://www.iowaattorneygeneral.gov)

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**From:** Johansen, Eric [LEGIS] [<mailto:Eric.Johansen@legis.iowa.gov>]  
**Sent:** Tuesday, April 25, 2017 9:49 AM  
**To:** Tabor, Eric [AG]  
**Cc:** Schneider, Charles [LEGIS]; Dix, Bill [LEGIS]  
**Subject:** FW: HF 524 should be reviewed by Tom Miller before Gov. Branstad signs it into law

Eric,

Senator Schneider has asked that I pass along a request for comment from the Attorney General regarding HF 524 (medicinal cannabis). Could you please provide us an opinion regarding the legality of Iowa establishing the program outlined in HF 524?

Thanks,  
Eric  
--  
Eric Johansen  
Staff Director  
Senate Republican Caucus Staff  
(515) 313-8538 : Cell  
(515) 281-3979 : Office



---

**From:** Schneider, Charles [LEGIS]  
**Sent:** Tuesday, April 25, 2017 9:42 AM  
**To:** Johansen, Eric [LEGIS]  
**Subject:** FW: HF 524 should be reviewed by Tom Miller before Gov. Branstad signs it into law

Hi Eric,

Would you please pass this along to Attorney General Miller's office for comment?

Thanks!

Charles Schneider  
State Senator

----- Original Message -----

Subject: HF 524 should be reviewed by Tom Miller before Gov. Branstad signs it into law  
Sent: Apr 25, 2017 5:56 AM  
From: Carl Olsen <[carl@carl-olsen.com](mailto:carl@carl-olsen.com)>  
To: "Schneider, Charles [LEGIS]" <[Charles.Schneider@legis.iowa.gov](mailto:Charles.Schneider@legis.iowa.gov)>, Charles Schneider <[charlesmschneider@gmail.com](mailto:charlesmschneider@gmail.com)>  
Cc:

130 E. Aurora Ave.  
Des Moines, Iowa 50313-3654  
April 25, 2017

Charles Schneider  
7887 Cody Dr  
West Des Moines, IA 50266

Re: HF 524 (medical use of cannabis)

Dear Senator Schneider,

HF 524 appears to set up a continuing criminal enterprise here in Iowa, in violation of federal law, 21 U.S.C. § 848 (2017). Anyone participating in the program would be in violation of federal law, 21 U.S.C. § 844 (2017). Anyone manufacturing or distributing cannabis products would be committing federal crimes carrying penalties of 10 years to life in federal prison and a fine of \$10 to \$50 million, 21 U.S.C. § 841 (2017). Penalties can double for conspiracy to commit any of these acts, 21 U.S.C. § 846 (2017). Because HF 524 authorizes the cultivation, manufacture, and distribution, and possession of cannabis products in the state of Iowa without explaining how any of it would be in compliance with federal law, HF 524 creates a positive conflict between federal and state law so that the two cannot consistently stand together, 21 U.S.C. § 903 (2017).

Please request an opinion from the Attorney General of Iowa, Tom Miller, on the legality of HF 524 before Governor Branstad signs HF 524 into law.

Current federal law can be found at 21 U.S.C. §§ 801 et seq., Pub. L. 91-513, Oct. 27, 1970, 84 Stat. 1236 (“Controlled Substances Act”).

In my opinion, federal schedules of controlled substances are ordinary administrative regulations and cannot be used to interfere with state medical marijuana programs, but HF 524 does not address this matter.

**Alliance for Cannabis Therapeutics v. DEA, 930 F.2d 936, 939 (D.C. Cir. 1991)** (“*neither the statute nor its legislative history precisely defines the term ‘currently accepted medical use’; therefore, we are obliged to defer to the Administrator’s interpretation of that phrase if reasonable.*”)

**Gonzales v. Oregon, 546 U.S. 243, 258 (2006)** (“*The Attorney General has rulemaking power to fulfill his duties under the CSA. The specific respects in which he is authorized to make rules, however, instruct us that he is not authorized to make a rule declaring illegitimate a medical standard for care and treatment of patients that is specifically authorized under state law.*”)

**Grinspoon v. DEA, 828 F.2d 881, 886 (1st Cir. 1987)** (“*Congress did not intend ‘accepted medical use in treatment in the United States’ to require a finding of recognized medical use in every state or, as the Administrator contends, approval for interstate marketing of the substance.*”)

I look forward to hearing from you at your earliest convenience.

Thank you very much!

Sincerely,

Carl Olsen  
130 E. Aurora Ave.  
Des Moines, Iowa 50313-3654  
515-343-9933  
[carl@carl-olsen.com](mailto:carl@carl-olsen.com)

<http://carl-olsen.com/>

<http://iowamedicalmarijuana.org/>

cc: Iowa Governor Terry Branstad



## Thompson, Jeffrey [AG]

---

**From:** Tabor, Eric [AG]  
**Sent:** Wednesday, March 15, 2017 4:36 PM  
**To:** 'Laura Belin'  
**Cc:** Greenwood, Geoff [AG]; Thompson, Jeffrey [AG]  
**Subject:** RE: seeking comment/clarification

Laurie – Attorney General Miller is committed to responding to Senator David Johnson before Governor Branstad resigns. Eric



**Eric Tabor**  
**Chief Deputy Attorney General**  
Office of the Attorney General of Iowa  
1305 E. Walnut St.  
Des Moines, Iowa 50319  
Main: (515) 281-5164 | Direct: (515) 281-5191  
Email: [Eric.Tabor@iowa.gov](mailto:Eric.Tabor@iowa.gov) | [www.iowaattorneygeneral.gov](http://www.iowaattorneygeneral.gov)

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**From:** Laura Belin [mailto:[desmoinesdem@bleedingheartland.com](mailto:desmoinesdem@bleedingheartland.com)]  
**Sent:** Tuesday, March 14, 2017 4:09 PM  
**To:** Tabor, Eric [AG]  
**Subject:** Fwd: seeking comment/clarification

Hello Eric,

I'm forwarding this to you, having received an out of office auto-reply from Geoff.

Thanks,

Laurie

----- Forwarded message -----

**From:** Laura Belin <[desmoinesdem@bleedingheartland.com](mailto:desmoinesdem@bleedingheartland.com)>  
**Date:** Tue, Mar 14, 2017 at 4:05 PM  
**Subject:** seeking comment/clarification  
**To:** "Greenwood, Geoff [AG]" <[Geoff.Greenwood@iowa.gov](mailto:Geoff.Greenwood@iowa.gov)>

Geoff,

Can you tell me whether the Attorney General's Office is working on an expedited basis to provide the written opinion requested by Senator David Johnson?

If the answer is yes, when do you expect the opinion to be ready? Can Attorney General Miller commit to answering Senator Johnson's questions this month, or at least before Governor Branstad resigns, which seems likely to happen in April or May?

If the answer is no, can you explain why Attorney General Miller is unwilling to respond in a timely way to these questions?

The coming transfer of power is an extraordinary situation of obvious statewide importance. If Lieutenant Governor Reynolds appoints a new lieutenant governor, that person will be next in line to perform the governor's duties, in apparent contradiction to language in the Iowa Constitution placing the Iowa Senate president next in line.

I understand that legal research can take time, but you indicated in our earlier correspondence that the Attorney General's staff had thoroughly researched these matters before your December 12 announcement that Attorney General Miller concurred with the governor's reading of the Iowa Constitution.

Thanks in advance for any information you can provide about a timetable. If Attorney General Miller will not commit to issuing his written opinion before Governor Branstad resigns, I want to let my readers know. (Several have asked me what is happening on this.)

Yours,

Laurie  
1705 Plaza Circle  
Windsor Heights, IA 50324  
(515) 276-6971

<http://www.bleedingheartland.com>

**Thompson, Jeffrey [AG]**

---

**From:** Tabor, Eric [AG]  
**Sent:** Wednesday, March 08, 2017 8:54 AM  
**To:** Thompson, Jeffrey [AG]; Ranscht, David [AG]; Gavin, Meghan [AG]  
**Subject:** FW: A new Pieces of Iowa's Past has been published: Lieutenant Governors Who Have Become Governor

FYI

---

**From:** lfblists@legis.iowa.gov [mailto:lfblists@legis.iowa.gov]  
**Sent:** Wednesday, March 08, 2017 8:05 AM  
**To:** TOUR\_GUIDE\_TIDBITS@LISTSERV.LEGIS.IOWA.GOV  
**Subject:** A new Pieces of Iowa's Past has been published: Lieutenant Governors Who Have Become Governor

Document type: Pieces of Iowa's Past

Document title: Lieutenant Governors Who Have Become Governor

Document published location: <https://www.legis.iowa.gov/docs/publications/TB/855445.pdf>

Please do not reply to this e-mail as this e-mail account is not monitored.

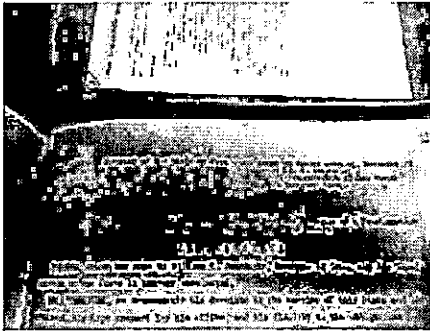
## Thompson, Jeffrey [AG]

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**From:** Tabor, Eric [AG]  
**Sent:** Thursday, February 02, 2017 9:52 AM  
**To:** Thompson, Jeffrey [AG]  
**Subject:** FW: Follow-up

FYI

**From:** Johnson, Larry [mailto:larry.johnson@iowa.gov]  
**Sent:** Thursday, February 02, 2017 8:25 AM  
**To:** Tabor, Eric [AG]  
**Subject:** Follow-up



--

Larry Johnson, Jr. | Legal Counsel

Office of the Governor, State of Iowa

Gov. Terry Branstad & Lt. Gov. Kim Reynolds

515.725.3506 | [larry.johnson@iowa.gov](mailto:larry.johnson@iowa.gov)

[www.governor.iowa.gov](http://www.governor.iowa.gov)

[www.ltgovernor.iowa.gov](http://www.ltgovernor.iowa.gov)

February 1, 1877.

Upon this day, Samuel J. Newkirk,  
having been elected a Senator of the United  
States for six years from the fourth day of  
March, vacated the office of Governor  
of the State of Iowa, in accordance  
with the constitution, Joshua  
Newbold, the lieutenant-governor,  
assumed the discharge of the duties  
of the office of Governor. Although not  
yet a year in office, he has managed all  
the business of the State. Lieutenant Governor  
Newbold, who took the oath of office as  
Governor, being administered  
by Edward J. Holmes, Clerk of  
the Supreme Court.



Governor Warren Hearst

On this day the resignation of Albert B. Cummings as Governor  
has been presented in due form to the Thirty-second General Assembly convened  
in special session, and said resignation having been accepted, Governor  
Warren Hearst, appears by invitation before the joint assembly and was  
solely inaugurated Governor. The oath of office was administered by Chief  
Justice West W. Ladd and the Governor delivered a brief inaugural  
address upon assuming the duties of his office as Governor.

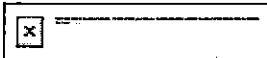
Appointed Mrs. William W. Secretary in Charge of the

Office  
Certificates of election sent to the State Congressmen elected for

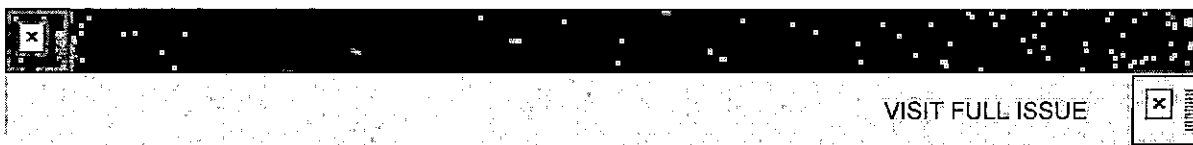
## Thompson, Jeffrey [AG]

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**From:** Tax Analysts <taxanalysts@taxnotes.com>  
**Sent:** Monday, May 01, 2017 2:03 AM  
**To:** Thompson, Jeffrey [AG]  
**Subject:** State Tax Notes Contents



MONDAY, MAY 1, 2017



### ON THE COVER

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#### **Play Ball! The Detroit 'Jock Tax'**

Lynn A. Gandhi

### FROM THE EDITOR

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#### **Anderson Economic Group Releases Report on Business Tax Burdens**

Jéanne Rauch-Zeñder

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#### **U.S. District Court Upholds Different Tax Treatment of Railroads**

Eric Yauch

#### **Virginia Supreme Court Focused on Retroactive Addback Rule in Kohl's**

Brian Bardwell

#### **Minnesota Tax Court Strikes Down Alternative Apportionment Ruling**

Eric Yauch

## **Retiring Alabama Judge Bill Thompson Leaves Legacy of Independence**

Eric Yauch

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## **Governor Appoints New Tax Tribunal Chief Judge**

Eric Yauch

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## **FTB Proposes Reg on Taxation of Space Transportation Companies**

Paul Jones

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Paul Jones

## **Tax Watchdog Reviews 2017 Revenue-Raising Bills**

Paul Jones

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Paul Jones

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## **Senate Votes to Raise Business Personal Property Tax Threshold**

Brian Bardwell

## **House Unlikely to Advance Bill to Cut Business Personal Property Taxes**

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Paige Jones

## **Governor Again Calls for Lower Income Taxes**

Paige Jones

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## **Marijuana Tax Rates Must 'Strike A Balance,' Pro-Cannabis Groups Say**

Paige Jones

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## **State Approves Revised Tax Credit Agreement With Dow Chemical**

Paige Jones

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## **U.S. Supreme Court Relists State Tax Retroactivity Cases**

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Wisconsin

### **Controversial Credit Spurred Creation of Thousands of Jobs, Research Says**

Maria Koklanaris

Coming Soon

## **Coming Soon**

**SMITTEN WITH THE MITTEN**

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### **Play Ball! The Detroit 'Jock Tax'**

Lynn A. Gandhi

**IN THE TRENCHES**

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### **State and Local Tax Planning for Partnerships**

Peter L. Faber

**STATE TAX MERRY-GO-ROUND**

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**California's Public School Teacher Tax Holiday**

William Hays Weissman

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**Telemedicine Services and Unrelated Business Income**

Roxanne Bland

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Jeffrey A. Friedman, Stephanie T. Do and Pilar Mata

**Does the Ohio CAT Violate the Commerce Clause?**

Robert J. Firestone

**CROSSWORD PUZZLE**

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**May 2017 Tax Crossword Puzzle**

Myles Mellor

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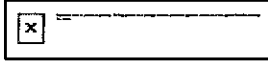
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**Thompson, Jeffrey [AG]**

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**From:** Tax Analysts <taxanalysts@taxnotes.com>  
**Sent:** Monday, April 24, 2017 2:05 AM  
**To:** Thompson, Jeffrey [AG]  
**Subject:** State Tax Notes Contents



MONDAY, APRIL 24, 2017



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**ON THE COVER**

**The Idea That Would Not Die: Beyond Oregon's Measure 97**

Michelle DeLappe and Larry J. Brant

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**FROM THE EDITOR**

**Alaska's Production Tax Problems**

Jéanne Rauch-Zender

---

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**Pennsylvania Court Finds Gross Receipts Tax Unconstitutional**

Eric Yauch

**U.S. Court of Appeals Reinstates Vanguard Whistleblower Case**

Brian Bardwell



## **Parties Debate Tax on Gross Receipts in Briefs Filed in Texas Supreme Court**

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Billy Hamilton

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## **Arizona's New Service Contractor Regime: Three Questions to Ask**

Pat Derdenger and Karen M Jurichko. Lowell

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## **What's Wrong With a City's Mandatory Bag Fees?**

Garry G. Fujita

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## **The Necessity of Fair and Impartial Tax Adjudicatory Bodies**

Roxanne Bland

**IN THE WORKS**

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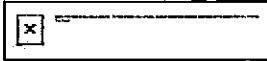
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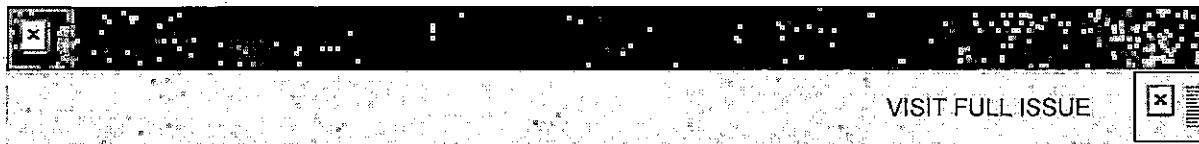
**Thompson, Jeffrey [AG]**

---

**From:** Tax Analysts <taxanalysts@taxnotes.com>  
**Sent:** Monday, April 17, 2017 2:03 AM  
**To:** Thompson, Jeffrey [AG]  
**Subject:** State Tax Notes Contents



MONDAY, APRIL 17, 2017



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**ON THE COVER**

**Water's-Edge Issues to Watch**

Eric J. Coffill and Samantha K. Trencs

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**FROM THE EDITOR**

**Dog Decisions**

Jéanne Rauch-Zender

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**BellSouth Facing Treble Damages After Sixth Circuit Reverses in 911 Fee Case**

Brian Bardwell

**Deemed Asset Sale Gain Sourced to State New Jersey Court Rules**

Eric Yauch

**California Court of Appeal Rules Cap-and-Trade Isn't a Tax**

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## **Louisiana Court of Appeal Upholds Sales Tax Assessments Against Company**

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## **Gorsuch Joins U.S. Supreme Court as State Tax Retroactivity Cases Set**

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## **Special Master to Preside Over U.S. Supreme Court Property Case**

Lauren Loricchio

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Paige Jones

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Paige Jones

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Eric Yauch

## **DOR Issues New Guidance on Taxing Canned Software Support Services**

Eric Yauch

West Virginia

## **Tax Reform Shifts Again From Sales Taxes to Gross Receipts and Income Taxes**

Maria Koklanaris

Coming Soon

**Coming Soon**

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Eric J. Coffill and Samantha K. Trencs

### ***Elan Pharmaceuticals* — Guidance on Throwout and P.L. 86-272**

Alysse McLoughlin

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Doug Sheppard, Joe Crosby, Kendall Houghton, Stephen P. Kranz and Diann L Smith

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### **The Zombie Precedent: *Norton Co. v. Department of Revenue***

John A. Swain

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### **What Does It Mean to Be Charitable?**

Christopher B. McLaughlin and G. Jason Jolley

## STATE TAX MERRY-GO-ROUND

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Billy Hamilton

## THE SALT BOX

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### **The Perils of Pauline — Sale-Leaseback Transactions**

Roxanne Bland

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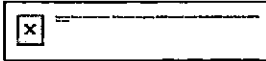
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**Thompson, Jeffrey [AG]**

---

**From:** Tax Analysts <taxanalysts@taxnotes.com>  
**Sent:** Monday, April 10, 2017 2:03 AM  
**To:** Thompson, Jeffrey [AG]  
**Subject:** State Tax Notes Contents



MONDAY, APRIL 10, 2017



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**ON THE COVER**

**State Tax Considerations for Section 385 Exceptions**

Scott L. Austin, Jack R. Kramer, Nicholas J. Stratis and Ilya A. Lipin

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**Pennsylvania's Efforts to Enact a Gas Tax**

Jéanne Rauch-Zender

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Lee A Sheppard

**California Supreme Court Hears Arguments in Documentary Transfer Tax Dispute**

Eric Yauch

**Catalog Association Suit Challenges Tennessee Remote Seller Rule**

Eric Yauch

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Alaska

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Paul Jones

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## **Governor Calls for Further Streamlining of Municipal Income Taxes**

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**Tax Foundation's Report Analyzed Only the State and Local Tax Deduction**

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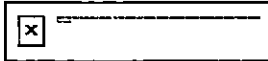
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MONDAY, APRIL 3, 2017



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**ON THE COVER**

**State Conformity to New Federal Business Return Due Dates**

Caralee Hall

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**FROM THE EDITOR**

**The Tax Foundation Releases Facts & Figures**

Jéanne Rauch-Zender

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Bruce P Ely, Christopher R. Grissom and William T. Thistle, II

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**Deductions Should Be Eliminated, Replaced With Standard Deduction**

Elliott Dubin

**IN THE WORKS**

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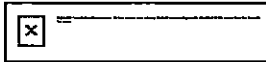
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MONDAY, MARCH 27, 2017



**ON THE COVER**

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**Are State and Local Taxes Constitutionally Distinguishable?**

Walter Hellerstein

**FROM THE EDITOR**

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**California's Efforts to Retain Teachers**

Jéanne Rauch-Zender

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**Fourth Circuit Reverses Dismissed Challenge to South Carolina's Property Tax Exemption**

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**Alabama Appellate Court Orders DOR to Refund Internet Tax to Customers**

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**Arizona Court of Appeals Upholds Hospital Fee**

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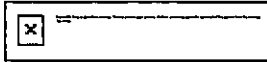
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MONDAY, MARCH 20, 2017



**ON THE COVER**

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**How State Tax Policies Can Reduce Inequality**

Elizabeth C. McNichol

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**Electric Vehicles – The Way of the Future?**

Jéanne Rauch-Zender

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**Federal Court Allows Transient Lodging Tax Case to Proceed**

Eric Yauch

**'No Retroactivity Occurred,' Michigan Argues in U.S. Supreme Court Brief**

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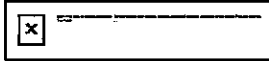
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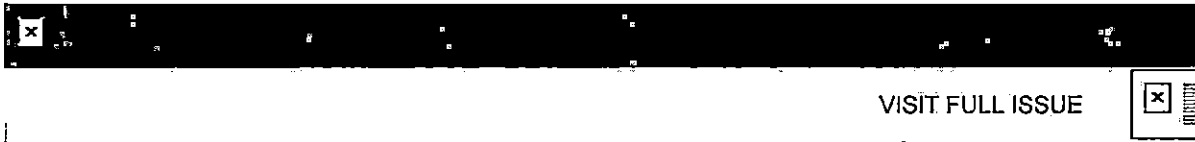
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MONDAY, MARCH 13, 2017



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**ON THE COVER**

**A State-Level Carbon Tax With Border Adjustments**

David Gamage and Darien Shanske

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**State Tax Refunds Help Local Wildlife**

Jéanne Rauch-Zender

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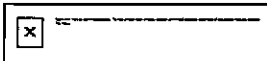
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MONDAY, MARCH 6, 2017



VISIT FULL ISSUE

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**ON THE COVER**

**A Prime Example of Bungled Bundled Transactions**

Stephen P Kranz and Hayes R Holderness

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**California Residents Struggle With High Housing Costs**

Jéanne Rauch-Zender

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**Paul H. Frankel, 'the Godfather of State and Local Tax,' Dies at 80**

Maria Koklanaris

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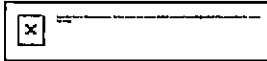
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**To:** Thompson, Jeffrey [AG]  
**Subject:** State Tax Notes Contents



MONDAY, FEBRUARY 27, 2017



VISIT FULL ISSUE



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George S Isaacson and Matthew P Schaefer

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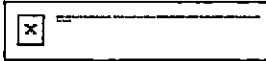
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**Thompson, Jeffrey [AG]**

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**From:** Tax Analysts <taxanalysts@taxnotes.com>  
**Sent:** Monday, February 20, 2017 2:04 AM  
**To:** Thompson, Jeffrey [AG]  
**Subject:** State Tax Notes Contents



MONDAY, FEBRUARY 20, 2017



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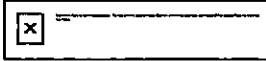
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## Thompson, Jeffrey [AG]

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**From:** Tax Analysts <taxanalysts@taxnotes.com>  
**Sent:** Monday, February 13, 2017 2:04 AM  
**To:** Thompson, Jeffrey [AG]  
**Subject:** State Tax Notes Contents



MONDAY, FEBRUARY 13, 2017



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Jack Trachtenberg, Jennifer S White and Jeremy P Gove

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Jéanne Rauch-Zender

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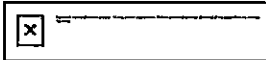
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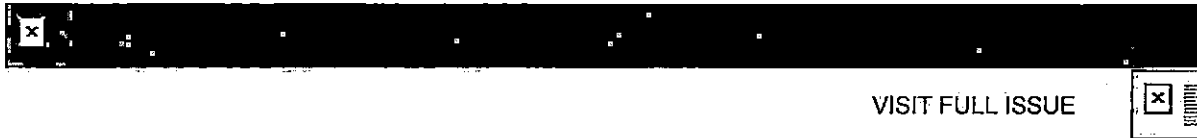
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**From:** Tax Analysts <taxanalysts@taxnotes.com>  
**Sent:** Monday, February 06, 2017 2:03 AM  
**To:** Thompson, Jeffrey [AG]  
**Subject:** State Tax Notes Contents



MONDAY, FEBRUARY 6, 2017



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**ON THE COVER**

**Working Toward Solutions for the Sharing Economy**

Kathleen K. Wright

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**American Indians Continue to Strive for Economic Independence**

JC)anne Rauch-Zender

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**Taxpayer Negligently Underreported Sales Tax, Minnesota Tax Court Finds**

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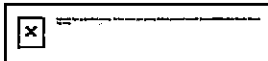
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**Thompson, Jeffrey [AG]**

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**From:** Tax Analysts <taxanalysts@taxnotes.com>  
**Sent:** Monday, January 30, 2017 3:42 PM  
**To:** Thompson, Jeffrey [AG]  
**Subject:** CORRECTION: State Tax Notes Contents



MONDAY, JANUARY 30, 2017



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Kawika Pierson and Fred Thompson

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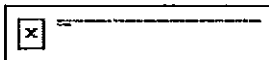
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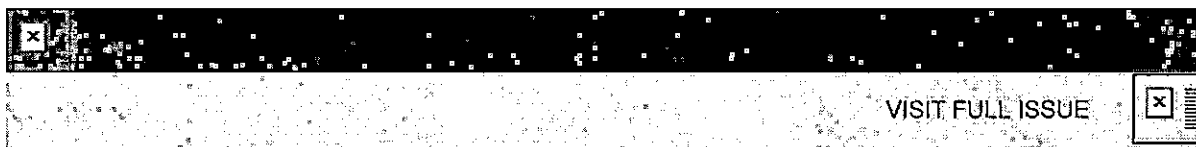
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**From:** Tax Analysts <taxanalysts@taxnotes.com>  
**Sent:** Monday, January 30, 2017 2:02 AM  
**To:** Thompson, Jeffrey [AG]  
**Subject:** [L2SPAM] State Tax Notes Contents.

**Importance:** Low



MONDAY, JANUARY 30, 2017



### ON THE COVER

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**Arizona Finally Implements Sales Tax Simplification**

James G. Jr. Busby

**THE SALT BOX**

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**State Challenges Associated With Taxing Marijuana**

Roxanne Bland

**LETTER TO THE EDITOR**

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**Pennsylvania B&B Owner Says Airbnb Agreement Will Cheat the State**

Dee Fegan

**IN THE WORKS**

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**In the Works**

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## Thompson, Jeffrey [AG]

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**From:** Tax Analysts <taxanalysts@taxnotes.com>  
**Sent:** Monday, January 23, 2017 2:02 AM  
**To:** Thompson, Jeffrey [AG]  
**Subject:** State Tax Notes Contents



MONDAY, JANUARY 23, 2017



### ON THE COVER

#### **Defending New York False Claims Act Tax Proceedings**

Peter L. Faber, David A. Chen, Todd D. Harrison, Stephen P. Kranz and Mark W. Yopp

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**Defending New York False Claims Act Tax Proceedings**

Peter L. Faber, David A. Chen, Todd D. Harrison, Stephen P. Kranz and Mark W. Yopp

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**Chasing Tax Policy Unicorns: Big Ideas and Wishful Thinking**

Billy Hamilton

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**THE SALT BOX**

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**Litigation Surrounding Online Travel Companies**

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**Will California Cities Begin Taxing Streaming Video Services?**

Michael J. Cataldo

**Marijuana Taxes -- Present and Future Traps**

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**IN THE WORKS**

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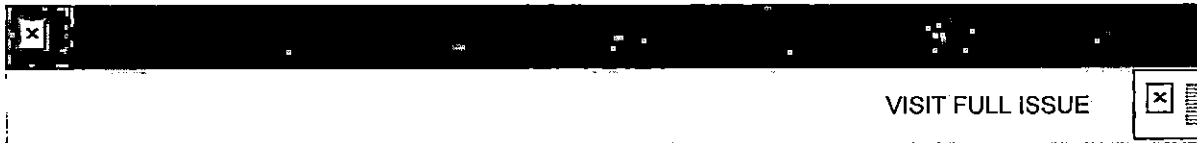
**Thompson, Jeffrey [AG]**

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**From:** Tax Analysts <taxanalysts@taxnotes.com>  
**Sent:** Tuesday, January 17, 2017 3:02 AM  
**To:** Thompson, Jeffrey [AG]  
**Subject:** State Tax Notes Contents



TUESDAY, JANUARY 17, 2017



**ON THE COVER**

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**Corporate Income Tax Legislative Update: What Happened in 2016?**

Shona Ponda, Jennifer Alban-Bond and Kathryn Jeffery

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**College Sports Generate Millions in Revenue**

Jéanne Rauch-Zender

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Shona Ponda, Jennifer Alban-Bond and Kathryn Jeffery

**BOTH SIDES NOW**

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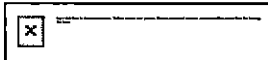
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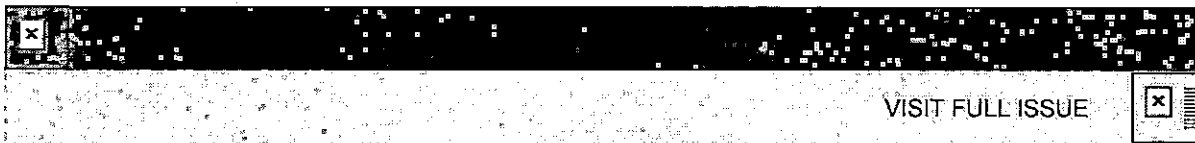
## Thompson, Jeffrey [AG]

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**From:** Tax Analysts <taxanalysts@taxnotes.com>  
**Sent:** Monday, December 19, 2016 2:03 AM  
**To:** Thompson, Jeffrey [AG]  
**Subject:** State Tax Notes Contents



MONDAY, DECEMBER 19, 2016



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Timothy P. Noonan and Andrew W. Wright

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**The Importance of Pre-Transaction Sell-Side SALT Due Diligence**

John Wojcik and John Wozniczka

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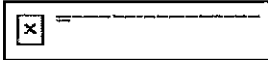
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**From:** Tax Analysts <taxanalysts@taxnotes.com>  
**Sent:** Monday, December 12, 2016 2:03 AM  
**To:** Thompson, Jeffrey [AG]  
**Subject:** State Tax Notes Contents



MONDAY, DECEMBER 12, 2016



**ON THE COVER**

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**It May Take More Than a Village: SALT and Tribal Tax Update**

Michelle DeLappe

**FROM THE EDITOR**

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**Rebirth in Energy Production**

Jéanne Rauch-Zender

**NEWS & ANALYSIS**

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**State Tax Claims on the Line in U.S. Supreme Court Bankruptcy Case**

Stephanie Cumings

**West Virginia Sales Tax Credit Violates Dormant Commerce Clause**

Stephanie Cumings

**Parties in Stored Natural Gas Tax Dispute Spar at Texas Supreme Court**

Eric Yauch

## **Texas Appeals Court Revives United Airlines Property Valuation Appeal**

Stephanie Cumings

## **Federal Court Remands False Claims Case Against Citigroup to New York Court**

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## **Hawaii Tax Department Subject of Transparency Lawsuit**

Stephanie Cumings

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Paul Jones

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Maria Koklanaris

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Brian Bardwell

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Maria Koklanaris

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Paige Jones

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Paige Jones



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Paul Jones

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Eric Yauch

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## **Supreme Court Could Resolve Nexus Issues With Ohio Case, Huddleston Says**

Amy Hamilton

## **California to Enforce Marijuana Taxes, Urges Trump to Back Industry Banking**

Paul Jones

## **Effect of Debt-Equity Regulations on SALT World Remains Uncertain**

Stephanie Cumings

## **Dip in Sales and Use Tax Collections 'a Bit Concerning,' NCSL Speaker Says**

Paige Jones

**SKOOKUM TAX NEWS**

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## **It May Take More Than a Village: SALT and Tribal Tax Update**

Michelle DeLappe

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**State Tax Implications of the New Federal Partnership Audit Rules**

Alysse McLoughlin and Peter L. Faber

**PUDGET SOUND SALT**

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**Should the Doctrine of Acquiescence Compel the Supreme Court to Uphold *Quill*?**

Garry G. Fujita

**STATE TAX MERRY-GO-ROUND**

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**State Tax Reform: We Have Met the Enemy and He Is Us**

Billy Hamilton

**SALT FROM MY SADDLE**

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**Arizona's New State and Local Sales Tax Nexus Guidelines**

James G. Busby, Jr.

**THE SALT BOX**

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**The Rise of Tax Fraud**

Roxanne Bland

**CURRENT AND QUOTABLE**

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**ITEP Report Highlights Issues With State Tax Subsidies for Private Schools**

Carl Davis

**IN THE WORKS**

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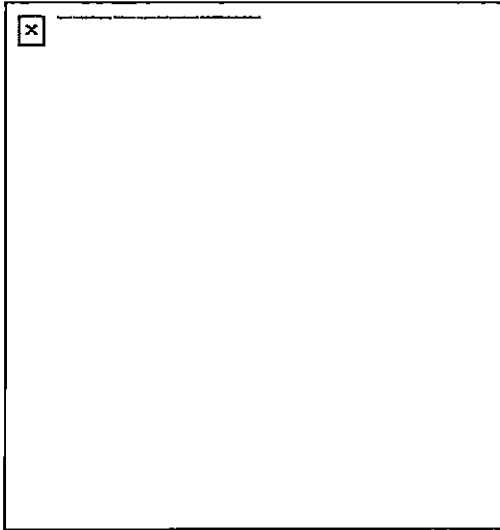
**Thompson, Jeffrey [AG]**

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**From:** Terri L. Bennett <tbennett@iowalaw.org>  
**Sent:** Tuesday, April 25, 2017 9:25 AM  
**To:** Thompson, Jeffrey [AG]  
**Subject:** Iowa Legal Aid's 40th Anniversary

## **Iowa Legal Aid:**

Celebrating 40 Years of Seeking Justice and Improving Lives

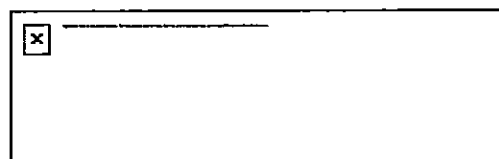
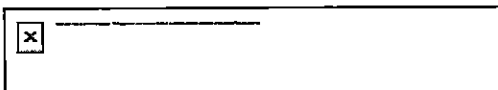


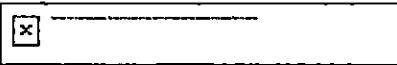
### **Equal Justice After Hours 2017**

*Equal Justice After Hours*, the Iowa Legal Aid Foundation's signature annual fundraising event, was held on March 30, and attended by over 300 people. Photos and the program from the event can be found on the Iowa Legal Aid Foundation's website at [www.iowalegalaidfoundation.org](http://www.iowalegalaidfoundation.org).

Preliminary figures show that nearly \$200,000 was raised through sponsorships, ticket sales and donations at the event. This total includes \$25,000 raised through a dollar-for-dollar challenge issued by members of the Iowa State Bar Association's Board of Governors.

### **THANK YOU TO THE PREMIER SPONSORS OF EQUAL JUSTICE AFTER HOURS 2017:**



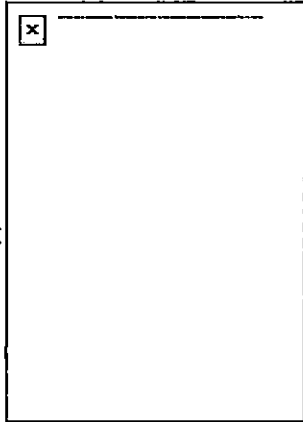


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**Litigation Highlights of the Past 40 Years:**

**Availability of Fee Waivers**

Iowa Legal Aid has worked on behalf of vulnerable children for its entire 40 years. In the early 1990s, Iowa Legal Aid staff often received calls from parents who were not allowed to enroll their children in school because of unpaid school fees. School fees often totaled more than \$100 per child, depending on the grade level and other factors. There were cases where the names of students who had not paid fees were read over the public address system at the beginning of the school day, where children's names were posted on a bulletin board, where students were denied participation in graduation ceremonies, where students were not allowed to have their report cards—all because of their parents' poverty. One year, an elementary principal actually stood in the door way, and extended his arm to block the entry of an impoverished child whose parents had not paid school fees. Iowa Legal Aid filed a request for rule making with the Department of Education. It took four years to get a rule that required school districts to waive fees for low-income families, but now, each fall, low-income families are notified of the availability of fee waivers. There were no more back-to-school calls to Iowa Legal Aid after 1996, when the rule became final.



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**Did you know there are over 498,000 Iowans with incomes below 125% of the poverty level and are financially eligible for legal aid?**

---

**Iowa Legal Aid's Cedar Rapids Regional Office**

In December 2010, the Cedar Rapids Regional Office was the first tenant to move into the newly constructed, post-Flood 2008, Human Services Campus.



*PICTURED:  
Left to Right: Ericka Petersen, Lisa Gavin, Alisa Diehl, Ashle Bray, Emma Schlomann, Leslie Frederick, Chris Merkle, Liz Stansbury, Jim Kringlen (Managing Attorney)*

---

## **13th Annual Dean's Cup Golf Challenge**

**May 15, 2017 - Finkbine Golf Course - Iowa City**

This event is for all law graduates, faculty, staff and students of Drake Law School and the Iowa College of Law – of every skill level – to support their law school, and, at the same time, raise funds for Iowa Legal Aid, which provided Hope, Dignity and Justice to nearly 38,000 Iowans in 2016, but still had to turn away or underserve at least 10,000 others.

Over 110 lawyers and judges from around the state participated in the 2016 event. Drake, led by Captain Chief Justice Mark Cady, won the Cup from a spirited Iowa squad and its Captain Judge Eliza Ovrom. In addition to playing in the event, many alums and businesses supported the event by donating items for the silent auction, sponsoring a hole or making other contributions to the event. Also, a lawyer who is not a graduate of either school may participate in the best shot format by declaring temporary allegiance to one of the two schools at the time of registration.

The Registration fee is partially tax deductible. To sign up and secure your spot in this prestigious event, or indicate your desire to be a sponsor, click [here](#).

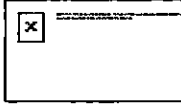
**The field is limited, so be sure to submit your registration right away!**

---

In its 40-year history, Iowa Legal Aid has made a significant impact on the lives of low-income Iowans. Throughout the year, we will continue to share client stories, significant cases, and other examples of our long history of seeking justice and improving lives.

Thank you for your support as we celebrate our history and fulfill our mission to provide Hope Dignity and Justice to all Iowans. Please contact me with questions, comments or concerns.

Sincerely,



Dennis Groenenboom  
Executive Director  
[dgroenenboom@iowalaw.org](mailto:dgroenenboom@iowalaw.org)  
515-243-2980 x 1620

---

**"Celebrating 40 Years of Seeking Justice and Improving Lives"**

Please visit our website at [www.iowalegalaid.org](http://www.iowalegalaid.org)  
Donate to our cause at [www.iowalegalaidfoundation.org](http://www.iowalegalaidfoundation.org)

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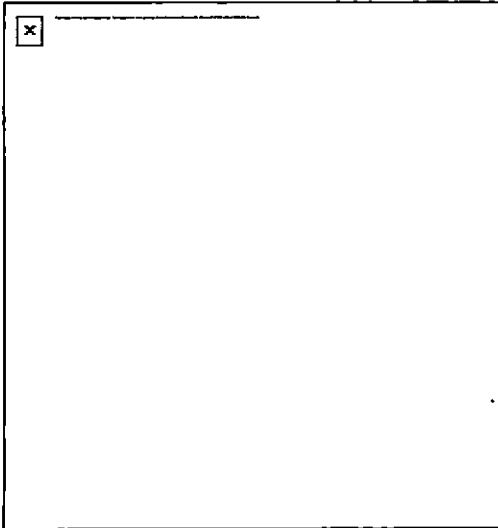
Thompson, Jeffrey [AG]

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**From:** Terri L. Bennett <tbennett@iowalaw.org>  
**Sent:** Thursday, March 23, 2017 5:21 PM  
**To:** Thompson, Jeffrey [AG]  
**Subject:** Iowa Legal Aid's 40th Anniversary

## Iowa Legal Aid:

Celebrating 40 Years of Seeking Justice and Improving Lives



### PLEASE JOIN US!! Equal Justice After Hours 2017

For the past 40 years, Iowa Legal Aid has helped ensure that everyone is treated fairly in the justice system. The importance of access to the court system is best illustrated through the comments of an Iowa Legal Aid client:

***"Thank you! For years, I didn't know how or when to get out of the situation I was in when in all reality, one phone call to Iowa Legal Aid made a huge impact on my life! I now have a nice place to live that is safe for me and my children. We can now learn to live without domestic violence in our home. My children can now grow up to respect others. Iowa Legal Aid saved my life!"***

In 2017, Iowa Legal Aid is celebrating **40 YEARS OF SEEKING JUSTICE AND IMPROVING LIVES**. Iowa Legal Aid will be kicking off its celebration with its annual event, ***Equal Justice After Hours***. The event will be held Thursday, March 30 from 5:00-7:00 p.m. at American Enterprise Group, located at 601 6th Avenue in downtown Des Moines. Tickets are \$50 and can be purchased at the door or online [HERE](#).

**Iowa State Bar Association Board of Governors has issued  
a challenge for donations made that evening!**



For the fourth year the President-Elect of the Iowa State Bar Association (ISBA), Steve Eckley, has initiated a Board of Governors challenge at ***Equal Justice After Hours***. The challenge is a dollar-for-dollar match from Steve and individual members of the Board of Governors of the ISBA for pledges and donations made at the event. Individual Board of Governors members have raised over \$7,000 to initiate the challenge!!

Join us on March 30 to celebrate **40 Years of Seeking Justice and Improving Lives**. If you are unable to attend, but would like to support Iowa Legal Aid, click **HERE** to donate.

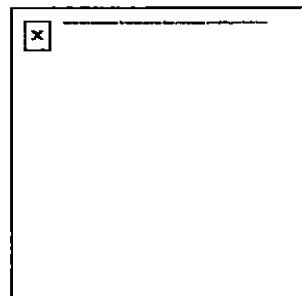
For further information, contact Terri Bennett at 515-243-2980 x 1611 or [tbennett@iowalaw.org](mailto:tbennett@iowalaw.org)

---

## Litigation Highlights of the Past 40 Years:

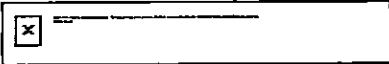
### Iowa Legal Aid's Assistance to Veterans

Iowa Legal Aid helped a disabled veteran with a garnishment problem. All of the money in his bank account had been seized. As a result, he had no money to pay expenses. The money in his account was from his Army pension and the VA. His money was protected by law from garnishment. However, he did not know it was protected and did not know he could do anything about it. Iowa Legal Aid brought a lawsuit challenging the lack of notice to the veteran and lack of an opportunity to challenge the legality of taking his property. In response to his lawsuit, the Iowa Supreme Court approved an administrative directive, providing all the relief Iowa Legal Aid asked for on his behalf. In fact, the change in procedure was broader in scope than the lawsuit, as it applied to the entire state. Now, someone in this situation will receive a notice explaining exempt property, and how to assert the claim. (Burr v. Des Moines County – Federal District Court)



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### Iowa Legal Aid's Iowa City Regional Office

 Hawkeye Legal Aid in Iowa City was one of the "original" county legal aid offices that merged to form the Legal Services Corporation of Iowa, now Iowa Legal Aid. Hawkeye Legal Aid was formed in 1967. Iowa Legal Aid celebrates its 40th anniversary this year, but it is also the 50th anniversary of legal aid in Johnson County.

**PICTURED:**

*Front row, left to right: Charles Pierce, Liz Norris, Chris Luzzie (Litigation Director).*

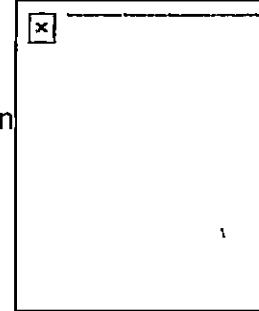
*Back row, left to right: Jan Rutledge (Managing Attorney), Courtney Thomas-Dusing, Lorraine*

Gaynor, Jessica Covington.

---

## Iowa Legal Aid Client Tells Her Story

One of the most meaningful ways to learn about Iowa Legal Aid's important work is to hear about it from our clients. Click **HERE** to listen to Theresa tell her story of the positive impact Iowa Legal Aid made in her life.

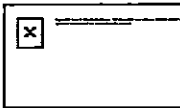


---

In its 40-year history, Iowa Legal Aid has made a significant impact on the lives of low-income Iowans. Throughout the year, we will continue to share client stories, significant cases, and other examples of our long history of seeking justice and improving lives.

Thank you for your support as we celebrate our history and fulfill our mission to provide Hope Dignity and Justice to all Iowans. Please contact me with questions, comments or concerns.

Sincerely,



Dennis Groenenboom  
Executive Director  
[dgroenenboom@iowalaw.org](mailto:dgroenenboom@iowalaw.org)  
515-243-2980 x 1620

---

**"Celebrating 40 Years of Seeking Justice and Improving Lives"**

Please visit our website at [www.iowalegalaid.org](http://www.iowalegalaid.org)  
Donate to our cause at [www.iowalegalaidfoundation.org](http://www.iowalegalaidfoundation.org)

---

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Address postal inquiries to:  
Iowa Legal Aid  
1111 9th Street, Suite 230  
Des Moines, IA 50314  
Powered By



## Thompson, Jeffrey [AG]

---

**From:** Thompson, Jeffrey [AG]  
**Sent:** Monday, April 03, 2017 10:24 AM  
**To:** Ranscht, David [AG]; Gavin, Meghan [AG]  
**Subject:** Lt Gov stuff

South Carolina just went through the succession issues with Nicki Haley leaving. Could one of you find the S.C. constitution and any pertinent cases? Thanks.

**Thompson, Jeffrey [AG]**

---

**From:** Thompson, Jeffrey [AG]  
**Sent:** Wednesday, March 29, 2017 10:21 AM  
**To:** Busselot, Michael [IGOV]  
**Subject:** Accepted: Invitation: Follow-up Discussion on Succession @ Thu Mar 30, 2017 10am - 10:30am (CDT) (jeffrey.thompson@iowa.gov)

## Thompson, Jeffrey [AG]

---

**From:** Thompson, Jeffrey [AG]  
**Sent:** Wednesday, March 29, 2017 10:20 AM  
**To:** Busselot, Michael [IGOV]  
**Subject:** Accepted: Invitation: Follow-up Discussion on Succession @ Thu Mar 30, 2017 10am - 10:30am (CDT) (jeffrey.thompson@iowa.gov)

## Thompson, Jeffrey [AG]

---

**From:** Thompson, Jeffrey [AG]  
**Sent:** Wednesday, March 29, 2017 10:05 AM  
**To:** Johnson, Larry [IGOV]  
**Subject:** RE: Follow-up Discussion on Succession

Yes. Let's shoot for 10. I will come over to the Capitol. Thanks.

**From:** Johnson, Larry [mailto:larry.johnson@iowa.gov]  
**Sent:** Wednesday, March 29, 2017 9:53 AM  
**To:** Thompson, Jeffrey [AG]  
**Subject:** Re: Follow-up Discussion on Succession

Jeff - Thanks for reaching out. Does any time from 10-noon work for you tomorrow, Thursday?

On Tue, Mar 28, 2017 at 12:07 PM, Thompson, Jeffrey [AG] <[Jeffrey.Thompson@iowa.gov](mailto:Jeffrey.Thompson@iowa.gov)> wrote:

Do you have time in the next few days for a follow-up discussion?

--

**Larry Johnson, Jr.** | Legal Counsel

Office of the Governor, State of Iowa

Gov. Terry Branstad & Lt. Gov. Kim Reynolds

515.725.3506 | [larry.johnson@iowa.gov](mailto:larry.johnson@iowa.gov)

[www.governor.iowa.gov](http://www.governor.iowa.gov)

[www.ltgovernor.iowa.gov](http://www.ltgovernor.iowa.gov)

**Thompson, Jeffrey [AG]**

---

**From:** Thompson, Jeffrey [AG]  
**Sent:** Tuesday, March 28, 2017 12:08 PM  
**To:** 'Bousselot, Michael [IGOV]'; Johnson, Larry [IGOV] (Larry.Johnson@iowa.gov)  
**Subject:** Follow-up Discussion on Succession

Do you have time in the next few days for a follow-up discussion?

**Thompson, Jeffrey [AG]**

---

**From:** Thompson, Jeffrey [AG]  
**Sent:** Wednesday, March 08, 2017 9:10 AM  
**To:** Tabor, Eric [AG]  
**Cc:** Ranscht, David [AG]; Gavin, Meghan [AG]  
**Subject:** Re: A new Pieces of Iowa's Past has been published: Lieutenant Governors Who Have Become Governor

Interesting timing. Note that Lt govs were elected separately to two year terms back then. I don't see any appointments.

Sent from my iPhone

On Mar 8, 2017, at 8:54 AM, Tabor, Eric [AG] <[Eric.Tabor@iowa.gov](mailto:Eric.Tabor@iowa.gov)> wrote:

FYI

---

**From:** [lfblists@legis.iowa.gov](mailto:lfblists@legis.iowa.gov) [<mailto:lfblists@legis.iowa.gov>]  
**Sent:** Wednesday, March 08, 2017 8:05 AM  
**To:** [TOUR\\_GUIDE\\_TIDBITS@LISTSERV.LEGIS.IOWA.GOV](mailto:TOUR_GUIDE_TIDBITS@LISTSERV.LEGIS.IOWA.GOV)  
**Subject:** A new Pieces of Iowa's Past has been published: Lieutenant Governors Who Have Become Governor

Document type: Pieces of Iowa's Past

Document title: Lieutenant Governors Who Have Become Governor

Document published location: <https://www.legis.iowa.gov/docs/publications/TB/855445.pdf>

Please do not reply to this e-mail as this e-mail account is not monitored.



## Thompson, Jeffrey [AG]

---

**From:** Thompson, Jeffrey [AG]  
**Sent:** Wednesday, February 15, 2017 5:05 PM  
**To:** Gavin, Meghan [AG]; Ranscht, David [AG]  
**Subject:** RE: Arkansas, Oklahoma, and Oregon

Thanks. Let's try to find time to talk tomorrow.

Reread original and current Art. IV sec 19 carefully.

---

**From:** Gavin, Meghan [AG]  
**Sent:** Wednesday, February 15, 2017 1:34 PM  
**To:** Thompson, Jeffrey [AG]; Ranscht, David [AG]  
**Subject:** Arkansas, Oklahoma, and Oregon

You asked me to look into whether the new governor appointed a lieutenant governor after the court concluded that the lt. governor "became" governor.  
Short answer – No for each state.

Arkansas – Arkansas held a special election to fill the position of lt. governor after the lt. governor became governor following the election of President Clinton. Mike Huckabee won that special election. However, Arkansas is like Iowa pre-1988, where the lt. governor is elected separately from the governor.

Oklahoma – After the court in Oklahoma determined that the lt governor became governor in 1926, the office of lt. governor was "vacant" and held open until the next election. Just a few years later, the Governor of Oklahoma was impeached and the lt. governor again became governor, leaving the lt. governor office vacant.

Oregon – The Court in Oregon determined that the SOS became governor in 1877. For over a year Chadwick held BOTH the office of governor and the SOS until the next election.



**Meghan Gavin**  
**Assistant Attorney General**  
Office of the Attorney General of Iowa  
1305 E. Walnut St.  
Des Moines, Iowa 50319  
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## Thompson, Jeffrey [AG]

---

**From:** Thompson, Jeffrey [AG]  
**Sent:** Wednesday, February 15, 2017 1:55 PM  
**To:** 'Gavin, Meghan [AG]'; Ranscht, David [AG]  
**Subject:** RE: Arkansas, Oklahoma, and Oregon

Thanks.

---

**From:** Gavin, Meghan [AG]  
**Sent:** Wednesday, February 15, 2017 1:34 PM  
**To:** Thompson, Jeffrey [AG]; Ranscht, David [AG]  
**Subject:** Arkansas, Oklahoma, and Oregon

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Oregon – The Court in Oregon determined that the SOS became governor in 1877. For over a year Chadwick held BOTH the office of governor and the SOS until the next election.



**Meghan Gavin**  
**Assistant Attorney General**  
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## Thompson, Jeffrey [AG]

---

**From:** Thompson, Jeffrey [AG]  
**Sent:** Friday, February 10, 2017 4:08 PM  
**To:** Ranscht, David [AG]  
**Cc:** Gavin, Meghan [AG]  
**Subject:** RE: Draft Answers

David,

This is great work. Everything we need to make the case. I've given it to Eric so he can see the scope of the support for our position. Let's talk Monday.

Have a good weekend.

---

**From:** Ranscht, David [AG]  
**Sent:** Friday, February 10, 2017 2:30 PM  
**To:** Thompson, Jeffrey [AG]  
**Subject:** Draft Answers

Although there is not a specific paragraph to this effect in the memo as it stands now, I also realized that article IV, section 19 states the people further down the line "act as" governor, while "devolve" applies only to the lieutenant. That provision was amended to its current form as part of the 1988 amendments. Several other states noted that the difference in language suggests the lieutenant governor is not merely acting governor.

**Thompson, Jeffrey [AG]**

---

**From:** Thompson, Jeffrey [AG]  
**Sent:** Friday, February 10, 2017 2:54 PM  
**To:** 'Ranscht, David [AG]'  
**Subject:** RE: Draft Answers

Thanks. I agree that this distinction is important – the other people in line of succession have other “jobs” while the only real purpose for the Lt. Gov is to take over for Gov.

---

**From:** Ranscht, David [AG]  
**Sent:** Friday, February 10, 2017 2:30 PM  
**To:** Thompson, Jeffrey [AG]  
**Subject:** Draft Answers

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## Thompson, Jeffrey [AG]

---

**From:** Thompson, Jeffrey [AG]  
**Sent:** Friday, February 10, 2017 10:27 AM  
**To:** Greenwood, Geoff [AG]  
**Cc:** Tabor, Eric [AG]  
**Subject:** Re: David Johnson inquiry

I'd tell him we are still looking at the issue and have not provided a response.

Sent from my iPhone

On Feb 10, 2017, at 10:21 AM, Greenwood, Geoff [AG] <[Geoff.Greenwood@iowa.gov](mailto:Geoff.Greenwood@iowa.gov)> wrote:

I'll let him know we are preparing a response but have not yet responded.

---

**From:** Kauffman, Clark [<mailto:ckkauffma@registermedia.com>]  
**Sent:** Friday, February 10, 2017 10:20 AM  
**To:** Greenwood, Geoff [AG]  
**Subject:** David Johnson inquiry

Geoff,

Can you tell me whether the AG's has responded yet to Sen. David Johnson's Feb. 1 letter to the AG asking for an official opinion with regard to the lieutenant governor taking over as governor of the state. In his letter, he indicates he expects an answer by Feb. 15....

Clark

## Thompson, Jeffrey [AG]

---

**From:** Thompson, Jeffrey [AG]  
**Sent:** Friday, December 09, 2016 12:39 PM  
**To:** Gavin, Meghan [AG]  
**Subject:** Research - succession

Since David is doing survey of state constitutions and cases would you focus on finding law review or other secondary sources? We will need to plan a meeting to discuss first thing next week.

Sent from my iPhone

## Thompson, Jeffrey [AG]

---

**From:** Thompson, Jeffrey [AG]  
**Sent:** Thursday, December 08, 2016 2:41 PM  
**To:** Gavin, Meghan [AG]; Ranscht, David [AG]  
**Subject:** RE: Constitutional issue re: Lt. Gov assuming Gov's powers

Already put a hard copy on your chairs. Found it this morning. Dicta.....

-----Original Message-----

**From:** Gavin, Meghan [AG]  
**Sent:** Thursday, December 08, 2016 2:39 PM  
**To:** Ranscht, David [AG]; Thompson, Jeffrey [AG]  
**Subject:** RE: Constitutional issue re: Lt. Gov assuming Gov's powers

[https://govt.westlaw.com/iaag/Document/l6adbf60af80111df9b8c850332338889?originationContext=Search+Result&listSource=Search&viewType=FullText&navigationPath=Search%2fv3%2fsearch%2fresults%2fnavigation%2fi0ad70f7000000158dfad385267b9973f%3fstartIndex%3d1%26Nav%3dADMINDECISION\\_PUBLICVIEW%26contextData%3d\(sc.Default\)&rank=2&list=ADMINDECISION\\_PUBLICVIEW&transitionType=SearchItem&contextData=\(sc.Search\)&t\\_querytext=Governor+resignation+successor+vacancy+lieutenant+governor+duties+and+responsibilities&t\\_Method=WIN](https://govt.westlaw.com/iaag/Document/l6adbf60af80111df9b8c850332338889?originationContext=Search+Result&listSource=Search&viewType=FullText&navigationPath=Search%2fv3%2fsearch%2fresults%2fnavigation%2fi0ad70f7000000158dfad385267b9973f%3fstartIndex%3d1%26Nav%3dADMINDECISION_PUBLICVIEW%26contextData%3d(sc.Default)&rank=2&list=ADMINDECISION_PUBLICVIEW&transitionType=SearchItem&contextData=(sc.Search)&t_querytext=Governor+resignation+successor+vacancy+lieutenant+governor+duties+and+responsibilities&t_Method=WIN)

Here's a relevant opinion free m Pam.

---

**From:** Ranscht, David [AG]  
**Sent:** Thursday, December 08, 2016 12:02 PM  
**To:** Thompson, Jeffrey [AG]; Gavin, Meghan [AG]  
**Subject:** RE: Constitutional issue re: Lt. Gov assuming Gov's powers

Cool table indeed.

Here are two more cases (WI and MT). I have a bunch more in a folder to read after lunch.

[cid:image001.png@01D25149.FECA50E0]<<http://www.iowaattorneygeneral.gov/>>

David Ranscht  
Assistant Attorney General  
Office of the Attorney General of Iowa  
Licensing & Administrative Law Division  
1305 E. Walnut St.  
Des Moines, Iowa 50319  
Main: (515) 281-5164 | Direct: (515) 281-7175  
Email: [david.ranscht2@iowa.gov](mailto:david.ranscht2@iowa.gov)<<mailto:david.ranscht2@iowa.gov>> |  
[www.iowaattorneygeneral.gov](http://www.iowaattorneygeneral.gov/)<<http://www.iowaattorneygeneral.gov/>>

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immediately by reply email or telephone. Any unintended transmission of this email message does not constitute a waiver of any applicable privilege or protection. Thank you.

From: Thompson, Jeffrey [AG]  
Sent: Thursday, December 08, 2016 11:46 AM  
To: Ranscht, David [AG]; Gavin, Meghan [AG]  
Subject: FW: Constitutional issue re: Lt. Gov assuming Gov's powers

See below. Gotta love Wikipedia.

Can we print the cool table?

From: Greenwood, Geoff [AG]  
Sent: Thursday, December 08, 2016 11:13 AM  
To: Thompson, Jeffrey [AG]  
Subject: FW: Constitutional issue re: Lt. Gov assuming Gov's powers

From: Mark O. Lambert [mailto:marklambert@mchsi.com]  
Sent: Thursday, December 08, 2016 11:12 AM  
To: Greenwood, Geoff [AG]  
Cc: Tabor, Eric [AG]  
Subject: Re: Constitutional issue re: Lt. Gov assuming Gov's powers

Thanks, Geoff. One more thing, historically, when an Iowa Gov has left office before the end of his term, there has not been a Lt. Gov. appointed. Most of the time, these were very short periods of time, though.  
[https://en.wikipedia.org/wiki/List\\_of\\_Governors\\_of\\_Iowa](https://en.wikipedia.org/wiki/List_of_Governors_of_Iowa)

Mark

---

From: "Geoff Greenwood [AG]" <Geoff.Greenwood@iowa.gov<mailto:Geoff.Greenwood@iowa.gov>>  
To: "Mark O. Lambert" <marklambert@mchsi.com<mailto:marklambert@mchsi.com>>, "Eric Tabor [AG]" <Eric.Tabor@iowa.gov<mailto:Eric.Tabor@iowa.gov>>  
Sent: Thursday, December 8, 2016 10:25:12 AM  
Subject: RE: Constitutional issue re: Lt. Gov assuming Gov's powers

Thanks for contacting us, Mark. We're researching it and will add this to the conversation.

Best regards,

[cid:image001.png@01D25149.FECA50E0]<<http://www.iowaattorneygeneral.gov/>>

Geoff Greenwood  
Communications Director  
Office of the Attorney General of Iowa  
1305 E. Walnut St.  
Des Moines, Iowa 50319  
Main: (515) 281-5164 | Direct: (515) 281-6699



Email: [geoff.greenwood@iowa.gov](mailto:geoff.greenwood@iowa.gov) |  
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From: Mark O. Lambert [mailto:[marklambert@mchsi.com](mailto:marklambert@mchsi.com)]  
Sent: Thursday, December 08, 2016 9:54 AM  
To: Greenwood, Geoff [AG]; Tabor, Eric [AG]  
Subject: Constitutional issue re: Lt. Gov assuming Gov's powers  
Importance: High

Eric and Geoff:

In Massachusetts, when Governor William Weld resigned in 1997, Lt. Gov. Paul Cellucci became "Acting Governor" – not "Governor." When Cellucci resigned to become US Ambassador to Canada during the Bush Administration in 2001, his Lt. Gov. Jane Swift became "Acting Governor."

Massachusetts Constitution has a similar provision to the Iowa Constitution:

III.--Whenever the chair of the Governor shall be vacant, by reason of his death, or absence from the Commonwealth, or otherwise, the Lieutenant-Governor, for the time being, shall, during such vacancy, perform all the duties incumbent upon the Governor, and shall have and exercise all the powers and authorities, which by this Constitution the Governor is vested with, when personally present.

Hope this is helpful.

--Mark

Mark Lambert

Attorney at Law

Polk City

## Thompson, Jeffrey [AG]

---

**From:** Thompson, Jeffrey [AG]  
**Sent:** Thursday, December 08, 2016 11:46 AM  
**To:** Ranscht, David [AG]; Gavin, Meghan [AG]  
**Subject:** FW: Constitutional issue re: Lt. Gov assuming Gov's powers

See below. Gotta love Wikipedia.

Can we print the cool table?

---

**From:** Greenwood, Geoff [AG]  
**Sent:** Thursday, December 08, 2016 11:13 AM  
**To:** Thompson, Jeffrey [AG]  
**Subject:** FW: Constitutional issue re: Lt. Gov assuming Gov's powers

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**From:** Mark O. Lambert [<mailto:marklambert@mchsi.com>]  
**Sent:** Thursday, December 08, 2016 11:12 AM  
**To:** Greenwood, Geoff [AG]  
**Cc:** Tabor, Eric [AG]  
**Subject:** Re: Constitutional issue re: Lt. Gov assuming Gov's powers

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[https://en.wikipedia.org/wiki/List\\_of\\_Governors\\_of\\_Iowa](https://en.wikipedia.org/wiki/List_of_Governors_of_Iowa)

Mark

---

**From:** "Geoff Greenwood [AG]" <[Geoff.Greenwood@iowa.gov](mailto:Geoff.Greenwood@iowa.gov)>  
**To:** "Mark O. Lambert" <[marklambert@mchsi.com](mailto:marklambert@mchsi.com)>, "Eric Tabor [AG]" <[Eric.Tabor@iowa.gov](mailto:Eric.Tabor@iowa.gov)>  
**Sent:** Thursday, December 8, 2016 10:25:12 AM  
**Subject:** RE: Constitutional issue re: Lt. Gov assuming Gov's powers

Thanks for contacting us, Mark. We're researching it and will add this to the conversation.

Best regards,



**Geoff Greenwood**  
**Communications Director**  
Office of the Attorney General of Iowa  
1305 E. Walnut St.  
Des Moines, Iowa 50319  
Main: (515) 281-5164 | Direct: (515) 281-6699  
Email: [geoff.greenwood@iowa.gov](mailto:geoff.greenwood@iowa.gov) | [www.iowaattorneygeneral.gov](http://www.iowaattorneygeneral.gov)

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**From:** Mark O. Lambert [<mailto:marklambert@mchsi.com>]  
**Sent:** Thursday, December 08, 2016 9:54 AM  
**To:** Greenwood, Geoff [AG]; Tabor, Eric [AG]  
**Subject:** Constitutional issue re: Lt. Gov assuming Gov's powers  
**Importance:** High

Eric and Geoff:

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Hope this is helpful.

--Mark

Mark Lambert  
Attorney at Law  
Polk City  
515-681-0285

## Thompson, Jeffrey [AG]

---

**From:** Thompson, Jeffrey [AG]  
**Sent:** Thursday, December 08, 2016 10:14 AM  
**To:** Ranscht, David [AG]  
**Subject:** FW: Constitutional issue re: Lt. Gov assuming Gov's powers  
**Importance:** High

See below.

---

**From:** Greenwood, Geoff [AG]  
**Sent:** Thursday, December 08, 2016 10:13 AM  
**To:** Thompson, Jeffrey [AG]  
**Subject:** FW: Constitutional issue re: Lt. Gov assuming Gov's powers  
**Importance:** High

---

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**Sent:** Thursday, December 08, 2016 9:54 AM  
**To:** Greenwood, Geoff [AG]; Tabor, Eric [AG]  
**Subject:** Constitutional issue re: Lt. Gov assuming Gov's powers  
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Attorney at Law  
Polk City  
515-681-0285

## Thompson, Jeffrey [AG]

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**From:** Thompson, Jeffrey [AG]  
**Sent:** Wednesday, December 07, 2016 11:52 AM  
**To:** Busselot, Michael [IGOV]; Johnson, Larry [IGOV]  
**Subject:** Congratulations to Gov. Branstad

Michael and Larry,

Wow. What a great development. For Gov., for Iowa, for USA. Please pass on my personal congratulations.

Sincerely,  
Jeff

**Thompson, Jeffrey [AG]**

---

**From:** Women Legal - CLE Approved <forum@ark-group.com>  
**Sent:** Wednesday, January 04, 2017 11:17 AM  
**To:** Thompson, Jeffrey [AG]  
**Subject:** Women Legal Conference - San Francisco

# Women Legal 2017

February 09, 2017 - San Francisco, CA

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Illustrating the business imperative for the advancement, retention and succession of female leadership in the legal profession - while identifying opportunities to open up business dialogues and make useful connections

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**Featuring key contributions and candid viewpoints from:**

Caren Ulrich Stacy, **Creator of Diversity Lab and OnRamp Fellowship**

Kathryn Fritz, Managing Partner, **Fenwick & West**

Cristina Carvalho, Managing Partner, **Arent Fox**

Susan Brewer, CEO, **Steptoe & Johnson**

Mallun Yen, Executive Vice President, **RPX Corporation**

Susan Bennett, Principal, **Sibenco Legal and Advisory**

Janice Brown, Founding Partner, **Brown Law Group**

Audra Dial, Atlanta office Managing Partner, **Kilpatrick Townsend & Stockton**

Jennifer Zimmerman, Executive Director, **Morgan Stanley**

Naomi Waltman, Sr. Vice President & Associate General Counsel, **CBS**

Isabella Fu, Associate General Counsel, **Microsoft Corporation**

Seth Aronson, Partner, **O'Melveny & Myers**

Patricia Gillette, **Public Keynote Speaker and Member of JAMS**

Deborah Epstein Henry, Founder & President, **Flex-Time Lawyers**

Lisa Horowitz, Founder & Principal Strategist, **Attorney Talent Strategy Group**

**And Others!**

Go [HERE](#) to view the full agenda

**CLE is available for this event, please contact Kelli Bush for more info - 704-341-2377**

*We hope you will join us at Ark Group's 10th annual **Women Legal - San Francisco** conference where once again we provide an ideal platform for the exchange of ideas and experiential wisdom as we collectively address the primary*

obstacles, challenges and opportunities that exist concerning the promotion, retention and succession of female leadership - as well as identify opportunities to open up business dialogues and make useful connections - turning strategic relationships into mentors, sponsors and clients!

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Suggested Reading: **Robots in Law: How Artificial Intelligence is Transforming Legal Services**

This email was sent by: **ARK Group US**  
333 W. North Avenue, Suite 373 Chicago, Illinois, IL 60610, USA

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**Thompson, Jeffrey [AG]**

---

**From:** Women Legal - CLE Approved <forum@ark-group.com>  
**Sent:** Wednesday, December 14, 2016 9:26 AM  
**To:** Thompson, Jeffrey [AG]  
**Subject:** Women Legal 2017 San Francisco

# Women Legal 2017

February 09, 2017 - San Francisco, CA

---

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---

Suggested Reading: **The Talent Management Toolkit for Law Firms**

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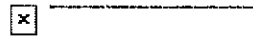
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## Thompson, Jeffrey [AG]

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**From:** WordRake - Write to the Point <writetothepoint@wordrake.com>  
**Sent:** Tuesday, February 14, 2017 8:19 AM  
**To:** Thompson, Jeffrey [AG]  
**Subject:** Perfect Orbits Once Again

Write to the Point – Writing Tips from WordRake  
Read the web version [here](#)



[Forward to a Friend](#)

## Perfect Orbits Once Again

### THE LESSON

These are the third person *singular* pronouns:

*she, her, herself, he, his, him, himself, it, its, and itself*

These are the third person *plural* pronouns:

*they, them, their, and themselves*

These are some of the *indefinite* pronouns:

*anyone, everyone, no one, nobody, someone, each*

There are more, but you get the point.

**Two Problems**

Here's the situation: Both alternatives are *incorrect*; but you *have* to choose one.

In 1982, I published my first book, *Victim: The Other Side of Murder*. The story chronicles a family of six, two of whom had been trapped in the basement of a hi-fi shop at the mercy of a mass-murderer. The book was the first work of narrative nonfiction to illuminate the victim's side of violent crime. I dedicated it to my parents and to the surviving members of the family who had courageously opened up to me. But in expressing my gratitude, I faced a problem: three members of the family were men; the other was a woman. After I had struggled for many hours, that half of the dedication finally read:

*The story itself  
Belongs to the Naisbitt family,  
And I am indebted to each of them  
For sharing their part of it with me*

Even though *each* is singular and *their* is plural, I saw no other solution. Fast forward to last summer, when I wrote a tip about forming possessives and how polite society in the early eighteenth century did not tolerate inanimate objects possessing things (See Tip: "Possessed"). I included this clause:

. . . so anyone caught writing 'the ship's mast' could find themselves not invited to the next garden party.

One of your colleagues, Jerry, wrote that he found it interesting that I had "fallen prey to using the third person plural as a generic pronoun." He means that *anyone* is singular, yet I refer to it with the plural pronoun, *themselves*. If Jerry had read the dedication in *Victim*, he would have said that *each* is singular and *their* is plural, so they don't agree either.

I could have written "*each* . . . for sharing *his or her* part" and "*anyone* caught . . . could find *herself or himself* not invited." But neither is a good alternative. I also could have gone with the royal *he* and cut out a little over half the world's population: "for sharing *his* part" and "could find *himself* not invited." Maybe I should have written, "And I am indebted to *all* of them for sharing *their* stories with me." But that seemed less personal.

#### QUICK REVIEW

The third person *singular* pronouns are:

*she, her, herself, he, his, him, himself, it, its, and itself*

The third person *plural* pronouns are:

*they, them, their, and themselves*

The *indefinite* pronouns include:

*singular third person* pronouns express both feminine and masculine, and attempt to combine she/he, his/her, and it, which is awkward.

Second, *indefinite pronouns* are singular in number and require a singular verb, but they are "notionally plural" when matched to other pronouns. In *Sense and Sensibility* (1811) Jane Austen demonstrates the *indefinite pronoun* followed by a *singular verb* but a *third person plural pronoun*:

"And each of them was in arranging their particular concerns. . . ."

#### Rule

It's okay to use the third person plural pronouns *they, them, they, and themselves* when referring to a *singular noun of indeterminate gender* (*writer, governor*) or a *plural noun of indeterminate gender*.

Any *governor* who raise taxes in their state could find *themselves* out of the governor's mansion come next election.

*Nobody* here seems to fall into an Author, ancient or modern, if *they* can avoid

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*anyone, everyone, no one, nobody, someone, each*

There are more, but you get the point.

## TWO PROBLEMS THAT OVERLAP

### The First Problem

In the eighteenth century a group of grammarians arbitrarily decreed that *indefinite pronouns* should always be *singular* and require *singular* verbs: *anyone is, everyone is, no one is, someone was, each has been*.

### The Second Problem

The grammar decree hit an especially hard stone wall when the grammarians tried to match the *singular indefinite pronouns* to the *singular third person pronouns*. You can imagine the angst when someone tried to post an ad in the *Boston Bugle*:

*Anyone* attending the candle-making class must bring \_\_\_\_ own wax.

Is it *her* or *his*, or is it *their*? That was the dilemma: If we used the plural *their* with the indefinite *anyone*, we would be wrong because *anyone* had been decreed singular; and if we used *her* or *his*, we would be equally wrong, because *she* does not include the other. *Merriam-Webster's Concise Dictionary of English Usage* calls these two problems "perceptible gaps in the language." And the gaps intersect right at this point: in English we have no *singular third person pronoun* that covers *both* women and men.

## A THICKER PLOT

Up against that stone wall, the eighteenth-century grammarians pondered, If *anyone* is singular, and we have to match it to a *singular third person pronoun*—but we don't have one that means both genders—can we match it by decree to *he* or *his* anyway? Of course they could, and as shocking as this might seem, they decided on the masculine *his* (*he, him, himself*). Can you imagine? It might have had something to do with eighteenth-century grammarians being men. So writers followed this practice so rigidly over the next two hundred years, they produced sentences like this one from a New York politician in 1984:

"... *everyone* will be able to decide for *himself* whether or not to have an abortion."

But going back to the fourteenth century, writers and some grammarians faced with the dilemma were already using *they, them, their, and themselves* to refer to the *indefinite pronouns*.

"And every one to rest themselves. . .," wrote Shakespeare in *The Rape of Lucrece*, 1594.

"I would have *everybody* marry if *they* can do it properly," opined Jane Austen in *Mansfield Park*, 1814.

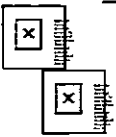
As much as we try to make language like math, with strict rules and predictable outcomes, doggone it, it just won't work properly. Faced with the works of Shakespeare, Austen, and other literary luminaries, grammarians went back, pondered some more, then rationalized: although *indefinite pronouns* might not be *actually* plural, they are *notionally* plural. And the planets circled the sun in perfect orbits once again.

Although a few critics disagree, I would not hesitate to use the plural *they, them, their, or themselves* to refer to a *noun of indeterminate gender* (*writer, laborer, secretary, nurse, governor*) or to an *indefinite pronoun*, as I did in my book in 1982. And the next time someone questions your doing that, raise the corners of your mouth, shake your head slightly, and knit your brow, as if to say, "That's so adorable you haven't heard: Indefinite pronouns are notionally plural."

## About the Author

*New York Times* bestselling author, Gary Kinder, has taught over 1,000 writing programs to law firms, corporations, universities, and government agencies. In 2012, Gary and his team of engineers created WordRake, the only software in the world that edits for clarity and brevity, giving professionals more confidence when writing to clients and colleagues. Backed by seven U.S. patents, WordRake was recently hailed as "Disruptive Innovation" by Harvard Law School. And LexisNexis® Pacific has chosen the WordRake editing software to include in its new Lexis® Draft Pro.

Visit [wordrake.com](http://wordrake.com) for a free 7-day trial—no credit card required.



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## Thompson, Jeffrey [AG]

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**From:** Rita Bettis <rita.bettis@aclu-ia.org>  
**Sent:** Wednesday, May 03, 2017 3:38 PM  
**To:** Thompson, Jeffrey [AG]; Ogden, Thomas [AG]  
**Subject:** Fwd: [EXTERNAL] Re: EQCE081503: PLANNED PARENTHOOD OF THE HEARTLAND V TERRY BRANSTAD ET AL  
**Attachments:** Order setting hearing.PDF

Here is the order, attached.

**Rita Bettis**  
Legal Director  
ACLU of Iowa  
505 Fifth Avenue, Ste. 901  
Des Moines, IA 50309-2316  
(515)-243-3988 ext. 115



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----- Forwarded message -----

**From:** <[Ashley.Howell@iowacourts.gov](mailto:Ashley.Howell@iowacourts.gov)>  
**Date:** Wed, May 3, 2017 at 3:24 PM  
**Subject:** Re: [EXTERNAL] Re: EQCE081503: PLANNED PARENTHOOD OF THE HEARTLAND V TERRY BRANSTAD ET AL  
**To:** Rita Bettis <rita.bettis@aclu-ia.org>  
**Cc:** "Thompson, Jeffrey [AG]" <[Jeffrey.Thompson@iowa.gov](mailto:Jeffrey.Thompson@iowa.gov)>, Joseph Fraioli <[JOSEPH.FRAIOLI@aclu-ia.org](mailto:JOSEPH.FRAIOLI@aclu-ia.org)>, [Thomas.Ogden@iowa.gov](mailto:Thomas.Ogden@iowa.gov)

The order has been filed. Thanks everyone you will be in Courtroom 310

Ashley Howell  
Judicial Specialist for Judge Jeffrey D. Farrell  
Courtroom 310  
(515)286-3855  
Polk County Courthouse  
500 Mulberry Avenue  
Des Moines, Iowa 50309

[ashley.howell@iowacourts.gov](mailto:ashley.howell@iowacourts.gov)

**From:** Rita Bettis <rita.bettis@aclu-ia.org>  
**To:** [Ashley.Howell@iowacourts.gov](mailto:Ashley.Howell@iowacourts.gov), "Thompson, Jeffrey [AG]" <[Jeffrey.Thompson@iowa.gov](mailto:Jeffrey.Thompson@iowa.gov)>, [Thomas.Ogden@iowa.gov](mailto:Thomas.Ogden@iowa.gov)  
**Cc:** Joseph Fraioli <[JOSEPH.FRAIOLI@aclu-ia.org](mailto:JOSEPH.FRAIOLI@aclu-ia.org)>  
**Date:** 05/03/2017 02:36 PM  
**Subject:** [EXTERNAL] Re: EQCE081503: PLANNED PARENTHOOD OF THE HEARTLAND V TERRY BRANSTAD ET AL

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Dear Ms. Howell,

We have conferred with our opposing counsel, cc'ed. We all agree that the 1:30 time you proposed on the phone would give everyone adequate time.

Thank you,

**Rita Bettis**

Legal Director

ACLU of Iowa

505 Fifth Avenue, Ste. 901

Des Moines, IA 50309-2316

(515)-243-3988 ext. 115

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On Wed, May 3, 2017 at 1:41 PM, <[Ashley.Howell@iowacourts.gov](mailto:Ashley.Howell@iowacourts.gov)> wrote:

How long do the parties anticipate they will need for this hearing?

Ashley Howell

Judicial Specialist for Judge Jeffrey D. Farrell

Courtroom 310

(515)286-3855

Polk County Courthouse

500 Mulberry Avenue

Des Moines, Iowa 50309

[ashley.howell@iowacourts.gov](mailto:ashley.howell@iowacourts.gov)



## Thompson, Jeffrey [AG]

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**From:** Camilla Taylor <ctaylor@lambdalegal.org>  
**Sent:** Thursday, March 02, 2017 2:21 PM  
**To:** Tabor, Eric [AG]; Thompson, Jeffrey [AG]  
**Cc:** Malheiro, Sharon K.; Nancy Marcus; Jenny Pizer  
**Subject:** Recommendation Against Proposed Iowa "Religious Freedom Restoration Act"  
**Attachments:** Final Lambda Legal Recommends Against Iowa RFRA (March 2 2017) nm.DOC

March 2, 2017

Attorney General Tom Miller  
Office of the Attorney General of Iowa  
Hoover State Office Building  
1305 E. Walnut Street  
Des Moines IA 50319

*Delivered via email to [eric.tabor@iowa.gov](mailto:eric.tabor@iowa.gov) and [jeffrey.thompson@iowa.gov](mailto:jeffrey.thompson@iowa.gov).*

### **Re: Recommendation Against Proposed Iowa "Religious Freedom Restoration Act"**

Dear Attorney General Miller,

We are writing on behalf of Lambda Legal Defense and Education Fund ("Lambda Legal") to express strong opposition to the possibility of the Iowa legislature taking up a bill to enact a broad Religious Freedom Restoration Act ("RFRA") because **there has been no showing of need** for expanded religious rights in Iowa and experience in numerous other states has shown that the rights sought to be created by such a law **inevitably are invoked by those seeking to justify discrimination** against lesbian, gay, bisexual and transgender ("LGBT") individuals, same-sex couples, and people living with HIV. Harmful discrimination, related litigation, and business aversion to the state are the **unfortunate, contentious and damaging results** for the state's residents, court system, and economy.

Lambda Legal is the nation's oldest and largest legal organization working for full recognition of the civil rights of LGBT people and everyone living with HIV, through policy advocacy, impact litigation, and public education. Among many other landmark cases during its 44 year history, Lambda Legal was counsel for plaintiffs in *Obergefell v. Hodges*, 576 U.S. \_\_\_, 135 S.Ct. 2584 (2015); *Lawrence v. Texas*, 539 U.S. 558 (2003); and *Romer v. Evans*, 517 U.S. 620 (1996), three of the most important cases addressing sexual orientation and the law decided to date by the U.S. Supreme Court. Lambda Legal also was counsel for plaintiffs in a number of cases in Iowa resulting in significant victories for the rights of LGBT people, including *Rhoades v. State*, 848 N.W.2d 22 (Iowa 2014); *Gartner v. Iowa Dep't of Pub. Health*, 830 N.W.2d 335 (Iowa 2013); *Varnum v. Brien*, 763 N.W.2d 862 (Iowa 2009) and *Alons v. District Court for Woodbury County*, 698 N.W.2d 858 (Iowa 2005).

Iowa is home to a significant LGBT population that would be put at risk if discrimination against them were allowed to proliferate in the name of religion. According to an analysis of 2010 U.S. Census data by the Williams Institute at the UCLA School of Law, 4,093 same-sex couples make their home in Iowa, with many of those couples raising children.<sup>[1]</sup> In addition, there are many other LGBT members of same-sex couples not captured in these figures because they are not sharing one household.<sup>[2]</sup>

Lambda Legal's membership includes over 2,000 Iowans and we are committed to protecting those individuals, their families, and Iowa's entire LGBT community against discrimination. We understand and believe that the State shares our commitment to protecting this substantial but vulnerable part of Iowa's population and also to ensuring that the State itself plays no part in inviting or facilitating discrimination. Our shared interests in preventing discrimination would be threatened were a RFRA bill to advance in this state.

Constitutional protections for religious freedom are strong in Iowa and there has been no showing of legitimate need to create expansive new religious rights with an Iowa RFRA. At the same time, we all saw during the contentious debates over proposed RFRA in other states (such as in Indiana<sup>[3]</sup> and Arizona<sup>[4]</sup>), that the asserted need for state RFRA rights was expressed and perceived as a desire by businesses to be able to turn away certain types of people—namely, same-sex couples. However, facilitating exclusion of targeted classes of people from public accommodations and other aspects of civic participation is not and has never been a legitimate basis for enacting a statute (whether in the name of religion or not). Indeed, the desire to exclude same-sex couples or LGBT individuals from one's business is no more a legitimate purpose in 2017 than the desire to exclude interracial couples and people of color generally from public places in 1967.

Consequently, given the troubling reality of persistent, religiously motivated discrimination in public contexts, and elevated public concern about the harms of such discrimination, the enactment of anti-LGBT state laws is not economically advisable because they prompt strong national business opposition.<sup>[5]</sup> This is due in significant part to the fact that 91% of Fortune 500 companies now have and place great value on their own nondiscrimination protections for their LGBT employees.<sup>[6]</sup> Indeed, the Williams Institute reports that “[o]ver ninety percent of the country's largest companies . . . state that diversity policies are good for their corporate bottom line.”<sup>[7]</sup> Moreover, according to a 2015 national poll, two-thirds of small businesses surveyed reported that businesses should not be allowed to refuse service to LGBT people because of religious beliefs.<sup>[8]</sup>

In addition to major corporate opposition, consumers similarly have expressed outrage, including through boycotts with substantial economic effects, in response to legislation facilitating discrimination against LGBT people.<sup>[9]</sup> In the context of employment discrimination, the vast majority of Americans believe that every worker is important and should be given equal job opportunities.<sup>[10]</sup> As a result, a state's economy is the strongest when discrimination is not permitted to interfere with qualified workers who are contributing to the economy and when customers know they will be welcomed and treated fairly—and where everyone can participate without rejection or marginalization based on anyone else's discriminatory religious views.

Finally, laws that seem to invite religion-based discrimination can be costly for states. For example, such laws can encourage demands that public employers accommodate employees' religious harassment and refusal to interact with targeted coworkers and members of the public, which in turn can lead to discrimination lawsuits against the government. Taxpayers will be forced to foot the bill to defend the government either against lawsuits by those rejected based on others' religious beliefs, or by those who wished to discriminate and were informed that such conduct is not permissible within a government setting. Proceeding down this path promises only negative consequences.

In *Burwell v. Hobby Lobby*, 573 U.S. \_\_\_, 134 S. Ct. 2751 (2014), Lambda Legal submitted an amicus brief to the Supreme Court that agreed with the conclusion in the amicus brief submitted by the State of Iowa and ten other states warning of the dangers of expanded religious rights that “render[] both state and federal regulation of business activity vulnerable to claims for religions exemption, including in the areas of public safety, civil rights, social welfare, land use, housing, employment, and public health.”<sup>[11]</sup> These dangers, aptly recognized by Iowa and others in *Hobby Lobby*, are acute when a broad state RFRA effectively encourages individuals, companies and other organizations to demand exemptions from state civil rights protections.

The experiences of other states confirms that enactment of a state RFRA statute would create real risks for Iowans. The Iowa Civil Rights Act of 1965 has long accorded critical protections against discrimination on the basis of age, race, creed, color, sex, sexual orientation, gender identity, national origin, religion, or disability, in contexts including housing, employment, and public accommodations. Today, a state RFRA would put those crucial civil rights protections at grave risk of being effectively undermined because such a law inevitably would be taken by some as an invitation to discriminate against LGBT people. Even if the courts were to hold after-the-fact that Iowa has compelling interests in enforcing the state's civil rights law, and that the ICRA is the least restrictive means for serving those interests, the harms of discrimination already would have been inflicted upon Iowans who deserve better.

As for the range of potential threats to individual Iowans, events in other states indicate that the following troubling scenarios should be anticipated:

- For-profit businesses could refuse to sell goods or services to same-sex couples, LGBT individuals, unmarried couples, single mothers, and people of minority religious faiths;
- Health care providers could refuse to treat LGBT or HIV-positive patients;
- Hospitals, nonprofit agencies and businesses could deny family health insurance benefits or family medical leave to workers with a same-sex spouse if the employer claims a religious reason for doing so;
- Nursing homes could turn away elderly same-sex couples, LGBT individuals, or anyone living with HIV;
- Commercial businesses might hire, fire, and treat employees unequally based on religious beliefs if the owners are religiously motivated—meaning women could be denied jobs, LGBT people could be fired, and African Americans could be paid less than whites, if the owners say their religious beliefs so dictate;
- Homeless shelters could refuse to house LGBT families;
- LGBTQ young people in foster care could be denied housing, medical care or other services;
- Charitable meal delivery services for the elderly could proselytize against LGBT people when they deliver meals; and
- Assisted living facilities, nursing homes and hospitals could ban transgender residents and patients from dressing, grooming and using restrooms and other facilities consistently with their gender identity.

In addition to economic and other tangible injuries caused by such refusals of services and other discriminatory treatment, such treatment often also has devastating psychological effects. Research consistently finds that social exclusion and stigmatization of LGBT people can lead to serious mental health problems, including depression, anxiety, substance use disorders, and suicide attempts.<sup>[12]</sup> The religious reinforcement of anti-LGBT bias and discrimination often increases the negative impact on mental health.<sup>[13]</sup>

Legislation enacted for the purpose of allowing businesses, social welfare agencies and organizations, health care facilities, and others to turn away people in need of services, based on the excluded persons' sexual orientation, gender identity, or other classification, is a dramatic change from how we have always understood civil rights and constitutional protections. Especially at this moment in history when strong divisions about socially contentious issues too often culminate in increased acts of discrimination against minority groups, it is more dangerous than ever for the government to facilitate such discrimination. The enactment of a RFRA law written to give cover to such prejudice-

driven exclusions of persons from equal participation in society impermissibly would involve the government in the facilitation of discriminatory treatment of Iowans. Instead, it should be the State's priority to protect all Iowans from the substantial harms of discrimination by preserving and fully enforcing the Iowa Civil Rights Act, regardless of anyone's religious motivations for otherwise unlawful discrimination.

For all of these reasons, Lambda Legal urges you not to support a RFRA bill in the Iowa legislature or in any other context.

Respectfully yours,

Jennifer C. Pizer, Law and Policy Director  
Nancy Marcus, Senior Law and Policy Advisor  
Western Regional Office  
4221 Wilshire Blvd., Suite 280  
Los Angeles, CA 90010-3512  
Tel. 213-382-7600

Camilla B. Taylor, Senior Counsel  
Midwest Regional Office  
105 W. Adams, 26<sup>th</sup> Floor  
Chicago, IL 60603-6208  
Tel. 312-663-4413

Sharon K. Malheiro  
Lambda Legal Cooperating Attorney  
Of Counsel, Davis Brown Law Firm  
215 10th Street, Suite 1300  
Des Moines, Iowa 50309

cc: Chief of Staff Eric Tabor and Solicitor General Jeffrey Thompson

---

<sup>[1]</sup> Gary J. Gates & Abigail M. Cooke, *Iowa Census Snapshot: 2010* 1-2 (Sept. 2011), [https://williamsinstitute.law.ucla.edu/wp-content/uploads/Census2010Snapshot\\_Iowa\\_v2.pdf](https://williamsinstitute.law.ucla.edu/wp-content/uploads/Census2010Snapshot_Iowa_v2.pdf).

<sup>[2]</sup> See *id.*; Gary J. Gates, *Demographics of Married and Unmarried Same-sex Couples: Analyses of the 2013 American Community Survey* (March 2015), available at <http://williamsinstitute.law.ucla.edu/category/research/census-lgbt-demographics-studies/#sthash.eFYXq73M.dpuf>.

<sup>[3]</sup> J. Scott Trubey, *Indiana Still Healing from Scars of RFRA*, ATLANTA J. CONST. (April 2, 2016) (“*Indiana Still Healing*”) (“Indianapolis lost \$60 million in future convention business, and Angie’s List ... decided to halt plans to add hundreds of tech jobs in the city after the bill was signed. ... Major companies such as Apple, NASCAR and Salesforce condemned the bill, and Indiana became a punch line on late-night TV. ... Convention bookings in Indy in the second quarter of last year dipped 43 percent compared with the same period in 2014.”), available at <http://www.myaic.com/news/state--regional-govt--politics/indiana-still-healing-from-scars-rfra/f0lRpukhR4iD1XznoNkZYN/>; Monica Davey and Mitch Smith, *Indiana Governor, Feeling Backlash From Law’s Opponents, Promises a ‘Fix,’* N.Y. TIMES (March 31, 2015), available at [https://www.nytimes.com/2015/04/01/us/politics/indiana-governor-mike-pence-feeling-backlash-from-religious-laws-opponents-promises-a-fix.html?\\_r=0](https://www.nytimes.com/2015/04/01/us/politics/indiana-governor-mike-pence-feeling-backlash-from-religious-laws-opponents-promises-a-fix.html?_r=0).

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<sup>[4]</sup> Hernanda Santos, *Arizona Governor Vetoes Bill on Refusal of Service to Gays*, N.Y. TIMES (Feb. 26, 2014) (Republican Governor Jan Brewer vetoed the RFRA bill “amid mounting pressure from Arizona business leaders, who said the bill would be a financial disaster for the state and would harm its reputation. Prominent members of the Republican establishment . . . also sided with the bill’s opponents, who argued that the measure would have allowed people to use religion as a fig leaf for prejudice. . . . Hour by hour, the state began to lose business even as the governor deliberated”), available at <https://www.nytimes.com/2014/02/27/us/Brewer-arizona-gay-service-bill.html>; Alia Beard Rau, Yvonne Wingett Sanchez and Mary Jo Pitzl, *Arizona Gov. Jan Brewer Vetoes Senate Bill 1062*, THE REPUBLIC (Feb. 26, 2014) (“SB 1070 resulted in an economic backlash against Arizona, and a reputation as a state that’s unwelcoming to minorities. Brewer and others made it clear . . . that they hope for a different outcome with the veto of SB 1062”), available at <http://archive.azcentral.com/news/politics/articles/20140226arizona-jan-brewer-1062-statement.html>.

<sup>[5]</sup> See *supra* note 3, *Indiana Still Healing*.

<sup>[6]</sup> See *91% of Fortune 500 Companies Have Sexual Orientation Protections, Says HRC*, DENVER BUSINESS J. (Dec. 9, 2013), available at [http://www.bizjournals.com/denver/blog/finance\\_etc/2013/12/hrc-91-of-fortune-500-companies-have.html](http://www.bizjournals.com/denver/blog/finance_etc/2013/12/hrc-91-of-fortune-500-companies-have.html).

<sup>[7]</sup> Christy Mallory and Brad Sears, *Discrimination, Diversity and Development: The Legal and Economic Implications of North Carolina’s HB 2* at 32, n. 184 (May 2016) (“*Implications of North Carolina’s HB 2*”), available at [http://williamsinstitute.law.ucla.edu/wp-content/uploads/Discrimination-Diversity-and-Development\\_The-Legal-and-Economic-Implications-of-North-Carolinas-HB2.pdf](http://williamsinstitute.law.ucla.edu/wp-content/uploads/Discrimination-Diversity-and-Development_The-Legal-and-Economic-Implications-of-North-Carolinas-HB2.pdf).

<sup>[8]</sup> *Id.* at n. 183.

<sup>[9]</sup> Emma Grey Ellis, *Guess How Much That Anti-LGBTQ Law Is Costing North Carolina*, WIRED (Sept. 18, 2016) (estimating that NC has lost \$395 million due to HB2-related boycotts), available at <https://www.wired.com/2016/09/guess-much-anti-lgbtq-law-costing-north-carolina/>; Ryan Bort, *A Comprehensive Timeline of Public Figures Boycotting North Carolina Over the HB2 ‘Bathroom Bill,’* NEWSWEEK (Sept. 14, 2016) (including comprehensive timeline of the boycotts of North Carolina by entities such as the NCAA, NBA, ACC, production studio Lionsgate, *Wicked* composer Stephen Schwartz, Cirque du Soleil, 269 children’s book authors and illustrators, and major entertainment figures including Bruce Springsteen, Ringo Starr, Itzhak Perlman, Maroon 5, Pearl Jam, Demi Lovato and Nick Jonas, as well as 68 leading national businesses), available at <http://www.newsweek.com/north-carolina-hb2-bathroom-bill-timeline-498052>. See also *supra* note 7, *Implications of North Carolina’s HB 2* (estimating that anti-LGBT law could cost state \$5 billion annually).

<sup>[10]</sup> *Gay and Lesbian Rights*, GALLUP, <http://www.gallup.com/poll/1651/gay-lesbian-rights.aspx>.

<sup>[11]</sup> Brief of California, Connecticut, Hawaii, Illinois, Iowa, Maine, Maryland, New York, Oregon, Vermont and Washington as Amici Curiae Supporting Petitioners at 9, *Burwell v. Hobby Lobby Stores*, 134 S. Ct. 2751 (2014) (No. 13-354), available at <http://sblog.s3.amazonaws.com/wp-content/uploads/2013/10/40797168.pdf>.

<sup>[12]</sup> See Edward J. Alessi, et al, *Prejudice Events and Traumatic Stress among Heterosexuals and Lesbians, Gay Men, and Bisexuals*, *Journal of Aggression, Maltreatment & Trauma*, 22:5, 510-526 (2013), available at [https://www.researchgate.net/publication/259353848\\_Prejudice-Related\\_Events\\_and\\_Traumatic\\_Stress\\_Among\\_Heterosexuals\\_and\\_Lesbians\\_Gay\\_Men\\_and\\_Bisexuals](https://www.researchgate.net/publication/259353848_Prejudice-Related_Events_and_Traumatic_Stress_Among_Heterosexuals_and_Lesbians_Gay_Men_and_Bisexuals).

<sup>[13]</sup> See Ilan H. Meyer, et al, *The Role of Help-Seeking in Preventing Suicide Attempts among Lesbians, Gay Men, and Bisexuals*, *Suicide and Life-Threatening Behavior* 45(1) at 8-9 (May 2014), available at <https://williamsinstitute.law.ucla.edu/research/health-and-hiv-aids/lgb-suicide-june-2014/> and at [https://www.researchgate.net/publication/262308758\\_The\\_Role\\_of\\_Help-Seeking\\_in\\_Preventing\\_Suicide\\_Attempts\\_among\\_Lesbians\\_Gay\\_Men\\_and\\_Bisexuals](https://www.researchgate.net/publication/262308758_The_Role_of_Help-Seeking_in_Preventing_Suicide_Attempts_among_Lesbians_Gay_Men_and_Bisexuals).

## Thompson, Jeffrey [AG]

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**From:** Willits, Emily [AG]  
**Sent:** Monday, February 20, 2017 2:17 PM  
**To:** Thompson, Jeffrey [AG]  
**Subject:** FW: Governor's Legislative Program Bill Sent to Leadership February 20, 2017  
**Attachments:** 1681XL.pdf

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**From:** Adams, Heather [AG]  
**Sent:** Monday, February 20, 2017 2:08 PM  
**To:** AG Licensing  
**Cc:** Tabor, Eric [AG]  
**Subject:** FW: Governor's Legislative Program Bill Sent to Leadership February 20, 2017



**Heather L. Adams**  
**Assistant Attorney General**  
Office of the Attorney General of Iowa  
1305 E. Walnut St.  
Des Moines, Iowa 50319  
Main: (515) 281-5164 | Direct: (515) 281-3441  
Email: [Heather.Adams@iowa.gov](mailto:Heather.Adams@iowa.gov) | [www.iowaattorneygeneral.gov](http://www.iowaattorneygeneral.gov)

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**From:** Thompson, Deborah [<mailto:deborah.thompson@idph.iowa.gov>]  
**Sent:** Monday, February 20, 2017 2:02 PM  
**To:** Clabaugh, Gerd [IDPH]; Reisetter, Sarah [IDPH]; Spangler, Marcia [IDPH]; Sharp, Ken [IDPH]  
**Cc:** Adams, Heather [AG]; Caskey, Jennifer [IDPH]  
**Subject:** Fwd: FW: Governor's Legislative Program Bill Sent to Leadership February 20, 2017

FYI - the Smaller, Smarter Government bill is being circulated. I don't think it's been introduced yet but they've given it to leadership in both chambers.

Thanks,

Deborah

**Deborah H. Thompson, MPA**  
Policy Advisor & Legislative Liaison | Iowa Department of Public Health  
321 E. 12th St | Des Moines, IA 50319 | Mobile: 515-240-0530 | [deborah.thompson@idph.iowa.gov](mailto:deborah.thompson@idph.iowa.gov)

*Promoting and Protecting the Health of Iowans*

----- Forwarded message -----

**From:** Ohms, Kenneth [LEGIS] <Kenneth.Ohms@legis.iowa.gov>  
**Date:** Mon, Feb 20, 2017 at 1:49 PM  
**Subject:** FW: Governor's Legislative Program Bill Sent to Leadership February 20, 2017  
**To:** "Thompson, Deborah [IDPH]" <deborah.thompson@idph.iowa.gov>

FYI

---

**From:** Laust, Sandra [LEGIS]  
**Sent:** Monday, February 20, 2017 1:45 PM  
**To:** Bakker, Eric [LEGIS]; Boussetot, Michael [IGOV]; Dalluge, Zach [LEGIS]; Dickinson, Glen [LEGIS]; Dorsey, Chris [LEGIS]; Earnhardt, Mary [LEGIS]; Failor, Ed [LEGIS]; Fiihr, Dean [LEGIS]; Friedrichsen, Jake [LEGIS]; Hunter, Caleb [LEGIS]; Kattenhorn, Debbie [LEGIS]; Lunde, Joel [IDOM]; Oller, Liddy [LEGIS]; Phillips, Tony [LEGIS]; Roederer, David [IDOM]; Stopulos, Ted [IGOV]; Tadlock, Colin [LEGIS]  
**Subject:** Governor's Legislative Program Bill Sent to Leadership February 20, 2017

The following Governor's legislative program bill approved for release by the Department of Management, is attached:

**LSB 1681xl Professional Licensing Regulation**

Sandra Laust

Legislative Services Agency

(515) 281-3566

---

This email message and its attachments may contain confidential information that is exempt from disclosure under Iowa Code chapters 22, 139A, and other applicable law. Confidential information is for the sole use of the intended recipient. If you believe that you have received this transmission in error, please reply to the sender, and then delete all copies of this message and any attachments. If you are not the intended recipient, you are hereby notified that any review, use, retention, dissemination, distribution, or copying of this message is strictly prohibited by law.

**Thompson, Jeffrey [AG]**

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**From:** Wittmus, Lisa [AG]  
**Sent:** Monday, February 06, 2017 10:43 AM  
**To:** Thompson, Jeffrey [AG]; Gavin, Meghan [AG]; Esbrook, Jordan [AG]  
**Subject:** FW: Courtesy NEF RE: LACE128389  
**Attachments:** LACE128389\_OTOT.pdf

---

**From:** efilings@mail@iowacourts.gov [mailto:efiling@mail@iowacourts.gov]  
**Sent:** Monday, February 06, 2017 10:20 AM  
**To:** Wittmus, Lisa [AG]  
**Subject:** Courtesy NEF RE: LACE128389

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NOTICE OF ELECTRONIC FILING OR PRESENTATION [NEF]

---

**A filing has been submitted to the court RE: LACE128389**

**Judge:**

**Official File Stamp:** 02-06-2017:09:56:10  
**Court:** TRIAL COURT  
Scott  
**Case Title:** WOODS, BREAN, ET AL., V. STATE OF IOWA  
**Document(s) Submitted:** OTHER EVENT Defendants' Reply to Plaintiffs' Resistance to Motion to Dismiss  
**Filed by or in behalf of:** Meghan Gavin

You may review this filing by clicking on the following link to take you to your [cases](#).

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MEGHAN LEE GAVIN for STATE OF IOWA, IOWA DEPARTMENT OF EDUCATION, IOWA GENERAL ASSEMBLY, TERRY BRANSTAD  
JORDAN GENEVIEVE ESBROOK for STATE OF IOWA, IOWA DEPARTMENT OF EDUCATION, IOWA GENERAL ASSEMBLY, TERRY BRANSTAD  
CATHERINE ZAMORA CARTEE for BREAN A WOODS, BECCA FREDERICK  
JEFFREY SCOTT THOMPSON for STATE OF IOWA, IOWA DEPARTMENT OF EDUCATION, IOWA GENERAL ASSEMBLY, TERRY BRANSTAD

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**Note:** The rules define the clerk of court as responsible for service of court-generated documents. Additionally on small claims cases that by statute can be served by certified mail, when the filer has selected and paid for certified mail in the electronic filing system or at the clerk of court office, the clerk of court is responsible for service of the original notice and answer and appearance by certified mail in accordance with the Code of Iowa.

\*The moving party or the individual who filed it is responsible for service of a document if it was not served by the electronic filing system. That includes, but is not limited to, service of all petitions and original notices [rule 16.316(3)], service of documents on all parties seeking to intervene in confidential cases [16.321(1)(c)], and service of all documents on non-registered parties [16.317(1)(b)].

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**Thompson, Jeffrey [AG]**

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**From:** Wittmus, Lisa [AG]  
**Sent:** Monday, January 30, 2017 5:05 PM  
**To:** Gavin, Meghan [AG]; Esbrook, Jordan [AG]; Thompson, Jeffrey [AG]  
**Subject:** FW: Courtesy NEF RE: LACE128389  
**Attachments:** 608618.pdf; 608619.pdf

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**From:** efilng.mail@iowacourts.gov [mailto:efiling.mail@iowacourts.gov]  
**Sent:** Monday, January 30, 2017 3:17 PM  
**To:** Wittmus, Lisa [AG]  
**Subject:** Courtesy NEF RE: LACE128389

\*\*\*\*\* IMPORTANT NOTICE - READ THIS INFORMATION \*\*\*\*\*  
NOTICE OF ELECTRONIC FILING OR PRESENTATION [NEF]

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**A filing has been submitted to the court RE: LACE128389**

**Judge:**

**Official File Stamp:** 01-30-2017:14:27:00  
**Court:** TRIAL COURT  
Scott  
**Case Title:** WOODS, BREAN, ET AL., V. STATE OF IOWA  
**Document(s) Submitted:** ORDER SETTING HEARING MOTION TO DISMISS 04/11/2017 @ 09:00 AM  
**Filed by or in behalf of:** Mary E Howes

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JORDAN GENEVIEVE ESBROOK for STATE OF IOWA, IOWA DEPARTMENT OF EDUCATION, IOWA GENERAL ASSEMBLY, TERRY BRANSTAD  
CATHERINE ZAMORA CARTEE for BREAN A WOODS, BECCA FREDERICK  
JEFFREY SCOTT THOMPSON for STATE OF IOWA, IOWA DEPARTMENT OF EDUCATION, IOWA GENERAL ASSEMBLY, TERRY BRANSTAD

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**Note:** The rules define the clerk of court as responsible for service of court-generated documents. Additionally on small claims cases that by statute can be served by certified mail, when the filer has selected and paid for certified mail in the electronic filing system or at the clerk of court office, the clerk of court is responsible for service of the original notice and answer and appearance by certified mail in accordance with the Code of Iowa.

\*The moving party or the individual who filed it is responsible for service of a document if it was not served by the electronic filing system. That includes, but is not limited to, service of all petitions and original notices [rule 16.316(3)], service of documents on all parties seeking to intervene in confidential cases [16.321(1)(c)], and service of all documents on non-registered parties [16.317(1)(b)].

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**Thompson, Jeffrey [AG]**

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**From:** Wittmus, Lisa [AG]  
**Sent:** Friday, January 27, 2017 9:56 AM  
**To:** Thompson, Jeffrey [AG]; Gavin, Meghan [AG]; Kraemer, Gretchen [DHS]  
**Subject:** FW: Courtesy NEF RE: 15-2099  
**Attachments:** 15-2099\_AOAO.pdf; 15-2099\_OCON.pdf

I will put the pdf copy into ProLaw but wasn't going to print out a paper copy for anyone. If you do want one, please let me know and I will prepare one.

The Correction Notice & Amended Opinion is to correct 1 word. Thanks.

Lisa

---

**From:** efilings@mail@iowacourts.gov [mailto:efilings@mail@iowacourts.gov]  
**Sent:** Wednesday, January 25, 2017 9:03 AM  
**To:** Wittmus, Lisa [AG]  
**Subject:** Courtesy NEF RE: 15-2099

\*\*\*\*\* IMPORTANT NOTICE - READ THIS INFORMATION \*\*\*\*\*

NOTICE OF ELECTRONIC FILING OR PRESENTATION [NEF]

---

**A filing has been made in the following case:** 15-2099

**Official File Stamp:** 01-25-2017:09:02:21  
**Court:** Appellate Court  
**Case Title:** Homan v. Branstad  
**Document(s) Submitted** **Filed by or on behalf of**  
AMENDED OPINION David S. Wiggins

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BAUMGARTNER, SARAH MARIE for MCCOY, MATTHEW, HOMAN,  
DANNY, TAYLOR, RICH, KEARNS, JERRY, SMITH, MARK,  
COURTNEY, THOMAS, PETERSEN, JANET ANN, HUNTER, BRUCE,  
HANSON, CURT, BISIGNANO, TONY, QUIRMBACH, HERMAN,  
DEARDEN, DICK, STAED, ARTHUR MATTHEW, ABDUL-SAMAD,  
AKO, OLDSON, JO, GAINES, RUTH ANN, STECKMAN, SHARON,  
TAYLOR, TODD E., GASKILL, MARY, RUNNING-MARQUARDT,

KIRSTEN, BROWN-POWERS, TIMI, JACOBY, DAVE, JOCHUM, PAM,  
GRONSTAL, MICHAEL EDWARD, BEARINGER, BRUCE  
BOULTON, NATHANIEL RANDELL for MCCOY, MATTHEW,  
HOMAN, DANNY, TAYLOR, RICH, KEARNS, JERRY, SMITH, MARK,  
COURTNEY, THOMAS, PETERSEN, JANET ANN, HUNTER, BRUCE,  
HANSON, CURT, BISIGNANO, TONY, QUIRMBACH, HERMAN,  
DEARDEN, DICK, STAED, ARTHUR MATTHEW, ABDUL-SAMAD,  
AKO, OLDSON, JO, GAINES, RUTH ANN, STECKMAN, SHARON,  
TAYLOR, TODD E., GASKILL, MARY, RUNNING-MARQUARDT,  
KIRSTEN, BROWN-POWERS, TIMI, JACOBY, DAVE, JOCHUM, PAM,  
GRONSTAL, MICHAEL EDWARD, BEARINGER, BRUCE  
HEDBERG, MARK T. for MCCOY, MATTHEW, HOMAN, DANNY,  
TAYLOR, RICH, KEARNS, JERRY, SMITH, MARK, COURTNEY,  
THOMAS, PETERSEN, JANET ANN, HUNTER, BRUCE, HANSON,  
CURT, BISIGNANO, TONY, QUIRMBACH, HERMAN, DEARDEN,  
DICK, STAED, ARTHUR MATTHEW, ABDUL-SAMAD, AKO,  
OLDSON, JO, GAINES, RUTH ANN, STECKMAN, SHARON, TAYLOR,  
TODD E., GASKILL, MARY, RUNNING-MARQUARDT, KIRSTEN,  
BROWN-POWERS, TIMI, JACOBY, DAVE, JOCHUM, PAM,  
GRONSTAL, MICHAEL EDWARD, BEARINGER, BRUCE  
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\*The filer is responsible for service of a document if it was not served by the electronic filing system. See generally rule 16.317 and 16.321.

**Thompson, Jeffrey [AG]**

---

**From:** Wittmus, Lisa [AG]  
**Sent:** Thursday, January 26, 2017 3:43 PM  
**To:** Gavin, Meghan [AG]; Esbrook, Jordan [AG]; Thompson, Jeffrey [AG]  
**Subject:** FW: Courtesy NEF RE: LACE128389  
**Attachments:** 607655.pdf

Another attorney from their firm is joining the case.

---

**From:** efilng.mail@iowacourts.gov [mailto:efiling.mail@iowacourts.gov]  
**Sent:** Thursday, January 26, 2017 9:27 AM  
**To:** Wittmus, Lisa [AG]  
**Subject:** Courtesy NEF RE: LACE128389

\*\*\*\*\* IMPORTANT NOTICE - READ THIS INFORMATION \*\*\*\*\*  
NOTICE OF ELECTRONIC FILING OR PRESENTATION [NEF]

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**A filing has been submitted to the court RE: LACE128389**

**Judge:**

**Official File Stamp:** 01-26-2017:09:26:29  
**Court:** TRIAL COURT  
Scott  
**Case Title:** WOODS, BREAN, ET AL., V. STATE OF IOWA  
**Document(s) Submitted:** APPEARANCE Appearance  
**Filed by or in behalf of:** Nathan Legue

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JORDAN GENEVIEVE ESBROOK for STATE OF IOWA, IOWA DEPARTMENT OF EDUCATION,  
IOWA GENERAL ASSEMBLY, TERRY BRANSTAD  
CATHERINE ZAMORA CARTEE for BREAN A WOODS, BECCA FREDERICK  
JEFFREY SCOTT THOMPSON for STATE OF IOWA, IOWA DEPARTMENT OF EDUCATION,  
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\*The moving party or the individual who filed it is responsible for service of a document if it was not served by the electronic filing system. That includes, but is not limited to, service of all petitions and original notices [rule 16.316(3)], service of documents on all parties seeking to intervene in confidential cases [16.321(1)(c)], and service of all documents on non-registered parties [16.317(1)(b)].

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**Thompson, Jeffrey [AG]**

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**From:** Wittmus, Lisa [AG]  
**Sent:** Wednesday, January 25, 2017 9:30 AM  
**To:** Thompson, Jeffrey [AG]; Gavin, Meghan [AG]; Esbrook, Jordan [AG]  
**Subject:** FW: Courtesy NEF RE: LACE128389, Trial Setting Conference on 2/17/17  
**Attachments:** 606851.pdf

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**From:** efiling.mail@iowacourts.gov [mailto:efiling.mail@iowacourts.gov]  
**Sent:** Tuesday, January 24, 2017 12:01 PM  
**To:** Wittmus, Lisa [AG]  
**Subject:** Courtesy NEF RE: LACE128389

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NOTICE OF ELECTRONIC FILING OR PRESENTATION [NEF]

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**A filing has been submitted to the court RE: LACE128389**

**Judge:**

**Official File Stamp:** 01-24-2017:09:52:06  
**Court:** TRIAL COURT  
Scott  
**Case Title:** WOODS, BREAN, ET AL., V. STATE OF IOWA  
**Document(s) Submitted:** ORDER FOR TRIAL SCHEDULING CONFERENCE Trial Scheduling  
Conference 02/17/2017 08:35 AM DIST.  
**Filed by or in behalf of:** Marlita Greve

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GENERAL ASSEMBLY, TERRY BRANSTAD  
JORDAN GENEVIEVE ESBROOK for STATE OF IOWA, IOWA DEPARTMENT OF EDUCATION,  
IOWA GENERAL ASSEMBLY, TERRY BRANSTAD  
CATHERINE ZAMORA CARTEE for BREAN A WOODS, BECCA FREDERICK  
JEFFREY SCOTT THOMPSON for STATE OF IOWA, IOWA DEPARTMENT OF EDUCATION,  
IOWA GENERAL ASSEMBLY, TERRY BRANSTAD

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**not registered filers. Per rule 16.317(1)(b), the filing party must serve a paper copy of the filed document(s) on the following parties in the manner required by Iowa Court Rules. \***

---

**Note:** The rules define the clerk of court as responsible for service of court-generated documents. Additionally on small claims cases that by statute can be served by certified mail, when the filer has selected and paid for certified mail in the electronic filing system or at the clerk of court office, the clerk of court is responsible for service of the original notice and answer and appearance by certified mail in accordance with the Code of Iowa.

\*The moving party or the individual who filed it is responsible for service of a document if it was not served by the electronic filing system. That includes, but is not limited to, service of all petitions and original notices [rule 16.316(3)], service of documents on all parties seeking to intervene in confidential cases [16.321(1)(c)], and service of all documents on non-registered parties [16.317(1)(b)].

PLEASE DO NOT REPLY TO THIS EMAIL. Responses go to an email box that is not monitored. To receive help, follow the instruction on the 'Support' link on the efilng website.

## Thompson, Jeffrey [AG]

---

**From:** Greenwood, Geoff [AG]  
**Sent:** Thursday, January 05, 2017 11:14 AM  
**To:** Tabor, Eric [AG]; Thompson, Jeffrey [AG]  
**Subject:** FW: AP question on Branstad-Reynolds Scholarship Fund  
**Attachments:** Rev Rul 77-283.pdf; GCM 39867.pdf

---

**From:** Foley, Ryan J. [mailto:RJFoley@ap.org]  
**Sent:** Thursday, January 05, 2017 11:12 AM  
**To:** Greenwood, Geoff [AG]  
**Subject:** AP question on Branstad-Reynolds Scholarship Fund

Hi, Geoff:

You may have seen my story this week about an Iowa-based nonprofit foundation, the Branstad-Reynolds Scholarship Fund, which has failed to disclose its donors as required by the IRS.

Tax experts who have reviewed the group's tax returns are also questioning whether the group has additional potential tax law violations.

In particular, they note that the fund reported its inauguration activity expenses as disbursements for "charitable purposes" in both 2010 and 2011. More than \$400,000 would appear to be in question.

The IRS has held that an organization formed to conduct inauguration activities is not operated for charitable purposes, and contributions to that entity are not deductible charitable contributions. See Rev. Rul. 77-283 attached.

The fund did not report inauguration expenses as disbursements for "charitable purposes" in 2014 and 2015.

I'm wondering whether the Iowa AG's office has offered any guidance to this group on its compliance with Iowa laws and/or is looking into the lack of disclosure and potential tax issues.

Is Attorney General Miller concerned that this group hasn't disclosed up to \$1 million from donors who gave in 2015? That information was due by Nov. 15 and the foundation acknowledges that what it filed on that date is incomplete.

Thank you,  
Ryan Foley

Ryan J. Foley  
Correspondent, The Associated Press  
103 E. College St., Suite 208  
Iowa City, IA 52240  
319-337-5615 (o)  
319-400-2213 (c)  
319-337-6126 (fax)  
Twitter: @rjfoley

## Thompson, Jeffrey [AG]

---

**From:** Thompson, Jeffrey [AG]  
**Sent:** Tuesday, December 20, 2016 2:18 PM  
**To:** Tabor, Eric [AG]  
**Subject:** FW: Volkswagen Settlement -- State Agency Working Group Coordination  
**Attachments:** VW Working Group Memo\_v2.1docx.docx

Eric,

FYI See attached from Janet.

**From:** Phipps, Janet [mailto:janet.phipps@iowa.gov]  
**Sent:** Tuesday, December 20, 2016 12:57 PM  
**To:** Thompson, Jeffrey [AG]  
**Subject:** Fwd: Volkswagen Settlement -- State Agency Working Group Coordination

Just FYI -

*Janet E. Phipps, Director  
Dept. of Administrative Services  
Hoover Building, 3rd Floor  
1305 E. Walnut  
Des Moines, IA 50319  
Office: 515.725.2205  
Cell: 515.418.7271  
[janet.phipps@iowa.gov](mailto:janet.phipps@iowa.gov)*



Iowa Department of Administrative Services

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----- Forwarded message -----

**From:** Hoelscher, Doug <[doug.hoelscher@iowa.gov](mailto:doug.hoelscher@iowa.gov)>  
**Date:** Tue, Dec 20, 2016 at 12:53 PM  
**Subject:** Volkswagen Settlement -- State Agency Working Group Coordination  
**To:** "Gerd Clabaugh [IDPH]" <[gerd.clabaugh@idph.iowa.gov](mailto:gerd.clabaugh@idph.iowa.gov)>, "Durham, Debi [IEDA]" <[Debi.Durham@iowa.gov](mailto:Debi.Durham@iowa.gov)>, Charles Gipp <[chuck.gipp@iowa.gov](mailto:chuck.gipp@iowa.gov)>, Geri Huser <[geri.huser@iub.iowa.gov](mailto:geri.huser@iub.iowa.gov)>, Mark Lowe <[mark.lowe@dot.iowa.gov](mailto:mark.lowe@dot.iowa.gov)>, "Northey, Bill [IDALS]" <[whn@iowaagriculture.gov](mailto:whn@iowaagriculture.gov)>, "Gen. Janet Phipps" <[janet.phipps-burkhead@iowa.gov](mailto:janet.phipps-burkhead@iowa.gov)>, "Wise, Ryan" <[ryan.wise@iowa.gov](mailto:ryan.wise@iowa.gov)>, Siew-san Wong <[siew-san.wong@iowa.gov](mailto:siew-san.wong@iowa.gov)>, David Roederer <[david.roederer@iowa.gov](mailto:david.roederer@iowa.gov)>

Cc: Stephanie Groen <[stephanie.groen@iowa.gov](mailto:stephanie.groen@iowa.gov)>, Michael Boussetot <[michael.boussetot@iowa.gov](mailto:michael.boussetot@iowa.gov)>, Tracie Gibler <[tracie.gibler@iowa.gov](mailto:tracie.gibler@iowa.gov)>, Cord Overton <[cord.overton@iowa.gov](mailto:cord.overton@iowa.gov)>, Theodore Stopulos <[ted.stopulos@iowa.gov](mailto:ted.stopulos@iowa.gov)>, Lawrence Johnson Jr <[larry.johnson@iowa.gov](mailto:larry.johnson@iowa.gov)>, Colin Smith <[colin.smith@iowa.gov](mailto:colin.smith@iowa.gov)>, Deborah Thompson <[deborah.thompson@idph.iowa.gov](mailto:deborah.thompson@idph.iowa.gov)>, Rita Grimm <[rita.grimm@ieda.iowa.gov](mailto:rita.grimm@ieda.iowa.gov)>, "Bruce Trautman [DNR]" <[bruce.trautman@iowa.gov](mailto:bruce.trautman@iowa.gov)>, "Louis Vander Streek [IUB]" <[louis.vanderstreek@iub.iowa.gov](mailto:louis.vanderstreek@iub.iowa.gov)>, "Derby, Mikel" <[mikel.derby@iowadot.us](mailto:mikel.derby@iowadot.us)>, "Anderson, Stuart" <[stuart.anderson@iowadot.us](mailto:stuart.anderson@iowadot.us)>, Mike Naig <[michael.naig@iowaagriculture.gov](mailto:michael.naig@iowaagriculture.gov)>, "Gronewald, Matt [IDALS]" <[matt.gronewald@iowaagriculture.gov](mailto:matt.gronewald@iowaagriculture.gov)>, Linda Fandel <[linda.fandel@iowa.gov](mailto:linda.fandel@iowa.gov)>

Attached and pasted below, please find a memo regarding the State's coordination on the Volkswagen Settlement. Please also inform me if you think anyone should be added to distribution list.



**Memo**

**To:**

- Gerd Clabaugh, Director, Iowa Department of Public Health
- Debi Durham, Director, Iowa Economic Development Authority
- Chuck Gipp, Director, Iowa Department of Natural Resources
- Geri Huser, Chair, Iowa Utilities Board
- Mark Lowe, Interim Director, Iowa Department of Transportation
- Bill Northey, Iowa Secretary of Agriculture
- Janet Phipps, Director, Iowa Department of Administrative Services
- Ryan Wise, Director, Iowa Department of Education
- San Wong, Director, Iowa Department of Human Rights
- Dave Roederer, Director, Iowa Department of Management

**From:** Doug Hoelscher (IGOV), Stephanie Weisenbach (IEDA), & Angie Poole (IDOT)  
**cc:** Mike Boussetot (IGOV)

**Date:** December 20, 2016

**Re:** Volkswagen Settlement State Agency Working Group

**Overview:**

The Governor's Office has asked the Iowa Department of Transportation to coordinate the state of Iowa's response to the Volkswagen settlement. We are asking you to **provide an agency representative to participate** in this state agency working group. The purpose is to coordinate with other partner state agencies to identify/recommend potential projects and recommend a process for

allocating these funds. The recommendations from this group will be prepared for the Governor's Office consideration.

**Volkswagen (VW) has agreed to pay \$14.7 billion to resolve litigation regarding failure to comply with emissions standards captioned the *United States v. Volkswagen Group of America*.** Of that:

- **Zero Emission Vehicle Investments (ZEV):** \$2 billion will be allocated to national ZEV investments (\$800 million for California and \$1.2 billion nationally), and
- **Environmental Mitigation Trust (Trust) \$2.7 billion will be allocated to Trust, which states and territories may use to invest in transportation projects that will reduce Nitrogen Oxides emissions (NOx),** which contribute to ozone and raise health concerns.
- **Vehicle Purchase & Upgrades:** The remaining \$10 billion dollars will be spent by VW purchase or upgrade faulty VW vehicles.

To access or download the partial and amended consent decree, go to the following link on the Environmental Protection Agency's website: <https://www.epa.gov/enforcement/201-partial-and-amended-consent-decree>.

#### **National Zero Emission Vehicle (ZEV) Investments:**

The \$2 billion allocated to ZEV Investment will be distributed as described in the ZEV Investment Plan developed by Volkswagen and approved by EPA. The plan will focus on three primary activities:

1. Investing in electric vehicle charging infrastructure.
2. Increasing awareness and fostering education about electronic vehicles, their benefits, and charging availability.
3. Launching a Green City initiative in the state of California.

Volkswagen is required to obtain input on this plan and they are accepting project proposals through January 16, 2017. The Iowa Economic Development Authority (IEDA), in coordination with the Iowa DOT, will prepare a proposal for fast charging corridors shaped by the local interest from property owners and stakeholders primarily along high volume corridors including I-35 and I-80.

#### **Environmental Mitigation Trust:**

**The state of Iowa is eligible to receive an allocation of \$20,179,540.80 from the Trust,** which can be spent over approximately ten years.

## **Timeframe for the Trust:**

States (referred to as beneficiaries) must wait until a Trustee has been selected to act as a third-party to administer the funding. Selection of the trustee and determination of Trust Effective Date (TED) is expected to occur in early CY 2017. Within two months of the TED, each beneficiary will submit certification for its lead agency. Within 90 days of becoming a beneficiary, a Beneficiary Mitigation Plan is due to the Trustee broadly describing intended uses for the funding and associated emissions benefits. Each beneficiary is allowed up to 15 percent of its allocation for administration costs, which can include state staff and typical administration expenses as well as training costs.

## **Eligible Project Uses of Environmental Mitigation Trust:**

The eligible projects described in the settlement focus on replacing or repowering older diesel vehicles with new diesel or alternative fuel vehicles. Alternative fuel vehicles listed are compressed natural gas, propane, hybrid or all-electric. We continue to advocate for biofuels-related projects, but eligibility remains uncertain. Vehicles can be government owned or non-government owned. Types of vehicles include large freight trucks, school buses, shuttle buses, transit buses, freight switchers, ferries and /or tugs, medium duty trucks, airport ground support equipment, fork lifts and port cargo handling equipment. Electric vehicle charging stations are eligible, however, it is worth noting that VW will be spending \$2 billion nationally on ZEV investments. States may also use what is called the Diesel Emission Reduction Act (DERA) option, which is an existing EPA program that funds a variety of similar diesel emission reduction projects. This opens up another list of potentially eligible projects, such as idle reduction equipment, off-road equipment, and diesel generators. The Iowa Department of Natural Resources currently administers some of EPA's DERA funds in Iowa.

## **Timeline/Potential Next Steps (actual dates are subject to determination of Trust Effective Date):**

- **Set up a working group meeting late early January 2017.**
- **Identify project priorities by the working group (By February 2017)**
  - o At present, several parties have already expressed an interest in VW settlement funding. These potential projects, as well as forthcoming broad public solicitation for potential projects will be discussed at the first working group meeting;
  - o Identify state priorities;
  - o Review submitted projects;
  - o Recommendations submitted to Governor's Office.
- **Develop & Submit Beneficiary Mitigation Plan (March 2017 through May 2017 -- but not later than three months after being deemed a beneficiary).**
- **Begin Implementation.**

**If your agency would like to be part of the working group, please respond with the name of a representative to Angie Poole at the Iowa Department of Transportation by December 30, 2016. Angie can be reached at 515-239-1351 or at [angela.poole@iowadot.us](mailto:angela.poole@iowadot.us)**

--  
**Doug Hoelscher** | Director of State-Federal Relations

Office of the Governor, State of Iowa

Gov. Terry Branstad & Lt. Gov. Kim Reynolds

202-624-5479 | [Doug.Hoelscher@iowa.gov](mailto:Doug.Hoelscher@iowa.gov)

[www.governor.iowa.gov](http://www.governor.iowa.gov)

[www.ltgovernor.iowa.gov](http://www.ltgovernor.iowa.gov)



## Thompson, Jeffrey [AG]

---

**From:** Phipps, Janet <janet.phipps@iowa.gov>  
**Sent:** Tuesday, December 20, 2016 12:57 PM  
**To:** Thompson, Jeffrey [AG]  
**Subject:** Fwd: Volkswagen Settlement -- State Agency Working Group Coordination  
**Attachments:** VW Working Group Memo\_v2.1.docx.docx

Just FYI -

*Janet E. Phipps, Director  
Dept. of Administrative Services  
Hoover Building, 3rd Floor  
1305 E. Walnut  
Des Moines, IA 50319  
Office: 515.725.2205  
Cell: 515.418.7271  
[janet.phipps@iowa.gov](mailto:janet.phipps@iowa.gov)*



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----- Forwarded message -----

**From:** Hoelscher, Doug <doug.hoelscher@iowa.gov>  
**Date:** Tue, Dec 20, 2016 at 12:53 PM  
**Subject:** Volkswagen Settlement -- State Agency Working Group Coordination  
**To:** "Gerd Clabaugh [IDPH]" <gerd.clabaugh@idph.iowa.gov>, "Durham, Debi [IEDA]" <Debi.Durham@iowa.gov>, Charles Gipp <chuck.gipp@iowa.gov>, Geri Huser <geri.huser@iub.iowa.gov>, Mark Lowe <mark.lowe@dot.iowa.gov>, "Northey, Bill [IDALS]" <whn@iowaagriculture.gov>, "Gen. Janet Phipps" <janet.phipps-burkhead@iowa.gov>, "Wise, Ryan" <ryan.wise@iowa.gov>, Siew-san Wong <siew-san.wong@iowa.gov>, David Roederer <david.roederer@iowa.gov>  
**Cc:** Stephanie Groen <stephanie.groen@iowa.gov>, Michael Boussetot <michael.boussetot@iowa.gov>, Tracie Gibler <tracie.gibler@iowa.gov>, Cord Overton <cord.overton@iowa.gov>, Theodore Stopulos <ted.stopulos@iowa.gov>, Lawrence Johnson Jr <larry.johnson@iowa.gov>, Colin Smith <colin.smith@iowa.gov>, Deborah Thompson <deborah.thompson@idph.iowa.gov>, Rita Grimm <rita.grimm@ieda.iowa.gov>, "Bruce Trautman [DNR]" <bruce.trautman@iowa.gov>, "Louis Vander Streek [IUB]" <louis.vanderstreek@iub.iowa.gov>, "Derby, Mikel" <mikel.derby@iowadot.us>, "Anderson, Stuart" <stuart.anderson@iowadot.us>, Mike Naig <michael.naig@iowaagriculture.gov>, "Gronewald, Matt [IDALS]" <matt.gronewald@iowaagriculture.gov>, Linda Fandel <linda.fandel@iowa.gov>

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Memo

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Chuck Gipp, Director, Iowa Department of Natural Resources

Geri Huser, Chair, Iowa Utilities Board

Mark Lowe, Interim Director, Iowa Department of Transportation

Bill Northey, Iowa Secretary of Agriculture

Janet Phipps, Director, Iowa Department of Administrative Services

Ryan Wise, Director, Iowa Department of Education

San Wong, Director, Iowa Department of Human Rights

Dave Roederer, Director, Iowa Department of Management

From: Doug Hoelscher (IGOV), Stephanie Weisenbach (IEDA), & Angie Poole (IDOT)  
cc: Mike Bousselot (IGOV)

Date: December 20, 2016

Re: Volkswagen Settlement State Agency Working Group

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**Doug Hoelscher** | Director of State-Federal Relations

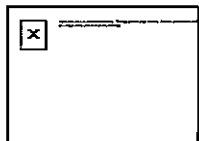
Office of the Governor, State of Iowa

Gov. Terry Branstad & Lt. Gov. Kim Reynolds

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[www.governor.iowa.gov](http://www.governor.iowa.gov)

[www.ltgovernor.iowa.gov](http://www.ltgovernor.iowa.gov)



## Thompson, Jeffrey [AG]

---

**From:** Greenwood, Geoff [AG]  
**Sent:** Tuesday, December 13, 2016 4:03 PM  
**To:** Erin Murphy  
**Subject:** RE: Question  
**Attachments:** 1923 Op Atty Gen 263.pdf

Erin:

Here's a little more explanation.

Notably, Iowa courts have never addressed this issue.

In all four historical cases of vacancies by Iowa governors, the lieutenant governor who succeeded the governor was viewed and regarded in all respects as the governor.

Our office carefully reviewed the Iowa Constitution.

A significant formal attorney general opinion from 1923 states that (in case of death, resignation or removal from office of the governor) the lieutenant governor becomes governor (I attached the opinion and highlighted the pertinent section on page 2).

Case law, statutory, and constitutional analyses from other states are consistent with this provision.

Finally, the Iowa Code supports this position. State law establishes that, the lieutenant governor, after taking office as governor, appoints a new lieutenant governor.

This research leads us to concur with Governor Branstad's conclusion that, upon his resignation, Lt. Governor Reynolds will become Governor. In her capacity as Governor, Governor Reynolds will have the authority to appoint a new lieutenant governor.

Hopefully that helps clear things up.

Again, sorry about the delay.

Geoff



**Geoff Greenwood**  
**Communications Director**  
Office of the Attorney General of Iowa  
1305 E. Walnut St.  
Des Moines, Iowa 50319  
Main: (515) 281-5164 | Direct: (515) 281-6699  
Email: [geoff.greenwood@iowa.gov](mailto:geoff.greenwood@iowa.gov) | [www.iowaattorneygeneral.gov](http://www.iowaattorneygeneral.gov)

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---

**From:** Erin Murphy [mailto:Erin.Murphy@lee.net]  
**Sent:** Tuesday, December 13, 2016 2:55 PM  
**To:** Greenwood, Geoff [AG]  
**Subject:** RE: Question

Sounds good, and thanks for the heads-up.

I think I'm clear except on one piece ... Iowa Code clearly states the governor fills a vacancy for lieutenant governor. But the constitution says only that the powers of the governor's office fall on the lieutenant governor ... it does not necessarily say the lieutenant governor becomes governor. And, as the code states, only a governor can name a lieutenant governor.

So that's the bridge I'm trying to cross here.

**Erin Murphy**  
Lee Enterprises  
Des Moines Bureau chief

W: 515-422-9061  
C: 515-681-7388  
T: [@ErinDMurphy](mailto:@ErinDMurphy)

---

**From:** Greenwood, Geoff [AG] [mailto:Geoff.Greenwood@iowa.gov]  
**Sent:** Tuesday, December 13, 2016 2:53 PM  
**To:** Erin Murphy <Erin.Murphy@lee.net>  
**Subject:** RE: Question

Erin:

Sorry to leave you hanging. I'll get back to you soon.

Geoff

---

**From:** Erin Murphy [mailto:Erin.Murphy@lee.net]  
**Sent:** Tuesday, December 13, 2016 1:44 PM  
**To:** Greenwood, Geoff [AG]  
**Subject:** RE: Question

Hey, Geoff. I don't wish to pester, but just circling back on this only because I'm hoping to piece this together today, and wanted to make sure you saw it.

**Erin Murphy**  
Lee Enterprises  
Des Moines Bureau chief

W: 515-422-9061  
C: 515-681-7388  
T: [@ErinDMurphy](mailto:@ErinDMurphy)

---

**From:** Erin Murphy  
**Sent:** Tuesday, December 13, 2016 9:35 AM  
**To:** 'Rod Boshart' <[Rod.Boshart@thegazette.com](mailto:Rod.Boshart@thegazette.com)>

Cc: 'Greenwood, Geoff [AG]' <[Geoff.Greenwood@iowa.gov](mailto:Geoff.Greenwood@iowa.gov)>

Subject: RE: Question

Geoff:

I'm following up on this, trying to put a bow on this whole thing. In particular, I'm interested in the new lieutenant governor piece.

Can you point me to the sections of the code and constitution that gave the AG's office clarity on this?

**Erin Murphy**

Lee Enterprises

Des Moines Bureau chief

W: 515-422-9061

C: 515-681-7388

T: [@ErinDMurphy](https://twitter.com/ErinDMurphy)

---

**From:** Rod Boshart [<mailto:Rod.Boshart@thegazette.com>]

**Sent:** Tuesday, December 13, 2016 7:27 AM

**To:** Erin Murphy <[Erin.Murphy@lee.net](mailto:Erin.Murphy@lee.net)>

**Subject:** FW: Question

---

**From:** Greenwood, Geoff [AG] [<mailto:Geoff.Greenwood@iowa.gov>]

**Sent:** Monday, December 12, 2016 4:29 PM

**To:** Rod Boshart

**Subject:** RE: Question

Rod,

Following up on your question from Friday.

Our office has researched the law and consulted with the Governor's office. We concur with the Governor's conclusion that, upon the resignation of Governor Branstad, Lt. Governor Reynolds will become Governor and will have the authority to appoint a new Lieutenant Governor.

Thanks,

Geoff



**Geoff Greenwood**

**Communications Director**

Office of the Attorney General of Iowa

1305 E. Walnut St.

Des Moines, Iowa 50319

Main: (515) 281-5164 | Direct: (515) 281-6699

Email: [geoff.greenwood@iowa.gov](mailto:geoff.greenwood@iowa.gov) | [www.iowaattorneygeneral.gov](http://www.iowaattorneygeneral.gov)

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---

**From:** Greenwood, Geoff [AG]  
**Sent:** Friday, December 09, 2016 10:12 AM  
**To:** 'Rod Boshart'  
**Subject:** RE: Question

Not yet. We're still doing some research and conferring with the Governor's office.

---

**From:** Rod Boshart [<mailto:Rod.Boshart@thegazette.com>]  
**Sent:** Friday, December 09, 2016 9:44 AM  
**To:** Greenwood, Geoff [AG]  
**Subject:** Question

Has the AG's office reached any conclusions on how the transfer of power will work when Gov. Branstad steps down and Lt. Gov. Reynolds steps into her new role?



## Thompson, Jeffrey [AG]

---

**From:** Johnson, Larry [IGOV]  
**Sent:** Friday, December 09, 2016 3:39 PM  
**To:** Thompson, Jeffrey [AG]  
**Cc:** Boussetot, Michael [IGOV]  
**Subject:** Follow-up  
**Attachments:** Gov Newbold - Oath (best version).JPG; Gov Newbold - Proclamation.JPG; Elthon - Governor of State of Iowa - oath of office.JPG; Leo Elthon, Governor of Iowa, Proclamation.pdf; Leo Elthon, Governor proclamation.pdf; Garst - Governor - Proclamation with State Seal.JPG; Garst - Governor of Iowa - Proclamation.JPG; Garst - Oath and inaugural (zoom).JPG; Fulton - Governor - Cond of State.JPG; Fulton - Governor - Condition of the State (zoom) .JPG

Hi Jeff – Thanks for taking the time to meet with me today. After we met I went down to the state archives. I found official documents for all four of the lt. governors who became governor. Attached are 3 of the governor oaths of the office of governor, proclamations, and conditions of state.

Oaths: I retrieved three of the four governors' oaths of office as governor: Newbold, Garst, and Elthon. One oath was in the Supreme Court Chamber. One was issued by the Chief Justice of the Supreme Court and one was issued by the Clerk of Court.

All four Governors signed official paperwork with the Secretary of State's signature.

Condition of State: Additionally – the Condition of the State for Gov. Fulton indicates he is the Governor.

There were no documents in the archives that I searched through that indicated the lt. governors who had the powers and duties of governor devolve upon them had any other title than Governor or Governor of the State of Iowa.

Thanks, Jeff

Larry Johnson, Jr.  
Legal Counsel  
Office of Governor Terry E. Branstad  
515-725-3506  
Larry.Johnson@Iowa.gov

**Thompson, Jeffrey [AG]**

---

**From:** Wittmus, Lisa [AG]  
**Sent:** Thursday, December 08, 2016 10:32 AM  
**To:** Thompson, Jeffrey [AG]; Willits, Emily [AG]; Kraemer, Gretchen [DHS]; Gavin, Meghan [AG]  
**Subject:** FW: Courtesy NEF RE: 15-2099  
**Attachments:** 15-2099 Procedendo.pdf

---

**From:** efilng.mail@iowacourts.gov [mailto:efiling.mail@iowacourts.gov]  
**Sent:** Wednesday, December 07, 2016 3:45 PM  
**To:** Wittmus, Lisa [AG]  
**Subject:** Courtesy NEF RE: 15-2099

\*\*\*\*\* IMPORTANT NOTICE - READ THIS INFORMATION \*\*\*\*\*  
NOTICE OF ELECTRONIC FILING OR PRESENTATION [NEF]

---

**A filing has been made in the following case:** 15-2099

**Official File Stamp:** 12-07-2016:00:00:00  
**Court:** Appellate Court  
**Case Title:** Homan v. Branstad  
**Event(s):**

**Document(s) Filed**                      **Filed by or on behalf of**  
PROCEDENDO

You may review this filing by clicking on the following link to take you to your [cases](#).

This notice was automatically generated by the courts auto-notification system.

---

The electronic filing system has served the following people

THOMPSON, JEFFREY SCOTT for BRANSTAD TERRY E  
BAUMGARTNER, SARAH MARIE for MCCOY, MATTHEW, HOMAN,  
DANNY, TAYLOR, RICH, KEARNS, JERRY, SMITH, MARK,  
COURTNEY, THOMAS, PETERSEN, JANET ANN, HUNTER, BRUCE,  
HANSON, CURT, BISIGNANO, TONY, QUIRMBACH, HERMAN,  
DEARDEN, DICK, STAED, ARTHUR MATTHEW, ABDUL-SAMAD,  
AKO, OLDSON, JO, GAINES, RUTH ANN, STECKMAN, SHARON,  
TAYLOR, TODD E., GASKILL, MARY, RUNNING-MARQUARDT,  
KIRSTEN, BROWN-POWERS, TIMI, JACOBY, DAVE, JOCHUM, PAM,

GRONSTAL, MICHAEL EDWARD, BEARINGER, BRUCE  
BOULTON, NATHANIEL RANDELL for MCCOY, MATTHEW,  
HOMAN, DANNY, TAYLOR, RICH, KEARNS, JERRY, SMITH, MARK,  
COURTNEY, THOMAS, PETERSEN, JANET ANN, HUNTER, BRUCE,  
HANSON, CURT, BISIGNANO, TONY, QUIRMBACH, HERMAN,  
DEARDEN, DICK, STAED, ARTHUR MATTHEW, ABDUL-SAMAD,  
AKO, OLDSON, JO, GAINES, RUTH ANN, STECKMAN, SHARON,  
TAYLOR, TODD E., GASKILL, MARY, RUNNING-MARQUARDT,  
KIRSTEN, BROWN-POWERS, TIMI, JACOBY, DAVE, JOCHUM, PAM,  
GRONSTAL, MICHAEL EDWARD, BEARINGER, BRUCE  
HEDBERG, MARK T. for MCCOY, MATTHEW, HOMAN, DANNY,  
TAYLOR, RICH, KEARNS, JERRY, SMITH, MARK, COURTNEY,  
THOMAS, PETERSEN, JANET ANN, HUNTER, BRUCE, HANSON,  
CURT, BISIGNANO, TONY, QUIRMBACH, HERMAN, DEARDEN,  
DICK, STAED, ARTHUR MATTHEW, ABDUL-SAMAD, AKO,  
OLDSON, JO, GAINES, RUTH ANN, STECKMAN, SHARON, TAYLOR,  
TODD E., GASKILL, MARY, RUNNING-MARQUARDT, KIRSTEN,  
BROWN-POWERS, TIMI, JACOBY, DAVE, JOCHUM, PAM,  
GRONSTAL, MICHAEL EDWARD, BEARINGER, BRUCE  
GAVIN, MEGHAN LEE for BRANSTAD TERRY E

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**Note:** The clerk of court is responsible for service of court-generated documents. See generally rule 16.320(2)

\*The filer is responsible for service of a document if it was not served by the electronic filing system. See generally rule 16.317 and 16.321.

**Gavin, Meghan [AG]**

---

**To:** ra  
**Subject:** FW: Miller to Release, Discuss AG Opinion on Gubernatorial Succession

---

**From:** Greenwood, Geoff [AG]  
**Sent:** Monday, May 01, 2017 10:02 AM  
**Subject:** Miller to Release, Discuss AG Opinion on Gubernatorial Succession

**IOWA DEPARTMENT OF JUSTICE  
OFFICE OF THE ATTORNEY GENERAL  
Thomas J. Miller, Attorney General  
[www.iowaAttorneyGeneral.gov](http://www.iowaAttorneyGeneral.gov)**

CONTACT: Geoff Greenwood • Communications Director • 515-281-6699 • [geoff.greenwood@iowa.gov](mailto:geoff.greenwood@iowa.gov)

FOR IMMEDIATE RELEASE  
May 1, 2017

**Media Advisory**

**Miller to Release, Discuss AG Opinion on Gubernatorial Succession**  
*Formal attorney general legal opinion addresses whether lieutenant governor becomes governor, authority to appoint new lieutenant governor*

(DES MOINES, Iowa) Attorney General Tom Miller today will release a formal attorney general opinion, in response to a request by Sen. David Johnson, I-Ocheyedan, regarding gubernatorial succession.

**WHAT:** News conference

**WHO:** Attorney General Tom Miller

**WHERE:** Attorney General's Office, Hoover Building, Second Floor

**DATE:** TODAY – May 1, 2017

**TIME:** 1:30 p.m.

**CALL IN #:** 866-685-1580, conference code 515 281 4213 (\*6 to mute, #6 to unmute)

**NOTE:** The news conference will be streamed live at [youtube.com/agiowa](http://youtube.com/agiowa).

Raw HD video will be made available upon request. Send request to:  
[geoff.greenwood@iowa.gov](mailto:geoff.greenwood@iowa.gov).

###

## Gavin, Meghan [AG]

---

**From:** Gavin, Meghan [AG]  
**Sent:** Tuesday, April 25, 2017 11:45 AM  
**To:** Tabor, Eric [AG]; Adams, Heather [AG]  
**Cc:** Thompson, Jeffrey [AG]  
**Subject:** RE: HF 524 should be reviewed by Tom Miller before Gov. Branstad signs it into law

---

**From:** Tabor, Eric [AG]  
**Sent:** Tuesday, April 25, 2017 11:38 AM  
**To:** Adams, Heather [AG]; Gavin, Meghan [AG]  
**Cc:** Thompson, Jeffrey [AG]  
**Subject:** FW: HF 524 should be reviewed by Tom Miller before Gov. Branstad signs it into law

Once we have time to digest the bill, let's discuss. Thanks. Eric

[cid:image001.png@01D2BDB8.78447470]<<http://www.iowaattorneygeneral.gov/>>

Eric Tabor  
Chief Deputy Attorney General  
Office of the Attorney General of Iowa  
1305 E. Walnut St.  
Des Moines, Iowa 50319  
Main: (515) 281-5164 | Direct: (515) 281-5191  
Email: [Eric.Tabor@iowa.gov](mailto:Eric.Tabor@iowa.gov)<<mailto:Eric.Tabor@iowa.gov>> |  
[www.iowaattorneygeneral.gov](http://www.iowaattorneygeneral.gov)<<http://www.iowaattorneygeneral.gov/>>

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**From:** Johansen, Eric [LEGIS] [<mailto:Eric.Johansen@legis.iowa.gov>]  
**Sent:** Tuesday, April 25, 2017 9:49 AM  
**To:** Tabor, Eric [AG]  
**Cc:** Schneider, Charles [LEGIS]; Dix, Bill [LEGIS]  
**Subject:** FW: HF 524 should be reviewed by Tom Miller before Gov. Branstad signs it into law

Eric,

Senator Schneider has asked that I pass along a request for comment from the Attorney General regarding HF 524 (medicinal cannabis). Could you please provide us an opinion regarding the legality of Iowa establishing the program outlined in HF 524?

Thanks,  
Eric

--

Eric Johansen  
Staff Director  
Senate Republican Caucus Staff  
(515) 313-8538 : Cell  
(515) 281-3979 : Office

From: Schneider, Charles [LEGIS]  
Sent: Tuesday, April 25, 2017 9:42 AM  
To: Johansen, Eric [LEGIS]  
Subject: FW: HF 524 should be reviewed by Tom Miller before Gov. Branstad signs it into law

Hi Eric,

Would you please pass this along to Attorney General Miller's office for comment?

Thanks!

Charles Schneider  
State Senator

----- Original Message -----

Subject: HF 524 should be reviewed by Tom Miller before Gov. Branstad signs it into law

Sent: Apr 25, 2017 5:56 AM

From: Carl Olsen <carl@carl-olsen.com<mailto:carl@carl-olsen.com>>

To: "Schneider, Charles [LEGIS]" <Charles.Schneider@legis.iowa.gov<mailto:Charles.Schneider@legis.iowa.gov>>, Charles Schneider <charlesmschneider@gmail.com<mailto:charlesmschneider@gmail.com>>

Cc:

130 E. Aurora Ave.  
Des Moines, Iowa 50313-3654  
April 25, 2017

Charles Schneider  
7887 Cody Dr  
West Des Moines, IA 50266

Re: HF 524 (medical use of cannabis)

Dear Senator Schneider,

HF 524 appears to set up a continuing criminal enterprise here in Iowa, in violation of federal law, 21 U.S.C. § 848 (2017). Anyone participating in the program would be in violation of federal law, 21 U.S.C. § 844 (2017). Anyone manufacturing or distributing cannabis products would be committing federal crimes carrying penalties of 10 years to life in federal prison and a fine of \$10 to \$50 million, 21 U.S.C. § 841 (2017). Penalties can double for conspiracy to commit any of these acts, 21 U.S.C. § 846 (2017). Because HF 524 authorizes the cultivation, manufacture, and distribution, and possession of cannabis products in the state of Iowa without explaining how any of it would be in compliance with federal law, HF 524 creates a positive conflict between federal and state law so that the two cannot consistently stand together, 21 U.S.C. § 903 (2017).

Please request an opinion from the Attorney General of Iowa, Tom Miller, on the legality of HF 524 before Governor Branstad signs HF 524 into law.

Current federal law can be found at 21 U.S.C. §§ 801 et seq., Pub. L. 91-513, Oct. 27, 1970, 84 Stat. 1236 ("Controlled Substances Act").

In my opinion, federal schedules of controlled substances are ordinary administrative regulations and cannot be used to interfere with state medical marijuana programs, but HF 524 does not address this matter.

*Alliance for Cannabis Therapeutics v. DEA*, 930 F.2d 936, 939 (D.C. Cir. 1991) ("neither the statute nor its legislative history precisely defines the term 'currently accepted medical use'; therefore, we are obliged to defer to the Administrator's interpretation of that phrase if reasonable.")

*Gonzales v. Oregon*, 546 U.S. 243, 258 (2006) ("The Attorney General has rulemaking power to fulfill his duties under the CSA. The specific respects in which he is authorized to make rules, however, instruct us that he is not authorized to make a rule declaring illegitimate a medical standard for care and treatment of patients that is specifically authorized under state law.")

*Grinspoon v. DEA*, 828 F.2d 881, 886 (1st Cir. 1987) ("Congress did not intend 'accepted medical use in treatment in the United States' to require a finding of recognized medical use in every state or, as the Administrator contends, approval for interstate marketing of the substance.")

I look forward to hearing from you at your earliest convenience.

Thank you very much!

Sincerely,

Carl Olsen  
130 E. Aurora Ave.  
Des Moines, Iowa 50313-3654  
515-343-9933  
carl@carl-olsen.com<mailto:carl@carl-olsen.com>

<http://carl-olsen.com/>

<http://iowamedicalmarijuana.org/>

cc: Iowa Governor Terry Branstad





## Gavin, Meghan [AG]

---

**From:** Adams, Heather [AG]  
**Sent:** Wednesday, March 29, 2017 10:59 AM  
**To:** Gavin, Meghan [AG]  
**Subject:** FW: Five travel reimbursements to attend National Cannabis Summit  
**Attachments:** National\_cannabis\_summit\_executive\_summary.pdf;  
National\_cannabis\_summit\_overview.pdf;  
National\_cannabis\_summit\_program\_information.pdf

Public Health is wanting to know if we would like to go to this conference – all expenses would be paid. Let's discuss, thanks.



**Heather L. Adams**  
**Assistant Attorney General**  
Office of the Attorney General of Iowa  
1305 E. Walnut St.  
Des Moines, Iowa 50319  
Main: (515) 281-5164 | Direct: (515) 281-3441  
Email: [Heather.Adams@iowa.gov](mailto:Heather.Adams@iowa.gov) | [www.iowaattorneygeneral.gov](http://www.iowaattorneygeneral.gov)

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---

**From:** Decker, Deann [<mailto:deann.decker@idph.iowa.gov>]  
**Sent:** Wednesday, March 29, 2017 10:45 AM  
**To:** Adams, Heather [AG]  
**Subject:** Fwd: Five travel reimbursements to attend National Cannabis Summit

FYI...I forgot to ask you about this yesterday. The ATTC sent this out awhile ago. They sent a reminder yesterday and I have a call with them tomorrow. They will fund 5 people from each state.

Let me know!

Thanks

DeAnn

----- Forwarded message -----

**From:** Wrolstad, Jan L. <[WrolstadJ@umkc.edu](mailto:WrolstadJ@umkc.edu)>  
**Date:** Fri, Mar 3, 2017 at 4:17 PM  
**Subject:** Five travel reimbursements to attend National Cannabis Summit  
**To:** "[Kathy.Stone@idph.iowa.gov](mailto:Kathy.Stone@idph.iowa.gov)" <[Kathy.Stone@idph.iowa.gov](mailto:Kathy.Stone@idph.iowa.gov)>, "DeAnn Decker ([DeAnn.Decker@idph.iowa.gov](mailto:DeAnn.Decker@idph.iowa.gov))" <[DeAnn.Decker@idph.iowa.gov](mailto:DeAnn.Decker@idph.iowa.gov)>, "[Kimberly.Reynolds@ks.gov](mailto:Kimberly.Reynolds@ks.gov)" <[Kimberly.Reynolds@ks.gov](mailto:Kimberly.Reynolds@ks.gov)>, Charles Bartlett <[Charles.Bartlett@ks.gov](mailto:Charles.Bartlett@ks.gov)>, "[mark.stringer@dmh.mo.gov](mailto:mark.stringer@dmh.mo.gov)" <[mark.stringer@dmh.mo.gov](mailto:mark.stringer@dmh.mo.gov)>, "[rick.gowdy@dmh.mo.gov](mailto:rick.gowdy@dmh.mo.gov)" <[rick.gowdy@dmh.mo.gov](mailto:rick.gowdy@dmh.mo.gov)>, "Anderson-Harper, Rosie" <[Rosie.Anderson-Harper@dmh.mo.gov](mailto:Rosie.Anderson-Harper@dmh.mo.gov)>, "[sheri.dawson@nebraska.gov](mailto:sheri.dawson@nebraska.gov)" <[sheri.dawson@nebraska.gov](mailto:sheri.dawson@nebraska.gov)>, "[todd.stull@nebraska.gov](mailto:todd.stull@nebraska.gov)" <[todd.stull@nebraska.gov](mailto:todd.stull@nebraska.gov)>  
**Cc:** "Stilen, Patricia" <[stilenp@umkc.edu](mailto:stilenp@umkc.edu)>, "Gotham, Heather J." <[GothamHJ@umkc.edu](mailto:GothamHJ@umkc.edu)>, "Rockford, Deborah" <[RockfordD@umkc.edu](mailto:RockfordD@umkc.edu)>, "Knopf-Amelung, Sarah M." <[KnopfSM@umkc.edu](mailto:KnopfSM@umkc.edu)>, "Sherry, Bree" <[sherryb@umkc.edu](mailto:sherryb@umkc.edu)>, "Rogers, Doris M." <[rogersdm@umkc.edu](mailto:rogersdm@umkc.edu)>



SCIENCE, POLICY AND BEST PRACTICES.

August 28-30, 2017  
Denver, Colorado

Dear Region 7 SSAs,

**Mid-America ATTC has an opportunity for you . . .**

The ATTC Network, along with the National Council for Behavioral Health and Advocates for Human Potential (AHP), are sponsoring a National Cannabis Summit. The purpose of the Summit is to provide an objective national forum for changing public policy, public health, treatment and research. The Summit is scheduled for August 28-30, 2017, in Denver, Colorado.

**Mid-America ATTC is offering the following . . .**

*Mid-America ATTC will pay for travel for a team of 5 attendees per state to attend the Summit. We hope you or someone from your office is able to attend as well as 4 other state leaders from other departments, such as public health, criminal justice, the attorney general's office, legislators, etc. We are inviting you to put together a team of 5 persons who would benefit the most from the Summit. We'll cover the registration fee of \$550 per person and flights in advance. We will reimburse for the cost of the hotel, meals at the University per diem rate, airport parking, ground transportation, etc. following the event.*

There will be 4 Tracks:

- Public Health, Public Safety and Prevention
- Emerging Research and Epidemiological Data
- Regulatory Issues
- Governance, Federal Law and Emerging Policy

The summit will look at how changing cannabis policy and norms impact:

- Addictions treatment and recovery
- Public health
- Prevention programs
- Criminal justice systems
- Mental health treatment and recovery
- National, state and local policies and regulations
- Workplaces and businesses
- Harm reduction efforts

Three info flyers about the Summit are attached. The Summit website for more details is:  
<https://www.nationalcannabissummit.org/>.

**Please let Pat or me know who from your office is able to attend. Also, would you be able to find 4 other state leaders in other departments or in the state legislature who are interested in attending and then get me their names and contact information? -**

**No cannabis industry entity is part of the planning for, funding of, or presentations at this event.**

I look forward to hearing from you,

Jan

**Jan Wrolstad, M.Div. | Associate Director |Mid-America ATTC**

[wrolstadj@umkc.edu](mailto:wrolstadj@umkc.edu) | 816-235-5056

**University of Missouri-Kansas City (UMKC) School of Nursing and Health Studies**

Collaborative for Excellence in Behavioral Health Research and Practice

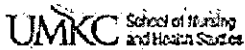
Health Sciences Building, Rm. #2421

2464 Charlotte

Kansas City, MO 64108

[www.attcnetwork.org/midamerica](http://www.attcnetwork.org/midamerica)

[www.sonhs.umkc.edu](http://www.sonhs.umkc.edu)



--

DeAnn Decker

Bureau Chief of Substance Abuse | Iowa Department of Public Health

Division of Behavioral Health | 321 E. 12th Street | Des Moines, IA 50319

Office: 515-281-0928 | [DeAnn.Decker@idph.iowa.gov](mailto:DeAnn.Decker@idph.iowa.gov)

*Promoting and Protecting the Health of Iowans*

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## Gavin, Meghan [AG]

---

**From:** Adams, Heather [AG]  
**Sent:** Wednesday, February 22, 2017 10:45 AM  
**To:** AG Licensing  
**Cc:** Tabor, Eric [AG]  
**Subject:** RE: Smaller, Smarter Gov't Bill

Introduced as HSB 138



**Heather L. Adams**  
**Assistant Attorney General**  
Office of the Attorney General of Iowa  
1305 E. Walnut St.  
Des Moines, Iowa 50319  
Main: (515) 281-5164 | Direct: (515) 281-3441  
Email: [Heather.Adams@iowa.gov](mailto:Heather.Adams@iowa.gov) | [www.iowaattorneygeneral.gov](http://www.iowaattorneygeneral.gov)

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---

**From:** Adams, Heather [AG]  
**Sent:** Monday, February 20, 2017 2:43 PM  
**To:** AG Licensing  
**Cc:** Tabor, Eric [AG]  
**Subject:** FW: Smaller, Smarter Gov't Bill

Let me know if you have any reactions to share after you've read the bill, thanks!



**Heather L. Adams**  
**Assistant Attorney General**  
Office of the Attorney General of Iowa  
1305 E. Walnut St.  
Des Moines, Iowa 50319  
Main: (515) 281-5164 | Direct: (515) 281-3441  
Email: [Heather.Adams@iowa.gov](mailto:Heather.Adams@iowa.gov) | [www.iowaattorneygeneral.gov](http://www.iowaattorneygeneral.gov)

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---

**From:** Clabaugh, Gerd [<mailto:gerd.clabaugh@idph.iowa.gov>]  
**Sent:** Monday, February 20, 2017 2:35 PM  
**To:** Thompson, Deborah [IDPH]; Reisetter, Sarah [IDPH]; Sharp, Ken [IDPH]; Adams, Heather [AG]  
**Subject:** Fwd: Smaller, Smarter Gov't Bill

FYI. I don't think this has been released yet, so please don't share it further. But I would be interested in your reactions to what's being proposed. Thanks

**Gerd W. Clabaugh**

Director | Iowa Department of Public Health | 321 E. 12th Street | Lucas State Office Bldg. | Des Moines, IA 50319 | Office: 515-281-8474 | [gerd.clabaugh@idph.iowa.gov](mailto:gerd.clabaugh@idph.iowa.gov)

***Protecting and Improving the Health of Iowans***

----- Forwarded message -----

From: **Pottebaum, Nic** <[nic.pottebaum@iowa.gov](mailto:nic.pottebaum@iowa.gov)>  
Date: Mon, Feb 20, 2017 at 2:11 PM  
Subject: Fwd: Smaller, Smarter Gov't Bill  
To: Gerd Clabaugh <[gerd.clabaugh@idph.iowa.gov](mailto:gerd.clabaugh@idph.iowa.gov)>

----- Forwarded message -----

From: **Pottebaum, Nic** <[nic.pottebaum@iowa.gov](mailto:nic.pottebaum@iowa.gov)>  
Date: Mon, Feb 20, 2017 at 2:09 PM  
Subject: Smaller, Smarter Gov't Bill  
To: Deborah Thompson <[deborah.thompson@idph.iowa.gov](mailto:deborah.thompson@idph.iowa.gov)>

See attachment.

--  
**Nicholas Pottebaum** | Policy Advisor  
Office of the Governor, State of Iowa  
Gov. Terry Branstad & Lt. Gov. Kim Reynolds  
515.725.3505 | [Nic.Pottebaum@iowa.gov](mailto:Nic.Pottebaum@iowa.gov)  
[www.governor.iowa.gov](http://www.governor.iowa.gov)  
[www.ltgovernor.iowa.gov](http://www.ltgovernor.iowa.gov)

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## **Gavin, Meghan [AG]**

---

**From:** Adams, Heather [AG]  
**Sent:** Monday, February 20, 2017 3:01 PM  
**To:** Adams, Heather [AG]  
**Cc:** AG Licensing  
**Subject:** Re: Smaller, Smarter Gov't Bill

Upon my quick review, it seems that the intent for the professions which will be registered is not to treat them as the department currently does for EMS providers, who are certified and required to follow competency and safety standards adopted by the department by rule, but instead to treat them like hair braiders, who simply register with the department.

Heather L. Adams  
Assistant Attorney General  
(515)281-3441  
[Heather.Adams@iowa.gov](mailto:Heather.Adams@iowa.gov)

On Feb 20, 2017, at 2:42 PM, Adams, Heather [AG] <[Heather.Adams@iowa.gov](mailto:Heather.Adams@iowa.gov)> wrote:

Let me know if you have any reactions to share after you've read the bill, thanks!

**Heather L. Adams**  
**Assistant Attorney General**  
<image001.png> Office of the Attorney General of Iowa  
1305 E. Walnut St.  
Des Moines, Iowa 50319  
Main: (515) 281-5164 | Direct: (515) 281-3441  
Email: [Heather.Adams@iowa.gov](mailto:Heather.Adams@iowa.gov) | [www.iowaattorneygeneral.gov](http://www.iowaattorneygeneral.gov)

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---

**From:** Clabaugh, Gerd [<mailto:gerd.clabaugh@idph.iowa.gov>]  
**Sent:** Monday, February 20, 2017 2:35 PM  
**To:** Thompson, Deborah [IDPH]; Reisetter, Sarah [IDPH]; Sharp, Ken [IDPH]; Adams, Heather [AG]  
**Subject:** Fwd: Smaller, Smarter Gov't Bill

FYI. I don't think this has been released yet, so please don't share it further. But I would be interested in your reactions to what's being proposed. Thanks

**Gerd W. Clabaugh**  
Director | Iowa Department of Public Health | 321 E. 12th Street | Lucas State Office Bldg. | Des Moines, IA 50319 | Office: 515-281-8474 | [gerd.clabaugh@idph.iowa.gov](mailto:gerd.clabaugh@idph.iowa.gov)



***Protecting and Improving the Health of Iowans***

----- Forwarded message -----

**From:** Pottebaum, Nic <[nic.pottebaum@iowa.gov](mailto:nic.pottebaum@iowa.gov)>  
**Date:** Mon, Feb 20, 2017 at 2:11 PM  
**Subject:** Fwd: Smaller, Smarter Gov't Bill  
**To:** Gerd Clabaugh <[gerd.clabaugh@idph.iowa.gov](mailto:gerd.clabaugh@idph.iowa.gov)>

----- Forwarded message -----

**From:** Pottebaum, Nic <[nic.pottebaum@iowa.gov](mailto:nic.pottebaum@iowa.gov)>  
**Date:** Mon, Feb 20, 2017 at 2:09 PM  
**Subject:** Smaller, Smarter Gov't Bill  
**To:** Deborah Thompson <[deborah.thompson@idph.iowa.gov](mailto:deborah.thompson@idph.iowa.gov)>

See attachment.

--

**Nicholas Pottebaum** | Policy Advisor  
Office of the Governor, State of Iowa  
Gov. Terry Branstad & Lt. Gov. Kim Reynolds  
515.725.3505 | [Nic.Pottebaum@iowa.gov](mailto:Nic.Pottebaum@iowa.gov)  
[www.governor.iowa.gov](http://www.governor.iowa.gov)  
[www.ltgovernor.iowa.gov](http://www.ltgovernor.iowa.gov)

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<1681XL\_1487354663286 (1).pdf>

## Gavin, Meghan [AG]

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**From:** Adams, Heather [AG]  
**Sent:** Monday, February 20, 2017 2:43 PM  
**To:** AG Licensing  
**Cc:** Tabor, Eric [AG]  
**Subject:** FW: Smaller, Smarter Gov't Bill  
**Attachments:** 1681XL\_1487354663286 (1).pdf

Let me know if you have any reactions to share after you've read the bill, thanks!



**Heather L. Adams**  
**Assistant Attorney General**  
Office of the Attorney General of Iowa  
1305 E. Walnut St.  
Des Moines, Iowa 50319  
Main: (515) 281-5164 | Direct: (515) 281-3441  
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**Sent:** Monday, February 20, 2017 2:35 PM  
**To:** Thompson, Deborah [IDPH]; Reisetter, Sarah [IDPH]; Sharp, Ken [IDPH]; Adams, Heather [AG]  
**Subject:** Fwd: Smaller, Smarter Gov't Bill

FYI. I don't think this has been released yet, so please don't share it further. But I would be interested in your reactions to what's being proposed. Thanks

**Gerd W. Clabaugh**

Director | Iowa Department of Public Health | 321 E. 12th Street | Lucas State Office Bldg. | Des Moines, IA 50319 | Office: 515-281-8474 | [gerd.clabaugh@idph.iowa.gov](mailto:gerd.clabaugh@idph.iowa.gov)

***Protecting and Improving the Health of Iowans***

----- Forwarded message -----

**From:** Pottebaum, Nic <[nic.pottebaum@iowa.gov](mailto:nic.pottebaum@iowa.gov)>  
**Date:** Mon, Feb 20, 2017 at 2:11 PM  
**Subject:** Fwd: Smaller, Smarter Gov't Bill  
**To:** Gerd Clabaugh <[gerd.clabaugh@idph.iowa.gov](mailto:gerd.clabaugh@idph.iowa.gov)>

----- Forwarded message -----

From: **Pottebaum, Nic** <[nic.pottebaum@iowa.gov](mailto:nic.pottebaum@iowa.gov)>

Date: Mon, Feb 20, 2017 at 2:09 PM

Subject: Smaller, Smarter Gov't Bill

To: Deborah Thompson <[deborah.thompson@idph.iowa.gov](mailto:deborah.thompson@idph.iowa.gov)>

See attachment.

--

**Nicholas Pottebaum** | Policy Advisor  
Office of the Governor, State of Iowa  
Gov. Terry Branstad & Lt. Gov. Kim Reynolds

515.725.3505 | [Nic.Pottebaum@iowa.gov](mailto:Nic.Pottebaum@iowa.gov)

[www.governor.iowa.gov](http://www.governor.iowa.gov)

[www.ltgovernor.iowa.gov](http://www.ltgovernor.iowa.gov)

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## Gavin, Meghan [AG]

---

**From:** Adams, Heather [AG]  
**Sent:** Monday, February 20, 2017 2:08 PM  
**To:** AG Licensing  
**Cc:** Tabor, Eric [AG]  
**Subject:** FW: Governor's Legislative Program Bill Sent to Leadership February 20, 2017  
**Attachments:** 1681XL.pdf



**Heather L. Adams**  
**Assistant Attorney General**  
Office of the Attorney General of Iowa  
1305 E. Walnut St.  
Des Moines, Iowa 50319  
Main: (515) 281-5164 | Direct: (515) 281-3441  
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---

**From:** Thompson, Deborah [mailto:[deborah.thompson@idph.iowa.gov](mailto:deborah.thompson@idph.iowa.gov)]  
**Sent:** Monday, February 20, 2017 2:02 PM  
**To:** Clabaugh, Gerd [IDPH]; Reisetter, Sarah [IDPH]; Spangler, Marcia [IDPH]; Sharp, Ken [IDPH]  
**Cc:** Adams, Heather [AG]; Caskey, Jennifer [IDPH]  
**Subject:** Fwd: FW: Governor's Legislative Program Bill Sent to Leadership February 20, 2017

FYI - the Smaller, Smarter Government bill is being circulated. I don't think it's been introduced yet but they've given it to leadership in both chambers.

Thanks,

Deborah

**Deborah H. Thompson, MPA**  
Policy Advisor & Legislative Liaison | Iowa Department of Public Health  
321 E. 12th St | Des Moines, IA 50319 | Mobile: 515-240-0530 | [deborah.thompson@idph.iowa.gov](mailto:deborah.thompson@idph.iowa.gov)

*Promoting and Protecting the Health of Iowans*

----- Forwarded message -----

**From:** Ohms, Kenneth [LEGIS] <[Kenneth.Ohms@legis.iowa.gov](mailto:Kenneth.Ohms@legis.iowa.gov)>  
**Date:** Mon, Feb 20, 2017 at 1:49 PM  
**Subject:** FW: Governor's Legislative Program Bill Sent to Leadership February 20, 2017  
**To:** "Thompson, Deborah [IDPH]" <[deborah.thompson@idph.iowa.gov](mailto:deborah.thompson@idph.iowa.gov)>

FYI

---

**From:** Laust, Sandra [LEGIS]

**Sent:** Monday, February 20, 2017 1:45 PM

**To:** Bakker, Eric [LEGIS]; Boussetot, Michael [IGOV]; Dalluge, Zach [LEGIS]; Dickinson, Glen [LEGIS]; Dorsey, Chris [LEGIS]; Earnhardt, Mary [LEGIS]; Failor, Ed [LEGIS]; Fiihr, Dean [LEGIS]; Friedrichsen, Jake [LEGIS]; Hunter, Caleb [LEGIS]; Kattenhorn, Debbie [LEGIS]; Lunde, Joel [IDOM]; Oller, Liddy [LEGIS]; Phillips, Tony [LEGIS]; Roederer, David [IDOM]; Stopulos, Ted [IGOV]; Tadlock, Colin [LEGIS]

**Subject:** Governor's Legislative Program Bill Sent to Leadership February 20, 2017

The following Governor's legislative program bill approved for release by the Department of Management, is attached:

**LSB 1681xl Professional Licensing Regulation**

Sandra Laust

Legislative Services Agency

(515) 281-3566

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## Gavin, Meghan [AG]

---

**From:** Adams, Heather [AG]  
**Sent:** Monday, February 13, 2017 2:42 PM  
**To:** Gavin, Meghan [AG]  
**Subject:** FW: Purdue Pharma and Commonwealth of Virginia Partner to Improve Utilization of Prescription Monitoring Program



**Heather L. Adams**  
**Assistant Attorney General**  
Office of the Attorney General of Iowa  
1305 E. Walnut St.  
Des Moines, Iowa 50319  
Main: (515) 281-5164 | Direct: (515) 281-3441  
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---

**From:** Thinnes Culver, Mari  
**Sent:** Monday, February 13, 2017 1:44 PM  
**To:** Curtiss, Rebecca [IDPH]; Lukan, Steven [ODCP]; Woolery, Dale [ODCP]  
**Cc:** Adams, Heather [AG]  
**Subject:** Purdue Pharma and Commonwealth of Virginia Partner to Improve Utilization of Prescription Monitoring Program

Hi All,

In case you didn't see it, I thought I would pass along this story from the WaPo on Virginia's partnership with Purdue on their state's PMP.

Thanks, Mari



**Mariclare Thinnes Culver**  
**Assistant Attorney General**  
Office of the Attorney General of Iowa  
1305 E. Walnut St.  
Des Moines, IA 50319  
Main: (515) 281-5164 | Direct: (515) 281-8480  
Email: [Mari.ThinnesCulver@iowa.gov](mailto:Mari.ThinnesCulver@iowa.gov) | [www.iowaattorneygeneral.gov](http://www.iowaattorneygeneral.gov)

[https://www.washingtonpost.com/news/to-your-health/wp/2017/01/26/drug-company-to-help-improve-virginias-prescription-drug-monitoring-system/?utm\\_term=.7d89d113b2f9](https://www.washingtonpost.com/news/to-your-health/wp/2017/01/26/drug-company-to-help-improve-virginias-prescription-drug-monitoring-system/?utm_term=.7d89d113b2f9)

# Drug company to help improve Virginia's prescription drug monitoring system

By Lenny Bernstein January 26

(Toby Talbot/Associated Press)

A major drug company is teaming up with the state of Virginia to help curb “doctor shopping” for narcotics and overprescribing of opioids by physicians.

Purdue Pharma, manufacturer of the long-acting painkiller OxyContin, said Thursday it will pay \$3.1 million to upgrade the state's prescription drug monitoring program, a database that doctors and other prescribers can check before they offer a patient narcotics. The 11-year-old system is designed to curb “doctor shopping,” by showing prescribers if patients are obtaining narcotics from multiple health-care professionals.

Research has found that the systems, especially when mandatory, are effective. But doctors, who say they are already burdened by paperwork requirements, have complained about the time it takes to log into a separate database and iron out problems with the information they find on their patients.

*[States are slowly forcing opioid prescribers to confront 'doctor shopping.']*

The Virginia pilot program will integrate the narcotics database into electronic health records that physicians already use to keep track of their patients' medical histories. That

should reduce the time it takes to check the prescription drug system and make it easier to use, officials said. It also will help them more easily view their patients' drug purchases in other states.

Mark Timney, Purdue Pharma's chief executive, said that while better systems are likely to decrease consumption of opioids such as the ones his company makes, the scale of the drug epidemic requires companies to help curb drug use. “We only want opioids, and certainly our medication, to be prescribed at the right time for the right patient and in the right doses,” he said.

More than 16,000 people died of overdoses from prescription opioids, including methadone, in 2015, according to the Centers for Disease Control and Prevention. Every state except Missouri has created a prescription drug monitoring program, and most of those systems call for some form of mandatory action by prescribers. In Virginia, any prescriber who offers a patient 14 days or more of certain controlled substances must check the database, according to William A. Hazel Jr., the state's secretary of health and human resources. He said that a bill likely to be approved this year would cut that to seven days.

*[Unnatural Causes: Sick and dying in small-town America]*

Hazel said the prescription drug monitoring system also had reduced the total number of narcotic prescriptions written in the state.

“This to us is about helping physicians understand what their patients are doing,” said Hazel, an orthopedic surgeon. “We believe in the patient-physician relationship. We trust them and they trust us, and unfortunately it doesn't always work out.”

Purdue Pharma is widely blamed for contributing to the opioid epidemic by fraudulently marketing OxyContin for six years as a formulation of the drug oxycodone that was less prone to abuse. In 2007, the company and three of its executives pleaded guilty in federal court in Virginia to criminal charges that they had misled doctors, patients and regulators about the risk of addiction to OxyContin. The company agreed to pay a \$600 million fine for “misbranding” the drug.



## **Purdue Pharma and Commonwealth of Virginia Partner to Improve Utilization of Prescription Monitoring Program**

**STAMFORD, Conn. and RICHMOND, Va., Jan. 26, 2017** – Purdue Pharma L.P., Virginia Governor Terry McAuliffe and the Virginia Secretary of Health and Human Resources today announced the formation of a public-private partnership to enhance utilization of the state prescription monitoring program (PMP) as part of the solution to address the opioid crisis. The Commonwealth of Virginia will connect the state PMP to the electronic health records (EHR) used by Virginia prescribers and pharmacists to make information from the PMP an integral part of the patient workflow when prescribing or dispensing controlled substances. The goal is to improve the performance, access and usability of the PMP program data for 18,000 prescribers and 400 pharmacies in the Commonwealth of Virginia by the end of 2017.

“The epidemic of opioid addiction is a public health emergency in Virginia, and combating it is a top priority for my administration,” said Gov. Terry McAuliffe. “The Prescription Monitoring Program is a critical prevention tool that helps curb abuse of prescription medications, and I applaud this enhancement that makes the PMP easier and more likely for physicians to use.”

The Virginia Department of Health Professions, the administrator of the Virginia PMP, selected Appriss Health to integrate the PMP information into the EHR and pharmacy management systems. This integration will help clinicians and pharmacists make more informed clinical decisions and improve patient outcomes. Appriss Health is the technology provider for the Virginia PMP and the provider of NarxCare, a leading platform to address substance use disorders. As part of the integration effort, NarxCare will deliver a variety of analytics, tools and other resources to assist clinicians and support patients.

“The PMP is an important resource to help us track prescription data and spot potential abuse,” said Virginia Secretary of Health and Human Resources Dr. Bill Hazel. “Integrating that data with electronic health records strengthens the PMP and is an important step in our ongoing battle against the epidemic of opioid abuse.”

The Virginia PMP provides to authorized users a patient’s prescription history for Schedule II – V prescriptions for the prior 12 months as reported by all Virginia pharmacies and by out-of-state pharmacies delivering to people in Virginia. Additionally, the PMP prescription report informs clinical decision-making to help prevent or stop harm from duplicate drug therapy, prescription drug misuse, abuse and diversion.

“This initiative will put information that doctor’s need to make better informed prescribing decisions at their fingertips,” said Gail Cawkwell, M.D., Ph.D., Vice President and Chief Medical Officer, Purdue Pharma L.P. “The technology provides important information about possible abuse, but also highlights patients that may have higher risks of overdose.”

Purdue Pharma will provide funding to accelerate uptake of technology that make PMPs interoperable across state lines and increase utilization of Virginia’s PMP data within EHR clinical workflows for prescribers and pharmacists.

“Purdue Pharma has a long history of supporting and funding public health initiatives like the use of prescription drug monitoring programs to help reduce the misuse and abuse of opioids,” said Mark Timney, President and Chief Executive Officer, Purdue Pharma L.P. “We recognize the immediate need for technology innovations, such as this, to improve access to the PMP data through workflow integration and enhance the effectiveness of these tools.”

#### **ABOUT PURDUE PHARMA L.P.**

Purdue Pharma is a privately-held pharmaceutical company and is part of a global network of independent associated companies that is known for pioneering research in chronic pain and opioids with abuse deterrent properties. The company's leadership and employees are committed to providing healthcare professionals, patients and caregivers quality products and educational resources to support their proper use. Purdue Pharma is engaged in the development, production and distribution of both prescription and over-the-counter medicines and hospital products. With Purdue Pharma's expertise in drug development, commercialization and life-cycle management, the company is diversifying in high-need areas to expand through strategic acquisitions and creative partnerships. For more information, please visit [www.purduepharma.com](http://www.purduepharma.com).

###

#### **Media Inquiries:**

Catherine London  
Corporate Communications  
Purdue Pharma L.P.  
+1 203-588-7530  
[catherine.london@pharma.com](mailto:catherine.london@pharma.com)

## Gavin, Meghan [AG]

---

**From:** White, Cathleen [AG] on behalf of AG Webteam [AG]  
**Sent:** Tuesday, May 02, 2017 8:30 AM  
**To:** Gavin, Meghan [AG]  
**Subject:** FW: Lt. Governor / Attorney General situation

Meghan, can you help with a response to Mr. Bowman?

**From:** Beau Bowman [mailto:beaubowman13@gmail.com]  
**Sent:** Monday, May 01, 2017 2:43 PM  
**To:** AG Webteam [AG]  
**Subject:** Lt. Governor / Attorney General situation

Hi there,

My name is Beau Bowman and I have a question about the recent release by the attorney general concerning the Lt. Governor's new title and power to appoint a new Lt. Governor.

I agree with the Attorney General that Lt. Governor Kim Reynolds should not be able to appoint a new Lt. Governor.

What I do not agree with is her title "Governor Reynolds."

The Iowa Constitution (Article IV sec. 17) states: "In case of the death, impeachment, **resignation**, removal from office, or other disability of the governor, the powers and duties of the office for the residue of the term, or until he shall be acquitted, or the disability removed, **shall devolve upon the lieutenant governor.**"

The legal definition of the word devolve is: "when property is automatically transferred from one party to another"

No where in the constitution does it say that Reynolds would become the Governor, but only take on the responsibility of Governor for the remainder of the term.

Therefore, Reynolds' title should stay as Lt. Governor. She should not be able to appoint a new Lt. Governor because there is no vacancy in that office.

My email and phone number are listed at the bottom of this email. Thank you for hearing me out.

--

***Beau Bowman***

[beaubowman13@gmail.com](mailto:beaubowman13@gmail.com) | (563) 370-4818

## Gavin, Meghan [AG]

---

**From:** Ambrozic, Jane [AG]  
**Sent:** Wednesday, November 04, 2015 9:31 AM  
**To:** Gavin, Meghan [AG]  
**Subject:** RE: Courtesy NEF RE: CVCV050143

Yes--Thompson had me pull it off for him.

-----Original Message-----

**From:** Gavin, Meghan [AG]  
**Sent:** Wednesday, November 04, 2015 9:28 AM  
**To:** Ambrozic, Jane [AG]; Griebel, Pam [AG]  
**Subject:** FW: Courtesy NEF RE: CVCV050143

FYI. I haven't read it yet. Good news.

---

**From:** efilings@mail@iowacourts.gov [efilings@mail@iowacourts.gov]  
**Sent:** Wednesday, November 04, 2015 8:45 AM  
**To:** Gavin, Meghan [AG]  
**Subject:** Courtesy NEF RE: CVCV050143

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A filing has been submitted to the court RE: CVCV050143  
Judge: DOUGLAS F STASKAL

Official File Stamp: 11-03-2015:08:03:22

Court: TRIAL COURT

Polk

Case Title: HOMAN, TAYLOR, ET AL VS BRANSTAD AND PALMER

Document(s) Submitted: ORDER REGARDING DISMISSAL the Governors Motion for Summary Judgment is GRANTED AND THE LEGISLATORS MOTION FOR SUM JDMT IS DENIED; PETITION IS DISMISSED AND THE COSTS OF THIS ACTION ARE ASSESSED TO THE PLTFs

Filed by or in behalf of: Doug Staskal

You may review this filing by clicking on the following link to take you to your cases<<https://www.iowacourts.state.ia.us/Efile/notify?pageAction=ViewCases>>.

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The electronic filing system has served the following people:

JEFFREY SCOTT THOMPSON for CHARLES PALMER, TERRY E BRANSTAD

SARAH MARIE WOLFE for TONY BISIGNANO, JANET ANN PETERSEN, RUTH ANN GAINES, BRUCE HUNTER, MICHAEL EDWARD GRONSTAL, TODD E TAYLOR, AKO ABDUL SAMAD, DANNY HOMAN, ARTHUR MATTHEW STAED, HERMAN QUIRMBACH, DICK DEARDEN, JO OLDSON, SHARON STECKMAN, KIRSTEN RUNNING MARQUARDT, MARY GASKILL, RICH TAYLOR, TIMI BROWN POWERS, JERRY KEARNS, DAVE JACOBY, MARK SMITH, THOMAS COURTNEY, CURT HANSON, MATT MCCOY, BRUCE BEARINGER, PAM JOCHUM

NATHANIEL RANDELL BOULTON for TONY BISIGNANO, JANET ANN PETERSEN, RUTH ANN GAINES, BRUCE HUNTER, MICHAEL EDWARD GRONSTAL, TODD E TAYLOR, AKO ABDUL SAMAD, DANNY HOMAN, ARTHUR MATTHEW STAED, HERMAN QUIRMBACH, DICK DEARDEN, JO OLDSON, SHARON STECKMAN, KIRSTEN RUNNING MARQUARDT, MARY GASKILL, RICH TAYLOR, TIMI BROWN POWERS, JERRY KEARNS, DAVE JACOBY, MARK SMITH, THOMAS COURTNEY, CURT HANSON, MATT MCCOY, BRUCE BEARINGER, PAM JOCHUM

MARK TERRY HEDBERG for TONY BISIGNANO, JANET ANN PETERSEN, RUTH ANN GAINES, BRUCE HUNTER, MICHAEL EDWARD GRONSTAL, TODD E TAYLOR, AKO ABDUL SAMAD, DANNY HOMAN, ARTHUR MATTHEW STAED, HERMAN QUIRMBACH, DICK DEARDEN, JO OLDSON, SHARON STECKMAN, KIRSTEN RUNNING MARQUARDT, MARY GASKILL, RICH TAYLOR, TIMI BROWN POWERS, JERRY KEARNS, DAVE JACOBY, MARK SMITH, THOMAS COURTNEY, CURT HANSON, MATT MCCOY, BRUCE BEARINGER, PAM JOCHUM

DIANE MARIE STAHL for CHARLES PALMER, TERRY E BRANSTAD

MEGHAN LEE GAVIN for CHARLES PALMER, TERRY E BRANSTAD \_\_\_\_\_

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Note: The rules define the clerk of court as responsible for service of court-generated documents. Additionally on small claims cases that by statute can be served by certified mail, when the filer has selected and paid for certified mail in the electronic filing system or at the clerk of court office, the clerk of court is responsible for service of the original notice and answer and appearance by certified mail in accordance with the Code of Iowa.

\*The moving party or the individual who filed it is responsible for service of a document if it was not served by the electronic filing system. That includes, but is not limited to, service of all petitions and original notices [rule 16.316(3)], service of documents on all parties seeking to intervene in confidential cases [16.321(1)(c)], and service of all documents on non-registered parties [16.317(1)(b)].

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## Gavin, Meghan [AG]

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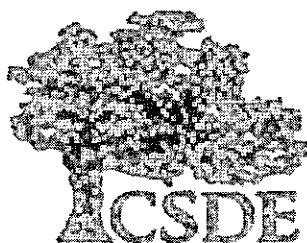
**From:** National Council of State Education Attorneys <NCOSEA@LSV.UKY.EDU> on behalf of Anastasio, Laura <Laura.Anastasio@CT.GOV>  
**Sent:** Friday, April 28, 2017 8:21 AM  
**To:** NCOSEA@LSV.UKY.EDU  
**Subject:** Re: [NCOSEA:] Sanctuary Schools

In Connecticut, Governor Dannel Malloy has been instrumental in coordinating information for undocumented families in our state. The *Family Preparedness Plan* (available at the link below) consists of materials compiled by the Governor's Office with input from various state agencies including the Connecticut State Department of Education and the Department of Children and Families, legal services organizations, and key stakeholders. It is intended to serve as a one-stop guide for parents to use in planning for the possibility of detention or deportation.

This plan has been translated into nine different languages as of this date:

See: <http://portal.ct.gov/FamilyPreparedness>

I hope that you find this information helpful!



**Laura L. Anastasio**  
**Attorney**  
Connecticut State Department of Education  
Division of Legal and Governmental Affairs  
Email: [laura.anastasio@ct.gov](mailto:laura.anastasio@ct.gov)  
Telephone: 860-713-6512  
Fax: 860-713-7004

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---

**From:** National Council of State Education Attorneys [<mailto:NCOSEA@LSV.UKY.EDU>] **On Behalf Of** Forman, Sarah Jane (EOM)  
**Sent:** Thursday, April 27, 2017 3:48 PM  
**To:** NCOSEA@LSV.UKY.EDU  
**Subject:** [NCOSEA:] Sanctuary Schools

Hey folks,

Here in DC we are putting together a program for our LEAs about the rights and protections provided to undocumented children and families in the District. Many of our LEAs and public school families are very concerned about the current climate and are seeking leadership from us on the topic. I am wondering if any other state education agencies have done something like this, and if you have if you would be willing to share the materials. Below is a link to a publication that from our Mayor's office that will serve as our starting point, but am interested in what other jurisdictions are doing to address this issue.

<https://dme.dc.gov/sites/default/files/dc/sites/dme/publication/attachments/DC%20Education%20Advice.pdf>

Thanks!

Cheers,

Sarah Jane

Sarah Jane Forman  
General Counsel  
Office of the State Superintendent of Education  
810 First Street, NE  
Washington, DC 20002  
(202) 727-0382 Office  
(202) 320-4950 Mobile  
[Sarahjane.forman@dc.gov](mailto:Sarahjane.forman@dc.gov)

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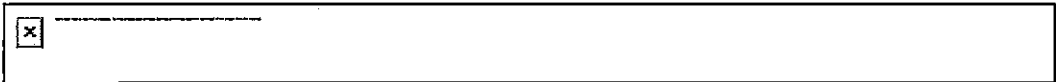
**Gavin, Meghan [AG]**

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**From:** Baker Donelson <bakerdonelson@bakerdonelson.com>  
**Sent:** Monday, February 20, 2017 11:14 AM  
**To:** Gavin, Meghan [AG]  
**Subject:** Sanctuary Jurisdiction Policy Could Impact Disaster Recovery

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February 20, 2017

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## Sanctuary Jurisdiction Policy Could Impact Disaster Recovery

By Ernest B. Abbott and Wendy Huff Ellard

On January 25, 2017, President Trump issued Executive Order 13768, "Enhancing Public Safety in the Interior of the United States." The full implications of this broadly written Executive Order are not yet known; however, it could have unanticipated consequences on how states, local governmental entities and agencies, and even some private non-profit entities respond to, and recover from, natural disasters.

The stated purpose of Executive Order 13768 is to "direct executive departments and agencies to employ all lawful means to enforce the immigration laws of the United States." Among other things, it specifically states that any state, or any political subdivision of a state, that willfully refuses to comply – a "Sanctuary Jurisdiction" – will not be eligible to receive federal grants, except as deemed necessary for law enforcement purposes by the Attorney General or the Secretary of Homeland Security. The Order directs the Secretary, "in his discretion and to the extent consistent with



law," to designate Sanctuary Jurisdictions. But it is not yet clear what is intended by the Executive Order, how broadly it may be applied or how the "law enforcement" exception may be interpreted.

When a large disaster overwhelms the resources of a state and the impacted local governments, the governor of the impacted state must request that the president declare an emergency or major disaster in order to receive FEMA disaster assistance. FEMA reviews the governor's request and transmits it to the president with a recommendation, but, ultimately, whether a state receives an approved declaration is wholly within the discretion of the president. Further, even when a declaration is approved, FEMA's decision to provide funding to any specific applicant for disaster assistance – local governments, state agencies, non-profit entities and even individuals – is discretionary. The statute and regulations say that FEMA "may," but is not required to, provide supplemental federal grant assistance reimbursing disaster expenses such as debris removal; life-saving emergency protective measures; the repair, replacement or restoration of disaster-damaged facilities; and associated hazard mitigation measures.

Given this legal framework, the Executive Order signals that the President may decide not to declare disasters in states that the Secretary designates as Sanctuary Jurisdictions. Further, FEMA decisions to obligate funding reimbursing eligible disaster expenses of any designated Sanctuary Jurisdiction may be subject to the Executive Order – even for disasters declared years ago. FEMA grants are technically made to state governments managing subgrants to local and non-profit grant recipients, so the prohibition could extend to private non-profit entities that are eligible for federal disaster grants (including electric cooperatives, hospitals and other entities that provide essential services) when located in a state designated a Sanctuary Jurisdiction. Indeed, the prohibition regarding federal grants in designated jurisdictions could conceivably impact disaster funding that has been approved and obligated but not yet paid, or even affect FEMA's ability to obligate additional funds to reimburse actual costs which have exceeded initial obligated grant funds based on cost estimates.

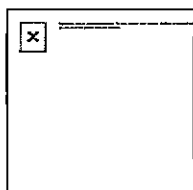
It is not yet clear how the Secretary of Homeland Security will define Sanctuary Jurisdictions, and how FEMA might apply the Executive Order in approving new funding for pending projects. Thus, predicting the full impact of this Executive Order on disaster assistance is still speculative.

Any entity potentially impacted should watch these developments very closely.

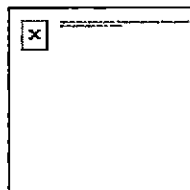
If you have questions about the specific items covered by this alert, or would like to discuss FEMA's disaster assistance programs generally, please contact [Ernest B. Abbott](#), [Wendy Huff Ellard](#) or any of the members of our [Disaster Recovery and Government Services Team](#).

---

## About the Authors



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## Gavin, Meghan [AG]

---

**From:** Carl Olsen <carl-olsen@mchsi.com>  
**Sent:** Thursday, May 04, 2017 6:23 AM  
**To:** Funk, Andrew [IBPE]; Gavin, Meghan [AG]  
**Subject:** SF 524

Hi Andrew and Meghan,

The language I asked the board to review on March 8, 2017, in SF 282, is now included in HF 524 which was passed in both chambers of the legislature on April 22, 2017, and awaiting the governor's signature. See Section 1 of the bill, on pages 1 and 2.

The purpose of my request on March 8 was to ask the board to lobby against the bill. Your response was that the board could look at the language if it became law. You said it appeared to be redundant.

I really don't have much interest in redundant language other than preventing two paragraphs that are redundant from being added to the Iowa Code which has enough pages already.

I am still curious and you told me the board could look at it later if I asked. I'd like the board to look at it and explain whether it creates any new duties for the board, or whether it is redundant.

Here are a couple of questions.

1. Can the board permanently reschedule a substance, or is the board limited to making recommendations to the legislature?

Paragraph 1 of Section 1 says:

If a cannabidiol investigational product approved as a prescription drug medication by the United States food and drug administration is eliminated from or revised in the federal schedule of controlled substances by the federal drug enforcement agency and notice of the elimination or revision is given to the board, the board shall similarly eliminate or revise the prescription drug medication in the schedule of controlled substances under this chapter. Such action by the board shall be immediately effective upon the date of publication of the final regulation containing the elimination or revision in the federal register.

2. Doesn't the board already have rules for each of the schedules of controlled substances?

Paragraph 2 of Section 1 says:

The board shall adopt rules pursuant to chapter 17A to administer this section. The board may adopt rules on an emergency basis as provided in section 17A.4, subsection 3, and section 17A.5, subsection 2, to administer this section, and the rules shall be effective immediately upon filing unless a later date is specified in the rules. Any emergency rules adopted in accordance with this section shall also be published as a notice of intended action as provided in section 17A.4, subsection 1.

Thank you!

Carl Olsen  
130 E Aurora Ave

Des Moines, Iowa 50313-3654

T 515-343-9933

F 641-316-7358

[carl-olsen@mchsi.com](mailto:carl-olsen@mchsi.com)

<http://carl-olsen.com/>

<http://iowamedicalmarijuana.org/>

## Gavin, Meghan [AG]

---

**From:** carl-olsen@mchsi.com  
**Sent:** Thursday, May 04, 2017 10:43 AM  
**To:** Gavin, Meghan [AG]  
**Cc:** Funk, Andrew [IBPE]  
**Subject:** Re: SF 524

Or, it could be Tuesday or Wednesday, but I assume you'll be busy those two days.

Carl Olsen  
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F 641-316-7358  
carl-olsen@mchsi.com  
<http://carl-olsen.com/>  
<http://iowamedicalmarijuana.org/>

---

**From:** carl-olsen@mchsi.com  
**To:** "Meghan Gavin [AG]" <Meghan.Gavin@iowa.gov>  
**Cc:** "Andrew Funk [IBPE]" <Andrew.Funk@iowa.gov>  
**Sent:** Thursday, May 4, 2017 10:41:56 AM  
**Subject:** Re: SF 524

Hi Meghan,

I'm not in a big hurry. I figured it was too late to put this on the agenda for the meeting next week, since I see the agenda is already printed.

I think meeting with staff is a good idea. Maybe that will resolve any questions I have and a formal discussion by the board won't be necessary.

If we could set up a meeting next week sometime, that would be great. Monday? Thursday? Friday?

Carl Olsen  
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F 641-316-7358  
carl-olsen@mchsi.com  
<http://carl-olsen.com/>  
<http://iowamedicalmarijuana.org/>

**From:** "Meghan Gavin [AG]" <Meghan.Gavin@iowa.gov>  
**To:** "Carl Olsen" <carl-olsen@mchsi.com>, "Andrew Funk [IBPE]" <Andrew.Funk@iowa.gov>  
**Sent:** Thursday, May 4, 2017 9:59:07 AM  
**Subject:** RE: SF 524

Carl,

Good morning. The Board and Board staff are preparing for its meeting next week. It is too late to add additional items (absent an emergency) to the agenda.

Can I get a better idea of what you are requesting? Is this something that we can meet to discuss with staff or are you looking for a more formal discussion?

Thanks,  
Meghan

---

**From:** Carl Olsen [carl-olsen@mchsi.com]  
**Sent:** Thursday, May 04, 2017 6:23 AM  
**To:** Funk, Andrew [IBPE]; Gavin, Meghan [AG]  
**Subject:** SF 524

Hi Andrew and Meghan,

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Thank you!

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<http://carl-olsen.com/>  
<http://iowamedicalmarijuana.org/>

## Gavin, Meghan [AG]

---

**From:** carl-olsen@mchsi.com  
**Sent:** Thursday, May 04, 2017 10:42 AM  
**To:** Gavin, Meghan [AG]  
**Cc:** Funk, Andrew [IBPE]  
**Subject:** Re: SF 524

Hi Meghan,

I'm not in a big hurry. I figured it was too late to put this on the agenda for the meeting next week, since I see the agenda is already printed.

I think meeting with staff is a good idea. Maybe that will resolve any questions I have and a formal discussion by the board won't be necessary.

If we could set up a meeting next week sometime, that would be great. Monday? Thursday? Friday?

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---

**From:** "Meghan Gavin [AG]" <Meghan.Gavin@iowa.gov>  
**To:** "Carl Olsen" <carl-olsen@mchsi.com>, "Andrew Funk [IBPE]" <Andrew.Funk@iowa.gov>  
**Sent:** Thursday, May 4, 2017 9:59:07 AM  
**Subject:** RE: SF 524

Carl,

Good morning. The Board and Board staff are preparing for its meeting next week. It is too late to add additional items (absent an emergency) to the agenda.

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Thanks,  
Meghan

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From: Carl Olsen [carl-olsen@mchsi.com]  
Sent: Thursday, May 04, 2017 6:23 AM  
To: Funk, Andrew [IBPE]; Gavin, Meghan [AG]  
Subject: SF 524

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Thank you!

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<http://carl-olsen.com/>  
<http://iowamedicalmarijuana.org/>

## **Gavin, Meghan [AG]**

---

**From:** Epps, Tracey <tracey.epps@iowa.gov>  
**Sent:** Monday, April 10, 2017 2:04 PM  
**To:** Broughton, Adam [DNR]; Bob George; Jones53Cnty [HSEMD County]; Chen, Angela [HSEMD]; Bacon, Elonda [DNR]; Gastineau, Janet [DNR]; Gavin, Meghan [AG]; Quigle, Jeffrey [DPS]; Julie Waltz; Sharp, Ken [IDPH]; Krystal Stotts; Sexton, Lisa [HSEMD]; Mullen, Joseph [IWD]; Overton, Cord [IGOV]; Pruisner, Robin [IDALS]; Ron Burchette; Jacobus, Todd [IANG]  
**Subject:** Fwd: PR on IERC

FYI -  
Please see the highlighted information below (SF 351).

I will get back in contact with everyone about the June 22 conference call (final) meeting approximately 2 week prior to that date with the conference call number and time.

Thank you!  
Tracey

----- Forwarded message -----

**From:** **Benson, John** <[john.benson@iowa.gov](mailto:john.benson@iowa.gov)>  
**Date:** Mon, Apr 10, 2017 at 1:58 PM  
**Subject:** PR on IERC  
**To:** "Epps, Tracey" <[tracey.epps@iowa.gov](mailto:tracey.epps@iowa.gov)>

## **OFFICE OF THE GOVERNOR**

**Governor Terry E. Branstad ★ Lt. Governor Kim Reynolds**

FOR IMMEDIATE RELEASE: Friday, April 7, 2017  
Contact: Governor's Office, 515-281-5211

### **Gov. Branstad signs 8 bills into law**

(DES MOINES) – Gov. Terry Branstad today signed the following 8 bills into law:

House File 464: an Act relating to the crossing of highways by all-terrain vehicles and off-road utility vehicles, and making a penalty applicable.

The bill passed the Iowa House on March 13, 96-0 and the Iowa Senate on March 29, 49-0.

House File 586: an Act relating to financial matters, including mechanic's liens, and the Iowa Finance Authority by establishing a rent subsidy program, modifying shelter assistance fund grant award requirements, and revising filing requirements for certain bonds and notes issued by the authority.

The bill passed the Iowa House on March 22, 99-0 and the Iowa Senate on March 30, 47-0.

House File 593: an Act authorizing mental health professionals to perform certain functions relating to persons with substance-related disorders and persons with mental illness.

The bill passed the Iowa House on March 22, 99-0 and the Iowa Senate on March 29, 49-0.

Senate File 332: an Act making changes to the controlled substance schedules, and providing penalties, and including effective date provisions.

The bill passed the Iowa Senate on March 13, 49-0 and the Iowa House on March 30, 98-0.

Senate File 351: an Act providing for the elimination of the Iowa Emergency Response Commission.

The bill passed the Iowa Senate on March 1, 50-0 and the Iowa House on March 30, 97-0.

Senate File 405: an Act relating to statutory corrections which may adjust language to reflect current practices, insert earlier omissions, delete redundancies and inaccuracies, delete temporary language, resolve inconsistencies and conflicts, update ongoing provisions, or remove ambiguities, and including effective date provisions.

The bill passed the Iowa Senate on March 15, 49-0 and the Iowa House on March 22, 99-0.

Senate File 410: an Act relating to a declaration concerning the final disposition of a person's remains and including applicability provisions.

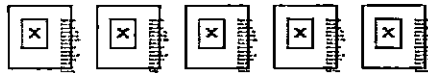
The bill passed the Iowa Senate on March 9, 48-0 and the Iowa House on March 30, 98-0.

Senate File 448: an Act relating to insurers in possession of salvage motor vehicles.

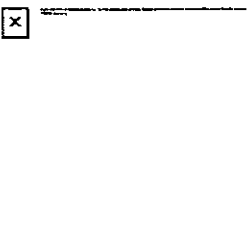
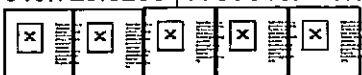
The bill passed the Iowa Senate on March 21, 49-0 and the Iowa House on March 28, 96-0.

###

Stay Connected with the Office of the Governor of Iowa:



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	<p><b>John R. Benson   Communications Bureau Chief</b> <b>Iowa Department of Homeland Security &amp; Emergency Management</b> 7900 Hickman Rd., Suite 500   Windsor Heights, Iowa 50324 515.725.3208   FAX 515.725.3260   <a href="http://www.homelandsecurity.iowa.gov">www.homelandsecurity.iowa.gov</a></p> 
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Tracey Epps  
Iowa Department of Homeland Security and Emergency Management  
Operations Division | Planning, Training and Exercise Bureau  
Joint Forces Headquarters | 6100 NW 78th Ave | Johnston, IA 50131  
Office: 515-725-3297 | Fax: 515-323-4319

Mailing address:

7900 Hickman Rd., Suite 500  
Windsor Heights, IA 50324

## Gavin, Meghan [AG]

---

**From:** Epps, Tracey <tracey.epps@iowa.gov>  
**Sent:** Wednesday, April 05, 2017 9:39 AM  
**To:** Broughton, Adam [DNR]; Bob George; Jones53Cnty [HSEMD County]; Chen, Angela [HSEMD]; Bacon, Elonda [DNR]; Gastineau, Janet [DNR]; Gavin, Meghan [AG]; Quigle, Jeffrey [DPS]; Julie Waltz; Sharp, Ken [IDPH]; Krystal Stotts; Sexton, Lisa [HSEMD]; Mullen, Joseph [IWD]; Overton, Cord [IGOV]; Pruisner, Robin [IDALS]; Ron Burchette; Jacobus, Todd [IANG]  
**Subject:** IERC Meeting

Good morning everyone,

First, to update everyone, the IERC bill passed both the House and Senate and is now on the Governor's desk for signature. Assuming he will sign it, the IERC will be dissolved effective July 1.

That being said, we need to have one final IERC meeting to vote, at a minimum, on the HMEP grant and the LEPC memberships. Lisa Sexton has yet to receive the grant guidance, however, has been told the grant application will be due by June 30. It is Lisa's recommendation we wait until June to convene for the grant vote.

I've spoken to Julie Waltz and decided to have this final meeting via conference call rather than face-to-face. I am recommending we schedule the conference call "meeting" for June 22.

I will email the necessary documents as well and the conference line number/PIN as the June date approaches.

If you have any questions, please don't hesitate to contact me.

Thank you.  
Tracey

--

Tracey Epps  
Iowa Department of Homeland Security and Emergency Management  
Operations Division | Planning, Training and Exercise Bureau  
Joint Forces Headquarters | 6100 NW 78th Ave | Johnston, IA 50131  
Office: 515-725-3297 | Fax: 515-323-4319

Mailing address:  
7900 Hickman Rd., Suite 500  
Windsor Heights, IA 50324

## Gavin, Meghan [AG]

---

**From:** Epps, Tracey <tracey.epps@iowa.gov>  
**Sent:** Tuesday, February 14, 2017 9:22 AM  
**To:** Broughton, Adam [DNR]; Bob George; Jones53Cnty [HSEMD County]; Chen, Angela [HSEMD]; Bacon, Elonda [DNR]; Gastineau, Janet [DNR]; Gavin, Meghan [AG]; Quigle, Jeffrey [DPS]; Julie Waltz; Sharp, Ken [IDPH]; Krystal Stotts; Sexton, Lisa [HSEMD]; Mullen, Joseph [IWD]; Overton, Cord [IGOV]; Pruisner, Robin [IDALS]; Ron Burchette; Jacobus, Todd [IANG]  
**Cc:** Benson, John [HSEMD]; Flinn, Joyce [HSEMD]  
**Subject:** IERC Legislation

Good morning,

Our Department (HSEMD) recently introduced Senate Study Bill 1081. This bill seeks to transfer the duties presently conducted by the Commission to HSEMD. You can find the bill on the Legislature's website, <https://www.legis.iowa.gov/legislation/BillBook?ga=87&ba=ssb1081>

Presently HSEMD does most of the work associated with the Commission's duties as defined in United States Code Title 42, Chapter 116, Emergency Planning and Community Right to Know (EPCRA). This includes development, approval, and administration of the HMEP grant dealing with hazardous material emergency preparedness.

Chapter 116 lays out the responsibilities at the state and local levels with regard to hazardous materials governance and training. One of the duties at the state level is the establishment of the state emergency response commission. Per the federal law "*the Governor of each state shall appoint a State emergency response commission. The Governor may designate as the State emergency response commission one or more existing emergency response organizations that are State-sponsored or appointed.*" This proposed action would be in accordance with EPCRA.

We are seeing a trend with states assuming the commission's duties where the commission has matured and now has limited function and a partner agency is doing most of the work for the commission. Minnesota and Oregon have recently undertaken such an action with success. HSEMD feels that by having HSEMD officially assume these duties the function will become more efficient while reducing the overall size of state government.

This proposal would not alter the responsibilities of the Department of Natural Resources or the local emergency planning committees under this chapter.

If you have any questions, please feel free to contact me.



Tracey

--

Tracey Epps

Iowa Department of Homeland Security and Emergency Management

Operations Division | Planning, Training and Exercise Bureau

Joint Forces Headquarters | 6100 NW 78th Ave | Johnston, IA 50131

Office: 515-725-3297 | Fax: 515-323-4319

## Gavin, Meghan [AG]

---

**From:** Esbrook, Jordan [AG]  
**Sent:** Tuesday, January 31, 2017 8:13 AM  
**To:** Gavin, Meghan [AG]  
**Subject:** FW: Gov. Branstad hires Ommen as insurance commissioner

Pam is still looking out for us in retirement!

Jordan Esbrook  
Assistant Attorney General  
Office of the Attorney General of Iowa  
1305 E. Walnut St.  
Des Moines, Iowa 50319  
Main: (515) 281-5164 | Direct: (515) 281-8159  
Email: Jordan.esbrook@iowa.gov | www.iowaattorneygeneral.gov

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From: Pam [pamgriebel@aol.com]  
Sent: Monday, January 30, 2017 5:17 PM  
To: Esbrook, Jordan [AG]  
Subject: Gov. Branstad hires Ommen as insurance commissioner

A refresher on separating functions might be well-timed. . . .

Check out this article from Des Moines Register:

Gov. Branstad hires Ommen as insurance commissioner

<http://dmreg.co/2iq7DjJ>

Sent from my iPad

## Gavin, Meghan [AG]

---

**From:** National Council of State Education Attorneys <NCOSEA@LSV.UKY.EDU> on behalf of Forster, Sarah <Sarah.Forster@MAINE.GOV>  
**Sent:** Friday, March 10, 2017 7:48 AM  
**To:** NCOSEA@LSV.UKY.EDU  
**Subject:** [NCOSEA:] Interesting update on ESSA

My client got this information from the USDE about the requirements that are no longer in effect. Thought it might be of interest . . .

**From:** OESE.OSS.Maine [<mailto:OSS.Maine@ed.gov>]  
**Sent:** Thursday, March 09, 2017 4:13 PM  
**To:** Tome, Rachelle  
**Cc:** Nunez, Mario  
**Subject:** Your question about State plans for ESSA

Hello Rachelle,

It was nice to talk with you and Charlene yesterday. This e-mail is to reply to the pending question we have from you about State plans for ESSA. You had noted that the Feb. 10, 2017 e-mail from Secretary DeVos to chief state school officers indicates that the Department will develop a revised template for consolidated State plans that meets the “absolutely necessary” requirement by March 13, 2017 and that the Department will still accept consolidated State plans on April 3 or September 18, 2017. And, based on this, you had asked, how should a State, such as Maine, that has been working to submit its consolidated State plan on for the April 3, 2017 due date meet the 30 day public comment period requirement for a consolidated State plan if a revised template for such a plan is not available more than 30 days in advance of April 3, 2017?

In order to ensure that an SEA submits a high quality consolidated State plan that meets the needs of all students in the State, the Department encourages, but no longer requires absent the regulations, each SEA to timely and meaningfully consult with a variety of stakeholders consistent with the individual consultation requirements for each program included in its consolidated State plan.

However, under ESEA section 8540, each SEA must consult in a timely and meaningful manner with the Governor, or appropriate officials from the Governor’s office, including during the development and prior to submission of its consolidated State plan to the Department. Each SEA must provide its Governor up to 30 days to sign the consolidated State plan before submitting it to the Secretary. If an SEA consulted with the Governor on the previous consolidated State plan template based on the regulations, an SEA may not rely on that consultation. Under ESEA section 8540, each SEA must ensure that it consults with the Governor in a timely and meaningful manner on its consolidated State plan that meets the revised requirements.

We hope this helps. And, of course, if you need anything more or think it would be helpful to talk further, please just let us know.

Best,  
Collette and Mario

*Collette Roney  
Office of State Support  
Office of Elementary and Secondary Education  
U.S. Department of Education*

400 Maryland Ave. SW, Rm. 3E120  
Washington, DC 20202-6132  
Phone: (202) 401-5245  
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Sarah A. Forster  
Assistant Attorney General  
Office of the Attorney General  
6 State House Station  
Augusta, ME 04333-0006  
207-626-8866 (v)  
207-287-3145 (f)

## Gavin, Meghan [AG]

---

**From:** Funk, Andrew <andrew.funk@iowa.gov>  
**Sent:** Tuesday, January 03, 2017 12:15 PM  
**To:** Steffensmeier, Laura [AG]  
**Cc:** Gavin, Meghan [AG]  
**Subject:** Re: FYI-Kay Jessen

Thanks, Laura. I sent Tracie an email last week asking her to update it to state two days every other month, not two hours.

On Tue, Jan 3, 2017 at 11:37 AM, Steffensmeier, Laura [AG] <[Laura.Steffensmeier@iowa.gov](mailto:Laura.Steffensmeier@iowa.gov)> wrote:

Thanks for letting us know. I'm not shocked. Perhaps the information regarding time commitment could be updated on the Governor's website as they seek to find someone new.



### Laura Steffensmeier

#### Assistant Attorney General

Office of the Attorney General of Iowa

1305 E. Walnut St.

Des Moines, IA 50319

Main: (515) 281-5164 | Direct: (515) 281-6690

Email: [Laura.Steffensmeier@iowa.gov](mailto:Laura.Steffensmeier@iowa.gov) | [www.iowaattorneygeneral.gov](http://www.iowaattorneygeneral.gov)

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**From:** Funk, Andrew [<mailto:andrew.funk@iowa.gov>]  
**Sent:** Tuesday, January 03, 2017 11:05 AM  
**To:** Gavin, Meghan [AG]; Steffensmeier, Laura [AG]  
**Subject:** FYI-Kay Jessen

Happy New Year!

Kay Jessen submitted her resignation to me this morning. From her email, it appears as though she will not be finishing out the year.

--

Andrew Funk, Pharm.D.  
Executive Director  
Iowa Board of Pharmacy  
RiverPoint Business Park  
400 SW 8th Street, Suite E  
Des Moines, Iowa 50309-4688  
515.281.5944 Main Line  
[andrew.funk@iowa.gov](mailto:andrew.funk@iowa.gov)

---

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--

Andrew Funk, Pharm.D.  
Executive Director  
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## Gavin, Meghan [AG]

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**From:** Gavin, Meghan [AG]  
**Sent:** Thursday, May 04, 2017 9:59 AM  
**To:** Carl Olsen; Funk, Andrew [IBPE]  
**Subject:** RE: SF 524

Carl,

Good morning. The Board and Board staff are preparing for its meeting next week. It is too late to add additional items (absent an emergency) to the agenda.

Can I get a better idea of what you are requesting? Is this something that we can meet to discuss with staff or are you looking for a more formal discussion?

Thanks,  
Meghan

---

**From:** Carl Olsen [carl-olsen@mchsi.com]  
**Sent:** Thursday, May 04, 2017 6:23 AM  
**To:** Funk, Andrew [IBPE]; Gavin, Meghan [AG]  
**Subject:** SF 524

Hi Andrew and Meghan,

The language I asked the board to review on March 8, 2017, in SF 282, is now included in HF 524 which was passed in both chambers of the legislature on April 22, 2017, and awaiting the governor's signature. See Section 1 of the bill, on pages 1 and 2.

The purpose of my request on March 8 was to ask the board to lobby against the bill. Your response was that the board could look at the language if it became law. You said it appeared to be redundant.

I really don't have much interest in redundant language other than preventing two paragraphs that are redundant from being added to the Iowa Code which has enough pages already.

I am still curious and you told me the board could look at it later if I asked. I'd like the board to look at it and explain whether it creates any new duties for the board, or whether it is redundant.

Here are a couple of questions.

1. Can the board permanently reschedule a substance, or is the board limited to making recommendations to the legislature?

Paragraph 1 of Section 1 says:

If a cannabidiol investigational product approved as a prescription drug medication by the United States food and drug administration is eliminated from or revised in the federal schedule of controlled substances by the federal drug enforcement agency and notice of the elimination or revision is given to the board, the board shall similarly eliminate or revise the prescription drug medication in the schedule of controlled substances under this chapter. Such action by the board shall be immediately effective upon the date of publication of the final regulation containing the elimination or revision in the federal register.

2. Doesn't the board already have rules for each of the schedules of controlled substances?

Paragraph 2 of Section 1 says:

The board shall adopt rules pursuant to chapter 17A to administer this section. The board may adopt rules on an emergency basis as provided in section 17A.4, subsection 3, and section 17A.5, subsection 2, to administer this section, and the rules shall be effective immediately upon filing unless a later date is specified in the rules. Any emergency rules adopted in accordance with this section shall also be published as a notice of intended action as provided in section 17A.4, subsection 1.

Thank you!

Carl Olsen  
130 E Aurora Ave  
Des Moines, Iowa 50313-3654  
T 515-343-9933  
F 641-316-7358  
[carl-olsen@mchsi.com](mailto:carl-olsen@mchsi.com)  
<http://carl-olsen.com/>  
<http://iowamedicalmarijuana.org/>



## Gavin, Meghan [AG]

---

**From:** Gavin, Meghan [AG]  
**Sent:** Tuesday, May 02, 2017 8:50 AM  
**To:** White, Cathleen [AG]  
**Subject:** RE: Lt. Governor / Attorney General situation

The opinion specifically addresses the issue he is talking about. I think we can just provide him with the opinion and point him to pages 11-15.

---

**From:** White, Cathleen [AG] On Behalf Of AG Webteam [AG]  
**Sent:** Tuesday, May 02, 2017 8:30 AM  
**To:** Gavin, Meghan [AG]  
**Subject:** FW: Lt. Governor / Attorney General situation

Meghan, can you help with a response to Mr. Bowman?

**From:** Beau Bowman [mailto:beaubowman13@gmail.com]  
**Sent:** Monday, May 01, 2017 2:43 PM  
**To:** AG Webteam [AG]  
**Subject:** Lt. Governor / Attorney General situation

Hi there,

My name is Beau Bowman and I have a question about the recent release by the attorney general concerning the Lt. Governor's new title and power to appoint a new Lt. Governor.

I agree with the Attorney General that Lt. Governor Kim Reynolds should not be able to appoint a new Lt. Governor.

What I do not agree with is her title "Governor Reynolds."

The Iowa Constitution (Article IV sec. 17) states: "In case of the death, impeachment, **resignation**, removal from office, or other disability of the governor, the powers and duties of the office for the residue of the term, or until he shall be acquitted, or the disability removed, **shall devolve upon the lieutenant governor.**"

The legal definition of the word devolve is: "when property is automatically transferred from one party to another"

No where in the constitution does it say that Reynolds would become the Governor, but only take on the responsibility of Governor for the remainder of the term.

Therefore, Reynolds' title should stay as Lt. Governor. She should not be able to appoint a new Lt. Governor because there is no vacancy in that office.

My email and phone number are listed at the bottom of this email. Thank you for hearing me out.

--

**Beau Bowman**

beaubowman13@gmail.com | (563) 370-4818

## Gavin, Meghan [AG]

---

**From:** Gavin, Meghan [AG]  
**Sent:** Monday, May 01, 2017 10:35 AM  
**To:** Ranscht, David [AG]  
**Subject:** FW: Miller to Release, Discuss AG Opinion on Gubernatorial Succession

---

**From:** Greenwood, Geoff [AG]  
**Sent:** Monday, May 01, 2017 10:02 AM  
**Subject:** Miller to Release, Discuss AG Opinion on Gubernatorial Succession

**IOWA DEPARTMENT OF JUSTICE  
OFFICE OF THE ATTORNEY GENERAL  
Thomas J. Miller, Attorney General  
[www.iowaattorneygeneral.gov](http://www.iowaattorneygeneral.gov)**

CONTACT: Geoff Greenwood • Communications Director • 515-281-6699 • [geoff.greenwood@iowa.gov](mailto:geoff.greenwood@iowa.gov)

FOR IMMEDIATE RELEASE  
May 1, 2017

### Media Advisory

## Miller to Release, Discuss AG Opinion on Gubernatorial Succession

*Formal attorney general legal opinion addresses whether lieutenant governor becomes governor, authority to appoint new lieutenant governor*

(DES MOINES, Iowa) Attorney General Tom Miller today will release a formal attorney general opinion, in response to a request by Sen. David Johnson, I-Ocheyedan, regarding gubernatorial succession.

**WHAT:** News conference

**WHO:** Attorney General Tom Miller

**WHERE:** Attorney General's Office, Hoover Building, Second Floor

**DATE:** TODAY – May 1, 2017

**TIME:** 1:30 p.m.

**CALL IN #:** 866-685-1580, conference code 515 281 4213 (\*6 to mute, #6 to unmute)

**NOTE:** The news conference will be streamed live at [youtube.com/agiowa](http://youtube.com/agiowa).

Raw HD video will be made available upon request. Send request to:  
[geoff.greenwood@iowa.gov](mailto:geoff.greenwood@iowa.gov).

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## Gavin, Meghan [AG]

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**From:** Gavin, Meghan [AG]  
**Sent:** Wednesday, April 26, 2017 2:53 PM  
**To:** Cathelyn, Laura [AG]  
**Subject:** FW: HF 524 should be reviewed by Tom Miller before Gov. Branstad signs it into law

Here is Carl's inquiry on the CBD bill. You should also check on the comments on Reka's editorial today. Its the usual suspects.

---

**From:** Tabor, Eric [AG]  
**Sent:** Tuesday, April 25, 2017 11:38 AM  
**To:** Adams, Heather [AG]; Gavin, Meghan [AG]  
**Cc:** Thompson, Jeffrey [AG]  
**Subject:** FW: HF 524 should be reviewed by Tom Miller before Gov. Branstad signs it into law

Once we have time to digest the bill, let's discuss. Thanks. Eric



**Eric Tabor**  
**Chief Deputy Attorney General**  
Office of the Attorney General of Iowa  
1305 E. Walnut St.  
Des Moines, Iowa 50319  
Main: (515) 281-5164 | Direct: (515) 281-5191  
Email: [Eric.Tabor@iowa.gov](mailto:Eric.Tabor@iowa.gov) | [www.iowaattorneygeneral.gov](http://www.iowaattorneygeneral.gov)

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**From:** Johansen, Eric [LEGIS] [<mailto:Eric.Johansen@legis.iowa.gov>]  
**Sent:** Tuesday, April 25, 2017 9:49 AM  
**To:** Tabor, Eric [AG]  
**Cc:** Schneider, Charles [LEGIS]; Dix, Bill [LEGIS]  
**Subject:** FW: HF 524 should be reviewed by Tom Miller before Gov. Branstad signs it into law

Eric,

Senator Schneider has asked that I pass along a request for comment from the Attorney General regarding HF 524 (medicinal cannabis). Could you please provide us an opinion regarding the legality of Iowa establishing the program outlined in HF 524?

Thanks,  
Eric

--  
Eric Johansen  
Staff Director  
Senate Republican Caucus Staff  
(515) 313-8538 : Cell  
(515) 281-3979 : Office

---

**From:** Schneider, Charles [LEGIS]  
**Sent:** Tuesday, April 25, 2017 9:42 AM  
**To:** Johansen, Eric [LEGIS]  
**Subject:** FW: HF 524 should be reviewed by Tom Miller before Gov. Branstad signs it into law

Hi Eric,

Would you please pass this along to Attorney General Miller's office for comment?

Thanks!

Charles Schneider  
State Senator

----- Original Message -----

Subject: HF 524 should be reviewed by Tom Miller before Gov. Branstad signs it into law  
Sent: Apr 25, 2017 5:56 AM  
From: Carl Olsen <[carl@carl-olsen.com](mailto:carl@carl-olsen.com)>  
To: "Schneider, Charles [LEGIS]" <[Charles.Schneider@legis.iowa.gov](mailto:Charles.Schneider@legis.iowa.gov)>, Charles Schneider  
<[charlesmschneider@gmail.com](mailto:charlesmschneider@gmail.com)>  
Cc:

130 E. Aurora Ave.  
Des Moines, Iowa 50313-3654  
April 25, 2017

Charles Schneider  
7887 Cody Dr  
West Des Moines, IA 50266

Re: HF 524 (medical use of cannabis)

Dear Senator Schneider,

HF 524 appears to set up a continuing criminal enterprise here in Iowa, in violation of federal law, 21 U.S.C. § 848 (2017). Anyone participating in the program would be in violation of federal law, 21 U.S.C. § 844 (2017). Anyone manufacturing or distributing cannabis products would be committing federal crimes carrying penalties of 10 years to life in federal prison and a fine of \$10 to \$50 million, 21 U.S.C. § 841 (2017). Penalties can double for conspiracy to commit any of these acts, 21 U.S.C. § 846 (2017). Because HF 524 authorizes the cultivation, manufacture, and distribution, and possession of cannabis products in the state of Iowa without explaining how any of it would be in compliance with federal law, HF 524 creates a positive

conflict between federal and state law so that the two cannot consistently stand together, 21 U.S.C. § 903 (2017).

Please request an opinion from the Attorney General of Iowa, Tom Miller, on the legality of HF 524 before Governor Branstad signs HF 524 into law.

Current federal law can be found at 21 U.S.C. §§ 801 et seq., Pub. L. 91–513, Oct. 27, 1970, 84 Stat. 1236 (“Controlled Substances Act”).

In my opinion, federal schedules of controlled substances are ordinary administrative regulations and cannot be used to interfere with state medical marijuana programs, but HF 524 does not address this matter.

**Alliance for Cannabis Therapeutics v. DEA, 930 F.2d 936, 939 (D.C. Cir. 1991)** (“*neither the statute nor its legislative history precisely defines the term ‘currently accepted medical use’; therefore, we are obliged to defer to the Administrator’s interpretation of that phrase if reasonable.*”)

**Gonzales v. Oregon, 546 U.S. 243, 258 (2006)** (“*The Attorney General has rulemaking power to fulfill his duties under the CSA. The specific respects in which he is authorized to make rules, however, instruct us that he is not authorized to make a rule declaring illegitimate a medical standard for care and treatment of patients that is specifically authorized under state law.*”)

**Grinspoon v. DEA, 828 F.2d 881, 886 (1st Cir. 1987)** (“*Congress did not intend ‘accepted medical use in treatment in the United States’ to require a finding of recognized medical use in every state or, as the Administrator contends, approval for interstate marketing of the substance.*”)

I look forward to hearing from you at your earliest convenience.

Thank you very much!

Sincerely,

Carl Olsen

130 E. Aurora Ave.

Des Moines, Iowa 50313-3654

515-343-9933

[carl@carl-olsen.com](mailto:carl@carl-olsen.com)

<http://carl-olsen.com/>

<http://iowamedicalmarijuana.org/>

cc: Iowa Governor Terry Branstad  
U.S. Attorney General Jeff Sessions

## Gavin, Meghan [AG]

---

**From:** Gavin, Meghan [AG]  
**Sent:** Monday, April 03, 2017 10:37 AM  
**To:** Thompson, Jeffrey [AG]; Ranscht, David [AG]  
**Subject:** RE: Lt Gov stuff

<http://www.independentmail.com/story/news/local/2017/01/18/sc-supreme-court-ruling-may-pave-way-bryant-become-lieutenant-governor/96736648/>

---

**From:** Thompson, Jeffrey [AG]  
**Sent:** Monday, April 03, 2017 10:24 AM  
**To:** Ranscht, David [AG]; Gavin, Meghan [AG]  
**Subject:** Lt Gov stuff

South Carolina just went through the succession issues with Nicki Haley leaving. Could one of you find the S.C. constitution and any pertinent cases? Thanks.

## Gavin, Meghan [AG]

---

**From:** Gavin, Meghan [AG]  
**Sent:** Monday, April 03, 2017 10:35 AM  
**To:** Thompson, Jeffrey [AG]; Ranscht, David [AG]  
**Subject:** RE: Lt Gov stuff

South Carolina recently amended its constitution to specifically grant the governor the power to appoint a Lt governor. Currently, the law calls for a complete domino. The president pro tem of the senate was elevated to Lt. governor.

Word of caution - this is google research since I can't access westlaw on my tablet.

SECTION 11. Death, resignation, removal of Governor.

Section effective until the general election of 2018 and upon the joint election of the Governor and Lieutenant Governor. See also, section effective beginning with the general election of 2018 and upon the joint election of the Governor and Lieutenant Governor.

In the case of the removal of the Governor from office by impeachment, death, resignation, disqualification, disability, or removal from the State, the Lieutenant Governor shall be Governor. In case the Governor be impeached, the Lieutenant Governor shall act in his stead and have his powers until judgment in the case shall have been pronounced. In the case of the temporary disability of the Governor and in the event of the temporary absence of the Governor from the State, the Lieutenant Governor shall have full authority to act in an emergency. (1972 (57) 3171; 1973 (58) 48.) SECTION 11.

Death, resignation, removal of Governor, Lieutenant Governor.

Section effective beginning with the general election of 2018 and upon the joint election of the Governor and Lieutenant Governor. See also, section effective until the general election of 2018 and upon the joint election of the Governor and Lieutenant Governor.

In the case of the removal of the Governor from office by impeachment, death, resignation, disqualification, disability, or removal from the State, the Lieutenant Governor shall be Governor. In case the Governor be impeached, the Lieutenant Governor shall act in his stead and have his powers until judgment in the case shall have been pronounced. In the case of the temporary disability of the Governor and in the event of the temporary absence of the Governor from the State, the Lieutenant Governor shall have full authority to act in an emergency. In the case of the removal of the Lieutenant Governor from office by impeachment, death, resignation, disqualification, disability, or removal from the State, the Governor shall appoint, with the advice and consent of the Senate, a successor to fulfill the unexpired term.

---

**From:** Thompson, Jeffrey [AG]  
**Sent:** Monday, April 03, 2017 10:24 AM  
**To:** Ranscht, David [AG]; Gavin, Meghan [AG]  
**Subject:** Lt Gov stuff

South Carolina just went through the succession issues with Nicki Haley leaving. Could one of you find the S.C. constitution and any pertinent cases? Thanks.



## Gavin, Meghan [AG]

---

**From:** Gavin, Meghan [AG]  
**Sent:** Wednesday, March 29, 2017 12:40 PM  
**To:** Adams, Heather [AG]  
**Subject:** RE: Five travel reimbursements to attend National Cannabis Summit

Sure. I'll be back in tomorrow. Pharmacy would probably be in favor of me attending.

---

**From:** Adams, Heather [AG]  
**Sent:** Wednesday, March 29, 2017 10:59 AM  
**To:** Gavin, Meghan [AG]  
**Subject:** FW: Five travel reimbursements to attend National Cannabis Summit

Public Health is wanting to know if we would like to go to this conference – all expenses would be paid. Let's discuss, thanks.

[cid:image003.png@01D2A87B.82E27A50]<<http://www.iowaattorneygeneral.gov/>>

Heather L. Adams  
Assistant Attorney General  
Office of the Attorney General of Iowa  
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**From:** Decker, Deann [<mailto:deann.decker@idph.iowa.gov>]  
**Sent:** Wednesday, March 29, 2017 10:45 AM  
**To:** Adams, Heather [AG]  
**Subject:** Fwd: Five travel reimbursements to attend National Cannabis Summit

FYI....I forgot to ask you about this yesterday. The ATTC sent this out awhile ago. They sent a reminder yesterday and I have a call with them tomorrow. They will fund 5 people from each state.

Let me know!

Thanks

DeAnn

----- Forwarded message -----

**From:** Wrolstad, Jan L. <[WrolstadJ@umkc.edu](mailto:WrolstadJ@umkc.edu)<<mailto:WrolstadJ@umkc.edu>>>  
**Date:** Fri, Mar 3, 2017 at 4:17 PM  
**Subject:** Five travel reimbursements to attend National Cannabis Summit

To: "Kathy.Stone@idph.iowa.gov<mailto:Kathy.Stone@idph.iowa.gov>"  
<Kathy.Stone@idph.iowa.gov<mailto:Kathy.Stone@idph.iowa.gov>>, "DeAnn Decker  
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<DeAnn.Decker@idph.iowa.gov<mailto:DeAnn.Decker@idph.iowa.gov>>,  
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"todd.stull@nebraska.gov<mailto:todd.stull@nebraska.gov>"  
<todd.stull@nebraska.gov<mailto:todd.stull@nebraska.gov>>  
Cc: "Stilen, Patricia" <stilenp@umkc.edu<mailto:stilenp@umkc.edu>>, "Gotham, Heather J."  
<GothamHJ@umkc.edu<mailto:GothamHJ@umkc.edu>>, "Rockford, Deborah"  
<RockfordD@umkc.edu<mailto:RockfordD@umkc.edu>>, "Knopf-Amelung, Sarah M."  
<KnopfSM@umkc.edu<mailto:KnopfSM@umkc.edu>>, "Sherry, Bree"  
<sherryb@umkc.edu<mailto:sherryb@umkc.edu>>, "Rogers, Doris M."  
<rogersdm@umkc.edu<mailto:rogersdm@umkc.edu>>

[cid:image001.jpg@01D29431.CA8EF300]

Dear Region 7 SSAs,

Mid-America ATTC has an opportunity for you . . .

The ATTC Network, along with the National Council for Behavioral Health and Advocates for Human Potential (AHP), are sponsoring a National Cannabis Summit. The purpose of the Summit is to provide an objective national forum for changing public policy, public health, treatment and research. The Summit is scheduled for August 28-30, 2017, in Denver, Colorado.

Mid-America ATTC is offering the following . . .

Mid-America ATTC will pay for travel for a team of 5 attendees per state to attend the Summit. We hope you or someone from your office is able to attend as well as 4 other state leaders from other departments, such as public health, criminal justice, the attorney general's office, legislators, etc. We are inviting you to put together a team of 5 persons who would benefit the most from the Summit. We'll cover the registration fee of \$550 per person and flights in advance. We will reimburse for the cost of the hotel, meals at the University per diem rate, airport parking, ground transportation, etc. following the event.

There will be 4 Tracks:

- Public Health, Public Safety and Prevention
- Emerging Research and Epidemiological Data
- Regulatory Issues
- Governance, Federal Law and Emerging Policy

The summit will look at how changing cannabis policy and norms impact:

- Addictions treatment and recovery
- Public health
- Prevention programs
- Criminal justice systems
- Mental health treatment and recovery
- National, state and local policies and regulations
- Workplaces and businesses
- Harm reduction efforts

Three info flyers about the Summit are attached. The Summit website for more details is:  
<https://www.nationalcannabissummit.org/>.

Please let Pat or me know who from your office is able to attend. Also, would you be able to find 4 other state leaders in other departments or in the state legislature who are interested in attending and then get me their names and contact information?

No cannabis industry entity is part of the planning for, funding of, or presentations at this event.

I look forward to hearing from you,

Jan

Jan Wrolstad, M.Div. | Associate Director | Mid-America ATTC [wrolstadj@umkc.edu](mailto:wrolstadj@umkc.edu) |  
816-235-5056 University of Missouri-Kansas City (UMKC) School of Nursing and Health Studies Collaborative for  
Excellence in Behavioral Health Research and Practice Health Sciences Building, Rm. #2421  
2464 Charlotte  
Kansas City, MO 64108  
[www.attcnetwork.org/midamerica](http://www.attcnetwork.org/midamerica)  
[www.sonhs.umkc.edu](http://www.sonhs.umkc.edu)  
[cid:image002.jpg@01D29431.CA8EF300]

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DeAnn Decker

Bureau Chief of Substance Abuse | Iowa Department of Public Health

Division of Behavioral Health | 321 E. 12th Street | Des Moines, IA 50319

Office: 515-281-0928 | [DeAnn.Decker@idph.iowa.gov](mailto:DeAnn.Decker@idph.iowa.gov)

---

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## Gavin, Meghan [AG]

---

**From:** Gavin, Meghan [AG]  
**Sent:** Thursday, February 23, 2017 3:32 PM  
**To:** Larson, Jacob [AG]  
**Subject:** FW: Smaller, Smarter Gov't Bill  
**Attachments:** 1681XL\_1487354663286 (1).pdf

---

**From:** Adams, Heather [AG]  
**Sent:** Monday, February 20, 2017 2:43 PM  
**To:** AG Licensing  
**Cc:** Tabor, Eric [AG]  
**Subject:** FW: Smaller, Smarter Gov't Bill

Let me know if you have any reactions to share after you've read the bill, thanks!



**Heather L. Adams**  
**Assistant Attorney General**  
Office of the Attorney General of Iowa  
1305 E. Walnut St.  
Des Moines, Iowa 50319  
Main: (515) 281-5164 | Direct: (515) 281-3441  
Email: [Heather.Adams@iowa.gov](mailto:Heather.Adams@iowa.gov) | [www.iowaattorneygeneral.gov](http://www.iowaattorneygeneral.gov)

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---

**From:** Clabaugh, Gerd [<mailto:gerd.clabaugh@idph.iowa.gov>]  
**Sent:** Monday, February 20, 2017 2:35 PM  
**To:** Thompson, Deborah [IDPH]; Reisetter, Sarah [IDPH]; Sharp, Ken [IDPH]; Adams, Heather [AG]  
**Subject:** Fwd: Smaller, Smarter Gov't Bill

FYI. I don't think this has been released yet, so please don't share it further. But I would be interested in your reactions to what's being proposed. Thanks

**Gerd W. Clabaugh**

Director | Iowa Department of Public Health | 321 E. 12th Street | Lucas State Office Bldg. | Des Moines, IA 50319 |  
Office: 515-281-8474 | [gerd.clabaugh@idph.iowa.gov](mailto:gerd.clabaugh@idph.iowa.gov)

*Protecting and Improving the Health of Iowans*

----- Forwarded message -----

From: **Pottebaum, Nic** <[nic.pottebaum@iowa.gov](mailto:nic.pottebaum@iowa.gov)>  
Date: Mon, Feb 20, 2017 at 2:11 PM  
Subject: Fwd: Smaller, Smarter Gov't Bill  
To: Gerd Clabaugh <[gerd.clabaugh@idph.iowa.gov](mailto:gerd.clabaugh@idph.iowa.gov)>

----- Forwarded message -----

From: **Pottebaum, Nic** <[nic.pottebaum@iowa.gov](mailto:nic.pottebaum@iowa.gov)>  
Date: Mon, Feb 20, 2017 at 2:09 PM  
Subject: Smaller, Smarter Gov't Bill  
To: Deborah Thompson <[deborah.thompson@idph.iowa.gov](mailto:deborah.thompson@idph.iowa.gov)>

See attachment.

--

**Nicholas Pottebaum** | Policy Advisor  
Office of the Governor, State of Iowa  
Gov. Terry Branstad & Lt. Gov. Kim Reynolds  
515.725.3505 | [Nic.Pottebaum@iowa.gov](mailto:Nic.Pottebaum@iowa.gov)  
[www.governor.iowa.gov](http://www.governor.iowa.gov)  
[www.ltgovernor.iowa.gov](http://www.ltgovernor.iowa.gov)

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## Gavin, Meghan [AG]

---

**From:** Gavin, Meghan [AG]  
**Sent:** Wednesday, February 15, 2017 1:34 PM  
**To:** Thompson, Jeffrey [AG]; Ranscht, David [AG]  
**Subject:** Arkansas, Oklahoma, and Oregon

You asked me to look into whether the new governor appointed a lieutenant governor after the court concluded that the Lt. governor “became” governor.

Short answer – No for each state.

Arkansas – Arkansas held a special election to fill the position of Lt. governor after the Lt. governor became governor following the election of President Clinton. Mike Huckabee won that special election. However, Arkansas is like Iowa pre-1988, where the Lt. governor is elected separately from the governor.

Oklahoma – After the court in Oklahoma determined that the Lt governor became governor in 1926, the office of Lt. governor was “vacant” and held open until the next election. Just a few years later, the Governor of Oklahoma was impeached and the Lt. governor again became governor, leaving the Lt. governor office vacant.

Oregon – The Court in Oregon determined that the SOS became governor in 1877. For over a year Chadwick held BOTH the office of governor and the SOS until the next election.



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**Assistant Attorney General**  
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## **Gavin, Meghan [AG]**

---

**From:** Gavin, Meghan [AG]  
**Sent:** Thursday, February 02, 2017 4:06 PM  
**To:** Thompson, Jeffrey [AG]; Ranscht, David [AG]  
**Subject:** 1982 Election

Okay I think I have figured out the catalyst for the 1988 amendment. In 1982 in Governor Branstad's first election, for the first time in Iowa history the people elected a republican governor and a democrat lt. governor. Twice previously, we had elected a republican lt. governor with a democratic governor.

[https://en.wikipedia.org/wiki/Robert\\_T.\\_Anderson](https://en.wikipedia.org/wiki/Robert_T._Anderson)

I haven't found any contemporaneous evidence that anything in the 1988 amendment was designed to address the question of whether a new lt. governor could be appointed.



**Gavin, Meghan [AG]**

---

**From:** Gavin, Meghan [AG]  
**Sent:** Tuesday, January 31, 2017 10:21 AM  
**To:** Wittmus, Lisa [AG]  
**Subject:** FW: Courtesy NEF RE: LACE128389

**Importance:** High

Lisa,

Can you check on the date for our reply? Is it due tomorrow?

Thanks,  
Meghan

---

**From:** efilings@mail@iowacourts.gov [efilings@mail@iowacourts.gov]  
**Sent:** Friday, January 27, 2017 7:46 PM  
**To:** Gavin, Meghan [AG]  
**Subject:** Courtesy NEF RE: LACE128389

\*\*\*\*\* IMPORTANT NOTICE - READ THIS INFORMATION \*\*\*\*\*  
NOTICE OF ELECTRONIC FILING OR PRESENTATION [NEF]

---

**A filing has been submitted to the court RE: LACE128389**

**Judge:**

**Official File Stamp:** 01-27-2017:19:46:10  
**Court:** TRIAL COURT  
Scott  
**Case Title:** WOODS, BREAN, ET AL., V. STATE OF IOWA  
**Document(s) Submitted:** RESISTANCE Resistance to Defendants' Motion to Dismiss  
**Filed by or in behalf of:** Nathan Legue

You may review this filing by clicking on the following link to take you to your cases.

This notice was automatically generated by the courts auto-notification system.

---

**The electronic filing system has served the following people:**

NATHAN MICHAEL LEGUE for BREAN A WOODS, BECCA FREDERICK  
CHASE ANDREW CARTEE for BREAN A WOODS, BECCA FREDERICK  
MEGHAN LEE GAVIN for STATE OF IOWA, IOWA DEPARTMENT OF EDUCATION, IOWA  
GENERAL ASSEMBLY, TERRY BRANSTAD  
JORDAN GENEVIEVE ESBROOK for STATE OF IOWA, IOWA DEPARTMENT OF EDUCATION,  
IOWA GENERAL ASSEMBLY, TERRY BRANSTAD

CATHERINE ZAMORA CARTEE for BREAN A WOODS, BECCA FREDERICK  
JEFFREY SCOTT THOMPSON for STATE OF IOWA, IOWA DEPARTMENT OF EDUCATION,  
IOWA GENERAL ASSEMBLY, TERRY BRANSTAD

---

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\*The moving party or the individual who filed it is responsible for service of a document if it was not served by the electronic filing system. That includes, but is not limited to, service of all petitions and original notices [rule 16.316(3)], service of documents on all parties seeking to intervene in confidential cases [16.321(1)(c)], and service of all documents on non-registered parties [16.317(1)(b)].

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## **Gavin, Meghan [AG]**

---

**From:** Gavin, Meghan [AG]  
**Sent:** Sunday, December 11, 2016 5:12 PM  
**To:** Ranscht, David [AG]; Thompson, Jeffrey [AG]  
**Subject:** 1988 Amendment

It occurred to me that we should look at the legislative history for the 1988 amendment to see if the intention was to modernize succession as well as allow for the joint election of the governor and lieutenant governor. I've pulled the online version but will ask the state librarian to pull the complete versions tomorrow. I have a discovery conference in front of judge Hansen first thing tomorrow morning but am otherwise available.

Since the Lt governor receives the compensation for the governor when performing that offices duties, is the debate focused on the title?

Thanks,  
Meghan

**Gavin, Meghan [AG]**

---

**From:** Gavin, Meghan [AG]  
**Sent:** Friday, December 09, 2016 1:03 PM  
**To:** Thompson, Jeffrey [AG]  
**Subject:** RE: Research - succession

Will do.

---

**From:** Thompson, Jeffrey [AG]  
**Sent:** Friday, December 09, 2016 12:38 PM  
**To:** Gavin, Meghan [AG]  
**Subject:** Research - succession

Since David is doing survey of state constitutions and cases would you focus on finding law review or other secondary sources? We will need to plan a meeting to discuss first thing next week.

Sent from my iPhone

## Gavin, Meghan [AG]

---

**From:** Gavin, Meghan [AG]  
**Sent:** Thursday, December 08, 2016 3:00 PM  
**To:** Ranscht, David [AG]; Thompson, Jeffrey [AG]  
**Subject:** FW: Annals of Iowa - Google Books. Interesting history, all predations 1923

More historical info.

---

**From:** Meghan Gavin [megsgavs@gmail.com]  
**Sent:** Thursday, December 08, 2016 2:59 PM  
**To:** Gavin, Meghan [AG]  
**Subject:** Fwd: Annals of Iowa - Google Books. Interesting history, all predations 1923

Sent from my iPhone

Begin forwarded message:

**From:** Pam <pamgriebel@aol.com<mailto:pamgriebel@aol.com>>  
**Date:** December 8, 2016 at 2:48:41 PM CST  
**To:** Meghan Gavin <MegsGavs@gmail.com<mailto:MegsGavs@gmail.com>>  
**Subject:** Annals of Iowa - Google Books. Interesting history, all predations 1923

<https://books.google.com/books?id=tUtIAAAAYAAJ&pg=PA531&lpg=PA531&dq=if+iowa+governor+resigns+does+it+governor+become+governor+or+just+perform+duties+of+the+office&source=bl&ots=fRDBBzV08D&sig=0ARFc70rQD6J7WBxRwsGT4FOYSY&hl=en&sa=X&ved=0ahUKEwjn0ceVuuXQAhWCi1QKHcPcCgMQ6AEIPzAE#v=onepage&q=if%20iowa%20governor%20resigns%20does%20it%20governor%20become%20governor%20or%20just%20perform%20duties%20of%20the%20office&f=false>

Sent from my iPad

## Gavin, Meghan [AG]

---

**From:** Gavin, Meghan [AG]  
**Sent:** Thursday, December 08, 2016 2:39 PM  
**To:** Ranscht, David [AG]; Thompson, Jeffrey [AG]  
**Subject:** RE: Constitutional issue re: Lt. Gov assuming Gov's powers

[https://govt.westlaw.com/iaag/Document/l6adbf60af80111df9b8c850332338889?originationContext=Search+Result&listSource=Search&viewType=FullText&navigationPath=Search%2fv3%2fsearch%2fresults%2fnavigation%2fi0ad70f7000000158dfad385267b9973f%3fstartIndex%3d1%26Nav%3dADMINDECISION\\_PUBLICVIEW%26contextData%3d\(sc.Default\)&rank=2&list=ADMINDECISION\\_PUBLICVIEW&transitionType=SearchItem&contextData=\(sc.Search\)&t\\_querytext=Governor+resignation+successor+vacancy+lieutenant+governor+duties+and+responsibilities+&t\\_Method=WIN](https://govt.westlaw.com/iaag/Document/l6adbf60af80111df9b8c850332338889?originationContext=Search+Result&listSource=Search&viewType=FullText&navigationPath=Search%2fv3%2fsearch%2fresults%2fnavigation%2fi0ad70f7000000158dfad385267b9973f%3fstartIndex%3d1%26Nav%3dADMINDECISION_PUBLICVIEW%26contextData%3d(sc.Default)&rank=2&list=ADMINDECISION_PUBLICVIEW&transitionType=SearchItem&contextData=(sc.Search)&t_querytext=Governor+resignation+successor+vacancy+lieutenant+governor+duties+and+responsibilities+&t_Method=WIN)

Here's a relevant opinion free m Pam.

---

**From:** Ranscht, David [AG]  
**Sent:** Thursday, December 08, 2016 12:02 PM  
**To:** Thompson, Jeffrey [AG]; Gavin, Meghan [AG]  
**Subject:** RE: Constitutional issue re: Lt. Gov assuming Gov's powers

Cool table indeed.

Here are two more cases (WI and MT). I have a bunch more in a folder to read after lunch.

[cid:image001.png@01D25149.FECA50E0]<<http://www.iowaattorneygeneral.gov/>>

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Office of the Attorney General of Iowa  
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**From:** Thompson, Jeffrey [AG]  
**Sent:** Thursday, December 08, 2016 11:46 AM  
**To:** Ranscht, David [AG]; Gavin, Meghan [AG]  
**Subject:** FW: Constitutional issue re: Lt. Gov assuming Gov's powers

See below. Gotta love Wikipedia.

Can we print the cool table?

From: Greenwood, Geoff [AG]  
Sent: Thursday, December 08, 2016 11:13 AM  
To: Thompson, Jeffrey [AG]  
Subject: FW: Constitutional issue re: Lt. Gov assuming Gov's powers

From: Mark O. Lambert [mailto:marklambert@mchsi.com]  
Sent: Thursday, December 08, 2016 11:12 AM  
To: Greenwood, Geoff [AG]  
Cc: Tabor, Eric [AG]  
Subject: Re: Constitutional issue re: Lt. Gov assuming Gov's powers

Thanks, Geoff. One more thing, historically, when an Iowa Gov has left office before the end of his term, there has not been a Lt. Gov. appointed. Most of the time, these were very short periods of time, though.  
[https://en.wikipedia.org/wiki/List\\_of\\_Governors\\_of\\_Iowa](https://en.wikipedia.org/wiki/List_of_Governors_of_Iowa)

Mark

---

From: "Geoff Greenwood [AG]" <Geoff.Greenwood@iowa.gov<mailto:Geoff.Greenwood@iowa.gov>>  
To: "Mark O. Lambert" <marklambert@mchsi.com<mailto:marklambert@mchsi.com>>, "Eric Tabor [AG]" <Eric.Tabor@iowa.gov<mailto:Eric.Tabor@iowa.gov>>  
Sent: Thursday, December 8, 2016 10:25:12 AM  
Subject: RE: Constitutional issue re: Lt. Gov assuming Gov's powers

Thanks for contacting us, Mark. We're researching it and will add this to the conversation.

Best regards,

[cid:image001.png@01D25149.FECA50E0]<<http://www.iowaattorneygeneral.gov/>>

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immediately by reply email or telephone. Any unintended transmission of this email message does not constitute a waiver of any applicable privilege or protection. Thank you.

From: Mark O. Lambert [mailto:marklambert@mchsi.com]  
Sent: Thursday, December 08, 2016 9:54 AM  
To: Greenwood, Geoff [AG]; Tabor, Eric [AG]  
Subject: Constitutional issue re: Lt. Gov assuming Gov's powers  
Importance: High

Eric and Geoff:

In Massachusetts, when Governor William Weld resigned in 1997, Lt. Gov. Paul Cellucci became "Acting Governor" – not "Governor." When Cellucci resigned to become US Ambassador to Canada during the Bush Administration in 2001, his Lt. Gov. Jane Swift became "Acting Governor."

Massachusetts Constitution has a similar provision to the Iowa Constitution:

III.--Whenever the chair of the Governor shall be vacant, by reason of his death, or absence from the Commonwealth, or otherwise, the Lieutenant-Governor, for the time being, shall, during such vacancy, perform all the duties incumbent upon the Governor, and shall have and exercise all the powers and authorities, which by this Constitution the Governor is vested with, when personally present.

Hope this is helpful.

--Mark

Mark Lambert

Attorney at Law

Polk City

515-681-0285



## **Gavin, Meghan [AG]**

---

**From:** Greenwood, Geoff [AG]  
**Sent:** Monday, May 01, 2017 6:47 PM  
**To:** Tabor, Eric [AG]; Thompson, Jeffrey [AG]  
**Cc:** Gavin, Meghan [AG]; Ranscht, David [AG]  
**Subject:** FW: thank you

**From:** Laura Belin [mailto:desmoinesdem@bleedingheartland.com]  
**Sent:** Monday, May 01, 2017 3:16 PM  
**To:** Greenwood, Geoff [AG]  
**Subject:** thank you

Hello Geoff,

Thanks again for the heads up about the call-in opportunity.

I don't have their individual e-mail addresses, but please pass along my appreciation to the solicitor general and the other staff members who worked closely on today's formal opinion. It was very well-researched.

The reaction from the governor's office is disappointing but demonstrates how much political pressure was on the Attorney General's Office to reach a different conclusion. Thank you for standing up for the rule of law.

Yours,

Laurie  
1705 Plaza Circle  
Windsor Heights, IA 50324  
(515) 276-6971

<http://www.bleedingheartland.com>

**Gavin, Meghan [AG]**

---

**From:** Greenwood, Geoff [AG]  
**Sent:** Monday, May 01, 2017 10:02 AM  
**Subject:** Miller to Release, Discuss AG Opinion on Gubernatorial Succession

**IOWA DEPARTMENT OF JUSTICE  
OFFICE OF THE ATTORNEY GENERAL  
Thomas J. Miller, Attorney General  
[www.IowaAttorneyGeneral.gov](http://www.IowaAttorneyGeneral.gov)**

CONTACT: Geoff Greenwood • Communications Director • 515-281-6699 • [geoff.greenwood@iowa.gov](mailto:geoff.greenwood@iowa.gov)

FOR IMMEDIATE RELEASE  
May 1, 2017

**Media Advisory**

**Miller to Release, Discuss AG Opinion on Gubernatorial Succession**  
*Formal attorney general legal opinion addresses whether lieutenant governor becomes governor, authority to appoint new lieutenant governor*

(DES MOINES, Iowa) Attorney General Tom Miller today will release a formal attorney general opinion, in response to a request by Sen. David Johnson, I-Ocheyedan, regarding gubernatorial succession.

**WHAT:** News conference

**WHO:** Attorney General Tom Miller

**WHERE:** Attorney General's Office, Hoover Building, Second Floor

**DATE:** TODAY – May 1, 2017

**TIME:** 1:30 p.m.

**CALL IN #:** 866-685-1580, conference code 515 281 4213 (\*6 to mute, #6 to unmute)

**NOTE:** The news conference will be streamed live at [youtube.com/agiowa](http://youtube.com/agiowa).

Raw HD video will be made available upon request. Send request to:  
[geoff.greenwood@iowa.gov](mailto:geoff.greenwood@iowa.gov).

###

## Gavin, Meghan [AG]

**From:** Hawkeye Caucus <hawkeyecaucus@uiowa.edu>  
**Sent:** Friday, February 03, 2017 7:29 AM  
**To:** Gavin, Meghan [AG]  
**Subject:** Journalist's story begins at UI

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x

Life in a community can change quickly, whether it's an important city council vote or a traffic accident. With so much going on, staying informed can be difficult for the average citizen.

That's where journalists like MacKenzie Elmer (BA 2012) make a difference.

Elmer writes about the city of Des Moines for the *Des Moines Register*, covering metro and county government. She previously covered breaking news, jumping in the car at a moment's notice to follow a fire or shooting.

One such instance came in November, when two Des Moines Police Department officers were tragically shot. Confusion broke out as others on the police force worked to find the shooter. Elmer had just switched from covering breaking news to city news, so the story was outside her required area. But instincts won over.

"I couldn't help myself – I turned on the police scanner," she said, and when she located officers pursuing the shooter in Redfield, Iowa, she jumped in her car and sped off, alerting the newsroom on the road. She reported the story and attended the funerals for the *Register*.

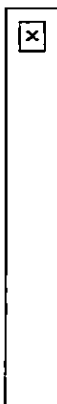
Attending the funeral of two celebrated police officers was a difficult task, she said. But she knew these stories deserved to be told.

She was prepared for this kind of reporting by her time at the School of Journalism & Mass Communication, which she described as "fantastic" experience. Also indispensable was her work writing long-form journalism for the *Iowa Center for Public Affairs Journalism – IowaWatch.org*, working under the mentorship of professor and Pulitzer-Prize winning former reporter Stephen J. Berry.

One skill she learned was that of interviewing, especially on difficult subjects.

"Interviewing is a huge art, and you have to find your own style," she said. "I try to show my best traits and try to be easy to talk to."

It is immensely rewarding when sources respond in a genuine and heartfelt way, she said.





"I'm always humbled when people invite me into their lives and personally share," she said. "That is truly something that I cherish and remember as I'm going throughout my career."

After graduating from the UI, Elmer landed at the *Burlington Hawk Eye*, where she interviewed Gov. Terry Branstad within a month of the start of her career. She also wrote for the *Associated Press* and the *Waterloo-Cedar Falls Courier*, where she won two journalism awards for a series on mental health.

She aims to change the public's perception of journalism, and she has already begun this work with regular visits to Southeast Polk Middle School, where she talks about what journalists do.

"When a change affects [people] positively or negatively, we're the deliverer of that information," she said. "Journalism is a huge component of the democratic process."

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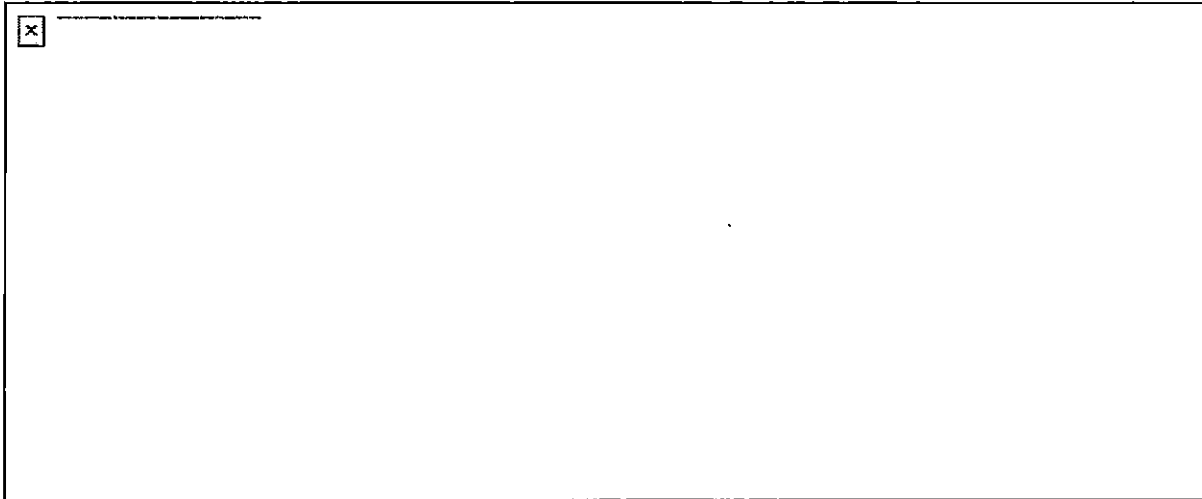
Hawkeye Caucus  
224 Jessup Hall  
Iowa City, IA  
University of Iowa

**Gavin, Meghan [AG]**

---

**From:** IPERS <info@ipers.org>  
**Sent:** Tuesday, January 17, 2017 5:06 PM  
**To:** Gavin, Meghan [AG]  
**Subject:** Member Update Newsletter: Winter 2017

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**In This Issue:**

**SAVING FOR RETIREMENT**

**LET'S GET PERSONAL**

**'TIS THE SEASON (TAX SEASON!)**

**WATCH YOUR BOX... ANNUAL BENEFITS STATEMENTS MAIL IN MARCH**

**KEEPING UP WITH THE IOWA LEGISLATURE**

**Saving for Retirement**

Are you saving enough for retirement? How much is enough? Isn't IPERS enough? No, IPERS is not enough! You need to have additional retirement savings, as well as Social Security. Remember, IPERS does not have a cost-of-living adjustment. Your benefit payments are guaranteed for life but they remain level (no increases). Find out if your employer offers a deferred comp program. If not, contact a financial planner on your own so you can be prepared!

**Let's Get Personal**

IPERS needs your email address...your personal email address, that is. Lots of members provide only a work email, which is fine as long as they remain working with that employer. Eventually, though, it will be time for retirement. Why not update your records now? It's easy through [My Account](#).

**'Tis the Season (Tax Season!)**

If you received IPERS benefits in 2016, IPERS will mail to you a 1099-R for tax purposes. These will mail on January 24, 2017. Need it earlier? Download it through [My Account](#).

## Watch Your Box... Annual Benefits Statements Mail in March

Keep your eyes peeled for your annual benefits statement, scheduled to mail in March. This important member information is mailed to all members (not retirees, unless you've returned to public employment) to show earnings to date, service accrued, and possible retirement benefits. Be sure to check it over carefully and report any corrections to IPERS.

## Keeping Up With the Iowa Legislature

The Governor and the Iowa Legislature share responsibility as plan sponsors for IPERS. It's their role to ensure IPERS remains secure. (See "Legislator's Guide to IPERS" video.) During the session, IPERS tracks related bills and posts updates to the legislative page of our website, making it easy to stay informed on IPERS' issues.

WINTER 2017

### CONTACT US

[www.ipers.org](http://www.ipers.org) | [info@ipers.org](mailto:info@ipers.org) | 800-622-3849 | Monday - Friday, 7:30 a.m. - 5 p.m.



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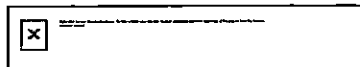
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IPERS, P.O. Box 9117, 7401 Register Drive, Des Moines, IA 50306-9117

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## Gavin, Meghan [AG]

---

**From:** Landow, Jason [AG]  
**Sent:** Thursday, February 02, 2017 4:58 PM  
**To:** Gavin, Meghan [AG]  
**Subject:** editorial

Kind of a funny editorial—not much actual info but a little bit.

I'll see what I can find at the library though.

Have a good night!

Jason

<http://www.desmoinesregister.com/story/opinion/editorials/2016/04/30/editorial-amend-constitution-end-lieutenant-governor/83539266/>

## Gavin, Meghan [AG]

---

**From:** mail <mail@bluegatefarmfresh.com>  
**Sent:** Tuesday, April 04, 2017 6:11 PM  
**To:** Skeebout  
**Subject:** BGF News-April

### Blue Gate Farm News – Volume XXXII, Number 4 – April 2017

#### Weather notes:

Precipitation to date in the past month: Rain: 2.75 *and counting*  
Snow: 3.00"

#### What's up on the farm?

Happy April from the farm! As ironic as it may seem, April 1st is an extra special day for us at BGF. It is the anniversary of our move in 2005 from big city (Houston) theatre managers to chemical-free vegetable farmers in Iowa. Isn't that the professional track everyone takes? So here we are saying hello to our 13th season. It is crazy to look back at all of the highs, lows and every-days of our lives on the farm. Thanks to all who join us on this madcap adventure!

Speaking of adventures and general craziness, we hardly know what to think of this season so far. It was one of the least snowy winters in years, with the snowfall in Marion County down more than 15" from average. However, as of last month, our soil moisture levels were right about average, due to multiple mid-winter thunderstorms. As of today, the soil moisture levels seem a bit excessive as we've had nearly 1.5" today alone. Luckily we got the all the field composting and the first round of discing done just as the rain/snow mix started last week. So as soon as the ground dries out enough we will be ready for the next round of soil prep and planting. We've got about 300 lbs of potatoes to go in and then the early round of sowing crops like spinach, salad mix, peas, radishes and other cool-loving greens. These crops are already growing in high tunnel #2 for our earliest harvesting, and they will be followed by 1-2 sowings in the field.

We had gotten a little behind in our transplant sowing in the sunroom, but as of last Friday are caught up again for another week or so. In the past month we've completed sowings on the following transplants: broccoli, cabbage, cauliflower, napa cabbage, kale, chard, head lettuce, eggplant, garden berries, peppers, peas, tomatoes, fennel, basil & other herbs. The earliest transplants (onions, leeks, shallots, broccoli, cabbage, kale & chard have all relocated to high tunnel #1 to make way for more heat-loving plants and to harden off and get ready for planting outside. So the biggest sowing push is done, with just cucumbers, okra, and winter/summer squashes left to come.

High Tunnel #1 is mostly cleared of over-wintered crops and we are renovating the beds for a quick cover crop planting to feed the soil followed by our first plantings of basil, tomatoes, peppers and eggplant. The new High Tunnel (#2) continues to house our over-wintered beds of kale, chard and lettuce mix. The remaining beds were recently sown to succession crops of spinach, salad mix, head lettuce, choy, peas and arugula.

Even though it seems early to have some of these crops growing, farmers market starts in just 4 weeks, with the CSA following 4 weeks later. Things change so fast at this time of year, we go from 20° to 70° to snow to lush green grass, seemingly overnight and then often...it snows again. I guess it keeps us from getting bored or complacent. As I write this, the boy alpacas are standing out in pouring rain grazing, because that glorious green



grass is just too tasty to wait out the rain in the dry shelter. If nothing else, they are ever willing to embrace the moment.

The bi-weekly VegEmail sales continue to go well. Our storage crops are mostly sold out, but there are plenty of eggs, fresh spring greens and herbs to come, with asparagus likely starting in a couple of weeks. If you aren't receiving emails about these sales, and would like to, please let us know. Big thanks to our hosts for these sales: Peace Tree Brewing Co in Des Moines and the Grand Theater in Knoxville.

**We're still hiring!** Our farm crew is filling up, but we have one full-time position remaining for the upcoming season. If you know of anyone in the area who might enjoy a summer-worth of suntans, whole body workout and bonus vegetables, send them our way! These are paid positions that start as early as mid-April and possibly go through late December.

### **2017 CSA Season**

2017 CSA slots are also filling up. The Base CSA Membership is \$500 for the 20 week season. Deposits (\$50) were due at the end of February with balance payments due on May 1<sup>st</sup>. We will send out invoices for those amounts in the next week or so. We anticipate the first delivery of the 2017 season to be the first week of June, weather-dependending. We do still have some memberships at all delivery locations available (Des Moines, Knoxville & on-farm); if you know of anyone who might be interested, please share this info with them. You are our best advertising.

Is a monthly newsletter not enough for you and you want to read more about our daily adventures or see pictures of the farm? You can follow us on Facebook at [Blue Gate Farm](#).

That's about it this month, if you have any questions or comments be sure to let us know.

Best from the farm,  
Jill & Sean (and Blue, Luci and Indigo)

Jill Beebout & Sean Skeehan  
Blue Gate Farm  
749 Wyoming Street  
Chariton, IA 50049  
641-203-1709  
[www.bluegatefarmfresh.com](http://www.bluegatefarmfresh.com)

## Gavin, Meghan [AG]

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**From:** Meghan Gavin <megsgavs@gmail.com>  
**Sent:** Thursday, December 08, 2016 2:59 PM  
**To:** Gavin, Meghan [AG]  
**Subject:** Fwd: Annals of Iowa - Google Books. Interesting history, all predations 1923

Sent from my iPhone

Begin forwarded message:

**From:** Pam <pamgriebel@aol.com>  
**Date:** December 8, 2016 at 2:48:41 PM CST  
**To:** Meghan Gavin <MegsGavs@gmail.com>  
**Subject:** Annals of Iowa - Google Books. Interesting history, all predations 1923

<https://books.google.com/books?id=tUtIAAAAYAAJ&pg=PA531&lpg=PA531&dq=if+iowa+governor+resigns+does+lt+governor+become+governor+or+just+perform+duties+of+the+office&source=bl&ots=fRDBBzV08D&sig=0ARFc70rQD6J7WBxRwsGT4F0YSY&hl=en&sa=X&ved=0ahUKEwjn0ceVuuXQAhWCi1QKHcPcCgMQ6AEIPzAE#v=onepage&q=if%20iowa%20governor%20resigns%20does%20lt%20governor%20become%20governor%20or%20just%20perform%20duties%20of%20the%20office&f=false>

Sent from my iPad

**Gavin, Meghan [AG]**

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**From:** Meghan Gavin <megsgavs@gmail.com>  
**Sent:** Thursday, December 08, 2016 1:05 PM  
**To:** Gavin, Meghan [AG]  
**Subject:** Fwd: View Document - Iowa Department of Justice, Office of the Attorney General Opinions

Sent from my iPhone

Begin forwarded message:

**From:** Pam <pamgriebel@aol.com>  
**Date:** December 8, 2016 at 12:49:05 PM CST  
**To:** Meghan Gavin <MegsGavs@gmail.com>  
**Subject: Re: View Document - Iowa Department of Justice, Office of the Attorney General Opinions**

Purely out of curiosity, let me know if the opinion helped. Fun diversion between laundry and walking Kenzie!

Sent from my iPad

On Dec 8, 2016, at 12:38 PM, Pam <pamgriebel@aol.com> wrote:

In case the link doesn't work:

*\*I* From a consideration of this article it will be observed that in case of death, Previous Term resignation Next Term or removal from office of the Previous Term governor Next Term, that the Previous Term lieutenant governor Next Term succeeds him as Previous Term governor Next Term of the state for the residue of the term. It will further appear that when there is a temporary disability of the Previous Term governor Next Term, the Previous Term lieutenant governor Next Term acts in his stead during the period of time such disability continues. In the first instance, the Previous Term lieutenant governor Next Term becomes Previous Term governor Next Term. In the second instance he simply acts as Previous Term governor Next Term during th

Sent from my iPad

On Dec 8, 2016, at 12:33 PM, Pam <pamgriebel@aol.com> wrote:

Not sure of amendment timing, but the constitutional language is similar today. Certainly says in the opinion that if the Governor's inability to perform is permanent ( death, resignation), the Lt gov becomes Governor. Only temporary performance of duties when Governor's inability to perform is temporary. Just the first opinion that popped up. Haven't looked for others.

Sent from my iPad

On Dec 8, 2016, at 12:25 PM, Pam <[pamgriebel@aol.com](mailto:pamgriebel@aol.com)> wrote:

This might help

[https://govt.westlaw.com/iaag/Document/I6adbf60af80111df9b8c850332338889?originationContext=Search+Result&listSource=Search&viewType=FullText&navigationPath=Search%2fv3%2fsearch%2fresults%2fnavigation%2fi0ad70f7000000158dfad385267b9973f%3fstartIndex%3d1%26Nav%3dADMINDECISION\\_PUBLICVIEW%26contextData%3d\(sc.Default\)&rank=2&list=ADMINDECISION\\_PUBLICVIEW&transitionType=SearchItem&contextData=\(sc.Search\)&t\\_querytext=Governor+resignation+successor+vacancy+lieutenant+governor+duties+and+responsibilities+&t\\_Method=WIN](https://govt.westlaw.com/iaag/Document/I6adbf60af80111df9b8c850332338889?originationContext=Search+Result&listSource=Search&viewType=FullText&navigationPath=Search%2fv3%2fsearch%2fresults%2fnavigation%2fi0ad70f7000000158dfad385267b9973f%3fstartIndex%3d1%26Nav%3dADMINDECISION_PUBLICVIEW%26contextData%3d(sc.Default)&rank=2&list=ADMINDECISION_PUBLICVIEW&transitionType=SearchItem&contextData=(sc.Search)&t_querytext=Governor+resignation+successor+vacancy+lieutenant+governor+duties+and+responsibilities+&t_Method=WIN)

Sent from my iPad

**From:** NEWS [AG]  
**Sent:** Monday, May 01, 2017 11:46 AM  
**Subject:** Lieutenant Governor to Serve as Governor, But Lacks Authority to Appoint Lieutenant, Attorney General Opinion Concludes

**IOWA DEPARTMENT OF JUSTICE  
OFFICE OF THE ATTORNEY GENERAL  
Thomas J. Miller, Attorney General  
[www.iowaattorneygeneral.gov](http://www.iowaattorneygeneral.gov)**

CONTACT: Geoff Greenwood | Communications Director | 515-281-6699 | [geoff.greenwood@iowa.gov](mailto:geoff.greenwood@iowa.gov)

FOR IMMEDIATE RELEASE  
May 1, 2017

**Lieutenant Governor to Serve as Governor, But Lacks Authority to  
Appoint Lieutenant, Attorney General Opinion Concludes**

*Formal opinion responds to request by state senator as Governor Branstad prepares to resign  
for ambassadorship*

DES MOINES – Attorney General Tom Miller Monday issued a formal legal opinion stating that if a governor resigns, the lieutenant governor becomes governor for all intents and purposes, but does not have legal authority to appoint a new lieutenant governor.

Sen. David Johnson, I-Ocheyedan, requested the opinion following Governor Terry Branstad’s announcement that, if confirmed by the U.S. Senate, he will serve as U.S. ambassador to China.

The 23-page opinion, following extensive legal and historical research, concludes, “...the powers and duties of the office of Governor fall upon the lieutenant governor.” The conclusion is based on an Iowa Constitution provision addressing a governor’s resignation, which states, “...the powers and duties of the office...shall devolve upon the lieutenant governor.” Under that provision, the opinion adds, “The lieutenant governor takes on this authority because she is lieutenant governor.”

Significantly, according to Miller, Article IV, section 1 provides that “The supreme executive power of this state shall be vested in a chief magistrate, who shall be styled the governor of the state of Iowa.”

While the “the lieutenant governor becomes governor and has the title of Governor,” the opinion further adds that that person does not have constitutional authority to appoint a new lieutenant governor. “In other words, upon a governor’s resignation, the lieutenant governor will hold both the offices of Governor and Lieutenant Governor. There is no vacancy to be filled,” according to the opinion.

“This opinion conveys that, in a sense, the two offices merge,” Miller said. “This is consistent with numerous cases in other states that addressed this question,” Miller added. “It is also consistent with a close reading of

the Iowa governor's succession provision—Article IV, section 19 of the Iowa Constitution, which establishes a precise order of gubernatorial succession without providing for the appointment of a lieutenant governor.”

Miller's opinion notes that in all four previous instances when an Iowa governor resigned or died while in office, the lieutenant governor was always considered governor, but never appointed or named a new lieutenant governor. The opinion also concludes, “The framers intended that those in the gubernatorial line of succession be elected.”

At the federal level, prior to Congress amending the U.S. Constitution in 1967 to establish that the vice president becomes president and grants the president authority to appoint a new vice president with Congressional approval, no vice president who assumed the powers and duties of a president who died while in office appointed a new vice president.

The formal opinion departs from a public statement Miller's office issued in December, following an informal legal review in response to media inquiries, which stated the office concurred with “Governor Branstad's conclusion that...in her capacity as Governor, Governor Reynolds will have the authority to appoint a new lieutenant governor.”

The December statement was based, in part, on an Iowa Code section addressing vacancies of office holders. Miller's formal opinion concludes this statute does not apply when a governor resigns and the powers and duties devolve upon the lieutenant governor.

#### **About Attorney General Opinions**

A formal attorney general opinion addresses legal questions relating to a public official's duties by interpreting laws and offering legal guidance.

While not a legal precedent, a formal attorney general opinion is similar to one and stands until a court or later opinion overrules it or new legislation is enacted to change a statute in question. Opinions are not legally binding, but courts generally give them careful consideration and deference.

###

**Gavin, Meghan [AG]**

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**From:** NEWS [AG]  
**Sent:** Tuesday, February 21, 2017 2:12 PM  
**Subject:** Miller Statement on AFSCME Lawsuit

**IOWA DEPARTMENT OF JUSTICE  
OFFICE OF THE ATTORNEY GENERAL**  
Thomas J. Miller, Attorney General  
[www.iowaattorneygeneral.gov](http://www.iowaattorneygeneral.gov)

CONTACT: Geoff Greenwood | Communications Director | 515-281-6699 | [geoff.greenwood@iowa.gov](mailto:geoff.greenwood@iowa.gov)

FOR IMMEDIATE RELEASE  
February 21, 2017

## **Statement from Attorney General Tom Miller on AFSCME Lawsuit over Collective Bargaining Law**

*Miller to ask Executive Council to approve outside legal counsel to defend state*

DES MOINES – Attorney General Tom Miller today announced that he will ask the Iowa Executive Council to seek outside legal counsel to defend the state against the lawsuit challenging the constitutionality of House File 291, the collective bargaining bill signed into law on Friday.

The American Federation of State, County and Municipal Employees (AFSCME) Iowa Council 61 filed the lawsuit Monday in Polk County District Court.

The Executive Council, comprised of the governor, secretary of state, state treasurer, secretary of agriculture and state auditor, must approve the appointment of outside counsel to represent the state.

“As the new collective bargaining law has the potential to existentially threaten the viability of public sector unions—many of the very same organizations that have supported me in the past—I am recommending that the Executive Council seek outside legal representation to defend this lawsuit in order to avoid any questions about a potential conflict,” Miller said. “While the extraordinarily professional and skilled attorneys in my office have vigorously defended Governor Branstad and the legislature in past lawsuits involving AFSCME, I think it’s most prudent in this highly charged legal dispute to avoid any appearance of politics clouding our office’s legal representation and judgment.”

###

**Gavin, Meghan [AG]**

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**From:** NEWS [AG]  
**Sent:** Wednesday, December 07, 2016 12:37 PM  
**Subject:** Miller Statement on Branstad Nomination as Ambassador to China

**IOWA DEPARTMENT OF JUSTICE  
OFFICE OF THE ATTORNEY GENERAL  
Thomas J. Miller, Attorney General  
[www.iowaattorneygeneral.gov](http://www.iowaattorneygeneral.gov)**

CONTACT: Geoff Greenwood | Communications Director | 515-281-6699 | [geoff.greenwood@iowa.gov](mailto:geoff.greenwood@iowa.gov)

FOR IMMEDIATE RELEASE  
December 7, 2016

**Miller Statement on Branstad Nomination as Ambassador to China**

*Miller: "I know he'll serve the U.S. well and will carry his deep passion for our state and our nation to China."*

DES MOINES – Attorney General Tom Miller today released the following statement regarding the announcement by President-Elect Donald Trump's transition team that Governor Terry Branstad will be nominated to serve as U.S. ambassador to China:

"I congratulate Governor Branstad for the tremendous honor of being asked to represent our nation's interests in China. I know he'll serve the U.S. well and will carry his deep passion for our state and our nation to China. I am confident the Governor will work very hard on trade partnerships, and that's good for Iowa farmers and our state's economy."

###



## **Gavin, Meghan [AG]**

---

**From:** National Council of State Education Attorneys <NCOSEA@LSV.UKY.EDU> on behalf of Peabody, Amy - Office of Legal, Legislative and Communication Services  
<amy.peabody@EDUCATION.KY.GOV>  
**Sent:** Friday, March 24, 2017 8:20 AM  
**To:** NCOSEA@LSV.UKY.EDU  
**Subject:** Re: [NCOSEA:] Two issues

Our freshly minted charter school law (signed by the Governor this week) has a single sex charter school provision: <http://www.lrc.ky.gov/recorddocuments/bill/17RS/HB520/bill.pdf>.

-----Original Message-----

**From:** National Council of State Education Attorneys [mailto:NCOSEA@LSV.UKY.EDU] On Behalf Of Crumpler, Laura  
**Sent:** Friday, March 24, 2017 9:19 AM  
**To:** NCOSEA@LSV.UKY.EDU  
**Subject:** Re: [NCOSEA:] Two issues

We do in NC have specific legislation about single sex charter schools. I have always questioned whether such a thing would survive a challenge under the Constitution and we did at least try to make the applicant justify the need for having one even given the statutory authorization. Ours in NC is an all-female charter school. The statute is NCGS 115C-218.45(e).

With regard to your juvenile question, we do not have anything specific but we have had mental health facilities that are private yet serving Special Ed kids and have had continuing issues around who has to pay and who is ultimately responsible for IDEA services - The private entity should be required to be an "LEA" for purposes of IDEA. It must defend any due process actions. I would also be careful about any other state and federal laws you want to apply to it - just like the charter schools - the entity needs to be subject to records laws, both privacy issues as well as public records issues: it needs to be subject to Open Meetings; and of course all other laws and constitutional provisions such as First, Fourth and Fourteenth Amendments, Title IX, ADA, ADEA, etc. etc. etc.

Just my two cents' worth.

Laura E. Crumpler  
Special Deputy Attorney General  
(919)807-3437

---

**From:** National Council of State Education Attorneys [NCOSEA@LSV.UKY.EDU] On Behalf Of Forster, Sarah [Sarah.Forster@MAINE.GOV]  
**Sent:** Thursday, March 23, 2017 4:02 PM  
**To:** NCOSEA@LSV.UKY.EDU  
**Subject:** [NCOSEA:] Two issues

OK experienced ones, I have not one, but two issues I'm hoping resonate . . .

1. Do any of you from charter school states have specific legislative authorization for single sex charter schools? If so, I'd love to hear if anyone has either challenged it or threatened to challenge it . . .

2. Maine has decided to do an RFP for a private entity to operate the school at the state's only juvenile corrections facility. I am resigned, but not enthusiastic, about this decision, particularly given that seventy five percent of the students in the facility have an IEP. Have any of your states gone the privatization route? What should I be doing in terms of what needs to be in the RFP and any other issues???

Yikes. So glad you are out there . . .

Sarah

Sent from my iPhone

## Gavin, Meghan [AG]

**From:** Polk County Bar Association <info@pcbaonline.ccsend.com> on behalf of Polk County Bar Association <cphillips@pcbaonline.org>  
**Sent:** Friday, April 21, 2017 12:03 PM  
**To:** Gavin, Meghan [AG]  
**Subject:** Are you stressed? | Wing man | Get CLEs | Honor winners | More

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# The Advocate

April/May 2017

## In This Issue

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[Something for everyone at Spring CLE](#)

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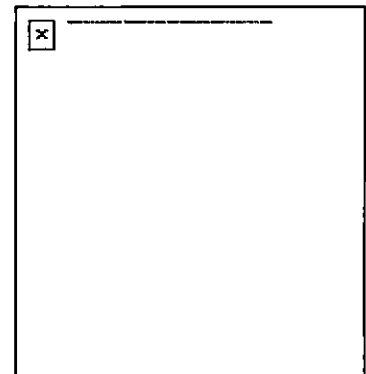
[Notice of Magistrate vacancies](#)

[See what you've missed](#)

## From the President . . . .

*Pressure  
You  
have to  
learn to  
pace  
yourself*

*Pressure  
You're  
just like  
everybo  
dy else*



*PCBA President Bridget Penick*

*Pressure  
You've only had to run so far  
So good  
But you will come to a place  
Where the only thing you feel  
Are loaded guns in your face  
And you'll have to deal with  
Pressure*

This President's Message is tardy. I apologize. It was on my To Do list, but it fell to the bottom. I know I am not the only PCBA member who

## Upcoming Events

**April 28:** PCBA Spring CLE

**May 2:** Bench & Bar Spring Social

**May 9:** PCBA Law Day Luncheon

**June 9:** PCBA Golf Outing

**June 13:** PCBA Law Clerk Luncheon

## Meet Your Representatives

### Officers

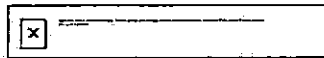
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### Board of Governors

### Committees

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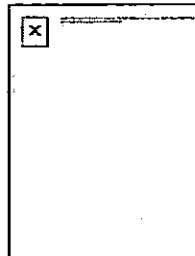
[www.pcbaonline.org](http://www.pcbaonline.org)



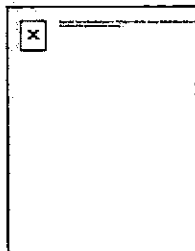
## On the Move

**Shayla L. McCormally** and **Maureen C. Cosgrove** have formed McCormally & Cosgrove, P.L.L.C. in Des Moines.

Shayla maintains a general practice, including civil litigation, family law, surrogacy and personal injury. She earned her J.D. from the University of Iowa College of Law in 2007. Her previous experience includes working at Wandro & Associates, P.C. and as a trial attorney with the United States Department of Justice.



Shayla  
McCormally



often feels pulled in a dozen directions at the same time, with the sense that I am just spinning my wheels trying to keep juggling all the balls in the air. **PRESSURE.**

I have learned that April, coincidentally, is Stress Awareness Month. Recognized since 1992, each April, health care professionals and health promotion experts across the country join forces to increase public awareness about both the causes and cures for our modern stress epidemic. We also see various tornado and severe weather drills at this time each spring, to try to prepare us for the possibility of a natural disaster. But what prepares us to deal with the **PRESSURE** of the practice of law?

While I'm sure each occupation has its stressors, we know all too well the mounting pressure we face in our practice, whether private practice, in house, government, or elsewhere. The demand for faster, less costly legal advice, coupled with the blessing and curse of technology that allows us to be connected and accessible 24/7 sends thousands of lawyers each year into a tailspin of stress and pressure. Add in family, health, community stressors and even the uncertainty of our national security and changes in politics and government-it's a recipe for disaster that no April tornado drill or disaster preparedness training can touch.

It is no surprise to scan the Iowa Supreme Court's disciplinary decisions and find that many lawyers who find themselves in front of the Grievance Commission have succumbed to the pressure and sought solace in controlled substances, only deepening the downward spiral. The ABA reports that more than 50% of all disciplinary cases involve impaired lawyers. Lawyers abuse alcohol at a 50-80% higher rate than the general

Maureen maintains a that includes litigation work in the areas of law, personal injury, and probate. She earned her J.D. from Hamline University School of Law in 2009. Maureen has been a corporate attorney, an assistant with the Iowa Attorney General's Office, and an associate at the Baer Law Office in Des Moines, Iowa.

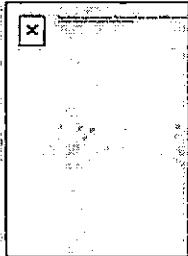
Maureen  
Cosgrove

general practice  
and transactional  
family law, business

population.

Although we often refer to ourselves as "attorneys and counselors," I am not proclaiming to be one who can expertly help my fellow lawyers deal with such pressure. Sure, there are the usual tips that seem to be window dressing and overly obvious:

**Read more ...**

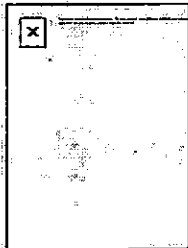


Brent Cashatt



Stacey Warren

**Brent Cashatt and Stacey Warren** have announced their new law practice: CashattWarren Family Law, a boutique law firm specializing in complex divorces, child custody issues, and situations with large scale or complicated asset management and separation. A husband/wife combination, Cashatt and Warren are the only two lawyers in the state of Iowa recognized by a worldwide association of practicing lawyers, the International Academy of Family Lawyers, as the most experienced and skilled family law specialists in their respective countries. In addition, both Cashatt and Warren are recognized Fellows in the American Academy of Matrimonial Lawyers. Cashatt is currently serving as the Vice President of the Board of Governors and has chaired the Admissions Committee. Cashatt and Warren are in the middle of a build-out of their office space in the East Village.



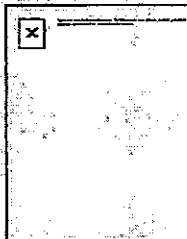
Paige Thorson



Colleen MacRae

**Paige Thorson, Colleen MacRae, and Rebecca Moore** have joined Nyemaster Goode's Des Moines office.

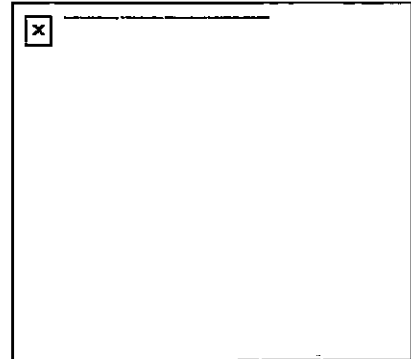
Paige is in Nyemaster's Government Affairs Department representing clients before the Iowa Legislature, Governor's office, and state agencies. Her work as legislative counsel involves a broad spectrum of public policy issues including health care, insurance, economic development, utilities, and renewable energy. Prior to joining



Rebecca Moore

## Hail our wing-eating hero!

Our  
intrepid  
PCB  
A  
Past  
President  
Nathan  
Overberg



Nathan Overberg rolls up his sleeves and prepares to beat the wing-eating competition.

g has proved to be a wing eater extraordinaire - and an awesome fundraiser to boot! Nathan took top honors at the recent charity wing-eating Eat-a Thon competition at the Drake neighborhood Jethro's BBQ and raised some \$3,300 for the PCBA Volunteer Lawyer's Project.

Thank you to everyone who donated and to Nathan for being such a good sport to eat so many wings! [Click here to see photos from the event.](#)

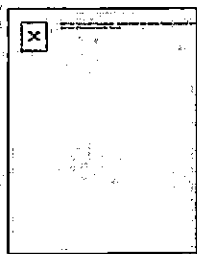
## Help us honor our Law Day winners

the firm, Paige served in various positions in Iowa state government for the Department on Aging, Office of the State Long-Term Care Ombudsman, and Department of Human Services. Most recently, she served as the policy advisor and legislative liaison for the Iowa Department of Human Services. Paige received her J.D. from Drake University in 2010. She can be contacted at (515) 283-8194 or pthorson@nyemaster.com.

Colleen is in Nyemaster's Business, Finance, and Real Estate Department where she assists clients with the formation of businesses, corporate restructuring, and contract drafting and negotiations. She provides counseling and transactional services to financial institutions in connection with regulatory compliance, operations and a variety of acquisitions. Colleen's practice also includes real estate leasing and economic development and prior to joining the firm, Colleen represented clients in environmental matters including permitting, land use, and water quality. She can be contacted at (515) 283-8175 or cmacrae@nyemaster.com.

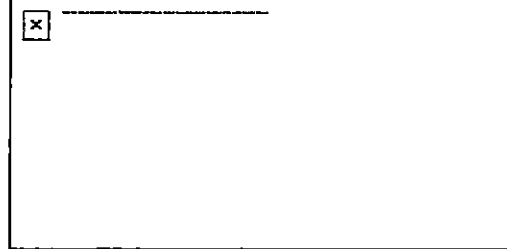
Rebecca is in Nyemaster's Tax, Estate Planning, and Employee Benefits Department. Rebecca's practice includes assisting clients with estate planning, trust and estate administration, and tax issues. Before joining Nyemaster, she was a partner at Buchanan law office in Algona, Iowa. Rebecca obtained her undergraduate degree in Political Science and Sociology at Iowa State University. She can be contacted at (515) 283-3175 or moore@nyemaster.com.

International law firm **Dorsey & Whitney LLP** has opened an office in Dallas, Texas, to bring on a team of Dallas-based lawyers who are practitioners in mezzanine finance, private equity and a broad range of other corporate finance, M&A and securities work. With more than 530 lawyers worldwide, Dorsey now has 14 offices strategically located across the United States, three in China, two in Canada and one in London.



Allison Kerndt

Nyemaster Goode, P.C. has announced that **Allison E. Kerndt** has joined the firm as a shareholder in its rapidly growing Intellectual Property Department. Allison focuses her practice on advising clients on issues related to the management of their intellectual property portfolios. Her experience spans a wide range of technical areas, including pharmaceutical, chemical, and cosmetic arts, biomedical devices, electronic devices, and business methods. She is experienced in the preparation and prosecution of patent and trademark applications and is registered to practice before the United States Patent and Trademark Office. Allison received her J.D., with distinction, from The University of Iowa College of Law in 2005. She has more than a decade of experience in intellectual property, which includes a judicial clerkship with the United States Court of



The PCBA and ARAG are proud to sponsor our annual Law Day competition to give Polk County K-12 students an opportunity to showcase their creative talents, learn about the law and have the opportunity to win prizes! This year's competition included coloring, poster, and essay categories for kindergarten through fifth grade students in Polk County; and visual arts, music and performing arts, essay, and poetry categories for sixth through twelfth grade students.

This year's theme, *The Fourteenth Amendment: Transforming American Democracy*, provided the opportunity to explore the many ways that the Fourteenth Amendment has reshaped American law and society.

Student winners will be honored at the PCBA & ARAG Law Day Awards Luncheon on **May 9** at the Downtown Marriott Hotel featuring keynote speaker The Hon. Romonda Belcher, District Associate Judge, Fifth Judicial District. [Click here for details and to download the reservation form.](#)

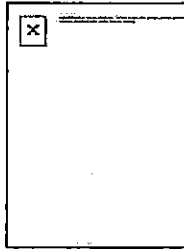
## Consider becoming a Law Day sponsor

Please consider supporting our Law Day program and enriching the experience for Polk County area students. For just \$100, you or your firm can sponsor a winning student,

Appeals for the Federal Circuit, the court that hears appeals of all patent litigation in the country. Allison can be reached at (515) 283-3193 or [akerndt@nyemaster.com](mailto:akerndt@nyemaster.com).

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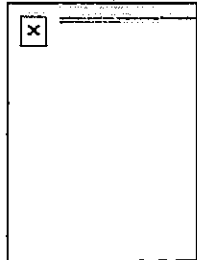
**Christopher J. Jessen** has joined Belin McCormick, P.C. as an associate in the litigation practice group. Christopher will handle a broad range of litigation matters with a particular emphasis on complex commercial litigation. He joins the law firm after serving as the judicial clerk for the Honorable Christopher McDonald of the Iowa Court of Appeals. Christopher is a 2016 graduate of the Drake University Law School where he earned Order of the Coif recognition, graduating with highest honors. He was Research Editor of the *Drake Law Review*.



Christopher Jessen

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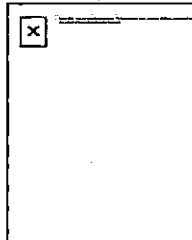
**Rob Poggenklass** has joined the staff of Iowa Legal Aid's Central Iowa Regional Office. He is a 2010 graduate of William & Mary School of Law. Originally from Iowa, Rob returned to the state after working with the Public Defender's office in Newport News, Virginia, and the American Civil Liberties Union of Virginia.



Rob Poggenklass

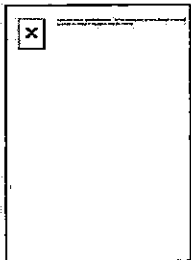
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**Kristie Kunstman-Stern** has been hired as a Staff Attorney in Iowa Legal Aid's Central Iowa Regional Office. She is a 1997 graduate of the University of Dayton School of Law in Dayton, Ohio. Prior to joining the staff of Iowa Legal Aid, Ms. Kunstman-Stern was the Director of Legal Services at the Center for Law & Social Work in Chicago, Illinois. She has also worked with the Office of the Public Guardian in Chicago.



Kristie Kunstman-Stern

## Kudos



David Luginbill

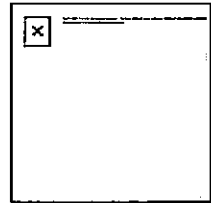
Attorney **David Luginbill** has become a Fellow of the American College of Trial Lawyers, one of the premier legal associations in North America. The induction ceremony took place recently before an audience of approximately 600 persons during the 2017 Spring Meeting of the College in Boca Raton, Florida. David is a partner in the firm of Ahlers & Cooney, P.C. With 40 years of litigation experience, he has lead counsel experience trying

the student's teacher, and the student's parent or parents. Sponsors may also sit with the winning students at our Law Day luncheon, as space allows, and they will be recognized in the written program. [Click here for details.](#)

## Member Spotlight: Who will be next?

The PCBA Membership Committee is accepting nominations for future "Member Spotlight" features.

Please email your nominations to Maggie Hanson at [maggiehanson@davisbrownlaw.com](mailto:maggiehanson@davisbrownlaw.com).



## Something for everyone at Spring CLE

You won't want to miss our Spring General Practice CLE on **Friday, April 28**, at the Downtown Marriott Hotel, where a wide variety of important topics will be covered.

This event is FREE for current members, but there is a \$25 charge for printed materials (note that the materials will also be posted in the Members Only area of our website following the event). We have received approval for 7.5 State CLE credit hours with 1 hour Ethics and 1 hour Federal credit.

[Click here to download the registration form and the agenda.](#)

**You are cordially invited**

complex and difficult high-stakes litigation and routinely handles litigation through trial and/or appeal for clients in a wide range of litigation matters. He has represented national and international clients, as well as clients located in Iowa. David received his law degree from Drake University.

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As reported in the February 15, 2017 issue of the *Bond Buyer's Midwest Yearend Review*, Ahlers & Cooney, P.C. ranked No. 1 in Iowa for Bond Counsel: Competitive Issues for 2016, with \$1,599,700,000 in total issuance. See:

[http://cdn.bondbuyer.com/media/pdfs/BB021517\\_Mid\\_West.pdf](http://cdn.bondbuyer.com/media/pdfs/BB021517_Mid_West.pdf)

With one exception, Ahlers & Cooney, P.C. has led the state of Iowa as bond counsel on competitive issues since 2006.

*Don't miss an opportunity to share your news and special announcements with fellow PCBA Members! [Click here.](#)*

The PCBA Bench & Bar Committee invites you to attend our spring social on **Tuesday, May 2**, from 4:30 to 7:30 p.m., at the ISBA Conference Center, 625 East Court Avenue in Des Moines. Please join us in recognizing the newly appointed judges. Complimentary Hors d'Oeuvres and beverages will be served.

### **You won't want to miss June luncheon**

Join us on **Tuesday, June 13**, at noon for our annual law clerk luncheon. Our speakers are Pat McNulty from Grefe & Sidney, PLC and Theresa Weeg, Iowa Attorney General's Office (retired) who will share their experiences working with the International Criminal Tribunal for the former Yugoslavia.

The luncheon will be held at the Wakonda Club, 3915 Fleur Dr., in Des Moines, and the cost is \$25 with advance reservation and \$27 at the door. Please note that seating is limited and we may not be able to accommodate walk ins, so be sure to make your reservation early. [Click here for complete details and a reservation form.](#)

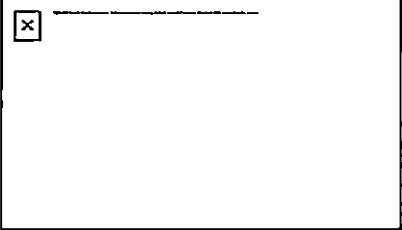
### **Get the latest Courts phone chart**

The updated Polk County Court phone chart has just been released and we have made it available to PCBA members on our website. To get the latest court room assignments, phone numbers, and court attendant and court reporter contacts for each judge, [just click here.](#) Member login required.



## Our box office is now open

One of the many benefits of belonging to the



Polk County Bar Association is access to discounted tickets on top-quality Broadway productions at the Des Moines Civic Center. Each year, we purchase season tickets - and we will also buy group tickets if there are enough people interested for a particular show - and we pass the savings on to you!

Take a look at the shows listed below. If you are interested in attending, just email [Sonja Diener](mailto:Sonja.Diener@polkcountybar.org) and let her know which shows and how many tickets for each show you would like. You don't have to buy tickets for every show - you can pick and choose. This is not an obligation to buy. It just gives us an idea of how many group tickets, in addition to the season's tickets, we will need to buy. If you have questions, just call our office at (515) 697-7880.

### **Willis Broadway series tickets**

All shows are at 7:30 p.m. on a Thursday. \$73.50 each:

Oct. 12, 2017 - *Something Rotten*

Nov. 2, 2017 - *The Color Purple*

Dec. 7, 2017 - *Waitress*

Feb. 22, 2018 - *On Your Feet! The Emilio & Gloria Estefan Musical*

April 5, 2018 - *The Humans*

Please note that *Hamilton* is SOLD OUT. All the tickets that we can receive are spoken for. We hope to be able to buy more tickets, but that is not guaranteed. If you would like

to be put on our very long list of people interested in tickets, just send an email to [sdiener@pcbaonline.org](mailto:sdiener@pcbaonline.org). No more than three tickets per person please. And again, there is no guarantee that we will be able to buy more tickets.

### **Add On Shows**

All shows are at 7:30 p.m. We will buy these only if enough people are interested. We don't know the price or location of seats yet.

Friday, Jan. 26, 2018 - *Stomp*

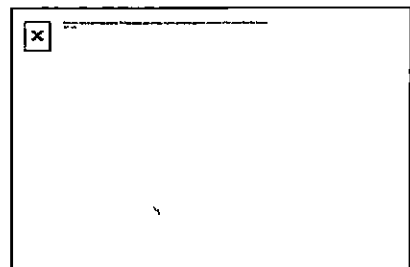
Friday, March 9, 2018 - *Chicago*

Thursday, April 19, 2018 - *Les Miserables*

Saturday, May 12, 2018 - *Leslie Odom Jr. in Concert with the Des Moines Symphony*

### **Golf with us for a good cause**

It's time to dust off those golf clubs and



join us for the PCBA's annual Bench and Bar Golf Outing to benefit the Volunteer Lawyers Project. This year's event will be held on **Friday, June 9**, at the Waveland Golf Course in Des Moines. Registration begins at noon with a shotgun start at 1 p.m.

If you register before May 6, you can take advantage of our early bird special and pay only \$100 per person, which includes green fees, cart, and dinner following golf. You can also order a box lunch for \$10.

[Click here for details and to](#)

[download the registration form.](#)

### **Why not become a golf sponsor?**

This year, the PCBA Volunteer Lawyers Project is offering two sponsorship levels for our Bench & Bar Golf Tournament. The Gold level is an exclusive hole sponsorship which includes one large sign at each hole and one Foursome as part of the package. The cost is \$1,000. Only 18 Gold sponsorships are available. The Silver level sponsorship is \$500 and includes signage on display at the tournament starting box.

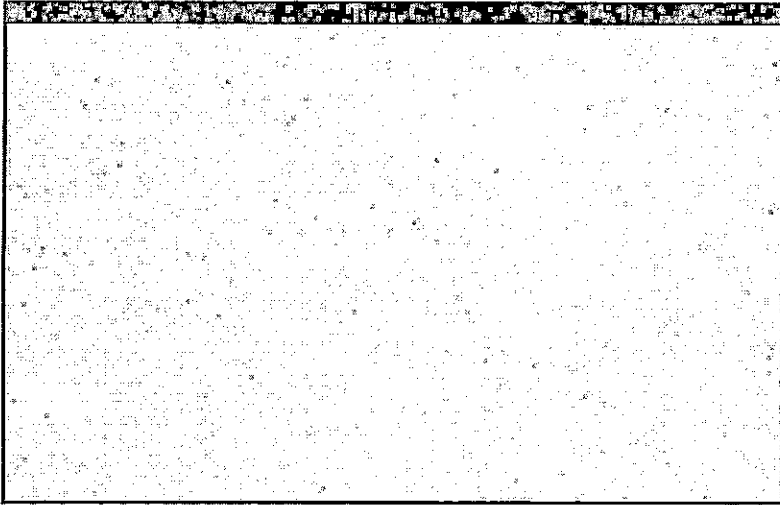
[Click here for sponsorship details](#) and [click here for a sponsorship invoice.](#)

### **Notice of Magistrate vacancies**

There are nine magistrate vacancies in judicial election district 5-C (Polk County) as a result of the July 31, 2017 expiration of the terms of office of the six current magistrates and the allocation of three additional positions to Polk County. The term of office of a magistrate is four years. The terms of office of the magistrates appointed to fill these vacancies will begin on August 1, 2017 and expire on July 31, 2021. Appointments to fill these vacancies will be made on or before June 1, 2017. The deadline for submitting applications is Tuesday, May 2, at 4 p.m. [Click here for complete details.](#)

### **See what you've missed**

The PCBA monthly luncheons are a great way to network, keep on top of current events, and get up close and personal with Iowa movers and shakers. Recent speakers have included The Honorable Mark Cady and Court of Appeals Chief Judge



The Honorable David Danilson who explored current Judicial Branch issues; State Representative Zach Nunn, Matthew Eslick (Nyemaster Goode), and Jesse Johnston (Dickinson Law) who shared their Mock Trial experiences; and Iowa State University Men's Head Basketball coach Steve Prohm who gave a behind-the-scenes look at the Cyclone's winning season.

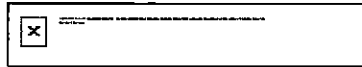
[Click here to see photos of each of these events.](#)

Polk County Bar Association, 625 East Court Ave., Suite 100, Des Moines, IA 50309-2007

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## Gavin, Meghan [AG]

**From:** Polk County Bar Association <info@pcbaonline.ccsend.com> on behalf of Polk County Bar Association <cphillips@pcbaonline.org>  
**Sent:** Friday, February 17, 2017 5:33 AM  
**To:** Gavin, Meghan [AG]  
**Subject:** Bridget's tattoo | Get up close with the Bench | Need CLEs? | Job postings | More

Having trouble viewing this email? [Click here](#)

# The Advocate

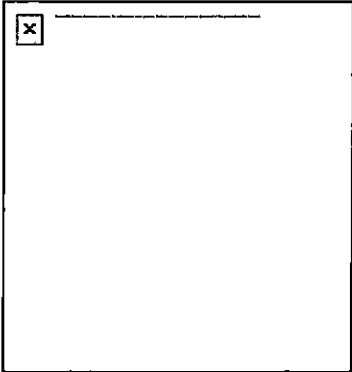
February/March 2017

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- [Changes impact deployed parents](#)
- [Follow MVS during National Ag Week](#)
- [In memoriam: Harley A. Whitfield](#)

### *From the President . . . .*

I have a tattoo of the scales of justice on my shoulder blade. I was inspired by Robert DeNiro's tattoo sprawling across his back in Cape Fear, but I was not gutsy enough for that for my first (or any) tattoo. As a lawyer, I suppose it may seem too cutesy, or perhaps it is seen as shameless self-promotion. It is a permanent reminder, though, of the integrity of our U.S. justice system.



*PCBA President Bridget Penick*

The scales of justice symbolize the idea of the fair distribution of law, with no influence of bias, privilege or corruption. Given recent events in this country, I could not be more proud of our judiciary and my fellow lawyers upholding and embodying what the scales of justice represent.

I am writing this message on Valentine's Day, and I was fortunate to have a Valentine's lunch date with more than a dozen judges and justices and dozens of Polk County Bar Association lawyers. I shared a table with our speakers, Iowa Supreme

## Upcoming Events

**March 14:** PCBA Luncheon  
**April 11:** PCBA Luncheon  
**April 28:** PCBA Spring CLE  
**May 9:** PCBA Annual Mtg & Law Day Luncheon  
**June 13:** PCBA Law Clerk Luncheon

## Meet Your Representatives

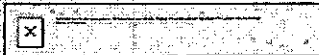
### Officers

Board of Directors

Board of Governors  
Committees

### Visit our Website

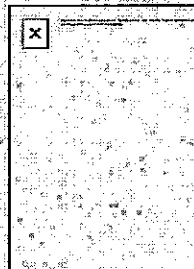
[www.pcbaonline.org](http://www.pcbaonline.org)



## On the Move

### Holly Logan

recently joined the Davis Brown Law Firm as Special Counsel in the Litigation Division. For more than 15 years, Holly has practiced in the areas of white collar criminal defense, internal investigations, and business litigation. She has defended individuals, companies, and boards of directors in governmental investigations and at trial. Prior to joining Davis Brown, Holly practiced at her own boutique white collar and business litigation firm in Des Moines. She earned her J.D. from the



Logan

Court Chief Justice Mark Cady and Iowa Court of Appeals Chief Judge David Danilson. As I chatted with them informally and then listened to their prepared remarks, I was reminded of how incredibly proud I am that Iowa has merit selection instead of judicial elections, to minimize politics swaying our scales of justice in one way or the other. As Chief Justice Cady noted, the U.S. Chamber of Commerce ranked Iowa's court system as 4th in the nation. The State of Nevada has adopted a court of appeals system mirrored after Iowa's mode.

As Chief Danilson (sort of) joked, the Iowa Court of Appeals is like the second chair lawyer at trial who does the majority of the work but gets none of the recognition. **Read more (and see the tattoo).**

## Something for everyone at Feb. CLE

The PCBA Bench and Bar Committee invites you to attend its Spring CLE on February 23 from 1:30 p.m. to 4:45 p.m. at the ISBA Conference Center. The topics are: Juvenile Justice, Iowa Access to Justice Commission, Cyber-security Risk Management Basics, and a Legislative Update. We anticipate three hours of State CLE credit to be approved. Following the seminar, there will be a Networking Social with complimentary Hors d'Oeuvres and beverages.

The CLE is free for current PCBA members. If you are not a member, you may join the PCBA on the day of the seminar in order to attend for free. **Click here for the registration form.** If you are unable to attend the seminar, you are welcome to join us for the Networking Social following the CLE, which will begin at 4:45 p.m.

## More CLE opportunities coming up

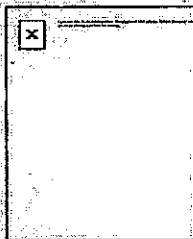
Mark your calendar for two additional noon hour CLE seminars sponsored by the PCBA Bench and Bar Committee.

The first, on **Monday, March 27**, from noon to 1 p.m., at the Polk County Justice Center, will feature Christopher Patterson, District Court Administrator, on the Court Complex overview; Anne Sheeley, Polk County Clerk of

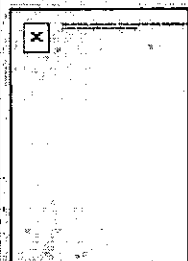
University of Iowa College of Law where she graduated with Distinction.

**Lara Q. Plaisance**

has joined Hopkins & Huebner, P.C as a shareholder attorney in the Des Moines office. Lara earned her J.D. from University of Missouri-Kansas City School of Law. She will practice primarily in workers' compensation.



Plaisance



Hilligas

**Aaron Hilligas** has joined Ahlers & Cooney, P.C. as an Associate Attorney. Aaron is a member of the firm's Employment & Labor Law practice area, serving public entities, higher education and K-12

educational institutions. He advises clients on a variety of labor and employment related matters and represents employers in collective bargaining agreement negotiations, in cases before the Public Employment Relations Board, and in grievance arbitrations. Prior to Ahlers & Cooney, Aaron worked in the Office of the General Counsel for the National Labor Relations Board (NLRB) for the Division of Advice, as well as in-house as an attorney with labor organizations covering a variety of industries in the public and private sectors, including K-12 and higher education. He received his Juris Doctor in 2002 from the University of Wisconsin.

**Kudos**

Attorneys **Jason Comisky** and **Kristin Billingsley Cooper** were recently elected shareholders at Ahlers & Cooney, P.C.

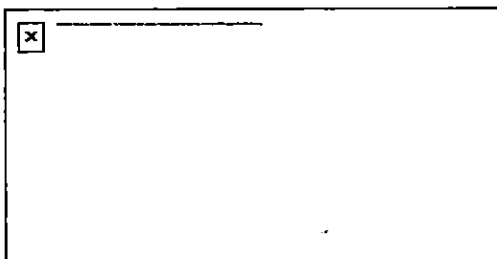
Court on Case Processing; and

Hon. Rachael Seymour, District Associate Judge - 5th Judicial District on Juvenile Court.

The second, on **Thursday, April 20**, from noon to 1 p.m., at the U.S. District Court, will feature Judge Helen Adams who will discuss proposed local federal rules. [Click here to download the registration form.](#)

**Students wanted for Law Day contest**

Each year, the Polk County Bar Association teams up with ARAG to give Polk County students in



grades K through 12 a chance to get creative with the law as part of our Law Day celebration. Chief among the activities is the visual arts, music, essay, and poetry competitions.

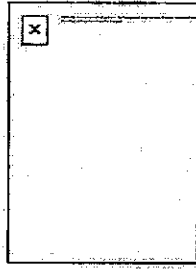
This year's theme, *The 14th Amendment: Transforming American Democracy*, enables students to explore the many ways that the 14th Amendment has reshaped American law and society. Ratified during Reconstruction a century and a half ago, the Fourteenth Amendment serves as the cornerstone of landmark civil rights legislation, the foundation for numerous federal court decisions protecting fundamental rights, and a source of inspiration for all those who advocate for equal justice under law.

[Click here for complete details.](#) The deadline for entries is April 10, and the winning students will be honored at the PCBA Annual Meeting and Law Day Luncheon on May 9.

**We're looking for Law Day sponsors**

Please consider supporting our Law Day program and enriching the experience for Polk County area students. For just \$100, you or your firm can sponsor a winning student, the student's teacher, and the student's parent or parents. Sponsors may

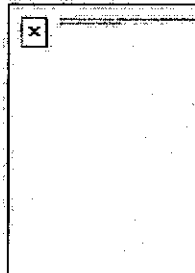
Jason is a member of the firm's Public Finance & Law and Corporate, Business & Tax practice areas, and also serves as the Procurement/ Contracting Practice Group Leader. Jason



Gomisky

works closely with cities and counties on urban renewal and economic development issues, and he provides general legal services to small businesses and individuals, such as mergers and acquisitions, business formations, contracts, estate planning, estate administration, and real estate transactions. Prior to joining Ahlers & Cooney in 2014, Jason practiced law in Dubuque and Fort Dodge, Iowa. He is a graduate of the University of Iowa College of Law.

Kristin works primarily in the firm's Public Finance and Law area, with a focus on municipal finance, including municipal bonding, economic development and urban renewal.



Billingsley Cooper

Kristin also works in the Corporate, Business and Tax practice area, providing business services for both public and private entities in real estate and other business transactions. She also assists Iowa colleges and universities with higher education business matters. Kristin joined the firm as an associate in 2011. Previously, she worked as a legal intern for the Honorable Celeste F. Bremer at the Southern District of Iowa, and then as a summer associate with the firm. Prior to law school, Kristin assisted real estate clients as a commercial real estate agent, providing services in buying, selling, and leasing commercial real estate. Kristin is a graduate of Drake University Law School.

also sit with the winning students at our Law Day luncheon, as space allows, and they will be recognized in the written program. [Click here for details.](#)

## Member Spotlight: Who will be next?

The PCBA Membership Committee is accepting nominations for future "Member Spotlight" features. Please email your nominations to Jessica Cleerman at [cleerj1@nationwide.com](mailto:cleerj1@nationwide.com).

## Save the date: Spring CLE is April 28

Mark your calendar now so you don't miss our Spring General Practice CLE on **Friday, April 28**, at the Downtown Marriott Hotel. This event is FREE for current members. There is a \$25 charge for printed materials, but they will also be posted in the Members Only area of our website following the event.

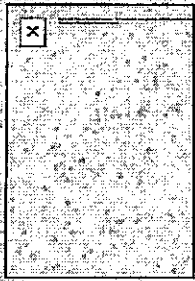
We anticipate approval for 7.5 State CLE credit hours with 1 hour Ethics and 1 hour Federal credit. Watch our website for agenda details as they are finalized. Meanwhile, [click here to download the registration form.](#)

## Check out these job vacancies

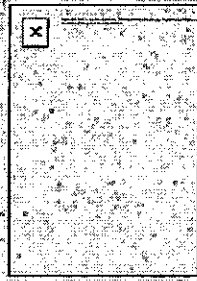
York Risk Services Group is seeking a Senior Casualty Claims Adjuster to investigate, evaluate, and adjust Public Entity claims; and Stinson Leonard Street LLP is seeking a Transactional Attorney with experience in the areas of corporate law, business transactions, secured lending transactions, and/or commercial real estate to join its Mankato, Minnesota office. [Get the details on our website \(member login required\).](#) And don't forget to let us know if you have job opportunities to post. Contact [sdiener@pcbaonline.org](mailto:sdiener@pcbaonline.org) with details.

## Get the latest Courts phone chart



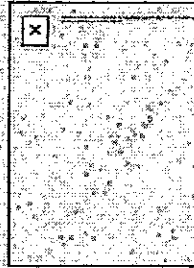


Piepmeier



Sieverding

The Davis Brown Law Firm has announced that **Amy Piepmeier, Craig Sieverding, and Emily Stork** have been elected shareholders effective January 2017.



Stork

Amy is a member of the firm's business division, practicing primarily in the areas of securities law and corporate transactions. She regularly counsels public and private companies regarding equity and debt financing structure and transactions, including private placements and registered offerings, SEC reporting and regulation, Sarbanes-Oxley compliance, corporate governance matters, contract negotiation and other business and transactional matters.

Craig is a member of the firm's business division, focusing on the health care industry. He represents and provides counsel to a wide variety of health care providers, including health systems, hospitals, long-term care facilities, and home health care agencies, on regulatory and compliance, licensing, audits and investigations, data privacy and security, contracting, and reimbursement matters.

Emily is a member of the firm's business division and maintains a general real estate practice. She represents both commercial and residential clients in matters including wind energy acquisition and development, abstract examinations

The new Polk County Court phone chart is now available and we have it available on our website for you! [Click here to download the chart](#), which includes the law clerks and three new judicial specialists. *Member login required.*

### Have you renewed your membership?

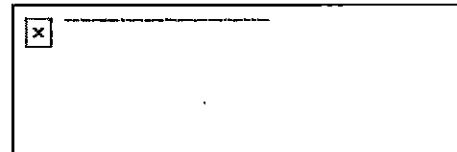
One of the best things you can do for your career is to belong to the Polk County Bar Association. Your PCBA membership entitles you to FREE CLE seminars to sharpen your skills, monthly luncheons to explore current issues, access to the court-sponsored mediation program, news and information you can't get anywhere else, discounts on programs and services, and much, much more. [Click here to learn more and to download the renewal form.](#)

And, as a bonus, first-time PCBA members and those who renew their membership for 2017 are entitled to attend one of our informative and timely PCBA luncheons on us - FREE of CHARGE - No strings attached! If you have questions about your membership, contact PCBA Executive Director Carol Phillips. [Click here for details and to download the membership form.](#)

*P.S. You can now pay your dues by credit card online!*

### Symposium to explore poverty issues

The 31st Annual Des Moines Civil & Human Rights Symposium is scheduled for March 15 in the Des Moines University Student Education Center. The theme for this year's symposium is *Poverty affects us all*, and a number of sessions will be of particular interest to the legal community.



The symposium runs from 8 a.m. to 4:45 p.m. Admission is free and includes breakfast and lunch. This event is approved for 4.5 hours of CLE credits. For more information, [click here to download a flyer.](#)

and title opinions/title commitments, easements and covenants, closings, and leases among others.



Wallace

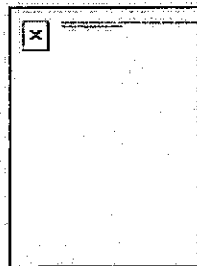
Belin McCormick, P.C. attorneys voted for Matt Wallace to become a shareholder of the Des Moines law firm effective January 1. Matt is a member of the corporate practice group and he has

negotiated for buyers and sellers, across several industries, in transactions small and large. He combines his understanding of the law, Master's degree in accounting, and business acumen to solve issues for his clients. Matt graduated with honors from the University of Chicago Law School. He was a member of the University of Chicago Law Review.

Two associate attorneys with Nyemaster Goode - Neal Coleman and Katie Graham - have been admitted to the firm as shareholders effective January 1.

Neal is a shareholder with the Business, Finance and Real Estate Department. Neal's practice focuses primarily on commercial transactions, general representation of

business organizations in all phases of an entity's life cycle, and real estate law, with a particular emphasis on commercial real estate financing transactions. He graduated with honors from the University of Texas at Austin in 2011.



Coleman

## Changes impact deployed parents

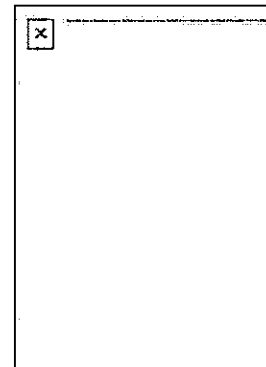
Beginning July 1, 2016 Iowa Code Chapter 598C provides a mechanism by which service member parents who are deployed may ask that a nonparent take over their parenting responsibility during their deployment. The nonparent must be an adult family member of the child or an adult with whom the child has a close and substantial relationship. The deployment must be more than 90 days but less than 18 months. The deployment must be one where family members cannot go with the service member. [Click here for a Q & A.](#)

## Follow MVS during National Ag Week

Follow the [Filewrapper Blog](#), written by McKee, Voorhees, and Sease, PLC, Intellectual Property Attorney Caitlin M. Andersen during National Ag Week, March 19-25. The blogs will offer an in-depth look at how technology and intellectual property influence both crop and animal production agriculture. National Ag Week is sponsored each year by the Agriculture Council of America and aims to recognize and celebrate the many impacts agriculture has on the world.

## In memoriam: Harley A. Whitfield

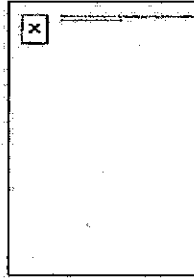
Harley A. Whitfield, 86, passed away on January 9 at Sarasota Memorial Hospital in Sarasota, Florida. Harley was a resident of Des Moines until retiring and moving to Spirit Lake, Iowa. Harley was born October 7, 1930, to Allen and Irma Cowan Whitfield. Allen was the founding partner of Whitfield & Allen in 1928, the predecessor to Whitfield & Eddy Law.



Harley A. Whitfield

Following his service as a lieutenant in the Air Force, Harley attended Drake University Law School, graduating with honors in 1956 and earning membership in the Order of the Coif. Harley practiced with Whitfield & Eddy Law and its predecessor firms from 1956 until his retirement in 1995, specializing in business and corporate law. He led the firm as the chairman of its Executive Committee for many years, with exceptional business and political acumen.

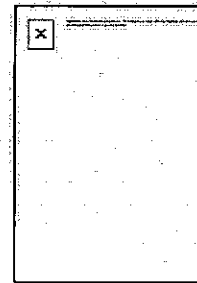
Katie is a shareholder in the firm's Litigation Department. Katie is a trial attorney, and her practice focuses primarily on litigating employment matters involving allegations of age, gender, disability, race, and religious discrimination, sexual harassment, common law retaliatory discharge, and violations of the FMLA and FLSA. She graduated with high honors from Drake University Law School in 2011.



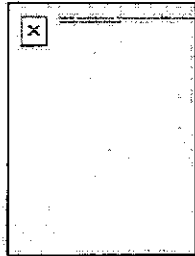
Graham

## More Kudos

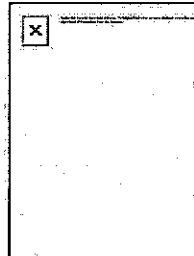
**Brandon W. Clark**, chair of the Copyright, Entertainment, and Media Law Practice Group at McKee, Voorhees & Sease, PLC, has received the Industry Supporter of the Year award by the Greater Des Moines Music Coalition. Brandon represents a wide variety of clients including artists, songwriters, producers, record labels, and more generally, creators. Brandon worked at both record labels and music publishing companies before joining McKee, Voorhees & Sease in 2015. In addition, he is an adjunct professor at Drake University where he teaches Copyright Law and a course on the music industry entitled, Performing Arts Management.



Clark



Drake



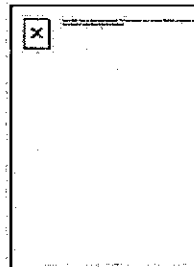
Scales

McKee, Voorhees & Sease, P.L.C. has been selected for the 2016 Des Moines Small Business Excellence Award in the Lawyers classification by the Des Moines Small Business Excellence Award Program. McKee, Voorhees & Sease helps its clients obtain and protect their intellectual property rights through patents, trademark and copyright registrations both domestically and internationally.

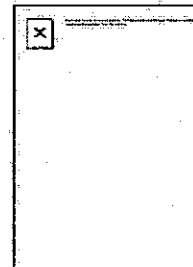
Whitfield & Eddy Law has announced that **Jennifer L. Drake** and **William C. Scales** are the newest members of the firm effective January 1.

Jennifer joined the firm in 2016 and is active in the Real Estate and Construction Practice Groups. She represents commercial and residential real estate owners, developers, brokers, and managers in negotiations, contracts, leases, and financial transactions. She received her J.D. from Drake University Law School in 2003.

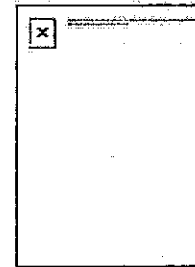
William represents businesses and individuals in all phases of civil litigation and also represents creditors in bankruptcy proceedings. He is an associate fellow in the Litigation Counsel of America and was selected for inclusion in the Great Plains Super Lawyers in the area of Banking as a Rising Star in 2015-2016. He joined the firm as a Law Clerk from 2009-2011 and was an associate attorney from 2011-2016. He received his J.D.



McDermott



Cartmill



Barber

**Matt McDermott** has been elected president of Belin McCormick, P.C. Matt is a shareholder of the firm, and he focuses on civil and criminal trials and appeals. He handles a wide variety of litigation matters. Matt earned his law degree at the University of California at Berkeley in 2003 (California Law Review).

Attorneys **Nola Cartmill** and **Nate Barber** join Matt on the three-person Belin McCormick, P.C. Management Committee. Nola earned her law degree from Harvard University in 2009, and Nate earned his law degree from the University of California, Berkeley in 2002 (Order of the Coif, California Law Review).

from Drake University Law School in  
2011.

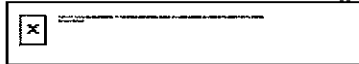
*Don't miss an opportunity to share  
your news and special  
announcements with fellow PCBA  
Members! [Click here.](#)*

Polk County Bar Association, 625 East Court Ave., Suite 100, Des Moines, IA 50309-  
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**Gavin, Meghan [AG]**

**From:** Polk County Bar Association <info@pcbaonline.ccsend.com> on behalf of Polk County Bar Association <cphillips@pcbaonline.org>  
**Sent:** Thursday, December 15, 2016 6:06 AM  
**To:** Gavin, Meghan [AG]  
**Subject:** Stay humble and kind | Social Club | Family Law | CLE materials | More

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# The Advocate

December/January 2017

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- [Note these new Workers' Compensation numbers](#)

### Upcoming Events

### *From the President . . . .*

#### **Always stay humble and kind**

So much has happened in this world - this country - this state - this county - since my last president's message in early October. I'll refrain from political commentary on the presidential election, but focus on the positive and express gratitude at the results of the judicial retention election. Thank you to each of you who

*PCBA President Bridget Penick*

helped educate a friend or family member on the purpose of our judicial retention election process. Thanks to all who attended the ribbon cutting for the Polk County Justice Center. Congratulations to the National Bar Association for the groundbreaking on "A Monumental Journey."

Anyone who knows me knows that music is important to me. Only a handful of you who know me well may recall that I was a country music DJ at KCUI while attending Central College. Blame it all on my roots, but country song lyrics speak to me. As we are in the midst of the holiday season, yet also in the midst of a very divided and

162

Jan. 10: PCBA Luncheon  
 Feb. 14: Bench & Bar Luncheon  
 March 14: PCBA Luncheon  
 April 11: PCBA Luncheon  
 May 9: PCBA Annual Mtg & Law Day Luncheon

## Meet Your Representatives

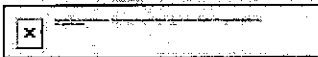
### Officers

### Board of Directors

### Board of Governors Committees

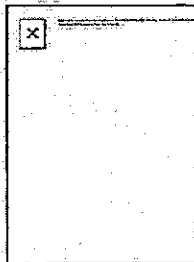
### Visit our Website

[www.pcbaonline.org](http://www.pcbaonline.org)



## On the Move

Whitfield & Eddy Law has welcomed **Sean M. Callison** as an associate attorney in the Des Moines office. He is a member of the firm's business and banking, construction, labor and employment, trucking, and litigation practice groups. He has written about the use of unmanned aircraft (drones), in the construction industry and presented on the topic as well. Sean is a recent graduate of Drake University Law School and was a law clerk at the firm from 2014 - 2016.



**Stephanie A. Kolfookian, Abigail M. Hillers** and **Robert J. Thole** have joined Bradshaw, Fowler, Proctor &

embittered country, (and yes, as I tried but was unable to get great tickets to the Soul 2 Soul concert coming to Des Moines next summer), I find myself singing these lyrics of late:

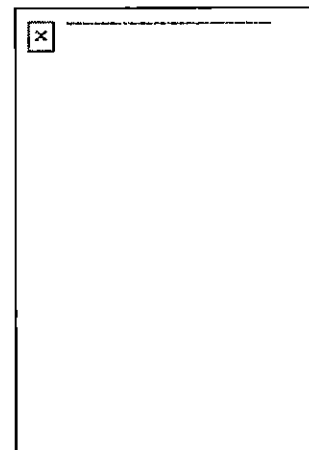
*"When those dreams you're dreamin' come to you  
 When the work you put in is realized  
 Let yourself feel the pride  
 But always stay humble and kind."*

- From "Humble and Kind", written by Lori McKenna and performed by Tim McGraw

As lawyers, we dutifully attend CLEs and amass our ethics credits. We hear speeches about civility. We know we are duty-bound to act with "professional courtesy and professional integrity in the fullest sense of those terms." Iowa Standards for Professional Conduct, Rule 33.1(1). Are we collectively fulfilling this obligation? Are you personally living it? Or, has the negativity and turmoil in the last few months led us astray? **Read more....**

## All about the Des Moines Social Club

Mark your calendar and plan to join us on **Tuesday, Jan. 10**, for the first PCBA luncheon of the new year featuring Pete De Kock, executive director of the Des Moines Social Club. Pete joined the Social Club as Executive Director in 2015. He leads the DMSC team with specific responsibilities around org strategy, team building, fundraising, community partnerships, and finances. He is a graduate of Grinnell College and Harvard University, where he studied political and social ethics.

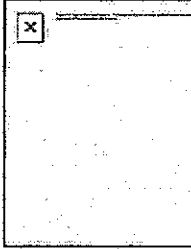


*Pete De Kock*

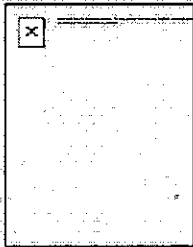
The luncheon will be held at the ISBA Building, 625 E. Court, from noon to 1 p.m. Tickets are \$17 in advance and \$19 at the door, but keep in mind that space is limited and we may not be able to accommodate walk ins. **Click here for details and a**

Fairgrave, P.C., in Des Moines, Iowa.

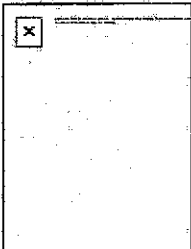
**Stephanie** joined the firm as an associate attorney in the firm's litigation division. She earned her J.D. from The University of Iowa College of Law in May 2015. Prior to joining the Bradshaw Law Firm, Stephanie clerked for Justice Thomas D. Waterman of the Iowa Supreme Court.



**Abigail** joined the firm as an associate attorney in the firm's transactional division, representing clients in the area of Wills, Trusts, Estate Planning, Probate Law, and Real Estate Law. She earned her J.D. from Valparaiso University Law School in 2009. Prior to joining the Bradshaw Law Firm, Abigail worked as a wealth management and trust officer, and general counsel, for a local bank.



**Robert** has joined the litigation division of the firm as an associate attorney. He earned his J.D. from Drake University Law School in May 2012. While attending law school, Robert clerked for both the Bradshaw Law Firm and the Honorable Robert B. Hanson of the 5th Judicial District in Polk County, Iowa. Prior to joining the Bradshaw Law Firm, Robert was engaged in private practice in Des Moines.



## Kudos

**Fredrikson & Byron** has been ranked in the Tier 1 of Metropolitan "Best Law Firm" in 28 practice areas by *U.S. News - Best Lawyers® in 2017*

[reservation form](#) or call 243-3904.

## Get up close with the Court

We invite you to be our valentine and attend the PCBA Bench & Bar Luncheon on **Tuesday, Feb. 14**, at noon. This year's featured guests will be Iowa Supreme Court Chief Justice Mark Cady and Court of Appeals Chief Judge David Danilson. Watch the PCBA website for details as they become available.

## Attention Family Law attorneys

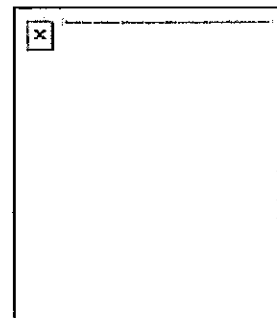
The Polk County Bar Association Family Law Committee invites you to attend the annual transition meeting with the Family Law Judges, which is scheduled for **Tuesday, Dec. 20**, from noon until 1:30 p.m. at the Polk County Courthouse, 500 Mulberry Street, in Courtroom 302. Chief Judge Arthur Gamble, Judges Eliza Ovrorn, Douglas Staskal and the newly appointed Judge will be in attendance to discuss the transition and answer any questions that you may have.

## Member Spotlight: Nathan Mundy

*This is the latest in a series of features on our own PCBA members. The PCBA Membership Committee is accepting nominations for future "Member Spotlight" segments. Please email your nominations to Jessica Cleerman at [cleerj1@nationwide.com](mailto:cleerj1@nationwide.com).*

### Tell us about yourself:

I am Nathan Mundy and I am an attorney in private practice in Des Moines. I am married to another attorney, Anna Mundy, who is in-house at Principal Financial Group. We met at Drake Law School in 2004 and were married in 2007. We have two wonderful boys, Jack (5) and Ben (1). We live in Des Moines on the Northwest side with our Wheaten Terrier,



including the Des Moines office ranking for Immigration Law and Litigation - Labor & Employment. To be eligible for a ranking, a firm must have at least one lawyer recognized by The Best Lawyers in America® 2017 in that practice area and metro. This year the following Des Moines attorneys were named Best Lawyers: **Bret A. Dublinske, Bridget R. Penick and J. Marc Ward.**

**Nyemaster Goode, P.C.**, has been recognized in the seventh edition (2017) of the "Best Law Firm" rankings recently released by *U.S. News & World Report and Best Lawyers®*. Nyemaster Goode achieved 39 practice rankings, including 26 "Tier 1" rankings. Here are the rankings for the Des Moines office: **Tier 1:** Appellate Practice, Banking and Finance Law, Business Organizations (including LLCs and Partnerships), Closely Held Companies and Family Businesses Law, Commercial Litigation, Corporate Law, Employee Benefits (ERISA) Law, Employment Law - Management, Family Law, Government Relations Practice, Insurance Law, Litigation - Bankruptcy, Litigation - Labor and Employment, Litigation - Tax, Mergers & Acquisitions Law, Non-Profit/Charities Law, Personal Injury Litigation - Defendants, Real Estate Law, Tax Law, Trusts & Estates Law, and Workers' Compensation Law - Employers. **Tier 2:** Bankruptcy and Creditor Debtor Rights/Insolvency and Reorganization Law, Corporate Governance Law, Financial Services Regulation Law, Franchise Law, Health Care Law, Immigration Law, Labor Law - Management, Litigation - Banking & Finance, Litigation - Real Estate, Mortgage Banking Foreclosure Law, and Product Liability Litigation - Defendants. **Tier 3:** Administrative/Regulatory Law.

**Belin McCormick, P.C.** has earned Tier 1 ranking from Best Lawyers "Best Law Firms" in 21 categories. The 26-attorney Des Moines law firm, has added "Litigation - Tax" to its Tier

Tessie.

I was born on an Air Force base in Mountain Home, Idaho. We lived there for two years until we moved to Cannon Air Force Base in New Mexico. We moved to Des Moines when I was in first grade and I have lived here ever since. I went to Lincoln High School where I was All-Conference in football, ran track including a role on the team for the 1600m medley relay at the State Track Meet, participated in show choir, some small theater roles, and the State-Champion All-Male Dance Team. I was moderately successful in the academic classroom.

I received a football scholarship to play at St. Ambrose University in Davenport, IA. While I only played football for two years, it did introduce me to the next phase in my life, the law. There I majored in Political Science and Philosophy and founded the SAU Chapter of the Phi Alpha Delta Law Fraternity and re-started the Mock Trial Program as its captain. I also served on the Student Government Association and was on the committee that drafted the SGA Mission Statement. I was also an alumni ambassador to our vast regional alumni network.

**[Read more....](#)**

x

## **Justice Center is open for business**

A number of PCBA members were on hand on Nov. 14 when the Polk County Board of Supervisors hosted a ribbon cutting for the grand opening of the Polk County Justice Center. The building is one of three downtown buildings undergoing extensive renovation as part of an \$81 million referendum that was passed by voters in November of 2013. [Click here to read Judge Arthur Gamble's remarks at the historic event.](#)

## **Fall CLE materials are now online**

Some 275 PCBA members gathered at the



1 recognition. The 2017 Tier One designated specialty areas where Belin McCormick, P.C. are recognized: Appellate Practice, Banking and Finance Law, Commercial Litigation, Communications Law, Corporate Law, Employment Law - Management, Environmental Law, Financial Services Regulation Law, Labor Law- Management, Litigation - Banking & Finance, Litigation-Environmental, Litigation-Municipal, Litigation - Labor & Employment, Litigation - Real Estate, Litigation-Tax, Litigation - Trusts & Estates Mergers & Acquisitions Law, Personal Injury-Defendants Real Estate Law, Tax Law, and Trusts & Estates Law.

Davis Brown associate attorney **Margaret (Maggie) Hanson** recently received news that her request for clemency for a pro bono client was approved by President Obama. The Office for the Pardon Attorney, U.S. Department of Justice, personally called Maggie to share that her client's sentence would be commuted. Senior Shareholder **Nikki Mordini** accepted the request and advised Maggie as well as **Sarah Crane, Sarah Franklin, Emily Stork, and Elizabeth Van Arkel** in the preparation of the petitions. Paralegal **Natalie Rivera** assisted greatly in the effort.

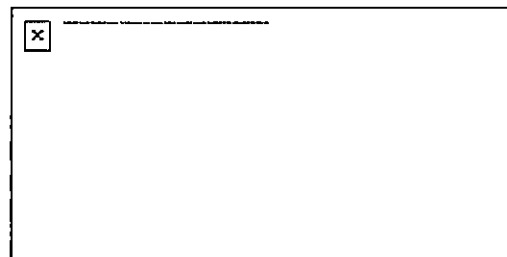
Davis Brown attorneys **Emily Stork** and **Elizabeth Van Arkel** have also received word from the U.S. Department of Justice Pardon Attorney that petitions they submitted for clemency were approved by President Obama.

International law firm **Dorsey & Whitney LLP** announced that *U.S. News - Best Lawyers®* recognized the Commercial Litigation, Health Care Law, and Public Finance Law practices in Dorsey's Des Moines office for inclusion in its "Best Law Firms" rankings for 2017. The practices received a tier 1 ranking,

Downtown Des Moines Marriott on November 18 to network and stay on top of their profession at the Fall general practice seminar. As always, the CLE provided a full day of thought-provoking presentations covering a wide array of topics pertinent to the practice of law in Iowa. The program, which was offered FREE to members, was approved for 7.5 hours of State CLE credit, including 1 hour Ethics and 3 hours Federal. [Click here to download the materials.](#) **Member login required.**

## Students wanted for Law Day contest

Each year, the Polk County Bar Association teams up with ARAG to give Polk County students a



chance to get creative with the law as part of our Law Day celebration. Chief among the activities is the visual arts, music, essay and poetry competition for students in grades 6 through 12.

This year's theme, The Fourteenth Amendment: Transforming American Democracy, provides the opportunity for students to explore the many ways that the Fourteenth Amendment has reshaped American law and society. Through its Citizenship, Due Process and Equal Protection clauses, this transformative amendment advanced the rights of all Americans. It also played a pivotal role in extending the reach of the Bill of Rights to the states. Ratified during Reconstruction a century and a half ago, the Fourteenth Amendment serves as the cornerstone of landmark civil rights legislation, the foundation for numerous federal court decisions protecting fundamental rights, and a source of inspiration for all those who advocate for equal justice under law.

The deadline for entries is April 10. [Click here for complete details.](#) The winning students will be honored at the PCBA Annual Meeting and Law Day Luncheon on Tuesday, May 9.

Fredrikson & Byron received a nearly perfect score of 95 percent on the 2017 Corporate Equality Index (CEI), a national benchmarking survey and report on corporate policies and practices relating to lesbian, gay, bisexual and transgender (LGBT) workplace equality, administered by the Human Rights Campaign (HRC). Fredrikson's score reflects a commitment to LGBT workplace equality, with respect to tangible policies, benefits and practices.

*Don't miss an opportunity to share your news and special announcements with fellow PCBA Members! [Click here.](#)*

## **It's time to renew your membership**

One of the best things you can do for your career is to belong to the Polk County Bar Association. Your PCBA membership entitles you to FREE CLE seminars to sharpen your skills, monthly luncheons to explore current issues, access to the court-sponsored mediation program, news and information you can't get anywhere else, discounts on programs and services, and much, much more. [Click here](#) to learn more and to download the renewal form.

And, as a bonus, first-time PCBA members and those who renew their membership for 2017 are entitled to attend one of our informative and timely PCBA Luncheons on us - FREE of CHARGE - No strings attached! [Click here for more information from PCBA President Bridget Penick](#) and click here to [download our membership form.](#)

P.S. You can now pay your dues by credit card online!

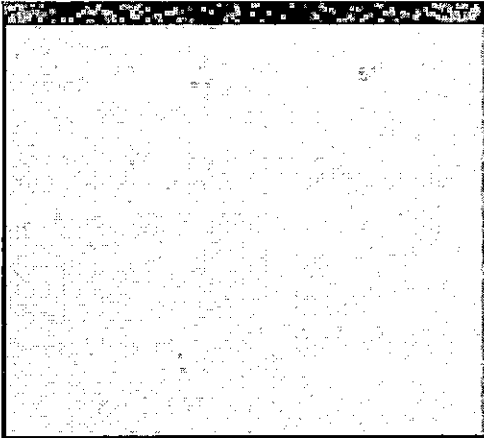
## **Support the Volunteer Lawyers Project and get a tax deduction**

As 2016 draws to a close, our attention turns to year-end finances and tax returns. Don't forget that you can make a contribution to the Polk County Bar Association Volunteer Lawyers Project before the end of the year and get a tax deduction.

The PCBA VLP is a charitable organization established with the mission of providing legal services to low income residents of Polk County. With your help, PCBA VLP is one of the most successful volunteer lawyer programs in the country, with Polk County lawyers donating approximately 5,000 hours of their time annually.

Unfortunately, demand for PCBA VLP services has never been higher while our funding continues to decline. To help make it easier to support our efforts, The PCBA VLP now offers you the ability to make donations on a monthly, quarterly, or annual basis - all you need to do is check the appropriate option on your PCBA membership renewal form. And don't forget that the PCBA VLP is a tax-exempt, charitable organization. That means any donation you make is tax deductible. You can also designate the PCBA VLP as the recipient on your United Way donation.

[Click here to learn more from PCBA VLP President](#)



Alex Johnson.

**Note these new Workers'  
Compensation phone numbers**

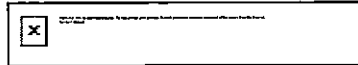
The Workers' Compensation Division of Iowa Workforce Development has its own unique toll-free and local phone numbers effective Nov. 1. They are **800-645-4583** and **515-725-4120**.

Polk County Bar Association, 625 East Court Ave., Suite 100, Des Moines, IA 50309-2007

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Sent by [cphillips@pcbaonline.org](mailto:cphillips@pcbaonline.org) in collaboration with



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## Gavin, Meghan [AG]

---

**From:** Proesch, Nicole <nicole.proesch@iowa.gov>  
**Sent:** Tuesday, January 24, 2017 2:46 PM  
**To:** Gavin, Meghan [AG]  
**Subject:** Fwd: State AGs seek to intervene in for-profit accreditor battle with Education Department

FYI

----- Forwarded message -----

**From:** Wise, Ryan <ryan.wise@iowa.gov>  
**Date:** Tue, Jan 24, 2017 at 2:43 PM  
**Subject:** Fwd: State AGs seek to intervene in for-profit accreditor battle with Education Department  
**To:** Nicole Proesch <nicole.proesch@iowa.gov>

Just FYI.

Ryan

----- Forwarded message -----

**From:** Hoelscher, Doug <doug.hoelscher@iowa.gov>  
**Date:** Tue, Jan 24, 2017 at 1:20 PM  
**Subject:** Fwd: State AGs seek to intervene in for-profit accreditor battle with Education Department  
**To:** "Wise, Ryan" <ryan.wise@iowa.gov>, Linda Fandel <linda.fandel@iowa.gov>, "Karen Misjak [ICSAC]" <karen.misjak@iowa.gov>, "Leeper, Julie [ICSAC]" <Julie.Leeper@iowa.gov>, Stephanie Groen <stephanie.groen@iowa.gov>, Lawrence Johnson Jr <larry.johnson@iowa.gov>, Colin Smith <colin.smith@iowa.gov>

fyi

----- Forwarded message -----

**From:** POLITICO Pro Education Whiteboard <politicoemail@politicopro.com>  
**Date:** Tue, Jan 24, 2017 at 12:45 PM  
**Subject:** State AGs seek to intervene in for-profit accreditor battle with Education Department  
**To:** Doug.Hoelscher@iowa.gov

By Michael Stratford

01/24/2017 12:40 PM EDT

Attorneys general from five states and the District of Columbia are seeking to intervene in a for-profit college accreditor's legal battle with the Education Department.

The group of attorneys general today asked a federal judge to let them join in the defense of the Obama administration's decision last year to terminate the accreditor's federal recognition — a rare move that amounts to a “death penalty” for the accrediting organization.

The accreditor, the Accrediting Council for Independent Colleges and Universities, is currently suing the department to block that decision. A federal judge last month declined to issue an emergency order halting the termination but the court is still considering the case.

The attorneys general, all Democrats, argue that they should be allowed to join the case “in order to defend important state interests.” They argue that ACICS approves for-profit schools in each of their respective states.

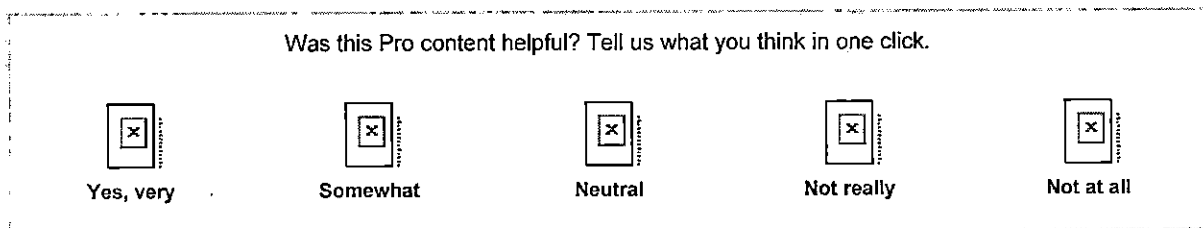
The motion was filed by the attorneys general of Massachusetts, Illinois, Maine, New York, Maryland and the District of Columbia — all of whom previously signed a letter last year urging the Obama administration to terminate recognition of ACICS.

The move by the attorneys general could prove significant if the Trump administration decides not to continue defending the Obama administration’s decision in court. It’s not yet clear how Trump's Education Department plans to proceed on the matter.

Attorneys for ACICS and the Education Department are due in court for a hearing in the case on Feb. 1.

*To view online:*

<https://www.politicopro.com/education/whiteboard/2017/01/state-ag-sseek-to-intervene-in-for-profit-accreditor-battle-with-education-department-082765>



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**Doug Hoelscher** | Director of State-Federal Relations

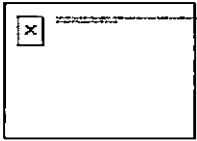
Office of the Governor, State of Iowa

Gov. Terry Branstad & Lt. Gov. Kim Reynolds

202-624-5479 | [Doug.Hoelscher@iowa.gov](mailto:Doug.Hoelscher@iowa.gov)

[www.governor.iowa.gov](http://www.governor.iowa.gov)

[www.ltgovernor.iowa.gov](http://www.ltgovernor.iowa.gov)



--

Ryan Wise, Ed.L.D.

Director

Iowa Department of Education

Grimes Office Building, 2nd Floor

400 E. 14th Street

Des Moines, IA 50319-0146

Office: (515) 281-3436

--

Nicole M. Proesch

Legal Counsel

Office of the Director

Iowa Department of Education

Grimes State Office Building | 400 E. 14th Street | Des Moines, IA 50319-0146

Phone: 515-281-8661 | Cell: 515-240-3787 | Fax: 515-242-5988 | [nicole.proesch@iowa.gov](mailto:nicole.proesch@iowa.gov)

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**Gavin, Meghan [AG]**

---

**From:** National Council of State Education Attorneys <NCOSEA@LSV.UKY.EDU> on behalf of Proesch, Nicole <nicole.proesch@IOWA.GOV>  
**Sent:** Friday, January 20, 2017 1:03 PM  
**To:** NCOSEA@LSV.UKY.EDU  
**Subject:** [NCOSEA:] Fwd: [NCOSEA:] Media consent process  
**Attachments:** Publication Release Form FINAL.pdf

Here is our process in Iowa.

----- Forwarded message -----

**From:** Hupp, Staci <staci.hupp@iowa.gov>  
**Date:** Fri, Jan 20, 2017 at 11:47 AM  
**Subject:** Re: [NCOSEA:] Media consent process  
**To:** "Mayes, Thomas" <thomas.mayes@iowa.gov>  
**Cc:** Nicole Proesch <nicole.proesch@iowa.gov>

Thomas/Nicole,

We get student consent under the following circumstances:

- Photographing students for our staff-produced newsletters/articles, which are distributed via email and posted to our website.
- Photographing students for pictures that will be on display in our building.
- Organizing a conference or event with student participants who may be photographed/video recorded by the media, PR people or other participants. An example would be the Governor's bullying prevention summits.
- Capturing photos or video of students as part of a recorded training for teachers/school administrators.

In the conference/event example, consent is handled through registration paperwork. In the other examples, a release form is used. Our agency's consent form has been updated in the last year and is attached.

Thanks,

Staci

On Thu, Jan 19, 2017 at 4:41 PM, Mayes, Thomas <thomas.mayes@iowa.gov> wrote:  
Staci, how would you suggest that Nicole respond?

Thomas A. Mayes, Attorney II  
Division of Learning and Results  
Iowa Department of Education  
400 E 14th St



Grimes State Office Building  
Des Moines, IA 50319-0146  
515.242.5614

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----- Forwarded message -----

From: **THEOHARIS GEORGIANA** <[GTHEOHAR@isbe.net](mailto:GTHEOHAR@isbe.net)>  
Date: Thu, Jan 19, 2017 at 4:38 PM  
Subject: [NCOSEA:] Media consent process  
To: [NCOSEA@lsv.uky.edu](mailto:NCOSEA@lsv.uky.edu)

Colleagues:

The Illinois State Board of Education (ISBE) is in the process of revising our media permission policy and related media consent forms and has determined that the creation and implementation of a standardized process is needed to specify an orderly means for obtaining and using photographs of people, including students and educators in print and digital media.

Specifically, we are interested in knowing whether your state education agency (SEA) has a standardized procedure for taking pictures of people attending conferences and posting pictures of students and educators participating in school-related activities in its press releases, social media, publications, and on its website? If so, would you please describe? Would your SEA have any model media permission policies or procedures that we might review as we revise our own? We would be interested to see state administrative rules as well, if available.

Finally, how does your SEA address privacy issues surrounding the use and publication of such personal images/photographs (e.g., Federal Educational Rights and Privacy Act (20 U.S.C. § 1232g)(FERPA))?

We very much appreciate any assistance you might provide regarding this matter.

If you have any questions, you may contact me at (312) 814-2227.

Georgiana Theoharis

Assistant General Counsel

Illinois State Board of Education

100 West Randolph Street, 14<sup>th</sup> Floor

Chicago, Illinois 60601

Tel. 312.814.2227

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Staci Hupp  
Communications Director  
Iowa Department of Education  
Office: 515-281-5651  
Cell: 515-669-7007

--

Nicole M. Proesch

Legal Counsel

Office of the Director

Iowa Department of Education

Grimes State Office Building | 400 E. 14th Street | Des Moines, IA 50319-0146

Phone: 515-281-8661 | Cell: 515-240-3787 | Fax: 515-242-5988 | [nicole.proesch@iowa.gov](mailto:nicole.proesch@iowa.gov)

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## Gavin, Meghan [AG]

---

**From:** Ranscht, David [AG]  
**Sent:** Tuesday, April 18, 2017 12:10 PM  
**To:** Gavin, Meghan [AG]; Thompson, Jeffrey [AG]  
**Subject:** Cedar Rapids Gazette editorial

<http://www.thegazette.com/subject/opinion/blogs/24-hour-dorman/in-iowa-the-mystery-of-the-lieutenant-governor-circa-1857-20170416>

Interesting.



**David Ranscht**  
**Assistant Attorney General**  
Office of the Attorney General of Iowa  
Licensing & Administrative Law Division  
1305 E. Walnut St.  
Des Moines, Iowa 50319  
Main: (515) 281-5164 | Direct: (515) 281-7175  
Email: [david.ranscht2@iowa.gov](mailto:david.ranscht2@iowa.gov) | [www.iowaattorneygeneral.gov](http://www.iowaattorneygeneral.gov)

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## Gavin, Meghan [AG]

---

**From:** Ranscht, David [AG]  
**Sent:** Friday, April 14, 2017 1:03 PM  
**To:** Gavin, Meghan [AG]  
**Subject:** My draft  
**Attachments:** Question One.docx

Here's what I have.

I also requested from the Oklahoma AG a copy of their opinion number 65-235, which is too old to be in full text on their website and also not on Westlaw. A journal article I was reading described it as answering "no" to the question "If the Lieutenant Governor succeeds to the Governorship (due to death, resignation, or impeachment of the Governor), does the then Governor have the authority to appoint another person to the Lieutenant Governorship?"

The person I talked to in Oklahoma said they would look for it and email me. I'll forward it when he does.



**David Ranscht**  
**Assistant Attorney General**  
Office of the Attorney General of Iowa  
Licensing & Administrative Law Division  
1305 E. Walnut St.  
Des Moines, Iowa 50319  
Main: (515) 281-5164 | Direct: (515) 281-7175  
Email: [david.ranscht2@iowa.gov](mailto:david.ranscht2@iowa.gov) | [www.iowaattorneygeneral.gov](http://www.iowaattorneygeneral.gov)

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## Gavin, Meghan [AG]

---

**From:** Ranscht, David [AG]  
**Sent:** Monday, April 03, 2017 12:33 PM  
**To:** Gavin, Meghan [AG]; Thompson, Jeffrey [AG]  
**Subject:** RE: Lt Gov stuff  
**Attachments:** Shall Be Styled.docx

Here is a chart categorizing states by whether they have a provision like our article IV, section 1—providing the powers are vested in a chief magistrate who shall be styled the governor.

David Ranscht  
Assistant Attorney General  
Office of the Attorney General of Iowa  
Licensing & Administrative Law Division  
1305 E. Walnut St.  
Des Moines, Iowa 50319  
Main: (515) 281-5164 | Direct: (515) 281-7175  
Email: david.ranscht2@iowa.gov | www.iowaattorneygeneral.gov

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-----Original Message-----

**From:** Gavin, Meghan [AG]  
**Sent:** Monday, April 03, 2017 10:37 AM  
**To:** Thompson, Jeffrey [AG]; Ranscht, David [AG]  
**Subject:** RE: Lt Gov stuff

<http://www.independentmail.com/story/news/local/2017/01/18/sc-supreme-court-ruling-may-pave-way-bryant-become-lieutenant-governor/96736648/>

---

**From:** Thompson, Jeffrey [AG]  
**Sent:** Monday, April 03, 2017 10:24 AM  
**To:** Ranscht, David [AG]; Gavin, Meghan [AG]  
**Subject:** Lt Gov stuff

South Carolina just went through the succession issues with Nicki Haley leaving. Could one of you find the S.C. constitution and any pertinent cases? Thanks.

## Gavin, Meghan [AG]

---

**From:** Ranscht, David [AG]  
**Sent:** Monday, April 03, 2017 11:19 AM  
**To:** Gavin, Meghan [AG]; Thompson, Jeffrey [AG]  
**Subject:** RE: Lt Gov stuff

Here's the court opinion. (It doesn't say much.)

<http://www.sccourts.org/opinions/HTMLFiles/SC/27699.pdf>

And here's the proposed amendment that passed in 2012 and 2014.

[http://www.scstatehouse.gov/sess119\\_2011-2012/bills/3152.htm](http://www.scstatehouse.gov/sess119_2011-2012/bills/3152.htm)

[http://www.scstatehouse.gov/sess120\\_2013-2014/bills/446.htm](http://www.scstatehouse.gov/sess120_2013-2014/bills/446.htm)

It looks mostly like what we did in 1988. One weird thing I noticed is that in the laundry list of reasons why the lieutenant governor would be "removed" (impeachment, resignation, etc.), "becoming governor" is not one of them, as some other states have said.

David Ranscht  
Assistant Attorney General  
Office of the Attorney General of Iowa  
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Des Moines, Iowa 50319  
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**To:** Thompson, Jeffrey [AG]; Ranscht, David [AG]  
**Subject:** RE: Lt Gov stuff

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South Carolina just went through the succession issues with Nicki Haley leaving. Could one of you find the S.C. constitution and any pertinent cases? Thanks.

**Gavin, Meghan [AG]**

---

**From:** National Council of State Education Attorneys <NCOSEA@LSV.UKY.EDU> on behalf of Stacey Suber-Drake <SDrake@DOE.K12.GA.US>  
**Sent:** Friday, January 20, 2017 1:30 PM  
**To:** NCOSEA@LSV.UKY.EDU  
**Subject:** Re: [NCOSEA:] Fwd: [NCOSEA:] Media consent process  
**Attachments:** Release Form Adult.pdf; Release Form for Minor Children.pdf

Good afternoon,

These are the forms used in Georgia.

Stacey

**Stacey Suber-Drake** | *Interim General Counsel* | 404.463.1725

**From:** National Council of State Education Attorneys [mailto:NCOSEA@LSV.UKY.EDU] **On Behalf Of** Proesch, Nicole  
**Sent:** Friday, January 20, 2017 2:03 PM  
**To:** NCOSEA@LSV.UKY.EDU  
**Subject:** [NCOSEA:] Fwd: [NCOSEA:] Media consent process

Here is our process in Iowa.

----- Forwarded message -----

**From:** **Hupp, Staci** <[staci.hupp@iowa.gov](mailto:staci.hupp@iowa.gov)>  
**Date:** Fri, Jan 20, 2017 at 11:47 AM  
**Subject:** Re: [NCOSEA:] Media consent process  
**To:** "Mayes, Thomas" <[thomas.mayes@iowa.gov](mailto:thomas.mayes@iowa.gov)>  
**Cc:** Nicole Proesch <[nicole.proesch@iowa.gov](mailto:nicole.proesch@iowa.gov)>

Thomas/Nicole,

We get student consent under the following circumstances:

- Photographing students for our staff-produced newsletters/articles, which are distributed via email and posted to our website.
- Photographing students for pictures that will be on display in our building.
- Organizing a conference or event with student participants who may be photographed/video recorded by the media, PR people or other participants. An example would be the Governor's bullying prevention summits.
- Capturing photos or video of students as part of a recorded training for teachers/school administrators.

In the conference/event example, consent is handled through registration paperwork. In the other examples, a release form is used. Our agency's consent form has been updated in the last year and is attached.



Thanks,

Staci

On Thu, Jan 19, 2017 at 4:41 PM, Mayes, Thomas <[thomas.mayes@iowa.gov](mailto:thomas.mayes@iowa.gov)> wrote:

Staci, how would you suggest that Nicole respond?

Thomas A. Mayes, Attorney II  
Division of Learning and Results  
Iowa Department of Education  
400 E 14th St  
Grimes State Office Building  
Des Moines, IA 50319-0146  
515.242.5614

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From: **THEOHARIS GEORGIANA** <[GTHEOHAR@isbe.net](mailto:GTHEOHAR@isbe.net)>  
Date: Thu, Jan 19, 2017 at 4:38 PM  
Subject: [NCOSEA:] Media consent process  
To: [NCOSEA@lsv.uky.edu](mailto:NCOSEA@lsv.uky.edu)

Colleagues:

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Specifically, we are interested in knowing whether your state education agency (SEA) has a standardized procedure for taking pictures of people attending conferences and posting pictures of students and educators participating in school-related activities in its press releases, social media, publications, and on its website? If so, would you please describe? Would your SEA have any model media permission policies or procedures that we might review as we revise our own? We would be interested to see state administrative rules as well, if available.

Finally, how does your SEA address privacy issues surrounding the use and publication of such personal images/photographs (e.g., Federal Educational Rights and Privacy Act (20 U.S.C. § 1232g)(FERPA))?

We very much appreciate any assistance you might provide regarding this matter.

If you have any questions, you may contact me at (312) 814-2227.

Georgiana Theoharis

Assistant General Counsel

Illinois State Board of Education

100 West Randolph Street, 14<sup>th</sup> Floor

Chicago, Illinois 60601

Tel. 312.814.2227

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Staci Hupp  
Communications Director  
Iowa Department of Education  
Office: 515-281-5651  
Cell: 515-669-7007

--

Nicole M. Proesch

Legal Counsel

Office of the Director

Iowa Department of Education

Grimes State Office Building | 400 E. 14th Street | Des Moines, IA 50319-0146

Phone: 515-281-8661 | Cell: 515-240-3787 | Fax: 515-242-5988 | [nicole.proesch@iowa.gov](mailto:nicole.proesch@iowa.gov)

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**Gavin, Meghan [AG]**

---

**From:** Stahle, Diane [AG]  
**Sent:** Wednesday, May 04, 2016 2:49 PM  
**To:** Thompson, Jeffrey [AG]; Gavin, Meghan [AG]  
**Cc:** Peterzalek, Jeffrey [AG]  
**Subject:** RE: Courtesy NEF RE: 15-2099

I'll get the answer to the first question asked by the Court about whether there is an appropriation.

---

**From:** Wittmus, Lisa [AG]  
**Sent:** Wednesday, May 04, 2016 2:30 PM  
**To:** Thompson, Jeffrey [AG]; Gavin, Meghan [AG]; Stahle, Diane [AG]  
**Cc:** Peterzalek, Jeffrey [AG]  
**Subject:** FW: Courtesy NEF RE: 15-2099

**From:** [efiling.mail@iowacourts.gov](mailto:efiling.mail@iowacourts.gov) [mailto:[efiling.mail@iowacourts.gov](mailto:efiling.mail@iowacourts.gov)]  
**Sent:** Wednesday, May 04, 2016 10:39 AM  
**To:** Wittmus, Lisa [AG]  
**Subject:** Courtesy NEF RE: 15-2099

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A filing has been made in the following case:

15-2099

Official File Stamp:

05-04-2016:10:39:05

Court:

Appellate Court

Case Title:

Homan v. Branstad

Document(s) Submitted

Filed by or in behalf of

ORDER: w/in 14 days parties to file statements addressing potential mootness of the appeal

Mark Cady

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THOMPSON, JEFFREY SCOTT for BRANSTAD, TERRY E

WOLFE, SARAH MARIE for MCCOY, MATTHEW, HOMAN, DANNY, TAYLOR, RICH, KEARNS, JERRY, SMITH, MARK, COURTNEY, THOMAS, PETERSEN, JANET ANN, HUNTER, BRUCE, HANSON, CURT, BISIGNANO, TONY, QUIRMBACH, HERMAN, DEARDEN, DICK, STAED, ARTHUR MATTHEW, ABDUL-SAMAD, AKO, OLDSO, JO, GAINES, RUTH ANN, STECKMAN, SHARON, TAYLOR, TODD E., GASKILL, MARY, RUNNING-MARQUARDT, KIRSTEN, BROWN-POWERS, TIMI, JACOBY, DAVE, JOCHUM, PAM, GRONSTAL, MICHAEL EDWARD, BEARINGER, BRUCE

BOULTON, NATHANIEL RANDELL for MCCOY, MATTHEW, HOMAN, DANNY, TAYLOR, RICH, KEARNS, JERRY, SMITH, MARK, COURTNEY, THOMAS, PETERSEN, JANET ANN, HUNTER, BRUCE, HANSON, CURT, BISIGNANO, TONY, QUIRMBACH, HERMAN, DEARDEN, DICK, STAED, ARTHUR MATTHEW, ABDUL-SAMAD, AKO, OLDSO, JO, GAINES, RUTH ANN, STECKMAN, SHARON, TAYLOR, TODD E., GASKILL, MARY, RUNNING-MARQUARDT, KIRSTEN, BROWN-POWERS, TIMI, JACOBY, DAVE, JOCHUM, PAM, GRONSTAL, MICHAEL EDWARD, BEARINGER, BRUCE

HEDBERG, MARK T. for MCCOY, MATTHEW, HOMAN, DANNY, TAYLOR, RICH, KEARNS, JERRY, SMITH, MARK, COURTNEY, THOMAS, PETERSEN, JANET ANN, HUNTER, BRUCE, HANSON, CURT, BISIGNANO, TONY, QUIRMBACH, HERMAN, DEARDEN, DICK, STAED, ARTHUR MATTHEW, ABDUL-SAMAD, AKO, OLDSO, JO, GAINES, RUTH ANN, STECKMAN, SHARON, TAYLOR, TODD E., GASKILL, MARY, RUNNING-MARQUARDT, KIRSTEN, BROWN-POWERS, TIMI, JACOBY, DAVE, JOCHUM, PAM, GRONSTAL, MICHAEL EDWARD, BEARINGER, BRUCE

GAVIN, MEGHAN LEE for BRANSTAD, TERRY E

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## Gavin, Meghan [AG]

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**From:** Steffensmeier, Laura [AG]  
**Sent:** Tuesday, January 03, 2017 11:37 AM  
**To:** Funk, Andrew [IBPE]; Gavin, Meghan [AG]  
**Subject:** RE: FYI-Kay Jessen

Thanks for letting us know. I'm not shocked. Perhaps the information regarding time commitment could be updated on the Governor's website as they seek to find someone new.



**Laura Steffensmeier**  
**Assistant Attorney General**  
Office of the Attorney General of Iowa  
1305 E. Walnut St.  
Des Moines, IA 50319  
Main: (515) 281-5164 | Direct: (515) 281-6690  
Email: [Laura.Steffensmeier@iowa.gov](mailto:Laura.Steffensmeier@iowa.gov) | [www.iowaattorneygeneral.gov](http://www.iowaattorneygeneral.gov)

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**From:** Funk, Andrew [mailto:[andrew.funk@iowa.gov](mailto:andrew.funk@iowa.gov)]  
**Sent:** Tuesday, January 03, 2017 11:05 AM  
**To:** Gavin, Meghan [AG]; Steffensmeier, Laura [AG]  
**Subject:** FYI-Kay Jessen

Happy New Year!

Kay Jessen submitted her resignation to me this morning. From her email, it appears as though she will not be finishing out the year.

--

Andrew Funk, Pharm.D.  
Executive Director  
Iowa Board of Pharmacy  
RiverPoint Business Park  
400 SW 8th Street, Suite E  
Des Moines, Iowa 50309-4688  
515.281.5944 Main Line  
[andrew.funk@iowa.gov](mailto:andrew.funk@iowa.gov)

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## Gavin, Meghan [AG]

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**From:** Tabor, Eric [AG]  
**Sent:** Monday, May 01, 2017 2:07 PM  
**To:** Thompson, Jeffrey [AG]; Gavin, Meghan [AG]; Ranscht, David [AG]  
**Subject:** FW: RELEASE: Gov. Branstad, Lt. Gov. Reynolds respond to Attorney General Miller's reversal of opinion

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**From:** Press Releases from Iowa Governor's Office [mailto:IowaGovernorsOffice@public.govdelivery.com]  
**Sent:** Monday, May 01, 2017 2:04 PM  
**To:** Tabor, Eric [AG]  
**Subject:** RELEASE: Gov. Branstad, Lt. Gov. Reynolds respond to Attorney General Miller's reversal of opinion

## OFFICE OF THE GOVERNOR Governor Terry E. Branstad ★ Lt. Governor Kim Reynolds

FOR IMMEDIATE RELEASE: Monday, May 1, 2017  
CONTACT: Governor's Office 515-281-5211

# Gov. Branstad, Lt. Gov. Reynolds respond to Attorney General Miller's reversal of opinion

(DES MOINES) – Today, after learning of Attorney General Tom Miller's reversal of opinion, Gov. Terry Branstad and Lt. Gov. Kim Reynolds issued the following statements, and provided both facts and background information to the public on the case for a new Lt. Governor.

### Gov. Terry Branstad

"Tom Miller was crystal clear last December when he said Lt. Governor Reynolds could act upon existing law and appoint a Lt. Governor when she becomes Governor upon my resignation.

*'Our office has researched the law and consulted with the Governor's office. We concur with the Governor's conclusion that, upon resignation of Governor Branstad, Lt. Governor Reynolds will become Governor and will have the authority to appoint a new Lt. Governor.' – Tom Miller's Office, December 13, 2016.*

No new facts or laws have changed since December 13, 2016. Tom Miller has allowed politics to cloud his judgment and is ignoring Iowa law. This politically motivated opinion defies common sense. Iowans expect a Governor and Lt. Governor working on their behalf. This is disappointing."

### Lt. Gov. Kim Reynolds

"In December, Attorney General Tom Miller researched the law and concurred with the Secretary of State and our office that, upon Gov. Branstad's resignation, I become Governor and have the authority to appoint a new Lt. Governor. Since then, I've been moving forward with that understanding. Now, five months later, just one day before Governor Branstad testifies before the U.S. Senate Foreign Relations Committee, the Attorney General has reversed himself, but the law hasn't changed. The law still states that as Governor, I vacate my role as Lt. Governor and am able to appoint a new Lt. Governor. With the law on our side we will move forward with his first conclusion as we examine our options in light of Tom Miller's reversal."

**Ben Hammes, Communications Director**

"The power of a Governor to appoint a new Lt. Governor was put into the law in 2009 by the democrats. That law says: 'An appointment by the governor to fill a vacancy in the office of lieutenant governor shall be for the balance of the unexpired term.' This bill passed unanimously by both parties and signed into law by a democrat Governor. Now, just because the democrats do not control the Governor's office, Attorney General Miller wants to pretend like this law does not exist, and issue a non-binding opinion. Quite frankly, this is what Iowans are sick and tired of. The Attorney General should be upholding the law, not ignoring it."

\*\*\*\*\*

**Background Information:**

Attorney General Miller now says that Lt. Gov. Reynolds will be both Governor and Lt. Governor at the same time and that Lt. Gov. Reynolds will not be able to appoint a new Lt. Governor. That defies common sense and the law.

- (1) When Gov. Branstad resigns, the Iowa Constitution states that his powers will devolve upon Lt. Gov. Reynolds. Lt. Gov. Reynolds will become Governor. Attorney General Miller agrees with this conclusion.
- (2) Iowa law prevents someone from holding two offices at the same time. Because Kim Reynolds will become Governor, she will automatically vacate the Office of the Lt. Governor.
- (3) In 2009, the Iowa Legislature (led by democrats) passed a statute to clarify that if there is a vacancy in the Office of Lt. Governor, the Governor appoints someone to fill that vacancy. That law is clear: "An appointment by the governor to fill a vacancy in the office of lieutenant governor shall be for the balance of the unexpired term."
- (4) When Terry Branstad resigns, Kim Reynolds becomes Governor; the Office of Lt. Governor is then vacant, and under the Iowa Code (passed unanimously by the Legislature) Gov. Reynolds appoints someone to fill that vacancy.

Similar situations have occurred before in other states. For example:

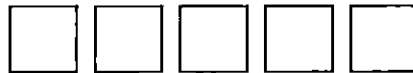
- (1) In 2003, President Bush picked Utah Gov. Michael Leavitt to head the EPA. The state's Attorney General, in a thorough legal opinion, concluded that Leavitt's Lt. Governor became Governor and vacated the Lt. Governor's Office. The new Governor, then, was free to appoint a new Lt. Governor (and he did).

- (2) Similarly, when then-Gov. Bill Clinton became president in 1993, the Arkansas Supreme Court ruled — based upon constitutional provisions that are nearly identical to Iowa’s — that his Lt. Governor became Governor. The Office of the Lt. Governor was then vacant, and Mike Huckabee filled that vacancy mid-term.
- (3) Finally, and most recently, the New York’s highest court ruled that when Gov. Elliot Spitzer resigned, Lt. Governor David Patterson became Governor, vacated the Office of Lt. Governor, and was free to appoint a new Lt. Governor.

In December 2016, Attorney General Miller agreed with this view of the law. Since then, the Constitution hasn’t changed. Neither has the Iowa Code. While Attorney General Miller's opinion is not binding on anybody, Iowans should ask why Attorney General Miller suddenly reversed course.

###

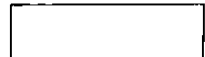
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## Gavin, Meghan [AG]

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**From:** Tabor, Eric [AG]  
**Sent:** Tuesday, April 25, 2017 11:39 AM  
**To:** Adams, Heather [AG]; Gavin, Meghan [AG]  
**Cc:** Thompson, Jeffrey [AG]  
**Subject:** FW: HF 524 should be reviewed by Tom Miller before Gov. Branstad signs it into law

Once we have time to digest the bill, let's discuss. Thanks. Eric



**Eric Tabor**  
**Chief Deputy Attorney General**  
Office of the Attorney General of Iowa  
1305 E. Walnut St.  
Des Moines, Iowa 50319  
Main: (515) 281-5164 | Direct: (515) 281-5191  
Email: [Eric.Tabor@iowa.gov](mailto:Eric.Tabor@iowa.gov) | [www.iowaattorneygeneral.gov](http://www.iowaattorneygeneral.gov)

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**From:** Johansen, Eric [LEGIS] [<mailto:Eric.Johansen@legis.iowa.gov>]  
**Sent:** Tuesday, April 25, 2017 9:49 AM  
**To:** Tabor, Eric [AG]  
**Cc:** Schneider, Charles [LEGIS]; Dix, Bill [LEGIS]  
**Subject:** FW: HF 524 should be reviewed by Tom Miller before Gov. Branstad signs it into law

Eric,

Senator Schneider has asked that I pass along a request for comment from the Attorney General regarding HF 524 (medicinal cannabis). Could you please provide us an opinion regarding the legality of Iowa establishing the program outlined in HF 524?

Thanks,  
Eric  
--  
Eric Johansen  
Staff Director  
Senate Republican Caucus Staff  
(515) 313-8538 : Cell  
(515) 281-3979 : Office

---

**From:** Schneider, Charles [LEGIS]  
**Sent:** Tuesday, April 25, 2017 9:42 AM  
**To:** Johansen, Eric [LEGIS]  
**Subject:** FW: HF 524 should be reviewed by Tom Miller before Gov. Branstad signs it into law

Hi Eric,

Would you please pass this along to Attorney General Miller's office for comment?

Thanks!

Charles Schneider  
State Senator

----- Original Message -----

Subject: HF 524 should be reviewed by Tom Miller before Gov. Branstad signs it into law  
Sent: Apr 25, 2017 5:56 AM  
From: Carl Olsen <[carl@carl-olsen.com](mailto:carl@carl-olsen.com)>  
To: "Schneider, Charles [LEGIS]" <[Charles.Schneider@legis.iowa.gov](mailto:Charles.Schneider@legis.iowa.gov)>, Charles Schneider <[charlesmschneider@gmail.com](mailto:charlesmschneider@gmail.com)>  
Cc:

130 E. Aurora Ave.  
Des Moines, Iowa 50313-3654  
April 25, 2017

Charles Schneider  
7887 Cody Dr  
West Des Moines, IA 50266

Re: HF 524 (medical use of cannabis)

Dear Senator Schneider,

HF 524 appears to set up a continuing criminal enterprise here in Iowa, in violation of federal law, 21 U.S.C. § 848 (2017). Anyone participating in the program would be in violation of federal law, 21 U.S.C. § 844 (2017). Anyone manufacturing or distributing cannabis products would be committing federal crimes carrying penalties of 10 years to life in federal prison and a fine of \$10 to \$50 million, 21 U.S.C. § 841 (2017). Penalties can double for conspiracy to commit any of these acts, 21 U.S.C. § 846 (2017). Because HF 524 authorizes the cultivation, manufacture, and distribution, and possession of cannabis products in the state of Iowa without explaining how any of it would be in compliance with federal law, HF 524 creates a positive conflict between federal and state law so that the two cannot consistently stand together, 21 U.S.C. § 903 (2017).

Please request an opinion from the Attorney General of Iowa, Tom Miller, on the legality of HF 524 before Governor Branstad signs HF 524 into law.

Current federal law can be found at 21 U.S.C. §§ 801 et seq., Pub. L. 91–513, Oct. 27, 1970, 84 Stat. 1236 (“Controlled Substances Act”).

In my opinion, federal schedules of controlled substances are ordinary administrative regulations and cannot be used to interfere with state medical marijuana programs, but HF 524 does not address this matter.

**Alliance for Cannabis Therapeutics v. DEA, 930 F.2d 936, 939 (D.C. Cir. 1991)** (“*neither the statute nor its legislative history precisely defines the term ‘currently accepted medical use’; therefore, we are obliged to defer to the Administrator’s interpretation of that phrase if reasonable.*”)

**Gonzales v. Oregon, 546 U.S. 243, 258 (2006)** (“*The Attorney General has rulemaking power to fulfill his duties under the CSA. The specific respects in which he is authorized to make rules, however, instruct us that he is not authorized to make a rule declaring illegitimate a medical standard for care and treatment of patients that is specifically authorized under state law.*”)

**Grinspoon v. DEA, 828 F.2d 881, 886 (1st Cir. 1987)** (“*Congress did not intend ‘accepted medical use in treatment in the United States’ to require a finding of recognized medical use in every state or, as the Administrator contends, approval for interstate marketing of the substance.*”)

I look forward to hearing from you at your earliest convenience.

Thank you very much!

Sincerely,

Carl Olsen  
130 E. Aurora Ave.  
Des Moines, Iowa 50313-3654  
515-343-9933  
[carl@carl-olsen.com](mailto:carl@carl-olsen.com)

<http://carl-olsen.com/>

<http://iowamedicalmarijuana.org/>

cc: Iowa Governor Terry Branstad



**Gavin, Meghan [AG]**

---

**From:** Tabor, Eric [AG]  
**Sent:** Wednesday, March 08, 2017 8:54 AM  
**To:** Thompson, Jeffrey [AG]; Ranscht, David [AG]; Gavin, Meghan [AG]  
**Subject:** FW: A new Pieces of Iowa's Past has been published: Lieutenant Governors Who Have Become Governor

FYI

---

**From:** lfblists@legis.iowa.gov [mailto:lfblists@legis.iowa.gov]  
**Sent:** Wednesday, March 08, 2017 8:05 AM  
**To:** TOUR\_GUIDE\_TIDBITS@LISTSERV.LEGIS.IOWA.GOV  
**Subject:** A new Pieces of Iowa's Past has been published: Lieutenant Governors Who Have Become Governor

Document type: Pieces of Iowa's Past

Document title: Lieutenant Governors Who Have Become Governor

Document published location: <https://www.legis.iowa.gov/docs/publications/TB/855445.pdf>

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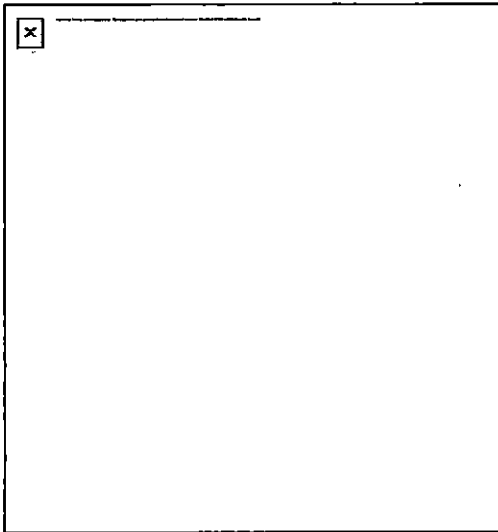
**Gavin, Meghan [AG]**

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**From:** Terri L. Bennett <tbennett@iowalaw.org>  
**Sent:** Tuesday, April 25, 2017 9:30 AM  
**To:** Gavin, Meghan [AG]  
**Subject:** Iowa Legal Aid's 40th Anniversary

## **Iowa Legal Aid:**

Celebrating 40 Years of Seeking Justice and Improving Lives

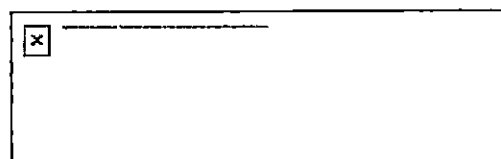
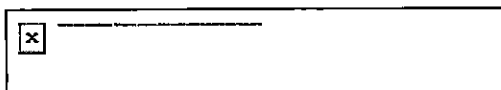


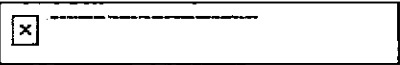
### **Equal Justice After Hours 2017**

*Equal Justice After Hours*, the Iowa Legal Aid Foundation's signature annual fundraising event, was held on March 30, and attended by over 300 people. Photos and the program from the event can be found on the Iowa Legal Aid Foundation's website at [www.iowalegalaidfoundation.org](http://www.iowalegalaidfoundation.org).

Preliminary figures show that nearly \$200,000 was raised through sponsorships, ticket sales and donations at the event. This total includes \$25,000 raised through a dollar-for-dollar challenge issued by members of the Iowa State Bar Association's Board of Governors.

### **THANK YOU TO THE PREMIER SPONSORS OF EQUAL JUSTICE AFTER HOURS 2017:**



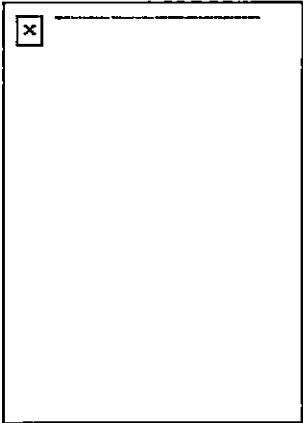


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**Litigation Highlights of the Past 40 Years:**

**Availability of Fee Waivers**

Iowa Legal Aid has worked on behalf of vulnerable children for its entire 40 years. In the early 1990s, Iowa Legal Aid staff often received calls from parents who were not allowed to enroll their children in school because of unpaid school fees. School fees often totaled more than \$100 per child, depending on the grade level and other factors. There were cases where the names of students who had not paid fees were read over the public address system at the beginning of the school day, where children's names were posted on a bulletin board, where students were denied participation in graduation ceremonies, where students were not allowed to have their report cards—all because of their parents' poverty. One year, an elementary principal actually stood in the door way, and extended his arm to block the entry of an impoverished child whose parents had not paid school fees. Iowa Legal Aid filed a request for rule making with the Department of Education. It took four years to get a rule that required school districts to waive fees for low-income families, but now, each fall, low-income families are notified of the availability of fee waivers. There were no more back-to-school calls to Iowa Legal Aid after 1996, when the rule became final.



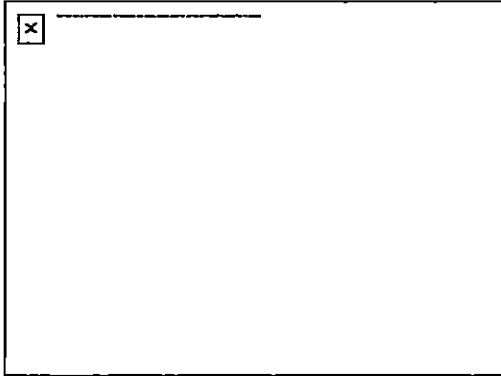
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**Did you know there are over 498,000 Iowans with incomes below 125% of the poverty level and are financially eligible for legal aid?**

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**Iowa Legal Aid's Cedar Rapids Regional Office**

In December 2010, the Cedar Rapids Regional Office was the first tenant to move into the newly constructed, post-Flood 2008, Human Services Campus.



*PICTURED:*

*Left to Right: Ericka Petersen, Lisa Gavin, Alisa Diehl, Ashle Bray, Emma Schlomann, Leslie Frederick, Chris Merkle, Liz Stansbury, Jim Kringlen (Managing Attorney)*

---

## **13th Annual Dean's Cup Golf Challenge**

**May 15, 2017 - Finkbine Golf Course - Iowa City**

This event is for all law graduates, faculty, staff and students of Drake Law School and the Iowa College of Law – of every skill level – to support their law school, and, at the same time, raise funds for Iowa Legal Aid, which provided Hope, Dignity and Justice to nearly 38,000 Iowans in 2016, but still had to turn away or underserve at least 10,000 others.

Over 110 lawyers and judges from around the state participated in the 2016 event. Drake, led by Captain Chief Justice Mark Cady, won the Cup from a spirited Iowa squad and its Captain Judge Eliza Ovrom. In addition to playing in the event, many alums and businesses supported the event by donating items for the silent auction, sponsoring a hole or making other contributions to the event. Also, a lawyer who is not a graduate of either school may participate in the best shot format by declaring temporary allegiance to one of the two schools at the time of registration.

The Registration fee is partially tax deductible. To sign up and secure your spot in this prestigious event, or indicate your desire to be a sponsor, click [here](#).

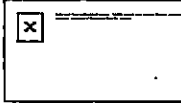
**The field is limited, so be sure to submit your registration right away!**

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In its 40-year history, Iowa Legal Aid has made a significant impact on the lives of low-income Iowans. Throughout the year, we will continue to share client stories, significant cases, and other examples of our long history of seeking justice and improving lives.

Thank you for your support as we celebrate our history and fulfill our mission to provide Hope Dignity and Justice to all Iowans. Please contact me with questions, comments or concerns.

Sincerely,



Dennis Groenenboom  
Executive Director  
[dgroenenboom@iowalaw.org](mailto:dgroenenboom@iowalaw.org)  
515-243-2980 x 1620

---

**"Celebrating 40 Years of Seeking Justice and Improving Lives"**

Please visit our website at [www.iowalegalaid.org](http://www.iowalegalaid.org)  
Donate to our cause at [www.iowalegalaidfoundation.org](http://www.iowalegalaidfoundation.org)

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Iowa Legal Aid  
1111 9th Street, Suite 230  
Des Moines, IA 50314  
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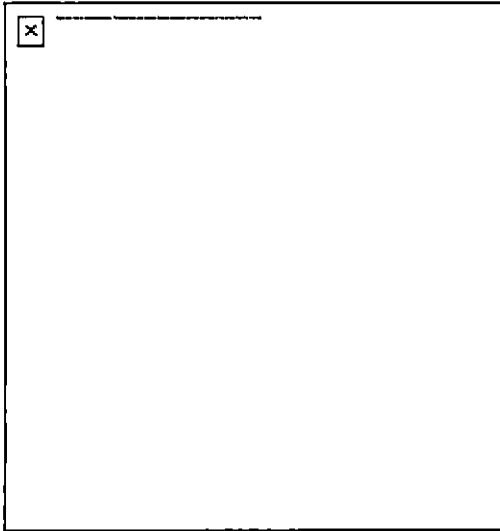
Gavin, Meghan [AG]

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**From:** Terri L. Bennett <tbennett@iowalaw.org>  
**Sent:** Thursday, March 23, 2017 5:25 PM  
**To:** Gavin, Meghan [AG]  
**Subject:** Iowa Legal Aid's 40th Anniversary

## Iowa Legal Aid:

Celebrating 40 Years of Seeking Justice and Improving Lives



### PLEASE JOIN US!! Equal Justice After Hours 2017

For the past 40 years, Iowa Legal Aid has helped ensure that everyone is treated fairly in the justice system. The importance of access to the court system is best illustrated through the comments of an Iowa Legal Aid client:

***"Thank you! For years, I didn't know how or when to get out of the situation I was in when in all reality, one phone call to Iowa Legal Aid made a huge impact on my life! I now have a nice place to live that is safe for me and my children. We can now learn to live without domestic violence in our home. My children can now grow up to respect others. Iowa Legal Aid saved my life!"***

In 2017, Iowa Legal Aid is celebrating **40 YEARS OF SEEKING JUSTICE AND IMPROVING LIVES**. Iowa Legal Aid will be kicking off its celebration with its annual event, ***Equal Justice After Hours***. The event will be held Thursday, March 30 from 5:00-7:00 p.m. at American Enterprise Group, located at 601 6th Avenue in downtown Des Moines. Tickets are \$50 and can be purchased at the door or online [HERE](#).

**Iowa State Bar Association Board of Governors has issued  
a challenge for donations made that evening!**

For the fourth year the President-Elect of the Iowa State Bar Association (ISBA), Steve Eckley, has initiated a Board of Governors challenge at ***Equal Justice After Hours***. The challenge is a dollar-for-dollar match from Steve and individual members of the Board of Governors of the ISBA for pledges and donations made at the event. Individual Board of Governors members have raised over \$7,000 to initiate the challenge!!

Join us on March 30 to celebrate **40 Years of Seeking Justice and Improving Lives**. If you are unable to attend, but would like to support Iowa Legal Aid, click **HERE** to donate.

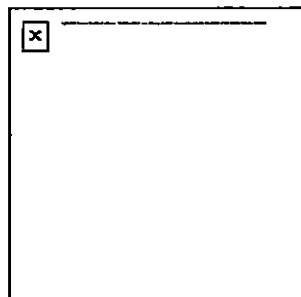
For further information, contact Terri Bennett at 515-243-2980 x 1611 or [tbennett@iowalaw.org](mailto:tbennett@iowalaw.org)

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## Litigation Highlights of the Past 40 Years:

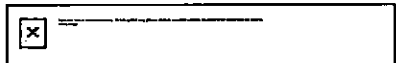
### Iowa Legal Aid's Assistance to Veterans

Iowa Legal Aid helped a disabled veteran with a garnishment problem. All of the money in his bank account had been seized. As a result, he had no money to pay expenses. The money in his account was from his Army pension and the VA. His money was protected by law from garnishment. However, he did not know it was protected and did not know he could do anything about it. Iowa Legal Aid brought a lawsuit challenging the lack of notice to the veteran and lack of an opportunity to challenge the legality of taking his property. In response to his lawsuit, the Iowa Supreme Court approved an administrative directive, providing all the relief Iowa Legal Aid asked for on his behalf. In fact, the change in procedure was broader in scope than the lawsuit, as it applied to the entire state. Now, someone in this situation will receive a notice explaining exempt property, and how to assert the claim. (Burr v. Des Moines County -- Federal District Court)



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### Iowa Legal Aid's Iowa City Regional Office

 Hawkeye Legal Aid in Iowa City was one of the "original" county legal aid offices that merged to form the Legal Services Corporation of Iowa, now Iowa Legal Aid. Hawkeye Legal Aid was formed in 1967. Iowa Legal Aid celebrates its 40th anniversary this year, but it is also the 50th anniversary of legal aid in Johnson County.

**PICTURED:**

*Front row, left to right: Charles Pierce, Liz Norris, Chris Luzzie (Litigation Director).*

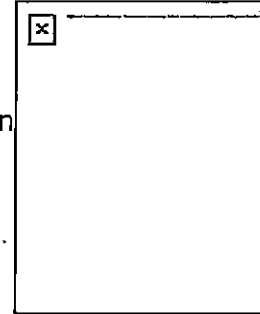
*Back row, left to right: Jan Rutledge (Managing Attorney), Courtney Thomas-Dusing, Lorraine*

Gaynor, Jessica Covington.

---

## Iowa Legal Aid Client Tells Her Story

One of the most meaningful ways to learn about Iowa Legal Aid's important work is to hear about it from our clients. Click [HERE](#) to listen to Theresa tell her story of the positive impact Iowa Legal Aid made in her life.

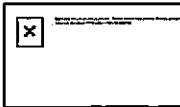


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In its 40-year history, Iowa Legal Aid has made a significant impact on the lives of low-income Iowans. Throughout the year, we will continue to share client stories, significant cases, and other examples of our long history of seeking justice and improving lives.

Thank you for your support as we celebrate our history and fulfill our mission to provide Hope Dignity and Justice to all Iowans. Please contact me with questions, comments or concerns.

Sincerely,



Dennis Groenenboom  
Executive Director  
[dgroenenboom@iowalaw.org](mailto:dgroenenboom@iowalaw.org)  
515-243-2980 x 1620

---

**"Celebrating 40 Years of Seeking Justice and Improving Lives"**

Please visit our website at [www.iowalegalaid.org](http://www.iowalegalaid.org)  
Donate to our cause at [www.iowalegalaidfoundation.org](http://www.iowalegalaidfoundation.org)

---

[Remove my name from all future email correspondence](#)

Address postal inquiries to:  
Iowa Legal Aid  
1111 9th Street, Suite 230  
Des Moines, IA 50314

Powered By



## **Gavin, Meghan [AG]**

---

**From:** Thompson, Jeffrey [AG]  
**Sent:** Monday, April 03, 2017 10:59 AM  
**To:** Ranscht, David [AG]; Gavin, Meghan [AG]  
**Subject:** FW: Follow-up

See below. Let's talk about which cases.

**From:** Johnson, Larry [mailto:larry.johnson@iowa.gov]  
**Sent:** Monday, April 03, 2017 10:41 AM  
**To:** Thompson, Jeffrey [AG]; Boussetot, Michael [IGOV]  
**Subject:** Follow-up

Hi Jeff - I just wanted to follow-up on the ten cases you were referring to last week. If you had a minute to send the case name and citations that'd be great.

Thanks, Jeff.  
Larry

--

**Larry Johnson, Jr.** | Legal Counsel

Office of the Governor, State of Iowa

Gov. Terry Branstad & Lt. Gov. Kim Reynolds

515.725.3506 | [larry.johnson@iowa.gov](mailto:larry.johnson@iowa.gov)

[www.governor.iowa.gov](http://www.governor.iowa.gov)

[www.ltgovernor.iowa.gov](http://www.ltgovernor.iowa.gov)



## **Gavin, Meghan [AG]**

---

**From:** Thompson, Jeffrey [AG]  
**Sent:** Monday, April 03, 2017 10:24 AM  
**To:** Ranscht, David [AG]; Gavin, Meghan [AG]  
**Subject:** Lt Gov stuff

South Carolina just went through the succession issues with Nicki Haley leaving. Could one of you find the S.C. constitution and any pertinent cases? Thanks.

**Gavin, Meghan [AG]**

---

**From:** Thompson, Jeffrey [AG]  
**Sent:** Wednesday, March 08, 2017 9:10 AM  
**To:** Tabor, Eric [AG]  
**Cc:** Ranscht, David [AG]; Gavin, Meghan [AG]  
**Subject:** Re: A new Pieces of Iowa's Past has been published: Lieutenant Governors Who Have Become Governor

Interesting timing. Note that lt govs were elected separately to two year terms back then. I don't see any appointments.

Sent from my iPhone

On Mar 8, 2017, at 8:54 AM, Tabor, Eric [AG] <[Eric.Tabor@iowa.gov](mailto:Eric.Tabor@iowa.gov)> wrote:

FYI

---

**From:** [lfblists@legis.iowa.gov](mailto:lfblists@legis.iowa.gov) [mailto:[lfblists@legis.iowa.gov](mailto:lfblists@legis.iowa.gov)]  
**Sent:** Wednesday, March 08, 2017 8:05 AM  
**To:** [TOUR\\_GUIDE\\_TIDBITS@LISTSERV.LEGIS.IOWA.GOV](mailto:TOUR_GUIDE_TIDBITS@LISTSERV.LEGIS.IOWA.GOV)  
**Subject:** A new Pieces of Iowa's Past has been published: Lieutenant Governors Who Have Become Governor

Document type: Pieces of Iowa's Past  
Document title: Lieutenant Governors Who Have Become Governor  
Document published location: <https://www.legis.iowa.gov/docs/publications/TB/855445.pdf>

Please do not reply to this e-mail as this e-mail account is not monitored.

## Gavin, Meghan [AG]

---

**From:** Thompson, Jeffrey [AG]  
**Sent:** Wednesday, February 15, 2017 5:05 PM  
**To:** Gavin, Meghan [AG]; Ranscht, David [AG]  
**Subject:** RE: Arkansas, Oklahoma, and Oregon

Thanks. Let's try to find time to talk tomorrow.

Reread original and current Art. IV sec 19 carefully.

---

**From:** Gavin, Meghan [AG]  
**Sent:** Wednesday, February 15, 2017 1:34 PM  
**To:** Thompson, Jeffrey [AG]; Ranscht, David [AG]  
**Subject:** Arkansas, Oklahoma, and Oregon

You asked me to look into whether the new governor appointed a lieutenant governor after the court concluded that the lt. governor "became" governor.  
Short answer – No for each state.

Arkansas – Arkansas held a special election to fill the position of lt. governor after the lt. governor became governor following the election of President Clinton. Mike Huckabee won that special election. However, Arkansas is like Iowa pre-1988, where the lt. governor is elected separately from the governor.

Oklahoma – After the court in Oklahoma determined that the lt governor became governor in 1926, the office of lt. governor was "vacant" and held open until the next election. Just a few years later, the Governor of Oklahoma was impeached and the lt. governor again became governor, leaving the lt. governor office vacant.

Oregon – The Court in Oregon determined that the SOS became governor in 1877. For over a year Chadwick held BOTH the office of governor and the SOS until the next election.



**Meghan Gavin**  
**Assistant Attorney General**  
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Des Moines, Iowa 50319  
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## Gavin, Meghan [AG]

---

**From:** Thompson, Jeffrey [AG]  
**Sent:** Wednesday, February 15, 2017 1:55 PM  
**To:** Gavin, Meghan [AG]; Ranscht, David [AG]  
**Subject:** RE: Arkansas, Oklahoma, and Oregon

Thanks.

---

**From:** Gavin, Meghan [AG]  
**Sent:** Wednesday, February 15, 2017 1:34 PM  
**To:** Thompson, Jeffrey [AG]; Ranscht, David [AG]  
**Subject:** Arkansas, Oklahoma, and Oregon

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**Meghan Gavin**  
**Assistant Attorney General**  
Office of the Attorney General of Iowa  
1305 E. Walnut St.  
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Main: (515) 281-5164 | Direct: (515) 281-6736  
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## Gavin, Meghan [AG]

---

**From:** Thompson, Jeffrey [AG]  
**Sent:** Friday, February 10, 2017 4:08 PM  
**To:** Ranscht, David [AG]  
**Cc:** Gavin, Meghan [AG]  
**Subject:** RE: Draft Answers

David,

This is great work. Everything we need to make the case. I've given it to Eric so he can see the scope of the support for our position. Let's talk Monday.

Have a good weekend.

---

**From:** Ranscht, David [AG]  
**Sent:** Friday, February 10, 2017 2:30 PM  
**To:** Thompson, Jeffrey [AG]  
**Subject:** Draft Answers

Although there is not a specific paragraph to this effect in the memo as it stands now, I also realized that article IV, section 19 states the people further down the line "act as" governor, while "devolve" applies only to the lieutenant. That provision was amended to its current form as part of the 1988 amendments. Several other states noted that the difference in language suggests the lieutenant governor is not merely acting governor.

**Gavin, Meghan [AG]**

---

**From:** Thompson, Jeffrey [AG]  
**Sent:** Friday, December 09, 2016 12:39 PM  
**To:** Gavin, Meghan [AG]  
**Subject:** Research - succession

Since David is doing survey of state constitutions and cases would you focus on finding law review or other secondary sources? We will need to plan a meeting to discuss first thing next week.

Sent from my iPhone

## Gavin, Meghan [AG]

---

**From:** Thompson, Jeffrey [AG]  
**Sent:** Thursday, December 08, 2016 2:41 PM  
**To:** Gavin, Meghan [AG]; Ranscht, David [AG]  
**Subject:** RE: Constitutional issue re: Lt. Gov assuming Gov's powers

Already put a hard copy on your chairs. Found it this morning. Dicta.....

-----Original Message-----

**From:** Gavin, Meghan [AG]  
**Sent:** Thursday, December 08, 2016 2:39 PM  
**To:** Ranscht, David [AG]; Thompson, Jeffrey [AG]  
**Subject:** RE: Constitutional issue re: Lt. Gov assuming Gov's powers

[https://govt.westlaw.com/iaag/Document/I6adbf60af80111df9b8c850332338889?originationContext=Search+Result&listSource=Search&viewType=FullText&navigationPath=Search%2fv3%2fsearch%2fresults%2fnavigation%2fi0ad70f7000000158dfad385267b9973f%3fstartIndex%3d1%26Nav%3dADMINDECISION\\_PUBLICVIEW%26contextData%3d\(sc.Default\)&rank=2&list=ADMINDECISION\\_PUBLICVIEW&transitionType=SearchItem&contextData=\(sc.Search\)&t\\_querytext=Governor+resignation+successor+vacancy+lieutenant+governor+duties+and+responsibilities+&t\\_Method=WIN](https://govt.westlaw.com/iaag/Document/I6adbf60af80111df9b8c850332338889?originationContext=Search+Result&listSource=Search&viewType=FullText&navigationPath=Search%2fv3%2fsearch%2fresults%2fnavigation%2fi0ad70f7000000158dfad385267b9973f%3fstartIndex%3d1%26Nav%3dADMINDECISION_PUBLICVIEW%26contextData%3d(sc.Default)&rank=2&list=ADMINDECISION_PUBLICVIEW&transitionType=SearchItem&contextData=(sc.Search)&t_querytext=Governor+resignation+successor+vacancy+lieutenant+governor+duties+and+responsibilities+&t_Method=WIN)

Here's a relevant opinion free m Pam.

---

**From:** Ranscht, David [AG]  
**Sent:** Thursday, December 08, 2016 12:02 PM  
**To:** Thompson, Jeffrey [AG]; Gavin, Meghan [AG]  
**Subject:** RE: Constitutional issue re: Lt. Gov assuming Gov's powers

Cool table indeed.

Here are two more cases (WI and MT). I have a bunch more in a folder to read after lunch.

[cid:image001.png@01D25149.FECA50E0]<<http://www.iowaattorneygeneral.gov/>>

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Assistant Attorney General  
Office of the Attorney General of Iowa  
Licensing & Administrative Law Division  
1305 E. Walnut St.  
Des Moines, Iowa 50319  
Main: (515) 281-5164 | Direct: (515) 281-7175  
Email: [david.ranscht2@iowa.gov](mailto:david.ranscht2@iowa.gov) <<mailto:david.ranscht2@iowa.gov>> |  
[www.iowaattorneygeneral.gov](http://www.iowaattorneygeneral.gov/) <<http://www.iowaattorneygeneral.gov/>>

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immediately by reply email or telephone. Any unintended transmission of this email message does not constitute a waiver of any applicable privilege or protection. Thank you.

From: Thompson, Jeffrey [AG]  
Sent: Thursday, December 08, 2016 11:46 AM  
To: Ranscht, David [AG]; Gavin, Meghan [AG]  
Subject: FW: Constitutional issue re: Lt. Gov assuming Gov's powers

See below. Gotta love Wikipedia.

Can we print the cool table?

From: Greenwood, Geoff [AG]  
Sent: Thursday, December 08, 2016 11:13 AM  
To: Thompson, Jeffrey [AG]  
Subject: FW: Constitutional issue re: Lt. Gov assuming Gov's powers

From: Mark O. Lambert [mailto:marklambert@mchsi.com]  
Sent: Thursday, December 08, 2016 11:12 AM  
To: Greenwood, Geoff [AG]  
Cc: Tabor, Eric [AG]  
Subject: Re: Constitutional issue re: Lt. Gov assuming Gov's powers

Thanks, Geoff. One more thing, historically, when an Iowa Gov has left office before the end of his term, there has not been a Lt. Gov. appointed. Most of the time, these were very short periods of time, though.  
[https://en.wikipedia.org/wiki/List\\_of\\_Governors\\_of\\_Iowa](https://en.wikipedia.org/wiki/List_of_Governors_of_Iowa)

Mark

---

From: "Geoff Greenwood [AG]" <Geoff.Greenwood@iowa.gov<mailto:Geoff.Greenwood@iowa.gov>>  
To: "Mark O. Lambert" <marklambert@mchsi.com<mailto:marklambert@mchsi.com>>, "Eric Tabor [AG]" <Eric.Tabor@iowa.gov<mailto:Eric.Tabor@iowa.gov>>  
Sent: Thursday, December 8, 2016 10:25:12 AM  
Subject: RE: Constitutional issue re: Lt. Gov assuming Gov's powers

Thanks for contacting us, Mark. We're researching it and will add this to the conversation.

Best regards,

[cid:image001.png@01D25149.FECA50E0]<<http://www.iowaattorneygeneral.gov/>>

Geoff Greenwood  
Communications Director  
Office of the Attorney General of Iowa  
1305 E. Walnut St.  
Des Moines, Iowa 50319  
Main: (515) 281-5164 | Direct: (515) 281-6699



Email: [geoff.greenwood@iowa.gov](mailto:geoff.greenwood@iowa.gov) <<mailto:geoff.greenwood@iowa.gov>> |  
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From: Mark O. Lambert [<mailto:marklambert@mchsi.com>]  
Sent: Thursday, December 08, 2016 9:54 AM  
To: Greenwood, Geoff [AG]; Tabor, Eric [AG]  
Subject: Constitutional issue re: Lt. Gov assuming Gov's powers  
Importance: High

Eric and Geoff:

In Massachusetts, when Governor William Weld resigned in 1997, Lt. Gov. Paul Cellucci became "Acting Governor" – not "Governor." When Cellucci resigned to become US Ambassador to Canada during the Bush Administration in 2001, his Lt. Gov. Jane Swift became "Acting Governor."

Massachusetts Constitution has a similar provision to the Iowa Constitution:

III.--Whenever the chair of the Governor shall be vacant, by reason of his death, or absence from the Commonwealth, or otherwise, the Lieutenant-Governor, for the time being, shall, during such vacancy, perform all the duties incumbent upon the Governor, and shall have and exercise all the powers and authorities, which by this Constitution the Governor is vested with, when personally present.

Hope this is helpful.

--Mark

Mark Lambert

Attorney at Law

Polk City

## Gavin, Meghan [AG]

---

**From:** Thompson, Jeffrey [AG]  
**Sent:** Thursday, December 08, 2016 11:46 AM  
**To:** Ranscht, David [AG]; Gavin, Meghan [AG]  
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See below. Gotta love Wikipedia.

Can we print the cool table?

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**Sent:** Thursday, December 08, 2016 11:13 AM  
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**Subject:** Re: Constitutional issue re: Lt. Gov assuming Gov's powers

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[https://en.wikipedia.org/wiki/List\\_of\\_Governors\\_of\\_Iowa](https://en.wikipedia.org/wiki/List_of_Governors_of_Iowa)

Mark

---

**From:** "Geoff Greenwood [AG]" <[Geoff.Greenwood@iowa.gov](mailto:Geoff.Greenwood@iowa.gov)>  
**To:** "Mark O. Lambert" <[marklambert@mchsi.com](mailto:marklambert@mchsi.com)>, "Eric Tabor [AG]" <[Eric.Tabor@iowa.gov](mailto:Eric.Tabor@iowa.gov)>  
**Sent:** Thursday, December 8, 2016 10:25:12 AM  
**Subject:** RE: Constitutional issue re: Lt. Gov assuming Gov's powers

Thanks for contacting us, Mark. We're researching it and will add this to the conversation.

Best regards,



**Geoff Greenwood**  
**Communications Director**  
Office of the Attorney General of Iowa  
1305 E. Walnut St.  
Des Moines, Iowa 50319  
Main: (515) 281-5164 | Direct: (515) 281-6699  
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**From:** Mark O. Lambert [<mailto:marklambert@mchsi.com>]  
**Sent:** Thursday, December 08, 2016 9:54 AM  
**To:** Greenwood, Geoff [AG]; Tabor, Eric [AG]  
**Subject:** Constitutional issue re: Lt. Gov assuming Gov's powers  
**Importance:** High

Eric and Geoff:

In Massachusetts, when Governor William Weld resigned in 1997, Lt. Gov. Paul Cellucci became “Acting Governor” – not “Governor.” When Cellucci resigned to become US Ambassador to Canada during the Bush Administration in 2001, his Lt. Gov. Jane Swift became “Acting Governor.”

Massachusetts Constitution has a similar provision to the Iowa Constitution:

III.--Whenever the chair of the Governor shall be vacant, by reason of his death, or absence from the Commonwealth, or otherwise, the Lieutenant-Governor, for the time being, shall, during such vacancy, perform all the duties incumbent upon the Governor, and shall have and exercise all the powers and authorities, which by this Constitution the Governor is vested with, when personally present.

Hope this is helpful.

--Mark

Mark Lambert  
Attorney at Law  
Polk City  
515-681-0285

## Gavin, Meghan [AG]

---

**From:** White, Cathleen [AG]  
**Sent:** Tuesday, May 02, 2017 8:58 AM  
**To:** Gavin, Meghan [AG]  
**Subject:** RE: Lt. Governor / Attorney General situation

Will do. Thank you!

---

**From:** Gavin, Meghan [AG]  
**Sent:** Tuesday, May 02, 2017 8:50 AM  
**To:** White, Cathleen [AG]  
**Subject:** RE: Lt. Governor / Attorney General situation

The opinion specifically addresses the issue he is talking about. I think we can just provide him with the opinion and point him to pages 11-15.

---

**From:** White, Cathleen [AG] On Behalf Of AG Webteam [AG]  
**Sent:** Tuesday, May 02, 2017 8:30 AM  
**To:** Gavin, Meghan [AG]  
**Subject:** FW: Lt. Governor / Attorney General situation

Meghan, can you help with a response to Mr. Bowman?

**From:** Beau Bowman [<mailto:beaubowman13@gmail.com>]  
**Sent:** Monday, May 01, 2017 2:43 PM  
**To:** AG Webteam [AG]  
**Subject:** Lt. Governor / Attorney General situation

Hi there,

My name is Beau Bowman and I have a question about the recent release by the attorney general concerning the Lt. Governor's new title and power to appoint a new Lt. Governor.

I agree with the Attorney General that Lt. Governor Kim Reynolds should not be able to appoint a new Lt. Governor.

What I do not agree with is her title "Governor Reynolds."

The Iowa Constitution (Article IV sec. 17) states: "In case of the death, impeachment, **resignation**, removal from office, or other disability of the governor, the powers and duties of the office for the residue of the term, or until he shall be acquitted, or the disability removed, **shall devolve upon the lieutenant governor.**"

The legal definition of the word devolve is: "when property is automatically transferred from one party to another"

No where in the constitution does it say that Reynolds would become the Governor, but only take on the responsibility of Governor for the remainder of the term.

Therefore, Reynolds' title should stay as Lt. Governor. She should not be able to appoint a new Lt. Governor because there is no vacancy in that office.

My email and phone number are listed at the bottom of this email. Thank you for hearing me out.

--

***Beau Bowman***

[beaubowman13@gmail.com](mailto:beaubowman13@gmail.com) | (563) 370-4818

## Gavin, Meghan [AG]

---

**From:** Willits, Emily [AG]  
**Sent:** Wednesday, April 19, 2017 9:00 AM  
**To:** Gavin, Meghan [AG]  
**Subject:** Article

## WCF COURIER: Black Hawk County keeps courthouse gun ban

TIM JAMISON

Black Hawk County will continue banning firearms from the courthouse.

Members of the county Board of Supervisors decided Tuesday to maintain the weapons ban despite sweeping changes in Iowa gun laws approved by the Legislature and signed by Gov. Terry Branstad.

County Attorney Brian Williams said language in the law has been misconstrued by some as pre-empting local governments from having policies about gun possession in city and county buildings.

"I certainly hope that wasn't (the legislators') intent," Williams said. "My recommendation to the board is that we maintain the policy as is."

The only guns allowed in the courthouse are those carried by certified police officers or being used as evidence in trials. Metal detectors and security guards enforce the ban at the courthouse's public entrance.

The omnibus gun bill passed by both the Iowa House and Senate includes controversial "stand-your-ground" language among other provisions. It also allows individuals with proper permits to carry concealed weapons in the state Capitol buildings and grounds.

The law, effective July 1, also would allow a person "adversely affected" by a local government policy or rule regulating the legal possession and transfer of a firearm to sue in court for injunctive relief and damages.

"There's a lot of ambiguity in the statute," said Assistant County Attorney Pete Burk. "But I think we're on appropriate legal grounds to simply keep the policy we have."

A person carrying a weapon will not be allowed to enter the courthouse. If that person files a petition with the court, the county would then respond, Burk said.

All five county supervisors said they supported the current policy.

Bottom of Form

"We've got our employees to worry about, especially with the business we do here in the courthouse," said Supervisor Craig White. "We have situations where it's divorces, stuff like that, and if we allow guns in here it can only lead to problems."

Supervisor Chris Schwartz noted he received a death threat during his election campaign.

“The idea that we would allow guns into this building that aren’t being held by police officers is personally frightening to me, but also just out of concern for our employees and the people that come here to conduct business,” he said. “When people come to the courthouse they should have a right to feel safe.”

Board chairman Frank Magsamen resented the idea state government could restrict counties from adopting their own building policies.

“As local government I believe we have a better understanding about our needs and facilities,” he said.



**Emily Willits**

**Director, Licensing & Administrative Law Division**

Office of the Attorney General of Iowa

1305 E. Walnut St.

Des Moines, Iowa 50319

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Email: [Emily.Willits@iowa.gov](mailto:Emily.Willits@iowa.gov) | [www.iowaattorneygeneral.gov](http://www.iowaattorneygeneral.gov)

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**Gavin, Meghan [AG]**

---

**From:** Willits, Emily [AG]  
**Sent:** Saturday, April 01, 2017 6:49 AM  
**To:** jason-landow@uiowa.edu; Gavin, Meghan [AG]  
**Subject:** Des Moines Register: Frustrated by lack of progress, Iowa education board member calls for ending state tests

Nice pic!

From Des Moines Register:  
Frustrated by lack of progress, Iowa education board member calls for ending state tests The move could save millions of dollars while nixing tests that are no longer relevant, Mary Ellen Miller told the lieutenant governor Thursday.

<http://www.desmoinesregister.com/story/news/education/2017/03/30/frustrated-lack-progress-iowa-education-board-member-calls-ending-state-tests/99835160/>

Sent from my iPhone



## **Gavin, Meghan [AG]**

---

**From:** Willits, Emily [AG]  
**Sent:** Tuesday, February 28, 2017 11:29 AM  
**To:** AG Administrative Law  
**Subject:** Licensing reform

FYI – There is a new licensing bill that has been introduced. The explanation is pasted below. Let me know if you have comments/feedback.

<https://www.legis.iowa.gov/docs/publications/LGI/87/HSB174.pdf>

### EXPLANATION

The inclusion of this explanation does not constitute agreement with the explanation's substance by the members of the general assembly.

This bill relates to certain state regulations, including certificate of need requirements, the practice of certain professions, and the oversight of state preserves. The bill is organized into divisions.

**CERTIFICATE OF NEED REQUIREMENT.** This division removes the requirement for a hospital to apply to the Iowa department of public health for a certificate of need prior to the offering or development of a new or changed institutional health service unless the hospital plans to expand its swing-bed capacity above 25 beds or plans to add any nursing facility beds or skilled nursing beds. The division also requires a certificate of need for the construction, development, or other establishment of a hospital in a county with a population of less than 80,000, or a hospital in a county with a population of greater than 80,000 if the hospital is within 35 miles of a hospital located in a county with a population of less than 80,000.

The division exempts facilities that provide services to a person with a primary diagnosis of mental illness, as defined in Code section 229.1, from the certificate of need requirement.

The division takes effect upon enactment.

**PRACTICE OF DENTISTRY MODIFICATION AND INTERIOR DESIGN EXAMINING BOARD REPEAL.** This division eliminates the interior design examining board and removes all registration requirements for interior designers.

The division removes tooth whitening from the practice of dentistry as provided in Code section 153.13.

**REPEAL OF STATE ADVISORY BOARD FOR PRESERVES.** This division eliminates the state advisory board for preserves and assigns the duties of the board to the natural resource commission of the department of natural resources.

**ELECTRICAL EXAMINING BOARD.** This division reassigns the regulatory authority of the electrical examining board to the department of public safety, which shall regulate the licensure of electricians. The division changes the electrical examining board to an electrical examining advisory council, which shall have authority to approve administrative rules relating to professions governed by Code chapter 103 before they are adopted by the department.

**LICENSING MORATORIUM AND TASK FORCE.** This division prohibits an executive branch administrative unit from imposing new licensing regulations for a profession not regulated prior to July 1, 2017. The division also establishes a professional licensing task force made up of legislators, executive branch department representatives, a representative of the governor's office, and public members with professional licensure experience to review all aspects of professional licensure in the state.

**IOWA CAPITAL INVESTMENT BOARD.** This division of the bill eliminates the Iowa capital investment board established in Code section 15E.63 and transfers the duties and authority of that board to the economic development authority.



**Emily Willits**

**Director, Licensing & Administrative Law Division**

Office of the Attorney General of Iowa

1305 E. Walnut St.

Des Moines, Iowa 50319

Main: (515) 281-5164 | Direct: (515) 281-6403

Email: [Emily.Willits@iowa.gov](mailto:Emily.Willits@iowa.gov) | [www.iowaattorneygeneral.gov](http://www.iowaattorneygeneral.gov)

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**Gavin, Meghan [AG]**

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**From:** Wittmus, Lisa [AG]  
**Sent:** Tuesday, April 25, 2017 9:45 AM  
**To:** Esbrook, Jordan [AG]; Gavin, Meghan [AG]  
**Subject:** FW: Courtesy NEF RE: LACE128389  
**Attachments:** LACE128389\_MOWC.pdf; Woods - Proposed Order Granting Amendment and Resetting Hearing.docx

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**From:** efilings@mail@iowacourts.gov [mailto:efiling@mail@iowacourts.gov]  
**Sent:** Monday, April 24, 2017 6:31 PM  
**To:** Wittmus, Lisa [AG]  
**Subject:** Courtesy NEF RE: LACE128389

\*\*\*\*\* IMPORTANT NOTICE - READ THIS INFORMATION \*\*\*\*\*  
NOTICE OF ELECTRONIC FILING OR PRESENTATION [NEF]

---

**A filing has been submitted to the court RE: LACE128389**  
**Judge:**

**Official File Stamp:** 04-24-2017:18:30:35  
**Court:** TRIAL COURT  
Scott  
**Case Title:** WOODS, BREAN, ET AL., V. STATE OF IOWA  
**Document(s) Submitted:** PROPOSED OTHER ORDER Order Granting Amendment and Resetting Hearing  
MOTION TO WITHDRAW COUNSEL Motion to Withdraw Counsel  
**Filed by or in behalf of:** Nathan Legue

You may review this filing by clicking on the following link to take you to your cases.

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JORDAN GENEVIEVE ESBROOK for STATE OF IOWA, IOWA DEPARTMENT OF EDUCATION, IOWA GENERAL ASSEMBLY, TERRY BRANSTAD  
CATHERINE ZAMORA CARTEE for BREAN A WOODS, BECCA FREDERICK  
JEFFREY SCOTT THOMPSON for STATE OF IOWA, IOWA DEPARTMENT OF EDUCATION,

**PARTIES NOT SERVED BY EDMS**

**The Iowa Electronic Document Management System will not serve the following parties because they are not registered filers. Per rule 16.317(1)(b), the filing party must serve a paper copy of the filed document(s) on the following parties in the manner required by Iowa Court Rules. \***

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**Note:** The rules define the clerk of court as responsible for service of court-generated documents. Additionally on small claims cases that by statute can be served by certified mail, when the filer has selected and paid for certified mail in the electronic filing system or at the clerk of court office, the clerk of court is responsible for service of the original notice and answer and appearance by certified mail in accordance with the Code of Iowa.

\*The moving party or the individual who filed it is responsible for service of a document if it was not served by the electronic filing system. That includes, but is not limited to, service of all petitions and original notices [rule 16.316(3)], service of documents on all parties seeking to intervene in confidential cases [16.321(1)(c)], and service of all documents on non-registered parties [16.317(1)(b)].

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**Gavin, Meghan [AG]**

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**From:** Wittmus, Lisa [AG]  
**Sent:** Monday, February 06, 2017 10:43 AM  
**To:** Thompson, Jeffrey [AG]; Gavin, Meghan [AG]; Esbrook, Jordan [AG]  
**Subject:** FW: Courtesy NEF RE: LACE128389  
**Attachments:** LACE128389\_OTOT.pdf

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**From:** efilings@mail@iowacourts.gov [mailto:efiling@mail@iowacourts.gov]  
**Sent:** Monday, February 06, 2017 10:20 AM  
**To:** Wittmus, Lisa [AG]  
**Subject:** Courtesy NEF RE: LACE128389

\*\*\*\*\* IMPORTANT NOTICE - READ THIS INFORMATION \*\*\*\*\*  
NOTICE OF ELECTRONIC FILING OR PRESENTATION [NEF]

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**A filing has been submitted to the court RE: LACE128389**  
**Judge:**

**Official File Stamp:** 02-06-2017:09:56:10  
**Court:** TRIAL COURT  
Scott  
**Case Title:** WOODS, BREAN, ET AL., V. STATE OF IOWA  
**Document(s) Submitted:** OTHER EVENT Defendants' Reply to Plaintiffs' Resistance to Motion to Dismiss  
**Filed by or in behalf of:** Meghan Gavin

You may review this filing by clicking on the following link to take you to your cases.

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JORDAN GENEVIEVE ESBROOK for STATE OF IOWA, IOWA DEPARTMENT OF EDUCATION, IOWA GENERAL ASSEMBLY, TERRY BRANSTAD  
CATHERINE ZAMORA CARTEE for BREAN A WOODS, BECCA FREDERICK  
JEFFREY SCOTT THOMPSON for STATE OF IOWA, IOWA DEPARTMENT OF EDUCATION, IOWA GENERAL ASSEMBLY, TERRY BRANSTAD

---

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**Gavin, Meghan [AG]**

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**From:** Wittmus, Lisa [AG]  
**Sent:** Monday, January 30, 2017 5:05 PM  
**To:** Gavin, Meghan [AG]; Esbrook, Jordan [AG]; Thompson, Jeffrey [AG]  
**Subject:** FW: Courtesy NEF RE: LACE128389  
**Attachments:** 608618.pdf; 608619.pdf

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**From:** efilings@mail@iowacourts.gov [mailto:efiling@mail@iowacourts.gov]  
**Sent:** Monday, January 30, 2017 3:17 PM  
**To:** Wittmus, Lisa [AG]  
**Subject:** Courtesy NEF RE: LACE128389

\*\*\*\*\* IMPORTANT NOTICE - READ THIS INFORMATION \*\*\*\*\*  
NOTICE OF ELECTRONIC FILING OR PRESENTATION [NEF]

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**A filing has been submitted to the court RE: LACE128389**

**Judge:**

**Official File Stamp:** 01-30-2017:14:27:00  
**Court:** TRIAL COURT  
Scott  
**Case Title:** WOODS, BREAN, ET AL., V. STATE OF IOWA  
**Document(s) Submitted:** ORDER SETTING HEARING MOTION TO DISMISS 04/11/2017 @ 09:00 AM  
**Filed by or in behalf of:** Mary E Howes

You may review this filing by clicking on the following link to take you to your [cases](#).

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JORDAN GENEVIEVE ESBROOK for STATE OF IOWA, IOWA DEPARTMENT OF EDUCATION, IOWA GENERAL ASSEMBLY, TERRY BRANSTAD  
CATHERINE ZAMORA CARTEE for BREAN A WOODS, BECCA FREDERICK  
JEFFREY SCOTT THOMPSON for STATE OF IOWA, IOWA DEPARTMENT OF EDUCATION, IOWA GENERAL ASSEMBLY, TERRY BRANSTAD

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**PARTIES NOT SERVED BY EDMS**

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---

**Note:** The rules define the clerk of court as responsible for service of court-generated documents. Additionally on small claims cases that by statute can be served by certified mail, when the filer has selected and paid for certified mail in the electronic filing system or at the clerk of court office, the clerk of court is responsible for service of the original notice and answer and appearance by certified mail in accordance with the Code of Iowa.

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## Gavin, Meghan [AG]

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**From:** Wittmus, Lisa [AG]  
**Sent:** Friday, January 27, 2017 9:56 AM  
**To:** Thompson, Jeffrey [AG]; Gavin, Meghan [AG]; Kraemer, Gretchen [DHS]  
**Subject:** FW: Courtesy NEF RE: 15-2099  
**Attachments:** 15-2099\_AOAO.pdf; 15-2099\_OCON.pdf

I will put the pdf copy into ProLaw but wasn't going to print out a paper copy for anyone. If you do want one, please let me know and I will prepare one.

The Correction Notice & Amended Opinion is to correct 1 word. Thanks.

Lisa

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**From:** efilings@mail@iowacourts.gov [mailto:efilings@mail@iowacourts.gov]  
**Sent:** Wednesday, January 25, 2017 9:03 AM  
**To:** Wittmus, Lisa [AG]  
**Subject:** Courtesy NEF RE: 15-2099

\*\*\*\*\* IMPORTANT NOTICE - READ THIS INFORMATION \*\*\*\*\*

NOTICE OF ELECTRONIC FILING OR PRESENTATION [NEF]

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**A filing has been made in the following case:** 15-2099

**Official File Stamp:** 01-25-2017:09:02:21  
**Court:** Appellate Court  
**Case Title:** Homan v. Branstad  
**Document(s) Submitted** **Filed by or on behalf of**  
AMENDED OPINION David S. Wiggins

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COURTNEY, THOMAS, PETERSEN, JANET ANN, HUNTER, BRUCE,  
HANSON, CURT, BISIGNANO, TONY, QUIRMBACH, HERMAN,  
DEARDEN, DICK, STAED, ARTHUR MATTHEW, ABDUL-SAMAD,  
AKO, OLDSO, JO, GAINES, RUTH ANN, STECKMAN, SHARON,  
TAYLOR, TODD E., GASKILL, MARY, RUNNING-MARQUARDT,

KIRSTEN, BROWN-POWERS, TIMI, JACOBY, DAVE, JOCHUM, PAM,  
GRONSTAL, MICHAEL EDWARD, BEARINGER, BRUCE  
BOULTON, NATHANIEL RANDELL for MCCOY, MATTHEW,  
HOMAN, DANNY, TAYLOR, RICH, KEARNS, JERRY, SMITH, MARK,  
COURTNEY, THOMAS, PETERSEN, JANET ANN, HUNTER, BRUCE,  
HANSON, CURT, BISIGNANO, TONY, QUIRMBACH, HERMAN,  
DEARDEN, DICK, STAED, ARTHUR MATTHEW, ABDUL-SAMAD,  
AKO, OLDSON, JO, GAINES, RUTH ANN, STECKMAN, SHARON,  
TAYLOR, TODD E., GASKILL, MARY, RUNNING-MARQUARDT,  
KIRSTEN, BROWN-POWERS, TIMI, JACOBY, DAVE, JOCHUM, PAM,  
GRONSTAL, MICHAEL EDWARD, BEARINGER, BRUCE  
HEDBERG, MARK T. for MCCOY, MATTHEW, HOMAN, DANNY,  
TAYLOR, RICH, KEARNS, JERRY, SMITH, MARK, COURTNEY,  
THOMAS, PETERSEN, JANET ANN, HUNTER, BRUCE, HANSON,  
CURT, BISIGNANO, TONY, QUIRMBACH, HERMAN, DEARDEN,  
DICK, STAED, ARTHUR MATTHEW, ABDUL-SAMAD, AKO,  
OLDSON, JO, GAINES, RUTH ANN, STECKMAN, SHARON, TAYLOR,  
TODD E., GASKILL, MARY, RUNNING-MARQUARDT, KIRSTEN,  
BROWN-POWERS, TIMI, JACOBY, DAVE, JOCHUM, PAM,  
GRONSTAL, MICHAEL EDWARD, BEARINGER, BRUCE  
GAVIN, MEGHAN LEE for BRANSTAD TERRY E

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**Note:** The clerk of court is responsible for service of court-generated documents. See generally rule 16.320(2)

\*The filer is responsible for service of a document if it was not served by the electronic filing system. See generally rule 16.317 and 16.321.

**Gavin, Meghan [AG]**

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**From:** Wittmus, Lisa [AG]  
**Sent:** Thursday, January 26, 2017 3:43 PM  
**To:** Gavin, Meghan [AG]; Esbrook, Jordan [AG]; Thompson, Jeffrey [AG]  
**Subject:** FW: Courtesy NEF RE: LACE128389  
**Attachments:** 607655.pdf

Another attorney from their firm is joining the case.

---

**From:** efileing.mail@iowacourts.gov [mailto:efiling.mail@iowacourts.gov]  
**Sent:** Thursday, January 26, 2017 9:27 AM  
**To:** Wittmus, Lisa [AG]  
**Subject:** Courtesy NEF RE: LACE128389

\*\*\*\*\* IMPORTANT NOTICE - READ THIS INFORMATION \*\*\*\*\*  
NOTICE OF ELECTRONIC FILING OR PRESENTATION [NEF]

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**A filing has been submitted to the court RE: LACE128389**

**Judge:**

**Official File Stamp:** 01-26-2017:09:26:29  
**Court:** TRIAL COURT  
Scott  
**Case Title:** WOODS, BREAN, ET AL., V. STATE OF IOWA  
**Document(s) Submitted:** APPEARANCE Appearance  
**Filed by or in behalf of:** Nathan Legue

You may review this filing by clicking on the following link to take you to your [cases](#).

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JORDAN GENEVIEVE ESBROOK for STATE OF IOWA, IOWA DEPARTMENT OF EDUCATION,  
IOWA GENERAL ASSEMBLY, TERRY BRANSTAD  
CATHERINE ZAMORA CARTEE for BREAN A WOODS, BECCA FREDERICK  
JEFFREY SCOTT THOMPSON for STATE OF IOWA, IOWA DEPARTMENT OF EDUCATION,  
IOWA GENERAL ASSEMBLY, TERRY BRANSTAD

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**document(s) on the following parties in the manner required by Iowa Court Rules. \***

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**Note:** The rules define the clerk of court as responsible for service of court-generated documents. Additionally on small claims cases that by statute can be served by certified mail, when the filer has selected and paid for certified mail in the electronic filing system or at the clerk of court office, the clerk of court is responsible for service of the original notice and answer and appearance by certified mail in accordance with the Code of Iowa.

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**Gavin, Meghan [AG]**

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**From:** Wittmus, Lisa [AG]  
**Sent:** Wednesday, January 25, 2017 9:30 AM  
**To:** Thompson, Jeffrey [AG]; Gavin, Meghan [AG]; Esbrook, Jordan [AG]  
**Subject:** FW: Courtesy NEF RE: LACE128389, Trial Setting Conference on 2/17/17  
**Attachments:** 606851.pdf

**Follow Up Flag:** Follow up  
**Flag Status:** Completed

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**From:** efileing.mail@iowacourts.gov [mailto:efiling.mail@iowacourts.gov]  
**Sent:** Tuesday, January 24, 2017 12:01 PM  
**To:** Wittmus, Lisa [AG]  
**Subject:** Courtesy NEF RE: LACE128389

\*\*\*\*\* IMPORTANT NOTICE - READ THIS INFORMATION \*\*\*\*\*  
NOTICE OF ELECTRONIC FILING OR PRESENTATION [NEF]

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**A filing has been submitted to the court RE: LACE128389**

**Judge:**

**Official File Stamp:** 01-24-2017:09:52:06  
**Court:** TRIAL COURT  
Scott  
**Case Title:** WOODS, BREAN, ET AL., V. STATE OF IOWA  
**Document(s) Submitted:** ORDER FOR TRIAL SCHEDULING CONFERENCE Trial Scheduling  
Conference 02/17/2017 08:35 AM DIST.  
**Filed by or in behalf of:** Marlita Greve

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GENERAL ASSEMBLY, TERRY BRANSTAD  
JORDAN GENEVIEVE ESBROOK for STATE OF IOWA, IOWA DEPARTMENT OF EDUCATION,  
IOWA GENERAL ASSEMBLY, TERRY BRANSTAD  
CATHERINE ZAMORA CARTEE for BREAN A WOODS, BECCA FREDERICK  
JEFFREY SCOTT THOMPSON for STATE OF IOWA, IOWA DEPARTMENT OF EDUCATION,  
IOWA GENERAL ASSEMBLY, TERRY BRANSTAD

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---

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**Gavin, Meghan [AG]**

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**From:** Wittmus, Lisa [AG]  
**Sent:** Thursday, December 08, 2016 10:32 AM  
**To:** Thompson, Jeffrey [AG]; Willits, Emily [AG]; Kraemer, Gretchen [DHS]; Gavin, Meghan [AG]  
**Subject:** FW: Courtesy NEF RE: 15-2099  
**Attachments:** 15-2099 Procedendo.pdf

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**From:** efilng.mail@iowacourts.gov [mailto:efiling.mail@iowacourts.gov]  
**Sent:** Wednesday, December 07, 2016 3:45 PM  
**To:** Wittmus, Lisa [AG]  
**Subject:** Courtesy NEF RE: 15-2099

\*\*\*\*\* IMPORTANT NOTICE - READ THIS INFORMATION \*\*\*\*\*  
NOTICE OF ELECTRONIC FILING OR PRESENTATION [NEF]

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**A filing has been made in the following case:** 15-2099

**Official File Stamp:** 12-07-2016:00:00:00  
**Court:** Appellate Court  
**Case Title:** Homan v. Branstad  
**Event(s):**

**Document(s) Filed**                      **Filed by or on behalf of**  
PROCEDENDO

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COURTNEY, THOMAS, PETERSEN, JANET ANN, HUNTER, BRUCE,  
HANSON, CURT, BISIGNANO, TONY, QUIRMBACH, HERMAN,  
DEARDEN, DICK, STAED, ARTHUR MATTHEW, ABDUL-SAMAD,  
AKO, OLDSON, JO, GAINES, RUTH ANN, STECKMAN, SHARON,  
TAYLOR, TODD E., GASKILL, MARY, RUNNING-MARQUARDT,  
KIRSTEN, BROWN-POWERS, TIMI, JACOBY, DAVE, JOCHUM, PAM,

GRONSTAL, MICHAEL EDWARD, BEARINGER, BRUCE  
BOULTON, NATHANIEL RANDELL for MCCOY, MATTHEW,  
HOMAN, DANNY, TAYLOR, RICH, KEARNS, JERRY, SMITH, MARK,  
COURTNEY, THOMAS, PETERSEN, JANET ANN, HUNTER, BRUCE,  
HANSON, CURT, BISIGNANO, TONY, QUIRMBACH, HERMAN,  
DEARDEN, DICK, STAED, ARTHUR MATTHEW, ABDUL-SAMAD,  
AKO, OLDSON, JO, GAINES, RUTH ANN, STECKMAN, SHARON,  
TAYLOR, TODD E., GASKILL, MARY, RUNNING-MARQUARDT,  
KIRSTEN, BROWN-POWERS, TIMI, JACOBY, DAVE, JOCHUM, PAM,  
GRONSTAL, MICHAEL EDWARD, BEARINGER, BRUCE  
HEDBERG, MARK T. for MCCOY, MATTHEW, HOMAN, DANNY,  
TAYLOR, RICH, KEARNS, JERRY, SMITH, MARK, COURTNEY,  
THOMAS, PETERSEN, JANET ANN, HUNTER, BRUCE, HANSON,  
CURT, BISIGNANO, TONY, QUIRMBACH, HERMAN, DEARDEN,  
DICK, STAED, ARTHUR MATTHEW, ABDUL-SAMAD, AKO,  
OLDSON, JO, GAINES, RUTH ANN, STECKMAN, SHARON, TAYLOR,  
TODD E., GASKILL, MARY, RUNNING-MARQUARDT, KIRSTEN,  
BROWN-POWERS, TIMI, JACOBY, DAVE, JOCHUM, PAM,  
GRONSTAL, MICHAEL EDWARD, BEARINGER, BRUCE  
GAVIN, MEGHAN LEE for BRANSTAD TERRY E

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\*The filer is responsible for service of a document if it was not served by the electronic filing system. See generally rule 16.317 and 16.321.



**Gavin, Meghan [AG]**

---

**From:** Wittmus, Lisa [AG]  
**Sent:** Thursday, November 10, 2016 1:37 PM  
**To:** Willits, Emily [AG]  
**Cc:** Gavin, Meghan [AG]  
**Subject:** FW: Courtesy NEF RE: 15-2099  
**Attachments:** 15-2099 Homan Opinion.pdf

---

**From:** Wittmus, Lisa [AG]  
**Sent:** Thursday, November 10, 2016 1:36 PM  
**To:** Thompson, Jeffrey [AG]; Gavin, Meghan [AG]  
**Subject:** FW: Courtesy NEF RE: 15-2099

---

**From:** [efiling.mail@iowacourts.gov](mailto:efiling.mail@iowacourts.gov) [<mailto:efiling.mail@iowacourts.gov>]  
**Sent:** Thursday, November 10, 2016 12:59 PM  
**To:** Wittmus, Lisa [AG]  
**Subject:** Courtesy NEF RE: 15-2099

\*\*\*\*\* IMPORTANT NOTICE - READ THIS INFORMATION \*\*\*\*\*

NOTICE OF ELECTRONIC FILING OR PRESENTATION [NEF]

---

**A filing has been made in the following case:** 15-2099

**Official File Stamp:** 11-10-2016:12:58:11  
**Court:** Appellate Court  
**Case Title:** Homan v. Branstad  
**Document(s) Submitted** **Filed by or on behalf of**  
OPINION: AFFIRMED David S. Wiggins

You may review this filing by clicking on the following link to take you to your [cases](#).

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COURTNEY, THOMAS, PETERSEN, JANET ANN, HUNTER, BRUCE,  
HANSON, CURT, BISIGNANO, TONY, QUIIRMBACH, HERMAN,

DEARDEN, DICK, STAED, ARTHUR MATTHEW, ABDUL-SAMAD, AKO, OLDSON, JO, GAINES, RUTH ANN, STECKMAN, SHARON, TAYLOR, TODD E., GASKILL, MARY, RUNNING-MARQUARDT, KIRSTEN, BROWN-POWERS, TIMI, JACOBY, DAVE, JOCHUM, PAM, GRONSTAL, MICHAEL EDWARD, BEARINGER, BRUCE  
BOULTON, NATHANIEL RANDELL for MCCOY, MATTHEW, HOMAN, DANNY, TAYLOR, RICH, KEARNS, JERRY, SMITH, MARK, COURTNEY, THOMAS, PETERSEN, JANET ANN, HUNTER, BRUCE, HANSON, CURT, BISIGNANO, TONY, QUIRMBACH, HERMAN, DEARDEN, DICK, STAED, ARTHUR MATTHEW, ABDUL-SAMAD, AKO, OLDSON, JO, GAINES, RUTH ANN, STECKMAN, SHARON, TAYLOR, TODD E., GASKILL, MARY, RUNNING-MARQUARDT, KIRSTEN, BROWN-POWERS, TIMI, JACOBY, DAVE, JOCHUM, PAM, GRONSTAL, MICHAEL EDWARD, BEARINGER, BRUCE  
HEDBERG, MARK T. for MCCOY, MATTHEW, HOMAN, DANNY, TAYLOR, RICH, KEARNS, JERRY, SMITH, MARK, COURTNEY, THOMAS, PETERSEN, JANET ANN, HUNTER, BRUCE, HANSON, CURT, BISIGNANO, TONY, QUIRMBACH, HERMAN, DEARDEN, DICK, STAED, ARTHUR MATTHEW, ABDUL-SAMAD, AKO, OLDSON, JO, GAINES, RUTH ANN, STECKMAN, SHARON, TAYLOR, TODD E., GASKILL, MARY, RUNNING-MARQUARDT, KIRSTEN, BROWN-POWERS, TIMI, JACOBY, DAVE, JOCHUM, PAM, GRONSTAL, MICHAEL EDWARD, BEARINGER, BRUCE  
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**Gavin, Meghan [AG]**

---

**From:** Wittmus, Lisa [AG]  
**Sent:** Thursday, November 10, 2016 1:36 PM  
**To:** Thompson, Jeffrey [AG]; Gavin, Meghan [AG]  
**Subject:** FW: Courtesy NEF RE: 15-2099  
**Attachments:** 15-2099 Homan Opinion.pdf

---

**From:** efilings@mail@iowacourts.gov [mailto:efiling@mail@iowacourts.gov]  
**Sent:** Thursday, November 10, 2016 12:59 PM  
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\*\*\*\*\* IMPORTANT NOTICE - READ THIS INFORMATION \*\*\*\*\*  
NOTICE OF ELECTRONIC FILING OR PRESENTATION [NEF]

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**A filing has been made in the following case:** 15-2099

**Official File Stamp:** 11-10-2016:12:58:11  
**Court:** Appellate Court  
**Case Title:** Homan v. Branstad  
**Document(s) Submitted** **Filed by or on behalf of**  
OPINION: AFFIRMED David S. Wiggins

You may review this filing by clicking on the following link to take you to your [cases](#).

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AKO, OLDSON, JO, GAINES, RUTH ANN, STECKMAN, SHARON,  
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KIRSTEN, BROWN-POWERS, TIMI, JACOBY, DAVE, JOCHUM, PAM,  
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HANSON, CURT, BISIGNANO, TONY, QUIRMBACH, HERMAN,  
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KIRSTEN, BROWN-POWERS, TIMI, JACOBY, DAVE, JOCHUM, PAM,  
GRONSTAL, MICHAEL EDWARD, BEARINGER, BRUCE  
HEDBERG, MARK T. for MCCOY, MATTHEW, HOMAN, DANNY,  
TAYLOR, RICH, KEARNS, JERRY, SMITH, MARK, COURTNEY,  
THOMAS, PETERSEN, JANET ANN, HUNTER, BRUCE, HANSON,  
CURT, BISIGNANO, TONY, QUIRMBACH, HERMAN, DEARDEN,  
DICK, STAED, ARTHUR MATTHEW, ABDUL-SAMAD, AKO,  
OLDSON, JO, GAINES, RUTH ANN, STECKMAN, SHARON, TAYLOR,  
TODD E., GASKILL, MARY, RUNNING-MARQUARDT, KIRSTEN,  
BROWN-POWERS, TIMI, JACOBY, DAVE, JOCHUM, PAM,  
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**Gavin, Meghan [AG]**

---

**From:** Wittmus, Lisa [AG]  
**Sent:** Tuesday, May 17, 2016 2:49 PM  
**To:** Gavin, Meghan [AG]  
**Subject:** FW: Courtesy NEF RE: 15-2099  
**Attachments:** 520606.pdf

---

**From:** efilng.mail@iowacourts.gov [mailto:efiling.mail@iowacourts.gov]  
**Sent:** Tuesday, May 17, 2016 12:39 PM  
**To:** Wittmus, Lisa [AG]  
**Subject:** Courtesy NEF RE: 15-2099

\*\*\*\*\* IMPORTANT NOTICE - READ THIS INFORMATION \*\*\*\*\*  
NOTICE OF ELECTRONIC FILING OR PRESENTATION [NEF]

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**A filing has been made in the following case:** 15-2099

**Official File Stamp:** 05-17-2016:12:38:21  
**Court:** Appellate Court  
**Case Title:** Homan v. Branstad  
**Document(s) Submitted** **Filed by or in behalf of**  
OTHER RESPONSE TO ORDER REGARDING MOOTNESS Sarah Marie Wolfe

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THOMAS, PETERSEN, JANET ANN, HUNTER, BRUCE, HANSON,  
CURT, BISIGNANO, TONY, QUIRMBACH, HERMAN, DEARDEN,  
DICK, STAED, ARTHUR MATTHEW, ABDUL-SAMAD, AKO,  
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GRONSTAL, MICHAEL EDWARD, BEARINGER, BRUCE  
BOULTON, NATHANIEL RANDELL for MCCOY, MATTHEW,

HOMAN, DANNY, TAYLOR, RICH, KEARNS, JERRY, SMITH, MARK, COURTNEY, THOMAS, PETERSEN, JANET ANN, HUNTER, BRUCE, HANSON, CURT, BISIGNANO, TONY, QUIRMBACH, HERMAN, DEARDEN, DICK, STAED, ARTHUR MATTHEW, ABDUL-SAMAD, AKO, OLDSON, JO, GAINES, RUTH ANN, STECKMAN, SHARON, TAYLOR, TODD E., GASKILL, MARY, RUNNING-MARQUARDT, KIRSTEN, BROWN-POWERS, TIMI, JACOBY, DAVE, JOCHUM, PAM, GRONSTAL, MICHAEL EDWARD, BEARINGER, BRUCE  
HEDBERG, MARK T. for MCCOY, MATTHEW, HOMAN, DANNY, TAYLOR, RICH, KEARNS, JERRY, SMITH, MARK, COURTNEY, THOMAS, PETERSEN, JANET ANN, HUNTER, BRUCE, HANSON, CURT, BISIGNANO, TONY, QUIRMBACH, HERMAN, DEARDEN, DICK, STAED, ARTHUR MATTHEW, ABDUL-SAMAD, AKO, OLDSON, JO, GAINES, RUTH ANN, STECKMAN, SHARON, TAYLOR, TODD E., GASKILL, MARY, RUNNING-MARQUARDT, KIRSTEN, BROWN-POWERS, TIMI, JACOBY, DAVE, JOCHUM, PAM, GRONSTAL, MICHAEL EDWARD, BEARINGER, BRUCE  
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**Gavin, Meghan [AG]**

---

**From:** Wittmus, Lisa [AG]  
**Sent:** Wednesday, May 04, 2016 2:30 PM  
**To:** Thompson, Jeffrey [AG]; Gavin, Meghan [AG]; Stahle, Diane [AG]  
**Cc:** Peterzalek, Jeffrey [AG]  
**Subject:** FW: Courtesy NEF RE: 15-2099  
**Attachments:** 15-2099\_ORDR.pdf

---

**From:** efilng.mail@iowacourts.gov [mailto:efiling.mail@iowacourts.gov]  
**Sent:** Wednesday, May 04, 2016 10:39 AM  
**To:** Wittmus, Lisa [AG]  
**Subject:** Courtesy NEF RE: 15-2099

\*\*\*\*\* IMPORTANT NOTICE - READ THIS INFORMATION \*\*\*\*\*  
NOTICE OF ELECTRONIC FILING OR PRESENTATION [NEF]

---

**A filing has been made in the following case:** 15-2099

**Official File Stamp:** 05-04-2016:10:39:05  
**Court:** Appellate Court  
**Case Title:** Homan v. Branstad  
**Document(s) Submitted** **Filed by or in behalf of**  
ORDER: w/in 14 days parties to file statements addressing potential mootness of the appeal Mark Cady

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TODD E., GASKILL, MARY, RUNNING-MARQUARDT, KIRSTEN,  
BROWN-POWERS, TIMI, JACOBY, DAVE, JOCHUM, PAM,  
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BOULTON, NATHANIEL RANDELL for MCCOY, MATTHEW, HOMAN, DANNY, TAYLOR, RICH, KEARNS, JERRY, SMITH, MARK, COURTNEY, THOMAS, PETERSEN, JANET ANN, HUNTER, BRUCE, HANSON, CURT, BISIGNANO, TONY, QUIRMBACH, HERMAN, DEARDEN, DICK, STAED, ARTHUR MATTHEW, ABDUL-SAMAD, AKO, OLDSON, JO, GAINES, RUTH ANN, STECKMAN, SHARON, TAYLOR, TODD E., GASKILL, MARY, RUNNING-MARQUARDT, KIRSTEN, BROWN-POWERS, TIMI, JACOBY, DAVE, JOCHUM, PAM, GRONSTAL, MICHAEL EDWARD, BEARINGER, BRUCE HEDBERG, MARK T. for MCCOY, MATTHEW, HOMAN, DANNY, TAYLOR, RICH, KEARNS, JERRY, SMITH, MARK, COURTNEY, THOMAS, PETERSEN, JANET ANN, HUNTER, BRUCE, HANSON, CURT, BISIGNANO, TONY, QUIRMBACH, HERMAN, DEARDEN, DICK, STAED, ARTHUR MATTHEW, ABDUL-SAMAD, AKO, OLDSON, JO, GAINES, RUTH ANN, STECKMAN, SHARON, TAYLOR, TODD E., GASKILL, MARY, RUNNING-MARQUARDT, KIRSTEN, BROWN-POWERS, TIMI, JACOBY, DAVE, JOCHUM, PAM, GRONSTAL, MICHAEL EDWARD, BEARINGER, BRUCE GAVIN, MEGHAN LEE for BRANSTAD, TERRY E

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**Gavin, Meghan [AG]**

---

**From:** Wittmus, Lisa [AG]  
**Sent:** Thursday, January 07, 2016 12:41 PM  
**To:** Gavin, Meghan [AG]; Thompson, Jeffrey [AG]  
**Subject:** FW: Courtesy NEF RE: 15-2099  
**Attachments:** Homan III MTD Single Justice Review final.pdf

---

**From:** efilings@mail@iowacourts.gov [mailto:efiling@mail@iowacourts.gov]  
**Sent:** Thursday, January 07, 2016 10:35 AM  
**To:** Wittmus, Lisa [AG]  
**Subject:** Courtesy NEF RE: 15-2099

\*\*\*\*\* IMPORTANT NOTICE - READ THIS INFORMATION \*\*\*\*\*  
NOTICE OF ELECTRONIC FILING OR PRESENTATION [NEF]

---

**A filing has been made in the following case:** 15-2099

**Official File Stamp:** 01-07-2016:10:34:27  
**Court:** Appellate Court  
**Case Title:** Homan v. Branstad  
**Document(s) Submitted** **Filed by or in behalf of**  
MOTION Motion for Review of a Single-Justice Order Meghan Gavin

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THOMAS, PETERSEN, JANET ANN, HUNTER, BRUCE, HANSON,  
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BROWN-POWERS, TIMI, JACOBY, DAVE, JOCHUM, PAM,  
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BOULTON, NATHANIEL RANDELL for MCCOY, MATTHEW,  
HOMAN, DANNY, TAYLOR, RICH, KEARNS, JERRY, SMITH, MARK,

COURTNEY, THOMAS, PETERSEN, JANET ANN, HUNTER, BRUCE, HANSON, CURT, BISIGNANO, TONY, QUIRMBACH, HERMAN, DEARDEN, DICK, STAED, ARTHUR MATTHEW, ABDUL-SAMAD, AKO, OLDSON, JO, GAINES, RUTH ANN, STECKMAN, SHARON, TAYLOR, TODD E., GASKILL, MARY, RUNNING-MARQUARDT, KIRSTEN, BROWN-POWERS, TIMI, JACOBY, DAVE, JOCHUM, PAM, GRONSTAL, MICHAEL EDWARD, BEARINGER, BRUCE HEDBERG, MARK T. for MCCOY, MATTHEW, HOMAN, DANNY, TAYLOR, RICH, KEARNS, JERRY, SMITH, MARK, COURTNEY, THOMAS, PETERSEN, JANET ANN, HUNTER, BRUCE, HANSON, CURT, BISIGNANO, TONY, QUIRMBACH, HERMAN, DEARDEN, DICK, STAED, ARTHUR MATTHEW, ABDUL-SAMAD, AKO, OLDSON, JO, GAINES, RUTH ANN, STECKMAN, SHARON, TAYLOR, TODD E., GASKILL, MARY, RUNNING-MARQUARDT, KIRSTEN, BROWN-POWERS, TIMI, JACOBY, DAVE, JOCHUM, PAM, GRONSTAL, MICHAEL EDWARD, BEARINGER, BRUCE GAVIN, MEGHAN LEE for BRANSTAD, TERRY E

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**Gavin, Meghan [AG]**

---

**From:** Wittmus, Lisa [AG]  
**Sent:** Thursday, December 31, 2015 2:41 PM  
**To:** Gavin, Meghan [AG]; Thompson, Jeffrey [AG]; Griebel, Pam [AG]  
**Subject:** FW: Courtesy NEF RE: 15-2099  
**Attachments:** 15-2099 Homan Briefing Schedule.pdf

Even though we just received this today, the clerk dated it for 12/28 and that started the clock. Their brief is due 1/22/16 and ours is due Monday, 2/8/16. Thanks.

Lisa

---

**From:** efilings@mail@iowacourts.gov [mailto:efilings@mail@iowacourts.gov]  
**Sent:** Thursday, December 31, 2015 1:34 PM  
**To:** Wittmus, Lisa [AG]  
**Subject:** Courtesy NEF RE: 15-2099

\*\*\*\*\* IMPORTANT NOTICE - READ THIS INFORMATION \*\*\*\*\*  
NOTICE OF ELECTRONIC FILING OR PRESENTATION [NEF]

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**A filing has been made in the following case:** 15-2099

**Official File Stamp:** 12-28-2015:00:00:00  
**Court:** Appellate Court  
**Case Title:** Homan v. Branstad  
**Event(s):**

**Document(s) Filed:** **Filed by or in behalf of**  
NOTICE OF BRIEFING  
SCHEDULE

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THOMAS, PETERSEN, JANET ANN, HUNTER, BRUCE, HANSON,  
CURT, BISIGNANO, TONY, QUIRMBACH, HERMAN, DEARDEN,  
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OLDSON, JO, GAINES, RUTH ANN, STECKMAN, SHARON, TAYLOR, TODD E., GASKILL, MARY, RUNNING-MARQUARDT, KIRSTEN, BROWN-POWERS, TIMI, JACOBY, DAVE, JOCHUM, PAM, GRONSTAL, MICHAEL EDWARD, BEARINGER, BRUCE  
BOULTON, NATHANIEL RANDELL for MCCOY, MATTHEW, HOMAN, DANNY, TAYLOR, RICH, KEARNS, JERRY, SMITH, MARK, COURTNEY, THOMAS, PETERSEN, JANET ANN, HUNTER, BRUCE, HANSON, CURT, BISIGNANO, TONY, QUIRMBACH, HERMAN, DEARDEN, DICK, STAED, ARTHUR MATTHEW, ABDUL-SAMAD, AKO, OLDSON, JO, GAINES, RUTH ANN, STECKMAN, SHARON, TAYLOR, TODD E., GASKILL, MARY, RUNNING-MARQUARDT, KIRSTEN, BROWN-POWERS, TIMI, JACOBY, DAVE, JOCHUM, PAM, GRONSTAL, MICHAEL EDWARD, BEARINGER, BRUCE  
HEDBERG, MARK T. for MCCOY, MATTHEW, HOMAN, DANNY, TAYLOR, RICH, KEARNS, JERRY, SMITH, MARK, COURTNEY, THOMAS, PETERSEN, JANET ANN, HUNTER, BRUCE, HANSON, CURT, BISIGNANO, TONY, QUIRMBACH, HERMAN, DEARDEN, DICK, STAED, ARTHUR MATTHEW, ABDUL-SAMAD, AKO, OLDSON, JO, GAINES, RUTH ANN, STECKMAN, SHARON, TAYLOR, TODD E., GASKILL, MARY, RUNNING-MARQUARDT, KIRSTEN, BROWN-POWERS, TIMI, JACOBY, DAVE, JOCHUM, PAM, GRONSTAL, MICHAEL EDWARD, BEARINGER, BRUCE  
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**Gavin, Meghan [AG]**

---

**From:** Wittmus, Lisa [AG]  
**Sent:** Monday, December 21, 2015 12:38 PM  
**To:** Gavin, Meghan [AG]; Thompson, Jeffrey [AG]  
**Subject:** RE: Courtesy NEF RE: 15-2099

Thank you!

---

**From:** Gavin, Meghan [AG]  
**Sent:** Monday, December 21, 2015 12:38 PM  
**To:** Wittmus, Lisa [AG]; Thompson, Jeffrey [AG]  
**Subject:** RE: Courtesy NEF RE: 15-2099

I don't think a reply is necessary.

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**From:** Wittmus, Lisa [AG]  
**Sent:** Monday, December 21, 2015 12:38 PM  
**To:** Thompson, Jeffrey [AG]; Gavin, Meghan [AG]  
**Subject:** FW: Courtesy NEF RE: 15-2099

Our reply is due 12/24/15.

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**From:** [efiling.mail@iowacourts.gov](mailto:efiling.mail@iowacourts.gov) [mailto:efiling.mail@iowacourts.gov]  
**Sent:** Monday, December 21, 2015 11:48 AM  
**To:** Wittmus, Lisa [AG]  
**Subject:** Courtesy NEF RE: 15-2099

\*\*\*\*\* IMPORTANT NOTICE - READ THIS INFORMATION \*\*\*\*\*

NOTICE OF ELECTRONIC FILING OR PRESENTATION [NEF]

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**A filing has been made in the following case:** 15-2099

**Official File Stamp:** 12-21-2015:11:47:45  
**Court:** Appellate Court  
**Case Title:** Homan v. Branstad

**Document(s) Submitted**      **Filed by or in behalf of**  
RESISTANCE Plaintiffs'      Sarah Marie Wolfe  
Resistance to Motion to Dismiss

You may review this filing by clicking on the following link to take you to your [cases](#).

This notice was automatically generated by the courts auto-notification system.

---

The electronic filing system has served the following people

THOMPSON, JEFFREY SCOTT for BRANSTAD, TERRY E  
WOLFE, SARAH MARIE for MCCOY, MATTHEW, HOMAN, DANNY,  
TAYLOR, RICH, KEARNS, JERRY, SMITH, MARK, COURTNEY,  
THOMAS, PETERSEN, JANET ANN, HUNTER, BRUCE, HANSON,  
CURT, BISIGNANO, TONY, QUIRMBACH, HERMAN, DEARDEN,  
DICK, STAED, ARTHUR MATTHEW, ABDUL-SAMAD, AKO,  
OLDSON, JO, GAINES, RUTH ANN, STECKMAN, SHARON, TAYLOR,  
TODD E., GASKILL, MARY, RUNNING-MARQUARDT, KIRSTEN,  
BROWN-POWERS, TIMI, JACOBY, DAVE, JOCHUM, PAM,  
GRONSTAL, MICHAEL EDWARD, BEARINGER, BRUCE  
BOULTON, NATHANIEL RANDELL for MCCOY, MATTHEW,  
HOMAN, DANNY, TAYLOR, RICH, KEARNS, JERRY, SMITH, MARK,  
COURTNEY, THOMAS, PETERSEN, JANET ANN, HUNTER, BRUCE,  
HANSON, CURT, BISIGNANO, TONY, QUIRMBACH, HERMAN,  
DEARDEN, DICK, STAED, ARTHUR MATTHEW, ABDUL-SAMAD,  
AKO, OLDSON, JO, GAINES, RUTH ANN, STECKMAN, SHARON,  
TAYLOR, TODD E., GASKILL, MARY, RUNNING-MARQUARDT,  
KIRSTEN, BROWN-POWERS, TIMI, JACOBY, DAVE, JOCHUM, PAM,  
GRONSTAL, MICHAEL EDWARD, BEARINGER, BRUCE  
HEDBERG, MARK T. for MCCOY, MATTHEW, HOMAN, DANNY,  
TAYLOR, RICH, KEARNS, JERRY, SMITH, MARK, COURTNEY,  
THOMAS, PETERSEN, JANET ANN, HUNTER, BRUCE, HANSON,  
CURT, BISIGNANO, TONY, QUIRMBACH, HERMAN, DEARDEN,  
DICK, STAED, ARTHUR MATTHEW, ABDUL-SAMAD, AKO,  
OLDSON, JO, GAINES, RUTH ANN, STECKMAN, SHARON, TAYLOR,  
TODD E., GASKILL, MARY, RUNNING-MARQUARDT, KIRSTEN,  
BROWN-POWERS, TIMI, JACOBY, DAVE, JOCHUM, PAM,  
GRONSTAL, MICHAEL EDWARD, BEARINGER, BRUCE  
GAVIN, MEGHAN LEE for BRANSTAD, TERRY E

The moving party or the individual who filed this document is responsible for serving the following people in accordance with Iowa Code and Iowa Court Rules, including Chapter 16 Rules Pertaining to the Use of the Electronic Document Management System\*:

The filer is responsible for serving the following people in accordance with the Iowa Code and Iowa Court Rules, including Chapter 16 Rules Pertaining to the Use of the Electronic Document Management System\*:

**Note:** The clerk of court is responsible for service of court-generated documents. See generally rule 16.320(2)

\*The filer is responsible for service of a document if it was not served by the electronic filing system. See generally rule 16.317 and 16.321.

**Gavin, Meghan [AG]**

---

**From:** Wittmus, Lisa [AG]  
**Sent:** Monday, December 21, 2015 12:38 PM  
**To:** Thompson, Jeffrey [AG]; Gavin, Meghan [AG]  
**Subject:** FW: Courtesy NEF RE: 15-2099  
**Attachments:** 15-2099 Branstad Resistance.pdf

Our reply is due 12/24/15.

---

**From:** efilings@mail@iowacourts.gov [mailto:efiling@mail@iowacourts.gov]  
**Sent:** Monday, December 21, 2015 11:48 AM  
**To:** Wittmus, Lisa [AG]  
**Subject:** Courtesy NEF RE: 15-2099

\*\*\*\*\* IMPORTANT NOTICE - READ THIS INFORMATION \*\*\*\*\*  
NOTICE OF ELECTRONIC FILING OR PRESENTATION [NEF]

---

**A filing has been made in the following case:** 15-2099

**Official File Stamp:** 12-21-2015:11:47:45  
**Court:** Appellate Court  
**Case Title:** Homan v. Branstad  
**Document(s) Submitted** **Filed by or in behalf of**  
RESISTANCE Plaintiffs' Sarah Marie Wolfe  
Resistance to Motion to Dismiss

You may review this filing by clicking on the following link to take you to your [cases](#).

This notice was automatically generated by the courts auto-notification system.

---

The electronic filing system has served the following people

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TAYLOR, RICH, KEARNS, JERRY, SMITH, MARK, COURTNEY,  
THOMAS, PETERSEN, JANET ANN, HUNTER, BRUCE, HANSON,  
CURT, BISIGNANO, TONY, QUIRMBACH, HERMAN, DEARDEN,  
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TODD E., GASKILL, MARY, RUNNING-MARQUARDT, KIRSTEN,  
BROWN-POWERS, TIMI, JACOBY, DAVE, JOCHUM, PAM,  
GRONSTAL, MICHAEL EDWARD, BEARINGER, BRUCE  
BOULTON, NATHANIEL RANDELL for MCCOY, MATTHEW,  
HOMAN, DANNY, TAYLOR, RICH, KEARNS, JERRY, SMITH, MARK,

COURTNEY, THOMAS, PETERSEN, JANET ANN, HUNTER, BRUCE, HANSON, CURT, BISIGNANO, TONY, QUIRMBACH, HERMAN, DEARDEN, DICK, STAED, ARTHUR MATTHEW, ABDUL-SAMAD, AKO, OLDSON, JO, GAINES, RUTH ANN, STECKMAN, SHARON, TAYLOR, TODD E., GASKILL, MARY, RUNNING-MARQUARDT, KIRSTEN, BROWN-POWERS, TIMI, JACOBY, DAVE, JOCHUM, PAM, GRONSTAL, MICHAEL EDWARD, BEARINGER, BRUCE HEDBERG, MARK T. for MCCOY, MATTHEW, HOMAN, DANNY, TAYLOR, RICH, KEARNS, JERRY, SMITH, MARK, COURTNEY, THOMAS, PETERSEN, JANET ANN, HUNTER, BRUCE, HANSON, CURT, BISIGNANO, TONY, QUIRMBACH, HERMAN, DEARDEN, DICK, STAED, ARTHUR MATTHEW, ABDUL-SAMAD, AKO, OLDSON, JO, GAINES, RUTH ANN, STECKMAN, SHARON, TAYLOR, TODD E., GASKILL, MARY, RUNNING-MARQUARDT, KIRSTEN, BROWN-POWERS, TIMI, JACOBY, DAVE, JOCHUM, PAM, GRONSTAL, MICHAEL EDWARD, BEARINGER, BRUCE GAVIN, MEGHAN LEE for BRANSTAD, TERRY E

The moving party or the individual who filed this document is responsible for serving the following people in accordance with Iowa Code and Iowa Court Rules, including Chapter 16 Rules Pertaining to the Use of the Electronic Document Management System\*:

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**Note:** The clerk of court is responsible for service of court-generated documents. See generally rule 16.320(2)

\*The filer is responsible for service of a document if it was not served by the electronic filing system. See generally rule 16.317 and 16.321.



**Gavin, Meghan [AG]**

---

**From:** Wittmus, Lisa [AG]  
**Sent:** Tuesday, December 08, 2015 3:09 PM  
**To:** Thompson, Jeffrey [AG]; Stahle, Diane [AG]; Griebel, Pam [AG]; Gavin, Meghan [AG]  
**Subject:** FW: Courtesy NEF RE: CVCV050143  
**Attachments:** CVCV050143 Homan Order.pdf

Here's a pdf copy.

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**From:** efilings@mail@iowacourts.gov [mailto:efiling@mail@iowacourts.gov]  
**Sent:** Monday, December 07, 2015 1:50 PM  
**To:** Wittmus, Lisa [AG]  
**Subject:** Courtesy NEF RE: CVCV050143

\*\*\*\*\* IMPORTANT NOTICE - READ THIS INFORMATION \*\*\*\*\*  
NOTICE OF ELECTRONIC FILING OR PRESENTATION [NEF]

---

**A filing has been submitted to the court RE: CVCV050143**

**Judge:** DOUGLAS F STASKAL

**Official File Stamp:** 12-07-2015:09:10:15

**Court:** TRIAL COURT  
Polk

**Case Title:** HOMAN, TAYLOR, ET AL VS BRANSTAD AND PALMER

**Document(s) Submitted:** OTHER ORDER RULING ON PLAINTIFF'S MOTION TO AMEND OR ENLARGE

**Filed by or in behalf of:** Doug Staskal

You may review this filing by clicking on the following link to take you to your [cases](#).

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**The electronic filing system has served the following people:**

JEFFREY SCOTT THOMPSON for CHARLES PALMER, TERRY E BRANSTAD

SARAH MARIE WOLFE for TONY BISIGNANO, JANET ANN PETERSEN, RUTH ANN GAINES, BRUCE HUNTER, MICHAEL EDWARD GRONSTAL, TODD E TAYLOR, AKO ABDUL SAMAD, DANNY HOMAN, ARTHUR MATTHEW STAED, HERMAN QUIRMBACH, DICK DEARDEN, JO OLDSON, SHARON STECKMAN, KIRSTEN RUNNING MARQUARDT, MARY GASKILL, RICH TAYLOR, TIMI BROWN POWERS, JERRY KEARNS, DAVE JACOBY, MARK SMITH, THOMAS COURTNEY, CURT HANSON, MATT MCCOY, BRUCE BEARINGER, PAM JOCHUM

NATHANIEL RANDELL BOULTON for TONY BISIGNANO, JANET ANN PETERSEN, RUTH ANN GAINES, BRUCE HUNTER, MICHAEL EDWARD GRONSTAL, TODD E TAYLOR, AKO ABDUL SAMAD, DANNY HOMAN, ARTHUR MATTHEW STAED, HERMAN QUIRMBACH, DICK DEARDEN, JO OLDSON, SHARON STECKMAN, KIRSTEN RUNNING MARQUARDT, MARY GASKILL, RICH

TAYLOR, TIMI BROWN POWERS, JERRY KEARNS, DAVE JACOBY, MARK SMITH, THOMAS COURTNEY, CURT HANSON, MATT MCCOY, BRUCE BEARINGER, PAM JOCHUM

MARK TERRY HEDBERG for TONY BISIGNANO, JANET ANN PETERSEN, RUTH ANN GAINES, BRUCE HUNTER, MICHAEL EDWARD GRONSTAL, TODD E TAYLOR, AKO ABDUL SAMAD, DANNY HOMAN, ARTHUR MATTHEW STAED, HERMAN QUIRMBACH, DICK DEARDEN, JO OLDSON, SHARON STECKMAN, KIRSTEN RUNNING MARQUARDT, MARY GASKILL, RICH TAYLOR, TIMI BROWN POWERS, JERRY KEARNS, DAVE JACOBY, MARK SMITH, THOMAS COURTNEY, CURT HANSON, MATT MCCOY, BRUCE BEARINGER, PAM JOCHUM

DIANE MARIE STAHL for CHARLES PALMER, TERRY E BRANSTAD

MEGHAN LEE GAVIN for CHARLES PALMER, TERRY E BRANSTAD

---

**PARTIES NOT SERVED BY EDMS**

**The Iowa Electronic Document Management System will not serve the following parties because they are not registered filers. Per rule 16.317(1)(b), the filing party must serve a paper copy of the filed document(s) on the following parties in the manner required by Iowa Court Rules. \***

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**Note:** The rules define the clerk of court as responsible for service of court-generated documents. Additionally on small claims cases that by statute can be served by certified mail, when the filer has selected and paid for certified mail in the electronic filing system or at the clerk of court office, the clerk of court is responsible for service of the original notice and answer and appearance by certified mail in accordance with the Code of Iowa.

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PLEASE DO NOT REPLY TO THIS EMAIL. Responses go to an email box that is not monitored. To receive help, follow the instruction on the 'Support' link on the efilng website.

**Gavin, Meghan [AG]**

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**From:** Wittmus, Lisa [AG]  
**Sent:** Thursday, November 12, 2015 10:45 AM  
**To:** Thompson, Jeffrey [AG]; Gavin, Meghan [AG]; Griebel, Pam [AG]; Stahle, Diane [AG]  
**Subject:** FW: Courtesy NEF RE: CVCV050143  
**Attachments:** CVCV050143\_MOOT Homan.pdf

Here's their motion to amend or enlarge. Thanks.

Lisa

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**From:** efileing.mail@iowacourts.gov [mailto:efiling.mail@iowacourts.gov]  
**Sent:** Tuesday, November 10, 2015 12:42 PM  
**To:** Wittmus, Lisa [AG]  
**Subject:** Courtesy NEF RE: CVCV050143

\*\*\*\*\* IMPORTANT NOTICE - READ THIS INFORMATION \*\*\*\*\*  
NOTICE OF ELECTRONIC FILING OR PRESENTATION [NEF]

---

**A filing has been submitted to the court RE: CVCV050143**

**Judge:** DOUGLAS F STASKAL

**Official File Stamp:** 11-10-2015:12:41:55

**Court:** TRIAL COURT

Polk

**Case Title:** HOMAN, TAYLOR, ET AL VS BRANSTAD AND PALMER

**Document(s) Submitted:** MOTION Motion to Amend or Enlarge

**Filed by or in behalf of:** Sarah Marie Wolfe

You may review this filing by clicking on the following link to take you to your cases.

This notice was automatically generated by the courts auto-notification system.

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**The electronic filing system has served the following people:**

JEFFREY SCOTT THOMPSON for CHARLES PALMER, TERRY E BRANSTAD

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NATHANIEL RANDELL BOULTON for TONY BISIGNANO, JANET ANN PETERSEN, RUTH ANN GAINES, BRUCE HUNTER, MICHAEL EDWARD GRONSTAL, TODD E TAYLOR, AKO ABDUL SAMAD, DANNY HOMAN, ARTHUR MATTHEW STAED, HERMAN QUIRMBACH, DICK DEARDEN,

JO OLDSON, SHARON STECKMAN, KIRSTEN RUNNING MARQUARDT, MARY GASKILL, RICH TAYLOR, TIMI BROWN POWERS, JERRY KEARNS, DAVE JACOBY, MARK SMITH, THOMAS COURTNEY, CURT HANSON, MATT MCCOY, BRUCE BEARINGER, PAM JOCHUM

MARK TERRY HEDBERG for TONY BISIGNANO, JANET ANN PETERSEN, RUTH ANN GAINES, BRUCE HUNTER, MICHAEL EDWARD GRONSTAL, TODD E TAYLOR, AKO ABDUL SAMAD, DANNY HOMAN, ARTHUR MATTHEW STAED, HERMAN QUIRMBACH, DICK DEARDEN, JO OLDSON, SHARON STECKMAN, KIRSTEN RUNNING MARQUARDT, MARY GASKILL, RICH TAYLOR, TIMI BROWN POWERS, JERRY KEARNS, DAVE JACOBY, MARK SMITH, THOMAS COURTNEY, CURT HANSON, MATT MCCOY, BRUCE BEARINGER, PAM JOCHUM

DIANE MARIE STAHL for CHARLES PALMER, TERRY E BRANSTAD

MEGHAN LEE GAVIN for CHARLES PALMER, TERRY E BRANSTAD

---

**PARTIES NOT SERVED BY EDMS**

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**Gavin, Meghan [AG]**

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**From:** Wittmus, Lisa [AG]  
**Sent:** Tuesday, August 18, 2015 11:47 AM  
**To:** Thompson, Jeffrey [AG]; Stahle, Diane [AG]; Gavin, Meghan [AG]  
**Subject:** FW: Courtesy NEF RE: CVCV050143  
**Attachments:** 440840.pdf

Here's a copy of the order continuing the hearing from 8/25 to 8/26. Thanks.

Lisa

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**From:** efilg.mail@iowacourts.gov [mailto:efiling.mail@iowacourts.gov]  
**Sent:** Tuesday, August 18, 2015 10:54 AM  
**To:** Wittmus, Lisa [AG]  
**Subject:** Courtesy NEF RE: CVCV050143

\*\*\*\*\* IMPORTANT NOTICE - READ THIS INFORMATION \*\*\*\*\*  
NOTICE OF ELECTRONIC FILING OR PRESENTATION [NEF]

---

**A filing has been submitted to the court RE: CVCV050143**

**Judge:** DOUGLAS F STASKAL

**Official File Stamp:** 08-17-2015:16:31:55

**Court:** TRIAL COURT  
Polk

**Case Title:** HOMAN, TAYLOR, ET AL VS BRANSTAD AND PALMER

**Document(s) Submitted:** ORDER FOR CONTINUANCE HRG ON 8/25/15 IS CONTINUED. NEW  
HRG SET FOR 8/26/15 @ 8:15AM ROOM 306

**Filed by or in behalf of:** Doug Staskal

You may review this filing by clicking on the following link to take you to your cases.

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---

**The electronic filing system has served the following people:**

JEFFREY SCOTT THOMPSON for CHARLES PALMER, TERRY E BRANSTAD

SARAH MARIE WOLFE for TONY BISIGNANO, JANET ANN PETERSEN, RUTH ANN GAINES,  
BRUCE HUNTER, MICHAEL EDWARD GRONSTAL, TODD E TAYLOR, AKO ABDUL SAMAD,  
DANNY HOMAN, ARTHUR MATTHEW STAED, HERMAN QUIRMBACH, DICK DEARDEN, JO  
OLDSON, SHARON STECKMAN, KIRSTEN RUNNING MARQUARDT, MARY GASKILL, RICH  
TAYLOR, TIMI BROWN POWERS, JERRY KEARNS, DAVE JACOBY, MARK SMITH, THOMAS  
COURTNEY, CURT HANSON, MATT MCCOY, BRUCE BEARINGER, PAM JOCHUM

NATHANIEL RANDELL BOULTON for TONY BISIGNANO, JANET ANN PETERSEN, RUTH ANN  
GAINES, BRUCE HUNTER, MICHAEL EDWARD GRONSTAL, TODD E TAYLOR, AKO ABDUL

SAMAD, DANNY HOMAN, ARTHUR MATTHEW STAED, HERMAN QUIRMBACH, DICK DEARDEN, JO OLDSON, SHARON STECKMAN, KIRSTEN RUNNING MARQUARDT, MARY GASKILL, RICH TAYLOR, TIMI BROWN POWERS, JERRY KEARNS, DAVE JACOBY, MARK SMITH, THOMAS COURTNEY, CURT HANSON, MATT MCCOY, BRUCE BEARINGER, PAM JOCHUM

MARK TERRY HEDBERG for TONY BISIGNANO, JANET ANN PETERSEN, RUTH ANN GAINES, BRUCE HUNTER, MICHAEL EDWARD GRONSTAL, TODD E TAYLOR, AKO ABDUL SAMAD, DANNY HOMAN, ARTHUR MATTHEW STAED, HERMAN QUIRMBACH, DICK DEARDEN, JO OLDSON, SHARON STECKMAN, KIRSTEN RUNNING MARQUARDT, MARY GASKILL, RICH TAYLOR, TIMI BROWN POWERS, JERRY KEARNS, DAVE JACOBY, MARK SMITH, THOMAS COURTNEY, CURT HANSON, MATT MCCOY, BRUCE BEARINGER, PAM JOCHUM

DIANE MARIE STAHLER for CHARLES PALMER, TERRY E BRANSTAD

MEGHAN LEE GAVIN for CHARLES PALMER, TERRY E BRANSTAD

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**PARTIES NOT SERVED BY EDMS**

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**Gavin, Meghan [AG]**

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**From:** Wittmus, Lisa [AG]  
**Sent:** Thursday, August 13, 2015 1:33 PM  
**To:** Thompson, Jeffrey [AG]; Gavin, Meghan [AG]  
**Subject:** FW: Courtesy NEF RE: CVCV050143  
**Attachments:** 439962.pdf

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**From:** efilng.mail@iowacourts.gov [mailto:efiling.mail@iowacourts.gov]  
**Sent:** Thursday, August 13, 2015 10:52 AM  
**To:** Wittmus, Lisa [AG]  
**Subject:** Courtesy NEF RE: CVCV050143

\*\*\*\*\* IMPORTANT NOTICE - READ THIS INFORMATION \*\*\*\*\*  
NOTICE OF ELECTRONIC FILING OR PRESENTATION [NEF]

---

**A filing has been submitted to the court RE: CVCV050143**

**Judge:** DOUGLAS F STASKAL

**Official File Stamp:** 08-13-2015:08:07:46

**Court:** TRIAL COURT  
Polk

**Case Title:** HOMAN, TAYLOR, ET AL V. BRANSTAD AND PALMER

**Document(s) Submitted:** ORDER SETTING HEARING Hearing SET FOR 08/25/2015 AT 8:15AM  
RM306 RE MOTION TO DISMISS

**Filed by or in behalf of:** Doug Staskal

You may review this filing by clicking on the following link to take you to your [cases](#).

This notice was automatically generated by the courts auto-notification system.

---

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SARAH MARIE WOLFE for TONY BISIGNANO, JANET ANN PETERSEN, RUTH ANN GAINES, BRUCE HUNTER, MICHAEL EDWARD GRONSTAL, TODD E TAYLOR, AKO ABDUL SAMAD, DANNY HOMAN, ARTHUR MATTHEW STAED, HERMAN QUIRMBACH, DICK DEARDEN, JO OLDSON, SHARON STECKMAN, KIRSTEN RUNNING MARQUARDT, MARY GASKILL, RICH TAYLOR, TIMI BROWN POWERS, JERRY KEARNS, DAVE JACOBY, MARK SMITH, THOMAS COURTNEY, CURT HANSON, MATT MCCOY, BRUCE BEARINGER, PAM JOCHUM

NATHANIEL RANDELL BOULTON for TONY BISIGNANO, JANET ANN PETERSEN, RUTH ANN GAINES, BRUCE HUNTER, MICHAEL EDWARD GRONSTAL, TODD E TAYLOR, AKO ABDUL SAMAD, DANNY HOMAN, ARTHUR MATTHEW STAED, HERMAN QUIRMBACH, DICK DEARDEN, JO OLDSON, SHARON STECKMAN, KIRSTEN RUNNING MARQUARDT, MARY GASKILL, RICH

TAYLOR, TIMI BROWN POWERS, JERRY KEARNS, DAVE JACOBY, MARK SMITH, THOMAS COURTNEY, CURT HANSON, MATT MCCOY, BRUCE BEARINGER, PAM JOCHUM

MARK TERRY HEDBERG for TONY BISIGNANO, JANET ANN PETERSEN, RUTH ANN GAINES, BRUCE HUNTER, MICHAEL EDWARD GRONSTAL, TODD E TAYLOR, AKO ABDUL SAMAD, DANNY HOMAN, ARTHUR MATTHEW STAED, HERMAN QUIRMBACH, DICK DEARDEN, JO OLDSON, SHARON STECKMAN, KIRSTEN RUNNING MARQUARDT, MARY GASKILL, RICH TAYLOR, TIMI BROWN POWERS, JERRY KEARNS, DAVE JACOBY, MARK SMITH, THOMAS COURTNEY, CURT HANSON, MATT MCCOY, BRUCE BEARINGER, PAM JOCHUM

DIANE MARIE STAHLER for CHARLES PALMER, TERRY E BRANSTAD

MEGHAN LEE GAVIN for CHARLES PALMER, TERRY E BRANSTAD

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**PARTIES NOT SERVED BY EDMS**

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## Blake, Nathan [AG]

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**From:** Bakker, Eric [LEGIS] <Eric.Bakker@legis.iowa.gov>  
**Sent:** Thursday, March 16, 2017 11:56 AM  
**To:** Blake, Nathan [AG]  
**Subject:** RE: SF 418 - ICCC update

Hey, no problem at all –good to see you and the Irishman Murphy

---

**From:** Blake, Nathan [AG] [<mailto:Nathan.Blake@iowa.gov>]  
**Sent:** Thursday, March 16, 2017 11:36 AM  
**To:** Bakker, Eric [LEGIS]  
**Subject:** FW: SF 418 - ICCC update

Eric,

Sorry to barge in this morning, but it was good to see you. I appreciate Leader Hogg's time in discussing the ICCC update bill, SF 418. I'm forwarding along the thoughts we shared with Senator Petersen and Julie Simon last week. Please let me know if we can answer any further questions.

Thanks,  
Nathan

---

**From:** Blake, Nathan [AG]  
**Sent:** Wednesday, March 08, 2017 9:36 AM  
**To:** Petersen, Janet [LEGIS]  
**Cc:** Simon, Julie [LEGIS]  
**Subject:** SF 418 - ICCC update

Senator Petersen:

I write to encourage your support of SF 418, the bill that would update the Iowa Consumer Credit Code's fees and penalties. Here's a quick summary of our office's thinking:

- 1) While our office, of course, is not generally in favor of raising the cap on fees that can be charged to consumers, we believe that after 40 years without an increase, there is some justification for raising the fees based on inflation alone. Furthermore, even though the ceiling of the late fee is raised, it will continue to be assessed as the *lesser* of 5% or \$30.00.
- 2) More importantly, the bill also includes a valuable provision that allows consumers to void certain illegal (usually internet-based) triple-digit interest loans that make their way into Iowa. This area of law is exceedingly difficult for our office to prosecute because the perpetrators often live elsewhere and are difficult to pin down. This gives consumers themselves a simple option of voiding the contract, stopping payment, and not being responsible for any further payments.
- 3) All the penalties that can be assessed to financial institutions that violate the various ICCC sections have been updated. This is similar to the increase in fees to consumers and needed because there hasn't been an update since the 1970s.
- 4) In addition to the penalties that the ICCC Administrator can assess being increased, the penalties that consumers themselves can seek in a private right of action have also been increased.
- 5) Finally, this bill contains a much-needed update to the fees assessed to lenders who have to file with our office each year. This will help our office cover the costs of oversight and maintaining the ICCC registrants database.

When this bill was introduced as a Study Bill, it was far worse. It included the fee increases on consumers but not the penalty increases on financial institutions. There were a couple of other provisions had been included that were substantively anti-consumer. Our office worked with the credit unions and the bankers to forge a compromise that we believe updates the ICCC in a reasonable way and continues to serve consumers well.

I would love the opportunity to answer any questions, if you have any. Please don't hesitate to reach out. While I'm not up at the capitol all day, I am able to get there quickly.

Thank you,



**Nathan Blake**  
**Assistant Attorney General**  
Office of the Attorney General of Iowa  
1305 E. Walnut St.  
Des Moines, Iowa 50319  
Main: (515) 281-5926 | Direct: (515) 281-4325  
[www.iowaattorneygeneral.gov](http://www.iowaattorneygeneral.gov)

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**From:** Bill Brauch <billbrauch@gmail.com>  
**Sent:** Thursday, April 13, 2017 8:04 AM  
**To:** Whitney, Jessica [AG]; Blake, Nathan [AG]  
**Subject:** Fwd: Consumer Law & Policy Blog

FYI - more trouble for student borrowers who apparently no longer need protection....

Sent from my iPad

Begin forwarded message:

**From:** "Consumer Law & Policy" <noreply+feedproxy@google.com>  
**Date:** April 13, 2017 at 7:47:32 AM CDT  
**To:** [billbrauch@gmail.com](mailto:billbrauch@gmail.com)  
**Subject:** Consumer Law & Policy Blog  
**Reply-To:** "Consumer Law & Policy" <[dgupta@citizen.org](mailto:dgupta@citizen.org)>

## Consumer Law & Policy Blog

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- ["DeVos dials back consumer protections for student loan borrowers"](#)
- ["Our economy is a hellscape for consumers"](#)
- ["Plenty More Villains at Wells Fargo"](#)

### "DeVos dials back consumer protections for student loan borrowers"

Posted: 12 Apr 2017 08:40 AM PDT

The *Washington Post* reports that Education Secretary Betsy DeVos on Tuesday withdrew a series of policy memos issued by the Obama administration to strengthen consumer protections for student loan borrowers.

The Education Department is in the middle of issuing new contracts to student loan servicing companies that collect payments on behalf of the agency. These middlemen are responsible for placing borrowers in affordable repayment plans and keeping them from defaulting on their loans. But in the face of mounting consumer complaints over poor communication, mismanaged paperwork and delays in processing payments, the previous administration included contract requirements to shore up the quality of servicing. Companies complained that the demands would be expensive and unnecessarily time consuming.

The full article is [here](#).



## "Our economy is a hellscape for consumers"

Posted: 12 Apr 2017 08:36 AM PDT

An op-ed on the *Washington Post's* website today uses the United Airlines incident as a starting point to discuss lack of consumer choice in today's world.

We are told that this is the era of the empowered consumer: The savvy shopper has oodles of time to browse around comparing prices among various retailers, perhaps consulting Yelp, Glassdoor or the Better Business Bureau. An almost unlimited menu of choices and information means that anything may be purchased, often at a discount from a warehouse on the other side of the world. Service is king, and business-school professors complain of the "tyranny of the consumer." Better information means more competition, which means lower prices — all features, of course, an open marketplace ostensibly presided over by a regulatory authority that, while distant, exists to protect our safety.

This vision is a lie.

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## "Plenty More Villains at Wells Fargo"

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**Sent:** Tuesday, February 21, 2017 7:47 AM  
**To:** Whitney, Jessica [AG]; Blake, Nathan [AG]  
**Subject:** NY Times on for profits

**Follow Up Flag:** Follow Up  
**Flag Status:** Completed

From this a.m. No surprise here that you should not expect support from the Feds the next 4 years in pursuing for profit scams. But you knew that.....

<https://www.nytimes.com/2017/02/20/business/for-profit-education-trump-devos.html?hp&action=click&pgtype=Homepage&clickSource=story-heading&module=first-column-region&region=top-news&WT.nav=top-news>

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**From:** Bill Brauch <billbrauch@gmail.com>  
**Sent:** Friday, January 27, 2017 11:16 AM  
**To:** Blake, Nathan [AG]  
**Subject:** Re: Lunch next week

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> On Jan 27, 2017, at 10:11 AM, Blake, Nathan [AG] <Nathan.Blake@iowa.gov> wrote:

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> 1:00pm works just as well for me. See you then!

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> Sent: Friday, January 27, 2017 10:10 AM  
> Subject: Lunch next week  
> To: Blake, Nathan [AG] <nathan.blake@iowa.gov<mailto:nathan.blake@iowa.gov>>

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> Subject: Re: Lunch or coffee?  
> To: Blake, Nathan [AG] <nathan.blake@iowa.gov<mailto:nathan.blake@iowa.gov>>

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Would you be available TH or F or next week? Hope all is going well.

Sent from my iPad

**Blake, Nathan [AG]**

---

**From:** Bill Brauch <billbrauch@gmail.com>  
**Sent:** Tuesday, January 24, 2017 12:46 PM  
**To:** Blake, Nathan [AG]  
**Subject:** Lunch or coffee?

Would you be available TH or F or next week? Hope all is going well.

Sent from my iPad



**Blake, Nathan [AG]**

---

**From:** Bolkcom, Joe [LEGIS] <Joe.Bolkcom@legis.iowa.gov>  
**Sent:** Monday, January 09, 2017 4:54 PM  
**To:** Blake, Nathan [AG]  
**Subject:** Newsletter Subscription Confirmation

Nate,

Good to see you today. I look forward to working with you this session.

Stay in touch.

All the best,

Joe

**Blake, Nathan [AG]**

---

**From:** Bolkcom, Joe [LEGIS] <Joe.Bolkcom@legis.iowa.gov>  
**Sent:** Monday, January 09, 2017 4:54 PM  
**To:** Blake, Nathan [AG]  
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Nate,

Good to see you today. I look forward to working with you this session.

Stay in touch.

All the best,

Joe

**Blake, Nathan [AG]**

---

**From:** Engel, Cathy [LEGIS] <Cathy.Engel@legis.iowa.gov>  
**Sent:** Thursday, April 20, 2017 5:02 PM  
**To:** Tabor, Eric [AG]  
**Cc:** Whitney, Jessica [AG]; Blake, Nathan [AG]  
**Subject:** e-cigarettes

**Follow Up Flag:** Follow Up  
**Flag Status:** Completed

Hi Eric;

Can you provide information regarding Internet sales of e-cigarettes? Is the online sale of e-cigarettes currently legal and, if so, what are the restrictions? Thank you for any information you can provide. I know this may not be a simple question, but perhaps there is a helpful website you could direct me to? Again, thank you!

*Cathy*

Catherine Engel  
Senate Democratic Caucus Research Staff  
State Capitol  
Des Moines 50319  
(515) 281-8688

## Blake, Nathan [AG]

---

**From:** Engel, Cathy [LEGIS] <Cathy.Engel@legis.iowa.gov>  
**Sent:** Thursday, April 20, 2017 5:02 PM  
**To:** Tabor, Eric [AG]  
**Cc:** Whitney, Jessica [AG]; Blake, Nathan [AG]  
**Subject:** e-cigarettes

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*Cathy*

Catherine Engel  
Senate Democratic Caucus Research Staff  
State Capitol  
Des Moines 50319  
(515) 281-8688

**Blake, Nathan [AG]**

---

**From:** Engel, Cathy [LEGIS] <Cathy.Engel@legis.iowa.gov>  
**Sent:** Tuesday, March 21, 2017 10:12 AM  
**To:** Blake, Nathan [AG]  
**Subject:** Questions re monies Iowa received

**Follow Up Flag:** Follow Up  
**Flag Status:** Completed

Anyway you asked me to email my question on the monies IA received from Jamie Dimon / JP Morgan Chase fines 2014-2015. A significant portion of fine money was allotted to IA which I believe was designated for homeowners hurt by the mortgage crisis Anyway you asked me to email my question on the monies IA received from Jamie Dimon / JP Morgan Chase fines 2014-2015. A significant portion of fine money was allotted to IA which I believe was designated for homeowners hurt by the mortgage crisis

Hi Nathan,

A constituent is wondering how some of the mortgage settlement monies were spent (see above). Do you have some information you can provide? Thank you!

***Cathy***

Catherine Engel  
Senate Democratic Caucus Research Staff  
State Capitol  
Des Moines 50319  
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## Blake, Nathan [AG]

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Catherine Engel  
Senate Democratic Caucus Research Staff  
State Capitol  
Des Moines 50319  
(515) 281-8688

**Blake, Nathan [AG]**

---

**From:** Freeland, Bill [LEGIS] <Bill.Freeland@legis.iowa.gov>  
**Sent:** Tuesday, April 04, 2017 1:52 PM  
**To:** Blake, Nathan [AG]  
**Subject:** Re: HF 559

Sorry I saw this right as we were getting ready to come back over. Since the bill started in Commerce Zeke on our staff has been staffing that bill so I'm not very well versed on what the questions really were. Ultimately looks like we got far enough along. Thanks.

-

Bill Freeland  
House Democratic Research Staff  
Research Analyst  
bill.freeland@legis.iowa.gov<mailto:bill.freeland@legis.iowa.gov>  
515-281-6311<tel:515-281-6311>

On Apr 4, 2017, at 1:43 PM, Blake, Nathan [AG] <Nathan.Blake@iowa.gov<mailto:Nathan.Blake@iowa.gov>> wrote:

Bill, anything I can help out with?

## Blake, Nathan [AG]

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**From:** Freeland, Bill [LEGIS] <Bill.Freeland@legis.iowa.gov>  
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**Blake, Nathan [AG]**

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**From:** Freeland, Bill [LEGIS] <Bill.Freeland@legis.iowa.gov>  
**Sent:** Monday, March 20, 2017 12:30 PM  
**To:** Blake, Nathan [AG]  
**Subject:** HF 146

Does the Attorney General still have issues with HF 146 if the committee amendment gets adopted?

-

Bill Freeland  
House Democratic Research Staff  
Research Analyst  
bill.freeland@legis.iowa.gov<mailto:bill.freeland@legis.iowa.gov>  
515-281-6311<tel:515-281-6311>

**Blake, Nathan [AG]**

---

**From:** Freeland, Bill [LEGIS] <Bill.Freeland@legis.iowa.gov>  
**Sent:** Monday, March 20, 2017 12:30 PM  
**To:** Blake, Nathan [AG]  
**Subject:** HF 146

Does the Attorney General still have issues with HF 146 if the committee amendment gets adopted?

-

Bill Freeland  
House Democratic Research Staff  
Research Analyst  
bill.freeland@legis.iowa.gov<mailto:bill.freeland@legis.iowa.gov>  
515-281-6311<tel:515-281-6311>

## Blake, Nathan [AG]

---

**From:** Freeland, Bill [LEGIS] <Bill.Freeland@legis.iowa.gov>  
**Sent:** Thursday, March 09, 2017 12:58 PM  
**To:** Blake, Nathan [AG]  
**Subject:** HF 295

**Follow Up Flag:** Follow Up  
**Flag Status:** Completed

Has the Consumer Affairs Division reviewed HF 295? In particular, several of my members are asking about amendment H-1164 and whether that could preempt local communities from doing familial or non-familial restrictions, in effect having the same impact as HF 134. Thanks as always and if you have any questions feel free to let me know.

-

Bill Freeland  
House Democratic Research Staff  
Research Analyst  
bill.freeland@legis.iowa.gov<mailto:bill.freeland@legis.iowa.gov>  
515-281-6311<tel:515-281-6311>

## Blake, Nathan [AG]

---

**From:** Freeland, Bill [LEGIS] <Bill.Freeland@legis.iowa.gov>  
**Sent:** Friday, November 18, 2016 4:16 PM  
**To:** Blake, Nathan [AG]  
**Subject:** FW: price gouging acusation

**Follow Up Flag:** Follow Up  
**Flag Status:** Completed

Rep. Bearinger received the email below from a constituent regarding a price gouging complaint. Any insight you can give me would be much appreciated. As always if you need anything else from me feel free to let me know.

--  
Bill Freeland  
House Democratic Research Staff  
Research Analyst  
[bill.freeland@legis.iowa.gov](mailto:bill.freeland@legis.iowa.gov)  
515-281-6311

**From:** Bruce Bearinger [<mailto:brucebearinger7551@gmail.com>]  
**Sent:** Tuesday, November 15, 2016 3:52 PM  
**To:** Thomas, Rachelle [LEGIS]  
**Subject:** price gouging acusation

Merle Wilson  
Jesup, Iowa  
319-231-7105

Merle called me to report that Sears Auto in Waterloo was twice as expensive on their cost of parts on his bill that were places like Auto Zone and O'riley's. He believes this is price gouging. Please see it there is someone who can call him and let him know his possible routes of action.

Thanks you,

--  
Bruce Bearinger  
**Independent Consultant/State Representative HD 64**  
500 7th Ave Se  
Oelwein, Iowa 50662  
319.238.1188 (C)  
[brucebearinger7551@gmail.com](mailto:brucebearinger7551@gmail.com)

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Research Analyst  
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Merle Wilson  
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319-231-7105

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Bruce Bearinger  
**Independent Consultant/State Representative HD 64**  
500 7th Ave Se  
Oelwein, Iowa 50662  
319.238.1188 (C)  
[brucebearinger7551@gmail.com](mailto:brucebearinger7551@gmail.com)

## Blake, Nathan [AG]

---

**From:** Furlong, Zeke [LEGIS] <Zeke.Furlong@legis.iowa.gov>  
**Sent:** Wednesday, March 29, 2017 8:54 AM  
**To:** Freeland, Bill [LEGIS]; Blake, Nathan [AG]  
**Subject:** FW: HF 559, bill and amendment talking points  
**Attachments:** Iowa Consumer Credit Code Modernization talking points.docx; ICCC amendment talking points - section by section.docx; ICCC amendment talking points.docx

FYI

Zeke Furlong  
Senior Legislative Research Analyst  
House Democratic Research Staff  
State Capitol  
Des Moines, IA 50319  
Phone: 515.281.6972  
Fax: 515.281.5868

-----Original Message-----

**From:** Hartwig, Robert [mailto:rhartwig@iowabankers.com]  
**Sent:** Wednesday, March 29, 2017 8:45 AM  
**To:** Mohr, Gary [LEGIS]; Cownie, Peter [LEGIS]; McConkey, Charlie [LEGIS]  
**Cc:** Telk, Brittany [LEGIS]; Furlong, Zeke [LEGIS]; Jon Murphy; Presnal, Sharon; Hingst, Zak [IDOB]  
**Subject:** HF 559, bill and amendment talking points

Reps. Mohr, Cownie and McConkey,

Sorry for the confusion this morning as I had an email from Gus Harb from LSA that he had prepared and delivered the amendment to you all. Attached are talking points for both the bill (first attachment) and the amendment (second attachment). The final attachment is a shortened amendment talking point that just covers the policy of what we are doing instead of a section by section analysis. Please let me know by return email or by phone at 515-669-5509 if you have any questions. Thanks. Bob Hartwig, IBA

---

This electronic transmission and any documents accompanying this electronic transmission contain confidential information belonging to the sender. This information may be legally protected. The information is intended only for the use of the individual or entity named above. If you are not the intended recipient or receive this message in error, you are hereby notified that any disclosure, copying, distribution or taking any action in reliance on or regarding the contents of this electronically transmitted information is strictly prohibited.

## Blake, Nathan [AG]

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## Blake, Nathan [AG]

---

**From:** Furlong, Zeke [LEGIS] <Zeke.Furlong@legis.iowa.gov>  
**Sent:** Wednesday, March 01, 2017 12:39 PM  
**To:** Blake, Nathan [AG]  
**Subject:** RE: HF 196

Are you still around the capitol? I am free until 3.

Zeke Furlong  
Senior Legislative Research Analyst  
House Democratic Research Staff  
State Capitol  
Des Moines, IA 50319  
Phone: 515.281.6972  
Fax: 515.281.5868

-----Original Message-----

**From:** Blake, Nathan [AG] [mailto:Nathan.Blake@iowa.gov]  
**Sent:** Wednesday, March 1, 2017 10:04 AM  
**To:** Furlong, Zeke [LEGIS]  
**Subject:** Fwd: HF 196

Zeke,  
I left you a message on this subject. Just wanted to touch base at some point this morning to reiterate our concerns about HF 196 and make sure your caucus was fully informed (and opposed). Thanks very much.  
Nathan

----- Forwarded message -----

**From:** "Blake, Nathan [AG]" <Nathan.Blake@iowa.gov<mailto:Nathan.Blake@iowa.gov>>  
**Date:** Wed, Mar 1, 2017 at 9:41 AM -0600  
**Subject:** HF 196  
**To:** "Oldson, Joanne [LEGIS]" <jo.oldson@legis.iowa.gov<mailto:jo.oldson@legis.iowa.gov>>

Rep. Oldson,

Good morning. I know you're busy today but I wanted to draw your attention to HF 196, the so-called flexible lending bill. We had thought it was dead but it was revived this morning and looks destined for full committee as soon as this afternoon. If there's a good time that I could talk with you for a couple minutes this morning about our continued concerns with the bill (even with amendment), I would really appreciate it.

Thank you,

[[https://files.acompli.net/attach?iid=1%3AY8dkV\\_X2iKbiQQx\\_AEeXGA&aid=34%253a5894%253a0&account\\_id=1](https://files.acompli.net/attach?iid=1%3AY8dkV_X2iKbiQQx_AEeXGA&aid=34%253a5894%253a0&account_id=1)]<http://www.iowaattorneygeneral.gov/>>



Nathan Blake  
Assistant Attorney General  
Office of the Attorney General of Iowa  
1305 E. Walnut St.  
Des Moines, Iowa 50319  
Main: (515) 281-5926<tel:(515)%20281-5926> | Direct: (515) 281-4325<tel:(515)%20281-4325>  
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Nathan Blake  
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## Blake, Nathan [AG]

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**From:** Gilde, Joseph [LEGIS] <Joseph.Gilde@legis.iowa.gov>  
**Sent:** Wednesday, April 12, 2017 11:37 AM  
**To:** Blake, Nathan [AG]  
**Subject:** Re: HF 536  
**Attachments:** image001.png

Its bad legislation, poorly written

Sent from my iPhone

On Apr 12, 2017, at 11:29 AM, Blake, Nathan [AG] <Nathan.Blake@iowa.gov<mailto:Nathan.Blake@iowa.gov>> wrote:

Just registered against. This bill keeps getting worse, somehow. Why we're trying to encourage lowans to sink their money into a depreciating asset that can get stolen out from under them for no reason with just 60 days' notice is beyond me. And the "financial agent" problem never got fixed.

<image001.png><<http://www.iowaattorneygeneral.gov/>>

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## Blake, Nathan [AG]

---

**From:** Gilde, Joseph [LEGIS] <Joseph.Gilde@legis.iowa.gov>  
**Sent:** Wednesday, March 29, 2017 9:06 AM  
**To:** Blake, Nathan [AG]  
**Subject:** Re: Manufactured Housing Amendment

No worries at all.

That's really hard, hope you Andrea and the kids are doing ok.

Sent from my iPhone

On Mar 29, 2017, at 8:52 AM, Blake, Nathan [AG] <Nathan.Blake@iowa.gov<mailto:Nathan.Blake@iowa.gov>> wrote:

Hey, also, I'm sorry I didn't get back to you yesterday—had to take off from work to deal with some stuff at home, which is also why I missed the sub. Thanks for looping me in. NB

**From:** Gilde, Joseph [LEGIS] [mailto:Joseph.Gilde@legis.iowa.gov]  
**Sent:** Tuesday, March 28, 2017 10:02 AM  
**To:** Blake, Nathan [AG]  
**Subject:** Manufactured Housing Amendment

## Blake, Nathan [AG]

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**Sent:** Tuesday, March 28, 2017 10:02 AM  
**To:** Blake, Nathan [AG]  
**Subject:** Manufactured Housing Amendment

**Blake, Nathan [AG]**

---

**From:** Gilde, Joseph [LEGIS] <Joseph.Gilde@legis.iowa.gov>  
**Sent:** Tuesday, March 28, 2017 10:02 AM  
**To:** Blake, Nathan [AG]  
**Subject:** Manufactured Housing Amendment  
**Attachments:** manufactured housing amendment.pdf

**Follow Up Flag:** Follow Up  
**Flag Status:** Completed



**Blake, Nathan [AG]**

---

**From:** Gilde, Joseph [LEGIS] <Joseph.Gilde@legis.iowa.gov>  
**Sent:** Tuesday, March 28, 2017 10:02 AM  
**To:** Blake, Nathan [AG]  
**Subject:** Manufactured Housing Amendment  
**Attachments:** manufactured housing amendment.pdf

**Follow Up Flag:** Follow Up  
**Flag Status:** Completed

## Blake, Nathan [AG]

---

**From:** Godes, Bridget [LEGIS] <Bridget.Godes@legis.iowa.gov>  
**Sent:** Thursday, February 02, 2017 11:56 AM  
**To:** Blake, Nathan [AG]  
**Cc:** Dawson, Luke [AG]  
**Subject:** RE: SSB 1033 - Senate State Gov't

Thanks much to both of you.

---

**From:** Blake, Nathan [AG] [mailto:Nathan.Blake@iowa.gov]  
**Sent:** Thursday, February 2, 2017 10:17 AM  
**To:** Godes, Bridget [LEGIS]  
**Cc:** Dawson, Luke [AG]  
**Subject:** RE: SSB 1033 - Senate State Gov't

Bridget,

Thanks again for reaching out. The Consumer Protection Division does not have great concerns about a realistic probability of harm to consumers from this proposed change. While we can see how this would make the regulators' oversight job more difficult, we leave it to them to opine on that front. For consumers, it seems that the possibility of harm arising from non-CPAs certifying compliance and licensure of a CPA firm is pretty attenuated.

Please let me know if you, Senator Anderson, or Senator Jochum have any further questions.

Thanks,



**Nathan Blake**  
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**From:** Godes, Bridget [LEGIS] [mailto:Bridget.Godes@legis.iowa.gov]  
**Sent:** Wednesday, February 01, 2017 4:31 PM  
**To:** Blake, Nathan [AG]  
**Cc:** Dawson, Luke [AG]  
**Subject:** SSB 1033 - Senate State Gov't  
**Importance:** High

Nathan,

Senators Anderson and Jochum asked me to contact you for you to quickly review SSB 1033, Sec. 3 subsection c. This small section strikes “person with a practice privilege under section 542.20” and replaces it with “nonlicensee” as it relates to people working in CPA firms.

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*Bridget Godes*  
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*Senior Research Analyst*  
*Iowa State Senate – Iowa State Capitol*  
*Ph: 515-281-3433*

## Blake, Nathan [AG]

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**From:** Godes, Bridget [LEGIS] <Bridget.Godes@legis.iowa.gov>  
**Sent:** Thursday, February 02, 2017 11:56 AM  
**To:** Blake, Nathan [AG]  
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**Subject:** RE: SSB 1033 - Senate State Gov't

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Tomorrow – anytime would be fine.  
Thanks for the quick reply.

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**From:** Blake, Nathan [AG] [mailto:Nathan.Blake@iowa.gov]  
**Sent:** Wednesday, February 1, 2017 4:32 PM  
**To:** Godes, Bridget [LEGIS]  
**Subject:** RE: SSB 1033 - Senate State Gov't

Bridget,

Thanks for reaching out. Does “quickly” mean this afternoon or would tomorrow morning work?



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**Blake, Nathan [AG]**

---

**From:** Kattenhorn, Debbie [LEGIS] <Debbie.Kattenhorn@legis.iowa.gov>  
**Sent:** Tuesday, January 24, 2017 3:17 PM  
**Subject:** MARK YOUR CALENDARS  
**Attachments:** Retirement reception.pdf

**Follow Up Flag:** Follow Up  
**Flag Status:** Completed

Please mark your calendars for a reception hosted by the Senate Democrats for Theresa Kehoe, who is retiring from state government and starting a new job in the private sector.

We will have an open house reception for her in Room 116, next Monday, January 30 from 2-4pm.

Please join us to thank her for her service to Iowa and to wish her well on her new endeavors.

## Blake, Nathan [AG]

---

**From:** Simon, Julie [LEGIS] <Julie.Simon@legis.iowa.gov>  
**Sent:** Thursday, March 16, 2017 8:36 AM  
**To:** Blake, Nathan [AG]  
**Subject:** RE: SF 418 - ICCC update

Hi, Nathan...

Just verifying – Senate amendment S-3158 Breitbach is filed to strike Code language i that is inconsistent with federal law, specifically 12 CFR 215 (Regulation O). Thanks.

Julie Simon, Senate Dems

---

**From:** Blake, Nathan [AG] [mailto:Nathan.Blake@iowa.gov]  
**Sent:** Wednesday, March 8, 2017 9:36 AM  
**Subject:** SF 418 - ICCC update

Senator Petersen:

I write to encourage your support of SF 418, the bill that would update the Iowa Consumer Credit Code's fees and penalties. Here's a quick summary of our office's thinking:

- 1) While our office, of course, is not generally in favor of raising the cap on fees that can be charged to consumers, we believe that after 40 years without an increase, there is some justification for raising the fees based on inflation alone. Furthermore, even though the ceiling of the late fee is raised, it will continue to be assessed as the *lesser* of 5% or \$30.00.
- 2) More importantly, the bill also includes a valuable provision that allows consumers to void certain illegal (usually internet-based) triple-digit interest loans that make their way into Iowa. This area of law is exceedingly difficult for our office to prosecute because the perpetrators often live elsewhere and are difficult to pin down. This gives consumers themselves a simple option of voiding the contract, stopping payment, and not being responsible for any further payments.
- 3) All the penalties that can be assessed to financial institutions that violate the various ICCC sections have been updated. This is similar to the increase in fees to consumers and needed because there hasn't been an update since the 1970s.
- 4) In addition to the penalties that the ICCC Administrator can assess being increased, the penalties that consumers themselves can seek in a private right of action have also been increased.
- 5) Finally, this bill contains a much-needed update to the fees assessed to lenders who have to file with our office each year. This will help our office cover the costs of oversight and maintaining the ICCC registrants database.

When this bill was introduced as a Study Bill, it was far worse. It included the fee increases on consumers but not the penalty increases on financial institutions. There were a couple of other provisions had been included that were substantively anti-consumer. Our office worked with the credit unions and the bankers to forge a compromise that we believe updates the ICCC in a reasonable way and continues to serve consumers well.

I would love the opportunity to answer any questions, if you have any. Please don't hesitate to reach out. While I'm not up at the capitol all day, I am able to get there quickly.

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## McCormally, John [AG]

---

**From:** Gary Dickey <Gary@dickeycampbell.com>  
**Sent:** Tuesday, April 11, 2017 12:52 PM  
**To:** McCormally, John [AG]  
**Subject:** Re: Andreas Benford

No

Sent from my iPhone

Gary Dickey  
DICKEY & CAMPBELL LAW FIRM, PLC  
301 East Walnut, Suite 1  
Des Moines, Iowa 50309  
Tel: 515.288.5008  
Fax: 515.288.5010

> On Apr 11, 2017, at 9:27 AM, McCormally, John [AG] <[John.Mccormally@iowa.gov](mailto:John.Mccormally@iowa.gov)> wrote:

>

> Judge McCall reset the hearing for next Tuesday. I'm in Mason City all day. Do you object to another continuance?

>

>

> John McCormally

> Assistant Attorney General

> Special Litigation Division

> Office of the Attorney General of Iowa

> 1305 E. Walnut St.

> Des Moines, Iowa 50319

> Main: (515) 281-7055 | Direct: (515) 281-8080

> Email: [john.mccormally@iowa.gov](mailto:john.mccormally@iowa.gov) | [www.iowaattorneygeneral.gov](http://www.iowaattorneygeneral.gov)

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> -----Original Message-----

> From: Gary Dickey [<mailto:Gary@dickeycampbell.com>]

> Sent: Monday, April 10, 2017 3:57 PM

> To: McCormally, John [AG]

> Subject: RE: Andreas Benford

>

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> gdj

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> Gary Dickey

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> 301 East Walnut Street, Suite 1

> Des Moines, Iowa 50309

> Ph: 515/288-5008

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>

> -----Original Message-----

> From: McCormally, John [AG] [<mailto:John.Mccormally@iowa.gov>]

> Sent: Friday, March 10, 2017 1:53 PM

> To: Gary Dickey <[Gary@dickeycampbell.com](mailto:Gary@dickeycampbell.com)>

> Subject: Out of Office: Andreas Benford

>

> I am out of the office until March 21. I will not have access to email while I am out, but Jessica Porter ([Jessica.Porter@iowa.gov](mailto:Jessica.Porter@iowa.gov); (515) 281-7055) can assist in my absence.

>

>

> John McCormally

> Assistant Attorney General

> Iowa Department of Justice

> Hoover State Office Building

> 1305 E. Walnut, Second Floor

> Des Moines, IA 50319

> Direct: (515) 281-8080

> Fax: (515) 281-8894

## McCormally, John [AG]

---

**From:** Gary Dickey <Gary@dickeycampbell.com>  
**Sent:** Tuesday, April 11, 2017 12:52 PM  
**To:** McCormally, John [AG]  
**Subject:** Re: Andreas Benford

No

Sent from my iPhone

Gary Dickey  
DICKY & CAMPBELL LAW FIRM, PLC  
301 East Walnut, Suite 1  
Des Moines, Iowa 50309  
Tel: 515.288.5008  
Fax: 515.288.5010

> On Apr 11, 2017, at 9:27 AM, McCormally, John [AG] <[John.Mccormally@iowa.gov](mailto:John.Mccormally@iowa.gov)> wrote:

>

> Judge McCall reset the hearing for next Tuesday. I'm in Mason City all day. Do you object to another continuance?

>

>

> John McCormally

> Assistant Attorney General

> Special Litigation Division

> Office of the Attorney General of Iowa

> 1305 E. Walnut St.

> Des Moines, Iowa 50319

> Main: (515) 281-7055 | Direct: (515) 281-8080

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> From: Gary Dickey [<mailto:Gary@dickeycampbell.com>]

> Sent: Monday, April 10, 2017 3:57 PM

> To: McCormally, John [AG]

> Subject: RE: Andreas Benford

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**Attachments:** Benford, Andreas Discovery01 Rogs 031017.pdf; Benford, Andreas Discovery02 Prods to 031017.pdf

John,

Attached you will find interrogatories and requests for production.

You had asked about mootness? As I understand his PCR application, his biggest gripe is completing SOTP and then being told he did not satisfactorily complete it because of a discipline report. It appears he was told that his was going to lose his earned time credits if he didn't do SOTP again and that his TDD was pushed out to 2024. He thinks it should be 05/09/16. But, looking on the IDOC website, his TDD 05/02/2020.

For it to be moot, I think there would require: (1) providing him with certificate of completion for SOTP; (2) rescission of the second SOTP classification decision; and (3) restoration of the earned time credits.

gdj

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## McCormally, John [AG]

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**From:** Gary Dickey <Gary@dickeycampbell.com>  
**Sent:** Monday, December 05, 2016 2:09 PM  
**To:** McCormally, John [AG]  
**Subject:** RE: Benford  
**Attachments:** Benford, Andreas Pleading08 Supplemental Brief 120516.pdf

It appears there is a phantom EDMS filing. On 11/23/2016, Benford filed a pleading that was not served upon me via EDMS. But, it does show up on the EDMS docket. I have attached a copy of it to this email.

I believe the November 23<sup>rd</sup> filing is intended to be a reply brief in the FECR014434 case, but he also asks that it be docketed in this case as an application for a temporary injunction on page 22.

Quote of the day: "I have no idea what my lawyer intends to file on my behalf. I hope it is good, but I'm not expecting that!"

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## Krapf Case

Carroll, George [AG]

**Sent:** Thursday, June 16, 2016 7:47 AM

**To:** gary@dickeycampbell.com

---

Mr. Dickey,

I represent the Board of Regents, State of Iowa in the Krapf case. Our Answer is due on Monday, June 20, 2016. Would you have an objection to an extension of time to file our responsive pleading up to and including, July 11, 2016 in which to respond? Thank you for this consideration.

### George A. Carroll

Assistant Attorney General  
Office of the Attorney General of Iowa  
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**RE: Krapf Case**

Gary Dickey [Gary@dickeycampbell.com]

**Sent:** Thursday, June 16, 2016 7:48 AM**To:** Carroll, George [AG]

---

That is fine.

Gary Dickey  
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## Krapf Case

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Gary,

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### George A. Carroll

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## Krapf v. Rastetter et al

Gary Dickey [Gary@dickeycampbell.com]

**Sent:** Tuesday, August 23, 2016 11:34 AM

**To:** Carroll, George [AG]

**Attachments:** Krapf, Gerhild Pleading14 ~1.pdf (80 KB)

---

Attached you will find an electronic copy of the amended petition that I filed this morning. It is in the judge's queue, but he has not yet approved it.

gdj

### Gary Dickey

DICKEY & CAMPBELL LAW FIRM, P.L.C.

301 East Walnut Street, Suite 1

Des Moines, Iowa 50309

Ph: 515/288-5008

F: 515/288-5010

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# Krapf Case

Carroll, George [AG]

**Sent:** Tuesday, October 25, 2016 8:10 AM

**To:** gary@dickeycampbell.com

---

Gary,

Would Plaintiff agree to a twenty (20) day extension of time to answer the Krapf Petition? I would like up to and including November 14, 2016 to answer the petition. Thank you for this consideration.

## George A. Carroll

Assistant Attorney General  
Office of the Attorney General of Iowa  
1305 E. Walnut St.

Des Moines, Iowa 50319

Main: (515) 281-8330 | Direct: (515) 281-8583  
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**Re: Krapf Case**

Gary Dickey [Gary@dickeycampbell.com]

**Sent:** Tuesday, October 25, 2016 8:46 AM**To:** Carroll, George [AG]

---

Yes

Sent from my iPhone

Gary Dickey  
DICKEY & CAMPBELL LAW FIRM, PLC  
301 East Walnut, Suite 1  
Des Moines, Iowa 50309  
Tel: 515.288.5008  
Fax: 515.288.5010

> On Oct 25, 2016, at 8:10 AM, Carroll, George [AG]  
<George.Carroll@iowa.gov> wrote:

&gt;

&gt; Gary,

&gt;

> Would Plaintiff agree to a twenty (20) day extension of time  
> to answer the Krapf Petition? I would like up to and including  
> November 14, 2016 to answer the petition. Thank you for this  
> consideration.

&gt;

> <<http://www.iowaattorneygeneral.gov/>>

&gt;

&gt; George A. Carroll

&gt; Assistant Attorney General

&gt; Office of the Attorney General of Iowa

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&gt; Des Moines, Iowa 50319

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&gt;

&gt;

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**FW: Courtesy NEF RE: CVCV052002**

Gary Dickey [Gary@dickeycampbell.com]

**Sent:** Wednesday, December 21, 2016 4:19 PM**To:** Adams, Colleen**Cc:** Carroll, George [AG]

---

Colleen,

Can we get a trial scheduling conference set in this matter?

gdj

**Gary Dickey**

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**From:** [efiling.mail@iowacourts.gov](mailto:efiling.mail@iowacourts.gov) [mailto:[efiling.mail@iowacourts.gov](mailto:efiling.mail@iowacourts.gov)]**Sent:** Monday, November 14, 2016 9:24 AM**To:** Gary Dickey <[Gary@dickeycampbell.com](mailto:Gary@dickeycampbell.com)>**Subject:** Courtesy NEF RE: CVCV052002

\*\*\*\*\* IMPORTANT NOTICE - READ THIS INFORMATION \*\*\*\*\*

NOTICE OF ELECTRONIC FILING OR PRESENTATION [NEF]

---

**A filing has been submitted to the court RE: CVCV052002**

**Judge:** ROBERT J BLINK

**Official File Stamp:** 11-14-2016:09:24:04

**Court:** TRIAL COURT  
Polk

**Case Title:** GERHILD KRAPF V BRUCE RASTETTER ET AL

**Document(s) Submitted:** ANSWER Answer to Amended and Substituted Petition

**Filed by or in behalf of:** George Andrew Carroll, Mr.

You may review this filing by clicking on the following link to take you to your cases.

This notice was automatically generated by the courts auto-notification system.

---

**The electronic filing system has served the following people:**

GARY DEAN DICKEY JR for GERHILD KRAPP

GEORGE ANDREW CARROLL for BRUCE RASTETTER, BOARD OF REGENTS OF THE STATE OF IOWA, KATTIE MUHOLLAND, MILT DAKOVICH, LARRY MCKIBBEN, MARY ANDRJINGA

---

**PARTIES NOT SERVED BY EDMS**

**The Iowa Electronic Document Management System will not serve the following parties because they are not registered filers. Per rule 16.317(1)(b), the filing party must serve a paper copy of the filed document(s) on the following parties in the manner required by Iowa Court Rules. \***

---

**Note:** The rules define the clerk of court as responsible for service of court-generated documents. Additionally on small claims cases that by statute can be served by certified mail, when the filer has selected and paid for certified mail in the electronic filing system or at the clerk of court office, the clerk of court is responsible for service of the original notice and answer and appearance by certified mail in accordance with the Code of Iowa.

\*The moving party or the individual who filed it is responsible for service of a document if it was not served by the electronic filing system. That includes, but is not limited to, service of all petitions and original notices [rule 16.316(3)], service of documents on all parties seeking to intervene in confidential cases [16.321(1)(c)], and service of all documents on non-registered parties [16.317(1)(b)].

PLEASE DO NOT REPLY TO THIS EMAIL. Responses go to an email box that is not monitored. To receive help, follow the instruction on the 'Support' link on the eFiling website.

**RE: Courtesy NEF RE: CVCV052002**

Carroll, George [AG]

**Sent:** Thursday, December 22, 2016 6:54 AM**To:** Gary Dickey [Gary@dickeycampbell.com]; Adams, Colleen

---

Gary,

I am on vacation out of state until after January 4, 2017.

**George A. Carroll****Assistant Attorney General**

Office of the Attorney General of Iowa

1305 E. Walnut St.

Des Moines, Iowa 50319

Main: (515) 281-8330 | Direct: (515) 281-8583

Email: [george.carroll@iowa.gov](mailto:george.carroll@iowa.gov) | [www.iowaattorneygeneral.gov](http://www.iowaattorneygeneral.gov)

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**From:** Gary Dickey [Gary@dickeycampbell.com]**Sent:** Wednesday, December 21, 2016 4:19 PM**To:** Adams, Colleen**Cc:** Carroll, George [AG]**Subject:** FW: Courtesy NEF RE: CVCV052002

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Can we get a trial scheduling conference set in this matter?

gdj

**Gary Dickey**

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**Judge:** ROBERT J BLINK

**Official File Stamp:** 11-14-2016:09:24:04

**Court:** TRIAL COURT  
Polk

**Case Title:** GERHILD KRAPF V BRUCE RASTETTER ET AL

**Document(s) Submitted:** ANSWER Answer to Amended and Substituted Petition

**Filed by or in behalf of:** George Andrew Carroll, Mr.

You may review this filing by clicking on the following link to take you to your [cases](#).

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## **Krapf v. Rastetter et al, CVCV052002**

Gary Dickey [Gary@dickeycampbell.com]

**Sent:** Tuesday, January 03, 2017 4:31 PM

**To:** Quick, Christina [JB]

**Cc:** Carroll, George [AG]

---

Christina,

It looks like Judge Kelly is now assigned to this case. The defendants have filed their Answer. I believe we are ready for a trial scheduling conference to be set.

gdj

**RE: Krapf Trial Setting Conference**

Gary Dickey [Gary@dickeycampbell.com]

**Sent:** Thursday, January 05, 2017 12:43 PM**To:** Carroll, George [AG]

---

I'll send you over a discovery plan tomorrow. If that works, we can file it and call and get a date from court administration prior to 1/10.

gdj

Gary Dickey  
DICKY & CAMPBELL LAW FIRM, P.L.C.  
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-----Original Message-----

From: Carroll, George [AG] [<mailto:George.Carroll@iowa.gov>]  
Sent: Wednesday, January 04, 2017 11:31 AM  
To: Gary Dickey <Gary@dickeycampbell.com>  
Subject: Krapf Trial Setting Conference

Gary,

The trial setting order in the Krapf case is a little confusing. Normally, we do these by phone and they are set up by Plaintiff (it is left blank). This appears to be in person. We need to make sure this is by phone, can you clear this up?

<<http://www.iowaattorneygeneral.gov/>>

George A. Carroll  
Assistant Attorney General



Office of the Attorney General of Iowa

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**Krapf v. Rastetter et al, CVCV052002**

Gary Dickey [Gary@dickeycampbell.com]

**Sent:** Monday, January 09, 2017 4:39 PM**To:** Carroll, George [AG]; rkoopmans@nyemaster.com; rjs@nyemaster.com**Attachments:** Krapf, Gerhild Discovery01~1.pdf (660 KB) ; Krapf, Gerhild Discovery02~1.pdf (34 KB)

---

Gents,

Attached is a draft discovery plan for your consideration in advance of tomorrow's trial scheduling conference. Please let me know if you have time to visit together by phone to discuss the plan before the 2:15 p.m. call or whether we need to continue the scheduling conference. Based on the responses to open records requests, suspect that electronic discovery will be an issue in this case. I would offer attachment "A" as a placeholder.

gdj

**Gary Dickey**

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Thank you.

**RE: Krapf v. Rastetter et al, CVCV052002**

Richard J. Sapp [rjs@nyemaster.com]

**Sent:** Tuesday, January 10, 2017 8:54 AM**To:** Gary Dickey [Gary@dickeycampbell.com]; Carroll, George [AG]; Ryan Koopmans [RKoopmans@nyemaster.com]**Cc:** Barbara C. Goodson [BCG@nyemaster.com]

---

Gary- I need to get together with George to discuss a few of these deadlines and your proposed attachment on electronic discovery. George is in a deposition today. Can you get today's scheduling conference pushed back a few days? I have spoken with George and he is fine with doing that. That way we will have time to provide a specific response to your proposed order. If not, have you set up a dial -in for this call?( but we won't be able to agree to all dates today if it goes forward). Thanks. Dick

**From:** Gary Dickey [mailto:Gary@dickeycampbell.com]**Sent:** Monday, January 09, 2017 4:39 PM**To:** Carroll, George [AG] <George.Carroll@iowa.gov>; Ryan Koopmans <RKoopmans@nyemaster.com>; Richard J. Sapp <rjs@nyemaster.com>**Subject:** Krapf v. Rastetter et al, CVCV052002

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**RE: Krapf v. Rastetter et al, CVCV052002**

Gary Dickey [Gary@dickeycampbell.com]

**Sent:** Tuesday, January 10, 2017 8:57 AM**To:** Richard J. Sapp [rjs@nyemaster.com]; Carroll, George [AG]; Ryan Koopmans [RKoopmans@nyemaster.com]**Cc:** Barbara C. Goodson [BCG@nyemaster.com]

---

I will file a motion and proposed order pushing it out a week.

gdj

**Gary Dickey**

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**From:** Richard J. Sapp [mailto:rjs@nyemaster.com]**Sent:** Tuesday, January 10, 2017 8:55 AM**To:** Gary Dickey <Gary@dickeycampbell.com>; 'Carroll, George [AG]' <George.Carroll@iowa.gov>; Ryan Koopmans <RKoopmans@nyemaster.com>**Cc:** Barbara C. Goodson <BCG@nyemaster.com>**Subject:** RE: Krapf v. Rastetter et al, CVCV052002

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**RE: Krapf v. Rastetter et al, CVCV052002**

Richard J. Sapp [rjs@nyemaster.com]

**Sent:** Tuesday, January 10, 2017 8:59 AM**To:** Gary Dickey [Gary@dickeycampbell.com]; Carroll, George [AG]; Ryan Koopmans [RKoopmans@nyemaster.com]**Cc:** Barbara C. Goodson [BCG@nyemaster.com]

---

Thank you. Dick

**From:** Gary Dickey [mailto:Gary@dickeycampbell.com]**Sent:** Tuesday, January 10, 2017 8:58 AM**To:** Richard J. Sapp <rjs@nyemaster.com>; 'Carroll, George [AG]' <George.Carroll@iowa.gov>; Ryan Koopmans <RKoopmans@nyemaster.com>**Cc:** Barbara C. Goodson <BCG@nyemaster.com>**Subject:** RE: Krapf v. Rastetter et al, CVCV052002

I will file a motion and proposed order pushing it out a week.

gdj

**Gary Dickey**

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# FW: Krapf Case - Redline Drafts of Proposed Scheduling Order and Attachments- Atty client privileged and Confidential

Carroll, George [AG]

**Sent:** Thursday, January 12, 2017 1:00 PM  
**To:** gary@dickeycampbell.com  
**Attachments:** 20170110 RJS Redline Propo~1.PDF (283 KB) ; 20170110 RJS Redline Prop~1.DOCX (27 KB) ; 20170110 RJS Proposed Att~1.DOCX (27 KB)

---

Gary - I am fine with the revisions.

## George A. Carroll

**Assistant Attorney General**  
Office of the Attorney General of Iowa  
1305 E. Walnut St.  
Des Moines, Iowa 50319  
Main: (515) 281-8330 | Direct: (515) 281-8583  
Email: [george.carroll@iowa.gov](mailto:george.carroll@iowa.gov) | [www.iowaattorneygeneral.gov](http://www.iowaattorneygeneral.gov)

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---

**From:** Richard J. Sapp [rjs@nyemaster.com]  
**Sent:** Tuesday, January 10, 2017 11:31 AM  
**To:** Carroll, George [AG]  
**Cc:** Ryan Koopmans; Barbara C. Goodson  
**Subject:** FW: Krapf Case - Redline Drafts of Proposed Scheduling Order and Attachments- Atty client privileged and Confidential

George- Attached are my suggested revisions and additions to Mr. Dickey's proposed scheduling order and discovery plan, order on electronic information discovery, and a proposed order under I.R.C.P. 5.502(c) to protect against inadvertently produced privileged documents, all for your consideration and comment. I understand Mr. Dickey is filing a motion to postpone this afternoon's scheduling conference for a week, in order to give us time to reach agreement on these matters. Call me at your convenience if you want to discuss. Dick

**From:** Barbara C. Goodson  
**Sent:** Tuesday, January 10, 2017 11:19 AM  
**To:** Richard J. Sapp <rjs@nyemaster.com>  
**Subject:** Krapf Case - Redline Drafts of Proposed Scheduling Order and Attachments

**Barbara C. Goodson**  
Legal Assistant to Attorney Richard J. Sapp

T: (515) 283-8165  
F: (515) 283-3108  
E: [bcg@nyemaster.com](mailto:bcg@nyemaster.com)



# NYEMASTER

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## Krapf v. Bd of Regents- scheduling conference

Richard J. Sapp [rjs@nyemaster.com]

**Sent:** Tuesday, January 17, 2017 7:18 AM

**To:** Gary Dickey [Gary@dickeycampbell.com]

**Cc:** Carroll, George [AG]; Ryan Koopmans [RKoopmans@nyemaster.com]; Barbara C. Goodson [BCG@nyemaster.com]

---

Gary- did you set up a dial-in for today's call? Are the revisions to the draft scheduling order ok? Dick

Richard J. Sapp  
NYEMASTER GOODE, P.C.  
700 Walnut, Suite 1600  
Des Moines, IA 50309  
T: (515) 283-3144  
F: (515) 283-3108  
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[www.nyemaster.com](http://www.nyemaster.com)

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**RE: Krapf v. Bd of Regents- scheduling conference**

Richard J. Sapp [rjs@nyemaster.com]

**Sent:** Tuesday, January 17, 2017 7:23 AM**To:** Gary Dickey [Gary@dickeycampbell.com]**Cc:** Carroll, George [AG]; Ryan Koopmans [RKoopmans@nyemaster.com]; Barbara C. Goodson [BCG@nyemaster.com]

---

Ok with me. The number you have to connect me is correct. Dick

**From:** Gary Dickey [mailto:Gary@dickeycampbell.com]**Sent:** Tuesday, January 17, 2017 7:22 AM**To:** Richard J. Sapp <rjs@nyemaster.com>**Cc:** 'Carroll, George [AG]' <George.Carroll@iowa.gov>; Ryan Koopmans <RKoopmans@nyemaster.com>; Barbara C. Goodson <BCG@nyemaster.com>**Subject:** RE: Krapf v. Bd of Regents- scheduling conference

The revisions are fine with me. If you approve, I will file the discovery plan this morning.

I will call you and George at 2:15 and conference us in with court administration. If you have a number other than 283-3144 that you would like for me to call, please let me know.

gdj

**Gary Dickey**

DICKY &amp; CAMPBELL LAW FIRM, P.L.C.

301 East Walnut Street, Suite 1

Des Moines, Iowa 50309

Ph: 515/288-5008

F: 515/288-5010

[www.dickeycampbell.com](http://www.dickeycampbell.com)

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**From:** Richard J. Sapp [mailto:rjs@nyemaster.com]**Sent:** Tuesday, January 17, 2017 7:19 AM**To:** Gary Dickey <Gary@dickeycampbell.com>**Cc:** 'Carroll, George [AG]' <George.Carroll@iowa.gov>; Ryan Koopmans <RKoopmans@nyemaster.com>; Barbara C. Goodson <BCG@nyemaster.com>**Subject:** Krapf v. Bd of Regents- scheduling conference

Gary- did you set up a dial-in for today's call? Are the revisions to the draft scheduling order ok? Dick

Richard J. Sapp  
NYEMASTER GOODE, P.C.  
700 Walnut, Suite 1600

Des Moines, IA 50309

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F: (515) 283-3108

[rjs@nyemaster.com](mailto:rjs@nyemaster.com)

[www.nyemaster.com](http://www.nyemaster.com)

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**RE: Krapf v. Bd of Regents- scheduling conference**

Carroll, George [AG]

**Sent:** Tuesday, January 17, 2017 7:51 AM**To:** Gary Dickey [Gary@dickeycampbell.com]; Richard J. Sapp [rjs@nyemaster.com]**Cc:** Ryan Koopmans [RKoopmans@nyemaster.com]; Barbara C. Goodson [BCG@nyemaster.com]

---

Please call me on my cell phone for the Trial Setting Conference - 515-201-9993. Thank you.

**George A. Carroll****Assistant Attorney General**

Office of the Attorney General of Iowa

1305 E. Walnut St.

Des Moines, Iowa 50319

Main: (515) 281-8330 Direct: (515) 281-8583

Email: [george.carroll@iowa.gov](mailto:george.carroll@iowa.gov) | [www.iowaattorneygeneral.gov](http://www.iowaattorneygeneral.gov)

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---

**From:** Gary Dickey [Gary@dickeycampbell.com]**Sent:** Tuesday, January 17, 2017 7:22 AM**To:** Richard J. Sapp**Cc:** Carroll, George [AG]; Ryan Koopmans; Barbara C. Goodson**Subject:** RE: Krapf v. Bd of Regents- scheduling conference

The revisions are fine with me. If you approve, I will file the discovery plan this morning.

I will call you and George at 2:15 and conference us in with court administration. If you have a number other than 283-3144 that you would like for me to call, please let me know.

gdj

**Gary Dickey**

DICKEY &amp; CAMPBELL LAW FIRM, P.L.C.

301 East Walnut Street, Suite 1

Des Moines, Iowa 50309

Ph: 515/288-5008

F: 515/288-5010

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**From:** Richard J. Sapp [mailto:rjs@nyemaster.com]**Sent:** Tuesday, January 17, 2017 7:19 AM**To:** Gary Dickey <Gary@dickeycampbell.com>

Cc: 'Carroll, George [AG]' <George.Carroll@iowa.gov>; Ryan Koopmans <RKoopmans@nyemaster.com>; Barbara C. Goodson <BCG@nyemaster.com>  
Subject: Krpf v. Bd of Regents- scheduling conference

Gary- did you set up a dial-in for today's call? Are the revisions to the draft scheduling order ok? Dick

Richard J. Sapp  
NYEMASTER GOODE, P.C.  
700 Walnut, Suite 1600  
Des Moines, IA 50309  
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**RE: Krapf v. Bd of Regents- scheduling conference**

Richard J. Sapp [rjs@nyemaster.com]

**Sent:** Tuesday, January 17, 2017 8:08 AM**To:** Gary Dickey [Gary@dickeycampbell.com]**Cc:** Carroll, George [AG]; Ryan Koopmans [RKoopmans@nyemaster.com]; Barbara C. Goodson [BCG@nyemaster.com]

---

Gary- I just noticed you did not include Exs. A and B to the scheduling order, as we proposed, in your filing. Can you please include those in an amended filing? Thanks. Dick

**From:** Gary Dickey [mailto:Gary@dickeycampbell.com]**Sent:** Tuesday, January 17, 2017 7:22 AM**To:** Richard J. Sapp <rjs@nyemaster.com>**Cc:** 'Carroll, George [AG]' <George.Carroll@iowa.gov>; Ryan Koopmans <RKoopmans@nyemaster.com>; Barbara C. Goodson <BCG@nyemaster.com>**Subject:** RE: Krapf v. Bd of Regents- scheduling conference

The revisions are fine with me. If you approve, I will file the discovery plan this morning.

I will call you and George at 2:15 and conference us in with court administration. If you have a number other than 283-3144 that you would like for me to call, please let me know.

gdj

**Gary Dickey**

DICKY &amp; CAMPBELL LAW FIRM, P.L.C.

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F: 515/288-5010

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**From:** Richard J. Sapp [mailto:rjs@nyemaster.com]**Sent:** Tuesday, January 17, 2017 7:19 AM**To:** Gary Dickey <Gary@dickeycampbell.com>**Cc:** 'Carroll, George [AG]' <George.Carroll@iowa.gov>; Ryan Koopmans <RKoopmans@nyemaster.com>; Barbara C. Goodson <BCG@nyemaster.com>**Subject:** Krapf v. Bd of Regents- scheduling conference

Gary- did you set up a dial-in for today's call? Are the revisions to the draft scheduling order ok? Dick

Richard J. Sapp  
NYEMASTER GOODE, P.C.

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# FW: Proposed Attachment A and B to Scheduling Order In Re: Krapf v Board of Regents

Richard J. Sapp [rjs@nyemaster.com]

**Sent:** Tuesday, January 17, 2017 8:20 AM  
**To:** Gary Dickey [Gary@dickeycampbell.com]  
**Cc:** Carroll, George [AG]; Ryan Koopmans [RKoopmans@nyemaster.com]; Barbara C. Goodson [BCG@nyemaster.com]  
**Attachments:** 20170110 RJS Redline Prop~1.DOCX (27 KB) ; 20170110 RJS Proposed Att~1.DOCX (27 KB)

---

Attached are exhibits A and B to which I was referring. Dick

**From:** Barbara C. Goodson  
**Sent:** Tuesday, January 17, 2017 8:10 AM  
**To:** Richard J. Sapp <rjs@nyemaster.com>  
**Subject:** Proposed Attachment A and B to Scheduling Order In Re: Krapf v Board of Regents

**Barbara C. Goodson**  
Legal Assistant to Attorney Richard J. Sapp

T: [\(515\) 283-8165](tel:(515)283-8165)  
F: [\(515\) 283-3108](tel:(515)283-3108)  
E: [bcg@nyemaster.com](mailto:bcg@nyemaster.com)

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## Krapf v Rastetter

Gary Dickey [gdickeyjr@yahoo.com]

**Sent:** Tuesday, January 17, 2017 2:42 PM

**To:** Adams, Colleen; rjs@nyemaster.com; Carroll, George [AG]

---

Mediacom had a service outage that has taken down our phone/internet. I have a bridge number of 515.203.4148 Conference ID 10 if everyone is still available.

Gdj

Sent from my iPhone

Gary Dickey  
DICKY & CAMPBELL LAW FIRM, PLC  
301 East Walnut, Suite 1  
Des Moines, Iowa 50309  
Tel: 515.288.5008  
Fax: 515.288.5010

## **RE: Krapf v Rastetter**

Richard J. Sapp [rjs@nyemaster.com]

**Sent:** Tuesday, January 17, 2017 2:43 PM

**To:** Gary Dickey [gdickeyjr@yahoo.com]; Adams, Colleen; Carroll, George [AG]

---

Fine with me. Dick

-----Original Message-----

From: Gary Dickey [mailto:gdickeyjr@yahoo.com]

Sent: Tuesday, January 17, 2017 2:43 PM

To: Colleen.Adams@iowacourts.gov; Richard J. Sapp  
<rjs@nyemaster.com>; George.Carroll@iowa.gov

Subject: Krapf v Rastetter

Mediacom had a service outage that has taken down our phone/internet. I have a bridge number of 515.203.4148 Conference ID 10 if everyone is still available.

Gdj

Sent from my iPhone

Gary Dickey  
DICKY & CAMPBELL LAW FIRM, PLC  
301 East Walnut, Suite 1  
Des Moines, Iowa 50309  
Tel: 515.288.5008  
Fax: 515.288.5010

**RE: Krapf v Rastetter**

Carroll, George [AG]

**Sent:** Tuesday, January 17, 2017 2:44 PM**To:** Richard J. Sapp [rjs@nyemaster.com]; Gary Dickey [gdickeyjr@yahoo.com]; Adams, Colleen

---

I tried to call but it did not work. If you get the court on the phone I am available the end of October and all of November.

George A. Carroll

Assistant Attorney General

Office of the Attorney General of Iowa

1305 E. Walnut St.

Des Moines, Iowa 50319

Main: (515) 281-8330 | Direct: (515) 281-8583

Email: [george.carroll@iowa.gov](mailto:george.carroll@iowa.gov) | [www.iowaattorneygeneral.gov](http://www.iowaattorneygeneral.gov)

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---

From: Richard J. Sapp [rjs@nyemaster.com]

Sent: Tuesday, January 17, 2017 2:43 PM

To: 'Gary Dickey'; Adams, Colleen; Carroll, George [AG]

Subject: RE: Krapf v Rastetter

Fine with me. Dick

-----Original Message-----

From: Gary Dickey [<mailto:gdickeyjr@yahoo.com>]

Sent: Tuesday, January 17, 2017 2:43 PM

To: Colleen.Adams@iowacourts.gov; Richard J. Sapp

&lt;rjs@nyemaster.com&gt;; George.Carroll@iowa.gov

Subject: Krapf v Rastetter

Mediacom had a service outage that has taken down our phone/internet. I have a bridge number of 515.203.4148 Conference ID 10 if everyone is still available.

Gdj

Sent from my iPhone

Gary Dickey  
DICKEY & CAMPBELL LAW FIRM, PLC  
301 East Walnut, Suite 1  
Des Moines, Iowa 50309  
Tel: 515.288.5008  
Fax: 515.288.5010

**RE: Krapf v Rastetter**

Richard J. Sapp [rjs@nyemaster.com]

**Sent:** Tuesday, January 17, 2017 2:47 PM**To:** Carroll, George [AG]; Gary Dickey [gdickeyjr@yahoo.com]; Adams, Colleen

---

Try again. I am on and it worked. Dick

-----Original Message-----

From: Carroll, George [AG] [<mailto:George.Carroll@iowa.gov>]

Sent: Tuesday, January 17, 2017 2:45 PM

To: Richard J. Sapp &lt;rjs@nyemaster.com&gt;; 'Gary Dickey'

&lt;gdickeyjr@yahoo.com&gt;; Adams, Colleen

&lt;Colleen.Adams@iowacourts.gov&gt;

Subject: RE: Krapf v Rastetter

I tried to call but it did not work. If you get the court on the phone I am available the end of October and all of November.

George A. Carroll

Assistant Attorney General

Office of the Attorney General of Iowa

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Email: [george.carroll@iowa.gov](mailto:george.carroll@iowa.gov) | [www.iowaattorneygeneral.gov](http://www.iowaattorneygeneral.gov)

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From: Richard J. Sapp [rjs@nyemaster.com]

Sent: Tuesday, January 17, 2017 2:43 PM

To: 'Gary Dickey'; Adams, Colleen; Carroll, George [AG]

Subject: RE: Krapf v Rastetter

Fine with me. Dick

-----Original Message-----

From: Gary Dickey [<mailto:gdickeyjr@yahoo.com>]  
Sent: Tuesday, January 17, 2017 2:43 PM  
To: Colleen.Adams@iowacourts.gov; Richard J. Sapp  
<[rjs@nyemaster.com](mailto:rjs@nyemaster.com)>; George.Carroll@iowa.gov  
Subject: Krapf v Rastetter

Mediacom had a service outage that has taken down our phone/internet. I have a bridge number of 515.203.4148 Conference ID 10 if everyone is still available.

Gdj

Sent from my iPhone

Gary Dickey  
DICKEY & CAMPBELL LAW FIRM, PLC  
301 East Walnut, Suite 1  
Des Moines, Iowa 50309  
Tel: 515.288.5008  
Fax: 515.288.5010

## **Krapf v. Bd of Regents- scheduling conference**

Gary Dickey [Gary@dickeycampbell.com]

**Sent:** Tuesday, January 17, 2017 2:32 PM

**To:** Adams, Colleen; rjs@nyemaster.com; Carroll, George [AG]

---

We just lost Mediacom phone and internet service. I am working on getting a bridge number so that i can call in by cell.

Sent from my iPhone

Gary Dickey  
DICKY & CAMPBELL LAW FIRM, PLC  
301 East Walnut, Suite 1  
Des Moines, Iowa 50309  
Tel: 515.288.5008  
Fax: 515.288.5010



## Re: Krapf v. Bd of Regents- scheduling conference

Colleen.Adams@iowacourts.gov [Colleen.Adams@iowacourts.gov]

**Sent:** Tuesday, January 17, 2017 4:55 PM

**To:** Gary Dickey [Gary@dickeycampbell.com]

**Cc:** Carroll, George [AG]; rjs@nyemaster.com

---

Didn't we already set this one earlier?

Colleen Adams  
Case Coordinator Specialist  
500 Mulberry Room 408  
Des Moines, Iowa 50309  
To Schedule a Trial 515-286-3704  
colleen.adams@iowacourts.gov



From: Gary Dickey <Gary@dickeycampbell.com>  
To: "Colleen.Adams@iowacourts.gov" <Colleen.Adams@iowacourts.gov>, "rjs@nyemaster.com" <rjs@nyemaster.com>, "George.Carroll@iowa.gov" <George.Carroll@iowa.gov>  
Date: 01/17/2017 04:55 PM  
Subject: Krapf v. Bd of Regents- scheduling conference

- We just lost Mediacom phone and internet service. I am working on getting a bridge number so that i can call in by cell.

Sent from my iPhone

Gary Dickey  
DICKEY & CAMPBELL LAW FIRM, PLC  
301 East Walnut, Suite 1  
Des Moines, Iowa 50309  
Tel: 515.288.5008  
Fax: 515.288.5010

**RE: Krapf v. Bd of Regents- scheduling conference**

Gary Dickey [Gary@dickeycampbell.com]

**Sent:** Tuesday, January 17, 2017 5:19 PM**To:** Adams, Colleen**Cc:** Carroll, George [AG]; rjs@nyemaster.com

---

Our Mediacom just came back online. That was an email from earlier today that was lost in the internet. Please disregard.

gdj

**Gary Dickey**

DICKEY &amp; CAMPBELL LAW FIRM, P.L.C.

301 East Walnut Street, Suite 1

Des Moines, Iowa 50309

Ph: 515/288-5008

F: 515/288-5010

[www.dickeycampbell.com](http://www.dickeycampbell.com)

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**From:** Colleen.Adams@iowacourts.gov [mailto:Colleen.Adams@iowacourts.gov]**Sent:** Tuesday, January 17, 2017 4:56 PM**To:** Gary Dickey <Gary@dickeycampbell.com>**Cc:** George.Carroll@iowa.gov; rjs@nyemaster.com**Subject:** Re: Krapf v. Bd of Regents- scheduling conference

Didn't we already set this one earlier?

Colleen Adams

Case Coordinator Specialist

500 Mulberry Room 408

Des Moines, Iowa 50309

To Schedule a Trial 515-286-3704

[colleen.adams@iowacourts.gov](mailto:colleen.adams@iowacourts.gov)



From: Gary Dickey <Gary@dickeycampbell.com>  
To: "Colleen.Adams@iowacourts.gov" <Colleen.Adams@iowacourts.gov>, "ris@nyemaster.com" <ris@nyemaster.com>, "George.Carroll@iowa.gov" <George.Carroll@iowa.gov>  
Date: 01/17/2017 04:55 PM  
Subject: Krapf v. Bd of Regents- scheduling conference

---

We just lost Mediacom phone and internet service. I am working on getting a bridge number so that i can call in by cell.

Sent from my iPhone

Gary Dickey  
DICKEY & CAMPBELL LAW FIRM, PLC  
301 East Walnut, Suite 1  
Des Moines, Iowa 50309  
Tel: 515.288.5008  
Fax: 515.288.5010

# Krapf v. Board of Regents et al. - Service of Discovery

Barbara C. Goodson [BCG@nyemaster.com]

**Sent:** Monday, February 13, 2017 3:09 PM  
**To:** gary@dickeycampbell.com; Carroll, George [AG]  
**Cc:** Ryan Koopmans [RKoopmans@nyemaster.com]; Richard J. Sapp [rjs@nyemaster.com]  
**Attachments:** 20170213 Defendants Rastet~1.PDF (2 MB)

---

**Counsel:**

Attached for service in the above-referenced matter please find *Defendants' Bruce Rastetter, Katie Mulholland and Mary Andringa's First Set of Interrogatories Directed to Plaintiff Gerhild Krapf*. Hard copies are also being placed in the mail to you today. Should you have any problems with this transmission or the attachment, please do not hesitate to contact our office. Thank you.

Sincerely,

**Barbara C. Goodson**  
Legal Assistant to Attorney Richard J. Sapp

T: [\(515\) 283-8165](tel:(515)283-8165)  
F: [\(515\) 283-3108](tel:(515)283-3108)  
E: [bcg@nyemaster.com](mailto:bcg@nyemaster.com)

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## Krapf v. Rastetter et al, CVCV052002 (Plaintiff's discovery requests)

Gary Dickey [Gary@dickeycampbell.com]

**Sent:** Monday, February 13, 2017 5:41 PM

**To:** Richard J. Sapp [rjs@nyemaster.com]; Carroll, George [AG]; Ryan Koopmans [RKoopmans@nyemaster.com]

**Attachments:** Krapf, Gerhild CO02 Discov~1.pdf (90 KB) ; Gerhild, Krapf Discovery01~1.pdf (81 KB) ; Gerhild, Krapf Discovery01~2.pdf (100 KB) ; Gerhild, Krapf Discovery02~1.pdf (81 KB) ; Gerhild, Krapf Discovery02~2.pdf (100 KB) ; Gerhild, Krapf Discovery03~1.pdf (81 KB) ; Gerhild, Krapf Discovery03~2.pdf (100 KB) ; Gerhild, Krapf Discovery04~1.pdf (81 KB) ; Gerhild, Krapf Discovery04~2.pdf (100 KB) ; Gerhild, Krapf Discovery05~1.pdf (81 KB) ; Gerhild, Krapf Discovery05~2.pdf (100 KB) ; Gerhild, Krapf Discovery06~1.pdf (81 KB) ; Gerhild, Krapf Discovery06~2.pdf (83 KB)

---

Gents,

Please see the attached correspondence and discovery requests.

gdj

### Gary Dickey

DICKEY & CAMPBELL LAW FIRM, P.L.C.

301 East Walnut Street, Suite 1

Des Moines, Iowa 50309

Ph: 515/288-5008

F: 515/288-5010

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## Krapf Case

Carroll, George [AG]

**Sent:** Tuesday, March 07, 2017 1:47 PM

**To:** gary@dickeycampbell.com

---

Gary,

I would like an extension of time to respond to your discovery. I would like up to and including April 10, 2017 in which to respond. Thank you for this consideration.

### **George A. Carroll**

**Assistant Attorney General**  
Office of the Attorney General of Iowa  
1305 E. Walnut St.

Des Moines, Iowa 50319

Main: (515) 281-8330 | Direct: (515) 281-8583  
Email: [george.carroll@iowa.gov](mailto:george.carroll@iowa.gov) | [www.iowaattorneygeneral.gov](http://www.iowaattorneygeneral.gov)

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## **RE: Krapf v. Bd of Regents et al.**

Gary Dickey [Gary@dickeycampbell.com]

**Sent:** Wednesday, March 08, 2017 7:18 AM

**To:** Richard J. Sapp [rjs@nyemaster.com]; Carroll, George [AG]

**Cc:** Ryan Koopmans [RKoopmans@nyemaster.com]; Barbara C. Goodson [BCG@nyemaster.com]

---

All of the defendants have asked for an extension to April 10<sup>th</sup> in which to answer the first round of discovery requests. That is fine by me.

Since we all submitted our requests the same day, can we agree that all of the parties have until April 10<sup>th</sup> in which to respond?

gdj

### **Gary Dickey**

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F: 515/288-5010

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# Krapf Discovery

Carroll, George [AG]

**Sent:** Monday, April 10, 2017 7:29 AM

**To:** gary@dickeycampbell.com

---

Gary,

Due to my schedule, I need until Thursday, April 13, 2017, to complete the discovery in the Krapf case. Thank you for this consideration.

## George A. Carroll

Assistant Attorney General  
Office of the Attorney General of Iowa  
1305 E. Walnut St.

Des Moines, Iowa 50319

Main: (515) 281-8330 | Direct: (515) 281-8583  
Email: [george.carroll@iowa.gov](mailto:george.carroll@iowa.gov) | [www.iowaattorneygeneral.gov](http://www.iowaattorneygeneral.gov)

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**RE: Krapf Discovery**

Gary Dickey [Gary@dickeycampbell.com]

**Sent:** Monday, April 10, 2017 12:17 PM**To:** Carroll, George [AG]

---

As do I.

gdj

Gary Dickey  
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-----Original Message-----

From: Carroll, George [AG] [<mailto:George.Carroll@iowa.gov>]  
Sent: Monday, April 10, 2017 7:29 AM  
To: Gary Dickey <Gary@dickeycampbell.com>  
Subject: Krapf Discovery

Gary,

Due to my schedule, I need until Thursday, April 13, 2017, to complete the discovery in the Krapf case. Thank you for this consideration.

<<http://www.iowaattorneygeneral.gov/>>

George A. Carroll  
Assistant Attorney General  
Office of the Attorney General of Iowa  
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Des Moines, Iowa 50319

Main: (515) 281-8330 | Direct: (515) 281-8583

Email: [george.carroll@iowa.gov](mailto:george.carroll@iowa.gov) |  
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# Krapf v. Board of Regents et al. - Andringa Service of Discovery Responses

Barbara C. Goodson [BCG@nyemaster.com]

**Sent:** Monday, April 10, 2017 3:48 PM  
**To:** gary@dickeycampbell.com; Carroll, George [AG]  
**Cc:** Ryan Koopmans [RKoopmans@nyemaster.com]; Richard J. Sapp [rjs@nyemaster.com]  
**Attachments:** 20170410 Mary Andringa Ans~1.PDF (2 MB) ; 20170410 Mary Andringa Res~1.PDF (6 MB)

---

Counsel:

Attached for service in the above matter please find Defendant Mary Andringa's Answers to Plaintiff's First Set of Interrogatories and Responses to Plaintiff's First Set of Requests for Production. Hard copies of these materials have been placed in the mail to you today as well. Should you have any problems with this transmission or the attachments, please do not hesitate to contact our office. Thank you.

Sincerely,

**Barbara C. Goodson**

Legal Assistant to Attorney Richard J. Sapp

T: [\(515\) 283-8165](tel:5152838165)

F: [\(515\) 283-3108](tel:5152833108)

E: [bcg@nyemaster.com](mailto:bcg@nyemaster.com)

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# Krapf v. Board of Regents et al. - Mulholland Service of Discovery Responses

Barbara C. Goodson [BCG@nyemaster.com]

**Sent:** Monday, April 10, 2017 3:46 PM  
**To:** gary@dickeycampbell.com; Carroll, George [AG]  
**Cc:** Ryan Koopmans [RKoopmans@nyemaster.com]; Richard J. Sapp [rjs@nyemaster.com]  
**Attachments:** 20170410 Katie Mulholland ~1.PDF (2 MB) ; 20170410 Katie Mulholland ~2.PDF (2 MB)

---

Counsel:

Attached for service in the above matter please find Defendant Katie Mulholland's Answers to Plaintiff's First Set of Interrogatories and Responses to Plaintiff's First Set of Requests for Production. Hard copies of these materials have been placed in the mail to you today as well. Should you have any problems with this transmission or the attachments, please do not hesitate to contact our office. Thank you.

Sincerely,

**Barbara C. Goodson**

Legal Assistant to Attorney Richard J. Sapp

T: [\(515\) 283-8165](tel:(515)283-8165)

F: [\(515\) 283-3108](tel:(515)283-3108)

E: [bcg@nyemaster.com](mailto:bcg@nyemaster.com)

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# Krapf v. Board of Regents et al. - Rastetter Service of Discovery Responses

Barbara C. Goodson [BCG@nyemaster.com]

**Sent:** Monday, April 10, 2017 3:43 PM  
**To:** gary@dickeycampbell.com; Carroll, George [AG]  
**Cc:** Ryan Koopmans [RKoopmans@nyemaster.com]; Richard J. Sapp [rjs@nyemaster.com]  
**Attachments:** 20170410 Bruce Rastetter A~1.PDF (2 MB) ; 20170410 Bruce Rastetter R~1.PDF (3 MB)

---

**Counsel:**

Attached for service in the above matter please find Defendant Bruce Rastetter's Answers to Plaintiff's First Set of Interrogatories and Responses to Plaintiff's First Set of Requests for Production. Hard copies of these materials have been placed in the mail to you today as well. Should you have any problems with this transmission or the attachments, please do not hesitate to contact our office. Thank you.

Sincerely,

**Barbara C. Goodson**  
Legal Assistant to Attorney Richard J. Sapp

T: [\(515\) 283-8165](tel:(515)283-8165)  
F: [\(515\) 283-3108](tel:(515)283-3108)  
E: [bcg@nyemaster.com](mailto:bcg@nyemaster.com)

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# Krapf Discovery

Carroll, George [AG]

**Sent:** Thursday, April 13, 2017 3:57 PM

**To:** gary@dickeycampbell.com; rjs@nyemaster.com

**Attachments:** 2017-04-13 Response to Int~1.pdf (74 KB) ; 2017-04-13 Response to Int~2.pdf (93 KB) ;  
2017-04-13 Response to Int~3.pdf (93 KB) ; 2017-04-13 Response to Pro~1.pdf (68 KB) ;  
2017-04-13 Response to Pro~2.pdf (1 MB) ; 2017-04-13 Response to Pro~3.pdf (71 KB) ;  
Doc 1-80.pdf (10 MB)

---

Attached are discovery responses from the Board of Regents, Mr. McKibben and Mr. Dakovich. Copies of mail as well.

## George A. Carroll

Assistant Attorney General  
Office of the Attorney General of Iowa  
1305 E. Walnut St.

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**RE: Krapf v. Board of Regents**

Gary Dickey [Gary@dickeycampbell.com]

**Sent:** Friday, April 14, 2017 10:53 AM**To:** Richard J. Sapp [rjs@nyemaster.com]**Cc:** Carroll, George [AG]; Ryan Koopmans [RKoopmans@nyemaster.com]; Barbara C. Goodson [BCG@nyemaster.com]

---

Our responses to all of the requests are finalized and awaiting a signature. I will have them to you by Monday, if not sooner.

gdj

**Gary Dickey**

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**From:** Richard J. Sapp [mailto:rjs@nyemaster.com]**Sent:** Wednesday, April 12, 2017 2:23 PM**To:** Gary Dickey <Gary@dickeycampbell.com>**Cc:** 'Carroll, George [AG]' <George.Carroll@iowa.gov>; Ryan Koopmans <RKoopmans@nyemaster.com>; Barbara C. Goodson <BCG@nyemaster.com>**Subject:** Krapf v. Board of Regents

Gary- just a note that I have not received your client's responses to our discovery. By agreement, everyone was to respond to respective discovery requests on April 10. Please advise. Thanks. Dick

Richard J. Sapp  
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T: (515) 283-3144  
F: (515) 283-3108  
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# Krapf v. Board of Regents Discovery Responses

Gary Dickey [Gary@dickeycampbell.com]

**Sent:** Saturday, April 15, 2017 8:11 AM

**To:** Richard J. Sapp [rjs@nyemaster.com]

**Cc:** Carroll, George [AG]; Ryan Koopmans [RKoopmans@nyemaster.com]; Barbara C. Goodson [BCG@nyemaster.com]

**Attachments:** Krapf Gerhild Discovery03 ~1.pdf (928 KB)

---

Attached please find Plaintiff's answers to Rastetter, Mulholland, and Andringa's interrogatories.

## Gary Dickey

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Des Moines, Iowa 50309

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F: 515/288-5010

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# Krapf v. Board of Regents Discovery Responses 1 of 3

Gary Dickey [Gary@dickeycampbell.com]

**Sent:** Sunday, April 16, 2017 7:10 AM  
**To:** Carroll, George [AG]  
**Cc:** Richard J. Sapp [rjs@nyemaster.com]; Ryan Koopmans [RKoopmans@nyemaster.com]; Barbara C. Goodson [BCG@nyemaster.com]  
**Attachments:** Krapf, Gerhild Discovery01~1.pdf (3 MB) ; Krapf, Gerhild Discovery02~1.pdf (1 MB)

---

Attached you will find Plaintiff's responses to BORs discovery requests in three emails.

## Gary Dickey

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Des Moines, Iowa 50309

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# Krapf v. Board of Regents Discovery Responses 2 of 3

Gary Dickey [Gary@dickeycampbell.com]

**Sent:** Sunday, April 16, 2017 7:10 AM  
**To:** Carroll, George [AG]  
**Cc:** Richard J. Sapp [rjs@nyemaster.com]; Ryan Koopmans [RKoopmans@nyemaster.com]; Barbara C. Goodson [BCG@nyemaster.com]  
**Attachments:** Krapf, Gerhild Discovery02~1.pdf (2 MB)

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2 of 3

## Gary Dickey

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# Krapf v. Board of Regents Discovery Responses 3 of 3

Gary Dickey [Gary@dickeycampbell.com]

**Sent:** Sunday, April 16, 2017 7:10 AM  
**To:** Carroll, George [AG]  
**Cc:** Richard J. Sapp [rjs@nyemaster.com]; Ryan Koopmans [RKoopmans@nyemaster.com]; Barbara C. Goodson [BCG@nyemaster.com]  
**Attachments:** Krapf, Gerhild Discovery02~1.pdf (10 MB)

---

Last one.

## Gary Dickey

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F: 515/288-5010  
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**Sand, Rob [AG]**

---

**From:** government-owner@iabar.org on behalf of Mark O. Lambert <government@iabar.org>  
**Sent:** Friday, June 05, 2015 8:45 AM  
**To:** government@iabar.org  
**Subject:** Re: [ISBA Government]

Aaron,

I used to be an ALJ and I heard Medicaid and other DHS appeals. Generally, no coverage if one is incarcerated. Details here:

<https://www.legis.iowa.gov/docs/publications/IH/14809.pdf>

--Mark  
Mark Lambert

---

**From:** "Aaron Murphy" <government@iabar.org>  
**To:** "Government list serve" <government@iabar.org>  
**Sent:** Friday, June 5, 2015 8:35:13 AM  
**Subject:** Re: [ISBA Government]

Thanks. I hope my wife (who is a paralegal in my office) does not see this. It will be the second time in 2 days I have been wrong about something that I cannot argue my way out of. She thoroughly enjoys it when I am wrong.

On Thu, Jun 4, 2015 at 11:33 PM, Roger Kuhle <government@iabar.org> wrote:

Social security gets suspended when one is in jail. Medicaid Regs should address that.

Sent from my iPad

On Jun 4, 2015, at 5:02 PM, Aaron Murphy <government@iabar.org> wrote:

There is a prisoner in Mitchell County jail. That prisoner is on medication. He runs out of the medication and needs a refill. The pharmacy refills the medication. They bill Medicaid because the person is already enrolled in Medicaid (I guess most people in jail don't have money or insurance--imagine that). Medicaid says they won't pay because the county has to pay. Pharmacy asks us for advice. Our office is Mitchell County attorney so I am familiar with the fact that there is county liability for prisoner's medical bills, in many circumstances, etc. However, I don't believe that relieve Medicaid of their responsibility. Who agrees or doesn't agree?

--

Aaron R. Murphy  
Walk & Murphy P.L.C.  
515 State Street

Osage, IA 50461  
Phone: (641) 732-3796  
Fax: (641) 732-5345  
Website: www.iowalawpractice.com  
E-mail: iowalawpractice@gmail.com

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--  
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Walk & Murphy P.L.C.  
515 State Street  
Osage, IA 50461  
Phone: (641) 732-3796  
Fax: (641) 732-5345  
Website: www.iowalawpractice.com  
E-mail: iowalawpractice@gmail.com

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## Sand, Rob [AG]

---

**From:** criminallaw-owner@iabar.org on behalf of Gary Dickey <criminallaw@iabar.org>  
**Sent:** Thursday, March 03, 2016 1:43 PM  
**To:** criminallaw@iabar.org  
**Subject:** RE: [ISBA CriminalLaw] Confrontation

I'd read *Davis v. Washington*, 547 U.S. 813 (2006):

Statements are nontestimonial when made in the course of police interrogation under circumstances objectively indicating that the primary purpose of the interrogation is to enable police assistance to meet an ongoing emergency. They are testimonial when the circumstances objectively indicate that there is no such ongoing emergency, and that the primary purpose of the interrogation is to establish or prove past events potentially relevant to later criminal prosecution.

\*\*\*

This is not to say that a conversation which begins as an interrogation to determine the need for emergency assistance cannot, as the Indiana Supreme Court put it, "evolve into testimonial statements," once that purpose has been achieved. In this case, for example, after the operator gained the information needed to address the exigency of the moment, the emergency appears to have ended (when Davis drove away from the premises). The operator then told McCottry to be quiet, and proceeded to pose a battery of questions. It could readily be maintained that, from that point on, McCottry's statements were testimonial, not unlike the "structured police questioning" that occurred in *Crawford*. This presents no great problem. Just as, for Fifth Amendment purposes, "police officers can and will distinguish almost instinctively between questions necessary to secure their own safety or the safety of the public and questions designed solely to elicit testimonial evidence from a suspect," trial courts will recognize the point at which, for Sixth Amendment purposes, statements in response to interrogations become testimonial. Through *in limine* procedure, they should redact or exclude the portions of any statement that have become testimonial, as they do, for example, with unduly prejudicial portions of otherwise admissible evidence.

*Id.* at 822, 828-29 (citations omitted).

### Gary Dickey

DICKEY & CAMPBELL LAW FIRM, P.L.C.  
301 East Walnut Street, Suite 1  
Des Moines, Iowa 50309  
Ph: 515/288-5008  
F: 515/288-5010  
[www.dickeycampbell.com](http://www.dickeycampbell.com)

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**From:** criminallaw-owner@iabar.org [mailto:criminallaw-owner@iabar.org] On Behalf Of Dai Gwilliam  
**Sent:** Thursday, March 03, 2016 1:16 PM



To: [criminallaw@iabar.org](mailto:criminallaw@iabar.org)

Subject: [ISBA CriminalLaw] Confrontation

Hi - I have a Domestic Assault where the wife (complaining witness) is not listed by the state as a witness. How does this work with the right to confrontation - they can't still be doing the end run around that with the excited utterance exception to hearsay, can they?

I read Tomkins and not much direct help there. Any ideas?

Thanks, Dai

Dai Gwilliam, Attorney at Law  
432 East Bloomington  
Iowa City, Iowa 52244

Phone: (319) 354-6000  
Fax: (855) 301-9718

E-mail: [dai@daiqwilliam.com](mailto:dai@daiqwilliam.com)

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## Sand, Rob [AG]

---

**From:** government-owner@iabar.org on behalf of Mark O. Lambert <government@iabar.org>  
**Sent:** Wednesday, March 16, 2016 4:17 PM  
**To:** government@iabar.org  
**Subject:** Re: [ISBA Government] Freedom of Information Act (FOIA) Question

Amy, I am 100% in agreement with Mary's comments on this. You can also charge a reasonable fee for any copies made (as well as the time the employee spends making the copies). There have been many times we've received massive requests ("any/all documents regarding all projects Ms. Smith worked on during her 15 years as a planner with the city"). Usually when you send them the time/cost estimate and explain they need to pay in advance, you don't hear from them again. I'm not stating this as a way to avoid the open records law, but it's just a reality that people make these requests without having any idea of the employee time & effort and cost required to comply with the request.

--Mark  
Mark O. Lambert  
Assistant City Attorney  
City of Ames

---

**From:** "Mary Gannon" <government@iabar.org>  
**To:** [government@iabar.org](mailto:government@iabar.org)  
**Sent:** Wednesday, March 16, 2016 3:57:15 PM  
**Subject:** Re: [ISBA Government] Freedom of Information Act (FOIA) Question

Amy - the law doesn't require you to develop records that don't already exist and that kind of sounds like what they're looking for. That said, yes, you can charge for the retrieval, collection, etc. But, only the employee's hourly rate not overhead such as bennies. You can also give them the estimate and ask them to pay in advance. (I got that amendment passed when still lobbying due to the deadbeats who go on fishing trips.) So, yes, you can charge time for both the compilation and copying. Good luck!

Mary Gannon, MPA, JD,  
Public Employment Relations Board Member

On Wed, Mar 16, 2016 at 3:52 PM, Amy J. Skogerson <[government@iabar.org](mailto:government@iabar.org)> wrote:

Colleagues,

I represent a rural water district organized under Chapter 357A, making it a quasi-governmental entity subject to open meeting and open records laws. I received this question from my client and wondered if any of you have experience with and/or knowledge about how I should respond (I am working on research now):

Below are e-mails I am being asked by a person interested in our water use in \_\_\_\_\_ County. I was able to answer the first two e-mails fairly simply because we have that information readily available. She is now asking questions that will cause [client] to manually go through our records to get most of the answers to the questions in red. Can we charge to get this information from our system? I'm fairly certain this will take 20 to

30 hours of our staffs time if not more. Can we give them an estimate of the costs before we proceed? They are asking for this information under the Freedom of Information Act.

To be clear, my client has no objection to providing the requested information. The question is specifically about whether they can charge anything for their expenses in providing the information (staff time, copies, items such as that).

Thanks!

Amy Skogerson

*Amy J. Skogerson*

SKOGERSON LAW, P.C.

Collaborative Attorney, Mediator & Peacemaker

413 Grant Street / P.O. Box 252

Van Meter, Iowa 50261

Tel: [515.996.4045](tel:515.996.4045) / Fax: [515.996.4125](tel:515.996.4125)

Email: [amy@raccoonriverlaw.com](mailto:amy@raccoonriverlaw.com)

Web: [www.raccoonriverlaw.com](http://www.raccoonriverlaw.com)



**Sand, Rob [AG]**

---

**From:** Kattenhorn, Debbie [LEGIS] <Debbie.Kattenhorn@legis.iowa.gov>  
**Sent:** Tuesday, January 24, 2017 2:02 PM  
**Subject:** MARK YOUR CALENDARS  
**Attachments:** Retirement reception.pdf

Please mark your calendars for a reception hosted by the Senate Democrats for Theresa Kehoe, who is retiring from state government and starting a new job in the private sector.

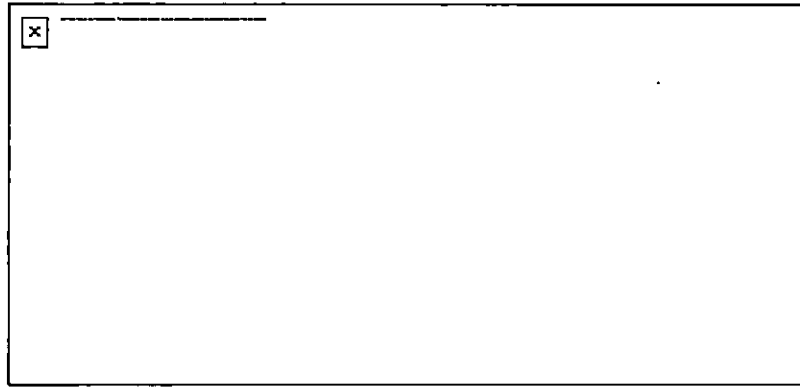
We will have an open house reception for her in Room 116, next Monday, January 30 from 2-4pm.

Please join us to thank her for her service to Iowa and to wish her well on her new endeavors.

**Ambrozic, Jane [AG]**

---

**From:** Janet Petersen, Iowa State Senator <bounce@bounce.myngp.com> on behalf of Janet Petersen, Iowa State Senator <senate@iowademocrats.org>  
**Sent:** Friday, May 19, 2017 9:43 AM  
**To:** Ambrozic, Jane [AG]  
**Subject:** Devastating News



Friend,

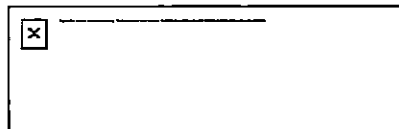
Planned Parenthood announced yesterday it would be closing four health centers in Iowa, including centers in three districts represented by Republican Senators who voted to shut them down. **Senator Roby Smith of Scott County, Senator Rick Bertrand of Woodbury County, and Senator Tom Greene of Des Moines County** voted to close the facilities in their very own districts.

This devastating news is what happens when Republican politicians think they can take charge of women's health care.

Before Republicans voted to dismantle it, Iowa's network of family planning clinics was working well. It was inexpensive for Iowa taxpayers and helped reduce abortions and unintended pregnancies for Iowa women.

We don't want to go backward. We must stand up for Iowa families and stand against Republican extremists like Sen. Smith, Sen. Bertrand, and Sen. Greene. Their vote to defund Planned Parenthood has cost women in their districts access to vital health services.

Please chip in \$14.67 or more for the 14,676 people who will lose access to family planning services.



Janet Petersen

State Senator

Des Moines

PS - Send a message to Senators Smith, Bertrand, and Greene that we stand with Iowa women and not their extreme agenda which they pushed through over the pleas of women across Iowa to maintain access to health care.

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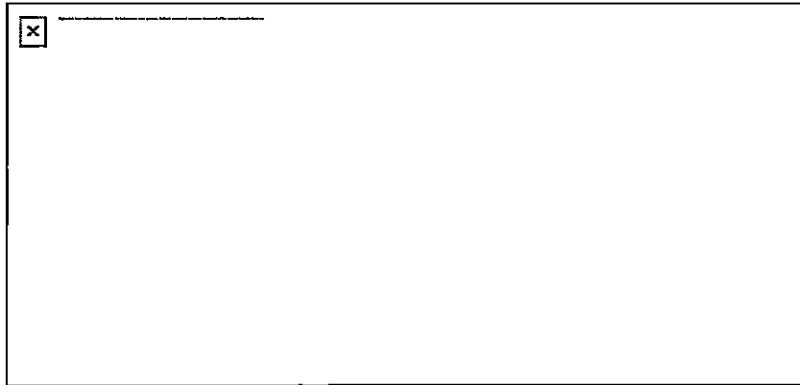
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**Ambrozic, Jane [AG]**

---

**From:** Seth Cohen, SMF Finance Director <bounce@bounce.myngp.com> on behalf of Seth Cohen, SMF Finance Director <senate@iowademocrats.org>  
**Sent:** Tuesday, May 16, 2017 5:31 PM  
**To:** Ambrozic, Jane [AG]  
**Subject:** Classified Information

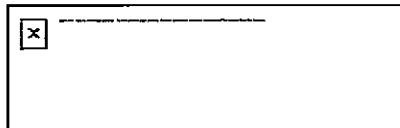


Friend,

Well... not really but I do have some great news!

All around the Iowa, we are hearing from Democrats like you, and we could not be more excited for 2018. Iowans want a government that works for them and not corporate donors. To take back the majority we need your help. We have 538 days until election day; [can you chip \\$5.38 to help us send the Republicans packing?](#)

Every dollar you donate will help us share our message of how the Senate Democrats will stand up to the Republicans for all Iowans.



Seth Cohen  
SMF Finance Director

Paid for by the Iowa Senate Majority Fund

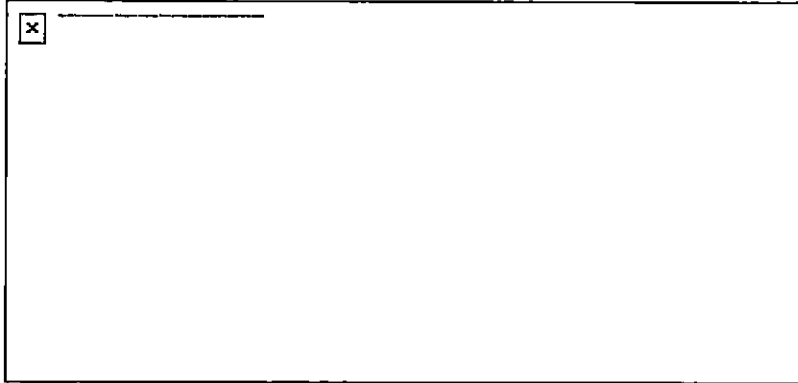
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## Ambrozic, Jane [AG]

---

**From:** Jacob Becklund, SMF Director <bounce@bounce.myngp.com> on behalf of Jacob Becklund, SMF Director <senate@iowademocrats.org>  
**Sent:** Wednesday, May 10, 2017 9:05 AM  
**To:** Ambrozic, Jane [AG]  
**Subject:** We have one goal!



Friend,

As you know, Iowa Republicans took total control of Iowa's state government last November for the first time in 20 years with an unprecedented onslaught of false and misleading negative advertisements.

Iowa Senate Democrats fought hard against these proposals, including the historic 30-hour, all-night, debate on the bill that attacks the rights of 180,000 teachers, firefighters, police officers, social workers, sanitation workers, and other public service workers.

Please join us as we work to stop the damage they are doing to the state and get Iowa going in the right direction again.

You can help us get Iowa going again by making a recurring monthly contribution over the next 18 months to the Iowa Senate Democrats' Majority Fund.

Your commitment now will provide the resources we need to recruit top-notch candidates to challenge the 10 Republican Senators up for re-election in 2018 and get our message out to every county, every district, and every corner of Iowa. Please consider the following monthly contributions:

"Hold The Line" Contributor - \$5 per month or \$90

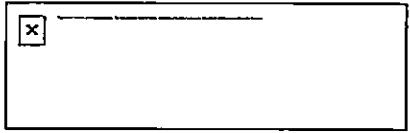
"Big Comeback" Contributor - \$12 per month or \$216

"New "Democratic Majority" Contributor - \$26 per month or \$468

"Clean "Sweep" Contributor - \$50 per month or \$900

We have one goal: re-take the majority in 2018, and we need your help.





Jacob Becklund

SMF Director

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Des Moines IA 50321 United States

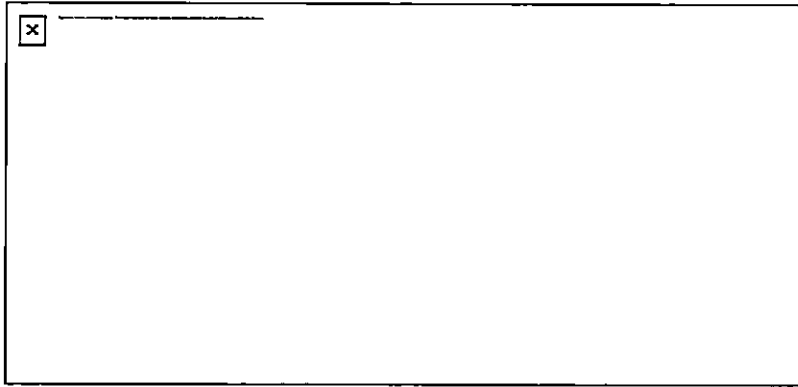
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**Ambrozic, Jane [AG]**

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**From:** Seth Cohen, SMF Finance Director <bounce@bounce.myngp.com> on behalf of Seth Cohen, SMF Finance Director <senate@iowademocrats.org>  
**Sent:** Tuesday, May 02, 2017 10:59 AM  
**To:** Ambrozic, Jane [AG]  
**Subject:** CORRECTION: Upcoming Events



Friend,

I apologize for multiple emails today; I wanted to clarify the post-secession event is **TODAY, May 2nd** from 4 pm to 6 pm. I look forward to seeing you there.

---

As I am sure you know by now, the Senate Majority Fund is having our first post-session event in Des Moines **TODAY**. Please Join us at Star Bar (2811 Ingersoll Ave, Des Moines) from 4 pm to 6 pm.

I wanted to let you know about a few other events our Senators are having over the next few weeks. Supporting our Senators, now, is the best way to help us take back the majority in 2018.

May 4th

Senator Rita Hart is having a Birthday/Cinco de Mayo celebration from 4:30 pm to 6:00 pm at Republic on Grand (401 E. Grand Ave, Des Moines).

May 9th

Senator Jim Lykam and Representative Dennis Cohoon will be at Pal Joey's (6224 Grand Avenue, Des Moines) from 4 pm to 6 pm.

May 10th

Senators Bowman and Ragan will be at Tumea and Sons (1501 SE 1st St, Des Moines) from 4 pm to 6 pm.

May 18th

Senators Dvorsky and Kinney will be at Tumea and Sons (1501 SE 1st St, Des Moines) from 4 pm to 6 pm.

Please join our Senators for these events to help us share our message of supporting hard-working Iowans and their families across Iowa.



Seth Cohen  
Finance Director

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Des Moines IA 50321 United States

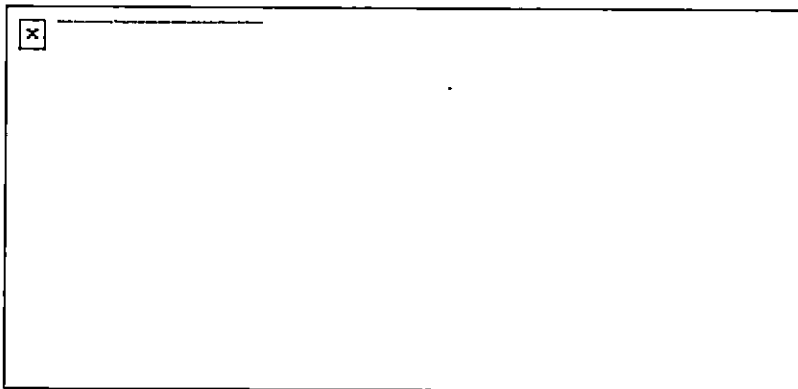
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## Ambrozic, Jane [AG]

---

**From:** Seth Cohen, Finance Director <bounce@bounce.myngp.com> on behalf of Seth Cohen, Finance Director <senate@iowademocrats.org>  
**Sent:** Tuesday, April 25, 2017 8:16 AM  
**To:** Ambrozic, Jane [AG]  
**Subject:** Fwd: Join us!



Friends,

I am not sure you saw Jacob's email last week, but I am sure you know how much damage the Republicans have done to hard-working Iowa families. We need your help to take our message to every corner of Iowa.

Please join us at our next event in Des Moines.

Event Details:

When: May 2nd 4 - 6 pm

Where: Star Bar, 2811 Ingersoll Ave, Des Moines, IA 50312

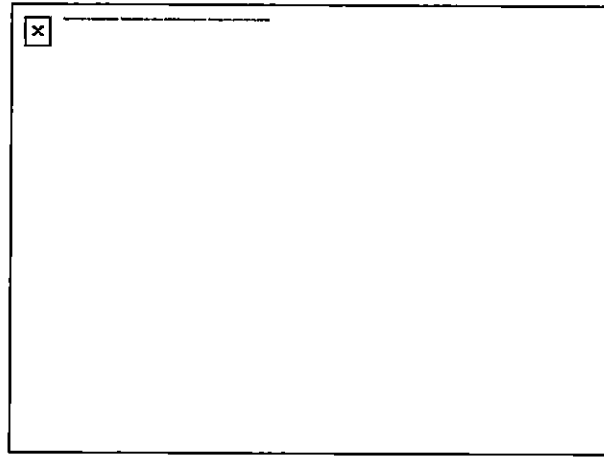
Suggested minimum donation \$26

Seth Cohen  
SMF Finance Director

-----  
Friend,

This session, Senate Republicans have caused serious harm to many families across the state. Their unconscionable agenda has targeted nearly every Iowan – from women, to children, to workers injured on the job. Too many people and families have seen their lives become harder this year. Now that session is ending; we need your help to take that message to every voter in every corner of the state to make sure they understand the consequences of the agenda of Senate Republicans.

That's why I'm asking you to join us for our post-session fundraiser.



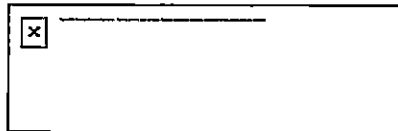
Event Details:

When: May 2nd 4 - 6 pm

Where: Star Bar, 2811 Ingersoll Ave, Des Moines, IA 50312

Suggested minimum donation \$26

I look forward to seeing you there!



Jacob Becklund

SMF Director

P.S. You can find all the details by clicking the picture above or going to our [Facebook event](#).

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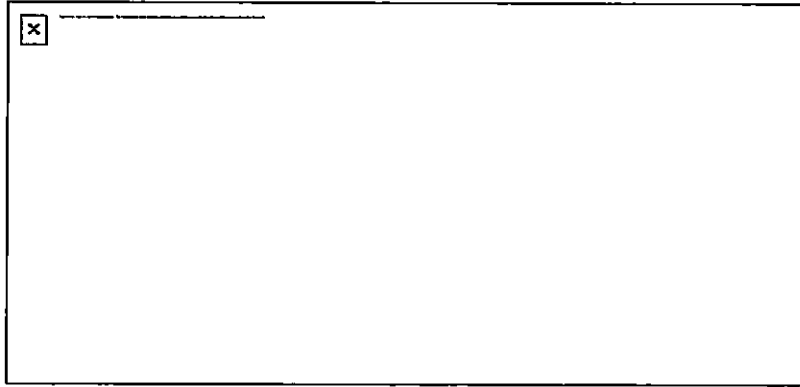
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## Ambrozic, Jane [AG]

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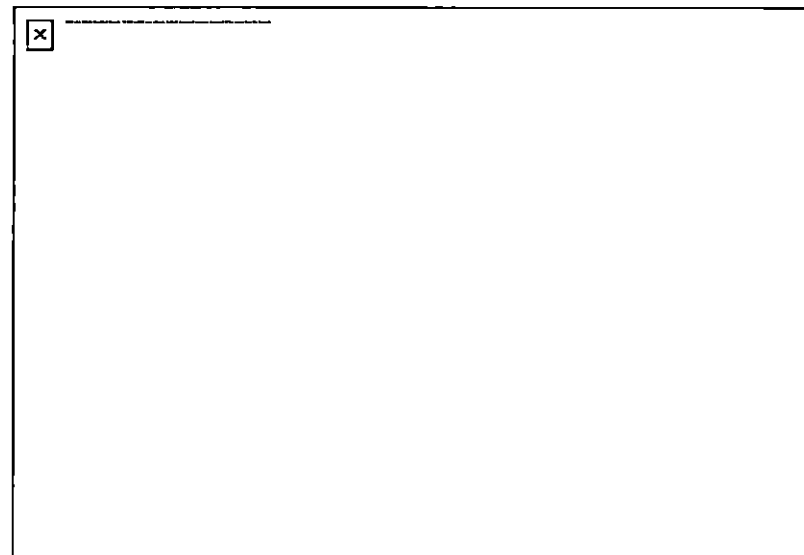
**From:** Liz Mathis, Iowa State Senator <bounce@bounce.myngp.com> on behalf of Liz Mathis, Iowa State Senator <senate@iowademocrats.org>  
**Sent:** Wednesday, April 19, 2017 10:27 AM  
**To:** Ambrozic, Jane [AG]  
**Subject:** A waiting period is like a buying a time share?



Friends,

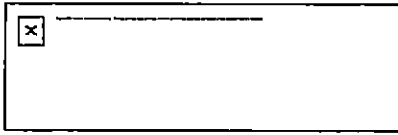
He compared it to a "time share." Really?

Republican Senator Mark Chelgren said a three-day waiting period for an abortion is like a "time share clause" you might talk about to your family and friends. The GOP's outrageous bill shames women into having an ultrasound, view it and listen to a fetal heartbeat. And the bill has, even more, mandates that turn back the clock and turns my stomach.



We know Senate Republicans have no respect for women who want to make their own health care choices. The GOP is patting us on the head saying, "... there, there now honey we know what's best for you." What's best for us is following the law that's been in place since 1973.

We can't allow people like Senator Chelgren to represent us. Help us retire him. Chip in \$25, or whatever you can now, to send him his walking papers.



Liz Mathis

State Senator - Linn County

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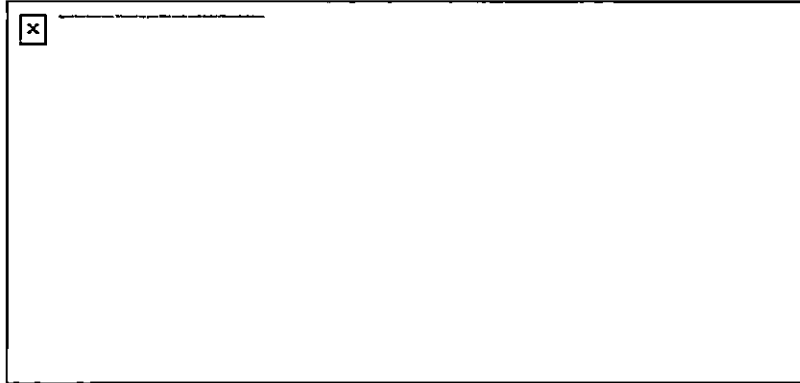
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**Ambrozic, Jane [AG]**

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**From:** Jacob Becklund, SMF Director <bounce@bounce.myngp.com> on behalf of Jacob Becklund, SMF Director <senate@iowademocrats.org>  
**Sent:** Friday, March 31, 2017 5:33 PM  
**To:** Ambrozic, Jane [AG]  
**Subject:** Last one

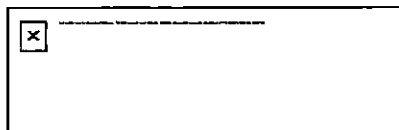


Friend,

I promise this is the last email we will send today! We need your help one more time before midnight. Can you chip in \$3 so we can close out March on a high note?

Because of your tremendous support, we are \$258 away from our goal! Can you help us cross the finish line?

Your donations will help our candidates defend their seats and take the fight to the Republicans across Iowa.



Sincerely,

Jacob Becklund

SMF Director



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## Ambrozic, Jane [AG]

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**From:** Kattenhorn, Debbie [LEGIS] <Debbie.Kattenhorn@legis.iowa.gov>  
**Sent:** Thursday, March 16, 2017 2:39 PM  
**To:** Ambrozic, Jane [AG]  
**Subject:** RE: Senator Hogg

This isn't a definite decision but just a warning, we are still in caucus and haven't started debate yet....

---

**From:** Ambrozic, Jane [AG] [<mailto:Jane.Ambrozic@iowa.gov>]  
**Sent:** Wednesday, March 15, 2017 3:36 PM  
**To:** Kattenhorn, Debbie [LEGIS]  
**Subject:** RE: Senator Hogg

Let me know if they are debating and I won't send them. Thanks for your help.

---

**From:** Kattenhorn, Debbie [LEGIS] [<mailto:Debbie.Kattenhorn@legis.iowa.gov>]  
**Sent:** Wednesday, March 15, 2017 3:30 PM  
**To:** Ambrozic, Jane [AG]  
**Subject:** RE: Senator Hogg

Okay, let's go with 4pm tomorrow (unless we're debating). Senator Dvorsky won't be able to join but Senator Hogg has asked Senators Kinney and Hart if they are able to sit in.

Thanks,  
Debbie

---

**From:** Ambrozic, Jane [AG] [<mailto:Jane.Ambrozic@iowa.gov>]  
**Sent:** Tuesday, March 14, 2017 10:08 AM  
**To:** Kattenhorn, Debbie [LEGIS]  
**Subject:** RE: Senator Hogg

The AG really would like to schedule something—he'd like 4 p.m. on Thursday. If that doesn't work, he'd like a phone call on Friday, probably in the afternoon.

---

**From:** Kattenhorn, Debbie [LEGIS] [<mailto:Debbie.Kattenhorn@legis.iowa.gov>]  
**Sent:** Monday, March 13, 2017 5:48 PM  
**To:** Ambrozic, Jane [AG]  
**Subject:** RE: Senator Hogg

Hi Jane,

We're having problems keeping meetings due to debate. We're happy to schedule something but it might need to be rescheduled due to debate. Also, Senator Hogg's person on water quality is Senator Dvorsky, so we would want to include him in the meeting. Knowing all that, do you still want to schedule this?

Thanks,  
Debbie

---

**From:** Ambrozic, Jane [AG] [<mailto:Jane.Ambrozic@iowa.gov>]  
**Sent:** Monday, March 13, 2017 1:55 PM

**To:** Kattenhorn, Debbie [LEGIS]  
**Subject:** Senator Hogg

Would the Senator have any time later on Thursday afternoon to meet with AG Miller and Meyer Koplow regarding water issues?



**Jane Ambrozic**  
**Executive Secretary**  
Office of the Attorney General of Iowa  
1305 E. Walnut St.  
Des Moines, Iowa 50319  
Main: (515) 281-5164 | Direct: (515) 281-5166  
Email: [Jane.Ambrozic@iowa.gov](mailto:Jane.Ambrozic@iowa.gov) | [www.iowaattorneygeneral.gov](http://www.iowaattorneygeneral.gov)

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## Ambrozic, Jane [AG]

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**From:** Kattenhorn, Debbie [LEGIS] <Debbie.Kattenhorn@legis.iowa.gov>  
**Sent:** Thursday, March 16, 2017 3:02 PM  
**To:** Ambrozic, Jane [AG]  
**Subject:** RE: Senator Hogg

Okay, we're going to have to reschedule to a different day/time. Sen. Hogg is in Sioux City tomorrow afternoon so we can't make a call tomorrow afternoon work.

---

**From:** Ambrozic, Jane [AG] [<mailto:Jane.Ambrozic@iowa.gov>]  
**Sent:** Thursday, March 16, 2017 2:57 PM  
**To:** Kattenhorn, Debbie [LEGIS]  
**Subject:** RE: Senator Hogg

Just let me know.

---

**From:** Kattenhorn, Debbie [LEGIS] [<mailto:Debbie.Kattenhorn@legis.iowa.gov>]  
**Sent:** Thursday, March 16, 2017 2:39 PM  
**To:** Ambrozic, Jane [AG]  
**Subject:** RE: Senator Hogg

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Debbie

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**To:** Kattenhorn, Debbie [LEGIS]  
**Subject:** Senator Hogg

Would the Senator have any time later on Thursday afternoon to meet with AG Miller and Meyer Koplow regarding water issues?



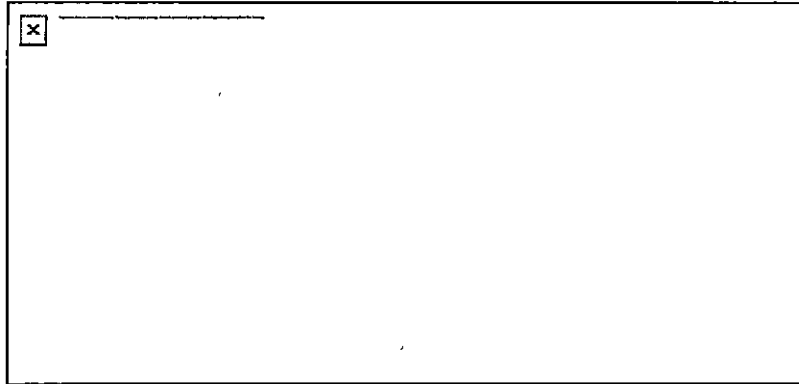
**Jane Ambrozic**  
**Executive Secretary**  
Office of the Attorney General of Iowa  
1305 E. Walnut St.  
Des Moines, Iowa 50319  
Main: (515) 281-5164 | Direct: (515) 281-5166  
Email: [Jane.Ambrozic@iowa.gov](mailto:Jane.Ambrozic@iowa.gov) | [www.iowaattorneygeneral.gov](http://www.iowaattorneygeneral.gov)

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**Ambrozic, Jane [AG]**

---

**From:** Janet Petersen, Iowa State Senator <bounce@bounce.myngp.com> on behalf of Janet Petersen, Iowa State Senator <senate@iowademocrats.org>  
**Sent:** Wednesday, March 15, 2017 5:31 PM  
**To:** Ambrozic, Jane [AG]  
**Subject:** Republicans' plan exposed



Friends,

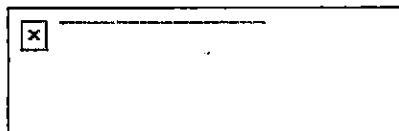
Last night Senate Republicans' showed their true plans for Iowa women when voting on SF 471, which would restrict women's access to make their own health decisions.

Senator Rick Bertrand of Sioux City said during floor debate that he was disappointed that Republicans were unable to impose abortion restrictions that are so onerous that no other state has imposed them on women.

"We'll do it next time," Bertrand promised.

This is not the first time the Republicans have attacked women's health care this session, and it will not be the last. We need your help to fight extreme anti-women policies like this one. If Senator Bertrand thinks it's OK to restrict the health care decisions of women further, let's replace him!

Help us elect a Democrat to replace him and retake the majority so we can stop these bills protect women's rights and women can make their own health care decisions.



Sincerely,

Janet Petersen, Iowa State Senator

PS- Senator Bertrand made it clear his real intention is to force the Supreme Court to overturn *Roe v Wade*. [Join us](#) in making sure we don't turn the clock back on women's health by donating today and retiring Senator Bertrand.

Paid for by the Iowa Senate Majority Fund

Iowa Senate Majority Fund  
5661 Fleur Drive  
Des Moines IA 50321 United States

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## Ambrozic, Jane [AG]

---

**From:** Kattenhorn, Debbie [LEGIS] <Debbie.Kattenhorn@legis.iowa.gov>  
**Sent:** Wednesday, February 22, 2017 3:21 PM  
**To:** Ambrozic, Jane [AG]  
**Subject:** RE: Call w/ AG Miller

Can we look at tomorrow, noon or after?

---

**From:** Ambrozic, Jane [AG] [<mailto:Jane.Ambrozic@iowa.gov>]  
**Sent:** Wednesday, February 22, 2017 10:16 AM  
**To:** Kattenhorn, Debbie [LEGIS]  
**Subject:** Call w/ AG Miller

Does Senator Hogg have time to have a call with AG Miller & Eric Tabor on Religious Freedom?



**Jane Ambrozic**  
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## Ambrozic, Jane [AG]

---

**From:** Kattenhorn, Debbie [LEGIS] <Debbie.Kattenhorn@legis.iowa.gov>  
**Sent:** Wednesday, February 22, 2017 3:39 PM  
**To:** Ambrozic, Jane [AG]  
**Subject:** RE: Call w/ AG Miller

Sure, that works. We'll probably have Cathy on the call with Sen. Hogg. Do you want to call us or should we call you?

---

**From:** Ambrozic, Jane [AG] [<mailto:Jane.Ambrozic@iowa.gov>]  
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## Ambrozic, Jane [AG]

---

**From:** Kattenhorn, Debbie [LEGIS] <Debbie.Kattenhorn@legis.iowa.gov>  
**Sent:** Wednesday, February 22, 2017 3:43 PM  
**To:** Ambrozic, Jane [AG]  
**Subject:** RE: Call w/ AG Miller

Just do mine, thanks 281-4610

---

**From:** Ambrozic, Jane [AG] [<mailto:Jane.Ambrozic@iowa.gov>]  
**Sent:** Wednesday, February 22, 2017 3:42 PM  
**To:** Kattenhorn, Debbie [LEGIS]  
**Subject:** RE: Call w/ AG Miller

I'm happy to place the call—best number?

---

**From:** Kattenhorn, Debbie [LEGIS] [<mailto:Debbie.Kattenhorn@legis.iowa.gov>]  
**Sent:** Wednesday, February 22, 2017 3:39 PM  
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**Subject:** RE: Call w/ AG Miller

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## Ambrozic, Jane [AG]

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**From:** Kattenhorn, Debbie [LEGIS] <Debbie.Kattenhorn@legis.iowa.gov>  
**Sent:** Wednesday, February 22, 2017 6:01 PM  
**To:** Ambrozic, Jane [AG]  
**Subject:** RE: Call w/ AG Miller

Hi Jane,

It is possible that Sen. Tod Bowman will join Sen. Hogg on the call because he'd like to hear the Attorney General's thoughts on this issue.

Thanks,  
Debbie

---

**From:** Ambrozic, Jane [AG] [<mailto:Jane.Ambrozic@iowa.gov>]  
**Sent:** Wednesday, February 22, 2017 3:47 PM  
**To:** Kattenhorn, Debbie [LEGIS]  
**Subject:** RE: Call w/ AG Miller

Will do, thank you.

---

**From:** Kattenhorn, Debbie [LEGIS] [<mailto:Debbie.Kattenhorn@legis.iowa.gov>]  
**Sent:** Wednesday, February 22, 2017 3:43 PM  
**To:** Ambrozic, Jane [AG]  
**Subject:** RE: Call w/ AG Miller

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**Subject:** RE: Call w/ AG Miller

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**From:** Ambrozic, Jane [AG] [<mailto:Jane.Ambrozic@iowa.gov>]  
**Sent:** Wednesday, February 22, 2017 10:16 AM  
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## Ambrozic, Jane [AG]

---

**From:** Kattenhorn, Debbie [LEGIS] <Debbie.Kattenhorn@legis.iowa.gov>  
**Sent:** Monday, March 13, 2017 5:48 PM  
**To:** Ambrozic, Jane [AG]  
**Subject:** RE: Senator Hogg

Hi Jane,

We're having problems keeping meetings due to debate. We're happy to schedule something but it might need to be rescheduled due to debate. Also, Senator Hogg's person on water quality is Senator Dvorsky, so we would want to include him in the meeting. Knowing all that, do you still want to schedule this?

Thanks,  
Debbie

---

**From:** Ambrozic, Jane [AG] [<mailto:Jane.Ambrozic@iowa.gov>]  
**Sent:** Monday, March 13, 2017 1:55 PM  
**To:** Kattenhorn, Debbie [LEGIS]  
**Subject:** Senator Hogg

Would the Senator have any time later on Thursday afternoon to meet with AG Miller and Meyer Koplow regarding water issues?



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## Ambrozic, Jane [AG]

---

**From:** Kattenhorn, Debbie [LEGIS] <Debbie.Kattenhorn@legis.iowa.gov>  
**Sent:** Wednesday, March 15, 2017 3:30 PM  
**To:** Ambrozic, Jane [AG]  
**Subject:** RE: Senator Hogg

Okay, let's go with 4pm tomorrow (unless we're debating). Senator Dvorsky won't be able to join but Senator Hogg has asked Senators Kinney and Hart if they are able to sit in.

Thanks,  
Debbie

---

**From:** Ambrozic, Jane [AG] [<mailto:Jane.Ambrozic@iowa.gov>]  
**Sent:** Tuesday, March 14, 2017 10:08 AM  
**To:** Kattenhorn, Debbie [LEGIS]  
**Subject:** RE: Senator Hogg

The AG really would like to schedule something—he'd like 4 p.m. on Thursday. If that doesn't work, he'd like a phone call on Friday, probably in the afternoon.

---

**From:** Kattenhorn, Debbie [LEGIS] [<mailto:Debbie.Kattenhorn@legis.iowa.gov>]  
**Sent:** Monday, March 13, 2017 5:48 PM  
**To:** Ambrozic, Jane [AG]  
**Subject:** RE: Senator Hogg

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**Subject:** Senator Hogg

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**Ambrozic, Jane [AG]**

---

**From:** Oller, Liddy [LEGIS] <Liddy.Oller@legis.iowa.gov>  
**Sent:** Tuesday, February 07, 2017 8:12 AM  
**To:** Ambrozic, Jane [AG]  
**Subject:** Meeting today

Hi Jane,

I can't remember what times AG Miller had available today, but would 11 am work to meet with Leader Hagenow today? We had something come up during the 10-11 block.

Thanks!

*Liddy Oller*

Confidential Secretary to House Majority Leader  
515-281-8204 - Office  
[liddy.oller@legis.iowa.gov](mailto:liddy.oller@legis.iowa.gov)



## Ambrozic, Jane [AG]

---

**From:** Oller, Liddy [LEGIS] <Liddy.Oller@legis.iowa.gov>  
**Sent:** Tuesday, February 07, 2017 8:17 AM  
**To:** Ambrozic, Jane [AG]  
**Subject:** RE: Meeting today

Unfortunately no. 2 pm would work or we could look later in the week.

---

**From:** Ambrozic, Jane [AG] [<mailto:Jane.Ambrozic@iowa.gov>]  
**Sent:** Tuesday, February 7, 2017 8:12 AM  
**To:** Oller, Liddy [LEGIS]  
**Subject:** RE: Meeting today

No, he's booked at 11:00. What about 1:30?

---

**From:** Oller, Liddy [LEGIS] [<mailto:Liddy.Oller@legis.iowa.gov>]  
**Sent:** Tuesday, February 07, 2017 8:11 AM  
**To:** Ambrozic, Jane [AG]  
**Subject:** Meeting today

Hi Jane,

I can't remember what times AG Miller had available today, but would 11 am work to meet with Leader Hagenow today? We had something come up during the 10-11 block.

Thanks!

*Liddy Oller*

Confidential Secretary to House Majority Leader  
515-281-8204 - Office  
[liddy.oller@legis.iowa.gov](mailto:liddy.oller@legis.iowa.gov)

## Ambrozic, Jane [AG]

---

**From:** Oller, Liddy [LEGIS] <Liddy.Oller@legis.iowa.gov>  
**Sent:** Tuesday, February 07, 2017 8:29 AM  
**To:** Ambrozic, Jane [AG]  
**Subject:** RE: Meeting today

9:30 this morning will work, Jane. Thank you for your help!

---

**From:** Ambrozic, Jane [AG] [<mailto:Jane.Ambrozic@iowa.gov>]  
**Sent:** Tuesday, February 7, 2017 8:24 AM  
**To:** Oller, Liddy [LEGIS]  
**Subject:** RE: Meeting today

He's out after today for the rest of the week. I could send him earlier, 9:30ish or later, say 4:30ish.

---

**From:** Oller, Liddy [LEGIS] [<mailto:Liddy.Oller@legis.iowa.gov>]  
**Sent:** Tuesday, February 07, 2017 8:17 AM  
**To:** Ambrozic, Jane [AG]  
**Subject:** RE: Meeting today

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**From:** Ambrozic, Jane [AG] [<mailto:Jane.Ambrozic@iowa.gov>]  
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[liddy.oller@legis.iowa.gov](mailto:liddy.oller@legis.iowa.gov)

## Ambrozic, Jane [AG]

---

**From:** Friedrichsen, Jake [LEGIS] <Jake.Friedrichsen@legis.iowa.gov>  
**Sent:** Tuesday, February 07, 2017 9:37 AM  
**To:** Ambrozic, Jane [AG]  
**Subject:** RE: Mtg w/ Attorney General Miller

4:30 works.

Jake Friedrichsen, Senior Administrative Assistant  
House Democratic Leader Mark Smith  
515-281-3054 (work); 563-380-4697 (cell)



---

**From:** Ambrozic, Jane [AG] [mailto:Jane.Ambrozic@iowa.gov]  
**Sent:** Tuesday, February 7, 2017 8:31 AM  
**To:** Friedrichsen, Jake [LEGIS]  
**Subject:** RE: Mtg w/ Attorney General Miller

Unfortunately, something has come up and the AG cannot make 2:00 p.m. work. Would 4:30?

---

**From:** Friedrichsen, Jake [LEGIS] [mailto:Jake.Friedrichsen@legis.iowa.gov]  
**Sent:** Monday, February 06, 2017 2:03 PM  
**To:** Ambrozic, Jane [AG]  
**Subject:** RE: Mtg w/ Attorney General Miller

Thanks.

Jake Friedrichsen, Senior Administrative Assistant  
House Democratic Leader Mark Smith  
515-281-3054 (work); 563-380-4697 (cell)



---

**From:** Ambrozic, Jane [AG] [mailto:Jane.Ambrozic@iowa.gov]  
**Sent:** Monday, February 6, 2017 1:47 PM  
**To:** Friedrichsen, Jake [LEGIS]  
**Subject:** RE: Mtg w/ Attorney General Miller

2:00 will work—thanks for your assistance. I'll send the AG over, along with Eric Tabor.

---

**From:** Friedrichsen, Jake [LEGIS] [mailto:Jake.Friedrichsen@legis.iowa.gov]  
**Sent:** Monday, February 06, 2017 11:36 AM  
**To:** Ambrozic, Jane [AG]  
**Subject:** RE: Mtg w/ Attorney General Miller

Mark has a funeral tomorrow morning. He could do noon, 2pm, or after 3:30.

Jake Friedrichsen, Senior Administrative Assistant  
House Democratic Leader Mark Smith



---

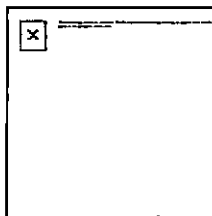
**From:** Smith, Mark [LEGIS]  
**Sent:** Monday, February 6, 2017 11:19 AM  
**To:** Friedrichsen, Jake [LEGIS]  
**Subject:** Fwd: Mtg w/ Attorney General Miller

Sent from my iPhone

Begin forwarded message:

**From:** "Ambrozic, Jane [AG]" <[Jane.Ambrozic@iowa.gov](mailto:Jane.Ambrozic@iowa.gov)>  
**Date:** February 6, 2017 at 10:12:23 AM CST  
**To:** "Smith, Mark [LEGIS]" <[mark.smith@legis.iowa.gov](mailto:mark.smith@legis.iowa.gov)>  
**Subject:** Mtg w/ Attorney General Miller

The AG would like to meet with you tomorrow (Tuesday) concerning Freedom of Religion. Do you have some time for him to meet you at the Capitol?



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## Ambrozic, Jane [AG]

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**To:** Ambrozic, Jane [AG]  
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Jake Friedrichsen, Senior Administrative Assistant  
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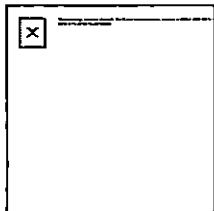
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Thanks.

Jake Friedrichsen, Senior Administrative Assistant  
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515-281-3054 (work); 563-380-4697 (cell)



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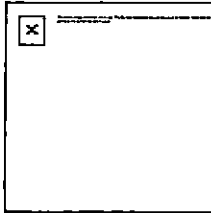
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**Sent:** Monday, February 6, 2017 11:19 AM  
**To:** Friedrichsen, Jake [LEGIS]  
**Subject:** Fwd: Mtg w/ Attorney General Miller

Sent from my iPhone

Begin forwarded message:

**From:** "Ambrozic, Jane [AG]" <[Jane.Ambrozic@iowa.gov](mailto:Jane.Ambrozic@iowa.gov)>  
**Date:** February 6, 2017 at 10:12:23 AM CST  
**To:** "Smith, Mark [LEGIS]" <[mark.smith@legis.iowa.gov](mailto:mark.smith@legis.iowa.gov)>  
**Subject:** Mtg w/ Attorney General Miller

The AG would like to meet with you tomorrow (Tuesday) concerning Freedom of Religion. Do you have some time for him to meet you at the Capitol?



**Jane Ambrozic**

**Executive Secretary**

Office of the Attorney General of Iowa

1305 E. Walnut St.

Des Moines, Iowa 50319

Main: (515) 281-5164 | Direct: (515) 281-5166

Email: [Jane.Ambrozic@iowa.gov](mailto:Jane.Ambrozic@iowa.gov) | [www.iowaattorneygeneral.gov](http://www.iowaattorneygeneral.gov)

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## Ambrozic, Jane [AG]

---

**From:** Kattenhorn, Debbie [LEGIS] <Debbie.Kattenhorn@legis.iowa.gov>  
**Sent:** Thursday, February 02, 2017 10:18 AM  
**To:** Ambrozic, Jane [AG]  
**Subject:** RE: AG Miller

Sorry, no, he has meetings back in Cedar Rapids. Also, if we manage to wrap up debate today, Senator Hogg needs to be on the road by 3:30pm today.

---

**From:** Ambrozic, Jane [AG] [<mailto:Jane.Ambrozic@iowa.gov>]  
**Sent:** Thursday, February 2, 2017 10:16 AM  
**To:** Kattenhorn, Debbie [LEGIS]  
**Subject:** RE: AG Miller

Let me check with him. Will the Senator be in tomorrow at all?

---

**From:** Kattenhorn, Debbie [LEGIS] [<mailto:Debbie.Kattenhorn@legis.iowa.gov>]  
**Sent:** Thursday, February 02, 2017 10:08 AM  
**To:** Ambrozic, Jane [AG]  
**Subject:** RE: AG Miller

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What do you think?

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**From:** Ambrozic, Jane [AG] [<mailto:Jane.Ambrozic@iowa.gov>]  
**Sent:** Thursday, February 2, 2017 10:00 AM  
**To:** Kattenhorn, Debbie [LEGIS]  
**Subject:** AG Miller

The AG would like to meet with Senator Hogg—is there any time today for the AG to come over?



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## **Ambrozic, Jane [AG]**

---

**From:** Kattenhorn, Debbie [LEGIS] <Debbie.Kattenhorn@legis.iowa.gov>  
**Sent:** Thursday, February 02, 2017 12:25 PM  
**To:** Ambrozic, Jane [AG]  
**Subject:** RE: AG Miller

Between 9 and 9:30

---

**From:** Ambrozic, Jane [AG] [<mailto:Jane.Ambrozic@iowa.gov>]  
**Sent:** Thursday, February 2, 2017 10:46 AM  
**To:** Kattenhorn, Debbie [LEGIS]  
**Subject:** RE: AG Miller

Would he have time for a call tomorrow morning?

---

**From:** Kattenhorn, Debbie [LEGIS] [<mailto:Debbie.Kattenhorn@legis.iowa.gov>]  
**Sent:** Thursday, February 02, 2017 10:18 AM  
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**To:** Kattenhorn, Debbie [LEGIS]  
**Subject:** AG Miller

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**Executive Secretary**  
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## Ambrozic, Jane [AG]

---

**From:** Kattenhorn, Debbie [LEGIS] <Debbie.Kattenhorn@legis.iowa.gov>  
**Sent:** Thursday, February 02, 2017 1:36 PM  
**To:** Ambrozic, Jane [AG]  
**Subject:** RE: AG Miller

319-538-2247 Thank you. Can I tell Sen. Hogg the subject of the call?

---

**From:** Ambrozic, Jane [AG] [<mailto:Jane.Ambrozic@iowa.gov>]  
**Sent:** Thursday, February 2, 2017 1:32 PM  
**To:** Kattenhorn, Debbie [LEGIS]  
**Subject:** RE: AG Miller

That's great—Is there a number I should call?

---

**From:** Kattenhorn, Debbie [LEGIS] [<mailto:Debbie.Kattenhorn@legis.iowa.gov>]  
**Sent:** Thursday, February 02, 2017 12:25 PM  
**To:** Ambrozic, Jane [AG]  
**Subject:** RE: AG Miller

Between 9 and 9:30

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**From:** Ambrozic, Jane [AG] [<mailto:Jane.Ambrozic@iowa.gov>]  
**Sent:** Thursday, February 2, 2017 10:46 AM  
**To:** Kattenhorn, Debbie [LEGIS]  
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**To:** Kattenhorn, Debbie [LEGIS]

**Subject:** AG Miller

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## Ambrozic, Jane [AG]

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## **Greenwood, Geoff [AG]**

---

**From:** Mark O. Lambert <marklambert@mchsi.com>  
**Sent:** Friday, May 12, 2017 9:29 AM  
**To:** Greenwood, Geoff [AG]  
**Subject:** Re: Message for the Attorney General

Thanks, Geoff.

And, if you wouldn't mind, could you also pass along Earl's obituary to AG Miller?  
<http://www.amestrib.com/obituaries/20170511/earl-hammond-nov-21-1926-8212-0010may-10-2017>

Thanks,

Mark

---

**From:** "Geoff Greenwood [AG]" <Geoff.Greenwood@iowa.gov>  
**To:** "Mark O. Lambert" <marklambert@mchsi.com>  
**Sent:** Friday, May 12, 2017 8:56:36 AM  
**Subject:** RE: Message for the Attorney General

Thanks, Mark. I passed this on to AG Miller's executive secretary.

Best regards,

Geoff



**Geoff Greenwood**  
**Communications Director**  
Office of the Attorney General of Iowa  
1305 E. Walnut St.  
Des Moines, Iowa 50319  
Main: (515) 281-5164 | Direct: (515) 281-6699  
Email: [geoff.greenwood@iowa.gov](mailto:geoff.greenwood@iowa.gov) | [www.iowaattorneygeneral.gov](http://www.iowaattorneygeneral.gov)

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---

**From:** Mark O. Lambert [<mailto:marklambert@mchsi.com>]  
**Sent:** Thursday, May 11, 2017 9:00 AM  
**To:** Greenwood, Geoff [AG]  
**Subject:** Message for the Attorney General  
**Importance:** High

Geoff,

Would you let Atty Gen. Miller know that former long-time state legislator Johnie Hammond of Ames lost her husband Earl yesterday?

Earl had been in a memory care unit at a nursing home in Ames for a while, and in hospice care the last few days.

Johnie's phone number is 515-292-2275. I talked to her yesterday, so I know she's taking calls. I thought Tom might want to call her.

Funeral/visitation arrangements have not been announced yet, though Johnie said it would likely be next week some time.

--Mark

Mark Lambert

[marklambert@mchsi.com](mailto:marklambert@mchsi.com)

515-681-0285

## Greenwood, Geoff [AG]

---

**From:** Mark O. Lambert <marklambert@mchsi.com>  
**Sent:** Thursday, May 11, 2017 9:00 AM  
**To:** Greenwood, Geoff [AG]  
**Subject:** Message for the Attorney General

**Importance:** High

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Funeral/visitation arrangements have not been announced yet, though Johnie said it would likely be next week some time.

--Mark

Mark Lambert  
[marklambert@mchsi.com](mailto:marklambert@mchsi.com)  
515-681-0285



**Greenwood, Geoff [AG]**

---

**From:** desmoines dem <desmoinesdem@yahoo.com>  
**Sent:** Friday, January 13, 2017 3:14 PM  
**To:** Greenwood, Geoff [AG]  
**Subject:** seeking comment

Geoff,

Under what circumstances can a city council in Iowa instruct a city attorney to begin proceedings to remove a mayor from office before the end of his or her term? Can this be done even if the mayor has committed no crime?

I realize the Attorney General's Office may not want to comment on the current situation in Muscatine (though I would welcome a comment on that if possible). I am just trying to understand what needs to happen before a city council can take that step against a mayor.

Thanks in advance,

Laurie Belin  
1705 Plaza Circle  
Windsor Heights, IA 50324  
(515) 276-6971

<http://www.bleedingheartland.com>

**Greenwood, Geoff [AG]**

---

**From:** desmoines dem <desmoinesdem@yahoo.com>  
**Sent:** Monday, February 06, 2017 7:59 AM  
**To:** Greenwood, Geoff [AG]  
**Subject:** seeking comment

Hello Geoff,

I realize that you may have no further comment on this issue before Attorney General Miller completes his opinion requested by Senator Johnson.

However, if Attorney General Miller or Solicitor General Thompson would like to respond to my latest post on this topic, I would be happy to update with their comments.

<http://www.bleedingheartland.com/2017/02/06/the-first-eight-vice-presidents-to-become-president-did-not-appoint-new-vps/>

Thanks,

Laurie Belin  
1705 Plaza Circle  
Windsor Heights, IA 50324  
(515) 276-6971

<http://www.bleedingheartland.com>

## **Greenwood, Geoff [AG]**

---

**From:** desmoines dem <desmoinesdem@yahoo.com>  
**Sent:** Thursday, February 02, 2017 11:08 AM  
**To:** Greenwood, Geoff [AG]  
**Subject:** Re: quick question

Thanks.

On Thursday, February 2, 2017 10:53 AM, "Greenwood, Geoff [AG]" <[Geoff.Greenwood@iowa.gov](mailto:Geoff.Greenwood@iowa.gov)> wrote:

Here it is...

---

**From:** desmoines dem [<mailto:desmoinesdem@yahoo.com>]  
**Sent:** Thursday, February 02, 2017 10:05 AM  
**To:** Greenwood, Geoff [AG]  
**Subject:** Re: quick question

Thanks, Geoff. Please send me a copy of Senator Johnson's request.

Yours,

Laurie

On Thursday, February 2, 2017 8:35 AM, "Greenwood, Geoff [AG]" <[Geoff.Greenwood@iowa.gov](mailto:Geoff.Greenwood@iowa.gov)> wrote:

Laurie:

We just received Sen. Johnson's request yesterday. We intend to further review our research and respond to Sen. Johnson's request, which could be a letter or formal Attorney General Opinion.

Geoff

---

**From:** desmoines dem [<mailto:desmoinesdem@yahoo.com>]  
**Sent:** Thursday, February 02, 2017 8:05 AM  
**To:** Greenwood, Geoff [AG]  
**Subject:** quick question

Hello Geoff,

Can you confirm whether Attorney General Miller will provide the formal opinion requested by State Senator David Johnson?

Senator asks: will Reynolds get title of governor when Branstad leaves?



**Senator asks: will Reynolds get title of governor when  
Branstad leaves?**

The only independent in the state legislature is asking Iowa's attorney general to issue a written opinion on th...

Or will Attorney General Miller merely forward to Senator Johnson the 1923 opinion your office sent me in December?

Thanks in advance for clarifying,

Laurie

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Geoff

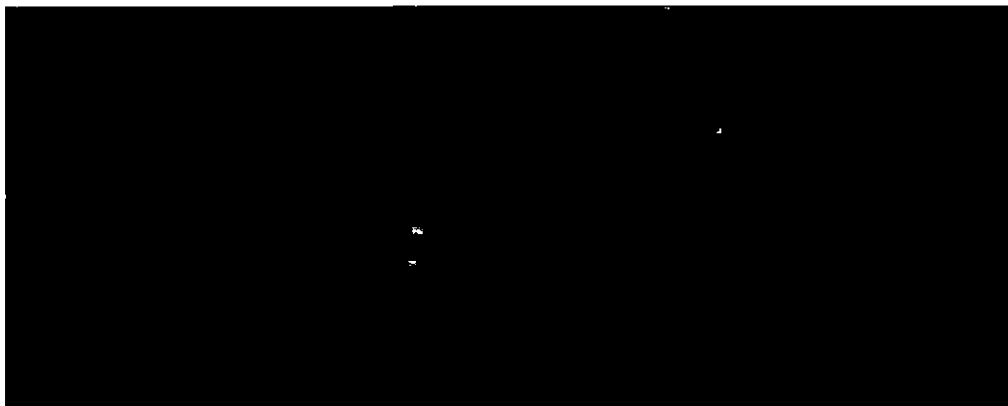
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**Sent:** Thursday, February 02, 2017 8:05 AM  
**To:** Greenwood, Geoff [AG]  
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Senator asks: will Reynolds get title of governor when Branstad leaves?





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Senator asks: will Reynolds get title of governor when Branstad leaves?



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## **Greenwood, Geoff [AG]**

---

**From:** desmoines dem <desmoinesdem@yahoo.com>  
**Sent:** Monday, December 19, 2016 7:55 AM  
**To:** Greenwood, Geoff [AG]  
**Subject:** Re: AG opinion on Reynolds as governor or "acting governor"

Geoff, sorry for the delay in circling back. Where does it say in Iowa Code that "the lieutenant governor, after taking office as governor, appoints a new lieutenant governor"? I see where the governor appoints a new LG if there is a vacancy in the LG position, but that says nothing about "the lieutenant governor, after taking office as governor."

In the Griffin case, Jeffrey Thompson told the Iowa Supreme Court that it was very significant Iowa lawmakers did not change the "infamous crimes" language when they amended the same part of the Iowa Constitution to remove the word "idiot." It strikes me as significant that lawmakers in the 1950s and 1980s did not change language referring to the LG performing the duties of the office of governor. They could have changed the wording to make it more like the US Constitution's language regarding the presidential succession, but they did not.

Why doesn't Attorney General Tom Miller want to ask the Iowa Supreme Court to weigh in on this issue? Doing so would allow the justices to provide a definitive interpretation of the Iowa Constitution. There is plenty of time for the justices to prepare an opinion. Governor Branstad does not intend to step down until he is confirmed as ambassador to China, which will take 4-8 months.

Thanks,

Laurie

On Tuesday, December 13, 2016 4:06 PM, "Greenwood, Geoff [AG]" <Geoff.Greenwood@iowa.gov> wrote:

Laurie:

Here's a little more explanation.

Notably, Iowa courts have never addressed this issue.

In all four historical cases of vacancies by Iowa governors, the lieutenant governor who succeeded the governor was viewed and regarded in all respects as the governor.

Our office carefully reviewed the Iowa Constitution.

A significant formal attorney general opinion from 1923 states that (in case of death, resignation or removal from office of the governor) the lieutenant governor becomes governor (I attached the opinion and highlighted the pertinent section on page 2).

Case law, statutory, and constitutional analyses from other states are consistent with this provision.

Finally, the Iowa Code supports this position. State law establishes that, the lieutenant governor, after taking office as governor, appoints a new lieutenant governor.

This research leads us to concur with Governor Branstad's conclusion that, upon his resignation, Lt. Governor Reynolds will become Governor. In her capacity as Governor, Governor Reynolds will have the authority to appoint a new lieutenant governor.

Geoff

---

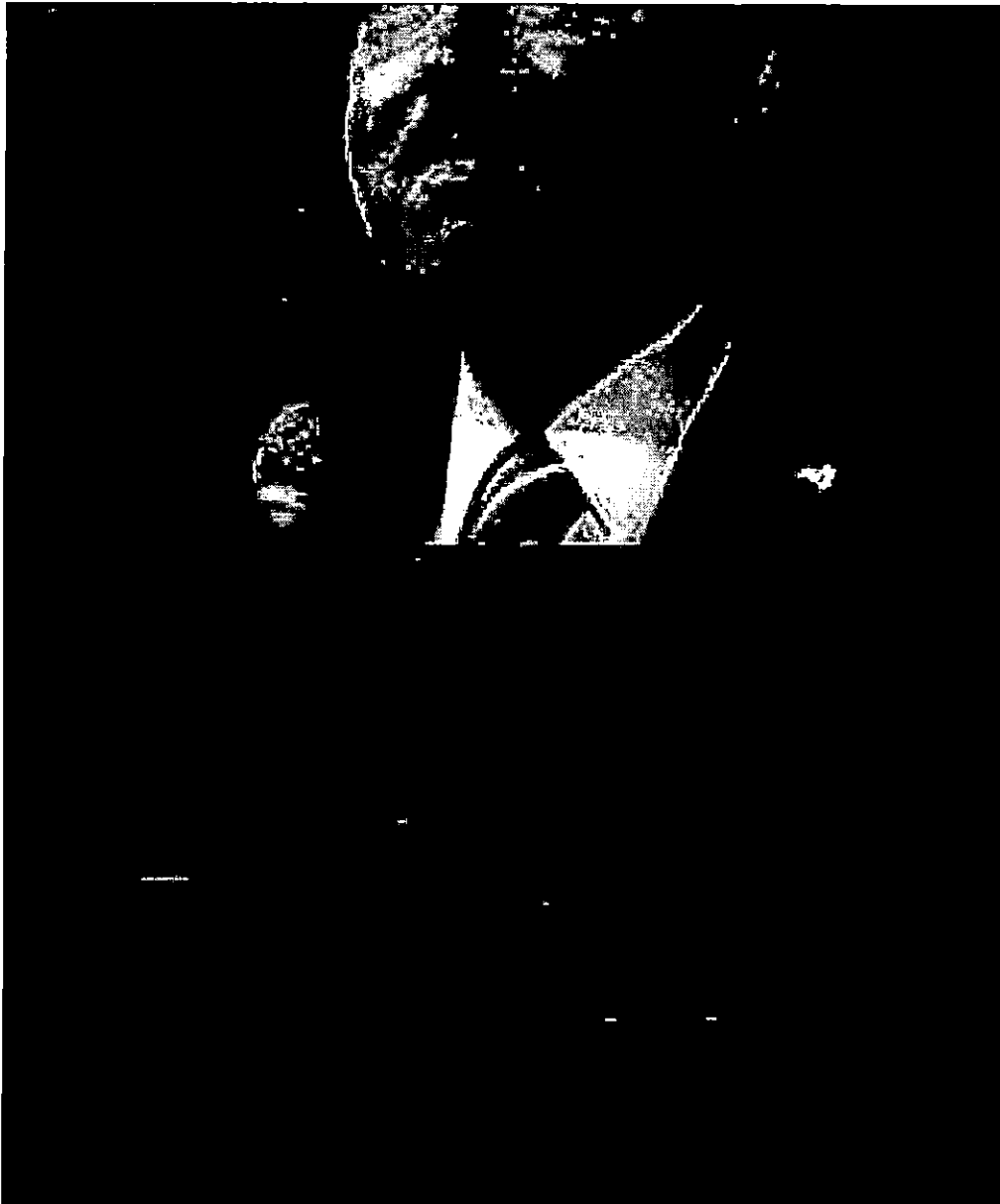
**From:** desmoines dem [mailto:desmoinesdem@yahoo.com]  
**Sent:** Monday, December 12, 2016 8:04 PM  
**To:** Greenwood, Geoff [AG]  
**Subject:** Re: AG opinion on Reynolds as governor or "acting governor"

Geoff, I'm seeking further explanation on the basis for that reading of the Iowa Constitution. Wouldn't the framers and lawmakers who later amended the text have said that the lieutenant governor would become the governor, instead of using phrases like, "The lieutenant governor, while acting as governor, shall be paid the compensation and expenses prescribed for the governor"?

Also, can Attorney General Miller explain why Joshua Newbold did not appoint a lieutenant governor during the nearly a year that he performed the duties of governor?

[List of Governors of Iowa - Wikipedia](#)





### List of Governors of Iowa - Wikipedia

In Massachusetts, where the wording in the state constitution is similar, a lieutenant governor who assumed the duties of the governor under similar circumstances has been called "acting governor."

Laurie

On Monday, December 12, 2016 4:27 PM, "Greenwood, Geoff [AG]" <[Geoff.Greenwood@iowa.gov](mailto:Geoff.Greenwood@iowa.gov)> wrote:

Hi Laurie,

Our office has researched the law and consulted with the Governor's office. We concur with the Governor's conclusion that, upon the resignation of Governor Branstad, Lt. Governor Reynolds will become Governor and will have the authority to appoint a new Lieutenant Governor.

Thanks,

Geoff



**Geoff Greenwood**  
**Communications Director**  
Office of the Attorney General of Iowa  
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**From:** desmoines dem [<mailto:desmoinesdem@yahoo.com>]  
**Sent:** Monday, December 12, 2016 9:04 AM  
**To:** Greenwood, Geoff [AG]  
**Subject:** AG opinion on Reynolds as governor or "acting governor"

Hello Geoff,

What is the time frame for Attorney General Miller to issue an opinion on 1) whether Kim Reynolds will become governor or merely "acting governor" after Governor Branstad leaves for China, and 2) whether Reynolds will be able to appoint a new lieutenant governor in that scenario? I am requesting a copy of that opinion as soon as it becomes available

I saw you told Jason Noble last week, "We're going to have to review this and confer with the governor's office." Does that mean Attorney General Miller plans to clear his opinion with the governor's staff ahead of time? Or will his analysis of Iowa Constitution Section 4 be independent?

I assume the governor's office will want Kim Reynolds to have the title of governor as well as the powers of the office.

Thanks in advance for any information or clarification you can provide.

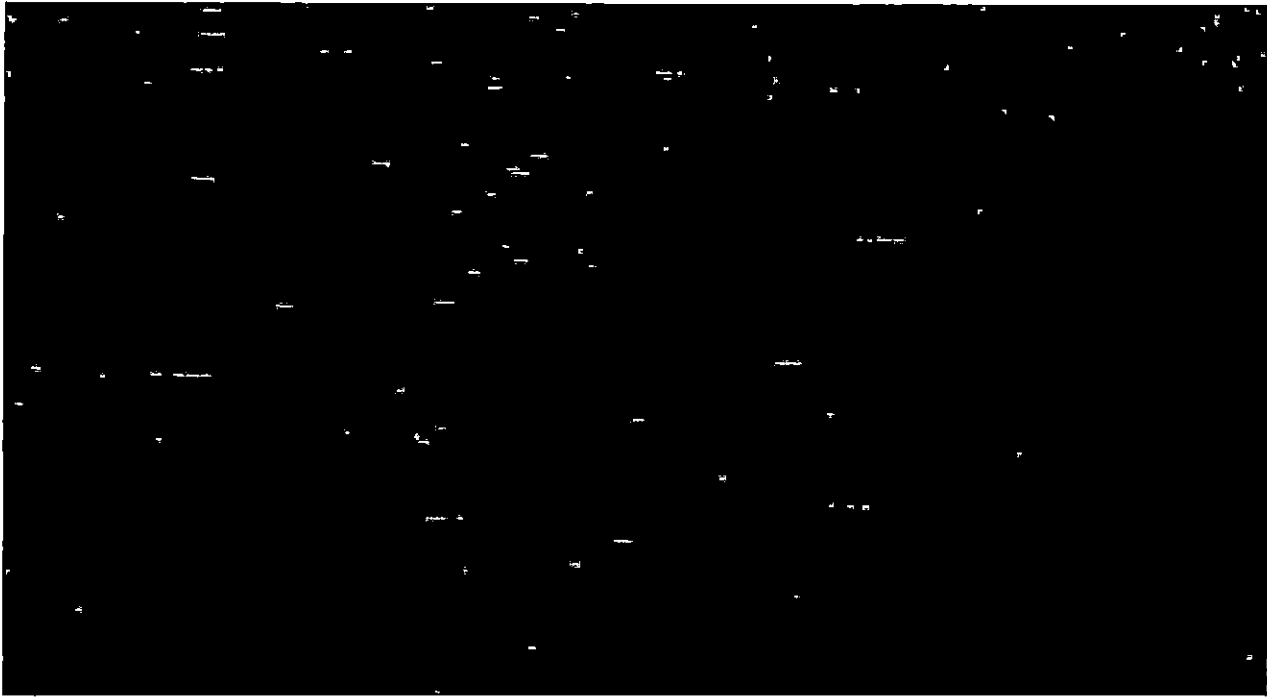
Yours,

Laurie Belin  
1705 Plaza Circle  
Windsor Heights, IA 50324  
(515) 276-6971

<http://www.bleedingheartland.com>

[As Branstad prepares for China, transfer of power process unfolds](#)





## **As Branstad prepares for China, transfer of power process unfolds**

Iowa officials say they need more time to determine how governmental power is transferred to Lt. Gov. Kim Reynolds.

AP Photo/Mark Schmitt

## Greenwood, Geoff [AG]

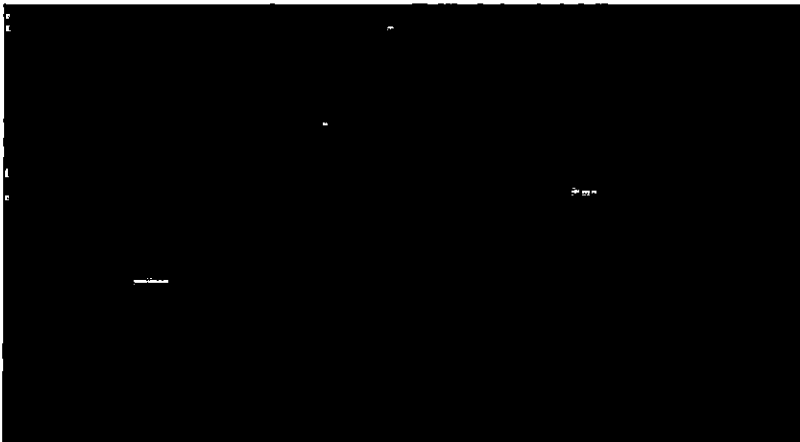
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**From:** desmoines dem <desmoinesdem@yahoo.com>  
**Sent:** Monday, December 12, 2016 8:04 PM  
**To:** Greenwood, Geoff [AG]  
**Subject:** Re: AG opinion on Reynolds as governor or "acting governor"

Geoff, I'm seeking further explanation on the basis for that reading of the Iowa Constitution. Wouldn't the framers and lawmakers who later amended the text have said that the lieutenant governor would become the governor, instead of using phrases like, "The lieutenant governor, while acting as governor, shall be paid the compensation and expenses prescribed for the governor"?

Also, can Attorney General Miller explain why Joshua Newbold did not appoint a lieutenant governor during the nearly a year that he performed the duties of governor?

[List of Governors of Iowa - Wikipedia](#)



**List of Governors of Iowa - Wikipedia**

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In Massachusetts, where the wording in the state constitution is similar, a lieutenant governor who assumed the duties of the governor under similar circumstances has been called "acting governor."

Laurie

On Monday, December 12, 2016 4:27 PM, "Greenwood, Geoff [AG]" <Geoff.Greenwood@iowa.gov> wrote:

Hi Laurie,

Our office has researched the law and consulted with the Governor's office. We concur with the Governor's conclusion that, upon the resignation of Governor Branstad, Lt. Governor Reynolds will become Governor and will have the authority to appoint a new Lieutenant Governor.

Thanks,



Geoff



**Geoff Greenwood**  
**Communications Director**  
Office of the Attorney General of Iowa  
1305 E. Walnut St.  
Des Moines, Iowa 50319  
Main: (515) 281-5164 | Direct: (515) 281-6699  
Email: [geoff.greenwood@iowa.gov](mailto:geoff.greenwood@iowa.gov) | [www.iowaattorneygeneral.gov](http://www.iowaattorneygeneral.gov)

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**Sent:** Monday, December 12, 2016 9:04 AM  
**To:** Greenwood, Geoff [AG]  
**Subject:** AG opinion on Reynolds as governor or "acting governor"

Hello Geoff,

What is the time frame for Attorney General Miller to issue an opinion on 1) whether Kim Reynolds will become governor or merely "acting governor" after Governor Branstad leaves for China, and 2) whether Reynolds will be able to appoint a new lieutenant governor in that scenario? I am requesting a copy of that opinion as soon as it becomes available

I saw you told Jason Noble last week, "We're going to have to review this and confer with the governor's office." Does that mean Attorney General Miller plans to clear his opinion with the governor's staff ahead of time? Or will his analysis of Iowa Constitution Section 4 be independent?

I assume the governor's office will want Kim Reynolds to have the title of governor as well as the powers of the office.

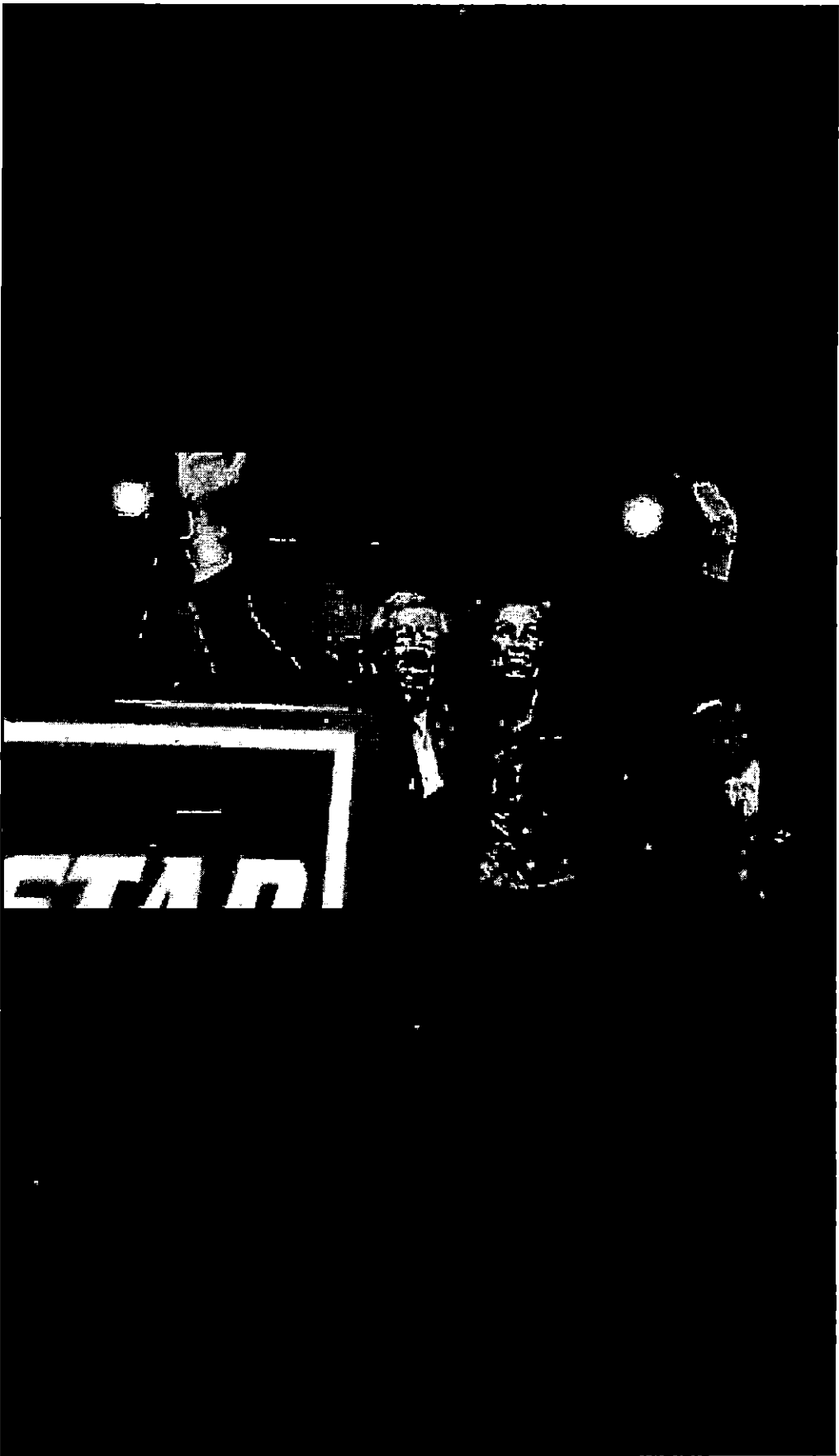
Thanks in advance for any information or clarification you can provide.

Yours,

Laurie Belin  
1705 Plaza Circle  
Windsor Heights, IA 50324  
(515) 276-6971

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[As Branstad prepares for China, transfer of power process unfolds](#)



**As Branstad prepares for China, transfer of power process**

**unfolds**

Iowa officials say they need more time to determine how governmental power is transferred to Lt. Gov. Kim Reynolds.

## **Greenwood, Geoff [AG]**

---

**From:** Mark O. Lambert <marklambert@mchsi.com>  
**Sent:** Monday, December 12, 2016 2:23 PM  
**To:** Greenwood, Geoff [AG]  
**Cc:** Tabor, Eric [AG]  
**Subject:** Re: Bleeding Heartland news/blog site on gubernatorial succession

Geoff and Eric,

FYI, a very astute comment on Laurie Belin's blog post by Darrell Hanson, longtime Republican (former) legislator:

Darrell Hanson I'm not an attorney or a constitutional scholar, so I don't know if the following is significant: Every time the Iowa constitution refers to someone taking over after the governor's position becomes vacant, whether it is the Lt. Gov., the President of the Senate, or the Speaker of the House, very similar language is used to refer to them as the person acting as governor, not as the new governor. In addition, the section Mark quoted (Article IV, section 17) that describes what happens when the governor resigns is the same section that describes what happens if a governor is temporarily disabled, and the same language applies to both situations. So it would seem to me that the same type of transfer of powers occurs under both circumstances. If a governor was temporarily disabled and the Lt. Gov. assumed the powers and duties of the governor during that time, nobody would argue that the Lt. Gov. position had become vacant. Since the same provision governs both a temporary assumption of power and a permanent assumption of power, I would assume the status of the Lt. Gov. office would be the same in both types of vacancies. But again, I'm not an attorney, so take those arguments for what they are worth.

Mark

---

**From:** "Geoff Greenwood [AG]" <Geoff.Greenwood@iowa.gov>  
**To:** "Mark O. Lambert" <marklambert@mchsi.com>, "Eric Tabor [AG]" <Eric.Tabor@iowa.gov>  
**Sent:** Monday, December 12, 2016 1:40:05 PM  
**Subject:** RE: Bleeding Heartland news/blog site on gubernatorial succession

Thanks, Mark.

Geoff

---

**From:** Mark O. Lambert [mailto:marklambert@mchsi.com]  
**Sent:** Monday, December 12, 2016 12:15 PM  
**To:** Greenwood, Geoff [AG]; Tabor, Eric [AG]  
**Subject:** Bleeding Heartland news/blog site on gubernatorial succession

Gents, just an FYI:

<http://www.bleedingheartland.com/2016/12/12/will-kim-reynolds-become-iowa-governor-or-merely-acting-governor/>

**Greenwood, Geoff [AG]**

---

**From:** Mark O. Lambert <marklambert@mchsi.com>  
**Sent:** Monday, December 12, 2016 12:15 PM  
**To:** Greenwood, Geoff [AG]; Tabor, Eric [AG]  
**Subject:** Bleeding Heartland news/blog site on gubernatorial succession

Gents, just an FYI:

<http://www.bleedingheartland.com/2016/12/12/will-kim-reynolds-become-iowa-governor-or-merely-acting-governor/>

Mark

**Greenwood, Geoff [AG]**

---

**From:** desmoines dem <desmoinesdem@yahoo.com>  
**Sent:** Monday, December 12, 2016 9:31 AM  
**To:** Greenwood, Geoff [AG]  
**Subject:** addendum

Geoff, Lieutenant Governor Reynolds told reporters at this morning's press conference that she plans to be sworn in as governor and to fill the LG position. That seems premature, so I'm seeking comment from the Attorney General's Office on whether there is any basis yet for Reynolds to say that.

Thanks,

Laurie

## **Greenwood, Geoff [AG]**

---

**From:** desmoines dem <desmoinesdem@yahoo.com>  
**Sent:** Monday, December 12, 2016 9:04 AM  
**To:** Greenwood, Geoff [AG]  
**Subject:** AG opinion on Reynolds as governor or "acting governor"

Hello Geoff,

What is the time frame for Attorney General Miller to issue an opinion on 1) whether Kim Reynolds will become governor or merely "acting governor" after Governor Branstad leaves for China, and 2) whether Reynolds will be able to appoint a new lieutenant governor in that scenario? I am requesting a copy of that opinion as soon as it becomes available

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I assume the governor's office will want Kim Reynolds to have the title of governor as well as the powers of the office.

Thanks in advance for any information or clarification you can provide.

Yours,

Laurie Belin  
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[As Branstad prepares for China, transfer of power process unfolds](#)



**As Branstad prepares for China, transfer**

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## **of power process unfolds**

Iowa officials say they need more time to determine how governmental power is transferred to Lt. Gov. Kim Reynolds.

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## Greenwood, Geoff [AG]

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**From:** Mark O. Lambert <marklambert@mchsi.com>  
**Sent:** Thursday, December 08, 2016 2:01 PM  
**To:** Greenwood, Geoff [AG]  
**Cc:** Tabor, Eric [AG]  
**Subject:** Re: Constitutional issue re: Lt. Gov assuming Gov's powers

Geoff and Eric,

Just one more thing (I promise!). I note the Iowa Constitution says upon a vacancy in the position of Governor, the Governor's power shall "devolve" to the Lt. Governor. (It does not say the Lt. Gov. assumes the office of Governor). I think this wording is important.

Note this dictionary definition of "devolve":

de·volve  
[də'vɔlv]

### VERB

1. transfer or delegate (power) to a lower level, especially from central government to local or regional administration:

"measures to devolve power to the provinces" ·

[[more](#)]

"devolved and decentralized government"

synonyms: [delegate](#) · [depute](#) · pass (down/on) · [download](#) ·

[[more](#)]

[hand down/over/on](#) · [transfer](#) · [transmit](#) · [assign](#) · [consign](#) · [convey](#) · [entrust](#) · [turn over](#) · [give](#) · [cede](#) · [surrender](#) · [relinquish](#) · [deliver](#) · [bestow](#) · [grant](#)

- (devolve on/upon/to)

(of duties or responsibility) pass to (a body or person at a lower level):

"his duties devolved on a comrade"

- formal

(devolve into)

degenerate or be split into:

"the Empire devolved into separate warring states"

Ok, I just find this fascinating. Good luck with your research!

Mark

---

**From:** "Geoff Greenwood [AG]" <Geoff.Greenwood@iowa.gov>  
**To:** "Mark O. Lambert" <marklambert@mchsi.com>  
**Cc:** "Eric Tabor [AG]" <Eric.Tabor@iowa.gov>  
**Sent:** Thursday, December 8, 2016 11:13:41 AM  
**Subject:** RE: Constitutional issue re: Lt. Gov assuming Gov's powers

Thanks, Mark.

---

**From:** Mark O. Lambert [mailto:marklambert@mchsi.com]  
**Sent:** Thursday, December 08, 2016 11:12 AM  
**To:** Greenwood, Geoff [AG]  
**Cc:** Tabor, Eric [AG]  
**Subject:** Re: Constitutional issue re: Lt. Gov assuming Gov's powers

Thanks, Geoff. One more thing, historically, when an Iowa Gov has left office before the end of his term, there has not been a Lt. Gov. appointed. Most of the time, these were very short periods of time, though.  
[https://en.wikipedia.org/wiki/List\\_of\\_Governors\\_of\\_Iowa](https://en.wikipedia.org/wiki/List_of_Governors_of_Iowa)

Mark

---

**From:** "Geoff Greenwood [AG]" <Geoff.Greenwood@iowa.gov>  
**To:** "Mark O. Lambert" <marklambert@mchsi.com>, "Eric Tabor [AG]" <Eric.Tabor@iowa.gov>  
**Sent:** Thursday, December 8, 2016 10:25:12 AM  
**Subject:** RE: Constitutional issue re: Lt. Gov assuming Gov's powers

Thanks for contacting us, Mark. We're researching it and will add this to the conversation.

Best regards,



**Geoff Greenwood**  
**Communications Director**  
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1305 E. Walnut St.  
Des Moines, Iowa 50319  
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---

**From:** Mark O. Lambert [mailto:[marklambert@mchsi.com](mailto:marklambert@mchsi.com)]  
**Sent:** Thursday, December 08, 2016 9:54 AM  
**To:** Greenwood, Geoff [AG]; Tabor, Eric [AG]  
**Subject:** Constitutional issue re: Lt. Gov assuming Gov's powers  
**Importance:** High

Eric and Geoff:

In Massachusetts, when Governor William Weld resigned in 1997, Lt. Gov. Paul Cellucci became “Acting Governor” – not “Governor.” When Celluci resigned to become US Ambassador to Canada during the Bush Administration in 2001, his Lt. Gov. Jane Swift became “Acting Governor.”

Massachusetts Constitution has a similar provision to the Iowa Constitution:

III.--Whenever the chair of the Governor shall be vacant, by reason of his death, or absence from the Commonwealth, or otherwise, the Lieutenant-Governor, for the time being, shall, during such vacancy, perform all the duties incumbent upon the Governor, and shall have and exercise all the powers and authorities, which by this Constitution the Governor is vested with, when personally present.

Hope this is helpful.

--Mark

Mark Lambert  
Attorney at Law  
Polk City  
515-681-0285

## **Greenwood, Geoff [AG]**

---

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Mark

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Hope this is helpful.

--Mark

Mark Lambert  
Attorney at Law  
Polk City  
515-681-0285

## Thompson, Jeffrey [AG]

---

**From:** Engel, Cathy [LEGIS] <Cathy.Engel@legis.iowa.gov>  
**Sent:** Friday, February 03, 2017 11:17 AM  
**To:** Thompson, Jeffrey [AG]  
**Subject:** Your phone call

Would 3:15 or after this afternoon work for you? Would you prefer that I call you? Thanks.

*Cathy*

Catherine Engel  
Senate Democratic Caucus Research Staff  
State Capitol  
Des Moines 50319  
(515) 281-8688

## Thompson, Jeffrey [AG]

---

**From:** Engel, Cathy [LEGIS] <Cathy.Engel@legis.iowa.gov>  
**Sent:** Friday, February 03, 2017 4:26 PM  
**To:** Thompson, Jeffrey [AG]  
**Subject:** RE: Your phone call

That works. I will be available all morning.

-----Original Message-----

**From:** Thompson, Jeffrey [AG] [<mailto:Jeffrey.Thompson@iowa.gov>]  
**Sent:** Friday, February 3, 2017 4:25 PM  
**To:** Engel, Cathy [LEGIS]  
**Subject:** Re: Your phone call

Cathy, I had to run to pick up my daughter from school. Perhaps we can talk Monday?

Sent from my iPhone

On Feb 3, 2017, at 11:17 AM, Engel, Cathy [LEGIS] <[Cathy.Engel@legis.iowa.gov](mailto:Cathy.Engel@legis.iowa.gov)<<mailto:Cathy.Engel@legis.iowa.gov>>>>  
wrote:

Would 3:15 or after this afternoon work for you? Would you prefer that I call you? Thanks.

Cathy

Catherine Engel  
Senate Democratic Caucus Research Staff  
State Capitol  
Des Moines 50319  
(515) 281-8688



**McCarthy, Kevin [AG]**

---

**From:** Kattenhorn, Debbie [LEGIS] <Debbie.Kattenhorn@legis.iowa.gov>  
**Sent:** Tuesday, January 24, 2017 3:17 PM  
**Subject:** MARK YOUR CALENDARS  
**Attachments:** Retirement reception.pdf

Please mark your calendars for a reception hosted by the Senate Democrats for Theresa Kehoe, who is retiring from state government and starting a new job in the private sector.

We will have an open house reception for her in Room 116, next Monday, January 30 from 2-4pm.

Please join us to thank her for her service to Iowa and to wish her well on her new endeavors.

## McCarthy, Kevin [AG]

---

**From:** Hyatt, Anna <Anna.Hyatt@legis.iowa.gov>  
**Sent:** Tuesday, January 10, 2017 12:00 PM  
**To:** McCarthy, Kevin [AG]  
**Subject:** FW: RELEASE: Gov. Branstad delivers the 2017 Condition of the State address to the Iowa General Assembly

---

**From:** Press Releases from Iowa Governor's Office [mailto:IowaGovernorsOffice@public.govdelivery.com]  
**Sent:** Tuesday, January 10, 2017 10:45 AM  
**To:** Hyatt, Anna  
**Subject:** RELEASE: Gov. Branstad delivers the 2017 Condition of the State address to the Iowa General Assembly

### OFFICE OF THE GOVERNOR Governor Terry E. Branstad ★ Lt. Governor Kim Reynolds

FOR IMMEDIATE RELEASE: Tuesday, Jan. 10, 2017  
CONTACT: Governor's Office 515-281-5211

## Gov. Branstad delivers the 2017 Condition of the State address to the Iowa General Assembly

(DES MOINES) – Gov. Terry E. Branstad today delivered the 2017 Condition of the State address, entitled “*Smaller and Smarter Government*,” to the Iowa General Assembly and the people of Iowa.

In his address, Gov. Branstad struck an enthusiastic tone that this new General Assembly brings new dynamics, new expectations and new opportunities to deliver positive results for Iowans. The governor spoke about the need for a responsible budget including submitting adjustments to the current fiscal year and the need for a biennial budget for fiscal year 2018 and 2019 that sets supplemental state aid for K-12 education in the first 30 days of the legislative session.

Gov. Branstad and Lt. Gov. Reynolds’ program initiatives for this upcoming session include a commitment to a smaller and smarter government, a focus on the jobs of today and tomorrow, obtaining a 21<sup>st</sup> century education for all students and making our Iowa roads safer.

**[VIEW THE BUDGET IN BRIEF HERE INCLUDING THE FISCAL YEAR 2017 BUDGET ADJUSTMENTS \(PAGE 73 & 74\)](#)**

#### **HIGHLIGHTS OF THE BUDGET ADJUSTMENTS:**

- Adjustments are required by law.
- Does not include across-the-board cuts.

- Does not reduce funding for supplemental state aid for K through 12 education.
- Does not reduce property tax credits.
- Modernized Medicaid resulting in over \$110 million in savings for Iowa taxpayers.

### **VIEW THE FULL FISCAL YEAR 2018 AND 2019 BUDGET HERE**

#### **HIGHLIGHTS:**

- The governor and Lt. governor's 2-year budget is again balanced and stable.
- The budget fits within five-year budget projections.
- Based on the principles laid out by the Iowa Taxpayers Association.
- Prioritizes education, health care, economic development and public safety.
- Gives schools the predictability and stability they need with an increase of over \$78.8 million in supplemental state aid in fiscal year 2018 and includes an additional \$63.5 million for fiscal year 2019.
- Modernized Medicaid resulting in \$232 million in savings for Iowa taxpayers.
- Redirects family planning money to organizations that focus on providing health care for women and eliminates taxpayer funding for organizations that perform abortions.

### **SMALLER AND SMARTER GOVERNMENT:**

#### **HIGHLIGHTS:**

- Gov. Branstad & Lt. Gov. Reynolds are calling for replacing the current antiquated collective bargaining system for public employees.
  - Move to one comprehensive statewide health care contract for public employees.
  - This will provide quality health care to public employees at a significantly lower cost and give local governments more flexibility to provide better wages and meet other needs.
  - Rewards public employees for taking ownership of their own health by conducting health risk assessments and taking other actions that improve their own health.
- Work with the General Assembly to address unnecessary barriers that prevent competition and raise costs through a series of regulatory and licensing reforms.

### **FOCUSING ON THE JOBS OF TODAY AND TOMORROW:**

#### **HIGHLIGHTS:**

- Modernizing water quality infrastructure that will create jobs in rural Iowa and promote cleaner water.
  - Calling on discussions to begin with the House-passed water quality bill from last session which provided for a long-term, dedicated source of revenue for implementation of projects outlined in the Nutrient Reduction Strategy.
- Prioritizes initiatives that will grow the state's talent pipeline including STEM (Science,

Technology, Engineering & Math), Future Ready Iowa, registered apprenticeships and work-based learning for Iowa students.

## 21<sup>st</sup> CENTURY EDUCATION:

### HIGHLIGHTS:

- Legislation encouraging all elementary, middle and high school students to have access to high-quality computer science programs by 2019. We want them to:
  - Offer at least one high-quality computer science course in every high school;
  - Provide exploratory computer science curriculum in every middle school and;
  - Include an introduction to computer science basics in every elementary school.
- Establish high-quality computer science standards.
- Create a computer science professional development incentive fund to train teachers.
- Convene an advisory group to recommend how to count computer science as a math credit toward high school graduation.

## SAFER IOWA ROADS:

### HIGHLIGHTS:

- Traffic fatalities spiked from 315 in 2015, to 402 in 2016.
- Gov. Branstad & Lt. Gov. Reynolds believe this is unacceptable.
- They are calling for legislation that drastically reduces the amount of distracted and impaired drivers on Iowa roads.
  - Restrict the use of mobile devices while driving.
- Gov. Branstad & Lt. Gov. Reynolds are also calling on the legislature to examine and implement strategies from the Department of Public Safety's task force that will make Iowa's roads safer.

---

**Gov. Branstad's 2017 Condition of the State Address, as prepared for delivery, is as follows:**

*Madam Lieutenant Governor*

*Mr. President*

*Madam Speaker*

*Legislative leaders, legislators, justices and judges, elected officials, distinguished guests, family, friends and fellow Iowans.*

*I'm honored and humbled to once again address a joint session of the General Assembly delivering the Condition of the State for the final time as your governor.*

*For 22 years, I have addressed this body as governor and today I want to especially welcome the 22 new legislators with us—from both sides of the aisle— who were elected in November.*

*Your constituents sent you to work hard, to work for them, and help make Iowa a better place.*

*I hope you are filled with the same sense of excitement and eagerness that I had when I first served in the Legislature in 1973.*

*Lt. Gov. Reynolds and I look forward to working with each of you and listening to your ideas on how to make our state an even better place for families to live, work and grow.*

*In that spirit, I am today extending an invitation to each legislator to meet with me personally during this legislative session.*

*We also gather again with shared sadness, returning to do our work without our friend, Sen. Joe Seng of Davenport.*

*Joe was a devout Catholic and a true statesman.*

*We enjoyed his contagious and positive personality and working with him.*

*As I look back on my years of public service, I am thankful for those Iowans who have stepped forward to serve their fellow citizens.*

*In particular, please join me in applauding those Iowans who have helped make our state and nation safer by serving in the military, law enforcement or as first responders.*

*Since taking office in 2011, we have made the necessary changes to strengthen our economy and improve the quality of life across our state.*

*We've made tough decisions to give Iowans a smaller and smarter government.*

*We have stayed the course with an unwavering commitment to create jobs, increase family incomes, reduce the size of government, and give Iowa students a globally competitive education.*

*We have provided significant tax relief for Iowans the past five years, especially for commercial property taxpayers.*

*And last month, Lt. Gov. Reynolds and leaders from the Economic Development Authority and Department of Transportation unveiled Iowa's most comprehensive Energy Plan.*

*The plan was developed after collaboration with the private sector, public sector, educators, non-profits and utilities.*

*Iowa is already a leader in low-cost and renewable energy.*

*The comprehensive new energy plan will help build on our past energy successes and reaffirms our*

*commitment to maintaining Iowa's energy leadership in the future.*

*I'm proud that we have made government smaller and smarter.*

*We've seen unemployment in our state drop from 6.2 percent to 3.8 percent.*

*The state has helped attract more than 13 and a half billion in private-sector capital investment, which has translated into great-paying jobs across Iowa.*

*And more Iowans have been employed these past few years than at any other period in our state's history.*

*We have also made the tough decisions to ensure government lives within its means like Iowa families must do.*

*We have accomplished this with a relentless focus on fiscal discipline, demanding budget predictability, fully restoring Iowa's reserve accounts and reducing the state's debt liability.*

*Together we have made progress toward our goal of restoring Iowa's schools to best in the nation through a series of landmark reforms and innovative policies.*

*To improve Iowa's education standing, we needed to make sure our hardworking teachers had all the tools necessary to succeed given higher expectations for all students.*

*So, we created a new Teacher Leadership System that better utilizes the expertise of top teachers to improve education, instruction and foster greater collaboration.*

*I'm proud to say that every public school in Iowa today is participating in our Teacher Leadership System.*

*To ensure that our children are prepared for a 21<sup>st</sup> century economy we advanced a nationally recognized STEM initiative that gives students the confidence and skills for rewarding careers.*

*The STEM initiative is led by Lt. Gov. Kim Reynolds and Kemin Industries President & CEO Dr. Chris Nelson and has seen outstanding growth and success.*

*Sustaining these measures over time is critical to get the right results for our students and our state.*

*The ability of Iowans to overcome challenges bolsters my optimism for our state's future.*

*When faced with challenges, Iowans consistently seek opportunities.*

*Some of the challenges we have overcome--like the Farm Crisis of the 1980s--tore at the very fabric of our communities.*

*In the 1980s, Bloomfield, Ia.--a community in Davis County in southeast Iowa--struggled like many communities across the state.*

*An uninsured bank in Bloomfield closed in 1983 and caused great losses for area families and businesses.*

*And area farmers were straddled with debt and limited market opportunities for their crops.*

*However, through a persistent focus on economic diversification and an entrepreneurial spirit to rebuild its community, Bloomfield now has new manufacturers that are growing alongside innovative startups.*

*And, to continue their effort to stay on the cutting edge community leaders are instituting aggressive strategies to become Iowa's first energy independent community by 2030.*

*I visited Bloomfield last year and was impressed with the Main Street revitalization, a new hardware store and the M3 Fabrication manufacturing plant.*

*And Woodbine, Ia., is another example of a community that took its future into its own hands.*

*The community showed how an integrated approach to community revitalization that focuses on historic preservation and community sustainability can redefine a struggling, small rural community.*

*Woodbine also had a bank closure in the 1980s, but the community turned its challenges into future growth and diversification.*

*Lt. Gov. Reynolds and I visited Woodbine and were impressed with the success of their Main Street program.*

*And Waterloo, Ia., after experiencing economic challenges throughout the previous three decades embraced the challenge of reshaping its industrial heritage to succeed in modern times.*

*Cedar Valley Tech Works has made Waterloo a nationally recognized leader for manufacturing innovation.*

*And John Deere continues to be a leading manufacturer and innovator in Waterloo.*

*In the balcony, we have leaders from Bloomfield, Woodbine and Waterloo.*

*Please join me in congratulating their accomplishments and supporting their future success.*

*Iowa's industries are increasingly high tech, including advanced manufacturing.*

*In total, Iowa has over 6,100 manufacturers that contribute more than \$31 billion to Iowa's economy and employ over 200,000 Iowans.*

*Over the next year, the Iowa Economic Development Authority will work with Iowa's manufacturers to advance a "Year of Manufacturing" in Iowa to help grow this important part of the Iowa economy.*

*We should also be proud that Iowa remains an agricultural powerhouse that feeds and fuels the world thanks to the hard work and innovation of Iowa's farmers and agricultural producers.*

*We just set an all-time record for ethanol production, set a new record for biodiesel production by an additional 55 million gallons and lead the nation in percentage of electricity generated by wind.*

*We now generate over 35 percent of our electricity from wind and expect this number to exceed 40 percent*

by 2020.

*Over the past 30 years, we've significantly added value to our agricultural commodities.*

*We've also diversified the Iowa economy by expanding exports and supporting growth in biofuels, wind energy, data centers, fertilizer plants, bio-renewable chemicals, advanced manufacturing, insurance and financial services.*

*These newer industries employ hundreds of thousands of Iowans in rewarding careers.*

*And while I am pleased with this progress and optimistic about Iowa's future, I believe there is more work to be done.*

*We must seize the opportunities before us.*

*This new General Assembly brings new dynamics, new expectations and new opportunities to deliver positive results for Iowans.*

*Our state is in an admirable position.*

*Many states are strapped with crushing debt, poor credit ratings and a bleak economic outlook.*

*But Iowa is a shining example of what hard work and smart, tough choices can do for growing businesses and nurturing families.*

*While the December Revenue Estimate is lower than previous projections the estimate still shows a modest increase in state revenues.*

*Although we have faced a headwind out of Washington, D.C., that is stifling our agricultural economy, we still have positive state revenue growth.*

*But we must proceed with caution and not repeat the mistakes of the past.*

*With that prudence in mind, I present my proposed adjustments to the current fiscal year budget to you today.*

*These adjustments are required by law.*

*My proposal does not include across-the-board cuts, does not reduce funding for K through 12 education, does not reduce property tax credits and does not include furloughs for state employees.*

*The budget reductions I am recommending for this fiscal year are difficult.*

*But they maintain funding for our mutual priorities.*

*I am committed to working with legislative leaders to implement these adjustments.*

*For the coming biennium, I am presenting a complete two-year budget that is balanced each year and*



*meets our five-year projections for a sustainable future.*

*This budget is based on the principles laid out by the Iowa Taxpayers Association.*

*It prioritizes education, health care, economic development and public safety.*

*And it redirects family planning money to organizations that focus on providing health care for women and eliminates taxpayer funding for organizations that perform abortions.*

*On my first trip to China in 1984, I learned that the Chinese word for danger and opportunity is one in the same.*

*Today, America and Iowa exist in a challenging world.*

*But we must seize the opportunity to make it a better place.*

*In 2010, Lt. Gov. Reynolds and I promised to reduce the size and scope of government.*

*I'm proud to report that we have a smaller, smarter government with a steady focus on improving services for our citizens in a more timely and efficient manner.*

*Yet, while the size of government is smaller, benefits for public employees at the state and local level have increased.*

*Unfortunately, the cost of these benefits has grown dramatically because of our antiquated collective bargaining system that has led to over 500 health-care plans, many of which are inefficient and way too costly for public employees and Iowa taxpayers.*

*Under our present system, a few adverse health outcomes will destroy the budget of a city, county or school district.*

*By replacing this system with one comprehensive statewide health-care contract we can spread the risk and dramatically reduce costs.*

*Using a uniform health-care benefit system similar to the IPERS program for retirement we can provide quality health care at a significantly lower cost and give local governments more flexibility to provide better wages and meet other needs.*

*The statewide health-care contract also needs to reward employees who take ownership of their own health by conducting health risk assessments and taking actions to improve their own health.*

*We have made a commitment to examine every dollar of revenue and expenditure in order to maximize efficiency and respect hardworking taxpayers.*

*We are committed to a smaller, smarter government that seeks innovative ways to provide services rather than blind adherence to the way things have always been done.*

*I'm asking the General Assembly to take a comprehensive review of all of our state's boards and*

*commissions to address unnecessary barriers that prevent competition and raise costs.*

*I encourage you to ask the tough questions that challenge the status quo.*

*In Iowa, 90 percent of our general fund budget is spent on three items; K through 12 education, Medicaid and employee wages and benefits.*

*The state has significantly increased funding for education since 2011, amounting to over 654 million additional dollars.*

*Education and job training are the foundation for our future economic growth.*

*Growing our state's talent pipeline needs to be a top priority.*

*Even with our modest revenue growth my recommendation includes an increase of \$73 million for K-12 education for fiscal year 2018 and an additional \$61 million for fiscal year 2019 which equates to roughly 2 percent growth each year.*

*So this year, let's show Iowans we can make these decisions early and meet the legal requirements of setting supplemental state aid for fiscal year 2018 and fiscal year 2019 in the first 30 days.*

*The second largest driver of our state budget is health and human services spending.*

*Together, we have transformed our mental health system to a community-based model, we obtained a federal waiver for our Iowa Health and Wellness Plan which has reduced charity care for hospitals and, like 39 other states, we have modernized our Medicaid program.*

*As a result, we have created a new system where more Iowans have access to mental health services closer to home than ever before; more Iowans are covered with health insurance than ever before; and more than 80 new value-added services are now being offered under our modernized Medicaid program.*

*We've also replaced the old Medicaid system with a coordinated team of health-care professionals to ensure patients see the right provider at the right time.*

*As a result of these reforms and innovation, we have improved the focus on health outcomes and saved the taxpayers \$110 million.*

*Our increase in education funding last year was made possible because of our modernized Medicaid efforts.*

*Without these vital reforms, the budget choices before us today would be twice as hard.*

*In order to grow Iowa, we must also look at policies and reforms that will continue growing family incomes.*

*One way to do this is to close the skills gap which in many ways is the biggest challenge our state faces over the next decade.*

*That is why Lt. Governor Reynolds and I set the Future Ready Iowa goal that 70 percent of Iowans in the workforce should have education or training beyond high school by 2025.*

*Today, less than half of our workforce does.*

*Accomplishing this ambitious goal will create unprecedented opportunities for Iowans and better position our state to compete in an increasingly knowledge-based, digital economy.*

*That is why we established the Future Ready Iowa Alliance, co-chaired by Lt. Governor Reynolds and Dan Houston of Principal, which will make recommendations by Oct. 31, 2017, to assure more Iowans have the careers they deserve and employers can hire the skilled workers they need to grow and innovate.*

*Even with a tight budget, we should continue to prioritize initiatives that will grow the state's talent pipeline like the STEM initiative, registered apprenticeships and work-based learning for Iowa's students.*

*Please help me recognize the students here with us today from Jackson Elementary School in Des Moines, Bondurant-Farrar Middle School and Waukee High School, which has one of the premier work-based learning programs in our state.*

*The students in the gallery represent children across Iowa who are counting on all of us to modernize schools for the 21st century.*

*That's why Lt. Governor Reynolds and I are launching a comprehensive computer science initiative.*

*We are encouraging every high school to offer at least one high-quality computer science course, every middle school to provide exploratory computer science, and every elementary school to include an introduction to computer science.*

*All students need to learn how computers operate because it is fundamental to life and work today.*

*Computer science will provide students a chance to join one of the fastest-growing and best-paying fields.*

*No student should miss out on this opportunity because of where they live.*

*This is another step to better align education and training with essential workforce needs.*

*We all care deeply for the safety of our families, our friends, and our neighbors.*

*However, a troubling trend has begun to emerge that threatens Iowans' safety on our roads.*

*Traffic deaths went from 315 in 2015 to 400 in 2016.*

*This is unacceptable.*

*Earlier this year, I called on the Department of Public Safety and the Governor's Traffic Safety Bureau to lead a working group to study this disturbing trend.*

*The group, with the support of key stakeholders, including law enforcement, made recommendations worth your consideration.*

*I am asking you to take a hard look at these recommendations and evaluate which can be put into law to make our roads safer.*

*Unfortunately, too many innocent bicyclists, motorcyclists, pedestrians and passengers have lost their lives on our roads.*

*Last year, I received a handwritten note from Christine and Darrel Harken, parents of Grace Harken, who live near Riceville.*

*They wrote "our daughter Gracie's life was so sadly ended July 29, 2015, by someone who was driving and texting."*

*Grace was biking safely and lawfully during a morning bike ride, when a driver who was texting struck and killed her.*

*They went on to write, "Grace would have forgiven the driver and moved forward.*

*"That is what we have chosen to do. But we miss her so."*

*Grace Harken's life was tragically ended way too early.*

*Modern technologies should come with new responsibilities.*

*I ask that all Iowans join the Iowa law-enforcement community, first responders, the League of Cities, all the major cell-phone carriers, the insurance industry, and the medical community in demanding real change in the laws for distracted and impaired drivers.*

*Last year, I called on the Legislature to send me a water-quality improvement bill.*

*I was pleased to see bipartisan progress made on this front with the House passing House File 2541 last session.*

*This bill was approved by the Agriculture, Ways and Means and Appropriations Committees and passed the House with 65 votes.*

*This bill provided for a long-term, dedicated and growing source of revenue to help implement projects to improve habitat and water quality directed by the Iowa Nutrient Reduction Strategy.*

*The bill also provided funding for community conservation practices and improvements to wastewater and drinking water facilities.*

*By leading on this issue, together we have the opportunity to modernize Iowa's agricultural infrastructure, create jobs in rural Iowa and promote collaboration between urban and rural communities.*

*I believe our discussions should begin with the House-passed bill from last session.*

*I hope we can work together to perfect and improve the legislation that will provide a long-term, dedicated and growing source of revenue for water-quality improvements.*

*I've been so blessed to serve as your governor, leading the state I love, for 22 years. .*

*I am confident Iowa will continue to move forward because Iowans care deeply about their neighbors, their communities and creating an even better future.*

*And I'm extremely thankful for perhaps the most patient person in the state -- my wife, Chris -- as she has also served Iowa as first lady with grace.*

*She has welcomed Iowans and visitors from around the world to Terrace Hill and she has volunteered to help in many ways, including reading with Jackson Elementary students.*

*To Chris and my entire family, thank you for your sacrifice during my time in public service.*

*I am also thankful for the friendships we have made in all 99 counties -- friendships that we will always cherish.*

*And I am grateful for the prayers from Iowans who have encouraged me along the way.*

*There is no better job in the world than being the governor of the state that you love.*

*But sometimes we are called to serve in ways we had never imagined.*

*As I approach the U.S. Senate confirmation process my main priority is to continue serving the people of Iowa with the same energy and passion that I have brought to this office each and every day.*

*Thank you.*

*God Bless you and all the people of Iowa.*

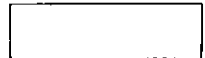
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## McCarthy, Kevin [AG]

---

**From:** Hyatt, Anna <Anna.Hyatt@legis.iowa.gov>  
**Sent:** Tuesday, January 10, 2017 12:00 PM  
**To:** McCarthy, Kevin [AG]  
**Subject:** FW: LSA's Preliminary Analysis of the Governor's FY 2018 and FY 2019 Budget Recommendations

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**From:** Lyons, Holly [LEGIS]  
**Sent:** Tuesday, January 10, 2017 10:48 AM  
**To:** All Legislators; All Staff  
**Subject:** LSA's Preliminary Analysis of the Governor's FY 2018 and FY 2019 Budget Recommendations

Members of the General Assembly and staff,

The Fiscal Services Division has published a **Preliminary Analysis of the Governor's FY 2018 Budget Recommendations**.

This document is available on the web at:

<https://www.legis.iowa.gov/docs/publications/LAGRP/851273.pdf>

Paper copies have been delivered to legislators' desks. The document contains:

- An overview of the Governor's budget recommendations for FY 2017, FY 2018 and FY 2019.
- Balance sheets for the General Fund, Environment First Fund (EFF), Rebuild Iowa Infrastructure Fund (RIIF), Technology Reinvestment Fund (TRF), Skilled Worker and Job Creation Fund (SWJCF), and State Bond Repayment Fund (SBRF)
- Appropriation tracking documents for the General Fund and Other Appropriated Funds.

Fiscal Services is in the process of completing a more detailed summary document titled ***Summary of FY 2018 and FY 2019 Budget and Governor's Recommendations***. This document should be available **Thursday afternoon, January 12**.

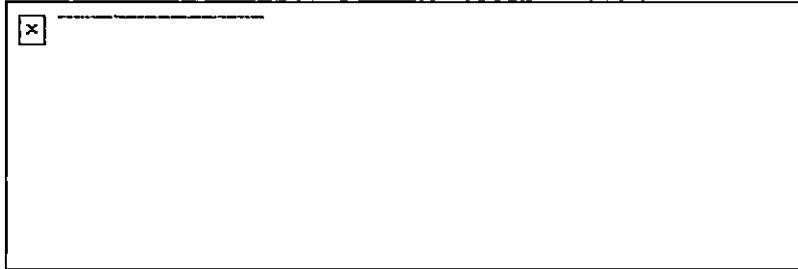
Please feel free to contact me or our staff if you have any questions!

Holly M. Lyons  
Fiscal Services Division Director  
Legislative Services Agency  
State Capitol Building  
Des Moines, IA 50319  
515-281-7845

**Tabor, Eric [AG]**

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**From:** Amy Nielsen <bounce@bounce.myngp.com> on behalf of Amy Nielsen <house@iowademocrats.org>  
**Sent:** Thursday, May 18, 2017 2:43 PM  
**To:** Tabor, Eric [AG]  
**Subject:** BREAKING: Planned Parenthood to close 4 Iowa clinics



**BREAKING: Planned Parenthood of the Heartland just announced the closure of 4 Iowa clinics in Keokuk, Sioux City, Burlington, and the Quad Cities.**

These closures are the direct result of 51 republican men in the Iowa House legislating what women can do with their bodies. Because of them, 14,676 Iowans will no longer have access to the safe, affordable, and judgment-free health care that only Planned Parenthood provides.

*If you've saved your payment information with ActBlue Express, your donation will go through immediately:*

**>>> RAPID RESPONSE FUND Express Donate: \$10**

**>>> RAPID RESPONSE FUND Express Donate: \$25**

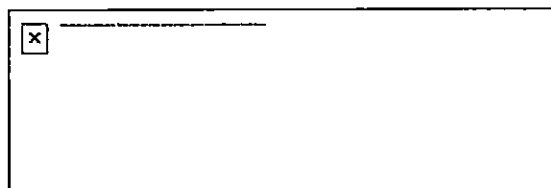
**>>> RAPID RESPONSE FUND Express Donate: \$50**

**>>> RAPID RESPONSE FUND Express Donate: \$100**

**Or, donate another amount**

Today's announcement highlights the real-world consequences the GOP agenda is having on our state. Help us show the GOP that we're ready to end their majority in 2018 -- **Chip in \$10 or more right now to help us hold republican politicians accountable.**

Amy Nielsen  
State Representative  
Iowa House District 77



Paid for by the Iowa Democratic Party

Iowa Democratic Party - House Truman Fund  
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Des Moines IA 50321 United States

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**From:** Bakker, Eric [LEGIS] <Eric.Bakker@legis.iowa.gov>  
**Sent:** Thursday, May 18, 2017 9:18 AM  
**Subject:** QCT: Wisconsin firm wins I-74 contract

# Wisconsin firm wins I-74 contract

- [Ed Tibbetts etibbetts@qctimes.com](mailto:Ed.Tibbetts@qctimes.com)

*Ed Tibbetts*

- May 17, 2017 Updated 9 hrs ago

The Iowa Department of Transportation said Wednesday that it has awarded the contract to build the new Interstate-74 bridge to Wisconsin-based Lunda Construction Co.

The DOT said the contract is for about \$322.1 million. The next lowest bid was at \$357.8 million.

It's not clear yet precisely when work on the bridge will begin. Sam Shea, a transportation planner for the Iowa DOT, said Wednesday he had not seen a schedule yet, but that work likely would begin in the Mississippi River by sometime next month. "I imagine they'll have quite a bit of staging to do," he said. Most of it will be in downtown Bettendorf.

Shea said people will likely see barges in the river fairly quickly, but that as far as anything being erected in the water, that is likely a few months away.

Construction of the bridge is expected to take three years. Much of the impact to traffic will be in 2019 and 2020. The project consists of two bridges, each about 3,400 in length, with two 795-foot basket handle arches over the Mississippi River navigational channel.

Selecting a contractor is a key milestone in the Interstate-74 corridor project, which has been in the planning stages for years.

Lunda, which is based in Black River Falls, Wisconsin, could not be immediately reached for comment Wednesday afternoon. But the company's web site cited work it's done on a number of bridges in Wisconsin and Minnesota, including in the Minneapolis/St. Paul area. Lunda was founded in 1938. It's now a subsidiary of Tutor Perini, a large construction firm based in the Los Angeles area.

The \$322 million bid came in significantly less than the DOT had anticipated. It had estimated that the I-74 project would cost between \$400 million and \$450 million, which included a viaduct and off-ramp over downtown Bettendorf estimated at about \$30 million. A contract for that work has not been announced yet, Shea said.

Despite the savings, the project still is the largest contract the state DOT has ever awarded, Shea said. He added the local share of the contract's cost came in somewhat higher than expected, but he did not have a figure available Wednesday afternoon. The cities of Moline and Bettendorf are responsible for those costs.

Bettendorf City Administrator Decker Ploehn said Wednesday the city was expecting to pay \$14 million for its share. "I think this is up a couple hundred thousand over that," he said.

Ploehn said he didn't consider it a major problem, but that the city is talking to the DOT about why it happened and is hoping to lower the amount.

Wednesday's award is the first of a number of I-74 related contracts that will be handed out this summer.

The state of Illinois is expected to award a contract in June for work from the river to 7th Avenue in Moline, which will include the viaduct over downtown and street improvements to accommodate the interchanges. That's estimated at \$120 million. Then, probably in September, contracts will be awarded for work on the interstate from 7th Avenue to just south of Avenue of the Cities, as well as street improvements, including reconstruction of 19th Street. That work has been estimated at \$128 million.

Eric Bakker  
Sr. AA to Senate Democratic Leader Rob Hogg  
515-281-3902 (w)  
515-401-8167 (c)

**From:** Bakker, Eric [LEGIS] <Eric.Bakker@legis.iowa.gov>  
**Sent:** Wednesday, May 17, 2017 12:41 PM  
**Subject:** DMR: Stepfather's killing could be first test of Iowa's new 'stand your ground' law

## Stepfather's killing could be first test of Iowa's new 'stand your ground' law

Grant Rodgers , [groddgers@dmreg.com](mailto:groddgers@dmreg.com) Published 12:08 p.m. CT May 17, 2017 | Updated 10 minutes ago

Iowa's new "stand your ground" law could have its first test in the murder trial of a Des Moines woman accused of shooting and killing her stepfather this month.

Defense attorney F. Montgomery Brown confirmed at a court hearing Wednesday that he plans to invoke the controversial law in defending Sera Alexander, who is accused of shooting her stepfather, Anthony Hartmann, several times in the basement of her family's south Des Moines home May 8.

The Republican-backed legislation, which was signed into law by Gov. Terry Branstad in April, says that "law abiding" people who are in a place legally do not have a duty to retreat before using deadly force to defend themselves if they believe their life is in danger. Brown told a judge that change made Iowa law "vastly more favorable" to a defendant like Alexander, 29.

"She has substantive defenses that, on their face, could very well be successful," Brown said.

The announcement came during a request from Brown to have Alexander's bail reduced from \$1 million so she could be released from Polk County Jail ahead of her trial. Judge Robert Hanson granted the reduction, allowing Alexander to be released on a \$100,000 cash or surety bond.

Susan McCall Hartmann, Alexander's mother, said she expected her daughter would be released from jail sometime Wednesday. McCall Hartmann sat in the courtroom alongside another daughter, Amanda, through the 20-minute hearing.

"She's got a job, she's got things to do. She will have some restrictions of course, but minor compared to what we've been through in this past week," McCall Hartmann said. "We're going to try to keep things as normal as possible."

In granting the bond reduction, Hanson noted that Alexander has no past criminal history and called the shooting an "aberration." "It doesn't look like the defendant is a flight risk, it doesn't look like she is a danger to anybody else," he said.

McCall Hartmann told the Register in a Friday interview that Hartmann, 49, abused her throughout their 19-year marriage. Brown told Hanson at the hearing that Alexander in recent years sought treatment for post-traumatic stress disorder related to violence Hartmann brought into the home.

Hartmann was not living at the family home due to a no-contact order that was put in place after he grabbed his wife by the hair and pushed her into a car window in November, according to court records. McCall Hartmann began divorce proceedings that month.

But the no-contact order was lifted May 2 so that Hartmann could return to the Southwest 17th Street home to retrieve some tools and other belongings.

McCall Hartmann told the Register that her daughter had been out of town and was not aware her stepfather was allowed in the home. The mother believes that Hartmann must have done something to make Alexander feel in danger, even though police have said he did not threaten or assault his stepdaughter before the killing.

Brown outlined his "stand your ground" defense at the hearing as part of his arguments that Alexander's bond should be lowered. Brown argued that the new law allows a person who uses deadly force to be mistaken about whether his or her life is threatened. The person would be covered if there was a "reasonable basis" to believe the threat was real and the person acted reasonably, he said.

Brown noted several instances in which Hartmann reportedly threatened the family, including a situation in which he threw a "heavy object" that broke his wife's hand and a prison sentence he received in 2001 for stabbing her in the arm.

Alexander legally obtained the handgun that was used in the shooting and had the proper permit to acquire the gun required by Iowa law, Brown said.

The law also presumes that lethal force is reasonable if the person killed unlawfully entered a house or building through "stealth," Brown said. Though Hartmann may have been allowed inside temporarily, Brown said that section of the law will be central to the case.

"From the defendant's perspective, she did not know Anthony Hartmann would be entering the house," he said. "He entered the house without her knowledge, so that presumption appears to apply."

Brown said in an interview after the hearing that he does expect litigation with prosecutors over whether the new law will even apply to the case. The "stand your ground" portion of the new law takes effect July 1.

As part of the request for a bond reduction, Brown said that Alexander would be willing to undergo electronic monitoring using an ankle bracelet, be subject to a curfew and remain at her house when not in court or at work.

Shannon Archer, an assistant Polk County attorney prosecuting the case, opposed the motion for bond reduction. Alexander should be considered a flight risk because she faces a first-degree murder charge that would carry a mandatory life-without-parole prison sentence if convicted, she said.

"Obviously, I am not unsympathetic to the violence that may have occurred in their home," Archer said. "As a seven-year domestic abuse prosecutor, I understand domestic abuse and what it can do to a family. But what we are dealing with here is an isolated incident where ... this defendant, without justification, went

up, grabbed her firearm and shot Mr. Hartmann multiple times. In no way was Mr. Hartmann threatening her or assaulting her at the time that that happened."

Archer also countered the defense attorney's portrayal of Hartmann as a violent drug abuser. "The law protects every victim equally and Mr. Hartmann should be entitled to the same protection of the law as any victim," she said.

An obituary for Hartmann said he graduated from Carlisle High School before finishing an electrician apprenticeship. McCall Hartmann has declined to tell the Register how the two met, but her husband was an Iowa Hawkeyes football fan with a "beautiful" singing voice, according to the obituary.

Eric Bakker  
Sr. AA to Senate Democratic Leader Rob Hogg  
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## Tabor, Eric [AG]

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**From:** Bakker, Eric [LEGIS] <Eric.Bakker@legis.iowa.gov>  
**Sent:** Wednesday, May 10, 2017 2:26 PM  
**Subject:** CRG guest columnist: Governor Branstad is a sore loser who still doesn't get it. (Senator Petersen)

By Sen. Janet Petersen, guest columnist

May 10, 2017 at 1:31 pm | [Print View](#)

Governor Branstad is a sore loser who still doesn't get it.

After leading the charge to cut or even deny Iowa women access to critical medical services, the governor is now whining about one of his few legislative defeats in 2017.

In his [recent opinion piece in The Gazette](#), Gov. Branstad makes it clear that he and Lt. Governor Kim Reynolds are ready to do almost anything to impose their own personal and religious beliefs on all Iowa women.

Iowans must never forget what the governor, lieutenant governor and the Iowa Board of Medicine tried to do.

In 2013, Gov. Branstad's appointees to that Board of Medicine voted to ban the existing legal access Iowa women had to telemedicine abortions.

Two years later, the Iowa Supreme Court unanimously ruled that by doing so, the Iowa Board of Medicine and the Branstad/Reynolds administration had violated the Iowa Constitution.

Here's part of that unanimous ruling:

"While undoubtedly at an abstract level everyone would prefer to see a doctor in person every time they have a medical issue, the reality of modern medicine is otherwise. In this case, the record indicates the physician plays an important role in reviewing the ultrasound images and dispensing the prescribed medications, but those roles can be performed without the physician being personally present.

"The record also provides almost no medical support for the necessity of a pelvic exam before dispensing the medication. At the same time, the record indicates that the telemedicine rule would make it more challenging for many women who wish to exercise their constitutional right to terminate a pregnancy in Iowa to do so."

Suzanna de Baca, CEO of Planned Parenthood of the Heartland, summarized the decision perfectly: "Medical experts opposed this law because it harms women by blocking access to safe medical care. When it comes to health care, politics should never trump medicine."

The simple truth is that Gov. Branstad played politics with the Iowa Board of Medicine and got caught. That's why two of his appointees were not reconfirmed this spring by the Iowa Senate.

Get over it, governor. Iowans have much more to worry about than two people who weren't reappointed to a committee.

We all live in the real world. We all live in a state where a Republican-controlled Legislature has just made health care much more insecure for everyone. Legislative Republicans make it harder for Iowa women — especially rural Iowa women — to get cancer screenings, STD tests, and birth control. Republicans also passed a severe 20-week abortion ban without any exceptions for rape, incest, or even severe fetal anomalies. Republicans even slashed state funding to help victims of domestic abuse and sexual assault.

Don't feel sorry for Gov. Branstad and his rejected appointees to the Iowa Board of Medicine. They aren't victims. The real victims of the 2017 session are Iowa women. They will have to travel farther and pay more for health care — and ultimately have worse health outcomes — because of the actions taken by the Republican-controlled Legislature, the governor and lieutenant governor.

- Janet Petersen is a State Senator from Des Moines.

Eric Bakker  
Sr. AA to Senate Democratic Leader Rob Hogg  
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## Tabor, Eric [AG]

---

**From:** Bakker, Eric [LEGIS] <Eric.Bakker@legis.iowa.gov>  
**Sent:** Monday, May 01, 2017 1:22 PM  
**Subject:** Lt Gov



**Dave Price** Verified account @idaveprice

Following

More

Breaking: Iowa Attorney General rules that @KimReynoldsIA can't appoint successor when she become governor.

Eric Bakker  
Sr. AA to Senate Democratic Leader Rob Hogg  
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## Tabor, Eric [AG]

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**From:** Engel, Cathy [LEGIS] <Cathy.Engel@legis.iowa.gov>  
**Sent:** Thursday, April 20, 2017 5:07 PM  
**To:** Tabor, Eric [AG]  
**Subject:** RE: e-cigarettes

Sure, I will be out.

-----Original Message-----

**From:** Tabor, Eric [AG] [mailto:Eric.Tabor@iowa.gov]  
**Sent:** Thursday, April 20, 2017 5:05 PM  
**To:** Engel, Cathy [LEGIS]  
**Subject:** Re: e-cigarettes

I'm in the Rotunda if you want to chat.

Sent from my iPhone

On Apr 20, 2017, at 5:02 PM, Engel, Cathy [LEGIS] <Cathy.Engel@legis.iowa.gov<mailto:Cathy.Engel@legis.iowa.gov>> wrote:

Hi Eric,

Can you provide information regarding Internet sales of e-cigarettes? Is the online sale of e-cigarettes currently legal and, if so, what are the restrictions? Thank you for any information you can provide. I know this may not be a simple question, but perhaps there is a helpful website you could direct me to? Again, thank you!

Cathy

Catherine Engel  
Senate Democratic Caucus Research Staff  
State Capitol  
Des Moines 50319  
(515) 281-8688

**Tabor, Eric [AG]**

---

**From:** Engel, Cathy [LEGIS] <Cathy.Engel@legis.iowa.gov>  
**Sent:** Thursday, April 20, 2017 5:02 PM  
**To:** Tabor, Eric [AG]  
**Cc:** Whitney, Jessica [AG]; Blake, Nathan [AG]  
**Subject:** e-cigarettes

Hi Eric,

Can you provide information regarding Internet sales of e-cigarettes? Is the online sale of e-cigarettes currently legal and, if so, what are the restrictions? Thank you for any information you can provide. I know this may not be a simple question, but perhaps there is a helpful website you could direct me to? Again, thank you!

*Cathy*

Catherine Engel  
Senate Democratic Caucus Research Staff  
State Capitol  
Des Moines 50319  
(515) 281-8688

## Tabor, Eric [AG]

---

**From:** Engel, Cathy [LEGIS] <Cathy.Engel@legis.iowa.gov>  
**Sent:** Wednesday, January 04, 2017 2:51 PM  
**To:** Cmelik, Kevin [AG]; Tabor, Eric [AG]  
**Subject:** FW: 802 Language

Hi,

I talked with Joe McEniry and asked when a good time for a phone conversation would be among the three of us. He is gone tomorrow but will be in on Friday. Kevin, are you available Friday, around 2:00 or so for Joe and I to contact you by telephone? If not, we'll look for a different time. Thanks for doing this.

Cathy

---

**From:** Tabor, Eric [AG] [mailto:Eric.Tabor@iowa.gov]  
**Sent:** Wednesday, January 4, 2017 1:58 PM  
**To:** Engel, Cathy [LEGIS]  
**Cc:** Cmelik, Kevin [AG]  
**Subject:** 802 Language

Cathy – Here is the email we discussed. Thanks. Eric



**Eric Tabor**  
**Chief Deputy Attorney General**  
Office of the Attorney General of Iowa  
1305 E. Walnut St.  
Des Moines, Iowa 50319  
Main: (515) 281-5164 | Direct: (515) 281-5191  
Email: [Eric.Tabor@iowa.gov](mailto:Eric.Tabor@iowa.gov) | [www.iowaattorneygeneral.gov](http://www.iowaattorneygeneral.gov)

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---

**From:** McEniry, Joseph [LEGIS] [mailto:Joseph.Mceniry@legis.iowa.gov]  
**Sent:** Tuesday, January 03, 2017 3:07 PM  
**To:** Cmelik, Kevin [AG]  
**Subject:**

Kevin, I am working on a chapter 802 bill that lists you as a person who has authorization to discuss the bill. Below is part of the language submitted in the draft. What does "unknown" mean? Does it mean legal name, nickname, face? My other question is more practical, don't these two new subsections in 802 basically override most if not all limitations under Code chapter 802—is that your intent? If a person is known to the prosecuting attorney that person is

usually indicted? What criminal does not conceal their crime--very few—if they don't conceal their crime then usually indicted quickly?

Sec. \_\_\_\_ . Section 802.6, Code 2017, is amended by adding the following new subsections:

NEW SUBSECTION. 3. The time within which an indictment or information must be found shall not include the time during which the person committing the crime is unknown to the prosecuting attorney.

NEW SUBSECTION. 4. The time which an indictment or information must be found shall not include the time during which the accused person conceals evidence of the offense, and evidence sufficient to charge the person with that offense is unknown to the prosecuting attorney and could not have been discovered by that authority through the exercise of due diligence.

**Tabor, Eric [AG]**

---

**From:** Engel, Cathy [LEGIS] <Cathy.Engel@legis.iowa.gov>  
**Sent:** Tuesday, December 06, 2016 2:29 PM  
**To:** Cmelik, Kevin [AG]; Tabor, Eric [AG]  
**Subject:** Would you mind looking at this legislation?

SF 416 – unauthorized placement of a Global Positioning Device

Hi Kevin,

SF 416 was introduced during the previous General Assembly. It will probably be introduced once again and I have been asked to run it by the Attorney General's office to see if there are concerns with the bill as written. I am hoping that you would be willing to take a look at it and provide some feedback. (It's very short.) Thank you!

*Cathy*

Catherine Engel  
Senate Democratic Caucus Research Staff  
State Capitol  
Des Moines 50319  
(515) 281-8688

## Tabor, Eric [AG]

---

**From:** Epley, David [LEGIS] <Dave.Epley@legis.iowa.gov>  
**Sent:** Tuesday, November 15, 2016 4:43 PM  
**To:** Tabor, Eric [AG]  
**Subject:** FW: Interpretation Requested on General Fund Use of Athletic Equipment

Ok, Eric, here you go. Looks like we will have a bill to allow this.

Dave

---

**From:** Proesch, Nicole [IDOE] [mailto:Nicole.Proesch@iowa.gov]  
**Sent:** Tuesday, November 15, 2016 4:20 PM  
**To:** Epley, David [LEGIS]; Seivert, Shanlyn [IDOE]  
**Subject:** RE: Interpretation Requested on General Fund Use of Athletic Equipment

Hi Dave,

The Department has not changed its position on this question since you received an answer in September from Phil Wise. Here is the Student Activities Fund Guidance that is available on our website. The short answer is that our interpretation remains that the SAF should be used for the purchase of Protective Athletic Equipment for student activities.

<https://www.educateiowa.gov/sites/files/ed/documents/Student%20Activity%20Funds%20FAQ%20FINAL%203%2023%2016.pdf>

Nicole

---

**From:** Epley, David [LEGIS] [mailto:Dave.Epley@legis.iowa.gov]  
**Sent:** Wednesday, October 19, 2016 10:26 AM  
**To:** Seivert, Shanlyn [IDOE] <Shanlyn.Seivert@iowa.gov>; Proesch, Nicole [IDOE] <Nicole.Proesch@iowa.gov>  
**Subject:** Interpretation Requested on General Fund Use of Athletic Equipment

I just got off a conference call with the Attorney General's Office regarding the issue of if a school district is allowed to use their General Fund to purchase athletic equipment. A local school district provided Patti Ruff a 1992 AG opinion which states that it was allowed. However, in 1994, chapter 298A.8 was passed as part of the GAAP bill (see below).

298A.8 Student activity fund.

The student activity fund is a special revenue fund. A student activity fund must be established in any school corporation receiving money from student-related activities such as admissions, activity fees, student dues, student fund-raising events, or other student-related cocurricular or extracurricular activities. Moneys in this fund shall be used to support only the cocurricular program defined in department of education administrative rules.

94 Acts, ch 1029, §8

Referred to in §298A.15

My question to the AG was that this AG opinion touted by the district, was it mute with the 94 law passage? Essentially yes, was the answer, but they then questioned if the dept. had set in policy that a school district could not pay for athletic equipment with GF dollars.

The AG Office then told me that Nicole Proesch is coming fourth with an opinion on if it is allowed or not. **I would simply like to request that I be included on what that decision is.**

Prior to the district digging up a 1992 AG opinion, I had already requested a bill for Patti Ruff on this topic that could be debated in the 2017 session. I had also received clarification from the department on rules and guidance. I also have an e-mail from Jeff Berger explaining the dept. position or interpretation of those rules and guidance (which is complex), but that may be mute since he was recently fired.

I do not want to influence whatever the decision the dept. comes up with on the matter, but if you need the 1992 AG opinion on the matter, or Jeff Berger's interpretation, let me know.

Dave

## **Tabor, Eric [AG]**

---

**From:** Hogg, Rob [LEGIS] <Rob.Hogg@legis.iowa.gov>  
**Sent:** Monday, February 06, 2017 8:37 PM  
**To:** Tabor, Eric [AG]  
**Subject:** Religious Freedom Vote  
**Attachments:** Religious Freedom Roll Call.pdf

Eric –

Cathy looked up the vote on the federal law in 1993.

It was 97-3 in favor of it. Those who voted no were Jesse Helms, Robert Byrd, and Harlan Matthews of Tennessee who was the Democrat who filled in after Gore became Vice President.

In the House, the vote was apparently on a voice vote.

It looks to me like we can support this.

Rob

Senator Rob Hogg  
Senate Democratic Leader  
Cedar Rapids  
(515) 281-3901 (office)  
(515) 281-4610 (assistant)  
(319) 247-0223 (home)



## Tabor, Eric [AG]

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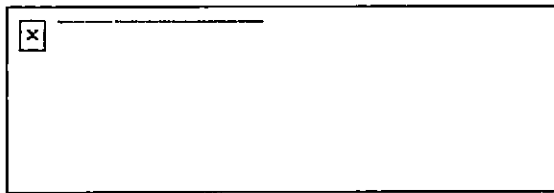
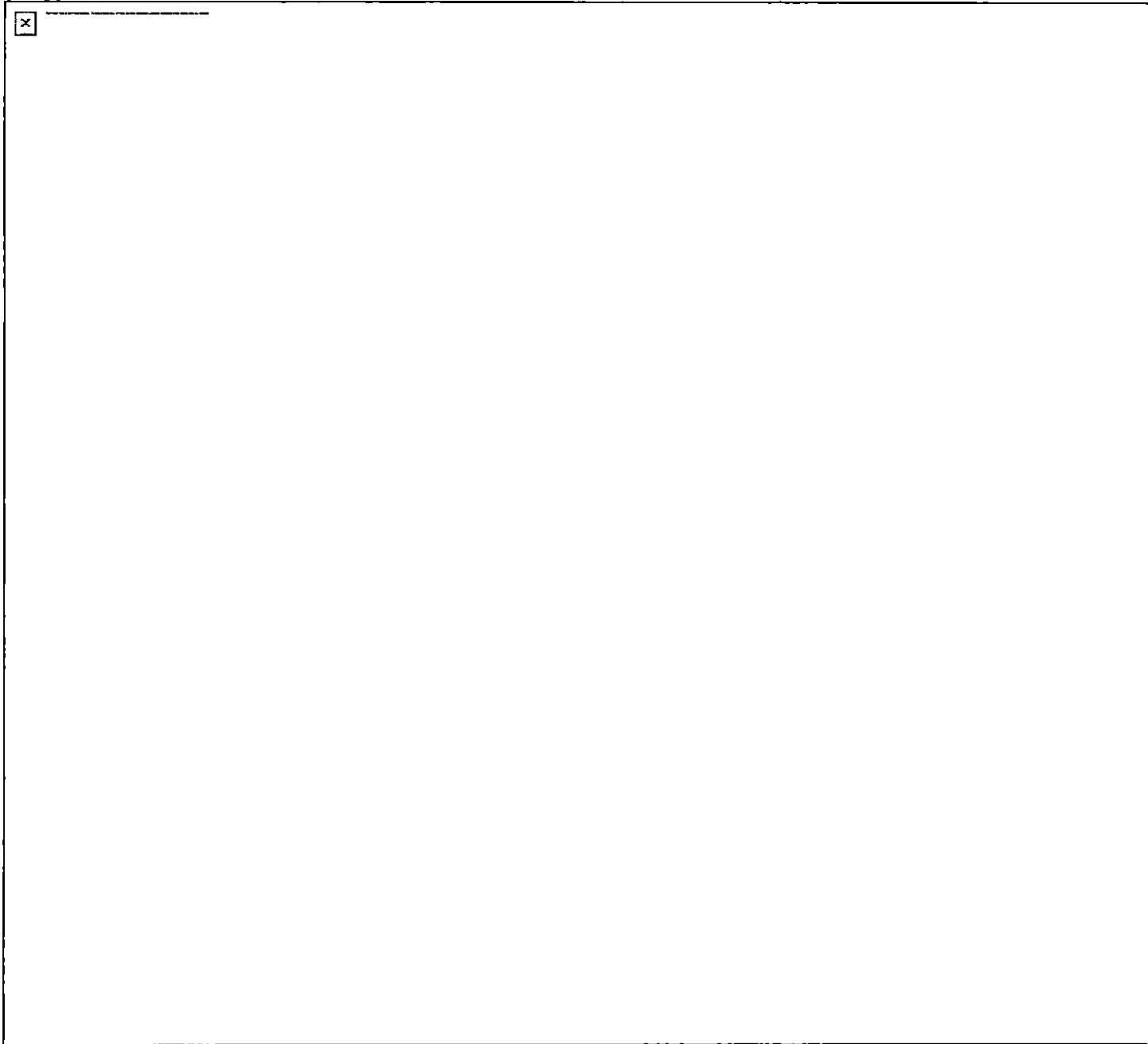
**From:** Mark Smith <bounce@bounce.myngp.com> on behalf of Mark Smith  
<house@iowademocrats.org>  
**Sent:** Wednesday, May 10, 2017 2:32 PM  
**To:** Tabor, Eric [AG]  
**Subject:** The republican impact on Iowa



Eric --

If there was ever any doubt of the negative impact republican politicians have on the lives of everyday Iowans just take a look at the headlines. Republican leaders, with bill after bill, continually attacked working families, women, and children.

**Let's resolve to end the republican majority in 2018. Put an end to republican power in Iowa - Chip in \$10 or more right now.**



GOP strips powers from public workers

Rod Boshart The Gazette More stories from Rod - <http://www.thegazette.com/subject/news/iowa-republicans-send-major-labor-law-rewrite-to-branstad-sped-up-process-used-to-pass-bill-in-senate-20170216>

Branstad signs bills limiting workers' compensation, blocking minimum wage hike

Brianne Pfannenstiel - <http://www.desmoinesregister.com/story/news/politics/2017/03/30/branstad-signs-bills-limiting-workers-compensation-blocking-minimum-wage-hikes/99819450/>

House committee passes 20-week abortion ban after contentious debate

Laura Terrell - <http://www.kcci.com/article/house-committee-members-nix-fetal-heartbeat-legislation/9204884>

ID requirement for Election Day voting in Iowa passes House

O. Henderson - <http://www.radioiowa.com/2017/03/09/id-requirement-for-election-day-voting-in-iowa-passes-house/>

Me

Medicaid firms spending less on care for Iowa's poor, disabled

Tony Leys - <http://www.desmoinesregister.com/story/news/health/2017/03/15/medicaid-firms-spending-less-care-iowas-poor-disabled/99213476/>

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Iowa Democratic Party  
5661 Fleur Drive  
Des Moines IA 50321 United States

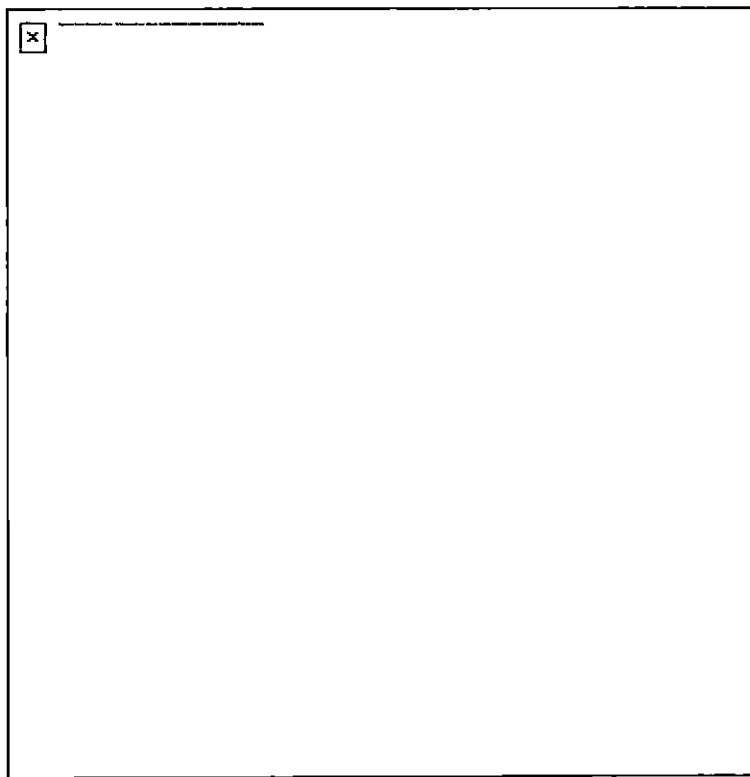
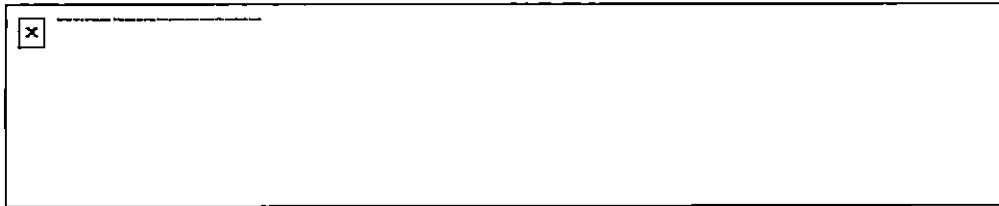
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**Tabor, Eric [AG]**

---

**From:** Mark Smith <bounce@bounce.myngp.com> on behalf of Mark Smith <house@iowademocrats.org>  
**Sent:** Wednesday, April 19, 2017 3:47 PM  
**To:** Tabor, Eric [AG]  
**Subject:** It starts with you



Eric, I wanted to make sure you saw [yesterday's article in Iowa Starting Line](#) announcing our new Iowa House Builders program.

After a legislative session marked by historic setbacks, Iowans are looking for ways to hold Republican legislators accountable and win back the Statehouse for Democrats. The Iowa House Builders Club is how we do that.

**"...This year Democrats aim to communicate early and often in targeted districts. To ensure funding for this approach, House Democrats are launching three new recurring donor club memberships." - Patrick Rynard, Iowa Starting Line**

Your House Builder membership is invaluable as we put together the resources to mount the kind of aggressive, comprehensive campaigns we need to win back the Iowa House next fall.

**Learn more about House Builders and how you can join by visiting**  
**[www.IowaHouse.org/HouseBuilders](http://www.IowaHouse.org/HouseBuilders)**

Mark Smith  
Iowa House Democratic Leader



Paid for by the Iowa House Truman Fund, a division of the Iowa Democratic Party

Iowa House Truman Fund  
5661 Fleur Drive  
Des Moines IA 50321 United States

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**Tabor, Eric [AG]**

---

**From:** Scott, Kerry [LEGIS] <kerry.scott@legis.iowa.gov>  
**Sent:** Thursday, December 01, 2016 3:53 PM  
**To:** Tabor, Eric [AG]  
**Cc:** Bakker, Eric [LEGIS]  
**Subject:** Code sec 338.6 /discrimatory rate fees  
**Attachments:** Untitled\_20161201\_165225.pdf

Eric --

I left you a voicemail regarding the attachments within this email.  
Sen. Hogg is seeking a formal AG opinion. Please assist.

Thanks, kerry

**Tabor, Eric [AG]**

---

**From:** Whitney, Jessica [AG]  
**Sent:** Thursday, May 25, 2017 9:40 AM  
**To:** Tabor, Eric [AG]  
**Subject:** FW: Paper

---

**From:** Whitney, Jessica [AG]  
**Sent:** Friday, March 10, 2017 2:58 PM  
**To:** 'Bill Brauch'  
**Subject:** RE: Paper

Seemingly slightly fewer complaints and not as many no pursues!

**From:** Bill Brauch [<mailto:billbrauch@gmail.com>]  
**Sent:** Friday, March 10, 2017 2:49 PM  
**To:** Whitney, Jessica [AG]  
**Subject:** Re: Paper

Thanks. Slim pickings these days, eh?

On Fri, Mar 10, 2017 at 2:44 PM, Whitney, Jessica [AG] <[Jessica.Whitney@iowa.gov](mailto:Jessica.Whitney@iowa.gov)> wrote:

That is really it for auto no-pursues. We had our meeting today with just 5 complaints, one of which we are not pursuing and advising the consumers to talk to their legislator about a remorse law.

Have a great weekend,

Jess

---

**From:** Bill Brauch [<mailto:billbrauch@gmail.com>]  
**Sent:** Thursday, March 09, 2017 10:39 PM  
**To:** Whitney, Jessica [AG]  
**Subject:** Re: Paper

Thanks. Knee is much better. As for no pursues, there was just 1 - came to me Feb. 10. Nothing since, at least not from Marti. Perhaps they are coming to me as part of what Rickie sends me?

Sent from my iPhone

On Mar 9, 2017, at 3:50 PM, Whitney, Jessica [AG] <[Jessica.Whitney@iowa.gov](mailto:Jessica.Whitney@iowa.gov)> wrote:

Bill,

I checked with Marti and you have received all of our no-pursues, meager as they are.

Sorry to hear about your knee, hopefully, it gets better!

Jess

**From:** Bill Brauch [<mailto:billbrauch@gmail.com>]  
**Sent:** Wednesday, March 08, 2017 3:49 PM  
**To:** Whitney, Jessica [AG]  
**Subject:** Re: Paper

Thanks! Saw the online story last night so I knew it'd be in the print version today. (More photos of us online - spent about an hour with the photographer on Friday - Karen and I made sure to get dressed first, no PJ's hah!) Didn't expect front page, but what the heck! Rachel is a bit embarrassed about it, but she'll live. All is mostly fine with us. Saw Cheryl this a.m. at Des Moines Orthopedic Surgeons office. She seems to be recovering well from the surgery she told me about today. Darned right knee of mine had an arthritis flare-up this weekend so was learning all about that this a.m. Couldn't put any weight on it Sunday evening. Mostly better now. Off to usual Spring Break Florida trip over the weekend. BTW, I have gotten only one auto complaint from Marti. I can't imagine you folks have had only one no-pursue going out in the last few weeks. But, maybe I'm wrong about that. Thought we'd be looking at these over a few weeks, maybe a month, to see if it was worth it for me to view them more frequently. So, could you please touch base with her just to make sure she understands what we're asking her to do? Much appreciated! Hope, you, Adam, and the kids are all well.

On Wed, Mar 8, 2017 at 3:31 PM, Whitney, Jessica [AG] <[Jessica.Whitney@iowa.gov](mailto:Jessica.Whitney@iowa.gov)> wrote:

I saw you and Rachel in the paper today! Way to advocate for smart start times.

Hope all is well.

Jess



## Tabor, Eric [AG]

---

**From:** Whitney, Jessica [AG]  
**Sent:** Thursday, May 25, 2017 9:41 AM  
**To:** Tabor, Eric [AG]  
**Subject:** FW: Your call

-----Original Message-----

**From:** Whitney, Jessica [AG]  
**Sent:** Friday, November 18, 2016 4:10 PM  
**To:** 'Bill Brauch'  
**Subject:** RE: Your call

Okay. Thanks! Good luck to your Mom!

-----Original Message-----

**From:** Bill Brauch [<mailto:billbrauch@gmail.com>]  
**Sent:** Friday, November 18, 2016 2:47 PM  
**To:** Whitney, Jessica [AG]  
**Subject:** Your call

Hi: I'm at a surgical center in WI w/ my mom. She is Having foot surgery. Not a big deal, but here to help for a few days b4 Karen & Rachel get here for Thksgvng. Phone battery is near dead. Will call when back to Mom's & can plug in.

Sent from my iPhone

## Tabor, Eric [AG]

---

**From:** Whitney, Jessica [AG]  
**Sent:** Thursday, May 25, 2017 9:40 AM  
**To:** Tabor, Eric [AG]  
**Subject:** FW: Paper

---

**From:** Whitney, Jessica [AG]  
**Sent:** Friday, March 10, 2017 2:45 PM  
**To:** 'Bill Brauch'  
**Subject:** RE: Paper

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Have a great weekend,  
Jess

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**Subject:** Re: Paper

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I saw you and Rachel in the paper today! Way to advocate for smart start times.

Hope all is well.

Jess

## Greenwood, Geoff [AG]

---

**From:** Greenwood, Geoff [AG]  
**Sent:** Thursday, May 04, 2017 11:34 AM  
**To:** Blake, Nathan [AG]  
**Subject:** RE: 33 hits from Meltwater News

Yes. I added you to the list. You'll get an email every morning.

Stop by if you want your login name and password.

---

**From:** Blake, Nathan [AG]  
**Sent:** Thursday, May 04, 2017 8:08 AM  
**To:** Greenwood, Geoff [AG]  
**Subject:** Fwd: 33 hits from Meltwater News

Is this something we subscribe to?

----- Forwarded message -----

**From:** "[morningreport@meltwaternews.com](mailto:morningreport@meltwaternews.com)" <[morningreport@meltwaternews.com](mailto:morningreport@meltwaternews.com)>  
**Date:** Thu, May 4, 2017 at 8:03 AM -0500  
**Subject:** 33 hits from Meltwater News  
**To:** "Blake, Nathan [AG]" <[Nathan.Blake@iowa.gov](mailto:Nathan.Blake@iowa.gov)>

[Help Center](#) | [help@meltwater.com](mailto:help@meltwater.com)

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### Report Overview

AGENT	MEDIA TYPE	HITS
Iowa Attorney General	News	15 in 1 day
Tom Miller	News	7 in 1 day

Geoff Greenwood	News	1 in 1 day
Iowa Attorney General	  	7 in 1 day
Tom Miller	  	1 in 1 day
@AGIowa		2 in 1 day



## Iowa Attorney General

### Meyer case goes to jury

The Daily Iowan | 05/04/17 01:23

...public through the media. In summing up the state's defense, Iowa Assistant Attorney General George Carroll told jurors, This case is not about...

WORDS MATCHED Attorney General, Iowa

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### Prosecution witnesses testify in Tait Purk murder trial

TamaToledoNews.com | 05/04/17 00:00

...being prosecuted by Tama County Attorney Brent Heeren and Assistant Iowa Attorney General Laura Roan. Purk is represented by public defenders...

WORDS MATCHED Attorney General, Iowa



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### Des Moines speed cameras still issuing tickets, despite judge's ruling

The Des Moines Register | 05/03/17 20:16

...the court stay the judge's order while they appeal the case. Iowa Attorney General Tom Miller wrote in a motion that cities have no reason to...

WORDS MATCHED Attorney General, Iowa

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### Iowa GOP requests attorney general's documents on gubernatorial succession opinion

The Des Moines Register | 05/03/17 20:16

Iowa GOP requests attorney general's documents on gubernatorial succession opinion Republicans ramped up political pressure against Iowa Attorney...

WORDS MATCHED Attorney General, attorney general, Iowa

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### Grassley casts doubt on FBI credibility in political inquiries

KPVI News 6 | 05/03/17 19:30

[8 other sources...](#)

...by the Justice Department came in a letter dated Tuesday. The Iowa Republican wrote to Deputy Attorney General Rod Rosenstein, asking that he...

WORDS MATCHED Attorney General, Iowa

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## Former animal shelter director faces sentencing May 15

Oskaloosa | 05/03/17 19:05

*...in March was delayed, state prosecutors said. Scott Brown, an assistant attorney general with the state of Iowa, said Lindsey Nicole Sime, 30,*

WORDS MATCHED attorney general, Iowa

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## Editorial: Reynolds should listen to the attorney general

The Des Moines Register | 05/03/17 18:46

*Miller's ruling on Lt. governor succession 'absurd' RELATED: Iowa GOP requests attorney general's documents on gubernatorial succession opinion If that...*

WORDS MATCHED attorney general, Iowa

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## Former jail administrator charged with felony after allegedly stealing cash from inmates

The Muscatine Journal | 05/03/17 18:30

*admitted the amount should have been closer to \$30,000. Assistant Attorney General for the State of Iowa, Andrew Prosser, said he was asked to...*

WORDS MATCHED Attorney General, Iowa

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## University of Iowa discrimination case goes to jury

Sentinel-Tribune | 05/03/17 16:43

[33 other sources...](#)

*...public through the media. In summing up the state's defense, Iowa Assistant Attorney General George Carroll told jurors, "This case is not about..."*

WORDS MATCHED Attorney General, Iowa

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## BC-US--Iowa-Athletics Trial, 2nd Ld-Writethru, US

AP (Hosted) | 05/03/17 16:22

*...public through the media. In summing up the state's defense, Iowa Assistant Attorney General George Carroll told jurors, "This case is not about..."*

WORDS MATCHED Attorney General, Iowa

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## Obscure GOP-Based Regulatory Commission Might Determine Keystone's Fate

The Daily Caller | 05/03/17 14:50

*...the president of activist group Bold Alliance, which pushed Iowa's attorney general last year into investigating ExxonMobil following reports...*

WORDS MATCHED attorney general, Iowa

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## BC-US--Iowa-Athletics Trial, 1st-LdWritethru, US

AP (Hosted) | 05/03/17 14:14



*...public through the media. In summing up the state's defense, Iowa Assistant Attorney General George Carroll told jurors, "This case is not about..."*

### Jane Meyer lawsuit against University of Iowa goes to jury

TheGazette.com | 05/03/17 13:53

*...is not about Tracey Griesbaum, George Carroll, an assistant Iowa Attorney General representing the university, told the jury during his closing...*

WORDS MATCHED Attorney General, Iowa



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### Reynolds has constitutional authority to appoint lieutenant

TheGazette.com | 05/03/17 12:41

*...by law she absolutely cannot hold both offices at the same time. Attorney General Miller The law of Iowa is definite: when Lt. Governor Reynolds ...*

WORDS MATCHED Attorney General, Iowa

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### AP-IA--Iowa News Digest 1:30 pm, IA

AP (Hosted) | 05/01/17 13:35

*along with all updates. TOP STORIES: IOWA GOVERNOR-TRANSITION DES MOINES Iowa's attorney general says Lt. Gov. Kim Reynolds will not have the...*

WORDS MATCHED attorney general, Iowa

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Meltwater

## Tom Miller

### Guest: AG Miller's finding smacks of partisanship

Quad-City Times | 05/04/17 00:30

*...thinking more about the office of lieutenant governor ever since state Attorney General Tom Miller's surprising announcement. His surprise ? In...*

WORDS MATCHED Attorney General, attorney general, Tom Miller



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### Iowa Democrat Says Kim Reynolds Needs to Have Power to Choose Her Lieutenant

WHOTV.com | 05/03/17 21:01

*...doesn't allow her to then that law needs to change. On Monday Attorney General Tom Miller announced that Reynolds won't have the power to choose a...*

WORDS MATCHED Attorney General, Tom Miller

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The Des Moines Register | 05/03/17 20:16

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## Iowa GOP requests attorney general's documents on gubernatorial succession opinion

The Des Moines Register | 05/03/17 20:16

*Iowa GOP requests attorney general's documents on gubernatorial succession opinion Republicans ramped up political pressure against Iowa Attorney ...*

WORDS MATCHED Attorney General, attorney general, Tom Miller

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## Editorial: Reynolds should listen to the attorney general

The Des Moines Register | 05/03/17 18:46

*Editorial: Reynolds should listen to the attorney general Lt. Gov. Kim Reynolds has yet to assume the duties of Iowa's governor, but already ...*

WORDS MATCHED Attorney General, attorney general, Tom Miller

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## Reynolds has constitutional authority to appoint lieutenant

TheGazette.com | 05/03/17 12:41

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WORDS MATCHED Attorney General, Tom Miller

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## AP-IA--Iowa News Digest 1:30 pm, IA

AP (Hosted) | 05/01/17 13:35

*...updates. TOP STORIES: IOWA GOVERNOR-TRANSITION DES MOINES Iowa's attorney general says Lt. Gov. Kim Reynolds will not have the authority to appoint...*

WORDS MATCHED Attorney General, attorney general, Tom Miller

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**Geoff Greenwood**



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The Des Moines Register | 05/03/17 20:16



...and "respond pursuant to Iowa's open records law." Spokesman Geoff Greenwood defended the opinion as was based on the law rather than politics,

WORDS MATCHED Geoff Greenwood

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## Iowa Attorney General

### Congress Agrees To Give Jeff Sessions \$0 To Wage War On Medi...

zerohedge.com | 05/03/17 19:04

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**DMRegister** @DMRegister

05/03/17 17:30

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**The Governor's office accused Attorney General Tom Miller o.....**

05/03/17 16:33

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**desmoinesdaily** @desmoinesdaily

05/03/17 16:30

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**Trump Loses "Bigly" In The New Spending Bill**

jobsanger.blogspot.com | 05/03/17 15:42

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### Jane Meyer lawsuit against University of Iowa goes to jury |...

05/03/17 15:06

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### Congressional Protections For Legal State Medical Marijuana ...

blog.norml.org | 05/03/17 14:52

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## Tom Miller



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## @AGIowa



**jasonnobleDMR** @jasonnobleDMR

05/03/17 13:51

@IowaGOP @AGIowa 2 of the @AGIowa officials the @IowaGOP is asking for documents from are considering runs for sta... <https://t.co/xybHqFzD0>

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**ronmparker29** @ronmparker29

05/03/17 09:13

When @AGIowa issued opinion about the transition process that @KimReynoldsIA didn't like, the @IowaGOP establishment screamed: "Sexism."

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## Greenwood, Geoff [AG]

**From:** Blake, Nathan [AG]  
**Sent:** Thursday, May 04, 2017 8:08 AM  
**To:** Greenwood, Geoff [AG]  
**Subject:** Fwd: 33 hits from Meltwater News

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**From:** "morningreport@meltwaternews.com" <[morningreport@meltwaternews.com](mailto:morningreport@meltwaternews.com)>  
**Date:** Thu, May 4, 2017 at 8:03 AM -0500  
**Subject:** 33 hits from Meltwater News  
**To:** "Blake, Nathan [AG]" <[Nathan.Blake@iowa.gov](mailto:Nathan.Blake@iowa.gov)>

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AGENT	MEDIA TYPE	HITS
Iowa Attorney General	News	15 in 1 day
Tom Miller	News	7 in 1 day
Geoff Greenwood	News	1 in 1 day
Iowa Attorney General		7 in 1 day
Tom Miller		1 in 1 day
@AGIowa		2 in 1 day

### Meyer case goes to jury

The Daily Iowan | 05/04/17 01:23

*...public through the media. In summing up the state's defense, Iowa Assistant Attorney General George Carroll told jurors, This case is not about...*

WORDS MATCHED Attorney General, Iowa



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### Prosecution witnesses testify in Tait Purk murder trial

TamaToledoNews.com | 05/04/17 00:00

*...being prosecuted by Tama County Attorney Brent Heeren and Assistant Iowa Attorney General Laura Roan. Purk is represented by public defenders...*

WORDS MATCHED Attorney General, Iowa



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### Des Moines speed cameras still issuing tickets, despite judge's ruling

The Des Moines Register | 05/03/17 20:16

*...the court stay the judge's order while they appeal the case. Iowa Attorney General Tom Miller wrote in a motion that cities have no reason to...*

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WORDS MATCHED Attorney General, attorney general, Iowa

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### Grassley casts doubt on FBI credibility in political inquiries

KPVI News 6 | 05/03/17 19:30

[8 other sources...](#)

*...by the Justice Department came in a letter dated Tuesday. The Iowa Republican wrote to Deputy Attorney General Rod Rosenstein, asking that he...*

WORDS MATCHED Attorney General, Iowa



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### Former animal shelter director faces sentencing May 15

Oskaloosa | 05/03/17 19:05

*...in March was delayed, state prosecutors said. Scott Brown, an assistant attorney general with the state of Iowa, said Lindsey Nicole Sime, 30,*

WORDS MATCHED attorney general, Iowa

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## Editorial: Reynolds should listen to the attorney general

The Des Moines Register | 05/03/17 18:46

*Miller's ruling on Lt. governor succession 'absurd' RELATED: Iowa GOP requests attorney general's documents on gubernatorial succession opinion if that...*

WORDS MATCHED attorney general, Iowa

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## Former jail administrator charged with felony after allegedly stealing cash from inmates

The Muscatine Journal | 05/03/17 18:30

*admitted the amount should have been closer to \$30,000. Assistant Attorney General for the State of Iowa, Andrew Prosser, said he was asked to...*

WORDS MATCHED Attorney General, Iowa

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## University of Iowa discrimination case goes to jury

Sentinel-Tribune | 05/03/17 16:43

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*...public through the media. In summing up the state's defense, Iowa Assistant Attorney General George Carroll told jurors, "This case is not about..."*

WORDS MATCHED Attorney General, Iowa

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## BC-US--Iowa-Athletics Trial, 2nd Ld-Writethru, US

AP (Hosted) | 05/03/17 16:22

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WORDS MATCHED Attorney General, Iowa

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## Obscure GOP-Based Regulatory Commission Might Determine Keystone's Fate

The Daily Caller | 05/03/17 14:50

*...the president of activist group Bold Alliance, which pushed Iowa's attorney general last year into investigating ExxonMobil following reports...*

WORDS MATCHED attorney general, Iowa

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AP (Hosted) | 05/03/17 14:14

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TheGazette.com | 05/03/17 13:53

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TheGazette.com | 05/03/17 12:41

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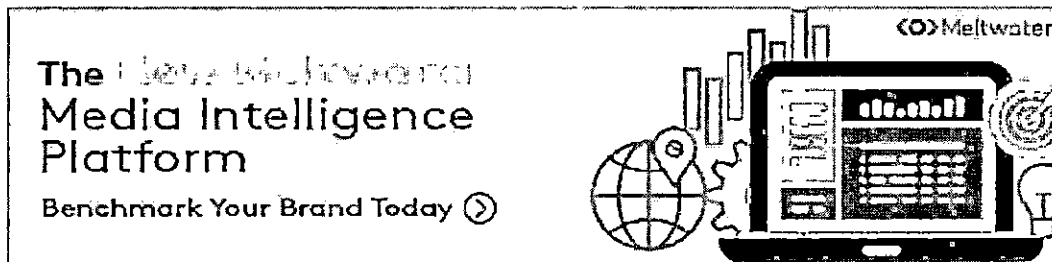
AP (Hosted) | 05/01/17 13:35


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WORDS MATCHED attorney general, Iowa

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**Tom Miller**

## Guest: AG Miller's finding smacks of partisanship

Quad-City Times | 05/04/17 00:30

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**Geoff Greenwood**

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## Iowa Attorney General



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zerohedge.com | 05/03/17 19:04

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### desmoinesdaily @desmoinesdaily

05/03/17 16:30

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jobsanger.blogspot.com | 05/03/17 15:42

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blog.norml.org | 05/03/17 14:52

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**@AGIowa**



**jasonnobleDMR** @jasonnobleDMR

05/03/17 13:51

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**ronmparker29** @ronmparker29

05/03/17 09:13

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## Greenwood, Geoff [AG]

---

**From:** Greenwood, Geoff [AG]  
**Sent:** Tuesday, December 20, 2016 5:54 PM  
**To:** desmoines dem  
**Subject:** RE: AG opinion on Reynolds as governor or "acting governor"

Laurie:

I appreciate your additional inquiry, but I think this office has sufficiently answered the broader questions about our legal position on the succession issue.

Best regards,

Geoff

---

**From:** desmoines dem [mailto:desmoinesdem@yahoo.com]  
**Sent:** Monday, December 19, 2016 7:55 AM  
**To:** Greenwood, Geoff [AG]  
**Subject:** Re: AG opinion on Reynolds as governor or "acting governor"

Geoff, sorry for the delay in circling back. Where does it say in Iowa Code that "the lieutenant governor, after taking office as governor, appoints a new lieutenant governor"? I see where the governor appoints a new LG if there is a vacancy in the LG position, but that says nothing about "the lieutenant governor, after taking office as governor."

In the Griffin case, Jeffrey Thompson told the Iowa Supreme Court that it was very significant Iowa lawmakers did not change the "infamous crimes" language when they amended the same part of the Iowa Constitution to remove the word "idiot." It strikes me as significant that lawmakers in the 1950s and 1980s did not change language referring to the LG performing the duties of the office of governor. They could have changed the wording to make it more like the US Constitution's language regarding the presidential succession, but they did not.

Why doesn't Attorney General Tom Miller want to ask the Iowa Supreme Court to weigh in on this issue? Doing so would allow the justices to provide a definitive interpretation of the Iowa Constitution. There is plenty of time for the justices to prepare an opinion. Governor Branstad does not intend to step down until he is confirmed as ambassador to China, which will take 4-8 months.

Thanks,

Laurie

On Tuesday, December 13, 2016 4:06 PM, "Greenwood, Geoff [AG]" <[Geoff.Greenwood@iowa.gov](mailto:Geoff.Greenwood@iowa.gov)> wrote:

Laurie:

Here's a little more explanation.

Notably, Iowa courts have never addressed this issue.

In all four historical cases of vacancies by Iowa governors, the lieutenant governor who succeeded the governor was viewed and regarded in all respects as the governor.

Our office carefully reviewed the Iowa Constitution.

A significant formal attorney general opinion from 1923 states that (in case of death, resignation or removal from office of the governor) the lieutenant governor becomes governor (I attached the opinion and highlighted the pertinent section on page 2).

Case law, statutory, and constitutional analyses from other states are consistent with this provision.

Finally, the Iowa Code supports this position. State law establishes that, the lieutenant governor, after taking office as governor, appoints a new lieutenant governor.

This research leads us to concur with Governor Branstad's conclusion that, upon his resignation, Lt. Governor Reynolds will become Governor. In her capacity as Governor, Governor Reynolds will have the authority to appoint a new lieutenant governor.

Geoff

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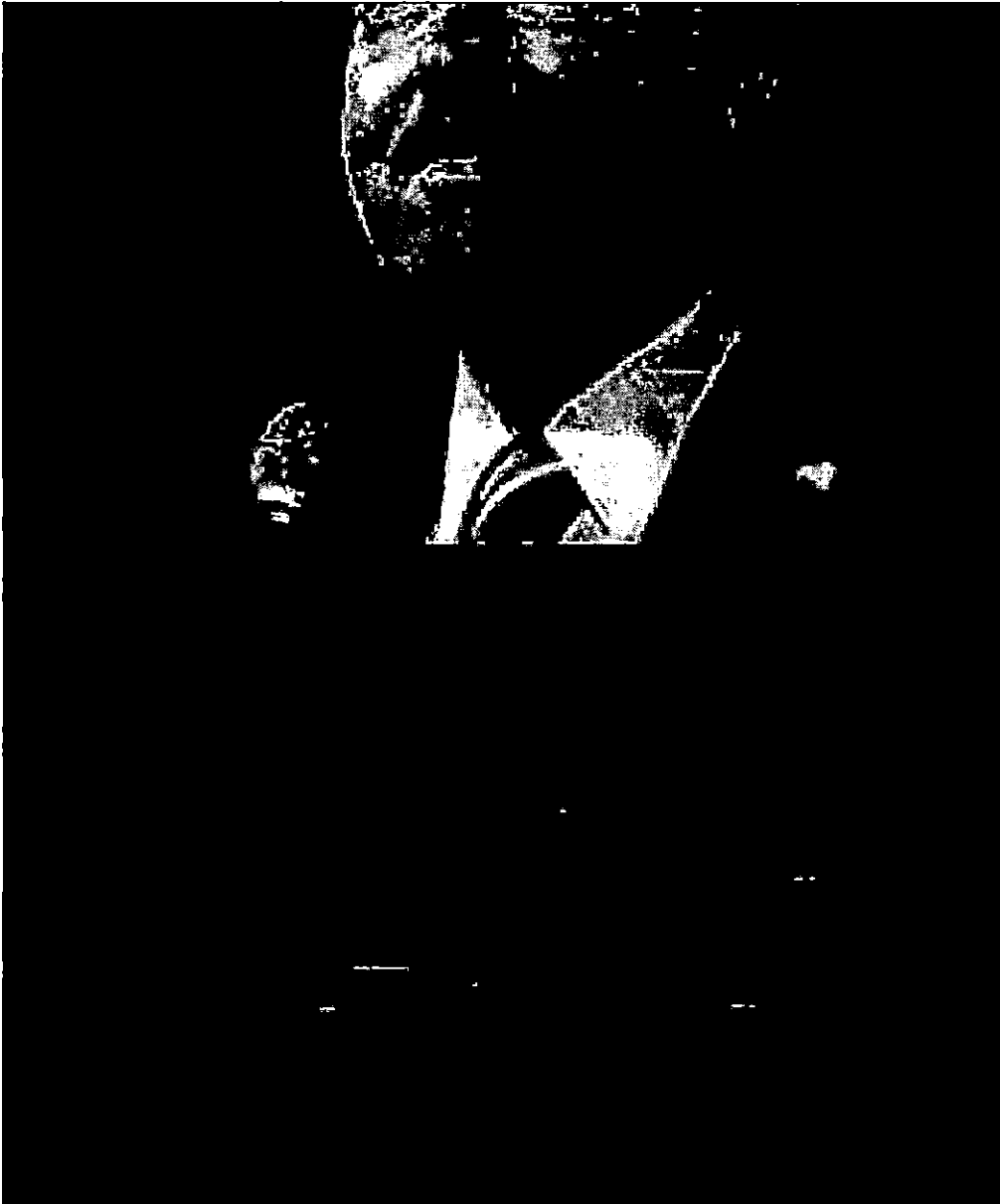
**From:** desmoines dem [<mailto:desmoinesdem@yahoo.com>]  
**Sent:** Monday, December 12, 2016 8:04 PM  
**To:** Greenwood, Geoff [AG]  
**Subject:** Re: AG opinion on Reynolds as governor or "acting governor"

Geoff, I'm seeking further explanation on the basis for that reading of the Iowa Constitution. Wouldn't the framers and lawmakers who later amended the text have said that the lieutenant governor would become the governor, instead of using phrases like, "The lieutenant governor, while acting as governor, shall be paid the compensation and expenses prescribed for the governor"?

Also, can Attorney General Miller explain why Joshua Newbold did not appoint a lieutenant governor during the nearly a year that he performed the duties of governor?

[List of Governors of Iowa - Wikipedia](#)





**List of Governors of Iowa - Wikipedia**

In Massachusetts, where the wording in the state constitution is similar, a lieutenant governor who assumed the duties of the governor under similar circumstances has been called "acting governor."

Laurie

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Thanks,

Geoff



**Geoff Greenwood**  
**Communications Director**  
Office of the Attorney General of Iowa  
1305 E. Walnut St.  
Des Moines, Iowa 50319  
Main: (515) 281-5164 | Direct: (515) 281-6699  
Email: [geoff.greenwood@iowa.gov](mailto:geoff.greenwood@iowa.gov) | [www.iowaattorneygeneral.gov](http://www.iowaattorneygeneral.gov)

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Thanks in advance for any information or clarification you can provide.

Yours,

Laurie Belin  
1705 Plaza Circle  
Windsor Heights, IA 50324  
(515) 276-6971

<http://www.bleedingheartland.com>

[As Branstad prepares for China, transfer of power process unfolds](#)







**As Branstad prepares for China, transfer of power process unfolds**

Iowa officials say they need more time to determine how governmental power is transferred to Lt. Gov. Kim Reynolds.

---

## Greenwood, Geoff [AG]

---

**From:** Greenwood, Geoff [AG]  
**Sent:** Monday, December 19, 2016 8:54 AM  
**To:** Tabor, Eric [AG]; Thompson, Jeff  
**Subject:** FW: AG opinion on Reynolds as governor or "acting governor"

---

**From:** desmoines dem [mailto:desmoinesdem@yahoo.com]  
**Sent:** Monday, December 19, 2016 7:55 AM  
**To:** Greenwood, Geoff [AG]  
**Subject:** Re: AG opinion on Reynolds as governor or "acting governor"

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In the Griffin case, Jeffrey Thompson told the Iowa Supreme Court that it was very significant Iowa lawmakers did not change the "infamous crimes" language when they amended the same part of the Iowa Constitution to remove the word "idiot." It strikes me as significant that lawmakers in the 1950s and 1980s did not change language referring to the LG performing the duties of the office of governor. They could have changed the wording to make it more like the US Constitution's language regarding the presidential succession, but they did not.

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Geoff

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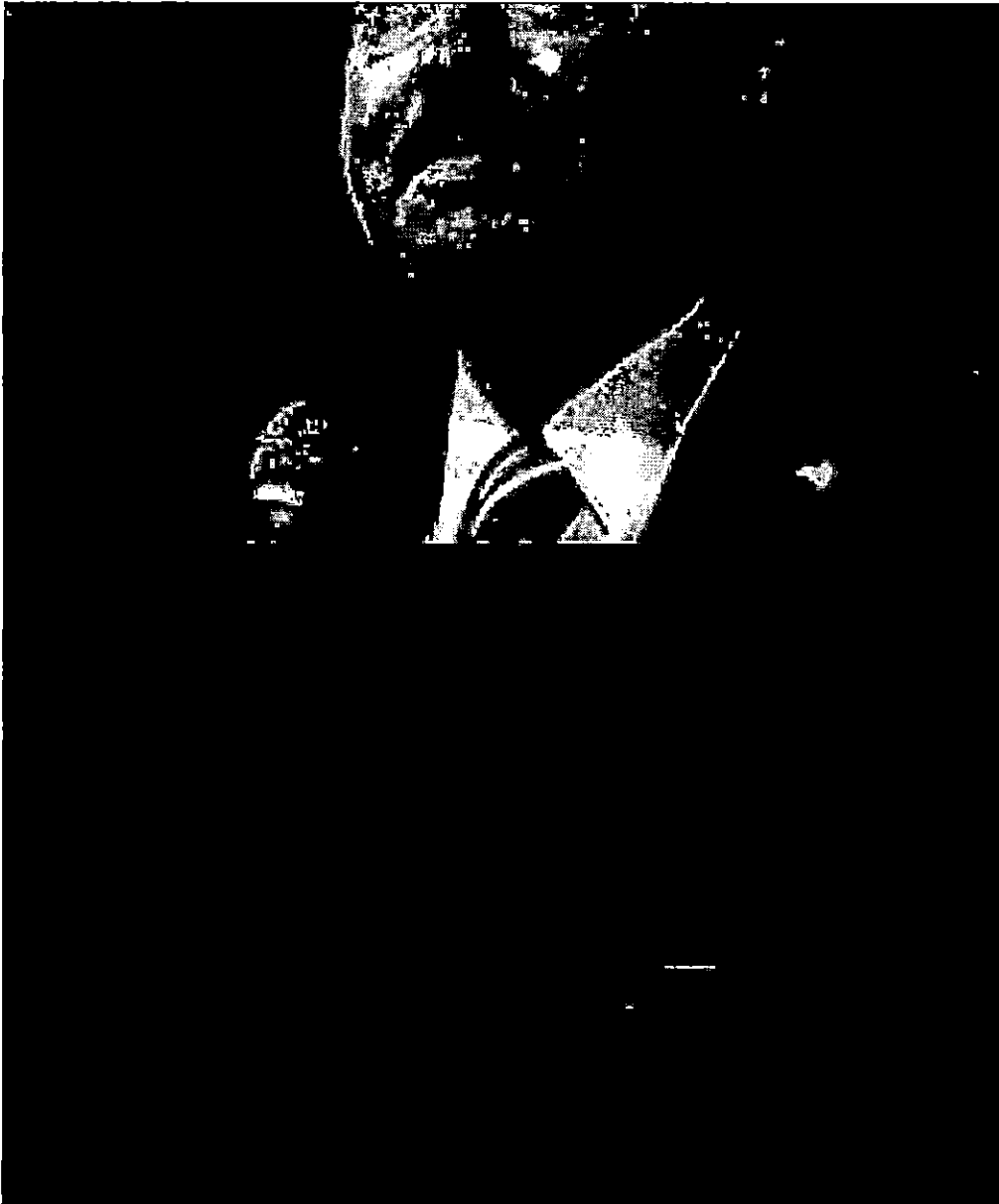
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[List of Governors of Iowa - Wikipedia](#)





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[As Branstad prepares for China, transfer of power process unfolds](#)





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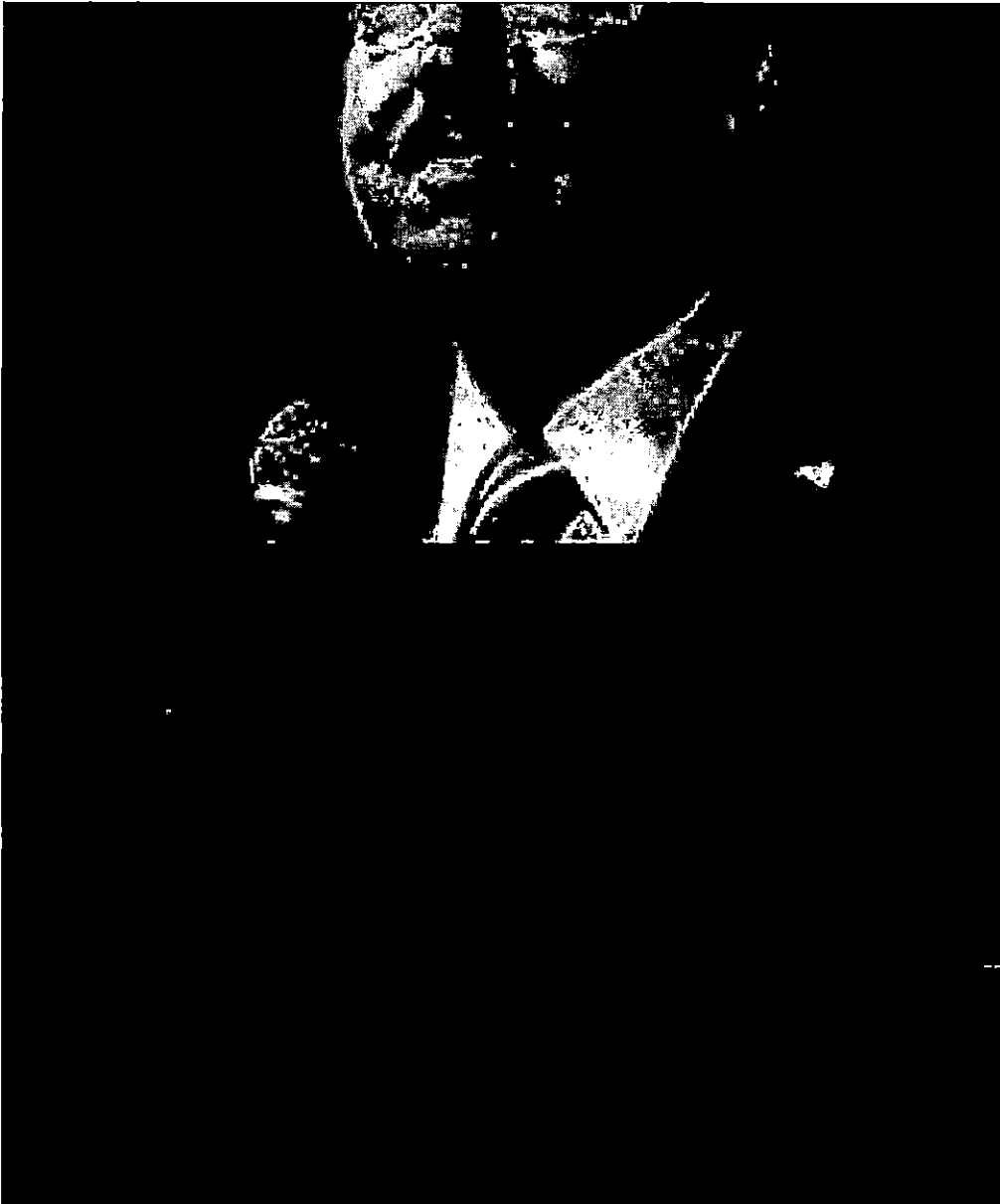
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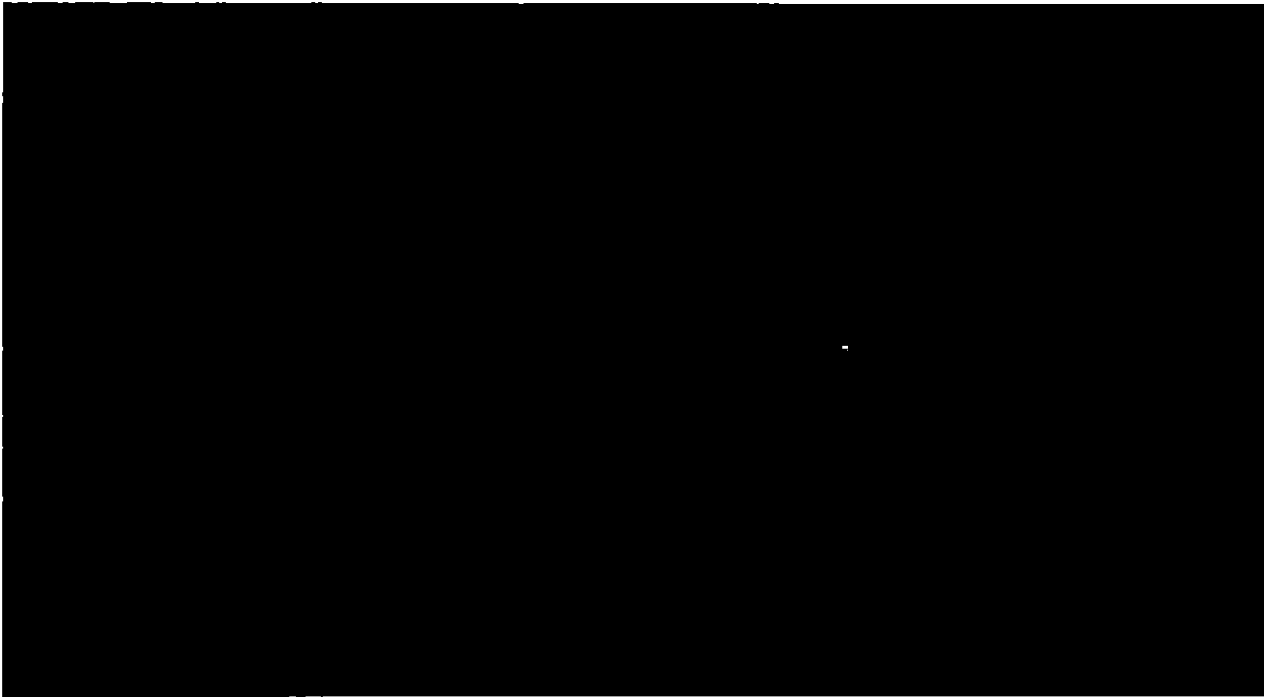
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[As Branstad prepares for China, transfer of power process unfolds](#)





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Iowa officials say they need more time to determine how governmental power is transferred to Lt. Gov. Kim Reynolds.

---

## Greenwood, Geoff [AG]

---

**From:** Mark O. Lambert <marklambert@mchsi.com>  
**Sent:** Monday, December 12, 2016 2:23 PM  
**To:** Greenwood, Geoff [AG]  
**Cc:** Tabor, Eric [AG]  
**Subject:** Re: Bleeding Heartland news/blog site on gubernatorial succession

Geoff and Eric,

FYI, a very astute comment on Laurie Belin's blog post by Darrell Hanson, longtime Republican (former) legislator:

Darrell Hanson I'm not an attorney or a constitutional scholar, so I don't know if the following is significant: Every time the Iowa constitution refers to someone taking over after the governor's position becomes vacant, whether it is the Lt. Gov., the President of the Senate, or the Speaker of the House, very similar language is used to refer to them as the person acting as governor, not as the new governor. In addition, the section Mark quoted (Article IV, section 17) that describes what happens when the governor resigns is the same section that describes what happens if a governor is temporarily disabled, and the same language applies to both situations. So it would seem to me that the same type of transfer of powers occurs under both circumstances. If a governor was temporarily disabled and the Lt. Gov. assumed the powers and duties of the governor during that time, nobody would argue that the Lt. Gov. position had become vacant. Since the same provision governs both a temporary assumption of power and a permanent assumption of power, I would assume the status of the Lt. Gov. office would be the same in both types of vacancies. But again, I'm not an attorney, so take those arguments for what they are worth.

Mark

---

**From:** "Geoff Greenwood [AG]" <Geoff.Greenwood@iowa.gov>  
**To:** "Mark O. Lambert" <marklambert@mchsi.com>, "Eric Tabor [AG]" <Eric.Tabor@iowa.gov>  
**Sent:** Monday, December 12, 2016 1:40:05 PM  
**Subject:** RE: Bleeding Heartland news/blog site on gubernatorial succession

Thanks, Mark.

Geoff

---

**From:** Mark O. Lambert [mailto:marklambert@mchsi.com]  
**Sent:** Monday, December 12, 2016 12:15 PM  
**To:** Greenwood, Geoff [AG]; Tabor, Eric [AG]  
**Subject:** Bleeding Heartland news/blog site on gubernatorial succession

Gents, just an FYI:

<http://www.bleedingheartland.com/2016/12/12/will-kim-reynolds-become-iowa-governor-or-merely-acting-governor/>

**Greenwood, Geoff [AG]**

---

**From:** Greenwood, Geoff [AG]  
**Sent:** Monday, December 12, 2016 1:40 PM  
**To:** Mark O. Lambert; Tabor, Eric [AG]  
**Subject:** RE: Bleeding Heartland news/blog site on gubernatorial succession

Thanks, Mark.

Geoff

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Mark



## Greenwood, Geoff [AG]

---

**From:** Greenwood, Geoff [AG]  
**Sent:** Friday, December 09, 2016 10:43 AM  
**To:** Hammes, Ben [IGOV]  
**Subject:** Channel 5

Ben,

Amanda Krenz just called asking for an interview about succession. I politely declined and let her know we're reviewing the law and are conferring with your office.

It's possible she may call over there. FYI.

Thanks,

Geoff



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## Greenwood, Geoff [AG]

---

**From:** Greenwood, Geoff [AG]  
**Sent:** Monday, February 27, 2017 1:18 PM  
**To:** Laura Belin  
**Subject:** RE: circling back

Laurie,

Our office is still working on it. I'll let you know when we have something available.

Thanks,

Geoff

**From:** Laura Belin [mailto:desmoinesdem@bleedingheartland.com]  
**Sent:** Monday, February 27, 2017 1:11 PM  
**To:** Greenwood, Geoff [AG]  
**Subject:** circling back

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**From:** Google Alerts <googlealerts-noreply@google.com>  
**Sent:** Thursday, May 04, 2017 8:34 AM  
**To:** Greenwood, Geoff [AG]  
**Subject:** Google Alert - "attorneys general"

### Google Alerts

## "attorneys general"

Daily update · May 4, 2017

#### NEWS

### Attorney general focused on drug crimes

Brookings Register

And we have the opportunity and we must do something about it." He added that the problem is nationwide.

America's states' attorneys general will be ...



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### Iowa GOP requests attorney general's documents on gubernatorial succession opinion

DesMoinesRegister.com

Specifically named in the records request are Nathan Blake and Rob Sand, both assistant **attorneys general** who have indicated interest in running for ...



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### Ted Cruz tries to derail FBI testimony on Trump/Russia by dredging up old discredited IRS "scandal"

Shareblue Media

Alleging without evidence that former **Attorneys General** Eric Holder and Loretta Lynch "stonewalled" that investigation, Cruz asked if the FBI was ...



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### Inherently Unreasonable Administrative Subpoenas Advance Police State, Violate the Constitution

CNSNews.com

They are issued by federal and state administrative agencies, **state attorneys general**, and even local government officials. They are "judgeless ...



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#### WEB

## How Well Does History Remember **Attorneys General**?

Above the Law

Who is the oldest living United States Attorney General? Hint: This person is 89 years old, and was appointed by a Democratic president. See the ...



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**From:** Google Alerts <googlealerts-noreply@google.com>  
**Sent:** Thursday, February 16, 2017 7:05 AM  
**To:** Greenwood, Geoff [AG]  
**Subject:** Google Alert - "attorneys general"

### Google Alerts

## "attorneys general"

Daily update · February 16, 2017

#### NEWS

### This Emoluments Thing Isn't Going Away

Slate Magazine

In an article last week, Shugerman laid out the theory that corporations are creatures of state law and that **attorneys general** have the authority to bring ...



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### Progressives Push New York Attorney General To Investigate Trump

OPB News

The coordinated legal strategy being developed by Schneiderman and other Democratic state **attorneys general** would be similar to what happened in ...



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### Lawmakers Expand Attorney General Powers to Resist Trump

U.S. News & World Report

It simply gives the attorney general the same powers to be able to sue the federal government as 41 other **attorneys general**. That's it."

Lawmakers expand attorney general powers to resist Trump - The Daily Progress

AG Frosh asks for \$1 million to exercise new powers - MarylandReporter.com

Full Coverage



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### New York attorney general reviewing request to bring action to dissolve Trump Organization

ThinkProgress

However, state **attorneys general** could hold Trump accountable through the legal system by filing lawsuits like the one Free Speech for People ...



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### Hri Kumar appointed Deputy Attorney-General

Channel NewsAsia

Justice Steven Chong Hornng Siong has been appointed Judge of Appeal, while one of two current Deputy Attorneys-General Tan Siong Thye has ...

3 new High Court appointments and new deputy Attorney-General: PMO - The Straits Times  
Full Coverage



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Faced with Vacancies, Trump Quietly Resets Justice Department Succession

GovExec.com

Obama, by contrast, had named as successors to the main attorneys general and deputies not Boente but the U.S. attorney for the District of Columbia ...



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Sources: Will new US Attorney General pursue Kitzhaber?

Portland Tribune

So far, the most effective opposition has come from the Democratic attorneys general in Washington and other states who have blocked Trump's ...



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United States: With CFPB's Future In Doubt, State AGs Prepare To Fight

Mondaq News Alerts (registration)

In the first of what are becoming regular clashes between Democratic state attorneys general and the new President, the attorneys general of ...



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People v. Cuiriz

The Recorder

Counsel for Plaintiff and Respondent: Kamala D. Harris and Xavier Becerra, Attorneys General, Gerald A. Engler, Chief Assistant Attorney General, ...



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10 State AGs Urge Senate To Reject Vessel Discharge Bill

Law360 (subscription)

Law360, New York (February 15, 2017, 8:52 PM EST) -- New York Attorney General Eric T. Schneiderman and nine other state attorneys general ...



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**From:** Google Alerts <googlealerts-noreply@google.com>  
**Sent:** Wednesday, January 25, 2017 7:06 AM  
**To:** Greenwood, Geoff [AG]  
**Subject:** Google Alert - "attorneys general"

### Google Alerts

## "attorneys general"

Daily update · January 25, 2017

#### NEWS

### 17 state **attorneys general** ask to defend CFPB; cite Trump

Fox Business

WASHINGTON – **Attorneys general** from 17 states are seeking to defend the U.S. consumer watchdog agency in court amid speculation that President ...

State **Attorneys General** Move to Intervene in PHH Matter - The National Law Review

State **attorneys general** move to protect consumer watchdog - The Providence Journal

State **Attorneys General** Defend CFPB Against Trump's Threats - Credit Union Times

Full Coverage



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### National coalition of **attorneys general** launches effort to stop embattled college accreditor

Washington Post

A group of six state **attorneys general**, including Maryland and the District's top prosecutors, want to stop one of the largest national accreditation ...



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### Navient Corp, Sallie Mae and Google Lawsuits: State **Attorneys General** January 23 Update

The National Law Review

On Wednesday, January 18, Illinois AG Lisa Madigan filed a lawsuit against Navient Corporation, certain Navient Corporation subsidiaries, and Sallie ...



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### DC attorney general urges the Senate to reject certain Trump nominees

Washington Post (blog)

Democratic **attorneys general** from five states joined Racine in the letter opposing Sessions. Eight Democratic **attorneys general** signed on to Racine's ...



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## State law-enforcement officials look to take on embattled college watchdog

MarketWatch

Six states **attorneys general**, including those from New York and Massachusetts, filed a motion Tuesday to intervene in a lawsuit filed by the ...



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## Democratic-led states battle Trump over consumer financial agency

The Fiscal Times

**Attorneys general** from 16 states plus the District of Columbia filed papers with a federal appeals court seeking to intervene in the case. That court ...



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## The best man to advise the Govt on the law

The Straits Times

**Attorneys-general** have been appointed in unusually regular succession in the last 11 years - six including an acting attorney-general - compared to ...



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## People v. Garcia

The Recorder

... Assistant Attorney General, Barry Carlton, Warren Williams and Lynne G. McGinnis, Deputy **Attorneys General**, for Plaintiff and Respondent.



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## BC-NC--North Carolina News Digest, NC

Richmond County Daily Journal

The **attorneys general**, all Democrats, said in a court filing Monday they have "a vital interest in defending an independent and effective" Consumer ...



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## BLOGS

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## Dem **Attorneys General** Rally Around CFPB'S Richard Cordray

Plunderbund

Like political cavalry coming to the rescue, Democratic **Attorneys General** from 16 states and the District of Columbia want to defend the agency and its ...




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### Google Alerts

## "attorneys general"

Daily update · January 4, 2017

#### NEWS

### State Attorneys General press Trump to keep Obama renewables plan

Renewable Energy Magazine

Democratic attorneys general from 15 states have sent a letter to President-elect Donald Trump asking him not to toss President Barack Obama Clean ...



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### Lawmakers push for NH attorney general to be elected, not appointed

Seacoastonline.com

Instead of attorneys general being appointed by the sitting governor and the governor's Executive Council, according to the suggested amendment, ...



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### State attorneys general tell Trump to keep Clean Power Plan

Midwest Energy News

WIND: President-elect Donald Trump sent a series of letters to Scotland's former first minister, alleging wind farms would "ruin" the country's coasts.



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### Treasury Nominee Steve Mnuchin's Bank Accused of "Widespread Misconduct" in Leaked Memo

The Intercept

"Because it would have been impossible for OneWest to sign the instruments before it became an operational bank," four deputy attorneys general ...

Report fuels questions about Mnuchin role in foreclosure crisis - Politico (blog)

Mnuchin's Bank Broke Foreclosure Rules, Leaked AG's Memo Says - Bloomberg

Full Coverage



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### Ex-Gov. Patrick Urges US Senate Committee To Reject Attorney General

## Nominee Sessions

WBUR

Charles Grassley, has also received letters of support from the Major Cities Chiefs Association, a group of former **attorneys general** and deputy ...



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## Former ITT Tech students fight for some money in the company's bankruptcy case

Los Angeles Times

Creditors, federal regulators, **state attorneys general** and jilted employees of ITT Educational Services Inc. have laid claim to the remaining assets of ...



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## With Trump as president, states must be more vigilant about clean air

Allentown Morning Call

... author on a rebuttal letter signed by Democratic **attorneys general** in 15 states, plus four cities and counties, asking the president-elect to save it.



Flag as irrelevant

## Morning Reads: GOP Goes After Ethics Watchdog

BillMoyers.com

Now, as the Trump administration looms, it seems as if Democratic **state attorneys general** could be central to keeping the climate fight moving forward ...



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## Alan Wilson: Supreme Court Should Clarify SC Succession

FITSNNews

... its decision," and for acknowledging that "our **state attorneys general** have, in the past, provided conflicting legal opinions on this succession issue."



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## Trump EPA Pick Labeled 'Climate Denier,' But There's No Evidence He Denied Climate Change

Daily Caller

Pruitt's column criticized a group of Democratic **attorneys general** investigating ExxonMobil and conservative think tanks for opposing federal climate ...




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**Subject:** Google Alert - "Iowa Attorney General"

### Google Alerts

## "Iowa Attorney General"

Daily update - May 4, 2017

#### NEWS

### Iowa GOP requests attorney general's documents on gubernatorial succession opinion

DesMoinesRegister.com

Republicans ramped up political pressure against Iowa Attorney General Tom Miller on Wednesday, in the aftermath of his office's finding that Lt. Gov.



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### Jane Meyer lawsuit against University of Iowa goes to jury

The Gazette: Eastern Iowa Breaking News and Headlines

"This case is not about Tracey Griesbaum," George Carroll, an assistant Iowa Attorney General representing the university, told the jury in his closing ...



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**To:** Greenwood, Geoff [AG]  
**Subject:** Google Alert - "Iowa Attorney General"

### Google Alerts

## "Iowa Attorney General"

Daily update · May 2, 2017

#### NEWS

### Attorney General opinion on succession is reversal of December statement

KCCI Des Moines

**Iowa Attorney General** Tom Miller on Monday released a formal attorney general opinion regarding gubernatorial succession. KCCI | Updated: 6:23 ...

Attorney General Concludes Reynolds Can't Appoint Lt. Gov.; Republicans Cry Foul - Iowa Public Radio

AG rules Reynolds can't pick lieutenant governor - DesMoinesRegister.com

Legal opinion adds unexpected twist to Branstad succession - The Gazette: Eastern Iowa Breaking News

and Headlines

Full Coverage



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### Attorney General: New Iowa governor won't have power to pick lie - KWWL -

Eastern Iowa Breaking ...

kwwl.com

**Iowa's attorney general** says Lt. Gov. Kim Reynolds will not have the authority to appoint a lieutenant governor when she replaces Gov. Terry Branstad ...



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### Update: Iowa AG says Reynolds can't appoint replacement

Mason City Globe Gazette

**Iowa Attorney General** Tom Miller speaks Feb. 9 at a news conference at the Justice Department in

Washington. In a legal opinion Monday, Miller ...

Miller: Reynolds has no power to appoint replacement - Quad City Times

Full Coverage



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### AG: New Iowa governor won't have power to pick lieutenant

Quad City Times

FILE - In this Feb. 9, 2012, file photo, **Iowa Attorney General** Tom Miller speaks at a news conference at the Justice Department in Washington.



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## AG declines to pursue petition to remove Muscatine council

Muscatine Journal

The **Iowa Attorney General** will not take action on a petition to remove the Muscatine City Council over allegations they acted improperly during the ...



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## Double standard? University of Iowa volleyball coach not fired after parent complaints of verbal ...

The Gazette: Eastern Iowa Breaking News and Headlines

asked George Carroll, an assistant **Iowa Attorney General** representing the UI. "Not while she was there," Heller said. "I got it within a few months after ...



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**To:** Greenwood, Geoff [AG]  
**Subject:** Google Alert - "Iowa Attorney General"

### Google Alerts

## "Iowa Attorney General"

Daily update · March 7, 2017

#### NEWS

### Iowa Capitol Digest: Branstad hopes to be US-China 'go-between'

Quad City Times

**RESPONSE COMING:** The Iowa Attorney General's Office is preparing a response to questions an Iowa senator raised about the succession of Gov.



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### I9 investigation finds there are 4265 untested rape kits in Iowa, oldest dates back to 1992

KCRG

DES MOINES, Iowa (KCRG-TV9) -- In a report expected to be released Tuesday, the Iowa Attorney General's office will unveil the number of untested ...



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**To:** Greenwood, Geoff [AG]  
**Subject:** Google Alert - "Iowa Attorney General"

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**"Iowa Attorney General"**

Daily update · February 8, 2017

NEWS

**Iowa attorney general joins other state AGs in opposing immigration ban executive order**

WQAD.com

DES MOINES, Iowa (WHO-TV) — On Monday, Iowa Attorney General Tom Miller joined 15 state attorneys general in support of the Washington state ...



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**Iowa Politics Today: Iowa attorney general joins other AGs in immigration lawsuit**

The Gazette: Eastern Iowa Breaking News and Headlines

QUESTION OF SUCCESSION: A lawmaker's request for an Iowa attorney general's opinion on how and whether a lieutenant governor is replaced if ...



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**Purk murder trial date is reset to May 1**

Tama News-Herald - Toledo Chronicle

The case is being prosecuted by Assistant Iowa Attorney General Laura Roan and Tama County Attorney Brent Heeren. Purk is represented by Aaron ...




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**"Tom Miller" "attorney general"**

Daily update · May 4, 2017

NEWS

Iowa GOP requests **attorney general's** documents on gubernatorial succession opinion

DesMoinesRegister.com

Republicans ramped up political pressure against Iowa **Attorney General Tom Miller** on Wednesday, in the aftermath of his office's finding that Lt. Gov.

Editorial: Reynolds should listen to the **attorney general** - DesMoinesRegister.com

Guest: AG Miller's finding smacks of partisanship - Quad City Times

Full Coverage



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### Google Alerts

## "Tom Miller" "attorney general"

Daily update · May 3, 2017

### NEWS

#### Miller might be wrong, but he's no political pawn

The Gazette: Eastern Iowa Breaking News and Headlines (blog)

Iowa Attorney General Tom Miller holds a news conference Monday, May 1, 2017, to announce his legal opinion that Lt. Gov. Kim Reynolds will serve ...

Democratic AG says new Republican governor won't have power to appoint a new lieutenant - The Daily Nonpareil

Miller's ruling on lt. governor succession 'absurd' - DesMoinesRegister.com

Succession question over Lt. Gov Kim Reynolds could end up in court - The Gazette: Eastern Iowa Breaking

News and Headlines

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#### Treasurer raises questions about paying Iowa's bills; GOP disputes claims

DesMoinesRegister.com

He pointedly made a reference to a formal legal opinion issued Monday by Iowa Attorney General Tom Miller, a Democrat, which concluded Reynolds ...




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#### "Tom Miller" "attorney general"

Daily update · May 2, 2017

##### NEWS

#### **Attorney General** opinion on succession is reversal of December statement

KCCI Des Moines

Iowa Attorney General Tom Miller on Monday released a formal attorney general opinion regarding gubernatorial succession. KCCI | Updated: 6:23 ...

AG rules Reynolds can't pick lieutenant governor - DesMoinesRegister.com

Attorney General: New Iowa governor won't have power to pick lieutenant - KWQC-TV6

Legal opinion adds unexpected twist to Branstad succession - The Gazette: Eastern Iowa Breaking News and Headlines

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#### Miller: Reynolds has no power to appoint replacement

Quad City Times

Iowa Attorney General Tom Miller announces at a news conference Monday that his legal opinion is that Lt. Gov. Kim Reynolds will serve as governor ...

Update: Iowa AG says Reynolds can't appoint replacement - Mason City Globe Gazette

Full Coverage



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#### AG: New Iowa governor won't have power to pick lieutenant

Quad City Times

FILE - In this Feb. 9, 2012, file photo, Iowa Attorney General Tom Miller speaks at a news conference at the Justice Department in Washington.



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#### Sioux City Journal

Sioux City Journal

Terry Branstad when he leaves office, but she won't have the power to appoint her own replacement,

Attorney General Tom Miller said on Monday.



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**Attorney General: New Iowa governor won't have power to pick lie - KWWL - Eastern Iowa Breaking ...**

kwwl.com

Democratic Attorney General Tom Miller says in an opinion Monday that Reynolds will become the acting governor when Branstad resigns to become ...



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**Photo by Jimmy Emerson, DVM**

KMAIand

(Des Moines, IA) -- Iowa Attorney General Tom Miller says Kim Reynolds won't have a lieutenant governor when she takes the top statewide office.



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### Google Alerts

#### "Tom Miller" "attorney general"

Daily update - February 7, 2017

#### NEWS

##### **Attorney General Tom Miller joins lawsuit against President Trump's immigration order**

kwwl.com

**Attorney General Tom Miller** today joined 15 state attorneys general in an amicus, or friend of the court, brief in support of the states of Washington and ...

Iowa **Attorney General** Joins Support of Lawsuit Against Executive Order on Immigration - whotv.com

Miller joins Attorneys General supporting Washington State lawsuit against President's immigration ... -

KCRG

IA AG joins fight over federal immigration restrictions - KIMT 3

Full Coverage



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##### **Branstad: State constitution clear on governor succession**

Mason City Globe Gazette


**FRIEND OF THE COURT: Attorney General Tom Miller** today joined 15 state attorneys general in a friend of the court brief in support of the states of ...



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**To:** Greenwood, Geoff [AG]  
**Subject:** Google Alert - "Tom Miller" "attorney general"

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## "Tom Miller" "attorney general"

Daily update · February 2, 2017

### NEWS

#### Lawmaker raises legal questions about Branstad-Reynolds' transition

DesMoinesRegister.com

An Iowa legislator is asking **Attorney General Tom Miller** for an official legal opinion regarding the constitutionality of Gov. Terry Branstad's plans to ...

Senator asks: will Reynolds get title of governor when Branstad leaves? - Radio Iowa

Senator asks for clarity on Iowa lieutenant governor succession - Cherokee Tribune Ledger News

STATE SENATOR CHALLENGES IF REYNOLDS CAN BECOME GOVERNOR - KSCJ

Full Coverage



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#### Democratic attorneys general in 4 states challenge Trump

Bristol Press

FILE - In this March 21, 2016, file photo, New York **Attorney General Eric ... Iowa Attorney General Tom Miller** told the AP that protecting the office is a ...

3 states: Democratic attorneys general challenge Trump on immigration ban - Frederick News Post

(subscription)

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#### Officials spar over refugee proposal

The Daily Iowan

**Attorney General Tom Miller** (a Democrat) said this is a troublesome policy because the United States is working with Iraqis on the ground in the fight ...



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## Greenwood, Geoff [AG]

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**From:** Greenwood, Geoff [AG]  
**Sent:** Wednesday, December 07, 2016 11:43 AM  
**To:** Gannon, Matt [AG]  
**Subject:** RE: Gov succession steps doc

Thanks, Matt.

Geoff

---

**From:** Gannon, Matt [AG]  
**Sent:** Wednesday, December 07, 2016 11:30 AM  
**To:** Greenwood, Geoff [AG]; Thompson, Jeffrey [AG]  
**Subject:** Gov succession steps doc



**Matthew L. Gannon**  
**Assistant Attorney General**  
Office of the Attorney General of Iowa  
1305 E. Walnut St.  
Des Moines, Iowa 50319  
Main: (515) 281-5164 | Direct: (515) 281-4951  
Email: [matt.gannon@iowa.gov](mailto:matt.gannon@iowa.gov) | [www.iowaattorneygeneral.gov](http://www.iowaattorneygeneral.gov)

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## Greenwood, Geoff [AG]

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**From:** Gannon, Matt [AG]  
**Sent:** Wednesday, December 07, 2016 11:30 AM  
**To:** Greenwood, Geoff [AG]; Thompson, Jeffrey [AG]  
**Subject:** Gov succession steps doc  
**Attachments:** Gov succession steps.docx



**Matthew L. Gannon**  
**Assistant Attorney General**  
Office of the Attorney General of Iowa  
1305 E. Walnut St.  
Des Moines, Iowa 50319  
Main: (515) 281-5164 | Direct: (515) 281-4951  
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1. Resignation of the Governor – Must be made in writing to the General Assembly, if in session, if not, to the Secretary of State. Iowa Code § 69.4(1).
2. Upon resignation, the Office of Governor is considered vacant. § 69.2(1)(d).
3. The vacancy is filled by the Lieutenant Governor. Iowa Const. Art. IV, Sec. 17 (“In the case of the death, impeachment, resignation . . . of the governor, the powers and duties of the office for the residue of the term, . . . shall devolve upon the lieutenant governor.”)
4. Once the Lt. Governor becomes governor, it creates a vacancy in the Lt. Governor’s office because of the prohibition against simultaneously holding more than one elective office. See Iowa Code § 69.2(1)(h).
5. In general, vacancies in state offices are filled by the governor. § 69.8(2).
6. The Code specifically provides, “an appointment by the governor to fill a vacancy in the office of the lieutenant governor shall be for the balance of the unexpired term.” § 69.8(2).

Accordingly, a resignation by Gov. Branstad would create a vacancy that would be filled by Lt. Gov. Reynolds. Once she assumed the office of Governor, a vacancy would be created in the Lt. Governor’s office. The governor has the power and authority to appoint a new Lt. Governor who would serve for the balance of the Branstad/ Reynolds term.

We have reviewed for any relevant case law or Attorney General Opinions, and have not found any that would alter the above analysis.

## **Greenwood, Geoff [AG]**

---

**From:** roxlaird@mchsi.com  
**Sent:** Monday, December 19, 2016 10:53 AM  
**To:** Greenwood, Geoff [AG]  
**Subject:** RE: governor succession

Jeff:

Thanks for getting back to me. I will let you know if I have other questions.

- Rox

---

**From:** Greenwood, Geoff [AG]  
**Sent:** Monday, December 19, 2016 9:47 AM  
**To:** roxlaird@mchsi.com  
**Subject:** RE: governor succession

Hi Rox:

That was a fun event.

Thanks for the reminder. Here's our thinking on succession:

Notably, Iowa courts have never addressed this issue.

In all four historical cases of vacancies by Iowa governors, the lieutenant governor who succeeded the governor was viewed and regarded in all respects as the governor.

Our office carefully reviewed the Iowa Constitution.

A significant formal attorney general opinion from 1923 states that (in case of death, resignation or removal from office of the governor) the lieutenant governor becomes governor (I attached the opinion and highlighted the pertinent section on page 2).

Case law, statutory, and constitutional analyses from other states are consistent with this provision.

Finally, the Iowa Code supports this position. State law establishes that, the lieutenant governor, after taking office as governor, appoints a new lieutenant governor.

This research leads us to concur with Governor Branstad's conclusion that, upon his resignation, Lt. Governor Reynolds will become Governor. In her capacity as Governor, Governor Reynolds will have the authority to appoint a new lieutenant governor.

Hopefully that helps clear things up.

Geoff

---

**From:** roxlaird@mchsi.com [mailto:roxlaird@mchsi.com]

**Sent:** Sunday, December 18, 2016 4:10 PM

**To:** Greenwood, Geoff [AG]

**Subject:** governor succession

Geoff:

Good to see you and visit the other night at the Coleman-Quiner soiree.

Following up on our conversation about the succession of governor to Lt. governor, could you send me that AG's opinion you mentioned, or a link if that is easier?

Otherwise, have a great holiday, Geoff.

- Rox

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**Attachments:** 1923 Op Atty Gen 263.pdf

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Otherwise, have a great holiday, Geoff.

- Rox

**Greenwood, Geoff [AG]**

---

**From:** Amanda Krenz <AKrenz@weareiowa.com>  
**Sent:** Wednesday, April 26, 2017 1:53 PM  
**To:** Greenwood, Geoff [AG]  
**Subject:** Re: Governor transistion

Thanks, Geoff!

---

**From:** Greenwood, Geoff [AG] <Geoff.Greenwood@iowa.gov>  
**Sent:** Wednesday, April 26, 2017 1:49:12 PM  
**To:** Amanda Krenz  
**Subject:** RE: Governor transistion

Hi Amanda,

On Feb 1, Sen. Johnson requested a formal Attorney General opinion on some questions regarding succession. AG Miller will issue a formal opinion, which is in its final draft stages and will be released publicly when it's ready.

Thanks,

Geoff

---

**From:** Amanda Krenz [mailto:AKrenz@weareiowa.com]  
**Sent:** Wednesday, April 26, 2017 12:33 PM  
**To:** Greenwood, Geoff [AG]  
**Subject:** Governor transistion

Hi Geoff.

We are running an update on the Governor and the transition of power to the Lt. Gov.

What exactly has been the AG's involvement been with this regarding the constitutionality of transition?

Is the AG looking into anything on Reynolds appointing her lieutenant governor once she becomes governor?

Thanks,  
Amanda

## Greenwood, Geoff [AG]

---

**From:** Greenwood, Geoff [AG]  
**Sent:** Wednesday, April 26, 2017 1:49 PM  
**To:** Amanda Krenz  
**Subject:** RE: Governor transistion

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Thanks,

Geoff

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Thanks,  
Amanda

## Greenwood, Geoff [AG]

---

**From:** Steenhoek, Kimberly K <ksteehoek@hearst.com>  
**Sent:** Monday, May 01, 2017 2:20 PM  
**To:** Greenwood, Geoff [AG]  
**Subject:** KCCI Close Up Request

Hi Geoff,

My name is Kimberly Steenhoek and I'm the producer for KCCI's public affairs show, Close Up. I'm wondering if Attorney General Miller is available to be on our show this week to talk about the legal opinion he issued today on the succession of the governor. We are planning to tape the show on Thursday around 3 p.m. this week, but we have flexibility on both the day and time if that doesn't work for his schedule.

Thanks,  
Kimberly



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515 778-9795 MOBILE Des Moines, IA 50309  
ksteehoek@hearst.com **HEARST**  
television

**From:** NEWS [AG]  
**Sent:** Monday, May 01, 2017 11:46 AM  
**Subject:** Lieutenant Governor to Serve as Governor, But Lacks Authority to Appoint Lieutenant, Attorney General Opinion Concludes

**IOWA DEPARTMENT OF JUSTICE  
OFFICE OF THE ATTORNEY GENERAL  
Thomas J. Miller, Attorney General  
[www.iowaattorneygeneral.gov](http://www.iowaattorneygeneral.gov)**

CONTACT: Geoff Greenwood | Communications Director | 515-281-6699 | [geoff.greenwood@iowa.gov](mailto:geoff.greenwood@iowa.gov)

FOR IMMEDIATE RELEASE  
May 1, 2017

**Lieutenant Governor to Serve as Governor, But Lacks Authority to  
Appoint Lieutenant, Attorney General Opinion Concludes**

*Formal opinion responds to request by state senator as Governor Branstad prepares to resign  
for ambassadorship*

DES MOINES – Attorney General Tom Miller Monday issued a formal legal opinion stating that if a governor resigns, the lieutenant governor becomes governor for all intents and purposes, but does not have legal authority to appoint a new lieutenant governor.

Sen. David Johnson, I-Ocheyedan, requested the opinion following Governor Terry Branstad’s announcement that, if confirmed by the U.S. Senate, he will serve as U.S. ambassador to China.

The 23-page opinion, following extensive legal and historical research, concludes, “...the powers and duties of the office of Governor fall upon the lieutenant governor.” The conclusion is based on an Iowa Constitution provision addressing a governor’s resignation, which states, “...the powers and duties of the office...shall devolve upon the lieutenant governor.” Under that provision, the opinion adds, “The lieutenant governor takes on this authority because she is lieutenant governor.”

Significantly, according to Miller, Article IV, section 1 provides that “The supreme executive power of this state shall be vested in a chief magistrate, who shall be styled the governor of the state of Iowa.”

While the “the lieutenant governor becomes governor and has the title of Governor,” the opinion further adds that that person does not have constitutional authority to appoint a new lieutenant governor. “In other words, upon a governor’s resignation, the lieutenant governor will hold both the offices of Governor and Lieutenant Governor. There is no vacancy to be filled,” according to the opinion.

“This opinion conveys that, in a sense, the two offices merge,” Miller said. “This is consistent with numerous cases in other states that addressed this question,” Miller added. “It is also consistent with a close reading of

the Iowa governor's succession provision—Article IV, section 19 of the Iowa Constitution, which establishes a precise order of gubernatorial succession without providing for the appointment of a lieutenant governor.”

Miller's opinion notes that in all four previous instances when an Iowa governor resigned or died while in office, the lieutenant governor was always considered governor, but never appointed or named a new lieutenant governor. The opinion also concludes, “The framers intended that those in the gubernatorial line of succession be elected.”

At the federal level, prior to Congress amending the U.S. Constitution in 1967 to establish that the vice president becomes president and grants the president authority to appoint a new vice president with Congressional approval, no vice president who assumed the powers and duties of a president who died while in office appointed a new vice president.

The formal opinion departs from a public statement Miller's office issued in December, following an informal legal review in response to media inquiries, which stated the office concurred with “Governor Branstad's conclusion that...in her capacity as Governor, Governor Reynolds will have the authority to appoint a new lieutenant governor.”

The December statement was based, in part, on an Iowa Code section addressing vacancies of office holders. Miller's formal opinion concludes this statute does not apply when a governor resigns and the powers and duties devolve upon the lieutenant governor.

#### **About Attorney General Opinions**

A formal attorney general opinion addresses legal questions relating to a public official's duties by interpreting laws and offering legal guidance.

While not a legal precedent, a formal attorney general opinion is similar to one and stands until a court or later opinion overrules it or new legislation is enacted to change a statute in question. Opinions are not legally binding, but courts generally give them careful consideration and deference.

###

## Greenwood, Geoff [AG]

---

**From:** Greenwood, Geoff [AG]  
**Sent:** Monday, May 01, 2017 3:04 PM  
**To:** Whitney, Jessica [AG]  
**Subject:** RE: May Consumer Focus: That IRS Call Might Now Be Legit!

Thanks again.

---

**From:** Whitney, Jessica [AG]  
**Sent:** Monday, May 01, 2017 3:03 PM  
**To:** Greenwood, Geoff [AG]  
**Subject:** RE: May Consumer Focus: That IRS Call Might Now Be Legit!

I called her back, but she had written the story and did not have any questions. I gave her my contact information and let her know she could call me anytime. She said she may have some follow-up with the story.

Jess

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**From:** Greenwood, Geoff [AG]  
**Sent:** Monday, May 01, 2017 2:34 PM  
**To:** Whitney, Jessica [AG]  
**Subject:** RE: May Consumer Focus: That IRS Call Might Now Be Legit!

If you would call her, I would appreciate it. Thanks.

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**From:** Whitney, Jessica [AG]  
**Sent:** Monday, May 01, 2017 1:08 PM  
**To:** Greenwood, Geoff [AG]  
**Subject:** RE: May Consumer Focus: That IRS Call Might Now Be Legit!

Yes, I can talk with IPR. How would you like me to proceed?

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**From:** Greenwood, Geoff [AG]  
**Sent:** Monday, May 01, 2017 1:01 PM  
**To:** Whitney, Jessica [AG]  
**Subject:** FW: May Consumer Focus: That IRS Call Might Now Be Legit!

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Geoff

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**From:** Sarah Boden [<mailto:sboden@iowapublicradio.org>]  
**Sent:** Monday, May 01, 2017 12:51 PM  
**To:** Greenwood, Geoff [AG]  
**Subject:** RE: May Consumer Focus: That IRS Call Might Now Be Legit!

Hi Geoff,

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Would that be possible?

-Sarah

**Sarah Boden** | Reporter | Iowa Public Radio

2111 Grand Avenue, Suite 100 | Des Moines, IA 50312

O: 515-725-1723 | F: 515-725-1714 | [iowapublicradio.org](http://iowapublicradio.org) | [@Sarah\\_Boden](https://twitter.com/Sarah_Boden)



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## Greenwood, Geoff [AG]

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**From:** Jerry Gallagher <jgallagher@kwwl.com>  
**Sent:** Monday, December 12, 2016 4:53 PM  
**To:** Greenwood, Geoff [AG]  
**Subject:** Re: Media request/KWWL

Thank you Geoff!

Jerry Gallagher  
KWWL Today in Iowa Anchor  
Waterloo, IA  
319-291-1231

---

**From:** Greenwood, Geoff [AG] <Geoff.Greenwood@iowa.gov>  
**Sent:** Monday, December 12, 2016 4:30:48 PM  
**To:** Jerry Gallagher  
**Subject:** RE: Media request/KWWL

Jerry:

Following up on your question from Thursday.

Our office has researched the law and consulted with the Governor's office. We concur with the Governor's conclusion that, upon the resignation of Governor Branstad, Lt. Governor Reynolds will become Governor and will have the authority to appoint a new Lieutenant Governor.

Thanks,

Geoff



**Geoff Greenwood**  
**Communications Director**  
Office of the Attorney General of Iowa  
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**Subject:** FW: Media request/KWWL

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KWWL Today in Iowa Anchor

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## Greenwood, Geoff [AG]

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**To:** Jerry Gallagher  
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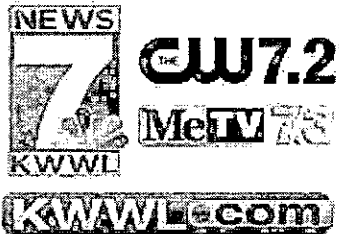
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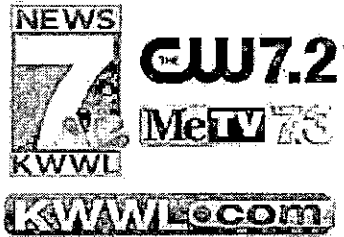
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**From:** Jerry Gallagher <jgallagher@kwwl.com>  
**Sent:** Thursday, December 08, 2016 11:56 AM  
**To:** Greenwood, Geoff [AG]  
**Subject:** Re: Media request/KWWL

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Jerry Gallagher  
KWWL Today in Iowa Anchor  
Waterloo, IA  
319-291-1231

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**From:** Greenwood, Geoff [AG] <Geoff.Greenwood@iowa.gov>  
**Sent:** Thursday, December 8, 2016 10:51:38 AM  
**To:** Jerry Gallagher  
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Thanks!



Jerry Gallagher  
KWWL Today in Iowa Anchor  
Waterloo, IA  
319-291-1231

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## Greenwood, Geoff [AG]

---

**From:** Greenwood, Geoff [AG]  
**Sent:** Thursday, December 08, 2016 10:52 AM  
**To:** Jerry Gallagher  
**Subject:** FW: Media request/KWWL  
**Attachments:** Article IV.PDF

Hi Jerry,

We don't have a definitive answer quite yet. Our office is reviewing pertinent sections of the Iowa Constitution (see attached) and Iowa Code regarding succession, and we're consulting with the Governor's office.

I don't have a timetable, but I think the Governor's office plans to release a transition plan at some point.

Best wishes,

Geoff



**Geoff Greenwood**  
**Communications Director**  
Office of the Attorney General of Iowa  
1305 E. Walnut St.  
Des Moines, Iowa 50319  
Main: (515) 281-5164 | Direct: (515) 281-6699  
Email: [geoff.greenwood@iowa.gov](mailto:geoff.greenwood@iowa.gov) | [www.iowaattorneygeneral.gov](http://www.iowaattorneygeneral.gov)

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---

**From:** Jerry Gallagher [<mailto:jgallagher@kwwl.com>]  
**Sent:** Thursday, December 08, 2016 10:27 AM  
**To:** Greenwood, Geoff [AG]  
**Subject:** Media request/KWWL

Geoff,

Good morning!

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## Greenwood, Geoff [AG]

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**From:** Greenwood, Geoff [AG]  
**Sent:** Monday, May 01, 2017 3:01 PM  
**To:** Alexandra Krula  
**Cc:** Keith Bliven; Matt Breen; Jenny Lenzini; Blake Branch  
**Subject:** RE: Miller to Release, Discuss AG Opinion on Gubernatorial Succession

Alexandra,

The video is posted at [www.vimeo.com/agiowa](http://www.vimeo.com/agiowa).

You can download the hd version through the address above or pull it down here:

[https://player.vimeo.com/external/215555640.hd.mp4?s=14ee199b52eb74e8d1b6f073cc45054c5beece2f&profile\\_id=174&download=1](https://player.vimeo.com/external/215555640.hd.mp4?s=14ee199b52eb74e8d1b6f073cc45054c5beece2f&profile_id=174&download=1)

I'll probably leave it up for a day or so and then plan to take it down.

Let me know if there's anything else you need.

Thanks,

Geoff



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**From:** Alexandra Krula [<mailto:akrula@ktiv.com>]  
**Sent:** Monday, May 01, 2017 10:57 AM  
**To:** Greenwood, Geoff [AG]  
**Cc:** Keith Bliven; Matt Breen; Jenny Lenzini; Blake Branch  
**Subject:** Re: Miller to Release, Discuss AG Opinion on Gubernatorial Succession

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## Greenwood, Geoff [AG]

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**From:** Greenwood, Geoff [AG]  
**Sent:** Monday, May 01, 2017 11:29 AM  
**To:** whotv [HSEMD Media]  
**Subject:** RE: Miller to Release, Discuss AG Opinion on Gubernatorial Succession

Yep. Just trying to give people options if they can't make it over here—mostly media outside of Des Moines.

---

**From:** Price, Dave [mailto:Dave.Price@WHOTV.com]  
**Sent:** Monday, May 01, 2017 11:28 AM  
**To:** Greenwood, Geoff [AG]  
**Subject:** RE: Miller to Release, Discuss AG Opinion on Gubernatorial Succession

Hey, can we come and shoot this?

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**From:** Greenwood, Geoff [AG] [mailto:Geoff.Greenwood@iowa.gov]  
**Sent:** Monday, May 01, 2017 10:02 AM  
**Subject:** Miller to Release, Discuss AG Opinion on Gubernatorial Succession

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**From:** Greenwood, Geoff [AG]  
**Sent:** Monday, May 01, 2017 11:05 AM  
**To:** Alexandra Krula  
**Cc:** Keith Bliven; Matt Breen; Jenny Lenzini; Blake Branch  
**Subject:** RE: Miller to Release, Discuss AG Opinion on Gubernatorial Succession

Sure. I'll get it to you this afternoon.

Geoff

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**From:** Alexandra Krula [mailto:akrula@ktiv.com]  
**Sent:** Monday, May 01, 2017 10:57 AM  
**To:** Greenwood, Geoff [AG]  
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**From:** Noble, Jason <jnoble2@registermedia.com>  
**Sent:** Monday, May 01, 2017 10:15 AM  
**To:** Greenwood, Geoff [AG]  
**Subject:** RE: Miller to Release, Discuss AG Opinion on Gubernatorial Succession

10-4 thanks. See you then.

Jason Noble  
Chief Political Reporter  
The Des Moines Register  
o: 515-286-2532  
c: 515-441-0600  
jnoble2@dmreg.com  
[@jasonnobleDMR](#)

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**From:** Greenwood, Geoff [AG] [<mailto:Geoff.Greenwood@iowa.gov>]  
**Sent:** Monday, May 01, 2017 10:13 AM  
**To:** Noble, Jason <jnoble2@registermedia.com>  
**Subject:** RE: Miller to Release, Discuss AG Opinion on Gubernatorial Succession

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**From:** Noble, Jason [<mailto:jnoble2@registermedia.com>]  
**Sent:** Monday, May 01, 2017 10:12 AM  
**To:** Greenwood, Geoff [AG]  
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**WHO:** Attorney General Tom Miller

**WHERE:** Attorney General's Office, Hoover Building, Second Floor

**DATE:** TODAY – May 1, 2017

**TIME:** 1:30 p.m.

**CALL IN #:** 866-685-1580, conference code 515 281 4213 (\*6 to mute, #6 to unmute)

**NOTE:** The news conference will be streamed live at [youtube.com/agiowa](http://youtube.com/agiowa).

Raw HD video will be made available upon request. Send request to:  
[geoff.greenwood@iowa.gov](mailto:geoff.greenwood@iowa.gov).

###

## **Greenwood, Geoff [AG]**

---

**From:** Laura Belin <desmoinesdem@bleedingheartland.com>  
**Sent:** Thursday, February 16, 2017 3:14 PM  
**To:** Greenwood, Geoff [AG]  
**Subject:** Re: official opinion to Senator Johnson

Thanks in advance, Geoff.

On Thu, Feb 16, 2017 at 3:02 PM, Greenwood, Geoff [AG] <[Geoff.Greenwood@iowa.gov](mailto:Geoff.Greenwood@iowa.gov)> wrote:

Laurie:

Our office is working on a response to Sen. Johnson's request. I'll be sure to send you a copy once we provide it to him.

Thanks,

Geoff

**From:** Laura Belin [mailto:[desmoinesdem@bleedingheartland.com](mailto:desmoinesdem@bleedingheartland.com)]  
**Sent:** Thursday, February 16, 2017 8:50 AM  
**To:** Greenwood, Geoff [AG]  
**Subject:** official opinion to Senator Johnson

Hello Geoff,

A short while ago on the Iowa Senate floor, Senator David Johnson said he has not yet received a written response from Attorney General Miller regarding the senator's questions about the succession of power.

When will Attorney General Miller reply to Senator Johnson?

Will Attorney General Miller provide a full written opinion answering the nine questions?



I am requesting a copy of Attorney General Miller's response as soon as it is available.

Thanks,

Laurie Belin

1705 Plaza Circle

Windsor Heights, IA 50324

(515) 276-6971

## Greenwood, Geoff [AG]

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**To:** Greenwood, Geoff [AG]  
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Windsor Heights, IA 50324  
(515) 276-6971

## **Greenwood, Geoff [AG]**

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**From:** Greenwood, Geoff [AG]  
**Sent:** Thursday, February 16, 2017 9:00 AM  
**To:** Tabor, Eric [AG]; Thompson, Jeff  
**Subject:** FW: official opinion to Senator Johnson

FYI...

**From:** Laura Belin [mailto:[desmoinesdem@bleedingheartland.com](mailto:desmoinesdem@bleedingheartland.com)]  
**Sent:** Thursday, February 16, 2017 8:50 AM  
**To:** Greenwood, Geoff [AG]  
**Subject:** official opinion to Senator Johnson

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## Greenwood, Geoff [AG]

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**From:** Greenwood, Geoff [AG]  
**Sent:** Wednesday, April 26, 2017 10:45 AM  
**To:** Tabor, Eric [AG]  
**Subject:** FW: Question on Sen. Johnson's request for opinion on Branstad-Reynolds; succession

FYI...

---

**From:** Petroski, William [mailto:[bpetrosk@registermedia.com](mailto:bpetrosk@registermedia.com)]  
**Sent:** Wednesday, April 26, 2017 10:39 AM  
**To:** Greenwood, Geoff [AG]  
**Subject:** RE: Question on Sen. Johnson's request for opinion on Branstad-Reynolds; succession

OK. Thanks, Geoff. That was a really good source that told us that; otherwise I wouldn't have asked you.  
Bill Petroski

---

**From:** Greenwood, Geoff [AG] [mailto:[Geoff.Greenwood@iowa.gov](mailto:Geoff.Greenwood@iowa.gov)]  
**Sent:** Wednesday, April 26, 2017 10:25 AM  
**To:** Petroski, William <[bpetrosk@registermedia.com](mailto:bpetrosk@registermedia.com)>  
**Cc:** Tabor, Eric [AG] <[Eric.Tabor@iowa.gov](mailto:Eric.Tabor@iowa.gov)>  
**Subject:** RE: Question on Sen. Johnson's request for opinion on Branstad-Reynolds; succession

Hi Bill:

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Thanks,

Geoff

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**From:** Petroski, William [mailto:[bpetrosk@registermedia.com](mailto:bpetrosk@registermedia.com)]  
**Sent:** Wednesday, April 26, 2017 8:47 AM  
**To:** Greenwood, Geoff [AG]  
**Cc:** Tabor, Eric [AG]  
**Subject:** Question on Sen. Johnson's request for opinion on Branstad-Reynolds; succession

Geoff/Eric:

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Thank you,  
Bill Petroski  
Des Moines Register  
515-284-8547

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Des Moines Register  
515-284-8547



## Greenwood, Geoff [AG]

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**From:** Greenwood, Geoff [AG]  
**Sent:** Wednesday, April 26, 2017 8:57 AM  
**To:** Thompson, Jeff  
**Subject:** FW: Question on Sen. Johnson's request for opinion on Branstad-Reynolds; succession

The rumor mill is churning...

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**From:** Petroski, William [mailto:[bpetrosk@registermedia.com](mailto:bpetrosk@registermedia.com)]  
**Sent:** Wednesday, April 26, 2017 8:47 AM  
**To:** Greenwood, Geoff [AG]  
**Cc:** Tabor, Eric [AG]  
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Bill Petroski  
Des Moines Register  
515-284-8547

## **Greenwood, Geoff [AG]**

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**From:** Hammes, Ben <ben.hammes@iowa.gov>  
**Sent:** Monday, February 13, 2017 7:39 AM  
**To:** Hammes, Ben [IGOV]  
**Subject:** RE-SENDING MORNING/WEEKEND CLIPS 2.13.17.....

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## **DMR: IOWA POLL: Tax hike backed for water projects**

Support for increase to also fund outdoor recreation is split largely along party lines

**DONNELLE ELLER**

DELLER@DMREG.COM © COPYRIGHT 2017, DES MOINES REGISTER AND TRIBUNE CO.

Linda Ellis says she's willing to pay more at the store if it means investing more money in cleaning up Iowa's rivers, lakes and streams and boosting the trails and parks that residents use for fun. "Water quality is a key issue around us," said Ellis, a 65-year-old Democrat and lifelong resident of the Iowa Great Lakes area.

"It's a unique part of the state, and tourism is really important to us." Like Ellis, 56 percent of Iowans support increasing the state sales tax three-eighths of 1 cent to pay for water quality projects and outdoor recreation, according to a new Des Moines Register/Mediacom Iowa Poll.

Thirty-eight percent of Iowans oppose a tax increase, and 5 percent are unsure how they feel about the proposal.

Selzer & Co. polled 802 Iowans Feb. 6-9.

The poll has a margin of error of plus or minus 3.5 percentage points.

Poll respondent Dan Bushman of Cedar Rapids said he also is concerned about improving water quality, particularly beefing up conservation that can reduce flooding. But he opposes raising the sales tax.

The excavation contractor wants to see more common-sense approaches to conservation and water-quality spending.



“We’ve got to get more value from what we’re spending,” said Bushman, 44, a Republican.

In 2010, 63 percent of Iowa voters approved a constitutional amendment creating the Iowa Natural Resources and Outdoor Trust Fund to aid water quality and calling for a dedicated funding source.

Providing the financing for the trust fund, however, requires legislative action.

Several proposals were floated in last year’s Legislature, but none gained traction.

Several conservation, farm, sportsmen and business groups support raising the sales tax, a move that would generate \$180 million annually.

Advocates have said about 60 percent of the spending would benefit water quality, but many of the proposed initiatives would provide multiple benefits. For example, building wetlands in key locations would improve water quality, reduce flooding and erosion and provide habitat for wildlife.

Support for the tax hike splits largely along party lines, the Iowa Poll showed: 71 percent of Democrats support the sales tax, as do 57 percent of independents, while 52 percent of Republicans oppose it. Support also splits along generational lines: 67 percent of Iowans younger than 35 support the tax, while 51 percent of Iowans 65 and older oppose it.

Kirk Leeds, CEO of the Iowa Soybean Association, said it’s a tough time to get a majority of Iowans behind a sales tax increase, given intense national political partisanship — and tight state finances.

“Many Iowans, including farmers, recognize that if we’re going to seriously address long-term conservation, water quality and recreation needs — we’re going to have to find additional resources, and that may require increasing taxes,” Leeds said.

Leeds and Jan Glendening, state director of The Nature Conservancy, said some lawmakers are looking at tying a sales tax increase with tax reforms, making the plan revenue neutral.

“That will generate even more support,” Glendening said.

Lawmakers also are expected to take another look at a proposal introduced last year that calls for shifting funding from other infrastructure projects and using money that Iowans pay on water utility bills.

Glendening said the poll results send a “mandate to lawmakers” to take action on sales tax to finance the trust fund.

Leeds worries, though, whether lawmakers will have the political energy to tackle another potentially divisive issue after battling over changes in collective bargaining for public employees.

“Will there be a willingness to come together for that kind of grand compromise” needed to pull together a funding package? he asked. “It could be an uphill battle.”

Iowa has been under pressure to improve water quality on several fronts.

In 2015, Des Moines Water Works sued drainage districts in three northwest Iowa counties, claiming that underground field tiles are funneling high levels of nitrates into the Raccoon River, a source of drinking water for 500,000 residents.



Earlier this month, the Iowa Supreme Court issued a ruling saying that the Des Moines utility couldn't ask the drainage districts to pay damages. But the remainder of the lawsuit, seeking regulatory oversight of the districts and, indirectly, farmers, is slated to go to trial this summer. Poll respondent Andrew Delisi of Runnells sees a clear need to support the sales tax increase.

"We all like drinking clean water, and if this is what we need to ensure that, I don't see why we wouldn't support it," said Delisi, a 49-year-old independent.

## **DMR: Support seen for role of unions at table**

Concerns palpable on collective bargaining

**JASON NOBLE**

[JNOBLE2@DMREG.COM](mailto:JNOBLE2@DMREG.COM)

Union reforms sharply limiting public employees' bargaining rights are barreling toward passage in the Iowa Legislature, but across the state, views on the matter are far less clear cut and show more favorability to organized labor.

A sampling of Iowans from Sioux City to Clinton, across party lines and throughout industries, reveals a general support for unions' role in Iowa workplaces, even amid some skepticism for the way labor groups operate.

Out of 20 Iowans reached by phone on Thursday and Friday, just two expressed genuine opposition to the notion of public employees bargaining on wages, benefits and working conditions. But roughly a dozen voiced support for unionized labor, even in occupations funded with taxpayer dollars. "There needs to be a little bit more protection there," said Angie Buck, 37, a Republican and stay-at-home mom from Marion. "Those jobs are what this country was founded on. Society doesn't work without those jobs." Buck and the others were contacted last week after participating in the latest Des Moines Register/ Mediacom Iowa Poll, although the poll did not include a question about the collective bargaining measures now pending in the Legislature. Interviewees were selected to ensure gender, age, geographic and ideological diversity.

The measures under consideration make farreaching changes to the union organizing and collective bargaining laws governing 184,000 public sector workers, including teachers, prison guards, city and county workers, and others. In its most sweeping change, the legislation shrinks the number of issues subject to collective bargaining from 18 to one — wages. Public safety workers such as police and firefighters are exempted from some of those changes. Additionally, the legislation mandates changes in the ways unions collect dues and political donations and require them to hold recertification elections with every new contract — putting the union itself up for a vote among its members every two to three years. The legislation was introduced early last week and has moved forward on a legislative fast track. It could be sent to Gov. Terry Branstad to be signed into law as early as this week.

Among those defending public employees' collective bargaining rights was Beverly Abbott, who called herself a "strong believer" in organized labor because of her husband's long and positive experience with unions as a railroad worker.

"Just take school teachers," said Abbott, 61 and a political independent from Clinton. "They are so underpaid and underrated, and if it weren't for the unions, I don't think they'd have what they've got now." Even though she's not in a union, Laura Cullen, 50, of Iowa City, said she recognizes that many



public-sector workers have made a choice to forgo higher private-sector pay for the stability and better benefits of the public sector.

If the proposed reforms pass, she worries, public workers will lose the benefits that make their wages more competitive. And, she added, she just doesn't believe that the promise of lower-cost government is worth the potential losses in workers and the services they provide.

"When we are endlessly trying to cut taxes, cut taxes, cut taxes, I think it's problematic," said Cullen, a political independent. "I really want someone to answer the phone when I call 911. I really want to have someone who empties the trash once a week. I really want those services, and the trade-off is that I pay taxes." Several outstate Iowans who hold publicsector jobs said the pay and benefits were a big reason why they've remained in rural in Iowa.

That's true for Julie Froah, a nurse who worked for Maytag in Newton but now teaches at Des Moines Area Community College's Newton campus. She called her community college compensation the "anchor" that keeps her in the community.

Edward Olson, meanwhile, offered support for the aims of the legislation, suggesting the changes might spur new and more individualized incentives for workers to do their best on the job. "I'm giving the bill the benefit of the doubt," he said. "Causing some pain is probably not a horrible thing, because otherwise change doesn't happen, and some change in that space is a good thing."

Olson, 47, a Democrat and a manager at John Deere from Bettendorf, said he's seen instances in which unionized workers do what's mandated by their contract — and nothing more.

"They may not be as interested in doing what other people consider the right thing, because it's not required," he said. "Having a desire to do the right thing is an important thing in life, and if we're too comfortable in what we're doing, we probably need to make some changes." And when it comes to government work, Olson said, his impression is that there may be more of that complacency than in other fields. David Bolsenga, an over-the-road trucker from Grimes, likewise questioned unions' value in the workplace and their effect on employees' work ethic. In an earlier career as a glazer, Bolsenga, 57 and a political independent, said he saw unions play favorites and play politics — and he resented less skilled or less diligent workers earning the same pay. "If you're a good worker, you're going to have a job, period," he said. "And if you have good work values, you should be rewarded. Just because you put time in doesn't mean you should be paid." Among the changes proposed in the legislation is banning seniority-based benefits as an item for bargaining among non-public safety workers. Among many, though, is a general ambivalence about the role of unions in Iowa workplaces, often informed by mixed personal experiences with organized labor. That includes Kevin Terwilliger, a 57-year-old groundskeeper for the Clear Lake school district. He described mounting frustrations with the union representing district employees that ultimately led him to end his membership.

But he also saw great value in bargaining collectively, regardless of his individual frustrations with the union representatives. Critical to that, he added, is bargaining for benefits as well as wages. He recalled past negotiations in which district employees sought higher annuity payments and additional vacation time in lieu of raises — something that would be prohibited under the new law. "That's not right," Terwilliger, a Republican, said. "That should be on the table."

## **AP: Of 1.6 million votes cast in November, Iowa aware of only 10 improper ballots**

**RYAN J. FOLEY**



## ASSOCIATED PRESS

Iowa's top elections official, who is pushing for a voter identification requirement that could make it harder for some to vote, has only been informed of 10 votes that were potentially improper out of nearly 1.6 million counted statewide in the November election. Iowa Secretary of State Paul Pate's office learned of a handful of cases of alleged double votes and votes cast by ineligible felons on Election Day that were counted, according to a summary of "general election irregularities" obtained by The Associated Press under the open records law.

Further review by the AP showed that most of the instances were mistakes rather than fraud, and may not have been stopped by an identification requirement. They included a non-English speaking citizen who mistakenly voted when he registered and again on Election Day, a felon whose voting rights had been restored in Wisconsin but not Iowa, and a noncitizen who turned herself in after learning later she shouldn't have been eligible to vote.

Donald Trump easily beat Hillary Clinton in Iowa to carry the state's six electoral votes in the Nov. 8 election.

The review shows that instances of improper voting were minuscule in Iowa, even as Trump calls for an investigation into voter fraud and Republicans who control the state Legislature consider restrictions. A Pate-backed bill introduced Wednesday calls for mandating that voters show certain state-approved identification, which would require 85,000 residents who lack driver's licenses, passports and other accepted IDs to obtain new state voting cards and bring them to polls.

Iowa has been one of the most convenient places for residents to vote in the nation, and has among the highest voter turnout. The state has a long window for voting early, Election Day registration and polls that are required to stay open until 9 p.m.

A group representing Iowa's 99 county auditors, who run elections in their jurisdictions, has opposed Pate's plan.

"Our system is incredible here in the state," said Johnson County Auditor Travis Weipert, noting that one vote out of 80,000 cast in his county remains under investigation. "Incredible. We have 99 auditors who work their tails off ... The system works perfect and they are trying to fix a problem that isn't there."

The only person charged with election misconduct in Iowa is Terri Rote of Des Moines, a Trump supporter who told police she voted twice because she believed the candidate's claims that the election was rigged and that her first ballot wouldn't be counted. Her attorney has argued in court documents that Rote is likely mentally ill and a judge is considering whether she's competent to stand trial.

Polk County Attorney John Sarcone has said two other double voters will not be charged because they were confused and lacked criminal intent.

Police in Storm Lake declined to charge the non-English speaking man, who wasn't sure whether he had voted absentee when he registered at the auditor's office days before the election. Told by poll workers that he hadn't voted, he cast another ballot on Election Day. The county later turned up his second ballot.

"It was an accident involving human error and it was unfounded as an actual fraud case," said the city's public safety director, Mark Prosser. "We found absolutely no skullduggery at all."

Pate spokesman Kevin Hall said the summary obtained by AP was incomplete because county elections officials are not required to report all irregularities. He said the office would like to see that changed, and the



voter ID bill would require local officials to report to the state all cases of suspected election misconduct that have been referred for investigation.

Pate has conceded that Iowa elections are clean but argues his plan is needed to keep them that way.

Asked which, if any, of the known irregularities the identification requirement would prevent, Hall was non-specific: "Secretary Pate's Election Integrity Act is a comprehensive, technology-driven proposal aimed at streamlining the system, reducing human error and protecting against fraud."

State data show that some voters who register on Election Day and confusion over Iowa's restrictions on voting rights for felons have presented challenges for elections administrators.

Hall said auditors were still trying to confirm that an unspecified number of voters who registered Nov. 8 were legitimate. About 40 same-day registrants in the 2014 election listed addresses that were either wrong or didn't respond to official inquiries, making their eligibility to vote where they did unclear.

Pate's office says it learned of five felons who registered on Election Day and were allowed to vote. More than 35 others were flagged as potentially ineligible and cast provisional ballots, which were not counted after elections officials confirmed they had lost their voting rights.

"There were no irregularities here. It worked exactly as it should," said Fayette County deputy auditor Ruth Ann Kearney, who said a felon's provisional ballot wasn't counted after further review.

## **DMR: Rally cry: 'We will not go down quietly'**

Collective bargaining issue draws throngs to Iowa's Capitol

**JOEY AGUIRRE**

[JAGUIRRE@DMREG.COM](mailto:JAGUIRRE@DMREG.COM)

More than a thousand people supporting teachers and other public employees gathered in front of the Iowa Capitol Sunday afternoon urging legislators to not rewrite Iowa's collective bargaining law.

The theme of the March for Iowa's Teachers was simple: resist and persist.

"This is an attack on every educator, every student and really, every member of the state of Iowa," Iowa State Education Association President Tammy Wawro said.

Iowa public employees and union leaders have implored legislators to reject a Republican-sponsored collective bargaining bill that would restrict public-sector workers' ability to negotiate contracts with state and local governments and school districts.

The proposed changes would limit contract negotiations only to base wages, cutting out negotiations over issues such as health insurance, evaluation procedures, seniority-related benefits, vacation and overtime policies.

Iowa Republican leaders and Gov. Terry Branstad say reforming the way the state negotiates contracts with its workers is necessary because the current model is in favor of the workers who, they say, receive benefits beyond what private-sector workers typically earn.



They say it's a drain on the state budget.

It has drawn criticism from the state's 184,000 public-sector union workers, hundreds of whom showed up Sunday afternoon at the Capitol.

In a teacher-dominated crowd, several current teachers and two legislators spoke to the crowd, urging them to contact their state legislators.

"We will not go down quietly," Wawro said.

T.J. Foley, a senior at Valley High School, gave a passionate speech.

"The rights of our teachers and workers are under siege," Foley said. "It is up to us to stop these attacks on Iowa's future. As the son of a teacher, I stand before you today as a representation of the 485,000 publicschool students who will be adversely affected by this ill-informed and misguided legislation."

Members of the grassroots organization Iowans for Public Education said they hoped the rally would help spread awareness to others who may not know how exactly this legislation impacts them.

"But defeating these bills is our number one goal for today," said Tonya Kehoe, a professor at Kirkwood Community College. "That's why we all came here today. We all share that, no matter what our associations are."

Kyrstin Shelley, a librarian at Northview Middle School in Ankeny, said if this is really what the public wants, there needs to be public hearings.

"We haven't had a chance to weigh in," Shelley said.

"This is an election-cycle discussion, not a one-week-in-the-middle-of-February, dropped-in-the-middle-of-abunch-of-others-things discussion."

William "Porkchop" Lairsey, a member of the Local 347 IBEW in Des Moines, said the act proves how little legislators care about their constituents.

"You start taking teachers' rights away and diminishing the quality of education, that doesn't lead to a good future for anybody," said Lairsey, 40. "Once you get anti-union legislators, it snowballs and is to the detriment of unions and the working class in general. People run on religion and fear of immigration to get into office, then they get into office and worry about corporate interests. It all boils down to money."

A public hearing is being held at 5 p.m. today at the Iowa Capitol regarding this legislation.

## **DMR: IOWA POLL: Majority oppose travel ban**

**JASON NOBLE**

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Just more than half of Iowans disagree with controversial Trump order

A slim majority of Iowans disagree with President Donald Trump's executive order pausing refugee resettlement and barring travel to the U.S. from seven Muslim- majority countries.

Fifty-one percent of respondents to the new Des Moines Register/ Mediacom Iowa Poll disagree with the policy, which sparked massive demonstrations amid a chaotic rollout late last month and has since been put on hold by the federal courts.

Mark Scherer, a manufacturer's representative from Johnston, said he opposes the substance of the order as well as the way it was implemented. Despite the careful wording, Scherer said, Trump's order appears to him to target Muslims and make dire situations even more difficult for refugees seeking to escape war zones.

"It was done in just the completely wrong manner, and then the substance of it was so poorly written and explained," he said.

Scherer, 64 and a political independent, recalled coaching soccer in the late 1990s and early 2000s when Bosnian Muslims were settling in Iowa as refugees from that wartorn country. He found great satisfaction, he said, in coaching young Bosnians, getting to know their families and watching them thrive.

Forty-three percent agree with the order, and 6 percent of Iowans aren't sure how they feel about it. The poll of 802 Iowans was conducted Feb. 6-9 by Selzer & Co. and has a margin of error of plus or minus 3.5 percentage points.

Trump campaigned on promises to "ban Muslims" from entering the country — arguing such a step was necessary to prevent terrorist attacks — and to review the vetting procedures for admitting immigrants and refugees.

On Jan. 27, the Trump administration moved to fulfill that promise by issuing a more narrowly tailored executive order prohibiting entry to the U.S. by Iraqi, Syrian, Iranian, Sudanese, Libyan, Somali and Yemeni nationals for 90 days, pausing all new refugee resettlement for 120 days and blocking Syrian refugees indefinitely.

The order sparked dramatic scenes at international airports across the country, as travelers who were in the air when the order was signed were detained and in some cases sent back to their country of origin.

In the weeks since, the federal courts have temporarily blocked implementation of the order amid judicial review of its legality and constitutionality.

The court actions mean refugee resettlement has resumed, including here in Iowa.

Support and opposition to the order here falls sharply along partisan lines. Eighty-two percent of Republicans agree with the executive order, while 85 percent of Democrats disagree with it. Cari Hague, a 38-year-old photographer from Ames and a Republican who supports Trump's order, said national security policy is a matter best left to experts. "I think the advisers in his administration know more about the details of our security than I do, and I trust them to make that decision to protect our safety," she said. Hague agreed with the underlying justification for the order: that travelers from certain countries with ongoing conflicts and ties to terrorism deserve more scrutiny.

"It's not everywhere," she said. "They're specifying places that harbor terrorism." But Democrat Shaun Winters looked at the order and saw an administration painting with too broad a brush. "Just saying 'If you're from this country, you're not allowed in' is ridiculous," said Winters, 41, a construction supervisor from Wellman. "We're all from somewhere else."



Similarly, Iowans' feelings on the executive order also correlate strongly with their feelings for Trump: 86 percent of Iowans who approve of Trump's job performance also approve of the ban, while 89 percent of those who disapprove of Trump also disapprove of the ban.

Fifty-four percent of self-identified independents disagree with the order.

The poll also reveals a sharp urban-rural split. Sixty-one percent of Iowans who live in cities disagree with Trump's executive order, while 70 percent of rural residents agree with it.

Disagreement with the executive order rates highest in Iowa's 3rd Congressional District, which includes Des Moines, where there are several immigrant and refugee enclaves.

Support for the order runs highest in the vast and rural 4th District — the only district in the state where a majority say they agree with the ban.

Keith Anger, a political independent from rural Hornick, conceded that Trump "initiated" the order poorly but said he remains supportive of the underlying objective — to slow immigration while stricter vetting procedures are put in place.

"It's a temporary ban, period," he said. "It's not something to stop all Muslims or just certain groups. I think what Trump is saying is that we don't want open borders. We don't need that here."

One more factor dividing people's views on the executive order is their age. Among Iowans under 35, 62 percent say they disagree with the order.

"People are just trying to live their lives," said Chloe Kaplan, a 23-year-old political independent and chef from Keystone in eastern Iowa. "We can't assume that every single one of them is a threat."

## **DMR: Schools gird for sweeping changes**

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Republican-backed legislation that would overhaul collective bargaining for public employees in Iowa could open the door for sweeping changes in the state's public schools.

Educators and school leaders who have studied the legislation told the Register it could usher in a new era where districts compete for the best educators, with star teachers or principals earning higher pay or bonuses, and under-performers being rooted out. That could be particularly hard on rural schools, who could be out-bid by metro districts.

The legislation greatly reduces unions' bargaining ability, requiring negotiations only on base wages. It allows some bargaining, such as holidays and hours, only if a district chooses. It prohibits collective bargaining over additional pay, seniority, grievances, employment benefits, insurance, union dues made through payroll, and layoff procedures, among others.

While the exact impact is not clear, almost everyone agrees that the implications of the collective bargaining legislation being fast-tracked in the Statehouse are far-reaching.



“These changes are necessary,” Lt. Gov. Kim Reynolds said this week. “It gives them (school districts) the opportunity to reward good employees — and good teachers — and, most importantly, make employment decisions based on merit, and not simply time served.”

If House Study Bill 84 and Senate File 213 become law, they would take effect immediately, sending pending contract negotiations back to square one, officials said. Iowa’s state teachers’ union says it is prepared to go to court to fight them. Opponents are comparing the legislation to Wisconsin’s Act 10, which vastly curtailed collective bargaining in that state. Since the legislation went into effect in 2011, the influence of unions and veteran teachers has waned. One libertarian-leaning nonpartisan think tank, the MacIver Institute for Public Policy, estimated that union membership has declined 58 percent.

In addition, nearly 3,000 teachers retired, a Wisconsin union said.

“This is so much bigger than a union conversation,” Iowa State Education Association president Tammy Wawro said. “This is about dismantling the profession of education.”

A March for Iowa’s Teachers has been planned for Sunday to protest the bill as it moves forward.

But proponents say the bill could bring muchneeded flexibility to Iowa schools, allowing districts to offer higher wages for hard-to-fill positions in science or special education.

Districts could decide where to place teachers, rounding out school staffs, instead of transfers based on seniority that can leave less desirable schools stocked with rookie staff.

Wisconsin’s ‘free agent’ teachers

Wisconsin’s Act 10 fundamentally changed how schools operate, the Milwaukee Journal Sentinel found during an in-depth look, five years after the act’s passage. The state’s teachers now largely act as “free agents,” moving between schools as they seek better benefits or pay.

“This has created a whole new marketplace for education, and for teachers,” said C.J. Szafir, vice president for policy at Wisconsin Institute for Law & Liberty, a conservative law firm that defended Act 10. Superstar educators sign five-figure bonuses, and skills trump seniority. But the effect on student academics is murky, at best, the Journal Sentinel found. The changes varied among districts. Some adopted employee handbooks similar to their previously negotiated contracts.

Todd Gray, president of the Wisconsin Association of School District Administrators, said in his district, the primary change was to seniority, which no longer is a factor in layoffs. “The sky did not fall,” MacIver Institute President Brett Healy said. “We still have teachers in front of the classroom. Our children are still doing relatively well compared to the rest of the country.” But the wave of subsequent teacher retirements did have an impact, said Christina Brey, spokeswoman for the Wisconsin Education Association Council. “There’s a lot of unrest,” she said. “There’s a revolving door of teachers.”

Without the ability to strike (Wisconsin and Iowa both make it illegal for teachers to strike) and little other recourse to take, teachers are now focusing their efforts at the community level, appealing to parents or school board members. “Schools became places where the stability was gone,” Brey said.

Rural impact in Iowa



Ramifications are hard to predict in Iowa. But multiple superintendents, union and association leaders, and college professors said the legislation could herald vast changes in how schools operate that could further the rural-metro divide.

Suburban or urban districts with financial flexibility may be in a position to recruit the best teachers with desirable pay or benefits packages, leaving rural or low-income schools with little ability to compete. Districts that border metros could be particularly vulnerable, as the best staff could find better pay without the cost or complications of moving, said Lee Adler, a senior lecturer at Cornell University who's studied labor and unions.

"The teachers are going to leave those rural districts or the state altogether because they won't work for chicken feed," he said. "They're professionals."

Remote schools already have a difficult time recruiting teachers and have been hit by a national teacher shortage.

"That's my biggest fear," said Duane Willhite, superintendent of North Fayette Schools and a member of the Rural School Advocates of Iowa. "Those positions could get even harder to fill."

#### Trying to reassure teachers

Iowa superintendents sent messages to their staffs this week, including assurances that they're valued. Some intend to keep collaborative processes in place — or create advisory committees to ensure staff concerns are heard. A competitive hiring environment puts the onus on districts, multiple leaders said. "If people are happy and being treated well and feel appreciated, they won't want to move anywhere else," said Anne Sullivan, Des Moines Public Schools' chief human resources officer. In addition, students could benefit from the ability to retain "your best and your brightest teacher," she said.

Other employment protections — such as having fair and equitable hiring processes and not discriminating based on age — will still apply. But it can cause disruptions, said Sally Klingel, the director of labor-management relations programming for the Scheinman Institute at Cornell.

"If there's no incentive to stay — and, in fact, another district is paying more because they've got a larger budget — teachers are starting to move at a substantially higher rate than the past," she said.

#### The role of politics

Other changes could depend largely on local dynamics or school board politics. In districts such as Fort Dodge, administrators and teachers meet every month to work together to improve schools. "I wouldn't necessarily change a lot of the process," Superintendent Doug Van Zyl said. But not all schools have that relationship. "The potential is, you could have management styles that want to make sweeping changes," he said. Even if much of the contract is written into board policies, as some districts have done in Wisconsin, changes likely are to occur if the legislation passes. Employees with poor performance could be given less time to improve or be let go immediately. The costs of a district's insurance could be reined in — by deferring it to employees — freeing money for other programs.

But some fear local politics will influence decisions, with bigger paychecks going to football coaches, or cuts favoring popular staff. Teachers "will be let go next week or next year because someone on their school board's niece needs a job," said Wawro, president of the state teachers union. "There's no safety."



## DMR: UPTICK IN IOWA'S CHILD HOMICIDES RAISES CONCERNS

Among questions: How many deaths are too many?

Arising number of Iowa children have been victims of homicide the past three years — from abuse, shootings and unsupervised accidents.

At least 20 Iowa children died last year, including 11 from suspected abuse, a Reader's Watchdog probe of cases statewide found.

The children included Natalie Finn, the West Des Moines 16-year-old who was tortured and starved to death in October. But they also included six children who drowned, four who were fatally shot, one who died when his father crashed his car and another who was left in a sweltering vehicle.

The six blue handprints represent deaths by drowning.

\*Some of the drownings were also confirmed cases of abuse.

READER'S WATCHDOG LEE ROOD

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The four gray handprints represent deaths involving guns. These 20 handprints represent the number of child homicides in Iowa in 2016.

The 10 red handprints represent deaths from suspected abuse.

The review of 2016 deaths, culled from media reports across the state, underscores what Iowa's Child Death Review Team noticed after completing research on child deaths from 2013 and 2014. "It's safe to say homicide deaths are on the increase," said John Kraemer, coordinator of the volunteer team, which operates out of the State Medical Examiner's Office.

The death-review team is charged with making recommendations to help prevent child deaths. But legislators zeroed out the team's budget in 2009, shifting duties from public health to the busy State Medical Examiner's Office. As a result, publication of the volunteer group's findings has been slowed. Some advocates believe more timely recommendations are needed to promptly benefit Iowa's children. In recent years, child homicides — those caused by another regardless of intent — hit a low mark of seven in 2013. But they climbed to 13 in 2014, then hit at least 14 last year, according to Iowa's Department of Public Health.

The uptick raises questions about possible causes, prevention steps and how many deaths are too many in a state many perceive as being a safe place for children.

Iowa's higher abuse rates

In recent years, Iowa has had a higher rate of children in foster care as a result of neglect and abuse — eight for every 1,000 in 2014, versus five for every 1,000 nationally, according to the Kids Count Data Center supported by the Annie E.

Casey Foundation. But the rate of abuse reports Iowa investigated was lower — 39 per 1,000 in 2014 versus 41 per 1,000 nationally. The rate of confirmed abuse fell in 2014, as the Iowa Department of Human Services shifted more cases toward informal services and less formal investigation and court intervention. The rate that year was the same as the national average: 11 per 1,000.

The increase in homicides and other preventable deaths the past three years coincides with the decision to focus investigations on the most serious abuse and steer thousands of reports of suspected low-level abuse to voluntary services. Some attorneys for at-risk children have criticized that shift, but those overseeing the annual child-death reviews say they don't know what effect, if any, the state's focus on the most serious abuse has had on families who are not being monitored.

“That's outside my expertise,” state Medical Examiner Dr. Dennis Klein said. Human Services counted more deaths after child abuse or neglect before 2014, including as many as 28 in 2012. Some of those deaths, like those Watchdog counted for 2016, were the result of unsupervised accidents, not homicides. Natalie Finn and her siblings were the subjects of numerous child abuse reports last school year, but the suspected abuse was not confirmed, according to a state lawmaker briefed on the case. State Sen. Matt Mc-Coy, D-West Des Moines, told Watchdog last month that police and a social worker obtained a court order and pushed their way into the West Des Moines home of Natalie's adoptive mother, Nicole But Natalie was pulled from her alternative high school last fall and died of starvation Oct. 24 in her mother's care.

Nicole Finn, 42, and her ex-husband, Joseph Finn II, of Urbandale, have pleaded not guilty to multiple felony charges and are scheduled to go to trial in March. Nicole Finn has been charged with first-degree murder.

Kraemer and Klein say they are reviewing Natalie's death, along with other 2016 child fatalities. But a more thorough investigation is being done by Iowa's state ombudsman.

#### Child abuse: A leading cause of deaths

At least half of the children who suffered preventable deaths last year were allegedly abused or neglected by parents or caregivers.

The abuse children suffer in such cases is diverse. In 2013, for example, the seven homicides investigated by the child death review team were mostly caused by caregivers involved in drug use or altercations, Kraemer said. The 2014 and 2015 child-death reports are still being finalized by the team, but many of those deaths were caused by blunt-force trauma, often to children younger than 5, he said. Nationally, homicides are one of the leading causes of child deaths.

One 1996 study found it was the leading cause of infant deaths due to injury, accounting for a third of all such fatalities. But data is notoriously underreported, and often poor because of how it is defined, collected and reported among states, according to the Child Welfare Information Gateway.

Young children often suffer fatal abuse at the hands of their parents. In 2014, more than 72 percent of children who died from maltreatment also suffered neglect, according to the Child Welfare Information Gateway.

Some child-abuse experts in Iowa have pushed for those who work closely with at-risk families to place more emphasis on learning about past trauma and mental health as a way of preventing such tragedies. Dr. Resiyme Oral, a pediatrician at the University of Iowa Hospitals in Iowa City, has examined thousands of children who have been potential victims of abuse.

As part of the first line of defense, Oral and others are making the case for all of the state's pediatric hospitals to employ social workers who can help evaluate family history and wellbeing when abuse is alleged.



By better understanding a parent or caregiver's past, medical professionals are better equipped to help the family — whether a child stays in the home or is removed for safety reasons, she said.

#### Drug use targeted

Use of hard drugs by parents and caregivers and its link to child abuse also has become a bigger concern among professionals in the Iowa childwelfare system.

This year, a work group created by the Legislature has recommended that lawmakers pass a measure that would call for formal child-abuse investigations of families whenever children are exposed to certain dangerous drugs in their homes, vehicles or premises.

The work group zeroed in on methamphetamine, cocaine, opiates and heroin, as well as drug-making precursors and other chemicals that could injure children or cause explosions.

In the past, it was possible that no formal investigation would be launched into an allegation of abuse of an older child whose parents used meth. That's because Human Services rules called for immediate, formal investigations only in cases of children younger than 6.

Other families would be assessed but likely directed toward voluntary services.

But Human Services has developed new criteria for flagging reports of hard drug use — and, in some high-risk cases, marijuana exposure — for immediate child abuse investigations, rather than sending them on another path toward services.

The work group's proposed changes to Iowa code are intended to assure cases involving heroin, meth or cocaine use by parents or caregivers receive formal investigation and court oversight.

Jane Harvey, a bureau chief for child welfare at Human Services, said the recommendations are based on two years of data suggesting that children exposed to drugs such as meth, cocaine, heroin and opioids are far more likely to require intervention.

"Some drugs are substantively more dangerous in the presence of kids," she said.

#### Needed: Supervision near water

The Watchdog review also showed child drownings were higher in 2016 than past years. Among the six counted, some were believed to be accidents and others the fault of a neglectful caregiver.

Circumstances often decide whether some of those deaths are ultimately labeled accidents or homicides. In 2016, Anna Sothman was sentenced to 50 years in prison because her child drowned in a bathtub in Pella after she left her for more than half an hour.

But no criminal charges were brought against the Nebraska parents whose child also died after being left in a bathtub in Panora over Thanksgiving.

"If a child was left unattended by a caregiver, that can be an accident. If we have suspicion or evidence that it was intentional, it can be homicide," Klein said "It's hard to generalize. There are subtleties to each case, and it can be subjective." All the drownings — in bathtubs and swimming holes — point to the need for more supervision by adults, Kraemer said.



The Watchdog review did not include a count of deaths not reported in news accounts, like those caused by Sudden Infant Death Syndrome or suicide. But the death review team has found recent suicide numbers troubling. In 2014, 14 child suicides were recorded statewide. In 2013, there were 17.

“What we want to do is education and work with schools and parents to look for signs of emotional stress, relationship problems or even acts of bullying,” Kraemer said.

Toxicology data isn’t always available, so it’s hard to know whether drug use is also a factor in suicides, he said.

### Deaths involving guns

At least five homicides last year stemmed from gun violence. Nationally, the Centers for Disease Control and Prevention reported 460 children ages 14 and younger died in 2014 from incidents involving firearms, compared with 369 such deaths in 2010.

Seventy-four of those deaths in 2014 were unintentional, compared with 62 in 2010. In Iowa, intentional shootings last year led to the death of Kedarie Johnson, the 16-year-old gender-fluid teen shot several times in March in Burlington; Yore Thuok Jieng, a 14-year-old Roosevelt High School freshman gunned down in Des Moines in October; and Ayana Culbreath, a 15-year-old Davenport teen who was shot at a backyard party in June.

In addition, 10-year-old Cade Hartwig of Garner was killed accidentally by his grandfather at a shooting range in August, and 13-year-old Ireshia Parks of Cedar Rapids accidentally was shot by a friend in September.

Four-year-old Jayden Choate also fatally shot himself last year while left unsupervised in a trailer home in Elgin with his 2-year-old brother and 5-month-old sister.

Children’s access to firearms in their homes is a persistent concern, increasing the risk of homicides and suicides, Kraemer said.

## **DMR: Children’s residential facilities to get new oversight**

Proposals part of legislation passed in wake of ’16 raids

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Proposed rules requiring the certification and oversight of boarding schools and other children’s residential facilities in Iowa could take effect as soon as May.

The rules are part of legislation passed in the wake of the January 2016 raids of an unregulated boarding school in far southeast Iowa where troubled children were reportedly sexually assaulted and abused. “I think they will make a difference,” said Wendy Rickman, a top administrator for Iowa’s Department of Human Services. “We have always had the ability to take a look at abuse cases, but not the (operation of the facility) itself. This also sets it up so these schools have to become known to us.”



Midwest Academy near Keokuk and Montrose was closed after the 2016 raids. It now faces two civil suits from parents and children alleged to have been abused, as well as a former employee who said she was wrongfully fired.

Iowa's Division of Criminal Investigation and the Attorney General's office have not filed any criminal charges after more than a year of investigation, but the probe continues, officials said.

The rules require all residential facilities for children to obtain state certification to operate and subject employees to criminal, abuse and sex offender background checks.

The facilities would be required to have an annual fire inspection, meet building codes and provide children with adequate food and shelter, as well as opportunities to sleep and exercise.

Corporal punishment, physical restraint and child abuse would be prohibited.

Any founded abuse report on a director or proprietor could be cause to pull the certification. Human Services is aware of roughly a dozen such facilities in Iowa that would be affected. After a hearing Friday before the Legislature's bipartisan Administrative Rules Review Committee, the rules now are subject to a public comment period until Feb. 21.

Once an old county hospital, Midwest was started by a Utah millionaire, Robert Lichfield, who with others started numerous tough-love schools across the country.

Ben Trane, a former employee at one of those schools, ran Midwest until he was accused of sexually abusing a student last year. The World Wide Association of Specialty Programs and Schools founded by Lichfield and others has faced a series of lawsuits and federal criminal probes over the years stemming from allegations similar to those leveled at Midwest Academy, including child abuse, sex abuse, fraud, false marketing and bogus accreditation claims.

Sheriffs' reports from the three years leading to the raids showed the troubled teens who were sent there by their often-desperate parents ran away in crowds as large as 11, cut themselves, sexually assaulted others, and attempted suicide on numerous occasions.

The criminal probe began after two staff members alleged that a staff member had sexually assaulted a student. One of the two staffers who contacted law enforcement was mandated by law to report child abuse. Search warrant documents later revealed Trane was being investigated for fraud, abuse and sexually abusing the student.

A lawsuit filed by parents and former students showed Iowa's Department of Human Services already had found Trane responsible for child abuse in 2015 for failing to properly supervise sexually abused children in his care. Lee County Sheriff Jim Sholl and others said after the probe began that boarding schools such as Midwest should be required to have state oversight.

Trane has not commented publicly on the criminal probe and has moved from Keokuk. He could not be reached for comment. The National Institutes of Health has said teen programs using "fear and tough treatment" are not successful and can worsen existing behavioral problems.

## **DMR: 'It feels like I'm living my purpose in this position'**

Waterloo mayor Hart did not campaign as a symbol of racial progress, but symbolism comes with job



WATERLOO, Ia. — Quentin Hart clutches his throat, realizing he lacks a necktie seconds before he's ready to stroll into a Rotary International meeting as the featured speaker.

If the Waterloo mayor ever thought running a city was glamorous, his whirlwind first year in office — with controversies over policing, hiring practices, prayer — has long since disabused him of the notion. Hart began his two-year term at the start of 2016 after eight years on city council. He routinely visits local schools where some kids assume he gets chauffeured around the city.

No, the mayor drives himself. And there's no fashion consultant sitting next to him in his city-issued Ford Taurus. So he grabs a tie off the seat and twirls a fast half-Windsor knot while gazing in the rear-view mirror. Soon, fellow mayor Jim Brown of Cedar Falls peers through the driver's window. It's time to make a beeline indoors for the buffet lunch and polite banter.

Hart, 45, is the first African-American mayor of predominantly white Iowa's most concentrated black community. Waterloo is 15.6 percent black, compared to a 3.3 percent demographic share statewide. He has spent his first year entangled in few issues steeped in race and racism. But he also has boosted ambitions for the city's economic development

and a burnished image.

Hart took office as President Barack Obama's racially historic tenure in the White House wound down. Although he leads what technically is nonpartisan local government, Hart is a stalwart Democrat. Hillary Clinton clung to Black Hawk County in the presidential election by nearly eight points as scores of other Midwest and "rust belt" counties flipped in favor of Donald Trump. But Trump's win jarred Hart enough that he purchased a copy of the billionaire's 30-year-old ghostwritten autobiography, "The Art of the Deal."

"I need to understand how a person thinks and the way that they function," he said.

So what did he learn from the book?

"Think big," he said. "Talk big.

"But at the end of the day it makes no difference if you're not able to put things in motion and move the needle forward."

Symbolism comes with the job

In struggling to move forward Waterloo has been hampered by the lingering effects of entrenched residential segregation that have exacerbated blight, crime and poverty. Strike-breaking African-American railroad workers were drawn here from the South in the early 20th century and confined to the city's northeast corner. Hart's own family in the 1960s was among a second wave from the South as blacks sought manufacturing jobs and fresh opportunities.

Hart did not campaign as a symbol of racial progress.

Yet sort of like reaching for that nonexistent necktie and feeling naked, Hart has had to get comfortable with those moments where suddenly he senses the constant scrutiny of his office. He already was on display as a councilman, but not in such a way that his every gesture was parsed for meaning. Hart remembers "throwing out all these ideas" as the representative of his ward. Now all eyes turn to him to sift through the big brainstorming pile.



His predecessor left a Bible quote from Joshua 1:9 engraved on a nameplate that stares the mayor in the face as he oversees epic, sometimes contentious council meetings: “Be strong and courageous. Do not be afraid. God will be with you and He will never forsake you.”

Hart now is the face of his city. Like it or not, symbolism comes with the job.

“It just kind of hit me,” he said. “Everything I do. Everything I say. What I don’t do and what I don’t say, people are really paying attention to it.”

Police reforms dominate first year

In his mayoral campaign Hart offered himself up as a “bridge” to unify his city — whether across race, neighborhoods or other divides.

But, inevitably, there have been roadblocks.

Hart’s effort to polish Waterloo’s prevailing narrative included hiring a part-time communications director.

That led to a squabble with the council over his power to even add the position.

An email from Councilman Tom Lind included the line: “You work for us. Obama (yesterday) is gone.”

Hart objected to what he called “racist, derogatory, partisan remarks.” Lind denied they were racist. (Lind didn’t respond to requests for comment from the Register.) Hart reinstated prayer at the start of city council meetings — also welcoming secular invocation as some residents objected to the return of religion to the chamber for the first time in more than a decade.

But the biggest hurdle for Hart’s first year has been law enforcement. The troubled relationship between Waterloo’s overwhelmingly white police and its black residents has included millions of dollars paid in settlements to suspects who alleged use of excessive force by officers.

Chief Trelka touts an overall decline in both serious and minor crime statistics in the last seven years, including use of force. He insists that a calm now permeates the city after a troubling spike in shootings included six gun murders within the last five months of 2014.

He acknowledges that racial disparity persists on his force despite intensive recruitment efforts: Two African-Americans, one Latino and two Pacific Islanders currently wear badges.

“The solution has been very elusive,” Trelka said.

Local media reported that Trelka’s job was in jeopardy at the height of last year’s furor, with calls for the U.S. Department of Justice to step in for a full investigation. But both the chief and the mayor have repeatedly declined to elaborate on what they call a personnel matter.

Hart did strip Trelka of his broader public safety oversight of Waterloo Fire Rescue so that the chief could focus solely on policing.

In lieu of federal intervention, a number of new local initiatives have been launched. Work with consultants as well as police in Charlotte, Va., led to creation of a police foundation to fund programs for Waterloo youth.

An “ex-offenders task force” began last month as a series of forums with former felons to help promote mutual understanding.

Hart says that he’s satisfied with the progress so far and that Trelka is “making great strides in the right direction.”

Elvis, chili and economic development

Several days ago Hart awoke at 4:45 a.m. to lift weights and try to sweat out a nagging cold. The previous night’s council meeting had dragged on for three hours.

Hart’s days usually begin at the gym, followed by the occasional breakfast downtown at Morg’s Diner. In the evening he often takes one or more of his three young kids to yet another gym. Hart’s wife, Cassandra, teaches at Lowell Elementary.

As we drive through the city I ask the mayor to name his most controversial decision in the last year. “Which week?” he turns and says with his trademark deadpan delivery.

Being mayor isn’t all flash points and policy. Sometimes Hart gets to judge a chili-tasting contest. Or help pick, of all things, the best Elvis impersonator.

Hart has made a sustained push for economic development. He likes to cite \$250 million in recent investment in the broader Cedar Falls-Waterloo metro with its 170,000 or so residents.

Iowa Gov. Terry Branstad even singled out Waterloo in his recent Condition of the State address. The governor praised how the city, “after experiencing economic challenges throughout the previous three decades embraced the challenge of reshaping its industrial heritage to succeed in modern times.”

Branstad went on to cite not only one of the city’s traditional staple employers, John Deere, but also Cedar Valley TechWorks. The 30-acre campus converts former Deere tractor plants into a tech and industrial hub with a 3-D manufacturing center and design lab. One of the refurbished six-story factories soon will boast a Marriott hotel.

During my partial day with the mayor we drive past TechWorks and other new or emerging landmarks.

Downtown, ID8 is a co-working space and “innovation incubator” converted from what had been a movie theater, bank and railroad headquarters. It opened last year and so far has cultivated a membership of 18 clients who pay a \$500 annual fee plus daily rates.

Hawkeye Community College, Hart’s former employer where he worked on the main campus on the south edge of town as associate director of multicultural affairs, is building an Adult Learning Center in the heart of the city.

Grand Crossing Condos soon will add 68 rental units downtown.

Redevelopment of portions of U.S. Highway 63 that cuts through the city is intended in part to make neighborhoods more prominent and pedestrian- friendly.

A former abandoned strip mall on the city’s northeast side has been razed to make way for a new mix of medical clinics near Allen Hospital, plus a hotel and retail.



Common refrain: 'Tell Me Why'

On his first visit to the Cedar Falls Rotary, housed in an ornate Victorian home run by the Cedar Falls Woman's Club, the mayor is serenaded by a ballroom full of about 40 members. Each Rotary meeting begins with a rousing sing-along.

Barbara Hatinger stands on stage next to the grand piano and declares "Tell Me Why" to be the perfect song to help welcome politician: The title is a question that dogs elected officials everywhere.

After his speech the first question posed to Hart is a request for more detail on the ex-offenders task force that he had briefly mentioned.

Mayors everywhere may wish they could spend more time talking about some gorgeous redevelopment they helped lure to the city. But they tend to get pulled back into difficult but necessary conversations on the elusive nature of justice.

After more than a year on the job, Hart understands that all too well.

I couldn't pin down Hart on his plans to run for reelection this fall. No doubt because he knows that everything he says — or doesn't say — will be parsed. But I feel like I got my answer, anyway.

At one point in the hectic day he says, "It feels like I'm living my purpose in this position."

That sounds like a mayor who has made peace with the scrutiny, with or without a necktie.

## **DMR: At GOP forum, issue updates, laughter, boos**

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Ankeny's Neveln Center overflowed on Saturday with educators, mental health advocates and others who attended a legislative open forum.

Polk County Supervisor Steve Van Oort, state Sen. Jack Whitver and Reps. John Landon and Kevin Koester, all Republicans, updated the roughly 500-person crowd on recently contentious issues, including education funding and the Republican-backed bill that would overhaul collective bargaining rights for Iowa's public employees. The proposal strips some bargaining rights for non-public safety workers while making it harder for unions to organize and raise funds, the Register previously reported.

If signed into law, the changes would take place immediately.

By overhauling the process, Whitver said the proposals "rebalance the scales between employers, employees and taxpayers."

"It's about empowering our local schools and superintendents," Whitver said. Many in the crowd, however, did not agree. A chorus of boos or laughter followed some of the legislators' statements, and some audience members held signs of protest against the changes.

Rachel Borich, a nurse at Ankeny's Southview Middle School, was in the audience as a community member, mother and public employee, she said.

"With a drop in funding and an increase in enrollment, Ankeny is going to struggle to stay afloat," Borich said.

She was not impressed with the proposed changes to collective bargaining, she said.

"I really don't think they should touch collective bargaining," she said. "It doesn't cost the district anything. We pay our own union dues."

## **DMR: UI tightens rules for out-of-state students seeking in-state tuition**

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IOWA CITY, Ia. — As Iowa's public universities consider how to implement cuts in state revenue, University of Iowa officials are raising the bar for incoming out-of-state students seeking in-state residency after beginning their studies. UI officials began exploring the need to tighten the requirements after the university saw 317 parttime freshmen enrolling at the university during fall 2016. "That's a record number," said UI Registrar Larry Lockwood. Many of those nonresidents were not taking enough credit hours to trigger the higher tuition rate that full-time out-ofstate students are required to pay. That scenario adds up to about \$6 million in tuition that otherwise would be going to the university if those prime-time, outof- state students — including those living in dormitories — had been registered full-time. Out-of-state students have to live in Iowa for at least a 12-month period and provide evidence that they moved to Iowa primarily for reasons other than higher education.

But where nonresident students previously had to show that they worked an average of 20 hours a week over that 12-month period, students enrolling after May 1 will now have to show they're working at least 30 hours per week on average. Many of those students met the minimum, onecredit- hour requirement to be eligible for student housing, but their off-campus work schedules required them to come and go at odd hours of the night, disturbing the rest and study needs of fulltime students, Lockwood said. Iowa's public universities offer lower tuition to resident students because the state government is offsetting some of those costs through general fund appropriations. With a nearly \$20,000 gap between the annual costs for resident and nonresident students, out-ofstate students can pay as much as \$80,000 more in base tuition and fees over four years of undergraduate study.

The changes in residency requirements come at a time when UI is now having to trim at least \$8 million in state funding promised for the current academic year. Iowa State University is facing a similar midyear cut, and the University of Northern Iowa has to trim \$2 million. More state cuts for the current fiscal year could still be on the way. The changes do not need to be approved by the Iowa Board of Regents, UI officials said, because the policies are within the general residency requirements already outlined in board policy. "We want to put some common sense into the process," Lockwood said. "If you really want to be an Iowa resident, you'll have to meet the criteria that everyone else is going to meet."

Iowa Administrative Code states that out-ofstate students may be eligible for resident reclassification following 12 consecutive months in the state, "provided the student is not enrolled as more than a half-time student" and "provides sufficient evidence of the establishment of an Iowa domicile."



The code makes exceptions for the students whose parents move to Iowa during their studies as well as for students who are active military, veterans or have refugee status.

But the gist of the law states that people coming to Iowa from another state to enroll more than halftime in any institution of postsecondary education “shall be presumed to have come to Iowa primarily for educational reasons, rather than to establish a domicile in Iowa.”

UI Housing officials also are increasing the minimum number of credit hours required for students to be eligible to live in the dorms or other university housing options.

In the past, that number has been only one credit hour.

Starting this fall, however, the minimum will be seven credit hours — enough to qualify students for half-time status.

“We’ve generally had more bodies than we’ve had beds,” said Von Stange, director of University Housing and Dining. “We know that some of those students are parttime students, and we want to provide our limited residence hall space for students who are spending most of their time on campus and in class.”

Students will have until the 10th day of class to register for the minimum number of credit hours, Stange said. Those who fail to do so will be notified that they will have to move elsewhere.

For out-of-state UI students still looking to become Iowa residents, at least some of the increased work requirements will have to be off campus, Lockwood said.

Work-study jobs on campus cap at 20 hours per week.

“There are a lot of local business that would be more than happy to hire them on,” said Lockwood, pointing out that the Iowa City area has one of the lowest unemployment rates in the state.

## **DMR: DNR officer saves fisherman who fell through Osceola ice**

**MOLLY LONGMAN**

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One Iowa Department of Natural Resources officer saved a man who fell through the ice while ice fishing in Osceola late Friday morning, according to a DNR release. Two Iowa men set up an ice fishing shelter on West Lake in southern Iowa.

DNR State Conservation Officer Michael Miller was on a routine patrol when he observed the men setting up shop for a day of ice fishing. “I saw them out there and yelled, ‘How much ice are you on?’” Miller said, according to the release. “And they said, ‘3 inches.’ I told them to get off the ice immediately.” DNR officials say one of the anglers made it off the ice safely but the other wasn’t so lucky: He broke through the ice about 10 yards from the shore. Upon seeing this, Miller sprang into action, grabbing his rescue throw bag (a handy rescue device with a length of rope stuffed loosely into a bag) from his vehicle, tossing it to the man in the lake and pulling him to shore with the help of the other angler. Miller said this all happened in a span of about five minutes. After the angler was safely on land, paramedics arrived on the scene to to examine the angler, who was released from the scene.



“He said he was losing feeling in his hands and his hands were hurting,” Miller said.

“At this point I was more worried about the threat from exposure than from drowning.”

Miller, who patrols Clarke and Decatur counties for the Iowa DNR, said he’d seen anglers break through the ice before but had never pulled one out, according to the release.

“I told them next time they want to go ice fishing this time of year, to go north,” Miller said.

“It’s 48 degrees here with a south wind. Our ice conditions have been deteriorating quickly for some time.”

DNR officials said ice fishing isn’t recommended in the southern third of Iowa. They ask anglers to be extremely cautious during the latter half of winter as longer days, thaw-freeze cycles and warmer winds weaken the ice.

The DNR recommends staying in and ordering your trout from the store if ice is fewer than 4 inches thick.

They release a weekly fishing report with ice conditions included, which is a good place to check if you’ll be in danger of going for an accidental dip.

## **DMR Editorial: Here's one state job we don't need**

### **The Register's Editorial**

With Gov. Terry Branstad expected to leave office soon and assume the role of U.S. ambassador to China, Lt. Gov. Kim Reynolds is making plans to move into the governor’s office.

She’s also making plans to appoint her own lieutenant governor, saying she wants someone who will function as a full-fledged “partner,” just as she has with Branstad.

This means that should Reynolds, for any reason, be unable to serve as governor through January 2019, Iowa could be saddled with a non-elected governor who didn’t run on any sort of a statewide ballot. (If she were to leave office with no lieutenant governor appointed, the duties of the governor would fall to the president of the Iowa Senate.)

Iowa Attorney General Tom Miller has backed up the Branstad administration, providing informal guidance that suggests once the governor leaves office, Reynolds will not simply assume his responsibilities and duties, but will be sworn in as governor of Iowa and will have the power to appoint her own lieutenant governor.

Miller’s thinking appears to be consistent with some provisions of Iowa law, but it also seems to plainly contradict the Iowa Constitution, which says the lieutenant governor, when filling out the term of the governor, is merely “acting as governor” and “performing the duties pertaining to the office of governor.”

It’s also worth noting that none of Iowa’s four previous lieutenant governors who were elevated to the governor’s office in this fashion took it upon themselves to appoint a new lieutenant governor. In fact, Joshua Newbold served as governor for almost a full year after Samuel Kirkwood resigned from the office in 1877.

Thankfully, Sen. David Johnson, an independent from Ocheyedan, is asking the attorney general for a formal opinion on the matter — one that directly addresses the language in the Iowa Constitution and answers several critical questions related to the succession of power in the governor’s office.



But there's a larger question here that also needs to be addressed at some point: Why does Iowa even have a lieutenant governor?

As Reynolds and her predecessors have demonstrated, the position is largely ceremonial, with the lieutenant governor handling public appearances and acting, at best, as a mouthpiece for the administration and, at worse, as a smiling prop for photo opportunities. One look at [the lieutenant governor's official schedule](#) proves that.

So why, when our state is slashing spending, eliminating thousands of jobs and possibly closing courthouses, do we continue to have a lieutenant governor? The Code of Iowa doesn't even include a list of duties related to the job, further underscoring the disposable nature of the position.

Seven states don't even bother to elect a lieutenant governor, although a few of those bestow the title on whoever happens to be presiding in the state Senate at the moment.

Amending the Iowa Constitution and eliminating the job would save the taxpayers not just the \$103,000 salary, but all of the travel, administration and staffing expenses tied to the job.

There's has never been a better time for the Iowa Legislature to initiate the process of amending the Iowa Constitution to eliminate the lieutenant governor's job — which soon will be filled by a person who wasn't even elected to the position.

## **DMR: Planned Parenthood funding protested**

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The words "We love you and your baby," written in marker in a child's handwriting next to a colored-in heart, were among the messages greeting drivers as they passed Planned Parenthood in Des Moines Saturday morning.

The phrase, written by a 9-year-old parishioner of St. Joseph Catholic Church in Des Moines summed up what about 50 people who gathered with signs, crosses and rosaries outside of the clinic at 1000 E. Army Post Road, wanted to say. It was one of 225 rallies at sites nationwide that day protesting federal funding of Planned Parenthood, organized through the #ProtestPP anti-abortion organization, according its website. Other Iowa rallies took place in Cedar Falls, Council Bluffs, Iowa City and Sioux City.

People at the rally called for federal funds to instead support organizations that provide free services to women but do not perform abortions, such as InnerVisions Healthcare in West Des Moines. They also wanted to let women know that there are other options, event spokesperson Geneveve Loraditch of Ankeny said.

"We're mostly here to pray," Loraditch said. "And we're united in that this is not a place where we want our money to go."

Exclamations of disapproval like "Stay out of my vagina!" were shouted at protesters from passing cars. "People say they have a right to their bodies," protester Daryl Chicoine of Ankeny said. "But these babies also have a right to their lives. ... Planned Parenthood is not parenthood. It's destruction." Chicoine and fellow



protesters Marie Fitch and Jackie Corey, both of Ankeny, said America is at a pivotal point and the Trump administration brings some hope to the anti-abortion cause.

Corey added that while she appreciates the administration's anti-abortion stance, she is concerned about its actions on immigration.

"We support the rights of all people to find freedom and justice," Corey said. "We welcome the immigrants."

The group hoped its "prayerful, peaceful presence" conveyed love to the people that passed by, Fitch said.

"They have a right to their own body, but that right stops when it infringes on an innocent (person)," she said. "That baby needs the support of bigger people."

## **DMR Editorial: Legislators should repay state for cheap health care**

Ignorance of the law is no excuse

Gov. Terry Branstad said in 2012 he would begin voluntarily paying 20 percent of his state-funded health insurance premiums. He encouraged other state workers, including lawmakers, to follow suit. The next year, the governor said some legislators, who had previously enjoyed premium-free health insurance, had started contributing 20 percent.

But not a single lawmaker is paying that share, according to December 2016 data obtained by The Des Moines Register. And it appears they are violating state law.

Iowa Code Section 2.40 extends health insurance to legislators, which is a generous benefit compared with what some other states offer members of a part-time Legislature. The law also specifies the plans offered should be the same as those available to state employees "excluded from collective bargaining."

Iowa lawmakers, however, have enrolled in plans with significantly lower premiums negotiated by unions on behalf of union-covered state workers. Ninety-two legislators pay as little as \$20 per month, a Register investigation found. They should be paying \$142 to \$334 per month. An additional 39 lawmakers pay up to \$344 monthly instead of the \$446 called for by their plan.

It's not clear why this is happening, but the day after this newspaper reported the information, Senate Majority Leader Bill Dix, a Republican from Shell Rock, predicted the underpayments would end during this legislative session. (On Wednesday a subcommittee passed a bill requiring all legislative branch employees to enroll in non-union health plans.) Dix should certainly be able to ensure that happens, and the public should be able to confirm it does. Dix is, after all, the chairman of the Legislative Council, which establishes policies for lawmakers and reviews the employee handbook and what insurance plans are offered.

"Senate Republicans have long felt that we should be paying a larger share of our health insurance," he said.

Except they didn't.

Dix and House Democratic Minority Leader Mark Smith of Marshalltown, also a member of the council, said they were unaware of the law regarding their own health insurance.

That's right. The people who make the laws in this state are unaware of what those laws require.



Then there's the hypocrisy. Republican lawmakers are seeking to make changes to Iowa's collective bargaining law. They target unions and complain about the cost of public workers while they sponge off union-negotiated health, dental, life and long-term disability insurance plans.

In fact, the public paid \$23,150 last year for all the fringe benefits Dix enrolled in, more than any other lawmaker. He also collected \$37,500 in salary and \$23,409 for travel and other reimbursements in fiscal year 2016. This one member of Iowa's citizen Legislature costs taxpayers more than \$84,000 annually.

It's not a bad part-time job if you can get it.

And claiming to be unaware of the law does not absolve lawmakers of responsibility when they break it. If that were the case, child molesters and drug dealers would show up in court, claim they didn't know their actions were illegal and avoid punishment. The government will not allow people to avoid paying taxes owed because they say they didn't know about them.

Every single Iowa lawmaker should repay the state for the share of their health coverage they failed to pay. They could write checks, set up payment plans or arrange payroll deductions.

That is what honest stewards of public dollars who are genuinely concerned about government spending would do.

## **DMR: 'Local control' is an Iowa legislative lie**

I've been covering the Iowa Legislature for 25 years, but it didn't take that long to recognize legislators' favorite little lies.

"I'll be brief," is probably the most common, a phrase that typically precedes some longwinded rant. "I didn't mean to speak on this bill," is another eye-roller. If lawmakers could find a way to eliminate all the accidental speeches, they could probably cut the legislative session down to 50 days.

The one I want to address today is more mythical idea than idiotic idiom, but it's just as delusional. It's the notion that state lawmakers respect local control.

"Local control," broadly, is the ability for governments below the state level — cities, counties and school boards, for the most part — to make their own decisions.

This year, Iowans are hearing the phrase most often as Republican legislators' rationale for taking a machete to Chapter 20, the law dealing with collective bargaining for public employees.

And yet, the same week legislators were so generously bestowing power and flexibility to local governments with their right hand, they were preparing to rip it away with the left. Legislation to forbid local governments from setting their own minimum wage has been introduced and is likely to pass this year.

Contradictory? Not at all, House Speaker Linda Upmeyer said Thursday.

"Those things in the preemption bill have always been not the responsibility of the local government. They have always been functions of state government and federal government," she said.

Upmeyer drew a distinction with the collective bargaining bill. "The way we handle budgets is absolutely a function of a school board, of a city council, of county supervisors," she said.



Uh-huh. Where was the concern for the budgeting responsibility of local school boards the last several years? Lawmakers flouted their own legal requirement for setting state aid for schools in a timely fashion. They made it difficult and sometimes impossible for school districts to meet the state's deadline for certifying their budgets.

Lawmakers did approve state aid in a timely way this year, but the GOP majority cut the governor's proposed 2 percent increase almost in half. That's their prerogative, but the fact is the state controls local school budgets in many ways and will continue to do so.

For most of the last quartercentury, however, the tug-of-war over local control has been all about manure. In the early 1990s, local governments started using their zoning authority to prevent concentrated livestock operations — mostly hog lots, in those days — from locating too close to neighbors and waterways.

The Legislature soon put a stop to that, preempting local governments and reserving regulation over livestock operations to itself. In return, lawmakers put in place some new regulations, but they didn't exactly clear the air. Many rural Iowans have their noses out of joint over this issue to this day.

The minimum-wage issue started in a similar way. Frustrated by inaction at the state and federal level, some Iowa counties have moved to address the ridiculously outdated \$7.25-per-hour minimum wage. They apparently have acted within their authority, or this conflict would be playing out in the courts instead of the Statehouse.

Gov. Terry Branstad and Republicans who control the Legislature want to put a stop to that. They argue it is difficult for businesses to deal with a patchwork of different wage laws. House Study Bill 71 also stops local governments from making their own laws related to hiring practices, employment benefits, scheduling practices or other terms and conditions of employment. So cities can't have stricter antidiscrimination laws than the state's, nor can they require local employers to offer health for example.

Lawmakers, however, have made no move toward actually addressing the problem that some local governments wanted to fix: raising the minimum wage. Upmeyer was noncommittal when asked if an increase would be proposed in a separate bill. I suspect that if Republicans had the votes to raise the minimum wage, it would be in the bill.

What is in the bill instead is a provision to stop cities from banning non-recyclable plastic bags. Apparently, Republican legislators feel the state should have plastic-bag primacy, even though local communities have to manage their local landfills with their local budgets.

Lawmakers like to pretend they are apologetic about taking up time with their remarks, accidental or deliberate. Everybody knows it's nothing more than a social gesture that means nothing. Everybody also knows that no matter how much legislators profess to care about local control, it is always and only on their own terms. It's time to give up that favorite little legislative lie.

## **DMR Iowa View: Collective bargaining: Why dismantle landmark law?**

**JOHN W. MCKERLEY** is an oral historian at the University of Iowa Labor Center.

Compromise created one of the best bipartisan bills in the last 50 years, interviews show

On Tuesday, the Republican majority in the Iowa legislature filed bills that would radically and negatively amend one of the finest bipartisan pieces of Iowa legislation drafted in the last 50 years — the Iowa Public Employment Relations Law (Chapter 20 of the Iowa Code).

I know this because I've spent much of the last three years documenting the original legislation's history.

Since 2013, I have spoken with dozens of Iowans who worked in the public sector before Chapter 20 was enacted in 1974, legislators from both parties who voted for it, employees of the board charged with administering it, and representatives of the generations of workers who have labored and negotiated under its rules. While some of these Iowans have criticisms of particular elements of the law, none of them favors the fundamental restructuring set forth in the current Republican plans.

Before Chapter 20, Iowa's public employees had little say in their pay or conditions of work. For example, teachers report being disciplined and discharged for conduct outside of school hours, with women, in particular, being singled out for discipline for "indecent" conduct, which could include nothing more than being seen in a two-piece bathing suit on weekends. By the late 1960s and early 1970s, such experiences resulted in a wave of strikes by public employees like firefighters, nurses and teachers, all of whom felt pushed into a corner by a legal system that refused to force their employers to engage in honest and meaningful collective bargaining.

By 1974, these tensions resulted in wide, bipartisan support for a collective bargaining law for public employees. The final law — signed by Republican Gov. Robert Ray — rested on three major compromises. The first was a strong no-strike provision. Next was a provision limiting the "scope" of bargaining — meaning that employers and employees were not forced by law to negotiate over anything other than a particular list of topics, including pay, health insurance and a grievance procedure. Finally, in cases in which the two sides could not settle a contract, the law set up a system by which a neutral outside arbitrator would pick from proposals to reach the most reasonable settlement based on several conditions, including comparing similar contracts across the state, the ability of the employer to pay (taking into account the possibility of tax increases but not encouraging them), and the public interest.

The law also established a Public Employment Relations Board (under the direction of the governor's appointees) who administered the law. These industrial relations professionals helped to establish a system that, over time, settled the overwhelming majority of contracts without the need for arbitrators.

Indeed, by 2016, no more than 3 percent of contracts went to arbitration.

The system established by Chapter 20 has meant slow but steady improvements in pay and working conditions for Iowa's public employees. Moreover, none of the dire warnings about unsustainable tax increases — made in the 1970s as today — have ever come to pass.

Indeed, arguably, such circumstances were more likely before Chapter 20 than after it. Perhaps it was for this reason that David Stanley, the co-founder of Iowans for Tax Relief, was among the conservative Republicans who voted for Chapter 20 in 1974.

As one of the people most familiar with the long history of Chapter 20, I can identify no rationale for the current Republicans' proposed bills other than ideological motivations or pressure from out-of-state groups that have no interest in the long-term well-being of Iowans. If successful, I fear that the proposed changes to Chapter 20 will have the effect of further hollowing out Iowa's middle class, especially in rural areas and small towns, where public-sector jobs are some of the best to be found. I implore Iowans of good will from all parties to reach out to their legislators and urge them to oppose these bills.

## **DMR Iowa View: Congress must correct error over terrorist law**

By: Leonard Boswell



During my 16 years as a member of the Iowa delegation in Congress, I witnessed on more than one occasion the idea that “some of the worst acts committed have been done with the best of intentions.”

When Congress passed the Justice Against Sponsors of Terrorism Act [expanding the right of U.S.

citizens to sue nations for terrorist acts], it was passed with noble intentions. Unfortunately, the consequences of this legislation have a worst-case scenario effect on members of our military and foreign diplomatic corps.

As other nations look to reciprocate our law, the shortcomings become more apparent. For example, sovereign immunity has been the legal precedent that has prevented nations from being subjected to criminal prosecution.

With the adoption of JASTA, the stronghold of sovereign immunity has been questioned and will continue to be questioned by nations that may not be our friends. Several countries including Turkey, Iraq and Pakistan are beginning to consider laws that resemble our own.

As a leader on the world stage, the United States often sets precedent in diplomatic relationships across the world. When we fail to abide by our own idea of sovereign immunity, other nations will be enticed to follow suit. Sadly, the consequences for our military men and woman could be catastrophic.

I know and am friends with many members who supported this act. I can attest to them as individuals who want to do what is right for America and the American people. Unfortunately, what was meant to provide justice for families who were affected so tragically by the events of 9/11 has unintentionally put members of our military in harm's way. As a veteran myself, I aim to keep our military heroes safe from harm.

As it currently stands, JASTA legislation comprises language that promotes uncertain consequences on a global scale. It allows foreign nations the opportunity to exercise legal jurisdiction over members of our military.

This in turn opens Pandora's box to the possibility that our nation's leaders will be forced to decide between divulging secret or sensitive information or subjecting our service members to the ruling decided in a foreign court.

These issues are best avoided.

As a former member of Congress, I understand why its members make the decisions they do. Representatives must realize when they have made a grave mistake and to immediately rectify the error. In this case they need to make substantive changes that protect those who protect us. That is why I ask Congress to make the politically hard decision on this issue.

## **DMR Iowa View: Branstad's leadership made wind energy a big success**

Tom Kiernan, American Wind Energy Association

Led by Iowa's example, wind power has officially gone mainstream nationwide. There are now enough turbines installed to power 20 million American homes, and more than 100,000 U.S. workers have well-paying jobs in the wind industry. It's impossible to tell this success story without Iowa Gov. Terry Branstad.

As he continues his public service as the next ambassador to China, on behalf of American wind power I want to express a heartfelt “thank you.” Led by Branstad's determination and forwardlooking policy, Iowa consistently shows the rest of the country what's possible with homegrown wind energy.



In 1983, Iowa took a remarkable step: It became the first state to create a renewable portfolio standard, signed into law by Branstad in his first year in office. History proves this was a ground-breaking piece of legislation. Today, 29 states and the District of Columbia their own RPS.

These successful policies have brought a host of benefits to the country's families and businesses. They have created 200,000 American jobs, billions of dollars in savings from lower energy prices and substantial public health benefits from cleaner air. In Newton, wind came along when the local economy needed a boost the most. Once dubbed the "washing machine capital of the world," the town faced a crisis when Maytag and other manufacturers shut down and moved jobs overseas. Then two new wind factories opened, one in part of the old Maytag plant, ultimately offering thousands of new jobs that gave Newton another chance.

Branstad's support for wind energy benefits all Iowans. The state recently became the first to generate more than onethird of its electricity from wind. And Iowans didn't need to sacrifice affordable electricity to get there — they pay among the lowest rates in the country, sitting far below the national average.

The results speak for themselves: Up to 7,000 Iowans have wind power jobs. Eleven in-state factories build wind turbines and parts for them. And nearly \$12 billion of private investment has already been added to the state's economy. Just one of the additional projects now underway, MidAmerican Energy's Wind XI farm, will invest another \$3.6 billion as the state's largest renewable energy project, yet.

Crucially, wind has also bolstered the cornerstone of Iowa's economy: agriculture. The state's farmers receive up to \$20 million every year for hosting turbines. That's income they can count on when commodity prices fluctuate or weather hurts the harvest. Some observers have even called wind "the new corn."

"One turbine has changed my life," Ed Woolsey, a fifth-generation Iowa farmer, recently told Bloomberg Businessweek. "Before, I raised corn and soybeans and cattle." Now, he said, "I'm a wind farmer."

"Every wind turbine you see while driving across our state means income for farmers, revenue for local governments and jobs for Iowa families," Branstad said during 2016's Condition of the State address. As he heads to China, we recognize his pivotal leadership in making this all possible for millions of Americans in Iowa and beyond.

## **DMR: Door ajar for statewide insurance program**

Speaker anticipates options by Jan. 1; Branstad aide mum

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Sweeping changes proposed to Iowa's collective bargaining laws would block most public-sector unions from negotiating over health insurance, though they stop short of instituting a mandatory statewide health insurance system Gov. Terry Branstad has floated.

Republican leaders say they considered including such a plan in the legislation, but felt it could be too restrictive. Instead, the bill leaves open the possibility for a voluntary statewide health insurance program that employers could opt into.



“We want to make sure people are able to look at what best meets their needs,” said House Speaker Linda Upmeyer, R-Clear Lake. She said she anticipates a statewide program would be made available as an option for employers around the first of the year.

Branstad’s spokesman Ben Hammes declined to answer questions about when such a proposal might be made or what provisions it would include. He said in a statement that if the proposed collective bargaining changes were to become law, “we would begin working to develop common sense solutions” related to health insurance.

But Branstad has spoken extensively about the possibility in recent months. In his Condition of the State address in January, he proposed removing health insurance from collective bargaining negotiations and instead shifting all of Iowa’s public workers into a single health benefit program.

Iowa has more than 500 health care plans for an estimated 184,000 public employees working in cities, counties and school districts across the state. Merging all of those employees into one plan would help spread the risk in an attempt to keep costs low while maintaining benefits, Branstad argues.

He and other Republicans have said the state’s collective bargaining laws don’t give employers enough flexibility to negotiate reasonable health care policies, resulting in overly generous benefits for which taxpayers foot the bill. “When you have public employees getting these Cadillac benefits and paying virtually nothing — \$20 a month — and the taxpayers are paying in some cases over \$23,000 (for health insurance) ... it’s not fair,” Branstad told reporters Monday.

“It needs to be addressed, and that is why we are going to continue to work with the Legislature and labor committees in both houses to address it.” Legislation proposed last week in the statehouse would make changes to nearly every aspect of the state’s collective bargaining laws. Among the most significant are changes to what public-sector union workers are allowed to negotiate over.

Currently, unions negotiate for wages and health insurance, as well as a wide range of other workplace conditions and employment benefits.

The legislation — House Study Bill 84 and Senate File 213 — specifically prohibits negotiations over health insurance, though it exempts public safety workers from that provision. Rep. Dave Deyoe, R-Nevada and House Labor Committee chair, said removing health insurance from negotiations removes barriers on employers that currently prevent them from seeking less costly alternatives.

“It’s not necessarily making people pay more for health care,” he said of the changes. “It might be a situation where they can find a policy that’s less expensive that provides the same benefits.” But union leaders, who would no longer have a voice in choosing which health plans would be available to their members, say they absolutely expect to see higher health insurance costs. For those currently paying \$20 a month, that increase could be dramatic.

Danny Homan, president of AFSCME Iowa Council 61, has said that many unions have agreed to lower salaries in exchange for better health benefits. And although Branstad and legislative leaders have said a statewide pool could provide a low-cost alternative, Homan said he’s not convinced.

“When the governor and Republican leadership claim that a statewide health insurance program would provide savings, they are doing so out of pure speculation and without any facts or figures to back them up,” Homan said in a statement. “The last time we trusted the governor on his cost savings plan, we ended up with the disaster that is privatized Medicaid. This is a baseless claim and I cannot comment further until I see something on paper.” Deyoe said that the governor’s staff made it clear to him that any statewide system would be voluntary. Upmeyer said that’s because legislators had some concerns, including about people who live along



the state's borders. "If it doesn't allow somebody in Council Bluffs to get some health care in Omaha, it might be a problem," she said. "It might not be what they want. So I think the fact that we have a pool available, that may offer great opportunity. That's an option. That's something people can take a look at. But if it doesn't meet their needs, then they can go and look at or create perhaps a different pool."

That statewide plan would be just one option for employers shopping for new health insurance options, she said. The bill lets employers pick the plan they like best for their employees.

"I think people will be innovative and creative about what kind of pools they put together, who they work with," Upmeyer said. "And I think that'll be positive."

## **DMR: Rastetter won't seek 2nd regents term**

President, president pro tem tenure received mixed reviews

**JEFF CHARIS- CARLSON**

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IOWA CITY, Ia. — The president of the Iowa Board of Regents announced Friday that he will not seek a second term on the board that oversees Iowa's three public universities.

Bruce Rastetter, instead, will allow his six-year term to expire April 30, according to a news release Friday.

"I want to thank Gov. Branstad for the opportunity to serve our state these past six years and his confidence in me as a regent," Rastetter said in the release. "Because of the importance of our three public universities and the pride I have in them, this was a tough decision. However, I will leave the board satisfied that we made significant strides improving the value of higher education in Iowa."

For the past few weeks, Rastetter has said he was "undecided" about whether to seek reappointment to the nine-member board. Officials with the governor's office say Iowa Gov. Terry Branstad is scheduled March 1 to release the names of his appointments to three seats on the regents and more than 160 other boards.

Rastetter was not among the 20 board applications the governor's office had received by Feb. 3. Regents Katie Mulholland and Sherry Bates, whose terms also expire in April, submitted applications for reappointment.

Rastetter said his departure from the Iowa Board of Regents will allow him to return to his agribusiness interests in the Midwest and in South America.

"I'm excited about several significant projects that we have in the initial planning stages, and I look forward to announcing details about them very soon," he said.

### Controversial tenure

Rastetter's tenure as the board's president and president pro tem has received mixed reviews. He has said his focus has been on ensuring that quality higher education remains affordable and accessible to all Iowans. His news release included a list of accomplishments that ranged from 2 1/2 years of tuition freezes for resident undergraduates, record student enrollment, record growth in private philanthropy and expansion of the University of Iowa Hospitals and Clinics. He also credited the universities, state legislators and the governor for

working more collaboratively to financially support the state's three universities so they remain leading institutions of academic and innovative excellence.

Rastetter's many critics, however, say his four years as board president have led to widespread concerns about encouraging political favoritism, undermining academic leadership and pitting the state's public universities against each other. "Mr. Rastetter has created more division and distrust at our three public universities than any time I can remember," Sen. Joe Bolkcom, D-Iowa City, said Friday in an emailed statement. "We are still trying to fix the damage caused by his disastrous performancebased funding proposal. ... I join thousands of Iowa students, parents and staff who are relieved that Mr. Rastetter has decided to move on."

Critics have raised concerns about Rastetter's supposed too cozy relationships with current presidents Steve Leath at ISU and Bruce Harreld at UI, as well as with his often antagonistic relationships with former presidents Sally Mason at UI and William Ruud at UNI.

#### President searches

Rastetter played an active role in the 2015 search process that led to the hiring of Harreld, a former IBM executive, as the 21st president of the University of Iowa. Rastetter not only recruited Harreld, who had no previous experience in university administration, but he also facilitated meetings between Harreld and four other members of the board. Questions and concerns about the search process led to a vote of "no confidence" against the regents by the UI Faculty Senate. The national American Association of University Professors also voted this summer to approve sanctions against UI for failures of the search. AAUP officials say that last year's search for a new president of the University of Northern Iowa avoided many of the problems that plagued last year's search. Rastetter was not a member of UNI search committee.

#### State funding

In 2012, the regent leadership began using the strategy of promising to freeze resident undergraduate tuition levels if the Iowa Legislature provided a specific amount of additional funding for the state's three public universities.

The gamble paid off during the 2013 and 2014 legislative sessions. But lower than requested state funding increases in 2015 and 2016 legislative session led to mid-year and last-minute tuition increases. To demonstrate to lawmakers that the universities were making every state dollar count, Rastetter also called for an efficiency study of the three universities. The resulting Transparent, Inclusive Efficiency Review process has led to major changes in HR, IT, procurement and other issues across the regent enterprise.

Rastetter was much less successful, however, with a plan to change the basic formula by which the state divides funding among the three universities. The so-called "performance based funding" formula approved by the board in 2014 would have redirected millions of state dollars from UI to pay for the larger percent of in-state students at ISU and UNI.

#### Board presidency

If Branstad had reappointed Rastetter, it's unclear whether the agribusinessman and Republican donor would have had the 34 votes needed in the Republican-controlled Iowa Senate for confirmation. Rastetter first became president of the board in 2013 after the Iowa Senate, then under Democratic control, refused to confirm his predecessor, Regent Craig Lang, for reappointment.

What happens to Rastetter's board presidency after April 30 depends on whether Mulholland, the board's president pro tem, is reappointed by the governor and confirmed by the Senate.



## **DMR: Officer's search of stepson is ruled lawful**

Davenport cop did not violate man's constitutional rights

**GRANT RODGERS**

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A Davenport police officer acted lawfully when he searched his adult stepson without a warrant, once for a weapon and another time after he became suspicious that the 20-yearold was selling marijuana, the Iowa Supreme Court ruled Friday.

The ruling came in an appeal from Christopher Brown, who argued that evidence obtained during two searches by his stepfather, Officer Brent Kilburg, should have been suppressed from his trials on felony gun and drug charges.

Though the Fourth Amendment of the U.S. Constitution prevents law enforcement officers in most situations from searching a person without a warrant, the justices unanimously ruled that Kilburg was not acting as an "agent of the government" when he searched his stepson, the court ruled. "We conclude that Brent was not acting in his capacity as a law enforcement officer during either of the searches," Justice Bruce Zager wrote. "When initially confronted with with the situations, Brent was at all times acting as a concerned parent and not as a law enforcement officer."

The justices had never encountered the unusual facts in Brown's appeal, Zagar wrote. But courts have heard arguments for decades over when, exactly, police and law enforcement officers are acting in their official job capacities rather than as private citizens. For instance, the Nebraska Supreme Court ruled in 1990 that a police officer who also worked as a landlord conducted a legal search when he found drug paraphernalia in a tenant's apartment and alerted narcotics officers, according to the ruling.

Kilburg physically searched his stepson on Feb. 5, 2015, after Brown's mother and other family members became concerned that he had stolen a firearm and might be suicidal. The officer found the gun in Brown's waistband and decided to call two of his supervisors after his wife told him that she'd found marijuana in her son's backpack, according to the ruling.

Kilburg turned over the backpack to police, and Brown was arrested on two drug charges and one count of being a felon in possession of a firearm.

Kilburg searched the trunk of his stepson's car later that month after becoming concerned that Brown was selling marijuana. Brown was unemployed at the time and living with his mother and stepfather, and both became suspicious when they learned that he'd purchased an Xbox video game console. Kilburg found a handgun and marijuana in the trunk of his stepson's car and turned over the evidence to a sheriff's deputy.

Brown, now 22, was charged again with possession of a controlled substance, being a felon in possession of a firearm and conspiracy to commit a non-forcible felony. After two trials in front of a judge, he was convicted of numerous charges and given a five-year suspended prison sentence at a hearing in August 2015.

"There is no doubt that both of the searches in this case were purely private in nature," Zagar wrote in the ruling. "In each search, Brent confronted the situation in his capacity as a private citizen — a stepparent — and his conduct moving forward indicated that he continued to act in his role as a concerned parent."



# **AP: Court: Officers can't ask for driver's license without a suspicion of crime**

**DAVID PITT**

ASSOCIATED PRESS

The Iowa Supreme Court has made it significantly more difficult for police to continue to ask questions or even ask for a driver's license during routine traffic stops if there is no reasonable suspicion a crime has been committed. In a ruling Friday, the majority of a divided 4-3 court overturned a 30-year-old Iowa legal precedent that said officers could at least ask drivers to produce their license during routine stops. "We conclude that when the reason for a traffic stop is resolved and there is no other basis for reasonable suspicion, article I, section 8 of the Iowa Constitution requires that the driver must be allowed to go his or her way without further ado," wrote Justice Brent Appel in the majority opinion.

The court decision throws out the conviction of an Eldridge man who was stopped in August 2014 by a police officer conducting random checks on license plates of passing cars.

Jayel Antrone Coleman was driving his sister's car which was flagged when Officer James Morris ran its license plate and records indicated the owner had a suspended license.

He continued the stop even after finding the car's owner wasn't driving by asking for Coleman's license, registration and proof of insurance.

The justices said once Morris determined the car's driver was not the owner, the reason for the stop was satisfied and further inquiry was unconstitutional.

Appel said unlimited discretion to stop vehicles on the open road have given rise to allegations of racial profiling. The court affirmed that "limitations on searches and seizures by law enforcement protect fundamental values of liberty and human dignity and are a bulwark against arbitrary governmental intrusions into the lives of citizens." As it turned out Coleman had no license since he had been barred from driving by the state. His record indicated he'd been arrested two days before the stop for second-offense drunken driving and had a previous record that included driving while barred, driving while suspended and several narcotics convictions.

He was charged with driving while barred and convicted by a Scott County judge but appealed claiming the evidence obtained by the officer was part of an unlawful seizure.

The opinion reveals a deep division among Iowa justices about how they view the balance between law enforcement duties and constitutional limits on police power. Justice Thomas Waterman, opposing the majority opinion, said Coleman's stop was not unduly prolonged by the officer's request to see a driver's license.

"Until today, a police officer who lawfully stopped a motorist could ask to see his or her driver's license, especially when the officer knew the driver was not the car's registered owner," Waterman said. "Almost all Iowans, I believe, would find this activity completely unobjectionable and, indeed, mundane."

Assistant Iowa Attorney General Kevin Cmelik said the ruling may make officers more hesitant to approach the window of a car if they can't ask for identification to know who they're dealing with.

"It certainly is going to change the dynamics for officers in those situations where they do dispel their reasonable suspicion and have to decide what to do," he said.

Coleman's attorney, Micki Meier, said the decision "limits officers' ability to just be able to randomly choose vehicles to pull over based on license plates" and forces them to have some other reason for stopping cars.

## **DMR: Iowa GOP chief chides 'thuggish comments' in email**

WILLIAM PETROSKI

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An insulting email circulated by a union lobbyist is sparking criticism from the head of the Republican Party of Iowa, who decried the use of "sexist, thuggish comments" in an increasingly bitter debate at the Iowa Capitol over a collective bargaining bill. The email from Erich Schmidt, political director for the Laborers International Union of North America in Des Moines, provides tips for union supporters when contacting Republican legislators. It includes bluntly worded talking points to use when discussing the GOP-sponsored proposal, which would dramatically weaken contract negotiating rights now held by Iowa's public employee unions.

Schmidt's email, which was obtained by The Des Moines Register, includes the names of 13 Republicans in the Iowa House. It offers a brief description of each lawmaker, with most characterized as "douche." In addition, first-term Rep. Ashley Hinson, R-Marion, is characterized as "Cute but still douche," while Rep. Walt Rogers, R-Cedar Falls, is labeled "Super Duper Douche."

Email addresses on Schmidt's message indicate it was circulated this week among staff of the Des Moines Public Schools, as well to other individuals concerned about the collective bargaining bill. The Laborers International Union represents some blue-collar public employees in central Iowa as well as the Waterloo area.

Jeff Kaufmann, chairman of the Republican Party of Iowa, issued a statement Friday denouncing Schmidt's email.

"Frankly, I am dismayed that Iowans would stoop this low and act in this manner," Kaufmann said. "The sexist, thuggish comments in this leaked email are shocking and inexcusable. In addition, this email was disseminated widely on taxpayer-funded equipment during taxpayer-funded work hours. Iowans now expect the union responsible for this email to take the appropriate actions and hold this person accountable. We also expect those aligned with this union will demand changes as well."

Schmidt said Friday his email was an unedited internal document that was accidentally released to the public and it was not approved by his union. However, he refused to apologize, saying, "If mild locker room talk is what it takes to get the public's attention to what Republicans in this Legislature are doing to working Iowans, then the Municipal Laborers have succeeded. Republicans are ramming prepackaged legislation down Iowa employees' throats which would take us back 43 years. They are stripping worker rights and keeping Iowa's minimum wage at poverty levels. What should be shocking is this legislation."

Democrats and union leaders have harshly criticized House Study Bill 84 and Senate File 213, saying the identical proposals would destroy collective bargaining for Iowa's public employees, which has been in place since the 1970s. Republicans say the legislation would restore control to local elected officials and state officials and help Iowa taxpayers. Under the two bills, public employees who are not engaged in public safety work would be able to bargain only on wages, while other issues, such as health insurance and working conditions, would be explicitly banned from contract talks.

Schmidt's email suggests that opponents of the collective bargaining bill contact Republican legislators multiple times. It also recommends that callers use different voices or different phone numbers.

One of Schmidt's talking points suggests that callers tell the designated legislators, "Hey, I didn't hear you campaign on this (expletive). You lied to me, not a good idea, bro!"

Kaufmann said Friday the email was forwarded to the media by a teacher disgusted with the contents. He said it contains "shockingly sexist comments and inappropriate language." He specifically made reference to the description of Hinson, a former reporter, anchor and producer for KCRGTV in Cedar Rapids.

Hinson told The Des Moines Register she considers Schmidt's email to be "petty bullying." The fact it was circulated among Des Moines Public Schools employees serves as evidence of the need for reform in Iowa's collective bargaining process, she said.

"They are making their point for us because people were doing this when they should have been teaching. I find this to be offensive and I think it is misogynistic and hypocritical," Hinson said.

"You know, I am a smart woman. I am an elected representative. I deserve respect like any other representative on that list, or among my peers," Hinson said. She suggested that she is owed an apology.

Rep. Shannon Lundgren, RPeosta, whose name was included in Schmidt's email, said it is disheartening that people would think bullying and being negative would change a legislator's mind. She said she is talking with school officials, county supervisors, union officials and others in her northeast Iowa legislative district to gather as many comments as possible about the proposed collective bargaining legislation. At this point, she added, she wants to see some amendments before she can say she will vote for it.

Phil Roeder, a spokesman for Des Moines Public Schools, described Schmidt's email as "crude and inappropriate." He also suggested it gives "lousy advice" about contacting state legislators.

"It does not represent Des Moines Public Schools in any way, shape or form.," Roeder said. "Any employees who did share this document using their district email account will be counseled by our human resources office, including a reminder that their emails are public, and that their use or misuse of district email reflects on both their school and the school district. Beyond that, any discipline would be a personnel matter that we cannot publicly discuss."

However, Roeder said he takes issue with claims the email was widely disseminated in Des Moines schools, adding it appears to have been forwarded to 10 of 5,000 school employees. If other instances are found, they will be shared with the school's human resources office, he said.

## **DMR Editorial: Don't eliminate ban on politically active churches**

Trump would turn churches into tax-exempt political machines if Johnson Amendment were revoked

When President Donald Trump attended the National Prayer Breakfast, he assured the assembled clergy that he intends to "totally destroy" the 60-year-old law that prohibits tax-exempt churches from supporting political candidates.

It's easy to see why he'd make such a promise.

Trump claimed an astonishing 81 percent of the white evangelical vote in the November election, despite his many personal peccadilloes. That's the sort of support money can't buy. It's also the sort of support that can generate an avalanche of campaign contributions, which could explain the president's desire to dismantle the Johnson Amendment. That amendment has long prevented churches and other nonprofits from claiming tax-



exempt status if they choose to promote, or oppose, the political campaigns of candidates running for public office.

Eliminating the law would more explicitly legalize that which is already commonplace: clergy members freely expressing their political views from the pulpit. That is worth applauding, but there's a corresponding, unavoidable downside to eliminating the Johnson Amendment, and it's a doozy.

With no Johnson Amendment, the flow of "dark money" that has corrupted our political process with untraceable campaign contributions would become a torrential flood. The change would also create an entirely new animal: the tax-exempt political machine.

As things stand now, a citizen can contribute \$100 to a church and claim a tax deduction for doing so, or he can donate that \$100 to a political campaign and forgo the deduction. If Trump has his way, the \$100 donation to the church can then be routed directly to the political campaign, and the donor could still claim a tax deduction, and the church could continue to enjoy tax-exempt status even if its sole function was that of a money-laundering operation for political candidates.

That is a recipe for disaster.

As Richard Schmalbeck, a professor of law at Duke University, says, "If wealthy people and institutions can deduct the cost of their political activities, but only if those activities are funneled through a church, they will do precisely that. If for some reason they cannot find a cooperative church to be their mouthpiece, they can easily create one."

Schmalbeck points out that the IRS is prohibited from randomly auditing churches, and churches, unlike other charities, are automatically assumed to be deserving of tax-exempt status.

The Johnson Amendment doesn't bar clergy or parishioners from voicing their opinions on matters of public policy — the late Jerry Falwell is Exhibit A of that — but it does prohibit churches from funding candidates' campaigns if, at the same time, they are claiming tax-exempt status.

That's important because tax deductions and exemptions are, in effect, a form of taxpayer-provided subsidies — and no one wants to see taxpayer subsidies used to support political candidates, regardless of party.

Eliminating the Johnson Amendment won't add to the ability of churches to express themselves. But it will result in taxpayers underwriting that exercise, while simultaneously creating new ways to secretly finance political campaigns.

## **LEE: Proposed procedural hurdles indicate political attack, Iowa union leaders say**

Erin Murphy

Unions that represent Iowa's public employees think they are on the receiving end of a politically motivated attack from state lawmakers who seek to change dramatically the way some of those public employees collectively bargain for benefits.

Republican state lawmakers this week introduced sweeping legislation that essentially rewrites the state's collective bargaining laws. GOP officials say the current system, which was established in the 1970s, favors public employees at the expense of taxpayers.

Among the many in the proposal are provisions that would significantly weaken unions' bargaining position on employee benefits and make it more difficult for unions to retain their bargaining authority.

Those provisions, in particular, have led union officials to claim that Iowa Republican lawmakers are not trying to save taxpayer money, but rather weaken the influence of public employee unions, a bloc that in elections typically votes for Democratic candidates.

A similar law implemented in Wisconsin in 2011 led to a 34 percent reduction in union membership between 2011 and 2015, according to the Milwaukee Journal Sentinel.

One top Iowa union leader described Iowa Republicans' proposals as a copy of Wisconsin's but "on steroids."

"They are doing everything in their power to make it hard for unions to exist in this state," said Danny Homan, president of AFSCME Iowa Council 61, which represents 40,000 workers in law enforcement, corrections, mental health care and other fields.

Statehouse Republican leaders denied allegations that they are attempting to "bust" public employee unions.

"That's not what this is about," Republican Gov. Terry Branstad said. "The fact is, I think Iowans appreciate and want us to be fair, and they want a system that is not antiquated and isn't tilted in one (side's) favor, but (a system) that's going to be fair to all Iowans. And I believe that these changes are designed to do that."

The proposal adds or strengthens procedural hurdles for unions to retain their bargaining authority. Chief among them is a measure that would require unions to be certified by a majority of their members, instead of merely by a majority of members who vote, as current law is written.

In other words, if a union has 5,000 members, it would have to receive 2,501 votes in support of recertification. Under current law, unions need only a majority of however many members vote, like most public elections.

Republicans say such a measure is warranted to keep union bargaining units accountable to their members and is justifiable even though most elections, including for state legislator and governor, are decided by a majority of votes cast, not a majority of the population represented.

"The rule on that is the same that we have here in the House: It's a majority here of the House members," said Rep. Dave Deyoe, R-Nevada, referring to the requirement of a majority vote in the chamber for the passage of legislation. Deyoe is chairman of the House Labor Committee through which the collective bargaining bill is running. "It doesn't matter how many people are here in the chambers. If you have a vote up there, we have to have 51 votes."

Union leaders said that because Iowa is a right-to-work state, no public employee may be required to pay union dues and any employee can opt out of a union at any time. Therefore, they say, the higher threshold for recertification is unnecessary and an indication of a political attack.

"It's totally unnecessary. It's vindictive," Homan said. "They have now taken that bar (to recertify) and given us a bar that is really, really, really unfair and high."

Homan said participation in union certification votes varies from bargaining unit to bargaining unit, often depending on the size. Smaller units will have high voter turnout, but larger units often do not, he said.

“You may have half of them vote. So that means I need to get 100 percent yeses? We have absolutely no margin for error,” Homan said, noting a recent unit’s vote on whether members wish to accept the state’s bargaining offer of a 1.25-percent raise. “We have 5,000 members here in Des Moines, and I guarantee you 5,000 of them didn’t come to vote yesterday. For whatever reason. They’re good members. They pay their dues.

“For whatever reason, they just don’t show up. Does that mean that they want to get rid of the union? I don’t think so.”

The proposal also doubles — from one to two years — the amount of time before a bargaining unit may try again, if it fails in a recertification vote.

Tammy Wawro, president of the Iowa State Education Association, which represents more than 34,000 Iowa educators, called the proposed recertification threshold “purely punitive.”

“It’s just a lot of process (for no) reason,” Wawro said. “If people want to decertify now, they have a plan. ... People can get together and ask a bargaining unit to not represent them.”

## **SCJ: Inside the Capitol**

*Editor's note: Every other Sunday through the conclusion of this year's session of the Iowa Legislature, local lawmakers will share their Statehouse views.*

### **Sen. Bill Anderson, R-Sioux City**

Legislation allowing for the sale and use of fireworks passed last week on a bipartisan vote of 11-3 in the Senate State Government Committee.

This is an issue I have become very familiar with over the past four years. A similar version of the fireworks bill was adopted by the State Government Committee last year on a bipartisan vote. That bill never came to the full Senate for debate.

Senate Study Bill 1051, if it becomes law, would give county boards of supervisors or city councils the ability to prohibit the use of consumer fireworks through a simple ordinance or resolution. The bill also has language which would allow the sale of consumer fireworks in both permanent and temporary structures. Currently in the state, Iowans are permitted to possess as many consumer fireworks as they want, you just can’t set them off.

Retailers in permanent structures would be permitted to sell consumer fireworks from June 1 through July 8 and between Dec. 10 and Jan. 3 annually. Those selling fireworks in temporary structures would be permitted to sell from June 13 to July 8 each year. The bill also creates procedures and penalties for violators. Sales would be prohibited to consumers under the age of 18.

With the enactment of this bill, Iowans would have the freedom to use fireworks during the specified dates. Fireworks must be used on personal property or with a landowner’s permission.

I expect the bill will now move to the Senate Ways and Means Committee, from there to the full Senate for debate.

**Rep. Jim Carlin, R-Sioux City**

Given the degree of interest, misunderstanding and concern around proposed changes to Chapter 20, it's important to lay out the facts as they now stand. I encourage all to review House Study Bill (HSB 84) before drawing final conclusions.

What the bill does not do:

The bill does not affect private-sector unions.

The bill does not repeal the right to collectively bargain.

The bill does not affect pensions in any way.

The bill does not take away health insurance.

The bill does not mandate that local governments must join a statewide health insurance pool.

What the bill does do:

The bill rebalances the scales to insure a fair and equitable system that works for public employers, employees, and taxpayers, giving taxpayers a seat at the table.

For example, arbitrators cannot now consider if the state has enough funds to pay for wage and benefit increases, but they can consider government's ability to increase taxes in order to generate more funds to pay for these benefits. Collective bargaining agreements need to live within current financial realities, just as in the private sector.

HSB 84 gives local governments the ability to recruit and reward exceptional employees while making it easier to get rid of the occasional bad employees. Currently, it can take up to three years to terminate an ineffective teacher. That is a disservice to taxpayers, parents, students and quality teachers within the system.

HSB 84 will change the mandated items that must be bargained for, allowing management the ability to actually manage. Greater flexibility for school boards, city councils, mayors and boards of supervisors, along with state government officials, allows for more effective allocation of resources.

As this legislative session continues, I welcome your feedback. Please feel free to contact me at [jim.carlin@legis.iowa.gov](mailto:jim.carlin@legis.iowa.gov) or 515-281-3221 or 712-253-4270

**Rep. Chris Hall, D-Sioux City**

Over the past several years, I've done my best to approach the Legislature without partisanship as my first pivot.

Republicans and Democrats both have good ideas, and there has been balance in shared control of the Legislature over the last six years. That has taken a drastic turn this year as one-party control by the GOP does not appear to give even moderate Republicans much voice within their party.

Monday evening, after hours of testimony from school officials and debate, aid for K-12 public schools was set at a dismal 1.1 percent. Initially, Gov. Terry Branstad proposed 2 percent growth, which was then decreased by legislative Republicans. A recent survey of superintendents found that this will likely cause increases in class



sizes (71 percent), layoffs of teachers (61 percent) and an increase in property taxes for Iowans (179 school districts). The Republican school funding proposal of 1 percent this year is the third lowest since 1973.

Think about these two facts. Seven of the past eight years account for the lowest investments in public schools in Iowa's history. Yet during the same period of the Branstad era, business tax cuts have increased six times faster than education funding. Elected GOP officials have prioritized corporate welfare over Iowa's own taxpayers.

Steamrolling behind those sad facts, the GOP has proposed to make public jobs less competitive. Law enforcement, firefighters, teachers, snowplow drivers, social workers – your friends and neighbors – would have less retirement and health care coverage under their proposal, and it will be harder to attract young families to this state. It will make attracting teachers to rural communities more difficult. Iowans value public service and our current laws have worked for more than 40 years. We owe these people better than to demonize and scapegoat them.

Please ask your legislators to oppose HSB 84. Visit [saveiowaworkers.com](http://saveiowaworkers.com) for their contact information.

### **Rep. Tim Kacena, D-Sioux City**

Police officers and state troopers putting their lives on the line every day to protect us. Nurses taking care of your spouse, parents or children. Teachers and coaches in your school district. Correctional officers working at one of the state prisons. Snow plow drivers working all night during a blizzard to keep our streets and highways safe. Veterans who have served in combat but have returned home and now serve their local community. These are just a few of the public workers who make Iowa a great place to live.

However, House and Senate Republican lawmakers and the governor believe these dedicated public servants are underworked and overpaid. That's why they have spent months writing a bill in secret to strip away rights from these workers and didn't even bring the issue up during the campaigns last fall.

Originally passed to stop strikes, the bipartisan state collective bargaining law has served Iowans, employees and public employers across Iowa well for more than 40 years. It simply requires Iowans and their public employer (school, city, county, etc.) to sit down and work together to discuss issues and reach mutually agreeable solutions in the workplace.

Unveiled on Tuesday, Gov. Terry Branstad and Republicans are now trying to fast track the bill through the Legislature. Hundreds of Iowans came to the Capitol last week to have their voice heard, but Republicans don't want to hear from Iowans or even consider the unintended consequences.

I believe that law enforcement officers, firefighters, teachers, nurses and other Iowa workers deserve fairness and a voice in their own workplace.

On Monday, the Iowa House debated supplemental state aid for our public schools and one-half million kids.

The proposed 1.1 percent is the third lowest increase since 1973 and half of what was recommended by the governor. This increase amounts to about \$73 per student, which would buy one-half of a textbook. Districts have had eight consecutive years of budget decline, averaging about 1.8 percent per year. Administrators say they need 3 to 3.5 percent just to stay above water.

In the end, I voted against a 1.1 percent increase in funding to schools.



## LEE: Recurring themes in Branstad's state of state speeches

ERIN MURPHY

The longest-serving governor in the nation's history, Terry Branstad has delivered to Iowans a Condition of the State address 22 times.

The speech is given each year in January during the first week of the legislative session. Delivered in the House chamber at the Iowa Capitol, lawmakers, state Supreme Court justices and other statewide elected officials attend, and it is broadcast live on public television.

Typically, it is the largest audience the governor attracts each year.

On Jan. 10, Branstad delivered what likely will be his final Condition of the State address. The governor has been selected by President Donald Trump to serve as the next U.S. ambassador to China, and his confirmation is expected to come this spring.

To mark the occasion, a news researcher analyzed the texts of each of the six Condition of the State addresses Branstad has made since returning to the governor's office in 2011 — starting with his 2012 speech. Obviously, his messages vary, but the analysis shows some recurring topics and word choices. Here are the most common:

We (295 times)

Together (81 times)

Us (51 times)

When Branstad says “we” and “together,” he most often is referring to himself and lawmakers and the work ahead.

“Together we can make our schools safer,” he said in 2015, using both words in the same sentence.

Another example, from 2013: “It is the promise of a good people, who demand a good government and expect the men and women serving in that government to put aside their differences and come together to make good public policy.”

Iowa (368 times)

This one should come as no surprise. From touting its successes to laying out visions for its future, the state's name is going to come up often when a governor is giving a speech on the condition of the state.

Branstad used “Iowa” more than any other word in the past six speeches, and it's probably safe to assume that would hold true for all 22 of his addresses, not to mention those of other Iowa governors.

An example from 2017: “I am confident Iowa will continue to move forward because Iowans care deeply about their neighbors, their communities and creating an even better future.”

Students (72 times)

Schools (91 times)

## Education (78 times)

Branstad has a complicated relationship with education — public education in particular. The state continues to devote a healthy portion of its budget — more than half — to public education, but advocates say funding has been inadequate since Branstad’s return to office in 2011.

Branstad also led an effort to enact significant K-12 education reforms in 2013, which he spoke about in the next year’s Condition of the State.

An example from 2014: “We have begun to reform Iowa’s education system, and we can expect Iowa schools to pull away from the middle of the pack and reclaim pre-eminence in student achievement as measured against the rest of the United States.”

## I (160 times)

It would be hard to be a state’s chief executive, speak for a half-hour about one’s plans to meet the state’s challenges and not refer to oneself fairly regularly. Still, his use of the first-person singular didn’t rise above 30 times each in five earlier speeches. It peaked at 36 this year, likely his last.

An example from 2012: “This year I will submit to the General Assembly a revised plan to reduce commercial and industrial property taxes by 40 percent over the next eight years.”

## Jobs (81 times)

## Economy (64 times)

Branstad has placed a primary focus on the state’s workforce, pledging when he returned to office in 2011 to create more than 200,000 jobs. In fact, his use of the two words was highest in his 2012 speech. It is natural that he would regularly refer to jobs and the economy in his speeches, but both have ticked downward a bit over the years. He used the word “jobs” 27 times in 2012, but only five times in 2017.

An example from 2015: “The proposals outlined today will impact every Iowan. They will help to create jobs, protect students and families and open up our government.”

## Opportunity (73 times)

When Branstad talks about opportunity, often it is to lay out a piece of his agenda as he did during his first Condition of the State address since returning to the governor’s office.

An example from 2012: “Now, with our fiscal house much improved, and our fiscal year 2013 budget already substantially completed, we have a tremendous opportunity to focus the next few months on two other critical priorities: first, creating new jobs and careers for Iowans to significantly raise family incomes, and second, adopting common sense solutions for our schools to give our children a world class education.”

## New (68 times)

Branstad often describes his proposals as “new.” He also regularly refers to “new jobs” when discussing a need to increase employment.

An example from 2016: "Together we can forge a new path that will lead us to stable and predictable funding for school infrastructure and historic long-term protection for water quality."

Today (62 times)

Branstad uses "today" most commonly in two ways: To tell Iowans about what he thinks are good things happening in the state and to make pledges for the future.

An example of the latter from 2014: "Today, I am calling on members of the Iowa Legislature to join me in working to reduce costs to make college affordable and reduce the amount of debt incurred by Iowa students and their families.

Future (43 times)

The annual addresses are all about looking forward, having a plan for what's next.

An example from 2017: "And while I am pleased with this progress and optimistic about Iowa's future, I believe there is more work to be done."

## **KMA Land: Questions raised regarding Clarinda lodge's shutdown**

Local lawmakers and union leaders, alike, are expressing concerns over the suspension of services at the Clarinda Correctional Facility's lodge unit.

State Department of Corrections officials announced this week that the lodge--a minimum security facility--would be closed temporarily because of \$5.5 million in cuts to the department's budget for fiscal 2017. The department's reductions were part of the \$117 million in deappropriations to the current fiscal year's budget approved by the Iowa House and Senate and Governor Terry Branstad. State Representative Cecil Dolecheck says he was upset over the new of the lodge's closing. Dolecheck tells KMA News he spoke with a department of corrections liaison concerning the reductions, and was informed it was a temporary shutdown.

"They're planning on temporarily shutting down the lodge," said Dolecheck. "There are inmates that are closed to being terminated. Their terms are about up. They're being reacquainted to go back in (into society). They're going to try and place those inmates--if they don't go back in and complete their parole--into community-based corrections centers in other areas.

"I said, 'what's that doing to do, because the lodge is what does the cooking and cleaning for the whole prison?' They said they would have to use other inmates in the prison, and take them over to the lodge, and have them do that," he added.

Dolecheck also expressed concerns about the lodge's employees.

"It's going to be a transition period," he said. "It's kind of unfortunate. The lodge had been working well. There's 17 employees in the community that are employed there. So, I'm concerned about those employees, and their employment, and where they end up, or get transferred to. But, I guess I'll just wait and see."

The exact number of workers impacted by the shutdown was unavailable.

Danny Homan is president of the American Federation of State, County and Municipal Employees Local 61--the state's largest employees union. In an interview on KMA's 7:35 news segment Friday morning, Homan



expressed concerns about the lodge's prisoners being paroled or placed on work release. He also says the lodge's closing comes on the heels of other layoffs of state prison employees in recent months.

"They've laid off, I think it's about 16 probationary employees," said Homan. "I don't know if we've had any layoffs down at Clarinda, but those aren't even layoffs--those are terminations. These are people that gave up another job to come and work for the department, and now they're being fired during their probationary period.

"That's another concern we have. Those people gave up jobs to work for the state of Iowa--and this is how the state of Iowa treats them," he added.

Homan believes Governor Terry Branstad and Lieutenant Governor Kim Reynolds could have taken steps to avoid the reductions--such as eliminating corporate tax breaks.

"When they came into office six years ago," he said, "they bragged about having a \$700,000-\$900,000 surplus in state government. They didn't create that surplus--Governor Culver did. But, they bragged about it. They inherited it. And, where's that surplus today? It's gone. Where did it go? Into the pockets of corporate tax breaks."

Dolecheck says he would be open to reviewing the tax incentives given to big corporations in Iowa. However, the Mount Ayr Republican says it all goes back to lower-than-expected revenues indicated in the State Revenue Estimating Conference's report in December. Homan, meanwhile, expressed fears that riots and other incidents at the Tecumseh State Prison in Nebraska could happen at Clarinda or other facilities in Iowa.

Also targeted for cuts were the Luster Heights Camp at Harper's Ferry, the John Bennett Unit at Fort Madison, and the residential treatment services at Sheldon's community-based corrections.

## **WHOTV: Iowa No Longer Utilizing Unemployment Kiosk System**

It was a controversial move in 2011 when Governor Terry Branstad chose to close down the state's unemployment offices and replace them with more than 700 self-help kiosks around the state.

But now, those kiosks aren't even being serviced or tracked by Iowa Workforce Development. [The Des Moines Register first reported](#) the kiosks were abandoned Friday, prompting a response from Governor Branstad's Communications Director, Ben Hammes.

"This is an old issue that dates back before Director Townsend," he said. "Our relentless focus on economic development and providing good paying jobs across Iowa have led to unemployment in Iowa dropping to 3.6 percent, well below the national average. We are interested in looking forward and are confident in Iowa Workforce Development and their focus on utilizing technology to provide the best service to Iowans in all areas of our state."

Iowa Workforce Development officials say, because of technology advancements, these kiosks had become obsolete. The virtual access point, once only accessible via kiosk computer, can now be logged into from any Internet-connected device.

"The majority of calls we have received about the kiosks in the past few years have been a request for us to pick up the equipment because it's no longer necessary to access the virtual access page that provides the service to Iowans," said Beth Townsend, director of Iowa Workforce Development.



But some labor activists are crying foul, saying that without a public announcement that these kiosks would no longer be serviced or tracked, this is another slant against unemployed Iowans.

"When they decided they were going to close those offices, we actually fought against that," said Ken Sagar, president of the Iowa Federation of Labor. "In the alternative, when they put the kiosk in, that was a pretty big disappointment, at the time. And now, the fact that we are fundamentally throwing the kiosk out the window, too, it's kind of like asking Iowans to, 'Go help yourself.'"

## **AP: Powerful Iowa higher education leader won't seek 2nd term**

Bruce Rastetter, the powerful and polarizing leader of the board that governs Iowa's three public universities, announced Friday that he will be stepping down April 30 after deciding not to seek a second six-year term.

Rastetter, a Republican who has been president of the nine-member Board of Regents since 2013, said he would not ask Gov. Terry Branstad to reappoint him. He said it was a "tough decision" but that he will leave satisfied with accomplishments that include freezing tuition for resident undergraduate students for 2 ½ years, a first in 40 years.

The announcement came after some Democrats in the Iowa Senate indicated they would likely vote against confirming Rastetter had he been reappointed. While Republicans control the chamber, Rastetter would have needed to earn votes from some Democrats to obtain the two-thirds support needed.

Rastetter said he would focus on his work as CEO of Summit Agricultural Group, his investment company that is working to develop ethanol production in Brazil. Later this year, regents will choose one of their own to be board president.

Branstad thanked Rastetter for his service, calling him a "hard-working, conscientious leader" and praising him for helping attract "outstanding university presidents."

"We were also able to make dramatic changes to improve efficiency of the institutions and control costs for Iowa students and their families," he said.

Branstad in 2011 appointed Rastetter, who was his top donor in the 2010 campaign in which Branstad unseated Gov. Chet Culver. The governor orchestrated a leadership shakeup in which the board's top leaders were demoted and Rastetter was elevated to the no. 2 position. Rastetter became president two years later despite controversy that often swirled around him.

Rastetter backed plans that froze tuition rates for in-state undergraduates, saying students needed relief from Iowa's notoriously high debt loads. The freezes proved popular with students and parents but were ultimately unsustainable after lawmakers didn't provide funding increases sought by the schools.

A businessman who made fortunes in pork production and ethanol, Rastetter had been accused of showing favoritism toward Iowa State University and antipathy at times toward his alma mater, the University of Iowa, where he's a major football booster.

Rastetter had been leading an investment group working with Iowa State to develop a major western-style farming operation in Tanzania on land where the government was evicting thousands of settlers. The project continued after his appointment, drawing accusations of a conflict of interest and protests. Iowa State eventually ended its involvement with the project, which Rastetter defended as a well-intentioned plan to help feed Africans.



More recently, critics were angered by Rastetter's moves to nudge University of Iowa President Sally Mason into retirement in 2015 and the process by which the board installed businessman Bruce Harreld to replace her.

Critics said Rastetter orchestrated the search to favor Harreld, a former IBM executive who had no prior higher education management experience, over more qualified candidates. Rastetter backed the hire as a way to shake up the school. He and other regents face trial later this year in a lawsuit alleging they violated the open meetings law when they met privately with Harreld during the search.

Rastetter also faced questions about his relationship with Iowa State University President Steven Leath, who turned to Rastetter's company for help finding, buying and dividing a \$1.1 million plot of land to build a home in central Iowa in 2015.

Rastetter announced in December that the board would keep Leath as president despite an audit that found he used university airplanes for personal flight training, to attend medical appointments and to take relatives to an NCAA basketball game.

Critics had accused Leath, a pilot, of keeping quiet a 2015 hard landing in which he damaged one of the planes while returning home from vacation. But Leath had informed Rastetter about the landing weeks after it happened.

## **AP: Toledo residents unsure how to use former Iowa Juvenile Home**

Residents in Toledo are unsure what they want the state to do with the 27-acre former Iowa Juvenile Home that Gov. Terry Branstad ordered closed in 2014.

The Courier (<http://bit.ly/2knvSOa>) reports that Matrix Design Group has presented three options for the 27 acres, 16 buildings and nearly 143,000 square feet of the facility that closed in 2014. The Iowa Economic Development Authority Board hired the company to determine how to develop the facility.

Two options would keep part of the grounds as an educational facility and devote the rest to residential living. The third makes the entire area a mix of senior housing and residential living.

More than 50 people who attended the meeting offered questions and critiques but didn't unite behind a specific plan.

## **Daily Non-Pareil: Legislature's actions could significantly hurt Council Bluffs' budget**

By Jon Leu

With Iowa lawmakers scrambling to address a \$117 million shortfall in the state's budget and debating changes that could potentially reduce the degree of control that cities and counties could exercise over local governments, Council Bluffs Mayor Matt Walsh said he has "concerns" about the viability of the balanced budget for the coming fiscal year that he has presented to the City Council.

While Walsh's proposed budget does not call for any reductions in the city's workforce, he said that three employees planning to retire will not be replaced. The mayor said that while he has not instituted a citywide hiring freeze, vacancies on the city staff, which now numbers 480, will be replaced on a case-by-case basis.

But he said there are two bills on the floor of the Legislature now dealing with traffic cameras that could create the potential for a required layoff of city workers.

The first of those bills would end the use of traffic cameras throughout the state of Iowa.

Walsh said his budget proposal for the coming year includes \$704,000 in revenue that would be generated by the city's red-light cameras. If the cameras are banned in Iowa, it would create a \$700,000 shortfall in the city's budget.

He said while the city has the ability to raise the current 2 percent franchise fee by as much as 3 percent, with each 1 percent increase in the franchise fee generating slightly more than \$1 million, those costs would be passed on to consumers by the utilities forced to pay the higher franchise fees.

"Raising the franchise fee would have the same impact on residents as a tax increase, and I don't think we should raise taxes," he said.

Walsh said the average cost of a city employee for wages and benefits is approximately \$75,000. The loss of \$700,000 in revenue could force the city to lay off nine to 10 employees.

A second traffic camera bill would require cities using the cameras to obtain permission from the Iowa Department of Transportation and would shift revenue from any cameras the DOT approved from a city's general fund to the city's road-use tax fund.

If that version of the law is approved by lawmakers and signed by the governor, a portion of the \$700,000 generated by Council Bluffs' red-light cameras would become unavailable for employee salaries and benefits and could result in the lay off of three to four workers, Walsh said.

Of even greater concern is the potential loss of state reimbursement of property tax revenue the city lost when the Legislature approved a property tax rollback on commercial properties several years ago.

Walsh said his budget anticipates a commercial and industrial property tax replacement payment of \$2.2 million for the fiscal year beginning July 1.

He said Gov. Terry Branstad, who has been nominated by President Donald Trump to become U.S. Ambassador to China, has said he would veto any legislation that cut the commercial and industrial property tax replacement to cities.

Branstad's heir-apparent, Lt. Gov. Kim Reynolds, indicated last Tuesday that she, too, would veto legislation that would eliminate the reimbursement. Ben Hammes, a spokesman for Branstad, told The Nonpareil on Friday the governor has made a commitment to honor the property tax reimbursement.

Walsh said while he is reasonably confident the city will receive the property tax replacement, a change of heart in Des Moines, coupled with the potential loss of \$700,000 in red light camera revenue would be a "perfect storm" that could force the city to reduce its workforce by 30 or more employees.

Walsh said Council Bluffs' low property tax base continues to cause budgeting problems for the city.



“Like many smaller cities, we’ve been maxed out at the allowable property tax levy of \$8.10 per \$1,000 of taxable valuation for years,” he said. “To address that, the Legislature, many years ago, allowed cities to add a 27-cent emergency levy. We’ve been maxed out at that for years, too.”

Walsh compared Council Bluffs, with a population of 62,230, to Iowa City, with a population of 67,862. Although the two cities are comparable in terms of population, the property tax base is lower and relatively stagnant in Council Bluffs, while the property tax base in Iowa City is more than twice as great and growing.

The low property tax base here takes away the city’s flexibility in addressing budget issues, he said.

## **LEE: Iowa party leaders assess political landscape**

ROD BOSHART

The state’s top Republican said Friday he sides with GOP legislators on issues of state preemption of some local decisions and collective bargaining changes that may impact his other roles as a county supervisor and member of a community college employees’ union.

Jeff Kaufmann, chairman of the Republican Party of Iowa who also is a Cedar County supervisor and instructor at Muscatine Community College, said his party’s platform “is very clear about we believe in local control” but he there also are appropriate times for the state to set uniform policies in areas like the minimum wage and local siting of livestock confinement operations.

“I think there is an appropriate time for preemption, but I would rather it be the exception than the rule,” Kaufmann said in an interview at Friday’s taping of Iowa Public Television’s “Iowa Press” show where he appeared jointly with Iowa Democratic Party chairman Derek Eadon.

“I think the Legislature is going to have to make the decision as to when preemption is appropriate. But they’ve got to make their case to county supervisors,” the Iowa GOP chief said. “We have a ton of new Republican county supervisors. There are a lot more Republican supervisors than Democratic supervisors — overwhelming, and so they’re going to have to make their case.”

A bill that would preempt cities and counties from going beyond the state standard in areas of minimum wage, civil rights, consumer product restrictions and other employment areas has cleared the committee level and is awaiting floor debate in the Iowa House. Republicans who control the Legislature also are moving ahead with a sweeping rewrite of Iowa’s collective bargaining law.

Kaufmann, a former negotiator for his community college’s bargaining unit, said he welcomed the requirement that unions periodically recertify and the effort to include taxpayers in the discussion by revamping a binding arbitration process that pressures local officials to raise taxes to pay for contract awards.

“We’re still going to bargain salaries,” he said and just because health insurance and other issues will no longer be mandatory items for bargaining “that doesn’t say you can’t bargain those items. What it says is they have to be agreed upon. Since when is it a bad idea for both bodies involved in negotiations to talk about something?”

Kaufmann said he liked Branstad’s idea of creating a statewide health insurance pool but was unaware that GOP legislators had scrapped that idea and did not include it in the collective bargaining bill working its way on parallel tracks through the House and Senate.

He said he expected that will still be a topic of conversation given the governor's support even if it meant schools, counties or other local units banding together to create health insurance pools presuming they would not run afoul of state preemption rules. "Common sense will tell you that it's numbers that drive down costs," he said.

During the IPTV taping, Eadon said voter backlash over GOP efforts to defund Planned Parenthood, revamp collective bargaining and make other changes that weren't part of their 2016 campaign messages could give Democrats an opening in 2018 when Republicans won't have Branstad or U.S. Sen. Chuck Grassley at the top of the ticket.

"I think we're optimistic that there's an opportunity to be able to show some of these folks that we have their back and that Republicans are not proposing anything that's going to help the middle class or job growth with this agenda. But obviously our base is going to be reeling from a lot of these bills," Eadon said.

"I think we're already seeing this restlessness and this fear of some very dangerous policies being proposed at the federal level and at the state level and I think we're going to see more and more of this," the Democratic leader added. "I don't think these rallies are going to stop with this disastrous union-busting bill that the Republicans are proposing."

Kaufmann conceded that having Branstad resign as governor to become President Trump's ambassador to China "is a loss. I can't sugarcoat that." But he said Republicans have a strong bench with Lt. Gov. Kim Reynolds waiting in the wings and while he conceded Republicans have to "guard against" overplaying their hand the same is true of Democrats.

"We're going to fight complacency," Kaufmann said. "That would be an easy trap to fall into, and I didn't do a victory dance. I moved right into 2018."

Eadon said Democrats also have a strong bench and Branstad's departure is "absolutely an opening," but he conceded the party is "starting from scratch" without high profile candidates like Tom Harkin and Tom Vilsack. "We still have a lot of time before that June primary of next year," he noted.

## **LEE: Response to collective bargaining proposal shades of, but not quite, Wisconsin 2011**

ERIN MURPHY

It wasn't quite a repeat of Wisconsin in 2011.

Nonetheless it was an interesting week at the Iowa Capitol as the collective bargaining battle began in earnest.

On Tuesday morning, statehouse Republicans unveiled their plan to alter the way many of Iowa's public employees collectively bargain for their benefits. The legislation was expected, but unknown to most statehouse observers. The scope was unknown until its unveiling.

Like Wisconsin in 2011, the Iowa proposal makes dramatic changes to collective bargaining laws, weakening the negotiating strength of public employee unions while carving out exceptions for public safety unions.

The response was immediate and dramatic.

People flooded to the Capitol to protest and speak at the various committee hearings that were held on the bill. Extra security was brought in just in case — at times there were at least a dozen state troopers stationed throughout the Capitol, keeping an eye on the proceedings.

To this reporter's knowledge, there were no incidents of troublemaking.

The scene was reminiscent of — but not quite as dramatic — as Madison, Wisconsin, at the height of the 2011 protests there. Tens of thousands of people protested daily at the Wisconsin Capitol in February of 2011. The crowds that came to the Iowa Capitol this week didn't quite reach that level.

But hundreds — maybe even into the thousands — of people came to the Iowa Capitol on Tuesday and Wednesday to have their voices heard.

The vast majority of public reaction to the Republican collective bargaining proposal — like Wisconsin 2011 — was negative. And it wasn't just at the Capitol; rallies took place across the state this past week.

Statehouse Republicans said supporters of the proposal simply are not as vocal as those who oppose it, but that they are nonetheless grateful the legislation has been introduced and is moving forward.

A public hearing on the proposal has been scheduled for Monday night at the Capitol. What will the crowd be like for that? Will it be even larger than the throngs at the Capitol this week? Will there be more supporters of the proposal?

We shall see.

You may have read or heard this week about one particular aspect of statehouse Republicans' collective bargaining proposal: whether it is being "fast-tracked" to being signed.

Here's a quick clarification on that.

The allegation is that Republicans are moving the bill swiftly to avoid public scrutiny. Democrats and opponents of the bill say Republicans are "fast-tracking" the legislation.

Republicans deny the allegation, saying they are following all established legislative rules and procedures.

The truth, as is almost always the case, lies somewhere in the middle.

Republicans are correct: They are following legislative procedures in advancing the bill. Rules are in place that dictate when a bill can be debated at each step of the process — after it is passed by subcommittee, full committee, and ultimately the full chamber. Thus far, Republicans have followed those rules, and they have given assurances they will continue to do so. And, as mentioned earlier in this column, they scheduled a public hearing on the bill, giving anyone in the state an opportunity to voice their feelings to lawmakers.

So Republicans are not fast-tracking the bill, at least as far as procedural rules go.

However, the bill is moving swiftly through that established legislative process. It was just introduced for the first time on Tuesday morning, and by the end of Thursday it had passed Senate subcommittee and committee, making it eligible for floor debate early this coming week. The expectation is the bill will be fully debated and approved by both chambers — the Senate and House — by the end of this coming week, and could be signed into law by the governor the following week.

That's pretty quick movement for legislation; bills regularly take weeks — even months to go through the full legislative process.

So, to summarize, Republicans are not “fast-tracking” the collective bargaining bill according to established procedures. But compared to most pieces of legislation, they're advancing it pretty quickly.

## **The Gazette: Iowa teachers rally against Legislature's collective bargaining bill**

Hundreds met on the steps of the statehouse Sunday

Hundreds of Iowa teachers, school children and other activists rallied outside the statehouse Sunday, voicing opposition to legislation filed last week that would overhaul the state's collective bargaining law.

The legislation threatens the “backbone of society” by targeting public educators, said Roxann Dittmer, who has spent most of the past 25 years working as an early education teacher in the Cedar Rapids Community School District.

“I didn't choose to be an activist for education,” Dittmer said. “I chose to be a teacher, and it falls to you because you have to fight for what's right for the good of children and for the families of Iowa.”

The legislation would gut Chapter 20 — which sets the parameters for contract negotiations with public employee unions — Iowa Democrats have said, while Republicans have argued the changes would provide more local control and modernize the 1974 law.

Under the proposed legislation, public employees except for police and firefighters would only be able to bargain for base wages.

“It's going to be hard to find people to go into public service when we treat them this way,” Sen. Nate Boulton, D-Des Moines, said at Sunday's march.

Other speakers, including representatives from the Iowa State Education Association and the march's organizer Iowans for Public Education, said they hope Iowa will avoid the fate of states like Wisconsin that have gutted their collective bargaining laws.

“Wisconsin has become a state that teachers avoid,” Des Moines Education Association President Andrew Rasmussen told the crowd.

Kelly McMahon, a Cedar Rapids kindergarten teacher at the rally, spent the first nine years of her career teaching in Milwaukee. She said the political climate around public education there drove her from the state.

“We have to be able to attract the brightest people to the profession,” she said. “And when you attack the profession like this, and then you put in scams like education vouchers or education savings accounts, you're doing nothing but great harm.”



More than losing the ability to bargain for benefits, McMahon said she is worried the proposed changes to Iowa's collective bargaining law will stop teachers from voicing concerns for fear of reprimand.

"There are not only these attacks on our schools and our profession, but also things are happening in our classroom every single day that aren't OK," she said. "And we need to be able to speak up and be a voice for our kids."

Dozens of school-aged children attended the rally with their families. Jenna Pressley, who works for the Ankeny Community School District, attached a sign to her seven-month-old daughter's stroller that read "attacking teachers attacks my future."

"She's going to be directly impacted by what happens to public schools," Pressley said. "Her mom and dad are both public school teachers, and I want her future to be full of bright, empowered teachers."

Organizers urged demonstrators to attend a public forum on the collective bargaining changes scheduled for Monday evening at the statehouse. Both Dittmer and McMahon said they'll be making the trip again from Cedar Rapids.

"I'm just at the point in my life where I'm tired of apologizing," Dittmer said. "I'm good at what I do, I love my students, I am an advocate for public education. That's why I'm here — because this is important to me."

"I've read about what has happened in other states, and it's scary. I don't want that for our state."

## **The Gazette: Cedar Rapids casino backers 'thread the needle' with options**

Wary of previous denial, group offers smaller choice

A new push for a casino in Cedar Rapids is getting support locally from people saying it would be a good addition to downtown, but there's also skepticism state regulators would allow it.

"Talking about it is a good idea, but the problem I see is the hurdle in Des Moines," said John Opperman, 57, of Marion, who was with family members Sunday in Cedar Rapids. "I don't see anyone on the commission or legislators saying they support it. The same thing is going to happen again. I think it is good to have a plan, but I hate to get everyone all worked up for nothing."

Three proposals have been presented publicly in advance of the Iowa Racing and Gaming Commission's application deadline Monday for a Linn County gaming license: the \$165 million Cedar Crossing on the River on the west side of the Cedar River; the \$105 million Cedar Crossing Central replacing the Five Seasons Parking Ramp with a skydeck to the DoubleTree Hotel and U.S. Cellular Center; and the \$42 million Wild Rose Cedar Rapids "boutique" casino next to the Skogman building and kitty-corner to the DoubleTree. .

The Cedar Crossing on the River option is virtually the same pitch the state commission rejected in 2014 by a 4-1 vote, in large part due to economic studies predicting heavy cannibalization of revenues from other casinos, including Riverside Casino & Golf Resort to the south.

"It was a larger facility that we learned in the spring of 2014 was everything we wanted it to be, but one thing it was also was probably too big," said Brent Stevens, of Peninsula Pacific.

Peninsula and partner Cedar Rapids Development Group are bringing forth the old project, which had amenities and entertainment components to go with a large gaming operation, and also a smaller version about two-thirds the size that still offers amenities so it isn't just a "slot house," he said.

The two partners formally presented the proposals at a Sunday morning news conference at the DoubleTree.

Wild Rose Entertainment, along with development partners Steve Emerson and Hunter Parks, introduced their plan in September.

The gaming commission has a lengthy process for deciding if one or more — or none — of the proposals get a license. A decision could come in November.

Amy Opperman, 33, of Cedar Rapids, who was spending Sunday morning at NewBo City Market with her dad, John, and mom, Laurie Opperman, was supportive of building a casino in Cedar Rapids.

"It will be an income generator," she said. "I think financially it will really help the city, so I am glad to see it coming back."

All three said they preferred the Cedar Crossing Central concept, for among other reasons the likely boost it would bring to the city-owned DoubleTree.

Others cast more doubt.

"I don't know if it can support one," Bob Leslie, 58, of West Branch, said of a new casino in Cedar Rapids. "I question whether it is needed. You have Meskwaki, Riverside, Dubuque, Davenport has a couple. It would be good for the people here and good for the people who own it, but I don't know if enough people would use it."

Steve Gray, head of the Cedar Rapids Development Group, acknowledged it is a challenging prospect. The gaming market in Iowa is flat.

"We are trying to thread the needle of, one, generating new revenue for the state, and two, having less impact on other casinos," Gray said.

But he said the backers won't give up even if this effort falls short. "We are back and, quite frankly, we aren't going away until we are told 'yes,'" he said.

Cedar Rapids city officials are bound by an earlier memorandum of understanding to support the Cedar Rapids Development Group. The agreement is expected Tuesday to be extended to 2029, so if this effort fails the city would continue to support the group for years.

The city and the Wild Rose boutique casino have no such deal.

Cedar Rapids Mayor Ron Corbett, who attended the news conference Sunday, called on the commission to look to the future of the gaming industry, and said the commission needs to balance all the criteria for a license and not just focus on cannibalization of other revenues.

"Industries have had to reinvent themselves," Corbett said. "Think about the old riverboats and Mark Twain-style casinos, and what there is now. The commission has to look forward to how the industry can evolve and not just protect what they have in place."

The Cedar Crossing casinos plan to provide benefits the community.

The Cedar Crossing on the River design includes a portion of the flood control system, and Cedar Crossing Central would upgrade the Five Seasons Parking Ramp, which needs to be replaced in the next 10 years at a cost of \$35 million or so, Corbett and Cedar Rapids City Manager Jeff Pomeranz said.

## **The Gazette: Program for Eastern Iowa girls teaches hundreds about STEM careers**

Annual program shines light on science- and math-related fields

CPR. How to suture wounds. The importance of noting observations during a scientific experiment.

These are just a handful of topics that nearly 200 middle school girls from Eastern Iowa learned about this past weekend during a University of Iowa program that aimed to reverse a longtime trend.

On Saturday, 191 middle school students gathered in the Medical Education Research Facility on the UI campus for the sixth annual Girls Go STEM event, which focuses on teaching participants about STEM — Science, Technology, Engineering and Math — careers.

“Historically, women have not been represented in STEM, so we need to catch ourselves up with that and not put our girls in that situation to say, ‘this will be hard for you, just because you’re a girl,’ ” said Jackie Kleppe, director of collegiate and community relations with the University of Iowa Health Care, which hosts the program as part of the [Southeast Iowa STEM Hub](#).

Gov. Terry Branstad has promoted STEM curriculum as a part of the Governor’s STEM Advisory Council since 2013.

The free Girls Go STEM program is for girls in sixth, seventh and eighth grades, which organizers say is a key age to retain a young woman’s interest in a science- or math-related field.

Participating students chose four of 16 sessions — hosted by various departments across the university — that featured hands-on activities specific to a particular field. Students who attended the College Dentistry’s session learned how to fill cavities, while those who attended the chemical engineering session learned how to test air quality using high-tech gadgets.

While the program in the past has focused on general health sciences, organizers say they’ve opened up the programs for other departments to participate in the last two years.

Kara Thomas, 11, a sixth-grader at Wickham Elementary School in Coralville, said her favorite session involved learning how to make lip balm as part of a pharmaceuticals program. This was her first time attending Girls Go STEM.

Thomas said before the program, she hadn’t thought about a job in any of the STEM fields.

“But now that I’ve learned about it, I’m thinking about it,” Thomas said. “I thought the pharmacy was really interesting.”

Encouraging participants to consider a career in one of the featured departments is the main goal of the program, said organizers and instructors.

“It’s very much important to me,” said Radhika Anareddy, a graduate student at the University of Iowa working toward her Ph.D. in analytical chemistry who was an instructor on Saturday in the chemistry department’s session. “I think more female students should go into science because right now, I see that many girls are not in the program, so we’d like to encourage more girls to go into science and be independent.”

Researchers have found that middle school is often a time young women lose interest in subjects pertaining to math or science, according to data from the Southern Poverty Law Center.

According to the center, women account for about 20 percent of STEM-related bachelor’s degrees in the United States, despite the fact the majority of college graduates and master’s degree holders are women.

According to the U.S. Department of Commerce, women make up less than a quarter of the STEM-related workforce.

“Last year, we did an evaluation after the event, and I think 80-some percent said their interest in STEM has increased after attending this event,” said Jayme Crawford, coordinator for collegiate health at the University of Iowa Health Care.

Aside from the girls, 195 parents also attended Saturday’s event, where they learned about adolescent health and about women in STEM-related fields.

Crawford, who manages the adult programming, said the goal is to help parents understand how to help their girls pursue STEM interests.

“(We want them to) deter away from those stereotypes that (their daughters) are not good at math and science,” Crawford said.

## **The Gazette: 3 casino options for Cedar Rapids try their luck**

License applications due Monday to Iowa Racing and Gaming Commission

Investors rebuffed for a Cedar Rapids casino license in 2014 are back with a plan to reintroduce the initial Cedar Crossing proposal as well as pitch the option of a new Cedar Crossing Central concept with a giant skydeck over railroad tracks to the DoubleTree Hotel and U.S. Cellular Center.

The two options will be introduced in a new bid for a Linn County gaming license to the Iowa Racing and Gaming Commission, investor Steve Gray and partner Brent Stevens, chairman of Los Angeles-based Peninsula Pacific, told The Gazette

“When we think about the good and meaningful broad community support, we feel pretty good about this project and believe things have changed enough over the last three years to have a reasonable chance of success with the Racing and Gaming Commission,” said Gray, head of the Cedar Rapids Development Group of local investors behind the proposal.

While the Cedar Crossing plan offers two distinct choices, there are no guarantees either — or a previously released downtown “boutique” casino proposal from Wild Rose Entertainment — will fly with the commission.

The deadline for submitting new license applications is 3 p.m. Monday, but the commission is not expected to make a decision until late fall.

Wild Rose, which has three casinos in Iowa, and local developers Steve Emerson and Hunter Parks triggered the application process after pitching a downtown casino and office project last September.

Here's what the commission is likely to see in the applications:

- Wild Rose Entertainment: A \$40 million casino with 600 to 700 slot machines and 15 to 20 table games, but no additional amenities such as dining or a bar, and a projected \$42 million in annual revenue. It would employ 200 to 225 people. The casino would be on the second floor of a four-story mixed-use structure with a skywalk, kitty-corner to the DoubleTree along First Avenue and the Fourth Street SE rail corridor.

- Cedar Crossing on the River: A \$165 million complex with 840 slot machines and 22 table games, multiple restaurants, a bar, a retail area and entertainment space. The site is along First Avenue W and First Street SW on 8 acres of vacant city-owned land. The plan calls for 355 permanent jobs, 1,283 short-term construction jobs and annual revenue of \$83.8 million. This concept is nearly identical to what was rejected in 2014, including incorporating a portion of the flood control system.

#### **PROPOSED LOCATION FOR CEDAR CROSSING ON THE RIVER**

- Cedar Crossing Central: A \$105 million investment with 550 slot machines and 15 table games, dining and beverage service and annual revenue of \$63 million, The facility would replace the Five Seasons Parking Ramp with new parking, gaming floor and a landing hovering above the railroad tracks to the DoubleTree and U.S. Cellular Center between First Avenue E, A Avenue NE and Fifth Street NE. The plan estimates 231 permanent jobs and 601 short-term jobs during construction.

#### **PROPOSED LOCATION FOR CEDAR CROSSING CENTRAL**

At least 3 percent of gambling revenue from any proposal is required by law to be distributed to community projects through a local nonprofit board, which also would hold the license. An application costs \$25,000, plus a fee of \$30,000 as a deposit for criminal background checks. An additional fee of \$20 million is payable over five years if a license is granted.

A key aspect of the Cedar Crossing Central proposal is its impact on the Five Seasons Parking Ramp. The garage, which officials say needs replacing in the near future, would be demolished and replaced with the casino and parking being incorporated. The city would continue to own the land, while the development group owns the space. Backers say it could save the city millions on a necessary infrastructure project.

Another issue is the busy — and noisy — railway through downtown.

Stevens, who has been involved with three Iowa casino projects including launching Diamond Jo in Dubuque, said he has assurances the railroad would allow the structure, and sought to minimize the noise disruptions. Cedar Rapids has a deal with Union Pacific to enact a “quiet zone” in that area possibly by the end of the year.

Union Pacific has not been contacted about a structure over the Fourth Street SE corridor railroad tracks, said Calli Hite, a company spokeswoman, but didn't rule it out.

“Union Pacific engineering and real estate experts would review the proposal to ensure it meets established standards, such as vertical and horizontal clearances and real estate requirements,” Hite said.

Gray said he had always intended to bring forth another casino proposal but moved the schedule ahead by a year because of the recent Wild Rose proposal.

“We had never planned to go away. It was all a matter of when we were going to reinvigorate our effort,” Gray said. “Since Wild Rose hijacked the process and is jumping ahead of 100 local investors who spent a lot of time and spent a lot of money and made a lot of commitments, we need to respond.”

Officials from Wild Rose declined an interview, but provided a written statement.

“Our proposal reflects the priorities and guidance of the Iowa Racing and Gaming Commission, and it is designed to complement the growing downtown Cedar Rapids entertainment district, while providing a valuable source of new revenue for Linn County,” said Tom Timmons, Wild Rose president and chief operating officer.

Gray reported “100 percent” buy-in on the Cedar Crossing proposals from the previous investor group, and said they would be fully reimbursed if approved.

Gray led an expensive and combative but successful public referendum campaign to open the door to gaming in Linn County. With the original Cedar Crossing plan driving the debate, voters supported gaming by a 61-39 margin in March 2013. The referendum expires in 2021.

As part of the deal to develop a casino on city land and lead the referendum, the city of Cedar Rapids and Linn County signed a memorandum of understanding to support a casino license application only from the Cedar Rapids Development Group. The agreement runs through 2017 with the county and 2019 with Cedar Rapids.

Cedar Rapids Mayor Ron Corbett said he expects the City Council to pass a resolution of support for the Cedar Rapids Development Group on Tuesday without casting a preference for either option. He did not comment on the Wild Rose plan, but noted the group has not asked for an endorsement and one won't be forthcoming.

Corbett said he personally prefers the larger concept, but is supportive of both Cedar Crossing models.

“I like option ‘b’ only because it is an option,” he said. “I'd rather have a larger casino. If we have to go to a boutique style facility, then I'm willing to be supportive of it.”

The multimillion-dollar question is whether the gaming market, which appears flat, has shifted enough or whether a smaller casino reduces the potential of taking revenue from nearby casinos enough to justify a new license.

## **OVERHEAD MAP OF THE TWO PROPOSED CEDAR CROSSING LOCATIONS**

Studies ordered by the commission leading up to the 2014 denial predicted 73 percent to 81 percent of Cedar Crossing revenue would come through cannibalization of nearby casinos, most notably from Riverside Casino & Golf Resort south of Iowa City.

New studies will be ordered up this time.

“The studies are going to have a pretty significant impact in our decision,” said Jeff Lamberti, an Ankeny lawyer and chairman of the state commission. “Whether the type of facilities being proposed will change the market outlook we saw in the past is unknown at this point.”

Lamberti said there isn’t a “magic number” for how much revenue cannibalization is too much, and it isn’t the only factor. But historically, the commission moves forward with a license if the percentage of revenue cannibalization is in the single digits. It could go either way if the percentage hits the teens.

“These projects require a big investment and for that they are going to get some protection in their territory,” Lamberti said, adding the commission likes to see additional amenities such as hotels, restaurants and entertainment.

Dan Kehl, who owns three Iowa casinos including Riverside, did not respond to a request for comment. He has vocally and financially opposed a Cedar Rapids casino.

Ten of 19 Iowa casinos posted year-to-year losses and overall admissions slipped by more than 90,000 patrons to a total of 21,538,433, according to the most recent annual Iowa gambling industry report. Iowa casino profits grew by more than 1 percent in the most recent reporting year, but gaming revenue peaked at \$1.466 billion three years ago.

If anything, commission members have discouraged more applications, saying the market doesn’t appear to have changed, but vowed to keep an open mind.

The commission has the same make up as it did in 2014, although the terms of Lambert and Carl Heinrich of Council Bluffs — two of the previous Cedar Rapids ‘no’ votes — expire April 30.

Both applied for reappointment, among 18 applicants. The only Linn County applicant was Rene Gadelha, of Marion, who was the Republican nominee for the District 34 state Senate seat retained by Liz Mathis.

An aide to Gov. Terry Branstad said recommendations will be forwarded March 1 to the Iowa Senate for confirmation, but there’s no indication if Branstad would make changes.

Brian Ohorilko, administrator with the Iowa Racing and Gaming Commission, said no gaming license applications have been submitted yet, but it’s normal for applications to arrive close to deadline. He said two entities have been in touch about applying.

“There’s some concerns by applicants if they submit too early, competitors will get the opportunity to look at applications,” he said.

The gaming commission will consider the applications over the next several months.

One or two vendors will be hired likely in April to conduct market studies, followed by project presentation, site visits, background checks, public hearings and other aspects before the commission makes a ruling, possibly at a November meeting.

## THE STORY SO FAR

- November 2003: Linn County voters defeat a casino measure, 53 to 47 percent.
- Oct. 3, 2012: The Cedar Rapids Development Group of mostly local investors, led by Steve Gray, announce a goal of building a 110,000- to 120,000-square-foot complex with a casino, restaurants, meeting spaces and other amenities in Cedar Rapids at a cost of \$80 to \$100 million.
- Oct. 8, 2012: The Linn County Board of Supervisors approves a memorandum of understanding with the Linn County Gaming Association and Cedar Rapids Development Group to support only their application for a gambling license. The city of Cedar Rapids also approves a similar agreement about this time.
- March 5, 2013: Voters approve a referendum allowing gambling in Linn County on a 61-to-39 percent vote. The \$2.2 million campaign pitted casino investors and supporters against a Just Say No Casino effort funded in large measure by Dan Kehl, chief executive of the Riverside Casino & Golf Resort south of Iowa City.
- September 2014: The Cedar Rapids Development group submits an application for a license.
- January 2014: Cedar Crossing Casino makes its presentation to the appointed Iowa Racing and Gaming Commission.
- February 2014: The commission releases results of market studies concluding a Cedar Rapids facility would “cannibalize” customers from existing casinos, particularly from Riverside.
- April 17, 2014: The commission votes 4-1 to reject a license for the Cedar Crossing Casino.
- June 12, 2014: After approving a gambling license for a casino in Greene County, commissioners discuss an informal, three-year moratorium on any new casino licenses.
- Sept. 15, 2016: Wild Rose Entertainment, which operates three casinos in Iowa, and local developers Steve Emerson and Hunter Parks announce a proposal for a \$40 million “boutique casino” on downtown's First Avenue E across from the DoubleTree Hotel and Convention Center.
- Nov. 17, 2016: The gaming commission — despite observations that little in the casino landscape has changed — sets a Feb. 13 deadline for accepting applications for a Linn County gaming license and orders two studies of market conditions.
- February 2017: Gray, backed by his original investors as well as partners from Los Angeles-based Peninsula Gaming, which owns the Diamond Jo Casino, lays out a new bid for a casino license with two options: the original large-scale project now called Cedar Crossing on the River, or a smaller casino called Cedar Crossing Central that would be connected to the DoubleTree as a skydeck over actively used railroad tracks.

## WHAT COMES NEXT

- 3 p.m., Monday: Feb. 13, 2017: Applications for a Linn County casino license are due.
- March 7, 2017: Vendors seeking contracts to perform a market study make presentations.
- April 13, 2017: The commission likely selects vendors for the studies and sets a timeline for a decision process.
- April 30, 2017: Terms of commission members Jeff Lamberti and Carl Heinrich expire. Both are seeking reappointment, among 18 applicants submitted to Gov. Terry Branstad's office.
- July/August 2017: Applicants pitch casino proposals to commissioners.
- Late summer/early fall 2017: Results from market studies are presented. The Iowa Division of Criminal Investigation privately reports background checks on casino applicants. Commissioners have a site visit



to Cedar Rapids. A public comment period is held, possibly in Cedar Rapids. A question-and-answer is held between commissioners and applicants.

- o November 2017: The commission is expected to make a decision.

## **WHO DECIDES**

- o Iowa Racing and Gaming Commission members are:
- o Richard Arnold, a Republican from Russell, voted against the Cedar Rapids license in 2014. The farmer and small business owner's term expires April 30, 2019.
- o Carl Heinrich, a Republican from Council Bluffs, voted against the Cedar Rapids license in 2014. The past president of Iowa Western Community College and American Red Cross board member's term expires April 30, 2017.
- o Kristine Kramer, a Democrat from New Hampton, voted against the Cedar Rapids license in 2014. The K & W Motors Ltd. owner's term expires on April 30, 2018.
- o Jeff Lamberti, the Republican chairman from Ankeny, voted against the Cedar Rapids license in 2014. The term of the lawyer and president of Block Lamberti Gocke & Ahlman expires on April 30, 2017.
- o Dolores Mertz, a Democrat from Algona, voted for the Cedar Rapids license in 2014. The retired state representative's term expires April 30, 2018.

## **The Gazette: Drone regulations taking flight at Iowa Statehouse**

Legislators weighing entrepreneurship with privacy concerns

Lawmakers are taking a 30,000-foot look at unmanned aircraft systems, commonly known as drones.

A growing number of businesses and government agencies have received Federal Aviation Administration approval to fly their drones in Iowa, prompting lawmakers to consider state standards in tandem with existing federal regulations to balance legitimate uses with privacy concerns associated with a rapidly evolving technology and hobby.

House Study Bill 88 sets parameters for the use of unmanned aircraft systems employed by farmers, engineers, surveyors, utilities railroads, photographers, hobbyists, law enforcement and other government agencies and sets penalties for the misuse of aerial vehicles in photographing or gathering data on private property without permission.

Federal rules already put limits on speeds, altitudes and distances from airports that pilots can fly their drones.

Rep. Jarad Klein, a Keota Republican who uses a drone on his farming operation to scout crop development, monitoring flooding or conduct other management functions, said the Legislature is considering how best to balance privacy concerns with personal freedoms without stifling business enterprises and commercial applications.

The Legislature's initial foray into regulating unmanned aerial vehicles came in 2014 when lawmakers approved and Gov. Terry Branstad signed a bill to prohibit state or local law enforcement authorities from using drone surveillance for traffic enforcement. The law also states that evidence obtained by law enforcement using an unmanned drone is not admissible in a criminal or civil trial unless it was obtained legally pursuant to a search warrant or in a manner consistent with state and federal law.

The proposed changes being contemplated this session deal with the use of drones by governmental agencies for research or for gathering and archiving data related to the search for a criminal suspect, providing support to

another tactical operation, conducting crowd monitoring or in cases where there is “a reasonable belief” that an emergency exists that threatens lives or safety.

Other parts of the bill deal with nuisances such as drones emitting peculiar sounds or excessive noise, spraying a gas or liquid or dropping an object, as well as specifying criminal penalties for using drones to stalk a victim, commit a terrorist act or to improperly “control” or “enter” an animal facility or crop operation property.

The bill also bars drones from being equipped with a dangerous weapon — with exemptions for the military or Iowa National Guard.

The bill’s initial subcommittee debut last week drew concerns from businesses like Terraplane that worried parts of the measure could hinder businesses doing video tracking of power line rights of way or aerial surveying that would move along public and private property. Such uses could involve “spillover imagery” where it would be impractical to get permission from every private property owner.

“It’s about intent,” Klein said. “What it really boils down to is if you’ve got permission, you’re good to go.

If you don’t have permission and you’re over private property, that’s when it starts to raise concerns.”

Representatives of county attorneys and civil libertarians also sparred over the admissibility in a criminal proceeding of evidence obtained through general crowd monitoring without a warrant and whether such activity potentially could chill free speech. A lobbyist for the motion picture association and broadcast news companies also wondered how the bill’s provisions would be applied to breaking news, car chases or other newsgathering functions.

“We have a lot of great people around the state and they’re the ones that I don’t want to get into their way, but the ones are out there to cause harm, we need to have some of these tools in place,” Klein said. “Will it stop them, not necessarily but what it will do is it will be a deterrent.”

## **The Gazette: University of Iowa graduate students file complaint against regents**

Union accuses the board of bargaining in bad faith

As discussion heats up around proposed legislation that would strip Iowa unions of their collective bargaining rights, the University of Iowa graduate student union is joining its counterparts by filing a “prohibited practice” against the state, by way of the Board of Regents.

The Campaign to Organize Graduate Students or COGS, which represents 2,183 UI graduate students employed as teaching or research assistants, earlier this week filed its complaint with the Iowa Public Employment Relations Board alleging bad-faith bargaining in its negotiations for a 2017-2019 contract.

AFSCME Iowa Council 61, which represents about 40,000 public employees including some at Iowa State University, and United Faculty, representing about 550 University of Northern Iowa faculty members, filed similar complaints last week.

The complaints come as the Republican-controlled Legislature is moving through a proposed measure some say acts as a “union busting bill” in that it limits mandatory bargaining topics to just wages. If it passes, unionized employees — like public school teachers, some public safety workers, public works employees, and many

across Iowa's public university campuses — would be stripped of their right to bargain for things like insurance, hours, vacations, holidays, and overtime pay.

Even wage-related bargaining would be limited to increases no higher than three percent or the consumer price index. And the proposal includes additional provisions challenging union existence, including one requiring union recertification and another prohibiting payroll deductions for union dues.

Murmurs about proposed changes to Chapter 20 have infiltrated union and lawmaker circles for months — even as the state and the regents negotiated new two-year contracts with unions like COGS, AFSCME, United Faculty, and Service Employees International Union Local 199, which represents about 5,000 workers, including professional and scientific UI Health Care employees.

The new complaints — including the one COGS filed this week — accuse the state and regents of refusing to continue bargaining “until the Iowa Legislature passed a bill amending Chapter 20.”

Josh Lehman, a spokesman for the Board of Regents, has said the board is “continuing to follow the prescribed process of negotiation.” He also has provided a bargaining schedule showing United Faculty and COGS previously agreed to reserve Feb. 20 and 21, respectively, for mediation and March 1 and 2 for arbitration.

But the COGS complaint accuses the regents — despite efforts involving a state mediator — of being “unavailable for bargaining.”

“The Board of Regents stated its position that it would not meet for bargaining or mediation until after a date by which the employer perceived the Legislature would have taken action to change the statutory provisions of Chapter 20,” according to the COGS complaint.

Although SEIU hasn't filed a complaint with the state Public Employment Relations Board, or PERB, earlier this week it did agree to ratify the regents' last contract offer and urged them to respond to reports it would “not honor the offer that it made to these nurses and other health care professionals.”

When asked on Friday if the regents have responded to the SEIU's ratification, Lehman told The Gazette, “We continue to follow the collective bargaining process.”

Landon Elkind, president of COGS, told The Gazette on Friday that PERB has started the process toward mediation.

Jan Berry, an administrative law judge with the state, told The Gazette that complaints can go to a judge or to the full board. If the board sides with the complainant, it can order “remedial relief.”

“The general philosophy is they try to put the parties back in the position they would have been had the violation not occurred,” Berry said.

## **The Gazette: More than 20 apply for Iowa Board of Regent vacancies**

'I would hope that we could go in a little different direction'

Bruce Rastetter's announcement Friday that he won't seek another term as president of the Board of Regents guarantees at least one new face on the nine-member panel this spring.

Rastetter's six-year term is set to expire April 30, as are the terms of board President Pro Tem Katie Mulholland and Sherry Bates, who in December 2014 was appointed to replace Nicole Carroll after she resigned and moved to Texas.

The Iowa Senate confirmed Bates to serve out the remainder of Carroll's term, which runs through April. Both Bates and Mulholland have filed paperwork seeking reappointment.

Mike Richards — who was appointed to the board last May to replace Mary Andringa after she resigned — also must receive Senate confirmation this spring.

Ben Hammes, a spokesman for the governor's office, said Gov. Terry Branstad must submit regent appointments to lawmakers by March 1. The Senate then will have 45 days to act on them — with the next term on the Board of Regents beginning May 1.

To date, 23 people have applied for appointment to the Board of Regents — including Mulholland and Bates, according to documents from the governor's office. That group includes a senior associate registrar at the University of Iowa, a program director at the Roy J. Carver Charitable Trust, the executive vice president of Federal Home Loan Bank of Des Moines, and the manager of the Boone Municipal Airport.

Van Meter City Administrator Jacob Anderson also has applied, as has Timothy Fitzgibbon, who lists his current employer as National Council on Higher Education Resources in Washington, D.C. — although he indicates he lives locally.

Michael Hammer, who lists his job as librarian with the Wisconsin Department of Corrections, also has applied.

The applicants' current residencies were omitted from documents provided to The Gazette from the governor's office, but Iowa Code states that eight of the board's nine members must be "selected from the state at large." The ninth applicant is a student representing one of the campuses.

The applicants cite an array of reasons for wanting to serve:

Fitzgibbon, an Iowa State University graduate, said he wants to give back to the state.

"My job is nationally based, and serving on an Iowa board or commission would allow me to contribute and volunteer at a local level," he wrote in his application.

Anderson, of Van Meter, wrote his skills equip him to "work on delivering good government in the State of Iowa."

Daniel Clute, executive vice president with Federal Home Loan Bank of Des Moines, noted in his application this "unprecedented period in higher education."

"I have a strong belief in the vital importance of these schools to the future of our state and its citizens," he wrote.

Dale Farnham, Boone Municipal Airport manager, seemed to — like Rastetter — have an agricultural slant, noting in his application he wants to "make an impact on the direction of Iowa's agricultural industry."

"Having spent most of my life and professional career involved in agriculture, I have developed a great deal of respect and admiration for Iowa farmers and agribusiness people," he wrote.

The applicants vary by political party, and some lawmakers said they'd like to see more balance in the future.

State law requires the board have no more than five members of one political party, and right now the scale is tipped strongly Republican — with five from the conservative cohort, three independents, and just one Democrat — Mulholland.

As a registered and politically-active Republican, Rastetter's departure will provide an opportunity for more balance, some lawmakers said.

"We very definitely need more adherence to the requirement in state law that the board have party balance," said Sen. Herman Quirnbach, D-Ames. "The spirit of that law has been violated in my view, rather egregiously."

Quirnbach said he'd like to see someone with strong education credentials, adding, "I don't think an appointment to the board should be a reward to a political donor."

Both Rastetter and Richards have been big political donors to Gov. Terry Branstad.

"Both for substantive and appearance reasons, I would hope that we could go in a little different direction in the future," Quirnbach said.

Sen. Joe Bolkcom, D-Iowa City, put it more plainly.

"Gov. Branstad should do something novel and appoint a real Democrat to the board," he said.

## **QC Times: Crowd rallies against pending bargaining legislation**

Linda Cook

The cry of "Union busting is disgusting!" went up from a crowd of about 100 Sunday afternoon near the Scott County Administrative Center on the 600 block of West 4th Street.

As some of those in attendance carried signs reading "Resist" and "Democracy, not facism," speakers rallied the crowd against the proposed Republican changes to Iowa's collective bargaining law.

A public hearing in the House on the proposal, which would limit bargaining rights for more than 180,000 Iowa public-sector workers who are not public safety workers, is set for today. Votes are expected in the Legislature this week.

The proposal prevents bargaining on a number of benefits and grievance procedures, and would change arbitration procedures and civil service standards.

Supporters of the proposal say public employees, including teachers, are better compensated than many private sector-employees.

But community activist Bob Babcock was among the participants who compared the legislation to Wisconsin's 2011 law that removed most collective bargaining rights from public employees. He is "concerned about the race to the bottom that legislation like this is going to create."

When similar legislation passed in Wisconsin, the state began to lose its quality teachers, he said.

Monica Kurth, D-Davenport, said the gathering was held "hopefully to have an impact on the decision making in Des Moines. Kurth was elected to the seat Jan. 31, after the incumbent, Democrat Jim Lykam, won the Senate District 45 seat in a Dec. 27 special election.

"This bill basically eliminates collective bargaining for the majority of workers," Kurth said, including teachers and other staff in schools, probation officers, and those who work in the prison system, including food-service employees.

"It's a huge policy shift with no reason for doing it," said Sandra Larew of Bettendorf, who said she is a product of Iowa public schools and moved to Iowa so her children could be educated here. "That's what I'm concerned about, is the future. I'm terrified about the future of Iowa."

Dan Flaherty, a teacher at Davenport Central High School, said he completely supports Chapter 20, which is the section in the Iowa Code that governs collective bargaining. "Without quality teachers, we can't have quality education," he said.

"As far as a national level, it all filters down," said Jane Duax, of Davenport, whose children attend Davenport schools. She referred to Elisabeth Dee "Betsy" DeVos, U.S. secretary of education in the Trump administration. "(DeVos) is such a proponent for defunding public schools," she said.

"It's not just about wages. It's about the right to negotiate," said Ed Curley of Davenport, political liaison for the American Federation of Government Employees Local 2119. "Labor unions have fought for this country."

Also attending the rally was 1st Ward Alderman Rick Dunn of Davenport. "I've been a union worker all my life," he said.

## **QC Times Editorial: Editorial: What's good enough for Iowa's teachers should be good enough for cops**

Quad-City Times editorial board

A "heroes exemption" should be needless, if the Full Wisconsin collective bargaining overhaul rocketing through Iowa Legislature is truly a good deal for taxpayers and public employees. But Republicans have backed themselves into a political corner.

Iowa's public employee unions' worst nightmare was realized last week, when the bill dropped to severely restrict Chapter 20 bargaining on health care insurance, bonus pay and vacations. Dissenters call it "union

busting," pointing to the exodus of teachers and bureaucrats from Wisconsin and Michigan after those states imposed similar restrictions on what could be collectively bargained.

But it's the reform package's sweeping carve-out for police and firefighters -- the creation of two classes of public employees -- that poses the greatest questions about whether facts or ideology are running the show. Under the plan, unions representing officers and firefighters could still negotiate health care benefits and vacations, for instance. The remainder of the public employee class would be left dealing in base pay and little else, yet another assault on home-rule.

There's reason behind the move to limit bargaining on health care, in particular. Costs annually skyrocket and, by and large, are absorbed by the local tax base. A more stringent system of negotiation among a larger cohort of employees is very likely to cut costs. The rest, however -- vacation days, bonus pay -- could sour the employee-management relationship at local governments. There needs to be chips with which to bargain, after all.

And this uniform system should apply to all employees, whether they wear work boots, a tie, or a badge and a gun.

The "put their lives on the line" defense is already swirling around the arbitrary division between bureaucrat and cop. But a quick glimpse at federal and state work-place fatality data prove the argument to be little more than emotion and politics. Loggers and truck drivers, per capita, are substantially more likely to die on the job than police officers or firefighters. In fact, police officers had the 15th most dangerous job in the U.S. in 2014, the most recent year available, says the U.S. Bureau of Labor statistics. While 2016 saw a saddening spike in fatal attacks on officers of more than 50 percent, it's highly unlikely that policing will even crack the top 10 when the numbers are crunched.

It might not fit into the present narrative, but a state or city employee hauling gravel and clearing trees is, in a statistical sense, indeed risking life and limb.

The segregation between the uniformed and the plain-clothed reeks of politics. It reeks of ideology. It reeks of a party that's so married to a worldview -- which elevates the uniformed and denigrates teachers and city planners -- that it now can't escape.

Fact is, few professions can whip up public support faster than officers and firefighters. And few professions are easier to politically bludgeon than teachers and bureaucrats. It's the result of a targeted campaign against regulation, government and the hardworking men and women who make it all function.

Police are worthy of appreciation. Firefighters do make sacrifices. But the not-so-sexy work done by clerks, budget analysts and parks and recreation staff is the very foundation of local government.

What's good enough for them, should be good enough for all public employees.

## **RI: Statehouse hearing tonight on Iowa collective bargaining changes**

FEBRUARY 12, 2017 BY O. KAY HENDERSON

The Iowa legislature is poised to pass a bill this week that will dramatically eliminate items that teachers and government workers in Iowa may bargain for during union contract negotiations. House Speaker Linda

Upmeyer of Clear Lake suggests with Republicans holding a majority of seats in both the House and Senate now, this move should not be a surprise.

“This is about doing the right thing for Iowans,” Upmeyer said during a news conference last Thursday. “This is something we’ve worked on for a number of years. We’ve had bills on this topic before.”

Critics say under the bill, state and local government workers will only be able to negotiate over base wages during contract talks. Republican legislators who held forums in their districts this weekend were quizzed by large crowds upset about the bill. More than 100 people gathered in an Oskaloosa coffee shop to confront three local legislators. Suzy Card of Pella, a regional representative for the state teachers’ union, drew applause from the crowd when she questioned whether the GOP had “campaigning on getting rid of collective bargaining.”

“That’s a yes or no questions, guys,” Card said and a man in the crowd said loudly, “Pretty simple,” prompting the crowd to applaud.

More than 400 attended a forum in Ankeny. Jody Butler, a former education advisor to Governor Terry Branstad in the 1990s, asked the two Republican legislators there to “have a meaningful conversation” and make adjustments in the bill.

“Take your time instead of shoving this through,” Butler said.

On Sunday afternoon, there was a large rally at the statehouse in support of teachers and other government workers. A public hearing on the bill is scheduled this evening in a committee room at the statehouse.

## **RI: Study finds SAVE fund has helped schools with facility needs**

FEBRUARY 10, 2017 BY PAT CURTIS

A new study shows a one-cent statewide sales tax has helped Iowa schools address overdue facility and equipment needs.

The Secure an Advanced Vision for Education — or SAVE — fund was created by the legislature in 2008 to replace another tax program that led to inequities between urban and rural districts. Iowa State University economist Dave Swenson says districts have use money from the SAVE fund for a variety of purposes, depending on their size and student population trends.

“Growing districts have way more demand for new bricks and mortar. Stable districts are looking to be able to maintain maybe both their bricks and mortar and their equipment needs, while some of the declining rural districts are having to invest in technology and alternative education systems and mechanisms,” Swenson said.

The ISU study, compiled for the Iowa Association of School Boards, covered SAVE spending from 2009 to 2015. During that time, SAVE has generated just under three-billion dollars (\$3 billion) for school infrastructure construction projects. But, Swenson notes districts can also borrow, based on future SAVE revenues, and they’ve taken on a combined \$2.42 billion in debt.

“That penny sales tax appears to not be sufficient to fund all of their incremental equipment and infrastructure needs,” Swenson said. One of the selling points for the SAVE fund was the promise of property tax relief.



The ISU researchers found that 30 percent of Iowa school districts used SAVE funds for direct property tax relief in 2011. However, that level dropped to just under 17 percent four years later. The SAVE fund is due to expire in 2029.

## **RI: Pro-union rallies in Wisconsin ‘didn’t work,’ Iowa unions go local**

FEBRUARY 10, 2017 BY O. KAY HENDERSON

### **Union members clapping during a hearing on the collective bargaining law.**

Republicans in the state legislature who’re poised to change Iowa’s collective bargaining law may get an earful at weekend forums in their districts.

The leaders of Iowa’s public sector unions have said they do not plan to mimic what happened in Wisconsin when lawmakers in that state took steps to retract union bargaining rights.

“I was in Wisconsin. I participated in those large rallies. That didn’t work very well,” AFSCME Council 61 president Danny Homan said. “We don’t have the time if we wanted to because I believe this bill’s signed (into law) Monday or Tuesday of next week.”

Iowa State Education Association president Tammy Wawro said government workers can’t take time off to drive to Des Moines for a pro-union rally.

“They are actually working their tail off to try to do the best they can every day, taking care of people across this state,” Wawro said.

But Wawro is encouraging members of the teachers’ union to go to forums Saturday, to speak with their local legislators.

“They need to go talk to the people maybe they even voted for and say, ‘Hey, this isn’t what we elected you to do,’” Wawro said.

There will be a public hearing at the statehouse Monday night. Bill backers say it’s likely the labor bill will pass the Republican-led House and Senate early next week.

## **REUTERS: White House official attacks court after legal setbacks on immigration**

Ruling blasted as ‘judicial usurpation of power’

A White House official launched a blistering attack on the federal appeals court that blocked President Donald Trump’s executive order on immigration on Sunday, calling its ruling a “judicial usurpation of power.”

The Trump administration has faced multiple legal setbacks to its travel ban issued on Jan. 27, and the Republican president has said he may issue a new executive order rather than go through lengthy court challenges.

“The president’s powers here are beyond question,” White House adviser Stephen Miller said on the “Fox News Sunday” program.

Miller referred to immigration law that the executive order is based on that gives the U.S. president broad powers to restrict who enters the country on national security grounds.

However, the same law forbids discrimination on race, sex, nationality or place of birth or residence. The case also could involve First Amendment protections involving religion.

The executive order Trump issued banned entry into the United States to refugees and citizens of seven Muslim-majority countries, triggering nationwide protests and legal challenges.

A week later, a federal judge in Seattle issued a temporary restraining order that put the president’s travel ban on hold, eliciting a barrage of angry Twitter messages from Trump. The judge’s suspension was upheld by a three-judge panel of the 9th U.S. Circuit Court of Appeals in San Francisco on Thursday.

Miller, appearing on several television news shows, criticized the court and its ruling.

“The 9th Circuit has a long history of being overturned and the 9th Circuit has a long history of overreaching,” he said on the Fox news show. “This is a judicial usurpation of power.”

The powers to restrict entry into the United States “represent the very apex of presidential authority,” he added.

“We have multiple options and we are considering all of them,” Miller said while appearing on ABC’s “This Week.”

Those include formulating a new executive action, appealing the 9th Circuit panel’s decision to the full appeals court and appealing the emergency stay to the Supreme Court, he said.

If the Seattle lawsuit goes to trial, Washington State Attorney General Bob Ferguson said on Sunday he will depose Trump administration officials to uncover “what truly motivated” the president’s executive order.

Documents and emails authored by administration officials may contain evidence that the order was an unconstitutional attempt to ban Muslims from entering the United States, and Ferguson said on ABC’s “This Week” that he will use “every tool” at his disposal to bring those to light.

## **Chicago Tribune Editorial: Wake up, Illinois. You're surrounded.**

Flanked by fellow lawmakers, Missouri Gov. Eric Greitens signs legislation to make Missouri the 28th "right-to-work" state during a ceremonial signing at the abandoned Amelex warehouse in Springfield, Mo. on Monday, Feb. 6, 2017. The law, which goes into effect on Aug. 28, prohibits unions from charging membership dues as a condition of employment.

To chants from union protesters, new Missouri Gov. Eric Greitens signed legislation Monday making Missouri the 28th right-to-work state in the nation. Republican House. Republican Senate. Republican governor. Done, done, done.

By comparison: When Gov. Bruce Rauner two years ago championed a scaled back right-to-work concept — local, voter-approved right-to-work zones, not a statewide proposal — it got no traction in the Democrat-

led General Assembly. A bill introduced by House Speaker Michael Madigan to test its popularity, and to embarrass Rauner, got zero "yes" votes. No support whatsoever.

## ADVERTISING

Right-to-work laws — which are a threat to unions because they remove mandatory membership dues as a condition for employment — are an important tool in attracting businesses and especially manufacturing jobs. Just ask lawmakers, economic development recruiters and big employers in Iowa, Wisconsin, Indiana, Michigan, Kentucky and now Missouri, our neighbors who have adopted right-to-work laws.

We wonder how lucrative the wagers have gotten between governors Terry Branstad, Scott Walker, Eric Holcomb, Rick Snyder, Matt Bevin and Greitens on which of their states will be next to poach an Illinois business or job or taxpayer. Here's what each of them is thinking: *By right-to-work and so many other measures, Illinois is chasing away employers. Can I steal jobs there?*

**We aren't here to argue** that Illinois should be the 29th right-to-work state. We're here instead to warn that while Illinois lawmakers deadlock on policy reforms that would attract more jobs here, including reforms struggling to get support in the Senate, the six surrounding states have positioned themselves to attract more jobs there, there, there, there, there and there.

When will Illinois lawmakers recognize that the house is on fire? When will they make job creation, job retention, their do-or-die priority?

With Democrats controlling the House and Senate, and even Republican lawmakers in the General Assembly preferring to duck the issue, Illinois won't be a right-to-work state any time soon. One community that tried on its own, Lincolnshire, had its right-to-work ordinance struck down by a federal judge.

But right-to-work laws in every border state are all the more reason for Illinois to make itself attractive to employers. We agree with Illinois Chamber of Commerce President Todd Maisch that if lawmakers won't even debate right-to-work legislation, they have to get behind other pro-growth policies — tougher workers' compensation laws, tax credits to encourage businesses to locate or expand here, fewer nanny-state regulations and schools that better prepare students for the workforce.

Property taxes here are among the highest in the nation. And certain parts of the state aren't just jobs deserts, they're becoming depopulated deserts. More people moved away from Illinois during the last two years than from any other state in the country. Many moved to other Midwestern states. So don't repeat the lie that it's the weather.

**Here's what else** a prospective employer sees in Illinois: No state budget in nearly two years. A credit rating nearing junk status. Inability to pay bills as they come due, a basic definition of insolvency. And political impasse in the General Assembly. An attempt at compromise legislation to get a budget passed hit a snag in the Senate on Wednesday. Senators, keep working.

Iowa enacted a right-to-work law in 1947. Michigan and Indiana in 2012. Wisconsin in 2015. Kentucky in January 2017. And now Missouri.

Yet which state in this region most needs a jobs rebound? The most dramatic intervention? The most ambitious pro-business reforms? Illinois.

We realize the very phrase "right-to-work" is toxic in Illinois.

We wish another phrase were toxic, too: "Good jobs are leaving our state."

## **Washington Post: North Korea fires ballistic missile, first since Trump elected**

North Korea fired a ballistic missile Sunday morning, its first provocation since Donald Trump was elected president of the United States and one that sets up a test for the new administration in Washington.

The launch happened while Trump was hosting Japanese Prime Minister Shinzo Abe at his golf resort in Florida, and analysts said that the hawkish Abe will likely push Trump issue a strong rebuke.

"I don't think this is designed to respond to Trump, I think this is part of Kim Jong Un's continued efforts to try to advance his programs," said Jon Wolfsthal, a senior non-proliferation official in former President Barack Obama's administration now at Harvard's Belfer Center. "But it has the added effect of calling Trump's bluff. The real question is not what North Korea has done, but what the U.S. is going to do about it," he said.

Trump, who dined with Abe at his Florida home Saturday evening, declined to respond to reporters' questions about the missile test.

The missile was fired shortly before 8 a.m. from a known test site in North Pyongan province in the west of the country, not far from the border with China, and flew over the Korean Peninsula and into the Sea of Japan, South Korea's Joint Chiefs of Staff said.

They were still working to analyze data from the projectile but said it appeared to be a medium-range Musudan missile, the type that North Korea had been trying to perfect last year. The Musudan is technically capable of flying as far as 2,400 miles, putting Guam within range and almost reaching Alaska. But the joint chiefs said this missile appeared to fly only 300 miles.

"The military is determining if the missile is a modified Musudan intermediate-range ballistic missile or the shorter range Rodong missile," a military official told the South's Yonhap News Agency.

But some analysts thought the launch could have been the first stages of an intercontinental ballistic missile capable of reaching the United States.

"I think we're all waiting for the first two stages of the ICBM," said Jeffrey Lewis of the Center for Non-proliferation Studies at the Middlebury Institute of International Studies. "They finished testing that engine on the stand so now it's time to test it in the air."

Kim Jong Un's regime has declared a goal of producing an inter-continental missile that can deliver a nuclear payload to the U.S. and last year appeared to be making a concerted effort toward achieving that goal. It conducted two nuclear tests and dozens of missile tests, including eight Musudan tests. Only one, in June, was a success, flying about 250 miles and reaching a surprisingly high altitude.

But the regime had not fired any since October, perhaps to avoid influencing domestic politics in the U.S. ahead of the presidential election and in South Korea, where the conservative president has been suspended from office and there is now a good chance of a progressive administration that is friendlier to Pyongyang.

In his New Year's address, Kim said that North Korea had test-fired in various ways for a nuclear strike "to cope with the imperialists' nuclear war threats" and said that the country had "entered the final stage of preparation for the test launch of intercontinental ballistic missile."

In response, President Trump tweeted: “North Korea just stated that it is in the final stages of developing a nuclear weapon capable of reaching parts of the U.S. It won’t happen!”

However, apart from repeating the usual pledges to work stop North Korea from reaching its nuclear goals, the Trump administration has said little on what it would do to stop Kim. The administration is understood to be embarking on a view of North Korea after eight years in which the Obama administration practiced “strategic patience” — hoping that it could wait out North Korea.

In Seoul, Acting President Hwang Kyo-Ahn convened a meeting of the national security council and said the South Korean government would work with its allies to ensure a “concerted response to punish North Korea.”

## **Washington Post: Trump insists he can bring the cost of \$21.6 billion border wall 'way down'**

President Donald Trump vowed in a pair of tweets Saturday morning to negotiate the costs of constructing a wall along the U.S.-Mexico border “way down,” after a government analysis estimated the price at a whopping \$21.6 billion.

The Department of Homeland Security said this past week that the wall would cost \$21.6 billion and take 3 1/2 years to construct. Reacting to the estimate, Trump tweeted:

“I am reading that the great border WALL will cost more than the government originally thought, but I have not gotten involved in the . . . design or negotiations yet. When I do, just like with the F-35 FighterJet or the Air Force One Program, price will come WAY DOWN!”

Trump sent his tweets from his Mar-a-Lago estate in Palm Beach, Fla., where he and first lady Melania are hosting Japanese Prime Minister Shinzo Abe and his wife, Akie.

During his transition period before being sworn in as president, Trump spoke with executives of Lockheed Martin and Boeing to try to negotiate down the costs of the government’s contracts to build new F-35 fighter jets and a modern Air Force One jumbo jet. After the discussions, both companies, highly dependent on government defense contracts, announced efforts to reduce costs on the programs.

The border wall is a signature campaign promise of Trump’s. He said on the campaign trail that it would cost only about \$8 billion, but that seems to have been an unreasonably low estimate.

Trump prides himself on his negotiating abilities. As a real estate developer, he famously squeezed contractors for profits, yet still often experienced massive cost overruns. Government contracting is more prescribed than in the private sector, of course, and involves an open bidding process.

## **REUTERS: Top Federal Reserve official resigns as bank deregulation looms**

The Federal Reserve Board’s top bank regulator said on Friday he would resign, giving a boost to President Donald Trump’s plans to ease reforms put in place after the 2007-09 financial crisis.

Daniel Tarullo, a strong regulator who was dovish on monetary policy in his seven years on the board, said in his resignation letter to Trump he would leave the U.S. central bank on or around April 5.

With his resignation, Trump will have three positions to fill on the Fed's Board of Governors, which at full strength has seven members.

Much of Tarullo's legacy involves erecting safeguards after the 2007-2009 financial crisis and accompanying recession, where big banks crumbled or were driven by the Fed and U.S. Treasury into shotgun mergers intended to make them stronger.

With the goal of never needing taxpayer bailouts of failed banks, Tarullo has been strict about carrying out the 2010 Dodd-Frank Wall Street reform law and administering rigorous "stress tests" annually to banks on how prepared they are to withstand unexpected shocks.

The tests gave Tarullo huge control over the largest U.S. banks. Performance in the exams dictates how much money they can return to shareholders in dividends or spend on stock buybacks. Failure puts bank bosses under pressure and lenders devote thousands of staff and hundreds of millions of dollars to passing the tests.

Tarullo has also pushed for bigger capital buffers and other checks on potential risks banks may pose to the world's financial system.

His departure leaves many questions about the future of financial regulation. Tarullo sees the direction of changes under Trump as unclear, but said he expects the core elements put in place during his tenure of increasing capital requirements, risk management, and a resolution regime for big banks may survive.

"I'm hopeful that they really do command a broad enough consensus that this was a way to combat the 'too big to fail' problems which obviously bedeviled the system in the years leading up to and in the crisis itself," he said in an interview with Reuters.

One bank executive, who declined to be quoted by name, said the industry is relieved the Tarullo era is over. Bankers had long complained he and his staff kept changing the stress tests and balance-sheet reviews in ways that arbitrarily ratcheted up capital requirements behind closed doors.

"He made up rules in a black box and would not bother to explain their rationale to banks," the executive said.

Tarullo said changes to the stress tests, known by the acronym CCAR, that he and Yellen have proposed, on including capital buffers and a Global Systemically Important Bank surcharge, are "moving along right now."

"It's going to provide more certainty to the banks about what the next final stage of CCAR will look like," he said.

Liberal and progressive groups said Tarullo had fought to protect Americans from another financial crisis or economic catastrophe.

"Governor Tarullo has stood steadfast as a sentinel on the front lines of a six-year war to turn the Dodd Frank financial reform law into a reality," said Dennis Kelleher, president of Better Markets, a group created to promote economic stability.

Besides crafting regulation, Tarullo is a voter on interest rate policy, with a record of tending toward caution on raising rates. The Fed signaled in December it could raise rates three times this year. Tarullo plans to attend the March meeting.

## LIFE AFTER TARULLO

Bank stocks moved higher in the moments following Tarullo's resignation announcement, with the S&P banks industry group index rising 0.35 percent.

The Trump administration has already said it would appoint a new Fed governor charged with heading financial regulation, a post created in Dodd-Frank. Tarullo was never formally confirmed for it, but stepped into the role.

In addition to the three appointments Trump will be able to make soon, he will be able to nominate a replacement for Fed chief Janet Yellen when her four-year term as chair ends in January 2018. Fed Vice Chairman Stanley Fischer also completes his term in 2018.

David Nason, a former deputy to Treasury Secretary Henry Paulson in 2008 and General Electric executive, is the front runner for the regulation post, according to sources familiar with the matter. John Allison, a former BB&T CEO who has said he would like to abolish the Fed, has also been mentioned as a potential nominee.

In recent months, Tarullo sharply questioned moves by Republican lawmakers to roll back post-crisis regulations, putting him at odds with House Financial Services Committee Chairman Jeb Hensarling. Last year he criticized Hensarling's proposal to give banks a choice between complying with Dodd-Frank or holding higher amounts of capital, saying the capital ratio was too low. Hensarling is expected to introduce a new draft of the bill soon.

## **POLITICO: Trump reviews top White House staff after tumultuous start**

Michael Flynn is under fire, but he's not the only one about whom Trump is voicing his doubts.

By JOSH DAWSEY and ALEX ISENSTADT

President Donald Trump, frustrated over his administration's rocky start, is complaining to friends and allies about some of his most senior aides — leading to questions about whether he is mulling an early staff shakeup.

Trump has told several people that he is particularly displeased with national security adviser Michael Flynn over reports that he had top-secret discussions with Russian officials and lied about it. The president, who spent part of the weekend dealing with the Flynn controversy, has been alarmed by reports from top aides that they don't trust Flynn. "He thinks he's a problem," said one person familiar with the president's thinking. "I would be worried if I was General Flynn."

Yet Trump's concern goes beyond his embattled national security adviser, according to conversations with more than a dozen people who have spoken to Trump or his top aides. He has mused aloud about press secretary Sean Spicer, asking specific questions to confidants about how they think he's doing behind the podium. During conversations with Spicer, the president has occasionally expressed unhappiness with how his press secretary is talking about some matters — sometimes pointing out even small things he's doing that he doesn't like.

Others who've talked with the president have begun to wonder about the future of Chief of Staff Reince Priebus. Several Trump campaign aides have begun to draft lists of possible Priebus replacements, with senior White House aides Kellyanne Conway and Rick Dearborn and lobbyist David Urban among those mentioned. Gary Cohn, a Trump economic adviser who is close with senior adviser Jared Kushner, has also been the subject of chatter.

For now, Priebus remains in control as chief of staff. He was heavily involved in adviser Stephen Miller's preparation for appearances on Sunday morning talk shows, which drew praise from the president.

If there is a single issue where the president feels his aides have let him down, it was the controversial executive order on immigration. The president has complained to at least one person about "how his people didn't give him good advice" on rolling out the travel ban and that he should have waited to sign it instead of "rushing it like they wanted me to." Trump has also wondered why he didn't have a legal team in place to defend it from challenges.

The discussions come at a tense time for the Trump White House, which has endured a tumultuous start. The president, who can be hard on his staff, is known for orchestrating shake-ups when things aren't going right. His campaign had several leadership changes, and such decisions, such as his late-summer elevation of Conway and Stephen Bannon, are often made by gut.

The White House did not respond to requests for comment.

While Trump is unlikely to make any immediate staff moves, senior administration officials say, he has ramped up his contact with people he trusts outside the White House and has expressed concerns about how things are going. The president is turning to longtime New York friends like investor Stephen Schwarzman for advice and is relying more on Cohn, who worked at Goldman Sachs before joining the Trump team.

"He only asks you a lot of questions when he's unhappy," one person who recently talked to Trump and knows him well said. "If he thinks things are going well, he just tells you how well it's going."

"There will definitely be a change by the end of the summer, if not sooner," this person added.

This weekend, Trump had at a 30-minute meeting at his Mar-a-Lago resort with Chris Ruddy, a longtime friend who is chief executive of Newsmax, a conservative website.

Ruddy, who discussed an array of topics with Trump as he sipped whiskey and the president drank Diet Coke, said changes could be afoot. "He's always been successful and had strong people around him, and he's in the process of figuring out who those people are," he said.

After the meeting, Ruddy made an appearance on CNN's "Reliable Sources," where he complained about Priebus and called for his ouster. Ruddy said that his remarks were warmly received by others in the administration, but that he hadn't given the president a heads-up beforehand.

"A number of high-ranking Trump administration officials sent me a text praising my performance," Ruddy said. "If they don't get someone of a different skill set, they're going to continue having problems."

Late Sunday, Ruddy said he had spoken with the chief of staff, who had briefed him on his plans for the White House. Ruddy said he came away from the conversation confident that things would improve.

Adding to the intrigue: Sources say the president is planning to have lunch this week with New Jersey Gov. Chris Christie, a longtime confidant who is among those mentioned as having a possible future White House role. While Christie, who has a chilly relationship with Kushner, is seen as unlikely to take a White House job, the lunch has raised eyebrows among some Trump aides. Christie had earlier been offered several roles in the administration but turned them down.



Some Trump friends note that he is adjusting to a new reality — and learning that running a business is a lot different than running the White House. The Washington staff he runs is larger and more complex than the one he oversaw in his business.

"There's a reality check of what's happening, that everything President Trump does, there's going to be a protest and a lawsuit filed," said New York Rep. Chris Collins.

Others point out that, at this early stage, things still need time to settle.

"I think they're getting their sea legs more and more and some of the growing pains will go away in time," said New York Rep. Tom Reed, a top Trump ally. "He's a loyal guy, but he's from the private sector, and he'll want to see results. As long as he sees progress, I think he'll keep his current staff around for the foreseeable future."

White House aides say it can be hard to know what will make Trump happy, or what will anger him. Some aides chafed at Conway's decision to plug Ivanka Trump's merchandise line on television, a move that drew widespread criticism, including from ethics experts who said she was walking a dangerous line. But, far from hurting her internally, Trump liked the appearance, and her standing has increased in his eyes, said several people close to the president.

Yet, as the notoriously image-conscious president endures days of negative headlines, some aides have begun to worry. One person who spoke with the president recently said he seemed to be looking for someone to point his finger at.

"You're not going to see Trump come out and say I was wrong," this person said. "If you're waiting on him to take the blame, you're going to be waiting a long time."

Yet at the same time, Trump has told friends and he wants his Cabinet members to stay the course no matter the accusations lobbed against them, and that shaking up his staff could be seen as an admission of failure.

Douglas Brinkley, a presidential historian who recently met with Trump, said the presidency had been "off to the rockiest start that I can remember."

"Everything he rolls out is done so badly," Brinkley said. "It reeks of being short-staffed and not having a true pecking order of production from the White House. They're just releasing comments, tweets and policies willy-nilly. It's been a very convulsive and confusing first few weeks, but nevertheless it's been salad days if you care about Republican policies."

## **REUTERS: Senate expected to confirm Mnuchin as Treasury secretary**

The U.S. Senate is expected to confirm former Goldman Sachs banker and Hollywood financier Steven Mnuchin as Treasury secretary on Monday, returning a Wall Street veteran to the top U.S. economic and financial job for the first time in eight years.

Mnuchin's appointment to Treasury signals the Trump administration's trust in bankers and other senior business executives after Democrat Barack Obama launched his presidency with career regulator Timothy Geithner running Treasury and a mandate to rein in Wall Street for its role in the 2007-2009 financial crisis.

Democrats, who boycotted Mnuchin's approval by the Senate Finance Committee, are expected to vote against Mnuchin. But no Republicans have declared opposition, setting the stage for a party-line 52-48 vote. The vote is set for around 7 p.m. EST.

Mnuchin's focus will shift from defending his foreclosure record in the aftermath of the financial crisis to tackling major issues such as tax reform, financial services deregulation and international economic diplomacy as major trading partners fret over President Donald Trump's "America First" strategy.

Mnuchin, 54, will need to build a team of officials quickly to handle a Group of 20 finance ministers meeting in March and make decisions on how far to roll back the Dodd-Frank Wall Street reform law enacted during the Obama administration with the aim of preventing a repeat of the financial crisis.

Treasury and White House representatives did not respond to requests for comment late on Sunday on a Bloomberg report that Trump would soon nominate David Malpass, a former economist at failed Wall Street bank Bear Stearns, as Treasury undersecretary for international affairs.

Malpass, a Trump campaign adviser who had been leading Treasury transition efforts, was seen as a leading candidate for the job, with experience from international economic posts in the Ronald Reagan and George H.W. Bush administrations.

His role at Bear Stearns could set off a new round of protests from Democrats over his forecasts in 2007 dismissing the hazards building in credit markets that fueled the U.S. housing collapse. Bear Stearns was the first major financial failure of the financial crisis in 2008.

#### FORECLOSURE RECORD UNDER FIRE

Mnuchin, who left Goldman Sachs in 2002, has come under fire over his investor group's 2009 acquisition of another failed lender, IndyMac Bank, a deal in which the Federal Deposit Insurance Corp agreed to absorb most of the losses on IndyMac foreclosures. The bank, rebranded as OneWest, subsequently foreclosed on more than 36,000 homeowners, drawing charges from housing advocates that it was a "foreclosure machine."

Mnuchin grew OneWest into Southern California's largest lender and sold it for \$3.4 billion in 2015. He has also helped finance Hollywood blockbusters such as "Avatar," "American Sniper" and this past weekend's box office champion, "The Lego Batman Movie," which took in \$55.6 million.

In a last-ditch effort to derail Mnuchin's nomination, Democratic Senator Elizabeth Warren charged on Friday that Mnuchin "flat-out lied" to senators about OneWest's use of so-called robo-signings, a practice in which signings of court documents are automated without adequate review by bank officials.

But Mnuchin, who joined Trump's campaign as finance chairman in May 2016, has been well-received by Republicans because of his extensive finance experience.

"Objectively speaking, I don't believe anyone can reasonably argue that Mr. Mnuchin is unqualified for the position," Republican Senate Finance Committee Chairman Orrin Hatch said at Mnuchin's confirmation hearing in January.

## Greenwood, Geoff [AG]

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**From:** Greenwood, Geoff [AG]  
**Sent:** Thursday, December 08, 2016 9:10 AM  
**To:** Tabor, Eric [AG]  
**Subject:** RE: Succession  
**Attachments:** Article IV.pdf; Gov succession steps.docx

See attached.

---

**From:** Tabor, Eric [AG]  
**Sent:** Thursday, December 08, 2016 9:06 AM  
**To:** Greenwood, Geoff [AG]  
**Subject:** Re: Succession

Could you reformat? Came a little funky. Thanks.

Sent from my iPhone

On Dec 8, 2016, at 9:59 AM, Greenwood, Geoff [AG] <[Geoff.Greenwood@iowa.gov](mailto:Geoff.Greenwood@iowa.gov)> wrote:

Eric:

Here's the pertinent area of Article IV:

**Lieutenant governor to act as governor.** SEC. 17. In case of the death, impeachment, resignation, removal from office, or other disability of the governor, the powers and duties of the office for the residue of the term, or until he shall be acquitted, or the disability removed, shall devolve upon the lieutenant governor.

Referred to in §7.14 of the Code

**Duties of lieutenant governor.** SEC. 18. The lieutenant governor shall have the duties provided by law and those duties of the governor assigned to the lieutenant governor by the governor.

Repealed and rewritten 1988, Amendment [42]

**Succession to office of governor and lieutenant governor.** SEC. 19. If there be a vacancy in the office of the governor and the lieutenant governor shall by reason of death, impeachment, resignation, removal from office, or other disability become incapable of performing the duties pertaining to the office of governor, the president of the senate shall act as governor until the vacancy is filled or the disability removed; and if the president of the senate, for any of the above causes, shall be incapable of performing the duties pertaining to the office of governor the same shall devolve upon the speaker of the house of representatives; and if the speaker of the house of representatives, for any of the above causes, shall be incapable of performing the duties of the office of governor, the justices of the supreme court shall convene the general assembly by proclamation and the general assembly shall organize by the election of a president by the senate and a speaker by the house of representatives. The general assembly shall thereupon immediately proceed to the election of a governor and lieutenant governor in joint convention.

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Here's Matt's analysis from earlier in the day:

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Accordingly, a resignation by Gov. Branstad would create a vacancy that would be filled by Lt. Gov. Reynolds. Once she assumed the office of Governor, a vacancy would be created in the Lt. Governor’s office. The governor has the power and authority to appoint a new Lt. Governor who would serve for the balance of the Branstad/ Reynolds term.

We have reviewed for any relevant case law or Attorney General Opinions, and have not found any that would alter the above analysis.

Geoff

**Geoff Greenwood**  
**Communications Director**

<image001.png>  
Office of the Attorney General of Iowa  
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Des Moines, Iowa 50319  
Main: (515) 281-5164 | Direct: (515) 281-6699  
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Geoff



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## Greenwood, Geoff [AG]

---

**From:** Pfannenstiel, Brianne <bpfann@dmreg.com>  
**Sent:** Wednesday, December 07, 2016 5:14 PM  
**To:** Greenwood, Geoff [AG]  
**Subject:** RE: Succession--add'l info

And you're acting on the assumption that THAT section of the Constitution is definitely what applies – you're just reviewing what that looks like in practice? Is that accurate?

Because I hung up on our phone conversation under the impression that it's not clear whether the code or the constitution applies.

---

**From:** Greenwood, Geoff [AG] [mailto:Geoff.Greenwood@iowa.gov]  
**Sent:** Wednesday, December 07, 2016 5:06 PM  
**To:** Pfannenstiel, Brianne  
**Subject:** RE: Succession--add'l info

What I explained on the phone earlier was that Article IV Sec 17 of the Iowa Constitution addresses the Lt. Gov. acting as Gov. Beyond that, we're reviewing the succession issue.

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**From:** Pfannenstiel, Brianne [mailto:bpfann@dmreg.com]  
**Sent:** Wednesday, December 07, 2016 5:01 PM  
**To:** Greenwood, Geoff [AG]  
**Subject:** RE: Succession--add'l info

But is that how you explained it to me on the phone just a bit ago? That is how I understood you. Please confirm. I am making clear in the story that this is all still under review.

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**From:** Greenwood, Geoff [AG] [mailto:Geoff.Greenwood@iowa.gov]  
**Sent:** Wednesday, December 07, 2016 5:00 PM  
**To:** Pfannenstiel, Brianne  
**Subject:** RE: Succession--add'l info

Brianne:

Attorneys in our office and the Governor's office are reviewing the Iowa Constitution and Iowa Code, and plan to consult about how the law addresses succession.

Thanks,

Geoff

---

**From:** Pfannenstiel, Brianne [mailto:bpfann@dmreg.com]  
**Sent:** Wednesday, December 07, 2016 4:41 PM  
**To:** Greenwood, Geoff [AG]  
**Subject:** RE: Succession--add'l info

Geoff – quick follow up question for you. If we look at the Constitutional interpretation of this, since Reynolds stays Lt. Gov. and assumes the duties of governor, there is no vacancy to fill. Is that correct?

Give me a call back if you can, or an emailed response is fine to. On deadline, though, so would like to hear back ASAP.

Brianne

---

**From:** Greenwood, Geoff [AG] [<mailto:Geoff.Greenwood@iowa.gov>]  
**Sent:** Wednesday, December 07, 2016 11:43 AM  
**To:** Pfannenstiel, Brianne  
**Subject:** Succession--add'l info

Hey Brianne:

We looked up the pertinent section of the Iowa Constitution, which we didn't really discuss in the call. Here's kind of a legal flowchart that may help make things clear, including the Iowa Code sections you already looked up:

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**From:** Pfannenstiel, Brianne <bpfann@dmreg.com>  
**Sent:** Wednesday, December 07, 2016 5:08 PM  
**To:** Greenwood, Geoff [AG]  
**Subject:** RE: Succession--add'l info

You're really leaving me hanging here. I'm just seeking clarification on what you already told me so that I don't misrepresent your earlier statements. Please call me at 515-284-8244. Thanks.

Brianne

---

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Hopefully this helps.

Geoff



**Geoff Greenwood**  
**Communications Director**  
Office of the Attorney General of Iowa  
1305 E. Walnut St.  
Des Moines, Iowa 50319  
Main: (515) 281-5164 | Direct: (515) 281-6699  
Email: [geoff.greenwood@iowa.gov](mailto:geoff.greenwood@iowa.gov) | [www.iowaattorneygeneral.gov](http://www.iowaattorneygeneral.gov)

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## **Greenwood, Geoff [AG]**

---

**From:** Greenwood, Geoff [AG]  
**Sent:** Wednesday, December 07, 2016 5:00 PM  
**To:** Pfannenstiel, Brianne  
**Subject:** RE: Succession--add'l info

Brianne:

Attorneys in our office and the Governor's office are reviewing the Iowa Constitution and Iowa Code, and plan to consult about how the law addresses succession.

Thanks,

Geoff

---

**From:** Pfannenstiel, Brianne [mailto:bpfann@dmreg.com]  
**Sent:** Wednesday, December 07, 2016 4:41 PM  
**To:** Greenwood, Geoff [AG]  
**Subject:** RE: Succession--add'l info

Geoff – quick follow up question for you. If we look at the Constitutional interpretation of this, since Reynolds stays Lt. Gov. and assumes the duties of governor, there is no vacancy to fill. Is that correct?

Give me a call back if you can, or an emailed response is fine to. On deadline, though, so would like to hear back ASAP.

Brianne

---

**From:** Greenwood, Geoff [AG] [mailto:Geoff.Greenwood@iowa.gov]  
**Sent:** Wednesday, December 07, 2016 11:43 AM  
**To:** Pfannenstiel, Brianne  
**Subject:** Succession--add'l info

Hey Brianne:

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Hopefully this helps.

Geoff



**Geoff Greenwood**

**Communications Director**

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## Greenwood, Geoff [AG]

---

**From:** Greenwood, Geoff [AG]  
**Sent:** Wednesday, December 07, 2016 4:46 PM  
**To:** Thompson, Jeff  
**Subject:** FW: Succession--add'l info

---

**From:** Pfannenstiel, Brianne [mailto:bpfann@dmreg.com]  
**Sent:** Wednesday, December 07, 2016 4:41 PM  
**To:** Greenwood, Geoff [AG]  
**Subject:** RE: Succession--add'l info

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**To:** Pfannenstiel, Brianne  
**Subject:** Succession--add'l info

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Geoff



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Brianne

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## Greenwood, Geoff [AG]

---

**From:** Pfannenstiel, Brianne <bpfann@dmreg.com>  
**Sent:** Wednesday, December 07, 2016 11:44 AM  
**To:** Greenwood, Geoff [AG]  
**Subject:** RE: Succession--add'l info

Wonderful. Thanks so much for the help.

Brianne

**Brianne Pfannenstiel**  
Politics Reporter  
*The Des Moines Register*  
515-803-0348  
[bpfann@dmreg.com](mailto:bpfann@dmreg.com)  
@brianneDMR

---

**From:** Greenwood, Geoff [AG] [mailto:Geoff.Greenwood@iowa.gov]  
**Sent:** Wednesday, December 07, 2016 11:43 AM  
**To:** Pfannenstiel, Brianne  
**Subject:** Succession--add'l info

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## Greenwood, Geoff [AG]

---

**From:** Greenwood, Geoff [AG]  
**Sent:** Wednesday, December 07, 2016 11:43 AM  
**To:** bpfannenst@dmreg.com  
**Subject:** Succession--add'l info

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## Greenwood, Geoff [AG]

---

**From:** Greenwood, Geoff [AG]  
**Sent:** Monday, May 01, 2017 3:02 PM  
**To:** Hughes, Anne  
**Subject:** RE: video request

Anne,

The video is posted at [www.vimeo.com/agiowa](http://www.vimeo.com/agiowa).

You can download the hd version through the address above or pull it down here:

[https://player.vimeo.com/external/215555640.hd.mp4?s=14ee199b52eb74e8d1b6f073cc45054c5beece2f&profile\\_id=174&download=1](https://player.vimeo.com/external/215555640.hd.mp4?s=14ee199b52eb74e8d1b6f073cc45054c5beece2f&profile_id=174&download=1)

I'll probably leave it up for a day or so and then plan to take it down.

Let me know if there's anything else you need.

Thanks,

Geoff



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---

**From:** Hughes, Anne [mailto:AHughes@kwqc.com]  
**Sent:** Monday, May 01, 2017 11:34 AM  
**To:** Greenwood, Geoff [AG]  
**Subject:** video request

Hi,  
I would be interested in any video on the Mr. Miller discussing Gubernatorial succession.

Anne Hughes | KWQC•TV6  
Assistant News Director/Assignment Editor  
[ahughes@kwqc.com](mailto:ahughes@kwqc.com)  
D: 563-383-7163 • F: 563-383-7131  
805 Brady St. • Davenport, IA • 52803



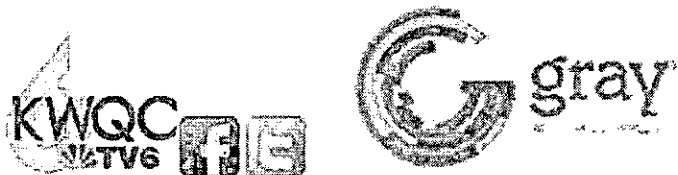
## Greenwood, Geoff [AG]

---

**From:** Hughes, Anne <AHughes@kwqc.com>  
**Sent:** Monday, May 01, 2017 11:48 AM  
**To:** Greenwood, Geoff [AG]  
**Subject:** RE: video request

Thanks.

Anne Hughes | KWQC•TV6  
Assistant News Director/Assignment Editor  
ahughes@kwqc.com  
D: 563-383-7163 • F: 563-383-7131  
805 Brady St. • Davenport, IA • 52803



---

**From:** Greenwood, Geoff [AG] [mailto:Geoff.Greenwood@iowa.gov]  
**Sent:** Monday, May 01, 2017 11:47 AM  
**To:** Hughes, Anne  
**Subject:** RE: video request

Sure. I'll get back to you with a link when it's ready for you to download.

---

**From:** Hughes, Anne [mailto:AHughes@kwqc.com]  
**Sent:** Monday, May 01, 2017 11:34 AM  
**To:** Greenwood, Geoff [AG]  
**Subject:** video request

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Assistant News Director/Assignment Editor  
ahughes@kwqc.com  
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**Greenwood, Geoff [AG]**

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## Tabor, Eric [AG]

---

**From:** Kerr, Sue [AG]  
**Sent:** Wednesday, May 24, 2017 10:46 AM  
**To:** Tabor, Eric [AG]  
**Cc:** Whitney, Jessica [AG]  
**Subject:** FW: ID theft victim assistance in Iowa  
**Attachments:** ID Theft Grant Applicaiton.docx

I found one more email message... Sue

**From:** Bill Brauch [mailto:billbrauch@gmail.com]  
**Sent:** Monday, May 01, 2017 5:41 PM  
**To:** Kerr, Sue [AG]  
**Subject:** Re: ID theft victim assistance in Iowa

I revised the document quite a bit today, so ignore the text in the email I sent along. I've attached the entire thing. No need for you to read all of it. A good amount of it relates to specific federal requirements. The key segments for which I'd appreciate any input are in pp. 1 - 8. If I'm wrong about anything in there or if you see an important omission, please let me know. Thanks for taking the time to look it over! If we get the grant (and we think IOVA would be the only Iowa applicant - there are 10 grants of \$50,000 each available) I'd likely be the project director. If that happens, we'd get a chance to work together again! Again, thank you!

On Mon, May 1, 2017 at 4:01 PM, Kerr, Sue [AG] <[Susan.Kerr@iowa.gov](mailto:Susan.Kerr@iowa.gov)> wrote:

Hi Bill,

Always good to hear from you! I was out of the office last Thursday and Friday due to a vile cold virus. I am swamped today. I gave your email message a quick read. I would like to read it again tomorrow when I have a little more time. Then I'd be happy to send you my comments.



**Susan Kerr**  
**Investigator**  
Office of the Attorney General of Iowa  
1305 E. Walnut Street, 2<sup>nd</sup> Floor  
Des Moines, IA 50319  
Phone: (515) 281-6414 | Fax: (515) 281-6771  
Email: [susan.kerr@iowa.gov](mailto:susan.kerr@iowa.gov) | [www.iowaattorneygeneral.gov](http://www.iowaattorneygeneral.gov)

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**From:** Bill Brauch [mailto:billbrauch@gmail.com]  
**Sent:** Monday, May 01, 2017 9:26 AM  
**To:** Kerr, Sue [AG]  
**Subject:** ID theft victim assistance in Iowa

Hi Sue: I hope all is well with you. I am working with IOVA, the Iowa Organization for Victim Assistance, on a grant application to the USDOJ that would provide IOVA money to put together an ID theft victim coalition to help identify holes in our system in Iowa. Below is a section of my draft that describes the need. I was hoping you could take a moment to give me your thoughts on the degree to which it is accurate and complete. Thanks for any help you can provide. Bill

## 2) Problem Statement/Statement of Need

Identity theft remains a significant problem in Iowa and throughout the United States. The Federal Trade Commission's ("FTC") annual report for 2016 regarding complaints to its Consumer Sentinel national database showed identity theft remains a top complaint, ranking third with slightly under 400,000 complaints.[1] Prior to 2016, identity theft had been the FTC's top complaint category for 15 straight years.[2] Victimization comes in various forms. In 2016 complaints to the FTC, employment or tax-related fraud (34%) was the most common form of reported identity theft, followed by credit card fraud (33%), phone or utilities fraud (13%), and bank fraud (12%). Other significant categories of identity theft reported by victims were loan or lease fraud (7%) and government documents or benefits fraud (7%).[3] Highlighting the problem, a 2014 Bureau of Justice Statistics Report concluded that 15% of Americans aged 16 and older experienced one or more incidents of identity theft during their lifetimes.[4]

While Iowa does not rank comparatively high in the number of complaints, the state has recognized the significance of identity theft by enacting laws specifically making identity theft a crime.[5] The Iowa Legislature also passed legislation which created an identity theft "passport" program, overseen by the Crime Victims' Assistance Division of the Iowa Attorney General's office, that supplies a certificate Iowa identity

theft victims may use in contacting potential lenders and in interacting with law enforcement to help establish the fact of their victimization.[6] In addition, the Consumer Protection Division of the Iowa Attorney General's Office offers a guidance booklet, both online and on paper, with helpful information to assist victims in self-help efforts by providing tools such as model correspondence victims may use in contacting credit reporting agencies, lenders, credit card issuers, and others about having been victimized.[7] The Division also offers similar materials to help Iowans avoid becoming victims of identity theft.[8]

A number of other Iowa public and private service providers assist identity theft victims by providing self-help information and by steering them to other information sources. They also help victims by directing them to local law enforcement to report the crimes. IOVA believes that while the information provided to victims is helpful, it may differ depending on which service providers victims contact. Indeed, there is no one Iowa source identified as the "place to start" victims on the road to economic and psychological recovery.

It is evident that there is significant work being done in Iowa to help identity theft victims but, to date, no agency or individual has studied the scope of the problem of identity theft in Iowa. No one has studied the degree to which Iowa public and private agencies train staff members in how best to assist identity theft victims.

No one has taken a close look at the degree to which Iowa's 99 counties provide assistance specifically to identity theft victims. Additionally, no one has studied whether public and private resources could be more effectively and efficiently utilized to assist victims.

Finally, no agency or individual has examined whether Iowa law enforcement officials view and charge identity theft crimes uniformly or whether charging decisions vary significantly by county.

Due to these gaps in uniformity and knowledge, it is unclear whether Iowa public and private sources of assistance are efficient or effective in addressing the needs of identity theft victims.

Therefore, there is a significant need in Iowa for the creation of a collaborative coalition to review these gaps in knowledge with the goal of enhancing assistance to identity theft victims. It would be of great benefit to the people of Iowa to:

- Study the impact of identity theft in Iowa;
- Communicate with all possible victim service providers to determine the levels and types of support provided;
- Analyze the scope and quality of assistance provided identity theft victims, including the training given service provider staff; and,
- Create a state-wide coalition comprising public and private service providers to develop “best practices” standards to share with all with the goal of maximizing the quality and degree of support across the state.

### 3) Project Strategy/Design

IOVA proposes to address the above needs by using the funds made available through this grant to form and lead a state-wide coalition to:

- Identify the incidence of identity theft in Iowa, including the degree to which perpetrators are arrested and charged, and the outcomes of any such prosecutions;
- Identify all Iowa public and private service providers currently offering assistance to identity theft victims, including but not limited to government agencies, financial institutions, victims advocacy programs, legal clinics, state and local bar associations, Iowa Legal Aid, and state-wide professional associations, such as the Iowa Bar Association and the Iowa Insurance Exchange;

- Examine the form of assistance provided by each service provider, including but not limited to referrals and advice and whether the agency provides self-help materials or directly assists victims throughout the process of repairing damaged credit reports and taking other steps to recover;
- Determine the degree to which assistance is provided at no cost to victims;
- Specifically examine the degree to which Iowa county governments offer assistance to identity theft victims;
- Study the forms of training provided service provider staff who interact with identity theft victims;
- Study public outreach efforts of each service provider;
- Conduct a public outreach campaign to educate the public about the services available to victims of identity theft and how to avoid becoming a victim;
- Develop “best practices” tools to utilize in outreach, training and in service provision;
- Determine what other states have done to provide hands-on assistance to victims so that they get the help they need to recover from identity theft, from start through completion of the recovery process;
- Conduct a systems-analysis to determine whether greater standardization of service provision would be more effective and efficient;
- Examine whether Iowa offers standardized training for law enforcement officers on the subject of identity theft at the Iowa Law Enforcement Academy;

- Examine whether Iowa county attorneys receive training through the Iowa County Attorneys Association on best charging practices as to identity theft;
- Make recommendations for any needed changes in state law needed to better deter identity theft or assist victim recovery; and,
- Determine the need and potential for funding of increased direct assistance to individual Iowa residents throughout the period of recovering from identity theft, using volunteer or paid victim advocates.

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[1] Link to ftc report

[2] Link to ITRC page.

[3] Link to FTC report page number #

[4] Link to BJA report

[5] Iowa Code chapter \_\_\_\_\_.

[6] Iowa Code section \_\_\_\_\_.

[7] Link to AG's Guide for Victims

[8] Link to AG's How to Avoid materials

**Tabor, Eric [AG]**

---

**From:** Gary Dickey <Gary@dickeycampbell.com>  
**Sent:** Wednesday, December 14, 2016 10:56 AM  
**To:** Reel Schmidt, Lisa [DHS]  
**Subject:** RE: Community Living Services

Any update from the meeting on 12/8?

gdj

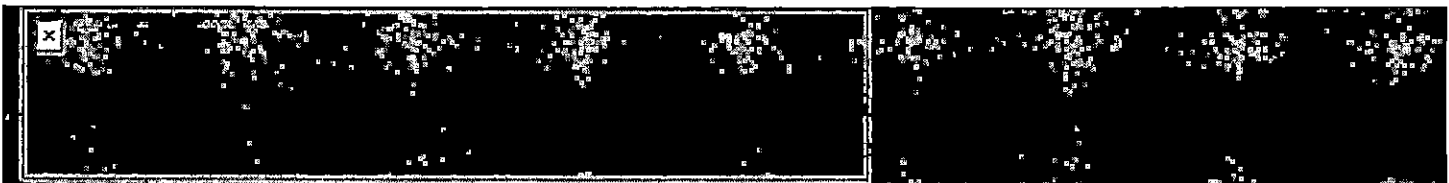
**Gary Dickey**

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**From:** Reel Schmidt, Lisa [<mailto:secureMailer.d-ff41ee4e1c2d4c9ea52c69da8ca8ed1e@dhs.state.ia.us>] On Behalf Of Reel Schmidt, Lisa  
**Sent:** Monday, November 28, 2016 11:38 AM  
**To:** Gary Dickey <Gary@dickeycampbell.com>  
**Subject:** Community Living Services



**Secure Message Delivery**

**From:** "Reel Schmidt, Lisa" <[reelsc@dhs.state.ia.us](mailto:reelsc@dhs.state.ia.us)>  
**Subject:** Community Living Services

[View Message](#)

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This message will be available online until 12/12/2016.

---

**Tabor, Eric [AG]**

---

**From:** Gary Dickey <Gary@dickeycampbell.com>  
**Sent:** Wednesday, January 18, 2017 7:47 AM  
**To:** Reel Schmidt, Lisa [DHS]  
**Subject:** RE: Community Living Services

My client reports that he never received any notification from the department concerning lifting the sanctions. Can you visit with your client and confirm that a letter was sent in December? Also, can you provide me with a copy for my file?

gdj

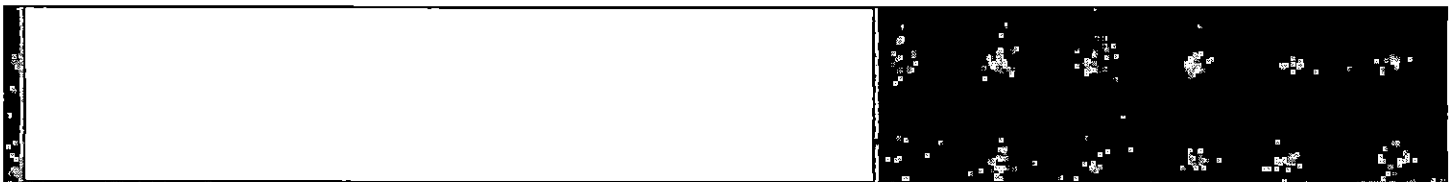
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---

**From:** Reel Schmidt, Lisa [<mailto:secureMailer.d-64702e413b3641dda6b69807f8fbbb1b@dhs.state.ia.us>] On Behalf Of Reel Schmidt, Lisa  
**Sent:** Wednesday, December 21, 2016 8:41 AM  
**To:** Gary Dickey <Gary@dickeycampbell.com>  
**Subject:** RE: Community Living Services



**Secure Message Delivery**

**From:** "Reel Schmidt, Lisa" <[reelsc@dhs.state.ia.us](mailto:reelsc@dhs.state.ia.us)>  
**Subject:** RE: Community Living Services

[View Message](#)

---

This message will be available online until 01/04/2017.

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## Tabor, Eric [AG]

---

**From:** Reel Schmidt, Lisa <lreelsc@dhs.state.ia.us>  
**Sent:** Wednesday, December 21, 2016 8:42 AM  
**To:** Gary Dickey  
**Subject:** RE: Community Living Services

---

From: Gary Dickey [Gary@dickeycampbell.com]  
Sent: Tuesday, December 20, 2016 4:10 PM  
To: Reel Schmidt, Lisa  
Subject: RE: Community Living Services

When we last corresponded concerning CLS, you indicated DHS would staff the request at their next meeting 12/8. Do you have any update on the response?

gdj

Gary Dickey  
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From: Reel Schmidt, Lisa [<mailto:secureMailer.d-ff41ee4e1c2d4c9ea52c69da8ca8ed1e@dhs.state.ia.us>] On Behalf Of Reel Schmidt, Lisa  
Sent: Monday, November 28, 2016 11:38 AM  
To: Gary Dickey <[Gary@dickeycampbell.com](mailto:Gary@dickeycampbell.com)<<mailto:Gary@dickeycampbell.com>>>  
Subject: Community Living Services

[<https://mg1.dhs.state.ia.us/enduser/def/images/logo.png>]

Secure Message Delivery

From: "Reel Schmidt, Lisa" <[lreelsc@dhs.state.ia.us](mailto:lreelsc@dhs.state.ia.us)<<mailto:lreelsc@dhs.state.ia.us>>>  
Subject: Community Living Services

View Message<<https://mg1.dhs.state.ia.us/enduser/msg.html?x=d-1a905f7586e509f3d1e4a6eb9ad858b5e2564602fda1d5110c3e5ff133506ee5c3cfcfd3f1ba4700889d97433eb0e479ff41e4e1c2d4c9ea52c69da8ca8ed1e>>

This message will be available online until 12/12/2016.

**Tabor, Eric [AG]**

---

**From:** Reel Schmidt, Lisa <lreelsc@dhs.state.ia.us>  
**Sent:** Monday, November 21, 2016 4:00 PM  
**To:** Gary Dickey  
**Subject:** FW: Community Living Services  
**Attachments:** CLS Pleading04 Settlement Agreement.pdf

Hi Gary,

I'm making inquiries. I will be out of office Wed-Friday of this Thanksgiving week so I will be in touch next week.

Just an aside – your email came to my private email, which I don't check as often as my work email.

Have a nice holiday.

Lisa RS



**Lisa Reel Schmidt**  
**Assistant Attorney General**  
Office of the Attorney General of Iowa  
1305 E. Walnut St.  
Des Moines, Iowa 50319  
Main: (515) 281-3147 | Direct: (515) 281-4055  
Email: [lreelsc@dhs.state.ia.us](mailto:lreelsc@dhs.state.ia.us)

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---

**From:** Lisa Reel Schmidt [<mailto:lisa.reelschmidt@yahoo.com>]  
**Sent:** Friday, November 18, 2016 9:51 AM  
**To:** Reel Schmidt, Lisa  
**Subject:** Fw: Community Living Services

----- Forwarded Message -----

**From:** Gary Dickey <[Gary@dickeycampbell.com](mailto:Gary@dickeycampbell.com)>  
**To:** Lisa Reel Schmidt <[lisa.reelschmidt@yahoo.com](mailto:lisa.reelschmidt@yahoo.com)>  
**Sent:** Friday, November 18, 2016 9:28 AM  
**Subject:** Community Living Services

Lisa,

If you recall, Community Living Services withdrew its appeal February of 2016, pursuant to the attached settlement agreement, which calls for sixth-month reviews. My client reports that it has been compliant. Could you visit with your client and advise whether probation can be lifted?

gdj

**Gary Dickey**

DICKEY & CAMPBELL LAW FIRM, P.L.C.

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Des Moines, Iowa 50309

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**Tabor, Eric [AG]**

---

**From:** Lisa Reel Schmidt <lisa.reelschmidt@yahoo.com>  
**Sent:** Friday, November 18, 2016 9:51 AM  
**To:** Reel Schmidt, Lisa [DHS]  
**Subject:** Fw: Community Living Services  
**Attachments:** CLS Pleading04 Settlement Agreement.pdf

----- Forwarded Message -----

**From:** Gary Dickey <Gary@dickeycampbell.com>  
**To:** Lisa Reel Schmidt <lisa.reelschmidt@yahoo.com>  
**Sent:** Friday, November 18, 2016 9:28 AM  
**Subject:** Community Living Services

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**Gary Dickey**

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**Tabor, Eric [AG]**

---

**From:** Gary Dickey <Gary@dickeycampbell.com>  
**Sent:** Tuesday, December 20, 2016 4:11 PM  
**To:** Reel Schmidt, Lisa [DHS]  
**Subject:** RE: Community Living Services

When we last corresponded concerning CLS, you indicated DHS would staff the request at their next meeting 12/8. Do you have any update on the response?

gdj

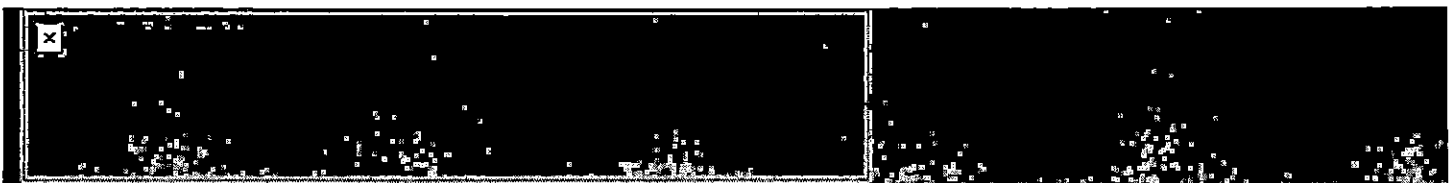
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**From:** Reel Schmidt, Lisa [<mailto:secureMailer.d-ff41ee4e1c2d4c9ea52c69da8ca8ed1e@dhs.state.ia.us>] On Behalf Of Reel Schmidt, Lisa  
**Sent:** Monday, November 28, 2016 11:38 AM  
**To:** Gary Dickey <Gary@dickeycampbell.com>  
**Subject:** Community Living Services



**Secure Message Delivery**

**From:** "Reel Schmidt, Lisa" <[lreelsc@dhs.state.ia.us](mailto:lreelsc@dhs.state.ia.us)>  
**Subject:** Community Living Services

[View Message](#)

This message will be available online until 12/12/2016.

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## Tabor, Eric [AG]

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**From:** Kerr, Sue [AG]  
**Sent:** Wednesday, May 24, 2017 10:46 AM  
**To:** Tabor, Eric [AG]  
**Cc:** Whitney, Jessica [AG]  
**Subject:** FW: ID theft victim assistance in Iowa  
**Attachments:** ID Theft Grant Applicaiton.docx

I found one more email message... Sue

**From:** Bill Brauch [mailto:billbrauch@gmail.com]  
**Sent:** Monday, May 01, 2017 5:41 PM  
**To:** Kerr, Sue [AG]  
**Subject:** Re: ID theft victim assistance in Iowa

I revised the document quite a bit today, so ignore the text in the email I sent along. I've attached the entire thing. No need for you to read all of it. A good amount of it relates to specific federal requirements. The key segments for which I'd appreciate any input are in pp. 1 - 8. If I'm wrong about anything in there or if you see an important omission, please let me know. Thanks for taking the time to look it over! If we get the grant (and we think IOVA would be the only Iowa applicant - there are 10 grants of \$50,000 each available) I'd likely be the project director. If that happens, we'd get a chance to work together again! Again, thank you!

On Mon, May 1, 2017 at 4:01 PM, Kerr, Sue [AG] <[Susan.Kerr@iowa.gov](mailto:Susan.Kerr@iowa.gov)> wrote:

Hi Bill,

Always good to hear from you! I was out of the office last Thursday and Friday due to a vile cold virus. I am swamped today. I gave your email message a quick read. I would like to read it again tomorrow when I have a little more time. Then I'd be happy to send you my comments.



**Susan Kerr**  
**Investigator**  
Office of the Attorney General of Iowa  
1305 E. Walnut Street, 2<sup>nd</sup> Floor  
Des Moines, IA 50319  
Phone: (515) 281-6414 | Fax: (515) 281-6771  
Email: [susan.kerr@iowa.gov](mailto:susan.kerr@iowa.gov) | [www.iowaattorneygeneral.gov](http://www.iowaattorneygeneral.gov)

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**From:** Bill Brauch [mailto:[billbrauch@gmail.com](mailto:billbrauch@gmail.com)]

**Sent:** Monday, May 01, 2017 9:26 AM

**To:** Kerr, Sue [AG]

**Subject:** ID theft victim assistance in Iowa

Hi Sue: I hope all is well with you. I am working with IOVA, the Iowa Organization for Victim Assistance, on a grant application to the USDOJ that would provide IOVA money to put together an ID theft victim coalition to help identify holes in our system in Iowa. Below is a section of my draft that describes the need. I was hoping you could take a moment to give me your thoughts on the degree to which it is accurate and complete. Thanks for any help you can provide. Bill

## 2) Problem Statement/Statement of Need

Identity theft remains a significant problem in Iowa and throughout the United States. The Federal Trade Commission's ("FTC") annual report for 2016 regarding complaints to its Consumer Sentinel national database showed identity theft remains a top complaint, ranking third with slightly under 400,000 complaints.[1] Prior to 2016, identity theft had been the FTC's top complaint category for 15 straight years.[2] Victimization comes in various forms. In 2016 complaints to the FTC, employment or tax-related fraud (34%) was the most common form of reported identity theft, followed by credit card fraud (33%), phone or utilities fraud (13%), and bank fraud (12%). Other significant categories of identity theft reported by victims were loan or lease fraud (7%) and government documents or benefits fraud (7%).[3] Highlighting the problem, a 2014 Bureau of Justice Statistics Report concluded that 15% of Americans aged 16 and older experienced one or more incidents of identity theft during their lifetimes.[4]

While Iowa does not rank comparatively high in the number of complaints, the state has recognized the significance of identity theft by enacting laws specifically making identity theft a crime.[5] The Iowa Legislature also passed legislation which created an identity theft "passport" program, overseen by the Crime Victims' Assistance Division of the Iowa Attorney General's office, that supplies a certificate Iowa identity



theft victims may use in contacting potential lenders and in interacting with law enforcement to help establish the fact of their victimization.[6] In addition, the Consumer Protection Division of the Iowa Attorney General's Office offers a guidance booklet, both online and on paper, with helpful information to assist victims in self-help efforts by providing tools such as model correspondence victims may use in contacting credit reporting agencies, lenders, credit card issuers, and others about having been victimized.[7] The Division also offers similar materials to help Iowans avoid becoming victims of identity theft.[8]

A number of other Iowa public and private service providers assist identity theft victims by providing self-help information and by steering them to other information sources. They also help victims by directing them to local law enforcement to report the crimes. IOVA believes that while the information provided to victims is helpful, it may differ depending on which service providers victims contact. Indeed, there is no one Iowa source identified as the "place to start" victims on the road to economic and psychological recovery.

It is evident that there is significant work being done in Iowa to help identity theft victims but, to date, no agency or individual has studied the scope of the problem of identity theft in Iowa. No one has studied the degree to which Iowa public and private agencies train staff members in how best to assist identity theft victims.

No one has taken a close look at the degree to which Iowa's 99 counties provide assistance specifically to identity theft victims. Additionally, no one has studied whether public and private resources could be more effectively and efficiently utilized to assist victims.

Finally, no agency or individual has examined whether Iowa law enforcement officials view and charge identity theft crimes uniformly or whether charging decisions vary significantly by county.

Due to these gaps in uniformity and knowledge, it is unclear whether Iowa public and private sources of assistance are efficient or effective in addressing the needs of identity theft victims.

Therefore, there is a significant need in Iowa for the creation of a collaborative coalition to review these gaps in knowledge with the goal of enhancing assistance to identity theft victims. It would be of great benefit to the people of Iowa to:

- Study the impact of identity theft in Iowa;
- Communicate with all possible victim service providers to determine the levels and types of support provided;
- Analyze the scope and quality of assistance provided identity theft victims, including the training given service provider staff; and,
- Create a state-wide coalition comprising public and private service providers to develop “best practices” standards to share with all with the goal of maximizing the quality and degree of support across the state.

### 3) Project Strategy/Design

IOVA proposes to address the above needs by using the funds made available through this grant to form and lead a state-wide coalition to:

- Identify the incidence of identity theft in Iowa, including the degree to which perpetrators are arrested and charged, and the outcomes of any such prosecutions;
- Identify all Iowa public and private service providers currently offering assistance to identity theft victims, including but not limited to government agencies, financial institutions, victims advocacy programs, legal clinics, state and local bar associations, Iowa Legal Aid, and state-wide professional associations, such as the Iowa Bar Association and the Iowa Insurance Exchange;

- Examine the form of assistance provided by each service provider, including but not limited to referrals and advice and whether the agency provides self-help materials or directly assists victims throughout the process of repairing damaged credit reports and taking other steps to recover;
- Determine the degree to which assistance is provided at no cost to victims;
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## Tabor, Eric [AG]

---

**From:** Kerr, Sue [AG]  
**Sent:** Wednesday, May 24, 2017 10:28 AM  
**To:** Tabor, Eric [AG]  
**Cc:** Whitney, Jessica [AG]  
**Subject:** ID theft victim assistance in Iowa

Email message you requested... Sue

---

**From:** Kerr, Sue [AG]  
**Sent:** Monday, May 01, 2017 4:02 PM  
**To:** 'Bill Brauch'  
**Subject:** ID theft victim assistance in Iowa

Hi Bill,

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**Susan Kerr**  
**Investigator**

Office of the Attorney General of Iowa  
1305 E. Walnut Street, 2<sup>nd</sup> Floor  
Des Moines, IA 50319  
Phone: (515) 281-6414 | Fax: (515) 281-6771  
Email: [susan.kerr@iowa.gov](mailto:susan.kerr@iowa.gov) | [www.iowaattorneygeneral.gov](http://www.iowaattorneygeneral.gov)

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- Communicate with all possible victim service providers to determine the levels and types of support provided;
- Analyze the scope and quality of assistance provided identity theft victims, including the training given service provider staff; and,

- Create a state-wide coalition comprising public and private service providers to develop “best practices” standards to share with all with the goal of maximizing the quality and degree of support across the state.

### 3) Project Strategy/Design

IOVA proposes to address the above needs by using the funds made available through this grant to form and lead a state-wide coalition to:

- Identify the incidence of identity theft in Iowa, including the degree to which perpetrators are arrested and charged, and the outcomes of any such prosecutions;
- Identify all Iowa public and private service providers currently offering assistance to identity theft victims, including but not limited to government agencies, financial institutions, victims advocacy programs, legal clinics, state and local bar associations, Iowa Legal Aid, and state-wide professional associations, such as the Iowa Bar Association and the Iowa Insurance Exchange;
- Examine the form of assistance provided by each service provider, including but not limited to referrals and advice and whether the agency provides self-help materials or directly assists victims throughout the process of repairing damaged credit reports and taking other steps to recover;
- Determine the degree to which assistance is provided at no cost to victims;
- Specifically examine the degree to which Iowa county governments offer assistance to identity theft victims;



- Study the forms of training provided service provider staff who interact with identity theft victims;
- Study public outreach efforts of each service provider;
- Conduct a public outreach campaign to educate the public about the services available to victims of identity theft and how to avoid becoming a victim;
- Develop “best practices” tools to utilize in outreach, training and in service provision;
- Determine what other states have done to provide hands-on assistance to victims so that they get the help they need to recover from identity theft, from start through completion of the recovery process;
- Conduct a systems-analysis to determine whether greater standardization of service provision would be more effective and efficient;
- Examine whether Iowa offers standardized training for law enforcement officers on the subject of identity theft at the Iowa Law Enforcement Academy;
- Examine whether Iowa county attorneys receive training through the Iowa County Attorneys Association on best charging practices as to identity theft;
- Make recommendations for any needed changes in state law needed to better deter identity theft or assist victim recovery; and,
- Determine the need and potential for funding of increased direct assistance to individual Iowa residents throughout the period of recovering from identity theft, using volunteer or paid victim advocates.

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[6] Iowa Code section \_\_\_\_\_.

[7] Link to AG's Guide for Victims

[8] Link to AG's How to Avoid materials

**Tabor, Eric [AG]**

**From:** Kerr, Sue [AG]  
**Sent:** Wednesday, May 24, 2017 10:28 AM  
**To:** Tabor, Eric [AG]  
**Cc:** Whitney, Jessica [AG]  
**Subject:** FTC - Most ID theft victims don't need a police report

Email message you requested... Sue

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**From:** Kerr, Sue [AG]  
**Sent:** Tuesday, May 02, 2017 9:06 AM  
**To:** 'Bill Brauch'  
**Subject:** FTC - Most ID theft victims don't need a police report

Just checking to see if you have read this?  
Sue

# CONSUMER UPDATES

TIPS AND ADVICE FROM THE NATION'S CONSUMER PROTECTION AGENCY

## Most ID theft victims don't need a police report

by Seena Gressin  
Attorney, Division of Consumer & Business Education, FTC

When it comes to reporting and recovering from identity theft, we're simplifying the process by eliminating the need for a police report in most cases.

[Read more >](#)

The image shows a thumbnail of a form titled "Identity Theft Report". The form includes sections for "Contact Information", "Personal Information", "Details of the Theft", and "How the Theft Happened". It also has a "Date Reported" field and a "Date of Loss" field. The form is a standard document used for reporting identity theft to the FTC.

SUBSCRIBER SERVICES: [Manage Preferences](#) | [Unsubscribe](#) | [Help](#)

This is a free service provided by the [Federal Trade Commission](#).

**Tabor, Eric [AG]**

**From:** Kerr, Sue [AG]  
**Sent:** Wednesday, May 24, 2017 10:28 AM  
**To:** Tabor, Eric [AG]  
**Cc:** Whitney, Jessica [AG]  
**Subject:** Identity Theft/Security Freeze

Email message you requested... Sue

---

**From:** Kerr, Sue [AG]

**Sent:** Tuesday, May 02, 2017 10:04 AM  
**To:** 'Bill Brauch'

**Subject:** Identity Theft/Security Freeze

I am writing in response to your inquiry regarding identity theft with the Iowa Attorney General's Office. Our best defense in helping Iowans with identity theft is to provide as much educational material as possible.

You may want to consider taking the precautionary steps listed below to avoid becoming the victim of identity theft as follows:

1. Contact each of the three major credit reporting agencies and follow these steps:

Equifax, P.O. Box 740256, Atlanta, GA 30374; 888-766-0008; [www.equifax.com](http://www.equifax.com)

Experian, P.O. Box 9530, Allen, TX 75013; 888-397-3742; [www.experian.com](http://www.experian.com)

Trans Union, P.O. Box 2000, Chester, PA 19022; 800-680-7289;

[www.transunion.com](http://www.transunion.com)

You may place a temporary (90-day) 'fraud victim alert' on each of your credit reports by calling any one of the credit agencies. The credit agency that you call will forward your request to the other two credit agencies. To request a permanent (7-year) fraud victim alert and add a 'fraud victim statement' to your credit file, you must send a request in writing along with a copy of your police report to each of the credit reporting agencies. Your fraud victim statement should give a short summary of your circumstances and ask creditors not to extend any existing lines of credit or open any new lines of credit without contacting you personally. Remember to include your home address and a couple of telephone numbers where you can be reached most of the time. There is no charge for these services.

2. You may want to place a 'security freeze' on your credit reports to stop fraudulent accounts from being opened by the identity thief. A security freeze prevents potential creditors and other third parties from accessing credit reports without your approval. Most businesses will not open credit card or loan accounts without checking your credit



history. You must contact each of the credit reporting agencies (Equifax, Experian and TransUnion) individually online or by postal mail. The security freeze is free to identity theft victims who can provide a copy of their identity theft police report. For more information, see the detailed instructions listed below entitled "Placing a Security Freeze on Your Credit Report to Protect Yourself from Identity Theft" or you can go to the credit reporting agencies' websites which are listed above.

3. Order a **free copy of your credit report** from each credit reporting agency. You are entitled to one free copy from each credit agency every twelve months. Monitoring your credit card statements and your credit reports are the most important steps you can take to safeguard your credit identity because you can catch errors and detect identity theft early. Equifax, Experian and TransUnion are private industry competitors who collect data independently. Thus, all three credit reports must be reviewed to ensure the accuracy and safety of your credit information. Your free credit report does not contain your credit score because it is the work product and property of the credit agencies. The Federal Trade Commission required the three national credit reporting agencies to create a joint clearinghouse for consumer requests, so ordering your credit report is very easy: Just call, write or go online to:

Annual Credit Report  
P.O. Box 105281  
Atlanta, GA 30348-5281  
Phone: 877-322-8228 toll-free  
www.AnnualCreditReport.com

4. **Review your credit reports carefully.** Look for unfamiliar credit card accounts or other suspicious activity, such as incorrect addresses or indications of delinquent payments. Send a 'dispute letter' to each credit reporting agency and creditor with whom fraudulent accounts have been opened. A sample dispute letter can be found on the FTC's website at: <http://www.consumer.ftc.gov/articles/0385-sample-letter-disputing-billing-errors>. Request that all fraudulent account information and inquiries be permanently removed from your credit report. You may also request the credit agencies notify those who have received your credit report in the last six months regarding disputed and erroneous information.

If you don't own a computer or need access to the Internet, there may be several places in your community that offer access at little or no charge such as; your local public library, community center, senior center, community college or university. Family or close friends may also be a resource. If computer or Internet access is not available, please contact our office and we will mail the brochures listed in this letter to you.

The involvement of the Attorney General's Office in matters of identity theft is limited. We generally do not directly investigate identity theft. In order to assist consumers who are concerned about identity theft, our office has prepared two brochures entitled, 'A Guide for Victims of Identity Theft and Identity Theft... Don't Let It Happen To You.'

The Guide for Victims of Identity Theft brochure outlines your rights, remedies and resources if you are the victim of identity theft. The brochure lists addresses and phone numbers for state and federal agencies which may be able to assist you as well. The Identity Theft... Don't Let It Happen To You brochure offers practical advice and additional precautionary steps you can take to reduce your risk of being becoming a victim of identity theft again. These brochures are available on the Attorney General's website at [www.IowaAttorneyGeneral.gov](http://www.IowaAttorneyGeneral.gov).

Please be aware that the Attorney General's Office is continuing to explore the best ways to prevent identity theft and to help consumers who have been victims of identity theft. Thank you for contacting our office.

Sincerely,  
Susan Kerr, Investigator

Consumer Protection Division  
Hoover State Office Building  
1305 East Walnut Street, 2nd Floor  
Des Moines, IA 50319

(515) 281-6414 Direct  
(515) 281-6771 Fax  
[www.IowaAttorneyGeneral.gov](http://www.IowaAttorneyGeneral.gov)

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### **Placing a Security Freeze on Your Credit Report to Protect Yourself from Identity Theft**

Each of the three major credit reporting agencies (Equifax, Experian and TransUnion) now offers consumers the ability to place a "security freeze," or deny access to, their credit reports. A security freeze means that your credit file cannot be shared with potential creditors. A security freeze can help prevent identity theft, because businesses will not open credit accounts without first checking a consumer's credit history. If your credit files are frozen, even someone who has your name and Social Security number probably will not be able to obtain credit in your name. Placing a security freeze does not affect your credit score - nor does it keep you from getting your free annual credit report.

How much does it cost?

A security freeze is free to identity theft victims who have a police report of identity theft. If you are not an identity theft victim, it will cost you \$10 to place a freeze with each credit reporting agency. That's a total of \$30 to freeze your credit information at each of the three major credit reporting agencies (Equifax, Experian and TransUnion).

How do I place a security freeze?



To place a freeze, you must make a separate request to each of the three credit reporting agencies. You must provide identifying information listed below. If you are an identity theft victim, you may provide a copy of your police report in lieu of the \$10 fee.

Log online or write to the addresses listed below and send the documentation listed:

**#1 Equifax Security Freeze**

P.O. Box 105788  
Atlanta, GA 30348

- Log online at [https://www.freeze.equifax.com/Freeze/jsp/SFF\\_PersonalIDInfo.jsp](https://www.freeze.equifax.com/Freeze/jsp/SFF_PersonalIDInfo.jsp) or send a request by certified mail.
- Include name, current and former addresses for the last two years, Social Security number, and date of birth.
- Copy of a utility bill, insurance or bank statement, etc., showing your name and current mailing address.
- \$10.00 fee payable by check, money order, or credit card (or an identity theft report to a law enforcement agency in lieu of payment for identity theft victims). Give name of credit card, account number, expiration date, and Card Identification Number.

To learn more about the Equifax security freeze, go to [www.Equifax.com](http://www.Equifax.com)

**#2 Experian Security Freeze**

P. O. Box 9554  
Allen, TX 75013

- Log online at <https://www.experian.com/freeze/center.html> or send a request by certified mail.
- Include name, current and former addresses for the last two years, Social Security number, and date of birth.
- Enclose a copy of a government identification card, such as a driver's license, state ID card or military ID card.
- Copy of a utility bill, insurance or bank statement, etc., showing your name and current mailing address.
- \$10.00 fee payable by check, money order, or credit card (or an identity theft report to a law enforcement agency in lieu of payment for identity theft victims). Give name of credit card, account number and expiration date.

To learn more about the Experian security freeze, go to [www.Experian.com](http://www.Experian.com)

**#3 TransUnion Security Freeze**

P. O. Box 2000  
Chester, PA 19022

- Log online at <http://www.transunion.com/personal-credit/credit-disputes/credit-freezes.page> or send a request by certified mail.

- Include name, current and former addresses for the last five years, Social Security number, and date of birth.
- \$10.00 fee payable by check, money order, or credit card (or an identity theft report to a law enforcement agency in lieu of payment for identity theft victims). Give name of credit card, account number and expiration date.

To learn more about the TransUnion security freeze, go to [www.TransUnion.com](http://www.TransUnion.com)

How long will the security freeze remain on my credit report?

A security freeze will remain on your credit report until you request it to be removed.

Can I open new credit accounts if my files are frozen?

Yes, but you have to lift the freeze to obtain a new credit card or loan. You can lift it for a period of time, or you can lift it for a specific creditor, or you can lift it permanently. After you send your letter asking for the freeze, each of the credit reporting agencies will send you a Personal Identification Number (PIN). You will also get instructions on how to lift the freeze. There are a variety of ways to lift the freeze (by mail, phone or Internet) using your PIN. The fee for lifting the freeze is \$12.

What will a creditor who requests my file see if it is frozen?

A creditor will see a message or a code indicating that the file is frozen.

Can a creditor get my credit score if my file is frozen?

No. A creditor who requests your file from one of the three credit reporting agencies will only get a message or a code indicating that the file is frozen.

Will a freeze lower my credit score?

No.

Can an employer do a background check on me if I have a freeze on my credit file?

No. You would have to lift the freeze to allow a background check or to apply for insurance, just as you would to apply for credit. The process for lifting the freeze is described above.

Can I order my own credit report if my file is frozen?

Yes. To obtain a free copy of your credit report from each of the three credit reporting agencies (Equifax, Experian and TransUnion) once every 12 months, call toll-free 877-322-8228, or order online at [www.AnnualCreditReport.com](http://www.AnnualCreditReport.com), or write to P.O. Box 105281, Atlanta, GA 30348-5281.

Can anyone see my credit file if it is frozen?

Your credit report can still be released to your existing creditors or to collection agencies acting on their behalf. They can use it to review or collect on your account. Other creditors may also use your information to make offers of credit-unless you opt out of receiving such offers. See below for how to opt out of pre-approved credit offers.



Government agencies may have access for collecting child support payments, taxes, or in the course of a legal proceeding.

Does freezing my file mean that I won't receive pre-approved credit offers? No. You can stop the pre-approved credit offers by calling 888-567-8688. Or you can do this online at [www.optoutprescreen.com](http://www.optoutprescreen.com). This will stop most of the offers, the ones that go through the credit reporting agencies. It's good for five years or you can make it permanent.

Do I have to freeze my file with all three credit reporting agencies? Yes. Different credit issuers may use different credit reporting agencies. If you want to stop your credit file from being viewed, you need to freeze it with Equifax, Experian and TransUnion.

Do I have to lift the security freeze at all three credit reporting agencies? No. You can ask the potential creditor which credit reporting agency it is going to utilize. Then place a global lift (with a start and end date) or a specific third party lift with that credit reporting agency.

Does my spouse's file have to be frozen, too? Yes. Both spouses have to freeze their separate credit files, via separate letters requesting the freeze, in order to get the benefit. That means the total cost for freezing is  $\$10 \times 3$  credit reporting agencies  $\times 2$  people =  $\$60$ .

Does a security freeze guarantee that I will not be a victim of identity theft? No. While a security freeze can help keep an identity thief from opening most new accounts in your name, it will not prevent all types of identity theft (such as: criminal, driver's license, government benefit, insurance, medical, and Social Security). It will not protect you, for example, from an identity thief who uses your existing credit cards or other accounts. The freeze won't be able to stop fraudulent activity that has already taken place before the security freeze was initiated. While a security freeze may not be able to protect you in these kinds of cases, it can protect you from the vast majority of identity thefts which involve opening a new line of credit!

You can get more information about identity theft by going to the Federal Trade Commission's website at: [www.ftc.gov](http://www.ftc.gov) or the Iowa Attorney General's website at: [www.IowaAttorneyGeneral.gov](http://www.IowaAttorneyGeneral.gov).

If you have complaints or questions, call our office at 515-281-5926 or toll-free at 888-777-4590 or email us at: [consumer@iowa.gov](mailto:consumer@iowa.gov) or write to the Attorney General's Consumer Protection Division, 1305 East Walnut Street, Des Moines, Iowa 50319.

## Tabor, Eric [AG]

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**From:** Kerr, Sue [AG]  
**Sent:** Wednesday, May 24, 2017 10:30 AM  
**To:** Tabor, Eric [AG]  
**Cc:** Whitney, Jessica [AG]  
**Subject:** ID theft victim assistance in Iowa

Email message you requested... Sue

**From:** Bill Brauch [mailto:billbrauch@gmail.com]  
**Sent:** Monday, May 01, 2017 5:00 PM  
**To:** Kerr, Sue [AG]  
**Subject:** Re: ID theft victim assistance in Iowa

Sue: Thanks, and I'm glad you're feeling better. Tomorrow is fine. In fact, we just learned today that the deadline has been extended to file it, from this Friday until the first Friday in June. So, I have time to make changes. Again, thanks! Now go home and rest! Bill

On Mon, May 1, 2017 at 4:01 PM, Kerr, Sue [AG] <[Susan.Kerr@iowa.gov](mailto:Susan.Kerr@iowa.gov)> wrote:

Hi Bill,

Always good to hear from you! I was out of the office last Thursday and Friday due to a vile cold virus. I am swamped today. I gave your email message a quick read. I would like to read it again tomorrow when I have a little more time. Then I'd be happy to send you my comments.



**Susan Kerr**  
**Investigator**

Office of the Attorney General of Iowa  
1305 E. Walnut Street, 2<sup>nd</sup> Floor  
Des Moines, IA 50319  
Phone: (515) 281-6414 | Fax: (515) 281-6771  
Email: [susan.kerr@iowa.gov](mailto:susan.kerr@iowa.gov) | [www.iowaattorneygeneral.gov](http://www.iowaattorneygeneral.gov)

**CONFIDENTIALITY NOTICE:** This email message (including any attachments) may be confidential or protected by one or more of the following: the attorney-client privilege, attorney work product doctrine, or applicable laws. If you are not the intended recipient or have received this message in error, please: (1) do not read, print, copy, distribute or use it in any way; (2) permanently delete or destroy the message (including any attachments); and (3) notify the sender immediately by reply email or telephone. Any unintended transmission of this email message does not constitute a waiver of any applicable privilege or protection. Thank you.

**From:** Bill Brauch [mailto:billbrauch@gmail.com]  
**Sent:** Monday, May 01, 2017 9:26 AM  
**To:** Kerr, Sue [AG]  
**Subject:** ID theft victim assistance in Iowa

HI Sue: I hope all is well with you. I am working with IOVA, the Iowa Organization for Victim Assistance, on a grant application to the USDOJ that would provide IOVA money to put together an ID theft victim coalition to help identify holes in our system in Iowa. Below is a section of my draft that describes the need. I was

hoping you could take a moment to give me your thoughts on the degree to which it is accurate and complete. Thanks for any help you can provide. Bill

## 2) Problem Statement/Statement of Need

Identity theft remains a significant problem in Iowa and throughout the United States. The Federal Trade Commission's ("FTC") annual report for 2016 regarding complaints to its Consumer Sentinel national database showed identity theft remains a top complaint, ranking third with slightly under 400,000 complaints.[1] Prior to 2016, identity theft had been the FTC's top complaint category for 15 straight years.[2] Victimization comes in various forms. In 2016 complaints to the FTC, employment or tax-related fraud (34%) was the most common form of reported identity theft, followed by credit card fraud (33%), phone or utilities fraud (13%), and bank fraud (12%). Other significant categories of identity theft reported by victims were loan or lease fraud (7%) and government documents or benefits fraud (7%).[3] Highlighting the problem, a 2014 Bureau of Justice Statistics Report concluded that 15% of Americans aged 16 and older experienced one or more incidents of identity theft during their lifetimes.[4]

While Iowa does not rank comparatively high in the number of complaints, the state has recognized the significance of identity theft by enacting laws specifically making identity theft a crime.[5] The Iowa Legislature also passed legislation which created an identity theft "passport" program, overseen by the Crime Victims' Assistance Division of the Iowa Attorney General's office, that supplies a certificate Iowa identity theft victims may use in contacting potential lenders and in interacting with law enforcement to help establish the fact of their victimization.[6] In addition, the Consumer Protection Division of the Iowa Attorney General's Office offers a guidance booklet, both online and on paper, with helpful information to assist victims in self-help efforts by providing tools such as model correspondence victims may use in contacting credit reporting agencies, lenders, credit card issuers, and others about having been victimized.[7] The Division also offers similar materials to help Iowans avoid becoming victims of identity theft.[8]

A number of other Iowa public and private service providers assist identity theft victims by providing self-help information and by steering them to other information sources. They also help victims by directing them to local law enforcement to report the crimes. IOVA believes that while the information provided to victims is helpful, it may differ depending on which service providers victims contact. Indeed, there is no one Iowa source identified as the “place to start” victims on the road to economic and psychological recovery.

It is evident that there is significant work being done in Iowa to help identity theft victims but, to date, no agency or individual has studied the scope of the problem of identity theft in Iowa. No one has studied the degree to which Iowa public and private agencies train staff members in how best to assist identity theft victims.

No one has taken a close look at the degree to which Iowa’s 99 counties provide assistance specifically to identity theft victims. Additionally, no one has studied whether public and private resources could be more effectively and efficiently utilized to assist victims.

Finally, no agency or individual has examined whether Iowa law enforcement officials view and charge identity theft crimes uniformly or whether charging decisions vary significantly by county.

Due to these gaps in uniformity and knowledge, it is unclear whether Iowa public and private sources of assistance are efficient or effective in addressing the needs of identity theft victims.

Therefore, there is a significant need in Iowa for the creation of a collaborative coalition to review these gaps in knowledge with the goal of enhancing assistance to identity theft victims. It would be of great benefit to the people of Iowa to:

- Study the impact of identity theft in Iowa;
- Communicate with all possible victim service providers to determine the levels and types of support provided;

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IOVA proposes to address the above needs by using the funds made available through this grant to form and lead a state-wide coalition to:

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- Determine the degree to which assistance is provided at no cost to victims;
- Specifically examine the degree to which Iowa county governments offer assistance to identity theft victims;
- Study the forms of training provided service provider staff who interact with identity theft victims;
- Study public outreach efforts of each service provider;
- Conduct a public outreach campaign to educate the public about the services available to victims of identity theft and how to avoid becoming a victim;
- Develop “best practices” tools to utilize in outreach, training and in service provision;
- Determine what other states have done to provide hands-on assistance to victims so that they get the help they need to recover from identity theft, from start through completion of the recovery process;
- Conduct a systems-analysis to determine whether greater standardization of service provision would be more effective and efficient;

- Examine whether Iowa offers standardized training for law enforcement officers on the subject of identity theft at the Iowa Law Enforcement Academy;
- Examine whether Iowa county attorneys receive training through the Iowa County Attorneys Association on best charging practices as to identity theft;
- Make recommendations for any needed changes in state law needed to better deter identity theft or assist victim recovery; and,
- Determine the need and potential for funding of increased direct assistance to individual Iowa residents throughout the period of recovering from identity theft, using volunteer or paid victim advocates.

---

[1] Link to ftc report

[2] Link to ITRC page.

[3] Link to FTC report page number #

[4] Link to BJA report

[5] Iowa Code chapter \_\_\_\_\_.

[6] Iowa Code section \_\_\_\_\_.

[7] Link to AG's Guide for Victims

[8] Link to AG's How to Avoid materials

**Tabor, Eric [AG]**

**From:** Kerr, Sue [AG]  
**Sent:** Wednesday, May 24, 2017 10:27 AM  
**To:** Tabor, Eric [AG]  
**Cc:** Whitney, Jessica [AG]  
**Subject:** FTC - Most ID theft victims don't need a police report

Email message you requested... Sue

**From:** Bill Brauch [mailto:billbrauch@gmail.com]  
**Sent:** Tuesday, May 02, 2017 9:37 AM  
**To:** Kerr, Sue [AG]  
**Subject:** Re: FTC - Most ID theft victims don't need a police report

Thanks. I had not seen that! Will require some revision to my draft.

On Tue, May 2, 2017 at 9:06 AM, Kerr, Sue [AG] <[Susan.Kerr@iowa.gov](mailto:Susan.Kerr@iowa.gov)> wrote:

Just checking to see if you have read this?

Sue

# CONSUMER UPDATES

TIPS AND ADVICE FROM THE NATION'S CONSUMER PROTECTION AGENCY

## Most ID theft victims don't need a police report

by Seena Gressin  
Attorney, Division of Consumer & Business Education, FTC

When it comes to reporting and recovering from identity theft, we're simplifying the process by eliminating the need for a police report in most cases.

[Read more >](#)

The image shows a screenshot of the 'Identity Theft Report' form. The form is titled 'Identity Theft Report' and includes a section for 'Personal Information' with fields for Name, Address, and Phone. Below that is a section for 'Identity Theft Information' with fields for Date of Theft, Type of Theft, and Amount of Loss. The form also includes a section for 'Reporting Information' with fields for Date of Report, Method of Report, and Name of Reporting Agency. The form is a standard document used for reporting identity theft to the FTC.

SUBSCRIBER SERVICES: [Manage Preferences](#) | [Unsubscribe](#) | [Help](#)

This is a free service provided by the [Federal Trade Commission](#).



**Tabor, Eric [AG]**

---

**From:** Parrott, Benjamin [AG]  
**Sent:** Wednesday, May 24, 2017 9:35 AM  
**To:** Tabor, Eric [AG]  
**Subject:** FW: Enriquez 13-24-RP



**Ben Parrott**  
**Assistant Attorney General**  
Office of the Attorney General of Iowa  
1305 E. Walnut St.  
Des Moines, Iowa 50319  
Phone: (515) 281-5976  
Email: [benjamin.parrott@iowa.gov](mailto:benjamin.parrott@iowa.gov) | [www.iowaattorneygeneral.gov](http://www.iowaattorneygeneral.gov)

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---

**From:** Parrott, Benjamin [AG]  
**Sent:** Wednesday, November 23, 2016 2:51 PM  
**To:** [gary@dickeycampbell.com](mailto:gary@dickeycampbell.com)  
**Subject:** Enriquez 13-24-RP

Gary,  
I won't be able to complete my merits brief in this case by its due date next Monday. Would you object to an extension? Thanks.  
Happy Thanksgiving,



**Ben Parrott**  
**Assistant Attorney General**  
Office of the Attorney General of Iowa  
1305 E. Walnut St.  
Des Moines, Iowa 50319  
Phone: (515) 281-5976  
Email: [benjamin.parrott@iowa.gov](mailto:benjamin.parrott@iowa.gov) | [www.iowaattorneygeneral.gov](http://www.iowaattorneygeneral.gov)

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## **Tabor, Eric [AG]**

---

**From:** Foster, Hilary [AG]  
**Sent:** Tuesday, May 23, 2017 7:46 AM  
**To:** Tabor, Eric [AG]  
**Subject:** FW: John Pederson Charitable Needs Trust kickoff event MONDAY April 10th

Good morning Eric,

I am sure you've already located this email in your search, but this email was the only one I found in response to your email regarding the open records request. Gary Dickey was cc'd on the original email.

Hilary Foster

---

**From:** Tabor, Eric [AG]  
**Sent:** Friday, April 07, 2017 9:44 AM  
**To:** AG Everyone; AG OCA  
**Subject:** FW: John Pederson Charitable Needs Trust kickoff event MONDAY April 10th

I am forwarding an email about an event being held on Monday evening to help our friend and former colleague John Pederson. Eric



**Eric Tabor**  
**Chief Deputy Attorney General**  
Office of the Attorney General of Iowa  
1305 E. Walnut St.  
Des Moines, Iowa 50319  
Main: (515) 281-5164 | Direct: (515) 281-5191  
Email: [Eric.Tabor@iowa.gov](mailto:Eric.Tabor@iowa.gov) | [www.iowaattorneygeneral.gov](http://www.iowaattorneygeneral.gov)

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----- Forwarded message -----

**From:** Mark Joyce <[iowa.lobby@gmail.com](mailto:iowa.lobby@gmail.com)>  
**Date:** Tue, Apr 4, 2017 at 10:50 PM  
**Subject:** John Pederson Charitable Needs Trust kickoff event MONDAY April 10th  
**To:** Mark Joyce <[iowa.lobby@gmail.com](mailto:iowa.lobby@gmail.com)>  
**Cc:** Matt Eide <[mpeide@gmail.com](mailto:mpeide@gmail.com)>, Gary Dickey <[gary@dickeycampbell.com](mailto:gary@dickeycampbell.com)>, Jim Henter <[jhenter@iaretail.org](mailto:jhenter@iaretail.org)>

**PLEASE DISTRIBUTE TO THOSE WHO MAY NOT BE ON MY LIST**

Dear 3<sup>rd</sup> House Friends & Family,

As most of you know, our friend and colleague John Pederson suffered a stroke during the early morning hours of March 16<sup>th</sup>.



John is working very hard every day at physical, occupational, and speech therapy. He continues to make progress, but it is impossible to know how soon and to what extent he will regain mobility on his left side. What we do know is that John and Cyndi will be confronted with many expenses throughout John's therapy and recovery that are not covered by insurance.

Many of you have asked "what can I do?".

In order to help John and Cyndi cover expenses associated with his rehabilitation (think home modifications and equipment, not golf), the **John Pederson Charitable Needs Trust** has been established. Contributions to the trust are not deductible, but this type of trust allows anyone wishing to contribute money towards John's rehab costs to do so without it being considered personal income or a gift to him for tax purposes. I would like to thank and acknowledge Matt Eide, the Brown Winick Law Firm, and Gary Dickey for their efforts to establish and maintain this trust.

We have scheduled a kickoff event to raise the initial funds for John's trust. See details below:

**WHAT: John Pederson Charitable Needs Trust Kickoff Fundraising Event**

**WHEN: Monday, April 10<sup>th</sup>, 6:00-8:00PM**

**WHERE: Wooly's in the East Village, 504 E. Locust St., Des Moines 50309**

***Food & Beverages provided. Make checks payable to the John Pederson Charitable Needs Trust. No donation is too large or too small. Please forward to others.***

Please plan to join us and thank you in advance for supporting John and Cyndi. If you cannot make the event, you may bring checks to the capitol or mail them to the below address.

Mark Joyce & Jim Henter

**Mark Joyce**

**Joyce Consulting, Inc.**

**418 38<sup>th</sup> PL**

**Des Moines, IA 50312**

**515-238-8860**

**[iowa.lobby@gmail.com](mailto:iowa.lobby@gmail.com)**

## **Tabor, Eric [AG]**

---

**From:** Reinkoester, Genevieve [AG]  
**Sent:** Monday, May 22, 2017 4:41 PM  
**To:** Tabor, Eric [AG]  
**Subject:** FW: Oliver v. State, 15-2223

Eric,

This email falls within the records request. I believe it's the only one I have.

Thanks,



**Genevieve Reinkoester**  
**Assistant Attorney General Criminal Appeals**  
Office of the Attorney General of Iowa  
1305 E. Walnut St.  
Des Moines, Iowa 50319  
Main: (515) 281-5164 | Direct: (515) 281-5976  
Email: [genevieve.reinkoester@iowa.gov](mailto:genevieve.reinkoester@iowa.gov) | [www.iowaattorneygeneral.gov](http://www.iowaattorneygeneral.gov)

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---

**From:** Gary Dickey [<mailto:Gary@dickeycampbell.com>]  
**Sent:** Friday, January 13, 2017 11:16 AM  
**To:** Reinkoester, Genevieve [AG]  
**Subject:** Oliver v. State, 15-2223

Genevieve,

I filed my amended appendix on January 3. I haven't seen your final brief. Wondering if you received my filing?

gdj

### **Gary Dickey**

DICKEY & CAMPBELL LAW FIRM, P.L.C.  
301 East Walnut Street, Suite 1  
Des Moines, Iowa 50309  
Ph: 515/288-5008  
F: 515/288-5010  
[www.dickeycampbell.com](http://www.dickeycampbell.com)

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## Tabor, Eric [AG]

---

**From:** Reinkoester, Genevieve [AG]  
**Sent:** Monday, May 22, 2017 4:42 PM  
**To:** Tabor, Eric [AG]  
**Subject:** FW: Oliver v. State, 15-2223

Eric,

Here is my response to him.

Thanks,



**Genevieve Reinkoester**  
**Assistant Attorney General Criminal Appeals**  
Office of the Attorney General of Iowa  
1305 E. Walnut St.  
Des Moines, Iowa 50319  
Main: (515) 281-5164 | Direct: (515) 281-5976  
Email: [genevieve.reinkoester@iowa.gov](mailto:genevieve.reinkoester@iowa.gov) | [www.iowaattorneygeneral.gov](http://www.iowaattorneygeneral.gov)

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---

**From:** Reinkoester, Genevieve [AG]  
**Sent:** Friday, January 13, 2017 11:17 AM  
**To:** Gary Dickey  
**Subject:** RE: Oliver v. State, 15-2223

Gary,

Thanks! I did. My calculations show my brief is not due until the 17<sup>th</sup>. I've been hung up on another brief here, but I'll get the final filed before then.



**Genevieve Reinkoester**  
**Assistant Attorney General Criminal Appeals**  
Office of the Attorney General of Iowa  
1305 E. Walnut St.  
Des Moines, Iowa 50319  
Main: (515) 281-5164 | Direct: (515) 281-5976  
Email: [genevieve.reinkoester@iowa.gov](mailto:genevieve.reinkoester@iowa.gov) | [www.iowaattorneygeneral.gov](http://www.iowaattorneygeneral.gov)

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---

**From:** Gary Dickey [mailto:Gary@dickeycampbell.com]

**Sent:** Friday, January 13, 2017 11:16 AM

**To:** Reinkoester, Genevieve [AG]

**Subject:** Oliver v. State, 15-2223

Genevieve,

I filed my amended appendix on January 3. I haven't seen your final brief. Wondering if you received my filing?

gdj

**Gary Dickey**

DICKEY & CAMPBELL LAW FIRM, P.L.C.

301 East Walnut Street, Suite 1

Des Moines, Iowa 50309

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F: 515/288-5010

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## Tabor, Eric [AG]

---

**From:** Parrott, Benjamin [AG]  
**Sent:** Wednesday, May 24, 2017 9:36 AM  
**To:** Tabor, Eric [AG]  
**Subject:** FW: Enriquez 13-24-RP



**Ben Parrott**  
**Assistant Attorney General**  
Office of the Attorney General of Iowa  
1305 E. Walnut St.  
Des Moines, Iowa 50319  
Phone: (515) 281-5976  
Email: [benjamin.parrott@iowa.gov](mailto:benjamin.parrott@iowa.gov) | [www.iowaattorneygeneral.gov](http://www.iowaattorneygeneral.gov)

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---

**From:** Gary Dickey [<mailto:Gary@dickeycampbell.com>]  
**Sent:** Wednesday, November 23, 2016 3:16 PM  
**To:** Parrott, Benjamin [AG]  
**Subject:** Re: Enriquez 13-24-RP

That's fine

Sent from my iPhone

Gary Dickey  
DICKEY & CAMPBELL LAW FIRM, PLC  
301 East Walnut, Suite 1  
Des Moines, Iowa 50309  
Tel: 515.288.5008  
Fax: 515.288.5010

On Nov 23, 2016, at 2:50 PM, Parrott, Benjamin [AG] <[Benjamin.Parrott@iowa.gov](mailto:Benjamin.Parrott@iowa.gov)> wrote:

Gary,

I won't be able to complete my merits brief in this case by its due date next Monday. Would you object to an extension? Thanks.

Happy Thanksgiving,

**Ben Parrott**  
**Assistant Attorney General**  
Office of the Attorney General of Iowa  
1305 E. Walnut St.  
Des Moines, Iowa 50319

<image001.png>

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**Tabor, Eric [AG]**

---

**From:** Hjelmaas, Rachele [LEGIS]  
**Sent:** Monday, January 30, 2017 5:19 PM  
**To:** Dean, Rhonda [AG]; Melohn, Janelle [AG]; Tabor, Eric [AG]  
**Cc:** Ashworth, Tom [LEGIS]  
**Subject:** DRAFT ONLY amendment to SF 22  
**Attachments:** tmpDocumentComposeAs-1485817988302.pdf

Hi,  
Here is a draft of the amendment for your review and comment, based on our e-mails and discussions. Let me know of changes.

Thank you.

***Rachele Hjelmaas***  
***Senior Legal Counsel***  
Legislative Services Agency  
Legal Division  
[rachele.hjelmaas@legis.iowa.gov](mailto:rachele.hjelmaas@legis.iowa.gov)  
515-281-8127

**Tabor, Eric [AG]**

---

**From:** Engel, Catherine [LEGIS]  
**Sent:** Tuesday, November 29, 2016 2:30 PM  
**To:** Melohn, Janelle [AG]; Hamill, Robert [AG]  
**Subject:** Hoping to meet with you.

Hi Janelle and Robert,

I shared your concerns regarding the Victim Compensation Fund and its ability to absorb additional costs with Senator Kinney. He is coming to Des Moines on December 7<sup>th</sup> and is available at 10:30. Are you by any chance available to meet with him at that time to discuss the Fund, your concerns, and what it might be able to withstand? Thank you!

*Cathy*

Catherine Engel  
Senate Democratic Caucus Research Staff  
State Capitol  
Des Moines 50319  
(515) 281-8688



## **Tabor, Eric [AG]**

---

**From:** Hjelmaas, Rachele [LEGIS]  
**Sent:** Wednesday, February 01, 2017 10:25 AM  
**To:** Melohn, Janelle [AG]; Dean, Rhonda [AG]; Tabor, Eric [AG]  
**Cc:** Ashworth, Tom [LEGIS]  
**Subject:** RE: DRAFT ONLY amendment to SF 22

Sorry, just reread your email. You are referring to the protective order application form provided in court rules, correct?

Rachele

---

**From:** Hjelmaas, Rachele [LEGIS]  
**Sent:** Wednesday, February 1, 2017 10:08 AM  
**To:** Melohn, Janelle [AG]; Dean, Rhonda [AG]; Tabor, Eric [AG]  
**Cc:** Ashworth, Tom [LEGIS]  
**Subject:** RE: DRAFT ONLY amendment to SF 22

Hi Janelle,  
Is AG Office responsible for the registration form?  
Rachele

---

**From:** Melohn, Janelle [AG] [<mailto:Janelle.Melohn@iowa.gov>]  
**Sent:** Wednesday, February 1, 2017 8:25 AM  
**To:** Hjelmaas, Rachele [LEGIS]; Dean, Rhonda [AG]; Tabor, Eric [AG]  
**Cc:** Ashworth, Tom [LEGIS]  
**Subject:** RE: DRAFT ONLY amendment to SF 22

I really like the draft of the language. Other states have added a requirement that for "registration" purposes, the protective order application form, should be modified to include a box where a victim can "check" and notate he/she would like to be registered to receive notification of service and expiration. Is it possible to add that sentence as well to the last part of this language?



### **Janelle Melohn**

#### **Director**

Office of the Attorney General of Iowa  
Crime Victim Assistance Division  
321 East 12<sup>th</sup> Street  
Des Moines, Iowa 50319  
Main: (515) 281-5044 | Direct: (515) 242-6109  
Email: [janelle.melohn@iowa.gov](mailto:janelle.melohn@iowa.gov) | [www.iowaattorneygeneral.gov](http://www.iowaattorneygeneral.gov)  
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---

**From:** Hjelmaas, Rachele [LEGIS] [<mailto:Rachele.Hjelmaas@legis.iowa.gov>]  
**Sent:** Monday, January 30, 2017 5:19 PM

**To:** Dean, Rhonda [AG]; Melohn, Janelle [AG]; Tabor, Eric [AG]

**Cc:** Ashworth, Tom [LEGIS]

**Subject:** DRAFT ONLY amendment to SF 22

Hi,

Here is a draft of the amendment for your review and comment, based on our e-mails and discussions. Let me know of changes.

Thank you.

***Rachele Hjelmaas***

***Senior Legal Counsel***

Legislative Services Agency

Legal Division

[rachele.hjelmaas@legis.iowa.gov](mailto:rachele.hjelmaas@legis.iowa.gov)

515-281-8127

## **Tabor, Eric [AG]**

---

**From:** Engel, Catherine [LEGIS]  
**Sent:** Thursday, January 19, 2017 10:10 AM  
**To:** Melohn, Janelle [AG]; Hamill, Robert [AG]  
**Subject:** FW: 1190 XS - Bill Draft Delivery from LSA - Victims Compensation  
**Attachments:** 1190XS\_1484832145924.pdf

Hi,  
Attached is the final draft. I know Ed worked with you on this, so hopefully it comports to the discussions you had. Thanks a lot. If there are problems with the draft, let us know so Senator Kinney can get the changes made.

Cathy

Catherine Engel  
Senate Democratic Caucus Research Staff  
State Capitol  
Des Moines 50319  
(515) 281-8688

-----Original Message-----

**From:** LSA - Legal Services [<mailto:lsabills@legis.iowa.gov>]  
**Sent:** Thursday, January 19, 2017 7:23 AM  
**To:** Kinney, Kevin [LEGIS]  
**Cc:** Engel, Cathy [LEGIS]  
**Subject:** 1190 XS - Bill Draft Delivery from LSA - Victims Compensation

Senator Kevin Kinney:

Please find attached the following bill prepared for you by the Legal Services Division of the Legislative Services Agency (LSA)

LSA Bill Draft Delivery - 1190 XS - Bill Draft Delivery from LSA - Victims Compensation

<https://www.legis.iowa.gov/portal/bms>

Drafter - Ed Cook ((515)281-3994) [ed.cook@legis.iowa.gov](mailto:ed.cook@legis.iowa.gov)

Help - If you have questions concerning the use of this electronic bill delivery and approval system contact the Computer Services Division employee assigned to your chamber or call the Help Desk at (515)281-6506.

Your Review - Please review the attached bill carefully to determine that your drafting instructions have been followed. Contact the drafter at the above e-mail or telephone number if you have any changes, corrections, or questions concerning the draft.

**Additional Sponsors:** If additional legislators should be added as cosponsors of the bill, please reject the bill and provide signatures of additional sponsors. The Additional Sponsors form is available for your use in gathering signatures from the LSA or in your chamber.

**Your Approval** - To officially approve the bill for filing, you must click on the secure link located above. Please **DO NOT** reply to this e-mail.

**Delivery** - Once approved, LSA will deliver copies of your bill in a packet to you for a signature.

**Your Rejection** - To officially reject the bill, you must click on the secure link located above. Please **DO NOT** reply to this e-mail.

Upon rejection contact the drafter at the above e-mail or telephone number to request changes or corrections, or send a completed Additional Sponsors form to the LSA to add co-sponsors.

Please provide changes or corrections in a manner where the changes and corrections are clearly and easily distinguishable from the language of the initial draft. Handwritten changes on a paper copy or instructions to change language on specified pages and lines are acceptable.

Please do not reply to this e-mail as this e-mail account is not monitored.

**Tabor, Eric [AG]**

---

**From:** Engel, Catherine [LEGIS]  
**Sent:** Thursday, December 29, 2016 9:49 AM  
**To:** Melohn, Janelle [AG]; Hamill, Robert [AG]  
**Cc:** Cook, Edwin [LEGIS]  
**Subject:** Question regarding draft

Hi Janelle and Robert,  
Ed Cook with LSA contacted me to ask about paragraph 8 below. Would it make sense to say, "In the event of a homicide..." rather than "victim's death"? Or is there a reason why it should continue to say "victim's death"? Thank you!

8. In the event of a victim's death, reasonable charges incurred for counseling the victim's spouse, children, parents, siblings, or persons cohabiting with or related by blood or affinity to the victim if the counseling services are provided by a psychologist licensed under chapter 154B, a victim counselor as defined in section 915.20A, subsection 1, or an individual holding at least a master's degree in social work or counseling and guidance, and reasonable charges incurred by such persons for medical care counseling provided by a psychiatrist licensed under chapter 148. The allowable charges under this subsection shall not exceed five thousand dollars per person.

9. In the event of a homicide, reasonable charges incurred for health care for the victim's spouse; child, foster child, stepchild, son-in-law, or daughter-in-law; parent, foster parent, or stepparent; sibling, foster sibling, stepsibling, brother-in-law, or sister-in-law; grandparent; grandchild; aunt, uncle, or first cousin; legal ward; or person cohabiting with the victim, not to exceed three thousand dollars per survivor.

10. In the event of a homicide, loss of income from work that, but for the death of the victim, would have been earned by the victim's spouse; child, foster child, stepchild, son-in-law, or daughter-in-law; parent, foster parent, or stepparent; sibling, foster sibling, stepsibling, brother-in-law, or sister-in-law; grandparent;

*Cathy*

Catherine Engel  
Senate Democratic Caucus Research Staff  
State Capitol  
Des Moines 50319  
(515) 281-8688

## Tabor, Eric [AG]

---

**From:** Kinney, Kevin [LEGIS]  
**Sent:** Thursday, December 01, 2016 7:01 AM  
**To:** Engel, Catherine [LEGIS]; Melohn, Janelle [AG]; Hamill, Robert [AG]  
**Subject:** RE: Hoping to meet with you.

Thanks Cathy, This works with me.

-----Original Message-----

**From:** Engel, Cathy [LEGIS]  
**Sent:** Wednesday, November 30, 2016 1:25 PM  
**To:** Melohn, Janelle [AG]; Hamill, Robert [AG]; Kinney, Kevin [LEGIS]  
**Subject:** RE: Hoping to meet with you.

I have reserved room 206 behind the Senate Chamber on Wednesday, December 7th at 12:00 for the meeting. If that doesn't work for anyone, please let me know.

Thanks again.

Cathy

-----Original Message-----

**From:** Melohn, Janelle [AG] [<mailto:Janelle.Melohn@iowa.gov>]  
**Sent:** Wednesday, November 30, 2016 8:01 AM  
**To:** Engel, Cathy [LEGIS]; Hamill, Robert [AG]  
**Subject:** RE: Hoping to meet with you.

Yes, works for me. Robert?

Where would you like to meet?

Janelle Melohn  
Director, Crime Victim Assistance Division Iowa Attorney General's Office  
312 East 12th Street  
Des Moines, IA 50319  
515-281-5044 (office)  
515-281-8199 (fax)  
[jmelohn@ag.state.ia.us](mailto:jmelohn@ag.state.ia.us)

---

**From:** Engel, Cathy [LEGIS] [[Cathy.Engel@legis.iowa.gov](mailto:Cathy.Engel@legis.iowa.gov)]  
**Sent:** Tuesday, November 29, 2016 4:05 PM  
**To:** Melohn, Janelle [AG]; Hamill, Robert [AG]  
**Subject:** RE: Hoping to meet with you.

Senator Kinney could stay in town and meet at 12:00. He has cattle to feed and needs to be home by 4:00. Shall we plan on that?

-----Original Message-----

**From:** Melohn, Janelle [AG] [<mailto:Janelle.Melohn@iowa.gov>]

Sent: Tuesday, November 29, 2016 2:39 PM  
To: Engel, Cathy [LEGIS]; Hamill, Robert [AG]  
Subject: RE: Hoping to meet with you.

Cathy,

We have interviews scheduled that day, some with candidates traveling in from out of state that would be difficult to reschedule. Is there any chance we could meet a little earlier-9am? or we could squeeze it in at noon, or at 3:30.

Let me know if any of these times can work.

Thank you!

Janelle Melohn  
Director, Crime Victim Assistance Division Iowa Attorney General's Office  
312 East 12th Street  
Des Moines, IA 50319  
515-281-5044 (office)  
515-281-8199 (fax)  
[jmelohn@ag.state.ia.us](mailto:jmelohn@ag.state.ia.us)

---

From: Engel, Cathy [LEGIS] [Cathy.Engel@legis.iowa.gov]  
Sent: Tuesday, November 29, 2016 2:30 PM  
To: Melohn, Janelle [AG]; Hamill, Robert [AG]  
Subject: Hoping to meet with you.

Hi Janelle and Robert,  
I shared your concerns regarding the Victim Compensation Fund and its ability to absorb additional costs with Senator Kinney. He is coming to Des Moines on December 7th and is available at 10:30. Are you by any chance available to meet with him at that time to discuss the Fund, your concerns, and what it might be able to withstand? Thank you!

Cathy

Catherine Engel  
Senate Democratic Caucus Research Staff  
State Capitol  
Des Moines 50319  
(515) 281-8688

## **Tabor, Eric [AG]**

---

**From:** Hjelmaas, Rachele [LEGIS]  
**Sent:** Friday, January 27, 2017 4:54 PM  
**To:** Melohn, Janelle [AG]; Dean, Rhonda [AG]  
**Cc:** Ashworth, Tom [LEGIS]  
**Subject:** FW: PO Notification Language - SF22

Hi Janelle and Rhonda,

I do have some questions about the process you have proposed relating to victim notification and the service of protective orders.

1. Is your intent to expand the current automated victim notification system established in Code section 915.10A to include all information relating to civil protective orders issued under chapters 236 and new proposed chapter 236A? You are not including no-contact orders issued in criminal cases? Such information includes all information relating to when the protective orders are served and when those orders will expire, and includes an additional notification requirement 30 days prior to the expiration date, correct? The idea is to get real-time information when the orders are actually served? All protective orders or just ex parte protective orders?
2. Local law enforcement and other government agencies (can you specify?) who serve these orders must enter this information into what specific electronic systems? The Court's EDMA or some other electronic management system accessible only to law enforcement? The information must be entered within 24 hours of service on the respondent or the agency serving the order must contact the clerk of court when no additional service attempts are planned by the agency (can you explain this?). Some clerks of court do not have access to the statewide victim notification system?
3. How does the information connect with the current automated victim notification system?

Thanks for your help.

Rachele

-----Original Message-----

**From:** Melohn, Janelle [AG] [mailto:Janelle.Melohn@iowa.gov]  
**Sent:** Thursday, January 26, 2017 7:59 AM  
**To:** Hjelmaas, Rachele [LEGIS]; Ashworth, Tom [LEGIS]; Tabor, Eric [AG]  
**Cc:** Dean, Rhonda [AG]  
**Subject:** RE: PO Notification Language - SF22

Sounds good, thanks!

Janelle Melohn  
Director  
Office of the Attorney General of Iowa  
Crime Victim Assistance Division  
321 East 12th Street  
Des Moines, Iowa 50319  
Main: (515) 281-5044 | Direct: (515) 242-6109  
Email: [janelle.melohn@iowa.gov](mailto:janelle.melohn@iowa.gov) | [www.iowaattorneygeneral.gov](http://www.iowaattorneygeneral.gov) Like us on Facebook at  
<https://www.facebook.com/CrimeVictimAssistanceDivision>  
Follow us on twitter @CVADInfo



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-----Original Message-----

From: Hjelmaas, Rachele [LEGIS] [mailto:Rachele.Hjelmaas@legis.iowa.gov]  
Sent: Wednesday, January 25, 2017 12:53 PM  
To: Melohn, Janelle [AG]; Ashworth, Tom [LEGIS]; Tabor, Eric [AG]  
Cc: Dean, Rhonda [AG]  
Subject: RE: PO Notification Language - SF22

Hi Everyone,

I just talked to Tom, and I'll go ahead and draft the language and send to everyone by next Monday for your review and comment--no need to meet at this point. I will contact Rhonda and Janelle with any drafting questions.

Thanks!

Rachele

-----Original Message-----

From: Melohn, Janelle [AG] [mailto:Janelle.Melohn@iowa.gov]  
Sent: Wednesday, January 25, 2017 12:01 PM  
To: Hjelmaas, Rachele [LEGIS]; Ashworth, Tom [LEGIS]; Tabor, Eric [AG]  
Cc: Dean, Rhonda [AG]  
Subject: RE: PO Notification Language - SF22

I am available to meet Thursday between 8:30-10:30 or 12:00-2:00pm, Friday between 10:45-2:00pm or Monday just about anytime.

Thanks!

Janelle Melohn

Director, Crime Victim Assistance Division Iowa Attorney General's Office  
312 East 12th Street  
Des Moines, IA 50319  
515-281-5044 (office)  
515-281-8199 (fax)  
jmelohn@ag.state.ia.us

---

From: Hjelmaas, Rachele [LEGIS] [Rachele.Hjelmaas@legis.iowa.gov]  
Sent: Tuesday, January 24, 2017 6:14 PM  
To: Ashworth, Tom [LEGIS]; Tabor, Eric [AG]  
Cc: Melohn, Janelle [AG]; Dean, Rhonda [AG]  
Subject: RE: PO Notification Language - SF22

Will do.

Janelle and Rhonda, please let me know when you are available to meet with me.

Rachele

From: Ashworth, Tom [LEGIS]  
Sent: Tuesday, January 24, 2017 6:12 PM  
To: Tabor, Eric [AG]  
Cc: Hjelmaas, Rachele [LEGIS]; Melohn, Janelle [AG]; Dean, Rhonda [AG]  
Subject: Re: PO Notification Language - SF22

Rachele, please work with the AG's Office to craft an amendment. I'll talk to you on Wed. Thanks.

Sent from my iPhone

On Jan 24, 2017, at 5:37 PM, Tabor, Eric [AG] <Eric.Tabor@iowa.gov<mailto:Eric.Tabor@iowa.gov>> wrote:  
Tom - Janelle Melohn and Rhonda Dean of our Crime Victims Assistance Division put together this draft language for SF 22. With your approval, I think it would make sense for them to meet with Rachele and explain the desired Protective Order notification process, so the language could be perfected. I am out the rest of the week, but could participate early next week. Thank you. Eric

<image001.png><<http://www.iowaattorneygeneral.gov/>>

Eric Tabor  
Chief Deputy Attorney General  
Office of the Attorney General of Iowa  
1305 E. Walnut St.  
Des Moines, Iowa 50319  
Main: (515) 281-5164 | Direct: (515) 281-5191  
Email: [Eric.Tabor@iowa.gov](mailto:Eric.Tabor@iowa.gov)<<mailto:Eric.Tabor@iowa.gov>> |  
[www.iowaattorneygeneral.gov](http://www.iowaattorneygeneral.gov/)<<http://www.iowaattorneygeneral.gov/>>

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From: Melohn, Janelle [AG]  
Sent: Tuesday, January 24, 2017 8:22 AM  
To: Tabor, Eric [AG]  
Cc: Dean, Rhonda [AG]  
Subject: PO Notification Language

Proposed language amending 915.10A:

"An automated notification system shall be established within the department of justice to assist plaintiffs and advocates regarding civil and criminal protective orders issued pursuant to Chapter 236 & 236A; to be informed upon

service and 30 days prior to expiration of protective order. The system shall disseminate the information to registered users through telephonic, electronic, or other means of access.

The local law enforcement agency or any other government agency responsible for serving ex parte orders of protection shall enter service information into the court system, or secure electronic database intended for law enforcement use, within twenty-four hours of service of the ex parte order on the respondent, or shall notify the county clerk when no additional service attempts are planned by the agency. The provisions of this section shall only apply to those county clerks able to access a statewide victim notification system designed to provide notification of service of orders of protection.

Upon entering service of the order, the data will be electronically transmitted from the Iowa Criminal Justice Information System (CJIS) to the notification database allowing for dissemination of data to registered users."

We modified the language, utilizing existing language from a few other states who have similar systems. Please let us know if you have any questions, or concerns.

<image001.png><<http://www.iowaattorneygeneral.gov/>>

Janelle Melohn  
Director  
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Crime Victim Assistance Division  
321 East 12th Street  
Des Moines, Iowa 50319  
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[www.iowaattorneygeneral.gov](http://www.iowaattorneygeneral.gov/)<<http://www.iowaattorneygeneral.gov/>>  
Like us on Facebook at <https://www.facebook.com/CrimeVictimAssistanceDivision>  
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## Tabor, Eric [AG]

---

**From:** Hjelmaas, Rachele [LEGIS]  
**Sent:** Wednesday, February 01, 2017 10:08 AM  
**To:** Melohn, Janelle [AG]; Dean, Rhonda [AG]; Tabor, Eric [AG]  
**Cc:** Ashworth, Tom [LEGIS]  
**Subject:** RE: DRAFT ONLY amendment to SF 22

Hi Janelle,  
Is AG Office responsible for the registration form?  
Rachele

---

**From:** Melohn, Janelle [AG] [<mailto:Janelle.Melohn@iowa.gov>]  
**Sent:** Wednesday, February 1, 2017 8:25 AM  
**To:** Hjelmaas, Rachele [LEGIS]; Dean, Rhonda [AG]; Tabor, Eric [AG]  
**Cc:** Ashworth, Tom [LEGIS]  
**Subject:** RE: DRAFT ONLY amendment to SF 22

I really like the draft of the language. Other states have added a requirement that for "registration" purposes, the protective order application form, should be modified to include a box where a victim can "check" and notate he/she would like to be registered to receive notification of service and expiration. Is it possible to add that sentence as well to the last part of this language?



### Janelle Melohn

#### Director

Office of the Attorney General of Iowa  
Crime Victim Assistance Division  
321 East 12<sup>th</sup> Street  
Des Moines, Iowa 50319  
Main: (515) 281-5044 | Direct: (515) 242-6109  
Email: [janelle.melohn@iowa.gov](mailto:janelle.melohn@iowa.gov) | [www.iowaattorneygeneral.gov](http://www.iowaattorneygeneral.gov)  
[Like us on Facebook at https://www.facebook.com/CrimeVictimAssistanceDivision](https://www.facebook.com/CrimeVictimAssistanceDivision)  
[Follow us on twitter @CVADInfo](https://twitter.com/CVADInfo)

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---

**From:** Hjelmaas, Rachele [LEGIS] [<mailto:Rachele.Hjelmaas@legis.iowa.gov>]  
**Sent:** Monday, January 30, 2017 5:19 PM  
**To:** Dean, Rhonda [AG]; Melohn, Janelle [AG]; Tabor, Eric [AG]  
**Cc:** Ashworth, Tom [LEGIS]  
**Subject:** DRAFT ONLY amendment to SF 22

Hi,  
Here is a draft of the amendment for your review and comment, based on our e-mails and discussions. Let me know of changes.

Thank you.

**Rachele Hjelmaas**  
**Senior Legal Counsel**  
Legislative Services Agency  
Legal Division  
[rachele.hjelmaas@legis.iowa.gov](mailto:rachele.hjelmaas@legis.iowa.gov)  
515-281-8127

## Tabor, Eric [AG]

---

**From:** Hjelmaas, Rachele [LEGIS]  
**Sent:** Tuesday, January 24, 2017 6:14 PM  
**To:** Ashworth, Tom [LEGIS]; Tabor, Eric [AG]  
**Cc:** Melohn, Janelle [AG]; Dean, Rhonda [AG]  
**Subject:** RE: PO Notification Language - SF22

Will do.

Janelle and Rhonda, please let me know when you are available to meet with me.

Rachele

---

**From:** Ashworth, Tom [LEGIS]  
**Sent:** Tuesday, January 24, 2017 6:12 PM  
**To:** Tabor, Eric [AG]  
**Cc:** Hjelmaas, Rachele [LEGIS]; Melohn, Janelle [AG]; Dean, Rhonda [AG]  
**Subject:** Re: PO Notification Language - SF22

Rachele, please work with the AG's Office to craft an amendment. I'll talk to you on Wed. Thanks.

Sent from my iPhone

On Jan 24, 2017, at 5:37 PM, Tabor, Eric [AG] <[Eric.Tabor@iowa.gov](mailto:Eric.Tabor@iowa.gov)> wrote:

Tom – Janelle Melohn and Rhonda Dean of our Crime Victims Assistance Division put together this draft language for SF 22. With your approval, I think it would make sense for them to meet with Rachele and explain the desired Protective Order notification process, so the language could be perfected. I am out the rest of the week, but could participate early next week. Thank you. Eric

**Eric Tabor**  
**Chief Deputy Attorney General**  
Office of the Attorney General of Iowa  
<image001.png> 1305 E. Walnut St.  
Des Moines, Iowa 50319  
Main: (515) 281-5164 | Direct: (515) 281-5191  
Email: [Eric.Tabor@iowa.gov](mailto:Eric.Tabor@iowa.gov) | [www.iowaattorneygeneral.gov](http://www.iowaattorneygeneral.gov)

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---

**From:** Melohn, Janelle [AG]  
**Sent:** Tuesday, January 24, 2017 8:22 AM  
**To:** Tabor, Eric [AG]



**Cc:** Dean, Rhonda [AG]  
**Subject:** PO Notification Language

Proposed language amending 915.10A:

*"An automated notification system shall be established within the department of justice to assist plaintiffs and advocates regarding civil and criminal protective orders issued pursuant to Chapter 236 & 236A; to be informed upon service and 30 days prior to expiration of protective order. The system shall disseminate the information to registered users through telephonic, electronic, or other means of access.*

*The local law enforcement agency or any other government agency responsible for serving ex parte orders of protection shall enter service information into the court system, or secure electronic database intended for law enforcement use, within twenty-four hours of service of the ex parte order on the respondent, or shall notify the county clerk when no additional service attempts are planned by the agency. The provisions of this section shall only apply to those county clerks able to access a statewide victim notification system designed to provide notification of service of orders of protection.*

*Upon entering service of the order, the data will be electronically transmitted from the Iowa Criminal Justice Information System (CJIS) to the notification database allowing for dissemination of data to registered users."*

We modified the language, utilizing existing language from a few other states who have similar systems. Please let us know if you have any questions, or concerns.

**Janelle Melohn**

**Director**

**Office of the Attorney General of Iowa  
Crime Victim Assistance Division**

<image001.png>

321 East 12<sup>th</sup> Street

Des Moines, Iowa 50319

Main: (515) 281-5044 | Direct: (515) 242-6109

Email: [janelle.melohn@iowa.gov](mailto:janelle.melohn@iowa.gov) | [www.iowaattorneygeneral.gov](http://www.iowaattorneygeneral.gov)

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**Blake, Nathan [AG]**

---

**From:** Licht, Amy [AG]  
**Sent:** Friday, March 10, 2017 4:37 PM  
**To:** 'gretchen.wolf@skadden.com'  
**Cc:** Blake, Nathan [AG]; Thinnes Culver, Mari; 'sarah.reznek@morganlewis.com'  
**Subject:** Iowa CID - Purdue

Gretchen,

When we spoke earlier this week regarding Iowa's Civil Investigative Demand, you asked us to provide some guidance as to the (1) government entities and (2) regulatory/oversight agencies and boards referenced in CID Requests 15 and 22, respectively. Below are the Requests at issue and a list of entities, acronyms, domain names, and other information we ask Respondents to use in beginning a search for communications and documents responsive to each Request.

This email does not waive our original Requests. We reserve the right to seek compliance with the full range of the Requests, including adding other entities, agencies, etc. that fall within their scope

Feel free to contact me if you would like to discuss this further. Thank you-

Amy

\*\*\*\*\*

*15) All communications with government entities in Iowa (including, but not limited to, state, county, and municipal government and executive, legislative, and administrative entities) relating to opioids or chronic, non-cancer pain, and all documents provided to these government entities or officials in Iowa.*

General domain: iowa.gov, @iowa.gov

Specific state agencies:

- Iowa Board of Medicine (IBOM), medicalboard.iowa.gov
- Iowa Department of Public Health (IDPH), idph.iowa.gov
- Iowa Board of Nursing (IBON), nursing.iowa.gov
- Iowa Dental Board (IDB), dentalboard.iowa.gov
- Iowa Board of Pharmacy (IBP), pharmacy.iowa.gov
- Iowa Department of Human Services/Iowa Medicaid Enterprise (IDHS/IME), dhs.state.ia.us

Iowa Governor's Office, Governor's Office of Drug Control Policy (ODCP), iowa.gov/odcp

Iowa Legislature: legis.iowa.gov, @legis.iowa.gov

Selected Iowa counties:

- Polk, www.polkcountyiowa.gov, www.polkcountyiowa.gov/health, @polkcountyiowa.gov
- Linn, www.linncounty.org, www.linncounty.org/health, @linncounty.org
- Scott, www.scottcounty.com, www.scottcounty.com/health @scottcounty.com
- Johnson, www.johnson-county.com, www.johnson-county.com/health, @johnson-county.com
- Black Hawk, www.co.black-hawk.ia.us, www.co.black-hawk.ia.us/258/Health-Department, @co.black-hawk.ia.us
- Woodbury, www.woodburycountyiowa.gov, siouxlandhealthdistrict.org, @woodburycountyiowa.gov, @siouxlandhealthdistrict.org,



Nathan Blake

5/8/2017 2:52 PM

thereto) is strictly prohibited. If you receive this email in error please immediately notify me at (212) 735-3000 and permanently delete the original email (and any copy of any email) and any printout thereof.

Further information about the firm, a list of the Partners and their professional qualifications will be provided upon request.

---

Nathan Blake

5/8/2017 2:52 PM

- Iowa Department of Human Services/Iowa Medicaid Enterprise (IDHS/IME), [dhs.state.ia.us](http://dhs.state.ia.us)

Iowa Governor's Office, Governor's Office of Drug Control Policy (ODCP), [iowa.gov/odcp](http://iowa.gov/odcp)

Iowa Legislature: [legis.iowa.gov](http://legis.iowa.gov), [@legis.iowa.gov](https://twitter.com/legis.iowa.gov)

#### Selected Iowa counties

- Polk, [www.polkcountyiowa.gov](http://www.polkcountyiowa.gov), [www.polkcountyiowa.gov/health](http://www.polkcountyiowa.gov/health), [@polkcountyiowa.gov](https://twitter.com/polkcountyiowa)
- Linn, [www.linncounty.org](http://www.linncounty.org), [www.linncounty.org/health](http://www.linncounty.org/health), [@linncounty.org](https://twitter.com/linncounty.org)
- Scott, [www.scottcounty.com](http://www.scottcounty.com), [www.scottcounty.com/health](http://www.scottcounty.com/health) [@scottcounty.com](https://twitter.com/scottcounty.com)
- Johnson, [www.johnson-county.com](http://www.johnson-county.com), [www.johnson-county.com/health](http://www.johnson-county.com/health), [@johnson-county.com](https://twitter.com/johnson-county.com)
- Black Hawk, [www.co.black-hawk.ia.us](http://www.co.black-hawk.ia.us), [www.co.black-hawk.ia.us/258/Health-Department](http://www.co.black-hawk.ia.us/258/Health-Department), [@co.black-hawk.ia.us](https://twitter.com/co.black-hawk.ia.us)
- Woodbury, [www.woodburycountyiowa.gov](http://www.woodburycountyiowa.gov), [siouxlandhealthdistrict.org](http://siouxlandhealthdistrict.org), [@woodburycountyiowa.gov](https://twitter.com/woodburycountyiowa.gov), [@siouxlandhealthdistrict.org](https://twitter.com/siouxlandhealthdistrict.org),
- Dubuque, [www.dubuquecounty.org](http://www.dubuquecounty.org), [www.dubuquecounty.org/health-department](http://www.dubuquecounty.org/health-department) [@dubuquecounty.org](https://twitter.com/dubuquecounty.org)
- Story, [www.storycountyiowa.gov](http://www.storycountyiowa.gov), [@storycountyiowa.gov](https://twitter.com/storycountyiowa.gov), [publichealth@mgmc.com](mailto:publichealth@mgmc.com)
- Pottawattamie, [www.pottcounty.com](http://www.pottcounty.com), [@pottcounty.com](https://twitter.com/pottcounty.com)
- Dallas, [www.co.dallas.ia.us](http://www.co.dallas.ia.us), [www.co.dallas.ia.us/departments-services/public-health-home-health](http://www.co.dallas.ia.us/departments-services/public-health-home-health), [@co.dallas.ia.us](https://twitter.com/co.dallas.ia.us)

*(22) All communications with the Iowa Board of Medicine, the Iowa Department of Public Health, the Iowa Board of Nursing, the Iowa Dental Board, the Iowa Osteopathic Medical Association, the Iowa Medical Society and/or any other public or quasi-public regulatory, licensing, or oversight agency or board regarding your opioids, chronic, non-cancer pain, or opioid use, misuse, diversion, addiction, or injury.*

All of the State agencies listed above, and

Iowa Osteopathic Medical Association (IOMA), [www.ioma.org](http://www.ioma.org)

Iowa Medical Society (IMS), [www.iowamedical.org](http://www.iowamedical.org)

Iowa Dental Association (IDA), [www.iowadental.org](http://www.iowadental.org)



#### Amy Licht

##### Assistant Attorney General

Office of the Attorney General of Iowa

1305 E. Walnut St.

Des Moines, Iowa 50319

Main: (515) 281-5164 | Direct: (515) 281-6774

Email: [amy.licht@iowa.gov](mailto:amy.licht@iowa.gov) | [www.iowaattorneygeneral.gov](http://www.iowaattorneygeneral.gov)

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**Blake, Nathan [AG]**

---

**From:** Wolf, Gretchen M <Gretchen.Wolf@skadden.com>  
**Sent:** Friday, March 10, 2017 4:38 PM  
**To:** Licht, Amy [AG]  
**Cc:** Blake, Nathan [AG]; Thinnis Culver, Mari; 'sarah.reznek@morganlewis.com'  
**Subject:** RE: [Ext] Iowa CID - Purdue

Thank you, Amy. We will discuss with our client and its vendor. Have a nice weekend.

Gretchen

Gretchen M. Wolf  
Skadden, Arps, Slate, Meagher & Flom LLP  
155 N. Wacker Dr., Suite 2700 | Chicago | Illinois | 60606  
T: 312.407.0956 | F: 312.827.9385 | C: 312.485.1407

---

**From:** Licht, Amy [AG] [mailto:Amy.Licht@iowa.gov]  
**Sent:** Friday, March 10, 2017 4:37 PM  
**To:** Wolf, Gretchen M (CHI)  
**Cc:** Blake, Nathan [AG]; Thinnis Culver, Mari; 'sarah.reznek@morganlewis.com'  
**Subject:** [Ext] Iowa CID - Purdue

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- Iowa Board of Nursing (IBON), nursing.iowa.gov
- Iowa Dental Board (IDB), dentalboard.iowa.gov
- Iowa Board of Pharmacy (IBP), pharmacy.iowa.gov

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Nathan Blake

5/8/2017 2:52 PM

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- Iowa Dental Board (IDB), [dentalboard.iowa.gov](http://dentalboard.iowa.gov)
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#### Selected Iowa counties

- Polk, [www.polkcountyiowa.gov](http://www.polkcountyiowa.gov), [www.polkcountyiowa.gov/health](http://www.polkcountyiowa.gov/health), [@polkcountyiowa.gov](https://twitter.com/polkcountyiowa)
- Linn, [www.linncounty.org](http://www.linncounty.org), [www.linncounty.org/health](http://www.linncounty.org/health), [@linncounty.org](https://twitter.com/linncounty.org)
- Scott, [www.scottcounty.com](http://www.scottcounty.com), [www.scottcounty.com/health](http://www.scottcounty.com/health) [@scottcounty.com](https://twitter.com/scottcounty.com)
- Johnson, [www.johnson-county.com](http://www.johnson-county.com), [www.johnson-county.com/health](http://www.johnson-county.com/health), [@johnson-county.com](https://twitter.com/johnson-county.com)
- Black Hawk, [www.co.black-hawk.ia.us](http://www.co.black-hawk.ia.us), [www.co.black-hawk.ia.us/258/Health-Department](http://www.co.black-hawk.ia.us/258/Health-Department), [@co.black-hawk.ia.us](https://twitter.com/co.black-hawk.ia.us)
- Woodbury, [www.woodburycountyiowa.gov](http://www.woodburycountyiowa.gov), [siouxlandhealthdistrict.org](http://siouxlandhealthdistrict.org), [@woodburycountyiowa.gov](https://twitter.com/woodburycountyiowa.gov), [@siouxlandhealthdistrict.org](https://twitter.com/siouxlandhealthdistrict.org),
- Dubuque, [www.dubuquecounty.org](http://www.dubuquecounty.org), [www.dubuquecounty.org/health-department](http://www.dubuquecounty.org/health-department) [@dubuquecounty.org](https://twitter.com/dubuquecounty.org)
- Story, [www.storycountyiowa.gov](http://www.storycountyiowa.gov), [@storycountyiowa.gov](https://twitter.com/storycountyiowa.gov), [publichealth@mgmc.com](mailto:publichealth@mgmc.com)
- Pottawattamie, [www.pottcounty.com](http://www.pottcounty.com), [@pottcounty.com](https://twitter.com/pottcounty.com)
- Dallas, [www.co.dallas.ia.us](http://www.co.dallas.ia.us), [www.co.dallas.ia.us/department-services/public-health-home-health](http://www.co.dallas.ia.us/department-services/public-health-home-health), [@co.dallas.ia.us](https://twitter.com/co.dallas.ia.us)

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**Amy Licht**

**Assistant Attorney General**

Office of the Attorney General of Iowa

1305 E. Walnut St.

Des Moines, Iowa 50319

Main: (515) 281-5164 | Direct: (515) 281-6774

Email: [amy.licht@iowa.gov](mailto:amy.licht@iowa.gov) | [www.iowaattorneygeneral.gov](http://www.iowaattorneygeneral.gov)

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**Blake, Nathan [AG]**

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**To:** Licht, Amy [AG]  
**Cc:** Blake, Nathan [AG]; Thinnes Culver, Mari; 'sarah.reznek@morganlewis.com'  
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- Johnson, [www.johnson-county.com](http://www.johnson-county.com), [www.johnson-county.com/health](http://www.johnson-county.com/health), @johnson-county.com
- Black Hawk, [www.co.black-hawk.ia.us](http://www.co.black-hawk.ia.us), [www.co.black-hawk.ia.us/258/Health-Department](http://www.co.black-hawk.ia.us/258/Health-Department), @co.black-hawk.ia.us
- Woodbury, [www.woodburycountyiowa.gov](http://www.woodburycountyiowa.gov), [siouxlandhealthdistrict.org](http://siouxlandhealthdistrict.org), @woodburycountyiowa.gov, @siouxlandhealthdistrict.org,
- Dubuque, [www.dubuquecounty.org](http://www.dubuquecounty.org), [www.dubuquecounty.org/health-department](http://www.dubuquecounty.org/health-department) @dubuquecounty.org
- Story, [www.storycountyiowa.gov](http://www.storycountyiowa.gov), @storycountyiowa.gov, [publichealth@mgmc.com](mailto:publichealth@mgmc.com)
- Pottawattamie, [www.pottcounty.com](http://www.pottcounty.com), @pottcounty.com
- Dallas, [www.co.dallas.ia.us](http://www.co.dallas.ia.us), [www.co.dallas.ia.us/department-services/public-health-home-health](http://www.co.dallas.ia.us/department-services/public-health-home-health), @co.dallas.ia.us

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**Blake, Nathan [AG]**

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**Cc:** Thinnes Culver, Mari  
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- Linn, [www.linncounty.org](http://www.linncounty.org), [www.linncounty.org/health](http://www.linncounty.org/health), @linncounty.org
- Scott, [www.scottcounty.com](http://www.scottcounty.com), [www.scottcounty.com/health](http://www.scottcounty.com/health) @scottcounty.com
- Johnson, [www.johnson-county.com](http://www.johnson-county.com), [www.johnson-county.com/health](http://www.johnson-county.com/health), @johnson-county.com
- Black Hawk, [www.co.black-hawk.ia.us](http://www.co.black-hawk.ia.us), [www.co.black-hawk.ia.us/258/Health-Department](http://www.co.black-hawk.ia.us/258/Health-Department), @co.black-hawk.ia.us
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- Story, [www.storycountyiowa.gov](http://www.storycountyiowa.gov), @storycountyiowa.gov, [publichealth@mgmc.com](mailto:publichealth@mgmc.com)
- Pottawattamie, [www.pottcounty.com](http://www.pottcounty.com), @pottcounty.com
- Dallas, [www.co.dallas.ia.us](http://www.co.dallas.ia.us), [www.co.dallas.ia.us/departments-services/public-health-home-health](http://www.co.dallas.ia.us/departments-services/public-health-home-health), @co.dallas.ia.us

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**Blake, Nathan [AG]**

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**To:** Blake, Nathan [AG]  
**Cc:** Thinnes Culver, Mari  
**Subject:** RE: [Ext] Iowa CID - Purdue

My availability is as follows:

Thursday: all day, starting at 9:15

Friday: 9-1, 2:15-3.

Mari?

---

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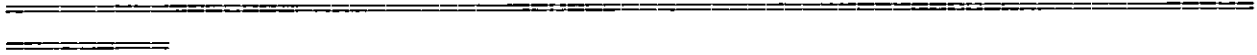
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Office of the Attorney General of Iowa

<image001.png>

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Des Moines, Iowa 50319

Main: (515) 281-5164 | Direct: (515) 281-6774

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5/8/2017 2:52 PM

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- Johnson, [www.johnson-county.com](http://www.johnson-county.com), [www.johnson-county.com/health](http://www.johnson-county.com/health), @johnson-county.com
- Black Hawk, [www.co.black-hawk.ia.us](http://www.co.black-hawk.ia.us), [www.co.black-hawk.ia.us/258/Health-Department](http://www.co.black-hawk.ia.us/258/Health-Department), @co.black-hawk.ia.us
- Woodbury, [www.woodburycountyiowa.gov](http://www.woodburycountyiowa.gov), [siouxlandhealthdistrict.org](http://siouxlandhealthdistrict.org), @woodburycountyiowa.gov, @siouxlandhealthdistrict.org,

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- Linn, [www.linncounty.org](http://www.linncounty.org), [www.linncounty.org/health](http://www.linncounty.org/health), [@linncounty.org](https://twitter.com/linncounty.org)
- Scott, [www.scottcounty.com](http://www.scottcounty.com), [www.scottcounty.com/health](http://www.scottcounty.com/health) [@scottcounty.com](https://twitter.com/scottcounty.com)
- Johnson, [www.johnson-county.com](http://www.johnson-county.com), [www.johnson-county.com/health](http://www.johnson-county.com/health), [@johnson-county.com](https://twitter.com/johnson-county.com)
- Black Hawk, [www.co.black-hawk.ia.us](http://www.co.black-hawk.ia.us), [www.co.black-hawk.ia.us/258/Health-Department](http://www.co.black-hawk.ia.us/258/Health-Department), [@co.black-hawk.ia.us](https://twitter.com/co.black-hawk.ia.us)
- Woodbury, [www.woodburycountyiowa.gov](http://www.woodburycountyiowa.gov), [siouxlandhealthdistrict.org](http://siouxlandhealthdistrict.org), [@woodburycountyiowa.gov](https://twitter.com/woodburycountyiowa), [@siouxlandhealthdistrict.org](https://twitter.com/siouxlandhealthdistrict.org)
- Dubuque, [www.dubuquecounty.org](http://www.dubuquecounty.org), [www.dubuquecounty.org/health-department](http://www.dubuquecounty.org/health-department) [@dubuquecounty.org](https://twitter.com/dubuquecounty.org)
- Story, [www.storycountyiowa.gov](http://www.storycountyiowa.gov), [@storycountyiowa.gov](https://twitter.com/storycountyiowa), [publichealth@mgmc.com](mailto:publichealth@mgmc.com)
- Pottawattamie, [www.pottcounty.com](http://www.pottcounty.com), [@pottcounty.com](https://twitter.com/pottcounty.com)
- Dallas, [www.co.dallas.ia.us](http://www.co.dallas.ia.us), [www.co.dallas.ia.us/departments-services/public-health-home-health](http://www.co.dallas.ia.us/departments-services/public-health-home-health), [@co.dallas.ia.us](https://twitter.com/co.dallas.ia.us)

*(22) All communications with the Iowa Board of Medicine, the Iowa Department of Public Health, the Iowa Board of Nursing, the Iowa Dental Board, the Iowa Osteopathic Medical Association, the Iowa Medical Society and/or any other public or quasi-public regulatory, licensing, or oversight agency or board regarding your opioids, chronic, non-cancer pain, or opioid use, misuse, diversion, addiction, or injury.*

All of the State agencies listed above, and

Iowa Osteopathic Medical Association (IOMA), [www.ioma.org](http://www.ioma.org)

Iowa Medical Society (IMS), [www.iowamedical.org](http://www.iowamedical.org)

Iowa Dental Association (IDA), [www.iowadental.org](http://www.iowadental.org)

**Amy Licht**

**Assistant Attorney General**

Office of the Attorney General of Iowa

<image001.png>

1305 E. Walnut St.

Des Moines, Iowa 50319

Main: (515) 281-5164 | Direct: (515) 281-6774

Email: [amy.licht@iowa.gov](mailto:amy.licht@iowa.gov) | [www.iowaattorneygeneral.gov](http://www.iowaattorneygeneral.gov)

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---

**From:** Wolf, Gretchen M [<mailto:Gretchen.Wolf@skadden.com>]  
**Sent:** Thursday, March 16, 2017 1:40 PM  
**To:** Licht, Amy [AG]  
**Cc:** Blake, Nathan [AG]; Thinnes Culver, Mari; '[sarah.reznek@morganlewis.com](mailto:sarah.reznek@morganlewis.com)'  
**Subject:** RE: [Ext] Iowa CID - Purdue

Amy,

Thank you again for this guidance. We have shared this with Purdue to incorporate into the searches. We have also conferred with Purdue about the date range covered by your CID and would like to set up a call with you and others on our team to discuss further. Are the three of you available for a call on Tuesday afternoon, March 21st, after 1:30 Central?

Thanks much,  
Gretchen

Gretchen M. Wolf  
Skadden, Arps, Slate, Meagher & Flom LLP  
155 N. Wacker Dr., Suite 2700 | Chicago | Illinois | 60606  
T: 312.407.0956 | F: 312.827.9385 | C: 312.485.1407

---

**From:** Licht, Amy [AG] [<mailto:Amy.Licht@iowa.gov>]  
**Sent:** Friday, March 10, 2017 4:37 PM  
**To:** Wolf, Gretchen M (CHI)  
**Cc:** Blake, Nathan [AG]; Thinnes Culver, Mari; '[sarah.reznek@morganlewis.com](mailto:sarah.reznek@morganlewis.com)'  
**Subject:** [Ext] Iowa CID - Purdue

Gretchen,

When we spoke earlier this week regarding Iowa's Civil Investigative Demand, you asked us to provide some guidance as to the (1) government entities and (2) regulatory/oversight agencies and boards referenced in CID Requests 15 and 22, respectively. Below are the Requests at issue and a list of entities, acronyms, domain names, and other information we ask Respondents to use in beginning a search for communications and documents responsive to each Request.

This email does not waive our original Requests. We reserve the right to seek compliance with the full range of the Requests, including adding other entities, agencies, etc. that fall within their scope

Feel free to contact me if you would like to discuss this further. Thank you-

Amy

\*\*\*\*\*

*15) All communications with government entities in Iowa (including, but not limited to, state, county, and municipal government and executive, legislative, and administrative entities) relating to opioids or chronic, non-cancer pain, and all documents provided to these government entities or officials in Iowa.*

General domain: iowa.gov, @iowa.gov

Specific state agencies:

- Iowa Board of Medicine (IBOM), [medicalboard.iowa.gov](http://medicalboard.iowa.gov)



**Blake, Nathan [AG]**

---

**From:** Blake, Nathan [AG]  
**Sent:** Thursday, March 16, 2017 2:15 PM  
**To:** Licht, Amy [AG]  
**Subject:** RE: [Ext] Iowa CID - Purdue

Uh, yes. Are you suggesting it shouldn't be?

---

**From:** Licht, Amy [AG]  
**Sent:** Thursday, March 16, 2017 2:13 PM  
**To:** Blake, Nathan [AG]  
**Subject:** RE: [Ext] Iowa CID - Purdue

PRIORITIES.

---

**From:** Blake, Nathan [AG]  
**Sent:** Thursday, March 16, 2017 2:13 PM  
**To:** Licht, Amy [AG]  
**Subject:** RE: [Ext] Iowa CID - Purdue

I'm free both of those days, too. Just don't schedule something during lunch.

---

**From:** Thinnes Culver, Mari  
**Sent:** Thursday, March 16, 2017 2:12 PM  
**To:** Licht, Amy [AG]  
**Cc:** Blake, Nathan [AG]; Thinnes Culver, Mari  
**Subject:** Re: [Ext] Iowa CID - Purdue

My schedule is about the same as Amy's, so schedule away! MC

Mari Culver  
Sent via remote access

On Mar 16, 2017, at 2:56 PM, Licht, Amy [AG] <[Amy.Licht@iowa.gov](mailto:Amy.Licht@iowa.gov)> wrote:

My availability is as follows:

Thursday: all day, starting at 9:15  
Friday: 9-1, 2:15-3.

Mari?

---

**From:** Blake, Nathan [AG]  
**Sent:** Thursday, March 16, 2017 1:41 PM  
**To:** Licht, Amy [AG]  
**Cc:** Thinnes Culver, Mari  
**Subject:** RE: [Ext] Iowa CID - Purdue

I'm out of town next week (for work, but a call would be difficult). Back in the office on Thursday. What are your availabilities on Thursday/Friday?



**Amy Licht**  
**Assistant Attorney General**  
Office of the Attorney General of Iowa  
1305 E. Walnut St.  
Des Moines, Iowa 50319  
Main: (515) 281-5164 | Direct: (515) 281-6774  
Email: [amy.licht@iowa.gov](mailto:amy.licht@iowa.gov) | [www.iowaattorneygeneral.gov](http://www.iowaattorneygeneral.gov)

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Further information about the firm, a list of the Partners and their professional qualifications will be provided upon request.

---

---

Amy

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General domain: iowa.gov, @iowa.gov

Specific state agencies:

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- Iowa Department of Public Health (IDPH), [idph.iowa.gov](http://idph.iowa.gov)
- Iowa Board of Nursing (IBON), [nursing.iowa.gov](http://nursing.iowa.gov)
- Iowa Dental Board (IDB), [dentalboard.iowa.gov](http://dentalboard.iowa.gov)
- Iowa Board of Pharmacy (IBP), [pharmacy.iowa.gov](http://pharmacy.iowa.gov)
- Iowa Department of Human Services/Iowa Medicaid Enterprise (IDHS/IME), [dhs.state.ia.us](http://dhs.state.ia.us)

Iowa Governor’s Office, Governor’s Office of Drug Control Policy (ODCP), [iowa.gov/odcp](http://iowa.gov/odcp)

Iowa Legislature: [legis.iowa.gov](http://legis.iowa.gov), @legis.iowa.gov

Selected Iowa counties

- Polk, [www.polkcountyiowa.gov](http://www.polkcountyiowa.gov), [www.polkcountyiowa.gov/health](http://www.polkcountyiowa.gov/health), @polkcountyiowa.gov
- Linn, [www.linncounty.org](http://www.linncounty.org), [www.linncounty.org/health](http://www.linncounty.org/health), @linncounty.org
- Scott, [www.scottcounty.com](http://www.scottcounty.com), [www.scottcounty.com/health](http://www.scottcounty.com/health) @scottcounty.com
- Johnson, [www.johnson-county.com](http://www.johnson-county.com), [www.johnson-county.com/health](http://www.johnson-county.com/health), @johnson-county.com
- Black Hawk, [www.co.black-hawk.ia.us](http://www.co.black-hawk.ia.us), [www.co.black-hawk.ia.us/258/Health-Department](http://www.co.black-hawk.ia.us/258/Health-Department), @co.black-hawk.ia.us
- Woodbury, [www.woodburycountyiowa.gov](http://www.woodburycountyiowa.gov), [siouxlandhealthdistrict.org](http://siouxlandhealthdistrict.org), @woodburycountyiowa.gov, @siouxlandhealthdistrict.org,
- Dubuque, [www.dubuquecounty.org](http://www.dubuquecounty.org), [www.dubuquecounty.org/health-department](http://www.dubuquecounty.org/health-department) @dubuquecounty.org
- Story, [www.storycountyiowa.gov](http://www.storycountyiowa.gov), @storycountyiowa.gov, [publichealth@mgmc.com](mailto:publichealth@mgmc.com)
- Pottawattamie, [www.pottcounty.com](http://www.pottcounty.com), @pottcounty.com
- Dallas, [www.co.dallas.ia.us](http://www.co.dallas.ia.us), [www.co.dallas.ia.us/departments-services/public-health-home-health](http://www.co.dallas.ia.us/departments-services/public-health-home-health), @co.dallas.ia.us

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- Iowa Medical Society (IMS), [www.iowamedical.org](http://www.iowamedical.org)
- Iowa Dental Association (IDA), [www.iowadental.org](http://www.iowadental.org)

occupational licensing threatens economic liberty. Unnecessary or overbroad restrictions erect significant barriers and impose costs that harm American workers, employers, consumers, and our economy as a whole, with no measurable benefits to consumers or society.

"This is an important moment for economic liberty. Governors, state legislators, and many other stakeholders want to move forward to remove or narrow occupational licensing regulations and open doors to opportunity, enhancing competition and innovation," said Acting Chairman Ohlhausen. "The FTC's Economic Liberty Task Force has moved quickly to create a website that will gather many existing resources, from the FTC and elsewhere, into a central repository for stakeholders. It will be a dynamic resource and will grow to incorporate additional work by the task force and others in this important area."

The FTC has a long history of advocacy to reduce or eliminate unnecessary occupational licensing requirements imposed by state law or rules, and the website [showcases that work](#). Upon request by a state legislator or in response to an open public comment period, FTC staff regularly shares its expertise on licensure issues affecting health care workers, other professionals such as attorneys and interior designers, and workers in occupations such as online auction trading and real estate closing services.

The website also presents [selected examples of state-based initiatives](#), telling the stories of state elected leaders and other officials who share the agency's goal of occupational licensing reform. The website features FTC testimony before Congress on occupational licensure, as well as blogs on the topic, and selected speeches and articles by FTC officials and staff.

The Federal Trade Commission works to [promote competition](#), and protect and educate consumers. You can learn more about [how competition benefits consumers](#) or [file an antitrust complaint](#). Like the FTC on [Facebook](#), follow us on [Twitter](#), read our [blogs](#) and [subscribe to press releases](#) for the latest FTC news and resources. The Economic Liberty web pages are at [www.ftc.gov/econliberty](http://www.ftc.gov/econliberty).

## Contact Information

**MEDIA CONTACT:**  
Betsy Lordan  
*Office of Public Affairs*  
202-326-3707

## Related Resources

- [Economic Liberty](#)

[More news from the FTC >>](#)



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**Blake, Nathan [AG]**

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**From:** Licht, Amy [AG]  
**Sent:** Thursday, March 16, 2017 2:26 PM  
**To:** 'Wolf, Gretchen M'  
**Cc:** Blake, Nathan [AG]; Thinnes Culver, Mari; 'sarah.reznek@morganlewis.com'  
**Subject:** RE: [Ext] Iowa CID - Purdue

Gretchen,

Thanks for your email. Unfortunately, Tuesday afternoon does not work from our end. We are fairly open on Thursday starting at 9:15 (except from 12-1) and Friday 9-12. Is there a time in those windows when you and Sarah are available?

Amy

---

**From:** Wolf, Gretchen M [mailto:Gretchen.Wolf@skadden.com]  
**Sent:** Thursday, March 16, 2017 1:40 PM  
**To:** Licht, Amy [AG]  
**Cc:** Blake, Nathan [AG]; Thinnes Culver, Mari; 'sarah.reznek@morganlewis.com'  
**Subject:** RE: [Ext] Iowa CID - Purdue

Amy,

Thank you again for this guidance. We have shared this with Purdue to incorporate into the searches. We have also conferred with Purdue about the date range covered by your CID and would like to set up a call with you and others on our team to discuss further. Are the three of you available for a call on Tuesday afternoon, March 21st, after 1:30 Central?

Thanks much,  
Gretchen

**Gretchen M. Wolf**  
Skadden, Arps, Slate, Meagher & Flom LLP  
155 N. Wacker Dr., Suite 2700 | Chicago | Illinois | 60606  
T: 312.407.0956 | F: 312.827.9385 | C: 312.485.1407

---

**From:** Licht, Amy [AG] [mailto:Amy.Licht@iowa.gov]  
**Sent:** Friday, March 10, 2017 4:37 PM  
**To:** Wolf, Gretchen M (CHI)  
**Cc:** Blake, Nathan [AG]; Thinnes Culver, Mari; 'sarah.reznek@morganlewis.com'  
**Subject:** [Ext] Iowa CID - Purdue

Gretchen,

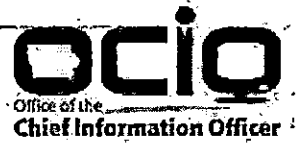
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This email does not waive our original Requests. We reserve the right to seek compliance with the full range of the Requests, including adding other entities, agencies, etc. that fall within their scope

Feel free to contact me if you would like to discuss this further. Thank you-

**Blake, Nathan [AG]**

**From:** OCIO Hoover Barracuda <L2GW01@iowa.gov>  
**Sent:** Friday, March 17, 2017 3:01 PM  
**To:** Blake, Nathan [AG]  
**Subject:** Spam Quarantine Summary - (7)



Office of the Chief Information Officer

**Spam Quarantine Summary**

Total inbound quarantined emails for nathan.blake@iowa.gov: 7 messages

The emails listed below are ones that have been placed in your quarantine digest since the last quarantine summary was sent.

Messages older than 30 days will be removed

Email Quarantined Since Last Notification (2017-Mar-17 09:00:40): 1 message		
From	Subject	Actions
Joe.Bolkcom@legis.iowa.gov	Branstad-Reynolds Budget Crisis Looms	<a href="#">Deliver</a>   <a href="#">Whitelist</a>   <a href="#">Delete</a> <a href="#">View</a>

Previously Quarantined Email: 6 messages		
From	Subject	Actions
amelie.vonkoczian@euroforum.com	Prepare yourself for the implementation of GDPR	<a href="#">Deliver</a>   <a href="#">Whitelist</a>   <a href="#">Delete</a> <a href="#">View</a>
notification@presdomail.com	Nathan, time is running out. See who else is going to LeadsCon LasVegas 2017	<a href="#">Deliver</a>   <a href="#">Whitelist</a>   <a href="#">Delete</a> <a href="#">View</a>
Joe.Bolkcom@legis.iowa.gov	More harsh treatment of working Iowans. Poor Iowa.	<a href="#">Deliver</a>   <a href="#">Whitelist</a>   <a href="#">Delete</a> <a href="#">View</a>
Joe.Bolkcom@legis.iowa.gov	Why are Republicans so obsessed with trying to fix things that aren't broken?	<a href="#">Deliver</a>   <a href="#">Whitelist</a>   <a href="#">Delete</a> <a href="#">View</a>
Joe.Bolkcom@legis.iowa.gov	Cutting Tuition Scholarships is Bad for Our Future	<a href="#">Deliver</a>   <a href="#">Whitelist</a>   <a href="#">Delete</a> <a href="#">View</a>
Joe.Bolkcom@legis.iowa.gov	Republicans Next Target: Destroy IPERS	<a href="#">Deliver</a>   <a href="#">Whitelist</a>   <a href="#">Delete</a> <a href="#">View</a>

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 Click on the [Whitelist](#) link to have that message delivered to your primary inbox and that sender whitelisted.  
 Click on the [Delete](#) link to remove that message from your quarantine.  
 Click on the [View](#) link to display that message in a new Message Details browser window.

[Manage your allowed / blocked list](#)

[Set quarantine notification intervals](#)

[View your entire Quarantine Inbox or manage your preferences.](#)



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Further information about the firm, a list of the Partners and their professional qualifications will be provided upon request.

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Iowa Governor's Office, Governor's Office of Drug Control Policy (ODCP), [iowa.gov/odcp](http://iowa.gov/odcp)

Iowa Legislature: [legis.iowa.gov](http://legis.iowa.gov), [@legis.iowa.gov](https://twitter.com/legis.iowa.gov)

Selected Iowa counties

- Polk, [www.polkcountyiowa.gov](http://www.polkcountyiowa.gov), [www.polkcountyiowa.gov/health](http://www.polkcountyiowa.gov/health), [@polkcountyiowa.gov](https://twitter.com/polkcountyiowa)
- Linn, [www.linncounty.org](http://www.linncounty.org), [www.linncounty.org/health](http://www.linncounty.org/health), [@linncounty.org](https://twitter.com/linncounty)
- Scott, [www.scottcounty.com](http://www.scottcounty.com), [www.scottcounty.com/health](http://www.scottcounty.com/health) [@scottcounty.com](https://twitter.com/scottcounty)
- Johnson, [www.johnson-county.com](http://www.johnson-county.com), [www.johnson-county.com/health](http://www.johnson-county.com/health), [@johnson-county.com](https://twitter.com/johnson-county)
- Black Hawk, [www.co.black-hawk.ia.us](http://www.co.black-hawk.ia.us), [www.co.black-hawk.ia.us/258/Health-Department](http://www.co.black-hawk.ia.us/258/Health-Department), [@co.black-hawk.ia.us](https://twitter.com/co.black-hawk.ia.us)
- Woodbury, [www.woodburycountyiowa.gov](http://www.woodburycountyiowa.gov), [siouxlandhealthdistrict.org](http://siouxlandhealthdistrict.org), [@woodburycountyiowa.gov](https://twitter.com/woodburycountyiowa), [@siouxlandhealthdistrict.org](https://twitter.com/siouxlandhealthdistrict)
- Dubuque, [www.dubuquecounty.org](http://www.dubuquecounty.org), [www.dubuquecounty.org/health-department](http://www.dubuquecounty.org/health-department) [@dubuquecounty.org](https://twitter.com/dubuquecounty)
- Story, [www.storycountyiowa.gov](http://www.storycountyiowa.gov), [@storycountyiowa.gov](https://twitter.com/storycountyiowa), [publichealth@mgmc.com](mailto:publichealth@mgmc.com)
- Pottawattamie, [www.pottcounty.com](http://www.pottcounty.com), [@pottcounty.com](https://twitter.com/pottcounty)
- Dallas, [www.co.dallas.ia.us](http://www.co.dallas.ia.us), [www.co.dallas.ia.us/departments-services/public-health-home-health](http://www.co.dallas.ia.us/departments-services/public-health-home-health), [@co.dallas.ia.us](https://twitter.com/co.dallas.ia.us)

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Iowa Medical Society (IMS), [www.iowamedical.org](http://www.iowamedical.org)

Iowa Dental Association (IDA), [www.iowadental.org](http://www.iowadental.org)

**Amy Licht**

**Assistant Attorney General**

<image001.png>

Office of the Attorney General of Iowa

1305 E. Walnut St.

Des Moines, Iowa 50319

Main: (515) 281-5164 | Direct: (515) 281-6774

Email: [amy.licht@iowa.gov](mailto:amy.licht@iowa.gov) | [www.iowaattorneygeneral.gov](http://www.iowaattorneygeneral.gov)

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**Cc:** Blake, Nathan [AG]; Thinnes Culver, Mari; '[sarah.reznek@morganlewis.com](mailto:sarah.reznek@morganlewis.com)'  
**Subject:** [Ext] Iowa CID - Purdue

Gretchen,

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*15) All communications with government entities in Iowa (including, but not limited to, state, county, and municipal government and executive, legislative, and administrative entities) relating to opioids or chronic, non-cancer pain, and all documents provided to these government entities or officials in Iowa.*

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- Iowa Department of Public Health (IDPH), [idph.iowa.gov](http://idph.iowa.gov)
- Iowa Board of Nursing (IBON), [nursing.iowa.gov](http://nursing.iowa.gov)
- Iowa Dental Board (IDB), [dentalboard.iowa.gov](http://dentalboard.iowa.gov)
- Iowa Board of Pharmacy (IBP), [pharmacy.iowa.gov](http://pharmacy.iowa.gov)
- Iowa Department of Human Services/Iowa Medicaid Enterprise (IDHS/IME), [dhs.state.ia.us](http://dhs.state.ia.us)

**Blake, Nathan [AG]**

**From:** OCIO Hoover Barracuda <L2GW01@iowa.gov>  
**Sent:** Saturday, March 18, 2017 9:01 AM  
**To:** Blake, Nathan [AG]  
**Subject:** Spam Quarantine Summary - (7)



Office of the Chief Information Officer

**Spam Quarantine Summary**

Total inbound quarantined emails for nathan.blake@iowa.gov: 7 messages

The emails listed below are ones that have been placed in your quarantine digest since the last quarantine summary was sent.

Messages older than 30 days will be removed

Previously Quarantined Email: 7 messages		
From	Subject	Actions
Joe.Bolkcom@legis.iowa.gov	Branstad-Reynolds Budget Crisis Looms	<a href="#">Deliver</a>   <a href="#">Whitelist</a>   <a href="#">Delete</a>   <a href="#">View</a>
amelie.vonkoczian@euroforum.com	Prepare yourself for the implementation of GDPR	<a href="#">Deliver</a>   <a href="#">Whitelist</a>   <a href="#">Delete</a>   <a href="#">View</a>
notification@presdomail.com	Nathan, time is running out. See who else is going to LeadsCon LasVegas 2017	<a href="#">Deliver</a>   <a href="#">Whitelist</a>   <a href="#">Delete</a>   <a href="#">View</a>
Joe.Bolkcom@legis.iowa.gov	More harsh treatment of working Iowans. Poor Iowa.	<a href="#">Deliver</a>   <a href="#">Whitelist</a>   <a href="#">Delete</a>   <a href="#">View</a>
Joe.Bolkcom@legis.iowa.gov	Why are Republicans so obsessed with trying to fix things that aren't broken?	<a href="#">Deliver</a>   <a href="#">Whitelist</a>   <a href="#">Delete</a>   <a href="#">View</a>
Joe.Bolkcom@legis.iowa.gov	Cutting Tuition Scholarships is Bad for Our Future	<a href="#">Deliver</a>   <a href="#">Whitelist</a>   <a href="#">Delete</a>   <a href="#">View</a>
Joe.Bolkcom@legis.iowa.gov	Republicans Next Target: Destroy IPERS	<a href="#">Deliver</a>   <a href="#">Whitelist</a>   <a href="#">Delete</a>   <a href="#">View</a>

**DELETE ALL DISPLAYED EMAILS**

Click on the [Deliver](#) link to have that message delivered to your primary inbox.  
 Click on the [Whitelist](#) link to have that message delivered to your primary inbox and that sender whitelisted.  
 Click on the [Delete](#) link to remove that message from your quarantine.  
 Click on the [View](#) link to display that message in a new Message Details browser window.

[Manage your allowed / blocked list](#)

[Set quarantine notification intervals](#)

[View your entire Quarantine Inbox or manage your preferences.](#)

**Blake, Nathan [AG]**

---

**From:** Thinnes Culver, Mari  
**Sent:** Friday, March 17, 2017 3:53 PM  
**To:** Blake, Nathan [AG]  
**Cc:** Licht, Amy [AG]; Thinnes Culver, Mari  
**Subject:** Re: [Ext] Iowa CID - Purdue

Works for me. MC

Mari Culver  
Sent via remote access

On Mar 17, 2017, at 2:43 PM, Blake, Nathan [AG] <[Nathan.Blake@iowa.gov](mailto:Nathan.Blake@iowa.gov)> wrote:

Works for me

---

**From:** Wolf, Gretchen M [<mailto:Gretchen.Wolf@skadden.com>]  
**Sent:** Friday, March 17, 2017 1:39 PM  
**To:** Licht, Amy [AG]  
**Cc:** Blake, Nathan [AG]; Thinnes Culver, Mari; '[sarah.reznek@morganlewis.com](mailto:sarah.reznek@morganlewis.com)'  
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Amy,

We will be joined by others from Morgan Lewis, Tim Shea and Nick Gess. Could we plan on 11:00 am Central on Thursday, March 23rd? If so, we will circulate a dial-in.

Thanks much,  
Gretchen

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**Cc:** Blake, Nathan [AG]; Thinnes Culver, Mari; 'sarah.reznek@morganlewis.com'  
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Thank you, Amy. Enjoy the weekend. We'll send a call-in number.

Gretchen

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Thanks much,  
 Gretchen

Gretchen M. Wolf  
 Skadden, Arps, Slate, Meagher & Flom LLP  
 155 N. Wacker Dr., Suite 2700 | Chicago | Illinois | 60606  
 T: 312.407.0956 | F: 312.827.9385 | C: 312.485.1407

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Nathan Blake

5/8/2017 2:52 PM

- Iowa Dental Board (IDB), [dentalboard.iowa.gov](http://dentalboard.iowa.gov)
- Iowa Board of Pharmacy (IBP), [pharmacy.iowa.gov](http://pharmacy.iowa.gov)
- Iowa Department of Human Services/Iowa Medicaid Enterprise (IDHS/IME), [dhs.state.ia.us](http://dhs.state.ia.us)

Iowa Governor's Office, Governor's Office of Drug Control Policy (ODCP), [iowa.gov/odcp](http://iowa.gov/odcp)

Iowa Legislature: [legis.iowa.gov](http://legis.iowa.gov), [@legis.iowa.gov](https://twitter.com/legis.iowa.gov)

Selected Iowa counties

- Polk, [www.polkcountyiowa.gov](http://www.polkcountyiowa.gov), [www.polkcountyiowa.gov/health](http://www.polkcountyiowa.gov/health), [@polkcountyiowa.gov](https://twitter.com/polkcountyiowa)
- Linn, [www.linncounty.org](http://www.linncounty.org), [www.linncounty.org/health](http://www.linncounty.org/health), [@linncounty.org](https://twitter.com/linncounty)
- Scott, [www.scottcounty.com](http://www.scottcounty.com), [www.scottcounty.com/health](http://www.scottcounty.com/health) [@scottcounty.com](https://twitter.com/scottcounty)
- Johnson, [www.johnson-county.com](http://www.johnson-county.com), [www.johnson-county.com/health](http://www.johnson-county.com/health), [@johnson-county.com](https://twitter.com/johnson-county)
- Black Hawk, [www.co.black-hawk.ia.us](http://www.co.black-hawk.ia.us), [www.co.black-hawk.ia.us/258/Health-Department](http://www.co.black-hawk.ia.us/258/Health-Department), [@co.black-hawk.ia.us](https://twitter.com/co.black-hawk.ia.us)
- Woodbury, [www.woodburycountyiowa.gov](http://www.woodburycountyiowa.gov), [siouxlandhealthdistrict.org](http://siouxlandhealthdistrict.org), [@woodburycountyiowa.gov](https://twitter.com/woodburycountyiowa.gov), [@siouxlandhealthdistrict.org](https://twitter.com/siouxlandhealthdistrict.org),
- Dubuque, [www.dubuquecounty.org](http://www.dubuquecounty.org), [www.dubuquecounty.org/health-department](http://www.dubuquecounty.org/health-department) [@dubuquecounty.org](https://twitter.com/dubuquecounty.org)
- Story, [www.storycountyiowa.gov](http://www.storycountyiowa.gov), [@storycountyiowa.gov](https://twitter.com/storycountyiowa), [publichealth@mgmc.com](mailto:publichealth@mgmc.com)
- Pottawattamie, [www.pottcounty.com](http://www.pottcounty.com), [@pottcounty.com](https://twitter.com/pottcounty)
- Dallas, [www.co.dallas.ia.us](http://www.co.dallas.ia.us), [www.co.dallas.ia.us/departments-services/public-health-home-health](http://www.co.dallas.ia.us/departments-services/public-health-home-health), [@co.dallas.ia.us](https://twitter.com/co.dallas.ia.us)

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**Amy Licht**

**Assistant Attorney General**

Office of the Attorney General of Iowa

1305 E. Walnut St.

Des Moines, Iowa 50319

Main: (515) 281-5164 | Direct: (515) 281-6774

Email: [amy.licht@iowa.gov](mailto:amy.licht@iowa.gov) | [www.iowaattorneygeneral.gov](http://www.iowaattorneygeneral.gov)

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Nathan Blake

5/8/2017 2:52 PM

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Iowa Governor's Office, Governor's Office of Drug Control Policy (ODCP), [iowa.gov/odcp](http://iowa.gov/odcp)

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Selected Iowa counties

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- Linn, [www.linncounty.org](http://www.linncounty.org), [www.linncounty.org/health](http://www.linncounty.org/health), [@linncounty.org](https://twitter.com/linncounty)
- Scott, [www.scottcounty.com](http://www.scottcounty.com), [www.scottcounty.com/health](http://www.scottcounty.com/health) [@scottcounty.com](https://twitter.com/scottcounty)
- Johnson, [www.johnson-county.com](http://www.johnson-county.com), [www.johnson-county.com/health](http://www.johnson-county.com/health), [@johnson-county.com](https://twitter.com/johnson-county)
- Black Hawk, [www.co.black-hawk.ia.us](http://www.co.black-hawk.ia.us), [www.co.black-hawk.ia.us/258/Health-Department](http://www.co.black-hawk.ia.us/258/Health-Department), [@co.black-hawk.ia.us](https://twitter.com/co.black-hawk.ia.us)
- Woodbury, [www.woodburycountyiowa.gov](http://www.woodburycountyiowa.gov), [siouxlandhealthdistrict.org](http://siouxlandhealthdistrict.org), [@woodburycountyiowa.gov](https://twitter.com/woodburycountyiowa.gov), [@siouxlandhealthdistrict.org](https://twitter.com/siouxlandhealthdistrict.org),
- Dubuque, [www.dubuquecounty.org](http://www.dubuquecounty.org), [www.dubuquecounty.org/health-department](http://www.dubuquecounty.org/health-department) [@dubuquecounty.org](https://twitter.com/dubuquecounty.org)
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- Pottawattamie, [www.pottcounty.com](http://www.pottcounty.com), [@pottcounty.com](https://twitter.com/pottcounty)
- Dallas, [www.co.dallas.ia.us](http://www.co.dallas.ia.us), [www.co.dallas.ia.us/departments-services/public-health-home-health](http://www.co.dallas.ia.us/departments-services/public-health-home-health), [@co.dallas.ia.us](https://twitter.com/co.dallas.ia.us)

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**Amy Licht**

**Assistant Attorney General**

Office of the Attorney General of Iowa

1305 E. Walnut St.

Des Moines, Iowa 50319

Main: (515) 281-5164 | Direct: (515) 281-6774

Email: [amy.licht@iowa.gov](mailto:amy.licht@iowa.gov) | [www.iowaattorneygeneral.gov](http://www.iowaattorneygeneral.gov)

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---

---

**Blake, Nathan [AG]**

---

**From:** Blake, Nathan [AG]  
**Sent:** Friday, March 17, 2017 1:44 PM  
**To:** Licht, Amy [AG]  
**Cc:** Thinnes Culver, Mari  
**Subject:** RE: [Ext] Iowa CID - Purdue

Works for me

---

**From:** Wolf, Gretchen M [mailto:Gretchen.Wolf@skadden.com]  
**Sent:** Friday, March 17, 2017 1:39 PM  
**To:** Licht, Amy [AG]  
**Cc:** Blake, Nathan [AG]; Thinnes Culver, Mari; 'sarah.reznek@morganlewis.com'  
**Subject:** RE: [Ext] Iowa CID - Purdue

Amy,

We will be joined by others from Morgan Lewis, Tim Shea and Nick Gess. Could we plan on 11:00 am Central on Thursday, March 23rd? If so, we will circulate a dial-in.

Thanks much,  
Gretchen

---

**From:** Licht, Amy [AG] [mailto:Amy.Licht@iowa.gov]  
**Sent:** Thursday, March 16, 2017 2:26 PM  
**To:** Wolf, Gretchen M (CHI)  
**Cc:** Blake, Nathan [AG]; Thinnes Culver, Mari; 'sarah.reznek@morganlewis.com'  
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Amy

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**From:** Wolf, Gretchen M [mailto:Gretchen.Wolf@skadden.com]  
**Sent:** Thursday, March 16, 2017 1:40 PM  
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**Cc:** Blake, Nathan [AG]; Thinnes Culver, Mari; 'sarah.reznek@morganlewis.com'  
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Thanks much,  
Gretchen

Gretchen M. Wolf  
Skadden, Arps, Slate, Meagher & Flom LLP  
155 N. Wacker Dr., Suite 2700 | Chicago | Illinois | 60606  
T: 312.407.0956 | F: 312.827.9385 | C: 312.485.1407

---

**From:** Licht, Amy [AG] [<mailto:Amy.Licht@iowa.gov>]  
**Sent:** Friday, March 10, 2017 4:37 PM  
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This email does not waive our original Requests. We reserve the right to seek compliance with the full range of the Requests, including adding other entities, agencies, etc. that fall within their scope

Feel free to contact me if you would like to discuss this further. Thank you-

Amy

\*\*\*\*\*

*15) All communications with government entities in Iowa (including, but not limited to, state, county, and municipal government and executive, legislative, and administrative entities) relating to opioids or chronic, non-cancer pain, and all documents provided to these government entities or officials in Iowa.*

General domain: iowa.gov, @iowa.gov

Specific state agencies:

- Iowa Board of Medicine (IBOM), [medicalboard.iowa.gov](http://medicalboard.iowa.gov)
- Iowa Department of Public Health (IDPH), [idph.iowa.gov](http://idph.iowa.gov)
- Iowa Board of Nursing (IBON), [nursing.iowa.gov](http://nursing.iowa.gov)
- Iowa Dental Board (IDB), [dentalboard.iowa.gov](http://dentalboard.iowa.gov)
- Iowa Board of Pharmacy (IBP), [pharmacy.iowa.gov](http://pharmacy.iowa.gov)
- Iowa Department of Human Services/Iowa Medicaid Enterprise (IDHS/IME), [dhs.state.ia.us](http://dhs.state.ia.us)

Iowa Governor’s Office, Governor’s Office of Drug Control Policy (ODCP), [iowa.gov/odcp](http://iowa.gov/odcp)

Iowa Legislature: [legis.iowa.gov](http://legis.iowa.gov), @legis.iowa.gov

Selected Iowa counties

- Polk, [www.polkcountyiowa.gov](http://www.polkcountyiowa.gov), [www.polkcountyiowa.gov/health](http://www.polkcountyiowa.gov/health), @polkcountyiowa.gov
- Linn, [www.linncounty.org](http://www.linncounty.org), [www.linncounty.org/health](http://www.linncounty.org/health), @linncounty.org
- Scott, [www.scottcounty.com](http://www.scottcounty.com), [www.scottcounty.com/health](http://www.scottcounty.com/health) @scottcounty.com
- Johnson, [www.johnson-county.com](http://www.johnson-county.com), [www.johnson-county.com/health](http://www.johnson-county.com/health), @johnson-county.com
- Black Hawk, [www.co.black-hawk.ia.us](http://www.co.black-hawk.ia.us), [www.co.black-hawk.ia.us/258/Health-Department](http://www.co.black-hawk.ia.us/258/Health-Department), @co.black-hawk.ia.us

Nathan Blake

5/8/2017 2:52 PM

- Woodbury, [www.woodburycountyiowa.gov](http://www.woodburycountyiowa.gov), [siouxlandhealthdistrict.org](http://siouxlandhealthdistrict.org), [@woodburycountyiowa.gov](https://twitter.com/woodburycountyiowa.gov), [@siouxlandhealthdistrict.org](https://twitter.com/siouxlandhealthdistrict.org),
- Dubuque, [www.dubuqu county.org](http://www.dubuqu county.org), [www.dubuqu county.org/health-department](http://www.dubuqu county.org/health-department) [@dubuqu county.org](https://twitter.com/dubuqu county.org)
- Story, [www.storycountyiowa.gov](http://www.storycountyiowa.gov), [@storycountyiowa.gov](https://twitter.com/storycountyiowa.gov), [publichealth@mgmc.com](mailto:publichealth@mgmc.com)
- Pottawattamie, [www.pottcounty.com](http://www.pottcounty.com), [@pottcounty.com](https://twitter.com/pottcounty.com)
- Dallas, [www.co.dallas.ia.us](http://www.co.dallas.ia.us), [www.co.dallas.ia.us/departments-services/public-health-home-health](http://www.co.dallas.ia.us/departments-services/public-health-home-health), [@co.dallas.ia.us](https://twitter.com/co.dallas.ia.us)

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Iowa Dental Association (IDA), [www.iowadental.org](http://www.iowadental.org)



**Amy Licht**

**Assistant Attorney General**

Office of the Attorney General of Iowa

1305 E. Walnut St.

Des Moines, Iowa 50319

Main: (515) 281-5164 | Direct: (515) 281-6774

Email: [amy.licht@iowa.gov](mailto:amy.licht@iowa.gov) | [www.iowaattorneygeneral.gov](http://www.iowaattorneygeneral.gov)

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Nathan Blake

5/8/2017 2:52 PM

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Gretchen M. Wolf  
Skadden, Arps, Slate, Meagher & Flom LLP  
155 N. Wacker Dr., Suite 2700 | Chicago | Illinois | 60606  
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- Iowa Board of Nursing (IBON), [nursing.iowa.gov](http://nursing.iowa.gov)
- Iowa Dental Board (IDB), [dentalboard.iowa.gov](http://dentalboard.iowa.gov)
- Iowa Board of Pharmacy (IBP), [pharmacy.iowa.gov](http://pharmacy.iowa.gov)
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- Linn, [www.linncounty.org](http://www.linncounty.org), [www.linncounty.org/health](http://www.linncounty.org/health), @linncounty.org
- Scott, [www.scottcounty.com](http://www.scottcounty.com), [www.scottcounty.com/health](http://www.scottcounty.com/health) @scottcounty.com
- Johnson, [www.johnson-county.com](http://www.johnson-county.com), [www.johnson-county.com/health](http://www.johnson-county.com/health), @johnson-county.com
- Black Hawk, [www.co.black-hawk.ia.us](http://www.co.black-hawk.ia.us), [www.co.black-hawk.ia.us/258/Health-Department](http://www.co.black-hawk.ia.us/258/Health-Department), @co.black-hawk.ia.us
- Woodbury, [www.woodburycountyiowa.gov](http://www.woodburycountyiowa.gov), [siouxlandhealthdistrict.org](http://siouxlandhealthdistrict.org), @woodburycountyiowa.gov, @siouxlandhealthdistrict.org,
- Dubuque, [www.dubuquecounty.org](http://www.dubuquecounty.org), [www.dubuquecounty.org/health-department](http://www.dubuquecounty.org/health-department) @dubuquecounty.org
- Story, [www.storycountyiowa.gov](http://www.storycountyiowa.gov), @storycountyiowa.gov, [publichealth@mgmc.com](mailto:publichealth@mgmc.com)
- Pottawattamie, [www.pottcounty.com](http://www.pottcounty.com), @pottcounty.com
- Dallas, [www.co.dallas.ia.us](http://www.co.dallas.ia.us), [www.co.dallas.ia.us/departments-services/public-health-home-health](http://www.co.dallas.ia.us/departments-services/public-health-home-health), @co.dallas.ia.us

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**Blake, Nathan [AG]**

**From:** Miller, Max [AG]  
**Sent:** Friday, March 17, 2017 8:20 AM  
**To:** Bellus, Benjamin [AG]; Blake, Nathan [AG]; Whitney, Jessica [AG]  
**Subject:** Fwd: FTC Launches New Website Dedicated to Economic Liberty

This sure sounds like it will help advance the FTC's mission...

Guess we're on our own now.

Sent from my iPhone

Begin forwarded message:

**From:** Emily Myers <[emyers@NAAG.ORG](mailto:emyers@NAAG.ORG)>  
**Date:** March 17, 2017 at 8:17:27 AM CDT  
**To:** Emily Myers <[emyers@NAAG.ORG](mailto:emyers@NAAG.ORG)>  
**Subject:** FW: FTC Launches New Website Dedicated to Economic Liberty

**From:** Federal Trade Commission [<mailto:subscribe@subscribe.ftc.gov>]  
**Sent:** Thursday, March 16, 2017 10:51 AM  
**To:** Emily Myers  
**Subject:** FTC Launches New Website Dedicated to Economic Liberty

**FEDERAL TRADE COMMISSION  
PROTECTING AMERICA'S CONSUMERS**

**FTC Launches New Website Dedicated to Economic Liberty**

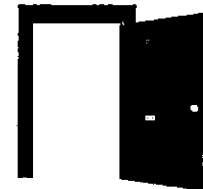
**New task force will address reforms in occupational licensing practices**

New [web pages](#) launched today on the Federal Trade Commission's website will highlight the work of the agency's new Economic Liberty Task Force, which Acting Chairman Maureen K. Ohlhausen announced as her first major policy initiative for the agency.

The task force addresses regulatory hurdles to job growth, including the proliferation of occupational licensing. Nearly 30 percent of American jobs require a license today, up from less than five percent in the 1950s. For some professions, occupational licensing is necessary to protect the public against legitimate health and safety concerns. But in many situations the expansion of

Learn how

**Economic  
LIBERTY  
Opens Doors**



**Blake, Nathan [AG]**

---

**From:** Blake, Nathan [AG]  
**Sent:** Monday, April 10, 2017 9:36 AM  
**To:** 'Henke, Beth M.'  
**Subject:** RE: Meeting with Dream Center Education Holdings

Beth,

Good to hear from you. Carolyn is indeed a force of nature; she's a good partner to have here in Iowa.

We would be happy to host the folks from the Dream Center during the week of the 24<sup>th</sup> here in Des Moines. AG Miller is traveling Wednesday-Friday of that week, but has either Monday (basically all day, beginning late morning) or Tuesday afternoon free. Please let me know what time works best for you on those days. Once we get the time nailed down, we can invite the rest of the EC and Tom Perrelli. I doubt any of them will make it to Des Moines, but certainly we'll want people to participate by phone.

Thanks very much for setting this up. We're looking forward to the meeting.



**Nathan Blake**  
**Assistant Attorney General**  
Office of the Attorney General of Iowa  
1305 E. Walnut St.  
Des Moines, Iowa 50319  
Main: (515) 281-5926 | Direct: (515) 281-4325  
[www.iowaattorneygeneral.gov](http://www.iowaattorneygeneral.gov)

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---

**From:** Henke, Beth M. [mailto:bhenke@edmc.edu]  
**Sent:** Monday, April 10, 2017 8:43 AM  
**To:** Blake, Nathan [AG]  
**Subject:** Meeting with Dream Center Education Holdings

Hi Nathan. Hope you are doing well. I was speaking with Carolyn from the Student Aid Commission at the annual NASASPS conference and she mentioned how well your two offices work together. I cannot believe how much work her office does, though I am learning that is very true about many state offices!

I am writing to follow-up on your request for a meeting with the folks from the Dream Center entity that has entered into the agreement to acquire the EDMC-owned actively enrolling schools. They are booked this week with travel and meetings unrelated to the transaction as well as WASC site visits (plus the holiday). Next week, there is a site visit/meeting with the North Carolina Board of Governors and a meeting with the accreditation committee of the ABA (for Argosy's law school), as well as a Dream Center Foundation board meeting that make them generally unavailable.

Nathan Blake

5/8/2017 2:52 PM

How does the week of the 24<sup>th</sup> look? We actually were hoping to do an in-person meeting, perhaps in Iowa or, as we did for some of the other meetings, Chicago? It is completely up to you, of course, but we are looking forward to talking with you and starting to build the lines of communication that EDMC built during the negotiations. Would Tom Perrelli also participate? Let me know your thoughts. Thanks so much.

Best,  
Beth

*Beth M. Henke*

Senior Vice President (Risk & Compliance) & Chief Compliance Officer  
Education Management Corporation (EDMC)  
210 Sixth Avenue, 33<sup>rd</sup> Floor  
Pittsburgh, PA 15222  
Direct: 412.918.5498  
Cell: 412.657.0825  
[bhenke@edmc.edu](mailto:bhenke@edmc.edu)

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**Blake, Nathan [AG]**

---

**From:** Whitney, Jessica [AG]  
**Sent:** Monday, April 10, 2017 8:52 AM  
**To:** Blake, Nathan [AG]  
**Subject:** RE: Meeting with Dream Center Education Holdings

Yes, sounds good. We could invite other EC states as well, if they want to come out to IA...

---

**From:** Blake, Nathan [AG]  
**Sent:** Monday, April 10, 2017 8:51 AM  
**To:** Whitney, Jessica [AG]  
**Subject:** FW: Meeting with Dream Center Education Holdings

In-person meeting in Des Moines the week of the 24<sup>th</sup>? We could ask Perrelli if he wants to join.

---

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*Beth M. Henke*

Senior Vice President (Risk & Compliance) & Chief Compliance Officer  
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210 Sixth Avenue, 33<sup>rd</sup> Floor  
Pittsburgh, PA 15222  
Direct: 412.918.5498  
Cell: 412.657.0825  
[bhenke@edmc.edu](mailto:bhenke@edmc.edu)

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**From:** OCIO Hoover Barracuda <L2GW01@iowa.gov>  
**Sent:** Monday, April 10, 2017 9:01 AM  
**To:** Blake, Nathan [AG]  
**Subject:** Spam Quarantine Summary - (9)



Office of the Chief Information Officer

**Spam Quarantine Summary**

Total inbound quarantined emails for nathan.blake@iowa.gov: 9 messages

The emails listed below are ones that have been placed in your quarantine digest since the last quarantine summary was sent.

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Email Quarantined Since Last Notification (2017-Apr-08 09:00:43): 1 message		
From	Subject	Actions
Hal.Morris@oag.texas.gov	Re: ITT Educational Services, Inc. - Proposed Stipulations of Material Facts	<a href="#">Deliver</a>   <a href="#">Whitelist</a>   <a href="#">Delete</a> <a href="#">View</a>

Previously Quarantined Email: 8 messages		
From	Subject	Actions
Joe.Bolkcom@legis.iowa.gov	Time to Pull the Plug on Lt. Governor Reynolds Medicaid Privatization Experiment	<a href="#">Deliver</a>   <a href="#">Whitelist</a>   <a href="#">Delete</a> <a href="#">View</a>
amelie.vonkoczian@euroforum.com	Getting GDPR-ready — Interviews about the General Data Protection Regulation	<a href="#">Deliver</a>   <a href="#">Whitelist</a>   <a href="#">Delete</a>   <a href="#">View</a>
Joe.Bolkcom@legis.iowa.gov	Republican Created Budget Woes Continue - Where is the Medical Cannabis Bill?	<a href="#">Deliver</a>   <a href="#">Whitelist</a>   <a href="#">Delete</a> <a href="#">View</a>
Joe.Bolkcom@legis.iowa.gov	Republican Agenda: Driving in Reverse	<a href="#">Deliver</a>   <a href="#">Whitelist</a>   <a href="#">Delete</a>   <a href="#">View</a>
amber@title4services.us	Programs Available Iowa State Employees	<a href="#">Deliver</a>   <a href="#">Whitelist</a>   <a href="#">Delete</a> <a href="#">View</a>
Joe.Bolkcom@legis.iowa.gov	Branstad-Reynolds Budget Crisis Looms	<a href="#">Deliver</a>   <a href="#">Whitelist</a>   <a href="#">Delete</a>   <a href="#">View</a>
amelie.vonkoczian@euroforum.com	Prepare yourself for the implementation of GDPR	<a href="#">Deliver</a>   <a href="#">Whitelist</a>   <a href="#">Delete</a>   <a href="#">View</a>
notification@presdomail.com	Nathan, time is running out. See who else is going to LeadsCon LasVegas 2017	<a href="#">Deliver</a>   <a href="#">Whitelist</a>   <a href="#">Delete</a>   <a href="#">View</a>

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 Click on the [Whitelist](#) link to have that message delivered to your primary inbox and that sender whitelisted.  
 Click on the [Delete](#) link to remove that message from your quarantine.  
 Click on the [View](#) link to display that message in a new Message Details browser window.

[Manage your allowed / blocked list](#)

[Set quarantine notification intervals](#)

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Nathan Blake

5/8/2017 2:52 PM

sender immediately and delete the original message. Neither the sender nor the company for which he or she works accepts any liability for any damage caused by any virus transmitted by this email.

**Blake, Nathan [AG]**

---

**From:** Blake, Nathan [AG]  
**Sent:** Monday, April 10, 2017 8:51 AM  
**To:** Whitney, Jessica [AG]  
**Subject:** FW: Meeting with Dream Center Education Holdings

In-person meeting in Des Moines the week of the 24<sup>th</sup>? We could ask Perrelli if he wants to join.

---

**From:** Henke, Beth M. [mailto:bhenke@edmc.edu]  
**Sent:** Monday, April 10, 2017 8:43 AM  
**To:** Blake, Nathan [AG]  
**Subject:** Meeting with Dream Center Education Holdings

Hi Nathan. Hope you are doing well. I was speaking with Carolyn from the Student Aid Commission at the annual NASASPS conference and she mentioned how well your two offices work together. I cannot believe how much work her office does, though I am learning that is very true about many state offices!

I am writing to follow-up on your request for a meeting with the folks from the Dream Center entity that has entered into the agreement to acquire the EDMC-owned actively enrolling schools. They are booked this week with travel and meetings unrelated to the transaction as well as WASC site visits (plus the holiday). Next week, there is a site visit/meeting with the North Carolina Board of Governors and a meeting with the accreditation committee of the ABA (for Argosy's law school), as well as a Dream Center Foundation board meeting that make them generally unavailable.

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Best,  
Beth

*Beth M. Henke*

Senior Vice President (Risk & Compliance) & Chief Compliance Officer  
Education Management Corporation (EDMC)  
210 Sixth Avenue, 33<sup>rd</sup> Floor  
Pittsburgh, PA 15222  
Direct: 412.918.5498  
Cell: 412.657.0825  
[bhenke@edmc.edu](mailto:bhenke@edmc.edu)

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**Blake, Nathan [AG]**

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**From:** Henke, Beth M. <bhenke@edmc.edu>  
**Sent:** Monday, April 10, 2017 8:43 AM  
**To:** Blake, Nathan [AG]  
**Subject:** Meeting with Dream Center Education Holdings

**Follow Up Flag:** Follow up  
**Flag Status:** Completed

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**Blake, Nathan [AG]**

**From:** OCIO Hoover Barracuda <L2GW01@iowa.gov>  
**Sent:** Thursday, April 06, 2017 3:01 PM  
**To:** Blake, Nathan [AG]  
**Subject:** Spam Quarantine Summary - (8)



Office of the Chief Information Officer

**Spam Quarantine Summary**

Total inbound quarantined emails for nathan.blake@iowa.gov: 8 messages

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Previously Quarantined Email: 8 messages		
From	Subject	Actions
amelie.vonkoczian@euroforum.com	Getting GDPR-ready — Interviews about the General Data Protection Regulation	<a href="#">Deliver</a>   <a href="#">Whitelist</a>   <a href="#">Delete</a>   <a href="#">View</a>
Joe.Bolkcom@legis.iowa.gov	Republican Created Budget Woes Continue - Where is the Medical Cannabis Bill?	<a href="#">Deliver</a>   <a href="#">Whitelist</a>   <a href="#">Delete</a>   <a href="#">View</a>
Joe.Bolkcom@legis.iowa.gov	Republican Agenda: Driving in Reverse	<a href="#">Deliver</a>   <a href="#">Whitelist</a>   <a href="#">Delete</a>   <a href="#">View</a>
amber@title4services.us	Programs Available Iowa State Employees	<a href="#">Deliver</a>   <a href="#">Whitelist</a>   <a href="#">Delete</a>   <a href="#">View</a>
Joe.Bolkcom@legis.iowa.gov	Branstad-Reynolds Budget Crisis Looms	<a href="#">Deliver</a>   <a href="#">Whitelist</a>   <a href="#">Delete</a>   <a href="#">View</a>
amelie.vonkoczian@euroforum.com	Prepare yourself for the implementation of GDPR	<a href="#">Deliver</a>   <a href="#">Whitelist</a>   <a href="#">Delete</a>   <a href="#">View</a>
notification@presdomain.com	Nathan, time is running out. See who else is going to LeadsCon Las Vegas 2017	<a href="#">Deliver</a>   <a href="#">Whitelist</a>   <a href="#">Delete</a>   <a href="#">View</a>
Joe.Bolkcom@legis.iowa.gov	More harsh treatment of working Iowans. Poor Iowa.	<a href="#">Deliver</a>   <a href="#">Whitelist</a>   <a href="#">Delete</a>   <a href="#">View</a>

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[Manage your allowed / blocked list](#)
[Set quarantine notification intervals](#)

[View your entire Quarantine Inbox or manage your preferences.](#)

**Blake, Nathan [AG]**

---

**From:** Blake, Nathan [AG]  
**Sent:** Monday, May 01, 2017 3:37 PM  
**To:** 'Henke, Beth M.'  
**Subject:** RE: Meeting with Dream Center Education Holdings

Beth,

Thanks for helping set up that meeting. Let me know what you hear back from them.

I could talk around 4pm ET tomorrow, if that works for you.

Nathan

---

**From:** Henke, Beth M. [mailto:bhenke@edmc.edu]  
**Sent:** Monday, May 01, 2017 12:29 PM  
**To:** Blake, Nathan [AG]  
**Subject:** RE: Meeting with Dream Center Education Holdings

Hi Nathan. Sorry this did not happen as expected in April. I have asked the Dream Center folks for dates the third and fourth weeks in May, so I am confident we can get it on the schedule very soon.

Are you free tomorrow afternoon to talk about the refund policy? I'll make sure we have an appropriate person to discuss the tax implications. Thanks, as always.

---

**From:** Blake, Nathan [AG] [mailto:Nathan.Blake@iowa.gov]  
**Sent:** Friday, April 28, 2017 5:31 PM  
**To:** Henke, Beth M.  
**Subject:** RE: Meeting with Dream Center Education Holdings

Beth,

I am following up on the below email. It appears that AG Miller is in town and relatively available the third and fourth weeks in May, if you could find a time that works then. We're looking forward to setting up the meeting.

Also, I had a question about EDMC's debt forgiveness and tax implications, if you have five minutes to spare sometime next week.

Have a good weekend,



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Nathan Blake

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**From:** Blake, Nathan [AG]  
**Sent:** Monday, April 10, 2017 9:36 AM  
**To:** 'Henke, Beth M.'  
**Subject:** RE: Meeting with Dream Center Education Holdings

Beth,

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Thanks very much for setting this up. We're looking forward to the meeting.



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**To:** Blake, Nathan [AG]  
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5/8/2017 2:52 PM

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**Blake, Nathan [AG]**

---

**From:** NEWS [AG]  
**Sent:** Monday, May 01, 2017 11:46 AM  
**Subject:** Lieutenant Governor to Serve as Governor, But Lacks Authority to Appoint Lieutenant, Attorney General Opinion Concludes

**IOWA DEPARTMENT OF JUSTICE  
OFFICE OF THE ATTORNEY GENERAL  
Thomas J. Miller, Attorney General  
[www.iowaattorneygeneral.gov](http://www.iowaattorneygeneral.gov)**

CONTACT: Geoff Greenwood | Communications Director | 515-281-6699 | [geoff.greenwood@iowa.gov](mailto:geoff.greenwood@iowa.gov)

FOR IMMEDIATE RELEASE  
May 1, 2017

**Lieutenant Governor to Serve as Governor, But Lacks Authority to Appoint Lieutenant, Attorney General Opinion Concludes**

*Formal opinion responds to request by state senator as Governor Branstad prepares to resign for ambassadorship*

DES MOINES – Attorney General Tom Miller Monday issued a formal legal opinion stating that if a governor resigns, the lieutenant governor becomes governor for all intents and purposes, but does not have legal authority to appoint a new lieutenant governor.

Sen. David Johnson, I-Ocheyedan, requested the opinion following Governor Terry Branstad’s announcement that, if confirmed by the U.S. Senate, he will serve as U.S. ambassador to China.

The 23-page opinion, following extensive legal and historical research, concludes, “...the powers and duties of the office of Governor fall upon the lieutenant governor.” The conclusion is based on an Iowa Constitution provision addressing a governor’s resignation, which states, “...the powers and duties of the office...shall devolve upon the lieutenant governor.” Under that provision, the opinion adds, “The lieutenant governor takes on this authority because she is lieutenant governor.”

Significantly, according to Miller, Article IV, section 1 provides that “The supreme executive power of this state shall be vested in a chief magistrate, who shall be styled the governor of the state of Iowa.”

While the “the lieutenant governor becomes governor and has the title of Governor,” the opinion further adds that that person does not have constitutional authority to appoint a new lieutenant governor. “In other words, upon a governor’s resignation, the lieutenant governor will hold both the offices of Governor and Lieutenant Governor. There is no vacancy to be filled,” according to the opinion.

“This opinion conveys that, in a sense, the two offices merge,” Miller said. “This is consistent with numerous cases in other states that addressed this question,” Miller added. “It is also consistent with a close reading of the Iowa governor’s succession provision—Article IV, section 19 of the Iowa Constitution, which establishes a precise order of gubernatorial succession without providing for the appointment of a lieutenant governor.”

Miller's opinion notes that in all four previous instances when an Iowa governor resigned or died while in office, the lieutenant governor was always considered governor, but never appointed or named a new lieutenant governor. The opinion also concludes, "The framers intended that those in the gubernatorial line of succession be elected."

At the federal level, prior to Congress amending the U.S. Constitution in 1967 to establish that the vice president becomes president and grants the president authority to appoint a new vice president with Congressional approval, no vice president who assumed the powers and duties of a president who died while in office appointed a new vice president.

The formal opinion departs from a public statement Miller's office issued in December, following an informal legal review in response to media inquiries, which stated the office concurred with "Governor Branstad's conclusion that...in her capacity as Governor, Governor Reynolds will have the authority to appoint a new lieutenant governor."

The December statement was based, in part, on an Iowa Code section addressing vacancies of office holders. Miller's formal opinion concludes this statute does not apply when a governor resigns and the powers and duties devolve upon the lieutenant governor.

#### **About Attorney General Opinions**

A formal attorney general opinion addresses legal questions relating to a public official's duties by interpreting laws and offering legal guidance.

While not a legal precedent, a formal attorney general opinion is similar to one and stands until a court or later opinion overrules it or new legislation is enacted to change a statute in question. Opinions are not legally binding, but courts generally give them careful consideration and deference.

###

**Blake, Nathan [AG]**

---

**From:** Henke, Beth M. <bhenke@edmc.edu>  
**Sent:** Monday, May 01, 2017 12:29 PM  
**To:** Blake, Nathan [AG]  
**Subject:** RE: Meeting with Dream Center Education Holdings

**Follow Up Flag:** Follow up  
**Flag Status:** Completed

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**To:** Henke, Beth M.  
**Subject:** RE: Meeting with Dream Center Education Holdings

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*Beth M. Henke*



**Nathan Blake**

5/8/2017 2:52 PM

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**Blake, Nathan [AG]**

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**From:** Blake, Nathan [AG]  
**Sent:** Friday, April 28, 2017 4:31 PM  
**To:** 'Henke, Beth M.'  
**Subject:** RE: Meeting with Dream Center Education Holdings

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1305 E. Walnut St.  
Des Moines, Iowa 50319  
Main: (515) 281-5926 | Direct: (515) 281-4325  
[www.iowaattorneygeneral.gov](http://www.iowaattorneygeneral.gov)

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---

**From:** Henke, Beth M. [mailto:[bhenke@edmc.edu](mailto:bhenke@edmc.edu)]  
**Sent:** Monday, April 10, 2017 8:43 AM  
**To:** Blake, Nathan [AG]  
**Subject:** Meeting with Dream Center Education Holdings

Hi Nathan. Hope you are doing well. I was speaking with Carolyn from the Student Aid Commission at the annual NASASPS conference and she mentioned how well your two offices work together. I cannot believe how much work her office does, though I am learning that is very true about many state offices!

I am writing to follow-up on your request for a meeting with the folks from the Dream Center entity that has entered into the agreement to acquire the EDMC-owned actively enrolling schools. They are booked this week with travel and meetings unrelated to the transaction as well as WASC site visits (plus the holiday). Next week, there is a site visit/meeting with the North Carolina Board of Governors and a meeting with the accreditation committee of the ABA (for Argosy's law school), as well as a Dream Center Foundation board meeting that make them generally unavailable.

How does the week of the 24<sup>th</sup> look? We actually were hoping to do an in-person meeting, perhaps in Iowa or, as we did for some of the other meetings, Chicago? It is completely up to you, of course, but we are looking forward to talking with you and starting to build the lines of communication that EDMC built during the negotiations. Would Tom Perrelli also participate? Let me know your thoughts. Thanks so much.

Best,  
Beth

*Beth M. Henke*

Senior Vice President (Risk & Compliance) & Chief Compliance Officer  
Education Management Corporation (EDMC)  
210 Sixth Avenue, 33<sup>rd</sup> Floor  
Pittsburgh, PA 15222  
Direct: 412.918.5498  
Cell: 412.657.0825  
[bhenke@edmc.edu](mailto:bhenke@edmc.edu)

---

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Nathan Blake

5/8/2017 2:52 PM

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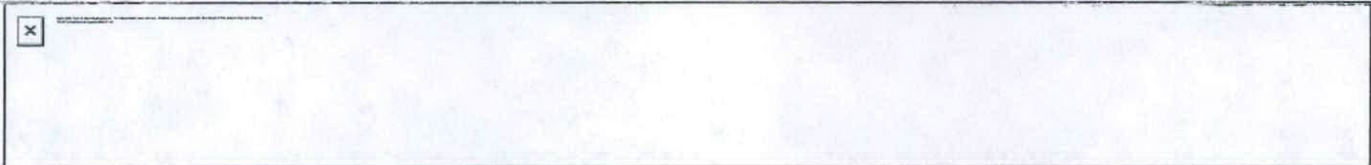


**Blake, Nathan [AG]**

---

**From:** IAPP Daily Dashboard <publications@iapp.org>  
**Sent:** Wednesday, April 26, 2017 12:26 PM  
**To:** Blake, Nathan [AG]  
**Subject:** WP29 data portability interpretation spooks European Commission

To view this email as a web page, [click here](#)



Privacy Impact Assessments  
**RE-THINKING A STAPLE OF  
PRIVACY PROTECTION**

The faster pace of business is spurring changes to the venerable Privacy Impact Assessment. Hear how this staple of privacy management may be evolving at the IAPP Asia Privacy Forum 2017 panel, moderated by Nymity's Teresa Troester-Falk.

**IAPP Asia Privacy Forum 2017**  
July 24-25, Singapore

[Register Now](#)

**April 26, 2017**

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- [Find Us on Twitter](#)
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**PRIVACY LAW—EU**  
**WP29 data portability interpretation spooks European Commission**

**Blake, Nathan [AG]**

---

**From:** Bellus, Benjamin [AG]  
**Sent:** Thursday, April 13, 2017 3:08 PM  
**To:** Blake, Nathan [AG]; Whitney, Jessica [AG]  
**Subject:** From the Business Record: New day, same ...

And another big ol'e "\*\*\*\* you" to the ordinary citizens.

Contractors cannot do their job right? Well then we lower the bar for them.

**Branstad to sign to bills related to construction industry**

Gov. Terry Branstad is expected to two pieces of legislation into law Thursday that affect the construction industry. Senate File 438 eliminates a requirement to include project labor agreements on public improvement projects, including developments that receive local or state incentives. Senate File 413 reduces the time for filing lawsuits related to improvements to real property from 15 years to eight years.



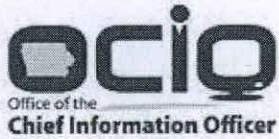
**Benjamin E. Bellus**  
**Assistant Attorney General**  
Office of the Attorney General of Iowa  
Consumer Protection Division

1305 E. Walnut St.  
Des Moines, Iowa 50319  
Main: (515) 281-5164 | Direct: (515) 281-5926 | Fax: (515) 281-6771  
Email: [Benjamin.Bellus@iowa.gov](mailto:Benjamin.Bellus@iowa.gov) | [www.iowaattorneygeneral.gov](http://www.iowaattorneygeneral.gov)



**Blake, Nathan [AG]**

**From:** OCIO Hoover Barracuda <L2GW01@iowa.gov>  
**Sent:** Tuesday, April 11, 2017 3:01 PM  
**To:** Blake, Nathan [AG]  
**Subject:** Spam Quarantine Summary - (10)



Office of the Chief Information Officer

**Spam Quarantine Summary**

**Total inbound quarantined emails for nathan.blake@iowa.gov: 10 messages**

The emails listed below are ones that have been placed in your quarantine digest since the last quarantine summary was sent.

Messages older than 30 days will be removed

Email Quarantined Since Last Notification (2017-Apr-10 09:00:40): 2 messages		
From	Subject	Actions
Ashley.Bartram@oag.texas.gov	Re: ITT - states only call 2 pm	<a href="#">Deliver</a>   <a href="#">Whitelist</a>   <a href="#">Delete</a>   <a href="#">View</a>
Hal.Morris@oag.texas.gov	Re: "ceasing operations" language in Proposed Stipulations - ForInternal Discussion	<a href="#">Deliver</a>   <a href="#">Whitelist</a>   <a href="#">Delete</a>   <a href="#">View</a>

Previously Quarantined Email: 8 messages		
From	Subject	Actions
Joe.Bolkcom@legis.iowa.gov	Time to Pull the Plug on Lt. Governor Reynolds Medicaid Privatization Experiment	<a href="#">Deliver</a>   <a href="#">Whitelist</a>   <a href="#">Delete</a>   <a href="#">View</a>
amelie.vonkoczian@euroforum.com	Getting GDPR-ready — Interviews about the General Data Protection Regulation	<a href="#">Deliver</a>   <a href="#">Whitelist</a>   <a href="#">Delete</a>   <a href="#">View</a>
Joe.Bolkcom@legis.iowa.gov	Republican Created Budget Woes Continue - Where is the Medical Cannabis Bill?	<a href="#">Deliver</a>   <a href="#">Whitelist</a>   <a href="#">Delete</a>   <a href="#">View</a>
Joe.Bolkcom@legis.iowa.gov	Republican Agenda: Driving in Reverse	<a href="#">Deliver</a>   <a href="#">Whitelist</a>   <a href="#">Delete</a>   <a href="#">View</a>
amber@title4services.us	Programs Available Iowa State Employees	<a href="#">Deliver</a>   <a href="#">Whitelist</a>   <a href="#">Delete</a>   <a href="#">View</a>
Joe.Bolkcom@legis.iowa.gov	Branstad-Reynolds Budget Crisis Looms	<a href="#">Deliver</a>   <a href="#">Whitelist</a>   <a href="#">Delete</a>   <a href="#">View</a>
amelie.vonkoczian@euroforum.com	Prepare yourself for the implementation of GDPR	<a href="#">Deliver</a>   <a href="#">Whitelist</a>   <a href="#">Delete</a>   <a href="#">View</a>
notification@presdomail.com	Nathan, time is running out. See who else is going to LeadsCon LasVegas 2017	<a href="#">Deliver</a>   <a href="#">Whitelist</a>   <a href="#">Delete</a>   <a href="#">View</a>

**[DELETE ALL DISPLAYED EMAILS](#)**

Click on the **Deliver** link to have that message delivered to your primary inbox.  
 Click on the **Whitelist** link to have that message delivered to your primary inbox and that sender whitelisted.  
 Click on the **Delete** link to remove that message from your quarantine.  
 Click on the **View** link to display that message in a new Message Details browser window.

[Manage your allowed / blocked list](#)      [Set quarantine notification intervals](#)

[View your entire Quarantine Inbox or manage your preferences.](#)

**Blake, Nathan [AG]**

**From:** OCIO Hoover Barracuda <L2GW01@iowa.gov>  
**Sent:** Tuesday, May 02, 2017 9:01 AM  
**To:** Blake, Nathan [AG]  
**Subject:** Spam Quarantine Summary - (5)



Office of the Chief Information Officer

**Spam Quarantine Summary**

Total inbound quarantined emails for nathan.blake@iowa.gov: 5 messages

The emails listed below are ones that have been placed in your quarantine digest since the last quarantine summary was sent.

Messages older than 30 days will be removed

Email Quarantined Since Last Notification (2017-Apr-30 09:00:29) 1 message		
From	Subject	Actions
amelie.vonkoczian@euroforum.com	EDPD Conference in Berlin: How the GDPR and ePrivacy law may affect your business	<a href="#">Deliver</a>   <a href="#">Whitelist</a>   <a href="#">Delete</a>   <a href="#">View</a>

Previously Quarantined Email 4 messages		
From	Subject	Actions
ACassani@cablevision.com.ar	UPDATE :	<a href="#">Deliver</a>   <a href="#">Whitelist</a>   <a href="#">Delete</a>   <a href="#">View</a>
Joe.Bolkcom@legis.iowa.gov	Session Adjournment Looms - Medical Cannabis Bill Resurrected	<a href="#">Deliver</a>   <a href="#">Whitelist</a>   <a href="#">Delete</a>   <a href="#">View</a>
Joe.Bolkcom@legis.iowa.gov	Time to Pull the Plug on Lt. Governor Reynolds Medicaid Privatization Experiment	<a href="#">Deliver</a>   <a href="#">Whitelist</a>   <a href="#">Delete</a>   <a href="#">View</a>
amelie.vonkoczian@euroforum.com	Getting GDPR-ready — Interviews about the General Data Protection Regulation	<a href="#">Deliver</a>   <a href="#">Whitelist</a>   <a href="#">Delete</a>   <a href="#">View</a>

**DELETE ALL DISPLAYED EMAILS**

Click on the [Deliver](#) link to have that message delivered to your primary inbox.  
 Click on the [Whitelist](#) link to have that message delivered to your primary inbox and that sender whitelisted.  
 Click on the [Delete](#) link to remove that message from your quarantine.  
 Click on the [View](#) link to display that message in a new Message Details browser window.

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[View your entire Quarantine Inbox or manage your preferences.](#)

**Blake, Nathan [AG]**

**From:** OCIO Hoover Barracuda <L2GW01@iowa.gov>  
**Sent:** Tuesday, May 02, 2017 3:01 PM  
**To:** Blake, Nathan [AG]  
**Subject:** Spam Quarantine Summary - (5)



Office of the Chief Information Officer

**Spam Quarantine Summary**

Total inbound quarantined emails for nathan.blake@iowa.gov: 5 messages.

The emails listed below are ones that have been placed in your quarantine digest since the last quarantine summary was sent.

Messages older than 30 days will be removed

Previously Quarantined Email: 5 messages		
From	Subject	Actions
amelie.vonkoczian@euroforum.com	EDPD Conference in Berlin: How the GDPR and ePrivacy law may affect your business	<a href="#">Deliver</a>   <a href="#">Whitelist</a>   <a href="#">Delete</a> <a href="#">View</a>
ACassani@cablevision.com.ar	UPDATE :	<a href="#">Deliver</a>   <a href="#">Whitelist</a>   <a href="#">Delete</a> <a href="#">View</a>
Joe.Bolkcom@legis.iowa.gov	Session Adjournment Looms - Medical Cannabis Bill Resurrected	<a href="#">Deliver</a>   <a href="#">Whitelist</a>   <a href="#">Delete</a> <a href="#">View</a>
Joe.Bolkcom@legis.iowa.gov	Time to Pull the Plug on Lt. Governor Reynolds Medicaid Privatization Experiment	<a href="#">Deliver</a>   <a href="#">Whitelist</a>   <a href="#">Delete</a> <a href="#">View</a>
amelie.vonkoczian@euroforum.com	Getting GDPR-ready — Interviews about the General Data Protection Regulation	<a href="#">Deliver</a>   <a href="#">Whitelist</a>   <a href="#">Delete</a> <a href="#">View</a>

**DELETE ALL DISPLAYED EMAILS**

Click on the **Deliver** link to have that message delivered to your primary inbox.  
 Click on the **Whitelist** link to have that message delivered to your primary inbox and that sender whitelisted.  
 Click on the **Delete** link to remove that message from your quarantine.  
 Click on the **View** link to display that message in a new Message Details browser window.

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will be able to continue to service and implement these programs without fear of federal incursion until September 30 of this year. Yet, this action is only a stopgap measure at best. Ultimately, Congress

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Tom Miller

 **The Governor's office accused Attorney General Tom Miller o.....** 05/03/17 16:33  
The Governor's office accused Attorney General Tom Miller of "playing politics" when he announced this week that Kim Reynolds won't be able to choose her own Lieutenant Governor. Well now an Iowa Democrat who wants to challenge Reynolds in 2018 is agreeing with her. Political Director Dave Price explains. [https://video.xx.fbcdn.net/v/t42.1790-2/18292462\\_1672910323016317\\_5180995611528265728\\_n.mp4?efg=eyJyblHlIjMwMCwicmxhIjo1MTIsInZlbnNvZGVfdGFnljoic3ZlX3NkIn0%3D&rl=300&vabr=148&oh=58c0ebf60a84ddc3b151a535b36cef26&oe=590DAA62](https://video.xx.fbcdn.net/v/t42.1790-2/18292462_1672910323016317_5180995611528265728_n.mp4?efg=eyJyblHlIjMwMCwicmxhIjo1MTIsInZlbnNvZGVfdGFnljoic3ZlX3NkIn0%3D&rl=300&vabr=148&oh=58c0ebf60a84ddc3b151a535b36cef26&oe=590DAA62)


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@AGlowa

 **jasonnobleDMR** @jasonnobleDMR 05/03/17 13:51  
@IowaGOP @AGlowa 2 of the @AGlowa officials the @IowaGOP is asking for documents from are considering runs for sta... <https://t.co/xtybHqFzD0>

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 **ronmparker29** @ronmparker29 05/03/17 09:13  
When @AGlowa issued opinion about the transition process that @KimReynoldsIA didn't like, the @IowaGOP establishment screamed: "Sexism."

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throughout any place in the United States, whether a state legalizes it or not." In February, a U.S. Attorney for the Department of Justice claimed an Obama-era rule instructing the agency



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**DMRegister** @DMRegister

05/03/17 17:30

The Iowa GOP is accusing the Democratic attorney general of flip-flopping and putting partisanship first.

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**The Governor's office accused Attorney General Tom Miller o.....**

05/03/17 16:33

The Governor's office accused Attorney General Tom Miller of "playing politics" when he announced this week that Kim Reynolds won't be able to choose her own Lieutenant Governor. Well now an Iowa Democrat who wants to challenge Reynolds in 2018 is agreeing with her. Political Director Dave Price explains. [https://video.xx.fbcdn.net/v/t42.1790-2/18292462\\_1672910323016317\\_5180995611528265728\\_n.mp4?efg=eyJybjHliOjMwMCwicmxhIjo1MTIsInZlbnNvZGVfdGFnljoic3ZlX3NkIn0%3D&rl=300&vabr=148&oh=58c0ebf60a84ddc3b151a535b36cef26&oe=590DAA62](https://video.xx.fbcdn.net/v/t42.1790-2/18292462_1672910323016317_5180995611528265728_n.mp4?efg=eyJybjHliOjMwMCwicmxhIjo1MTIsInZlbnNvZGVfdGFnljoic3ZlX3NkIn0%3D&rl=300&vabr=148&oh=58c0ebf60a84ddc3b151a535b36cef26&oe=590DAA62)

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**desmoinesdaily** @desmoinesdaily

05/03/17 16:30

Iowa GOP requests attorney general's documents on gubernatorial succession opinion

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**Trump Loses "Bigly" In The New Spending Bill**

jobsanger.blogspot.com | 05/03/17 15:42

used for cities and towns that decide to not cooperate with federal efforts to arrest undocumented immigrants. Attorney General Jeff Sessions was shut down in court last week for threatening to cut funding from such jurisdictions. The omnibus does not contain any language prohibiting funds for these cities. 9. Funding for Puerto Rico Last week, Trump drew a line in the sand on funding for Puerto Rico, currently grappling with a debt crisis: He told Reuters the next day: "I don't think that's fair

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**Jane Meyer lawsuit against University of Iowa goes to jury [...]**

05/03/17 15:06

"This case is not about Tracey Griesbaum," George Carroll, an assistant Iowa Attorney General representing the university, told the jury during his closing argument Wednesday morning. Instead, Carroll said, the jury should focus on Meyer's "unprofessional" actions. DES MOINES - A Polk County jury started deliberations shortly after noon Wednesday in a high-profile employment discrimination case that's given Iowans an off-the-field, sometimes locker-room look at the University of Iowa Athletics Department.

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**Congressional Protections For Legal State Medical Marijuana ...**

blog.norml.org | 05/03/17 14:52

deciding to maintain protections for state-sanctioned medical marijuana programs in the era of a Department of Justice being led by Attorney General Jeff Sessions means that patients ailing from conditions that range from cancer to PTSD can breathe a temporary sigh of relief. Once approved, states





### Editorial: Reynolds should listen to the attorney general

The Des Moines Register | 05/03/17 18:46

*Editorial: Reynolds should listen to the attorney general Lt. Gov. Kim Reynolds has yet to assume the duties of Iowa's governor, but already ...*

WORDS MATCHED Attorney General, attorney general, Tom Miller



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### Reynolds has constitutional authority to appoint lieutenant

TheGazette.com | 05/03/17 12:41

*...by law she absolutely cannot hold both offices at the same time. Attorney General Miller The law of Iowa is definite: when Lt. Governor Reynolds ...*

WORDS MATCHED Attorney General, Tom Miller

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### AP-IA--Iowa News Digest 1:30 pm, IA

AP (Hosted) | 05/01/17 13:35

*...updates. TOP STORIES: IOWA GOVERNOR-TRANSITION DES MOINES Iowa's attorney general says Lt. Gov. Kim Reynolds will not have the authority to appoint...*

WORDS MATCHED Attorney General, attorney general, Tom Miller

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## Geoff Greenwood

### Iowa GOP requests attorney general's documents on gubernatorial succession opinion

The Des Moines Register | 05/03/17 20:16

*...and "respond pursuant to Iowa's open records law." Spokesman Geoff Greenwood defended the opinion as was based on the law rather than politics ,*

WORDS MATCHED Geoff Greenwood

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## Iowa Attorney General



### Congress Agrees To Give Jeff Sessions \$0 To Wage War On Medi...

zerohedge.com | 05/03/17 19:04

part, a result of Attorney General Jeff Sessions' anti-cannabis rhetoric. Though he reportedly privately assured senators he would not crack down on states where it is legal, he also recently warned that while states can pass their own laws, " ...it does remain a violation of federal law to distribute marijuana

**AP-IA--Iowa News Digest 1:30 pm, IA**

AP (Hosted) | 05/01/17 13:35

*along with all updates. TOP STORIES: IOWA GOVERNOR-TRANSITION DES MOINES Iowa's attorney general says Lt. Gov. Kim Reynolds will not have the...*

WORDS MATCHED attorney general, Iowa

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**Tom Miller**

**Guest: AG Miller's finding smacks of partisanship**

Quad-City Times | 05/04/17 00:30

*...thinking more about the office of lieutenant governor ever since state Attorney General Tom Miller's surprising announcement. His surprise ? In...*

WORDS MATCHED Attorney General, attorney general, Tom Miller



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**Iowa Democrat Says Kim Reynolds Needs to Have Power to Choose Her Lieutenant**

WHOTV.com | 05/03/17 21:01

*...doesn't allow her to then that law needs to change. On Monday Attorney General Tom Miller announced that Reynolds won't have the power to choose a...*

WORDS MATCHED Attorney General, Tom Miller



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**Des Moines speed cameras still issuing tickets, despite judge's ruling**

The Des Moines Register | 05/03/17 20:16

*...court stay the judge's order while they appeal the case. Iowa Attorney General Tom Miller wrote in a motion that cities have no reason to pursue...*

WORDS MATCHED Attorney General, Tom Miller



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**Iowa GOP requests attorney general's documents on gubernatorial succession opinion**

The Des Moines Register | 05/03/17 20:16



*Iowa GOP requests attorney general's documents on gubernatorial succession opinion Republicans ramped up political pressure against Iowa Attorney ...*

WORDS MATCHED Attorney General, attorney general, Tom Miller

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*admitted the amount should have been closer to \$30,000. Assistant Attorney General for the State of Iowa, Andrew Prosser, said he was asked to...*

WORDS MATCHED Attorney General, Iowa

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## University of Iowa discrimination case goes to jury

Sentinel-Tribune | 05/03/17 16:43

[33 other sources...](#)

*...public through the media. In summing up the state's defense, Iowa Assistant Attorney General George Carroll told jurors, "This case is not about...*

WORDS MATCHED Attorney General, Iowa

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## BC-US--Iowa-Athletics Trial,2nd Ld-Writethru, US

AP (Hosted) | 05/03/17 16:22

*...public through the media. In summing up the state's defense, Iowa Assistant Attorney General George Carroll told jurors, "This case is not about...*

WORDS MATCHED Attorney General, Iowa

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## Obscure GOP-Based Regulatory Commission Might Determine Keystone's Fate

The Daily Caller | 05/03/17 14:50

*...the president of activist group Bold Alliance, which pushed Iowa's attorney general last year into investigating ExxonMobil following reports...*

WORDS MATCHED attorney general, Iowa

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## BC-US--Iowa-Athletics Trial,1st-LdWritethru, US

AP (Hosted) | 05/03/17 14:14

*...public through the media. In summing up the state's defense, Iowa Assistant Attorney General George Carroll told jurors, "This case is not about...*

WORDS MATCHED Attorney General, Iowa

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## Jane Meyer lawsuit against University of Iowa goes to jury

TheGazette.com | 05/03/17 13:53

*...is not about Tracey Griesbaum, George Carroll, an assistant Iowa Attorney General representing the university, told the jury during his closing...*

WORDS MATCHED Attorney General, Iowa

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## Reynolds has constitutional authority to appoint lieutenant

TheGazette.com | 05/03/17 12:41

*...by law she absolutely cannot hold both offices at the same time. Attorney General Miller The law of Iowa is definite: when Lt. Governor Reynolds ...*

WORDS MATCHED Attorney General, Iowa



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## Prosecution witnesses testify in Tait Purk murder trial

TamaToledoNews.com | 05/04/17 00:00

*...being prosecuted by Tama County Attorney Brent Heeren and Assistant Iowa Attorney General Laura Roan. Purk is represented by public defenders...*

WORDS MATCHED Attorney General, Iowa



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## Des Moines speed cameras still issuing tickets, despite judge's ruling

The Des Moines Register | 05/03/17 20:16

*...the court stay the judge's order while they appeal the case. Iowa Attorney General Tom Miller wrote in a motion that cities have no reason to...*

WORDS MATCHED Attorney General, Iowa



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## Iowa GOP requests attorney general's documents on gubernatorial succession opinion

The Des Moines Register | 05/03/17 20:16

*Iowa GOP requests attorney general's documents on gubernatorial succession opinion Republicans ramped up political pressure against Iowa Attorney...*

WORDS MATCHED Attorney General, attorney general, Iowa

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## Grassley casts doubt on FBI credibility in political inquiries

KPVI News 6 | 05/03/17 19:30

[8 other sources...](#)

*...by the Justice Department came in a letter dated Tuesday. The Iowa Republican wrote to Deputy Attorney General Rod Rosenstein, asking that he...*

WORDS MATCHED Attorney General, Iowa



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## Former animal shelter director faces sentencing May 15

Oskaloosa | 05/03/17 19:05

*...in March was delayed, state prosecutors said. Scott Brown, an assistant attorney general with the state of Iowa, said Lindsey Nicole Sime, 30,*

WORDS MATCHED attorney general, Iowa



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## Editorial: Reynolds should listen to the attorney general

The Des Moines Register | 05/03/17 18:46

*Miller's ruling on Lt. governor succession 'absurd' RELATED: Iowa GOP requests attorney general's documents on gubernatorial succession opinion If that...*

WORDS MATCHED attorney general, Iowa

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## Former jail administrator charged with felony after allegedly stealing cash from inmates

The Muscatine Journal | 05/03/17 18:30

**Blake, Nathan [AG]**

**From:** morningreport@meltwaternews.com  
**Sent:** Thursday, May 04, 2017 8:02 AM  
**To:** Blake, Nathan [AG]  
**Subject:** 33 hits from Meltwater News

[Help Center | help@meltwater.com](#)



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AGENT	MEDIA TYPE	HITS
Iowa Attorney General	News	15 in 1 day
Tom Miller	News	7 in 1 day
Geoff Greenwood	News	1 in 1 day
Iowa Attorney General		7 in 1 day
Tom Miller		1 in 1 day
@AGlowa		2 in 1 day

**Iowa Attorney General**

**Meyer case goes to jury**

The Daily Iowan | 05/04/17 01:23

...public through the media. In summing up the state s defense, Iowa Assistant Attorney General George Carroll told jurors, This case is not about...

**WORDS MATCHED** Attorney General, Iowa



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**ronmparker29** @ronmparker29

05/03/17 09:13

When @AGIowa issued opinion about the transition process that @KimReynoldsIA didn't like, the @IowaGOP establishment screamed: "Sexism."

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 **Jane Meyer lawsuit against University of Iowa goes to jury ]...** 05/03/17 15:06

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blog.norml.org | 05/03/17 14:52  
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**@AGIowa**

 **jasonnobleDMR @jasonnobleDMR** 05/03/17 13:51

.@IowaGOP @AGIowa 2 of the @AGIowa officials the @IowaGOP is asking for documents from are considering runs for sta... <https://t.co/xybHqFzD0>

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The Des Moines Register | 05/03/17 20:16

...and "respond pursuant to Iowa's open records law." Spokesman Geoff Greenwood defended the opinion as was based on the law rather than politics,

WORDS MATCHED Geoff Greenwood

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Iowa Attorney General



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zerohedge.com | 05/03/17 19:04

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05/03/17 17:30

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05/03/17 16:30

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jobsanger.blogspot.com | 05/03/17 15:42

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The Des Moines Register | 05/03/17 20:16

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WORDS MATCHED Attorney General, Tom Miller



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The Des Moines Register | 05/03/17 20:16

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**Editorial: Reynolds should listen to the attorney general**

The Des Moines Register | 05/03/17 18:46

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WORDS MATCHED Attorney General, attorney general, Tom Miller



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**Reynolds has constitutional authority to appoint lieutenant**

TheGazette.com | 05/03/17 12:41

*...by law she absolutely cannot hold both offices at the same time. Attorney General Miller The law of Iowa is definite: when Lt. Governor Reynolds ...*

WORDS MATCHED Attorney General, Tom Miller

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**AP-IA--Iowa News Digest 1:30 pm, IA**

AP (Hosted) | 05/01/17 13:35

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**Geoff Greenwood**

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TheGazette.com | 05/03/17 13:53

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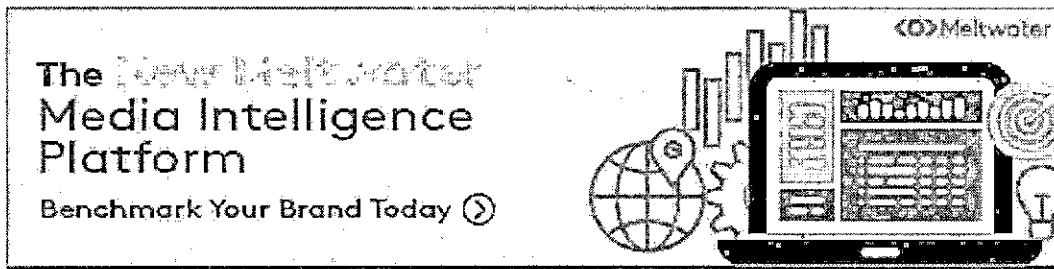
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WORDS MATCHED attorney general, Iowa

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### Guest: AG Miller's finding smacks of partisanship

Quad-City Times | 05/04/17 00:30

...thinking more about the office of lieutenant governor ever since state Attorney General Tom Miller's surprising announcement. His surprise ? In...

WORDS MATCHED Attorney General, attorney general, Tom Miller



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### Iowa Democrat Says Kim Reynolds Needs to Have Power to Choose Her Lieutenant

WHOTV.com | 05/03/17 21:01

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WORDS MATCHED Attorney General, Tom Miller



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## Editorial: Reynolds should listen to the attorney general

The Des Moines Register | 05/03/17 18:46

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WORDS MATCHED attorney general, Iowa



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## Former jail administrator charged with felony after allegedly stealing cash from inmates

The Muscatine Journal | 05/03/17 18:30

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WORDS MATCHED Attorney General, Iowa

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## University of Iowa discrimination case goes to jury

Sentinel-Tribune | 05/03/17 16:43

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*...public through the media. In summing up the state's defense, Iowa Assistant Attorney General George Carroll told jurors, "This case is not about...*

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## BC-US--Iowa-Athletics Trial, 2nd Ld-Writethru, US

AP (Hosted) | 05/03/17 16:22

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WORDS MATCHED Attorney General, Iowa



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## Obscure GOP-Based Regulatory Commission Might Determine Keystone's Fate

The Daily Caller | 05/03/17 14:50

*...the president of activist group Bold Alliance, which pushed Iowa's attorney general last year into investigating ExxonMobil following reports...*

WORDS MATCHED attorney general, Iowa

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AP (Hosted) | 05/03/17 14:14

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## Iowa Attorney General

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The Daily Iowan | 05/04/17 01:23

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### Prosecution witnesses testify in Tait Purk murder trial

TamaToledoNews.com | 05/04/17 00:00

*...being prosecuted by Tama County Attorney Brent Heeren and Assistant Iowa Attorney General Laura Roan. Purk is represented by public defenders...*

WORDS MATCHED Attorney General, Iowa



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### Des Moines speed cameras still issuing tickets, despite judge's ruling

The Des Moines Register | 05/03/17 20:16

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The Des Moines Register | 05/03/17 20:16

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WORDS MATCHED Attorney General, attorney general, Iowa

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### Grassley casts doubt on FBI credibility in political inquiries

KPVI News 6 | 05/03/17 19:30

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*...by the Justice Department came in a letter dated Tuesday. The Iowa Republican wrote to Deputy Attorney General Rod Rosenstein, asking that he...*

WORDS MATCHED Attorney General, Iowa



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### Former animal shelter director faces sentencing May 15

Oskaloosa | 05/03/17 19:05

*...in March was delayed, state prosecutors said. Scott Brown, an assistant attorney general with the state of Iowa, said Lindsey Nicole Sime, 30,*

WORDS MATCHED attorney general, Iowa

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**Blake, Nathan [AG]**

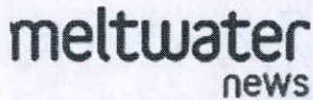
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**@AGIowa**



**jasonnobleDMR** @jasonnobleDMR

05/03/17 13:51

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## Iowa Attorney General



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zerohedge.com | 05/03/17 19:04

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05/03/17 15:06

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TheGazette.com | 05/03/17 12:41

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AP (Hosted) | 05/01/17 13:35

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The Des Moines Register | 05/03/17 20:16



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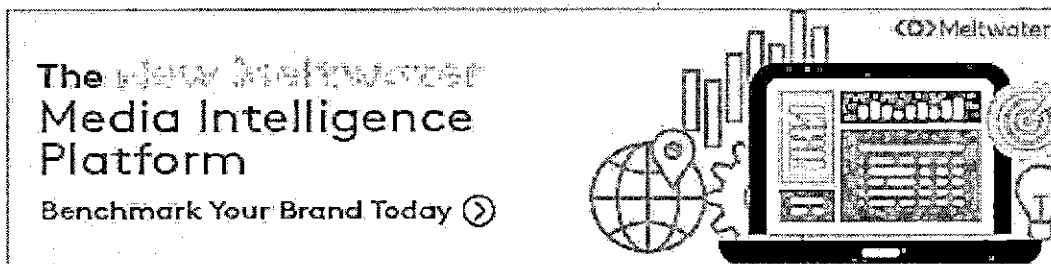
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### Tom Miller

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Quad-City Times | 05/04/17 00:30

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WORDS MATCHED Attorney General, attorney general, Tom Miller



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WHOTV.com | 05/03/17 21:01

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The Des Moines Register | 05/03/17 18:46

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### Former jail administrator charged with felony after allegedly stealing cash from inmates

The Muscatine Journal | 05/03/17 18:30

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Sentinel-Tribune | 05/03/17 16:43

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Iowa Attorney General



7 in 1 day

Tom Miller



1 in 1 day

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2 in 1 day



## Iowa Attorney General

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The Daily Iowan | 05/04/17 01:23

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### Prosecution witnesses testify in Tait Purk murder trial

TamaToledoNews.com | 05/04/17 00:00

*...being prosecuted by Tama County Attorney Brent Heeren and Assistant Iowa Attorney General Laura Roan. Purk is represented by public defenders...*

WORDS MATCHED Attorney General, Iowa



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### Des Moines speed cameras still issuing tickets, despite judge's ruling

The Des Moines Register | 05/03/17 20:16

*...the court stay the judge's order while they appeal the case. Iowa Attorney General Tom Miller wrote in a motion that cities have no reason to...*

WORDS MATCHED Attorney General, Iowa

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### Iowa GOP requests attorney general's documents on gubernatorial succession opinion

The Des Moines Register | 05/03/17 20:16

*Iowa GOP requests attorney general's documents on gubernatorial succession opinion Republicans ramped up political pressure against Iowa Attorney...*

WORDS MATCHED Attorney General, attorney general, Iowa

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### Grassley casts doubt on FBI credibility in political inquiries

KPVI News 6 | 05/03/17 19:30

[8 other sources...](#)

*...by the Justice Department came in a letter dated Tuesday. The Iowa Republican wrote to Deputy Attorney General Rod Rosenstein, asking that he...*

WORDS MATCHED Attorney General, Iowa

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### Former animal shelter director faces sentencing May 15

**Blake, Nathan [AG]**

**From:** Greenwood, Geoff [AG]  
**Sent:** Thursday, May 04, 2017 11:34 AM  
**To:** Blake, Nathan [AG]  
**Subject:** RE: 33 hits from Meltwater News

Yes. I added you to the list. You'll get an email every morning.

Stop by if you want your login name and password.

---

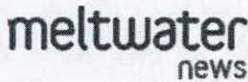
**From:** Blake, Nathan [AG]  
**Sent:** Thursday, May 04, 2017 8:08 AM  
**To:** Greenwood, Geoff [AG]  
**Subject:** Fwd: 33 hits from Meltwater News

Is this something we subscribe to?

----- Forwarded message -----

**From:** "[morningreport@meltwaternews.com](mailto:morningreport@meltwaternews.com)" <[morningreport@meltwaternews.com](mailto:morningreport@meltwaternews.com)>  
**Date:** Thu, May 4, 2017 at 8:03 AM -0500  
**Subject:** 33 hits from Meltwater News  
**To:** "Blake, Nathan [AG]" <[Nathan.Blake@iowa.gov](mailto:Nathan.Blake@iowa.gov)>

[Help Center | help@meltwater.com](#)



[Log In](#) [Help Center](#) [Contact Us](#)

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[Yes, I'm Happy!](#)  [No, Help me adjust.](#)

Report Overview		
AGENT	MEDIA TYPE	HITS
Iowa Attorney General	News	15 in 1 day
Tom Miller	News	7 in 1 day
Geoff Greenwood	News	1 in 1 day

**Blake, Nathan [AG]**

---

**From:** Greenwood, Geoff [AG]  
**Sent:** Monday, May 01, 2017 10:03 AM  
**Subject:** Miller to Release, Discuss AG Opinion on Gubernatorial Succession

**IOWA DEPARTMENT OF JUSTICE  
OFFICE OF THE ATTORNEY GENERAL**

**Thomas J. Miller, Attorney General**

[www.IowaAttorneyGeneral.gov](http://www.IowaAttorneyGeneral.gov)

CONTACT: Geoff Greenwood • Communications Director • 515-281-6699 • [geoff.greenwood@iowa.gov](mailto:geoff.greenwood@iowa.gov)

FOR IMMEDIATE RELEASE

May 1, 2017

**Media Advisory**

**Miller to Release, Discuss AG Opinion on Gubernatorial Succession**

*Formal attorney general legal opinion addresses whether lieutenant governor becomes governor, authority to appoint new lieutenant governor*

(DES MOINES, Iowa) Attorney General Tom Miller today will release a formal attorney general opinion, in response to a request by Sen. David Johnson, I-Ocheyedan, regarding gubernatorial succession.

**WHAT:** News conference

**WHO:** Attorney General Tom Miller

**WHERE:** Attorney General's Office, Hoover Building, Second Floor

**DATE:** TODAY – May 1, 2017

**TIME:** 1:30 p.m.

**CALL IN #:** 866-685-1580, conference code 515 281 4213 (\*6 to mute, #6 to unmute)

**NOTE:** The news conference will be streamed live at [youtube.com/agiowa](http://youtube.com/agiowa).

Raw HD video will be made available upon request. Send request to:  
[geoff.greenwood@iowa.gov](mailto:geoff.greenwood@iowa.gov).

###

**Blake, Nathan [AG]**

**From:** OCIO Hoover Barracuda <L2GW01@iowa.gov>  
**Sent:** Sunday, April 30, 2017 9:01 AM  
**To:** Blake, Nathan [AG]  
**Subject:** Spam Quarantine Summary - (6)



Office of the Chief Information Officer

**Spam Quarantine Summary**

Total inbound quarantined emails for nathan.blake@iowa.gov: 6 messages

The emails listed below are ones that have been placed in your quarantine digest since the last quarantine summary was sent.

Messages older than 30 days will be removed

Email Quarantined Since Last Notification (2017-Apr-24 15:00:52) 1 message		
From	Subject	Actions
Hal.Morris@oag.texas.gov	Re: ITT - Draft Letter to Trustee and Other Follow-up Items	<a href="#">Deliver</a>   <a href="#">Whitelist</a>   <a href="#">Delete</a>   <a href="#">View</a>

Previously Quarantined Email 5 messages		
From	Subject	Actions
ACassani@cablevision.com.ar	UPDATE :	<a href="#">Deliver</a>   <a href="#">Whitelist</a>   <a href="#">Delete</a>   <a href="#">View</a>
Joe.Bolkcom@legis.iowa.gov	Session Adjournment Looms - Medical Cannabis Bill Resurrected	<a href="#">Deliver</a>   <a href="#">Whitelist</a>   <a href="#">Delete</a>   <a href="#">View</a>
Joe.Bolkcom@legis.iowa.gov	Time to Pull the Plug on Lt. Governor Reynolds Medicaid Privatization Experiment	<a href="#">Deliver</a>   <a href="#">Whitelist</a>   <a href="#">Delete</a>   <a href="#">View</a>
amelie.vonkoczian@euroforum.com	Getting GDPR-ready — Interviews about the General Data Protection Regulation	<a href="#">Deliver</a>   <a href="#">Whitelist</a>   <a href="#">Delete</a>   <a href="#">View</a>
Joe.Bolkcom@legis.iowa.gov	Republican Created Budget Woes Continue - Where is the Medical Cannabis Bill?	<a href="#">Deliver</a>   <a href="#">Whitelist</a>   <a href="#">Delete</a>   <a href="#">View</a>

**DELETE ALL DISPLAYED EMAILS**

Click on the **Deliver** link to have that message delivered to your primary inbox.  
 Click on the **Whitelist** link to have that message delivered to your primary inbox and that sender whitelisted.  
 Click on the **Delete** link to remove that message from your quarantine.  
 Click on the **View** link to display that message in a new Message Details browser window.

[Manage your allowed / blocked list](#)

[Set quarantine notification intervals](#)

[View your entire Quarantine Inbox or manage your preferences.](#)

The European Commission has written to EU privacy regulators to express concern over their interpretation of the data portability clause in the General Data Protection Regulation. Specifically, the Commission appears to be worried that the regulators have interpreted too broad a scope for the GDPR's Article 20, David Meyer reports in this exclusive for The Privacy Advisor. The Article 29 Working Party issued guidelines earlier this month in which it said "the right to data portability covers data provided knowingly and actively by the data subject as well as the personal data generated by his or her activity." The guidelines went on to specify that this could include "observed data provided by the data subject by virtue of the use of the service or the device," such as the subject's search history, traffic data and location data – and even "raw data such as the heartbeat tracked by a wearable device."

[Full Story](#)

#### PRIVACY-ENHANCING TECHNOLOGY

##### Allon Bar: How to make privacy usable

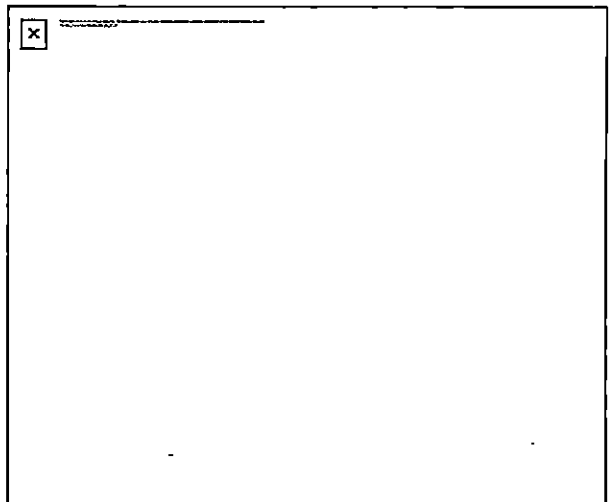
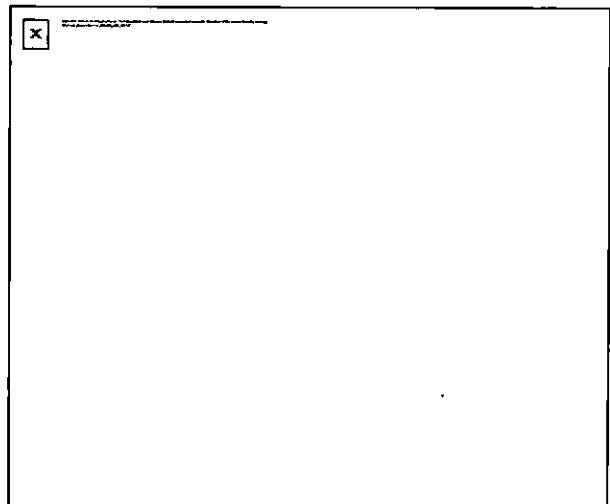
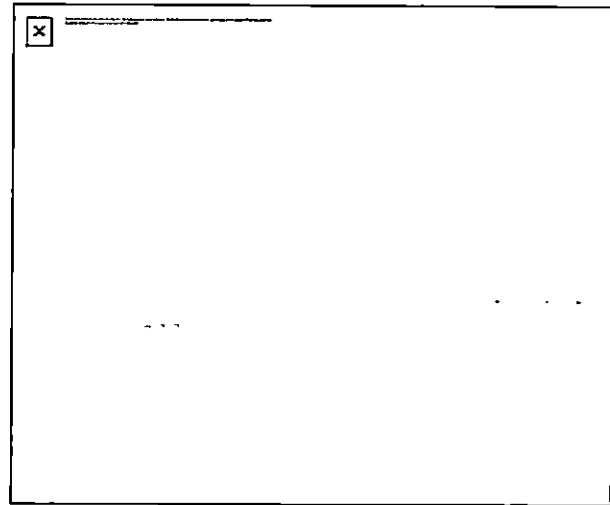
Helping to protect user privacy comes in many forms, whether through law, policy, or design, yet the link between design and policy is a strong one. "Coming from a human rights background," writes independent consultant Allon Bar, "I have become fascinated by the link between design and privacy." During the course of his work, Bar has found that "users are generally left in the dark about what tech companies do with their data." They also, he says, "have little control" of what is collected and used. In this post for Privacy Tech, Bar discusses "a few of the many ways in which design choices can enable different kinds of privacy approaches, focusing on informing users and giving them better control."

[Full Story](#)

#### PRIVACY LAW—GERMANY

##### German court upholds halt to Facebook-WhatsApp data sharing

The Hamburg administrative court refused to suspend an order made by [Hamburg Data Protection Commissioner Johannes Caspar](#)





regarding the data sharing agreement between Facebook and WhatsApp, ZDNet reports. Facebook sought to have the Hamburg court reverse Caspar's ruling to stop the data sharing agreement within Germany. The court shot down the social media company's request, with Facebook stating it will appeal the specific portion of the decision. "This is good news for the many millions of people who use the WhatsApp messenger service in Germany every day," said Caspar in a statement. "They are not defenceless." The court did rule Facebook does not have to immediately delete the data of German WhatsApp users it has already collected.

[Full Story](#)

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**Up-to-date breach notification laws in a single repository**

An innovative new tool developed in partnership between the IAPP and RADAR provides an efficient and streamlined way to stay current with complex and ever-changing data breach notification laws. Keep up with shifting jurisdictional requirements for regulatory compliance, stay informed of breach reporting obligations, and access current overviews of breach notification laws – including GDPR. Free for IAPP members.

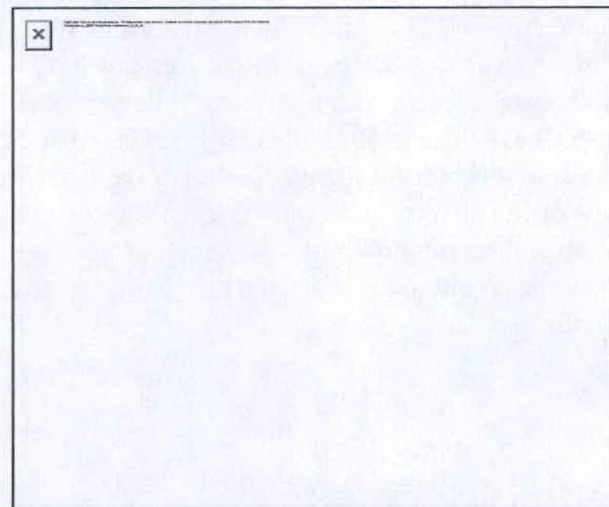
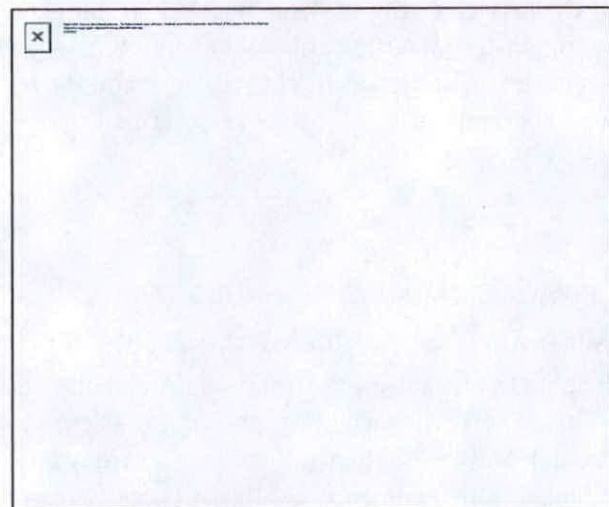
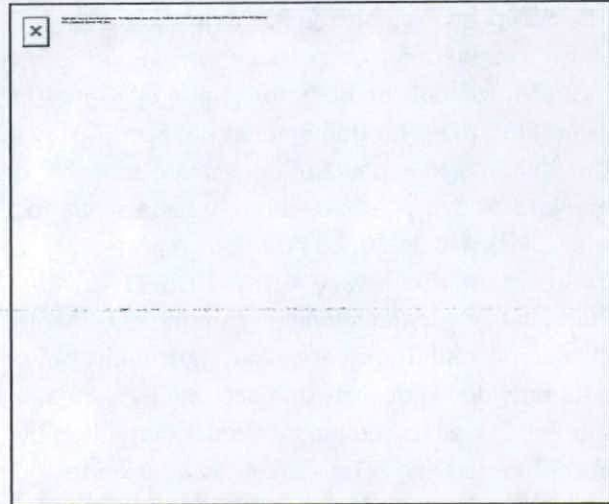
[Request this Free Tool](#)

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TELECOMMUNICATIONS—U.S.

**Coalition asks FCC to eliminate phone data retention rule**

A group of 38 technology, civil liberties and consumer rights organizations have written [a letter to the Federal Communications Commission](#) asking the agency to eliminate a rule requiring phone companies to hold onto call records for 18 months, Morning Consult reports. The letter, addressed to FCC Chairman Ajit Pai among others, said the rule "violates customers' privacy rights by requiring carriers to retain sensitive information about millions of Americans who are under no suspicion of wrongdoing." The groups said the data retention rule is outdated, as few carriers still use per-call billing. Meanwhile, the Federal Trade Commission is [seeking to overturn a federal appellate court](#)



ruling blocking the agency from prosecuting AT&T for allegedly misleading customers.

[Full Story](#)

**PRIVACY RESEARCH—U.S.**

**Survey: Consumers believe AI could benefit privacy, cybersecurity**

A survey released by PwC finds nearly two-thirds of American consumers are accepting of advances in artificial intelligence and machine learning, CyberScoop reports. Of the respondents, 63 percent believe AI will “help solve complex problems that plague modern societies,” with 68 percent citing cybersecurity and privacy as specific areas where AI could be beneficial. “Despite the doomsday scenarios painted by Hollywood and news media, most consumers are optimistic about AI’s potential for good,” the report states. Concerns do surround the use of AI, as 46 percent said AI will harm individuals by taking away jobs, while 23 percent said the technology will have more serious negative implications.

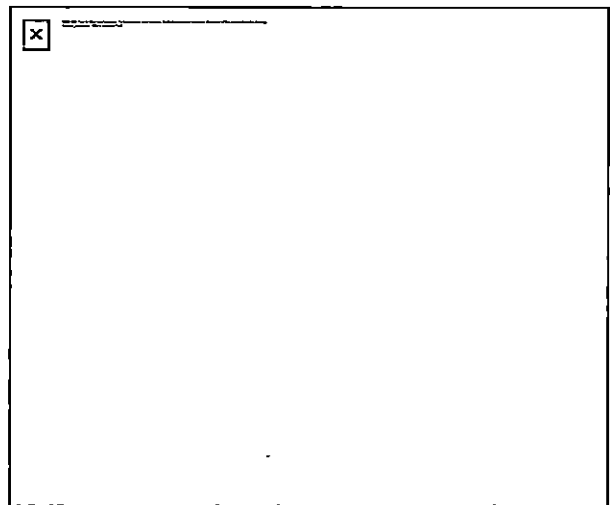
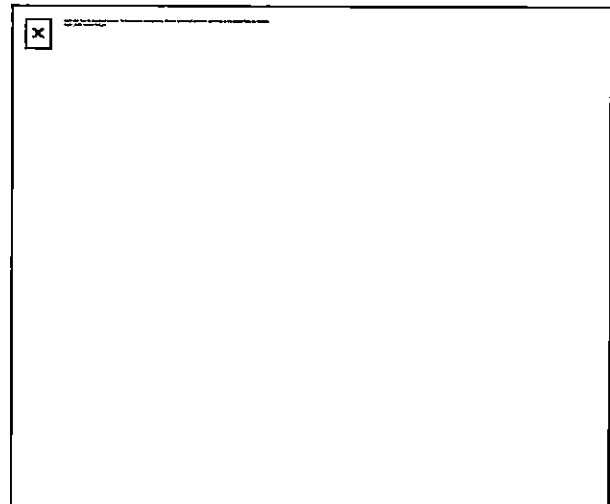
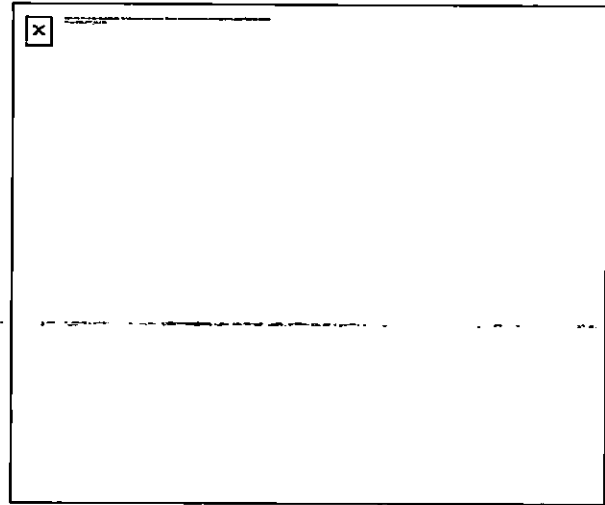
[Full Story](#)

**PRIVACY RESEARCH**

**Report: 1.1 billion identities stolen in 2016**

Symantec’s Internet Security Threat Report found 7.1 billion identities have been compromised in data breaches around the world over the past eight years, Livemint reports. In 2016, nearly 1.1 billion identities were stolen across the globe. The 2016 number is a large increase from the 563.8 million stolen in 2015, despite the fact fewer data breaches occurred last year. The U.S. suffered the largest amount of data breaches in 2016 by country, having suffered 1,023 of the 1,209 incidents recorded. Ransomware was found to be a big problem around the world, with an average of 35,000 attacks occurring during the beginning of 2016, with an increase to more than 40,000 by the end of the year.

[Full Story](#)

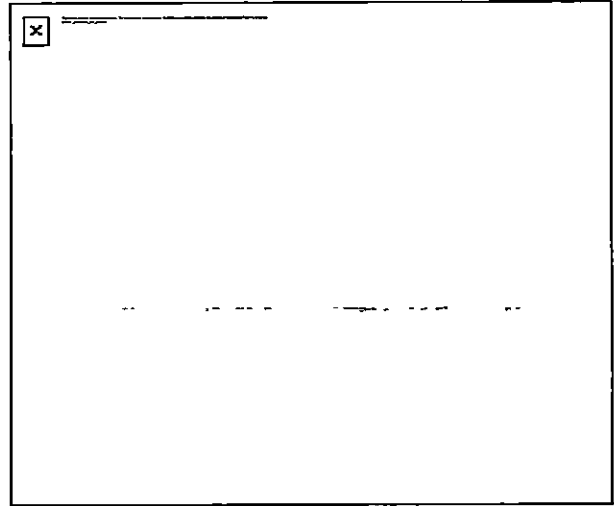


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### New half-day local workshops for privacy pros focused on tools to operationalize compliance!

A new global series of free local workshops has been announced to meet the demands of privacy professionals requesting focused, hands-on time diving into the operational details, best practices, and tools associated with GDPR, privacy program management, DPIA, and Data Mapping. These workshops qualify for 4.5 CPE credit hours.

Schedule, detailed agenda and registration available at [SmartPrivacy.com](http://SmartPrivacy.com)

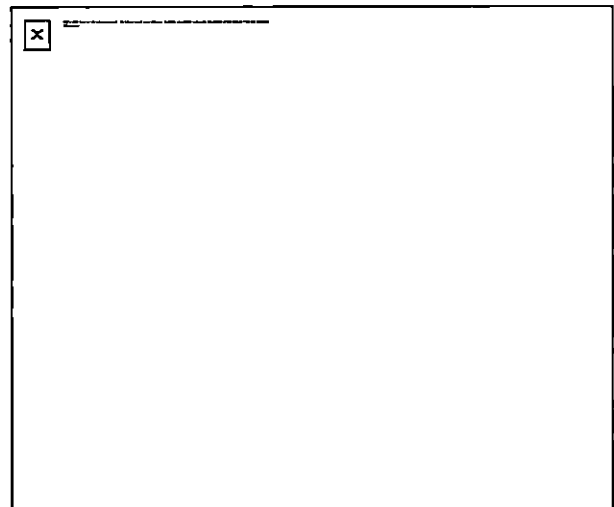


### PRIVACY COMMUNITY—U.S.

#### Doss to join Senate investigation into Russia's involvement in 2016 election

The National Security Agency's former head of intelligence law April Doss, CIPP/US, has been tapped to work on the Senate Intelligence Committee's investigation into whether Russia interfered with the 2016 U.S. presidential election, Business Insider reports. Doss, who currently acts as the chair to [Saul Ewing, LLP](#)'s cybersecurity and privacy practice, will join the committee on May 1. While Doss has been hired to work on the investigation, a Senate source said she will not be "leading the probe." Doss said, "The SSCI investigation is critically important, and it'll be a privilege to return to public service in this role."

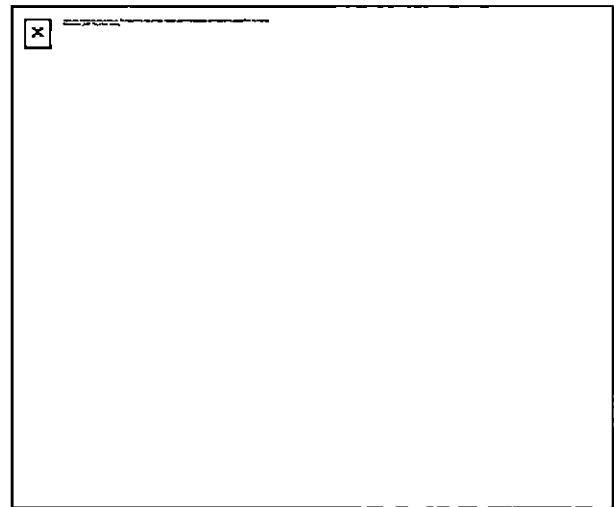
[Full Story](#)



### BIG DATA

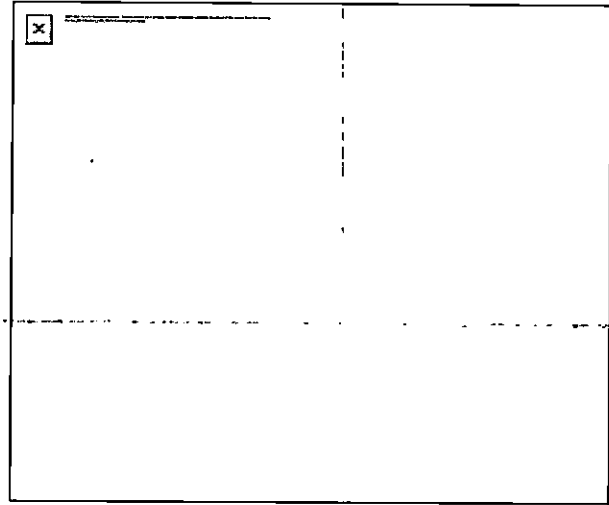
#### Are Unroll.me disclosures symptomatic of larger privacy policy problem?

After reports indicating email service Unroll.me had sold information from users' Lyft receipts to Uber, backlash has been swift – and rightfully so, some argue in a report from The Washington Post. While Unroll.me's privacy policy reads that it "may collect, use, transfer, sell, and disclose non-personal information for any purpose," CEO Jojo Hedaya apologized for not being "explicit" enough about the company's policies. Privacy analysts contend the situation exemplifies many issues with privacy policies. "There's a little Silicon



Valley groupthink at work here: They think users understand more about how the data industry works than they do," said the University of Minnesota's William McGeveran, CIPP/US. Unroll.me's situation indicates that privacy policies must be on the "floor, not the ceiling" for companies' disclosures, he added. (Registration may be required to access this story.) *Editor's Note: Jedidiah Bracy, CIPP, discusses the recent privacy scuttle around Unroll.me and Uber in a post for Privacy Tech.*

[Full Story](#)

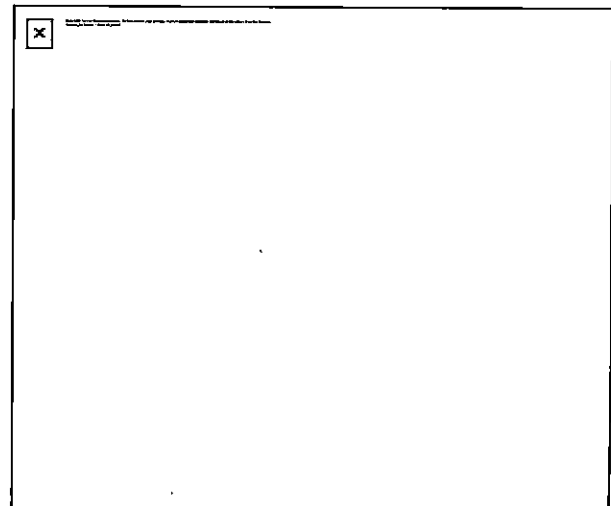


**INTERNET OF THINGS—U.S.**

**Police use Fitbit data in arrest warrant**

Connecticut law enforcement have used Fitbit data in an arrest warrant for a man suspected of killing his wife, as the health tracking device logged steps after he said she had died, the New York Daily News reports. While the suspect, Richard Dabate, "maintains his innocence," he faces charges of "murder, tampering with evidence and making a false statement charges" regarding the shooting that killed his 39-year-old wife, Connie Dabate, on Dec. 23, 2015, the report states. Debate has claimed that a masked assailant was responsible for the crime. *Editor's Note: [Privacy Perspectives](#) recently touched upon the inevitable rise in government access to internet-of-things devices.*

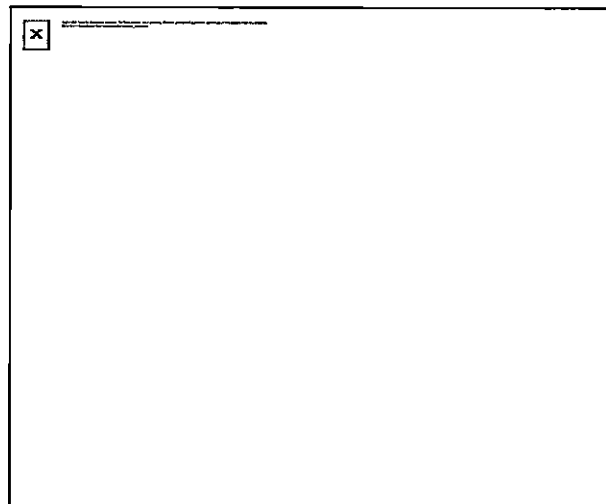
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**Sponsored Content**

**New Cybersecurity Litigation Treatise**

[Cybersecurity Litigation: Consumer Data Protection and Privacy](#) is a new 700-page treatise containing in-depth discussion of the liability facing companies, boards of directors and other employees responsible for cybersecurity and the recent cases applying those principles. It also includes a summary of the statutory schemes and governmental guidance that govern or advise on this emerging area of law, as well as special chapters focusing on the financial services and health care industries.



Available Here

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## INTERNET OF THINGS—U.S.

**FTC receives complaint from Access Now over sex toy security**

Access Now has filed a formal complaint with the Federal Trade Commission alleging sex toy company Svakom's internet-connected device has "grossly inadequate security," Access Now announced in a press report. The toy in question is the "Siime Eye," a vibrator with embedded camera "that can be controlled via an app on a smartphone, tablet, or computer," the report states. "Selling an easily hackable sex toy is the epitome of an unfair and deceptive trade practice," said Access Now U.S. Policy Manager Amie Stepanovich. "The Federal Trade Commission must send a clear message to the adult Internet of Things industry that bad security will not be tolerated." These security issues are particularly egregious considering the nature of the device, spurring "legal claims of rape, harassment, or assault," the report adds.

Full Story

## INFOSECURITY—U.S.

**Conference tackles privacy, security and sex trafficking**

The increase of sex traffickers successfully using encryption and other digital tools to cover their tracks has added a new level of tension to the privacy and security debate, law enforcement and government officials said at the Thomson Reuters Foundation's Trust Conference/America Forum, Reuters reports. Encryption "has in some cases very significantly adversely affected our ability to solve cases and to get justice for victims," said New York County District Attorney Cyrus Vance. "We want our privacy, but we also want to make sure that where criminals are involved, there's going to be a way to solve the crimes." Human Rights Watch Executive Director Ken Roth countered that while protecting and saving victims was important, weakening encryption to do so would just create

## PLATINUM PLUS MEMBERS

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- » Cisco
- » Deloitte
- » Ernst and Young
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- » Merck
- » Microsoft Corporation
- » OneTrust
- » Oracle
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- » MetLife
- » Nike
- » Protiviti
- » Prudential
- » Quintiles IMS
- » Rackspace US, Inc.
- » Stoel Rives
- » TD Bank
- » Target

more loopholes for traffickers to exploit.

[Full Story](#)

- » The Boeing Co.
- » Truste
- » United Health Group
- » Veritas
- » Vodafone Group Services Limited
- » Yahoo, Inc.

**PRIVACY LAW—U.S.**

**Real ID bill passes Maine Senate**

The Maine Senate has given final approval to the [Real-ID bill](#), and it now awaits Governor Paul

LePage's signature, the Portland Press Herald reports. The bill green-lights the creation of "next-generation driver's licenses and state-issued identification cards" that meet Real ID standards and allow Maine citizens to use their licenses to get through airport security and enter federal buildings. The bill also affords an opt-out for those who don't want to receive a Real-ID compliant license or card, the report states. "In my communication with the Department of Homeland Security, I've been assured that passage of this law will end these punitive enforcement actions and free Maine veterans and other residents to go about their business," said Sen. Bill Diamond of the bill's success.

[Full Story](#)

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**SAN FRANCISCO STATE OF MIND**

Get in the back-to-school spirit this fall with a privacy training class in San Francisco. There's an undeniable need for professionals who know the issues and impacts of data privacy. Register now to boost your knowledge and career.

**U.S. Private-Sector Privacy Training  
September 26-27, San Francisco, CA**



**KNOWLEDGENETS**

Network with local members while earning



Nathan Blake

5/8/2017 2:52 PM

free CPE credits at IAPP KnowledgeNet Chapter meetings. See all upcoming chapter activities around the world!

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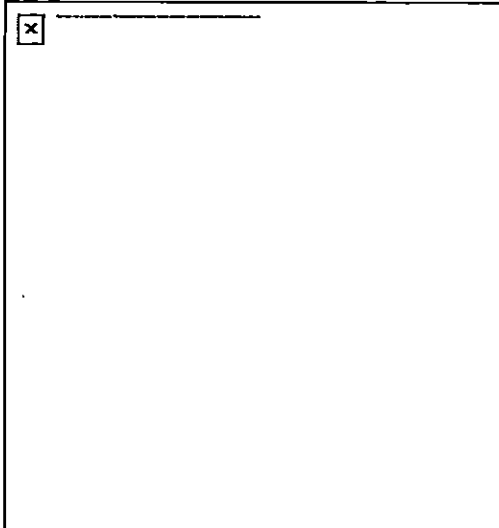
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**Blake, Nathan [AG]**

**From:** Terri L. Bennett <tbennett@iowalaw.org>  
**Sent:** Tuesday, April 25, 2017 9:28 AM  
**To:** Blake, Nathan [AG]  
**Subject:** Iowa Legal Aid's 40th Anniversary

## Iowa Legal Aid:

Celebrating 40 Years of Seeking Justice and Improving Lives

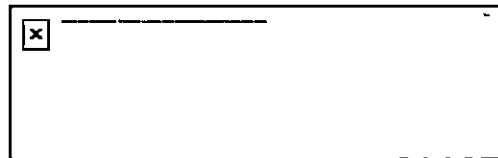


### Equal Justice After Hours 2017

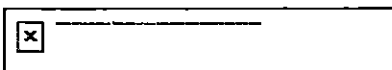
*Equal Justice After Hours*, the Iowa Legal Aid Foundation's signature annual fundraising event, was held on March 30, and attended by over 300 people. Photos and the program from the event can be found on the Iowa Legal Aid Foundation's website at [www.iowalegalaidfoundation.org](http://www.iowalegalaidfoundation.org).

Preliminary figures show that nearly \$200,000 was raised through sponsorships, ticket sales and donations at the event. This total includes \$25,000 raised through a dollar-for-dollar challenge issued by members of the Iowa State Bar Association's Board of Governors.

### THANK YOU TO THE PREMIER SPONSORS OF EQUAL JUSTICE AFTER HOURS 2017:



**MICHAEL & BARBARA GARTNER**





Nathan Blake

5/8/2017 2:52 PM

Remove my name from all future email correspondence

*Address postal inquiries to:*

Iowa Legal Aid

1111 9th Street, Suite 230

Des Moines, IA 50314

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### Upcoming Events

- April 28:** PCBA Spring CLE
- May 2:** Bench & Bar Spring Social
- May 9:** PCBA Law Day Luncheon
- June 9:** PCBA Golf Outing
- June 13:** PCBA Law Clerk Luncheon

### Meet Your Representatives

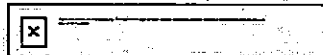
Officers

Board of Directors

Board of Governors  
Committees

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### On the Move

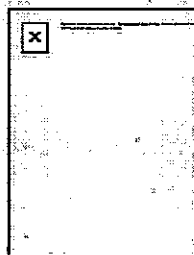
**Shayla L. McCormally** and **Maureen C. Cosgrove** have formed McCormally & Cosgrove, P.L.L.C. in Des Moines.

Shayla maintains a general practice, including civil litigation, family law, surrogacy and personal injury. She earned her J.D. from the University of Iowa College of Law in 2007. Her previous experience includes working at Wandro & Associates, P.C. and as a trial attorney with the United States Department of Justice.



Shayla McCormally

Maureen maintains a general practice that includes litigation and in the areas of family personal injury, and earned her J.D. from School of Law in 2009. a corporate attorney, an Iowa Attorney General's associate at the Baer



Maureen Cosgrove

transactional work law, business law, probate. She Hamline University Maureen has been assistant with the Office, and an Law Office in Des

sense that I am just spinning my wheels trying to keep juggling all the balls in the air. PRESSURE.

I have learned that April, coincidentally, is Stress Awareness Month. Recognized since 1992, each April, health care professionals and health promotion experts across the country join forces to increase public awareness about both the causes and cures for our modern stress epidemic. We also see various tornado and severe weather drills at this time each spring, to try to prepare us for the possibility of a natural disaster. But what prepares us to deal with the PRESSURE of the practice of law?

While I'm sure each occupation has its stressors, we know all too well the mounting pressure we face in our practice, whether private practice, in house, government, or elsewhere. The demand for faster, less costly legal advice, coupled with the blessing and curse of technology that allows us to be connected and accessible 24/7 sends thousands of lawyers each year into a tailspin of stress and pressure. Add in family, health, community stressors and even the uncertainty of our national security and changes in politics and government-it's a recipe for disaster that no April tornado drill or disaster preparedness training can touch.

It is no surprise to scan the Iowa Supreme Court's disciplinary decisions and find that many lawyers who find themselves in front of the Grievance Commission have succumbed to the pressure and sought solace in controlled substances, only deepening the downward spiral. The ABA reports that more than 50% of all disciplinary cases involve impaired lawyers. Lawyers abuse alcohol at a 50-80% higher rate than the general population.

Although we often refer to ourselves



Moines, Iowa



Brent Cashatt



Stacey Warren

**Brent Cashatt** and **Stacey Warren** have announced their new law practice: CashattWarren Family Law, a boutique law firm specializing in complex divorces, child custody issues, and situations with large scale or complicated asset management and separation. A husband/wife combination, Cashatt and Warren are the only two lawyers in the state of Iowa recognized by a worldwide association of practicing lawyers, the International Academy of Family Lawyers, as the most experienced and skilled family law specialists in their respective countries. In addition, both Cashatt and Warren are recognized Fellows in the American Academy of Matrimonial Lawyers. Cashatt is currently serving as the Vice President of the Board of Governors and has chaired the Admissions Committee. Cashatt and Warren are in the middle of a build-out of their office space in the East Village.



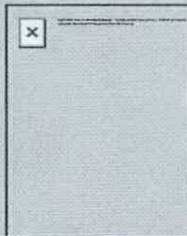
Paige Thorson



Colleen MacRae

**Paige Thorson, Colleen MacRae,** and **Rebecca Moore** have joined Nyemaster Goode's Des Moines office.

Paige is in Nyemaster's Government Affairs Department representing clients before the Iowa Legislature, Governor's office, and state agencies. Her work as legislative counsel involves a broad spectrum of public policy issues including health care, insurance, economic development, utilities, and renewable energy. Prior to joining the firm, Paige served in various positions in Iowa state government for the Department on Aging, Office of the State Long-Term Care Ombudsman, and Department of Human Services. Most recently, she served as the policy advisor and legislative liaison for the Iowa Department of Human Services. Paige received her J.D. from Drake University in 2010. She can



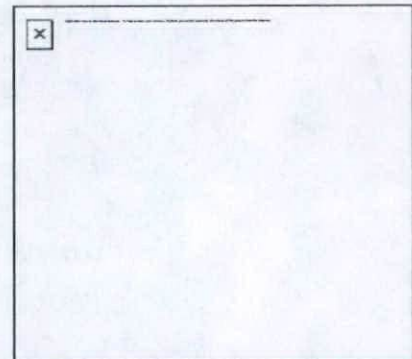
Rebecca Moore

as "attorneys and counselors," I am not proclaiming to be one who can expertly help my fellow lawyers deal with such pressure. Sure, there are the usual tips that seem to be window dressing and overly obvious:

[Read more ...](#)

### Hail our wing-eating hero!

Our  
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Nathan Overberg rolls up his sleeves and prepares to beat the wing-eating competition.

has proved to be a wing eater extraordinaire - and an awesome fundraiser to boot! Nathan took top honors at the recent charity wing-eating Eat-a Thon competition at the Drake neighborhood Jethro's BBQ and raised some \$3,300 for the PCBA Volunteer Lawyer's Project.

Thank you to everyone who donated and to Nathan for being such a good sport to eat so many wings! [Click here to see photos from the event.](#)

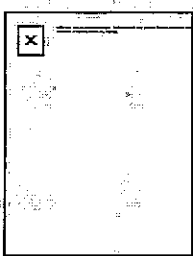
### Help us honor our Law Day winners

be contacted at (515) 283-8194 or [pthorson@nyemaster.com](mailto:pthorson@nyemaster.com).

Colleen is in Nyemaster's Business, Finance, and Real Estate Department where she assists clients with the formation of businesses, corporate restructuring, and contract drafting and negotiations. She provides counseling and transactional services to financial institutions in connection with regulatory compliance, operations and a variety of acquisitions. Colleen's practice also includes real estate leasing and economic development and prior to joining the firm, Colleen represented clients in environmental matters including permitting, land use, and water quality. She can be contacted at (515) 283-8175 or [cmacrae@nyemaster.com](mailto:cmacrae@nyemaster.com).

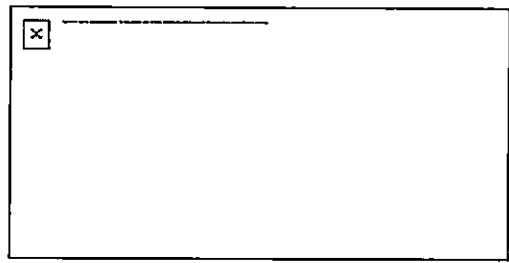
Rebecca is in Nyemaster's Tax, Estate Planning, and Employee Benefits Department. Rebecca's practice includes assisting clients with estate planning, trust and estate administration, and tax issues. Before joining Nyemaster, she was a partner at Buchanan law office in Algona, Iowa. Rebecca obtained her undergraduate degree in Political Science and Sociology at Iowa State University. She can be contacted at (515) 283-3175 or [rmoores@nyemaster.com](mailto:rmoores@nyemaster.com).

International law firm **Dorsey & Whitney LLP** has opened an office in Dallas, Texas, to bring on a team of Dallas-based lawyers who are practitioners in mezzanine finance, private equity and a broad range of other corporate finance, M&A and securities work. With more than 530 lawyers worldwide, Dorsey now has 14 offices strategically located across the United States, three in China, two in Canada and one in London.



Allison Kerndt

Nyemaster Goode, P.C. has announced that **Allison E. Kerndt** has joined the firm as a shareholder in its rapidly growing Intellectual Property Department. Allison focuses her practice on advising clients on issues related to the management of their intellectual property portfolios. Her experience spans a wide range of technical areas, including pharmaceutical, chemical, and cosmetic arts, biomedical devices, electronic devices, and business methods. She is experienced in the preparation and prosecution of patent and trademark applications and is registered to practice before the United States Patent and Trademark Office. Allison received her J.D., with distinction, from The University of Iowa College of Law in 2005. She has more than a decade of experience in intellectual property, which includes a judicial clerkship with the United States Court of Appeals for the Federal Circuit, the court that hears appeals of all patent litigation in the country. Allison can be reached at (515) 283-3193 or [akerndt@nyemaster.com](mailto:akerndt@nyemaster.com).



The PCBA and ARAG are proud to sponsor our annual Law Day competition to give Polk County K-12 students an opportunity to showcase their creative talents, learn about the law and have the opportunity to win prizes! This year's competition included coloring, poster, and essay categories for kindergarten through fifth grade students in Polk County; and visual arts, music and performing arts, essay, and poetry categories for sixth through twelfth grade students.

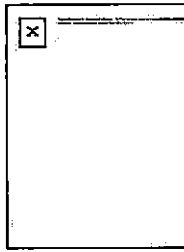
This year's theme, *The Fourteenth Amendment: Transforming American Democracy*, provided the opportunity to explore the many ways that the Fourteenth Amendment has reshaped American law and society.

Student winners will be honored at the PCBA & ARAG Law Day Awards Luncheon on **May 9** at the Downtown Marriott Hotel featuring keynote speaker The Hon. Romonda Belcher, District Associate Judge, Fifth Judicial District. [Click here for details and to download the reservation form.](#)

### Consider becoming a Law Day sponsor

Please consider supporting our Law Day program and enriching the experience for Polk County area students. For just \$100, you or your firm can sponsor a winning student,

**Christopher J. Jessen** has joined Belin McCormick, P.C. as an associate in the litigation practice group. Christopher will handle a broad range of litigation matters with a particular emphasis on complex commercial litigation. He joins the law firm after serving as the judicial clerk for the Honorable Christopher McDonald of the Iowa Court of Appeals. Christopher is a 2016 graduate of the Drake University Law School where he earned Order of the Coif recognition, graduating with highest honors. He was Research Editor of the *Drake Law Review*.

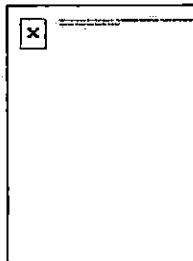


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Christopher Jessen

the student's teacher, and the student's parent or parents. Sponsors may also sit with the winning students at our Law Day luncheon, as space allows, and they will be recognized in the written program. [Click here for details.](#)

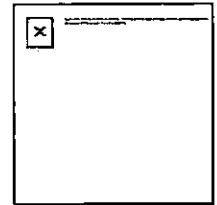
### Member Spotlight: Who will be next?

**Rob Poggenklass** has joined the staff of Iowa Legal Aid's Central Iowa Regional Office. He is a 2010 graduate of William & Mary School of Law. Originally from Iowa, Rob returned to the state after working with the Public Defender's office in Newport News, Virginia, and the American Civil Liberties Union of Virginia.

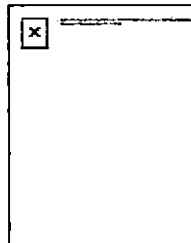


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Rob Poggenklass

The PCBA Membership Committee is accepting nominations for future "Member Spotlight" features. Please email your nominations to Maggie Hanson at [maggiehanson@davisbrownlaw.com](mailto:maggiehanson@davisbrownlaw.com).



**Kristie Kunstman-Stern** has been hired as a Staff Attorney in Iowa Legal Aid's Central Iowa Regional Office. She is a 1997 graduate of the University of Dayton School of Law in Dayton, Ohio. Prior to joining the staff of Iowa Legal Aid, Ms. Kunstman-Stern was the Director of Legal Services at the Center for Law & Social Work in Chicago, Illinois. She has also worked with the Office of the Public Guardian in Chicago.

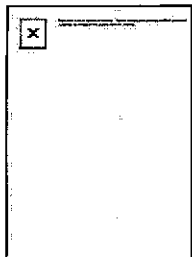


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Kristie Kunstman-Stern

### Something for everyone at Spring CLE

You won't want to miss our Spring General Practice CLE on **Friday, April 28**, at the Downtown Marriott Hotel, where a wide variety of important topics will be covered.

### Kudos



David Luginbill

Attorney **David Luginbill** has become a Fellow of the American College of Trial Lawyers, one of the premier legal associations in North America. The induction ceremony took place recently before an audience of approximately 600 persons during the 2017 Spring Meeting of the College in Boca Raton, Florida. David is a partner in the firm of Ahlers & Cooney, P.C. With 40 years of litigation experience, he has lead counsel experience trying

complex and difficult high-stakes litigation and routinely handles litigation through trial and/or appeal for clients in a wide range of litigation matters. He has represented national and international clients, as well as clients located in Iowa. David received his law degree from Drake University.

This event is FREE for current members, but there is a \$25 charge for printed materials (note that the materials will also be posted in the Members Only area of our website following the event). We have received approval for 7.5 State CLE credit hours with 1 hour Ethics and 1 hour Federal credit.

[Click here to download the registration form and the agenda.](#)

**You are cordially invited**

As reported in the February 15, 2017 issue of the *Bond Buyer's Midwest Yearend Review*, **Ahlers & Cooney, P.C.** ranked No. 1 in Iowa for Bond Counsel: Competitive Issues for 2016, with \$1,599,700,000 in total issuance. See: [http://cdn.bondbuyer.com/media/pdfs/BB021517\\_Mid\\_West.pdf](http://cdn.bondbuyer.com/media/pdfs/BB021517_Mid_West.pdf). With one exception, Ahlers & Cooney, P.C. has led the state of Iowa as bond counsel on competitive issues since 2006.

**Don't miss an opportunity to share your news and special announcements with fellow PCBA Members! [Click here.](#)**

The PCBA Bench & Bar Committee invites you to attend our spring social on **Tuesday, May 2**, from 4:30 to 7:30 p.m., at the ISBA Conference Center, 625 East Court Avenue in Des Moines. Please join us in recognizing the newly appointed judges. Complimentary Hors d'Oeuvres and beverages will be served.

### **You won't want to miss June luncheon**

Join us on **Tuesday, June 13**, at noon for our annual law clerk luncheon. Our speakers are Pat McNulty from Greffe & Sidney, PLC and Theresa Weeg, Iowa Attorney General's Office (retired) who will share their experiences working with the International Criminal Tribunal for the former Yugoslavia.

The luncheon will be held at the Wakonda Club, 3915 Fleur Dr., in Des Moines, and the cost is \$25 with advance reservation and \$27 at the door. Please note that seating is limited and we may not be able to accommodate walk ins, so be sure to make your reservation early. [Click here for complete details and a reservation form.](#)

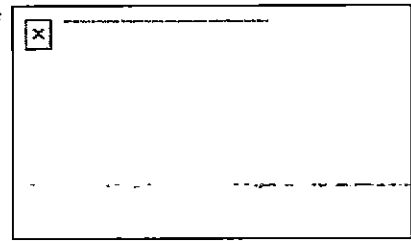
### **Get the latest Courts phone chart**

The updated Polk County Court phone chart has just been released and we have made it available to PCBA members on our website. To get the latest court room assignments, phone numbers, and court attendant and court reporter contacts for each judge, [just click here.](#) Member login required.



### Our box office is now open

One of the many benefits of belonging to the



Polk County Bar Association is access to discounted tickets on top-quality Broadway productions at the Des Moines Civic Center. Each year, we purchase season tickets - and we will also buy group tickets if there are enough people interested for a particular show - and we pass the savings on to you!

Take a look at the shows listed below. If you are interested in attending, just email [Sonja Diener](mailto:SonjaDiener) and let her know which shows and how many tickets for each show you would like. You don't have to buy tickets for every show - you can pick and choose. This is not an obligation to buy. It just gives us an idea of how many group tickets, in addition to the season's tickets, we will need to buy. If you have questions, just call our office at (515) 697-7880.

#### **Willis Broadway series tickets**

All shows are at 7:30 p.m. on a Thursday. \$73.50 each:

Oct. 12, 2017 - *Something Rotten*

Nov. 2, 2017 - *The Color Purple*

Dec. 7, 2017 - *Waitress*

Feb. 22, 2018 - *On Your Feet! The Emilio & Gloria Estefan Musical*

April 5, 2018 - *The Humans*

Please note that *Hamilton* is SOLD OUT. All the tickets that we can receive are spoken for. We hope to be able to buy more tickets, but that

is not guaranteed. If you would like to be put on our very long list of people interested in tickets, just send an email to [sdiener@pcbaonline.org](mailto:sdiener@pcbaonline.org). No more than three tickets per person please. And again, there is no guarantee that we will be able to buy more tickets.

### **Add On Shows**

All shows are at 7:30 p.m. We will buy these only if enough people are interested. We don't know the price or location of seats yet.

Friday, Jan. 26, 2018 - *Stomp*

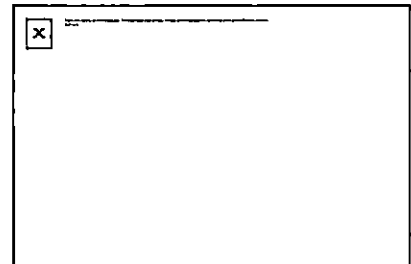
Friday, March 9, 2018 - *Chicago*

Thursday, April 19, 2018 - *Les Miserables*

Saturday, May 12, 2018 - *Leslie Odom Jr. in Concert with the Des Moines Symphony*

### **Golf with us for a good cause**

It's time to dust off those golf clubs and



join us for the PCBA's annual Bench and Bar Golf Outing to benefit the Volunteer Lawyers Project. This year's event will be held on **Friday, June 9**, at the Waveland Golf Course in Des Moines. Registration begins at noon with a shotgun start at 1 p.m.

If you register before May 6, you can take advantage of our early bird special and pay only \$100 per person, which includes green fees, cart, and dinner following golf. You can also order a box lunch for \$10.



[Click here for details and to download the registration form.](#)

### **Why not become a golf sponsor?**

This year, the PCBA Volunteer Lawyers Project is offering two sponsorship levels for our Bench & Bar Golf Tournament. The Gold level is an exclusive hole sponsorship which includes one large sign at each hole and one Foursome as part of the package. The cost is \$1,000. Only 18 Gold sponsorships are available. The Silver level sponsorship is \$500 and includes signage on display at the tournament starting box.

[Click here for sponsorship details](#) and [click here for a sponsorship invoice.](#)

### **Notice of Magistrate vacancies**

There are nine magistrate vacancies in judicial election district 5-C (Polk County) as a result of the July 31, 2017 expiration of the terms of office of the six current magistrates and the allocation of three additional positions to Polk County. The term of office of a magistrate is four years. The terms of office of the magistrates appointed to fill these vacancies will begin on August 1, 2017 and expire on July 31, 2021. Appointments to fill these vacancies will be made on or before June 1, 2017. The deadline for submitting applications is Tuesday, May 2, at 4 p.m. [Click here for complete details.](#)

### **See what you've missed**

The PCBA monthly luncheons are a great way to network, keep on top of current events, and get up close and personal with Iowa movers and shakers. Recent speakers have included The Honorable Mark Cady

**Blake, Nathan [AG]**

**From:** OCIO Hoover Barracuda <L2GW01@iowa.gov>  
**Sent:** Saturday, April 15, 2017 9:01 AM  
**To:** Blake, Nathan [AG]  
**Subject:** Spam Quarantine Summary - (8)



Office of the Chief Information Officer

**Spam Quarantine Summary**

Total inbound quarantined emails for nathan.blake@iowa.gov: 8 messages

The emails listed below are ones that have been placed in your quarantine digest since the last quarantine summary was sent.

Messages older than 30 days will be removed

Previously Quarantined Email: 8 messages		
From	Subject	Actions
Joe.Bolkcom@legis.iowa.gov	Session Adjournment Looms - Medical Cannabis Bill Resurrected	<a href="#">Deliver</a>   <a href="#">Whitelist</a>   <a href="#">Delete</a>   <a href="#">View</a>
Joe.Bolkcom@legis.iowa.gov	Time to Pull the Plug on Lt. Governor Reynolds Medicaid Privatization Experiment	<a href="#">Deliver</a>   <a href="#">Whitelist</a>   <a href="#">Delete</a>   <a href="#">View</a>
amelie.vonkoczian@euroforum.com	Getting GDPR-ready — Interviews about the General Data Protection Regulation	<a href="#">Deliver</a>   <a href="#">Whitelist</a>   <a href="#">Delete</a>   <a href="#">View</a>
Joe.Bolkcom@legis.iowa.gov	Republican Created Budget Woes Continue - Where is the Medical Cannabis Bill?	<a href="#">Deliver</a>   <a href="#">Whitelist</a>   <a href="#">Delete</a>   <a href="#">View</a>
Joe.Bolkcom@legis.iowa.gov	Republican Agenda: Driving in Reverse	<a href="#">Deliver</a>   <a href="#">Whitelist</a>   <a href="#">Delete</a>   <a href="#">View</a>
amber@title4services.us	Programs Available Iowa State Employees	<a href="#">Deliver</a>   <a href="#">Whitelist</a>   <a href="#">Delete</a>   <a href="#">View</a>
Joe.Bolkcom@legis.iowa.gov	Branstad-Reynolds Budget Crisis Looms	<a href="#">Deliver</a>   <a href="#">Whitelist</a>   <a href="#">Delete</a>   <a href="#">View</a>
amelie.vonkoczian@euroforum.com	Prepare yourself for the implementation of GDPR	<a href="#">Deliver</a>   <a href="#">Whitelist</a>   <a href="#">Delete</a>   <a href="#">View</a>

**DELETE ALL DISPLAYED EMAILS**

Click on the [Deliver](#) link to have that message delivered to your primary inbox.  
 Click on the [Whitelist](#) link to have that message delivered to your primary inbox and that sender whitelisted.  
 Click on the [Delete](#) link to remove that message from your quarantine.  
 Click on the [View](#) link to display that message in a new Message Details browser window.

[Manage your allowed / blocked list](#)

[Set quarantine notification intervals](#)

[View your entire Quarantine Inbox or manage your preferences.](#)

**Blake, Nathan [AG]**

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**From:** Gosnell, Kathi [AG]  
**Sent:** Friday, April 14, 2017 3:09 PM  
**To:** Whitney, Jessica [AG]; Blake, Nathan [AG]  
**Subject:** RE: Corruption In A Caucus Town?

Thanks for the heads up. Mr. Huntsman has been a walk-in in the past and we have two education complaints on record for him, Vatterott and DMACC. The Vatt email received a letter from Bill (and is still open) and the DMACC got a Thanks letter.

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**From:** Whitney, Jessica [AG]  
**Sent:** Friday, April 14, 2017 2:42 PM  
**To:** Gosnell, Kathi [AG]; Blake, Nathan [AG]  
**Subject:** FW: Corruption In A Caucus Town?

FYI.

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**From:** White, Cathleen [AG] **On Behalf Of** AG Webteam [AG]  
**Sent:** Friday, April 14, 2017 2:40 PM  
**To:** Whitney, Jessica [AG]  
**Subject:** FW: Corruption In A Caucus Town?

Jessica, he specifically states for our office to not respond, but I thought I should probably still give you a heads up of his comments regarding our office.

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**From:** Bryan Huntsman [<mailto:one1one9@hotmail.com>]  
**Sent:** Friday, April 14, 2017 12:32 PM  
**To:** Wise, Ryan [IDOE]  
**Cc:** Grimm, Rita [IEDA]; [ccoleman@dmgov.org](mailto:ccoleman@dmgov.org); [sherill.whisenand@mail.house.gov](mailto:sherill.whisenand@mail.house.gov); [alec.kennedy@grassley.senate.gov](mailto:alec.kennedy@grassley.senate.gov); Fandel, Linda [IGOV]; Reding, Jenna; [rkt483@aol.com](mailto:rkt483@aol.com); Coon, Hollie L; R Basu; AG Webteam [AG]; Ralph LoBosco; Tyler Raygor  
**Subject:** Fw: Corruption In A Caucus Town?

Ryan,

As head of both the Iowa Dept of Ed. and your relatively new, taxpayer funded Sector Partnership Leadership Counsel, we look to your leadership. Your predecessors have left taxpayers and their families out to hang in the past. Hundreds lost time and money dealing with the CIETC scandal. From there many more got ripped off in one of the most outrageous educational scams in Iowa at Vatterott College. Yet your department and the Iowa Attorney office did nothing. (Time for Iowa Term Limits?)

At the time Sen. Tom Harkin's office was inundated with Vatterott complaints. Have you read the results of his two year investigation of Private Colleges? Have you read the Executive summary of this report? Either way, you already know the level of corruption and why the IAG will go after ITT and La James, but won't go against Vatterott and the infamous Apollo Group. The sale of Vatterott to TA is phony (Please IGA...don't respond. The useless letter writing game you play has its reputation with every lawyer in town, especially Vatterott's firm.)

Nathan Blake

5/8/2017 2:52 PM

Will taxpayers continue to get the short end of the educational stick while the state and the corporate friends prosper? \$110 million of tax money to a fertilizer company? Hy vee got \$7.5 million of our money to remodel their corporate offices? Can I have their old indoor waterfall? The list of corruption here in this state keeps getting longer. .

Now that Iowa has chosen to mix taxpayer money with corporate welfare, not to mention all the business people on your counsel, all are now in position of public accountability no matter what the excuse.

Everything in the following email is back up with documentation, all the way to being able to produce the letters that back up what I state other have said. No, "He said, she said."

This is only the tip of the iceberg. I'm working on letting everyone know what is happening to low-income workers in Iowas manufacturing sector in what I call the New American Sweat Shops.

Feel free to call or meet with me.

Bryan Huntsman

515-203-0789

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**From:** Bryan Huntsman <[one1one9@hotmail.com](mailto:one1one9@hotmail.com)>

**Sent:** Thursday, April 13, 2017 11:40 AM

**To:** [bill.anderson@legis.iowa.gov](mailto:bill.anderson@legis.iowa.gov); [jerry.behn@legis.iowa.gov](mailto:jerry.behn@legis.iowa.gov); [rick.bertrand@legis.iowa.gov](mailto:rick.bertrand@legis.iowa.gov); [tony.bisignano@legis.iowa.gov](mailto:tony.bisignano@legis.iowa.gov); [joe.bolkcom@legis.iowa.gov](mailto:joe.bolkcom@legis.iowa.gov); [nate.boulton@legis.iowa.gov](mailto:nate.boulton@legis.iowa.gov); [tod.bowman@legis.iowa.gov](mailto:tod.bowman@legis.iowa.gov); [michael.breitbach@legis.iowa.gov](mailto:michael.breitbach@legis.iowa.gov); [waylon.brown@legis.iowa.gov](mailto:waylon.brown@legis.iowa.gov); [jake.chapman@legis.iowa.gov](mailto:jake.chapman@legis.iowa.gov); [mark.chelgren@legis.iowa.gov](mailto:mark.chelgren@legis.iowa.gov); [mark.costello@legis.iowa.gov](mailto:mark.costello@legis.iowa.gov); [jeffdanielson@gmail.com](mailto:jeffdanielson@gmail.com); [dan.dawson@legis.iowa.gov](mailto:dan.dawson@legis.iowa.gov); [bill.dix@legis.iowa.gov](mailto:bill.dix@legis.iowa.gov); 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**Subject:** Corruption In A Caucus Town?

Over a decade ago three state and city people went to prison for what US Attorney Matt Whitaker called "Iowa's most significant public corruption and public fraud cases in Iowa."

[http://wfcourier.com/opinions/editorial/cietc-scandal-must-not-be-forgotten/article\\_e9a61295-97c6-53d7-9b8f-912d50d896f9.html](http://wfcourier.com/opinions/editorial/cietc-scandal-must-not-be-forgotten/article_e9a61295-97c6-53d7-9b8f-912d50d896f9.html)

## CIETC scandal must not be forgotten

wfcourier.com

There will be some appeals winding through the judicial process, but the sentencing of John Bargman III last week is helping bring a conclusion to the stunning Central Iowa Employment

I believe that I can, beyond a reasonable doubt, show you the exact same thing is currently going on again. If you look closely you will see that several city and state officials that were involved then, but somehow (in my opinion, since I was there) escaped prosecution, are involved now.

I'm sure many of you already know that manufacturing outpaces agriculture here in Iowa in terms of the money produced in the people employed. While there are lots of related tax grants and corporate welfare involved in this area, very little of it seems to get the average Iowa taxpayer and small companies as intended.

US Department of Labor released millions of dollars in grant money to community colleges in central Iowa including Des Moines Area Community College. (DMAACC) immediately DMAACC and Iowa Workforce, courtesy of Gov. Branstad, stepped in and took over the money.

The last time the Feds let go of a major amount of money to DMAACC and Iowa Workforce, three people ended up going to prison. Two were connected to Iowa Workforce, Ramona Cunningham and John Bargman, and one

City Councilman, Archie Brooks. For those of us that were there for the Central Iowa Education Training Consortium scandal, I can tell you that the "David A. Vaudt from the Auditor's Office for the State of Iowa," whistleblower story is a cover-up and the truth of what happened is verifiable. The only difference, in my opinion, of what happened then and what is going on with the new Consortium is they become a little more polished and (In MY Opinion) this level of fraud has more acceptable to both elected and appointed officials here in the State of Iowa.

Bottom line is each time, both then and now, state employees, public unions, and the corporations that thrive survive on corporate welfare all benefit at the expense of the taxpayer.

Once DMACC and the Iowa Workforce got a hold the grant money they started what is called the Workforce Training Academy. They leased billboards all over the metro advertising free training in the manufacturing sector. There is no brick and mortar Workforce Trading Academy Its Workforce using DMACC facilities, thereby doubling the bureaucratic overhead and lessening the amount of money that actually makes it to the tax payers and their families and employers desperately in need of the training this grant money was intended for.

The irony seems be lost on this new State Aristocracy. Without the taxes that this middle class provides, how can their lifestyle be maintained? According to the US Dept. of Labor, Iowa's public sector workers enjoy an income that is 50% higher than those comparable in the private sector In fact, the DOL states that Iowa has the largest income gap in America. The California Policy center recently released a study showing that 26% of retired government workers make more than average currently working private sector employees.

Immediately Workforce and DMACC went to work training prisoners and convicted felons state-of-the-art welding and manufacturing techniques that were not being taught to the average Iowa taxpayer who walked in the DMACC door and enrolled in the very same program. While this may be seen as an act of benevolence, there is actually big money in this part of Iowa's prison industry. Iowa cooperation and businesses line up to hire these cons over regular Iowa tax payer because Iowa subsidizes 65% of their pay for a year. This state level "Pimping For Profit," also keeps the state employees and their public unions well paid too.

One manager at Harbor Freight Tool here in Des Moines said that Iowa Workforce is the greatest staffing agency in the world. While normal staffing agencies charge for their services, IWF not only pays the employer, they also help with the accounting. He showed me that when he submitted employees' hours to HF corporate office on the computer, a small window opened up saying that this info had been received by IWF. While this may seem like an old hole -in-the- wall store, in a forgotten strip mall, they are reporting annual sales of 6 million annually. Harbor Freight has over 700 hundred store with just one owner.

DMCC went out and bought state-of-the-art equipment including MIG welders TIG welders and aluminum welders. In the photograph you can see the one welder appears to have a sleeve wrapped around the line. Just that aluminum wire lead, not the welder, costs over \$3000 and DMACC ordered several. This equipment sits in DMACCs relatively new satellite South campus and new AWS test site DMACCs own Advanced Manufacturing Center in Ankeny doesn't even come close to having this and other top of line equipment. .



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This the exact equipment that potential DMACC students were shown during the pre- sign up tour welding program at DMACC South. Once students were signed up and there, welding instructor Bill Mann told students that they wouldn't be able to use the equipment because they were in the "old curriculum "or part of the Workforce Training Academy program. (<https://www.dmacc.edu/careertraining/Pages/certs-manufacturing-industrialtech.aspx#mig>) The average student who was stuck being taught the outdated stick welding with no recourse and student loans... that need to be reimbursed or forgiven. Imagine if you were that customer.

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## Manufacturing/Industrial Technology Certificates - DMACC

[www.dmacc.edu](http://www.dmacc.edu)

Building Maintenance (205 contact hours + 16 hour Career Readiness Lab) This is a two-semester program Offered: Fall/Spring/Summer Semesters Cost: \$1,813

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Scott Oken, Dean of Advanced Manufacturing at DMACC says all this was because they weren't sure if the Iowa Department of Education was going to approve their new curriculum. That's not true. First of all if you didn't know wethre you were going to be approved why you spend hundreds of thousands of dollars on equipment? In fact DMACC News <https://www.dmacc.edu/news/Pages/20130113-2.aspx> stated that, "Nearly \$1,000,000 of program-related equipment has been purchased and embedded into grant-impacted programs." Embedded? Second of all it seems that the Iowa Department of Education was on DMACC to get things moving.

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## Iowa's Community Colleges Achieve Success in Inaugural ...

[www.dmacc.edu](http://www.dmacc.edu)

The Iowa-Advanced Manufacturing (I-AM) Consortium released today the implementation outcomes for Year One of a Department of Labor Trade Adjustment Assistance ...

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Lastly there were teaching the prisoner and the ex-cons the new curriculum and had been for some time.

This new welding curriculum is a program they purchased from Hobart. Hobart has their own two-year school. Hobart manufactures Hobart welders and Miller welders. You can go online and purchase this program yourself and purchase the answers to the test as well. <https://www.welding.org/product/blueprint-reading-welders-fitters-2/>

This is the exact same third-party welding program that Ralph Young has been teaching at the city of Des Moines's Central Campus for years. What many don't know is that DMACC overseas that program too. So Scott Oken has been nothing but deceptive in any his answers? Yet another red flag

Are metro taxpayers getting double dipped on these programs if Ralph Young is teaching at the city level but DMACC overseeing at the state level? I noticed recently there was a news clip about the city and there new

trade programs for high schoolers. They've always had these trade programs. Does this mean they got more grant money?

What about all the tax money that DMACC is now receiving from high school such as the ones in Warren County who can't afford shop class. How do property taxes continue to rise, but the schools seem to offer less here in Iowa? DMACC spent at least one entire semester of Advanced Manufacturing creating a schedule specifically high schoolers. It forced working adults and families to show up for classes for two hours in the middle of the day. One hour on Friday in the middle of the day. Only one high schooler ever showed up and he quit because he decided to go do something else.

Laundering Grant money and tax money first, students and taxpayers...oh, somewhere at the bottom of the list.

While the Iowa Department of Education was allegedly upset that DMACC was falling behind schedule, you have to understand that DMACC was very busy. They were cashing in on the Goldmine that they had created and running drug dealers thieves and pedophiles thru Workforce Training Academy. This program got so big they actually came to you legislatures and asked for and got more money. The need more money to hire more state employees to handoff our money to people getting better training than Iowa taxpayers themselves were getting. Did any of you legislatures actually take a look at was going on? DMACC is grateful and acknowledged you guys on their website. <https://www.dmacc.edu/news/Pages/20140213-1.aspx>

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## DMACC Workforce Training Academy Expands Service

[www.dmacc.edu](http://www.dmacc.edu)

Campaign to offer short-term training generates big response. Des Moines Area Community College's (DMACC) Workforce Training Academy (WTA) is growing as a result of a ...

DMACC didn't stop there. Is it just me or have you noticed appointed public servants are starting to believe they are bona fide corporate executives running their own company? I call them the New Aristocracy because they don't have to be concerned about company profits and they don't have stockholders they have to answer too. Taxpayers either for that matter. Yes they have budgets but that's just a small detail, evident when legislatures "okay" additional monies for programs that are hurting the people these programs were originally intended for. Is just me with anybody also comfortable with the multiple state agencies now calling themselves the Authority? <http://watchdog.org/71188/ia-authorityboardmembers/>





Iowa's economic development board  
members ... - Watchdog.org

watchdog.org

By Sheena Dooley | Iowa Watchdog. DES MOINES –  
Members of an Iowa board charged with doling out millions  
to lure businesses to the state often work for ...

DMACC spent a lot of money becoming the new testing center for the American Welding Society. The AWS is an independent third-party welding certification the tests are not cheap and you don't get a refund if you don't pass. AWS certificates carry a lot of credibility. Quality Manufacturers Co. are the premier fabricators here in central Iowa. If you go to their website they advertise they have AWS certified welders.

<http://www.qualitymfgcorp.com/>

## Quality Manufacturing Corporation

[www.qualitymfgcorp.com](http://www.qualitymfgcorp.com)

Full service, metal fabricator located in Urbandale, Iowa specializing in prototype and production welding, hydraulic reservoirs, and stainless tanks.

If DMACC were going to make their newly purchased franchise profitable they couldn't give those tests away to taxpayers who were enrolled in their welding program. They couldn't roll the cost of the test up in federal loans student loans because AWS is a third-party vendor. So they ran the grant money through Workforce, so the coveted certifications paid for by same Iowa taxpayers who has to pay for them on their own

They made an agreement with Workforce to send them an unlimited supply of prepaid customers that include many from the Iowa Prison system. They bought equipment specifically for their new franchise operation and they spent thousands of dollars of taxpayer's money to train just one guy at DMACC to run the new operation.

They spared no expense of buying equipment that's a \$60,000 sheer they bought brand-new. That's \$25,000 self-propelled band saw they bought. There are Iowa taxpayers who own shops here in Iowa that can't afford to own equipment like that. More often than not, you don't need equipment like that. I'm sure that if it came out of

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the personal pockets of the people who make the decisions DMACC wouldn't have that equipment either. However DMACCs mantra is, it's just grant money.

When I pointed out all his equipment, I got a letter from the US Department of Labor Chicago, I've included the letter. Apparently they looked into the matter and the case is now closed? I never contacted the US Department of Labor. Who did and why? Do you know the people who accredited the Advanced Manufacturing curriculum are also out of Chicago? If you think that's a coincidence or you don't believe that all those millions of dollars came from Political Corruption Capital of the world camewithout any strings, you need to resign your position on Capitol Hill and go home.

If you take the time to read the letter, you will see Christine Quinn, regional administrator for the US Department of labor writes that she has looked into my concerns and writes, "None of the items you photographed were purchased with US DOL or TAACC CT grant funds" However if you go to DMACC'S News website... <https://www.dmacc.edu/news/Pages/20150415-3.aspx>... In the last sentence they write that the testing facility was funded by grant money from the USDOL. When stories don't match at this level, it should be a red flag to all of us.

## DMACC Welding Lab Earns Industry Accreditation

[www.dmacc.edu](http://www.dmacc.edu)

Welders can earn national certification at DMACC Southridge welding lab. The Des Moines Area Community College (DMACC) Center for Career and Professional Development ...

For those of are you on this list that have been around a while, doesn't start to look like Central Iowa Education Training Consortium part two? That is, the state is benefiting itself at the expense of the taxpayer.

But it doesn't stop there. In my opinion the fraud and mis-spent (Laundered) tax and grant money reaches another level

I read the report saying that Iowa manufacturers are desperate for people who can program CNC machines both laths and mills. This includes any other equipment such as waterjet or laser tables that also need to be programmed.

Let me show you what you get from highly funded tax and grant CNC class that exists in DMACC Advanced Manufacturing Degree program. The picture of the pink book is a photocopied nightmare that two instructors at the Advanced Manufacturing program put together with other disconnected info that they inserted. If you can read what it says, you'll see that the book is an accompaniment to a video course. Both the book and the course are from yet another third party company called CNC Concepts. Mark Rosenberry, the Adv Man. Program Chairman, says the videos were thrown away.

How this program is taught would make your jaw drop. Don't be fooled when DMACC points out the pass rate for this class because I'll be glad to tell you how student are really getting through that class.

Now take a look at the other book that I posted. This book is also a beginners guide for CNC programming and operation. It's free. You can get it online for free. It comes with an entire slideshow presentation to help you with the highlights. Once again, free. It also comes with the premier, industry standard Autodesk CAM software you need to learn how to program these machines. Say it with me, free.

This is not some cut-rate operation sponsoring in this program. Haas Automation is the largest machine tool builder for half the planet. They are also the very same manufacturers that supplied DMACC with their CNC equipment. The software is by Autodesk. Once again the very same top-of-the-line software that D Max using as well as the entire industry. But when you request information about this free software from the teachers who are teaching is program at DMACC, one of them (Co-author of the pink book) went ballistic and wrote a letter to Dean Oken. In the letter he thought DMACC should consider the legalities of handing out the software even when it wasn't DMACC giving it away. What? He also went on to imply that students had a lot of nerve asking for the program for free. It turns out student have been downloading the software for a while in order to get the help they don't seem to get from DMACC Yes, I have that memo.

It gets even better because the free book, the accompanying free slideshow and the free software are all part of a bigger program sponsored by MAV TV / Lucas Oil. Autodesk Software and Hass CNC. There is a massive library of how-to videos and step-by-step projects that you can access for free. They bought the rights to a TV show called Titan of Industry and re-named it Titian of CNC and the CNC Academy is online and FREE. They claim that they we soon be offering CNCcertifaction themselves. Yet DMACC tossed their videos and they fight students who try to find out information about the free stuff that been offered.

This is massive. It shows without a doubt that free enterprise...right here in Iowa.. can do far better and at no expense to the taxpayers. Some take it a step farther and ask why we need politicians to represent us. Can't we just vote for issues online? Lol, come on think about it.

While DMACC has no problem offer shady classes and books, it not have any problems spending \$30 million on a recreation and aquatic center that nobody wanted and nobody needed. DMACC has a 50% dropout rate. Out of the remaining students, almost all those have full-time or part-time jobs that they need to go to or they have long commutes and families to get to. Nobody has time to hang out at DMACC when they're done because DMACC is a commuter school. The pool was built for the glory of Ankeny. Just check and see and you will find everyone on the Rec Center committee was either Ankeny Chamber Of Commerce or Ankeny school Board. Should Denny Purcell get back to running Farm Bureau Insurance since there are billboards here in the metro telling people not to buy Farm Bureau Insurance?

How do you explain to the unknowing tax payers the massive expense was taken on when Iowa accepted the old Maytag facility? The Des Moines Register tells people says the facility was gifted to us. The truth is, it was unloaded on us. They have been trying to get rid of it for years

Nathan Blake

5/8/2017 2:52 PM

Take a look at the screenshot of a text message that Rob Denson sent. He's wanting to approach Alliant Energy for a year and a half, for starters, of free electricity. Notice how they call grant money? Does this mean that Alliant energy customers will now have to absorb this expense as well as pay taxes to support DMAACC? Isn't true that Alliant Energy recently created new billing rules that many feel are intended to curb the use of solar energy? How is it Rob didn't know what electrical bills would be? How is it he doesn't know if they are tax-exempt as he mentions in the text? He told the Des Moines Register exactly what the overhead would be. Another red flag.

-----It doesn't matter because it's not his money. It's not your money either...its grant money (Aka Fairy Dust) . . . damn it. Lol

If the state and DMAACC cant afford this, then lets fill in the pools, send the Ankeny High School Swim Team back to their new state of the art high schools and turn the rec center into a correctional faculty for select state, county and city politicians and other officials. Once there, we can put them in the "Pimp for Profit," programs as a form of restitution.

Middle-class capitalism cannot afford to support his outrageous levels socialism anymore.

All the warning signs are up. Fannie Mae recently announced the price of houses are too high. Uh-oh Every major predictors says the stock markets getting ready for a big adjustment. Every Western government is insolvent. Aren't the central bank start become insolvent too? Every major civilizations been taken down by the cost of war and we will not be different. Even here in the US we can see solvency issues with Social Security and the Federal Reserve. Aren't we having solvency issues right here at home with our own public-sector pension fund?

While the peasants are at the gate with pitchforks and torches, you can either tell them to eat GMO cake or severely cut state spending and corporate welfare as well getting rid of the Aristocracy who administrate and dominate these programs We are going broke.

.Bryan Huntsman

515-203-0789

**Blake, Nathan [AG]**

**From:** OCIO Hoover Barracuda <L2GW01@iowa.gov>  
**Sent:** Friday, April 14, 2017 3:01 PM  
**To:** Blake, Nathan [AG]  
**Subject:** Spam Quarantine Summary - (8)



Office of the Chief Information Officer

**Spam Quarantine Summary**

Total inbound quarantined emails for nathan.blake@iowa.gov: 8 messages

The emails listed below are ones that have been placed in your quarantine digest since the last quarantine summary was sent.

Messages older than 30 days will be removed

Email Quarantined Since Last Notification (2017-Apr-11 15:00:48) 1 message		
From	Subject	Actions
Joe.Bolkcom@legis.iowa.gov	Session Adjournment Looms - Medical Cannabis Bill Resurrected	<a href="#">Deliver</a>   <a href="#">Whitelist</a>   <a href="#">Delete</a>   <a href="#">View</a>

Previously Quarantined Email: 7 messages		
From	Subject	Actions
Joe.Bolkcom@legis.iowa.gov	Time to Pull the Plug on Lt. Governor Reynolds Medicaid Privatization Experiment	<a href="#">Deliver</a>   <a href="#">Whitelist</a>   <a href="#">Delete</a>   <a href="#">View</a>
amelie.vonkoczian@euroforum.com	Getting GDPR-ready — Interviews about the General Data Protection Regulation	<a href="#">Deliver</a>   <a href="#">Whitelist</a>   <a href="#">Delete</a>   <a href="#">View</a>
Joe.Bolkcom@legis.iowa.gov	Republican Created Budget Woes Continue - Where is the Medical Cannabis Bill?	<a href="#">Deliver</a>   <a href="#">Whitelist</a>   <a href="#">Delete</a>   <a href="#">View</a>
Joe.Bolkcom@legis.iowa.gov	Republican Agenda: Driving in Reverse	<a href="#">Deliver</a>   <a href="#">Whitelist</a>   <a href="#">Delete</a>   <a href="#">View</a>
amber@title4services.us	Programs Available Iowa State Employees	<a href="#">Deliver</a>   <a href="#">Whitelist</a>   <a href="#">Delete</a>   <a href="#">View</a>
Joe.Bolkcom@legis.iowa.gov	Branstad-Reynolds Budget Crisis Looms	<a href="#">Deliver</a>   <a href="#">Whitelist</a>   <a href="#">Delete</a>   <a href="#">View</a>
amelie.vonkoczian@euroforum.com	Prepare yourself for the implementation of GDPR	<a href="#">Deliver</a>   <a href="#">Whitelist</a>   <a href="#">Delete</a>   <a href="#">View</a>

**DELETE ALL DISPLAYED EMAILS**

Click on the **Deliver** link to have that message delivered to your primary inbox.  
 Click on the **Whitelist** link to have that message delivered to your primary inbox and that sender whitelisted.  
 Click on the **Delete** link to remove that message from your quarantine.  
 Click on the **View** link to display that message in a new Message Details browser window.

[Manage your allowed / blocked list](#)

[Set quarantine notification intervals](#)

[View your entire Quarantine Inbox or manage your preferences.](#)

**Blake, Nathan [AG]**

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**From:** Conference of Western Attorneys General <cwag@cwag.ccsend.com> on behalf of Conference of Western Attorneys General <ccoppin@cwagweb.org>  
**Sent:** Thursday, April 06, 2017 9:01 AM  
**To:** Blake, Nathan [AG]  
**Subject:** CWAG Roundup - April 6, 2017



## **CWAG Roundup April 6, 2017**

Dear Nathan,

**EXECUTIVE SUMMARY**  
**[\[Click Here for Full Articles\]](#)**

### ***UPCOMING EVENTS***

#### **2017 CWAG Annual Meeting Registration Now Open!**

San Francisco, CA

July 30- August 2, 2017

The Conference of Western Attorneys General along with CWAG Chair and Hawaii Attorney General Doug Chin invite you to the 2017 CWAG Annual Meeting in San Francisco, CA, July 30-August 2, 2017. Join your colleagues as CWAG explores the most pertinent legal issues during the days and spend the evenings enjoying the urban charm of the city at our social events.

To register online use the following link: [2017 CWAG Annual Meeting Registration](#)

If you have attended an annual meeting in the past few years your contact information has been saved in the registration system. **Please review your contact information during the registration process to make sure it is current.**

To register go to "Sign In" and enter the email address and password you or your assistant previously provided. If you can't recall your password, click on the "Forgot Password" link and your password will be sent to the email that is saved in the system.

If you have not previously registered for the annual meeting go to "New Registration", enter your email and create a personal password to be used for future registrations.

**Early Bird Registration:** The cutoff date for Early Bird registration is Friday, June 2, 2017 at 5:00pm (PT). All registrations received after this time and date will be charged the regular registration fee.

**Onsite Registration:** Pre-registering for primary attendees and guests who would like to attend any of the substantive or social opportunities is required. CWAG must make commitments to the hotel and activity vendors based on pre-registered guests prior to our arrival. The registration fees cover the cost of activities and meals at the conference which have been pre-arranged. Given the necessity of pre planning, we will not be accepting any onsite registrations.

**Hotel room cutoff: The last day to reserve your room within the CWAG room block is Friday, July 7, 2017.** If the room block sells out prior to that time, reservations will be accepted on a space available basis. The reservation number for the Westin St. Francis is 1.888.627.8546. Ask for the CWAG room block to receive our discounted rates.

### ***ALLIANCE PARTNERSHIP NEWS***

On March 30th, CWAG Attorneys General Balderas, Brnovich, Chin and Coffman traveled to Mexico City to meet with US Ambassador to Mexico Roberta Jacobson as well as recently appointed Attorney General of Mexico, Raul Cervantes Andrade, to discuss the CWAG Alliance Partnership initiative as well as areas where the two countries can continue to collaborate to combat transnational organized crime. Both the US Ambassador as well as Attorney General Cervantes Andrade expressed a strong desire to continue building the relationships between the US and Mexico state AGOs and CWAG looks forward to hosting the AG in Tampa, Florida September 27-29, 2017 for the CWAG Binational Attorney General Exchange hosted by Florida Attorney General Pam Bondi. Mexico Attorney General's Office coverage of the meetings can be found [here](#). Photos and coverage from the US Embassy in Mexico City can be found [here](#).

### ***BORDER LAW ENFORCEMENT***

**CWAG Attorney General Hector Balderas of New Mexico** announced that Juan David Villegas was successfully extradited from Mexico and is on U.S. soil in the custody of the U.S. Marshal Service. Attorney General Balderas used the extradition process for the return of this fugitive back to the United States, and as a result Juan David Villegas was captured and returned to stand trial for the deaths of his wife and four daughters in New Mexico. Attorney General Balderas was recently in Mexico meeting with Mexican justice officials, including the Attorney General of Mexico (Procurador General de la República) Raúl Cervantes Andrade to continue to strengthen New Mexico's strong diplomatic relations with Mexico and personally thanked Attorney General Cervantes Andrade for his cooperation

and effort to return Juan David Villegas to New Mexico. Attorney General Balderas also maintains regular communication with Mexican border state attorneys general regarding issues impacting the border and international extraditions. The United States' extradition treaty with Mexico allows extraditions of violent offenders or child predators, and the Office of the Attorney General is the only state agency in New Mexico that provides extradition support to local law enforcement and district attorneys.

### ***CAMPAIGN FINANCE***

**CWAG Attorney General Bob Ferguson of Washington** filed a campaign finance lawsuit against Tim Eyman, alleging improper personal use of \$308,000 in contributions made to political committees, concealment of contributions totaling \$490,185 and misleading reporting. The lawsuit also accuses for-profit signature gathering firm Citizen Solutions of participating in a scheme to conceal campaign money the company funneled to Eyman. If successful, Eyman and his for-profit company, Tim Eyman Watchdog for Taxpayers, could face \$1.8 million in penalties, plus \$308,000 in reimbursement. Citizen Solutions and one of its principals, William Agazarm, could face penalties up to \$924,555. "Taking kickbacks from contractors, using campaign funds for personal expenses, redirecting donations made for one initiative to a different initiative - it's hard to imagine what more Mr. Eyman could have done to show his contempt for our campaign finance disclosure laws," Attorney General Ferguson said.

### ***FIGHTING DRUG ABUSE***

**CWAG Associate Attorney General Pam Bondi of Florida** is honored to be appointed to President Donald J. Trump's Opioid and Drug Abuse Commission. As a member of the commission, Attorney General Bondi will work alongside national leaders in the opioid fight on drug prevention, interdiction and treatment strategies. New Jersey Governor Chris Christie will chair the commission. "I am honored to work alongside President Trump, Governor Christie and others to combat the national opioid crisis that is claiming thousands of American lives every year," said Attorney General Bondi. "For more than two decades, first as a state prosecutor and now as Florida's attorney general, I have fought drug abuse at the local and state level-with this appointment I will work with national leaders in this vital fight."

**CWAG Associate Attorney General Josh Stein of North Carolina** applauded the North Carolina House of Representatives Health Committee, which unanimously passed legislation to confront the opioid crisis. The STOP Act, formally the Strengthen Opioid misuse Prevention Act, will ensure smarter prescribing and smarter dispensing of highly-addictive prescription drugs."I sincerely thank the House Health Committee for its support of this bill and, in particular, Chairman Murphy for his leadership on it," said Attorney General Stein. "Opioid addiction is tearing families apart all across our state and requires a swift policy response to prevent addiction and support those who are currently struggling. This bill is an important first step in a comprehensive response to the opioid crisis."

### ***CONSUMER PROTECTION***



**CWAG Associate Attorney General Maura Healey of Massachusetts** announced that a Kansas-based insurance company has agreed to pay more than \$2.8 million to settle allegations that it used deceptive and unlawful practices to sell health insurance to Massachusetts consumers. The settlement will provide more than \$2.3 million to consumers. According to the complaint, Unified Life Insurance Company (ULIC) sold health insurance to Massachusetts consumers that was not authorized for sale and engaged in a host of deceptive practices, such as claiming its insurance included services that it did not cover. According to the complaint, ULIC also excluded Massachusetts consumers from coverage based upon their health status or preexisting conditions, and failed to cover basic health services - such as behavioral health services, maternity services, preventive services for women and children, and other essential benefits required by Massachusetts law. The coverage at issue was sold across state lines and was issued through a third-party association. "This company sold sub-par health insurance that violated state law," said Attorney General Healey. "Recently revived federal proposals to take away our state's longstanding authority to oversee sales of health insurance will leave consumers and families more vulnerable to exploitation and create a 'race-to-the-bottom' that will raise prices and reduce access to quality health care for those in need."

#### ***PUBLIC HEALTH AND SAFETY***

In recognition of Sexual Assault Awareness Month, **CWAG Attorney General Hector Balderas of New Mexico** announced the launch of his office's statewide Conscious Campus initiative. The educational initiative aims to help college communities discuss the realities of sexual assault on campus, explore interventions, and benefit from community resources. "I applaud my alma mater, Highlands University and other participating colleges in New Mexico for taking steps toward making their campuses safer," said Attorney General Balderas. "This initiative brings together college and university communities, government officials, health professionals, and law enforcement to engage in a meaningful dialogue about the realities of sexual assault and connects students with critical resources."

Kicking off April's "Alcohol Responsibility Month," **CWAG Attorney General Sean Reyes of Utah** teamed up with Olympic Superstar Simone Biles and the Foundation for Advancing Alcohol Responsibility (Responsibility.org) to release a public service announcement to prevent underage drinking. In the video, through Responsibility.org's Ask, Listen, Learn: Kids and Alcohol Don't Mix program, Attorney General Reyes and Biles encourage parents to have conversations with their kids and teens about saying "no" to underage drinking. "Few people have as significant an impact on children as their own parents," said Attorney General Reyes. "Parents can be positive role models and are the best people to teach children to make healthy lifestyle choices. I owe my own mother and father so much for the lessons and examples they gave me."

#### ***ATTORNEY GENERAL RACINE LAUNCHES MEDIATION PROGRAM***

**CWAG Associate Attorney General Karl A. Racine of the District of Columbia** has launched a pilot program to resolve lawsuits against the District government through an informal mediation process. Under the program, any individual who has filed a lawsuit

against the District of Columbia seeking \$10,000 or less for property damage or personal injury may bring the claim before a neutral mediator. Because this process does not involve formal discovery by either side, the mediation is intended to allow individuals with meritorious claims to obtain a quick resolution and save taxpayers the cost of going to trial. "District taxpayers benefit when lawsuits against the city are resolved quickly and the District as well as the other party can avoid the costs of going to trial," said Attorney General Racine. "The Office of the Attorney General's new mediation program is an opportunity for the District government to provide a quick, fair, and informal way of resolving claims with resolutions agreeable to all parties."

## ***TAXATION***

**CWAG Associate Attorney General Steven T. Marshall of Alabama** announced that the federal District Court for the Northern District of Alabama has dismissed CSX Transportation's lawsuit challenging the application of Alabama's four percent sales tax to CSX's purchase of diesel fuel, a ruling that could return more than \$10 million in unpaid taxes to Alabama's Education Trust Fund. Attorney General Marshall said, "I hope that Wednesday's opinion signals the end of nine years of litigation that has resulted in millions of dollars being withheld from Alabama's public schools. Everyone in this State benefits from stronger schools, so everyone, including railroad companies, needs to pay their fair share of taxes to support our schools."

Chris Coppin  
Legal Director  
Conference of Western Attorneys General  
1300 I Street  
Sacramento, CA 95814  
505-589-5101 (cell)  
817-615-9335 (fax)  
Chris.coppin@cwagweb.org

### **Forward this email**





**Blake, Nathan [AG]**

**From:** OCIO Hoover Barracuda <L2GW01@iowa.gov>  
**Sent:** Saturday, April 01, 2017 9:01 AM  
**To:** Blake, Nathan [AG]  
**Subject:** Spam Quarantine Summary - (8)



Office of the Chief Information Officer

Spam Quarantine Summary

Total inbound quarantined emails for nathan.blake@iowa.gov: 8 messages

The emails listed below are ones that have been placed in your quarantine digest since the last quarantine summary was sent.

Messages older than 30 days will be removed

Previously Quarantined Email: 8 messages		
From	Subject	Actions
Joe.Bolkcom@legis.iowa.gov	Republican Created Budget Woes Continue - Where is the Medical Cannabis Bill?	<a href="#">Deliver</a>   <a href="#">Whitelist</a>   <a href="#">Delete</a>   <a href="#">View</a>
Joe.Bolkcom@legis.iowa.gov	Republican Agenda: Driving in Reverse	<a href="#">Deliver</a>   <a href="#">Whitelist</a>   <a href="#">Delete</a>   <a href="#">View</a>
amber@title4services.us	Programs Available Iowa State Employees	<a href="#">Deliver</a>   <a href="#">Whitelist</a>   <a href="#">Delete</a>   <a href="#">View</a>
Joe.Bolkcom@legis.iowa.gov	Branstad-Reynolds Budget Crisis Looms	<a href="#">Deliver</a>   <a href="#">Whitelist</a>   <a href="#">Delete</a>   <a href="#">View</a>
amelie.vonkoczian@euroforum.com	Prepare yourself for the implementation of GDPR	<a href="#">Deliver</a>   <a href="#">Whitelist</a>   <a href="#">Delete</a>   <a href="#">View</a>
notification@presdomain.com	Nathan, time is running out. See who else is going to LeadsCon LasVegas 2017	<a href="#">Deliver</a>   <a href="#">Whitelist</a>   <a href="#">Delete</a>   <a href="#">View</a>
Joe.Bolkcom@legis.iowa.gov	More harsh treatment of working Iowans. Poor Iowa.	<a href="#">Deliver</a>   <a href="#">Whitelist</a>   <a href="#">Delete</a>   <a href="#">View</a>
Joe.Bolkcom@legis.iowa.gov	Why are Republicans so obsessed with trying to fix things that aren't broken?	<a href="#">Deliver</a>   <a href="#">Whitelist</a>   <a href="#">Delete</a>   <a href="#">View</a>

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 Click on the **Whitelist** link to have that message delivered to your primary inbox and that sender whitelisted.  
 Click on the **Delete** link to remove that message from your quarantine.  
 Click on the **View** link to display that message in a new Message Details browser window.

[Manage your allowed / blocked list](#)      [Set quarantine notification intervals](#)

[View your entire Quarantine Inbox or manage your preferences.](#)

**Blake, Nathan [AG]**

**From:** OCIO Hoover Barracuda <L2GW01@iowa.gov>  
**Sent:** Friday, March 31, 2017 3:01 PM  
**To:** Blake, Nathan [AG]  
**Subject:** Spam Quarantine Summary - (10)



Office of the Chief Information Officer

**Spam Quarantine Summary**

Total inbound quarantined emails for nathan.blake@iowa.gov: 10 messages

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Messages older than 30 days will be removed

Email Quarantined Since Last Notification (2017-Mar-25 09:00:24): 3 messages		
From	Subject	Actions
Hal.Morris@oag.texas.gov	Re: ITT Student Records - Next Steps; Next Conference Call on April 3at 1 PM EST	<a href="#">Deliver</a> <a href="#">Whitelist</a> <a href="#">Delete</a> <a href="#">View</a>
Hal.Morris@oag.texas.gov	Re: ITT Student Records - Next Steps; Next Conference Call on April 3at 1 PM EST	<a href="#">Deliver</a>   <a href="#">Whitelist</a>   <a href="#">Delete</a>   <a href="#">View</a>
Joe.Bolkcom@legis.iowa.gov	Republican Created Budget Woes Continue - Where is the Medical Cannabis Bill?	<a href="#">Deliver</a> <a href="#">Whitelist</a> <a href="#">Delete</a>   <a href="#">View</a>

Previously Quarantined Email: 7 messages		
From	Subject	Actions
Joe.Bolkcom@legis.iowa.gov	Republican Agenda: Driving in Reverse	<a href="#">Deliver</a> <a href="#">Whitelist</a> <a href="#">Delete</a> <a href="#">View</a>
amber@title4services.us	Programs Available Iowa State Employees	<a href="#">Deliver</a>   <a href="#">Whitelist</a>   <a href="#">Delete</a>   <a href="#">View</a>
Joe.Bolkcom@legis.iowa.gov	Branstad-Reynolds Budget Crisis Looms	<a href="#">Deliver</a> <a href="#">Whitelist</a> <a href="#">Delete</a> <a href="#">View</a>
amelie.vonkoczian@euroforum.com	Prepare yourself for the implementation of GDPR	<a href="#">Deliver</a>   <a href="#">Whitelist</a>   <a href="#">Delete</a>   <a href="#">View</a>
notification@presdomail.com	Nathan, time is running out. See who else is going to LeadsCon LasVegas 2017	<a href="#">Deliver</a> <a href="#">Whitelist</a> <a href="#">Delete</a> <a href="#">View</a>
Joe.Bolkcom@legis.iowa.gov	More harsh treatment of working lowans. Poor Iowa.	<a href="#">Deliver</a>   <a href="#">Whitelist</a>   <a href="#">Delete</a>   <a href="#">View</a>
Joe.Bolkcom@legis.iowa.gov	Why are Republicans so obsessed with trying to fix things that aren't broken?	<a href="#">Deliver</a> <a href="#">Whitelist</a> <a href="#">Delete</a> <a href="#">View</a>

**DELETE ALL DISPLAYED EMAILS**

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 Click on the [Whitelist](#) link to have that message delivered to your primary inbox and that sender whitelisted.  
 Click on the [Delete](#) link to remove that message from your quarantine.  
 Click on the [View](#) link to display that message in a new Message Details browser window.

[Manage your allowed / blocked list](#)

[Set quarantine notification intervals](#)

[View your entire Quarantine Inbox or manage your preferences.](#)

**Blake, Nathan [AG]**

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**From:** Conference of Western Attorneys General <cwag@cwag.ccsend.com> on behalf of Conference of Western Attorneys General <ccoppin@cwagweb.org>  
**Sent:** Thursday, March 30, 2017 10:02 AM  
**To:** Blake, Nathan [AG]  
**Subject:** CWAG Roundup - March 30, 2017



## **CWAG Roundup March 30, 2017**

Dear Nathan,

### **EXECUTIVE SUMMARY**

[\[Click Here for Full Articles\]](#)

### ***UPCOMING EVENTS***

#### **2017 CWAG Annual Meeting Registration Now Open!**

San Francisco, CA

July 30- August 2, 2017

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## ***CIVIL RIGHTS***

**CWAG Attorney General Bob Ferguson of Washington** announced that Mukilteo-based aerospace company Electroimpact will pay \$485,000 after an investigation alleging discrimination by the company, retaliation against employees, and unfair or deceptive advertising. The company will also change its hiring practices and conduct outreach to minority applicants. An investigation by the Attorney General's Wing Luke Civil Rights Unit found evidence that Electroimpact and its president, Peter Zieve, refused to hire Muslim applicants, engaged in religious and/or national origin harassment, discriminated against employees based on marital status, and retaliated against employees who opposed such unfair practices. The investigation also found the company engaged in unfair or deceptive practices by describing itself as an equal opportunity employer in advertising. "The conduct outlined in our complaint is outrageous," Attorney General Ferguson said. "Discriminating against workers and retaliating against anyone who questions it is illegal."

## ***OPIATE ABUSE***

Children hurt by their parents' addictions to painkillers and heroin will get help under a pilot program announced by **Ohio Attorney General Mike DeWine**. The \$3.6 million effort will provide intensive trauma counseling and other services to children abused or neglected due to parental drug use. Parents of children referred to the program will also receive drug treatment. One of every two children placed in foster care in 2015 were there because of abuse and neglect associated with their parents' drug use, according to the Public Children Services Association of Ohio. The announcement comes as the deadly epidemic shows no signs of letting up and in fact may be worsening. "The bad news is this wave is not letting

up. It's still coming," said Attorney General DeWine. "The good news is there are a lot of people in Ohio today who are alive because fellow citizens of theirs have done amazing work."

**CWAG Associate Attorney General Brad Schimel of Wisconsin** and the Pharmacy Society of Wisconsin (PSW) announced a new training tool designed to deter pharmacy robberies. "Since the launch of Dose of Reality 18 months ago, the Wisconsin Department of Justice and our private and public partners have taken a multifaceted approach to preventing prescription drug abuse," said Attorney General Schimel. "The DOJ's and Pharmacy Society of Wisconsin's Pharmacy Robbery Prevention and Response training is another tool in our arsenal. By discouraging robberies, and effectively responding to those that do occur, we protect the safety of pharmacy employees, customers, and the public, and reduce the amount of narcotics that reach the street." The Pharmacy Robbery Prevention and Response training, provided to pharmacies by law enforcement, will teach pharmacists, pharmacy technicians, clerks, and other pharmacy personnel how to deter a robbery, what to do when a robbery occurs, and what to do after a robbery occurs. The adoption of this training's content by pharmacies is not required but rather a series of recommendations to make pharmacy premises resistant to robberies.

### ***CONSUMER PROTECTION***

**CWAG Attorney General Mark Brnovich of Arizona** announced students are eligible to receive up to \$60,000 in refunds after Para Health Professionals, Inc., and Examination Preparation Institute, Inc. issued unaccredited degrees and medical certifications. Students took seminars to become certified as Phlebotomists, Electrocardiogram Technicians, Medical Technicians, Behavioral Health Technicians, Healthcare Technicians, or Pharmacy Technicians. The restitution is part of a consent judgment obtained by the Attorney General's Office against Para Health Professionals and Examination Preparation Institute for violations of the Arizona Consumer Fraud Act. "These so-called schools scammed students who dreamed of becoming medical technicians in Arizona," said Attorney General Brnovich. "Students paid thousands to become certified medical techs only to find out their certifications are effectively worthless. One victim found out her certification was invalid during a job interview at a local hospital."

With a change of administrations in the federal government, there may be plans to roll back regulations limiting access to consumers' online data. States have other ideas. State legislatures may prove to be a counterweight to Washington by enacting new regulations to increase consumers' privacy rights. Illinois legislators are considering a "right to know" bill that would let consumers find out what information about them is collected by companies like Google and Facebook, and what kinds of businesses they share it with. Such a right, which European consumers already have, has been a longtime goal of privacy advocates. In the interim, however, lawyers at Edelson PC, a Chicago-based class-action firm that has become notorious among tech companies for its prolific filing of privacy suits, have gone on offense with a lobbying campaign of their own. Firm lawyers have also helped found a new nonprofit group, the Digital Privacy Alliance, as an advocate for privacy legislation in Illinois and elsewhere. "We were forced to get involved politically because once we started winning a lot of cases in court, they all went on the offensive," said Jay Edelson, founder of Edelson PC. "It's important because the Trump administration is doing so much to roll back

privacy rights, so there is going to be a huge shift to state lawmakers and state attorneys general."

### ***HUMAN TRAFFICKING***

**CWAG Associate Attorney General Maura Healey of Massachusetts** announced that a Boston man has been indicted on charges of human trafficking, rape and witness intimidation in connection with supplying multiple women with drugs and trafficking them for commercial sex in communities across the state. Hendricks Mario Berdet was indicted by a Statewide Grand Jury on the charges of Trafficking in Persons for Sexual Servitude (12 counts), Rape (1 count), Deriving Support from Prostitution (10 counts), and Intimidation of a Witness (5 counts). "Ending the sexual exploitation of human beings is one of my office's highest priorities," said Attorney General Healey. "In the midst of a deadly and widespread opioid epidemic, we continue to find individuals preying upon those struggling with addiction."

### ***MARIJUANA***

**CWAG Attorney General Marty Jackley of South Dakota** announced that Attorney General Explanations for two proposed initiated measures have been filed with the Secretary of State. These statements will appear on petitions that will be circulated by the sponsor of the measures. For each petition, if the sponsor obtains a sufficient number of signatures (13,871) by November 2017, as certified by the Secretary of State, the measure will be placed on the ballot for the November 2018 general election. The measures are titled: "An initiated measure to legalize marijuana for medical use" and "An initiated measure to legalize certain amounts of marijuana, drugs made from marijuana, and drug paraphernalia, and to regulate and tax marijuana establishments." Under South Dakota law, the Attorney General is responsible for preparing explanations for proposed initiated measures, referred laws, and South Dakota Constitutional Amendments. Specifically, the explanation includes a title, an objective, clear and simple summary of the purpose and effect of the proposed measure and a description of the legal consequences. The Attorney General Explanation is not a statement either for or against the proposed measure.

### ***GAMBLING***

**CWAG Attorney General Sean Reyes of Utah** announced that AGO investigators, in a joint operation with local, state, and federal law enforcement partners, executed warrants to seize evidence of an alleged statewide enterprise related to illegal gambling machines. The operation identified over an estimated 500 machines or more at over 130 locations across the state. Tips about illegal gambling devices were reported by citizens to legislators, Utah Senator Curt Bramble, Utah Representative Justin Fawson, and Utah Representative Norm Thurston, as well as from other sources. "The Attorney General's Office has focused its operation today on a large number of gambling devices that we allege are illegal under Utah statute," said Utah Attorney General's Office Investigations Chief Leo Lucey. "Because these devices are out in the open and are available to anyone, they present an especially dangerous threat to youth."



**TOBACCO**

**CWAG Associate Attorney General Derek Schmidt of Kansas** has negotiated an agreement with the Sac and Fox Nation of Missouri in Kansas and Nebraska to improve accounting for cigarettes and tobacco products sold on tribal lands. The agreement, known as a compact, has been signed by tribal leaders and by Governor Brownback, and was submitted to the Legislature. Two similar compacts negotiated with the Prairie Band Potawatomi Nation and the Iowa Tribe of Kansas and Missouri were approved by the Legislature and signed into law in April 2016. A compact with the Kickapoo Tribe was signed in December 2016 and also awaits approval by the Legislature. Attorney General Schmidt said approval of the compacts this year will help the state demonstrate compliance with its enforcement obligations under the MSA. The compact with the Sac and Fox Nation of Missouri in Kansas and Nebraska is the final compact to be reached with the four resident tribes in Kansas, allowing the state to account for tobacco sales on all reservation lands in the state.

Chris Coppin

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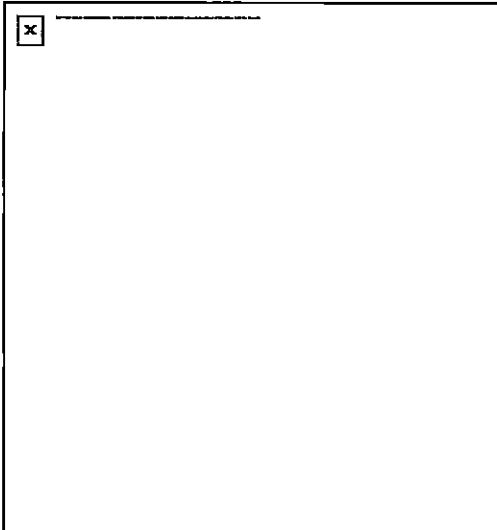
**Blake, Nathan [AG]**

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**From:** Terri L. Bennett <tbennett@iowalaw.org>  
**Sent:** Thursday, March 23, 2017 5:23 PM  
**To:** Blake, Nathan [AG]  
**Subject:** Iowa Legal Aid's 40th Anniversary

## **Iowa Legal Aid:**

Celebrating 40 Years of Seeking Justice and Improving Lives



### **PLEASE JOIN US!! Equal Justice After Hours 2017**

For the past 40 years, Iowa Legal Aid has helped ensure that everyone is treated fairly in the justice system. The importance of access to the court system is best illustrated through the comments of an Iowa Legal Aid client:

*"Thank you! For years, I didn't know how or when to get out of the situation I was in when in all reality, one phone call to Iowa Legal Aid made a huge impact on my life! I now have a nice place to live that is safe for me and my children. We can now learn to live without domestic violence in our home. My children can now grow up to respect others. Iowa Legal Aid saved my life!"*

In 2017, Iowa Legal Aid is celebrating **40 YEARS OF SEEKING JUSTICE AND IMPROVING LIVES**. Iowa Legal Aid will be kicking off its celebration with its annual event, ***Equal Justice After Hours***. The event will be held Thursday, March 30 from 5:00-7:00 p.m. at American Enterprise Group, located at 601 6th Avenue in downtown Des Moines. Tickets are \$50 and can be purchased at the door or online [HERE](#).

**Iowa State Bar Association Board of Governors has issued  
a challenge for donations made that evening!**



For the fourth year the President-Elect of the Iowa State Bar Association (ISBA), Steve Eckley, has initiated a Board of Governors challenge at ***Equal Justice After Hours***. The challenge is a dollar-for-dollar match from Steve and individual members of the Board of Governors of the ISBA for pledges and donations made at the event. Individual Board of Governors members have raised over \$7,000 to initiate the challenge!!

Join us on March 30 to celebrate **40 Years of Seeking Justice and Improving Lives**. If you are unable to attend, but would like to support Iowa Legal Aid, click **[HERE](#)** to donate.

For further information, contact Terri Bennett at 515-243-2980 x 1611 or [tbennett@iowalaw.org](mailto:tbennett@iowalaw.org)

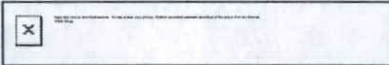
## Litigation Highlights of the Past 40 Years:

### Iowa Legal Aid's Assistance to Veterans

Iowa Legal Aid helped a disabled veteran with a garnishment problem. All of the money in his bank account had been seized. As a result, he had no money to pay expenses. The money in his account was from his Army pension and the VA. His money was protected by law from garnishment. However, he did not know it was protected and did not know he could do anything about it. Iowa Legal Aid brought a lawsuit challenging the lack of notice to the veteran and lack of an opportunity to challenge the legality of taking his property. In response to his lawsuit, the Iowa Supreme Court approved an administrative directive, providing all the relief Iowa Legal Aid asked for on his behalf. In fact, the change in procedure was broader in scope than the lawsuit, as it applied to the entire state. Now, someone in this situation will receive a notice explaining exempt property, and how to assert the claim. (Burr v. Des Moines County – Federal District Court)



### Iowa Legal Aid's Iowa City Regional Office

 Hawkeye Legal Aid in Iowa City was one of the "original" county legal aid offices that merged to form the Legal Services Corporation of Iowa, now Iowa Legal Aid. Hawkeye Legal Aid was formed in 1967. Iowa Legal Aid celebrates its 40th anniversary this year, but it is also the 50th anniversary of legal aid in Johnson County.

**PICTURED:**

*Front row, left to right: Charles Pierce, Liz Norris, Chris Luzzie (Litigation Director).*

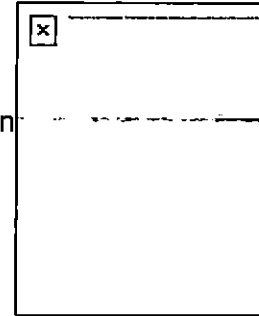
*Back row, left to right: Jan Rutledge (Managing Attorney), Courtney Thomas-Dusing, Lorraine*

*Gaynor, Jessica Covington.*

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## Iowa Legal Aid Client Tells Her Story

One of the most meaningful ways to learn about Iowa Legal Aid's important work is to hear about it from our clients. Click [HERE](#) to listen to Theresa tell her story of the positive impact Iowa Legal Aid made in her life.

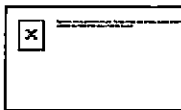


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In its 40-year history, Iowa Legal Aid has made a significant impact on the lives of low-income Iowans. Throughout the year, we will continue to share client stories, significant cases, and other examples of our long history of seeking justice and improving lives.

Thank you for your support as we celebrate our history and fulfill our mission to provide Hope Dignity and Justice to all Iowans. Please contact me with questions, comments or concerns.

Sincerely,



Dennis Groenenboom  
Executive Director  
[dgroenenboom@iowalaw.org](mailto:dgroenenboom@iowalaw.org)  
515-243-2980 x 1620

---

**"Celebrating 40 Years of Seeking Justice and Improving Lives"**

Please visit our website at [www.iowalegalaid.org](http://www.iowalegalaid.org)  
Donate to our cause at [www.iowalegalaidfoundation.org](http://www.iowalegalaidfoundation.org)

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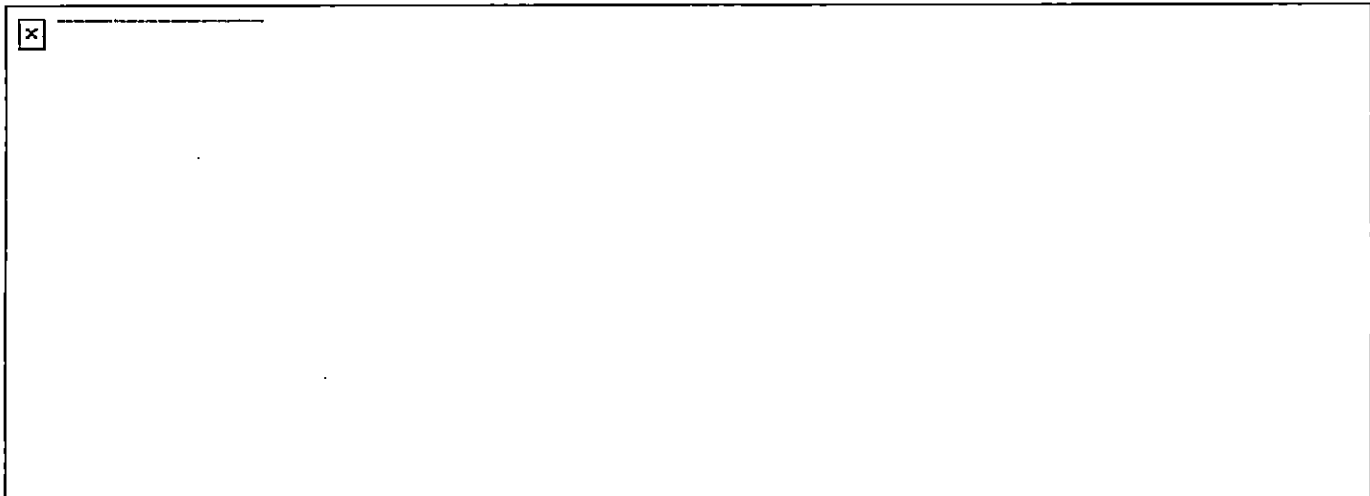
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Iowa Legal Aid  
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Des Moines, IA 50314  
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**From:** IAPP Daily Dashboard <publications@iapp.org>  
**Sent:** Thursday, March 23, 2017 12:54 PM  
**To:** Blake, Nathan [AG]  
**Subject:** Senate votes to overturn FCC broadband privacy rules

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**March 23, 2017**

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Active Learning, April 18  
Conference, April 19-20, Washington, DC



**TELECOMMUNICATIONS--U.S.**

**Senate votes to overturn FCC broadband privacy rules**

The U.S. Senate [voted](#) 50-48 Thursday to overturn the Federal Communications Commission's

broadband privacy rules. Sen. Jeff Flake, R-Ariz., said the FCC placed “heavy-handed” rules on ISPs compared to other content providers. Sen. Bill Nelson, D-Fla., called the Republican’s use of the Congressional Review Act to eliminate the FCC rules “a blunt congressional tool” that would not only “wipe out thoughtful rules” but would prevent the agency from reintroducing similar rules, [USA Today](#) reports. In [an op-ed for Wired](#), FTC Commissioner Terrell McSweeney and University of California, Berkeley professor Chris Hoofnagle argue why the FCC rules should not be overturned. “The FCC rule offers an opportunity for a meaningful debate about how to better translate our analog privacy norms into the digital world,” the authors write. “ISPs know our identities, and their position gives them the technical capacity to surveil users in ways that others cannot. It makes sense to ensure consumers can choose whether to share data related to their internet usage.”

[Full Story](#)

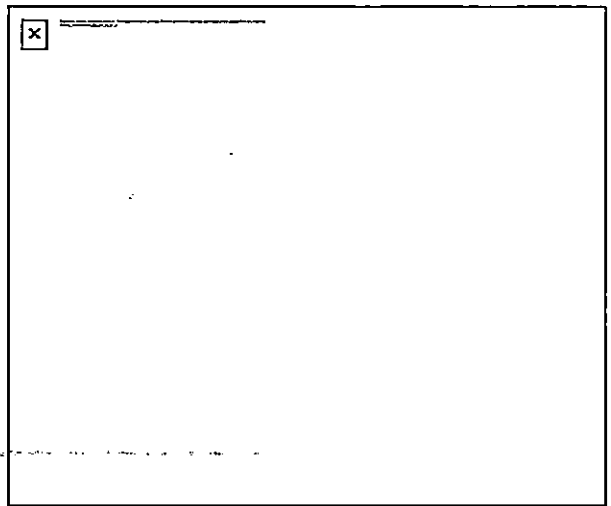
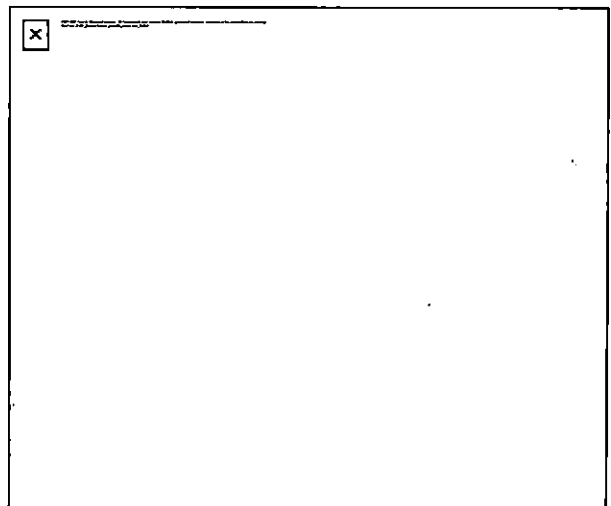
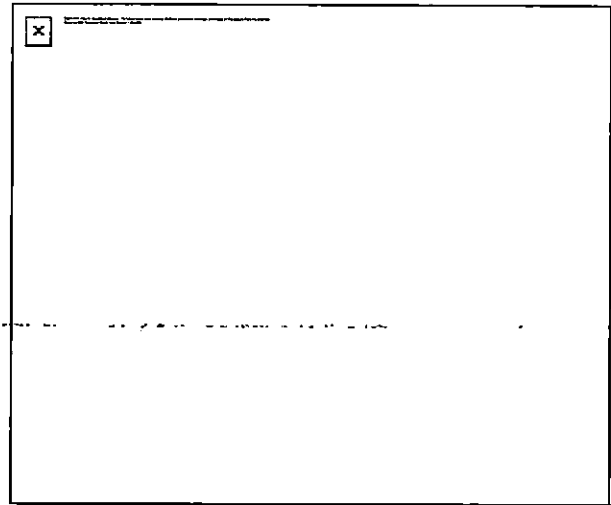
#### SURVEILLANCE—U.S.

### House intel chair claims US 'incidentally' collected data on Trump associates

House Intelligence Committee Chairman Devin Nunes, R-Calif., unexpectedly said he received information from unnamed sources that the U.S. intelligence community “incidentally” collected information on members of President Donald Trump’s transition team, [POLITICO](#) reports. Instead of informing other committee members, Nunes, to the apparent surprise of other lawmakers, went first to inform the White House, drawing harsh criticism from Ranking Member Adam Schiff, D-Calif. Nunes [apologized](#) Thursday. The move has prompted calls from Democrats and some Republicans, including [Sen. John McCain](#), R-Ariz., that ties between Russia and Trump’s transition team need an independent investigation. From a privacy perspective, the incident, once again, puts U.S. surveillance capabilities into the spotlight.

According to Nunes, the data was collected legally, but he has concerns about how American subjects were “unmasked” and shared among the intelligence community. Rep. Elijah Cummings, D-Md., has [said](#) Nunes should be investigated.

[Full Story](#)



## PRIVACY-OPERATIONS MANAGEMENT

### Why your company needs cyberinsurance, especially if it's not a Fortune 500

Yahoo. Target. Home Depot. LinkedIn. Verizon. Wendy's. Premera. Bethesda Game Studios. Cottage Health System. 21st Century Oncology. Natural Grocers. Drupal. Kirkwood Community College. What do these companies have in common? They've all suffered a data breach or cyber-related security incident in recent years. But there are other companies on this list that are not household names. Small- and medium-sized companies have been affected, too. In this new series for The Privacy Advisor, Brendan Hogan describes why organizations today, especially those that aren't Fortune 500s, should be investing in cyberinsurance.

[Full Story](#)

#### Sponsored Content

### GDPR – Can software really help?

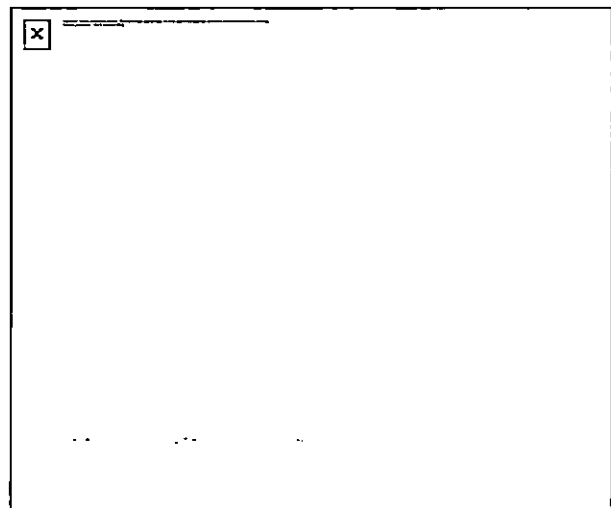
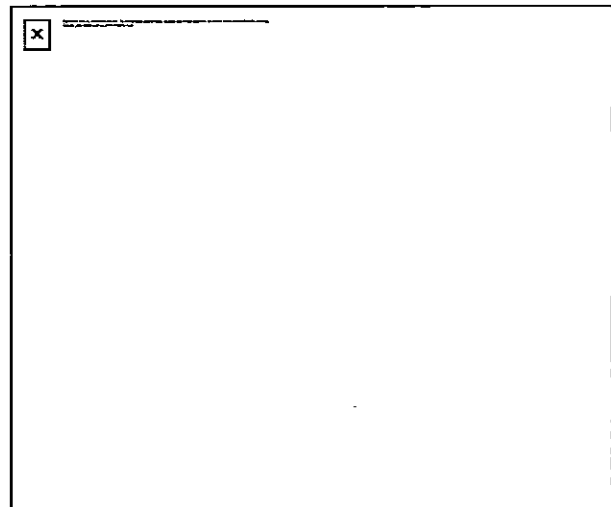
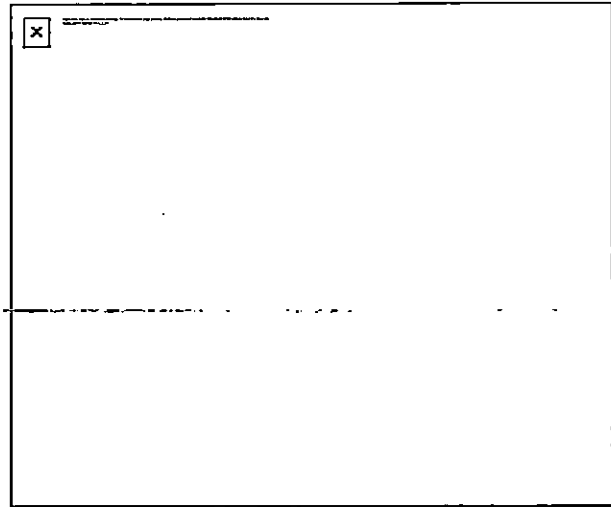
GDPR prep is in full swing – and privacy pros are turning to technology for solutions. With new operational requirements for documentation, data protection impact assessments, and privacy by design, increasingly organizations are turning to software-based tools to aid in the preparation. With capabilities to simplify and automate data mapping and privacy impact assessments, these tools are rapidly growing in popularity.

[Find out more](#)

## DATA LOSS—U.S.

### Department of Labor's JobLink site hacked

Unidentified hackers have breached the U.S. Department of Labor's America's JobLink site out of Topeka, Kansas, ultimately affecting 10 states, including Maine, Vermont, Idaho and Arizona, Governing reports. Information accessed includes Social Security numbers, names and dates of birth, the report states. While America's JobLink



technicians said they have fixed the "security hole" that initially allowed hackers entry, some states' Department of Labor, like Maine's, "recommended that JobLink users put a freeze on their credit report if they had a valid Social Security number in their JobLink account," the report adds.

[Full Story](#)

#### PRIVACY LAW—U.S.

### Data Breach Notification Act awaits New Mexico governor's approval

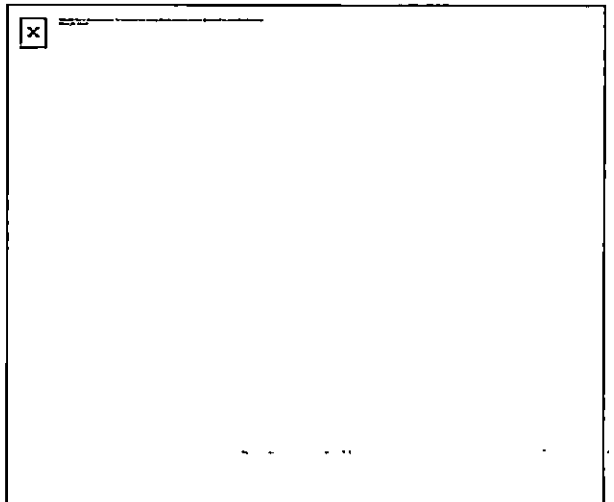
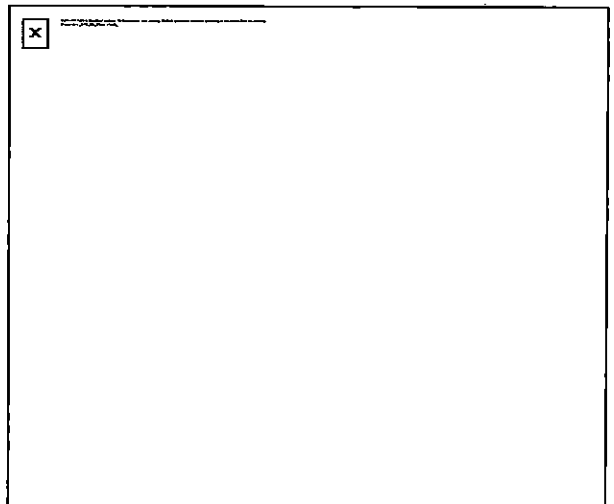
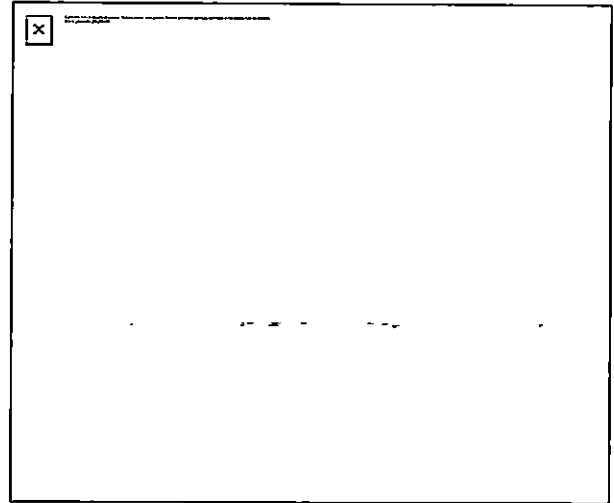
The New Mexico Senate has passed the Data Breach Notification Act, making it the 48th state to have such a law, GovInfoSecurity reports. The bill awaits the signature of Republican Gov. Susana Martinez, who has 20 days to approve or deny the measure, although the bill's sponsor, Rep. Bill Rehm predicts her support. The nonprescriptive bill requires businesses to notify the state's attorney general should more than 1,000 citizens' data be breached while giving "much latitude" to businesses regarding how they protect personally identifiable information, the report states. Should Martinez approve the act, South Dakota and Alabama will become the only remaining states without a breach notification law, the report adds.

[Full Story](#)

#### INTERNET OF THINGS—U.S.

### Democratic senators reintroduce transportation cybersecurity bills

Sens. Ed Markey, D-Mass., and Richard Blumenthal, D-Conn., have reintroduced two transportation cybersecurity bills, the Security and Privacy in Your Car Act and the Cybersecurity Standards for Aircraft to Improve Resilience Act, The Hill reports. The bills were initially introduced in the last session of Congress, the report states. The SPY Car Act calls for automotive cybersecurity and privacy standards from the National Highway Traffic Safety Administration and Federal Trade Commission, while the Cyber AIR Act requires a host of "reasonable measures" for air carriers and manufacturers, including secure Wi-Fi on flights and mandatory cyberattack notification. "Whether in their cars on the road or in aircraft in the sky,





Nathan Blake

5/8/2017 2:52 PM

Americans should be protected from cyberattack and violations of their privacy," Markey said.

[Full Story](#)

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### New Cybersecurity Litigation Treatise

[Cybersecurity Litigation: Consumer Data Protection and Privacy](#) is a new 700-page treatise containing in-depth discussion of the liability facing companies, boards of directors and other employees responsible for cybersecurity and the recent cases applying those principles. It also includes a summary of the statutory schemes and governmental guidance that govern or advise on this emerging area of law, as well as special chapters focusing on the financial services and health care industries.

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### PRIVACY LAW—U.S.

#### Three privacy bills proposed in Illinois

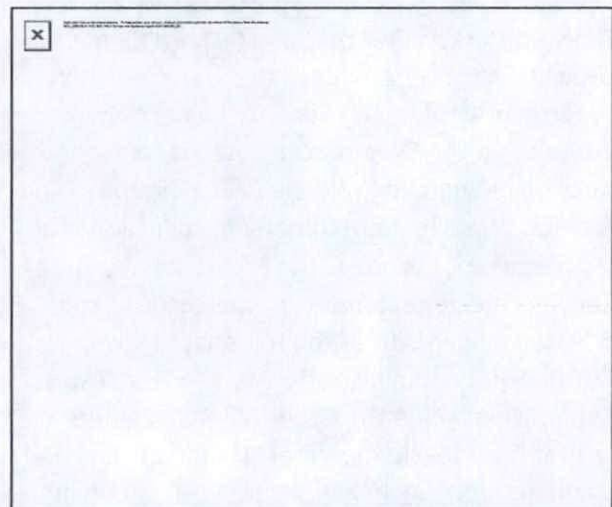
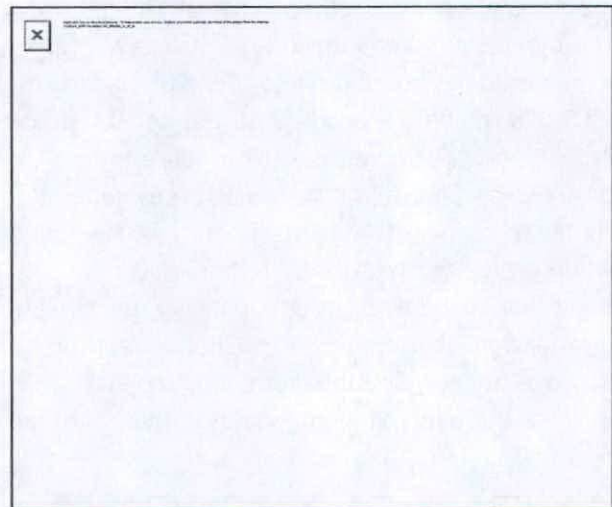
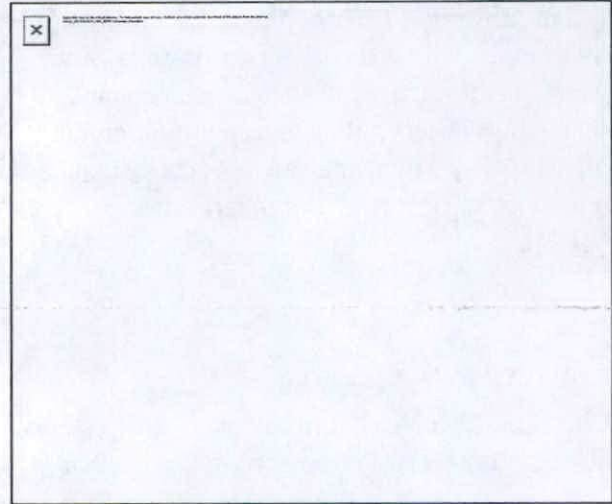
The Illinois State Senate is considering three privacy-related bills concerning the right to let citizens know about the data collected about them, unauthorized device microphone recordings protection, and the prohibition of unwanted geolocation services, dubbed the Right to Know Act, the Geolocation Privacy Protection Act and the Microphone-Enabled Device Act, respectively, ConsumerAffairs reports. Illinois Senator Michael Hastings emphasized that citizens should know where their data goes, and the Right to Know Act helps achieve that goal. Privacy advocates have their eye on the proposed Illinois laws, believing that they could "spread to other states, partly compensating for the Federal Communications Commission's plans to scrap Obama-era privacy protections," the report states.

[Full Story](#)

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### TELECOMMUNICATIONS—U.S.

#### Pai: FCC to vote on proposal blocking



### 'robocalls'

Writing a piece for The Hill, Federal Communications Commission Chairman Ajit Pai says his agency will be voting on a proposal to empower phone companies to block "robocalls." The spam calls are the number one source of complaints received by the FCC, and the new proposal will allow phone companies to block calls appearing from phone numbers determined to be invalid or no longer in use. The proposal was asked for through the phone industry's Robocall Strike Force, comprising 33 carriers and device makers. "There is no reason why any legitimate caller should be spoofing an unassigned or invalid number," Pai writes, adding, "The FCC's proposed action would go a long way toward making sure that robocallers won't be able to use this strategy to evade the law."

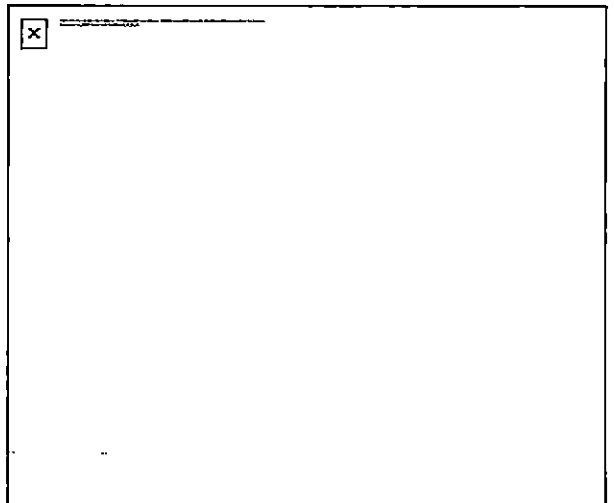
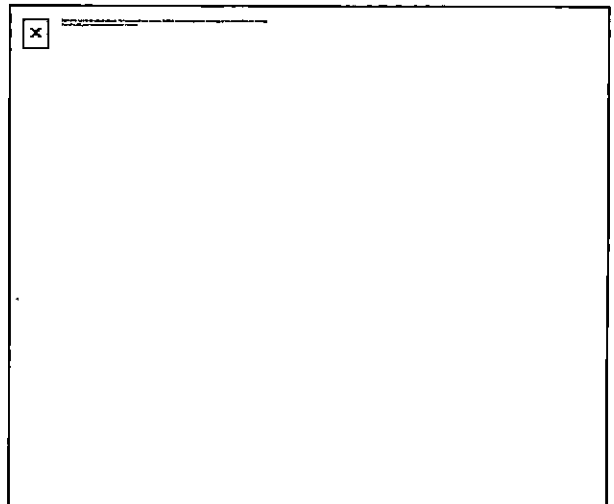
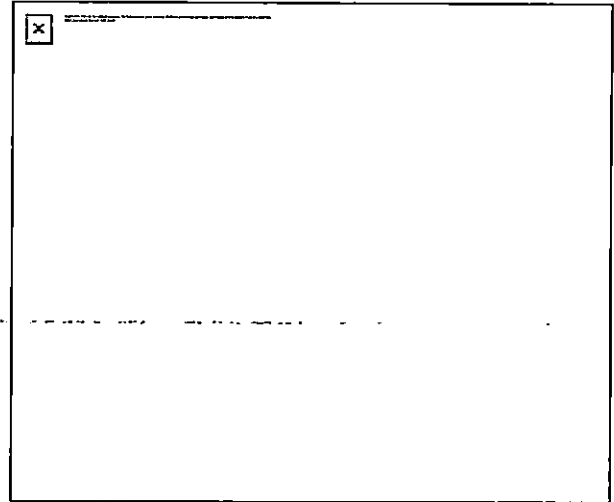
[Full Story](#)

### PERSONAL PRIVACY—U.S.

#### Experiment chronicles effect of constant surveillance in the home

CNN reports on the Helsinki Privacy Experiment, a project designed to explore the long-term psychological effects of constant surveillance in a home environment. The results of the experiment, [published five years ago](#), found while the majority of the participants expressed privacy concerns, such as the possibility of releasing the footage to the public, or the video would be edited in a way to intentionally misrepresent them, the subjects eventually got used to the surveillance. By the end of the 12-month experiment, 10 of the 12 participants said they had become accustomed to a lack of privacy. The experiment's lead author, Antti Oulasvirta, said privacy concerns surrounding technology are nothing new, with the first anxieties starting "with the internet in the late '90s, when there were cookies and people were starting to be tracked, and it got worse with smartphones. And now we have smart TVs, and eventually we will have IoT."

[Full Story](#)





## Get the revamped "Privacy Law Fundamentals, 2017"

New for 2017, the biannual "Privacy Law Fundamentals" now includes information on the GDPR, Privacy Shield, new developments at the U.S. FTC and FCC, and many other additions. A vital desk reference for every working privacy professional, authors Dan Solove and Paul Schwartz have created in "Privacy Law Fundamentals" a resource that's equally handy for a law student or 20-year veteran.

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## BIOMETRICS—U.S.

### California senators considering biometric surveillance disclosure bill

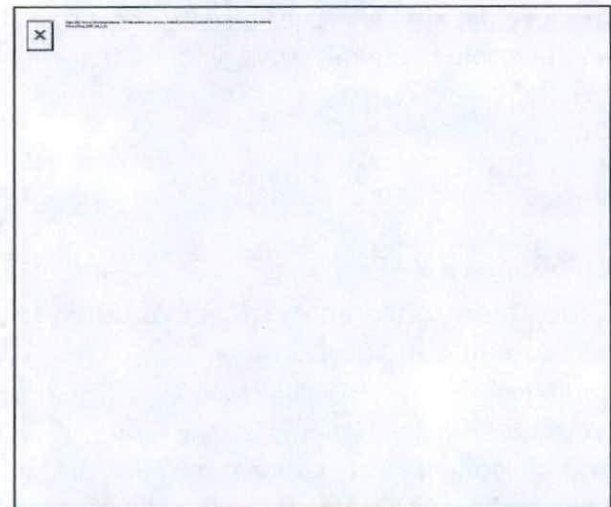
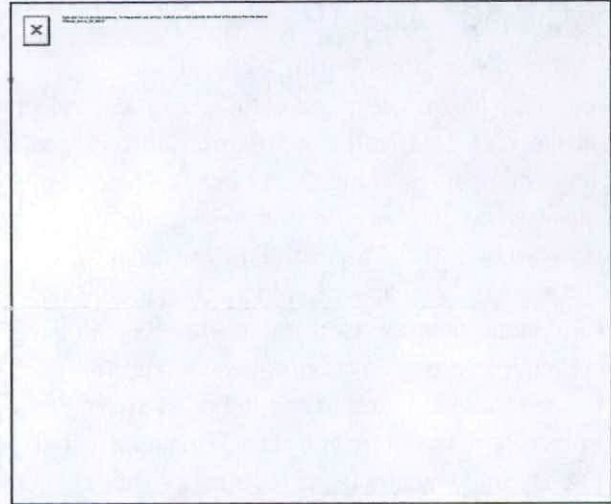
California senators are looking over a bill that would require law enforcement agencies across the state to disclose the surveillance tools in their possession, including facial recognition technology and eye scanners, The Desert Sun reports. The bill would require law enforcement, starting in 2018, to submit a plan for the surveillance technology they currently use and the data they have collected, while seeking public approval when requests for new technologies are made. The bill has faced criticism from both sides, with civil liberties groups stating the bill does not go far enough to shed the light on law enforcement's use of the tools, while others believe the bill would tip off criminals to the technology, helping them to evade capture. [The Intercept reports](#) on potential technology that would implement facial recognition technology in police body cameras. *Editor's note: Jedidiah Bracy, CIPP, covered Wednesday's House Oversight Committee hearing on facial recognition technology in a piece for [Privacy Tech](#).*

[Full Story](#)

## INFOSECURITY

### Hackers claim to have breached iCloud, seek ransom payment from Apple

Hackers claimed to have breached Apple's iCloud platform and are threatening to wipe out compromised user accounts if they are not paid a



## PLATINUM PLUS MEMBERS

- » [Accenture](#)
- » [CVS Health](#)
- » [Capital One](#)
- » [Cisco](#)
- » [Deloitte](#)
- » [Ernst and Young](#)
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- » [OneTrust](#)
- » [Oracle](#)
- » [PWC](#)
- » [Promontory](#)
- » [Teleperformance Group](#)

## PLATINUM MEMBERS

ransom. The group of hackers, calling themselves the "Turkish Crime Family," are asking Apple for either \$75,000 in bitcoin, or \$100,000 in iTunes gift cards, Motherboard reports. The hackers said they will either reset some of the iCloud accounts, or will wipe victims' devices remotely if Apple does not pay by April 7. "There have not been any breaches in any of Apple's systems including iCloud and Apple ID," Apple said in a statement. "The alleged list of email addresses and passwords appears to have been obtained from previously compromised third-party services."

[Full Story](#)

### LOCATION PRIVACY

#### Google Maps update allows users to share location with contacts

Wired reports Google Maps has released a new update allowing users to share their location in real time with their contacts for as long as they want to, allowing them to receive notifications or links as their travel progresses. While the location sharing may evoke privacy concerns, the report states, choosing who users can share with may make them more comfortable with the service. "If you can couch it in social, it's your friends that can track you—not that Big Brother can track you, not that an ad server can track you, not that Travis Kalanick can track you," said University of Michigan's Ross School of Business' Erik Gordon.

[Full Story](#)



[All Current Job Listings](#)



### WEBCON — KNOWING AND IMPLEMENTING THE GDPR:

#### PART 3

Wednesday, March 29, 11 a.m. - Noon ET

The final conversation of a complimentary, three-part series. Listen and learn from Omer Tene, VP of research and education at the IAPP, and Ruth Boardman, partner at Bird & Bird, as they explore

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- » Prudential
- » Quintiles IMS
- » Rackspace US, Inc.
- » Stoel Rives
- » TD Bank
- » Target
- » The Boeing Co.
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#### CORPORATE MEMBERS

Nathan Blake  
the GDPR mandates.

5/8/2017 2:52 PM

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**Blake, Nathan [AG]**

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**From:** Conference of Western Attorneys General <cwag@cwag.ccsend.com> on behalf of Conference of Western Attorneys General <ccoppin@cwagweb.org>  
**Sent:** Thursday, March 23, 2017 9:03 AM  
**To:** Blake, Nathan [AG]  
**Subject:** CWAG Roundup - March 23, 2017



## **CWAG Roundup March 23, 2017**

Dear Nathan,

### **EXECUTIVE SUMMARY**

**[\[Click Here for Full Articles\]](#)**

### ***CWAG CHAIR INITIATIVE***

The Conference of Western Attorneys General 2017 Chair's Initiative and Western Pacific AG Summit in Honolulu held last week was a huge success. The meeting ran from March 14th - 16th at the Royal Hawaiian Hotel with over 150 attendees. Hawaii Attorney General Doug Chin, who currently serves as Chair of CWAG, said, "It was an honor to host this meeting in Honolulu. We are excited to have had panels that focus on issues important to the Pacific Islands, as well as panels focused on renewable energy, sustainability, and open government. With a bipartisan group of 17 Attorneys General attending from jurisdictions across the country and the Pacific Islands, we held vibrant discussions of how states can lead the way on issues that matter so much to all of us."

If you missed the Chair Initiative, you still have the opportunity to watch the recorded program online! A program agenda is also included in the link below:

**[CWAG Chair Initiative Presentations](#)**

### ***UPCOMING EVENTS***

**2017 CWAG Annual Meeting Registration Now Open!**

San Francisco, CA



July 30- August 2, 2017

The Conference of Western Attorneys General along with CWAG Chair and Hawaii Attorney General Doug Chin invite you to the 2017 CWAG Annual Meeting in San Francisco, CA, July 30-August 2, 2017. Join your colleagues as CWAG explores the most pertinent legal issues during the days and spend the evenings enjoying the urban charm of the city at our social events.

To register online use the following link: [2017 CWAG Annual Meeting Registration](#)

If you have attended an annual meeting in the past few years your contact information has been saved in the registration system. **Please review your contact information during the registration process to make sure it is current.**

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If you have not previously registered for the annual meeting go to "New Registration", enter your email and create a personal password to be used for future registrations.

**Early Bird Registration:** The cutoff date for Early Bird registration is Friday, June 2, 2017 at 5:00pm (PT). All registrations received after this time and date will be charged the regular registration fee.

**Onsite Registration:** Pre-registering for primary attendees and guests who would like to attend any of the substantive or social opportunities is required. CWAG must make commitments to the hotel and activity vendors based on pre-registered guests prior to our arrival. The registration fees cover the cost of activities and meals at the conference which have been pre-arranged. Given the necessity of pre planning, we will not be accepting any onsite registrations.

**Hotel room cutoff: The last day to reserve your room within the CWAG room block is Friday, July 7, 2017.** If the room block sells out prior to that time, reservations will be accepted on a space available basis. The reservation number for the Westin St. Francis is 1.888.627.8546. Ask for the CWAG room block to receive our discounted rates.

### ***FORMER CALIFORNIA AG JOHN VAN DE KAMP DIES***

Former CWAG Attorney General John Van de Kamp of California died after a brief illness. He was 81. Van de Kamp was California's attorney general from 1983 until 1991. Van de Kamp had the distinction of serving as the first Los Angeles-based federal public defender

from 1971-1975 and then as Los Angeles County's top prosecutor from 1975-1982 during his long legal and political career. He also was the U.S. attorney in Los Angeles from 1966-67. **CWAG Attorney General Xavier Becerra** said, "John Van de Kamp lived for the values of justice and opportunity that define the state of California. I will forever be grateful for the confidence he showed in me from my earliest days of public service under his leadership at the California Department of Justice." Van de Kamp, a Stanford Law School graduate, also served as president of the State Bar of California from 2004-2005 and more recently was the independent reform monitor for the city of Vernon as part of reform efforts there.

### ***IMMIGRATION***

**CWAG Attorney General Doug Chin of Hawaii** announced that the State of Hawaii has moved to convert the temporary restraining order issued last week by Hawaii federal judge Derrick K. Watson in the travel ban case into a preliminary injunction. On March 15, 2017, Judge Watson issued a 43-page opinion enjoining the federal government nationwide from enforcing or implementing Sections 2 and 6 of a second Executive Order issued by President Trump. That Executive Order would have restricted immigration from Iran, Syria, Somalia, Sudan, Libya, and Yemen, and also temporarily suspended refugee admissions. Under federal court rules, a temporary restraining order expires 14 days after entry, unless the court extends it. In contrast, a preliminary injunction will last as long as directed by the court. A hearing on the motion is currently scheduled before Judge Watson on March 29, 2017 at 9:30 a.m.

### ***HEALTH CARE***

**CWAG Attorney General Lawrence Wasden of Idaho** announced the release of his opinion regarding the proposed sale of St. Joseph Regional Medical Center, a nonprofit hospital in Lewiston, to a for-profit subsidiary of Tennessee-based RCCH HealthCare Partners. The opinion concludes the Attorney General's review of the proposed sale as required under the Idaho Nonprofit Hospital Sale or Conversion Act. "My review of the proposed sale indicates the hospital and the public will benefit from this transaction," Attorney General Wasden said. "I therefore do not oppose the sale, and I encourage the parties to work cooperatively to quickly transition the hospital to its new management." He also announced that his office has reached agreements with Ascension Health - the sole member of St. Joseph Regional Medical Center, Inc. - and RCCH HealthCare Partners to establish a \$25 million healthcare endowment. A new, independent foundation will administer the endowment to benefit the health and well-being of people in nearby counties in Idaho, Washington and Oregon.

**CWAG Attorney General Ellen Rosenblum of Oregon** announced a \$545,000 settlement with the nutritional supplement chain Vitamin Shoppe Inc. that will prohibit the company from selling dietary supplements with illegal or unsafe ingredients. Under the settlement, Vitamin Shoppe is prohibited from selling any dietary supplement after the U.S. Food and Drug Administration (FDA) has issued written notice that the product contains an ingredient that is unlawful or unsafe. In addition, Vitamin Shoppe may not sell DMAA, picamillon, and other unlawful ingredients in Oregon. "The nutritional supplements that Vitamin



Shoppe was selling have the potential to do a lot of harm. Continuing to sell a purported dietary supplement after the FDA warned it was unsafe or unlawful is unacceptable," said Attorney General Rosenblum. "This is the first agreement of its kind that holds a retailer financially responsible for selling products manufactured by a third party that they knew or should have known were not safe or not lawful."

CVS Health (CVS) announced the company will launch Reduced Rx™, a prescription savings program that will offer discounts on certain medications - through CVS Health's pharmacy benefits manager, CVS Caremark - directly to patients. The program will help patients with high out of pocket costs afford essential medications. Novo Nordisk will participate in the prescription savings program. Through this program, CVS Health and Novo Nordisk will offer Novolin R®, Novolin N® and Novolin 70/30® human insulin at a cost of \$25 per 10ml vial, which reflects a potential savings of as much as \$100 for cash paying patients.

### ***ENVIRONMENTAL LAW***

**CWAG Associate Attorney General Ken Paxton of Texas** filed a lawsuit against several federal agencies for violating the Nuclear Waste Policy Act (NWPA). Since the NWPA's enactment in 1982, the federal government has failed to complete the licensing process for a permanent nuclear waste storage repository at Yucca Mountain, Nevada. The lawsuit, filed directly in the U.S. Court of Appeals for the 5th Circuit, seeks to force an up or down vote by the Nuclear Regulatory Commission (NRC) on the licensing of Yucca Mountain and to stop the Department of Energy from spending tax dollars on "consent-based" siting.

In response to President Trump's announcement he is seeking \$120 million to restart licensing activities for Yucca Mountain, **CWAG Attorney General Adam Paul Laxalt of Nevada** issued the following statement: "In the coming years, I will continue to battle the poster-child for federal overreach - a battle over an unwanted nuclear waste repository at Yucca Mountain in our beloved Nevada. My Solicitor General's Office, senior staff and outside experts, working in conjunction with the Office of Nuclear Project's staff and technical experts and the Governor's Office, have been preparing for a resumption of attempts to license Yucca Mountain to store high level nuclear waste since a federal court issued its restart order. Today's announcement that the president is requesting \$120 million in nuclear waste funding, part of which would be used to restart licensing activities for the Yucca Mountain repository, comes as no surprise to this team. Nevada will continue to litigate this matter aggressively and fully. We have many strong claims against the proposed nuclear repository. If the Trump administration continues along this path, we expect many years of protracted litigation in which we are confident we will ultimately prevail."

### ***CONSUMER PROTECTION***

When **CWAG Attorney General Bob Ferguson of Washington** was elected attorney general, the office had eight attorneys devoted to consumer protection. That's grown to 22, with two more being hired, he said. The increase has come despite a dramatic drop in recent years in funding for consumer protection from the state's general fund. Additional money

from settlements or court cases won go into the state general fund, and in some cases are reinvested in the consumer protection program to grow the program and pay the costs of bringing cases, he said. The litigation comes at a risk. Under Washington law, the state pays the cost of the winning side if the state loses its consumer protection lawsuit, Attorney General Ferguson said. But if the state does not sue, it sends a message to businesses that the Attorney General's Office will always settle, which means less money for the state. "If you go to trial and start winning, people get the memo on that," Attorney General Ferguson said. Last month, after a three-week trial, a King County judge awarded the state nearly \$4.3 million in penalties, attorneys' fees and costs for multiple violations of the state Consumer Protection Act by the makers of 5-Hour Energy.

**CWAG Associate Attorney General Karl A. Racine of the District of Columbia** warned immigrant communities in the District of Columbia of a potential scam involving persons posing as federal Immigrations and Customs Enforcement (ICE) agents and placing bogus Search/Removal Warrants on homes. The warrants threaten the occupants with searches and potential removal, and could be part of an effort to con residents of immigrant communities into sharing important personal financial information or to coerce them into making payments to avoid further action. "Scammers will often stop at nothing to take advantage of people, and particularly vulnerable groups," Attorney General Racine said. "We are concerned that these fake warrants are part of an attempt to exploit very real fears of deportation running rampant right now in immigrant communities. Our office will do everything we can to help educate and protect all District residents, including undocumented immigrants."

## ***MARIJUANA***

With growing pressure by special interests to push forward with the legalization of recreational marijuana in Rhode Island, **CWAG Associate Attorney General Peter Kilmartin**, along with Smart Approaches to Marijuana (SAM), the Ocean State Prevention Alliance, and What's the Rush Rhode Island, hosted a press conference to announce a unified opposition to the legalization of marijuana. Speakers at the press conference included representatives from law enforcement, the prevention and recovery communities, the medical community, the business community, municipal leaders, and others who are united in their opposition to the legalization of recreational marijuana in Rhode Island. "Many of the voices we heard today, we heard for the first time, especially from the medical community and municipal leaders. What they have to say should make every parent, every teacher, every business owner, every Rhode Islander pause to think about the many real consequences of legalization of recreational marijuana," said Attorney General Kilmartin. "This is a very complex policy decision that will have long lasting effects and unintended consequences, much of which are still unknown. This is not a decision that should be made lightly. It's important that we continue to have these discussions to better understand the full impact of legalization before we head down that a path - a path I believe is the wrong direction for the State of Rhode Island."



Nathan Blake

5/8/2017 2:52 PM

Legal Director  
Conference of Western Attorneys General  
1300 I Street  
Sacramento, CA 95814  
505-589-5101 (cell)  
817-615-9335 (fax)  
[Chris.coppin@cwagweb.org](mailto:Chris.coppin@cwagweb.org)

**Forward this email**



Conference of Western Attorneys General | 1300 I Street | Sacramento | CA | 95814

**Blake, Nathan [AG]**

**From:** OCIO Hoover Barracuda <L2GW01@iowa.gov>  
**Sent:** Thursday, March 23, 2017 9:01 AM  
**To:** Blake, Nathan [AG]  
**Subject:** Spam Quarantine Summary - (9)



Office of the Chief Information Officer

**Spam Quarantine Summary**

Total inbound quarantined emails for nathan.blake@iowa.gov: 9 messages

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Messages older than 30 days will be removed

Previously Quarantined Email: 9 messages		
From	Subject	Actions
amber@title4services.us	Programs Available Iowa State Employees	<a href="#">Deliver</a>   <a href="#">Whitelist</a>   <a href="#">Delete</a>   <a href="#">View</a>
Monica.Wadleigh@oag.texas.gov	Re: Next Conference Calls - March 21 (Tentative) and March 24	<a href="#">Deliver</a>   <a href="#">Whitelist</a>   <a href="#">Delete</a>   <a href="#">View</a>
Hal.Morris@oag.texas.gov	Re: Next Conference Calls - March 21 (Tentative) and March 24	<a href="#">Deliver</a>   <a href="#">Whitelist</a>   <a href="#">Delete</a>   <a href="#">View</a>
Joe.Bolkcom@legis.iowa.gov	Branstad-Reynolds Budget Crisis Looms	<a href="#">Deliver</a>   <a href="#">Whitelist</a>   <a href="#">Delete</a>   <a href="#">View</a>
amelie.vonkoczian@euroforum.com	Prepare yourself for the implementation of GDPR	<a href="#">Deliver</a>   <a href="#">Whitelist</a>   <a href="#">Delete</a>   <a href="#">View</a>
notification@presdomail.com	Nathan, time is running out. See who else is going to LeadsCon LasVegas 2017	<a href="#">Deliver</a>   <a href="#">Whitelist</a>   <a href="#">Delete</a>   <a href="#">View</a>
Joe.Bolkcom@legis.iowa.gov	More harsh treatment of working Iowans. Poor Iowa.	<a href="#">Deliver</a>   <a href="#">Whitelist</a>   <a href="#">Delete</a>   <a href="#">View</a>
Joe.Bolkcom@legis.iowa.gov	Why are Republicans so obsessed with trying to fix things that aren't broken?	<a href="#">Deliver</a>   <a href="#">Whitelist</a>   <a href="#">Delete</a>   <a href="#">View</a>
Joe.Bolkcom@legis.iowa.gov	Cutting Tuition Scholarships is Bad for Our Future	<a href="#">Deliver</a>   <a href="#">Whitelist</a>   <a href="#">Delete</a>   <a href="#">View</a>

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 Click on the [Delete](#) link to remove that message from your quarantine.  
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**Blake, Nathan [AG]**

**From:** OCIO Hoover Barracuda <L2GW01@iowa.gov>  
**Sent:** Wednesday, March 22, 2017 3:01 PM  
**To:** Blake, Nathan [AG]  
**Subject:** Spam Quarantine Summary - (9)



Office of the Chief Information Officer

**Spam Quarantine Summary**

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Email Quarantined Since Last Notification (2017-Mar-15 09:00:30) - 3 messages		
From	Subject	Actions
amber@title4services.us	Programs Available Iowa State Employees	<a href="#">Deliver</a>   <a href="#">Whitelist</a>   <a href="#">Delete</a> <a href="#">View</a>
Monica.Wadleigh@oag.texas.gov	Re: Next Conference Calls - March 21 (Tentative) and March 24	<a href="#">Deliver</a>   <a href="#">Whitelist</a>   <a href="#">Delete</a> <a href="#">View</a>
Hal.Morris@oag.texas.gov	Re: Next Conference Calls - March 21 (Tentative) and March 24	<a href="#">Deliver</a>   <a href="#">Whitelist</a>   <a href="#">Delete</a> <a href="#">View</a>

Previously Quarantined Email: 6 messages		
From	Subject	Actions
Joe.Bolkcom@legis.iowa.gov	Branstad-Reynolds Budget Crisis Looms	<a href="#">Deliver</a>   <a href="#">Whitelist</a>   <a href="#">Delete</a> <a href="#">View</a>
amelie.vonkoczian@euroforum.com	Prepare yourself for the implementation of GDPR	<a href="#">Deliver</a>   <a href="#">Whitelist</a>   <a href="#">Delete</a> <a href="#">View</a>
notification@presdomail.com	Nathan, time is running out. See who else is going to LeadsCon LasVegas 2017	<a href="#">Deliver</a>   <a href="#">Whitelist</a>   <a href="#">Delete</a> <a href="#">View</a>
Joe.Bolkcom@legis.iowa.gov	More harsh treatment of working lowans. Poor Iowa.	<a href="#">Deliver</a>   <a href="#">Whitelist</a>   <a href="#">Delete</a> <a href="#">View</a>
Joe.Bolkcom@legis.iowa.gov	Why are Republicans so obsessed with trying to fix things that aren't broken?	<a href="#">Deliver</a>   <a href="#">Whitelist</a>   <a href="#">Delete</a> <a href="#">View</a>
Joe.Bolkcom@legis.iowa.gov	Cutting Tuition Scholarships is Bad for Our Future	<a href="#">Deliver</a>   <a href="#">Whitelist</a>   <a href="#">Delete</a> <a href="#">View</a>

**DELETE ALL DISPLAYED EMAILS**

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 Click on the [Whitelist](#) link to have that message delivered to your primary inbox and that sender whitelisted.  
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[Manage your allowed / blocked list](#)

[Set quarantine notification intervals](#)

[View your entire Quarantine Inbox or manage your preferences.](#)

The task force addresses regulatory hurdles to job growth, including the proliferation of occupational licensing. Nearly 30 percent of American jobs require a license today, up from less than five percent in the 1950s. For some professions, occupational licensing is necessary to protect the public against legitimate health and safety concerns. But in many situations, the expansion of occupational licensing threatens economic liberty.

Unnecessary or overbroad restrictions erect significant barriers and impose costs that harm American workers, employers, consumers, and our economy as a whole, with no measurable benefits to consumers or society.

Learn how

**Economic  
LIBERTY  
Opens Doors**



"This is an important moment for economic liberty. Governors, state legislators, and many other stakeholders want to move forward to remove or narrow occupational licensing regulations and open doors to opportunity, enhancing competition and innovation," said Acting Chairman Ohlhausen. "The FTC's Economic Liberty Task Force has moved quickly to create a website that will gather many existing resources, from the FTC and elsewhere, into a central repository for stakeholders. It will be a dynamic resource and will grow to incorporate additional work by the task force and others in this important area."

The FTC has a long history of advocacy to reduce or eliminate unnecessary occupational licensing requirements imposed by state law or rules, and the website [showcases that work](#). Upon request by a state legislator or in response to an open public comment period, FTC staff regularly shares its expertise on licensure issues affecting health care workers, other professionals such as attorneys and interior designers, and workers in occupations such as online auction trading and real estate closing services.

The website also presents [selected examples of state-based initiatives](#), telling the stories of state elected leaders and other officials who share the agency's goal of occupational licensing reform. The website features FTC testimony before Congress on occupational licensure, as well as blogs on the topic, and selected speeches and articles by FTC officials and staff.

The Federal Trade Commission works to [promote competition](#), and protect and educate consumers. You can learn more about [how competition benefits consumers](#) or [file an antitrust complaint](#). Like the FTC on [Facebook](#), follow us on [Twitter](#), read our [blogs](#) and [subscribe to press releases](#) for the latest FTC news and resources. The Economic Liberty web pages are at [www.ftc.gov/econliberty](http://www.ftc.gov/econliberty).

## Contact Information

### MEDIA CONTACT:

Betsy Lordan  
Office of Public Affairs  
202-326-3707

## Related Resources

- [Economic Liberty](#)

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Nathan Blake

5/8/2017 2:52 PM

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**Blake, Nathan [AG]**

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**From:** Conference of Western Attorneys General <cwag@cwag.ccsend.com> on behalf of Conference of Western Attorneys General <ccoppin@cwagweb.org>  
**Sent:** Thursday, February 23, 2017 10:02 AM  
**To:** Blake, Nathan [AG]  
**Subject:** CWAG Roundup - February 23, 2017



## **CWAG Roundup February 23, 2017**

Dear Nathan,

### **EXECUTIVE SUMMARY**

**[\[Click Here for Full Articles\]](#)**

### **UPCOMING EVENTS**

#### **Chair's Initiative and Western Pacific AG Summit**

Honolulu, Hawaii

March 13-16, 2017

This conference will be held at the famous Royal Hawaiian Hotel. We will begin with a welcome reception on Monday, March 13, 2017, at 5:00pm. The Western Pacific Attorney General Summit will take place from 8:00am to 5:00pm on Tuesday, March 14, 2017. The Chair Initiative will take place on Wednesday, March 15th, from 8:00am to 5:00pm, and will conclude on Thursday, March 16th at 12:00pm. This conference is open to all private sector and government attendees. Click [here](#) to download registration materials. The preliminary draft agenda for the meeting can be downloaded [here](#). ***Registration deadline and hotel room block cutoff is Friday, February 24, 2017.***

The Pacific Summit will focus on major issues facing the Pacific jurisdictions, such as climate change, immigration, self-government, consumer retail access and economic growth. The Chair Initiative will explore how states have lead the way to solve national issues when the federal government has experienced deadlock and what the future holds for state action. The states are a vital and active source for ideas to solve important issues facing society. States lead the way on consumer and financial protection, healthcare, protecting privacy and so much more. Even when partisan politics keep the federal government from being as effective as it may, the states can put aside politics to address the needs of their



citizens.

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San Francisco, CA

July 30- August 2, 2017

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## ***ATTORNEY GENERAL NEWS***

Oklahoma Governor Mary Fallin appointed Secretary of State **Mike Hunter as Oklahoma Attorney General** after Scott Pruitt was confirmed by the U.S. Senate to be the Administrator of the Environmental Protection Agency. "Mike understands the law and has a thorough understanding of state government, which will serve him and the state well," Governor Fallin said. "Mike also understands the importance of public service and he will be a tremendous advocate to protect the basic legal rights for Oklahomans." Attorney General Hunter served as first assistant attorney general under Scott Pruitt from June 2015 to October, when Governor Fallin named him secretary of state. Hunter was the chief operating officer of the American Bankers Association from 2010 to 2015 and was secretary of the Commissioners of the Land Office. "I appreciate the confidence placed in me by Governor Fallin," Attorney General Hunter said. "I enjoyed working in her administration, and look forward to continuing to assist whenever possible to improve our state."

**CWAG Associate Attorney General Brad Schimel of Wisconsin** announced the additions of Daniel Lennington, Lane Ruhland, and Mike Austin to the Wisconsin Department of Justice senior leadership team. Lennington has been named Senior Counsel, a position vacated by Paul Connell, when Connell was named Deputy Attorney General. Ruhland will serve as Director of Government Affairs, replacing Austin, who has been selected by Attorney General Schimel to serve as Policy Advisor. "I am excited to put this team to work for the citizens of our great state," said Attorney General Schimel. "Dan, Lane, and Mike share our vision for public safety and respect for the rule of law, and I know they will advocate tirelessly to make Wisconsin safer and stronger."

Centene Corp. has hired **former Missouri Attorney General Chris Koster** as the managed care company's senior vice president, corporate services. Mr. Koster "will assist in business-related issues, outside of government relations, for Centene's locally-based health plans across the country." Koster was attorney general for the past eight years before running unsuccessfully for governor in 2016. Prior to his role as attorney general, Koster was in the Missouri Senate for four years, and was prosecuting attorney in Cass County for a decade. "I am honored to join a team of individuals who every day work to provide high-quality healthcare to vulnerable populations across the United States," Mr. Koster said in a statement. "In many ways, this opportunity provides the continuation of the mission I have pursued for the past decade."

## ***IMMIGRATION***

**CWAG Attorney General Bob Ferguson of Washington** declared victory in *State v. Trump*, in light of the U.S. Department of Justice's filing in the Ninth Circuit Court of Appeals. Justice, on behalf of President Trump, represented to the court that: "the President intends in the near future to rescind the Order and replace it with a new, substantially revised Executive Order" to eliminate constitutional concerns. "Let's be clear: Today's court filing by the federal government recognizes the obvious, the President's current Executive Order violates the Constitution," Attorney General Ferguson said. In filings with the Ninth Circuit, both the federal government and the states of Washington and Minnesota

urged the court to decline an "en banc" review of an earlier, unanimous ruling by a panel of three Ninth Circuit judges. In that decision, the court upheld U.S. District Court Senior Judge James L. Robart's injunction preventing enforcement of the Executive Order nationwide.

### ***INDIAN LAW***

The Tenth Circuit Court of Appeals has ruled in favor of **CWAG Attorney General Peter Michael** and the State of Wyoming in finding that the Wind River Reservation had been diminished when the federal government opened the reservation to settlement in a series of acts over the past 100 years. The Court reversed a U.S. Environmental Protection Agency determination that, even though the land was sold, it remained legally part of the reservation. If the EPA decision had been upheld, large portions of Wyoming previously thought to be under state jurisdiction would be impacted. The EPA addressed the reservation boundary issue in approving an application from the Northern Arapaho and Eastern Shoshone tribes, which share the reservation, to be treated in a manner similar to states under the Clean Air Act.

### ***HUMAN TRAFFICKING***

**CWAG Attorney General Sean Reyes of Utah** announced the guilty plea of Todd Jeremy Rettenberger to charges relating to human trafficking and related crimes. Rettenberger was sentenced to one to fifteen years in prison for second-degree felony human trafficking and zero to five years for third-degree felony exploitation of prostitution. The sentences will run concurrently. "The victims of this trafficker were girls, barely older than teens, forced into prostitution against their will and compelled to stay in "the life" by threats against their well-being and against their families. I am thrilled they will not have to endure a trial and be forced to relive the atrocities perpetrated upon them. It is imperative that we now keep these survivors safe, avoid revictimizing them, empower them with resources and do everything we can to help them heal and reclaim their lives," said Attorney General Reyes. "Importantly, this case demonstrates that human trafficking is real. It exists in Utah as it does across the nation and around the world. It takes many forms and can happen anywhere.

**CWAG Attorney General Sean Reyes of Utah** is supporting a bill before the Utah legislature that would fight the trafficking of adopted children. The new law would implement safeguards to protect adopted children from "rehoming," the illegal practice of adoptive parents giving away their adopted children away to strangers without the usual home study or background checks performed to protect children. At the invitation of the US Department of State, the Utah Attorney General's Office joined national a committee two years ago tasked with addressing the illegal phenomenon and exploring model legislation for other states around the country. The bill, HB 199, was passed out of the House Judiciary Committee with a favorable recommendation. "Getting the bill out of committee is a positive step in the right direction," said Attorney General Reyes. "This bill isn't designed to be overly punitive towards adoptive parents. We know the vast majority of adoptive parents have only the most noble of intentions when bringing adopted children into their families. But the reality is that many adopted kids coming from overseas environments have been victims of terrible abuse in war-torn countries or experienced severe trauma from the

horrors of torture, famine, abuse or other atrocities. Some adoptive parents who become overwhelmed by the cultural, emotional and psychological challenges of highly traumatized children, panic and end up desperate. In too many situations, parents have literally given away their children to strangers like they might with old furniture, beginning with an online communication or transaction."

### ***CONSUMER PROTECTION***

**CWAG Attorney General Mark Brnovich of Arizona** announced a judge dismissed more than 1,000 frivolous lawsuits filed by a serial litigator against Arizona small businesses. Advocates for Individuals with Disabilities flooded state courts with more than 1,700 lawsuits against Valley businesses in 2016. The copy-and-paste lawsuits alleged that businesses' parking lots did not comply with regulations related to persons with disabilities. Many of the issues were minor and easily fixable, but the lawsuits sought thousands of dollars in damages and attorneys' fees. "Arizona is not going to tolerate serial litigators who try to shake down small hardworking businesses by exploiting the disability community," said Attorney General Brnovich. "Today's ruling is a victory for the rule of law."

**CWAG Associate Attorney General Pam Bondi of Florida** and the Federal Trade Commission announced the entry of the last consent judgment shutting down an illegal robocalling scheme used to sell Florida cruise line vacations. The unlawful telemarketing campaign flooded consumers from across the country with billions of unwanted robocalls, averaging 12 to 15 million illegal calls a day, and generated millions of dollars for the companies. The fifth and final consent judgment announced bars owner Fred Accuardi and his companies from assisting or participating in actions that violate telemarketing laws. In 2015, Attorney General Bondi, in partnership with the FTC and other state attorneys general, filed a lawsuit against Caribbean Cruise Line, Inc., a marketing company, as well as seven other companies, for alleged involvement in a scheme that used political survey robocalls to illegally sell cruise vacations. The joint complaint was filed in the United States District Court for the Southern District of Florida. The complaint alleged that the defendants' robocalls violated both Florida and federal law by unlawfully using political surveys as a pretext to place sales calls pitching Bahamas cruises and related vacation packages to individuals on do-not-call lists and other individuals they were prohibited from calling.

Chris Coppin

Legal Director

Conference of Western Attorneys General

1300 I Street

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Chris.coppin@cwagweb.org

Nathan Blake

5/8/2017 2:52 PM

**Forward this email**



Conference of Western Attorneys General | 1300 I Street | Sacramento | CA | 95814

**Blake, Nathan [AG]**

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**From:** NEWS [AG]  
**Sent:** Tuesday, February 21, 2017 2:12 PM  
**Subject:** Miller Statement on AFSCME Lawsuit

**IOWA DEPARTMENT OF JUSTICE  
OFFICE OF THE ATTORNEY GENERAL  
Thomas J. Miller, Attorney General  
[www.iowaattorneygeneral.gov](http://www.iowaattorneygeneral.gov)**

CONTACT: Geoff Greenwood | Communications Director | 515-281-6699 | [geoff.greenwood@iowa.gov](mailto:geoff.greenwood@iowa.gov)

FOR IMMEDIATE RELEASE  
February 21, 2017

## **Statement from Attorney General Tom Miller on AFSCME Lawsuit over Collective Bargaining Law**

*Miller to ask Executive Council to approve outside legal counsel to defend state*

DES MOINES – Attorney General Tom Miller today announced that he will ask the Iowa Executive Council to seek outside legal counsel to defend the state against the lawsuit challenging the constitutionality of House File 291, the collective bargaining bill signed into law on Friday.

The American Federation of State, County and Municipal Employees (AFSCME) Iowa Council 61 filed the lawsuit Monday in Polk County District Court.

The Executive Council, comprised of the governor, secretary of state, state treasurer, secretary of agriculture and state auditor, must approve the appointment of outside counsel to represent the state.

“As the new collective bargaining law has the potential to existentially threaten the viability of public sector unions—many of the very same organizations that have supported me in the past—I am recommending that the Executive Council seek outside legal representation to defend this lawsuit in order to avoid any questions about a potential conflict,” Miller said. “While the extraordinarily professional and skilled attorneys in my office have vigorously defended Governor Branstad and the legislature in past lawsuits involving AFSCME, I think it’s most prudent in this highly charged legal dispute to avoid any appearance of politics clouding our office’s legal representation and judgment.”

###



**Blake, Nathan [AG]**

**From:** Polk County Bar Association <info@pcbaonline.ccsend.com> on behalf of Polk County Bar Association <cphillips@pcbaonline.org>  
**Sent:** Friday, February 17, 2017 5:33 AM  
**To:** Blake, Nathan [AG]  
**Subject:** Bridget's tattoo | Get up close with the Bench | Need CLEs? | Job postings | More

Having trouble viewing this email? [Click here](#)

**Polk County Bar Association**

# The Advocate

February/March 2017

In This Issue	<i>From the President . . . .</i>
<p><a href="#">Something for everyone at Feb. CLE</a></p> <p><a href="#">More CLE opportunities coming up</a></p> <p><a href="#">Students wanted for Law Day contest</a></p> <p><a href="#">We're looking for Law Day sponsors</a></p> <p><a href="#">Member Spotlight: Who will be next?</a></p> <p><a href="#">Save the date: Spring CLE is April 28</a></p> <p><a href="#">Check out these job vacancies</a></p> <p><a href="#">Get the latest Courts phone chart</a></p> <p><a href="#">Have you renewed your membership?</a></p> <p><a href="#">Symposium to explore poverty issues</a></p> <p><a href="#">Changes impact deployed parents</a></p> <p><a href="#">Follow MVS during National Ag Week</a></p> <p><a href="#">In memoriam: Harley A. Whitfield</a></p>	<p>I have a tattoo of the scales of justice on my shoulder blade. I was inspired by Robert DeNiro's tattoo sprawling across his back in Cape Fear, but I was not gutsy enough for that for my first (or any) tattoo. As a lawyer, I suppose it may seem too cutesy, or perhaps it is seen as shameless self-promotion. It is a permanent reminder, though, of the integrity of our U.S. justice system.</p> <div style="border: 1px solid black; width: 200px; height: 150px; margin: 10px auto; position: relative;"> <span style="position: absolute; top: -10px; left: -10px; border: 1px solid black; padding: 2px;">x</span> </div> <p style="text-align: right; margin-top: 10px;"><i>PCBA President Bridget Penick</i></p> <p>The scales of justice symbolize the idea of the fair distribution of law, with no influence of bias, privilege or corruption. Given recent events in this country, I could not be more proud of our judiciary and my fellow lawyers upholding and embodying what the scales of justice represent.</p> <p>I am writing this message on Valentine's Day, and I was fortunate to have a Valentine's lunch date with more than a dozen judges and justices and dozens of Polk County Bar Association lawyers. I shared a table with our speakers, Iowa Supreme Court Chief Justice Mark Cady and Iowa Court of</p>

### Upcoming Events

- March 14: PCBA Luncheon
- April 11: PCBA Luncheon
- April 28: PCBA Spring CLE
- May 9: PCBA Annual Mtg & Law Day Luncheon
- June 13: PCBA Law Clerk Luncheon

### Meet Your Representatives

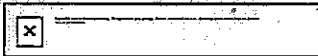
#### Officers

Board of Directors

Board of Governors  
Committees

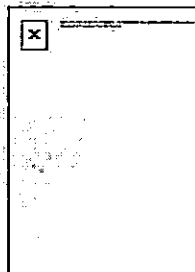
### Visit our Website

[www.pcbaonline.org](http://www.pcbaonline.org)



### On the Move

**Holly Logan** recently joined the Davis Brown Law Firm as Special Counsel in the Litigation Division. For more than 15 years, Holly has practiced in the areas of white collar criminal



Logan

defense, internal investigations, and business litigation. She has defended individuals, companies, and boards of directors in governmental investigations and at trial. Prior to joining Davis Brown, Holly practiced at her own boutique white collar and business litigation firm in Des Moines. She earned her J.D. from the University of Iowa College of Law

Appeals Chief Judge David Danilson. As I chatted with them informally and then listened to their prepared remarks, I was reminded of how incredibly proud I am that Iowa has merit selection instead of judicial elections, to minimize politics swaying our scales of justice in one way or the other. As Chief Justice Cady noted, the U.S. Chamber of Commerce ranked Iowa's court system as 4th in the nation. The State of Nevada has adopted a court of appeals system mirrored after Iowa's mode.

As Chief Danilson (sort of) joked, the Iowa Court of Appeals is like the second chair lawyer at trial who does the majority of the work but gets none of the recognition. **Read more (and see the tattoo).**

### Something for everyone at Feb. CLE

The PCBA Bench and Bar Committee invites you to attend its Spring CLE on February 23 from 1:30 p.m. to 4:45 p.m. at the ISBA Conference Center. The topics are: Juvenile Justice, Iowa Access to Justice Commission, Cyber-security Risk Management Basics, and a Legislative Update. We anticipate three hours of State CLE credit to be approved. Following the seminar, there will be a Networking Social with complimentary Hors d'Oeuvres and beverages.

The CLE is free for current PCBA members. If you are not a member, you may join the PCBA on the day of the seminar in order to attend for free. **Click here for the registration form.** If you are unable to attend the seminar, you are welcome to join us for the Networking Social following the CLE, which will begin at 4:45 p.m.

### More CLE opportunities coming up

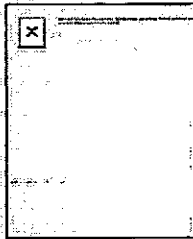
Mark your calendar for two additional noon hour CLE seminars sponsored by the PCBA Bench and Bar Committee.

The first, on **Monday, March 27**, from noon to 1 p.m., at the Polk County Justice Center, will feature Christopher Patterson, District Court Administrator, on the Court Complex overview; Anne Sheeley, Polk County Clerk of Court on Case Processing; and

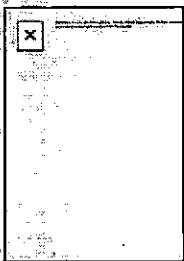


where she graduated with Distinction.

**Lara Q. Plaisance** has joined Hopkins & Huebner, P.C as a shareholder attorney in the Des Moines office. Lara earned her J.D. from University of Missouri-Kansas City School of Law. She will practice primarily in workers' compensation.



Plaisance



Hilligas

**Aaron Hilligas** has joined Ahlers & Cooney, P.C. as an Associate Attorney. Aaron is a member of the firm's Employment & Labor Law practice area, serving public entities, higher education and K-12

educational institutions. He advises clients on a variety of labor and employment related matters and represents employers in collective bargaining agreement negotiations, in cases before the Public Employment Relations Board, and in grievance arbitrations. Prior to Ahlers & Cooney, Aaron worked in the Office of the General Counsel for the National Labor Relations Board (NLRB) for the Division of Advice, as well as in-house as an attorney with labor organizations covering a variety of industries in the public and private sectors, including K-12 and higher education. He received his Juris Doctor in 2002 from the University of Wisconsin.

### Kudos

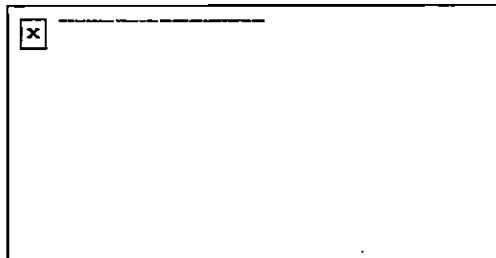
Attorneys **Jason Comisky** and **Kristin Billingsley Cooper** were recently elected shareholders at Ahlers & Cooney, P.C.

Hon. Rachael Seymour, District Associate Judge - 5th Judicial District on Juvenile Court.

The second, on **Thursday, April 20**, from noon to 1 p.m., at the U.S. District Court, will feature Judge Helen Adams who will discuss proposed local federal rules. [Click here to download the registration form.](#)

### Students wanted for Law Day contest

Each year, the Polk County Bar Association teams up with ARAG to give Polk County students in



grades K through 12 a chance to get creative with the law as part of our Law Day celebration. Chief among the activities is the visual arts, music, essay, and poetry competitions.

This year's theme, *The 14th Amendment: Transforming American Democracy*, enables students to explore the many ways that the 14th Amendment has reshaped American law and society. Ratified during Reconstruction a century and a half ago, the Fourteenth Amendment serves as the cornerstone of landmark civil rights legislation, the foundation for numerous federal court decisions protecting fundamental rights, and a source of inspiration for all those who advocate for equal justice under law.

[Click here for complete details.](#) The deadline for entries is April 10, and the winning students will be honored at the PCBA Annual Meeting and Law Day Luncheon on May 9.

### We're looking for Law Day sponsors

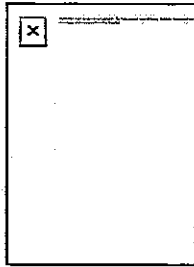
Please consider supporting our Law Day program and enriching the experience for Polk County area students. For just \$100, you or your firm can sponsor a winning student, the student's teacher, and the student's parent or parents. Sponsors may also sit with the winning students at our Law Day

Jason is a member of the firm's Public Finance & Law and Corporate, Business & Tax practice areas, and also serves as the Procurement/ Contracting Practice Group Leader. Jason

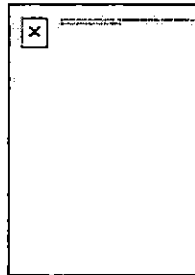
works closely with cities and counties on urban renewal and economic development issues, and he provides general legal services to small businesses and individuals, such as mergers and acquisitions, business formations, contracts, estate planning, estate administration, and real estate transactions. Prior to joining Ahlers & Cooney in 2014, Jason practiced law in Dubuque and Fort Dodge, Iowa. He is a graduate of the University of Iowa College of Law.

Kristin works primarily in the firm's Public Finance and Law area, with a focus on municipal finance, including municipal bonding, economic development and urban renewal.

Kristin also works in the Corporate, Business and Tax practice area, providing business services for both public and private entities in real estate and other business transactions. She also assists Iowa colleges and universities with higher education business matters. Kristin joined the firm as an associate in 2011. Previously, she worked as a legal intern for the Honorable Celeste F. Bremer at the Southern District of Iowa, and then as a summer associate with the firm. Prior to law school, Kristin assisted real estate clients as a commercial real estate agent, providing services in buying, selling, and leasing commercial real estate. Kristin is a graduate of Drake University Law School.



Comisky

Billingsley  
Cooper

luncheon, as space allows, and they will be recognized in the written program. [Click here for details.](#)

### Member Spotlight: Who will be next?

The PCBA Membership Committee is accepting nominations for future "Member Spotlight" features. Please email your nominations to Jessica Cleerman at [cleerj1@nationwide.com](mailto:cleerj1@nationwide.com).

### Save the date: Spring CLE is April 28

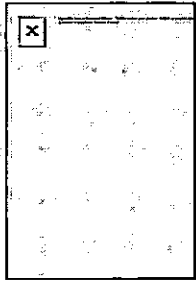
Mark your calendar now so you don't miss our Spring General Practice CLE on **Friday, April 28**, at the Downtown Marriott Hotel. This event is FREE for current members. There is a \$25 charge for printed materials, but they will also be posted in the Members Only area of our website following the event.

We anticipate approval for 7.5 State CLE credit hours with 1 hour Ethics and 1 hour Federal credit. Watch our website for agenda details as they are finalized. Meanwhile, [click here to download the registration form.](#)

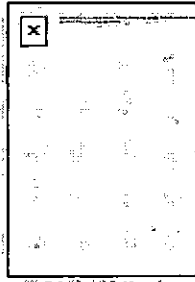
### Check out these job vacancies

York Risk Services Group is seeking a Senior Casualty Claims Adjuster to investigate, evaluate, and adjust Public Entity claims; and Stinson Leonard Street LLP is seeking a Transactional Attorney with experience in the areas of corporate law, business transactions, secured lending transactions, and/or commercial real estate to join its Mankato, Minnesota office. [Get the details on our website \(member login required\)](#). And don't forget to let us know if you have job opportunities to post. Contact [sdiener@pcbaonline.org](mailto:sdiener@pcbaonline.org) with details.

### Get the latest Courts phone chart

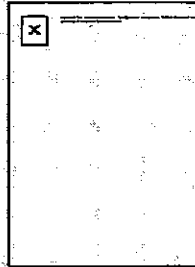


Piepmeier



Sieverding

The Davis Brown Law Firm has announced that **Amy Piepmeier, Craig Sieverding, and Emily Stork** have been elected shareholders, effective January 2017.



Stork

Amy is a member of the firm's business division, practicing primarily in the areas of securities law and corporate transactions. She regularly counsels public and private companies regarding equity and debt financing structure and transactions, including private placements and registered offerings, SEC reporting and regulation, Sarbanes-Oxley compliance, corporate governance matters, contract negotiation and other business and transactional matters.

Craig is a member of the firm's business division, focusing on the health care industry. He represents and provides counsel to a wide variety of health care providers, including health systems, hospitals, long-term care facilities, and home health care agencies, on regulatory and compliance, licensing, audits and investigations, data privacy and security, contracting, and reimbursement matters.

Emily is a member of the firm's business division and maintains a general real estate practice. She represents both commercial and residential clients in matters including wind energy acquisition and development, abstract examinations

The new Polk County Court phone chart is now available and we have it available on our website for you! [Click here to download the chart](#), which includes the law clerks and three new judicial specialists. *Member login required.*

### Have you renewed your membership?

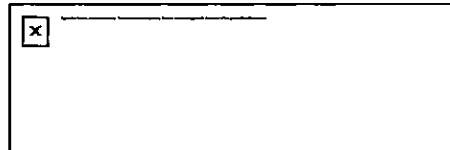
One of the best things you can do for your career is to belong to the Polk County Bar Association. Your PCBA membership entitles you to FREE CLE seminars to sharpen your skills, monthly luncheons to explore current issues, access to the court-sponsored mediation program, news and information you can't get anywhere else, discounts on programs and services, and much, much more. [Click here to learn more and to download the renewal form.](#)

And, as a bonus, first-time PCBA members and those who renew their membership for 2017 are entitled to attend one of our informative and timely PCBA luncheons on us - FREE of CHARGE - No strings attached! If you have questions about your membership, contact PCBA Executive Director Carol Phillips. [Click here for details and to download the membership form.](#)

*P.S. You can now pay your dues by credit card online!*

### Symposium to explore poverty issues

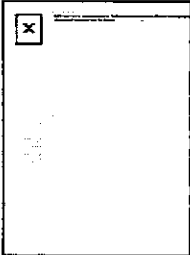
The 31st Annual Des Moines Civil & Human Rights Symposium is scheduled for March 15 in the Des Moines University Student Education Center. The theme for this year's symposium is *Poverty affects us all*, and a number of sessions will be of particular interest to the legal community.



The symposium runs from 8 a.m. to 4:45 p.m. Admission is free and includes breakfast and lunch. This event is approved for 4.5 hours of CLE credits. For more information, [click here to download a flyer.](#)

### Changes impact deployed parents

and title opinions/title commitments, easements and covenants, closings, and leases among others.



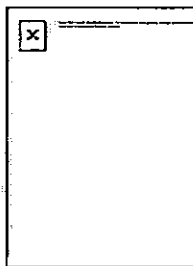
Wallace

Belin McCormick, P.C. attorneys voted for Matt Wallace to become a shareholder of the Des Moines law firm effective January 1. Matt is a member of the corporate practice group and he has

negotiated for buyers and sellers, across several industries, in transactions small and large. He combines his understanding of the law, Master's degree in accounting, and business acumen to solve issues for his clients. Matt graduated with honors from the University of Chicago Law School. He was a member of the University of Chicago Law Review.

Two associate attorneys with Nyemaster Goode - **Neal Coleman** and **Katie Graham** - have been admitted to the firm as shareholders effective January 1.

Neal is a shareholder with the Business, Finance and Real Estate Department. Neal's practice focuses primarily on commercial transactions, general representation of business organizations in all phases of an entity's life cycle, and real estate law, with a particular emphasis on commercial real estate financing transactions. He graduated with honors from the University of Texas at Austin in 2011.



Coleman

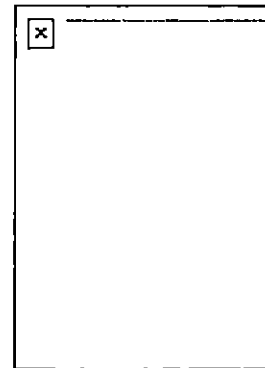
Beginning July 1, 2016 Iowa Code Chapter 598C provides a mechanism by which service member parents who are deployed may ask that a nonparent take over their parenting responsibility during their deployment. The nonparent must be an adult family member of the child or an adult with whom the child has a close and substantial relationship. The deployment must be more than 90 days but less than 18 months. The deployment must be one where family members cannot go with the service member. [Click here for a Q & A.](#)

### Follow MVS during National Ag Week

Follow the [Filewrapper Blog](#), written by McKee, Voorhees, and Sease, PLC, Intellectual Property Attorney Caitlin M. Andersen during National Ag Week, March 19-25. The blogs will offer an in-depth look at how technology and intellectual property influence both crop and animal production agriculture. National Ag Week is sponsored each year by the Agriculture Council of America and aims to recognize and celebrate the many impacts agriculture has on the world.

### In memoriam: Harley A. Whitfield

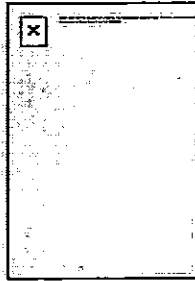
Harley A. Whitfield, 86, passed away on January 9 at Sarasota Memorial Hospital in Sarasota, Florida. Harley was a resident of Des Moines until retiring and moving to Spirit Lake, Iowa. Harley was born October 7, 1930, to Allen and Irma Cowan Whitfield. Allen was the founding partner of Whitfield & Allen in 1928, the predecessor to Whitfield & Eddy Law.



Harley A. Whitfield

Following his service as a lieutenant in the Air Force, Harley attended Drake University Law School, graduating with honors in 1956 and earning membership in the Order of the Coif. Harley practiced with Whitfield & Eddy Law and its predecessor firms from 1956 until his retirement in 1995, specializing in business and corporate law. He led the firm as the chairman of its Executive Committee for many years, with exceptional business and political acumen.

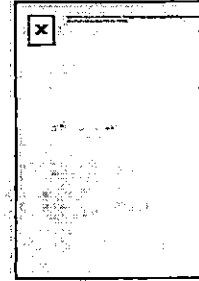
Katie is a shareholder in the firm's Litigation Department. Katie is a trial attorney, and her practice focuses primarily on litigating employment matters involving allegations of age, gender, disability, race, and religious discrimination, sexual harassment, common law retaliatory discharge, and violations of the FMLA and FLSA. She graduated with high honors from Drake University Law School in 2011.



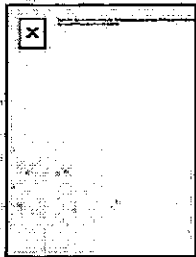
Graham

### More Kudos

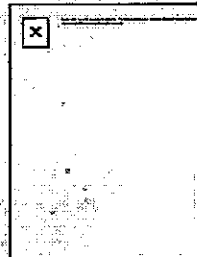
Brandon W. Clark, chair of the Copyright, Entertainment, and Media Law Practice Group at McKee, Voorhees & Sease, PLC, has received the Industry Supporter of the Year award by the Greater Des Moines Music Coalition. Brandon represents a wide variety of clients including artists, songwriters, producers, record labels, and more generally, creators. Brandon worked at both record labels and music publishing companies before joining McKee, Voorhees & Sease in 2015. In addition, he is an adjunct professor at Drake University where he teaches Copyright Law and a course on the music industry entitled, Performing Arts Management.



Clark



Drake



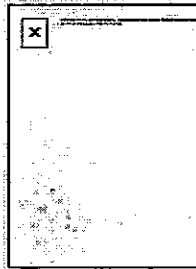
Scales

McKee, Voorhees & Sease, P.L.C. has been selected for the 2016 Des Moines Small Business Excellence Award in the Lawyers classification by the Des Moines Small Business Excellence Award Program. McKee, Voorhees & Sease helps its clients obtain and protect their intellectual property rights through patents, trademark and copyright registrations both domestically and internationally.

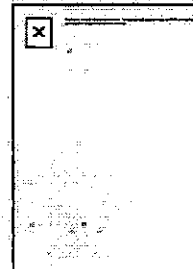
Whitfield & Eddy Law has announced that **Jennifer L. Drake** and **William C. Scales** are the newest members of the firm effective January 1.

Jennifer joined the firm in 2016 and is active in the Real Estate and Construction Practice Groups. She represents commercial and residential real estate owners, developers, brokers, and managers in negotiations, contracts, leases, and financial transactions. She received her J.D. from Drake University Law School in 2003.

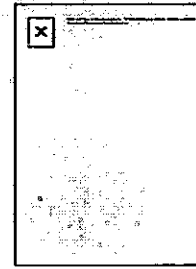
William represents businesses and individuals in all phases of civil litigation and also represents creditors in bankruptcy proceedings. He is an associate fellow in the Litigation Counsel of America and was selected for inclusion in the Great Plains Super Lawyers in the area of Banking as a Rising Star in 2015-2016. He joined the firm as a Law Clerk from 2009-2011 and was an associate attorney



McDermott



Cartmill



Barber

Matt McDermott has been elected president of Belin McCormick, P.C. Matt is a shareholder of the firm, and he focuses on civil and criminal trials and appeals. He handles a wide variety of litigation matters. Matt earned his law degree at the University of California at Berkeley in 2003 (California Law Review).

Attorneys Nola Cartmill and Nate Barber join Matt on the three-person Belin McCormick, P.C. Management Committee. Nola earned her law degree from Harvard University in 2009, and Nate earned his law degree from the University of California, Berkeley in 2002 (Order of the Coif, California Law Review).

from 2011-2016. He received his J.D. from Drake University Law School in 2011.

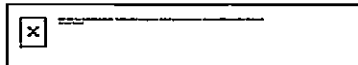
***Don't miss an opportunity to share your news and special announcements with fellow PCBA Members! [Click here.](#)***

Polk County Bar Association, 625 East Court Ave., Suite 100, Des Moines, IA 50309-2007

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Sent by [cphillips@pcbaonline.org](#) in collaboration with

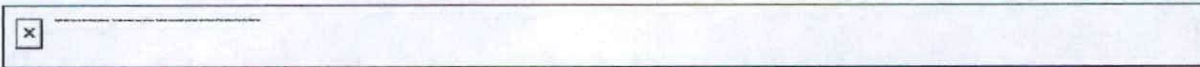


Try it free today

**Blake, Nathan [AG]**

---

**From:** Conference of Western Attorneys General <cwag@cwag.ccsend.com> on behalf of Conference of Western Attorneys General <ccoppin@cwagweb.org>  
**Sent:** Thursday, February 16, 2017 10:31 AM  
**To:** Blake, Nathan [AG]  
**Subject:** CWAG Roundup - February 16, 2017



## **CWAG Roundup February 16, 2017**

Dear Nathan,

### **EXECUTIVE SUMMARY**

**[\[Click Here for Full Articles\]](#)**

### **UPCOMING EVENTS**

#### **2017 CWAG Annual Meeting Registration Now Open!**

San Francisco, CA

July 30- August 2, 2017

The Conference of Western Attorneys General along with CWAG Chair and Hawaii Attorney General Doug Chin invite you to the 2017 CWAG Annual Meeting in San Francisco, CA, July 30-August 2, 2017. Join your colleagues as CWAG explores the most pertinent legal issues during the days and spend the evenings enjoying the urban charm of the city at our social events.

To register online use the following link: [2017 CWAG Annual Meeting Registration](#)

If you have attended an annual meeting in the past few years your contact information has been saved in the registration system. Please review your contact information during the registration process to make sure it is current.

To register, go to "Sign In" and enter the email address and password you or your assistant previously provided. If you can't recall your password, click on the "Forgot Password" link and your password will be sent to the email that is saved in the system.



If you have not previously registered for the annual meeting go to "New Registration", enter your email and create a personal password to be used for future registrations.

**Early Bird Registration:** The cutoff date for Early Bird registration is Friday, June 2, 2017 at 5:00pm (PT). All registrations received after this time and date will be charged the regular registration fee.

**Onsite Registration:** Pre-registering for primary attendees and guests who would like to attend any of the substantive or social opportunities is required. CWAG must make commitments to the hotel and activity vendors based on pre-registered guests prior to our arrival. The registration fees cover the cost of activities and meals at the conference which have been pre-arranged. Given the necessity of pre planning, we will not be accepting any onsite registrations.

**Hotel room cutoff:** the last day to reserve your room within the CWAG room block is Friday, July 7, 2017. If the room block sells out prior to that time, reservations will be accepted on a space available basis. The reservation number for the Westin St. Francis is 1.888.627.8546. Ask for the CWAG room block to receive our discounted rates.

### **Chair's Initiative and Western Pacific AG Summit**

Honolulu, Hawaii

March 13-16, 2017

This conference will be held at the famous Royal Hawaiian Hotel. We will begin with a welcome reception on Monday, March 13, 2017, at 5:00pm. The Western Pacific Attorney General Summit will take place from 8:00am to 5:00pm on Tuesday, March 14, 2017. The Chair Initiative will take place on Wednesday, March 15th, from 8:00am to 5:00pm, and will conclude on Thursday, March 16th at 12:00pm. This conference is open to all private sector and government attendees. Click [here](#) to download registration materials. The preliminary draft agenda for the meeting can be downloaded [here](#). **Registration deadline and hotel room block cutoff is Friday, February 24, 2017.**

The Pacific Summit will focus on major issues facing the Pacific jurisdictions, such as climate change, immigration, self-government, consumer retail access and economic growth. The Chair Initiative will explore how states have lead the way to solve national issues when the federal government has experienced deadlock and what the future holds for state action. The states are a vital and active source for ideas to solve important issues facing society. States lead the way on consumer and financial protection, healthcare, protecting privacy and so much more. Even when partisan-politics keep the federal government from being as effective as it may, the states can put aside politics to address the needs of their citizens.



Alabama Governor Robert J. Bentley appointed Marshall County District Attorney, Steve Marshall, to serve as the 50th Attorney General of Alabama. Former Attorney General Luther Strange was appointed to the United States Senate following Senator Jeff Sessions' appointment and confirmation as Attorney General of the United States. Following his appointment, Mr. Marshall said, "It is a great honor to be named Attorney General and I am thankful to Governor Bentley for the opportunity to serve the people of Alabama. The time spent working alongside law enforcement for the last 20 years has been a remarkable privilege. As Attorney General, I will continue to support their efforts to keep Alabamians safe and free from violent crime."

### ***IMMIGRATION***

It was reported in last week's Roundup that **CWAG Attorney General Bob Ferguson of Washington** had obtained an injunction against President Trump's executive order on immigration and that the matter was pending before the Ninth Circuit Court of Appeals. The Court of Appeals subsequently affirmed the lower court's ruling. "No one is above the law, not even the President," Attorney General Ferguson said. "The President should withdraw this flawed, rushed and dangerous Executive Order, which caused chaos across the country. If he refuses, I will continue our work to hold him accountable to the Constitution."

**CWAG Attorneys General Xavier Becerra of California, Ellen Rosenblum of Oregon, Bob Ferguson of Washington and CWAG Associate Attorneys General Peter Kilmartin of Rhode Island and TJ Donovan of Vermont** along with the state attorneys general from Massachusetts and New York filed a friend-of-the-court brief in the U.S. Supreme Court in *Jennings v Rodriguez*, a case involving the federal government's authority to detain non-citizens pending completion of their removal proceedings. The plaintiffs in this case are non-citizens who have been detained by federal authorities for longer than six months. They argue that the Constitution requires them to receive the same basic protection enjoyed by other non-criminals who are detained by the federal government: a hearing to determine whether their continued detention is justified. The plaintiffs do not dispute the government's right to detain individuals who are dangerous or pose a flight risk; they are only asking for an opportunity to be released on bond if the government cannot show that they present such a danger.

### ***ENERGY***

**CWAG Attorney General Cynthia H. Coffman of Colorado** announced that she has filed suit against Boulder County for an illegal moratorium on oil and gas development. The Boulder County Board of County Commissioners imposed a moratorium on all new applications for oil or gas development in Boulder County five years ago. The Boulder Commissioners since have re-imposed or extended the moratorium eight separate times. Two of those extensions were passed after the Colorado Supreme Court ruled in May 2016 that local bans on oil or gas development are preempted if they conflict with the Colorado Oil and Gas Conservation Act, which regulates all aspects of oil and gas development and operations within the State.

**CWAG Attorney General Tim Fox of Montana** filed for intervention on behalf of the State of Montana in the electricity rate proceeding of Washington utility Puget Sound Energy, before the Washington Utilities and Transportation Commission. PSE is a part-owner of the Colstrip generating facility, and entered into a legal settlement last year establishing a shut-down date of July 2022 for Colstrip Units 1 and 2. "It's important that the state of Montana has a seat at the table throughout this rate proceeding so our interests can be adequately represented," said Attorney General Fox. "The state of Montana wants to make sure that the company makes good on its legal obligations to Montana's communities, workers and environment affected by the operation and potential retirement of coal-fired generating units in our state."

### ***CONSUMER PROTECTION***

**CWAG Attorney General Bob Ferguson of Washington** announced that a King County judge ordered the makers of 5-hour ENERGY® to pay nearly \$4.3 million in penalties, attorneys' fees and costs for multiple violations of the state Consumer Protection Act. Attorney General Ferguson filed a lawsuit against the companies in 2014, alleging violations of the state Consumer Protection Act. After a three-week trial last September, Judge Beth Andrus ruled in the state's favor, finding that claims in the companies' advertising were deceptive, and therefore violated the Consumer Protection Act. The deceptive claims - that the popular flavored energy shots is superior to coffee, that doctors recommend 5-hour ENERGY®, and that its decaffeinated formula provides energy, alertness and focus that lasts for hours - appeared in press releases, on the internet and in thousands of print and broadcast ads. "The makers of 5-hour ENERGY® broke the law in pursuit of profit, and now they are paying for it," Attorney General Ferguson said.

**CWAG Associate Attorney General Pam Bondi of Florida** announced the multimillion dollar resolution of a lawsuit against several related unsecured loan services companies and operators. The three consent judgments and one settlement agreement obtained by Attorney General Bondi's Office resolve allegations that the defendant companies and their principals unlawfully charged cash-strapped consumers fees ranging from \$500 to more than \$1,000 for online lending services that consumers could perform on their own for free. The defendants allegedly convinced consumers to pay illegal up-front fees by falsely guaranteeing that a lender in the defendants' lender network had pre-approved the consumers for loans. "This result will provide full restitution to consumers victimized by this fraudulent loan scheme and ensure no more consumers are harmed by these unscrupulous practices," said Attorney General Bondi.

### ***FIGHTING DRUG ABUSE***

**CWAG Associate Attorney General Brad Schimel of Wisconsin**, the Drug Enforcement Administration, Federal Bureau of Investigation, Marshfield Clinic, and the Wisconsin Department of Justice Division of Criminal Investigation, testified at a legislative informational hearing on the growing challenge of methamphetamine abuse in Wisconsin. "Meth is notorious for not only destroying the user, but the entire family and community around each user," said Attorney General Schimel. "Wisconsin's top law enforcement

agency has been working with federal law enforcement to assess the threat of meth and every level of government has made a commitment to stop this horrible drug from continuing to destroy our communities. Today's hearing gave legislators the information they will need to protect their communities and help law enforcement battle back meth."

### ***FIGHTING PUBLIC CORRUPTION***

**CWAG Associate Attorney General Jim Hood of Mississippi** announced that he has filed 11 civil RICO lawsuits against all corporate and individual conspirators in the prison bribery scandal, including a former Mississippi Department of Corrections Commissioner. "The state of Mississippi has been defrauded through a pattern of bribery, kickbacks, misrepresentations, fraud, concealment, money laundering and other wrongful conduct," Attorney General Hood said. "These individuals and corporations that benefited by stealing from taxpayers must not only pay the state's losses, but state law requires that they must also forfeit and return the entire amount of the contracts paid by the state. We are also seeking punitive damages to punish these conspirators and to deter those who might consider giving or receiving kickbacks in the future."

Chris Coppin  
Legal Director  
Conference of Western Attorneys General  
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Sacramento, CA 95814  
505-589-5101 (cell)  
817-615-9335 (fax)  
[Chris.coppin@cwagweb.org](mailto:Chris.coppin@cwagweb.org)

#### **Forward this email**



**Blake, Nathan [AG]**

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**From:** Tariq Habash <habash@tcf.org>  
**Sent:** Monday, February 13, 2017 11:00 AM  
**To:** Tariq Habash  
**Subject:** Articles 2/13

Inside Higher Ed  
College Owner Pleads Guilty to Immigration Fraud  
February 13, 2017  
[https://www.insidehighered.com/quicktakes/2017/02/13/college-owner-pleads-guilty-immigration-fraud?utm\\_source=Inside+Higher+Ed&utm\\_campaign=ed4e36e072-DNU20170213&utm\\_medium=email&utm\\_term=0\\_1fcbc04421-ed4e36e072-199680505&mc\\_cid=ed4e36e072&mc\\_eid=755670cd3e](https://www.insidehighered.com/quicktakes/2017/02/13/college-owner-pleads-guilty-immigration-fraud?utm_source=Inside+Higher+Ed&utm_campaign=ed4e36e072-DNU20170213&utm_medium=email&utm_term=0_1fcbc04421-ed4e36e072-199680505&mc_cid=ed4e36e072&mc_eid=755670cd3e)

Politico- Morning Education  
Lawsuit Over Gainful Employment  
February 13, 2017  
<http://www.politico.com/tipsheets/morning-education/2017/02/protester-who-clashed-with-devos-pleads-not-guilty-218712>

Inside Higher Ed  
Cosmetology Group Sues Education Department  
February 13, 2017  
[https://www.insidehighered.com/quicktakes/2017/02/13/cosmetology-group-sues-education-department?utm\\_source=Inside+Higher+Ed&utm\\_campaign=ed4e36e072-DNU20170213&utm\\_medium=email&utm\\_term=0\\_1fcbc04421-ed4e36e072-199680505&mc\\_cid=ed4e36e072&mc\\_eid=755670cd3e](https://www.insidehighered.com/quicktakes/2017/02/13/cosmetology-group-sues-education-department?utm_source=Inside+Higher+Ed&utm_campaign=ed4e36e072-DNU20170213&utm_medium=email&utm_term=0_1fcbc04421-ed4e36e072-199680505&mc_cid=ed4e36e072&mc_eid=755670cd3e)

Huffington Post  
DeVos Faces Protest, Lawsuit On Second Day  
February 10, 2017  
[http://www.huffingtonpost.com/davidhalperin/devos-faces-protest-lawsu\\_b\\_14682624.html](http://www.huffingtonpost.com/davidhalperin/devos-faces-protest-lawsu_b_14682624.html)

Bloomberg  
Cosmetology Schools Sue Betsy DeVos Over Obama-Era Rules  
February 10, 2017  
<https://www.bloomberg.com/news/articles/2017-02-10/cosmetology-schools-sue-new-education-secretary-over-rules>

Co.Exist  
The First Public Benefit Corporation Is . . . A For-Profit College?  
February 10, 2017  
<https://www.fastcoexist.com/3068059/the-first-public-benefit-corporation-is-a-for-profit-college>

Inside Higher Ed  
Wis. Governor Pushes to Eliminate For-Profit Oversight Board  
February 13, 2017  
[https://www.insidehighered.com/quicktakes/2017/02/13/wis-governor-pushes-eliminate-profit-oversight-board?utm\\_source=Inside+Higher+Ed&utm\\_campaign=ed4e36e072-](https://www.insidehighered.com/quicktakes/2017/02/13/wis-governor-pushes-eliminate-profit-oversight-board?utm_source=Inside+Higher+Ed&utm_campaign=ed4e36e072-)

Nathan Blake

5/8/2017 2:52 PM

[DNU20170213&utm\\_medium=email&utm\\_term=0\\_1fcbc04421-ed4e36e072-199680505&mc\\_cid=ed4e36e072&mc\\_eid=755670cd3e](mailto:DNU20170213&utm_medium=email&utm_term=0_1fcbc04421-ed4e36e072-199680505&mc_cid=ed4e36e072&mc_eid=755670cd3e)

Wisconsin State Journal

Scott Walker revives proposal to eliminate for-profit college oversight board

February 10, 2017

[http://host.madison.com/wsj/news/local/education/university/scott-walker-revives-proposal-to-eliminate-for-profit-college-oversight/article\\_e7dffbe9-275c-56f0-8b40-98dee445fd26.html](http://host.madison.com/wsj/news/local/education/university/scott-walker-revives-proposal-to-eliminate-for-profit-college-oversight/article_e7dffbe9-275c-56f0-8b40-98dee445fd26.html)

Student Loan Hero

For-Profit Law School Students Suffer Loss of Federal Aid

February 10, 2017

<https://studentloanhero.com/featured/federal-aid-cut-for-profit-law-school/>

ValueWalk

A New Era of Cash and Optimism in For-Profit Education

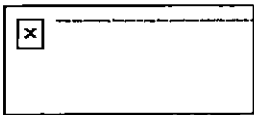
February 9, 2017

<http://www.valuwalk.com/2017/02/for-profit-education-devos/>

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Tariq Habash

*Policy Associate*



**The Century Foundation**

1333 H Street, NW 10th Floor, Washington DC 20005

Phone: 202.741.6397 Cell: 513-649-4429

Email: [habash@tcf.org](mailto:habash@tcf.org) Twitter: [@edpolicyhabash](https://twitter.com/edpolicyhabash)

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**Blake, Nathan [AG]**

---

**From:** Blake, Nathan [AG]  
**Sent:** Thursday, February 09, 2017 4:42 PM  
**To:** Thinnes Culver, Mari  
**Subject:** RE: [ISBA Litigation] Legislative Update - Statute of Repose

Thank you, this was helpful.

---

**From:** Thinnes Culver, Mari  
**Sent:** Thursday, February 09, 2017 9:34 AM  
**To:** Blake, Nathan [AG]  
**Subject:** FW: [ISBA Litigation] Legislative Update - Statute of Repose

Nathan, FYI



**Mariclare Thinnes Culver**  
**Assistant Attorney General**  
Office of the Attorney General of Iowa  
1305 E. Walnut St.  
Des Moines, IA 50319  
Main: (515) 281-5164 | Direct: (515) 281-8480  
Email: [Mari.ThinnesCulver@iowa.gov](mailto:Mari.ThinnesCulver@iowa.gov) | [www.iowaattorneygeneral.gov](http://www.iowaattorneygeneral.gov)

---

**From:** [litigation-owner@iabar.org](mailto:litigation-owner@iabar.org) [<mailto:litigation-owner@iabar.org>] **On Behalf Of** Lyford, Richard  
**Sent:** Thursday, February 09, 2017 6:51 AM  
**To:** Harry Shipley  
**Subject:** Re: [ISBA Litigation] Legislative Update - Statute of Repose

Harry, any news about the last time line panel?

Sent from my iPhone

- > On Feb 8, 2017, at 4:59 PM, Harry Shipley <[litigation@iabar.org](mailto:litigation@iabar.org)> wrote:
- >
- > Good afternoon Litigation Section Members,
- >
- > The ISBA Litigation Legislative Committee has been reviewing bills that have been introduced this session relating to the civil justice system. We wanted to update you on the status of various proposals and encourage you to contact the Legislature regarding those bills you are concerned about.
- >
- > The Litigation Section's legislative committee spent approximately an hour and a half reviewing HF3<<https://www.legis.iowa.gov/legislation/BillBook?ga=87&ba=HF3>> Statute of Repose and has approved a list of recommended exceptions for the Legislature to consider in the event they pass a shorter Statute of Repose, as in HF3<<https://www.legis.iowa.gov/legislation/BillBook?ga=87&ba=HF3>> (eight years). The Administrative Committee met last week and supported the recommendations of the legislative committee of the Litigation Section along with one additional amendment which was to increase the length of time in HF3<<https://www.legis.iowa.gov/legislation/BillBook?ga=87&ba=HF3>> from eight years to ten years.
- >
- > The ISBA's current position is, as previously adopted by the Board of Governors, is to oppose the Statute of Repose but, at the same time, work toward amending the legislation if it appears that it is going to pass. See the

Nathan Blake

5/8/2017 2:52 PM

attached position paper of the ISBA opposing  
HF3<<https://www.legis.iowa.gov/legislation/BillBook?ga=87&ba=HF3>>.

- >
- > The tentative filing statistics and jury verdicts are also attached for your information. You'll note that civil filings are down again and the numbers of civil jury verdicts are also down. These are tentative statistics and based upon past years, there will likely be about a 10% increase in these statistics.
- >
- > Other bills of interest are attached.
- >
- > You may contact your legislators in multiple ways. Obviously, the best way is to meet personally with them while they're back home on weekends. You may also contact them by email.
- >
- > They may be contacted as follows:
- >
- > By Phone:
- > Senate Switchboard - 515-281-3371
- > House Switchboard - 515-281-5211
- > Governor's Office- 515-281-5211
- >
- > By email:
- > A list of lawmakers and their email addresses can be found online:  
<[www.legis.iowa.gov/legislators](http://www.legis.iowa.gov/legislators)><<https://protect-us.mimecast.com/s/4QnwBZCmZNXud>>
- >
- >
- > By Mail
- > Address letter to:
- >
- > Iowa State Capitol
- > 1007 E. Grand Ave.
- > Des Moines, IA 50319
- >
- >
- > Respectfully,
- >
- >
- >
- >
- > ISBA President Skip Kenyon
- >
- > Legislative Counsel Jim Carney
- >
- >
- >
- >
- > <Litigation Section Update.pdf>

**Blake, Nathan [AG]**

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**Sent:** Thursday, February 09, 2017 9:34 AM  
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**Subject:** FW: [ISBA Litigation] Legislative Update - Statute of Repose

**Follow Up Flag:** Follow Up  
**Flag Status:** Completed

Nathan, FYI



**Mariclare Thinnes Culver**  
**Assistant Attorney General**  
Office of the Attorney General of Iowa  
1305 E. Walnut St.  
Des Moines, IA 50319  
Main: (515) 281-5164 | Direct: (515) 281-8480  
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Nathan Blake

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> By Phone:  
> Senate Switchboard - 515-281-3371  
> House Switchboard - 515-281-5211  
> Governor's Office- 515-281-5211

>  
> By email:  
> A list of lawmakers and their email addresses can be found online:  
> [www.legis.iowa.gov/legislators](http://www.legis.iowa.gov/legislators)<<https://protect-us.mimecast.com/s/4QnwBZCmZNXud>>

>  
>  
> By Mail  
> Address letter to:  
>  
> Iowa State Capitol  
> 1007 E. Grand Ave.  
> Des Moines, IA 50319

>  
>  
> Respectfully,

>  
>  
>  
>  
> ISBA President Skip Kenyon  
>  
> Legislative Counsel Jim Carney

>  
>  
>  
>  
> <Litigation Section Update.pdf>

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**Blake, Nathan [AG]**

---

**From:** Chambers, Joseph J. <Joseph.Chambers@ct.gov>  
**Sent:** Wednesday, January 25, 2017 9:29 AM  
**To:** Blake, Nathan [AG]  
**Subject:** RE: CT SOS

She had huge statewide name recognition b/c she attended every parade, funeral, meeting, ribbon cutting . . . . Lots of personal sacrifice without commensurate results.

---

**From:** Blake, Nathan [AG] [mailto:Nathan.Blake@iowa.gov]  
**Sent:** Wednesday, January 25, 2017 10:27 AM  
**To:** Chambers, Joseph J.  
**Subject:** RE: CT SOS

Interesting, thanks. I recognize her name because she was SOS when I was out there in the early aughts. Pretty tragic story, in some ways.

---

**From:** Chambers, Joseph J. [mailto:Joseph.Chambers@ct.gov]  
**Sent:** Wednesday, January 25, 2017 9:00 AM  
**To:** Blake, Nathan [AG]  
**Subject:** CT SOS

Thought you would be interested in this. Kind of odd how such appointments come about and how the politicians so often stick with those with party ties.

<http://ctmirror.org/2017/01/24/a-political-debut-generates-a-buzz-in-hartford/>

Also, let me tell you about the former CT SOS Susan Bysiewicz sometime. A political tale of woe and ambition. Almost Governor. Then almost AG.

[https://en.wikipedia.org/wiki/Susan\\_Bysiewicz](https://en.wikipedia.org/wiki/Susan_Bysiewicz)

**Joseph J. Chambers**  
Assistant Attorney General  
Office of the Connecticut Attorney General  
55 Elm Street  
P.O. Box 120  
Hartford, CT 06106

Tel: (860) 808-5270  
Fax: (860) 808-5385  
Email: [joseph.chambers@ct.gov](mailto:joseph.chambers@ct.gov)  
URL: <http://ct.gov/ag/>

---

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**Blake, Nathan [AG]**

---

**From:** Blake, Nathan [AG]  
**Sent:** Wednesday, January 25, 2017 9:27 AM  
**To:** 'Chambers, Joseph J.'  
**Subject:** RE: CT SOS

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[https://en.wikipedia.org/wiki/Susan\\_Bysiewicz](https://en.wikipedia.org/wiki/Susan_Bysiewicz)

**Joseph J. Chambers**

Assistant Attorney General  
Office of the Connecticut Attorney General  
55 Elm Street  
P.O. Box 120  
Hartford, CT 06106

Tel: (860) 808-5270  
Fax: (860) 808-5385  
Email: [joseph.chambers@ct.gov](mailto:joseph.chambers@ct.gov)  
URL: <http://ct.gov/ag/>

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**Blake, Nathan [AG]**

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**From:** Chambers, Joseph J. <Joseph.Chambers@ct.gov>  
**Sent:** Wednesday, January 25, 2017 9:00 AM  
**To:** Blake, Nathan [AG]  
**Subject:** CT SOS

Thought you would be interested in this. Kind of odd how such appointments come about and how the politicians so often stick with those with party ties.

<http://ctmirror.org/2017/01/24/a-political-debut-generates-a-buzz-in-hartford/>

Also, let me tell you about the former CT SOS Susan Bysiewicz sometime. A political tale of woe and ambition. Almost Governor. Then almost AG.

[https://en.wikipedia.org/wiki/Susan\\_Bysiewicz](https://en.wikipedia.org/wiki/Susan_Bysiewicz)

**Joseph J. Chambers**

Assistant Attorney General  
Office of the Connecticut Attorney General  
55 Elm Street  
P.O. Box 120  
Hartford, CT 06106

Tel: (860) 808-5270  
Fax: (860) 808-5385  
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**Blake, Nathan [AG]**

**From:** Senator Joe Bolkcom <Joe.Bolkcom@legis.iowa.gov>  
**Sent:** Friday, January 13, 2017 12:36 PM  
**To:** Blake, Nathan [AG]  
**Subject:** Legislative Session Begins

Having trouble reading this email? [View it in your browser.](#)



# Senator Joe Bolkcom

## Contact Joe

**CAPITOL:**  
 Iowa Statehouse  
 Des Moines, IA 50319  
 515-281-3371

**HOME:**  
 1235 Oakes Drive  
 Iowa City, IA 52245  
 319-337-6280

**E-MAIL:** [joe.bolkcom@legis.iowa.gov](mailto:joe.bolkcom@legis.iowa.gov)

**WEBSITES:** [www.senate.iowa.gov/senator/bolkcom](http://www.senate.iowa.gov/senator/bolkcom)  
[www.joebolkcom.org](http://www.joebolkcom.org)

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**FACEBOOK:**  

## Week One

We kicked off the 87<sup>th</sup> General Assembly on Monday. The week is marked by several speeches by our new Senate Democratic Leader Rob Hogg did a good job of providing our perspective on the new session [link](#) to his remarks. The week also witnessed Governor Branstad give his final Condition of the State address and Iowa Chief Justice Mark Cady deliver his State of the Judiciary remarks.

The Chief Justice always gets a warm welcome. He has done a great job putting in place cost-effective solutions for courts that reduce recidivism and strengthen families.

It was a different beginning this year. It was good to see my colleagues, staff and people that work in the minority is going to take some getting used to. Lot of bad ideas being cued up by the new Republican

In my new committee assignment as the ranking member of the Senate Appropriations Committee, I attended a budget briefing on Tuesday morning to learn about the Governor's budget proposal for next year and his request for \$110 million from the current year's budget. He has proposed \$25 million in cuts to our public schools and almost \$9 million in cuts to community colleges. The legislative Republicans are working on their own \$110 million. That should develop soon. Big business tax cuts and tax giveaways are the fastest growing



spending, and have undermined the state budget. They need to be on the table as the Republicans deal to cut services and spending.

I also spent several hours this week preparing for the political and punitive assault on the Iowa women that get health care services from one of 12 Planned Parenthood clinics in Iowa. The Republicans have filed a bill in the Senate. The bill prohibits family planning funding from going to any provider that may also provide abortion services. This bill will significantly reduce state or federal funding currently goes to fund abortions. This bill will significantly reduce low-income women and men to health screenings and services, contraception and family planning services.



University of Iowa student leaders Andrew Namanny, Lauren Freeman and Rachel Zuckerman talked with me Tuesday morning when they visited the Statehouse with members of the Iowa Board of Regents.

On the first day, one of the jobs of the new Senate is the task of selecting seats. This is done by seniority. The Senate secretary reads off the names of senators starting with the most senior member. When your name is called, you say the seat number you want. Longer-serving members tend to select seats in the back row of the chamber where you have easy access to your desk. New members get the seats that are down front or inside the chamber.

Democrats sit on the left side of the chamber and the Republicans occupy the right. The center row seats

mix, as the Republicans picked up seats and moved into territory that was recently held by Democrats.

I stayed in the same seat I have had for ten years. I continue to sit in a row between Senators Amanda R. Liz Mathis. We all stayed put for the next two years. At the end of the selection process, it was clear to all is an immense honor to occupy ANY seat in the beautiful Iowa Senate Chamber!

Please share your thoughts with me throughout the legislative session. You can call me at the Statehouse 281-3371. At home, I can be reached at 319-337-6280. E-mail me at [joe.bolkcom@legis.iowa.gov](mailto:joe.bolkcom@legis.iowa.gov). Follow Facebook. [www.facebook.com/joe.bolkcom](http://www.facebook.com/joe.bolkcom).

## **MLK Celebration**

Join us in celebration of the life of Martin Luther King Jr. and all his accomplishments. Here is a [link to all](#) hosted by the University of Iowa. Please click through for event details.

## **Iowa courts make our state safer and enhance quality of life**

In his annual State of the Judiciary address, Chief Justice Mark Cady laid out the importance of investing courts and why it matters for families, public safety and all Iowa taxpayers.

Our courts have done a lot of good on a tight budget over the years, but the Branstad-Reynolds proposal even more will deprive many Iowans of justice, and could stop the progress and innovation Iowa's world-class are known for.

In recent years, the Judicial Branch has improved juvenile court services. By increasing the number of juvenile court officers, they are able to have more face-to-face interactions with young offenders, resulting in fewer future offenses. In fact, the number of juvenile offenders entering Iowa's prison system has been cut in half.

In addition, diversion programs for low-risk youth help to keep them out of the court system. These programs are so successful that more communities and schools want to implement them.

Iowa's specialty courts—including drug, mental health, domestic abuse and veterans' courts—have done a great job of tackling the problems that lead to crime. These courts focus on helping offenders change their behavior so they don't commit new crimes.

The success of our courts is good for all Iowans. Courts improve our quality of life by making us safer, keeping families together, helping offenders become productive members of their communities, saving taxpayer dollars and setting young people on a positive track to adulthood.

## Republican budget mess hurts hard-working Iowans

Iowa's non-partisan budget experts say that policies pushed by Republicans have slowed the state's economy and led to a big downturn in revenue growth.

Republicans have exponentially increased new tax breaks for corporations, which now top \$500-million-a-year. They're promising even more tax breaks to their special interest friends, despite the state budget deficit. Tax giveaways have not produced the good jobs, skilled workers, better incomes or stronger economy that Republicans promised. Turning Medicaid over to out-of-state, for-profit companies has made the financial mess even worse.

The blame rests squarely on the shoulders of Governor Branstad, Lt. Governor Reynolds and Republican Party leaders. As a result of their actions, the state is in a \$113 million budget hole. Now they're making cuts to programs that Iowans depend on, including public safety and education.

They have failed to support efforts over the past six years to grow the economy for all Iowa families. They promised to create 200,000 jobs. They broke their promise to help create the best schools in the nation. They broke their promise to increase family incomes by 25 percent. They broke their promise to save taxpayer money by privatizing Medicaid.

Profits have gone up, but wages have not kept up. We must put the focus back on working families. We need:

- Raise Iowa's minimum wage. It is lower than the states around us. It is so low that full-time Iowa workers actually qualify for public assistance.
- End wage theft so that workers get paid what they're owed.
- Make sure women earn equal pay for equal work.

## Iowans face real problems

We certainly have our work cut out for us this year. Here are a few of the battles ahead:

- **School funding** - After shortchanging schools to make way for corporate tax breaks, Republicans continue their assault on education by shifting hundreds of millions in taxpayer dollars from public schools to homeschools and private schools. Education is the foundation of our state, our economy and our future. Adequate school funding is a must. Without high-quality schools, we can't possibly attract new great businesses and good jobs.
- **Women's health** - Republicans want to limit medical decisions for women and reduce access to cancer screenings, birth control and other health care services. In particular, targeting organizations like Planned Parenthood that provide affordable preventive care to low-income Iowans could harm the health and lives of thousands of women and other patients.



- **Fair wages and benefits** - One of the top priorities of Republican legislative leaders is to end Iowa's bipartisan 40-year-old law that allows law enforcement officers, firefighters, teachers and public employees to bargain with their employers for fair wages, health care insurance and other benefits. The current law is working well in Iowa, and has since it was adopted by a Republican Legislature and Republican Governor Robert D. Ray in the early 1970s. We all benefit when labor and management can work together on wages and benefits.

This message was intended for 'Nathan.Blake@iowa.gov.'

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**Blake, Nathan [AG]**

---

**From:** Dawson, Luke [AG]  
**Sent:** Friday, January 06, 2017 3:10 PM  
**To:** Blake, Nathan [AG]  
**Subject:** FW: OCIO Bill

Hi Nathan:

OCIO will not be introducing the 715C changes this year, and the Governor's office told it to reduce their legislative requests to 2-3 non-controversial issues. I wanted to keep you informed.

Luke

**From:** von Wolffradt, Robert [mailto:robert.vonwolffradt@iowa.gov]  
**Sent:** Friday, January 06, 2017 11:03 AM  
**To:** Dawson, Luke [AG]  
**Cc:** Behrens, Matt [OCIO]; Franklin, Jeff [OCIO]; Slaughter, Tom [OCIO]  
**Subject:** RE: OCIO Bill

Nope, igov gave us two minor change slots only

On Jan 6, 2017 9:30 AM, "Dawson, Luke [AG]" <Luke.Dawson@iowa.gov> wrote:

I suspect the 715C changes will not be introduced by OCIO?

**From:** Behrens, Matt [mailto:matt.behrens@iowa.gov]  
**Sent:** Friday, January 06, 2017 9:21 AM  
**To:** Cook, Edwin [LEGIS]  
**Cc:** von Wolffradt, Robert [OCIO]; Franklin, Jeff [OCIO]; Overton, Cord [IGOV]; Slaughter, Tom [OCIO]; Dawson, Luke [AG]  
**Subject:** OCIO Bill

Ed-

Attached please find the final draft of OCIO's proposed edits to Chapter 8B for the upcoming session.

Our changes can be found in:

1. 8B.1(8)
2. 8B.1(13)
3. 8B.4(19)
4. 8B.8

Nathan Blake

5/8/2017 2:52 PM

Let me know how I can assist with any next steps.

Thank you for your help!

Matt

**Matthew N. Behrens**

*Chief Technology Officer*

*Deputy Chief Information Officer*

*Office of the Chief Information Officer*

*State of Iowa*

*Office: (515) 281-5503*

*[matt.behrens@iowa.gov](mailto:matt.behrens@iowa.gov)*

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**Blake, Nathan [AG]**

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**From:** Conference of Western Attorneys General <cwag@cwag.ccsend.com> on behalf of Conference of Western Attorneys General <ccoppin@cwagweb.org>  
**Sent:** Thursday, January 05, 2017 10:26 AM  
**To:** Blake, Nathan [AG]  
**Subject:** CWAG Roundup - January 5, 2017



## **CWAG Roundup January 5, 2017**

Dear Nathan,

### **EXECUTIVE SUMMARY**

**[\[Click Here for Full Articles\]](#)**

### **UPCOMING EVENTS**

#### **Cyber Security & Technology Forum**

Park City, Utah

February 2-3, 2017

[\(Preliminary Draft Agenda and Registration Information\)](#)

#### **Chair's Initiative and Western Pacific AG Summit**

Honolulu, Hawaii

March 14-16, 2017

This conference will be held at the famous Royal Hawaiian Hotel. We will begin with a welcome reception on Monday, March 13, 2017, at 5:00pm. The Western Pacific Attorney General Summit will take place from 8:00am to 5:00pm on Tuesday, March 14, 2017. The Chair Initiative will take place on Wednesday, March 15th, from 8:00am to 5:00pm, and will conclude on Thursday, March 16th at 12:00pm. This conference is open to all private sector and government attendees.

The Pacific Summit will focus on major issues facing the Pacific jurisdictions, such as climate change, immigration, self-government and economic growth. The Chair Initiative will explore how states have lead the way to solve national issues when the federal government has experienced deadlock and what the future holds for state action. The states

remain a vital and active source for ideas to solve important issues facing society. Even when partisan politics keep the federal government from being as effective as it may, the states can put aside politics to address the needs of their citizens. Draft agenda will be available in the next couple of weeks. Registration is now open! [Click here to register.](#)

### **2017 CWAG Annual Meeting**

San Francisco, CA

July 30- August 2, 2017

### ***ATTORNEY GENERAL OFFICE NEWS***

**CWAG Attorney General Kamala D. Harris of California** stepped down as California Attorney General and was sworn in to the United States Senate in Washington, D.C. Before resigning, Attorney General Harris named Kathleen "Kate" Alice Kenealy Chief Deputy Attorney General. Ms. Kenealy will lead the California Department of Justice as Acting Attorney General until such time as Governor Brown's selected candidate, Congressman Xavier Becerra (D-LA), is confirmed by the state legislature as California's next Attorney General. Acting Attorney General Kenealy joined the Office of the Attorney General in August 2003 as a Deputy Attorney General in the Natural Resources Law Section. She became the section's Senior Assistant Attorney General in September 2010. For more than five years, Acting Attorney General Kenealy has served as the Chief Assistant Attorney General for the Civil Law Division. In that capacity, she has led the office's representation of state officials, state employees, and more than 200 state agencies. The Civil Division provides advice to its client agencies, defends cases brought against them, and prosecutes cases to vindicate state interests.

### ***HUMAN TRAFFICKING***

In observance of National Human Trafficking Awareness Month, **CWAG Attorney General Tim Fox of Montana** invites Montanans to view the "Faces of Freedom: Voices Calling for the End of Modern Day Slavery" traveling portrait exhibit when it comes to the state on January 11. Faces of Freedom raises awareness about the realities and effects of human trafficking and other forms of violent oppression in the world today. The exhibit celebrates human trafficking survivors and presents opportunities to engage people in learning more about this form of modern day slavery. "Human trafficking is a multi-billion dollar criminal industry that occurs all over the world, including here in Montana," said Attorney General Tim Fox. "No matter where this crime happens, the common denominator is that its victims have lost their freedom. My office is pleased to partner with Soroptimists International - Whitefish and the Freedom 58 Project to bring these powerful portraits of human trafficking survivors to Montana. We invite the public to see these beautiful paintings and reflect on the real-life journeys of their subjects as they move from oppression to rescue, and ultimately, to justice and freedom."

**CWAG Associate Attorney General Pam Bondi of Florida** announced the arrest of an Ocala man on charges related to human trafficking. Ryan Gemelle Poole faces one count of human trafficking, one count of deriving support from proceeds of prostitution and one

count of using a two-way communication device to facilitate a felony. The five-month long investigation revealed that Poole allegedly exploited a female victim to include taking control of all of her money, selling her and forcing her to participate in numerous acts of prostitution. Attorney General Bondi's Office of Statewide Prosecution is the prosecuting authority for the charges in this case. "Human trafficking is an abhorrent crime and the allegations in this case are sickening-further proving that we must do everything in our power to eliminate human trafficking in Florida," said Attorney General Bondi. "Working with our great law enforcement partners like Marion County Sheriff Emery Gainey and the Marion County Sheriff's Office, the subject of this investigation was arrested and justice will be served."

### ***PROTECTING THE ENVIRONMENT***

**CWAG Attorney General Bob Ferguson of Washington** filed five felony charges in Chelan County Superior Court against a Cashmere man and his asbestos abatement business. Timothy Powell and his business, A1 Asbestos LLC, are accused of providing false asbestos waste shipment records to an Okanogan County landfill, including forging signatures on one of the documents. Powell and A1 Asbestos are also accused of offering false statements to the state Department of Labor & Industries about the start dates of asbestos abatement work in an attempt to avoid worksite safety inspections. "Strict rules governing the disposal of asbestos waste exist to protect workers and the public, and they must be followed," Attorney General Ferguson said. Attorney General Ferguson has made prosecuting environmental crimes a priority of his administration. Since 2013, he has brought environmental prosecutions leading to 19 criminal convictions, and restitution orders in excess of \$900,000.

### ***ENDANGERED SPECIES***

The federal government offered five possible plans recently for limiting mining on federal land in the West to protect the vulnerable greater sage grouse, but it isn't saying which it prefers. In Wyoming, the rules would affect sage grouse habitat on federal lands north of Rock Springs, as well as a patch of land on the borders with Idaho and Utah, south of the Bridger-Teton National Forest. The options range from banning new mining activity on about 15,000 square miles for up to 20 years to imposing no additional restrictions on mine locations. Under all the options, mining and exploration projects already approved or underway could proceed. Energy companies could still extract oil and gas from any restricted lands, but they would have to use directional drilling from some distance away to avoid disturbing the surface. After years spent creating plans to mitigate drilling and mining of energy resources in sage grouse habitats, some are unsure of the need to further remove swaths of land from potential future development. Wyoming has been the vanguard in a collaboration of government and private interests; from ranchers and oil firms to environmentalists and outdoorsmen, to negotiate a balance between industry and sage grouse conservation.

### ***PUBLIC LANDS***



In perhaps the final major act of conservation of his administration, President Barack Obama designated 1.35 million acres in southeast Utah and 300,000 acres in Nevada as two new national monuments. The Bears Ears National Monument in Utah, named for twin buttes that poke above the horizon, will protect a diverse southwestern landscape that the novelist Wallace Stegner wrote could "fill up the eye and overflow the soul." It includes soaring red-rock formations, piñon-juniper mesas, 12,000-foot-high mountain peaks, and secluded sandstone canyons that harbor well-preserved prehistoric dwellings and rock-art panels, more than 100,000 Native American cultural and archaeological sites in all. It's among the most significant archaeological areas in the United States. The 300,000-acre Gold Butte National Monument, which lies between Lake Mead and the Grand Canyon, is also home to significant cultural resources, such as Native American petroglyphs, historic mining sites, and pioneer-era artifacts.

### ***CYBER SECURITY***

A code associated with a broad Russian hacking campaign dubbed Grizzly Steppe by the federal government has been detected on a laptop associated with a Vermont electric utility but not connected to the grid, the utility said. "We took immediate action to isolate the laptop and alerted federal officials of this finding," the Burlington Electric Department said in a statement. "Our team is working with federal officials to trace this malware and prevent any other attempts to infiltrate utility systems. We have briefed state officials and will support the investigation fully." The Department of Homeland Security alerted utilities about a malware code used in Grizzly Steppe, the Burlington Electric Department said. "We acted quickly to scan all computers in our system for the malware signature. We detected the malware in a single Burlington Electric Department laptop not connected to our organization's grid systems," it said.

Chris Coppin  
Legal Director  
Conference of Western Attorneys General  
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505-589-5101 (cell)  
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Chris.coppin@cwagweb.org

**Forward this email**





Conference of Western Attorneys General | 1300 I Street | Sacramento | CA | 95814



**Blake, Nathan [AG]**

**From:** Polk County Bar Association <info@pcbaonline.ccsend.com> on behalf of Polk County Bar Association <cphillips@pcbaonline.org>  
**Sent:** Thursday, December 15, 2016 6:06 AM  
**To:** Blake, Nathan [AG]  
**Subject:** Stay humble and kind | Social Club | Family Law | CLE materials | More

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**Polk County Bar Association**

# The Advocate

**December/January 2017**

<b>In This Issue</b>	<b>From the President . . . .</b>
<p><a href="#"><u>All about the Des Moines Social Club</u></a></p> <p><a href="#"><u>Get up close with the Court</u></a></p> <p><a href="#"><u>Attention Family Law attorneys</u></a></p> <p><a href="#"><u>Member Spotlight: Nathan Mundy</u></a></p> <p><a href="#"><u>Justice Center is open for business</u></a></p> <p><a href="#"><u>Fall CLE materials are now online</u></a></p> <p><a href="#"><u>Students wanted for Law Day contest</u></a></p> <p><a href="#"><u>It's time to renew your membership</u></a></p> <p><a href="#"><u>Support the Volunteer Lawyers Project and get a tax deduction</u></a></p> <p><a href="#"><u>Note these new Workers' Compensation numbers</u></a></p>	<p><b>Always stay humble and kind</b></p> <p>So much has happened in this world - this country - this state - this county - since my last president's message in early October. I'll refrain from political commentary on the presidential election, but focus on the positive and express gratitude at the results of the judicial retention election. Thank you to each of you who helped educate a friend or family member on the purpose of our judicial retention election process. Thanks to all who attended the ribbon cutting for the Polk County Justice Center. Congratulations to the National Bar Association for the groundbreaking on "A Monumental Journey."</p> <div style="border: 1px solid black; width: 200px; height: 100px; margin: 10px auto; position: relative;"> <div style="position: absolute; top: -15px; left: 5px; border: 1px solid black; padding: 2px;">x</div> </div> <p style="text-align: right;"><i>PCBA President Bridget Penick</i></p> <p>Anyone who knows me knows that music is important to me. Only a handful of you who know me well may recall that I was a country music DJ at KCUI while attending Central College. Blame it all on my roots, but country song lyrics speak to me. As we are in the midst of the holiday season, yet also in the midst of a very divided and embittered country, (and yes, as I tried but was</p>
<p style="text-align: center;"><b>Upcoming Events</b></p> <p><b>Jan. 10:</b> PCBA Luncheon</p>	

Feb. 14: Bench & Bar Luncheon  
 March 14: PCBA Luncheon  
 April 11: PCBA Luncheon  
 May 9: PCBA Annual Mtg & Law Day Luncheon

### Meet Your Representatives

Officers

Board of Directors

Board of Governors  
Committees

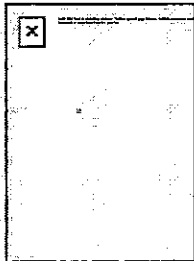
**Visit our Website**

[www.pcbaonline.org](http://www.pcbaonline.org)



### On the Move

Whitfield & Eddy Law has welcomed **Sean M. Callison** as an associate attorney in the Des Moines office. He is a member of the firm's business and banking, construction, labor and employment, trucking, and litigation practice groups. He has written about the use of unmanned aircraft (drones), in the construction industry and presented on the topic as well. Sean is a recent graduate of Drake University Law School and was a law clerk at the firm from 2014 - 2016.



**Stephanie A. Koltookian, Abigail M. Hillers and Robert J. Thole** have joined Bradshaw, Fowler, Proctor & Fairgrave, P.C. in Des Moines, Iowa.

unable to get great tickets to the Soul 2 Soul concert coming to Des Moines next summer), I find myself singing these lyrics of late:

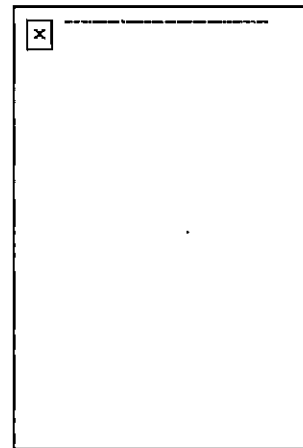
*"When those dreams you're dreamin' come to you  
 When the work you put in is realized  
 Let yourself feel the pride  
 But always stay humble and kind."*

- From "Humble and Kind", written by Lori McKenna and performed by Tim McGraw

As lawyers, we dutifully attend CLEs and amass our ethics credits. We hear speeches about civility. We know we are duty-bound to act with "professional courtesy and professional integrity in the fullest sense of those terms." Iowa Standards for Professional Conduct, Rule 33.1(1). Are we collectively fulfilling this obligation? Are you personally living it? Or, has the negativity and turmoil in the last few months led us astray? **Read more....**

### All about the Des Moines Social Club

Mark your calendar and plan to join us on **Tuesday, Jan. 10**, for the first PCBA luncheon of the new year featuring Pete De Kock, executive director of the Des Moines Social Club. Pete joined the Social Club as Executive Director in 2015. He leads the DMSC team with specific responsibilities around org strategy, team building, fundraising, community partnerships, and finances. He is a graduate of Grinnell College and Harvard University, where he studied political and social ethics.



*Pete De Kock*

The luncheon will be held at the ISBA Building, 625 E. Court, from noon to 1 p.m. Tickets are \$17 in advance and \$19 at the door, but keep in mind that space is limited and we may not be able to accommodate walk ins. [Click here for details and a reservation form](#) or call 243-3904.

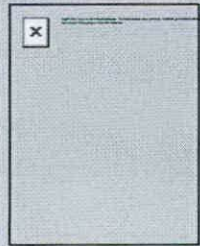


**Stephanie** joined the firm as an associate attorney in the firm's litigation division. She earned her J.D. from The University of Iowa College of Law in May 2015. Prior to joining the Bradshaw Law Firm, Stephanie clerked for Justice Thomas D. Waterman of the Iowa Supreme Court.



### Get up close with the Court

We invite you to be our valentine and attend the PCBA Bench & Bar Luncheon on **Tuesday, Feb. 14**, at noon. This year's featured guests will be Iowa Supreme Court Chief Justice Mark Cady and Court of Appeals Chief Judge David Danilson. Watch the PCBA website for details as they become available.



**Abigail** joined the firm as an associate attorney in the firm's transactional division, representing clients in the area of Wills, Trusts, Estate Planning, Probate Law, and Real Estate Law. She earned her J.D. from Valparaiso University Law School in 2009. Prior to joining the Bradshaw Law Firm, Abigail worked as a wealth management and trust officer, and general counsel, for a local bank.

### Attention Family Law attorneys

The Polk County Bar Association Family Law Committee invites you to attend the annual transition meeting with the Family Law Judges, which is scheduled for **Tuesday, Dec. 20**, from noon until 1:30 p.m. at the Polk County Courthouse, 500 Mulberry Street, in Courtroom 302. Chief Judge Arthur Gamble, Judges Eliza Ovrrom, Douglas Staskal and the newly appointed Judge will be in attendance to discuss the transition and answer any questions that you may have.

**Robert** has joined the litigation division of the firm as an associate attorney. He earned his J.D. from Drake University Law School in May 2012. While attending law school, Robert clerked for both the Bradshaw Law Firm and the Honorable Robert B. Hanson of the 5th Judicial District in Polk County, Iowa. Prior to joining the Bradshaw Law Firm, Robert was engaged in private practice in Des Moines.

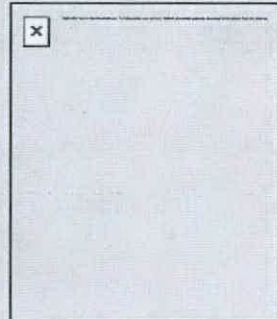


### Member Spotlight: Nathan Mundy

*This is the latest in a series of features on our own PCBA members. The PCBA Membership Committee is accepting nominations for future "Member Spotlight" segments. Please email your nominations to Jessica Cleerman at [cleerj1@nationwide.com](mailto:cleerj1@nationwide.com).*

### Tell us about yourself:

I am Nathan Mundy and I am an attorney in private practice in Des Moines. I am married to another attorney, Anna Murdy, who is in-house at Principal Financial Group. We met at Drake Law School in 2004 and were married in 2007. We have two wonderful boys, Jack (5) and Ben (1). We live in Des Moines on the Northwest side with our Wheaten Terrier, Tessie.



### Kudos

**Fredrikson & Byron** has been ranked in the Tier 1 of Metropolitan "Best Law Firm" in 28 practice areas by *U.S. News - Best Lawyers® in 2017* including the Des Moines office

ranking for Immigration Law and Litigation - Labor & Employment. To be eligible for a ranking, a firm must have at least one lawyer recognized by The Best Lawyers in America® 2017 in that practice area and metro. This year the following Des Moines attorneys were named Best Lawyers: **Bret A. Dublinske, Bridget R. Penick and J. Marc Ward.**

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**Nyemaster Goode, P.C.**, has been recognized in the seventh edition (2017) of the "Best Law Firm" rankings recently released by *U.S. News & World Report and Best Lawyers®*. Nyemaster Goode achieved 39 practice rankings, including 26 "Tier 1" rankings. Here are the rankings for the Des Moines office: **Tier 1:** Appellate Practice, Banking and Finance Law, Business Organizations (including LLCs and Partnerships), Closely Held Companies and Family Businesses Law, Commercial Litigation, Corporate Law, Employee Benefits (ERISA) Law, Employment Law - Management, Family Law, Government Relations Practice, Insurance Law, Litigation - Bankruptcy, Litigation - Labor and Employment, Litigation - Tax, Mergers & Acquisitions Law, Non-Profit/Charities Law, Personal Injury Litigation - Defendants, Real Estate Law, Tax Law, Trusts & Estates Law, and Workers' Compensation Law - Employers. **Tier 2:** Bankruptcy and Creditor Debtor Rights/Insolvency and Reorganization Law, Corporate Governance Law, Financial Services Regulation Law, Franchise Law, Health Care Law, Immigration Law, Labor Law - Management, Litigation - Banking & Finance, Litigation - Real Estate, Mortgage Banking Foreclosure Law, and Product Liability Litigation - Defendants. **Tier 3:** Administrative/Regulatory Law.

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**Belin McCormick, P.C.** has earned Tier 1 ranking from Best Lawyers "Best Law Firms" in 21 categories. The 26-attorney Des Moines law firm, has added "Litigation - Tax" to its Tier

I was born on an Air Force base in Mountain Home, Idaho. We lived there for two years until we moved to Cannon Air Force Base in New Mexico. We moved to Des Moines when I was in first grade and I have lived here ever since. I went to Lincoln High School where I was All-Conference in football, ran track including a role on the team for the 1600m medley relay at the State Track Meet, participated in show choir, some small theater roles, and the State-Champion All-Male Dance Team. I was moderately successful in the academic classroom.

I received a football scholarship to play at St. Ambrose University in Davenport, IA. While I only played football for two years, it did introduce me to the next phase in my life, the law. There I majored in Political Science and Philosophy and founded the SAU Chapter of the Phi Alpha Delta Law Fraternity and re-started the Mock Trial Program as its captain. I also served on the Student Government Association and was on the committee that drafted the SGA Mission Statement. I was also an alumni ambassador to our vast regional alumni network.

**[Read more....](#)**



**Justice Center is open for business**

A number of PCBA members were on hand on Nov. 14 when the Polk County Board of Supervisors hosted a ribbon cutting for the grand opening of the Polk County Justice Center. The building is one of three downtown buildings undergoing extensive renovation as part of an \$81 million referendum that was passed by voters in November of 2013. [Click here to read Judge Arthur Gamble's remarks at the historic event.](#)

**Fall CLE materials are now online**

Some 275 PCBA members gathered at the Downtown Des Moines Marriott on November 18 to network and stay on top of their profession at the

1. recognition. The 2017 Tier One designated specialty areas where Belin McCormick, P.C. are recognized: Appellate Practice, Banking and Finance Law, Commercial Litigation, Communications Law, Corporate Law, Employment Law - Management, Environmental Law, Financial Services Regulation Law, Labor Law - Management, Litigation - Banking & Finance, Litigation - Environmental, Litigation - Municipal, Litigation - Labor & Employment, Litigation - Real Estate, Litigation - Tax, Litigation - Trusts & Estates Mergers & Acquisitions Law, Personal Injury - Defendants Real Estate Law, Tax Law, and Trusts & Estates Law.

Davis Brown associate attorney **Margaret (Maggie) Hanson** recently received news that her request for clemency for a pro bono client was approved by President Obama. The Office for the Pardon Attorney, U.S. Department of Justice, personally called Maggie to share that her client's sentence would be commuted. Senior Shareholder **Nikki Mordini** accepted the request and advised Maggie as well as **Sarah Crane, Sarah Franklin, Emily Stork, and Elizabeth Van Arkel** in the preparation of the petitions. Paralegal **Natalie Rivera** assisted greatly in the effort.

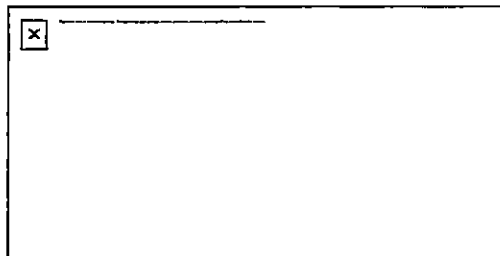
Davis Brown attorneys **Emily Stork** and **Elizabeth Van Arkel** have also received word from the U.S. Department of Justice Pardon Attorney that petitions they submitted for clemency were approved by President Obama.

International law firm **Dorsey & Whitney LLP** announced that *U.S. News - Best Lawyers®* recognized the Commercial Litigation, Health Care Law, and Public Finance Law practices in Dorsey's Des Moines office for inclusion in its "Best Law Firms" rankings for 2017. The practices received a tier 1 ranking,

Fall general practice seminar. As always, the CLE provided a full day of thought-provoking presentations covering a wide array of topics pertinent to the practice of law in Iowa. The program, which was offered FREE to members, was approved for 7.5 hours of State CLE credit, including 1 hour Ethics and 3 hours Federal. [Click here to download the materials.](#) **Member login required.**

## Students wanted for Law Day contest

Each year, the Polk County Bar Association teams up with ARAG to give Polk County students a



chance to get creative with the law as part of our Law Day celebration. Chief among the activities is the visual arts, music, essay and poetry competition for students in grades 6 through 12.

This year's theme, The Fourteenth Amendment: Transforming American Democracy, provides the opportunity for students to explore the many ways that the Fourteenth Amendment has reshaped American law and society. Through its Citizenship, Due Process and Equal Protection clauses, this transformative amendment advanced the rights of all Americans. It also played a pivotal role in extending the reach of the Bill of Rights to the states. Ratified during Reconstruction a century and a half ago, the Fourteenth Amendment serves as the cornerstone of landmark civil rights legislation, the foundation for numerous federal court decisions protecting fundamental rights, and a source of inspiration for all those who advocate for equal justice under law.

The deadline for entries is April 10. [Click here for complete details.](#) The winning students will be honored at the PCBA Annual Meeting and Law Day Luncheon on Tuesday, May 9.

**It's time to renew your membership**

**Fredrikson & Byron** received a nearly perfect score of 95 percent on the 2017 Corporate Equality Index (CEI), a national benchmarking survey and report on corporate policies and practices relating to lesbian, gay, bisexual and transgender (LGBT) workplace equality, administered by the Human Rights Campaign (HRC). Fredrikson's score reflects a commitment to LGBT workplace equality, with respect to tangible policies, benefits and practices.

*Don't miss an opportunity to share your news and special announcements with fellow PCBA Members! [Click here.](#)*

One of the best things you can do for your career is to belong to the Polk County Bar Association. Your PCBA membership entitles you to FREE CLE seminars to sharpen your skills, monthly luncheons to explore current issues, access to the court-sponsored mediation program, news and information you can't get anywhere else, discounts on programs and services, and much, much more. [Click here](#) to learn more and to download the renewal form.

And, as a bonus, first-time PCBA members and those who renew their membership for 2017 are entitled to attend one of our informative and timely PCBA Luncheons on us - FREE of CHARGE - No strings attached! [Click here for more information from PCBA President Bridget Penick](#) and [click here to download our membership form.](#)

P.S. You can now pay your dues by credit card online!

### **Support the Volunteer Lawyers Project and get a tax deduction**

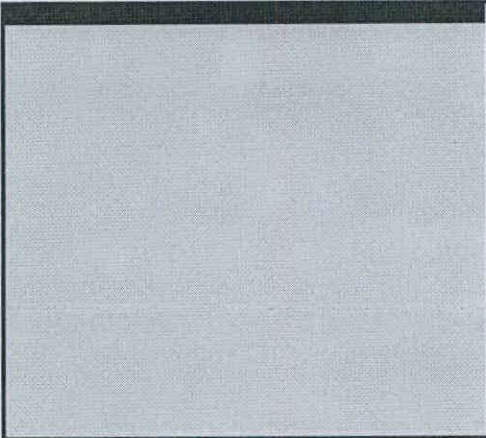
As 2016 draws to a close, our attention turns to year-end finances and tax returns. Don't forget that you can make a contribution to the Polk County Bar Association Volunteer Lawyers Project before the end of the year and get a tax deduction.

The PCBA VLP is a charitable organization established with the mission of providing legal services to low income residents of Polk County. With your help, PCBA VLP is one of the most successful volunteer lawyer programs in the country, with Polk County lawyers donating approximately 5,000 hours of their time annually.

Unfortunately, demand for PCBA VLP services has never been higher while our funding continues to decline. To help make it easier to support our efforts, The PCBA VLP now offers you the ability to make donations on a monthly, quarterly, or annual basis - all you need to do is check the appropriate option on your PCBA membership renewal form. And don't forget that the PCBA VLP is a tax-exempt, charitable organization. That means any donation you make is tax deductible. You can also designate the PCBA VLP as the recipient on your United Way donation.

[Click here to learn more from PCBA VLP President](#)



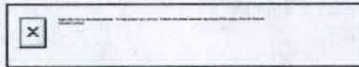
	<p><u>Alex Johnson.</u></p>
	<p><b>Note these new Workers' Compensation phone numbers</b></p>
	<p>The Workers' Compensation Division of Iowa Workforce Development has its own unique toll-free and local phone numbers effective Nov. 1. They are <b>800-645-4583</b> and <b>515-725-4120</b>.</p>

Polk County Bar Association, 625 East Court Ave., Suite 100, Des Moines, IA 50309-2007

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Sent by [cphillips@pcbaonline.org](mailto:cphillips@pcbaonline.org) in collaboration with



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**Blake, Nathan [AG]**

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**From:** Bellus, Benjamin [AG]  
**Sent:** Monday, December 12, 2016 11:06 AM  
**To:** Whitney, Jessica [AG]; Blake, Nathan [AG]; Wallin, Marc [AG]; Gosnell, Kathi [AG]; Licht, Amy [AG]; Miller, Max [AG]  
**Cc:** 'bbellus2@yahoo.com'  
**Subject:** From today's Business Record

Fellow Parents:

We should all respond and suggest that they teach about how government works; as well as some other issues that apparently are no longer focused on these days.. (Seriously!)

**Public input sought on statewide social studies standards**

The Iowa Department of Education is seeking input from Iowans on a draft of proposed statewide social studies standards for students in kindergarten through 12th grade. The draft represents the first statewide effort to update Iowa's social studies standards, which were adopted in 2008. A review team will take into consideration public feedback and is expected to make final recommendations to the State Board of Education in the spring. Iowa's academic standards are the subject of ongoing review as part of the Governor's Executive Order 83. The online survey is available through Jan. 9. A public forum will also be held Jan. 9 from 4:30 to 6 p.m. at the Heartland Area Education Agency, 6500 Corporate Drive in Johnston.



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**Blake, Nathan [AG]**

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**From:** Whitney, Jessica [AG]  
**Sent:** Friday, April 14, 2017 2:42 PM  
**To:** Gosnell, Kathi [AG]; Blake, Nathan [AG]  
**Subject:** FW: Corruption In A Caucus Town?  
**Attachments:** Alum MIG Center.jpg; \$60000 Shear.jpg; \$25000 Band Saw.jpg; IA TAACCCT Complaint Response 20160429.pdf; 224.jpg; 223.jpg; Screenshot\_2016-12-17-12-42-35.png; 072.jpg

FYI.

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**From:** White, Cathleen [AG] **On Behalf Of** AG Webteam [AG]  
**Sent:** Friday, April 14, 2017 2:40 PM  
**To:** Whitney, Jessica [AG]  
**Subject:** FW: Corruption In A Caucus Town?

Jessica, he specifically states for our office to not respond, but I thought I should probably still give you a heads up of his comments regarding our office.

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**From:** Bryan Huntsman [<mailto:one1one9@hotmail.com>]  
**Sent:** Friday, April 14, 2017 12:32 PM  
**To:** Wise, Ryan [IDOE]  
**Cc:** Grimm, Rita [IEDA]; [ccoleman@dmgov.org](mailto:ccoleman@dmgov.org); [sherill.whisenand@mail.house.gov](mailto:sherill.whisenand@mail.house.gov); [alec\\_kennedy@grassley.senate.gov](mailto:alec_kennedy@grassley.senate.gov); Fandel, Linda [IGOV]; Reding, Jenna; [rkt483@aol.com](mailto:rkt483@aol.com); Coon, Hollie L; R Basu; AG Webteam [AG]; Ralph LoBosco; Tyler Raygor  
**Subject:** Fw: Corruption In A Caucus Town?

Ryan,

As head of both the Iowa Dept of Ed. and your relatively new, taxpayer funded Sector Partnership Leadership Counsel, we look to your leadership. Your predecessors have left taxpayers and their families out to hang in the past. Hundreds lost time and money dealing with the CIETC scandal. From there many more got ripped off in one of the most outrageous educational scams in Iowa at Vatterott College. Yet your department and the Iowa Attorney office did nothing. (Time for Iowa Term Limits?)

At the time Sen. Tom Harkin's office was inundated with Vatterott complaints. Have you read the results of his two year investigation of Private Colleges? Have you read the Executive summary of this report? Either way, you already know the level of corruption and why the IAG will go after ITT and La James, but won't go against Vatterott and the infamous Apollo Group. The sale of Vatterott to TA is phony (Please IGA...don't respond. The useless letter writing game you play has its reputation with every lawyer in town, especially Vatterott's firm.)

Will taxpayers continue to get the short end of the educational stick while the state and the corporate friends prosper? \$110 million of tax money to a fertilizer company? Hy-vee got \$7.5 million of our money to remodel their corporate offices? Can I have their old indoor waterfall? The list of corruption here in this state keeps getting longer. .

Now that Iowa has chosen to mix taxpayer money with corporate welfare, not to mention all the business people on your counsel, all are now in position of public accountability no matter what the excuse.

Everything in the following email is backed up with documentation, all the way to being able to produce the letters that back up what I state others have said. No, "He said, she said."

This is only the tip of the iceberg. I'm working on letting everyone know what is happening to low-income workers in Iowas manufacturing sector in what I call the New American Sweat Shops.

Feel free to call or meet with me.

Bryan Huntsman

515-203-0789

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**From:** Bryan Huntsman <[one1one9@hotmail.com](mailto:one1one9@hotmail.com)>

**Sent:** Thursday, April 13, 2017 11:40 AM

**To:** [bill.anderson@legis.iowa.gov](mailto:bill.anderson@legis.iowa.gov); [jerry.behn@legis.iowa.gov](mailto:jerry.behn@legis.iowa.gov); [rick.bertrand@legis.iowa.gov](mailto:rick.bertrand@legis.iowa.gov); [tony.bisignano@legis.iowa.gov](mailto:tony.bisignano@legis.iowa.gov); [joe.bolkcom@legis.iowa.gov](mailto:joe.bolkcom@legis.iowa.gov); [nate.boulton@legis.iowa.gov](mailto:nate.boulton@legis.iowa.gov); [tod.bowman@legis.iowa.gov](mailto:tod.bowman@legis.iowa.gov); [michael.breitbach@legis.iowa.gov](mailto:michael.breitbach@legis.iowa.gov); [waylon.brown@legis.iowa.gov](mailto:waylon.brown@legis.iowa.gov); [jake.chapman@legis.iowa.gov](mailto:jake.chapman@legis.iowa.gov); [mark.chelgren@legis.iowa.gov](mailto:mark.chelgren@legis.iowa.gov); [mark.costello@legis.iowa.gov](mailto:mark.costello@legis.iowa.gov); [jeffdanielson@gmail.com](mailto:jeffdanielson@gmail.com); [dan.dawson@legis.iowa.gov](mailto:dan.dawson@legis.iowa.gov); [bill.dix@legis.iowa.gov](mailto:bill.dix@legis.iowa.gov); 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[mark.smith@legis.iowa.gov](mailto:mark.smith@legis.iowa.gov); [Ras.Smith@legis.iowa.gov](mailto:Ras.Smith@legis.iowa.gov); [art.staed@legis.iowa.gov](mailto:art.staed@legis.iowa.gov); [sharon.steckman@legis.iowa.gov](mailto:sharon.steckman@legis.iowa.gov); [rob.taylor@legis.iowa.gov](mailto:rob.taylor@legis.iowa.gov); [todd.taylor@legis.iowa.gov](mailto:todd.taylor@legis.iowa.gov); [phyllis.thede@legis.iowa.gov](mailto:phyllis.thede@legis.iowa.gov); [linda.upmeyer@legis.iowa.gov](mailto:linda.upmeyer@legis.iowa.gov); [guy.vander.linden@legis.iowa.gov](mailto:guy.vander.linden@legis.iowa.gov); [ralph.watts@legis.iowa.gov](mailto:ralph.watts@legis.iowa.gov); [beth.wessel-kroeschell@legis.iowa.gov](mailto:beth.wessel-kroeschell@legis.iowa.gov); [Skyler.Wheeler@legis.iowa.gov](mailto:Skyler.Wheeler@legis.iowa.gov); [John.Wills@legis.iowa.gov](mailto:John.Wills@legis.iowa.gov); [cindy.winckler@legis.iowa.gov](mailto:cindy.winckler@legis.iowa.gov);



Nathan Blake

5/8/2017 3:01 PM

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[Louie.zumbach@legis.iowa.gov](mailto:Louie.zumbach@legis.iowa.gov); [aphillips@qctimes.com](mailto:aphillips@qctimes.com); [Roy.Biondi@wfcourier.com](mailto:Roy.Biondi@wfcourier.com); [mfannin@kcstar.com](mailto:mfannin@kcstar.com);  
[Kampling@alliantenergy.com](mailto:Kampling@alliantenergy.com); [readers@washpost.com](mailto:readers@washpost.com); [simonconway@whoradio.com](mailto:simonconway@whoradio.com); [rod.boshart@thegazette.com](mailto:rod.boshart@thegazette.com);  
[CaptionMail@KCCI.com](mailto:CaptionMail@KCCI.com); [patricia.lopez@startribune.com](mailto:patricia.lopez@startribune.com); Coon, Hollie L; Drew Klein; [info@bleedingheartland.com](mailto:info@bleedingheartland.com)  
**Subject:** Corruption In A Caucus Town?

Over a decade ago three state and city people went to prison for what US Attorney Matt Whitaker called "Iowa's most significant public corruption and public fraud cases in Iowa."

[http://wfcourier.com/opinions/editorial/cietc-scandal-must-not-be-forgotten/article\\_e9a61295-97c6-53d7-9b8f-912d50d896f9.html](http://wfcourier.com/opinions/editorial/cietc-scandal-must-not-be-forgotten/article_e9a61295-97c6-53d7-9b8f-912d50d896f9.html)

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## CIETC scandal must not be forgotten

wfcourier.com

There will be some appeals winding through the judicial process, but the sentencing of John Bargman III last week is helping bring a conclusion to the stunning Central Iowa Employment

I believe that I can, beyond a reasonable doubt, show you the exact same thing is currently going on again. If you look closely you will see that several city and state officials that were involved then, but somehow (in my opinion, since I was there) escaped prosecution, are involved now.

I'm sure many of you already know that manufacturing outpaces agriculture here in Iowa in terms of the money produced in the people employed. While there are lots of related tax grants and corporate welfare involved in this area, very little of it seems to get the average Iowa taxpayer and small companies as intended.

US Department of Labor released millions of dollars in grant money to community colleges in central Iowa including Des Moines Area Community College. (DMACC) immediately DMACC and Iowa Workforce, courtesy of Gov. Branstad, stepped in and took over the money.

The last time the Feds let go of a major amount of money to DMACC and Iowa Workforce, three people ended up going to prison. Two were connected to Iowa Workforce, Ramona Cunningham and John Bargman, and one City Councilman, Archie Brooks. For those of us that were there for the Central Iowa Education Training Consortium scandal, I can tell you that the "David A. Vaudt from the Auditor's Office for the State of Iowa," whistleblower story is a cover-up and the truth of what happened is verifiable. The only difference, in my opinion, of what happened then and what is going on with the new Consortium is they become a little more polished and (In MY Opinion) this level of fraud has more acceptable to both elected and appointed officials here in the State of Iowa.

Bottom line is each time, both then and now, state employees, public unions, and the corporations that thrive survive on corporate welfare all benefit at the expense of the taxpayer.

Once DMACC and the Iowa Workforce got a hold the grant money they started what is called the Workforce Training Academy. They leased billboards all over the metro advertising free training in the manufacturing sector. There is no brick and mortar Workforce Trading Academy Its Workforce using DMACC facilities, thereby doubling the bureaucratic overhead and lessening the amount of money that actually makes it to the tax payers and their families and employers desperately in need of the training this grant money was intended for.

The irony seems be lost on this new State Aristocracy. Without the taxes that this middle class provides, how can their lifestyle be maintained? According to the US Dept. of Labor, Iowa's public sector workers enjoy an income that is 50% higher than those comparable in the private sector In fact, the DOL states that Iowa has the largest income gap in America. The California Policy center recently released a study showing that 26% of retired government workers make more than average currently working private sector employees.

Immediately Workforce and DMACC went to work training prisoners and convicted felons state-of-the-art welding and manufacturing techniques that were not being taught to the average Iowa taxpayer who walked in the DMACC door and enrolled in the very same program. While this may be seen as an act of benevolence, there is actually big money in this part of Iowa's prison industry. Iowa cooperation and businesses line up to hire these cons over regular Iowa tax payer because Iowa subsidizes 65% of their pay for a year. This state level "Pimping For Profit," also keeps the state employees and their public unions well paid too.

One manager at Harbor Freight Tool here in Des Moines said that Iowa Workforce is the greatest staffing agency in the world. While normal staffing agencies charge for their services, IWF not only pays the employer, they also help with the accounting. He showed me that when he submitted employees' hours to HF corporate office on the computer, a small window opened up saying that this info had been received by IWF. While this may seem like an old hole -in-the- wall store, in a forgotten strip mall, they are reporting annual sales of 6 million annually. Harbor Freight has over 700 hundred store with just one owner.

DMCC went out and bought state-of-the-art equipment including MIG welders TIG welders and aluminum welders. In the photograph you can see the one welder appears to have a sleeve wrapped around the line. Just that aluminum wire lead, not the welder, costs over \$3000 and DMACC ordered several. This equipment sits in DMACCs relatively new satellite South campus and new AWS test site DMACCs own Advanced Manufacturing Center in Ankeny doesn't even come close to having this and other top of line equipment. .

This the exact equipment that potential DMACC students were shown during the pre- sign up tour welding program at DMACC South. Once students were signed up and there, welding instructor Bill Mann told students that they wouldn't be able to use the equipment because they were in the "old curriculum "or part of the Workforce Training Academy program. (<https://www.dmacc.edu/careertraining/Pages/certs-manufacturing-industrialtech.aspx#mig>) The average student who was stuck being taught the outdated stick welding with no recourse and student loans... that need to be reimbursed or forgiven. Imagine if you were that customer.

## Manufacturing/Industrial Technology Certificates - DMACC

[www.dmacc.edu](http://www.dmacc.edu)

Building Maintenance (205 contact hours + 16 hour Career Readiness Lab) This is a two-semester program Offered: Fall/Spring/Summer Semesters Cost: \$1,813

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Scott Oken, Dean of Advanced Manufacturing at DMACC says all this was because they weren't sure if the Iowa Department of Education was going to approve their new curriculum. That's not true. First of all if you didn't know whether you were going to be approved why you spend hundreds of thousands of dollars on equipment? In fact DMACC News <https://www.dmacc.edu/news/Pages/20130113-2.aspx> stated that, "Nearly \$1,000,000 of program-related equipment has been purchased and embedded into grant-impacted programs." Embedded? Second of all it seems that the Iowa Department of Education was on DMACC to get things moving.

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## Iowa's Community Colleges Achieve Success in Inaugural ...

[www.dmacc.edu](http://www.dmacc.edu)

The Iowa-Advanced Manufacturing (I-AM) Consortium released today the implementation outcomes for Year One of a Department of Labor Trade Adjustment Assistance ...

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Lastly there were teaching the prisoner and the ex-cons the new curriculum and had been for some time.

This new welding curriculum is a program they purchased from Hobart. Hobart has their own two-year school. Hobart manufactures Hobart welders and Miller welders. You can go online and purchase this program yourself and purchase the answers to the test as well. <https://www.welding.org/product/blueprint-reading-welders-fitters-2/>

This is the exact same third-party welding program that Ralph Young has been teaching at the city of Des Moines's Central Campus for years. What many don't know is that DMACC oversees that program too. So Scott Oken has been nothing but deceptive in any his answers? Yet another red flag

Are metro taxpayers getting double dipped on these programs if Ralph Young is teaching at the city level but DMACC overseeing at the state level? I noticed recently there was a news clip about the city and their new trade programs for high schoolers. They've always had these trade programs. Does this mean they got more grant money?

What about all the tax money that DMACC is now receiving from high school such as the ones in Warren County who can't afford shop class. How do property taxes continue to rise, but the schools seem to offer less

here in Iowa? DMACC spent at least one entire semester of Advanced Manufacturing creating a schedule specifically high schoolers. It forced working adults and families to show up for classes for two hours in the middle of the day. One hour on Friday in the middle of the day. Only one high schooler ever showed up and he quit because he decided to go do something else.

Laundering Grant money and tax money first, students and taxpayers...oh, somewhere at the bottom of the list.

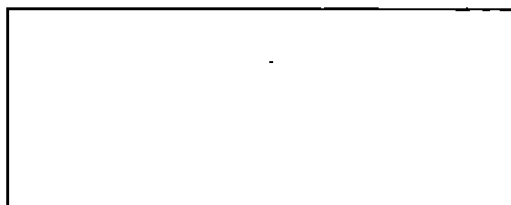
While the Iowa Department of Education was allegedly upset that DMACC was falling behind schedule, you have to understand that DMACC was very busy. They were cashing in on the Goldmine that they had created and running drug dealers thieves and pedophiles thru Workforce Training Academy. This program got so big they actually came to you legislatures and asked for and got more money. The need more money to hire more state employees to handoff our money to people getting better training than Iowa taxpayers themselves were getting. Did any of you legislatures actually take a look at was going on? DMACC is grateful and acknowledged you guys on their website. <https://www.dmacc.edu/news/Pages/20140213-1.aspx>

## DMACC Workforce Training Academy Expands Service

[www.dmacc.edu](http://www.dmacc.edu)

Campaign to offer short-term training generates big response. Des Moines Area Community College's (DMACC) Workforce Training Academy (WTA) is growing as a result of a ...

DMACC didn't stop there. Is it just me or have you noticed appointed public servants are starting to believe they are bona fide corporate executives running their own company? I call them the New Aristocracy because they don't have to be concerned about company profits and they don't have stockholders they have to answer too. Taxpayers either for that matter. Yes they have budgets but that's just a small detail, evident when legislatures "okay" additional monies for programs that are hurting the people these programs were originally intended for. Is just me with anybody also comfortable with the multiple state agencies now calling themselves the Authority? <http://watchdog.org/71188/ia-authorityboardmembers/>



Iowa's economic development board members ... - Watchdog.org

[watchdog.org](http://watchdog.org)

By Sheena Dooley | Iowa Watchdog. DES MOINES –

Members of an Iowa board charged with doling out millions to lure businesses to the state often work for ...

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DMACC spent a lot of money becoming the new testing center for the American Welding Society. The AWS is an independent third-party welding certification the tests are not cheap and you don't get a refund if you don't pass. AWS certificates carry a lot of credibility. Quality Manufacturers Co. are the premier fabricators here in central Iowa. If you go to their website they advertise they have AWS certified welders.  
<http://www.qualitymfgcorp.com/>

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## Quality Manufacturing Corporation

[www.qualitymfgcorp.com](http://www.qualitymfgcorp.com)

Full service, metal fabricator located in Urbandale, Iowa specializing in prototype and production welding, hydraulic reservoirs, and stainless tanks.

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If DMACC were going to make their newly purchased franchise profitable they couldn't give those tests away to taxpayers who were enrolled in their welding program. They couldn't roll the cost of the test up in federal loans student loans because AWS is a third-party vendor. So they ran the grant money through Workforce, so the coveted certifications paid for by same Iowa taxpayers who has to pay for them on their own

They made an agreement with Workforce to send them an unlimited supply of prepaid customers that include many from the Iowa Prison system. They bought equipment specifically for their new franchise operation and they spent thousands of dollars of taxpayer's money to train just one guy at DMACC to run the new operation.

They spared no expense of buying equipment that's a \$60,000 sheer they bought brand-new. That's \$25,000 self-propelled band saw they bought. There are Iowa taxpayers who own shops here in Iowa that can't afford to own equipment like that. More often than not, you don't need equipment like that. I'm sure that if it came out of the personal pockets of the people who make the decisions DMACC wouldn't have that equipment either. However DMACCs mantra is, it's just grant money.

When I pointed out all his equipment, I got a letter from the US Department of Labor Chicago, I've included the letter. Apparently they looked into the matter and the case is now closed? I never contacted the US Department of Labor. Who did and why? Do you know the people who accredited the Advanced Manufacturing curriculum are also out of Chicago? If you think that's a coincidence or you don't believe that all those millions of dollars came from Political Corruption Capital of the world camewithout any strings, you need to resign your position on Capitol Hill and go home.

Nathan Blake

5/8/2017 3:01 PM

If you take the time to read the letter, you will see Christine Quinn, regional administrator for the US Department of labor writes that she has looked into my concerns and writes, "None of the items you photographed were purchased with US DOL or TAACC CT grant funds" However if you go to DMACCS News website... <https://www.dmacc.edu/news/Pages/20150415-3.aspx>... In the last sentence they write that the testing facility was funded by grant money from the USDOL. When stories don't match at this level, it should be a red flag to all of us.

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## DMACC Welding Lab Earns Industry Accreditation

[www.dmacc.edu](http://www.dmacc.edu)

Welders can earn national certification at DMACC Southridge welding lab. The Des Moines Area Community College (DMACC) Center for Career and Professional Development ...

For those of are you on this list that have been around a while, doesn't start to look like Central Iowa Education Training Consortium part two? That is, the state is benefiting itself at the expense of the taxpayer.

But it doesn't stop there. In my opinion the fraud and mis-spent (Laundered) tax and grant money reaches another level

I read the report saying that Iowa manufacturers are desperate for people who can program CNC machines both laths and mills. This includes any other equipment such as waterjet or laser tables that also need to be programmed.

Let me show you what you get from highly funded tax and grant CNC class that exists in DMACC Advanced Manufacturing Degree program. The picture of the pink book is a photocopied nightmare that two instructors at the Advanced Manufacturing program put together with other disconnected info that they inserted. If you can read what it says, you'll see that the book is an accompaniment to a video course. Both the book and the course are from yet another third party company called CNC Concepts. Mark Rosenberry, the Adv Man. Program Chairman, says the videos were thrown away.

How this program is taught would make your jaw drop. Don't be fooled when DMACC points out the pass rate for this class because I'll be glad to tell you how student are really getting through that class.

Now take a look at the other book that I posted. This book is also a beginners guide for CNC programming and operation. It's free. You can get it online for free. It comes with an entire slideshow presentation to help you with the highlights. Once again, free. It also comes with the premier, industry standard Autodesk CAM software you need to learn how to program these machines. Say it with me, free.



This is not some cut-rate operation sponsoring in this program. Haas Automation is the largest machine tool builder for half the planet. They are also the very same manufacturers that supplied DMACC with their CNC equipment. The software is by Autodesk. Once again the very same top-of-the-line software that D Max using as well as the entire industry. But when you request information about this free software from the teachers who are teaching is program at DMACC, one of them (Co-author of the pink book) went ballistic and wrote a letter to Dean Oken. In the letter he thought DMACC should consider the legalities of handing out the software even when it wasn't DMACC giving it away. What? He also went on to imply that students had a lot of nerve asking for the program for free. It turns out student have been downloading the software for a while in order to get the help they don't seem to get from DMACC Yes, I have that memo.

It gets even better because the free book, the accompanying free slideshow and the free software are all part of a bigger program sponsored by MAV TV / Lucas Oil. Autodesk Software and Hass CNC. There is a massive library of how-to videos and step-by-step projects that you can access for free. They bought the rights to a TV show called Titan of Industry and re-named it Titian of CNC and the CNC Academy is online and FREE. They claim that they we soon be offering CNCcertifaction themselves. Yet DMACC tossed their videos and they fight students who try to find out information about the free stuff that been offered.

This is massive. It shows without a doubt that free enterprise...right here in Iowa.. can do far better and at no expense to the taxpayers. Some take it a step farther and ask why we need politicians to represent us. Can't we just vote for issues online? Lol, come on think about it.

While DMACC has no problem offer shady classes and books, it not have any problems spending \$30 million on a recreation and aquatic center that nobody wanted and nobody needed. DMACC has a 50% dropout rate. Out of the remaining students, almost all those have full-time or part-time jobs that they need to go to or they have long commutes and families to get to. Nobody has time to hang out at DMACC when they're done because DMACC is a commuter school. The pool was built for the glory of Ankeny. Just check and see and you will find everyone on the Rec Center committee was either Ankeny Chamber Of Commerce or Ankeny school Board. Should Denny Purcell get back to running Farm Bureau Insurance since there are billboards here in the metro telling people not to buy Farm Bureau Insurance?

How do you explain to the unknowing tax payers the massive expense was taken on when Iowa accepted the old Maytag facility? The Des Moines Register tells people says the facility was gifted to us. The truth is, it was unloaded on us. They have been trying to get rid of it for years

Take a look at the screenshot of a text message that Rob Denson sent. He's wanting to approach Alliant Energy for a year and a half, for starters, of free electricity. Notice how they call grant money? Does this mean that Alliant energy customers will now have to absorb this expense as well as pay taxes to support DMACC? Isn't true that Aliant Energy recently created new billing rules that many feel are intended to curb the use of solar energy? How it is Rob didn't know what electrical bills would be? How is it he doesn't know if they are tax-exempt as he mentions in the text? He told the Des Moines Register exactly what the overhead would be. Another red flag.

It doesn't matter because it's not his money. It's not your money either...its grant money (Aka Fairy Dust) damn it. Lol

Nathan Blake

5/8/2017 3:01 PM

If the state and DMACC cant afford this, then lets fill in the pools, send the Ankeny High School Swim Team back to their new state of the art high schools and turn the rec center into a correctional faculty for select state, county and city politicians and other officials. Once there, we can put them in the "Pimp for Profit, "programs as a form of restitution.

Middle-class capitalism cannot afford to support his outrageous levels socialism anymore.

All the warning signs are up. Fannie Mae recently announced the price of houses are two high. Uh-oh Every major predictors says the stock markets getting ready for a big adjustment. Every Western government is insolvent. Aren't the central bank start become insolvent too? Every major civilizations been taken down by the cost of war and we will not be different. Even here in the US we can see solvency issues with Social Security and the Federal Reserve. Aren't we having solvency issues right here at home with our own public-sector pension fund?

While the peasants are at the gate with pitchforks and torches, you can either tell them to eat GMO cake or severely cut state spending and corporate welfare as well getting rid of the Aristocracy who administrate and dominate these programs We are going broke.

.Bryan Huntsman

515-203-0789

**Tabor, Eric [AG]**

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**From:** Gregg, Adam <agregg@spd.state.ia.us>  
**Sent:** Thursday, May 04, 2017 10:19 AM  
**To:** Melohn, Janelle [AG] --  
**Cc:** Swaim, Kurt [SPD]; Nichols Cook, Erica [SPD]; Hamill, Robert [AG]; Tabor, Eric [AG]  
**Subject:** Re: Sexual Assault Kit Initiative

All-  
Thank you for the follow up. We will review and will let you know if we have any questions.

Thanks again,

Adam

**Adam C. Gregg**  
State Public Defender  
State of Iowa  
515-242-6158  
[agregg@spd.state.ia.us](mailto:agregg@spd.state.ia.us)

On Thu, May 4, 2017 at 10:12 AM, Melohn, Janelle [AG] <[Janelle.Melohn@iowa.gov](mailto:Janelle.Melohn@iowa.gov)> wrote:

Attached is the information required by HF2420, which states, "If information was obtained under subsection 2, paragraph "c", subparagraph (5), that a conviction was obtained for any crime associated with an untested sexual abuse evidence collection kit, the attorney general shall provide the office of the state public defender with the defendant's name, case number, and the county where the conviction occurred, within sixty days of receiving such information."

The original list of arrestees associated with untested SA kits was 124, however, after significant follow up with the respective law enforcement agencies and the Iowa Courts Online system, many cases dropped off the list for the following reasons: case was unfounded, case was suspended, prosecution was declined, or the victim refused to cooperate.

There were also many cases where no information could be found in the courts system. This bill did not compel the courts to cooperate with us in any fashion, so our ability to search for court records was extremely limited. Because we could not determine with certainty the offenders listed were in fact convicted, we left those names on the list and indicated "nothing found" in the case number column after exhausting all available options to find the information.

This list is all-encompassing in that every SA kit where the initial inventory indicated a conviction had been obtained has been followed up on. This should satisfy the final requirement under HF2420 for SPD.

Best regards,

**Janelle Melohn**  
**Director**  
Office of the Attorney General of Iowa



Crime Victim Assistance Division

321 East 12<sup>th</sup> Street

Des Moines, Iowa 50319

Main: (515) 281-5044 | Direct: (515) 242-6109  
Email: [janelle.melohn@iowa.gov](mailto:janelle.melohn@iowa.gov) | [www.iowaattorneygeneral.gov](http://www.iowaattorneygeneral.gov)

[Like us on Facebook at https://www.facebook.com/CrimeVictimAssistanceDivision](https://www.facebook.com/CrimeVictimAssistanceDivision)

[Follow us on twitter @CVADInfo](https://twitter.com/CVADInfo)

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**From:** Swaim, Kurt [<mailto:kswaim@spd.state.ia.us>]  
**Sent:** Wednesday, March 08, 2017 12:03 PM  
**To:** Melohn, Janelle [AG]  
**Cc:** Gregg, Adam [SPD]; Nichols Cook, Erica [SPD]; Hamill, Robert [AG]; Tabor, Eric [AG]  
**Subject:** Re: Sexual Assault Kit Initiative

Janelle,

As per my telephone talk with Eric this morning, I understand you will be getting us the information Adam specified in his email just as soon as you reasonably can. We'll look forward to receiving it soon. Thank you.

Best,

Kurt

Kurt Swaim

First Assistant State Public Defender

On Tue, Mar 7, 2017 at 6:20 PM, Melohn, Janelle [AG] <[Janelle.Melohn@iowa.gov](mailto:Janelle.Melohn@iowa.gov)> wrote:

Thanks for your quick response Mr. Gregg,

It sounds like SPD does now have interest in the general info provided for in paragraph six. We will do our best to filter down the info to the elements listed in the bill and have it to you before the March 15, deadline if not sooner.

As for the piece you reference in paragraph 3, that's going to be more difficult. The reason the offender information wasn't collected is two fold. One, the survey tool had already been disseminated to law enforcement prior to the passage of the legislation, which is something we made SPD aware of in our conversations last year and two, the survey tool also had to be approved by our federal grantor and they wouldn't have allowed for us to collect something outside the scope of the grant focus and the offender piece wouldn't have qualified. That being said, we can try to go back to the respective agencies and obtain that information, but it's likely to take some time. I can't have staff who are funded under the grant complete this work as it's outside the scope of our award/grant activities and ineligible for reimbursement which means general staff would have to take on this work while also completing their regular workload. Given what I now know about how quickly LE agencies respond to requests around this initiative, the best option will likely be to adhere to the 60 day measure you referred to in the bill and turn over the offender information as we receive it from these agencies regarding the 122 kits where convictions have already been obtained. This best adheres to the letter of the bill language and will allow time for agencies to respond, as well as for us to collect and reproduce the data for your agency.

I believe this will meet both your needs as well as the bill language, but if I've missed something please let me know.

Best regards,

Janelle Melohn  
Director, Crime Victim Assistance Division  
Iowa Attorney General's Office  
312 East 12th Street  
Des Moines, IA 50319  
515-281-5044 (office)  
515-281-8199 (fax)  
[jmelohn@ag.state.ia.us](mailto:jmelohn@ag.state.ia.us)

---

From: Gregg, Adam [[agregg@spd.state.ia.us](mailto:agregg@spd.state.ia.us)]  
Sent: Tuesday, March 07, 2017 2:04 PM  
To: Melohn, Janelle [AG]

Cc: Swaim, Kurt [SPD]; Nichols Cook, Erica [SPD]; Hamill, Robert [AG]  
Subject: Re: Sexual Assault Kit Initiative

Ms. Melohn-

Thanks for your recollections and perspective on the conversations which took place at about this time last year. However, it seems to me the best evidence of our agreement is the amendment language which was negotiated between our organizations, and which was subsequently adopted by both houses of the legislature and signed by the Governor. That language, of course, is now law.

I would respectfully propose the following path forward:

-The Office of the SPD again requests the information which is required to be provided under paragraph 3 of H.F. 2420. I may be misunderstanding your statement that this information was not collected. That would be very concerning, because that information was required to be collected under paragraph (2)(c)(5) of H.F. 2420. If I am understanding your email correctly and that information was not collected, I would propose that your office circle back to the respective agencies to gather the legally required information in cases which resulted in a conviction.

-The Office of the SPD again requests the information which is required to be provided under paragraph 6 of H.F. 2420. Under the bill, this information is not limited to cases which resulted in a conviction.

Thank you for your consideration.

Adam C. Gregg  
State Public Defender  
State of Iowa  
515-242-6158  
[agregg@spd.state.ia.us](mailto:agregg@spd.state.ia.us)<<mailto:agregg@spd.state.ia.us>>

On Tue, Mar 7, 2017 at 9:38 AM, Melohn, Janelle [AG]  
<[Janelle.Melohn@iowa.gov](mailto:Janelle.Melohn@iowa.gov)<<mailto:Janelle.Melohn@iowa.gov>>> wrote:  
Mr. Gregg,

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60 days-We explained to Kurt when we met, the entire survey was being conducted with federal grant dollars. Our grant required approval through the Federal Bureau of Justice Assistance (BJA) prior to releasing any of the data collected under the grant and we were up front we would not be able to provide any data until the end of the audit. We received this approval from BJA about a week and a half ago and provided this information to your agency as quickly as we were able, well within the 60 day timeframe and before the report had been made public.

The scope of this grant was to collect data to benefit victims who may not have received justice due to their SA kit not having been tested. SPD was hoping to piggyback on this data piece to explore whether or not offenders also received justice in their convictions, especially in the event someone had been wrongfully convicted. We didn't argue the language of the bill, because of our conversations with Kurt and Amy and our disclosures of what we could and couldn't provide and why. Kurt made very clear, you all were hoping to get information around kits that had not been tested, but where convictions were obtained. We explained we could not provide

raw data from the survey, wherein information had been disclosed to us which would not have otherwise been made public record, except in the case of a conviction. There were also elements SPD wanted that we did not obtain, since the focus of the grant was not on offenders and our survey tool also required approval through BJA.

I say all of this to say, we have provided you with exactly what was agreed upon in our conversations with Kurt and Amy. The elements in paragraph 3 that were not provided, were because we did not collect them. We did, however, provide more information than was required in this same paragraph to try to uphold what we had discussed with Amy and Kurt. Paragraph 3 only required us to provide the defendant's name, case number and county of conviction. We didn't capture anything but the case number out of these elements, but tried to provide context for each so SPD could further investigate. We have met the terms of our requirements under this paragraph.

Paragraph 6 was a moot point given what we'd discussed with Kurt, as he'd indicated SPD wasn't interested in general information about kits, but rather just kits that hadn't been tested, where convictions were obtained.

It is time consuming to filter down 4,200+ rows of information, to give you only the date a kit was collected, the facility where it was collected and the case number as is required under paragraph 6, especially if it's not going to be helpful to SPD (which is what we were told). We are happy to provide you with this list, however, if you've since determined it is now somehow helpful to your work.

Please let me know how SPD would like to proceed given this context.

[cid:image001.png@01D29722.4E7F1800]<<http://www.iowaattorneygeneral.gov/>>

Janelle Melohn

Director

Office of the Attorney General of Iowa

Crime Victim Assistance Division

321 East 12th Street

Des Moines, Iowa 50319

Main: (515) 281-5044 | Direct: (515) 242-6109

Email: [janelle.melohn@iowa.gov](mailto:janelle.melohn@iowa.gov)<<mailto:janelle.melohn@iowa.gov>> |

[www.iowaattorneygeneral.gov](http://www.iowaattorneygeneral.gov/)<<http://www.iowaattorneygeneral.gov/>>

Like us on Facebook at <https://www.facebook.com/CrimeVictimAssistanceDivision>

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From: Gregg, Adam [<mailto:agregg@spd.state.ia.us><<mailto:agregg@spd.state.ia.us>>]

Sent: Monday, March 06, 2017 4:54 PM

To: Hamill, Robert [AG]

Cc: Swaim, Kurt [SPD]; Melohn, Janelle [AG]; Nichols Cook, Erica [SPD]

Subject: Re: Sexual Assault Kit Initiative

Mr. Hamill-

Thank you sending this report. However, it does not appear to comply with the requirements of House File 2420.

For cases which resulted in a conviction, paragraph 3 of the bill very clearly requires the attorney general to provide my office with the defendant's name, case number, and county where the conviction occurred. This report does not appear to provide the information required by the law. I would also note that this information was to be provided to my office on a rolling basis, within 60 days of the AG's office receiving such information. It does not appear any ongoing disclosures occurred.

Instead, this report appears to be providing some of the information required by paragraph 6. The paragraph 6 disclosures were not limited to cases which resulted in a conviction. Therefore, the information to be provided under paragraph 6 is to be provided for all survey responses.

I respectfully request that the Office of the Attorney General provide the information required by law, namely:

- adhere to the directive of paragraph 3 of H.F. 2420, which requires the disclosure of the defendant's name, case number, and county of conviction for any cases in which a conviction was obtained for any crime associated with an untested kit;
- adhere to the directive of paragraph 6 of H.F. 2420, which requires the disclosure of the date the kit was collected, the location where the kit was collected, and the case number associated with the kit.

Adam C. Gregg  
State Public Defender  
State of Iowa  
515-242-6158  
[agregg@spd.state.ia.us](mailto:agregg@spd.state.ia.us)<<mailto:agregg@spd.state.ia.us>>

On Mon, Mar 6, 2017 at 1:49 PM, Hamill, Robert [AG]  
<[Robert.Hamill@iowa.gov](mailto:Robert.Hamill@iowa.gov)<<mailto:Robert.Hamill@iowa.gov>>> wrote:  
Hello Adam, Kurt,

I hope this email finds you well. As you probably recall my office received a grant from the Bureau of Justice Assistance and compiled an inventory of untested sexual assault kits statewide. Per HF2420 signed last March, we are providing your office with a list of kits identified by law enforcement agencies as not submitted due to suspect admission/conviction.

We also wanted to extend a courtesy invitation to the State Public Defender's office to a press conference tomorrow morning at 10 AM in Hoover on level A in conference room 7. AG Miller will be discussing the results of the survey and next steps on this grant project. Upon release tomorrow, the full report will be publicly available on our website.

Please don't hesitate to let me know if have questions. My direct line is 515-242-6110.

Thank you,  
Robert

[cid:image001.png@01D29722.4E7F1800]<<http://www.iowaattorneygeneral.gov/>>

Robert Hamill



Compensation and SAE Administrator  
Office of the Attorney General of Iowa  
Crime Victim Assistance Division  
321 E. 12th St.  
Des Moines, Iowa 50319  
Main: (515) 281-5044 | Fax: (515) 281-8199  
Email: [Robert.hamill@iowa.gov](mailto:Robert.hamill@iowa.gov)<mailto:Robert.hamill@iowa.gov> |  
[www.iowaattorneygeneral.gov](http://www.iowaattorneygeneral.gov)<http://www.iowaattorneygeneral.gov/>

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## Tabor, Eric [AG]

---

**From:** Melohn, Janelle [AG]  
**Sent:** Thursday, May 04, 2017 10:12 AM  
**To:** Swaim, Kurt [SPD]; Gregg, Adam [SPD]  
**Cc:** Nichols Cook, Erica [SPD]; Hamill, Robert [AG]; Tabor, Eric [AG]  
**Subject:** RE: Sexual Assault Kit Initiative  
**Attachments:** SPD-COMPLETED charges filed or suspect admission.xlsx

Attached is the information required by HF2420, which states, "If information was obtained under subsection 2, paragraph "c", subparagraph (5), that a conviction was obtained for any crime associated with an untested sexual abuse evidence collection kit, the attorney general shall provide the office of the state public defender with the defendant's name, case number, and the county where the conviction occurred, within sixty days of receiving such information."

The original list of arrestees associated with untested SA kits was 124, however, after significant follow up with the respective law enforcement agencies and the Iowa Courts Online system, many cases dropped off the list for the following reasons: case was unfounded, case was suspended, prosecution was declined, or the victim refused to cooperate.

There were also many cases where no information could be found in the courts system. This bill did not compel the courts to cooperate with us in any fashion, so our ability to search for court records was extremely limited. Because we could not determine with certainty the offenders listed were in fact convicted, we left those names on the list and indicated "nothing found" in the case number column after exhausting all available options to find the information.

This list is all-encompassing in that every SA kit where the initial inventory indicated a conviction had been obtained has been followed up on. This should satisfy the final requirement under HF2420 for SPD.

Best regards,



**Janelle Melohn**

**Director**

Office of the Attorney General of Iowa

Crime Victim Assistance Division

321 East 12<sup>th</sup> Street

Des Moines, Iowa 50319

Main: (515) 281-5044 | Direct: (515) 242-6109

Email: [janelle.melohn@iowa.gov](mailto:janelle.melohn@iowa.gov) | [www.iowaattorneygeneral.gov](http://www.iowaattorneygeneral.gov)

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**From:** Swaim, Kurt [<mailto:kswaim@spd.state.ia.us>]  
**Sent:** Wednesday, March 08, 2017 12:03 PM  
**To:** Melohn, Janelle [AG]  
**Cc:** Gregg, Adam [SPD]; Nichols Cook, Erica [SPD]; Hamill, Robert [AG]; Tabor, Eric [AG]  
**Subject:** Re: Sexual Assault Kit Initiative

Janelle,

As per my telephone talk with Eric this morning, I understand you will be getting us the information Adam specified in his email just as soon as you reasonably can. We'll look forward to receiving it soon. Thank you.

Best,

Kurt

Kurt Swaim  
First Assistant State Public Defender

On Tue, Mar 7, 2017 at 6:20 PM, Melohn, Janelle [AG] <[Janelle.Melohn@iowa.gov](mailto:Janelle.Melohn@iowa.gov)> wrote:  
Thanks for your quick response Mr. Gregg,

It sounds like SPD does now have interest in the general info provided for in paragraph six. We will do our best to filter down the info to the elements listed in the bill and have it to you before the March 15, deadline if not sooner.

As for the piece you reference in paragraph 3, that's going to be more difficult. The reason the offender information wasn't collected is two fold. One, the survey tool had already been disseminated to law enforcement prior to the passage of the legislation, which is something we made SPD aware of in our conversations last year and two, the survey tool also had to be approved by our federal grantor and they wouldn't have allowed for us to collect something outside the scope of the grant focus and the offender piece wouldn't have qualified. That being said, we can try to go back to the respective agencies and obtain that information, but it's likely to take some time. I can't have staff who are funded under the grant complete this work as it's outside the scope of our award/grant activities and ineligible for reimbursement which means general staff would have to take on this work while also completing their regular workload. Given what I now know about how quickly LE agencies respond to requests around this initiative, the best option will likely be to adhere to the 60 day measure you referred to in the bill and turn over the offender information as we receive it from these agencies regarding the 122 kits where convictions have already been obtained. This best adheres to the letter of the bill language and will allow time for agencies to respond, as well as for us to collect and reproduce the data for your agency.

I believe this will meet both your needs as well as the bill language, but if I've missed something please let me know.

Best regards,

Janelle Melohn  
Director, Crime Victim Assistance Division  
Iowa Attorney General's Office  
312 East 12th Street  
Des Moines, IA 50319  
515-281-5044 (office)  
515-281-8199 (fax)  
[jmelohn@ag.state.ia.us](mailto:jmelohn@ag.state.ia.us)

---

From: Gregg, Adam [[agregg@spd.state.ia.us](mailto:agregg@spd.state.ia.us)]  
Sent: Tuesday, March 07, 2017 2:04 PM  
To: Melohn, Janelle [AG]  
Cc: Swaim, Kurt [SPD]; Nichols Cook, Erica [SPD]; Hamill, Robert [AG]

Subject: Re: Sexual Assault Kit Initiative

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State of Iowa  
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Janelle Melohn

Director

Office of the Attorney General of Iowa

Crime Victim Assistance Division

321 East 12th Street

Des Moines, Iowa 50319

Main: (515) 281-5044 | Direct: (515) 242-6109

Email: [janelle.melohn@iowa.gov](mailto:janelle.melohn@iowa.gov)<<mailto:janelle.melohn@iowa.gov>> |

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From: Gregg, Adam [<mailto:agregg@spd.state.ia.us><<mailto:agregg@spd.state.ia.us>>]

Sent: Monday, March 06, 2017 4:54 PM

To: Hamill, Robert [AG]

Cc: Swaim, Kurt [SPD]; Melohn, Janelle [AG]; Nichols Cook, Erica [SPD]

Subject: Re: Sexual Assault Kit Initiative

Mr. Hamill-

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- adhere to the directive of paragraph 6 of H.F. 2420, which requires the disclosure of the date the kit was collected, the location where the kit was collected, and the case number associated with the kit.

Adam C. Gregg  
State Public Defender  
State of Iowa  
515-242-6158  
[agregg@spd.state.ia.us](mailto:agregg@spd.state.ia.us)<mailto:agregg@spd.state.ia.us>

On Mon, Mar 6, 2017 at 1:49 PM, Hamill, Robert [AG]  
<[Robert.Hamill@iowa.gov](mailto:Robert.Hamill@iowa.gov)<mailto:Robert.Hamill@iowa.gov>> wrote:  
Hello Adam, Kurt,

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Please don't hesitate to let me know if have questions. My direct line is 515-242-6110.

Thank you,  
Robert

[<cid:image001.png@01D29722.4E7F1800>]<<http://www.iowaattorneygeneral.gov/>>

Robert Hamill  
Compensation and SAE Administrator

Office of the Attorney General of Iowa  
Crime Victim Assistance Division  
321 E. 12th St.  
Des Moines, Iowa 50319  
Main: (515) 281-5044 | Fax: (515) 281-8199  
Email: [Robert.hamill@iowa.gov](mailto:Robert.hamill@iowa.gov)<mailto:[Robert.hamill@iowa.gov](mailto:Robert.hamill@iowa.gov)> |  
[www.iowaattorneygeneral.gov](http://www.iowaattorneygeneral.gov)<<http://www.iowaattorneygeneral.gov/>>

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## Tabor, Eric [AG]

---

**From:** Baker, Colleen [AG]  
**Sent:** Tuesday, May 02, 2017 4:19 PM  
**To:** Tabor, Eric [AG]  
**Subject:** Dave Furneaux - 279-1365

He knew Tom since 1974 and was a volunteer. He has always voted for Tom and is against the opinion regarding the Governor and would like a call back.



**Colleen Baker**  
**Legal Secretary**  
**Office of the Attorney General of Iowa**  
1305 E. Walnut Street  
Des Moines, IA 50319  
Phone: (515) 281-5132 Fax: (515) 281-6771  
Email: [colleen.baker@iowa.gov](mailto:colleen.baker@iowa.gov) | [www.iowaattorneygeneral.gov](http://www.iowaattorneygeneral.gov)

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**P** BE GREEN Please don't print this e-mail unless necessary



## Tabor, Eric [AG]

---

**From:** Greenwood, Geoff [AG]  
**Sent:** Tuesday, May 02, 2017 12:47 PM  
**To:** Tabor, Eric [AG]; Thompson, Jeffrey [AG]  
**Subject:** Fwd: Did you get my email earlier?

Sent from my iPhone

Begin forwarded message:

**From:** Ed Tibbetts <[ETibbetts@gctimes.com](mailto:ETibbetts@gctimes.com)>  
**Date:** May 2, 2017 at 12:12:47 PM CDT  
**To:** "Greenwood, Geoff [AG]" <[Geoff.Greenwood@iowa.gov](mailto:Geoff.Greenwood@iowa.gov)>  
**Subject:** RE: Did you get my email earlier?

Also, Geoff:

I'm curious if the lieutenant governor would be able to appoint a successor if she simply resigns her position as lieutenant governor, thus creating a vacancy? Pete McRoberts brought this up in a blog post.

Ed

---

**From:** Greenwood, Geoff [AG] [<mailto:Geoff.Greenwood@iowa.gov>]  
**Sent:** Tuesday, May 02, 2017 12:11 PM  
**To:** Ed Tibbetts  
**Subject:** RE: Did you get my email earlier?

He's been tied up, so I'll try to check with him early this afternoon.

Thanks,

Geoff

---

**From:** Ed Tibbetts [<mailto:ETibbetts@gctimes.com>]  
**Sent:** Tuesday, May 02, 2017 11:49 AM  
**To:** Greenwood, Geoff [AG]  
**Subject:** Did you get my email earlier?

**Ed Tibbetts**  
Newsroom  
Quad-City Times  
563-383-2327  
[gctimes.com](http://gctimes.com)



**QCT media group**  
print • digital • mobile • social  
qctmediagroup.com

## **Tabor, Eric [AG]**

---

**From:** Greenwood, Geoff [AG]  
**Sent:** Monday, May 01, 2017 6:47 PM  
**To:** Tabor, Eric [AG]; Thompson, Jeffrey [AG]  
**Cc:** Gavin, Meghan [AG]; Ranscht, David [AG]  
**Subject:** FW: thank you

**From:** Laura Belin [mailto:desmoinesdem@bleedingheartland.com]  
**Sent:** Monday, May 01, 2017 3:16 PM  
**To:** Greenwood, Geoff [AG]  
**Subject:** thank you

Hello Geoff,

Thanks again for the heads up about the call-in opportunity.

I don't have their individual e-mail addresses, but please pass along my appreciation to the solicitor general and the other staff members who worked closely on today's formal opinion. It was very well-researched.

The reaction from the governor's office is disappointing but demonstrates how much political pressure was on the Attorney General's Office to reach a different conclusion. Thank you for standing up for the rule of law.

Yours,

Laurie  
1705 Plaza Circle  
Windsor Heights, IA 50324  
(515) 276-6971

<http://www.bleedingheartland.com>

**Tabor, Eric [AG]**

---

**From:** Press Releases from Iowa Governor's Office  
<IowaGovernorsOffice@public.govdelivery.com>  
**Sent:** Monday, May 01, 2017 5:33 PM  
**To:** Tabor, Eric [AG]  
**Subject:** RELEASE: Gov. Branstad, Lt. Gov. Reynolds issue statements on Pottawattamie County Sherriff's Deputies shootings

**OFFICE OF THE GOVERNOR**  
Governor Terry E. Branstad ★ Lt. Governor Kim Reynolds

FOR IMMEDIATE RELEASE: Monday, May 1, 2017  
Contact: Governor's Office, 515-281-5211

**Gov. Branstad, Lt. Gov. Reynolds issue statements on  
Pottawattamie County Sherriff's Deputies shootings**

(DES MOINES) – Today, Gov. Terry Branstad and Lt. Gov. Kim Reynolds released statements upon learning of shootings involving Pottawattamie County Sheriff's Deputies.

*"Earlier today, I learned of the senseless act of violence that took the life of Mark Burbridge and injured Pat Morgan, both who served as Pottawattamie County Sheriff's Deputies. I am deeply saddened to hear these troubling details. I have asked state officials to assist local officials with the investigation if needed. The thoughts and prayers of Chris and I go out to the families of these officers and to those who serve beside them." –Gov. Terry Branstad*

*"Men and women across Iowa put their lives on the line every day to make our communities a safe place to live and raise a family. Today, we're reminded of the selfless and ultimate sacrifice they sometimes face. The State of Iowa stands ready to assist local officials in western Iowa as they grieve and mourn this loss of life. Kevin and I are praying for the Burbridge and Morgan families, and the entire law enforcement community in Pottawattamie County." –Lt. Gov. Kim Reynolds*

###

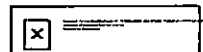
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## **Tabor, Eric [AG]**

---

**From:** Tabor, Eric [AG]  
**Sent:** Monday, May 01, 2017 2:07 PM  
**To:** Thompson, Jeffrey [AG]; Gavin, Meghan [AG]; Ranscht, David [AG]  
**Subject:** FW: RELEASE: Gov. Branstad, Lt. Gov. Reynolds respond to Attorney General Miller's reversal of opinion

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**From:** Press Releases from Iowa Governor's Office [mailto:IowaGovernorsOffice@public.govdelivery.com]  
**Sent:** Monday, May 01, 2017 2:04 PM  
**To:** Tabor, Eric [AG]  
**Subject:** RELEASE: Gov. Branstad, Lt. Gov. Reynolds respond to Attorney General Miller's reversal of opinion

## **OFFICE OF THE GOVERNOR** Governor Terry E. Branstad ★ Lt. Governor Kim Reynolds

FOR IMMEDIATE RELEASE: Monday, May 1, 2017  
CONTACT: Governor's Office 515-281-5211

# **Gov. Branstad, Lt. Gov. Reynolds respond to Attorney General Miller's reversal of opinion**

(DES MOINES) – Today, after learning of Attorney General Tom Miller's reversal of opinion, Gov. Terry Branstad and Lt. Gov. Kim Reynolds issued the following statements, and provided both facts and background information to the public on the case for a new Lt. Governor.

### **Gov. Terry Branstad**

"Tom Miller was crystal clear last December when he said Lt. Governor Reynolds could act upon existing law and appoint a Lt. Governor when she becomes Governor upon my resignation.

*'Our office has researched the law and consulted with the Governor's office. We concur with the Governor's conclusion that, upon resignation of Governor Branstad, Lt. Governor Reynolds will become Governor and will have the authority to appoint a new Lt. Governor.' – Tom Miller's Office, December 13, 2016.*

No new facts or laws have changed since December 13, 2016. Tom Miller has allowed politics to cloud his judgment and is ignoring Iowa law. This politically motivated opinion defies common sense. Iowans expect a Governor and Lt. Governor working on their behalf. This is disappointing."

### **Lt. Gov. Kim Reynolds**

"In December, Attorney General Tom Miller researched the law and concurred with the Secretary of State and our office that, upon Gov. Branstad's resignation, I become Governor and have the authority to appoint a new Lt. Governor. Since then, I've been moving forward with that understanding. Now, five months later, just one day before Governor Branstad testifies before the U.S. Senate Foreign Relations Committee, the Attorney General has reversed himself, but the law hasn't changed. The law still states that as Governor, I vacate my role as Lt. Governor and am able to appoint a new Lt. Governor. With the law on our side we will move forward with his first conclusion as we examine our options in light of Tom Miller's reversal."

**Ben Hammes, Communications Director**

"The power of a Governor to appoint a new Lt. Governor was put into the law in 2009 by the democrats. That law says: 'An appointment by the governor to fill a vacancy in the office of lieutenant governor shall be for the balance of the unexpired term.' This bill passed unanimously by both parties and signed into law by a democrat Governor. Now, just because the democrats do not control the Governor's office, Attorney General Miller wants to pretend like this law does not exist, and issue a non-binding opinion. Quite frankly, this is what Iowans are sick and tired of. The Attorney General should be upholding the law, not ignoring it."

\*\*\*\*\*

**Background Information:**

Attorney General Miller now says that Lt. Gov. Reynolds will be both Governor and Lt. Governor at the same time and that Lt. Gov. Reynolds will not be able to appoint a new Lt. Governor. That defies common sense and the law.

- (1) When Gov. Branstad resigns, the Iowa Constitution states that his powers will devolve upon Lt. Gov. Reynolds. Lt. Gov. Reynolds will become Governor. Attorney General Miller agrees with this conclusion.
- (2) Iowa law prevents someone from holding two offices at the same time. Because Kim Reynolds will become Governor, she will automatically vacate the Office of the Lt. Governor.
- (3) In 2009, the Iowa Legislature (led by democrats) passed a statute to clarify that if there is a vacancy in the Office of Lt. Governor, the Governor appoints someone to fill that vacancy. That law is clear: "An appointment by the governor to fill a vacancy in the office of lieutenant governor shall be for the balance of the unexpired term."
- (4) When Terry Branstad resigns, Kim Reynolds becomes Governor; the Office of Lt. Governor is then vacant, and under the Iowa Code (passed unanimously by the Legislature) Gov. Reynolds appoints someone to fill that vacancy.

Similar situations have occurred before in other states. For example:

- (1) In 2003, President Bush picked Utah Gov. Michael Leavitt to head the EPA. The state's Attorney General, in a thorough legal opinion, concluded that Leavitt's Lt. Governor became Governor and vacated the Lt. Governor's Office. The new Governor, then, was free to appoint a new Lt. Governor (and he did).

- (2) Similarly, when then-Gov. Bill Clinton became president in 1993, the Arkansas Supreme Court ruled — based upon constitutional provisions that are nearly identical to Iowa's — that his Lt. Governor became Governor. The Office of the Lt. Governor was then vacant, and Mike Huckabee filled that vacancy mid-term.
- (3) Finally, and most recently, the New York's highest court ruled that when Gov. Elliot Spitzer resigned, Lt. Governor David Patterson became Governor, vacated the Office of Lt. Governor, and was free to appoint a new Lt. Governor.

In December 2016, Attorney General Miller agreed with this view of the law. Since then, the Constitution hasn't changed. Neither has the Iowa Code. While Attorney General Miller's opinion is not binding on anybody, Iowans should ask why Attorney General Miller suddenly reversed course.

###

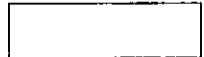
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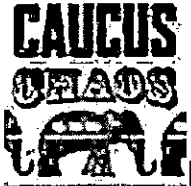
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**Tabor, Eric [AG]**

---

**From:** Bakker, Eric [LEGIS] <Eric.Bakker@legis.iowa.gov>  
**Sent:** Monday, May 01, 2017 1:22 PM  
**Subject:** Lt Gov



**Dave Price** Verified account @idaveprice

Following

More

Breaking: Iowa Attorney General rules that @KimReynoldsIA can't appoint successor when she become governor.

Eric Bakker  
Sr. AA to Senate Democratic Leader Rob Hogg  
515-281-3902 (w)  
515-401-8167 (c)



## Tabor, Eric [AG]

---

**From:** Tabor, Eric [AG]  
**Sent:** Wednesday, April 26, 2017 9:14 AM  
**To:** Thompson, Jeffrey [AG]  
**Subject:** FW: Litigation over Iowa 20-weeks law

**Importance:** High

FYI

---

**From:** John Bursch [mailto:jbursch@burschlaw.com]  
**Sent:** Wednesday, April 26, 2017 8:18 AM  
**To:** Tabor, Eric [AG]  
**Subject:** Litigation over Iowa 20-weeks law  
**Importance:** High

Good morning Eric. My name is John Bursch, and you may remember me from the NAAG amici contacts list when I served as Michigan Solicitor General from 2011-13. I am now back in private practice, though still actively litigating on behalf of states. (I represent Indiana in defending its law prohibiting the possession or transfer of aborted fetal body parts or tissue; Arizona, Michigan, and New Jersey in federal-court, consent-decree matters; and Michigan in the presidential-election recount litigation.)

I read this morning about the Iowa Legislature's approval of a new pro-life law and wanted to pro-actively reach out to see if I might be able to assist you and General Miller in defending the litigation that is bound to come once the Governor signs the bill. A summary of my experience is available at <http://www.burschlaw.com/>, and my contact information is below; is there a good time to talk in the next week or two?

Best regards,

John

John J. Bursch  
**BURSCH LAW PLLC**  
9339 Cherry Valley Ave SE, #78 | Caledonia, MI 49316  
616.450.4235 | [jbursch@burschlaw.com](mailto:jbursch@burschlaw.com)  
[www.burschlaw.com](http://www.burschlaw.com)

**Tabor, Eric [AG]**

---

**From:** John Bursch <jbursch@burschlaw.com>  
**Sent:** Wednesday, April 26, 2017 8:18 AM  
**To:** Tabor, Eric [AG]  
**Subject:** Litigation over Iowa 20-weeks law

**Importance:** High

Good morning Eric. My name is John Bursch, and you may remember me from the NAAG amici contacts list when I served as Michigan Solicitor General from 2011-13. I am now back in private practice, though still actively litigating on behalf of states. (I represent Indiana in defending its law prohibiting the possession or transfer of aborted fetal body parts or tissue; Arizona, Michigan, and New Jersey in federal-court, consent-decree matters; and Michigan in the presidential-election recount litigation.)

I read this morning about the Iowa Legislature's approval of a new pro-life law and wanted to pro-actively reach out to see if I might be able to assist you and General Miller in defending the litigation that is bound to come once the Governor signs the bill. A summary of my experience is available at <http://www.burschlaw.com/>, and my contact information is below; is there a good time to talk in the next week or two?

Best regards,

John

John J. Bursch  
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9339 Cherry Valley Ave SE, #78 | Caledonia, MI 49316  
616.450.4235 | [jbursch@burschlaw.com](mailto:jbursch@burschlaw.com)  
[www.burschlaw.com](http://www.burschlaw.com)

**Tabor, Eric [AG]**

---

**From:** Tabor, Eric [AG]  
**Sent:** Tuesday, April 25, 2017 11:39 AM  
**To:** 'Adams, Heather [AG]'; Gavin, Meghan [AG]  
**Cc:** Thompson, Jeffrey [AG]  
**Subject:** FW: HF 524 should be reviewed by Tom Miller before Gov. Branstad signs it into law

Once we have time to digest the bill, let's discuss. Thanks. Eric



**Eric Tabor**  
**Chief Deputy Attorney General**  
Office of the Attorney General of Iowa  
1305 E. Walnut St.  
Des Moines, Iowa 50319  
Main: (515) 281-5164 | Direct: (515) 281-5191  
Email: [Eric.Tabor@iowa.gov](mailto:Eric.Tabor@iowa.gov) | [www.iowaattorneygeneral.gov](http://www.iowaattorneygeneral.gov)

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**From:** Johansen, Eric [LEGIS] [<mailto:Eric.Johansen@legis.iowa.gov>]  
**Sent:** Tuesday, April 25, 2017 9:49 AM  
**To:** Tabor, Eric [AG]  
**Cc:** Schneider, Charles [LEGIS]; Dix, Bill [LEGIS]  
**Subject:** FW: HF 524 should be reviewed by Tom Miller before Gov. Branstad signs it into law

Eric,

Senator Schneider has asked that I pass along a request for comment from the Attorney General regarding HF 524 (medicinal cannabis). Could you please provide us an opinion regarding the legality of Iowa establishing the program outlined in HF 524?

Thanks,  
Eric

—  
Eric Johansen  
Staff Director  
Senate Republican Caucus Staff  
(515) 313-8538 : Cell  
(515) 281-3979 : Office

---

**From:** Schneider, Charles [LEGIS]  
**Sent:** Tuesday, April 25, 2017 9:42 AM  
**To:** Johansen, Eric [LEGIS]  
**Subject:** FW: HF 524 should be reviewed by Tom Miller before Gov. Branstad signs it into law

Hi Eric,

Would you please pass this along to Attorney General Miller's office for comment?

Thanks!

Charles Schneider  
State Senator

----- Original Message -----

Subject: HF 524 should be reviewed by Tom Miller before Gov. Branstad signs it into law  
Sent: Apr 25, 2017 5:56 AM  
From: Carl Olsen <[carl@carl-olsen.com](mailto:carl@carl-olsen.com)>  
To: "Schneider, Charles [LEGIS]" <[Charles.Schneider@legis.iowa.gov](mailto:Charles.Schneider@legis.iowa.gov)>, Charles Schneider <[charlesmschneider@gmail.com](mailto:charlesmschneider@gmail.com)>  
Cc:

130 E. Aurora Ave.  
Des Moines, Iowa 50313-3654  
April 25, 2017

Charles Schneider  
7887 Cody Dr  
West Des Moines, IA 50266

Re: HF 524 (medical use of cannabis)

Dear Senator Schneider,

HF 524 appears to set up a continuing criminal enterprise here in Iowa, in violation of federal law, 21 U.S.C. § 848 (2017). Anyone participating in the program would be in violation of federal law, 21 U.S.C. § 844 (2017). Anyone manufacturing or distributing cannabis products would be committing federal crimes carrying penalties of 10 years to life in federal prison and a fine of \$10 to \$50 million, 21 U.S.C. § 841 (2017). Penalties can double for conspiracy to commit any of these acts, 21 U.S.C. § 846 (2017). Because HF 524 authorizes the cultivation, manufacture, and distribution, and possession of cannabis products in the state of Iowa without explaining how any of it would be in compliance with federal law, HF 524 creates a positive conflict between federal and state law so that the two cannot consistently stand together, 21 U.S.C. § 903 (2017).

Please request an opinion from the Attorney General of Iowa, Tom Miller, on the legality of HF 524 before Governor Branstad signs HF 524 into law.

Current federal law can be found at 21 U.S.C. §§ 801 et seq., Pub. L. 91-513, Oct. 27, 1970, 84 Stat. 1236 (“Controlled Substances Act”).

In my opinion, federal schedules of controlled substances are ordinary administrative regulations and cannot be used to interfere with state medical marijuana programs, but HF 524 does not address this matter.

**Alliance for Cannabis Therapeutics v. DEA, 930 F.2d 936, 939 (D.C. Cir. 1991)** (“*neither the statute nor its legislative history precisely defines the term ‘currently accepted medical use’; therefore, we are obliged to defer to the Administrator’s interpretation of that phrase if reasonable.*”)

**Gonzales v. Oregon, 546 U.S. 243, 258 (2006)** (“*The Attorney General has rulemaking power to fulfill his duties under the CSA. The specific respects in which he is authorized to make rules, however, instruct us that he is not authorized to make a rule declaring illegitimate a medical standard for care and treatment of patients that is specifically authorized under state law.*”)

**Grinspoon v. DEA, 828 F.2d 881, 886 (1st Cir. 1987)** (“*Congress did not intend ‘accepted medical use in treatment in the United States’ to require a finding of recognized medical use in every state or, as the Administrator contends, approval for interstate marketing of the substance.*”)

I look forward to hearing from you at your earliest convenience.

Thank you very much!

Sincerely,

Carl Olsen  
130 E. Aurora Ave.  
Des Moines, Iowa 50313-3654  
515-343-9933  
[carl@carl-olsen.com](mailto:carl@carl-olsen.com)

<http://carl-olsen.com/>

<http://iowamedicalmarijuana.org/>

cc: Iowa Governor Terry Branstad

# U.S. Attorney General Jeff Sessions

## **Tabor, Eric [AG]**

---

**From:** Press Releases from Iowa Governor's Office  
<IowaGovernorsOffice@public.govdelivery.com>  
**Sent:** Friday, April 21, 2017 10:07 AM  
**To:** Tabor, Eric [AG]  
**Subject:** RELEASE: Gov. Branstad signs 20 bills into law

## **OFFICE OF THE GOVERNOR** **Governor Terry E. Branstad ★ Lt. Governor Kim Reynolds**

FOR IMMEDIATE RELEASE: Friday, April 21, 2017  
Contact: Governor's Office, 515-281-5211

### **Gov. Branstad signs 20 bills into law**

(DES MOINES) – Gov. Terry Branstad today signed the following 20 bills into law:

House File 134: an Act relating to the authority of cities to regulate and restrict the occupancy of residential rental property. This bill passed the Iowa House on March 15, 65-31 and the Iowa Senate on April 11, 43-6.

House File 146: an Act relating to notice requirements for actions for forcible entry and detainer. This bill passed the Iowa Senate on April 5, 50-0 and the Iowa House on April 10, 96-0.

House File 232: an Act relating to pronouncements of death by registered nurses and physician assistants. This bill passed the Iowa House on February 22, 99-0 and the Iowa Senate on April 10, 48-0.

House File 234: an Act relating to reports filed with the court by mental health advocates for persons with mental health disorders. This bill passed the Iowa House on February 22, 98-0 and the Iowa Senate on April 10, 48-0.

House File 253: an Act relating to proceedings and actions regarding paternity and the obligation of support. This bill passed the Iowa House on February 22, 99-0 and the Iowa Senate on April 10, 48-0.

House File 308: an Act relating to release of certain military personnel records. This bill passed the Iowa Senate on April 6, 49-0 and the Iowa House on April 11, 97-0.

House File 396: an Act relating to definition of child foster care for the purposes of child care provided by a relative of a child. This bill passed the Iowa House on March 8, 99-0 and the Iowa Senate on April 11, 49-0.

House File 410: an Act relating to classifying palmer amaranth as a primary noxious weed and an invasive plant and making penalties applicable. This bill passed the Iowa Senate on April 5, 50-0 and the Iowa House on April 11, 98-0.

House File 485: an Act allowing city council members to serve a city's volunteer fire department in any position of capacity. This bill passed the Iowa Senate on April 4, 50-0 and the Iowa House on April 11, 98-0.

House File 534: an Act relating to exceptions from child care facility licensing requirements. This bill passed the Iowa House on March 14, 94-0 and the Iowa Senate on April 10, 48-0.

House File 545: an Act relating to the public disclosure of information regarding founded child abuse involving a child fatality or near fatality. This bill passed the Iowa House on March 15, 96-0 and the Iowa Senate on April 10, 48-0.

House File 626: an Act eliminating filing fees for requests for independent review of certain determinations under long-term care insurance policies. This bill passed the Iowa House on April 10, 96-0 and the Iowa Senate on April 11, 49-0.

Senate File 275: an Act relating to termination of parental rights proceedings based upon safety or security concerns. This bill passed the Iowa Senate on March 8, 49-0 and the Iowa House on April 10, 96-0.

Senate File 374: an Act relating to providing legal assistance to indigent persons in criminal proceedings, and including effective date provisions. This bill passed the Iowa House on April 6, 93-1 and the Iowa Senate on April 11, 49-0.

Senate File 403: an Act relating to the theft of equipment rental property, and making penalties applicable. This bill passed the Iowa Senate on March 13, 49-0 and the Iowa House on April 10, 75-21.

Senate File 411: an Act relating to contractor registration and licensing by the Dept. of Public Health and the Dept. of Workforce Development and related fees and including effective date provisions. This bill passed the Iowa Senate on March 14, 49-0 and the Iowa House on April 11, 97-0.

Senate File 419: an Act relating to the nurse licensure compact, including provisions for assessments against party states, and including effective date provisions. This bill passed the Iowa Senate on March 27, 49-0 and the Iowa House on April 4, 98-0.

Senate File 451: an Act relating to certain payments made through a county treasurer's internet site. This bill passed the Iowa Senate on March 13, 49-0 and the Iowa House on April 11, 96-0.

Senate File 484: an Act relating to pharmacy regulation, including alternate Board of Pharmacy members, drug disposal program funding, an impaired professionals program, and pharmacy internet sites. This bill passed the Iowa Senate on March 16, 48-0 and the Iowa House on April 10, 96-0.

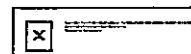
Senate File 497: an Act relating to transportation and other infrastructure-related appropriations to the Dept. of Transportation, including allocation and use of moneys from the road use tax fund and the primary road fund. This bill passed the Iowa Senate on April 10, 49-0 and the Iowa House on April 11, 97-0.

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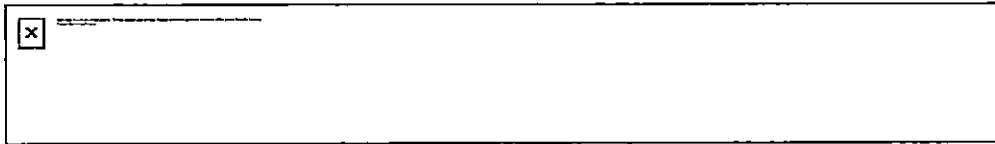


**Tabor, Eric [AG]**

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**From:** GOVERNING Daily <newsletters@governing.com>  
**Sent:** Friday, April 21, 2017 8:14 AM  
**To:** Tabor, Eric [AG]  
**Subject:** Are Nonprofits the New Go-To Choice for Altruistic Jobseekers?

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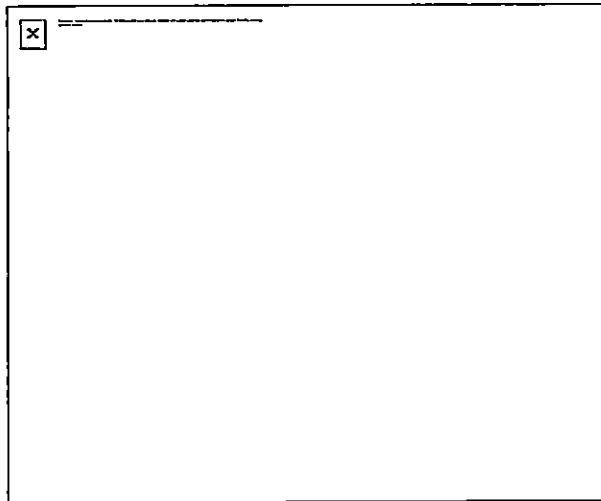
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FEATURED STORY FOR APRIL 21, 2017

## **Are Nonprofits the New Go-To Choice for Altruistic Jobseekers?**

Public service students appear to be shying away from working in government, possibly worsening the sector's longtime hiring struggle.

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**Tabor, Eric [AG]**

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**From:** Press Releases from Iowa Governor's Office  
<IowaGovernorsOffice@public.govdelivery.com>  
**Sent:** Thursday, April 20, 2017 2:01 PM  
**To:** Tabor, Eric [AG]  
**Subject:** RELEASE: Commandant Jodi Tymeson to return as Executive Director of the Iowa Department of Veterans Affairs

**OFFICE OF THE GOVERNOR**  
**Governor Terry E. Branstad ★ Lt. Governor Kim Reynolds**

FOR IMMEDIATE RELEASE: Thursday, April 20, 2017  
Contact: Governor's Office, 515-281-5211

**Commandant Jodi Tymeson to return as Executive Director of  
the Iowa Department of Veterans Affairs**

*Tymeson will return as Executive Director of the Iowa Department of Veterans Affairs on May 1*

(DES MOINES) – Today, Gov. Terry Branstad and Lt. Gov. Kim Reynolds announced that Iowa Veterans Home Commandant Jodi Tymeson will take over as the new Executive Director of Veterans Affairs on May 1. Previously, Tymeson was named Chief Operating Officer of the Iowa Veterans Home in May 2013, and then promoted to Commandant in October 2013.

"I want to thank Gen. Tymeson for her great work as Commandant of the Iowa Veterans Home," said Gov. Branstad. "She provided incredible leadership in caring for our veterans in Marshalltown. I am pleased that Gen. Tymeson is once again answering the call to service for her fellow Iowans as she returns as Executive Director of the Iowa Department of Veterans Affairs."

Lt. Gov. Kim Reynolds added, "Gen. Tymeson is the right person to lead the Iowa Department of Veterans Affairs and be the chief voice and advocate for Iowa veterans and their families. I'm thankful she has taken the responsibility once again to ensure that every veteran has the opportunity to receive the benefits they are entitled to."

"It's been an incredible honor to serve as Commandant of the Iowa Veterans Home. I will leave IVH knowing the staff will continue to provide exceptional care and services to our residents. I want to express my personal appreciation to the staff, volunteers, veteran service organizations, civic organizations and businesses, and many generous citizens who have contributed so much to support the mission of the Iowa Veterans Home. I look forward to continuing to serve Iowa's veterans."

Tymeson served in the Iowa Army National Guard from 1974-2007. While there, she graduated from officer candidate school and was commissioned a second lieutenant in 1982. She served as platoon leader, company commander, battalion commander and troop command commander – responsible for 3,450 soldiers. Tymeson was selected to attend the Army War College as a national security fellow at Harvard University's JFK School of Government, graduating in 1999. She is the first female promoted to brigadier general in the Iowa Army National Guard. She retired in 2007 with 33 years of service.

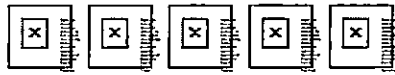
Tymeson also served as a full-time 6th grade teacher at Cedar Heights Elementary in Cedar Falls from 1988-1992, and

taught as a substitute teacher from 1993-1998. From 2001-2010, Tymeson served nearly 30,000 constituents as a state representative for Madison, Warren and Dallas Counties. She served as House Education Committee chair for four years, in addition to a number of other committee assignments.

Interested candidates wishing to apply to be the next Commandant of the Iowa Veterans Home can apply [here](#).

###

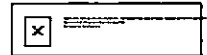
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## Tabor, Eric [AG]

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**From:** Press Releases from Iowa Governor's Office  
<IowaGovernorsOffice@public.govdelivery.com>  
**Sent:** Thursday, April 20, 2017 10:48 AM  
**To:** Tabor, Eric [AG]  
**Subject:** RELEASE: Gov. Branstad signs 10 bills into law

## OFFICE OF THE GOVERNOR Governor Terry E. Branstad ★ Lt. Governor Kim Reynolds

FOR IMMEDIATE RELEASE: Thursday, April 20, 2017  
Contact: Governor's Office, 515-281-5211

### Gov. Branstad signs 10 bills into law

(DES MOINES) – Gov. Terry Branstad today signed the following 10 bills into law:

House File 314: an Act relating to utility maintenance vehicles and solid waste or recycling collection service vehicles, and making penalties applicable. This bill passed the Iowa Senate on April 5, 50-0 and the Iowa House on April 10, 96-0.

Senate File 237: an Act relating to the practice of public accountants. This bill passed the Iowa Senate on March 8, 49-0 and the Iowa House on April 4, 98-0.

Senate File 333: an Act relating to a fiduciary's access to digital assets and including applicability provisions. This bill passed the Iowa Senate on March 13, 49-0 and the Iowa House on April 6, 95-0.

Senate File 362: an Act barring claims against fairs for damages arising out of the transmission of pathogens from certain animals housed on the fairgrounds. This bill passed the Iowa Senate on March 8, 48-1 and the Iowa House on April 6, 94-0.

Senate File 406: an Act exempting motor vehicles carrying an implement of husbandry from certain permit requirements. This bill passed the Iowa Senate on March 21, 49-0 and the Iowa House on April 6, 94-0.

Senate File 493: an Act relating to the authority of combined benefited recreational lake and water quality districts when issuing bonds. This bill passed the Iowa Senate on March 28, 49-0 and the Iowa House on April 11, 95-0.

House File 543: an Act relating to child in need of assistance and child abuse cases involving certain drugs and other substances. This bill passed the Iowa House on March 14, 93-0 and the Iowa Senate on April 10, 48-0.

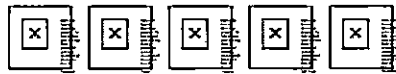
House File 263: an Act relating to the criminal offenses of domestic abuse and authorized placement of a global positioning device, and providing penalties. This bill passed the Iowa House on March 27, 90-8 and the Iowa Senate on April 10, 48-0.

Senate File 51: an Act relating to a cytomegalovirus public health initiative and the testing of newborns for congenital cytomegalovirus. The bill passed the Iowa Senate on March 22, 49-0 and the Iowa House on April 6, 94-0.

House File 473: an Act relating to high school equivalency programs and assessments and including effective date provisions. The bill passed the Iowa House on March 28, 96-0 and the Iowa Senate on April 10, 48-0.

###

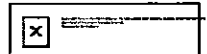
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**Tabor, Eric [AG]**

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**From:** Press Releases from Iowa Governor's Office  
<IowaGovernorsOffice@public.govdelivery.com>  
**Sent:** Wednesday, April 19, 2017 2:36 PM  
**To:** Tabor, Eric [AG]  
**Subject:** RELEASE: Branstad, Reynolds celebrate historic Iowa Fertilizer Company opening world-class fertilizer plant in Wever, Iowa

**OFFICE OF THE GOVERNOR**  
Governor Terry E. Branstad ★ Lt. Governor Kim Reynolds

FOR IMMEDIATE RELEASE: Wednesday April 19, 2017  
Contact: Governor's Office, 515-281-5211

**Branstad, Reynolds celebrate historic Iowa Fertilizer Company  
opening world-class fertilizer plant in Wever, Iowa**

*Company invests over \$3 billion in the facility*

(DES MOINES) – Today, Iowa Fertilizer Company (IFCo) and its parent company, OCI N.V. (Euronext: OCI), announced the official start of production at its plant in Wever in southeast Iowa. Gov. Terry Branstad, Lt. Gov. Kim Reynolds, the Lee County Board of Supervisors and others joined OCI in an event to inaugurate one of the largest private sector construction projects in Iowa's history and the first world-scale, greenfield nitrogen fertilizer facility built in the United States in more than 25 years.

"In Iowa, we have created a roadmap that attracts new businesses and supports key industries that drive long-term economic growth," said Gov. Terry Branstad. "At the outset of the Iowa Fertilizer project, the unemployment rate in Lee County was the highest in the state at 8.0%. That is why we fought so hard to encourage the company to locate its new fertilizer plant in this great community. Today, the county's unemployment rate is down nearly three points to 5.3%, providing a positive and meaningful impact on working families in the area."

"Working alongside Gov. Branstad, I am incredibly proud of the close, on-going partnership we have forged with Lee County, Iowa Fertilizer Company, and farmers to begin this \$3 billion operation," said Lt. Gov. Kim Reynolds. "In the years to come, this plant will continue to spur job growth for Iowa families and support our farmers by providing a more accessible source of fertilizer for their crops."

IFCo has commenced production of sellable ammonia and is in the final stage of start-up for downstream products - urea ammonium nitrate (UAN), granular urea and diesel exhaust fluid (DEF). The plant will produce approximately 1.5 to 2 million metric tons of nitrogen fertilizer products annually and can alternate between products at short notice, depending on market demand.

"The start of production at Iowa Fertilizer Company plant in Wever is a transformative moment for the agricultural industry," said Nassef Sawiris, Chief Executive Officer of OCI N.V. "As one of the most innovative and efficient manufacturing plants in the nation, Iowa Fertilizer is leading the way in providing American farmers a stable, high-quality and domestic source of nitrogen fertilizer products. Given its location among the highest nitrogen-consuming acres globally, on the border between Iowa and Illinois, the number one and two corn-producing states in the nation, the site houses not only a premier production facility, but also an industry-leading distribution centre."



At the peak of construction, IFCo employed more than 3,500 workers and currently employs more than 200 full-time positions to operate the plant. Additionally, many more indirect positions will be created.

The event in Wever marks the culmination of a five-year collaboration between state and local economic development leaders, Republican and Democrat officials in southeast Iowa, the agricultural community, Iowa Fertilizer Company, and state leaders in the Branstad-Reynolds Administration.

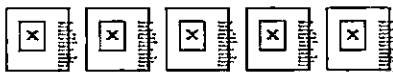
\*\*\*\*\*

**About Iowa Fertilizer Company**

Iowa Fertilizer Company is a leader in the fertilizer industry. The plant in Wever, Iowa is the first greenfield nitrogen fertilizer facility constructed in the United States in more than 25 years. Utilizing its state-of-the-art production, industry-leading technology, and environmentally sustainable processes, Iowa Fertilizer Company will help provide farmers in Iowa and around the country with a stable, domestic supply of fertilizer. For more information, visit Iowa Fertilizer Company at [iowafertilizer.com](http://iowafertilizer.com).

###

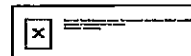
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**Tabor, Eric [AG]**

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**From:** Press Releases from Iowa Governor's Office  
<IowaGovernorsOffice@public.govdelivery.com>  
**Sent:** Wednesday, April 19, 2017 12:01 PM  
**To:** Tabor, Eric [AG]  
**Subject:** RELEASE: MEDIA ADVISORY ON BILL SIGNINGS

**OFFICE OF THE GOVERNOR**  
Governor Terry E. Branstad ★ Lt. Governor Kim Reynolds

FOR IMMEDIATE RELEASE: Wednesday, April 19, 2017  
CONTACT: Governor's Office 515-281-5211

**\*\*\* MEDIA ADVISORY ON BILL SIGNINGS \*\*\***

(DES MOINES) – Iowa Gov. Terry Branstad will be holding public bill signings in the Governor's Formal Office **TOMORROW at 9:45 a.m.**

Gov. Branstad will sign:

House File 263: an Act relating to the criminal offenses of domestic abuse and authorized placement of a global positioning device, and providing penalties. This bill passed the Iowa House on March 27, 90-8 and the Iowa Senate on April 10, 48-0.

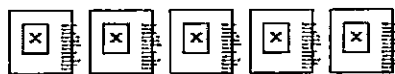
Senate File 51: an Act relating to a cytomegalovirus public health initiative and the testing of newborns for congenital cytomegalovirus. The bill passed the Iowa Senate on March 22, 49-0 and the Iowa House on April 6, 94-0.

House File 473: an Act relating to high school equivalency programs and assessments and including effective date provisions. The bill passed the Iowa House on March 28, 96-0 and the Iowa Senate on April 10, 48-0.

**\*\*The event is open to the media\*\***

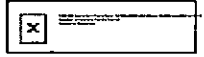
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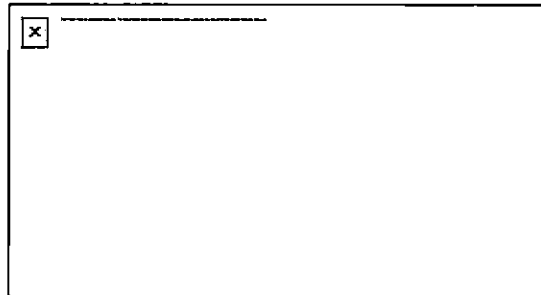
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## Tabor, Eric [AG]

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**From:** C.J., Fairfax for LG <bounce@bounce.myngp.com> on behalf of C.J., Fairfax for LG <info@fairfaxforlg.com>  
**Sent:** Tuesday, April 18, 2017 2:31 PM  
**To:** Tabor, Eric [AG]  
**Subject:** Join Us for A Weekend of Action!



### Fairfax for LG Weekend of Action Across the Commonwealth

Saturday, April 22, 2017

Hello Eric,

We are gearing up for another another Weekend of Action with #TeamFairfax in full swing! With only 56 days until the June 13th primary election, we need your help to connect with voters and finish strong!

We will be phone banking and going door to door to engage with voters about Justin Fairfax, Democratic Candidate for Lieutenant Governor.

We will have our volunteers out in full force across Virginia in:

- Alexandria
- Charlottesville
- Fairfax
- Falls Church
- Hampton
- Norfolk
- Richmond
- Roanoke

We would love for you to join us!

Please sign up here to tell us where you want to volunteer and help spread the message that the #FutureisNow!

Please let us know what shift you can volunteer for!

C.J. Incorminias, IV  
Regional Field Director for Hampton Roads  
Justin Fairfax for Lieutenant Governor of Virginia

Paid for by Friends of Justin Fairfax

Friends of Justin Fairfax  
P.O. Box 48  
Fairfax VA 22038 United States

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## Tabor, Eric [AG]

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**From:** Joe, Fairfax for Lt. Governor <bounce@bounce.myngp.com> on behalf of Joe, Fairfax for Lt. Governor <info@fairfaxforlg.com>  
**Sent:** Tuesday, April 18, 2017 11:07 AM  
**To:** Tabor, Eric [AG]  
**Subject:** Big Fundraising News! Winning from the Ground Up



Hello Eric,

Our first quarter finance report is in and thanks to your support, we raised nearly \$300,000 in the past three months with more than 65% of that amount coming from small-dollar donations of \$100 or less! Even more great news, with your help, our campaign outraised the other two Democratic candidates for Lt. Governor combined -- and, more importantly, from thousands more donors! ***This is truly an amazing grassroots campaign!***

**There are no big corporations funding our campaign; we are a grassroots movement driven by the people from the ground up.** You and our other strong supporters have made it possible for Justin to reach thousands of voters by traveling more than 30,000 miles around the Commonwealth sharing his message of economic security and opportunity for all Virginians.

We need all of our supporters to help sustain us through the next 56 days until the June 13th Primary so that we can continue to fight for a brighter future for all Virginians.

You have given us the resources to assemble and mobilize an amazing campaign team and operation, including hundreds of energized volunteers all across the state. And, it's paying off big! We have won all seven contested Democratic straw polls for Lt. Governor as well as the endorsement of more than 100 elected officials and other prominent leaders throughout the Commonwealth. We have already reached hundreds of thousands of voters in the past 11 months, and, with your continued support, we will have the resources to communicate with many more in the remaining eight weeks of this campaign.

Your help will enable Justin to win this election and to continue to fight to provide greater access to higher-paying "middle-skill" jobs and a livable wage, affordable, high-quality healthcare and education, to reduce the crushing burden of student loan debt, reform our broken criminal and juvenile justice system, and resist the erosion of our Constitutional and civil rights under the Trump Administration.

Will you contribute now to make a difference in June?

Thank you so much for your hard work, support, and belief in Justin and this campaign. We will win together!

Joe

Joe Zuckerman  
Finance Director  
Justin Fairfax for Lt. Governor

Paid for by Friends of Justin Fairfax

Friends of Justin Fairfax  
P.O. Box 48  
Fairfax VA 22038 United States

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**Tabor, Eric [AG]**

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**From:** Congressman L.F. Payne, 5th District of Virginia <bounce@bounce.myngp.com> on behalf of Congressman L.F. Payne, 5th District of Virginia <info@fairfaxforlg.com>  
**Sent:** Thursday, April 13, 2017 10:41 AM  
**To:** Tabor, Eric [AG]  
**Subject:** Congressman L.F. Payne Endorses Justin Fairfax for Lt. Governor of Virginia

Dear Eric,

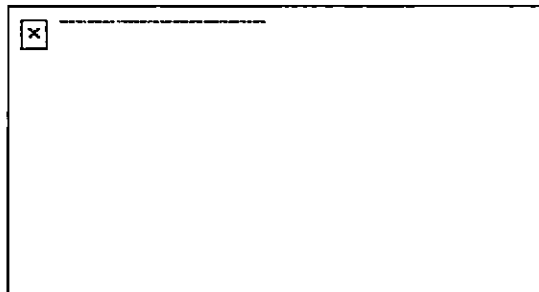
Running for Lt. Governor in a state as diverse and vast as Virginia requires energy, intellect, and an innate ability to connect with people by meeting them where they are.

As a former candidate for Lt. Governor and Congressman from a district that now stretches from Northern Virginia to the North Carolina border, I know what it means to represent people from across Virginia. I proudly endorse Justin Fairfax for Lt. Governor of Virginia because I believe he has what it takes to represent all Virginians. He is the kind of highly intelligent, dynamic, and forward-thinking leader Virginia needs to continue building on our progress to chart an even brighter future.

Please join me in voting for Justin Fairfax for Lt. Governor of Virginia on June 13<sup>th</sup> and again in November.

Sincerely,  
L.F. Payne

Former Congressman  
5<sup>th</sup> Congressional District of Virginia

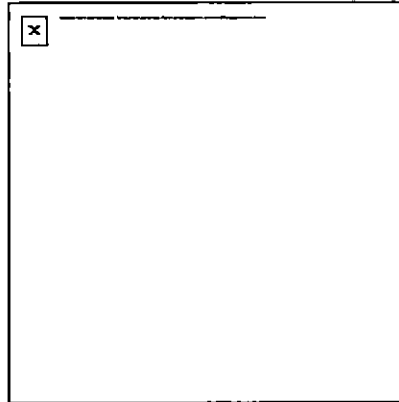


For Immediate Release  
April 13, 2017



Contact Information  
Lauren Zehyoue  
Phone: [214-356-0313](tel:214-356-0313)  
Email: [lauren@fairfaxforlg.com](mailto:lauren@fairfaxforlg.com)

**Former Virginia Congressman and Lieutenant Governor Candidate L.F. Payne Endorses  
Justin Fairfax for Lt. Governor of Virginia**



ARLINGTON, Virginia -- Today, the Justin Fairfax for Lieutenant Governor campaign is proud to announce the endorsement of former Virginia Congressman and Lt. Governor Candidate L.F. Payne. Congressman Payne represented Virginia's 5th District which now stretches from Northern to Southside Virginia for 9 years prior to running a spirited campaign for Lt. Governor of Virginia. The 5th Congressional District includes all or part of the independent cities of Bedford, Charlottesville, Danville, Farmville and Martinsville as well as Albemarle, Appomattox, Bedford, Buckingham, Campbell, Carroll, Charlotte, Cumberland, Franklin, Fluvanna, Halifax, Henry, Lunenburg, Mecklenburg, Nelson, Patrick, Pittsylvania, and Prince Edward counties.

"Running for Lt. Governor in a state as diverse and vast as Virginia requires energy, intellect, and an innate ability to connect with people by meeting them where they are." said Payne.

"As a former candidate for Lt. Governor and Congressman from a district that now stretches from Northern Virginia to the North Carolina border, I know what it means to represent people from across Virginia. I proudly endorse Justin Fairfax for Lt. Governor of Virginia because I believe he has what it takes to represent all Virginians. He is the kind of highly intelligent, dynamic, and forward-thinking leader Virginia needs to continue building on our progress and to chart an even brighter future.

"Please join me in voting for Justin Fairfax for Lt. Governor of Virginia on June 13<sup>th</sup> and again in November."

After receiving Congressman Payne's endorsement, former federal prosecutor Justin Fairfax made the following statement:

"I am humbled and honored to receive the endorsement of Congressman Payne. His distinguished service and leadership in Virginia in both the public and private sectors are known far and wide. I look forward to working with Congressman Payne to reach voters in the 5th Congressional District and throughout Virginia in the June 13th primary and the general election in November."

Congressman Payne joins Northern Virginia Congressman Gerry Connolly (VA-11), former Virginia Lt. Governor candidates Viola Baskerville and Senator Chap Petersen, and more than 100 elected officials, party leaders, and grassroots activists from across the Commonwealth in supporting Justin Fairfax for Lieutenant Governor of Virginia in 2017.

###

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## **Tabor, Eric [AG]**

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**From:** Press Releases from Iowa Governor's Office  
<IowaGovernorsOffice@public.govdelivery.com>  
**Sent:** Thursday, April 13, 2017 10:32 AM  
**To:** Tabor, Eric [AG]  
**Subject:** RELEASE: Gov. Branstad signs 14 bills into law

# **OFFICE OF THE GOVERNOR**

## **Governor Terry E. Branstad ★ Lt. Governor Kim Reynolds**

FOR IMMEDIATE RELEASE: Thursday, April 13, 2017  
Contact: Governor's Office, 515-281-5211

### **Gov. Branstad signs 14 bills into law**

(DES MOINES) – Gov. Terry Branstad today signed the following 14 bills into law:

Senate File 438: an Act relating to bidding and contracting for public improvement projects, making penalties applicable, and including effective date and applicability provisions. This bill passed the Iowa Senate on March 9, 26-21 and the Iowa House on April 4, 57-41.

Senate File 413: an Act relating to statute-of-repose periods for improvements to real property and including applicability provisions. This bill passed the Iowa Senate on March 8, 32-16 and the Iowa House on March 21, 57-39.

House File 517: an Act relating to offensive and dangerous weapons, and the justifiable use of reasonable and deadly force, including carrying, possessing, transferring, and acquiring weapons, the purchase and regulation of such weapons, providing penalties, and including effective date and applicability provisions. This bill passed the Iowa Senate on April 4, 33-17 and the Iowa House on April 6, 57-36.

Senate File 250: an Act establishing a notification requirement for mammogram reports to patients, and including effective date provisions. This bill passed the Iowa Senate on March 14, 49-0 and the Iowa House on April 4, 96-2.

House File 475: an Act relating to the use of a straight wall cartridge rifle to hunt deer and including penalties. This bill passed the Iowa House on March 13, 96-0 and the Iowa Senate on April 3, 49-0.

House File 568: an Act relating to pari-mutuel wagering, including horse and dog racing medication requirements and the applicability of certain setoff procedures to advance deposit wagering operators and including effective date provisions. This bill passed the Iowa House on March 14, 93-0 and the Iowa Senate on April 5, 50-0.

Senate File 373: an Act relating to service in the national guard and reserve components of the armed forces, including applicability of reemployment protections, and military justice jurisdiction and statutes of limitation. This bill passed the Iowa Senate on March 8, 49-0 and the Iowa House on April 4, 98-0.

Senate File 355: an Act relating to municipal utilities, by restricting the regulatory authority of the Iowa Utilities Board with regard to certain services, and authorizing city utilities to require deposits for gas or electric services for residential rental properties. This bill passed the Iowa Senate on March 9, 48-0 and the Iowa House on April 3, 96-0.

House File 572: an Act relating to employment services programs administered by the Department of Workforce Development by modifying the membership requirements and duties of the Iowa Workforce Development Board and authorizing the Department to carry out unemployment insurance systems modernization, making appropriations, and including effective date provisions. This bill passed the Iowa House on March 21, 88-9 and the Iowa Senate on April 3, 49-0.

House File 542: an Act relating to eligibility requirements for individuals claiming unemployment insurance benefits in consecutive benefit years and including effective date provisions. This bill passed the Iowa House on March 20, 58-39 and the Iowa Senate on April 4, 29-21.

House File 541: an Act relating to licensed real estate professionals and real estate disclosure statements. This bill passed the Iowa House on March 27, 98-0 and the Iowa Senate on April 5, 50-0.

House File 533: an Act relating to disqualification from eligibility for unemployment benefits and including effective date provisions. This bill passed the Iowa House on March 20, 97-0 and the Iowa Senate on April 4, 42-8.

House File 471: an Act relating to election precinct boundaries and consolidations. This bill passed the Iowa House on March 8, 97-1 and the Iowa Senate on April 4, 43-7.

House File 441: an Act relating to the use of child labor in laundry occupations. This bill passed the Iowa House on March 20, 94-3 and the Iowa Senate on April 4, 47-3.

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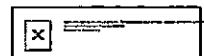
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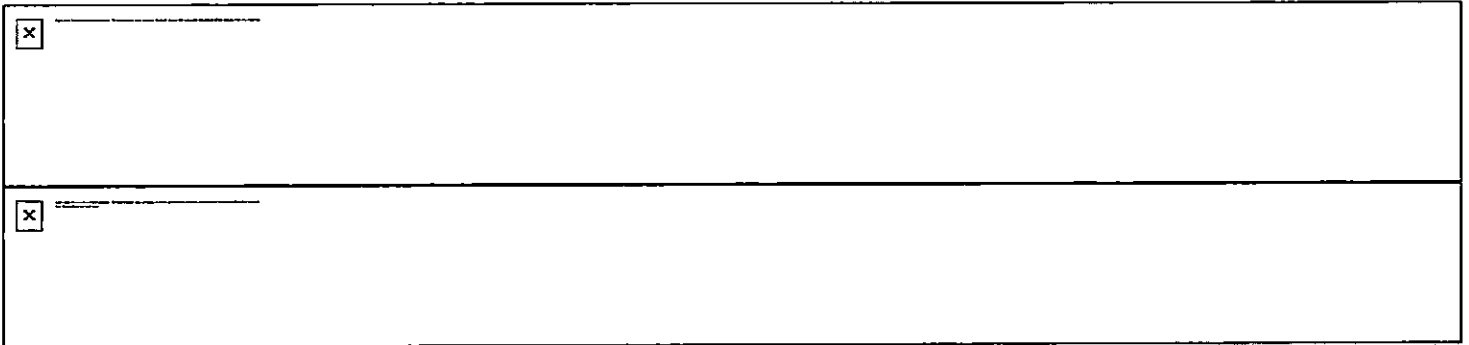


## Tabor, Eric [AG]

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**From:** GovTech Today <newsletters@govtech.com>  
**Sent:** Thursday, April 13, 2017 9:51 AM  
**To:** Tabor, Eric [AG]  
**Subject:** Cloud-Based Tools Help Cities Improve Trash Management | Cupertino, Calif., Maps Apple's Construction Permits

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### TOP STORIES FOR APRIL 13

#### 3 Cities Pilot Cloud-Based App, Dashboards to Get Smart About Trash and Recyclables

Each jurisdiction has unique ideas of how the technology can get its trash and recycling issues sorted and move it closer to becoming a smart city. [READ MORE](#)

#### Cupertino, Calif.'s Buildingeye Launch Puts Apple's Construction Permits on a Map

The Bay Area city makes the 15th government the startup has a contract with. [READ MORE](#)

#### Who Should Regulate Cybersecurity for Connected Cars?

The federal government regulates safety standards for vehicles. Should cybersecurity standards be treated differently? [READ MORE](#)

#### Why P3s Are the Brains Behind Smart Cities

Without a public-private partnership, a smart city plan will most likely remain stuck on the drawing board. [READ MORE](#)

### MORE HEADLINES

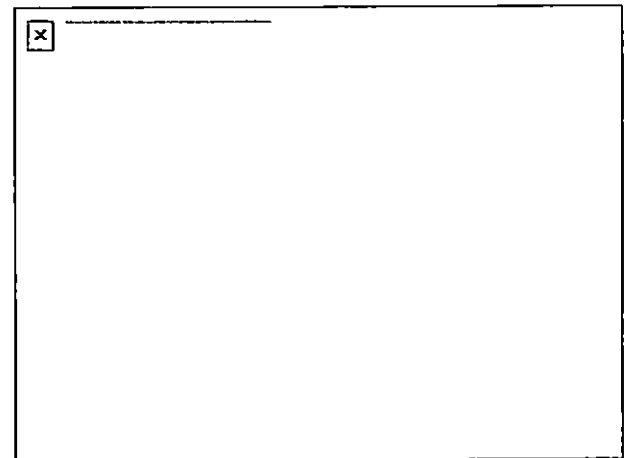
#### Opioid Crisis Could Prompt Changes to California's Prescription Drug Database

### QUESTION OF THE DAY

How is Google helping people be better artists?

ANSWER

### REVISITING STATE OF THE STATES



**The Future Is Automation:** Over the past few years, technology has increasingly snared a larger percentage of the limelight in governors' State of the State addresses, indicative of its growing prominence in

**Florida Sheriff's Video Warning Heroin Dealers to 'Run' Goes Viral**

**New FCC Chairman Reportedly Plans to Dismantle Net Neutrality Rules Passed Under Obama**

**FAA Shows Off New Air-Traffic Communication Tech in Minneapolis**

**Local Hampton Roads, Va., Leaders Launch Nonprofit to Highlight, Market, Grow Region's Drone Potential**

**Is Municipal Broadband Feasible?**

**Attracting Millennials Could Be the Key to Boosting Louisiana's Economy**

**Somerset, Mass., Official Visits D.C. to Make Case for Hyperloop in Her City**

**Pay-By-Phone Parking Could be the Next Step for Outdated Dayton, Ohio Meters**

**Personal Data at Risk as School Districts Become Cybercrime Targets**

**Portland Commits to Using 100 Percent Renewable Energy by 2050**

**EDITORS CHOICE**

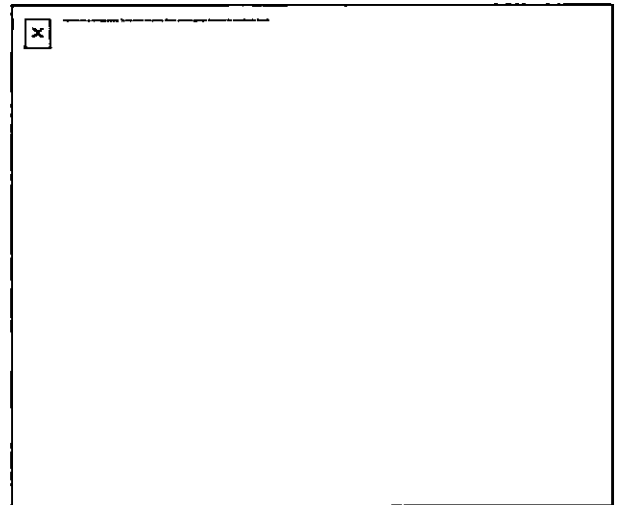
**Worst of the Web**

**Facebook Steps Up Its 'Civic Products,' Remains Committed to Video**

**Americans Say Government Should Invest in Stronger Cyber Defenses of their Data**

**Video Is Integral Part of Social Engagement,**

policy conversations. Over the last few weeks, a couple of governors gave their addresses, and our analyses are in: Ohio received 4 stars while Louisiana did not receive any.



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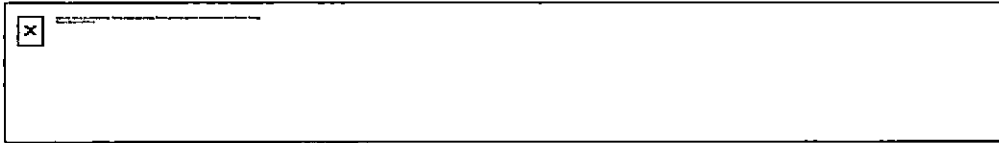


**Tabor, Eric [AG]**

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**From:** GOVERNING Daily <newsletters@governing.com>  
**Sent:** Wednesday, April 12, 2017 9:35 AM  
**To:** Tabor, Eric [AG]  
**Subject:** Federal Pressure Could Spur More 'Lunch Shaming' Bans

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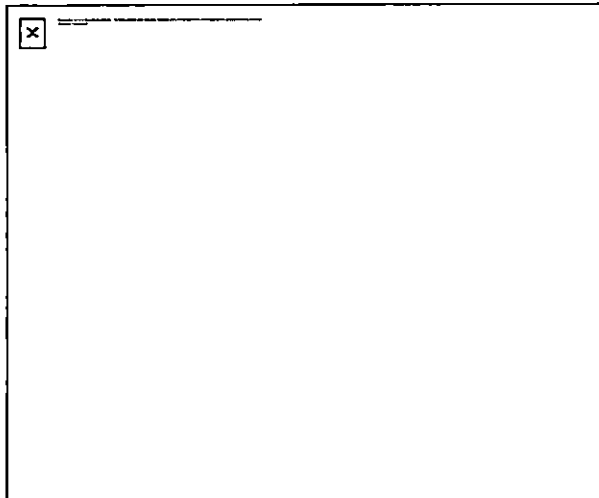
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FEATURED STORY FOR APRIL 12, 2017

## **Federal Pressure Could Spur More 'Lunch Shaming' Bans**

New Mexico is the first state to ban the practice. Now the rest have till the end of the school year to adopt an official policy for what happens when parents miss meal payments.

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**LATEST GOVERNING NEWS & COMMENTARY**



#### URBAN TOPIC

### **Your Age May Indicate Your Impact on Racial Segregation**

New research offers a first look at how migration patterns are influencing diversity.

#### URBAN NOTEBOOK

### **Have States Lost Their Place as Labs of Democracy?**

Experts say cities will be the new place for innovative policy. But there are two reasons that might not happen.

#### SMART MANAGEMENT

### **The Worst Idea in Government Management: Pay for Performance**

It hasn't worked that well in business. In the public sector, it has sometimes been disastrous.

## **LATEST WEB HEADLINES**

#### FINANCE

- **A Proposed Sales Tax for Arts Hits the Skids**

#### HEALTH & HUMAN SERVICES

- **Wisconsin Governor's Budget Proposal Axes State Farm-to-School Post**

#### INFRASTRUCTURE & ENVIRONMENT

- **Court Grants EPA's Request to Delay Smog Rule Case**
- **Tennessee Legislature Passes Rural Broadband Bill**
- **Portland Commits to Using 100% Renewable Energy by 2050**

#### POLITICS

- **Republican Survives Tight House Race to Win Kansas Seat**

#### PUBLIC SAFETY & JUSTICE

- **Trump's National Drug Czar Could Be Bad for Marijuana States**
- **Pennsylvania Inspector General Investigates Lt. Gov.**
- **ICE Suspends Reports Designed to Embarrass Sanctuary**

## Cities

- Oregon Lawmakers Vote to Shield Marijuana Users' from Feds
- 'French Connection' Judge Dies at 96

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## Top 10 American Cities for International Tourists

*The Mastercard Top US Destination Cities Index Report provides essential data on international visitors and how they spend in the top 10 U.S. cities. The report is an essential guide for high-stakes decisions on high-budget initiatives. [Learn more](#)*

## NEWS IN NUMBERS

# Fewer than 12,200

**People who were caught illegally crossing the Southwest border of the United States last month, which is the lowest number in 17 years.**

[MORE](#)

## WHO SAID THAT?

**"Governor Bentley mistakenly sent to Ms. Bentley a text message that stated, 'I love you Rebekah' and was accompanied by a red-rose emoji."**

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## Tabor, Eric [AG]

---

**From:** Tabor, Eric [AG]  
**Sent:** Monday, April 10, 2017 10:33 AM  
**To:** e\_tabor@hotmail.com  
**Subject:** FW: Andy McGuire Is In For Iowa Governor. See Her Endorsements

---

**From:** Noah Jensen Tabor [mailto:[noah.jensentabor@gmail.com](mailto:noah.jensentabor@gmail.com)]  
**Sent:** Monday, April 10, 2017 7:48 AM  
**To:** Tabor, Eric [AG]  
**Subject:** Fwd: Andy McGuire Is In For Iowa Governor. See Her Endorsements

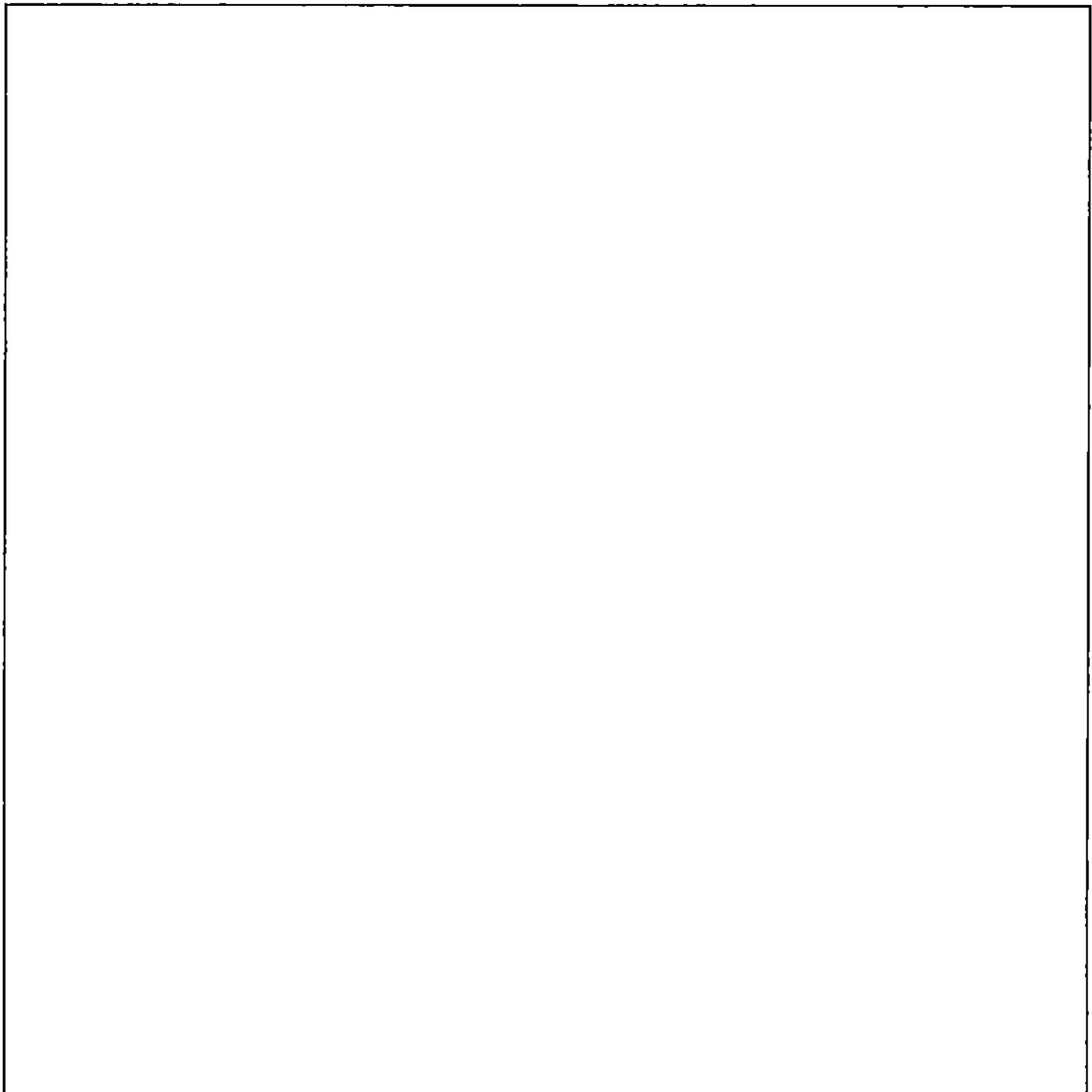
Noah Jensen Tabor, Esq.  
[noah.jensentabor@gmail.com](mailto:noah.jensentabor@gmail.com)  
319.480.0810

Begin forwarded message:

**From:** Iowa Starting Line <[IowaStartingLine@gmail.com](mailto:IowaStartingLine@gmail.com)>  
**Date:** April 10, 2017 at 7:46:02 AM CDT  
**To:** <[noah.jensentabor@gmail.com](mailto:noah.jensentabor@gmail.com)>  
**Subject:** Andy McGuire Is In For Iowa Governor. See Her Endorsements  
**Reply-To:** <[IowaStartingLine@gmail.com](mailto:IowaStartingLine@gmail.com)>

What do you think of McGuire's announcement video?

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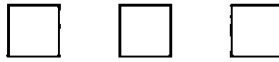
## Andy McGuire Kicks Off Gubernatorial Campaign

It's finally official: Andy McGuire is running for Iowa Governor. This morning she launched her bid with an announcement video that focused on her large family and her background as a medical doctor.

She also rolled out a list of early endorsers, including several well-known names that have been in Iowa Democratic politics for a long time.

See the video and endorsement list in our post:

**Andy McGuire Kicks Off Gubernatorial Campaign - Here's Who Backs Her**



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## Tabor, Eric [AG]

---

**From:** Tabor, Eric [AG]  
**Sent:** Friday, March 31, 2017 4:07 PM  
**To:** Book, Laura [LEGIS]  
**Subject:** RE: FY 18 Revised Governor's Recommendations

Laura – With respect to the Attorney General's Office, we would make our best efforts to handle the reduction by (1) cutting non-salary items, including out-of-state travel and supplies, (2) holding positions open, when possible, and (3) hiring less experienced staff, where appropriate.

I will talk with Janelle Melohn Monday about impact on victim service programs and get back to you.

You should contact Dennis Groenenboom about the impact on Legal Aid.

Thanks. Eric



**Eric Tabor**  
**Chief Deputy Attorney General**  
Office of the Attorney General of Iowa  
1305 E. Walnut St.  
Des Moines, Iowa 50319  
Main: (515) 281-5164 | Direct: (515) 281-5191  
Email: [Eric.Tabor@iowa.gov](mailto:Eric.Tabor@iowa.gov) | [www.iowaattorneygeneral.gov](http://www.iowaattorneygeneral.gov)

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**From:** Book, Laura [LEGIS] [<mailto:Laura.Book@legis.iowa.gov>]  
**Sent:** Friday, March 31, 2017 2:57 PM  
**To:** Tabor, Eric [AG]  
**Subject:** FY 18 Revised Governor's Recommendations

Eric,

In the Governor's FY 18 revised budget recommendations, the Governor has recommended a decrease of \$68,333 for the AG General Office, a decrease of \$18,520 for Victim Assistance Grants, and a decrease of \$6,601 for Legal Services Poverty Grants from the FY 17 adjusted Budget. This is also in addition to the decrease from the appropriated FY 17 budget.

Generally, do you know what effect these reductions would have on the Department? And how it would be implemented?

Thank you for your assistance,

Laura Book  
Legislative Fiscal Analyst  
Legislative Services Agency, Fiscal Services Division  
(515)725-0509

**Tabor, Eric [AG]**

---

**From:** Press Releases from Iowa Governor's Office  
<IowaGovernorsOffice@public.govdelivery.com>  
**Sent:** Wednesday, March 29, 2017 10:27 AM  
**To:** Tabor, Eric [AG]  
**Subject:** RELEASE: Gov. Branstad signs Senate File 447 into law

**OFFICE OF THE GOVERNOR**  
**Governor Terry E. Branstad ★ Lt. Governor Kim Reynolds**

FOR IMMEDIATE RELEASE: Wednesday, March 29, 2017  
Contact: Governor's Office, 515-281-5211

## **Gov. Branstad signs Senate File 447 into law**

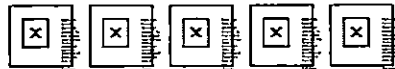
(DES MOINES) – Gov. Terry Branstad today signed the following bill into law:

Senate File 447: an Act providing for certain court actions involving an allegation of a public or private nuisance or the interference with a person's comfortable use and enjoyment of life or property caused by an animal feeding operation, providing for the award of damages, costs, and expenses, and including effective date provisions.

The bill passed the Iowa Senate on March 14, 31-18 and the Iowa House on March 22, 60-39.

###

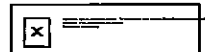
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## Tabor, Eric [AG]

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**From:** White, Cathleen [AG] on behalf of AG Webteam [AG]  
**Sent:** Wednesday, March 29, 2017 8:18 AM  
**To:** Tabor, Eric [AG]  
**Subject:** FW: Old Iowa Political Party Platforms

**From:** Matthew Carr [mailto:matthew.a.carr@columbia.edu]  
**Sent:** Tuesday, March 28, 2017 9:29 PM  
**To:** AG Webteam [AG]  
**Subject:** Old Iowa Political Party Platforms

Dear Attorney General Miller,

Former Lieutenant Governor Jo Ann Zimmerman gave me your name as someone who might be able to help me. I'm with Columbia University and the political science department here is collecting all state-level Democratic and Republican party platforms from 1960 until present.

Thankfully we have found almost all Iowa Democratic platforms since 1960. We are only missing five. We are looking for the state platform for 1972, 1976, 1986, 1988, and 1990. Do you happen to have copies of any of these old platforms or know anyone who might? We are at the point where we'll follow any lead -- it would be great to have a complete of Iowa Democratic platforms. Thank you.

Sincerely,  
Matt Carr

**Tabor, Eric [AG]**

---

**From:** GOVERNING Daily <newsletters@governing.com>  
**Sent:** Monday, March 27, 2017 9:32 AM  
**To:** Tabor, Eric [AG]  
**Subject:** Walking While Black: New Research Examines Why It's So Dangerous

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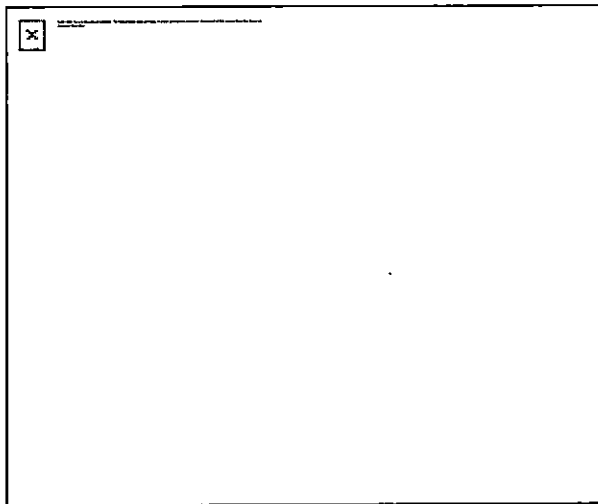
FEATURED STORY FOR MARCH 27, 2017

## **Walking While Black: New Research Examines Why It's So Dangerous**

Non-white pedestrians die at significantly higher rates than their white counterparts. Recent studies suggest drivers' prejudices may be to blame.

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**Tabor, Eric [AG]**

---

**From:** Willits, Emily [AG]  
**Sent:** Thursday, March 23, 2017 3:37 PM  
**To:** Kaufmann, Bobby [LEGIS]  
**Cc:** Tabor, Eric [AG]  
**Subject:** AG Training for New Board and Commission Members  
**Attachments:** Legal Overview for New Board and Commission Members.pdf

Representative Kaufmann:

As a follow-up to the Government Oversight committee hearing this morning, I am attaching the legal training that our office presents at the Governor's orientation for new board and commission members each year. There are additional materials from the orientation session that Larry Johnson would be able to provide.

We also do topical training sessions for various boards on a periodic basis. These are typically tailored to the particular board receiving the training; please let me know if your committee would like any examples.

Regards,  
Emily



**Emily Willits**  
**Director, Licensing & Administrative Law Division**  
Office of the Attorney General of Iowa  
1305 E. Walnut St.  
Des Moines, Iowa 50319  
Main: (515) 281-5164 | Direct: (515) 281-6403  
Email: [Emily.Willits@iowa.gov](mailto:Emily.Willits@iowa.gov) | [www.iowaattorneygeneral.gov](http://www.iowaattorneygeneral.gov)

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**Tabor, Eric [AG]**

---

**From:** GovTech Today <newsletters@govtech.com>  
**Sent:** Thursday, March 23, 2017 9:55 AM  
**To:** Tabor, Eric [AG]  
**Subject:** Workshops to Help Gov Tech Startups Understand the Public Sector, How Did L.A. Spend \$148 Million in Parking Ticket Revenue?

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### TOP STORIES FOR MARCH 23

### QUESTION OF THE DAY

#### Workshops to Help New Gov Tech Startups Understand the Public Sector

The workshops, from Abhi Nemani's consulting venture EthosLabs, would help companies refine products and pitches for local governments. [READ MORE](#)

#### How Did L.A. Spend \$148 Million in Parking Ticket Revenue? Check the Data Portal

The new Street Talk data portal includes information about what Los Angeles collects, from whom and where the money goes. [READ MORE](#)

#### Data Can Help Local Governments Fight Corruption, Study Says

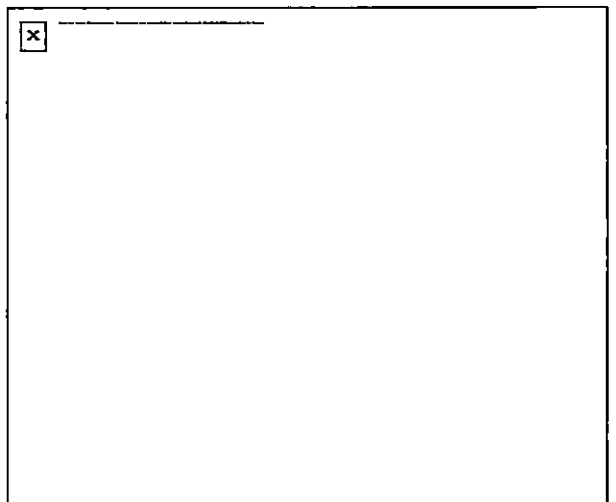
A data-driven approach can serve as an efficient and expedited starting point for agencies to identify and investigate fraud. [READ MORE](#)

#### New Discovery in Backscattering Could Hold Promise for Smart Cities, Report Finds

Backscattering, a passive broadcasting method, has an increasingly clear future as public agencies move aggressively to deliver services more cheaply and serve residents more effectively. [READ MORE](#)

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**Can Startups Be Fostered in Houston's 'Bigger is Better' Business Scene?**

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## Tabor, Eric [AG]

---

**From:** Tabor, Eric [AG]  
**Sent:** Wednesday, March 15, 2017 4:36 PM  
**To:** 'Laura Belin'  
**Cc:** Greenwood, Geoff [AG]; Thompson, Jeffrey [AG]  
**Subject:** RE: seeking comment/clarification

Laurie – Attorney General Miller is committed to responding to Senator David Johnson before Governor Branstad resigns. Eric



**Eric Tabor**  
**Chief Deputy Attorney General**  
Office of the Attorney General of Iowa  
1305 E. Walnut St.  
Des Moines, Iowa 50319  
Main: (515) 281-5164 | Direct: (515) 281-5191  
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**From:** Laura Belin [mailto:[desmoinesdem@bleedingheartland.com](mailto:desmoinesdem@bleedingheartland.com)]  
**Sent:** Tuesday, March 14, 2017 4:09 PM  
**To:** Tabor, Eric [AG]  
**Subject:** Fwd: seeking comment/clarification

Hello Eric,

I'm forwarding this to you, having received an out of office auto-reply from Geoff.

Thanks,

Laurie

----- Forwarded message -----

**From:** Laura Belin <[desmoinesdem@bleedingheartland.com](mailto:desmoinesdem@bleedingheartland.com)>  
**Date:** Tue, Mar 14, 2017 at 4:05 PM  
**Subject:** seeking comment/clarification  
**To:** "Greenwood, Geoff [AG]" <[Geoff.Greenwood@iowa.gov](mailto:Geoff.Greenwood@iowa.gov)>

Geoff,

Can you tell me whether the Attorney General's Office is working on an expedited basis to provide the written opinion requested by Senator David Johnson?

If the answer is yes, when do you expect the opinion to be ready? Can Attorney General Miller commit to answering Senator Johnson's questions this month, or at least before Governor Branstad resigns, which seems likely to happen in April or May?

If the answer is no, can you explain why Attorney General Miller is unwilling to respond in a timely way to these questions?

The coming transfer of power is an extraordinary situation of obvious statewide importance. If Lieutenant Governor Reynolds appoints a new lieutenant governor, that person will be next in line to perform the governor's duties, in apparent contradiction to language in the Iowa Constitution placing the Iowa Senate president next in line.

I understand that legal research can take time, but you indicated in our earlier correspondence that the Attorney General's staff had thoroughly researched these matters before your December 12 announcement that Attorney General Miller concurred with the governor's reading of the Iowa Constitution.

Thanks in advance for any information you can provide about a timetable. If Attorney General Miller will not commit to issuing his written opinion before Governor Branstad resigns, I want to let my readers know. (Several have asked me what is happening on this.)

Yours,

Laurie  
1705 Plaza Circle  
Windsor Heights, IA 50324  
(515) 276-6971

<http://www.bleedingheartland.com>

## **Tabor, Eric [AG]**

---

**From:** Melohn, Janelle [AG]  
**Sent:** Wednesday, March 15, 2017 12:00 PM  
**To:** Swaim, Kurt [SPD]; Gregg, Adam [SPD]; Nichols Cook, Erica [SPD]  
**Cc:** Hamill, Robert [AG]; Tabor, Eric [AG]  
**Subject:** RE: Sexual Assault Kit Initiative  
**Attachments:** SPD6-SAK RESULTS.xlsx

Attached is the excel file of all kits inventoried and the information provided to us, required by paragraph 6 in the legislation.

Paragraph 6 states: The department of justice shall compile and submit a report to the office of the state public defender, not later than March 15, 2017, that provides the date an untested sexual abuse evidence collection kit was collected, where the collection occurred, and the case number, if any, associated with the untested sexual abuse evidence collection kit.

If there is a blank, or "unknown" in one of the three data components, it is because the agency did not, or could not provide this information.

We continue to work on the convictions piece outlined in paragraph 3 and our hope is to be able to provide you with updated data as soon as we are able.

Best regards,



### **Janelle Melohn**

#### **Director**

Office of the Attorney General of Iowa

Crime Victim Assistance Division

321 East 12<sup>th</sup> Street

Des Moines, Iowa 50319

Main: (515) 281-5044 | Direct: (515) 242-6109

Email: [janelle.melohn@iowa.gov](mailto:janelle.melohn@iowa.gov) | [www.iowaattorneygeneral.gov](http://www.iowaattorneygeneral.gov)

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**From:** Swaim, Kurt [mailto:kswaim@spd.state.ia.us]  
**Sent:** Wednesday, March 08, 2017 12:03 PM  
**To:** Melohn, Janelle [AG]  
**Cc:** Gregg, Adam [SPD]; Nichols Cook, Erica [SPD]; Hamill, Robert [AG]; Tabor, Eric [AG]  
**Subject:** Re: Sexual Assault Kit Initiative

Janelle,

As per my telephone talk with Eric this morning, I understand you will be getting us the information Adam specified in his email just as soon as you reasonably can. We'll look forward to receiving it soon. Thank you.

Best,

Kurt

Kurt Swaim  
First Assistant State Public Defender

On Tue, Mar 7, 2017 at 6:20 PM, Melohn, Janelle [AG] <[Janelle.Melohn@iowa.gov](mailto:Janelle.Melohn@iowa.gov)> wrote:  
Thanks for your quick response Mr. Gregg,

It sounds like SPD does now have interest in the general info provided for in paragraph six. We will do our best to filter down the info to the elements listed in the bill and have it to you before the March 15, deadline if not sooner.

As for the piece you reference in paragraph 3, that's going to be more difficult. The reason the offender information wasn't collected is two fold. One, the survey tool had already been disseminated to law enforcement prior to the passage of the legislation, which is something we made SPD aware of in our conversations last year and two, the survey tool also had to be approved by our federal grantor and they wouldn't have allowed for us to collect something outside the scope of the grant focus and the offender piece wouldn't have qualified. That being said, we can try to go back to the respective agencies and obtain that information, but it's likely to take some time. I can't have staff who are funded under the grant complete this work as it's outside the scope of our award/grant activities and ineligible for reimbursement which means general staff would have to take on this work while also completing their regular workload. Given what I now know about how quickly LE agencies respond to requests around this initiative, the best option will likely be to adhere to the 60 day measure you referred to in the bill and turn over the offender information as we receive it from these agencies regarding the 122 kits where convictions have already been obtained. This best adheres to the letter of the bill language and will allow time for agencies to respond, as well as for us to collect and reproduce the data for your agency.

I believe this will meet both your needs as well as the bill language, but if I've missed something please let me know.

Best regards,

Janelle Melohn  
Director, Crime Victim Assistance Division  
Iowa Attorney General's Office  
312 East 12th Street  
Des Moines, IA 50319  
515-281-5044 (office)  
515-281-8199 (fax)  
[jmelohn@ag.state.ia.us](mailto:jmelohn@ag.state.ia.us)

---

From: Gregg, Adam [[agregg@spd.state.ia.us](mailto:agregg@spd.state.ia.us)]  
Sent: Tuesday, March 07, 2017 2:04 PM  
To: Melohn, Janelle [AG]  
Cc: Swaim, Kurt [SPD]; Nichols Cook, Erica [SPD]; Hamill, Robert [AG]  
Subject: Re: Sexual Assault Kit Initiative

Ms. Melohn-

Thanks for your recollections and perspective on the conversations which took place at about this time last

year. However, it seems to me the best evidence of our agreement is the amendment language which was negotiated between our organizations, and which was subsequently adopted by both houses of the legislature and signed by the Governor. That language, of course, is now law.

I would respectfully propose the following path forward:

-The Office of the SPD again requests the information which is required to be provided under paragraph 3 of H.F. 2420. I may be misunderstanding your statement that this information was not collected. That would be very concerning, because that information was required to be collected under paragraph (2)(c)(5) of H.F. 2420. If I am understanding your email correctly and that information was not collected, I would propose that your office circle back to the respective agencies to gather the legally required information in cases which resulted in a conviction.

-The Office of the SPD again requests the information which is required to be provided under paragraph 6 of H.F. 2420. Under the bill, this information is not limited to cases which resulted in a conviction.

Thank you for your consideration.

Adam C. Gregg  
State Public Defender  
State of Iowa  
515-242-6158  
[agregg@spd.state.ia.us](mailto:agregg@spd.state.ia.us)<<mailto:agregg@spd.state.ia.us>>

On Tue, Mar 7, 2017 at 9:38 AM, Melohn, Janelle [AG]  
<[Janelle.Melohn@iowa.gov](mailto:Janelle.Melohn@iowa.gov)<<mailto:Janelle.Melohn@iowa.gov>>> wrote:  
Mr. Gregg,

Since you weren't present for any of the meetings leading up to this legislation being passed and since Kurt seemed to be happy with the information we provided, it appears there's a bit of a disconnect as to what the intent of the language was and what Kurt and his colleague (Amy?) said they were hoping to achieve. Since we based our submission to you all on what was discussed, it's important to have the context.

60 days-We explained to Kurt when we met, the entire survey was being conducted with federal grant dollars. Our grant required approval through the Federal Bureau of Justice Assistance (BJA) prior to releasing any of the data collected under the grant and we were up front we would not be able to provide any data until the end of the audit. We received this approval from BJA about a week and a half ago and provided this information to your agency as quickly as we were able, well within the 60 day timeframe and before the report had been made public.

The scope of this grant was to collect data to benefit victims who may not have received justice due to their SA kit not having been tested. SPD was hoping to piggyback on this data piece to explore whether or not offenders also received justice in their convictions, especially in the event someone had been wrongfully convicted. We didn't argue the language of the bill, because of our conversations with Kurt and Amy and our disclosures of what we could and couldn't provide and why. Kurt made very clear, you all were hoping to get information around kits that had not been tested, but where convictions were obtained. We explained we could not provide raw data from the survey, wherein information had been disclosed to us which would not have otherwise been made public record, except in the case of a conviction. There were also elements SPD wanted that we did not obtain, since the focus of the grant was not on offenders and our survey tool also required approval through BJA.

I say all of this to say, we have provided you with exactly what was agreed upon in our conversations with Kurt and Amy. The elements in paragraph 3 that were not provided, were because we did not collect them. We did, however, provide more information than was required in this same paragraph to try to uphold what we had discussed with Amy and Kurt. Paragraph 3 only required us to provide the defendant's name, case number and county of conviction. We didn't capture anything but the case number out of these elements, but tried to provide context for each so SPD could further investigate. We have met the terms of our requirements under this paragraph.

Paragraph 6 was a moot point given what we'd discussed with Kurt, as he'd indicated SPD wasn't interested in general information about kits, but rather just kits that hadn't been tested, where convictions were obtained.

It is time consuming to filter down 4,200+ rows of information, to give you only the date a kit was collected, the facility where it was collected and the case number as is required under paragraph 6, especially if it's not going to be helpful to SPD (which is what we were told). We are happy to provide you with this list, however, if you've since determined it is now somehow helpful to your work.

Please let me know how SPD would like to proceed given this context.

[cid:image001.png@01D29722.4E7F1800]<<http://www.iowaattorneygeneral.gov/>>

Janelle Melohn

Director

Office of the Attorney General of Iowa

Crime Victim Assistance Division

321 East 12th Street

Des Moines, Iowa 50319

Main: (515) 281-5044 | Direct: (515) 242-6109

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From: Gregg, Adam [<mailto:agregg@spd.state.ia.us><<mailto:agregg@spd.state.ia.us>>]

Sent: Monday, March 06, 2017 4:54 PM

To: Hamill, Robert [AG]

Cc: Swaim, Kurt [SPD]; Melohn, Janelle [AG]; Nichols Cook, Erica [SPD]

Subject: Re: Sexual Assault Kit Initiative

Mr. Hamill-

Thank you sending this report. However, it does not appear to comply with the requirements of House File 2420.

For cases which resulted in a conviction, paragraph 3 of the bill very clearly requires the attorney general to provide my office with the defendant's name, case number, and county where the conviction occurred. This report does not appear to provide the information required by the law. I would also note that this information was to be provided to my office on a rolling basis, within 60 days of the AG's office receiving such information. It does not appear any ongoing disclosures occurred.

Instead, this report appears to be providing some of the information required by paragraph 6. The paragraph 6 disclosures were not limited to cases which resulted in a conviction. Therefore, the information to be provided under paragraph 6 is to be provided for all survey responses.

I respectfully request that the Office of the Attorney General provide the information required by law, namely:  
-adhere to the directive of paragraph 3 of H.F. 2420, which requires the disclosure of the defendant's name, case number, and county of conviction for any cases in which a conviction was obtained for any crime associated with an untested kit;  
-adhere to the directive of paragraph 6 of H.F. 2420, which requires the disclosure of the date the kit was collected, the location where the kit was collected, and the case number associated with the kit.

Adam C. Gregg  
State Public Defender  
State of Iowa  
515-242-6158  
[agregg@spd.state.ia.us](mailto:agregg@spd.state.ia.us)<<mailto:agregg@spd.state.ia.us>>

On Mon, Mar 6, 2017 at 1:49 PM, Hamill, Robert [AG]  
<[Robert.Hamill@iowa.gov](mailto:Robert.Hamill@iowa.gov)<<mailto:Robert.Hamill@iowa.gov>>> wrote:  
Hello Adam, Kurt,

I hope this email finds you well. As you probably recall my office received a grant from the Bureau of Justice Assistance and compiled an inventory of untested sexual assault kits statewide. Per HF2420 signed last March, we are providing your office with a list of kits identified by law enforcement agencies as not submitted due to suspect admission/conviction.

We also wanted to extend a courtesy invitation to the State Public Defender's office to a press conference tomorrow morning at 10 AM in Hoover on level A in conference room 7. AG Miller will be discussing the results of the survey and next steps on this grant project. Upon release tomorrow, the full report will be publicly available on our website.

Please don't hesitate to let me know if have questions. My direct line is 515-242-6110.

Thank you,  
Robert

[<cid:image001.png@01D29722.4E7F1800>]<<http://www.iowaattorneygeneral.gov/>>

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## Tabor, Eric [AG]

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**From:** Tabor, Eric [AG]  
**Sent:** Wednesday, March 15, 2017 9:46 AM  
**To:** 'Kiley'  
**Cc:** Deforest, Shelley [AG]  
**Subject:** RE: IMS Appropriation

Kiley – The \$300,000 appropriation from our Consumer Education and Litigation Fund is in the Governor’s budget recommendations. I think Rep. Worthan and Senator Chelgren are ok with this. I will talk to the Republican caucus staff, but it would be good for someone from IMS to make contact with the co-chairs. Thanks. Eric



**Eric Tabor**  
**Chief Deputy Attorney General**  
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**From:** Kiley [<mailto:kiley@iowamediationservice.com>]  
**Sent:** Wednesday, March 15, 2017 9:12 AM  
**To:** Tabor, Eric [AG]  
**Subject:** IMS Appropriation

Hi Eric,

I hope this message finds you well!

I wanted to give you an update that I had tried to reach out to people I know in the Republican world to see if we could get things pushed through by March 3rd, but essentially was told that the political landscape this year was so intense and complex with other issues that IMS' request for revisions was likely not going to happen. Therefore, my focus right now is the appropriation. Do you have a sense where that stands right now?

Best regards, -Kiley Mars

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**Tabor, Eric [AG]**

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**From:** Steward, David [AG]  
**Sent:** Tuesday, March 14, 2017 1:27 PM  
**To:** MGKoplow@wlrk.com  
**Cc:** Ambrozic, Jane [AG]; Tabor, Eric [AG]; Willits, Emily [AG]; Larson, Jacob [AG]  
**Subject:** Follow-up  
**Attachments:** FUNDING SOURCES FOR WATER QUALITY PROJECTS.docx

Meyer,

I am writing as a follow-up to yesterday's meeting with Michael Bousselet. I spoke with Iowa Finance Authority bond counsel, Dave Grossklaus, and confirmed the following with him:

1. The Iowa Senate water quality bill (SSB1034) does not provide for any bonding authority to IFA; and
2. The \$2 billion IFA State Revolving Fund can definitely make low interest loans to individuals and cities for water quality projects including wetlands, bioreactors and saturated buffer strips. He said that IFA has focused its education efforts in this area on Lt. Governor Reynolds and she should be aware of its availability for such projects.

Furthermore, AG Miller requested we provide a chart of funding sources we know are immediately available for water quality projects if HSB135 becomes law. The chart below is also attached to this email:

**FUNDING SOURCES FOR WATER QUALITY PROJECTS**

<p><b><u>STATE FINANCING</u></b></p> <ul style="list-style-type: none"><li>• HSB135:</li><li>• Iowa Water Quality Initiative (funds appropriated to implement the Nutrient Reduction Strategy)</li></ul>	<ul style="list-style-type: none"><li>• \$232 Million / 13yrs (\$5M-Yr 1; \$6.5M-Yr 2; \$11.5M-Yr 3;\$16.5M-Yrs 4-5; \$22M-Yrs 6-13) appropriations from the Rebuild Iowa Infrastructure Fund</li><li>• Water Service Tax (6% excise tax)</li><li>• \$9.6 Million annually (based on 2015 and 2016 appropriations)</li></ul>
<p><b><u>IFA STATE REVOLVING FUND</u></b></p> <ul style="list-style-type: none"><li>• Low interest loans from IFA SRF to individuals and cities for water quality projects including wetlands, bioreactors and saturated buffer strips.</li></ul>	<ul style="list-style-type: none"><li>• Approximately \$2 billion</li></ul>
<p><b><u>USDA CRP 90/10 COST SHARE</u></b></p> <ul style="list-style-type: none"><li>• USDA Clean Lakes, Estuaries and Rivers (CLEAR) Initiative in CRP Program (for building of bioreactors and installing of</li></ul>	<ul style="list-style-type: none"><li>• Cost share, or reimbursement, of up to 50 percent of the practice costs.</li><li>• Practice incentives of up to 40 percent of</li></ul>

<p>saturated buffers)</p>	<p>the eligible cost, not to exceed \$1,500 per bioreactor on existing CCRP filter strips and riparian buffers.</p> <ul style="list-style-type: none"> <li>Practice incentives of up to 40 percent of the eligible establishment cost for newly enrolled bioreactors or saturated buffers on filter strips.</li> </ul>
<p><b><u>FLOOD CONTROL</u></b></p> <ul style="list-style-type: none"> <li>U of I Flood Center</li> </ul>	<ul style="list-style-type: none"> <li>\$1.5 million annually from State of Iowa plus millions in federal and private funding including a \$96.9M grant from HUD for watershed improvement projects.</li> </ul>
<p><b><u>PRIVATE FUNDS</u></b></p> <ul style="list-style-type: none"> <li>Individuals and private non-profit organizations such as The Iowa Nature Conservancy, Iowa Natural Heritage Foundation and Ducks Unlimited</li> </ul>	<ul style="list-style-type: none"> <li>Several millions of dollars</li> </ul>



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**Tabor, Eric [AG]**

---

**From:** Tabor, Eric [AG]  
**Sent:** Monday, March 13, 2017 9:13 AM  
**To:** Larson, Jacob [AG]; Willits, Emily [AG]; Steward, David [AG]  
**Subject:** FW: RELEASE: Branstad, Reynolds, Northey Announce 12 Urban Water Quality Demonstration Projects Selected to Receive Funding

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**From:** Press Releases from Iowa Governor's Office [mailto:IowaGovernorsOffice@public.govdelivery.com]  
**Sent:** Monday, March 13, 2017 9:01 AM  
**To:** Tabor, Eric [AG]  
**Subject:** RELEASE: Branstad, Reynolds, Northey Announce 12 Urban Water Quality Demonstration Projects Selected to Receive Funding

**OFFICE OF THE GOVERNOR**  
**Governor Terry E. Branstad ★ Lt. Governor Kim Reynolds**

FOR IMMEDIATE RELEASE: Monday, March 13, 2017  
Contact: Governor's Office, 515-281-5211

**Branstad, Reynolds, Northey Announce 12 Urban Water Quality  
Demonstration Projects Selected to Receive Funding**

*Projects join 45 demonstrations, including 22 urban projects, already in place*

(DES MOINES) – Today, Governor Terry Branstad, Lt. Governor Kim Reynolds and Iowa Sec. of Agriculture Bill Northey announced 12 urban conservation water quality initiative demonstration projects have been selected to receive \$820,840 in funding. The 12 projects will provide nearly \$1.18 million in matching funds to support water quality improvement efforts as well as other in-kind contributions.

Area communities participating in newly announced projects are: **Ankeny, Burlington, Cedar Falls, Cedar Rapids, Clive, Denison, Des Moines, Emmetsburg, Readlyn, Slater, Spencer, Urbandale, Windsor Heights and Waterloo.**

“Water quality is a very important issue and today’s announcement is the next step for the Iowa Water Quality Initiative, which is continuing the effort to implement the Iowa Nutrient Reduction Strategy,” said Branstad. “Lt. Gov. Reynolds and I have already visited a couple of the demonstration projects in place and have seen first-hand the work being done by Iowans on their farms and in their communities.”

Reynolds added, “We’re excited to get these 12 new projects underway. I want to commend and congratulate these communities for taking the necessary steps to support water quality in the state. We also look forward to continuing our conversation with the Legislature in the weeks ahead to finalize a plan that will continue to grow water quality efforts in the state.”

“The water quality demonstration projects, both those in urban and rural areas, have been incredibly

valuable in helping us learn how to best implement these practices and have created a strong foundation as we look to further expand our efforts,” Northey said.

Projects will focus on conservation measures that capture and allow stormwater to be absorbed into the ground and reduce a property's contribution to water quality degradation, stream flows and flooding. They also include strong partnerships and outreach/education components to disseminate information to promote increased awareness and adoption of available practices and technologies for achieving reductions in nutrient loads to surface waters.

Practices which will be installed as part of these projects include bioretention cells, bioswales, native landscaping, permeable pavement, rain gardens, sedimentation basins, soil quality restoration, wetlands and other practices. More information about these and other urban water quality practices can be found at [www.cleanwateriowa.org/residential-practices.aspx](http://www.cleanwateriowa.org/residential-practices.aspx).

The Iowa Department of Agriculture and Land Stewardship received 34 pre-applications for this funding after it was announced last fall and 14 projects were invited to submit full proposals. Twelve projects were selected to receive funding through the Water Quality Initiative.

Iowa has four urban conservationists that work with communities, businesses, developers and homeowners on practices that can be used in urban areas to reduce runoff.

This is the third time that urban conservation projects have been funded through the Water Quality Initiative and there are currently 22 active or completed urban demonstration projects across the state. The state awarded these initial 22 projects over \$1.63 million in funding and partners and landowners participating in the projects are providing over \$5 million to support these urban conservation efforts.

A short summary of each of the new projects follows here.

**Parkway Watershed in Prairie Trail – City of Ankeny**

**Grant award:** \$70,030

**Total project:** \$140,062

**Description:** This project brings together local partners to build on stormwater management efforts within in the Prairie Trail area in Ankeny and will serve as a model for future installations of similar practices in community. Practices that will be installed as part of this project include a stormwater wetland, sediment forebay and native seeding in the Saylor Creek Watershed, which will be coupled with and education and outreach component to showcase the benefits of installation.

**Implementing and Educating: Stormwater Management for Education Institutions in Black Hawk County (Cities of Waterloo and Cedar Falls) – Black Hawk Soil and Water Conservation District**

**Grant award:** \$105,500

**Total project:** \$493,500

**Description:** This project will partner with three local educational institutions including Cedar Falls Community School District, Hawkeye Community College and the University of Northern Iowa to install stormwater management practices at respective campus locations and in alignment with the goals of providing educational opportunities focused on demonstrating project water quality benefits. Practices that will be installed as part of the project efforts will include multiple bioretention cells, native planting, and permeable pavement.

**Tama Building Permeable Alley – City of Burlington**

**Grant award:** \$75,000

**Total project:** \$191,650

**Description:** The City of Burlington will be installing a permeable alley for this project as part of downtown historic redevelopment project in a highly visible area. This project will serve as a catalyst for stormwater management and water quality project in the community and will provide a model for future efforts.

**Infiltration Practices along 6<sup>th</sup> Street SW Corridor – City of Cedar Rapids**

**Grant award:** \$100,000

**Total project:** \$206,600

**Description:** The City of Cedar Rapids has brought together a team of local partners to build on current stormwater management efforts underway in the community with the goal of promoting benefits of water volume control along with improved water quality. The practices that will be installed as part of this project consists of two bioretention cell systems which will treat and reduce stormwater volumes along the 6<sup>th</sup> street corridor area.

**Clay County Fair Centennial Plaza (City of Spencer) – Clay County Fair Association**

**Grant award:** \$50,000

**Total project:** \$100,000

**Description:** This project will support a strong local partnership group brought together to lead efforts in the development of the new Clay County Fairgrounds Centennial Plaza project by incorporation of urban conservation and educational components. This project will include installation a permeable pavers and bioretention cells along with education signage, outreach and demonstration components in a highly visible area to support local urban water quality improvement efforts.

**Downtown Denison Urban Conservation Project – City of Denison**

**Grant award:** \$73,560

**Total project:** \$147,120

**Description:** The City of Denison will be installing four bioretention cells and one permeable paver system in the downtown area as part of this project. This retrofit demonstration project will offer multiple water quality benefits, along with strong local support and community involvement, in a highly visible area with the goal of using this project as an example for future community infrastructure projects.

**Five Island Lake Campground Urban Watershed Project – City of Emmetsburg**

**Grant award:** \$49,250

**Total project:** \$98,500

**Description:** Five Island Lake has recently undergone extensive lake restoration activities and is transitioning to protection of their investment by also protecting the surrounding land. Project grant funds will be utilized to install multiple bioretention cells and native seeding as part of a former dredge silt site which has been repurposed into a new campground. These practices will blend into the new campground and showcase benefits of these practices to campers and park guests.

**Fourmile Creek Watershed Project Sediment Basin Forebay and Stormwater Wetland – City of Des Moines and Fourmile Watershed Management Authority (WMA)**

**Grant award:** \$75,000

**Total project:** \$150,000

**Description:** This project will coincide with the implementation goals of the Fourmile Creek Watershed Management Plan to improve water quality and includes two major components, a sediment basin forebay

and a stormwater wetland. These practices will work together to reduce sediment and stormwater pollutants from entering Fourmile Creek Watershed and provide education and outreach opportunities to promote future projects in Fourmile Creek.

**Walnut Creek WMA Project Implementation: Urbandale and Clive Nutrient Treatment/Flood Storage Wetlands (Cities of Urbandale and Clive) – The Nature Conservancy**

**Grant award:** \$45,000

**Total project:** \$90,000

**Description:** This project will implement several stormwater wetlands which have been identified in the Clive Greenbelt and Walnut Creek WMA Master Plans. The wetlands targeted for construction will be accomplished through restoration of stream oxbows and will provide multiple benefits including nutrient reduction, flood storage and riparian habitat. Educational opportunities will be incorporated into the project with the goal of providing expanded opportunities for future similar installations.

**City of Readlyn Urban WQI: Initial Steps toward a Large Scale Effort– City of Readlyn**

**Grant award:** \$70,000

**Total project:** \$167,500

**Description:** This catalyst project will support a strong local partnership brought together with the common goal of building a stormwater quality management program within the City of Readlyn. This project will partner with the SRF Sponsored Projects Program to install a series of bioretention cells in an area of town which has been historically subject to large stormwater runoff volumes.

**City of Slater Permeable Paver Project – City of Slater**

**Grant award:** \$100,000

**Total project:** \$200,805

**Description:** This project will incorporate a permeable paver system and enhanced raingarden into the existing municipal city pool parking lot within Earl Grimm Park. This highly visible project will manage runoff and improve water quality in the headwaters of Fourmile Creek, which is directly adjacent to the planned project site.

**Colby Water Quality Demonstration Park – City of Windsor Heights**

**Grant award:** \$7,500

**Total project:** \$17,000

**Description:** The goal of this project is to create a water quality themed demonstration park within the city owned Colby Park. The City of Windsor Heights will be installing three stormwater management practices as part of this project including a rain garden, soil quality restoration, and native landscaping, which will serve to provide education and demonstration for a variety of public events.

**Background on Iowa Water Quality Initiative**

The Iowa Water Quality Initiative was established in 2013 to help implement the Nutrient Reduction Strategy, which is a science and technology based approach to achieving a 45 percent reduction in nitrogen and phosphorus losses to our waters. The strategy brings together both point sources, such as municipal wastewater treatment plants and industrial facilities, and nonpoint sources, including farm fields and urban stormwater runoff, to address these issues.

The initiative seeks to harness the collective ability of both private and public resources and organizations to deliver a clear and consistent message to stakeholders to reduce nutrient loss and improve water quality.

In addition to these 12 new projects, 45 demonstration projects are currently located across the state to help implement and demonstrate water quality practices. This includes 16 targeted watershed projects, 7 projects focused on expanding the use and innovative delivery of water quality practices and 22 urban water quality demonstration projects. More than 150 organizations are participating in these projects. These partners will provide \$25.28 million dollars to go with the \$16.09 million in state funding going to these projects.

More than \$340 million in state and federal funds have been directed to programs with water quality benefits in Iowa last year. This total does not include the cost-share amount that farmers pay to match state and federal programs and funds farmers spent to build practices built without government assistance.

More information about the initiative can be found at [www.CleanWaterIowa.org](http://www.CleanWaterIowa.org).

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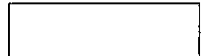
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## Tabor, Eric [AG]

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**From:** Larson, Jacob [AG]  
**Sent:** Monday, March 13, 2017 9:10 AM  
**To:** Tabor, Eric [AG]; Steward, David [AG]; Willits, Emily [AG]  
**Subject:** Gov meeting today

Here are the key elements I think the governor's water quality bill needs:

- 1) chapter 28F fix so that entities (including drainage districts) can jointly finance infrastructure upgrades--drainage districts can't put in a wetland and assess the cost, so there needs to be a way to finance the installation by downstream entities;
- 2) ensure better coordination--the flow chart I created shows 4 funds from HSB135, and the oversight and evaluation of each fund is done a little differently, and given the need to make targeted and efficient use of what little funding there is, it will be important that each fund know what the others are doing;
- 3) try and get bonding for these projects--this is an infrastructure problem that will take decades to fix, and w/out a long term, dedicated funding source, entities need to be able to bond for these kinds of projects; and
- 4) think about creating a procurement coordinator like Univ. of Iowa to identify and seek out federal/private funds.

There are issues with the length of time for evaluating and monitoring for progress, but my hope would be that those decisions get made by whoever coordinates this thing rather than spelled out by legislation.

Also, the cost share basis for funding infield and edge of field infrastructure, while a familiar funding mechanism to farmers, will incentivize very little activity by farmers because none of the projects will increase yields. The cost share either needs to be like 90/10 or some kind of grant program.

I did this on my iPhone, so I apologize if anything was confusing or for any errors. Please let me know if you have any questions. Thanks.

Jake

## **Tabor, Eric [AG]**

---

**From:** Ambrozic, Jane [AG]  
**Sent:** Friday, March 10, 2017 10:45 AM  
**To:** Steward, David [AG]; Larson, Jacob [AG]; Willits, Emily [AG]; Tabor, Eric [AG];  
mgkoplow@wlrk.com  
**Cc:** Ambrozic, Jane [AG]  
**Subject:** Next week's schedule

### Monday, March 13<sup>th</sup>:

10:00 Pre-meet call with Meyer

1:00 Meeting with Michael Boussetot, Governor's Office

### Tuesday – nothing

### Wednesday, March 15<sup>th</sup>

11:00 call with Meyer

### Thursday, March 16<sup>th</sup>

1:30 pre-meet

2:00 Meeting with Professor Weber

I believe that's all I've got for next week.



### **Jane Ambrozic**

#### **Executive Secretary**

Office of the Attorney General of Iowa

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## Tabor, Eric [AG]

---

**From:** Greg Nichols <gnichols@StudentLoan.org>  
**Sent:** Thursday, March 09, 2017 10:04 AM  
**To:** Fandel, Linda [IGOV]; Groen, Stephanie [IGOV]; Tabor, Eric [AG]; Gosnell, Kathi [AG]; Whitney, Jessica [AG]; Thinnes Culver, Mari; Leeper, Julie [ICSAC]  
**Cc:** jboeyink@ls2group.com; Charlotte Eby (ceby@ls2group.com); Chris Hensley; Steve McCullough; Megan Garrett  
**Subject:** Thank you for your assistance  
**Attachments:** CFL Launch Announcement.pdf

Later today, we will be releasing the attached, which announces the pending launch of our new parent loan products.

This option for lowans would not be available without the assistance of our Congressional delegation in getting initial Treasury guidance allowing use of our bonding authority for this purpose, AND the assistance of the Governor, Attorney General, and College Aid Commission and their staff in obtaining the necessary state-level agreement.

On behalf of our board, management, and the lowans who will be able to take advantage of this option, please accept our thanks.



**Greg Nichols**  
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## **Tabor, Eric [AG]**

---

**From:** Swaim, Kurt <kswaim@spd.state.ia.us>  
**Sent:** Wednesday, March 08, 2017 12:03 PM  
**To:** Melohn, Janelle [AG]  
**Cc:** Gregg, Adam [SPD]; Nichols Cook, Erica [SPD]; Hamill, Robert [AG]; Tabor, Eric [AG]  
**Subject:** Re: Sexual Assault Kit Initiative

Janelle,

As per my telephone talk with Eric this morning, I understand you will be getting us the information Adam specified in his email just as soon as you reasonably can. We'll look forward to receiving it soon. Thank you.

Best,

Kurt

Kurt Swaim  
First Assistant State Public Defender

On Tue, Mar 7, 2017 at 6:20 PM, Melohn, Janelle [AG] <[Janelle.Melohn@iowa.gov](mailto:Janelle.Melohn@iowa.gov)> wrote:  
Thanks for your quick response Mr. Gregg,

It sounds like SPD does now have interest in the general info provided for in paragraph six. We will do our best to filter down the info to the elements listed in the bill and have it to you before the March 15, deadline if not sooner.

As for the piece you reference in paragraph 3, that's going to be more difficult. The reason the offender information wasn't collected is two fold. One, the survey tool had already been disseminated to law enforcement prior to the passage of the legislation, which is something we made SPD aware of in our conversations last year and two, the survey tool also had to be approved by our federal grantor and they wouldn't have allowed for us to collect something outside the scope of the grant focus and the offender piece wouldn't have qualified. That being said, we can try to go back to the respective agencies and obtain that information, but it's likely to take some time. I can't have staff who are funded under the grant complete this work as it's outside the scope of our award/grant activities and ineligible for reimbursement which means general staff would have to take on this work while also completing their regular workload. Given what I now know about how quickly LE agencies respond to requests around this initiative, the best option will likely be to adhere to the 60 day measure you referred to in the bill and turn over the offender information as we receive it from these agencies regarding the 122 kits where convictions have already been obtained. This best adheres to the letter of the bill language and will allow time for agencies to respond, as well as for us to collect and reproduce the data for your agency.

I believe this will meet both your needs as well as the bill language, but if I've missed something please let me know.

Best regards,

Janelle Melohn  
Director, Crime Victim Assistance Division  
Iowa Attorney General's Office

312 East 12th Street  
Des Moines, IA 50319  
515-281-5044 (office)  
515-281-8199 (fax)  
[jmelohn@ag.state.ia.us](mailto:jmelohn@ag.state.ia.us)

---

From: Gregg, Adam [[agregg@spd.state.ia.us](mailto:agregg@spd.state.ia.us)]  
Sent: Tuesday, March 07, 2017 2:04 PM  
To: Melohn, Janelle [AG]  
Cc: Swaim, Kurt [SPD]; Nichols Cook, Erica [SPD]; Hamill, Robert [AG]  
Subject: Re: Sexual Assault Kit Initiative

Ms. Melohn-

Thanks for your recollections and perspective on the conversations which took place at about this time last year. However, it seems to me the best evidence of our agreement is the amendment language which was negotiated between our organizations, and which was subsequently adopted by both houses of the legislature and signed by the Governor. That language, of course, is now law.

I would respectfully propose the following path forward:

-The Office of the SPD again requests the information which is required to be provided under paragraph 3 of H.F. 2420. I may be misunderstanding your statement that this information was not collected. That would be very concerning, because that information was required to be collected under paragraph (2)(c)(5) of H.F. 2420. If I am understanding your email correctly and that information was not collected, I would propose that your office circle back to the respective agencies to gather the legally required information in cases which resulted in a conviction.

-The Office of the SPD again requests the information which is required to be provided under paragraph 6 of H.F. 2420. Under the bill, this information is not limited to cases which resulted in a conviction.

Thank you for your consideration.

Adam C. Gregg  
State Public Defender  
State of Iowa  
515-242-6158  
[agregg@spd.state.ia.us](mailto:agregg@spd.state.ia.us)<<mailto:agregg@spd.state.ia.us>>

On Tue, Mar 7, 2017 at 9:38 AM, Melohn, Janelle [AG]  
<[Janelle.Melohn@iowa.gov](mailto:Janelle.Melohn@iowa.gov)<<mailto:Janelle.Melohn@iowa.gov>>> wrote:  
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Please let me know how SPD would like to proceed given this context.

[cid:image001.png@01D29722.4E7F1800]<<http://www.iowaattorneygeneral.gov/>>

Janelle Melohn

Director

Office of the Attorney General of Iowa

Crime Victim Assistance Division

321 East 12th Street

Des Moines, Iowa 50319

Main: (515) 281-5044 | Direct: (515) 242-6109

Email: [janelle.melohn@iowa.gov](mailto:janelle.melohn@iowa.gov)<<mailto:janelle.melohn@iowa.gov>> |

[www.iowaattorneygeneral.gov](http://www.iowaattorneygeneral.gov/)<<http://www.iowaattorneygeneral.gov/>>

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From: Gregg, Adam [mailto:[agregg@spd.state.ia.us](mailto:agregg@spd.state.ia.us)<mailto:[agregg@spd.state.ia.us](mailto:agregg@spd.state.ia.us)>]  
Sent: Monday, March 06, 2017 4:54 PM  
To: Hamill, Robert [AG]  
Cc: Swaim, Kurt [SPD]; Melohn, Janelle [AG]; Nichols Cook, Erica [SPD]  
Subject: Re: Sexual Assault Kit Initiative

Mr. Hamill-

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For cases which resulted in a conviction, paragraph 3 of the bill very clearly requires the attorney general to provide my office with the defendant's name, case number, and county where the conviction occurred. This report does not appear to provide the information required by the law. I would also note that this information was to be provided to my office on a rolling basis, within 60 days of the AG's office receiving such information. It does not appear any ongoing disclosures occurred.

Instead, this report appears to be providing some of the information required by paragraph 6. The paragraph 6 disclosures were not limited to cases which resulted in a conviction. Therefore, the information to be provided under paragraph 6 is to be provided for all survey responses.

I respectfully request that the Office of the Attorney General provide the information required by law, namely:

- adhere to the directive of paragraph 3 of H.F. 2420, which requires the disclosure of the defendant's name, case number, and county of conviction for any cases in which a conviction was obtained for any crime associated with an untested kit;
- adhere to the directive of paragraph 6 of H.F. 2420, which requires the disclosure of the date the kit was collected, the location where the kit was collected, and the case number associated with the kit.

Adam C. Gregg  
State Public Defender  
State of Iowa  
515-242-6158  
[agregg@spd.state.ia.us](mailto:agregg@spd.state.ia.us)<mailto:[agregg@spd.state.ia.us](mailto:agregg@spd.state.ia.us)>

On Mon, Mar 6, 2017 at 1:49 PM, Hamill, Robert [AG]  
<[Robert.Hamill@iowa.gov](mailto:Robert.Hamill@iowa.gov)<mailto:[Robert.Hamill@iowa.gov](mailto:Robert.Hamill@iowa.gov)>> wrote:  
Hello Adam, Kurt,

I hope this email finds you well. As you probably recall my office received a grant from the Bureau of Justice Assistance and compiled an inventory of untested sexual assault kits statewide. Per HF2420 signed last March, we are providing your office with a list of kits identified by law enforcement agencies as not submitted due to suspect admission/conviction.

We also wanted to extend a courtesy invitation to the State Public Defender's office to a press conference tomorrow morning at 10 AM in Hoover on level A in conference room 7. AG Miller will be discussing the results of the survey and next steps on this grant project. Upon release tomorrow, the full report will be publicly available on our website.

Please don't hesitate to let me know if have questions. My direct line is 515-242-6110.

Thank you,  
Robert

[cid:image001.png@01D29722.4E7F1800]<<http://www.iowaattorneygeneral.gov/>>

Robert Hamill  
Compensation and SAE Administrator  
Office of the Attorney General of Iowa  
Crime Victim Assistance Division  
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**Tabor, Eric [AG]**

---

**From:** Tabor, Eric [AG]  
**Sent:** Wednesday, March 08, 2017 8:54 AM  
**To:** Thompson, Jeffrey [AG]; Ranscht, David [AG]; Gavin, Meghan [AG]  
**Subject:** FW: A new Pieces of Iowa's Past has been published: Lieutenant Governors Who Have Become Governor

FYI

---

**From:** lfblists@legis.iowa.gov [mailto:lfblists@legis.iowa.gov]  
**Sent:** Wednesday, March 08, 2017 8:05 AM  
**To:** TOUR\_GUIDE\_TIDBITS@LISTSERV.LEGIS.IOWA.GOV  
**Subject:** A new Pieces of Iowa's Past has been published: Lieutenant Governors Who Have Become Governor

Document type: Pieces of Iowa's Past

Document title: Lieutenant Governors Who Have Become Governor

Document published location: <https://www.legis.iowa.gov/docs/publications/TB/855445.pdf>

Please do not reply to this e-mail as this e-mail account is not monitored.

## Tabor, Eric [AG]

---

**From:** Tabor, Eric [AG]  
**Sent:** Tuesday, March 07, 2017 4:30 PM  
**To:** Swaim, Kurt [SPD]; Hamill, Robert [AG]; Melohn, Janelle [AG]  
**Cc:** McCarthy, Kevin [AG]  
**Subject:** RE: Sexual Assault Kit Initiative

Kurt – Can we meet tomorrow and discuss this? I will talk with my team in the morning re: good times. What is convenient for you? Thanks. Eric



**Eric Tabor**  
**Chief Deputy Attorney General**  
Office of the Attorney General of Iowa  
1305 E. Walnut St.  
Des Moines, Iowa 50319  
Main: (515) 281-5164 | Direct: (515) 281-5191  
Email: [Eric.Tabor@iowa.gov](mailto:Eric.Tabor@iowa.gov) | [www.iowaattorneygeneral.gov](http://www.iowaattorneygeneral.gov)

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**From:** Swaim, Kurt [mailto:[kswaim@spd.state.ia.us](mailto:kswaim@spd.state.ia.us)]  
**Sent:** Tuesday, March 07, 2017 2:22 PM  
**To:** Tabor, Eric [AG]  
**Subject:** Fwd: Sexual Assault Kit Initiative

Eric,

I am forwarding an email from Janelle Melohn and Adam's email in response. Can you help us get the information?

If you'd like to discuss, please give me a call. My direct number is 515-725-2012. Or, if more convenient for you, feel free to call me on my cell. It is 641-208-6330. Thanks.

Best,

Kurt

Kurt Swaim  
First Assistant State Public Defender

----- Forwarded message -----

From: **Gregg, Adam** <[agregg@spd.state.ia.us](mailto:agregg@spd.state.ia.us)>

Date: Tue, Mar 7, 2017 at 2:04 PM

Subject: Re: Sexual Assault Kit Initiative

To: "Melohn, Janelle [AG]" <[Janelle.Melohn@iowa.gov](mailto:Janelle.Melohn@iowa.gov)>

Cc: "Swaim, Kurt [SPD]" <[kswaim@spd.state.ia.us](mailto:kswaim@spd.state.ia.us)>, "Nichols Cook, Erica [SPD]" <[enicholscook@spd.state.ia.us](mailto:enicholscook@spd.state.ia.us)>, "Hamill, Robert [AG]" <[Robert.Hamill@iowa.gov](mailto:Robert.Hamill@iowa.gov)>

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**Adam C. Gregg**

State Public Defender

State of Iowa

515-242-6158

[agregg@spd.state.ia.us](mailto:agregg@spd.state.ia.us)

On Tue, Mar 7, 2017 at 9:38 AM, Melohn, Janelle [AG] <[Janelle.Melohn@iowa.gov](mailto:Janelle.Melohn@iowa.gov)> wrote:

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Please let me know how SPD would like to proceed given this context.

**Janelle Melohn**  
Director  
Office of the Attorney General of Iowa



Crime Victim Assistance Division

321 East 12<sup>th</sup> Street

Des Moines, Iowa 50319

Main: (515) 281-5044 | Direct: (515) 242-6109

Email: [janelle.melohn@iowa.gov](mailto:janelle.melohn@iowa.gov) | [www.iowaattorneygeneral.gov](http://www.iowaattorneygeneral.gov)

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**From:** Gregg, Adam [<mailto:agregg@spd.state.ia.us>]  
**Sent:** Monday, March 06, 2017 4:54 PM  
**To:** Hamill, Robert [AG]  
**Cc:** Swaim, Kurt [SPD]; Melohn, Janelle [AG]; Nichols Cook, Erica [SPD]  
**Subject:** Re: Sexual Assault Kit Initiative

Mr. Hamill-

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**Adam C. Gregg**

State Public Defender

State of Iowa

515-242-6158

[agregg@spd.state.ia.us](mailto:agregg@spd.state.ia.us)

On Mon, Mar 6, 2017 at 1:49 PM, Hamill, Robert [AG] <[Robert.Hamill@iowa.gov](mailto:Robert.Hamill@iowa.gov)> wrote:

Hello Adam, Kurt,

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Please don't hesitate to let me know if have questions. My direct line is 515-242-6110.

Thank you,

Robert



**Robert Hamill**  
**Compensation and SAE Administrator**  
Office of the Attorney General of Iowa

Crime Victim Assistance Division  
321 E. 12th St.

Des Moines, Iowa 50319

Main: (515) 281-5044 | Fax: (515) 281-8199  
Email: [Robert.hamill@iowa.gov](mailto:Robert.hamill@iowa.gov) | [www.iowaattorneygeneral.gov](http://www.iowaattorneygeneral.gov)

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## Tabor, Eric [AG]

---

**From:** Tabor, Eric [AG]  
**Sent:** Tuesday, March 07, 2017 2:53 PM  
**To:** Greenwood, Geoff [AG]  
**Cc:** McCarthy, Kevin [AG]  
**Subject:** FW: Sexual Assault Kit Initiative

FYI

**From:** Swaim, Kurt [mailto:kswaim@spd.state.ia.us]  
**Sent:** Tuesday, March 07, 2017 2:22 PM  
**To:** Tabor, Eric [AG]  
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Kurt Swaim  
First Assistant State Public Defender

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**Date:** Tue, Mar 7, 2017 at 2:04 PM  
**Subject:** Re: Sexual Assault Kit Initiative  
**To:** "Melohn, Janelle [AG]" <Janelle.Melohn@iowa.gov>  
**Cc:** "Swaim, Kurt [SPD]" <kswaim@spd.state.ia.us>, "Nichols Cook, Erica [SPD]" <enicholscook@spd.state.ia.us>, "Hamill, Robert [AG]" <Robert.Hamill@iowa.gov>

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Main: (515) 281-5044 | Direct: (515) 242-6109  
Email: [janelle.melohn@iowa.gov](mailto:janelle.melohn@iowa.gov) | [www.iowaattorneygeneral.gov](http://www.iowaattorneygeneral.gov)

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**From:** Gregg, Adam [<mailto:agregg@spd.state.ia.us>]  
**Sent:** Monday, March 06, 2017 4:54 PM

**To:** Hamill, Robert [AG]  
**Cc:** Swaim, Kurt [SPD]; Melohn, Janelle [AG]; Nichols Cook, Erica [SPD]  
**Subject:** Re: Sexual Assault Kit Initiative

Mr. Hamill-

Thank you sending this report. However, it does not appear to comply with the requirements of House File 2420.

For cases which resulted in a conviction, paragraph 3 of the bill very clearly requires the attorney general to provide my office with the defendant's name, case number, and county where the conviction occurred. This report does not appear to provide the information required by the law. I would also note that this information was to be provided to my office on a rolling basis, within 60 days of the AG's office receiving such information. It does not appear any ongoing disclosures occurred.

Instead, this report appears to be providing some of the information required by paragraph 6. The paragraph 6 disclosures were not limited to cases which resulted in a conviction. Therefore, the information to be provided under paragraph 6 is to be provided for all survey responses.

I respectfully request that the Office of the Attorney General provide the information required by law, namely:

-adhere to the directive of paragraph 3 of H.F. 2420, which requires the disclosure of the defendant's name, case number, and county of conviction for any cases in which a conviction was obtained for any crime associated with an untested kit;

-adhere to the directive of paragraph 6 of H.F. 2420, which requires the disclosure of the date the kit was collected, the location where the kit was collected, and the case number associated with the kit.

**Adam C. Gregg**

State Public Defender

State of Iowa

515-242-6158

[agregg@spd.state.ia.us](mailto:agregg@spd.state.ia.us)

On Mon, Mar 6, 2017 at 1:49 PM, Hamill, Robert [AG] <[Robert.Hamill@iowa.gov](mailto:Robert.Hamill@iowa.gov)> wrote:

Hello Adam, Kurt,

I hope this email finds you well. As you probably recall my office received a grant from the Bureau of Justice Assistance and compiled an inventory of untested sexual assault kits statewide. Per HF2420 signed last March, we are providing your office with a list of kits identified by law enforcement agencies as not submitted due to suspect admission/conviction.

We also wanted to extend a courtesy invitation to the State Public Defender's office to a press conference tomorrow morning at 10 AM in Hoover on level A in conference room 7. AG Miller will be discussing the results of the survey and next steps on this grant project. Upon release tomorrow, the full report will be publicly available on our website.

Please don't hesitate to let me know if have questions. My direct line is 515-242-6110.

Thank you,

Robert

**Robert Hamill**  
**Compensation and SAE Administrator**  
Office of the Attorney General of Iowa



Crime Victim Assistance Division  
321 E. 12th St.

Des Moines, Iowa 50319

Main: (515) 281-5044 | Fax: (515) 281-8199  
Email: [Robert.hamill@iowa.gov](mailto:Robert.hamill@iowa.gov) | [www.iowaattorneygeneral.gov](http://www.iowaattorneygeneral.gov)

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## Tabor, Eric [AG]

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**From:** Deforest, Shelley [AG]  
**Sent:** Monday, March 06, 2017 4:02 PM  
**To:** Tabor, Eric [AG]  
**Subject:** FW: Conference Sponsorship Justication - CVAD Symposium Sept 12-13, 2016  
**Attachments:** 20170306\_155606.pdf

This what I sent Mr. Hart.  
Shelley

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**From:** Deforest, Shelley [AG]  
**Sent:** Monday, March 06, 2017 4:00 PM  
**To:** Hart, Dennis [IDOM]  
**Subject:** Conference Sponsorship Justication - CVAD Symposium Sept 12-13, 2016

Here's a timeline on the initial contact regarding the Victim Justice Conference that was held back September 12-13, 2016.

- (1) 10/7/15 - Rhonda Dean contacted me regarding a checklist that she needed for their 2016 Victim Justice fall conference
- (2) 10/9/15 - I responded to Rhonda and Janelle after I contacted the Governor's Traffic Safety Bureau to see if they could provide me with a conference timeline> I forwarded the timeline along with the checklist to conference speakers.
- (3) 7/13/16 - Received an email from Crystal Irey from Dept. of Public Safety inquiring about the breakout of meals to the conference. I forwarded the email to Rhonda Dean and she responded to Crystal on the same day which indicated there would be an AM and PM snack and lunch on both days. She also indicated that she will be sending the Exception form as soon as the menu was determined.
- (4) 11/30/16 - Received the invoice for the Holiday Inn. I sent an email back to Rhonda asking 4 questions which pertained to meal/break/hotel expenses and registration deposits so I could prepare the Exception to State Wide policies. She sent back a listing of the attendees.
- (5) 12/1/16 - I put together a spreadsheet showing a break out of all attendees but Rhonda needed to contact the Holiday Inn to get a breakout of meals and breaks for both days and returned it to Rhonda for her to add the meal/breaks for each day.
- (6) 1/11/17 - Sent an email inquiring about the status of the meal break outs.
- (7) 1/17/17 - Rhonda responded that she was working on the break outs.
- (8) 1/18/17 - Rhonda returned the spreadsheet listing the dollar amounts for AM and PM breaks and lunches on both days.
- (9) 1/23/17 - I questioned the taxes on room since the tax indicated a state tax. Therefore, we can't pay from a state tax but the Holiday Inn said it was "dwelling Tax" so I asked her to check out what the definition of dwelling tax was and they sent it back indicating it was "state excise tax".
- (10) 1/23/17 - Hand carried the Request For Exception to State-Wide Policy to Trina Brietkse along with supportive documentation.
- (11) 2/16/17 - Emailed Trina to find out the status.
- (12) 2/9/17 - Visited with Trina in person regarding the status of the exception form.
- (13) 2/22/17 - Emailed Trina to find out the status and she responded but it was to another exception form I had sent up.
- (14) 2/28/17 - Left message on Trina's phone
- (15) 3/3/17 - Received an email from Trina regarding needing the approved DOM Conference Sponsorship Justification form. I responded by apologizing about not having the form complete in advance. Since I've never

filled out this form before, I asked to see whether or not if she could send me a copy of the that was submitted for Fall of 2014 conference and Trina couldn't find one. She asked how much the registration was and I responded back on the same day.

(16)3/6/17 – I completed the DOM Conference Sponsorship Justification form and hand-carried it to DOM for approval.

I've attached a copy of the agenda, Exception to State-wide Policies, break out of expenses and conference attendees. I'm really sorry for the tardiness on this form but I honestly just found out about the form last Friday. Please let me know if you have any other questions.



**Shelley DeForest**

**Financial Manager**

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**Tabor, Eric [AG]**

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**From:** Tabor, Eric [AG]  
**Sent:** Monday, March 06, 2017 9:29 AM  
**To:** Steward, David [AG]; Larson, Jacob [AG]; Bellus, Benjamin [AG]; Whitney, Jessica [AG]; Miller, Max [AG]  
**Subject:** FW: RELEASE: Branstad, Reynolds seeking public input related to \$21 million Volkswagen settlement

FYI

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**From:** Press Releases from Iowa Governor's Office [mailto:IowaGovernorsOffice@public.govdelivery.com]  
**Sent:** Monday, March 06, 2017 9:01 AM  
**To:** Tabor, Eric [AG]  
**Subject:** RELEASE: Branstad, Reynolds seeking public input related to \$21 million Volkswagen settlement

**OFFICE OF THE GOVERNOR**  
**Governor Terry E. Branstad ★ Lt. Governor Kim Reynolds**

FOR IMMEDIATE RELEASE: Monday, March 6, 2017

Contact: Angela Poole, Iowa Department of Transportation, 515-239-1351 or  
[angela.poole@iowadot.us](mailto:angela.poole@iowadot.us);  
Governor's Office, 515-281-5211

## **Branstad, Reynolds seeking public input related to \$21 million Volkswagen settlement**

(DES MOINES) – Today, Iowa Department of Transportation Director Mark Lowe joined Gov. Branstad and Lt. Gov. Reynolds at their regular Monday morning press conference. As a result of two related Volkswagen (VW) settlements, the state of Iowa is expected to receive approximately \$21 million in environmental mitigation trust funds over the next ten years set aside specifically for projects that reduce emission of nitrogen oxides (NOx). Branstad and Reynolds are asking for public input on how the funds should be spent. Iowa has developed a new [website](http://www.iowadot.gov/vwsettlement) (<http://www.iowadot.gov/vwsettlement>) to provide information about the settlement and collect input on how the state should plan for using the mitigation funds.

According to the [Environmental Protection Agency's website](#), "These settlements resolve allegations that Volkswagen violated the Clean Air Act by the sale of approximately 590,000 model year 2009 to 2016 diesel motor vehicles equipped with "defeat devices." The allegations were set forth in a complaint originally filed by the United States on behalf of the EPA on January 4, 2016, and amended on October 7, 2016, alleging that these vehicles are equipped with defeat devices in the form of computer software designed to cheat on federal emissions tests."

"The settlement provides for an array of eligible projects that could benefit Iowa. We are asking Iowans for their input on the types of projects they believe will achieve the greatest long-term impact," said Gov. Branstad.

Eligible mitigation actions include reducing NO<sub>x</sub> from heavy duty diesel sources such as freight trucks, school and transit buses, freight switcher locomotives, ferries and tugs, marine shorepower, air ground support equipment, and forklifts through projects that repower or replace older engines and vehicles. Eligible mitigation actions may also

include limited funding for charging infrastructure for light duty zero emission passenger vehicles.

Lt. Gov. Reynolds said, "This funding has the potential to significantly and positively impact air quality in Iowa. We look forward to hearing Iowans' creative ideas to improve our air quality."

The public comment period will be open until April 14. Once all public comments have been collected, a working group comprised of officials from several state agencies and coordinated by the Iowa Department of Transportation will develop a mitigation plan that will be submitted to the VW settlement trustee.

The Iowa website also provides a [subscription service](#) for those who would like to receive updates on the progress of the mitigation plan and the overall settlement.

###

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## Tabor, Eric [AG]

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**From:** Greenwood, Geoff [AG] <Geoff.Greenwood@iowa.gov>  
**Sent:** Friday, March 03, 2017 5:57 AM  
**To:** Thompson, Jeffrey [AG]; Tabor, Eric [AG]; Ferguson, Tom [AG]; Willits, Emily [AG]  
**Subject:** FW: MORNING CLIPS 3.3.17

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**From:** Hammes, Ben[SMTP:BEN.HAMMES@IOWA.GOV]  
**Sent:** Friday, March 03, 2017 5:56:55 AM  
**To:** Hammes, Ben [IGOV]  
**Subject:** MORNING CLIPS 3.3.17  
**Auto forwarded by a Rule**

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Bloomberg: GOP governors forming plan to keep Obama's Medicaid expansion

POLITICO: House leaders: Obamacare repeal will pass this month

POLITICO: Pence team downplays private email account usage

## **DMR: AILING-DEER HUNT A LONG SHOT?**

Debate centers on how state should battle fatal chronic wasting disease

**DONNELLE ELLER DELLER@DMREG.COM**

VOLGA, Ia. — Brian Power likes few things more than hunting deer with his son, Jon, on about 1,000 acres of steep, wooded hills that Power pieced together over nearly two decades. On a recent Sunday morning, Power, 54, listens to Jon, 21, describe seeing three coyotes cross a far ridge, a rare sight. Jon says he also spotted a couple of deer, but the wind and ice-covered corn stalks alerted the animals he was near.

Hunting for Power is “a challenge — you against Mother Nature.” Jon loves the adrenaline rush, “hearing your heartbeat in your throat after shooting a big buck.” But he became fascinated with the animals, sitting in a corn field with his father as a boy: “I could hear the deer grinding their teeth.”

This year, the men and about 450 other sportsmen in northeast Iowa have another shot at bagging a doe or buck because of a special harvest designed to assess a fast-spreading disease that’s fatal to deer.

For the first time in Clayton County, a wild deer tested positive last fall for chronic wasting disease. Sunday ends a two-week special hunt, set up to test about 300 deer within 5 miles of where the diseased animal was discovered.

The hunt has sparked debate about how Iowa should battle the disease, discovered in 18 wild deer since 2013.

Minnesota, for example, hired sharpshooters to cut the deer populations in infected areas. So, too, did Wisconsin in 2002, a highly unpopular approach that failed to stop the disease’s spread. Lawmakers later ratcheted efforts back.

Iowa’s plan is also getting mixed reviews, with some questioning its effectiveness.

“I don’t see the reason to kill 250 to 300 deer,” said Matt Stark, who lives in Coralville but hunts regularly in northeast Iowa. “In southwestern Wisconsin, they killed any whitetail deer that walked. ... And the disease is still there.”

Taking bucks that have shed their antlers this winter could rob hunters of trophies next fall, say Stark and other hunters.

Power thinks those concerns could be shortsighted.

“Containing chronic wasting disease is bigger than next year’s buck,” he said.

A fatal disease

Controlling wild deer populations is key to containing the disease, caused by an abnormal protein, called a prion.

Iowa’s special hunts, two of which have been held this year, will help scientists gauge how far the disease has spread, and potentially remove diseased animals.

“Taking additional deer lowers the density and lowers the chances of CWD (chronic wasting disease) transmission,” said Bryan Richards, the emerging disease coordinator at the U.S. Geological Survey’s National Wildlife Health Center.

The neurological disease attacks the brain of deer, elk and moose, making holes that resemble those in sponges. Animals lose weight, display abnormal behavior and lose bodily functions. It’s always fatal.

The disease spreads when animals are in close contact, but also when animals contact soil that contains prions from urine, feces or an infected animal carcass, officials say.

It’s similar to mad cow disease in cattle and Creutzfeldt-Jakob disease in humans. But chronic wasting disease hasn’t affected humans or other wildlife. U.S. health officials, though, advise hunters not to eat the meat from an animal testing positive.

Near Elkader, Ia., Terry Haindfield, an Iowa Department of Natural Resources wildlife biologist, helps a hunter shift the deer so its lymph nodes can be removed and tested. The organs will go to Iowa State University’s veterinary medicine laboratory. By Sunday, hunters had harvested 105 deer, that yielded 90 samples.

Fifteen deer were too young for samples. Iowa has tested about 61,000 samples from wild deer and 4,000 from hunting preserves since Wisconsin’s outbreak in 2002. The state tests deer from all Iowa counties, but it has focused efforts near neighboring state hotspots.

The state issued 740 tags in the hope of netting up to 300 specimens, preferably mature deer that are more likely to have the disease. In January, hunters killed 263 deer in Allamakee County. About 200 tests from adult deer showed one positive. Deer don’t exhibit symptoms until late in the disease. “There’s no realistic way to know which are positive,” Richards said. “So, you’ll take a lot of healthy deer out of the system, too.”

‘No answer to the problem’

The special harvest frustrates Maury Glesne, a hunter and third-generation hardware store owner in Elkader.

Few places in Iowa offer as rich deer hunting as northeast Iowa’s Clayton and Allamakee counties, said Glesne, whose True Value sells everything from guns and ammunition to hammers.

The land — sharp hills mixed with pastures and crops — provides excellent food and habitat.

“I don’t really think it’s necessary,” Glesne said of the special hunts, adding the state could get more samples through its regular seasons.

“There’s no answer to the problem,” he said. “If they find another one or two (positives), will they want to shoot another 200 or 300 deer?”

Haindfield, the DNR biologist, said the state will weigh the test results, and consult with hunters, before deciding its next move.

Glesne said deer hunting is an important economic driver for northeast Iowa.

The state says hunting, fishing and wildlife viewing generates \$197 million annually in direct sales

at restaurants, sporting goods stores and hotels. It has a \$1.5 billion economic impact as the spending rolls into the economy, Iowa DNR estimates.

Clayton County led the state in deer hunting last year, with about 4,300 animals bagged; Allamakee was second at 3,500.

“The hunting season is bigger for me than Christmas,” Glesne said.

But some hunters likely will not return to Clayton County, given the chronic wasting disease case.

“I’ve heard some people say they’re going to throw their deer meat out because of concerns about the disease,” Glesne said.

“I think we’ll end up with fewer hunters,” he said. And “that’s less money for the state.”

### Weighing the risk

Iowa officials have asked hunters and local lockers, which can process hundreds of thousands of pounds of venison each year, to segregate deer taken in the special harvest until tests are returned. Power, the hunter and landowner near Volga, processes his meat in his family’s large metal hunting shed. He feels confident the meat is safe, but he’ll keep it separated until tests results clear.

Some hunters, seeing no human effects for decades, eat deer meat that tests positive for chronic wasting disease, he said.

“It all depends on your comfort with risk,” Richards said. “The risk is small, but it’s not zero.”

‘That doesn’t mean kill all the deer’

Richards said Minnesota and New York are working to quash the disease.

Minnesota, which discovered it in November, used special hunts to reduce and test deer populations in infected areas, then hired sharpshooters last month. “The goal is to do what we can to eliminate the disease. That doesn’t mean kill all the deer. It doesn’t mean drop a nuclear device and level the earth,” said Lou Cornicelli, a wildlife research manager at the Minnesota Department of Natural Resources. Minnesota and New York have restricted transporting deer carcasses into the state and banned feeding deer grain or using mineral licks, popular practices to attract animals. Similar proposals in Iowa have failed to gain traction, officials say. “Once the disease is established, you’re out of luck, much like you’ve seen in Wisconsin,” Cornicelli said.

Wisconsin's early efforts were hampered by some landowners unwilling to participate in aggressive efforts to control the disease, Richards said. "They became reservoirs for deer, and reservoirs for the disease," he said. Now, the disease's prevalence is as high as 21 percent in some areas.

So far, the effort has worked in New York, with no outbreaks since 2005, Richards said. Iowa has a small window to try to stamp out the disease since it's only been found in a few places, he said. But Richards doesn't see public support for more aggressive herd reduction where the disease is present. "Even if you're successful, will the disease keep coming back?" Richards said. "The chances are it will," especially when "you look at the Mississippi River and see a population riddled with CWD."

## **DMR: Iowa Senate scraps death penalty bill**

**WILLIAM PETROSKI**

[BPETROSK@DMREG.COM](mailto:BPETROSK@DMREG.COM)

State lawmakers scrapped plans for a debate on capital punishment this year when they ran out of time prior to a key deadline this week in the Iowa Legislature.

Senate File 335 would have reinstated the death penalty, but only for multiple offenses in which a minor was kidnapped, raped and murdered. The bill was sponsored by six Republican legislators who pointed to the 2005 death of 10-year-old Jetseta Gage of Cedar Rapids, who was abducted from her grandmother's residence and was found slain the next day in a mobile home southwest of Iowa City. The girl had previously been a victim of sexual abuse.

A Senate subcommittee hearing on the bill was canceled Thursday amid a crush of action on other

legislation as lawmakers rushed to comply with the Legislature's "funnel" deadline. Most bills are required to clear at least one committee in the House or Senate this week to remain eligible for consideration in the 2017 session.

"It is not going to be debated this session," said Sen. Brad Zaun, R-Urbandale, chairman of the Senate Judiciary Committee. He said there simply wasn't enough time to consider the proposal this week. Two Senate bills advocating for a return of the death penalty have been filed this session, but both were introduced last week.

A host of groups had lined up to oppose the Senate bill. The opponents included the Iowa Attorney General's Office, the Iowa Academy of Trial Lawyers, National Association for the Advancement of Colored People-Iowa and Nebraska; Iowans Against the Death Penalty, American Civil Liberties Union of Iowa, the Iowa Catholic Conference, Iowa Annual Conference of the United Methodist Church,

Episcopal Diocese of Iowa, and Interfaith Alliance of Iowa.

Sen. Jerry Behn, R-Boone, a lead sponsor of Senate File 335, said the bill was aimed at circumstances where an assailant had an incentive to kill a child who had been raped and murdered by eliminating the possibility that the victim could provide testimony.

Iowa abolished the death penalty in 1965. The state's last execution was on March 15, 1963, at the Iowa State Penitentiary in Fort Madison when Victor Harry Feguer, a federal inmate, was hanged for murder. Thirty-one states authorize the death penalty.

The last major debate in the Iowa Legislature over capital punishment occurred in the 1990s. Since then, lawmakers have generally accepted the idea that Iowa will not execute murderers, and people convicted of first-degree murder and given life sentences in recent years have rarely been granted clemency by the state's governors.

## **DMR: UI's next move could be tuition hike**

Harreld believes lawmakers, regents should help institution bolster its standing to peers

**JEFF CHARIS- CARLSON**

[JCHARISC@PRESS-CITIZEN.COM](mailto:JCHARISC@PRESS-CITIZEN.COM)

With the University of Iowa reinstating \$4.3 million in legacy scholarships for the 2017-18 academic year, current and prospective students — along with their families — should prepare for significant tuition hikes in 2018-19 and beyond.

“We can't do this alone,” UI President Bruce Harreld said last month. “So the state either needs to fund our universities or get out of the way and let us start to soar.”

For Harreld, that means state lawmakers and members of the Iowa Board of Regents should give UI their blessing to increase its base tuition and fees until it ranks in the middle, rather than at the bottom, of its peer institutions.

Bringing UI's resident tuition rate to the average of its peer group, Harreld said, would provide an additional \$91 million for the university. Yet it would do so by raising UI's base tuition and fees by a third from nearly \$9,000 to nearly \$12,000.

Stretching that increase

over the next five years, as Harreld suggested to lawmakers last month, would require 6.6 percent increases each year. Given that the regents say tuition already is locked in for the 2017-18 school year, that would mean four years of 8.25 percent increases starting in 2018.

Bruce Rastetter, the outgoing president of the Board of Regents, seemed to give his blessing to Harreld's proposal Wednesday when he issued following statement: “Moving forward, if the state chooses not to adequately fund the UI's fiveyear strategic plan, the board is committed to work with the UI to bring its tuition in line with its national peer group.”

Rastetter also said last week that, despite past history otherwise, he would be open to UI and ISU, as public research universities, charging significantly higher tuition than UNI, as a comprehensive university.

Yet after Rastetter's term expires on April 30, it's unclear who will lead the ninemember board that oversees Iowa's three public universities.

Rastetter announced last month that he was not seeking reappointment to a second six-year term. Under board policy, the president's responsibilities should fall on President Pro Tem Katie Mulholland in the event of a vacancy. But Mulholland's term as a regent also expires April 30, and Iowa Gov. Terry Branstad has decided not to reappoint her.

Regent officials declined Thursday to discuss any specifics about what those possible tuition changes might mean long-term.

“The specifics would be discussed at the appropriate time in the future,” Josh Lehman, a spokesman for the regents, said via email.

The possibility of UI raising tuition by as much as 33 percent by 2022 is a far cry from the “tuition freeze” strategy Rastetter began advocating when he became board president in 2013. The regents were able to freeze in-state tuition rates for nearly three years because the Legislature provided additional funding to make up the costs.

That strategy broke down in 2015 and 2016, leading to mid-year tuition hikes last year at Iowa State University and the University of Northern Iowa and a nearly 5 percent tuition and fee increase for all three universities in 2016-17.

And the supposed financial benefits from the strategy have been erased at UI and ISU, undone this year by the Iowa Legislature and governor cutting UI’s budget by \$9.24 million, ISU’s budget by nearly \$9 million and UNI’s budget by more than \$2.5 million.

Those cuts have reduced the state funding for UI and ISU down to the level they were at during the 2013-14 academic year — the first

year of the tuition freeze. UNI’s funding level has been reduced to the 2015-16 level.

Given the unlikelihood of the Iowa Legislature fully restoring those cuts for the next fiscal year, university officials have been addressing them as permanent cuts. ISU and UNI have said they will address the cuts through postponing some strategic initiatives, leaving some vacant positions open and postponing nonessential deferred maintenance.

UI announced last week that it would address some of the long-term consequences by abruptly canceling a legacy scholarship program that awarded \$1,500 a year to more than 3,000 students. Harreld reversed that decision this week and restored the award for returning and incoming students.

“Moving forward, we must continue to place a priority on need-based and merit-based awards, which is why the scholarships ... will still be discontinued for new students starting in 2018,” UI officials said in a news release Wednesday.

ISU officials said Tuesday that they had no plans to reduce financial aid packages in response to the budget cuts.

Those scholarships — which were first offered to children of UI alumni in 2014 — are the result of the regents, under Rastetter’s leadership, creating a new formula for dividing up state funding among the three schools. The formula more directly tied state funding to each school’s in-state enrollment, which led UI to increase its recruitment efforts among Iowa graduates.

Although approved by the regents in 2014, the funding formula has been ignored by the Iowa Legislature when appropriating state money to the three public universities.

Concerns have been raised over the past three years that legacy scholarships undermine the state’s private and community colleges and eventually will prove too expensive for UI to maintain.



“Generally speaking, it’s not the best way to proceed to have a program like this in the first place,” said Barnak Nassirian, director of federal relations and policy analysis for the American Association of State Colleges and Universities. “But that doesn’t mean you should cancel it midstream or in an arbitrary way.”

## **DMR: In Iowa, views differ on Sessions tempest**

Grassley stands by AG in Russia fuss; Loeb sack: Resign

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One Iowa lawmaker on Thursday called on U.S. Attorney General Jeff Sessions to resign amid questions about his contact with the Russian government during last year’s presidential election. Another called that suggestion “nonsense.”

Sessions, a Republican who took office as attorney general less than a month ago, is at the center of the latest development in the ongoing story of interactions between President Donald Trump’s campaign and the Russian government.

The Washington Post reported Wednesday night that Sessions twice met with the Russian ambassador in 2016, contradicting a statement he made during his confirmation hearings.

Thursday afternoon, in response to the story, Sessions said he would recuse himself from Justice Department investigations into apparent Russian meddling in the election.

U.S. Rep. Dave Loebsack, the lone Democrat in Iowa’s congressional delegation, issued a statement Thursday morning accusing Sessions of lying under oath and calling on him to resign.

“These new revelations about the attorney general’s dealing with the Russians reinforce the need for a truly independent, outside, bipartisan investigation into the president and his staff’s dealings with Russians,” Loebsack said in the statement. “A simple recusal is no longer enough, Attorney General Sessions must resign so that we can focus on creating jobs and growing our nation’s economy.”

But U.S. Sen. Chuck Grassley, a Republican who heads the Senate Judiciary Committee that oversaw Sessions’ confirmation called such talk “nonsense,” praising the attorney general as “an honest and forthright public servant.”

Grassley said he advised Sessions in a conversation Thursday afternoon to remove himself from the Russia investigation.

“There’s little doubt that alleged conflicts, no matter how flimsy and regardless of whether or not they are based in fact, will be used against him to discredit him and any potential investigation into alleged conversations between the campaign and the Russian government,” Grassley said in a statement.

“So, his actions today were the right thing to do.” Grassley added that Sessions will clarify his remarks to the Judiciary Committee. “I appreciate that he will be sending a letter to the committee, as I asked him to do, to clear up any confusion regarding his testimony so we can put this issue to bed once and for all,” Grassley said.

U.S. Sen. Joni Ernst, a Republican issued a statement supporting Sessions’ decision to recuse himself.

“I can’t speak for Attorney General Sessions,” Ernst said. “I don’t yet know all the facts of this situation. However, I support his decision to recuse himself.”

U.S. Rep. David Young likewise expressed support for Session’s decision.

“I agree with Attorney General Session’s decision that should the agency ever find cause to investigate alleged conversations between the Trump campaign and Russia - he would recuse himself from those matters,” Young said in a statement. The other members of Iowa’s federal delegation, U.S Reps. Steve King and Rod Blum, did not respond to requests for comment on the matter.

## **DMR: Branstad reappoints one regent, not two**

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The Iowa governor’s recent appointments to the Iowa Board of Regents leave the presidency of the nine-member board up in the air. Bruce Rastetter, who has served as the president of the regents since 2013, announced last month he would not be seeking another six-year term on the board that oversees Iowa’s three public universities.

The list of appointments released by the governor’s office Wednesday show that Gov. Terry Branstad has not reappointed Regent Katie Mulholland, who has served as president pro tem for the same amount of time. “Gov. Branstad and Lt. Gov. Reynolds appreciate Katie Mulholland’s service to the Board of Regents and both believe she did a great job,” Ben Hammes, a gubernatorial spokesman, said Wednesday via email. “But rarely does a regent get reappointed to a second full term because they are sixyear terms. This gives Iowans more of an opportunity to serve on the Board of Regents.” Branstad did reappoint Regent Sherry Bates of Scranton, who has served on the board since filling a vacancy in 2015. “Sherry Bates has also been a great member of the Board of Regents, Hammes said. “Furthermore, she has only served a partial term and therefore both Gov. Branstad and Lt. Gov. Reynolds decided to reappoint and give her an opportunity to serve a full term.”

Rastetter and Mulholland were elected to their

leadership posts in April 2016, with their two-year terms as president and president pro tem not set to expire until April 2018. Both their terms as regents now are scheduled to end April 30.

Branstad also named two former state lawmakers to serve in the remaining open seats on the board: former Rep. Nancy Dunkel, D-Dyersville, and former Sen. Nancy Boettger, R-Harlan.

The appointments require support by a 34-vote supermajority of the Iowa Senate. The Senate also will consider the confirmation of Regent Mike Richards, who was appointed to fill a vacancy shortly after the Iowa Legislature adjourned last year.

## **DMR: Chelgren denies he distorted his educational background**

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An Iowa state senator denied Wednesday that he misrepresented his biographical information after questions were raised about his educational background. According to NBC News, biographical information for Sen. Mark Chelgren, R-Ottumwa, on the Iowa Senate Republicans website stated he had a business degree from California-based Forbco Management school. But Forbco isn't listed as an accredited school by the National Center for Education Statistics, and records show the only Forbco in California is a company that once operated a Sizzler steakhouse in Torrance, Calif., according to the report.

Asked by The Des Moines Register if he misrepresented his biography, Chelgren said, "No, I did not."

"This was Forbco Management School, which ran Sizzler restaurants and a few other different restaurants, and I spent six months in order to be promoted from associate manager to assistant manager" when I was 19, he said. "I had to take their school and their classes and they gave me their degree — as they termed it — and I have used that terminology.

"I was told, 'Well, it is probably better terminology to say "certificate," so regardless of however they want to do it, that is the semantics (NBC News is) arguing.' " Ed Failor, a spokesman for the Iowa Senate Republicans,

told NBC News that Chelgren received "a certificate" from a management course he took while working at Sizzler, but it's "not accurate" to say Chelgren has a business degree.

"(It's) kind of like Hamburger University at McDonald's," he said.

Chelgren told NBC News he wasn't aware of the error on the website, which was reportedly removed from his bio page.

Chelgren is pushing a bill in the Iowa Senate to achieve greater political diversity among professors at the state's Board of Regents universities, which would institute a hiring freeze until the number of registered Republicans and Democrats on university faculty fall within 10 percent of one another.

## **DMR: Medical marijuana gains some ground**

Bill to continue limited program advances, but with a few caveats

**TONY LEYS**

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Medical marijuana advocates gained a bit of ground in the Legislature Thursday, but they continue to face major hurdles to an expansion of the state's limited program.

The state's program, which allows possession of a marijuana extract by people with severe epilepsy, is set to expire in July. An Iowa Senate subcommittee approved a bill Thursday morning that would allow the program to continue indefinitely. The bill also says the state would immediately recognize the legality of a pharmaceutical version of the oil if the federal Food and Drug Administration does so. The bill, Senate File 282, would not expand the list of ailments for which Iowans could use marijuana products. It also would not legalize any production or distribution of the medication, unless federal authorities approve a version of the oil being tested by pharmaceutical companies. Medical marijuana advocates favor a broader program than the state now has. They note that only 132 ill Iowans have obtained cards since the current program was enacted in 2014. The idea of allowing medical use marijuana has become dramatically more popular in recent years. A Des Moines Register/ Mediacom Iowa Poll published last month found that 80 percent of Iowans now favor making

marijuana legal for medical uses, up from 58 percent who favored the idea in a 2013 Iowa Poll. Sen. Joe Bolkcom, an Iowa City Democrat who favors legalizing medical marijuana, voted reluctantly Thursday morning to move the bill forward to a full committee. He called the bill “an extremely limited half step. ... This bill extends a program that isn’t working.” He said Iowans with ailments such as multiple sclerosis, cancer and Crohn’s disease deserve the chance to try treating their symptoms with marijuana. The limited Senate bill is similar to one moving in the House. Sen. Thomas Greene, a Burlington Republican who was chairman of Thursday’s subcommittee on the Senate bill, said he hoped legislators would amend the proposal to expand it later in the process. “This is a common-sense advancement that I believe will help a lot of Iowans,” Greene, who is a retired pharmacist,

told reporters after the hearing. The bill went on to be passed by the full Senate Human Resources Committee Thursday evening.

Sen. Brad Zaun, an Urbandale Republican, introduced a broader bill Tuesday. Senate Study Bill 1176 calls on the state to authorize up to four manufacturing facilities by December 2017 and authorize up to 12 dispensaries by April 2018. Iowans with debilitating illnesses could work with their physicians to obtain state-issued cards authorizing them to purchase medical cannabis.

Zaun acknowledged in an interview Thursday that his bill was going to effectively die this week because of a legislative deadline known as a funnel. He expressed optimism that its language would be revived in an appropriations bill, which would be exempt from the funnel. Zaun referred to the Register’s Iowa Poll on medical marijuana. “If 80 percent of Iowans support it, I don’t understand where there’s a holdup,” he said.

The main holdup is in the Iowa House. House Speaker Linda Upmeyer has expressed skepticism about Iowa moving to allow more medical uses of marijuana while the federal government continues to consider such uses illegal.

Upmeyer told reporters Thursday that bills to extend the current, limited program would continue to move in the Legislature, but she was unsure about expansion proposals. She said she was open to the idea of allowing people with other illnesses besides epilepsy to use marijuana products, especially a version of the oil called Epidiolex, which contains little of the chemical that makes recreational marijuana users high.

## **DMR: Libertarian Party earns official status in Iowa**

Iowa Secretary of State Paul Pate says the Libertarian Party has obtained official political party status in Iowa.

Pate said the status began effective Wednesday after state election officials determined that the party’s presidential nominee, Gary Johnson, received 59,186 votes — or 3.8 percent of the vote in the November 2016 general election. That surpassed the 2 percent threshold required by Iowa law to obtain official political party status.

The new status gives the Libertarian Party the ability to participate in primary elections in 2018. “Libertarian” will be included as an option for Iowans on voter registration forms.

The last time a third party gained political party status in Iowa was in 2000, when Green Party nominee Ralph Nader received 2.2 percent of the votes cast for president.

## **DMR: Commissioner picks new Iowa State Patrol chief**

Public Safety Commissioner Roxann Ryan is appointing her top aide to be the new chief of the Iowa State Patrol.

Ryan announced Thursday that her executive officer, Jeff Ritzman, will be the patrol's next colonel effective immediately. He replaces Michael Van Berkum, whose retirement takes effect Friday.

Ryan said in a note to troopers that Ritzman "is the right person for the job at this point in time." She said Ritzman's experience makes him "uniquely qualified" to address challenges in law enforcement and lead the force during a time of tight budgets.

Ritzman joined the Department of Public Safety as a trooper in 1982 and has served in several roles, including homeland security coordinator in the intelligence-gathering Fusion Center.

Ryan also announced that she was appointing Lt. Randy Olmstead to replace Ritzman as executive officer.

## **DMR: Abortion ban bill advances in Senate**

Legislation would prohibit most abortions after 20 weeks

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A bill that would most prohibit most abortions after 20 weeks advanced Thursday in the Iowa Senate, while three other antiabortion bills failed because of a lack of support. The Iowa Senate Human Resources Committee voted 9-3 to approve Senate File 53, which would generally prohibit abortions 20 weeks after fertilization. At least 18 states have enacted similar legislation. However, it's not clear whether the measure can muster enough support to win approval in both the House and Senate. Earlier Thursday, Senate File 253, which was aimed at halting abortions in Iowa, was withdrawn from the agenda of the Senate Judiciary Committee. Sen. Brad Zaun, R-Urbandale, an opponent of abortion, said the proposal to declare that life begins at conception simply didn't have enough votes to pass the committee. "I am disappointed, but I certainly understand how the process works," Zaun said. He noted that this week marks a key legislative deadline for most policy bills to be approved by either a House or Senate committee. In the Iowa House, two anti-abortion bills — one declaring that life begins at conception and another halting most abortions after 20 weeks — both failed Thursday to advance out of committees. "We will continue to look at life as we move on through the session, see what the Senate sends to us and continue to take up the issue," said House Human Resources Committee Chairman Joel Fry, R-Osceola. House Speaker Linda Upmeyer, R-Clear Lake, said both House bills have merit and her caucus plans to continue to discuss the issue.

"They're working very hard to reach consensus on those topics," Upmeyer said. "Some people want to go down the path of life at conception and having something get to court that can have a bigger decision. Others are real focused on 'We want something that matters today or next week or next month.'" Officials with Planned Parenthood of the Heartland were disappointed by the Senate committee's decision to approve the 20-week ban on abortion, which makes a narrow exception for cases between 20 and 24 weeks that involve fetal abnormalities.

But Planned Parenthood officials were pleased with the failure of the life-at-conception legislation, which they described as a "thinly veiled, unconstitutional attempt to ban abortion" in Iowa.

“Even fellow Senate Republicans recognized it would have far-reaching unintended consequences and refused to vote in its favor,” said Planned Parenthood spokeswoman Rachel Lopez.

Jenifer Bowen, a spokeswoman for Iowa Right to Life, said the life-at-conception bill was a top priority of Iowa organizations opposed to abortion, and it was disappointing to see the measure fail to even pass the Legislature’s first deadline. She noted the bill’s critics had raised questions whether the legislation would have blocked women’s access to contraceptives and whether women attempting to become pregnant would have been denied an opportunity for in-vitro fertilization..

“The message is that we have so many answers that still need to be given to concerned legislators,” Bowen said. But she added that she was pleased the 20-week ban has advanced in the Senate and she believes it could withstand a court challenge if it is enacted into law. Two Democrats — Sens. Liz Mathis of Cedar Rapids and Amanda Ragan of Mason City — joined seven Republicans in voting for the 20-week abortion ban in the Senate Human Resources Committee.

Sen. Joe Bolkcom, D-Iowa City, spoke against the 20-week prohibition, saying the Legislature should not be enacting laws that unnecessarily restrict a family’s options.

Sometimes pregnancies go wrong, creating difficult decisions for a family, Bolkcom said. “The last person that needs to stick their nose into this heartbreaking situation is a politician,” he added.

Sen. Mark Costello, R-Iowa City, who supported the 20-week ban, said all lawmakers want to work toward preventing unplanned pregnancies. But he added, “I think this does have the potential to save lives. I always like to say there are two lives involved here.”

## **DMR: Property construction measure sparks debate**

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A controversial measure at the Statehouse would shift more of the burden of fixing unsafe and hidden errors in construction to property owners.

House File 3 and Senate Study Bill 1010 would change from 15 years to eight years the time property owners have to file a “statute of repose” action when they find defects in improvements made on residential, commercial or public property. Both bills have cleared their committees.

The controversial legislation is sponsored by Sen. Brad Zaun, R-Urbandale, chair of the Senate’s judiciary committee. Insurance groups, some builders organizations and land surveyors have registered in favor of the law change, but it is opposed by labor groups, other builders and lawyers. Attorneys within the Iowa Attorney General’s Consumer Protection Division oppose the legislation because they believe it would likely lead to fewer Iowans winning claims under the state’s existing “statute of repose.”

Ben Bellus, an attorney in the division, says homeowners would have less time to sue when defects are hidden. In one 2005 lawsuit he pointed out, a defectively constructed roof and rain gutters led a home’s second owners to find extensive water damage and mold. The homeowners won their court action but would not have if they were only allowed to sue within eight years, rather than 15. In another 1994 case, buyers of a house discovered hidden problems in the wood and other construction products used, as well as a lack of moisture barriers, that required costly repairs.

A statute-of-repose period differs from a statute of limitation. It establishes a time period after which a lawsuit based on negligence in an improvement can be filed, regardless of whether there was an injury to a person or property.

Some states have shorter time periods in their statutes, but they also have wider exemptions for things such as latent defects and fraud.

The consumer protective division also is opposing House Study Bill 62, which, among other things, would allow consumers to settle disputes over mechanic's liens in arbitration and court.

Currently, those liens can be addressed in civil courts by judges for a filing fee and allow people to seek damages Bellus says proposed code changes would prohibit people from winning damages from someone harmed by the defects. But Iowa Rep. Chip Baltimore, chairman of the House judiciary committee, contends arbitration also can make the process quicker and less expensive.

## **DMR: Public water utilities face big changes**

Legislation would dismantle D.M. Water Works, give power to cities

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Legislation that would dismantle Des Moines Water Works and other public water utilities is headed to a vote in both the Iowa House and Senate.

The Senate Agriculture Committee approved the bill Thursday morning after making several amendments that mirror changes made by the House Ag Committee two days earlier. The Iowa House will hold a public hearing on the contentious issue at 10 a.m. Monday at the Capitol. The legislation has undergone several changes, here's what you need to know:

**Q: What would the bill**

**do?**

**A:** It would strip public water utilities in Des Moines, Urbandale and West Des Moines of their independence, making them city departments subject to the control of the local city council. The city's existing water boards, which are appointed by each city's mayor and approved by the city council, hire administrators to operate the utilities and make decisions about water rates and infrastructure projects. They also can take bond referendums directly to the public for a vote.

The bill would change that. Water boards would become advisory boards, similar to a planning and zoning commission. City managers would be responsible for hiring managers to run the departments. And decisions on spending and policy would be subject to city council approval.

Existing state law requires a public vote to dissolve a public utility. The bill would instead give that power to the Legislature.

**Q: What does this means for the Des Moines Water Works lawsuit?**

**A:** The decision on whether to continue Des Moines Water Works' lawsuit against three rural northwest Iowa counties would rest with the Des Moines City Council. The water works filed a lawsuit in 2015 claiming underground drainage tiles are funneling high levels of nitrates into the Raccoon River, a source of drinking water for 500,000 central Iowans. The utility says it spent about \$1.3 million last year to remove nitrates and make the water safe for consumption. A trial is scheduled to begin in June.

**Q: Does it create a regional water system?**

**A:** Not directly. The legislation originally included language and deadlines that would have forced Des Moines and its suburban neighbors to create a regional water authority with a regional board appointed by city council. But that language has since been removed.

Decisions on whether to create a regional system would be left to central Iowa cities to decide. Des Moines City Manager Scott Sanders told lawmakers Tuesday that he believes the legislation would be "the first step in getting that accomplished."

**Q: What about existing water projects?**

**A:** Some would be allowed to continue. Others

would not. The legislation initially called for cities to halt any water infrastructure projects costing more than \$100,000 while a regional

water authority was created. Suburban leaders were concerned that could hurt economic development projects, including a \$2.5 billion Microsoft data center project in West Des Moines. The city has made commitments to install water lines to the site.

The amended bill allows contracts made before the legislation is enacted to continue.

But it would prohibit planning, design or construction of any new water production and treatment plants. That could end Urbandale's preliminary plans to build an independent water treatment facility to serve its residents.

**Q: Who is behind the legislation?**

**A:** Bill Stowe, the CEO of Des Moines Water Works, has claimed the Iowa Farm Bureau is pushing the legislation in an effort to kill the federal lawsuit. Iowa Farm Bureau rebutted the accusations, saying it did not author the bill and has not registered in support of it.

Des Moines City Councilwoman Christine Hensley has been most vocal on the council against the lawsuit, especially in her capacity as a leader of the Clean Water Partnership, which is backed by the Farm Bureau. But Hensley said she had no contact with either group about the bill until after it was introduced.

"There's absolutely no collusion," she said.

**Q: Where does the legislation stand?**

**A:** Identical bills are making their way through the Iowa House and Senate. The bills (House File 484 and Senate Study Bill 1146) were passed by each chamber's Agriculture Committee on party-line votes, with Republicans in favor and Democrats opposing.



The Iowa House will hold a public hearing Monday before the bill goes to the floor for debate. The hearing is scheduled for 10 a.m. at the Iowa Capitol in Room 103. Individuals and organizations can go online to submit a request to speak on the bill.

## **DMR: ‘Sanctuary city’ ban measure moves to Iowa Senate floor**

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Legislation that would prevent cities, counties and college campus police from enacting “sanctuary” policies to provide safe havens for undocumented immigrants cleared the Iowa Senate Local Government Committee on Thursday despite strong opposition from immigrants and a host of pro-immigrant groups. Senate Study Bill 1172, which was sent to the Senate floor, would bar a local government or campus police agency from receiving state funds if the legislation was violated. It would require Iowa law enforcement agencies to comply with federal immigration detainer requests for persons in their custody.

In addition, the legislation would prohibit local governments or campus police from discouraging local law enforcement officers or others from activities related to enforcing immigration laws. A similar, but not identical bill — House File 265 — is pending in the Iowa House.

“I believe law enforcement should enforce the law,” said Sen. Dennis Guth, R-Klemme. He supported the proposal during a Senate subcommittee debate that preceded the full committee discussion. Sen. Matt McCoy, D-Des Moines, criticized the legislation, saying it was “full of flaws” and unconstitutional. “This is meanspirited and I will not be part of it,” McCoy added.

McCoy said he was particularly concerned about provisions in the bill that could hold cities and counties liable for damages if a person subject to a detainer is released from custody and commits a felony within 10 years. Such damages could total millions of dollars and could force some local governments into bankruptcy, he added. However, the bill does not apply to school districts or nonpublic schools. Sen. Julian Garrett, R-Indianola, who chairs the committee, defended the proposal, saying, “This bill is primarily aimed at people who are already in jail for something.” He also said he is open to considering amendments to the bill, including the threat of liability and damages for cities and counties.

Cities such as San Francisco have gained national attention for their sanctuary policies, especially as President Donald Trump campaigned on tougher immigration laws ahead of his election. Since taking office, Trump has issued an executive order rescinding federal money to those cities.

In Iowa, some of the

debate on the issue has focused on Iowa City, where local officials recently adopted a resolution that would prevent city resources from being used to enforce federal immigration law absent a public safety threat. In addition, the Des Moines Public Schools are supporting undocumented students, barring staff from asking about their immigration status and funneling federal inquiries through the superintendent’s office and district attorney. But the measure appears to stop short of blocking the district from working with immigration officials.

A host of organizations registered against the Senate bill, including the Iowa League of Cities, Iowa Police Chiefs Association, Interfaith Alliance of Iowa, American Civil Liberties Union of Iowa, Iowa Catholic Conference, Iowa Annual Conference of the United Methodist Church, and others. The only organization registered in support is the Iowa Minuteman Civil Defense Corps. Daniel Zeno, a lobbyist for the American

Civil Liberties Union of Iowa, said the bill would undermine constitutional rights and would invite police to treat people differently because of their ethnicity. “It attacks the trust between communities and police,” he said. Tom Chapman, a lobbyist for the Iowa Catholic Conference, said the legislation represents a shift in the wrong direction for the immigration debate. “We are very much opposed. We look for merciful policies that will help people and their families,” he said.

Fabiola Schirrmeister, a Spanish language radio broadcaster in the Des Moines area, spoke passionately against the bill, warning it will lead to racial profiling. Schirrmeister, who was born in Mexico, said the legislation is already creating panic in Iowa’s Latino community, and she cautioned it could hurt the state’s economy. “Immigrants work hard,” she said.

## **AP: Senators question six-week delay on ag secretary pick**

Grassley: ‘They don’t seem to have a reason’ for paperwork not being offered

**MARY CLARE JALONICK**

ASSOCIATED PRESS

WASHINGTON — President Donald Trump picked former Georgia Gov. Sonny Perdue to be his agriculture secretary six weeks ago, but the administration still hasn’t formally provided the Senate with the paperwork for the nomination.

The delay is frustrating farm-state senators, who represent many of the core voters responsible for helping elect Trump.

The Senate Agriculture, Nutrition and Forestry Committee needs the paperwork before the chairman, Sen. Pat Roberts, can schedule a confirmation hearing.

“I don’t know yet,” Roberts, R-Kan., said Wednesday when asked about Perdue’s information. “I wish to hell I did. We need a champion for agriculture, we need him on board.”

Roberts also complained about the delay at a committee hearing in Kansas last week. He predicted that Perdue would be confirmed quickly once the Senate can get started on the nomination.

The White House said the paperwork, including ethics forms and an FBI background check, is coming soon. The only other nomination that hasn’t been sent to Capitol Hill is that of Alexander Acosta, who was nominated to be labor secretary on Feb. 16 after the withdrawal of the original nominee, Andrew Puzder.

Senators say they haven’t been given an explanation for the delay involving Perdue.

“They don’t seem to have a reason as to why his name hasn’t come up,” Sen. Chuck Grassley, R-Ia., told reporters after asking around about the Perdue nomination.

The delay comes as some farm-state lawmakers question whether Trump is paying enough attention to rural areas, which overwhelmingly voted for him.

After Trump’s address to Congress on Tuesday night, Democratic Sens. Heidi Heitkamp of North Dakota and Jon Tester of Montana both said the president didn’t specifically mention rural America in his hourlong speech. Both senators are up for re-election in 2018.

“There wasn’t a mention of rural America, a farm bill, or agriculture workers, and these should be focuses for any leader of our country,” Heitkamp said, noting that President Barack Obama often omitted farm country in his speeches to Congress as well.

“You wonder why people in rural America feel left out and feel disenfranchised? Because they never hear anything about them,” she said.

Tester said lawmakers need to keep rural issues “front and center” for the new president, who is from New York City.

“The tendency is to go where you know, and I’m not sure he knows rural America very well, so it’s just an opportunity to remind him that you’ve got to pay attention,” Tester said.

Some farm-state Republicans pushed back on the idea that Trump is not engaged.

“He talked about rolling back regulations, and he talked about things that really matter in rural America,” South Dakota Sen. Mike Rounds said of Trump’s speech.

While Trump began picking department heads in November, he waited until Jan. 18,

two days before his inauguration, to choose an agriculture secretary. At the time, farm-state lawmakers and farm groups said they worried that the new pick would be at a disadvantage getting started.

In the weeks since he was chosen, Perdue has held several meetings with senators on Capitol Hill.

Farm-state senators have mostly praised his nomination, including Heitkamp, who said she would support him.

Perdue, 70, is a farmer’s son who would be the first Southerner in the post in more than two decades. He built businesses in grain trading and trucking before becoming the first Republican governor of Georgia since Reconstruction. After his governorship, he co-founded a company called Perdue Partners that helped American companies export their goods.

It’s unclear whether any of his business interests are causing the holdup. The forms in question are financial disclosures certified by the Office of Government Ethics and also written ethics agreements between the nominee and the office that identify potential conflicts of interest and the ways in which the nominee will resolve those conflicts. They are required by the Ethics in Government Act of 1978, passed after the Watergate scandal.

Before Trump’s inauguration, the head of the ethics office complained that the new administration was not filing forms quickly enough as the Senate started to hold hearings.

Director Walter Shaub said in January that part of the problem was that Trump announced nominees before consulting the office for evaluation of ethics issues. Traditionally, a president’s or president-elect’s picks have not been announced until the office has cleared the nominees, Shaub said at the time.

While Perdue’s nomination is pending, acting Agriculture Deputy Secretary Mike Young is in charge.

## **DMR Editorial: Casino finances shouldn’t be secret**

Iowa is dependent on gambling money, and that requires openness

What happens to all the money gamblers drop in slot machines and toss on blackjack tables in Iowa's 19 state-regulated casinos?

We know because Iowa law requires casinos to hire auditors to complete detailed reports and file them with the state. These audits have been available to the public for more than 30 years.

The casino industry now wants to change that. Bills in the House and Senate would make the audits confidential. Lobbyists argue the audits contain trade secrets that could help competitors.

The industry, when pressed, admits what everyone should understand: Casinos are unlike other businesses and require strict regulation and public scrutiny.

Gambling has the potential to wreak havoc on lives and communities, which is why we require them to operate in the light.

The regulated casinos have traditionally welcomed such transparency to show they are far removed from the criminal, dark side of the industry.

Secondly, casinos play a unique role throughout the state.

Iowans rely on them for economic development, entertainment, charitable donations and state revenues. In 2016, those 19 casinos paid \$317 million in overall taxes and contributed \$41 million to nonprofits, on top of other charitable donations.

Like it or not, Iowans have grown dependent, if not addicted, to casino revenues. Prairie Meadows dollars help pay for the Iowa Events Center, for example, and underwrite grants for the United Way and other nonprofits.

The only way to control such dependence is through openness from top to bottom. No matter how tightly casinos are regulated, the public must be assured the regulators are doing their jobs, too.

In 1983, Gov. Terry Branstad signed a law requiring the audits of gambling licensee's "total gambling operations, including an itemization of all expenses and subsidies." The law also specifies that "books and records kept by a licensee are a public record."

These audits have allowed the public to understand casinos' financial stability over the years, and the picture hasn't always been rosy. In the 1990s, the audits showed riverboat casinos floating in red ink, and several eventually

left eastern Iowa for other states. Race tracks in Altoona and Waterloo fell into bankruptcy.

The audits have also told the story of improving fortunes, and those media reports helped shape the public debate over expanding gambling in the state. That debate continues over proposed casinos in Linn County.

The public information is also important to hundreds of charities that every year benefit from tens of millions of dollars linked to an Iowa law that requires a cut of casino revenues go to philanthropy.

As it is, the audits are available only on a limited basis. The media and the public are able to request audit reports through the Iowa Racing and Gaming Commission.

The commission then contacts the casino, which has 20 days to respond by either providing the audit or seeking a court injunction.

Last year, the Grand Traverse Band Economic Development, which is part of three Native American casinos in Michigan, requested the audits. Several Iowa casinos sued in December to keep the documents from being released, but three casinos owned by Wild Rose saw no need for secrecy.

A decision is pending, but the casino industry hedged by lobbying to change the law and close the audits.

The bills would still allow the release of basic information such as admissions per day, money wagered and adjusted gross receipts, but that is far less than what the current law requires.

Iowa's attorney general, Democrat Tom Miller, took no position on whether the information should be confidential after the lawsuit was filed last year. Sadly, this follows a pattern of weakness in his office when it comes to openness.

Republicans in the Legislature can take a stand, however. They can show Iowans that their casinos won't rake in their cash in the dark.

## **DMR Iowa View: Teachers deserve a choice other than IPERS**

**CHAD ALDEMAN**, a graduate of West Des Moines Valley and the University of Iowa, is a principal at Bellwether Education Partners and the editor of TeacherPensions.org.

Iowa plan delivers decent retirement benefits only to teachers who stay for 20 or 30 years

Imagine you're a new teacher in Iowa being offered a choice between two retirement plans: Under Option A, your employer will contribute 10 percent of your salary. That money will immediately go into your own portable account, and you can invest it in a range of low-cost mutual funds.

Under Option B, your employer will contribute only 9 percent of your salary, and only half that amount will go toward your own retirement (the rest has to go back to the state to pay off its debts). You don't get to make any investment choices, and you won't qualify for any retirement benefit at all until you work for at least seven years.

Because your benefits are based on a formula, you might not qualify for retirement benefits worth even as much as what you personally contributed until you work for 20 or 30 years.

Which option would you choose?

It's actually a trick question, but it shouldn't be. Unlike employees of Iowa's state colleges and universities, who are given this choice, Iowa's teachers are not. Instead, they're all placed in Option B, the IPERS defined benefit pension plan. They have no choice, even if life circumstances might make Option A the better one.

Advocates of IPERS point out that it takes on a number of risks so that workers don't have to. Iowa teachers don't have to decide whether or not to save for retirement, how much to contribute, or how to invest their savings.

The state takes care of those decisions. Monthly IPERS checks also mean that individual members don't have to figure out how to draw down their assets upon retirement. Rather than having access to one lump sum, the state pension plan issues qualifying retirees regular checks throughout their retirement years.

But Iowa teachers face other risks.

First, in Iowa as in other states, IPERS has taken on more and more debt (known as “unfunded liabilities” in the pension world) as the state’s promises have exceeded its savings. Teachers may not know it, but those costs trickle down to them in the form of smaller education budgets, higher class sizes, and lower salaries.

Worse, IPERS, like other pension plans, is heavily back-loaded. It delivers decent retirement benefits only to teachers who stay for 20 or 30 years.

For a variety of personal and professional reasons, most teachers don’t stay that long. In Iowa, about half of teachers leave within five years, and two-thirds leave within 10 years. Many of these teachers aren’t leaving teaching entirely, life just takes them to other places to teach. Either way, the bottom line is that most Iowa teachers are not benefitting from the current IPERS structure.

Recently, Iowa Treasurer Michael Fitzgerald warned that any changes to IPERS would harm current workers (Treasurer: My concern grows for IPERS members, Feb. 24) and potentially hinder the state’s ability to recruit new employees. But that doesn’t have to be true, and if Fitzgerald were willing to look, he could easily find examples of employers offering more workerfriendly retirement benefits.

The federal government began offering all newly hired civilian workers a hybrid retirement plan combining some aspects of traditional pension plans along with a more portable benefit structure beginning in the 1980s, and the military adopted a similar model last year. Nebraska has been enrolling state government workers in a portable “cash balance” plan for years, and Kansas and Kentucky switched more recently.

Even within Iowa’s borders, the state’s colleges and universities have been offering their workers the choice of a portable, well-run retirement plan for decades.

There are trade-offs with each of these plans, and none of them may be exactly right for all of Iowa’s teachers.

But regardless of the exact model chosen, it’s false to claim that Iowa can either protect current workers and retirees or create a better system for its next generation of workers. Iowa legislators made a set of promises to existing workers, and it should keep those promises.

Yet meeting those obligations should not stop Iowa from creating a path to a secure retirement for all of its teachers, no matter how long they choose to stay. Iowa’s current pension system isn’t accomplishing that goal, but there are readily available alternative plans that could.

## **DMR Iowa View: DOES IOWA WANT TO BECOME THE NEXT MISSOURI?**

### ***GUN BILL COULD LEAD TO MORE VIOLENCE***

**DANIEL WEBSTER** is director of the Johns Hopkins Center for Gun Policy and Research in Baltimore, Md.

#### **IOWA VIEW**

An omnibus gun bill moving through the Iowa Legislature should alarm Iowans concerned about gun violence and suicides. The bill would remove a number of gun safety measures by repealing handgun purchaser permits and background checks on all handgun sales, doing away with permits for open and concealed carry of firearms, and adds a “shoot first” provision that greatly expands legal justifications for killing someone. Each component of the bill is dangerous; in combination, it sets the stage for significant increases in gun violence.

In 2007, Missouri repealed its law that had required handgun purchasers to obtain a permit from local law enforcement to demonstrate that the individual passed a background check. It was virtually identical to the law that some Iowa lawmakers want to repeal. Research my colleagues and I conducted found that this repeal was associated with sharp increases in guns being diverted for criminal use, firearm homicides, shootings of law enforcement officers, and suicides, translating to more than 100 deaths in Missouri every year. The exact opposite occurred when Connecticut adopted a law similar to what Missouri repealed. Does Iowa want to become the next Missouri?

The proposed law would also, for practical purposes, do away with local law enforcement agencies' ability to vet an application for a permit to carry a concealed firearm. Currently they can decline to issue the permit when the applicant has a history indicative of dangerousness — prior criminal convictions or restraining orders. The bill under consideration offers a politically clever way to advance a reckless policy known as “permitless carry.” It would allow anyone with a current concealed carry permit to retain their permit for the rest of their life. There would be no incentive for those without concealed carry permits to obtain one under the proposed legislation, because anyone charged with illegal gun carrying could get off the hook by simply completing a firearm safety training course (a quick online course will do) after the offense but before their court date.

There is no credible research that indicates deregulation of public carrying of concealed firearms reduces violent crime or curtails mass shootings. The most recent and most rigorous research shows that such policies, if anything, lead to more assaults committed with firearms.

In addition to making it easier for prohibited persons to obtain firearms, expanding the number of legally armed and dangerous

people in nearly all public places, the proposed bill would also expand justifications for killing others. This “shoot first” policy is a bad “solution” that research also indicates likely increases homicides.

Iowa currently has reasonable policies to vet potential gun purchasers and carriers while protecting the rights of law-abiding adults. The proposed omnibus gun bill is meant to appease special interest groups with reckless policies that will predictably lead to more deaths and a reduced sense of safety for many. Elected officials must make hard life-or-death decisions.

When lives are on the line, lawmakers should not listen to the loudest voices, but do what the best science indicates will protect Iowans and prevent deaths.

## **DMR Iowa View: Transgender rights are protected in Iowa, thank goodness**

*Alicia Claypool, Interfaith Alliance of Iowa*

The Trump administration recently rescinded protections for transgender students that allowed them to use bathrooms corresponding with their gender identity. Thank goodness, this does not mean any change for Iowa's transgender students.

We have a civil rights law,

IOWA VIEW

passed in 2007, that protects these students. Iowa schools must allow students to use bathrooms or locker rooms and address students by the names and pronouns of the gender with which they identify. As the Iowa

Department of Education spokeswoman said last week, “Truly, nothing changes for [Iowa] schools.” (ACLU demands apology for student, Feb. 25) The new federal directive rolls back critical protections for transgender youth, relying on states’ rights, a rationale historically used to limit the rights of individuals. But this is not just any policy, because it deals with the fundamental value of respect for the dignity of each student and should not be allowed to be defined by the prejudices and

politics of state legislatures or local school boards.

Transgender rights is a civil rights issue, not states’ rights.

Civil and human rights define who we are as a nation and should reflect our highest aspirations, where the most vulnerable are respected and valued simply for who they are — a child of God.

## **LEE: Iowa GOP says its ‘bold agenda’ mostly on track**

Rod Boshart and James Q. Lynch

Emotions ran high and in some cases raw Thursday as legislators frantically worked to save issues dear to them from falling victim to a self-imposed deadline that renders bills ineligible in the remaining weeks of the 2017 session.

The first “funnel” deadline, which required non-money bills to clear at least one standing committee of the House or Senate to stay active this year, claimed issues dealing with reinstating the death penalty, restricting abortion and raising the statewide minimum wage or interstate speed limits.

State troopers were stationed at several committee meetings where high-profile issues drew crowds of spectators and TV cameras.

Republicans who control both legislative chambers managed to push ahead with bills that would revamp Iowa’s workers’ compensation system, force local governments to enforce federal immigration laws and create new election verification requirements for voters that minority Democrats called punitive and nonsense.

“From what I can tell right now, we’re still on track with a lot of our priorities to continue moving them forward,” said Senate President Jack Whitver, R-Ankeny.

“We came into this session with a big, bold agenda to do major reforms and that’s tough. It takes a long time, but we’re looking at doing reforms that will impact this state in a positive way for decades to come,” he said. “We know this is a two-year process. We’re going to take our time and do it right.”

Democrats, already in the minority in the House but now in the Senate this year, too, have had little sway over that GOP agenda.

“There’s been so much nonsense coming at us this week,” said Senate Democratic Leader Rob Hogg of Cedar Rapids. “This is just nonsense after nonsense after nonsense and we’re trying to sit here and say, hey, you said you were going to work on the economy and schools. Where is it? It’s not happening. In fact, they’re taking us in the wrong direction.”

House Democratic Leader Mark Smith of Marshalltown said Republicans who hold majorities of 59-41 in the House and 29-20-1 in the Senate were making “very egregious” changes to Iowa’s long-standing system of



protecting injured workers, election law changes to suppress voting and bills that are “an all-out assault” on ordinary Iowans.

“Republicans have always run on the idea of local control. Their legislation this year is very much anti-local control,” he said.

A workers’ compensation bill, HSB 169 — which calls for reducing benefits for many common workplace injuries, considering an injured employees’ age in determining an employee’s loss of earning power and limiting benefits to older injured employees and cutting off payments for disabling workplace injuries when a person turns 67 — provoked sharp and emotional debate in the House Commerce Committee.

“What you’re doing today, if you pass this out of committee, is doing the wrong thing by those workers,” said Rep. Abby Finkenauer, D-Dubuque. “This is mean. This isn’t who we are as Iowans. I beg you, vote ‘no’ and let’s stop this right now.”

Her plea and another from Rep. Scott Ourth, D-Ackworth, that the bill would be “inhumane ... un-American ... flat-out wrong ... a death sentence” did not stop the committee from approving the plan on 14-9 party-line vote.

“This is a slap in the face to me and my family and my colleagues,” said Ourth, a heavy equipment operator. “What you’re telling me, those of you who I have called friends all along the way, is that one day our friendship will end if I fall into this category of disability. You’re going to walk away. You’re going to turn your back.”

Rep. Gary Carlson, R-Muscatine, conceded the bill was not perfect.

“I do sincerely think we need to reset where we are,” he said.

A similar bill, SSB1170, won 9-6 support in the Senate Commerce Committee. There, bill manager Sen. Michael Breitbach, R-Strawberry Point, saying most Iowa businesses treat their employees “like family” in refuting Democratic critics. “They aren’t disposable, they are not throw away, we want them to get the best care they can.”

Senate Majority Leader Bill Dix, R-Shell Rock, said the workers’ compensation rewrite was designed to rebalance Iowa’s law to evaluate employee injuries in a fair and practical manner that “holds the promise of one of the biggest impacts” for addressing the “cost side” challenges for job creators.

But Sen. Nate Boulton, D-Des Moines, called the changes disappointing and being rushed through with an immediate effective date like an earlier collective bargaining change.

“So if you’re going to get injured, you’d better get injured this week instead of next week,” he told committee members.

In the Senate Local Government Committee, Republicans approved an immigration bill 7-4 that would sanction state funding to cities and counties that didn’t enforce federal laws in detaining people in this country illegally.

The committee did accept changes offered by Sen. Matt McCoy, D-Des Moines, who told GOP the amendments were needed so “you don’t pass something out of here that’s embarrassingly unconstitutional.”

The third time wasn’t the charm for an idea championed by Gov. Terry Branstad to eliminate licensing requirements for a wide number of professions, from social workers to mental health counselors.

Rep. Bobby Kaufmann, R-Wilton, dramatically tore up the bill, declaring it dead earlier in the week.

However, on Thursday morning, a House State Government subcommittee amended it to a bill related to licensing master electricians. The reincarnation was short-lived. The attempt to keep it alive through the deadline died in caucus.

That's unfortunate, but not surprising, Branstad said.

"We knew this was going to be tough," he said. "You're going up against all the organized special interest groups that want to protect their turf.

"This place is overrun with lobbyists to protect their special interests and that's who the legislators have heard from," Branstad said. "I'm just going to ask that they take another look and consider the people who don't have the paid, professional lobbyist here representing them."

For his part, Branstad said he generally was pleased that his priorities were advancing in the legislative process.

"I'm particularly encouraged about the public safety issues, the distracted and impaired driving, and those issues that really involve the safety of the citizens. We knew those were not going to be easy. We feel good about that," the Republican governor said. "Generally, things are coming along."

He also was encouraged that a water quality bill advanced Thursday in the Senate Natural Resources and Environment Committee, saying it's important that lawmakers approve funding and policy provisions on that front this session.

## **LEE: Death penalty bill killed at Iowa Statehouse**

ROD BOSHART

A slow-moving crush of Senate committees working Thursday to beat an eligibility deadline claimed a GOP measure that sought to reinstate capital punishment in Iowa on a limited basis.

Competition for meeting space and schedules waylaid by time-consuming private caucuses by legislators forced the cancellation of a lunch-hour subcommittee that was to consider Senate File 335 — a bill that would have reinstated the death penalty in cases where an adult kidnapped, raped and murdered a minor.

"It's fair to say that it was executed today," said Sen. Jerry Behn, R-Boone, the bill's lead sponsor who has been pushing the issue since first elected in 1996. "I'm hoping that we can get it taken back up next year. That's the plan."

Behn said he had a "heart-wrenching" telephone conversation with the mother of Jetseta Gage, a 10-year-old girl who was the victim of a 2005 kidnapping and murder. The girl's mother had planned to testify at the Statehouse in support of the bill but testimony was called off when the bill was pulled from Thursday's calendar, he said.

"I had a nice talk with her on the phone," Behn said. "It's a heart-wrenching story. I was truly moved."

Behn said he reintroduced the death penalty bill because Iowa currently has a punishment for capital crimes of life imprisonment but there is no deterrent — in fact, there is an incentive — for a perpetrator who kidnaps and rapes a minor not to kill the witness in hopes of not getting caught.

“If you kidnap and rape someone, it creates a perverted incentive to murder your victim,” he said. “My point is let’s not add an incentive to do that kind of action. Let’s make it a disincentive to further that action. This is a specific attempt to stop a specific type of a crime.

“I think it’s appropriation restitution or appropriate punishment for a crime,” he said of the three-stage limited death penalty proposal. “This is an effort to appease some of those who thought, basically, that the death penalty was inappropriate at any time. After some of the horrific murders that have occurred, I said maybe we can get a consensus to get something back on the books again.”

Connie Ryan of the Interfaith Alliance of Iowa — one of a number of opponents who planned to testify at Thursday’s subcommittee — said she was disappointed that the bill was filed in the first place and surprised when it got scrapped on Thursday.

“We had a lineup of people of faith and civil rights advocates and other folks who were prepared to speak and say that Iowa should not ever be a death penalty state,” Ryan told reporters.

With officials in death-penalty states struggling to find the right drugs to administer lethal injections and with DNA evidence exonerating some death-row inmates, Ryan said it was a surprise to see Iowa senators looking to reinstate a practice last used in Iowa in 1965.

“The Interfaith Alliance of Iowa is quite pleased that we are not going to have the conversation about making Iowa a death-penalty state again,” she said. “Iowa should not ever be a death penalty state and so we’re just pleased that we’re not going to have that conversation this session.”

## **LEE: Abortion bill makes it out of Senate committee meeting**

CHELSEA KEENAN

A bill that would bar a woman from receiving an abortion after 20 weeks made it through an Iowa Senate committee on Thursday evening. But two other pieces of legislation seeking to limit Iowa women’s access to abortion did not survive the session’s first funnel deadline.

Senate File 53 passed on a 9-to-3 vote in the Human Resources Committee, securing two Democrats after the legislation was amended to include exceptions in cases where the mother’s life is in danger or fetal anomalies in which the fetus is diagnosed with a medical condition that is incompatible with life.

The amendment was added after Sen. Mark Chelgren, R-Ottumwa, said he heard compelling testimony during the Tuesday subcommittee meeting. During the meeting, Amanda Acton of Waukeez testified about her own experiences with abortion, when she was told by her doctor in her 21st week that her daughter had a rare genetic condition and did not have lungs.

She said the decision to have an abortion was difficult, but the humane thing to do.

“We did listen,” Chelgren said.

But that was not enough for all the Democrats on the Senate committee.

“Not every pregnancy ends the way a family hopes it will,” said Sen. Joe Bolkcom, D-Iowa City. “Sometimes it ends in miscarriage, sometimes the mother finds out there is something seriously wrong with her baby. Abortions later in pregnancy may make us uncomfortable. But one thing we can all agree on is that a woman’s health and safety is crucial.”

If the Legislature wants to continue to decrease the number of unwanted pregnancies and therefore abortions, Bolkcom said it should be committed to funding family-planning services and support the use of contraception.

“Extreme bans do nothing to reduce abortions and hinder medical care,” he said.

The bill next will go before the full Senate for a vote.

A similar piece of legislation, House File 293, which passed through a House subcommittee on Wednesday, however, did not make it out of committee. That legislation, along with SF 253, the so-called personhood bill — which could have effectively banned abortions — died Thursday afternoon, after they were both taken off committee agendas.

The legislation — which women’s health organizations called “extreme and reckless” — would have made it so that life is “protected from the moment of conception ... and accorded the same rights and protections guaranteed to all persons.”

Opponents, including Planned Parenthood of the Heartland, said the bill severely would have limited women’s access to the most effective forms of birth control as well negatively impacted families seeking to use in vitro fertilization services. Similar Personhood movements have failed in recent years in Colorado, North Dakota and Mississippi.

“SF 253 was a thinly veiled, unconstitutional attempt to ban abortion in the state of Iowa,” said Planned Parenthood of the Heartland in a statement. “Even fellow Senate Republicans recognized it would have far-reaching unintended consequences, and refused to vote in its favor.”

Sen. Brad Zaun, R-Urbandale, who chaired the committee and was a co-sponsor of Senate File 253, expressed disappointment that the bill did not survive. But he added, “This is how the process works.”

Zaun was hesitant to comment on why the bill was unable to attain enough support to make it out of committee, but did say he received thousands of emails from Iowans both in support of and opposition to the bill.

“Obviously I believe in it,” he said. “I’m interested in saving one unborn child at a time.”

## **AP: Survey: Ethanol, food processing boost Iowa’s economy in January**

Results from a monthly survey of business supply managers suggest that manufacturing is boosting economic conditions in nine Midwest and Plains states, according to a report issued Wednesday.

The Mid-America Business Conditions Index report said the overall economic index for the region rose to 60.5 in February from 54.7 in January. It’s the highest figure since April 2014.

"This is the fourth consecutive month the index has increased and points to an improving regional manufacturing economy," said Creighton University economist Ernie Goss, who oversees the survey. "I expect this to generate even healthier growth for both manufacturing and nonmanufacturing through the third quarter of this year."

The survey results are compiled into a collection of indexes ranging from zero to 100. Survey organizers say any score above 50 suggests growth in that factor. A score below that suggests decline. The survey covers Iowa, Minnesota, Arkansas, Kansas, Missouri, Nebraska, North Dakota, Oklahoma and South Dakota.

The index for Iowa climbed to 62.6 from 51.8 in January. Components of the overall index from the monthly survey of supply managers were new orders at 67.4, production or sales at 69.7, delivery lead time at 52.0, employment at 57.7, and inventories at 66.4. Recent surveys point to solid growth for the next six months with job additions of approximately 4,500. Ethanol production and food processing were the leading industries, while the report listed metal manufacturers and agriculture equipment producers as lagging.

For Minnesota, the index dipped to 54.3 from 54.7 in January. Recent surveys point to positive but slow growth for the next six months with job additions of approximately 11,000. Ethanol and medical equipment manufacturers led the way, while vehicle parts manufacturers and agriculture equipment producers were lagging.

The February employment index remained above growth neutral but slipped to 55.6 last month from January's 57.0.

"The growth gap between regional manufacturing and nonmanufacturing is closing," Goss said. "However, rural job growth in the nine-state region continues to significantly lag that of urban areas in the region."

Economic optimism, as reflected by the February business confidence index, rose to 71.3 from 69.5 in January.

"This is the highest confidence reading that we have recorded in six years," Goss said.

In other measures, the regional new export orders index rose to 63.6 from 48.7 in January, and the import index climbed to 54.1 from January's 46.7.

## **LEE: Iowa lawmakers advance workers' comp overhaul**

JAMES Q. LYNCH

Labor squared off with business and industry Wednesday over the future of Iowa's workers' compensation system, which would be overhauled under legislation backed by GOP majority lawmakers.

Under the workers' compensation law, most employers are required to provide medical or disability payments — or both — to workers who are injured on the job.

But it's absurd the GOP is pushing for an overhaul, according to Kellie Paschke, a former House GOP staffer who's now a trial lawyer.

“A few short years ago we had workers’ compensation legislation before this committee,” recalled Paschke, speaking on behalf of the Association for Justice. “At that time, House Republicans indicated the system was not broken and nothing that needed to be fixed.”

And the Iowa Association of Business and Industry ran commercials saying Iowa’s workers’ compensation system was a model for the nation, she said.

“And yet here we are today, basically turning our workers’ compensation system on its head,” she said at a House Commerce subcommittee hearing on House Study Bill 169.

Mike Ralston of the Association of Business and Industry agreed the Iowa system was the premier worker’s comp system — then.

“The goal of this bill is to get it back to that premier status,” he said in a committee meeting packed with union members, trial lawyers and lobbyists.

“In just a few years, Iowa has gone from having some of the lowest workers’ comp premiums for employers, the richest benefits in the country for employees,” said Ralston, whose association has 1,500 member companies with 330,000 employees in Iowa. “Now we’re in the middle of the pack with increasing premiums and still some of the richest benefits for employees.”

Although the rate employers pay dropped 4.7 percent last year, Ralston said, the rates over several years actually have increased more than 7 percent.

HSB 169 is needed to “ensure the protection of the system and the protection of Iowa’s workers who need benefits from the system,” he said.

The bill is “fair for employers and employees, in fact, generous compared to benefits of our neighbors,” he said.

A Senate Commerce subcommittee hearing on similar legislation, Senate Study Bill 1170, drew a full room later in the day. Of the subcommittee members, Republican Sens. Michael Breitbach of Strawberry Point and Bill Anderson of Pierson signed off on the bill. Sen. Nate Boulton, D-Des Moines, did not.

Both the House and Senate Commerce committees plan to run their respective bills in full committee Thursday.

According to the Iowa Federation of Labor AFL-CIO, the bill would reduce benefits for common workplace injuries; eliminate benefits based on an employee’s loss of earning power in some cases; discriminate against older workers by requiring an employee’s age to be used to calculate available benefits; and limit benefits available to employees 67 and older when injured. For workers permanently and totally disabled by a job injury, their benefits would cease at age 67, the group said.

The issue is personal to Rep. Scott Ourth, D-Ackworth, a heavy equipment operator.

“We work tired, we work hot, we work sore and we work stiff, and we’re proud of it,” he said. But “people get hurt and they get hurt badly through no fault of their own.”

This legislation could affect him and his family “and I’m having a hard time with it.”

Rep. Peter Cownie, R-West Des Moines, said the first goal is to avoid injuries to workers. But there will be injuries, and workers injured on the job deserve benefits.

However, there has been abuse and it is the responsibility of the Legislature, which created the workers' comp system more than 100 years ago, to review it.

He and subcommittee Chairman Gary Carlson, R-Muscatine, signed off on the bill.

## **Clinton Herald: Bills tackle driving**

By Nick Moffitt

Bills aimed at curtailing distracted driving are making their way through legislative committees at the Iowa Statehouse.

Bills in both the Iowa House and Senate have started to gain traction recently, and have received support from Iowa Gov. Terry Branstad.

Senate File 234 would get rid of a stipulation that texting while driving is a secondary offense — an offense that drivers can only be charged with after they are pulled over for another violation — and make it a primary offense that allows officers to pull people over for it. House File 60 is the house companion bill.

House File 85 would require all cell phone use to be hands-free and would impose a \$30 fine for a violation. Senate File 100 is the companion bill. Both have exemptions for the use of a fixed device GPS.

According to statistics from the Iowa Department of Transportation, there were 1,100 total distracted-driving related crashes in Iowa, with 14 fatalities in 2015, equal to the combined total of the four previous years.

Sen. Tod Bowman, D-Maquoketa and ranking member on the Senate Transportation Committee, said he's worked on passing similar bills out of the Senate for four years now but feels more optimistic the House will take it up.

"One more year we'll continue to see if they'll do something to improve public safety," he said.

One reason he's feeling a bit more optimistic is Branstad's support of legislation focusing on distracted driving.

"The Governor has come on board and he's been pretty vocal in support. I think he'll lean on the speaker of the House and get some members to support it," he said.

Bowman said changing texting while driving to a primary offense, and proper enforcement, would go a long way into getting people to stop driving while distracted.

One potential concern with changing it to a primary offense is the potential for law enforcement to use it as an easy way to pull people over. In the past, this concern has led Rep. Mary Wolfe, D-Clinton, to be against changing it to a primary offense. Now, however, she's for the bill.

"The reason I have changed my position is input from constituents and people in Clinton County that deal with enforcing traffic laws and have seen the aftermath of serious accidents," Wolfe said.

She said as far as the difference between the two types of bills she'd like to see it go all the way to hands-free if possible, which eliminates some of the confusion.

Support for the varying proposals is mixed, according to a recent Des Moines Register Iowa Poll, which shows that 85 percent approve allowing an officer to pull over a driver if they see them texting. Only 48 percent approve of the same action if they see drivers speaking on the phone.

Rep. Norlin Mommsen, R-DeWitt, said as far as he is concerned the Legislature should go for the hands-free bill because it makes enforcement easier.

He said after speaking with some Iowa State Patrol members his takeaway was that if it is just made illegal to send messages while driving people will say they were changing a song, checking their calendar or some other action, which would make the law largely unenforceable.

"I just think that is part of the reason our accidents and death are going up so high. There are too many people being distracted by their phone," Mommsen said.

According to the Iowa Legislative Services Agency, changing texting while driving to a primary offense would generate revenue of \$96,875 in the first year and \$193,834 in the second year if it is passed. Revenue from that would go to the general fund.

## **KJAN: Boettger and 1 other former lawmaker among Branstad's picks for Board of Regents**

March 2nd, 2017 by Ric Hanson

Governor Branstad is appointing a couple of EX-state legislators to serve on the panel that governs the three state-supported universities. One spot on the Board of Regents opened up when Bruce Rastetter, the board president, announced in early February he would not seek another term. The governor on Tuesday selected three people to the nine-member board. They include **Nancy Boettger, a former Republican state senator from Harlan**, and Nancy Dunkel, a Democrat from Dyersville who served one term in the Iowa House.

Branstad is reappointing **Sherry Bates of Scranton** to the Board of Regents. Current Regent Katie Mulholland had also sought reappointment to the board, but she was left OFF the governor's list. Branstad's regent appointments must be confirmed by the Iowa Senate.

## **The Gazette Editorial: Judicial selection is no place for politics**

That Gov. Terry Branstad has chosen only Republicans to serve on the state's judicial nominating commissions is troubling. Far worse is a bill that would limit the commissions to only those political appointees.

Senate File 327 is buried in subcommittee, where we hope it stays.

The proposal would have political appointees select finalists for bench vacancies, replacing the current balanced system.

The state commission now consists of 17 people. Eight are appointed by the Governor's Office. Eight more are selected by the Iowa State Bar Association. The longest-serving Iowa Supreme Court justice leads the group and also is a voting member. Under the bill, all 16 members of the commission would be appointed by the



Governor's Office, and the justice leading the commission would vote only to break ties. The state's 14 district commissions would be likewise changed.

Iowa Sen. Julian Garrett, R-Indianola, who is a bill sponsor, said the Bar Association is responsible only to its members, with no accountability to Iowa voters. Garrett appears to have forgotten that voters weigh in when judges stand for retention.

Lawyers, regardless of their political affiliation, work with judges each day, and offer valuable insights during the interviews of those who hope to sit on the bench. Gubernatorial political appointees, on the other hand, often focus on issues unrelated to judicial duties.

This was evidenced in 2013, when proceedings of the state nominating commission were televised. Appointees posed questions that often had little to do with judicial qualifications.

"Did you make (marriage) covenant vows with your husband that you feel you've kept or that you're breaking?" asked one.

Another requested an applicant "comment on your methodology in choosing a place of worship."

If lawmakers feel some compelling need to tinker with the courts, we'd suggest finding ways to encourage more applications for judicial vacancies, or increasing judges' salaries, which have not kept pace with inflation. Iowa's system of selecting and voting to retain judges has been working well since 1962. It is a model for the country, and supported by lawyers and legal scholars of all political persuasions.

The last thing Iowans should want to do is introduce more politics and partisanship into the selection of our judges.

## **The Gazette: Dealing with Iowa's deficient bridges could hurt budgets: Moody's**

Cost of repairing its bridges leaped 20 percent

Iowa's laundry list of dilapidated bridges could put added strain on the pocketbooks of local county governments who maintain the lionshare of the state's bridge inventory.

A report released Thursday from global rating agency Moody's Investor Services, which cites new data from the Federal Highway Administration, states Iowa — rated by Moody's as Aaa stable — had nearly 5,000 non-federal, structurally deficient bridges last year. That's 21 percent of the bridges in the state and more than double the national average, according to the report.

"What makes Iowa unique is that it led the nation in the number of structurally deficient bridges at the non-federal level," David Jacobson, a Moody's spokesman, told The Gazette. "The other thing about Iowa is the counties in Iowa have a higher share of non-federal bridges than any other state in the country. So they're more exposed to the growing cost of repairs."

Iowa counties own and maintain 78 percent of the state's non-federal bridges, compared to the national average of 37 percent.

In addition, the report indicates the estimated cost of fixing all those bridges has increased by 20 percent in the past four years — from \$447 million to \$540 million.

According to the report, the problem is that Iowa's state and federal sources of bridge funds has not kept up with the growing backlog of deficient bridges, which means local revenues will become increasingly important for infrastructure needs.

“This poses a particular credit hazard for counties as they growing cost of bridge repairs will likely pressure operating budgets or increase debt burdens,” the report states. “Iowa counties generally have leeway to raise taxes to help with bridge maintenance, but without additional federal and state funding, an increased reliance on local taxes will impair counties’ financial flexibility.”

Jacobson said that doesn't necessarily mean credit scores will begin to drop for Iowa counties, but it poses a risk.

The report states that 55 of Iowa's 99 counties have at least 20 percent of their bridge stock classified as structurally deficient.

Johnson and Linn counties, however, are in relatively good shape, with only 12 percent and 9 percent of the bridges in those counties deemed structurally deficient, respectively.

Meanwhile to the west, 39 percent of the bridges in Tama County are considered structurally deficient.

A structurally deficient bridge is not necessarily a safety hazard, but has one or more of its key elements — such as the deck, superstructure or substructure — considered to be in poor condition or worse.

Iowa ranks first in the nation in terms of the total number of deficient bridges — more than 24,000 — and third for the percentage of deficient bridges in a state's overall inventory, according to a 2015 National Bridge Inventory report by the American Road and Transportation Builders Association, which uses Federal Highway Administration data.

More than 2,600 of Iowa's bridges have been put under posted weight limits due to their deficiencies, according to Iowa Department of Transportation data.

The recent increase of Iowa's gas tax is estimated to add about \$213 million annually to the state road fund, which means an additional \$101 million to state projects, \$70 million to county projects and \$42 million to city projects.

Those projects are intended to reduce Iowa's stock of deficient bridges.

## **The Gazette Guest View: Project labor agreements play favorites**

Jeremy Price is the owner of Price Industrial Electric and a member of the Associated Builders and Contractors of Iowa.

In the Corridor, across the state of Iowa, and indeed all over the country, we have an unmistakable need to put taxpayer dollars to work in the most efficient way possible to get all forms of our public infrastructure up to the world-class standard that America deserves.

Public projects come in all shapes and sizes. Flood walls and levees may be of obvious interest to our community, but so are highway improvements and school renovations. Whatever we fund through taxpayer dollars should be executed by people who offer the best skills at the most competitive price. To accept anything

but the highest-quality work at the best price the market can offer is to waste money that comes straight out of the pockets of hardworking people here in our own community.

That's why it is so important for Iowa to hold the line against any government mandates that would choke off competition for public projects. One of the ways government can overreach is to impose project labor agreements (PLAs) on public project bids.

Despite their neutral-sounding name, project labor agreements are a tool used to tip the scales in favor of big unions with lots of political influence. PLAs effectively force every contractor and subcontractor to bend their work rules and prices to fit a national union model.

In my opinion, the worst component of a PLA is the requirement for a contractor to hire its workforce through a labor union. If I were to bid on such a project, the fact that I would not be able to put my own employees to work is wrong. My employees live here, pay taxes here, and are active in our community. They should not be kept from working on public projects simply because they have voluntarily made the choice not to belong to a union.

We in the Cedar Rapids area are all too familiar with the discriminatory nature of PLAs. Unfortunately, under the leadership of Mayor Ron Corbett, the City of Cedar Rapids has pursued the use of PLAs on local projects. I employ over 125 employees in the area, many of them residents of Cedar Rapids. The city's discussion over the use of PLAs on local projects never included an analysis about how my employees would be affected.

Cedar Rapids has a wide range of capable contractors, subcontractors, and individuals working across the skilled trades — some are unionized, many are not. The discipline of market competition should decide who wins the jobs and provides the work. I have never once thought of asking any level of government to give my company an advantage when bidding — however, I do expect an open and fair process. PLAs are neither.

The Iowa Legislature is considering legislation that would prohibit the use of PLAs on any public project. I am extremely grateful that legislators going to stand up and protect the 82 percent of Iowa workers who choose not to belong to a labor union.

This does nothing to keep union contractors from bidding on taxpayer funded projects. It simply makes sure all qualified vendors are legitimately able to compete for the work.

Keeping project labor agreements out of the way of Corridor-area public projects should be a common goal among all of us who expect government to treat our tax dollars like their own.

## **QC Times: Grassley says Sessions recusal is right thing to do**

[Ed Tibbetts etibbetts@qctimes.com](mailto:Ed.Tibbetts@qctimes.com)

U.S. Sen. Chuck Grassley dismissed as "nonsense" the idea that Attorney General Jeff Sessions should resign in the wake of revelations that he had met last year with the Russian ambassador to the U.S., a report that had Democrats saying he should step down because he testified before the Senate Judiciary Committee that there had been no meetings.

Grassley, the Iowa Republican who chairs the committee, didn't weigh in on the truthfulness of Sessions' testimony. But he said he had asked the attorney general to send a letter to the committee "to clear up any confusion regarding his testimony so we can put this issue to bed once and for all." Sessions said he would do so.

Controversy swirled around the attorney general all day Thursday after a Washington Post story broke saying that he had met with the Russian ambassador last year at a time when there were allegations of contacts between the Trump campaign and the Russian government. Sessions, a senator on the Armed Services Committee at the time, was a Trump surrogate.

The Post story not only reported the contacts but noted that Sessions had told Sen. Al Franken, D-Minn., during confirmation hearings that "I did not have any communications with the Russians."

At a news conference Thursday afternoon, Sessions bowed to calls that he recuse himself from any investigation into Trump ties to the Russians. And he acknowledged he should have "slowed down" during his testimony but said he was taken by surprise by part of Franken's question and his answers were honest.

Grassey praised Sessions for recusing himself. He called it the right thing to do, saying alleged conflicts, "no matter how flimsy," would be used against him.

Democrats spent much of the day criticizing Sessions. Sen. Dick Durbin, D-Ill., called his committee testimony false and noted National Security Adviser Michael Flynn resigned after making misleading comments.

Locally, Reps. Dave Loebsack, D-Iowa, and Cheri Bustos, D-Ill., both called on Session to resign.

"It is now clear that Attorney General Sessions lied under oath during his confirmation hearings in front of the Senate Judiciary Committee," Loebsack said early Thursday.

Bustos also said that Sessions had lied. "This is disqualifying," she said.

Sen. Tammy Duckworth, D-Ill., said Sessions faces "serious questions" of whether he "misled or even lied."

Sen. Joni Ernst, R-Iowa, in her own statement, said she didn't have all the facts of the situation, but "I support his decision to recuse himself."

## **AP: Iowa lawmaker says business degree was Sizzler certificate**

The Associated Press

An Iowa state lawmaker said Thursday that he didn't mean to mislead anyone by claiming he had a business degree from a company that actually had awarded him a certificate for participating in a training program when he worked at Sizzler.

Sen. Mark Chelgren's biography on a website run by Iowa Senate Republicans had listed that he had a degree in business management from Forbco Management school. The information was removed Wednesday after NBC News reported that Forbco Management is a California company that operated a Sizzler franchise.

Chelgren told The Associated Press that his clerk first provided the credentials to Senate Republicans, which then circled back with him.

"It was given to me to approve and I thought it was adequate," he said.

Ed Failor, a spokesman for Iowa Senate Republicans, confirmed Thursday that Chelgren's bio was updated after the NBC report and that Chelgren doesn't have a college degree. Failor declined to comment further.

Chelgren, who is from Ottumwa in southeastern Iowa, said he did earn an associate's degree from Riverside Community College. Calls on Thursday seeking to verify that claim with Riverside City College — the school apparently changed its name — went to an automated system and The Associated Press wasn't able to get a live person on the line. The school also didn't immediately reply to an email.

On Wednesday, Failor had told NBC, "This was a management course he took when he worked for Sizzler, kind of like Hamburger University at McDonald's."

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Chelgren said Thursday he had not thought there was much difference between a degree and a certificate. He said he worked at a Southern California Sizzler in the 1980s, when he was about 19.

"I didn't see a difference when I did the review, didn't worry about," he said.

Chelgren said he doesn't mind that the information about him now has been changed.

"I know they've changed that, because apparently a degree and a certificate are different. And I'm OK with their change, but there was never any intent at all to mislead anyone," he said.

Chelgren, who was first elected to the state Senate in 2010, gained attention recently for sponsoring a bill that would freeze faculty hiring at the state's public universities until the number of professors registered as Republicans was within 10 percent of those registered as Democrats.

Failor said Chelgren wouldn't face discipline over the biography, noting that no Senate rules were broken.

## **QC Times Guest Opinion: Guest view: Minimum wage boost would damage economy**

Michael Saltsman is the research director for The Employment Policies Institute, a conservative think tank based in Washington.

Gov. Terry Branstad is half-right on the minimum wage.

Last month, the governor threw his support behind "a modest increase" in the Iowa's minimum wage as well as a measure that would restrict municipalities from increasing their minimum wage above the state level. He's wrong on the first point but right on the second.

A review of the best minimum wage research, published by the Federal Reserve Bank of San Francisco, confirmed that past "modest" minimum wage increases have had a major impact on job opportunities for young and less-skilled jobseekers. Researchers at Trinity and Miami University replicated the methodology of the nonpartisan Congressional Budget Office and found that Iowa would lose over 5,000 jobs if a \$10.10 minimum wage was implemented statewide. According to the most recent Census Bureau data, the Davenport Metro Area has a youth unemployment rate averaging over 17 percent.

Iowans don't have to look far to see consequences from minimum wage increases. Johnson County, which increased its minimum wage by 39 percent between November 1, 2015 and January 1, 2017, is suffering consequences, with employees feeling the impact.

Jon Sewell, the owner of Iowa City restaurant D.P. Dough, said he has had to cut back staff hours because he couldn't absorb the payroll increase of the minimum wage hike. Sewell stated, "We are using less hours so there are less people getting paid than we used to have because we weren't able to absorb all that increase in payroll." Business operators who are making razor thin profit margins have little flexibility when government dictated labor costs come in double digit increases.

The Orange Leaf, a frozen yogurt shop in North Liberty, closed its doors entirely, telling one local news station that it "couldn't keep up with Johnson County's minimum wage," and warned that they wouldn't be the only ones to close. That includes another North Liberty business, the Popcorn Shoppe, whose owner worries he'll have to close his doors because of rising labor costs combined with a tough business environment.

Childcare centers, which run on very low profit margins, have also been affected by the wage hike. The director of the Mary Jo Small Child Care Center said the wage hike had a "huge impact" on her center, which was forced to raise prices for care by \$100 a month per child to avoid going out of business.

Similar consequences are playing out across the country in other locales experimenting with starter wage increases. In California, where the wage increased to \$10.50 on New Year's Day and many localities have gone higher, dozens of businesses have closed their doors or plan to leave the state. Washington State, which also fashions itself a "leader" on the minimum wage, has seen the closure of numerous cafes and other businesses. And in New York, numerous restaurants have gone out of business, laid off employees, or reduced hours to compensate for increased labor costs associated with recent starter wage increases.

To prevent similar consequences in Iowa – like those seen in Johnson County and around the country – the Iowa Legislature should take a pass on the governor's not-so-modest wage increase proposal. Instead, it should follow in the footsteps of the Ohio legislature, which (with bipartisan backing from prominent Cleveland Democrats) passed a law establishing one minimum wage at the state level.

Iowa citizens are just beginning to understand the consequences of lacking such a law. In California, labor groups and activist city councils have created a mind-boggling patchwork of local wage laws; in the Bay Area alone, there are more than a dozen municipalities with their own mandated wage laws, and the sky's the limit on how high they can go.

In order to keep Iowa's entry-level career pathways open, Gov. Branstad should keep the starting wage at a reasonable level, and ensure that municipalities across the state can follow one wage standard.

## **RI: Bill to penalize cities, counties that fail to detain undocumented immigrants**

MARCH 3, 2017 BY O. KAY HENDERSON

A bill now eligible for debate in the Iowa Senate would bar Iowa cities and counties as well as public schools and colleges from having “any policy that discourages enforcement of federal immigration law.”

The Des Moines School Board recently adopted a policy that requires immigration officials to first contact the superintendent if they want to speak to someone on school grounds. Immigrants and their advocates crowded into a statehouse hearing on the bill yesterday, watching as Republican Senator Julian Garrett of Indianola questioned Des Moines School Board member Rob Barron.

“Do you recognize that the federal government has jurisdiction in this area over immigration law?” Garrett asked.

Barron responded: “There’s not a single person in this room that believes that the federal immigration policy is right. What law enforcement asks for is not always appropriate or right or legal.”

The bill also would make officials in Iowa cities and counties liable if they fail to detain someone federal officials suspect is in the country illegally — and that person commits a felony within the next decade.

A bill that cleared a committee in the Iowa House about a month ago would deny state funds to any city, county, community college or public university with policies that seek to “restrict or limit” enforcement of federal immigration laws.

## **RI: Branstad: GOP bill returns workers comp to ‘original concept’**

MARCH 3, 2017 BY O. KAY HENDERSON

Governor Terry Branstad on Thursday said he is “pleased” to see an overhaul of the state’s workers compensation system advancing through the legislature. Branstad says the system is out of whack due to new regulations and recent court rulings.

“What they’ve done is taken the original concept of workers comp with is instead of fight over who’s at fault, compensate the worker and try to help them so they can get back to work as quickly as possible to making it kind of, some cases, almost kind of a long-term disability thing,” Branstad said during an interview with two statehouse reporters.

Republicans on committees in both the Iowa House and Senate approved the overhaul Thursday afternoon. Democrats on the committees voted against it.

“To my fellow senators around this table, pause and think about what message we are sending to our workforce today,” said Democratic Senator Nate Boulton, a lawyer from Des Moines who has represented injured workers.

Boulton called the bill an “unforgiveable” attack on Iowa workers in both private sector and government jobs.

“If we pass this in its current form, we are going to be truly dismantling a system that is designed to protect Iowa workers who suffer disabling injuries at their workplace,” Boulton said.

The bill would take steps to reduce potential compensation for repetitive motion injuries as well as injuries tied to pre-existing conditions. It also would cut off workers comp checks when an employee reaches the age of 67.

Iowa business groups say the system has gotten out of balance and the bill will help address “significant” premium hikes. Representative Peter Cownie, a Republican from West Des Moines, said those concerns need to be addressed.

“If someone gets injured at work, they deserve to be compensated and this bill allows that to happen absolutely,” Cownie said. “But the fact of the matter is there has been abuse in the system. It cannot be denied.”

A hearing will be held at 6 p.m. Monday in the statehouse to give the public a chance to comment on the legislation.

## **RI: Iowa Senate panel advances new abortion restriction**

A bill to ban most abortions in Iowa after the 20th week of a pregnancy cleared a Senate Committee Thursday afternoon. Mark Costello, a Republican from Imogene, is the senator who was assigned to guide the bill through the legislative process.

“I do think that we can save lives with this,” Costello said, “and I think we’ve tried to make some accommodations to make it a little easier for everyone.”

Senator Mark Chelgren, a Republican from Ottumwa, led the effort that adjusted the bill, so abortions after the 20th week could be performed if a catastrophic abnormality is discovered in the fetus.

“We did listen,” Chelgren said. “We tried to understand what the concerns were.”

Six Republicans and three Democrats on the Senate Human Resources Committee voted to make the bill eligible for debate in the full senate. Three Democrats voted against the bill. Senator Joe Bolckom of Iowa City said politicians are the last people who should “stick their nose” into these kind of “heartbreaking” health care decisions.

“It’s better that each family make their own decision rather than letting politicians interfere,” Bolckom said during the committee meeting.

A separate “personhood” proposal that abortion opponents were vigorously lobbying for did not survive the legislature’s deadline for action today. Critics say that bill eventually could have outlawed most abortions in Iowa and might have led to a federal court case challenging the Roe v Wade decision that legalized abortion.

## **RI: Audit details popcorn problems at Iowa Veterans Home**

A state audit shows a former employee of the Iowa Veterans Home (IVH) in Marshalltown is blamed for the disappearance of hundreds of dollars in popcorn sales. Angie Snyder resigned from IVH in July of last year, shortly after being placed on administrative leave when it was discovered money from popcorn sales had not been deposited for nearly two-and-a-half years.



State Auditor Mary Mosiman says Snyder failed to keep any records of the deposits she claimed she made. “Our report identified an estimated \$1,800 of popcorn sales which were not properly deposited during this former administrative assistant’s employment,” Mosiman says. The \$1,800 estimate is based on previous sales prior to Snyder’s appointment to the job in October 2014.

Mosiman says it’s possible even more money and gifts went missing during Snyder’s time at IVH. “A number of the other collections and donations — such as gift cards, phone cards, and stamps — were not properly safeguarded and were therefore susceptible to loss. Because sufficient records were not available, it was not possible to determine if these types of items were handled improperly for personal purposes,” Mosiman says.

The auditor’s report has been shared with Marshalltown Police, the Iowa DCI, the Marshall County Attorney’s Office, and the Iowa Attorney General’s Office. The Iowa Veterans Home in Marshalltown has around 565 residents and 965 employees, according the IVH website.

## **RI: Death penalty bill stalls; key backer aims for 2018**

The lead sponsor of legislation that would have reinstated the death penalty in Iowa says scheduling conflicts have doomed the bill and it will not be considered again this year. Republican Jerry Behn of Boone has been trying to reinstate capital punishment in Iowa since he was first elected to the senate in 1996.

“I’m hoping we can get it taken back up next year,” Behn said.

Behn’s bill only would have allowed a death sentence when someone was convicted of kidnapping, rape and then the murder of the victim.

“This is an effort to appease some of those who thought, basically, that the death penalty was inappropriate at any time,” Behn said this afternoon during an interview with three statehouse reporters. “After some of the horrific murders that have occurred, I said maybe we can get a consensus to get something back on the books again.”

Behn said he’s especially troubled by the life sentence given to the man convicted of the brutal 2005 death of a 10-year-old Cedar Rapids girl who was kidnapped, raped and murdered. Jetseta Gage’s mother had planned to travel to Des Moines this afternoon to testify for Behn’s bill. However, the senate schedule is chaotic today as senators rush to find meeting rooms and take committee votes on dozens of bills. The room in which debate on the death penalty bill was to occur was double-booked.

Connie Ryan of the Interfaith Alliance of Iowa was in the hallway outside that room.

“We had a line-up of people of faith and civil rights advocates and other folks who were prepared to speak and say that Iowa should not ever be a death penalty state,” Ryan said during an interview.

With DNA evidence exonerating some death row inmates and officials in other states struggling to find the right drugs to administer lethal injections, Ryan said it would have been “surprising” to see Iowa reinstate capital punishment.

“States were not getting it right... We know as a nation we’re having these conversation and really questioning whether states across the nation should be doing this,” Ryan said. “...It was disappointing to see the bill, but we’re very grateful that the conversation has stopped for the moment, at least.”

Four other Republicans serving in the senate co-sponsored the bill with Behn. He believes that's the most support he's seen for reinstating the death penalty in the past two decades.

"I would truly like to believe we'd never have to use it. To say that I am a proponent...that's not really accurate. I would just as soon nobody ever had to use it," Behn said. "I just think it needs to be a toolbox that's available."

Iowa outlawed capital punishment in 1965. Three decades later, in 1995, the Iowa Senate overwhelmingly rejected a bill that would have reinstated the death penalty. Only 11 of the 50 senators voted for it.

## **RI: Survey: Economy in Iowa, Midwest is strong and growing**

The latest monthly survey of supply managers and business leaders in Iowa and eight other Midwestern states finds the numbers climbing for the fourth straight month.

Creighton University economist Ernie Goss says the February report of leading economic indicators is very encouraging.

"The overall index moves to its highest level since June of 2014," Goss says. "Obviously, that's good. The index ranges between zero and 100 and 50 is growth neutral. This was well above that. It expanded to 60.5. Now, that's not like your high school chemistry score, that's good!"

The overall index specifically for Iowa leapt by a huge margin, from nearly 52 in January to almost 63 in February. For the region, Goss says the business confidence index in this new survey soared to its highest level in six years.

"What that tells us is, the nine-state regional economy is likely to expand in the next three-to-six months," Goss says, "and expand at a pretty good pace."

The survey finds the region is adding manufacturing jobs at a solid pace, though the wholesale inflation gauge is also rising to its highest level since April of 2014.

"We've got some inflationary pressures, they're building," Goss says. "This is at the wholesale level so supply managers are telling us they're paying more and more for these raw materials and supplies."

Goss says the recent surveys point to solid growth in Iowa for the next six months with up to 4,500 job additions.

It shows Iowa's leading industries are food processing and ethanol production, while the lagging industries include metal manufacturers and agriculture equipment producers.

## **RI: Medical marijuana among issues legislators rushing to address**

Legislators who support medical marijuana are rushing to advance a bill that would at least extend the soon-to-expire state law that has decriminalized possession of cannabis oil for treatment of chronic epilepsy. Senator Joe Bolkcom, a Democrat from Iowa City, supports the bill, but says it's only a "half step."

"This bill is inadequate," Bolkcom said this morning. "It leaves thousands of other Iowans who have petitioned us for the last four years out in the cold."

Iowans with chronic and incurable diseases have been coming to the capitol, lobbying legislators to extend the law so they can use cannabis oil as treatment for nausea, pain and sleeplessness. But none of those advocates attended today's early morning meeting on this scaled back bill. Senator Thomas Greene, a Republican from Burlington, said he understands their frustration and disappointment.

"But as I've discovered here in my first seven weeks, things don't move as quickly as we would like, but I think things will happen," Green said. "There's a need. There's an urgency."

Greene is a retired pharmacist and he has two relatives who would benefit if doctors could prescribe cannabis oil as treatment.

"People with these medical issues are very real. It's not something that's one percent or two percent. It's a growing number," Greene said. "...We have to realize that medical treatment modes change over time and I've seen it in my 40 years in pharmacy. Advances...in therapy change every year — every day, so we have to be receptive to that, understanding and compassionate to those who need our help."

Greene said a growing number of Iowans support allowing doctors to prescribe the oil extract from a marijuana plant as treatment for a variety of illnesses. Green said he believes a "combined voice from medical professionals" eventually will help convince his fellow legislators to take that step.

This issue is part of the frantic activity at the statehouse this week as lawmakers rush to meet Friday's deadline for action on policy bills. Bills that fail to win approval in a committee are dead for the year.

## **NY Times: Xi Jinping, Seeking to Extend Power, May Bend Retirement Rules**

For years, China's Communist Party has maintained a check on the power of its leaders by calling on them to retire if they have reached age 68 when a new term begins.

Now President Xi Jinping, already the strongest Chinese leader in decades, may be maneuvering to bend those rules to retain a formidable ally — and create a precedent he could use to extend his own time in power.

Mr. Xi, 63, who has shaken up many political norms, does not want to be shackled by an informal rule created by his predecessors, people close to senior officials have said.

Whether Mr. Xi can get away with changing the age ceiling for staying in the party's top rank, the Politburo Standing Committee, has become a bellwether of how far he can consolidate his grip on a new party leadership that will be chosen in the fall.

Mr. Xi's immediate goal appears to be opening the way to retaining Wang Qishan, who has led his signature anticorruption drive and become one of the most powerful and feared officials in China, those people and other observers said. Mr. Wang, who is 68, could be forced to step down this year if the informal age ceiling holds.

But keeping Mr. Wang in place would also create an example that Mr. Xi could follow to stay in power after his two terms as president end in 2023. Already, news that Mr. Xi may delay choosing his successor has fanned speculation that he wants to prolong his hold on power.

Mr. Wang's fate has become one of the most intensely followed parts of the secretive maneuvering ahead of a Communist Party leadership shake-up late this year and is likely to be a topic of back-room speculation when the national legislature convenes here on Sunday.

Mr. Wang's staying on is a strong possibility, though not a certainty, said a retired Chinese official who knows several leaders, speaking on the condition of anonymity to discuss elite political deliberations. He said that Mr. Xi said that the age rule was not absolute, which was understood by officials to mean that he wanted Mr. Wang to be considered for the next term.

The blunt and combative Mr. Wang is an old friend of Mr. Xi's. Since 2012, Mr. Wang has led the Communist Party's discipline commission, overseeing the anticorruption campaign that has been a crowning feat of Mr. Xi's tenure. Mr. Wang also expanded the commission's role in policing loyalty to the party leader, making him a top political enforcer for Mr. Xi.

Along with his allegiance to Mr. Xi, Mr. Wang's diverse achievements — including as deputy prime minister, mayor of Beijing and one of the government's top financial firefighters — have fueled talk that Mr. Xi may want to install him as prime minister, shunting aside Li Keqiang, who was not Mr. Xi's pick for the job.

A party congress this fall will almost certainly reappoint Mr. Xi as party general secretary for five more years and appoint a new team to serve under him. Five of seven members of the Politburo Standing Committee must retire then under the current age limits, including Mr. Wang.

But the rule, known as "seven up, eight down," is not codified in any public documents. It says members of the Politburo Standing Committee who are 68 or older when the party congress meets every five years will retire, while officials 67 or younger remain in contention for the next term.

The retirement age has been changed for political ends before. In 1997, President Jiang Zemin imposed a ceiling of 70 to dispense with one rival, and five years later reduced it to 68 to push out another. (He made an exception for himself, staying-on as party leader until he was 76.)

"The rules for succession are all unwritten and largely up for negotiation," said Kerry Brown, a professor of Chinese studies at King's College, London. "All Xi has to do is play the 'exceptional times need exceptional remedies' card."

But while Mr. Xi is formidable, he may have to make trade-offs. Mr. Wang's chances of staying on may not survive the bartering among the party elite who choose the new lineup.

In particular, Mr. Xi may face suspicions that he wants to use Mr. Wang as a stalking horse for keeping power beyond the usual two terms as top leader. That, too, is an informal rule that has developed since the 1990s, when Deng Xiaoping sought to prevent another dictator-for-life like Mao.

By law, Mr. Xi can serve only two terms as president, but no law prevents him from retaining the more powerful post of party leader or some other position. Mr. Xi will turn 69 in 2022 when his second term as party general secretary ends.

Neither Mr. Xi nor Mr. Wang has said anything publicly about his plans. That would be nearly unthinkable hubris in the shadow play of Chinese politics, where ambition and power plays come cloaked in high-minded rhetoric and rules.

But the talk about Mr. Wang took off last October, when a party official, Deng Maosheng, told foreign reporters in Beijing that the age rule was not set in stone.

"The strict boundaries of 'seven up, eight down' don't exist," he said, according to Bloomberg. "This is something from folklore."

At the time, it was unclear whether Mr. Deng was echoing the views at the top of the party. His comments were not reported in Chinese media.

But before Mr. Deng's public remarks, Mr. Xi had said behind closed doors that the age rule was "not absolute," said the former official who knows several members of the party leadership.

His account was corroborated by a former American official with extensive high-level contacts in China. He spoke on condition of anonymity to protect those contacts. He said two people who meet with senior leaders had told him that Mr. Xi had played down the "seven up, eight down" rule.

Both unnamed sources said that, as far as they knew, Mr. Xi had not yet expressly demanded that Mr. Wang be kept on. Instead, by raising the age issue, Mr. Xi has signaled that Mr. Wang should be considered in discussions over coming months.

The bond between Mr. Xi and Mr. Wang goes back about five decades to Mao's turbulent Cultural Revolution, when they were both sent from Beijing to work in the dusty, poor hill country of northwestern China. Mr. Wang worked on a commune 50 miles from Mr. Xi, who has recalled visiting Mr. Wang for a night and giving him a book on economics.

After Deng Xiaoping began to free up the economy in the late 1970s, Mr. Wang abandoned a nascent career as a historian and became an expert on economic reforms. In the 1990s and early 2000s he took a series of government jobs cleaning up financial messes.

As deputy prime minister from 2008 to 2013, he was a crucial player in economic talks with the United States. After the global financial crisis erupted, he led a group of officials assigned to design China's response.

"You were my teacher," Mr. Wang told Henry M. Paulson Jr., a Treasury secretary under President George W. Bush, Mr. Paulson wrote in a book on dealing with China. "We aren't sure we should be learning from you anymore."

Mr. Wang also displays a deep red streak of faith in authoritarian one-party rule not so far from Mr. Xi's convictions.

"Wang is pragmatic and cleareyed," said Trey McArver, the director of China research for TS Lombard, an investment research company. "But it's a mistake to see him as a liberal free-marketeer. Rather, he is a reformer in the Chinese sense of the word. He will seek to increase the efficiency of the state-controlled system."

Some in Beijing say they believe that with China's economy slowing and straining under debt, and President Trump threatening to curb Chinese exports, Mr. Xi could make a case for making Mr. Wang prime minister.

"It seems clear to me that Xi would trust Wang more than Li and, as we know, Li was not Xi's choice," said Tony Saich, a professor at Harvard who specializes in Chinese politics. "The replacement of Li by Wang might provide a chance to kick-start stalled reforms after the next congress."

Most insiders consider the move unlikely, however. Mr. Wang would be reluctant to take the job unless Mr. Xi gave him a bigger say over the economy, said Deng Yuwen, a commentator in Beijing who formerly edited a party newspaper. Mr. Xi might be unwilling to share that power.

"The reason Li can't get much done is that everyone knows where the real power is," Mr. Deng said. "Wang Qishan would certainly want to be more like a traditional premier, with more power over the major economic decisions."

The retired official said that Mr. Wang had told friends that he was ready to retire at the end of the year. But Mr. Wang has also said he never expected to become the head of the party's anticorruption agency, and has warned officials always to be prepared for unexpected tasks.

"Look it up, before the 18th Party Congress, nobody expected it, inside and outside the party, here and abroad, when Wang Qishan became the central discipline inspection commission secretary," Mr. Wang told officials in a video that leaked online last year. "What's the Communist Party about? You do whatever the party tells you."

## **REUTERS: Senate approves Ben Carson as housing secretary**

The Senate voted on Thursday to confirm retired neurosurgeon Ben Carson as secretary of the Department of Housing and Urban Development (HUD) in President Donald Trump's Cabinet.

Carson, who ran for the 2016 Republican presidential nomination and later endorsed Trump, becomes the only African-American in the Trump Cabinet. The Senate confirmed his appointment by a vote of 58 to 41.

During his confirmation hearing in January, Carson, 65, told the Senate Committee on Banking, Housing, and Urban Affairs that he would monitor any potential conflicts of interest between his agency and properties controlled by Trump.

He also told lawmakers he was fit to lead HUD, an agency whose mission includes helping the poor get housing, even though he has sometimes criticized its work.

## **REUTERS: Senate confirms Perry as energy secretary**

Former Texas governor has vowed to renew nuclear weapons arsenal

The U.S. Senate on Thursday voted to confirm President Donald Trump's pick to head the Department of Energy, former Texas Governor Rick Perry, who has promised to renew America's nuclear weapons arsenal.

Perry's rise to America's top energy official came against opposition from Democrats worried about his ties to oil companies, his doubts about the science of climate change, and the fact that he once called for the department's total elimination — a comment he has since said he regrets.

The Senate voted 62 to 37 in support of Perry.

Perry, 66, was governor of Texas from 2000 to 2015, making him the longest-serving governor of the oil-producing state in its history.

As energy secretary, Perry would lead a vast scientific research operation credited with helping trigger a U.S. drilling boom and advancements in energy efficiency and renewables technology, and would oversee America's nuclear arsenal.

His predecessor, Obama Energy Secretary Ernest Moniz, was a nuclear physicist who led technical negotiations in the 2015 Iran nuclear deal, while the previous head, Steven Chu, was a Nobel Prize-winning physicist.

The former Texas governor said during his confirmation hearing earlier this year that he regretted having previously called for the department's elimination during his failed bid for the Republican presidential nomination in 2012.

## **REUTERS: Trump's attorney general Sessions recuses himself from investigations of Trump campaign**

U.S. Attorney General Jeff Sessions said on Thursday he would recuse himself from any investigations into alleged Russian meddling in the 2016 U.S. presidential election because he was involved with President Donald Trump's campaign.

But Sessions, who was a long-time U.S. senator before becoming the country's top law enforcement official, said he did nothing wrong when he did not disclose during Senate testimony that he had met last year with Russia's ambassador. He said the meetings were in his capacity as senator, not as a campaign aide.

"I have recused myself in the matters that deal with the Trump campaign," Sessions told reporters at a hastily arranged news conference after several of his fellow Republicans in Congress called for him to recuse himself and Democrats urged him to resign.

Sessions said he had been weighing recusal - ruling himself out from any role in the investigations - even before the latest twist of the controversy over ties between Trump associates and Russia that has dogged the early days of his presidency.

U.S. intelligence agencies concluded last year that Russia hacked and leaked Democratic emails during the election campaign as part of an effort to tilt the vote in Trump's favor. The Kremlin has denied the allegations.

During his Senate confirmation hearing in January, Sessions responded to a question from Democratic Senator Al Franken that he did not "have communications with the Russians" during the presidential campaign.

But on Wednesday night, the Washington Post revealed that Sessions, who was a senior campaign aide of Trump's, received Russian Ambassador Sergei Kislyak in his Senate office in September.

The other encounter was in July at a Heritage Foundation event that was attended by about 50 ambassadors, during the Republican National Convention, the Post said.

Sessions said he was "honest and correct" in his answer to Franken, drawing a distinction between his role as a senator and his role as a campaign aide.

Before the news conference, Trump said he had "total" confidence in Sessions. Asked whether Sessions should step aside from the investigations, Trump told reporters, "I don't think so."

Trump called frequently during his campaign for improved relations with Russia, drawing criticism from Democrats and some Republicans. Ties with Russia have been deeply strained in recent years over Moscow's military interference in Ukraine, military support for President Bashar al-Assad in Syria and President Vladimir Putin's intolerance of political dissent.

## **Bloomberg: Caterpillar office raided by tax agents**

Caterpillar shares headed for the steepest decline in eight months as the biggest maker of machinery for mining and construction had its Illinois offices raided by federal tax and financial officials.

Searches were conducted Thursday in Peoria, East Peoria and Morton by the IRS, the Federal Deposit Insurance Corp. and the Commerce Department, said Sharon Paul, a spokeswoman for the U.S. Attorney's Office for the Central District of Illinois.

Declining to give details on the nature of the raid, she said that in other cases the U.S. Attorney's Office has dealt with the IRS's Criminal Investigations unit and the Commerce Department's Office of Export Enforcement. Caterpillar has a financial unit that lends to customers.

Caterpillar confirmed by email the presence of agents in some of its Peoria-area facilities, without elaborating. "Caterpillar is cooperating," it said.

The stock fell 5.1 percent to \$93.60 at 1:05 p.m. Eastern Time in New York, heading for the biggest decline since June.

Although it isn't clear what the focus of the raids are, the company disclosed in an annual filing last month that it received a grand jury subpoena from the U.S. District Court for the Central District of Illinois on Jan. 8, 2015.

The subpoena requested documents relating to, among other things, financial information on U.S. and non-U.S. Caterpillar subsidiaries. That included undistributed profits of non-U. S. subsidiaries and the movement of cash among U.S. and non-U. S. subsidiaries, the company said.

The manufacturer said it got additional subpoenas relating to this investigation requesting more information on the purchase and resale of replacement parts by Caterpillar and non-U. S. Caterpillar subsidiaries and dividend distributions of certain non-U. S. Caterpillar subsidiaries. The company said in the filing that it believes this matter "will not have a material adverse effect on the company's consolidated results of operations, financial position or liquidity."

"I can confirm that our agents are on-site conducting official business," said Justin Cole, spokesman for the IRS Criminal Investigation division. "I'm unable to give any more details."

A spokesman for the FDIC declined to comment.

## **REUTERS: Trump's EPA budget proposal targets climate, clean water programs**

The White House is proposing to slash a quarter of the U.S. Environmental Protection Agency's budget, targeting climate-change programs and those designed to prevent air and water pollution like lead contamination, a source with direct knowledge of the proposal said on Thursday.

President Donald Trump has long signaled his intention to reverse former Democratic President Barack Obama's climate-change initiatives. But the Republican president has vowed his planned overhaul of green regulation would not jeopardize America's water and air quality.

The 23-page 2018 budget proposal, which aims to slice the environmental regulator's overall budget by 25 percent to \$6.1 billion and staffing by 20 percent to 12,400 as part of a broader effort to fund increased military spending, would cut deeply into programs like climate protection, environmental justice and enforcement.

The Washington Post was first to report the staff and overall budget cuts, but the source disclosed new details on the impact the cuts would have on programs.



The EPA had until Wednesday to report back to the White House. The agency did not immediately respond to a request for comment on the budget proposal or its counter proposal.

The proposal, sent to the EPA this week, would cut into grants that support American Indian tribes and energy efficiency initiatives, according to the source, who read the document to Reuters.

State grants for lead cleanup, for example, would be cut 30 percent to \$9.8 million. Grants to help native tribes combat pollution would be cut 30 percent to \$45.8 million. An EPA climate protection program on cutting emissions of greenhouse gases like methane that contribute to global warming would be cut 70 percent to \$29 million.

The proposal would cut funding for the brownfields industrial site cleanup program by 42 percent to \$14.7 million. It would also reduce funding for enforcing pollution laws by 11 percent to \$153 million.

The budget did not cut state revolving funds for programs, that Congress tapped last year to provide aid to Flint, Michigan, for its lead pollution crisis.

All staff at a research program, called Global Change Research, as well as 37 other programs would be cut under the plan.

## CONGRESSIONAL HURDLES

The Republican-led Congress would have to approve any EPA cuts. Some of the cuts are unlikely to pass as they are popular with both Democrats and Republicans. Congress would be unlikely to approve a proposal to cut all staff in a diesel emissions program, for example.

Scott Pruitt, the new head of the EPA, told U.S. mayors on Thursday he would make a priority of cleanups of industrial and hazardous waste sites and improving water infrastructure, even as the White House proposed severe proposed cuts to those programs.

“In this budget discussion that is ongoing with Congress that is just starting, there are some concerns about some of these grant programs that EPA has been a part of historically,” Pruitt said.

“I want you to know that with the White House and also with Congress, I am communicating a message that the brownfields program, the Superfund program and the water infrastructure grants and state revolving funds are essential to protect,” he said.

A state air pollution expert said the program cuts, if enacted, would harm some of the people most at risk from particulate and lead contamination.

“Any of these programs where they’ve cut air pollution or water pollution is going to have a direct effect on inner cities,” said Bill Becker, director of the National Association of Clean Air Agencies.

## **Bloomberg: GOP governors forming plan to keep Obama's Medicaid expansion**

A group of Republican governors is preparing a compromise plan for their peers in Congress who want to roll back Obamacare’s Medicaid benefits, asking them to preserve the law’s expansion of coverage to millions of poor people.

The compromise proposal has been initiated by a group including Ohio Gov. John Kasich and Wisconsin Gov. Scott Walker, and would hold on to parts of the Affordable Care Act's expansion of the program. It's meant to satisfy Republican goals of repealing Obamacare and giving more control of Medicaid to the states, while also maintaining coverage of people such as childless adults and those just above the poverty level. It would also open the door for states such as Wisconsin to broaden Medicaid eligibility.

The compromise plan and the effort to promote it was described by senior state officials, who spoke on condition of anonymity because it isn't yet public. The group also includes Utah, Arizona, and Tennessee, according to the officials. The proposal was presented to larger groups of governors in the past week during their winter meeting in Washington, according to the officials.

Other state officials spoke on the record about what they're seeking from Republicans who are crafting changes.

"What we're trying to do is have everybody be on the same page with something that'll actually pass and work in the states," Tennessee Gov. Bill Haslam said Tuesday at a press conference. Haslam said the group has been holding conference calls about every other day.

Jon Thompson, a spokesman for the Republican Governors Association, declined to comment.

Another element of the proposal deals with how the Medicaid expansion is funded. Republicans in Congress have talked about moving to a "block grant," giving a fixed amount of money to each state. The governors want the option to use a more flexible per-person allotment that would protect their budgets if Medicaid rolls grew quickly, for example in a recession.

The proposal comes as Republicans in Congress are trying to coalesce around how to repeal the Affordable Care Act and replace it with a policy of their own devising. Some have called for a total repeal immediately, while others say no effort should go ahead without a program to maintain coverage.

Thirty-one states expanded Medicaid under Obamacare, while some Republican-led states opted not to. Those program expansions brought coverage to about 12 million Americans, and governors have been saying for months that Congress should move carefully. Keeping the coverage expansion intact would benefit companies including Centene and Molina Healthcare, which have built big businesses around covering low-income people.

Nate Checketts, director of Utah's Medicaid program, emphasized that there isn't yet consensus among GOP-led states. But Utah and others like it want flexibility to join the program if it continues, he said.

"If there is a program that's out there we, as a non-expansion state, and we assume other states like us, want to have access to those funds," Checketts said.

Rep. Joe Barton, a Texas Republican who sits on one of the committees writing the bills, said he wasn't surprised by that type of request.

"Governors want more money, longer, with no strings attached," Barton said Thursday in an interview. "They've wanted that for 30 years. They'll want it 30 years from now."

The governors' proposal was presented to larger groups of governors last week at their winter meeting in Washington, according to the state aides.

"The governor has been pretty clear that he doesn't want to see the rug pulled out from anyone," said Christina Corieri, a senior policy adviser to Republican Gov. Doug Ducey of Arizona. "We are willing and at the table to

talk about financing reforms to Medicaid, as long as those are workable financing reforms, as long as those are equitable, and as long as we get the flexibility to manage” the program.

States also appear to be coming together around the idea that Congress needs to shore up the individual health insurance market before tackling Medicaid, lest people get shifted into a system where they can't get affordable coverage. Some Republican proposals in Congress would move some people off Medicaid.

“You can't move anyone out of the program without some affordable, viable option to move them into,” Arizona's Corieri said. She said her state is open to the idea of addressing both Medicaid and the individual market at the same time, or separately.

“States do have concerns about what happens to individuals if they're not covered by Medicaid,” Utah's Checketts said. “What other options do they have?”

There are signs that President Donald Trump is at least sympathetic. In a Tuesday night address to Congress, Trump said a replacement plan should give governors “the resources and flexibility they need with Medicaid to make sure no one is left out.”

Sen. Rob Portman, an Ohio Republican, interpreted those remarks to mean Trump supports keeping the Medicaid expansion.

“We have to address that population, and that's what he said,” Portman said in an interview after Trump's speech. “You can't leave these people behind.”

## **POLITICO: House leaders: Obamacare repeal will pass this month**

With Donald Trump reportedly on board, the House is poised to steamroll conservative opposition, senior lawmakers say.

By RACHAEL BADE, KYLE CHENEY and JOHN BRESNAHAN

Take it to the bank, GOP leaders are all but declaring: The House will vote to repeal and replace by the end of this month.

Their confidence, coming after months of dead ends and false starts, is fueled by the belief that President Donald Trump has their back — even if some conservatives currently don't.

At a closed-door meeting with Republicans on Thursday, Speaker Paul Ryan said he plans for the House to hold a vote on the leadership's Obamacare alternative in three weeks, sources in the room told POLITICO. The White House and the Senate support the House GOP leadership's effort, Ryan added — comments many in the room took as a warning for the far right to get in line.

On Friday, Vice President Mike Pence and newly installed Health and Human Services Secretary Tom Price will join Ryan in his hometown of Janesville, Wisconsin, to pitch their health care agenda. It's the clearest display of unity yet between the White House and GOP leadership on an Obamacare replacement strategy.

Price, meanwhile, has been summoning to his office conservative agitators who oppose Ryan's draft proposal. While Price didn't try to strong-arm them into standing down, the meetings themselves send a signal that the White House is in Ryan's corner.

“We’re all working off the same piece of paper, the same plan,” Ryan said at a Thursday news conference when asked about conservative opposition. “We are in sync — the House, the Senate and the Trump administration, because this law is collapsing.”

Privately, senior Republican lawmakers and staff are more blunt. They say they have no problem steamrolling conservatives by daring them to vote against an Obamacare repeal that their constituents have demanded for years.

“Conservatives are going to be in a box,” said one senior Republican lawmaker. Trump, the source predicted, eventually will “go out front and ... tell the conservatives ... they’re either for this or for keeping Obamacare.”

That moment hasn’t arrived yet, though, and conservatives haven’t been shy about voicing their objections to Ryan’s plan — including to administration officials. Several House Freedom Caucus and Republican Study Committee members have joined Senate firebrands Rand Paul, Ted Cruz and Mike Lee in blasting a draft Ryan plan as “Obamacare-lite.”

The White House has responded by dispatching Price, a former House member with sterling conservative credentials, to quell the uprising and try to sell conservatives on the repeal plan. Price once ran the conservative Republican Study Committee himself. And he wrote an Obamacare replacement plan that closely mirrors Ryan’s — and that had broad support among members on the far right, including Freedom Caucus Chairman Mark Meadows of North Carolina.

Price in the coming weeks is expected to meet with Republicans opposed to the leadership plan. He summoned study committee Chairman Mark Walker on Wednesday after the North Carolina Republican said he would vote against a draft of the House bill. The statement had surprised leadership and irked some of his fellow study committee members: California Rep. Tom McClintock. in a private RSC meeting, called it “Freedom Caucus crap,” referring to the in-your-face tactics employed by the smaller, more aggressive group. McClintock resigned from the Freedom Caucus in 2015.

Price also met Wednesday with Meadows, Jim Jordan of Ohio and Morgan Griffith of Virginia. POLITICO reported the night before that Meadows’ wife had sent a mass email to Republicans in North Carolina, urging them to call the White House and Congress to oppose what she derisively dubbed “Ryancare.”

Price’s outreach seems to have engendered goodwill. Freedom Caucus leaders declined an invitation from Paul to engage in a high-profile act of political theater on Thursday to protest what conservatives see as a secretive process used to craft the GOP health care legislation. Paul wanted the group to join him in trying to barge through security into a Capitol meeting room where GOP leaders were rumored to have stashed the latest draft of the health care plan.

Some Freedom Caucus members insist that, as far as they know, the White House hasn’t endorsed Ryan’s bill. They say they’ve never been told by administration officials that Trump backs the proposal.

“There have been stories in the media that somehow the White House and Ryan’s office are in agreement on health care,” said Rep. Raul Labrador (R-Idaho), a Freedom Caucus member. “We have not heard that [Trump] backed it or he doesn’t.”

Other conservatives, however, believe the White House is moving in Ryan’s direction. In a brief interview outside the House chamber Wednesday evening, Walker said it’s clear from his meetings with senior administration officials that Ryan’s plan is “the way that they’re headed.”

Numerous sources told POLITICO that Price and other White House staff have defended the use of refundable tax credits — a big sore point for far-right members that are part of Ryan's plan — during several meetings with conservatives.

Paul, one of the most vocal opponents of the House GOP plan, said he sparred with Price over the tax credits during a recent conversation.

“The only thing we have a disagreement on is refundable tax credits,” Paul said of his conversations with Price, though he also knocked Ryan’s proposal to pay for part of the replacement by curbing an employer deduction for health care. “We’re not real excited about a new tax on health insurance.”

With the Energy and Commerce Committee expected to take up the first portion of the GOP leadership bill next week, a path to the end of the first phase of the Obamacare fight — passing the bill in the House — is starting to emerge. The Senate, however, is another story.

The upper chamber is tensely divided over how to handle the Medicaid expansion under Obamacare; any rollback is bound to create winners and losers among states. Majority Leader Mitch McConnell of Kentucky told Ryan he needs the House bill within three weeks to move a measure through his own chamber before senators get bogged down in other issues.

The White House wasn’t always behind Ryan's plan; the speaker had to sell it. Price's involvement — which was delayed by his confirmation fight — has certainly helped.

Since early February, conservatives have been making their case to the White House that they should simply move a repeal bill and get to the details of replacement later. For weeks, White House officials did nothing to counter the conservative backlash: Two senior administration aides attended a February conservative retreat where Freedom Caucus leaders and Walker devised their plan to push for an immediate repeal vote.

Last week, conservatives decided to make a push against Ryan's bill via a media blitz, an effort devised partly to try to get Trump’s attention.

Some conservatives are still hoping they can win a few changes. During his meeting with Price, Walker said he asked the secretary to consider tying tax credits to a person's income level as well as a quicker end to Obamacare's expansion of Medicaid. He also expressed concerns about the cost of the replacement package, as he worries it will cost the government just as much as Obamacare did.

Walker added that he hopes to get to yes.

“We want to get behind the House plan, but we just want to make sure, to quote Secretary Price, that these dials are turned in the right direction,” he said. “We want to make sure we’re not putting the middle class in a situation where they’re carrying the weight of this.”

## **POLITICO: Pence team downplays private email account usage**

By MATTHEW NUSSBAUM

Vice President Mike Pence used a private AOL email account to conduct state business and was hacked while governor of Indiana, the Indianapolis Star reported on Thursday.

But Pence's team downplayed the story and dismissed any comparisons to the email controversy that plagued Hillary Clinton.

The report said Pence discussed sensitive matters and homeland security issues on the account, based on emails the Star obtained via a public records request, and an administration official confirmed that the account was hacked over the summer. The revelation comes after Pence regularly lambasted Clinton on the campaign trail for her use of a private email server as Secretary of State.

Pence's press secretary Marc Lotter dismissed any comparisons to the Clinton email controversy as "absurd," noting that Pence had been using the AOL account since the 1990s and did not set up a private server like Clinton did. He added that the use of a private email account by an Indiana governor was routine.

"Similar to previous governors, during his time as Governor of Indiana, Mike Pence maintained a state email account and a personal email account," he said in a statement. Lotter also said that Pence retained outside counsel to "review all of his communications to ensure that state-related emails are being transferred and properly archived by the state," as is required by Indiana law. That review is still being conducted.

And Lotter added that it would have been impossible for Pence to have emailed classified information, as Clinton did, because the Indiana governor did not have security clearance.

Pence's use of the private account had previously been reported by the Star.

President Donald Trump regularly assailed Clinton for her use of a private email server and said she should have been jailed for her actions. FBI director James Comey opted not to recommend prosecution against Clinton but said she and her staff had been "extremely careless" with classified information.

## Tabor, Eric [AG]

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**From:** Tabor, Eric [AG]  
**Sent:** Thursday, March 02, 2017 2:24 PM  
**To:** Ambrozic, Jane [AG]  
**Subject:** FW: Recommendation Against Proposed Iowa "Religious Freedom Restoration Act"  
**Attachments:** Final Lambda Legal Recommends Against Iowa RFRA (March 2 2017) nm.DOC

For Tom.

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**From:** Camilla Taylor [mailto:ctaylor@lambdalegal.org]  
**Sent:** Thursday, March 02, 2017 2:21 PM  
**To:** Tabor, Eric [AG]; Thompson, Jeffrey [AG]  
**Cc:** Malheiro, Sharon K.; Nancy Marcus; Jenny Pizer  
**Subject:** Recommendation Against Proposed Iowa "Religious Freedom Restoration Act"

March 2, 2017

Attorney General Tom Miller  
Office of the Attorney General of Iowa  
Hoover State Office Building  
1305 E. Walnut Street  
Des Moines IA 50319

*Delivered via email to [eric.tabor@iowa.gov](mailto:eric.tabor@iowa.gov) and [jeffrey.thompson@iowa.gov](mailto:jeffrey.thompson@iowa.gov).*

### **Re: Recommendation Against Proposed Iowa "Religious Freedom Restoration Act"**

Dear Attorney General Miller,

We are writing on behalf of Lambda Legal Defense and Education Fund ("Lambda Legal") to express strong opposition to the possibility of the Iowa legislature taking up a bill to enact a broad Religious Freedom Restoration Act ("RFRA") because **there has been no showing of need** for expanded religious rights in Iowa and experience in numerous other states has shown that the rights sought to be created by such a law **inevitably are invoked by those seeking to justify discrimination** against lesbian, gay, bisexual and transgender ("LGBT") individuals, same-sex couples, and people living with HIV. Harmful discrimination, related litigation, and business aversion to the state are the **unfortunate, contentious and damaging results** for the state's residents, court system, and economy.

Lambda Legal is the nation's oldest and largest legal organization working for full recognition of the civil rights of LGBT people and everyone living with HIV, through policy advocacy, impact litigation, and public education. Among many other landmark cases during its 44 year history, Lambda Legal was counsel for plaintiffs in *Obergefell v. Hodges*, 576 U.S. \_\_\_, 135 S.Ct. 2584 (2015); *Lawrence v. Texas*, 539 U.S. 558 (2003); and *Romer v. Evans*, 517 U.S. 620 (1996), three of the most important cases addressing sexual orientation and the law decided to date by the U.S. Supreme Court. Lambda Legal also was counsel for plaintiffs in a number of cases in Iowa resulting in significant victories for the rights of LGBT people, including *Rhoades v. State*, 848 N.W.2d 22 (Iowa 2014); *Gartner v. Iowa Dep't of Pub. Health*, 830 N.W.2d 335 (Iowa 2013); *Varnum v. Brien*, 763 N.W.2d 862 (Iowa 2009) and *Alons v. District Court for Woodbury County*, 698 N.W.2d 858 (Iowa 2005).

Iowa is home to a significant LGBT population that would be put at risk if discrimination against them were allowed to proliferate in the name of religion. According to an analysis of 2010 U.S. Census data by the Williams Institute at the UCLA School of Law, 4,093 same-sex couples make their home in Iowa, with many of those couples raising children.<sup>[1]</sup> In addition, there are many other LGBT members of same-sex couples not captured in these figures because they are not sharing one household.<sup>[2]</sup>

Lambda Legal's membership includes over 2,000 Iowans and we are committed to protecting those individuals, their families, and Iowa's entire LGBT community against discrimination. We understand and believe that the State shares our commitment to protecting this substantial but vulnerable part of Iowa's population and also to ensuring that the State itself plays no part in inviting or facilitating discrimination. Our shared interests in preventing discrimination would be threatened were a RFRA bill to advance in this state.

Constitutional protections for religious freedom are strong in Iowa and there has been no showing of legitimate need to create expansive new religious rights with an Iowa RFRA. At the same time, we all saw during the contentious debates over proposed RFRA in other states (such as in Indiana<sup>[3]</sup> and Arizona<sup>[4]</sup>), that the asserted need for state RFRA rights was expressed and perceived as a desire by businesses to be able to turn away certain types of people—namely, same-sex couples. However, facilitating exclusion of targeted classes of people from public accommodations and other aspects of civic participation is not and has never been a legitimate basis for enacting a statute (whether in the name of religion or not). Indeed, the desire to exclude same-sex couples or LGBT individuals from one's business is no more a legitimate purpose in 2017 than the desire to exclude interracial couples and people of color generally from public places in 1967.

Consequently, given the troubling reality of persistent, religiously motivated discrimination in public contexts, and elevated public concern about the harms of such discrimination, the enactment of anti-LGBT state laws is not economically advisable because they prompt strong national business opposition.<sup>[5]</sup> This is due in significant part to the fact that 91% of Fortune 500 companies now have and place great value on their own nondiscrimination protections for their LGBT employees.<sup>[6]</sup> Indeed, the Williams Institute reports that “[o]ver ninety percent of the country's largest companies . . . state that diversity policies are good for their corporate bottom line.”<sup>[7]</sup> Moreover, according to a 2015 national poll, two-thirds of small businesses surveyed reported that businesses should not be allowed to refuse service to LGBT people because of religious beliefs.<sup>[8]</sup>

In addition to major corporate opposition, consumers similarly have expressed outrage, including through boycotts with substantial economic effects, in response to legislation facilitating discrimination against LGBT people.<sup>[9]</sup> In the context of employment discrimination, the vast majority of Americans believe that every worker is important and should be given equal job opportunities.<sup>[10]</sup> As a result, a state's economy is the strongest when discrimination is not permitted to interfere with qualified workers who are contributing to the economy and when customers know they will be welcomed and treated fairly—and where everyone can participate without rejection or marginalization based on anyone else's discriminatory religious views.

Finally, laws that seem to invite religion-based discrimination can be costly for states. For example, such laws can encourage demands that public employers accommodate employees' religious harassment and refusal to interact with targeted coworkers and members of the public, which in turn can lead to discrimination lawsuits against the government. Taxpayers will be forced to foot the bill to defend the government either against lawsuits by those rejected based on others' religious beliefs, or by those who wished to discriminate and were informed that such conduct is not permissible within a government setting. Proceeding down this path promises only negative consequences.



In *Burwell v. Hobby Lobby*, 573 U.S. \_\_\_\_, 134 S. Ct. 2751 (2014), Lambda Legal submitted an amicus brief to the Supreme Court that agreed with the conclusion in the amicus brief submitted by the State of Iowa and ten other states warning of the dangers of expanded religious rights that “render[] both state and federal regulation of business activity vulnerable to claims for religious exemption, including in the areas of public safety, civil rights, social welfare, land use, housing, employment, and public health.”<sup>[11]</sup> These dangers, aptly recognized by Iowa and others in *Hobby Lobby*, are acute when a broad state RFRA effectively encourages individuals, companies and other organizations to demand exemptions from state civil rights protections.

The experiences of other states confirms that enactment of a state RFRA statute would create real risks for Iowans. The Iowa Civil Rights Act of 1965 has long accorded critical protections against discrimination on the basis of age, race, creed, color, sex, sexual orientation, gender identity, national origin, religion, or disability, in contexts including housing, employment, and public accommodations. Today, a state RFRA would put those crucial civil rights protections at grave risk of being effectively undermined because such a law inevitably would be taken by some as an invitation to discriminate against LGBT people. Even if the courts were to hold after-the-fact that Iowa has compelling interests in enforcing the state’s civil rights law, and that the ICRA is the least restrictive means for serving those interests, the harms of discrimination already would have been inflicted upon Iowans who deserve better.

As for the range of potential threats to individual Iowans, events in other states indicate that the following troubling scenarios should be anticipated:

- For-profit businesses could refuse to sell goods or services to same-sex couples, LGBT individuals, unmarried couples, single mothers, and people of minority religious faiths;
- Health care providers could refuse to treat LGBT or HIV-positive patients;
- Hospitals, nonprofit agencies and businesses could deny family health insurance benefits or family medical leave to workers with a same-sex spouse if the employer claims a religious reason for doing so;
- Nursing homes could turn away elderly same-sex couples, LGBT individuals, or anyone living with HIV;
- Commercial businesses might hire, fire, and treat employees unequally based on religious beliefs if the owners are religiously motivated—meaning women could be denied jobs, LGBT people could be fired, and African Americans could be paid less than whites, if the owners say their religious beliefs so dictate;
- Homeless shelters could refuse to house LGBT families;
- LGBTQ young people in foster care could be denied housing, medical care or other services;
- Charitable meal delivery services for the elderly could proselytize against LGBT people when they deliver meals; and
- Assisted living facilities, nursing homes and hospitals could ban transgender residents and patients from dressing, grooming and using restrooms and other facilities consistently with their gender identity.

In addition to economic and other tangible injuries caused by such refusals of services and other discriminatory treatment, such treatment often also has devastating psychological effects. Research consistently finds that social exclusion and stigmatization of LGBT people can lead to serious mental health problems, including depression, anxiety, substance use disorders, and suicide attempts.<sup>[12]</sup> The

religious reinforcement of anti-LGBT bias and discrimination often increases the negative impact on mental health.<sup>[13]</sup>

Legislation enacted for the purpose of allowing businesses, social welfare agencies and organizations, health care facilities, and others to turn away people in need of services, based on the excluded persons' sexual orientation, gender identity, or other classification, is a dramatic change from how we have always understood civil rights and constitutional protections. Especially at this moment in history when strong divisions about socially contentious issues too often culminate in increased acts of discrimination against minority groups, it is more dangerous than ever for the government to facilitate such discrimination. The enactment of a RFRA law written to give cover to such prejudice-driven exclusions of persons from equal participation in society impermissibly would involve the government in the facilitation of discriminatory treatment of Iowans. Instead, it should be the State's priority to protect all Iowans from the substantial harms of discrimination by preserving and fully enforcing the Iowa Civil Rights Act, regardless of anyone's religious motivations for otherwise unlawful discrimination.

For all of these reasons, Lambda Legal urges you not to support a RFRA bill in the Iowa legislature or in any other context.

Respectfully yours,

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cc: Chief of Staff Eric Tabor and Solicitor General Jeffrey Thompson

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<sup>[1]</sup> Gary J. Gates & Abigail M. Cooke, *Iowa Census Snapshot: 2010* 1-2 (Sept. 2011), [https://williamsinstitute.law.ucla.edu/wp-content/uploads/Census2010Snapshot\\_Iowa\\_v2.pdf](https://williamsinstitute.law.ucla.edu/wp-content/uploads/Census2010Snapshot_Iowa_v2.pdf).

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<sup>[2]</sup> See *id.*; Gary J. Gates, *Demographics of Married and Unmarried Same-sex Couples: Analyses of the 2013 American Community Survey* (March 2015), available at <http://williamsinstitute.law.ucla.edu/category/research/census-lgbt-demographics-studies/#sthash.eFYXq73M.dpuf>.

<sup>[3]</sup> J. Scott Trubey, *Indiana Still Healing from Scars of RFRA*, ATLANTA J. CONST. (April 2, 2016) (“*Indiana Still Healing*”) (“Indianapolis lost \$60 million in future convention business, and Angie’s List ... decided to halt plans to add hundreds of tech jobs in the city after the bill was signed. ... Major companies such as Apple, NASCAR and Salesforce condemned the bill, and Indiana became a punch line on late-night TV. ... Convention bookings in Indy in the second quarter of last year dipped 43 percent compared with the same period in 2014.”), available at <http://www.myajc.com/news/state--regional-govt--politics/indiana-still-healing-from-scars-rfra/f0lRpukhR4iDlXznoNkZYN/>; Monica Davey and Mitch Smith, *Indiana Governor, Feeling Backlash From Law’s Opponents, Promises a ‘Fix,’* N.Y. TIMES (March 31, 2015), available at [https://www.nytimes.com/2015/04/01/us/politics/indiana-governor-mike-pence-feeling-backlash-from-religious-laws-opponents-promises-a-fix.html?\\_r=0](https://www.nytimes.com/2015/04/01/us/politics/indiana-governor-mike-pence-feeling-backlash-from-religious-laws-opponents-promises-a-fix.html?_r=0).

<sup>[4]</sup> Hernanda Santos, *Arizona Governor Vetoes Bill on Refusal of Service to Gays*, N.Y. TIMES (Feb. 26, 2014) (Republican Governor Jan Brewer vetoed the RFRA bill “amid mounting pressure from Arizona business leaders, who said the bill would be a financial disaster for the state and would harm its reputation. Prominent members of the Republican establishment ... also sided with the bill’s opponents, who argued that the measure would have allowed people to use religion as a fig leaf for prejudice. ... Hour by hour, the state began to lose business even as the governor deliberated”), available at <https://www.nytimes.com/2014/02/27/us/Brewer-arizona-gay-service-bill.html>; Alia Beard Rau, Yvonne Wingett Sanchez and Mary Jo Pitzl, *Arizona Gov. Jan Brewer Vetoes Senate Bill 1062*, THE REPUBLIC (Feb. 26, 2014) (“SB 1070 resulted in an economic backlash against Arizona, and a reputation as a state that’s unwelcoming to minorities. Brewer and others made it clear ... that they hope for a different outcome with the veto of SB 1062”), available at <http://archive.azcentral.com/news/politics/articles/20140226arizona-jan-brewer-1062-statement.html>.

<sup>[5]</sup> See *supra* note 3, *Indiana Still Healing*.

<sup>[6]</sup> See *91% of Fortune 500 Companies Have Sexual Orientation Protections, Says HRC*, DENVER BUSINESS J. (Dec. 9, 2013), available at [http://www.bizjournals.com/denver/blog/finance\\_etc/2013/12/hrc-91-of-fortune-500-companies-have.html](http://www.bizjournals.com/denver/blog/finance_etc/2013/12/hrc-91-of-fortune-500-companies-have.html).

<sup>[7]</sup> Christy Mallory and Brad Sears, *Discrimination, Diversity and Development: The Legal and Economic Implications of North Carolina’s HB 2* at 32, n. 184 (May 2016) (“*Implications of North Carolina’s HB 2*”), available at <http://williamsinstitute.law.ucla.edu/wp-content/uploads/Discrimination-Diversity-and-Development-The-Legal-and-Economic-Implications-of-North-Carolinas-HB2.pdf>.

<sup>[8]</sup> *Id.* at n. 183.

<sup>[9]</sup> Emma Grey Ellis, *Guess How Much That Anti-LGBTQ Law Is Costing North Carolina*, WIRED (Sept. 18, 2016) (estimating that NC has lost \$395 million due to HB2-related boycotts), available at <https://www.wired.com/2016/09/guess-much-anti-lgbtq-law-costing-north-carolina/>; Ryan Bort, *A Comprehensive Timeline of Public Figures Boycotting North Carolina Over the HB2 ‘Bathroom Bill,’* NEWSWEEK (Sept. 14, 2016) (including comprehensive timeline of the boycotts of North Carolina by entities such as the NCAA, NBA, ACC, production studio Lionsgate, *Wicked* composer Stephen Schwartz, Cirque du Soleil, 269 children’s book authors and illustrators, and major entertainment figures including Bruce Springsteen, Ringo Starr, Itzhak Perlman, Maroon 5, Pearl Jam, Demi Lovato and Nick Jonas, as well as 68 leading national businesses), available at <http://www.newsweek.com/north-carolina-hb2-bathroom-bill-timeline-498052>. See also *supra* note 7, *Implications of North Carolina’s HB 2* (estimating that anti-LGBT law could cost state \$5 billion annually).

<sup>[10]</sup> *Gay and Lesbian Rights*, GALLUP, <http://www.gallup.com/poll/1651/gay-lesbian-rights.aspx>.

<sup>[11]</sup> Brief of California, Connecticut, Hawaii, Illinois, Iowa, Maine, Maryland, New York, Oregon, Vermont and Washington as Amici Curiae Supporting Petitioners at 9, *Burwell v. Hobby Lobby Stores*, 134 S. Ct. 2751 (2014) (No. 13-354), available at <http://sblog.s3.amazonaws.com/wp-content/uploads/2013/10/40797168.pdf>.

<sup>[12]</sup> See Edward J. Alessi, *et al.*, *Prejudice Events and Traumatic Stress among Heterosexuals and Lesbians, Gay Men, and Bisexuals*, *Journal of Aggression, Maltreatment & Trauma*, 22:5, 510-526 (2013), available at

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<https://www.researchgate.net/publication/259353848> Prejudice-Related Events and Traumatic Stress Among Heterosexuals and Lesbians Gay Men and Bisexuals.

<sup>[13]</sup> See Ilan H. Meyer, *et al*, *The Role of Help-Seeking in Preventing Suicide Attempts among Lesbians, Gay Men, and Bisexuals*, *Suicide and Life-Threatening Behavior* 45(1) at 8-9 (May 2014), available at <https://williamsinstitute.law.ucla.edu/research/health-and-hiv-aids/lgb-suicide-june-2014/> and at <https://www.researchgate.net/publication/262308758> The Role of Help-Seeking in Preventing Suicide Attempts among Lesbians Gay Men and Bisexuals.

## Tabor, Eric [AG]

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**From:** Camilla Taylor <ctaylor@lambdalegal.org>  
**Sent:** Thursday, March 02, 2017 2:21 PM  
**To:** Tabor, Eric [AG]; Thompson, Jeffrey [AG]  
**Cc:** Malheiro, Sharon K.; Nancy Marcus; Jenny Pizer  
**Subject:** Recommendation Against Proposed Iowa "Religious Freedom Restoration Act"  
**Attachments:** Final Lambda Legal Recommends Against Iowa RFRA (March 2 2017) nm.DOC

March 2, 2017

Attorney General Tom Miller  
Office of the Attorney General of Iowa  
Hoover State Office Building  
1305 E. Walnut Street  
Des Moines IA 50319

*Delivered via email to [eric.tabor@iowa.gov](mailto:eric.tabor@iowa.gov) and [jeffrey.thompson@iowa.gov](mailto:jeffrey.thompson@iowa.gov).*

### **Re: Recommendation Against Proposed Iowa "Religious Freedom Restoration Act"**

Dear Attorney General Miller,

We are writing on behalf of Lambda Legal Defense and Education Fund ("Lambda Legal") to express strong opposition to the possibility of the Iowa legislature taking up a bill to enact a broad Religious Freedom Restoration Act ("RFRA") because **there has been no showing of need** for expanded religious rights in Iowa and experience in numerous other states has shown that the rights sought to be created by such a law **inevitably are invoked by those seeking to justify discrimination** against lesbian, gay, bisexual and transgender ("LGBT") individuals, same-sex couples, and people living with HIV. Harmful discrimination, related litigation, and business aversion to the state are the **unfortunate, contentious and damaging results** for the state's residents, court system, and economy.

Lambda Legal is the nation's oldest and largest legal organization working for full recognition of the civil rights of LGBT people and everyone living with HIV, through policy advocacy, impact litigation, and public education. Among many other landmark cases during its 44 year history, Lambda Legal was counsel for plaintiffs in *Obergefell v. Hodges*, 576 U.S. \_\_\_, 135 S.Ct. 2584 (2015); *Lawrence v. Texas*, 539 U.S. 558 (2003); and *Romer v. Evans*, 517 U.S. 620 (1996), three of the most important cases addressing sexual orientation and the law decided to date by the U.S. Supreme Court. Lambda Legal also was counsel for plaintiffs in a number of cases in Iowa resulting in significant victories for the rights of LGBT people, including *Rhoades v. State*, 848 N.W.2d 22 (Iowa 2014); *Gartner v. Iowa Dep't of Pub. Health*, 830 N.W.2d 335 (Iowa 2013); *Varnum v. Brien*, 763 N.W.2d 862 (Iowa 2009) and *Alons v. District Court for Woodbury County*, 698 N.W.2d 858 (Iowa 2005).

Iowa is home to a significant LGBT population that would be put at risk if discrimination against them were allowed to proliferate in the name of religion. According to an analysis of 2010 U.S. Census data by the Williams Institute at the UCLA School of Law, 4,093 same-sex couples make their home in Iowa, with many of those couples raising children.<sup>[1]</sup> In addition, there are many other LGBT members of same-sex couples not captured in these figures because they are not sharing one household.<sup>[2]</sup>

Lambda Legal’s membership includes over 2,000 Iowans and we are committed to protecting those individuals, their families, and Iowa’s entire LGBT community against discrimination. We understand and believe that the State shares our commitment to protecting this substantial but vulnerable part of Iowa’s population and also to ensuring that the State itself plays no part in inviting or facilitating discrimination. Our shared interests in preventing discrimination would be threatened were a RFRA bill to advance in this state.

Constitutional protections for religious freedom are strong in Iowa and there has been no showing of legitimate need to create expansive new religious rights with an Iowa RFRA. At the same time, we all saw during the contentious debates over proposed RFRAs in other states (such as in Indiana<sup>[3]</sup> and Arizona<sup>[4]</sup>), that the asserted need for state RFRA rights was expressed and perceived as a desire by businesses to be able to turn away certain types of people—namely, same-sex couples. However, facilitating exclusion of targeted classes of people from public accommodations and other aspects of civic participation is not and has never been a legitimate basis for enacting a statute (whether in the name of religion or not). Indeed, the desire to exclude same-sex couples or LGBT individuals from one’s business is no more a legitimate purpose in 2017 than the desire to exclude interracial couples and people of color generally from public places in 1967.

Consequently, given the troubling reality of persistent, religiously motivated discrimination in public contexts, and elevated public concern about the harms of such discrimination, the enactment of anti-LGBT state laws is not economically advisable because they prompt strong national business opposition.<sup>[5]</sup> This is due in significant part to the fact that 91% of Fortune 500 companies now have and place great value on their own nondiscrimination protections for their LGBT employees.<sup>[6]</sup> Indeed, the Williams Institute reports that “[o]ver ninety percent of the country’s largest companies . . . state that diversity policies are good for their corporate bottom line.”<sup>[7]</sup> Moreover, according to a 2015 national poll, two-thirds of small businesses surveyed reported that businesses should not be allowed to refuse service to LGBT people because of religious beliefs.<sup>[8]</sup>

In addition to major corporate opposition, consumers similarly have expressed outrage, including through boycotts with substantial economic effects, in response to legislation facilitating discrimination against LGBT people.<sup>[9]</sup> In the context of employment discrimination, the vast majority of Americans believe that every worker is important and should be given equal job opportunities.<sup>[10]</sup> As a result, a state’s economy is the strongest when discrimination is not permitted to interfere with qualified workers who are contributing to the economy and when customers know they will be welcomed and treated fairly—and where everyone can participate without rejection or marginalization based on anyone else’s discriminatory religious views.

Finally, laws that seem to invite religion-based discrimination can be costly for states. For example, such laws can encourage demands that public employers accommodate employees’ religious harassment and refusal to interact with targeted coworkers and members of the public, which in turn can lead to discrimination lawsuits against the government. Taxpayers will be forced to foot the bill to defend the government either against lawsuits by those rejected based on others’ religious beliefs, or by those who wished to discriminate and were informed that such conduct is not permissible within a government setting. Proceeding down this path promises only negative consequences.

In *Burwell v. Hobby Lobby*, 573 U.S. \_\_\_, 134 S. Ct. 2751 (2014), Lambda Legal submitted an amicus brief to the Supreme Court that agreed with the conclusion in the amicus brief submitted by the State of Iowa and ten other states warning of the dangers of expanded religious rights that “render[] both state and federal regulation of business activity vulnerable to claims for religions exemption, including in the areas of public safety, civil rights, social welfare, land use, housing, employment, and public health.”<sup>[11]</sup> These dangers, aptly recognized by Iowa and others in *Hobby Lobby*, are acute when a broad state RFRA effectively encourages individuals, companies and other organizations to demand exemptions from state civil rights protections.

The experiences of other states confirms that enactment of a state RFRA statute would create real risks for Iowans. The Iowa Civil Rights Act of 1965 has long accorded critical protections against discrimination on the basis of age, race, creed, color, sex, sexual orientation, gender identity, national origin, religion, or disability, in contexts including housing, employment, and public accommodations. Today, a state RFRA would put those crucial civil rights protections at grave risk of being effectively undermined because such a law inevitably would be taken by some as an invitation to discriminate against LGBT people. Even if the courts were to hold after-the-fact that Iowa has compelling interests in enforcing the state's civil rights law, and that the ICRA is the least restrictive means for serving those interests, the harms of discrimination already would have been inflicted upon Iowans who deserve better.

As for the range of potential threats to individual Iowans, events in other states indicate that the following troubling scenarios should be anticipated:

- For-profit businesses could refuse to sell goods or services to same-sex couples, LGBT individuals, unmarried couples, single mothers, and people of minority religious faiths;
- Health care providers could refuse to treat LGBT or HIV-positive patients;
- Hospitals, nonprofit agencies and businesses could deny family health insurance benefits or family medical leave to workers with a same-sex spouse if the employer claims a religious reason for doing so;
- Nursing homes could turn away elderly same-sex couples, LGBT individuals, or anyone living with HIV;
- Commercial businesses might hire, fire, and treat employees unequally based on religious beliefs if the owners are religiously motivated—meaning women could be denied jobs, LGBT people could be fired, and African Americans could be paid less than whites, if the owners say their religious beliefs so dictate;
- Homeless shelters could refuse to house LGBT families;
- LGBTQ young people in foster care could be denied housing, medical care or other services;
- Charitable meal delivery services for the elderly could proselytize against LGBT people when they deliver meals; and
- Assisted living facilities, nursing homes and hospitals could ban transgender residents and patients from dressing, grooming and using restrooms and other facilities consistently with their gender identity.

In addition to economic and other tangible injuries caused by such refusals of services and other discriminatory treatment, such treatment often also has devastating psychological effects. Research consistently finds that social exclusion and stigmatization of LGBT people can lead to serious mental health problems, including depression, anxiety, substance use disorders, and suicide attempts.<sup>[12]</sup> The religious reinforcement of anti-LGBT bias and discrimination often increases the negative impact on mental health.<sup>[13]</sup>

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Sharon K. Malheiro  
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cc: Chief of Staff Eric Tabor and Solicitor General Jeffrey Thompson

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<sup>[1]</sup> Gary J. Gates & Abigail M. Cooke, *Iowa Census Snapshot: 2010 1-2* (Sept. 2011), [https://williamsinstitute.law.ucla.edu/wp-content/uploads/Census2010Snapshot\\_Iowa\\_v2.pdf](https://williamsinstitute.law.ucla.edu/wp-content/uploads/Census2010Snapshot_Iowa_v2.pdf).

<sup>[2]</sup> See *id.*; Gary J. Gates, *Demographics of Married and Unmarried Same-sex Couples: Analyses of the 2013 American Community Survey* (March 2015), available at <http://williamsinstitute.law.ucla.edu/category/research/census-lgbt-demographics-studies/#sthash.eFYXq73M.dpuf>.

<sup>[3]</sup> J. Scott Trubey, *Indiana Still Healing from Scars of RFRA*, ATLANTA J. CONST. (April 2, 2016) ("*Indiana Still Healing*") ("*Indianapolis lost \$60 million in future convention business, and Angie's List ... decided to halt plans to add hundreds of tech jobs in the city after the bill was signed. ... Major companies such as Apple, NASCAR and Salesforce condemned the bill, and Indiana became a punch line on late-night TV. ... Convention bookings in Indy in the second quarter of last year dipped 43 percent compared with the same period in 2014.*"), available at <http://www.myajc.com/news/state--regional-govt--politics/indiana-still-healing-from-scars-rfra/f0lRpuKhR4iDIXznoNkZYN/>; Monica Davey and Mitch Smith, *Indiana Governor, Feeling Backlash From Law's Opponents, Promises a 'Fix,'* N.Y. TIMES (March 31, 2015), available at [https://www.nytimes.com/2015/04/01/us/politics/indiana-governor-mike-pence-feeling-backlash-from-religious-laws-opponents-promises-a-fix.html?\\_r=0](https://www.nytimes.com/2015/04/01/us/politics/indiana-governor-mike-pence-feeling-backlash-from-religious-laws-opponents-promises-a-fix.html?_r=0).



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<sup>[4]</sup> Hernanda Santos, *Arizona Governor Vetoes Bill on Refusal of Service to Gays*, N.Y. TIMES (Feb. 26, 2014) (Republican Governor Jan Brewer vetoed the RFRA bill “amid mounting pressure from Arizona business leaders, who said the bill would be a financial disaster for the state and would harm its reputation. Prominent members of the Republican establishment ... also sided with the bill’s opponents, who argued that the measure would have allowed people to use religion as a fig leaf for prejudice. . . . Hour by hour, the state began to lose business even as the governor deliberated”), available at <https://www.nytimes.com/2014/02/27/us/Brewer-arizona-gay-service-bill.html>; Alia Beard Rau, Yvonne Wingett Sanchez and Mary Jo Pitzl, *Arizona Gov. Jan Brewer Vetoes Senate Bill 1062*, The Republic (Feb. 26, 2014) (“SB 1070 resulted in an economic backlash against Arizona, and a reputation as a state that’s unwelcoming to minorities. Brewer and others made it clear ... that they hope for a different outcome with the veto of SB 1062”), available at <http://archive.azcentral.com/news/politics/articles/20140226arizona-jan-brewer-1062-statement.html>.

<sup>[5]</sup> See *supra* note 3, *Indiana Still Healing*.

<sup>[6]</sup> See *91% of Fortune 500 Companies Have Sexual Orientation Protections, Says HRC*, DENVER BUSINESS J. (Dec. 9, 2013), available at [http://www.bizjournals.com/denver/blog/finance\\_etc/2013/12/hrc-91-of-fortune-500-companies-have.html](http://www.bizjournals.com/denver/blog/finance_etc/2013/12/hrc-91-of-fortune-500-companies-have.html).

<sup>[7]</sup> Christy Mallory and Brad Sears, *Discrimination, Diversity and Development: The Legal and Economic Implications of North Carolina’s HB 2* at 32, n. 184 (May 2016) (“*Implications of North Carolina’s HB 2*”), available at <http://williamsinstitute.law.ucla.edu/wp-content/uploads/Discrimination-Diversity-and-Development-The-Legal-and-Economic-Implications-of-North-Carolinas-HB2.pdf>.

<sup>[8]</sup> *Id.* at n. 183.

<sup>[9]</sup> Emma Grey Ellis, *Guess How Much That Anti-LGBTQ Law Is Costing North Carolina*, WIRED (Sept. 18, 2016) (estimating that NC has lost \$395 million due to HB2-related boycotts), available at <https://www.wired.com/2016/09/guess-much-anti-lgbtq-law-costing-north-carolina/>; Ryan Bort, *A Comprehensive Timeline of Public Figures Boycotting North Carolina Over the HB2 ‘Bathroom Bill,’* NEWSWEEK (Sept. 14, 2016) (including comprehensive timeline of the boycotts of North Carolina by entities such as the NCAA, NBA, ACC, production studio Lionsgate, *Wicked* composer Stephen Schwartz, Cirque du Soleil, 269 children’s book authors and illustrators, and major entertainment figures including Bruce Springsteen, Ringo Starr, Itzhak Perlman, Maroon 5, Pearl Jam, Demi Lovato and Nick Jonas, as well as 68 leading national businesses), available at <http://www.newsweek.com/north-carolina-hb2-bathroom-bill-timeline-498052>. See also *supra* note 7, *Implications of North Carolina’s HB 2* (estimating that anti-LGBT law could cost state \$5 billion annually).

<sup>[10]</sup> *Gay and Lesbian Rights*, GALLUP, <http://www.gallup.com/poll/1651/gay-lesbian-rights.aspx>.

<sup>[11]</sup> Brief of California, Connecticut, Hawaii, Illinois, Iowa, Maine, Maryland, New York, Oregon, Vermont and Washington as Amici Curiae Supporting Petitioners at 9, *Burwell v. Hobby Lobby Stores*, 134 S. Ct. 2751 (2014) (No. 13-354), available at <http://sblog.s3.amazonaws.com/wp-content/uploads/2013/10/40797168.pdf>.

<sup>[12]</sup> See Edward J. Alessi, *et al*, *Prejudice Events and Traumatic Stress among Heterosexuals and Lesbians, Gay Men, and Bisexuals*, *Journal of Aggression, Maltreatment & Trauma*, 22:5, 510-526 (2013), available at [https://www.researchgate.net/publication/259353848\\_Prejudice-Related\\_Events\\_and\\_Traumatic\\_Stress\\_Among\\_Heterosexuals\\_and\\_Lesbians\\_Gay\\_Men\\_and\\_Bisexuals](https://www.researchgate.net/publication/259353848_Prejudice-Related_Events_and_Traumatic_Stress_Among_Heterosexuals_and_Lesbians_Gay_Men_and_Bisexuals).

<sup>[13]</sup> See Ilan H. Meyer, *et al*, *The Role of Help-Seeking in Preventing Suicide Attempts among Lesbians, Gay Men, and Bisexuals*, *Suicide and Life-Threatening Behavior* 45(1) at 8-9 (May 2014), available at <https://williamsinstitute.law.ucla.edu/research/health-and-hiv-aids/lgb-suicide-june-2014/> and at [https://www.researchgate.net/publication/262308758\\_The\\_Role\\_of\\_Help-Seeking\\_in\\_Preventing\\_Suicide\\_Attempts\\_among\\_Lesbians\\_Gay\\_Men\\_and\\_Bisexuals](https://www.researchgate.net/publication/262308758_The_Role_of_Help-Seeking_in_Preventing_Suicide_Attempts_among_Lesbians_Gay_Men_and_Bisexuals).

## Tabor, Eric [AG]

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**From:** Tabor, Eric [AG]  
**Sent:** Monday, February 27, 2017 5:37 PM  
**To:** Willits, Emily [AG]  
**Subject:** FW: Legislator rips up bill to end licensing for social workers, barbers, other professionals

Its dead.

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**From:** Bakker, Eric [LEGIS] [mailto:Eric.Bakker@legis.iowa.gov]  
**Sent:** Monday, February 27, 2017 5:21 PM  
**Subject:** DMR: Legislator rips up bill to end licensing for social workers, barbers, other professionals

## Legislator rips up bill to end licensing for social workers, barbers, other professionals

Tony Leys, tleys@dmreg.com 5:03 p.m. CT Feb. 27, 2017

A Republican state representative drew applause from dozens of citizens Monday for literally tearing up a bill from Gov. Terry Branstad that would have cancelled licensure requirements for social workers, mental health therapists, barbers and several other professions.

"I wanted to publicly declare that when it comes to licensure reform and the taking away of all the things that you all have done and that you have dedicated your lives for, as far I'm concerned, my opinion is this," Rep. Bobby Kaufmann said as he ripped in half a cover sheet for [House Study Bill 138](#).

Kaufmann was chairman of a subcommittee that considered the bill proposed by Branstad, who is a fellow Republican. The panel listened to an hour of mostly negative comments before declaring the bill dead. Kaufmann's dramatic action drew whoops and applause from a hearing room packed with members of the professions in question.

The 82-page bill also had several other provisions, including a loosening of restrictions on new health-care facilities. But it was the proposal to withdraw professional licensing that drew heat.

Kaufmann said he received more than 3,600 emails about the bill, almost all of them in opposition. "I heard about it at McDonald's, at the grocery store, at Casey's, while I was getting my hair cut, and at Wal-Mart," Kaufmann said. "...There is zero appetite in this state for removing licensure. There is zero appetite for that to reappear in an amendment or to reappear in any sort of other bill the rest of the session."

Rep. Mary Mascher, an Iowa City Democrat who served on the subcommittee, noted that the only person who voiced any support Monday for ending the licensure requirements was a lobbyist for the conservative group Americans for Prosperity. "You need to be watching very carefully, because they're controlling a whole lot of what goes in our state right now," she said of the group, which is funded in part by billionaire brothers Charles and David Koch. "It should put the fear of God into all of us, because they've got the governor's ear."

Mascher said she was sorry so many professionals had to take time off from work Monday to testify against the bill. "We should have killed it before it ever got to this point," she said.

The bill would have substituted undefined "registration" for formal licensure for dietitians, athletic trainers, funeral directors, mental health counselors, marital therapists, social workers, speech pathologists and audiologists. It would have ended all licensure requirements for respiratory therapists, massage therapists, hearing-aid specialists, barbers and interior designers.

Professionals told legislators Monday that the licensure requirements ensure proper training and oversight. The licenses also are required by many public and private insurance plans that pay for health-care services, they said.

"It's a safeguard for the public," said Kenneth Cameron, a mental health counselor for Aspire Counseling Center in Des Moines. Without licenses, he said, counselors would be laughed at if they tried to submit bills to insurance companies. "Are you kidding me? It would never happen," he said, drawing chuckles from the crowd.

After the meeting, Branstad's spokesman suggested the governor's not giving up on the idea. The spokesman, Ben Hammes, noted Branstad had spoken in his Condition of the State address about Iowa requiring a third of its work force to have licenses, which he said is the highest level in the nation. "We felt it was time to have an initial conversation about licensing reform, while keeping the health and safety of Iowans the first priority," Hammes said in an email to the Register. "Gov. Branstad and Lt. Gov. Reynolds look forward to having those conversations about legislator's ideas on licensing reform in the weeks ahead."

Kaufmann said afterward that the Legislature would consider other parts of the bill. Among them is a proposal to ease requirements on proposed health-care facilities. Such proposals now need a "certificate of need" to show they wouldn't duplicate current facilities. Supporters say the system helps prevent wasteful health-care projects. Critics, including the governor, say the process has become a way for existing facilities to protect themselves from competition. The bill would specifically have exempted mental-health facilities from requiring permits. That was in response to the repeated blocking of a proposed psychiatric hospital in Bettendorf, which current hospitals say is unnecessary. Kaufmann said a bill on that subject could still pass this session.

CONNECTTWEET

Eric Bakker  
Sr. AA to Senate Democratic Leader Rob Hogg  
515-281-3902 (w)  
515-401-8167 (c)

## Tabor, Eric [AG]

---

**From:** Tabor, Eric [AG]  
**Sent:** Thursday, February 23, 2017 4:08 PM  
**To:** Dorff, David [AG]; Graziano, Craig [OCA]; White, Cathleen [AG]; Schuling, Mark [OCA]  
**Subject:** FW: SUBMITTED - Filing in RMS

**From:** linc-alerts@legis.iowa.gov [mailto:linc-alerts@legis.iowa.gov]  
**Sent:** Thursday, February 23, 2017 3:25 PM  
**To:** Tabor, Eric [AG]  
**Subject:** SUBMITTED - Filing in RMS

The following filing has been successfully submitted:

Rule Title: 64 IA 34 Property Owner's Rights

Status and updates can be viewed in the Rules Management System (RMS)  
<https://www.legis.iowa.gov/portal/rms>.

Notices of Intended Action and Adopted and Filed Emergency rule makings are reviewed by the Governor's Office prior to routing to the Administrative Code Office (ACO) for publication in the Iowa Administrative Bulletin and Iowa Administrative Code.

All other rule makings are reviewed by the Administrative Code Office prior to publication.

If the Governor's Office or ACO provides or requests feedback, you will receive an e-mail, and the tracking information in RMS will reflect the exchange.

Please do not reply to this e-mail as this e-mail account is not monitored.

## Tabor, Eric [AG]

---

**From:** Tabor, Eric [AG]  
**Sent:** Monday, February 20, 2017 12:49 PM  
**To:** Kiley  
**Subject:** Re: Update

Yes. AG Miller presents at 10:00 tomorrow - Rm 24 behind Senate.

Sent from my iPhone

On Feb 20, 2017, at 11:41 AM, Kiley <[kiley@iowamediationservice.com](mailto:kiley@iowamediationservice.com)> wrote:

Hello Eric,

I was touching base to let you know I have been reaching out to the Republican contacts I have (although that number is few). I will keep you apprised if any momentum occurs, and you and I can brainstorm if you would like.

I also was wondering if the governor's hearing for tomorrow had been confirmed?

Best regards, -Kiley Mars

Get [Outlook for iOS](#)

**Tabor, Eric [AG]**

---

**From:** Kraemer, Gretchen W. <gkraeme@dhs.state.ia.us>  
**Sent:** Tuesday, February 14, 2017 1:55 PM  
**To:** Tabor, Eric [AG]  
**Subject:** FW: Bunavail

**From:** Parker, Susan [mailto:sparker2@dhs.state.ia.us]  
**Sent:** Tuesday, February 14, 2017 12:10 PM  
**To:** Kraemer, Gretchen W.  
**Cc:** Stier, Mikki K; Lovelady, Julie; Horn, Brad  
**Subject:** Re: Bunavail

<http://www.iowamedicaidpdl.com/sites/default/files/ghs-files/meeting-minutes/2015-08-21/open-minutes-04-16-15.pdf>

As noted in the minutes from meeting 4/16/15 when this drug was released:

XII. Newly Released Generic Drugs and New Dosage Forms/Strengths (Dr. Biczak): All following recommendations were made to maximize cost savings to the program unless otherwise noted. Ivermectin tablets and HyQvia will both be preferred, while colchicine will be preferred with conditions. These drugs will all be non-preferred: ceftibuten, donepezil 23mg tablets,olapatadine, uceris, valganciclovir, Afrezza, and Arnuity Ellipta. Obizur will be nonrecommended. The following will all be non-preferred with conditions: amlodipine/valsartan, amlodipine/valsartan/hctz, celecoxib, lamotrigine odt, oxycodone er, pramipexole er, tacrolimus ointment, xigduo xr, Bunavail, Rasuvo, and Rytary. Holly Randleman motioned to accept the above recommendations. Linda Gehrke seconded the motion, and all members were in favor.

Every year in November there is an annual review and based on financial information, including federal and state supplemental rebates (which is confidential pursuant to 42 USC § 1396r-8(b)(3)(D)) status of drugs may change.

FYI: Brad is very familiar with our P&T/PDL process and may be able to assist with additional explanation if needed.

Thanks,  
Susan

---

**From:** Parker, Susan [mailto:sparker2@dhs.state.ia.us]  
**Sent:** Tuesday, February 14, 2017 11:44 AM  
**To:** Kraemer, Gretchen W.  
**Cc:** Stier, Mikki K; Lovelady, Julie  
**Subject:** Re: Bunavail

The Governor appointed Pharmaceutical & Therapeutics (P&T Committee) takes into account all clinical and financial aspects of each drug/category in making recommendations for status on the preferred drug list (PDL).

Per FAQs at <http://www.iowamedicaidpdl.com/sites/default/files/ghs-files/frequently-asked-questions/2016-10-05/frequently-asked-questions-pdl-sept-16-4-4.pdf>, the process is defined in #2 below:

## 2. What was the general method for constructing the PDL?

Each drug was reviewed on its clinical contributions relative to other medications in the same therapeutic category. Published, peer-reviewed clinical trials are the primary source of information used for this review. Placebo controlled, randomized clinical trials were awarded the greatest weight in the consideration process. Data regarding efficacy, effectiveness, adverse effects, and tolerability were analyzed and compared to other drugs within the therapeutic class. From this analysis, the clinical staff determined an agent's therapeutic value relative to the comparator drugs. An economic analysis was performed concurrent with the clinical review. This analysis incorporated Iowa utilization data, the CMS (federally negotiated drug manufacturer) rebates, and any supplemental rebates offered to the state by the drug manufacturers. The fiscal impact of PDL inclusion or exclusion of each medication was then determined. Another level of analysis weighed the relative cost to benefit ratios of accepting supplemental rebates compared to prior authorizing drugs. The comparable experiences of other states were collected and considered before suggestions were conveyed to the State. After reviewing and discussing these suggestions, the State's drug committee made recommendations to DHS for final determination.

Thanks,

Susan

**Susan Parker, Pharm.D., R.Ph.**

Iowa Medicaid Pharmacy Director

IME - 100 Army Post Road - Des Moines, Iowa - 50315-6241

(515)256-4634 Fax (515) 725-1360

[sparker2@dhs.state.ia.us](mailto:sparker2@dhs.state.ia.us)

[www.iowamedicaidpdl.com](http://www.iowamedicaidpdl.com)

--

**Susan Parker, Pharm.D., R.Ph.**

Iowa Medicaid Pharmacy Director

IME - 100 Army Post Road - Des Moines, Iowa - 50315-6241

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## Tabor, Eric [AG]

---

**From:** Tabor, Eric [AG]  
**Sent:** Thursday, February 02, 2017 1:24 PM  
**To:** Willits, Emily [AG]; Melohn, Janelle [AG]; McCarthy, Kevin [AG]  
**Subject:** FW: Attorney Assignment

Emily – Could grant handle this for IFA? Thanks. Eric



**Eric Tabor**  
**Chief Deputy Attorney General**  
Office of the Attorney General of Iowa  
1305 E. Walnut St.  
Des Moines, Iowa 50319  
Main: (515) 281-5164 | Direct: (515) 281-5191  
Email: [Eric.Tabor@iowa.gov](mailto:Eric.Tabor@iowa.gov) | [www.iowaattorneygeneral.gov](http://www.iowaattorneygeneral.gov)

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---

**From:** Melohn, Janelle [AG]  
**Sent:** Thursday, February 02, 2017 12:38 PM  
**To:** Tabor, Eric [AG]; McCarthy, Kevin [AG]  
**Subject:** Attorney Assignment

Eric/Kevin,

Could you please tell me which of our attorneys is assigned to represent the Iowa Council on Homelessness, run through the Iowa Finance Authority? Apparently their admin rules/code states they are to have representation and they are needing legal advice on a conflict of interest issue. When they inquired with the Governor's Office they had Donna Phillips listed as their counsel, which is obviously incorrect. I told them I would try to find out, so any help you can give would be appreciated.

Thanks!



**Janelle Melohn**  
**Director**  
Office of the Attorney General of Iowa  
Crime Victim Assistance Division  
321 East 12<sup>th</sup> Street  
Des Moines, Iowa 50319  
Main: (515) 281-5044 | Direct: (515) 242-6109  
Email: [janelle.melohn@iowa.gov](mailto:janelle.melohn@iowa.gov) | [www.iowaattorneygeneral.gov](http://www.iowaattorneygeneral.gov)  
Like us on Facebook at <https://www.facebook.com/CrimeVictimAssistanceDivision>  
Follow us on twitter @CVADInfo

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## Tabor, Eric [AG]

---

**From:** Tabor, Eric [AG]  
**Sent:** Thursday, February 02, 2017 9:52 AM  
**To:** IFafyi [IFA]  
**Subject:** FW: Follow-up

**From:** Johnson, Larry [mailto:larry.johnson@iowa.gov]  
**Sent:** Thursday, February 02, 2017 8:25 AM  
**To:** Tabor, Eric [AG]  
**Subject:** Follow-up

Hi Eric -

Thanks for talking with me this morning. I know you guys don't have gmail - sometimes it's a little strange with attachments. I am sending the 3 oaths of office from the archives that the three previous Lt. Governors took when they became Governor that I had sent a few months back to Jeff Thompson. I am going to send them in another email due to some issues with gmail. Let me know if you need anything else. Thanks, Eric.

Larry

--

**Larry Johnson, Jr.** | Legal Counsel

Office of the Governor, State of Iowa

Gov. Terry Branstad & Lt. Gov. Kim Reynolds

515.725.3506 | [larry.johnson@iowa.gov](mailto:larry.johnson@iowa.gov)

[www.governor.iowa.gov](http://www.governor.iowa.gov)

[www.ltgovernor.iowa.gov](http://www.ltgovernor.iowa.gov)

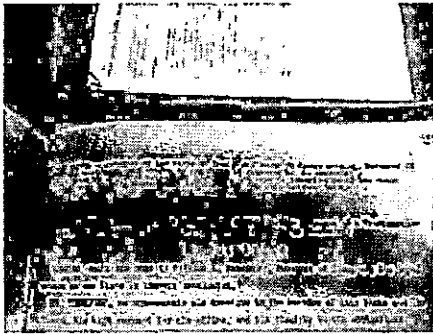
## Tabor, Eric [AG]

---

**From:** Tabor, Eric [AG]  
**Sent:** Thursday, February 02, 2017 9:52 AM  
**To:** Thompson, Jeffrey [AG]  
**Subject:** FW: Follow-up

FYI

**From:** Johnson, Larry [mailto:larry.johnson@iowa.gov]  
**Sent:** Thursday, February 02, 2017 8:25 AM  
**To:** Tabor, Eric [AG]  
**Subject:** Follow-up



--

**Larry Johnson, Jr.** | Legal Counsel

Office of the Governor, State of Iowa

Gov. Terry Branstad & Lt. Gov. Kim Reynolds

515.725.3506 | [larry.johnson@iowa.gov](mailto:larry.johnson@iowa.gov)

[www.governor.iowa.gov](http://www.governor.iowa.gov)

[www.ltgovernor.iowa.gov](http://www.ltgovernor.iowa.gov)

February 1, 1877

Upon this day, Gerrit J. Northward  
having been elected a Senator of the United  
States for six years from the fourth day of  
March vacated the office of Governor  
of the State of Iowa, William J. Foster, in ac-  
cordance with the constitution, Justice  
of the Peace, the lieutenant-governor  
assumed the discharge of the duties  
of the office of Governor. Although not  
officially sworn in as Governor, all  
the duties of the office were  
performed by the Lieut. Governor  
until the 1st of March when the  
Governor-elect, William J. Foster, being adminis-  
trated by the Lieut. Governor, assumed  
the duties of the office.

Handwritten notes in the left margin, including the word "minutes" at the top.

One this day, the resignation of Walter B. Chapman as Governor, has  
 been forwarded to you from the office of the Attorney General in  
 a special deliver, and has received from your office, kindred  
Governor Board, a printed copy, which has been forwarded to you  
 that may be forwarded to the Attorney General by the  
Attorney General on behalf of the Attorney General and the Attorney General  
 and the Attorney General in due order as before.

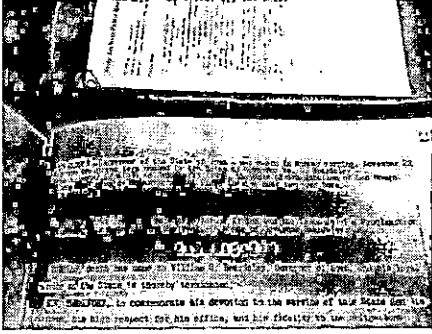
Respected Dear William, my secretary is charged to  
 inform you that the Attorney General has  
 resigned his office and will be succeeded by the Attorney General.

Wm. B. Chapman

## Tabor, Eric [AG]

---

**From:** Johnson, Larry <larry.johnson@iowa.gov>  
**Sent:** Thursday, February 02, 2017 8:25 AM  
**To:** Tabor, Eric [AG]  
**Subject:** Follow-up



--

**Larry Johnson, Jr.** | Legal Counsel

Office of the Governor, State of Iowa

Gov. Terry Branstad & Lt. Gov. Kim Reynolds

515.725.3506 | [larry.johnson@iowa.gov](mailto:larry.johnson@iowa.gov)

[www.governor.iowa.gov](http://www.governor.iowa.gov)

[www.ltgovernor.iowa.gov](http://www.ltgovernor.iowa.gov)

February 1, 1877.

Upon this day, Samuel J. Kirkwood, having been elected a senator of the United States for six years from the fourth day of March, vacated the office of Governor of the State of Iowa, whereupon, in accordance with the constitution, Joshua Nease, the lieutenant-governor, assumed the discharge of the duties of the office of Governor. Although not necessary yet, to remove all the business of the State from the hands of the Governor, the same being administered by Edward J. Holmes, Clerk of the Supreme Court.



Governor Warren Gorst:

15 On this day the resignation of Albert B. Cummings as Governor having been presented in due form to the Thirty-second General Assembly convened in special session, and said resignation having been accepted, Lieutenant Governor Warren Gorst, appeared by invitation before the joint assembly and was duly inaugurated Governor. The oath of office was administered by Chief Justice Scott M. Ladd and the Governor delivered a brief inaugural address thereupon assuming the duties of his office as Governor.

Appointed Mrs. Williams my Secretary in Charge of the  
Office.  
Certificates of election sent to the Iowa Congressmen elected Nov.

## Tabor, Eric [AG]

---

**From:** Johnson, Larry <larry.johnson@iowa.gov>  
**Sent:** Thursday, February 02, 2017 8:25 AM  
**To:** Tabor, Eric [AG]  
**Subject:** Follow-up

Hi Eric -

Thanks for talking with me this morning. I know you guys don't have gmail - sometimes it's a little strange with attachments. I am sending the 3 oaths of office from the archives that the three previous Lt. Governors took when they became Governor that I had sent a few months back to Jeff Thompson. I am going to send them in another email due to some issues with gmail. Let me know if you need anything else. Thanks, Eric.

Larry

--

**Larry Johnson, Jr.** | Legal Counsel

Office of the Governor, State of Iowa

Gov. Terry Branstad & Lt. Gov. Kim Reynolds

515-725-3506 | [larry.johnson@iowa.gov](mailto:larry.johnson@iowa.gov)

[www.governor.iowa.gov](http://www.governor.iowa.gov)

[www.ltgovernor.iowa.gov](http://www.ltgovernor.iowa.gov)

## Tabor, Eric [AG]

---

**From:** Deforest, Shelley [AG]  
**Sent:** Tuesday, January 31, 2017 9:57 AM  
**To:** Tabor, Eric [AG]  
**Subject:** FW: Form submission from: Contact Form  
**Attachments:** Crime Victim - Expenditure line items.xlsx

Sorry I probably should've cc'd you on this when I responded back DOM.  
Shelley

---

**From:** Deforest, Shelley [AG]  
**Sent:** Monday, January 30, 2017 2:50 PM  
**To:** Hart, Dennis [IDOM]; Hahn, Michael [IDOM]  
**Cc:** Melohn, Janelle [AG]; Hill, Kristi [AG CVAD]  
**Subject:** RE: Form submission from: Contact Form

Please find attached the spreadsheet representing the actual payouts by expenditure line item that were paid out to victims in sfy 2016. The actual amount paid to victims (or directly to providers) in SFY 2016 was \$6,575,135.85. I also included the budget amounts for the current fiscal year (2017) along with the requested amounts for SFY 2018 and SFY 2019.

Please let me know if you have questions.



**Shelley DeForest**  
**Financial Manager**  
Office of the Attorney General of Iowa  
Administrative Services Division  
1305 E. Walnut St.  
Des Moines, Iowa 50319  
Main: (515) 281-5164 | Direct: (515) 281-6362 | Fax: (515) 281-4209  
Email: [Shelley.Deforest2@iowa.gov](mailto:Shelley.Deforest2@iowa.gov) | [www.iowaattorneygeneral.gov](http://www.iowaattorneygeneral.gov)

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**From:** Hart, Dennis [<mailto:dennis.hart@iowa.gov>]  
**Sent:** Monday, January 30, 2017 11:27 AM  
**To:** Deforest, Shelley [AG]  
**Subject:** Fwd: Form submission from: Contact Form

----- Forwarded message -----  
**From:** Winters, Tammy <[tammy.winters@iowa.gov](mailto:tammy.winters@iowa.gov)>  
**Date:** Mon, Jan 30, 2017 at 11:04 AM

Subject: Fwd: Form submission from: Contact Form

To: "Hart, Dennis" <[dennis.hart@iowa.gov](mailto:dennis.hart@iowa.gov)>, "Hahn, Michael" <[mike.hahn@iowa.gov](mailto:mike.hahn@iowa.gov)>

Joel said this should go to the two of you to respond. This came through our website. When you respond to Mr. Foens, please BCC me so I can keep a copy in my files.

Thanks!

Tammy Winters

Department of Management

281-3322

----- Forwarded message -----

From: **Iowa Department of Management** <[tammy.winters@iowa.gov](mailto:tammy.winters@iowa.gov)>

Date: Mon, Jan 30, 2017 at 10:39 AM

Subject: Form submission from: Contact Form

To: [tammy.winters@iowa.gov](mailto:tammy.winters@iowa.gov)

Submitted on Monday, January 30, 2017 - 10:39am

Submitted by anonymous user: 65.156.255.204

Submitted values are:

Name: Scott Foens

Email: [scott.foens@icloud.com](mailto:scott.foens@icloud.com)

Phone: 319.533.2511

Message:

Below is a response and the original email from the Attorneys General Office regarding a line item in the Governor's FY2018-2019 Budget Book. The amount the AG's office is reporting for money paid out doesn't match any of the expenditure line items in the budget book and I'd like to know where payouts to victims are reflected in the budget book.

Thanks for your assistance in providing clarification on this.

Respectfully,

Scott Foens  
Marion, IA

-----Original Email Thread-----

Mr. Foens,

I have looked at the page you referenced in the Governor's Budget and to be brutally honest, I am not sure how they've broken out expenses into their line items because it's not a report I produce from my division. My guess is they are using state codes from the department of revenue, which gets incredibly confusing for someone who doesn't see the behind the scenes day to day as far as how different expenses get assigned. If you want to know more about how the compensation fund is spent, I encourage you to look at the Crime Victim Assistance Division's Annual Report, which is produced per IA code, for the state legislature every year. I have attached our annual report for your viewing pleasure.

To answer the question I believe you were asking, in SFY16, we paid out \$ \$6,559,803 in claims to victims of crime here in Iowa. That is the actual dollar amount spent solely to reimburse victims for their out of pocket expenses.

I hope this helps, but if I've missed something, please feel free to reach out to me again.

Janelle Melohn

Director

Office of the Attorney General of Iowa

Crime Victim Assistance Division

321 East 12th Street

Des Moines, Iowa 50319

Main: (515) 281-5044 | Direct: (515) 242-6109

Email: [janelle.melohn@iowa.gov](mailto:janelle.melohn@iowa.gov) | [www.iowaattorneygeneral.gov](http://www.iowaattorneygeneral.gov)

Like us on Facebook at <https://www.facebook.com/CrimeVictimAssistanceDivision>

Follow us on twitter @CVADInfo

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-----Original Message-----

From: Scott Foens [<mailto:scott.foens@icloud.com>]

Sent: Sunday, January 29, 2017 1:52 PM

To: AG Webteam [AG]

Subject: Victim Compensation Fund Detail Budget Book Question

I am looking through the Governor's FY2018-2019 budget book. On page 104, there is detailed information on the Victim Compensation Fund. I have a question. Under the Expenditures section, does the Claims line item represent monies actually paid out to the victims of crime while the other line items all represent expenses supporting that Claims line item or is the amount paid out in claims on a different line item and if so, where?

Thanks,

Scott Foens  
Marion, IA

The results of this submission may be viewed at:  
<https://dom.iowa.gov/node/3/submission/67>

## Tabor, Eric [AG]

---

**From:** Tabor, Eric [AG]  
**Sent:** Wednesday, January 11, 2017 5:10 PM  
**To:** Boussetot, Michael [IGOV]  
**Cc:** Willits, Emily [AG]  
**Subject:** North Carolina Dental/Highway Safety

Michael – I wanted to follow-up on our discussion with the Governor about legislative initiatives relating to the North Carolina Dental case and changes in boards and commissions, in general. We stand ready to help in any way that would be useful.

Also, Attorney General Miller was impressed with the Governor’s emphasis on highway safety issues in the State of the State Speech. We would welcome the opportunity to be helpful in that area, as well.

Thanks. Eric



**Eric Tabor**  
**Chief Deputy Attorney General**  
Office of the Attorney General of Iowa  
1305 E. Walnut St.  
Des Moines, Iowa 50319  
Main: (515) 281-5164 | Direct: (515) 281-5191  
Email: [Eric.Tabor@iowa.gov](mailto:Eric.Tabor@iowa.gov) | [www.iowaattorneygeneral.gov](http://www.iowaattorneygeneral.gov)

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**Tabor, Eric [AG]**

---

**From:** Press Releases from Iowa Governor's Office  
<IowaGovernorsOffice@public.govdelivery.com>  
**Sent:** Tuesday, January 10, 2017 10:45 AM  
**To:** Tabor, Eric [AG]  
**Subject:** RELEASE: Gov. Branstad delivers the 2017 Condition of the State address to the Iowa General Assembly

**OFFICE OF THE GOVERNOR**  
Governor Terry E. Branstad ★ Lt. Governor Kim Reynolds

FOR IMMEDIATE RELEASE: Tuesday, Jan. 10, 2017  
CONTACT: Governor's Office 515-281-5211

## **Gov. Branstad delivers the 2017 Condition of the State address to the Iowa General Assembly**

(DES MOINES) – Gov. Terry E. Branstad today delivered the 2017 Condition of the State address, entitled “*Smaller and Smarter Government*,” to the Iowa General Assembly and the people of Iowa.

In his address, Gov. Branstad struck an enthusiastic tone that this new General Assembly brings new dynamics, new expectations and new opportunities to deliver positive results for Iowans. The governor spoke about the need for a responsible budget including submitting adjustments to the current fiscal year and the need for a biennial budget for fiscal year 2018 and 2019 that sets supplemental state aid for K-12 education in the first 30 days of the legislative session.

Gov. Branstad and Lt. Gov. Reynolds’ program initiatives for this upcoming session include a commitment to a smaller and smarter government, a focus on the jobs of today and tomorrow, obtaining a 21<sup>st</sup> century education for all students and making our Iowa roads safer.

**[VIEW THE BUDGET IN BRIEF HERE INCLUDING THE FISCAL YEAR 2017 BUDGET ADJUSTMENTS \(PAGE 73 & 74\)](#)**

**HIGHLIGHTS OF THE BUDGET ADJUSTMENTS:**

- Adjustments are required by law.
- Does not include across-the-board cuts.
- Does not reduce funding for supplemental state aid for K through 12 education.
- Does not reduce property tax credits.
- Modernized Medicaid resulting in over \$110 million in savings for Iowa taxpayers.



## VIEW THE FULL FISCAL YEAR 2018 AND 2019 BUDGET HERE

### HIGHLIGHTS:

- The governor and Lt. governor's 2-year budget is again balanced and stable.
- The budget fits within five-year budget projections.
- Based on the principles laid out by the Iowa Taxpayers Association.
- Prioritizes education, health care, economic development and public safety.
- Gives schools the predictability and stability they need with an increase of over \$78.8 million in supplemental state aid in fiscal year 2018 and includes an additional \$63.5 million for fiscal year 2019.
- Modernized Medicaid resulting in \$232 million in savings for Iowa taxpayers.
- Redirects family planning money to organizations that focus on providing health care for women and eliminates taxpayer funding for organizations that perform abortions.

## SMALLER AND SMARTER GOVERNMENT:

### HIGHLIGHTS:

- Gov. Branstad & Lt. Gov. Reynolds are calling for replacing the current antiquated collective bargaining system for public employees.
  - Move to one comprehensive statewide health care contract for public employees.
  - This will provide quality health care to public employees at a significantly lower cost and give local governments more flexibility to provide better wages and meet other needs.
  - Rewards public employees for taking ownership of their own health by conducting health risk assessments and taking other actions that improve their own health.
- Work with the General Assembly to address unnecessary barriers that prevent competition and raise costs through a series of regulatory and licensing reforms.

## FOCUSING ON THE JOBS OF TODAY AND TOMORROW:

### HIGHLIGHTS:

- Modernizing water quality infrastructure that will create jobs in rural Iowa and promote cleaner water.
  - Calling on discussions to begin with the House-passed water quality bill from last session which provided for a long-term, dedicated source of revenue for implementation of projects outlined in the Nutrient Reduction Strategy.
- Prioritizes initiatives that will grow the state's talent pipeline including STEM (Science, Technology, Engineering & Math), Future Ready Iowa, registered apprenticeships and work-based learning for Iowa students.

## 21<sup>st</sup> CENTURY EDUCATION:

### HIGHLIGHTS:

- Legislation encouraging all elementary, middle and high school students to have access to high-quality computer science programs by 2019. We want them to:
  - Offer at least one high-quality computer science course in every high school;
  - Provide exploratory computer science curriculum in every middle school and;
  - Include an introduction to computer science basics in every elementary school.
- Establish high-quality computer science standards.
- Create a computer science professional development incentive fund to train teachers.
- Convene an advisory group to recommend how to count computer science as a math credit toward high school graduation.

### SAFER IOWA ROADS:

#### HIGHLIGHTS:

- Traffic fatalities spiked from 315 in 2015, to 402 in 2016.
- Gov. Branstad & Lt. Gov. Reynolds believe this is unacceptable.
- They are calling for legislation that drastically reduces the amount of distracted and impaired drivers on Iowa roads.
  - Restrict the use of mobile devices while driving.
- Gov. Branstad & Lt. Gov. Reynolds are also calling on the legislature to examine and implement strategies from the Department of Public Safety's task force that will make Iowa's roads safer.

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**Gov. Branstad's 2017 Condition of the State Address, as prepared for delivery, is as follows:**

*Madam Lieutenant Governor*

*Mr. President*

*Madam Speaker*

*Legislative leaders, legislators, justices and judges, elected officials, distinguished guests, family, friends and fellow Iowans.*

*I'm honored and humbled to once again address a joint session of the General Assembly delivering the Condition of the State for the final time as your governor.*

*For 22 years, I have addressed this body as governor and today I want to especially welcome the 22 new legislators with us—from both sides of the aisle—who were elected in November.*

*Your constituents sent you to work hard, to work for them, and help make Iowa a better place.*

*I hope you are filled with the same sense of excitement and eagerness that I had when I first served in the Legislature in 1973.*

*Lt. Gov. Reynolds and I look forward to working with each of you and listening to your ideas on how to make our state an even better place for families to live, work and grow.*

*In that spirit, I am today extending an invitation to each legislator to meet with me personally during this legislative session.*

*We also gather again with shared sadness, returning to do our work without our friend, Sen. Joe Seng of Davenport.*

*Joe was a devout Catholic and a true statesman.*

*We enjoyed his contagious and positive personality and working with him.*

*As I look back on my years of public service, I am thankful for those Iowans who have stepped forward to serve their fellow citizens.*

*In particular, please join me in applauding those Iowans who have helped make our state and nation safer by serving in the military, law enforcement or as first responders.*

*Since taking office in 2011, we have made the necessary changes to strengthen our economy and improve the quality of life across our state.*

*We've made tough decisions to give Iowans a smaller and smarter government.*

*We have stayed the course with an unwavering commitment to create jobs, increase family incomes, reduce the size of government, and give Iowa students a globally competitive education.*

*We have provided significant tax relief for Iowans the past five years, especially for commercial property taxpayers.*

*And last month, Lt. Gov. Reynolds and leaders from the Economic Development Authority and Department of Transportation unveiled Iowa's most comprehensive Energy Plan.*

*The plan was developed after collaboration with the private sector, public sector, educators, non-profits and utilities.*

*Iowa is already a leader in low-cost and renewable energy.*

*The comprehensive new energy plan will help build on our past energy successes and reaffirms our commitment to maintaining Iowa's energy leadership in the future.*

*I'm proud that we have made government smaller and smarter.*

*We've seen unemployment in our state drop from 6.2 percent to 3.8 percent.*

*The state has helped attract more than 13 and a half billion in private-sector capital investment, which has translated into great-paying jobs across Iowa.*

*And more Iowans have been employed these past few years than at any other period in our state's history.*

*We have also made the tough decisions to ensure government lives within its means like Iowa families must do.*

*We have accomplished this with a relentless focus on fiscal discipline, demanding budget predictability, fully restoring Iowa's reserve accounts and reducing the state's debt liability.*

*Together we have made progress toward our goal of restoring Iowa's schools to best in the nation through a series of landmark reforms and innovative policies.*

*To improve Iowa's education standing, we needed to make sure our hardworking teachers had all the tools necessary to succeed given higher expectations for all students.*

*So, we created a new Teacher Leadership System that better utilizes the expertise of top teachers to improve education, instruction and foster greater collaboration.*

*I'm proud to say that every public school in Iowa today is participating in our Teacher Leadership System.*

*To ensure that our children are prepared for a 21<sup>st</sup> century economy we advanced a nationally recognized STEM initiative that gives students the confidence and skills for rewarding careers.*

*The STEM initiative is led by Lt. Gov. Kim Reynolds and Kemin Industries President & CEO Dr. Chris Nelson and has seen outstanding growth and success.*

*Sustaining these measures over time is critical to get the right results for our students and our state.*

*The ability of Iowans to overcome challenges bolsters my optimism for our state's future.*

*When faced with challenges, Iowans consistently seek opportunities.*

*Some of the challenges we have overcome--like the Farm Crisis of the 1980s--tore at the very fabric of our communities.*

*In the 1980s, Bloomfield, Ia.--a community in Davis County in southeast Iowa--struggled like many communities across the state.*

*An uninsured bank in Bloomfield closed in 1983 and caused great losses for area families and businesses.*

*And area farmers were straddled with debt and limited market opportunities for their crops.*

*However, through a persistent focus on economic diversification and an entrepreneurial spirit to rebuild its community, Bloomfield now has new manufacturers that are growing alongside innovative startups.*

*And, to continue their effort to stay on the cutting edge community leaders are instituting aggressive strategies to become Iowa's first energy independent community by 2030.*

*I visited Bloomfield last year and was impressed with the Main Street revitalization, a new hardware store and the M3 Fabrication manufacturing plant.*

*And Woodbine, Ia., is another example of a community that took its future into its own hands.*

*The community showed how an integrated approach to community revitalization that focuses on historic preservation and community sustainability can redefine a struggling, small rural community.*

*Woodbine also had a bank closure in the 1980s, but the community turned its challenges into future growth and diversification.*

*Lt. Gov. Reynolds and I visited Woodbine and were impressed with the success of their Main Street program.*

*And Waterloo, Ia., after experiencing economic challenges throughout the previous three decades embraced the challenge of reshaping its industrial heritage to succeed in modern times.*

*Cedar Valley Tech Works has made Waterloo a nationally recognized leader for manufacturing innovation.*

*And John Deere continues to be a leading manufacturer and innovator in Waterloo.*

*In the balcony, we have leaders from Bloomfield, Woodbine and Waterloo.*

*Please join me in congratulating their accomplishments and supporting their future success.*

*Iowa's industries are increasingly high tech, including advanced manufacturing.*

*In total, Iowa has over 6,100 manufacturers that contribute more than \$31 billion to Iowa's economy and employ over 200,000 Iowans.*

*Over the next year, the Iowa Economic Development Authority will work with Iowa's manufacturers to advance a "Year of Manufacturing" in Iowa to help grow this important part of the Iowa economy.*

*We should also be proud that Iowa remains an agricultural powerhouse that feeds and fuels the world thanks to the hard work and innovation of Iowa's farmers and agricultural producers.*

*We just set an all-time record for ethanol production, set a new record for biodiesel production by an additional 55 million gallons and lead the nation in percentage of electricity generated by wind.*

*We now generate over 35 percent of our electricity from wind and expect this number to exceed 40 percent by 2020.*

*Over the past 30 years, we've significantly added value to our agricultural commodities.*

*We've also diversified the Iowa economy by expanding exports and supporting growth in biofuels, wind*

*energy, data centers, fertilizer plants, bio-renewable chemicals, advanced manufacturing, insurance and financial services.*

*These newer industries employ hundreds of thousands of Iowans in rewarding careers.*

*And while I am pleased with this progress and optimistic about Iowa's future, I believe there is more work to be done.*

*We must seize the opportunities before us.*

*This new General Assembly brings new dynamics, new expectations and new opportunities to deliver positive results for Iowans.*

*Our state is in an admirable position.*

*Many states are strapped with crushing debt, poor credit ratings and a bleak economic outlook.*

*But Iowa is a shining example of what hard work and smart, tough choices can do for growing businesses and nurturing families.*

*While the December Revenue Estimate is lower than previous projections the estimate still shows a modest increase in state revenues.*

*Although we have faced a headwind out of Washington, D.C., that is stifling our agricultural economy, we still have positive state revenue growth.*

*But we must proceed with caution and not repeat the mistakes of the past.*

*With that prudence in mind, I present my proposed adjustments to the current fiscal year budget to you today.*

*These adjustments are required by law.*

*My proposal does not include across-the-board cuts, does not reduce funding for K through 12 education, does not reduce property tax credits and does not include furloughs for state employees.*

*The budget reductions I am recommending for this fiscal year are difficult.*

*But they maintain funding for our mutual priorities.*

*I am committed to working with legislative leaders to implement these adjustments.*

*For the coming biennium, I am presenting a complete two-year budget that is balanced each year and meets our five-year projections for a sustainable future.*

*This budget is based on the principles laid out by the Iowa Taxpayers Association.*

*It prioritizes education, health care, economic development and public safety.*

*And it redirects family planning money to organizations that focus on providing health care for women and eliminates taxpayer funding for organizations that perform abortions.*

*On my first trip to China in 1984, I learned that the Chinese word for danger and opportunity is one in the same.*

*Today, America and Iowa exist in a challenging world.*

*But we must seize the opportunity to make it a better place.*

*In 2010, Lt. Gov. Reynolds and I promised to reduce the size and scope of government.*

*I'm proud to report that we have a smaller, smarter government with a steady focus on improving services for our citizens in a more timely and efficient manner.*

*Yet, while the size of government is smaller, benefits for public employees at the state and local level have increased.*

*Unfortunately, the cost of these benefits has grown dramatically because of our antiquated collective bargaining system that has led to over 500 health-care plans, many of which are inefficient and way too costly for public employees and Iowa taxpayers.*

*Under our present system, a few adverse health outcomes will destroy the budget of a city, county or school district.*

*By replacing this system with one comprehensive statewide health-care contract we can spread the risk and dramatically reduce costs.*

*Using a uniform health-care benefit system similar to the IPERS program for retirement we can provide quality health care at a significantly lower cost and give local governments more flexibility to provide better wages and meet other needs.*

*The statewide health-care contract also needs to reward employees who take ownership of their own health by conducting health risk assessments and taking actions to improve their own health.*

*We have made a commitment to examine every dollar of revenue and expenditure in order to maximize efficiency and respect hardworking taxpayers.*

*We are committed to a smaller, smarter government that seeks innovative ways to provide services rather than blind adherence to the way things have always been done.*

*I'm asking the General Assembly to take a comprehensive review of all of our state's boards and commissions to address unnecessary barriers that prevent competition and raise costs.*

*I encourage you to ask the tough questions that challenge the status quo.*

*In Iowa, 90 percent of our general fund budget is spent on three items; K through 12 education, Medicaid*

*and employee wages and benefits.*

*The state has significantly increased funding for education since 2011, amounting to over 654 million additional dollars.*

*Education and job training are the foundation for our future economic growth.*

*Growing our state's talent pipeline needs to be a top priority.*

*Even with our modest revenue growth my recommendation includes an increase of \$73 million for K-12 education for fiscal year 2018 and an additional \$61 million for fiscal year 2019 which equates to roughly 2 percent growth each year.*

*So this year, let's show Iowans we can make these decisions early and meet the legal requirements of setting supplemental state aid for fiscal year 2018 and fiscal year 2019 in the first 30 days.*

*The second largest driver of our state budget is health and human services spending.*

*Together, we have transformed our mental health system to a community-based model, we obtained a federal waiver for our Iowa Health and Wellness Plan which has reduced charity care for hospitals and, like 39 other states, we have modernized our Medicaid program.*

*As a result, we have created a new system where more Iowans have access to mental health services closer to home than ever before; more Iowans are covered with health insurance than ever before; and more than 80 new value-added services are now being offered under our modernized Medicaid program.*

*We've also replaced the old Medicaid system with a coordinated team of health-care professionals to ensure patients see the right provider at the right time.*

*As a result of these reforms and innovation, we have improved the focus on health outcomes and saved the taxpayers \$110 million.*

*Our increase in education funding last year was made possible because of our modernized Medicaid efforts.*

*Without these vital reforms, the budget choices before us today would be twice as hard.*

*In order to grow Iowa, we must also look at policies and reforms that will continue growing family incomes.*

*One way to do this is to close the skills gap which in many ways is the biggest challenge our state faces over the next decade.*

*That is why Lt. Governor Reynolds and I set the Future Ready Iowa goal that 70 percent of Iowans in the workforce should have education or training beyond high school by 2025.*

*Today, less than half of our workforce does.*

*Accomplishing this ambitious goal will create unprecedented opportunities for Iowans and better position our state to compete in an increasingly knowledge-based, digital economy.*



*That is why we established the Future Ready Iowa Alliance, co-chaired by Lt. Governor Reynolds and Dan Houston of Principal, which will make recommendations by Oct. 31, 2017, to assure more Iowans have the careers they deserve and employers can hire the skilled workers they need to grow and innovate.*

*Even with a tight budget, we should continue to prioritize initiatives that will grow the state's talent pipeline like the STEM initiative, registered apprenticeships and work-based learning for Iowa's students.*

*Please help me recognize the students here with us today from Jackson Elementary School in Des Moines, Bondurant-Farrar Middle School and Waukee High School, which has one of the premier work-based learning programs in our state.*

*The students in the gallery represent children across Iowa who are counting on all of us to modernize schools for the 21st century.*

*That's why Lt. Governor Reynolds and I are launching a comprehensive computer science initiative.*

*We are encouraging every high school to offer at least one high-quality computer science course, every middle school to provide exploratory computer science, and every elementary school to include an introduction to computer science.*

*All students need to learn how computers operate because it is fundamental to life and work today.*

*Computer science will provide students a chance to join one of the fastest-growing and best-paying fields.*

*No student should miss out on this opportunity because of where they live.*

*This is another step to better align education and training with essential workforce needs.*

*We all care deeply for the safety of our families, our friends, and our neighbors.*

*However, a troubling trend has begun to emerge that threatens Iowans' safety on our roads.*

*Traffic deaths went from 315 in 2015 to 400 in 2016.*

*This is unacceptable.*

*Earlier this year, I called on the Department of Public Safety and the Governor's Traffic Safety Bureau to lead a working group to study this disturbing trend.*

*The group, with the support of key stakeholders, including law enforcement, made recommendations worth your consideration.*

*I am asking you to take a hard look at these recommendations and evaluate which can be put into law to make our roads safer.*

*Unfortunately, too many innocent bicyclists, motorcyclists, pedestrians and passengers have lost their lives on our roads.*

*Last year, I received a handwritten note from Christine and Darrel Harken, parents of Grace Harken, who live near Riceville.*

*They wrote "our daughter Gracie's life was so sadly ended July 29, 2015, by someone who was driving and texting."*

*Grace was biking safely and lawfully during a morning bike ride, when a driver who was texting struck and killed her.*

*They went on to write, "Grace would have forgiven the driver and moved forward.*

*"That is what we have chosen to do. But we miss her so."*

*Grace Harken's life was tragically ended way too early.*

*Modern technologies should come with new responsibilities.*

*I ask that all Iowans join the Iowa law-enforcement community, first responders, the League of Cities, all the major cell-phone carriers, the insurance industry, and the medical community in demanding real change in the laws for distracted and impaired drivers.*

*Last year, I called on the Legislature to send me a water-quality improvement bill.*

*I was pleased to see bipartisan progress made on this front with the House passing House File 2541 last session.*

*This bill was approved by the Agriculture, Ways and Means and Appropriations Committees and passed the House with 65 votes.*

*This bill provided for a long-term, dedicated and growing source of revenue to help implement projects to improve habitat and water quality directed by the Iowa Nutrient Reduction Strategy.*

*The bill also provided funding for community conservation practices and improvements to wastewater and drinking water facilities.*

*By leading on this issue, together we have the opportunity to modernize Iowa's agricultural infrastructure, create jobs in rural Iowa and promote collaboration between urban and rural communities.*

*I believe our discussions should begin with the House-passed bill from last session.*

*I hope we can work together to perfect and improve the legislation that will provide a long-term, dedicated and growing source of revenue for water-quality improvements.*

*I've been so blessed to serve as your governor, leading the state I love, for 22 years.*

*I am confident Iowa will continue to move forward because Iowans care deeply about their neighbors, their communities and creating an even better future.*

*And I'm extremely thankful for perhaps the most patient person in the state -- my wife, Chris -- as she has also served Iowa as first lady with grace.*

*She has welcomed Iowans and visitors from around the world to Terrace Hill and she has volunteered to help in many ways, including reading with Jackson Elementary students.*

*To Chris and my entire family, thank you for your sacrifice during my time in public service.*

*I am also thankful for the friendships we have made in all 99 counties -- friendships that we will always cherish.*

*And I am grateful for the prayers from Iowans who have encouraged me along the way.*

*There is no better job in the world than being the governor of the state that you love.*

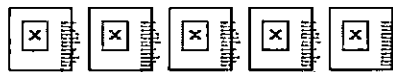
*But sometimes we are called to serve in ways we had never imagined.*

*As I approach the U.S. Senate confirmation process my main priority is to continue serving the people of Iowa with the same energy and passion that I have brought to this office each and every day.*

*Thank you.*

*God Bless you and all the people of Iowa.*

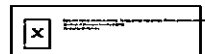
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## Tabor, Eric [AG]

---

**From:** Melohn, Janelle [AG]  
**Sent:** Monday, January 09, 2017 10:56 AM  
**To:** McCarthy, Kevin [AG]  
**Cc:** Tabor, Eric [AG]  
**Subject:** Press Conf/HT proclamation

Just wanted you to know it went well. Gov. Branstad made a short mention about the collaborative efforts of our office and DPS on this initiative. Dr. George Belitsos did speak to the influx of federal funding granted out to HT service providers around the state. No one from our office spoke formally, but Rhonda, Celine and I all attended the press conference and proclamation signing. On invitation, Celine also attended the Board Meeting of the Network Against Human Trafficking IA Chapter directly following the proclamation signing over at the Capitol.

After the proclamation, I was able to speak to Commissioner Ryan (her schedule freed up and she was able to attend after all) and we confirmed our meeting on the 13<sup>th</sup>. She told me she's concerned about the lack of funding for their analyst position. I told her we'd be happy to discuss it in our meeting with her.

Overall, everything went well this morning. Please let me know if you have any questions.



### Janelle Melohn

#### Director

Office of the Attorney General of Iowa

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## Tabor, Eric [AG]

---

**From:** Ambrozic, Jane [AG]  
**Sent:** Tuesday, January 03, 2017 1:15 PM  
**To:** 'Lawrence, John D [VPEO]'; Tabor, Eric [AG]  
**Subject:** RE: Water Quality Meeting

May we start the meeting at 2:30 and then call Dr. Helmers?

---

**From:** Lawrence, John D [VPEO] [mailto:jdlaw@iastate.edu]  
**Sent:** Tuesday, January 03, 2017 1:01 PM  
**To:** Tabor, Eric [AG]  
**Cc:** Ambrozic, Jane [AG]  
**Subject:** RE: Water Quality Meeting

Eric

Dr. Helmers is speaking on a program in NW Iowa on January 10, but he is available by phone after 1:45. I suggest that I start the meeting with at 1:00 or 1:15 and we can call Helmers with the questions that I can't answer.

Will that work?

John

---

**From:** Lawrence, John D [VPEO]  
**Sent:** Thursday, December 29, 2016 5:06 PM  
**To:** 'Tabor, Eric [AG]' <Eric.Tabor@iowa.gov>  
**Cc:** Ambrozic, Jane [AG] <Jane.Ambrozic@iowa.gov>  
**Subject:** RE: Water Quality Meeting

Thanks. Let me hear back from Helmers to see if he can make early afternoon work and then we can work out the details.

John

---

**From:** Tabor, Eric [AG] [mailto:Eric.Tabor@iowa.gov]  
**Sent:** Thursday, December 29, 2016 4:31 PM  
**To:** Lawrence, John D [VPEO] <jdlaw@iastate.edu>  
**Cc:** Ambrozic, Jane [AG] <Jane.Ambrozic@iowa.gov>  
**Subject:** RE: Water Quality Meeting

Small meeting with AG, staff, and a lawyer friend of the AG from NYC who is assisting us in moving the discussion forward. Thanks. Eric



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**From:** Lawrence, John D [VPEO] [<mailto:jdlaw@iastate.edu>]  
**Sent:** Thursday, December 29, 2016 4:25 PM  
**To:** Tabor, Eric [AG]  
**Subject:** RE: Water Quality Meeting

Eric  
Is this a small meeting with the AG and staff or is this a public meeting?  
John

**From:** Tabor, Eric [AG] [<mailto:Eric.Tabor@iowa.gov>]  
**Sent:** Thursday, December 29, 2016 3:50 PM  
**To:** Lawrence, John D [VPEO] <[jdlaw@iastate.edu](mailto:jdlaw@iastate.edu)>  
**Subject:** Water Quality Meeting

Dr. Lawrence – I received your voice message. Thanks for your willingness to meet with AG Miller on water quality issues. He needs to attend the Governor’s State of the State speech from 9:45 a.m. - about 11:30 a.m. on January 10<sup>th</sup>. So, the afternoon would be better. Thanks for checking with Dr. Hellmers and others. I am copying Jane Ambrozic, AG Miller’s Executive Assistant, who can work out a convenient time.

Thanks again and have a great holiday. Eric



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## Tabor, Eric [AG]

**From:** Tabor, Eric [AG]  
**Sent:** Tuesday, January 03, 2017 11:45 AM  
**To:** Willits, Emily [AG]; Ambrozic, Jane [AG]  
**Subject:** RE: Mtg w/ AG

Ok. Thanks. Eric



**Eric Tabor**  
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**From:** Willits, Emily [AG]  
**Sent:** Tuesday, January 03, 2017 11:38 AM  
**To:** Ambrozic, Jane [AG]; Tabor, Eric [AG]  
**Subject:** RE: Mtg w/ AG

That works for me. Emily

---

**From:** Ambrozic, Jane [AG]  
**Sent:** Tuesday, January 03, 2017 11:34 AM  
**To:** Willits, Emily [AG]; Tabor, Eric [AG]  
**Subject:** Mtg w/ AG

The AG wants to meet with the two of you this afternoon re working w/ the Governor on reform of occupational agencies. How about 2:00?



**Jane Ambrozic**  
**Executive Secretary**  
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**Tabor, Eric [AG]**

---

**From:** Murphy, Alexander [DPS]  
**Sent:** Tuesday, January 03, 2017 10:20 AM  
**To:** Ryan, Roxann [DPS]; Ritzman, Jeff [DPS]; Edmondson, Barbara [DPS]; Peterzalek, Jeffrey [AG]  
**Cc:** Saunders, Jim [DPS]; Mortvedt, Mitch [DPS]; Motsinger, Michael [DPS]  
**Subject:** FW: information request

FYSA...FOIA.

Thanks,  
AM



**Alex R. Murphy**  
Public Information Officer  
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**From:** Laura Belin [mailto:desmoinesdem@bleedingheartland.com]  
**Sent:** Friday, December 23, 2016 11:25 AM  
**To:** DPS - dpsinfo  
**Subject:** information request

Dear Alex Murphy,

I write the Iowa politics website Bleeding Heartland under the screen name "desmoinesdem."

I am seeking the following documents under Iowa's open records law:

1. All records related to Iowa Workforce Development asking the Department of Criminal Investigation to look into possible fraudulent acts by Susan Ackerman (including internal memos and e-mail correspondence within DCI as well as correspondence between IWD and DCI staff)
2. Any correspondence between DCI personnel and staff with the Polk County Attorney's office related to the criminal investigation of Susan Ackerman.
3. Any correspondence between DCI personnel and other state officials (either from a different agency or from the governor's office) who may have encouraged DCI to refer Ackerman's case to the Polk County Attorney's office.

Thanks in advance.

Yours,

Laura Belin  
1705 Plaza Circle  
Windsor Heights, IA 50324  
(515) 276-6971

<http://www.bleedingheartland.com>

## Tabor, Eric [AG]

---

**From:** Lawrence, John D [VPEO] <jdlaw@iastate.edu>  
**Sent:** Thursday, December 29, 2016 5:06 PM  
**To:** Tabor, Eric [AG]  
**Cc:** Ambrozic, Jane [AG]  
**Subject:** RE: Water Quality Meeting

Thanks. Let me hear back from Helmers to see if he can make early afternoon work and then we can work out the details.

John

---

**From:** Tabor, Eric [AG] [mailto:Eric.Tabor@iowa.gov]  
**Sent:** Thursday, December 29, 2016 4:31 PM  
**To:** Lawrence, John D [VPEO] <jdlaw@iastate.edu>  
**Cc:** Ambrozic, Jane [AG] <Jane.Ambrozic@iowa.gov>  
**Subject:** RE: Water Quality Meeting

Small meeting with AG, staff, and a lawyer friend of the AG from NYC who is assisting us in moving the discussion forward. Thanks. Eric



**Eric Tabor**  
**Chief Deputy Attorney General**  
Office of the Attorney General of Iowa  
1305 E. Walnut St.  
Des Moines, Iowa 50319  
Main: (515) 281-5164 | Direct: (515) 281-5191  
Email: [Eric.Tabor@iowa.gov](mailto:Eric.Tabor@iowa.gov) | [www.iowaattorneygeneral.gov](http://www.iowaattorneygeneral.gov)

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---

**From:** Lawrence, John D [VPEO] [mailto:jdlaw@iastate.edu]  
**Sent:** Thursday, December 29, 2016 4:25 PM  
**To:** Tabor, Eric [AG]  
**Subject:** RE: Water Quality Meeting

Eric  
Is this a small meeting with the AG and staff or is this a public meeting?  
John

---

**From:** Tabor, Eric [AG] [mailto:Eric.Tabor@iowa.gov]  
**Sent:** Thursday, December 29, 2016 3:50 PM

To: Lawrence, John D [VPEO] <[jdlaw@iastate.edu](mailto:jdlaw@iastate.edu)>

Subject: Water Quality Meeting -

Dr. Lawrence – I received your voice message. Thanks for your willingness to meet with AG Miller on water quality issues. He needs to attend the Governor’s State of the State speech from 9:45 a.m. - about 11:30 a.m. on January 10<sup>th</sup>. So, the afternoon would be better. Thanks for checking with Dr. Hellmers and others. I am copying Jane Ambrozic, AG Miller’s Executive Assistant, who can work out a convenient time.

Thanks again and have a great holiday. Eric



**Eric Tabor**

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**Tabor, Eric [AG]**

---

**From:** Murphy, Alexander [DPS]  
**Sent:** Thursday, December 22, 2016 10:56 AM  
**To:** 'Foley, Ryan J.'  
**Subject:** RE: Susan Ackerman case

Ryan,

Iowa Department of Workforce Development made the Department of Public Safety aware they had found potential evidence of a fraud perpetrated by one of its employees. Based on that preliminary information and a request for investigative assistance from Iowa Workforce Development, the DCI initiated an investigation, which ultimately resulted in charges being filed on Mrs. Ackerman by the Polk County Attorney's office.

Contrary to the assertions being made, politics does not play a role in this or any other criminal investigation. DCI Agents conduct impartial, thorough, and complete investigations and the evidence and other investigative findings they have collected as part of their investigation are provided to the county attorney with jurisdiction, for their review. The county attorney has responsibility to determine if criminal charges are justified, based on the evidence. This case was no different from any other investigation.

It should be noted that a criminal charge is merely an accusation and a defendant is presumed innocent until proven guilty.

Thanks,  
AM

Alex R. Murphy  
Public Information Officer  
Investigative Operations Divisions  
Office of the Commissioner  
Iowa Department of Public Safety  
215 East 7th Street  
Des Moines, IA 50319

Office: 515.725.6189  
Cell: 515.443.3014

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-----Original Message-----

**From:** Foley, Ryan J. [mailto:RJFoley@ap.org]  
**Sent:** Wednesday, December 21, 2016 4:33 PM  
**To:** Murphy, Alexander [DPS]

Subject: RE: Susan Ackerman case

Got it. Supporters of Susan Ackerman are already alleging that this case has a political motive - to retaliate against her for testifying critically of the Branstad administration to lawmakers in 2014.

Who asked DCI to investigate this alleged fraud? What steps were taken to keep any politics out of it?  
Ryan

-----Original Message-----

From: Murphy, Alexander [DPS] [mailto:amurphy@dps.state.ia.us]  
Sent: Wednesday, December 21, 2016 4:33 PM  
To: Foley, Ryan J.  
Subject: Re: Susan Ackerman case

Unfortunately, if the courts have not yet processed the complaint and affidavit, DPS does not have a file-stamped copy.

---

On: 21 December 2016 16:17, "Foley, Ryan J." <RJFoley@ap.org> wrote:

Correct. The clerk's office says it's not entered into the system yet or something. Even her attorney doesn't have it.

-----Original Message-----

From: Murphy, Alexander [DPS] [mailto:amurphy@dps.state.ia.us]  
Sent: Wednesday, December 21, 2016 4:16 PM  
To: Foley, Ryan J.  
Subject: Re: Susan Ackerman case

The county clerk of court didn't have it?

---

On: 21 December 2016 16:13, "Foley, Ryan J." <RJFoley@ap.org> wrote:

Yeah, it's not on file yet, even though she was booked at 6 a.m. this morning.

-----Original Message-----

From: Murphy, Alexander [DPS] [mailto:amurphy@dps.state.ia.us]  
Sent: Wednesday, December 21, 2016 4:13 PM  
To: Foley, Ryan J.  
Subject: Re: Susan Ackerman case

No, I don't, but you can get it from the clerk of court or on EDMS.

---

On: 21 December 2016 16:04, "Foley, Ryan J." <RJFoley@ap.org> wrote:

Do you have a criminal complaint in the matter?

-----Original Message-----

From: Murphy, Alexander [DPS] [mailto:amurphy@dps.state.ia.us]  
Sent: Wednesday, December 21, 2016 4:03 PM  
To: Foley, Ryan J.  
Subject: Re: Susan Ackerman case

Yes, that is correct.

On: 21 December 2016 15:42, "Foley, Ryan J." <RJFoley@ap.org> wrote:

Hi, Alex – Did DCI lead the investigation that led to today's fraud charge against former IWD administrative law judge Susan Ackerman?

Ryan

Ryan J. Foley

Correspondent, The Associated Press

103 E. College St., Suite 208

Iowa City, IA 52240

319-337-5615 (o)

319-400-2213 (c)

319-337-6126 (fax)

Twitter: @rjfoley

**Tabor, Eric [AG]**

---

**From:** Bellus, Benjamin [AG]  
**Sent:** Wednesday, December 21, 2016 9:36 AM  
**To:** Tabor, Eric [AG]; Miller, Max [AG]; Whitney, Jessica [AG]  
**Subject:** RE: Volkswagen Settlement -- State Agency Working Group Coordination

All:

I don't see a large role for our office in selecting the individual projects and the actual running of Iowa's program. However, it is important that Max and I attend the meetings. I will send our contact information to Angie.

Ben

---

**From:** Tabor, Eric [AG]  
**Sent:** Tuesday, December 20, 2016 4:47 PM  
**To:** Miller, Max [AG]; Bellus, Benjamin [AG]; Whitney, Jessica [AG]  
**Subject:** FW: Volkswagen Settlement -- State Agency Working Group Coordination

FYI

---

**From:** Thompson, Jeffrey [AG]  
**Sent:** Tuesday, December 20, 2016 2:18 PM  
**To:** Tabor, Eric [AG]  
**Subject:** FW: Volkswagen Settlement -- State Agency Working Group Coordination

Eric,

FYI See attached from Janet.

**From:** Phipps, Janet [<mailto:janet.phipps@iowa.gov>]  
**Sent:** Tuesday, December 20, 2016 12:57 PM  
**To:** Thompson, Jeffrey [AG]  
**Subject:** Fwd: Volkswagen Settlement -- State Agency Working Group Coordination

Just FYI -

*Janet E. Phipps, Director  
Dept. of Administrative Services  
Hoover Building, 3rd Floor  
1305 E. Walnut  
Des Moines, IA 50319  
Office: 515.725.2205  
Cell: 515.418.7271  
[janet.phipps@iowa.gov](mailto:janet.phipps@iowa.gov)*



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----- Forwarded message -----

From: **Hoelscher, Doug** <doug.hoelscher@iowa.gov>

Date: Tue, Dec 20, 2016 at 12:53 PM

Subject: Volkswagen Settlement -- State Agency Working Group Coordination

To: "Gerd Clabaugh [IDPH]" <gerd.clabaugh@idph.iowa.gov>, "Durham, Debi [IEDA]" <Debi.Durham@iowa.gov>, Charles Gipp <chuck.gipp@iowa.gov>, Geri Huser <geri.huser@iub.iowa.gov>, Mark Lowe <mark.lowe@dot.iowa.gov>, "Northey, Bill [IDALS]" <whn@iowaagriculture.gov>, "Gen. Janet Phipps" <janet.phipps-burkhead@iowa.gov>, "Wise, Ryan" <ryan.wise@iowa.gov>, Siew-san Wong <siew-san.wong@iowa.gov>, David Roederer <david.roederer@iowa.gov>

Cc: Stephanie Groen <stephanie.groen@iowa.gov>, Michael Bousselot <michael.bousselot@iowa.gov>, Tracie Gibler <tracie.gibler@iowa.gov>, Cord Overton <cord.overton@iowa.gov>, Theodore Stopulos <ted.stopulos@iowa.gov>, Lawrence Johnson Jr <larry.johnson@iowa.gov>, Colin Smith <colin.smith@iowa.gov>, Deborah Thompson <deborah.thompson@idph.iowa.gov>, Rita Grimm <rita.grimm@ieda.iowa.gov>, "Bruce Trautman [DNR]" <bruce.trautman@iowa.gov>, "Louis Vander Streek [IUB]" <louis.vanderstreek@iub.iowa.gov>, "Derby, Mikel" <mikel.derby@iowadot.us>, "Anderson, Stuart" <stuart.anderson@iowadot.us>, Mike Naig <michael.naig@iowaagriculture.gov>, "Gronewald, Matt [IDALS]" <matt.gronewald@iowaagriculture.gov>, Linda Fandel <linda.fandel@iowa.gov>

Attached and pasted below, please find a memo regarding the State's coordination on the Volkswagen Settlement. Please also inform me if you think anyone should be added to distribution list.



**Memo**

To:

Gerd Clabaugh, Director, Iowa Department of Public Health

Debi Durham, Director, Iowa Economic Development Authority

Chuck Gipp, Director, Iowa Department of Natural Resources

Geri Huser, Chair, Iowa Utilities Board

Mark Lowe, Interim Director, Iowa Department of Transportation

Bill Northey, Iowa Secretary of Agriculture

Janet Phipps, Director, Iowa Department of Administrative Services

Ryan Wise, Director, Iowa Department of Education

San Wong, Director, Iowa Department of Human Rights

Dave Roederer, Director, Iowa Department of Management

From: Doug Hoelscher (IGOV), Stephanie Weisenbach (IEDA), & Angie Poole (IDOT)  
cc: Mike Boussetot (IGOV)

Date: December 20, 2016

Re: Volkswagen Settlement State Agency Working Group

## Overview:

The Governor's Office has asked the Iowa Department of Transportation to coordinate the state of Iowa's response to the Volkswagen settlement. We are asking you **to provide an agency representative to participate** in this state agency working group. The purpose is to coordinate with other partner state agencies to identify/recommend potential projects and recommend a process for allocating these funds. The recommendations from this group will be prepared for the Governor's Office consideration.

**Volkswagen (VW) has agreed to pay \$14.7 billion to resolve litigation regarding failure to comply with emissions standards captioned the *United States v. Volkswagen Group of America*.** Of that:

- **Zero Emission Vehicle Investments (ZEV):** \$2 billion will be allocated to national ZEV investments (\$800 million for California and \$1.2 billion nationally), and
- **Environmental Mitigation Trust (Trust)** \$2.7 billion will be allocated to Trust, which states and territories may use to invest in transportation projects that will reduce Nitrogen Oxides emissions (NOx), which contribute to ozone and raise health concerns.
- **Vehicle Purchase & Upgrades:** The remaining \$10 billion dollars will be spent by VW purchase or upgrade faulty VW vehicles.

To access or download the partial and amended consent decree, go to the following link on the Environmental Protection Agency's website: <https://www.epa.gov/enforcement/201-partial-and-amended-consent-decree>.

## National Zero Emission Vehicle (ZEV) Investments:

The \$2 billion allocated to ZEV Investment will be distributed as described in the ZEV Investment Plan developed by Volkswagen and approved by EPA. The plan will focus on three primary activities:

1. Investing in electric vehicle charging infrastructure.

2. Increasing awareness and fostering education about electronic vehicles, their benefits, and charging availability.
3. Launching a Green City initiative in the state of California.

Volkswagen is required to obtain input on this plan and they are accepting project proposals through January 16, 2017. The Iowa Economic Development Authority (IEDA), in coordination with the Iowa DOT, will prepare a proposal for fast charging corridors shaped by the local interest from property owners and stakeholders primarily along high volume corridors including I-35 and I-80.

### **Environmental Mitigation Trust:**

**The state of Iowa is eligible to receive an allocation of \$20,179,540.80 from the Trust, which can be spent over approximately ten years.**

### **Timeframe for the Trust:**

States (referred to as beneficiaries) must wait until a Trustee has been selected to act as a third-party to administer the funding. Selection of the trustee and determination of Trust Effective Date (TED) is expected to occur in early CY 2017. Within two months of the TED, each beneficiary will submit certification for its lead agency. Within 90 days of becoming and beneficiary, a Beneficiary Mitigation Plan is due to the Trustee broadly describing intended uses for the funding and associated emissions benefits. Each beneficiary is allowed up to 15 percent of its allocation for administration costs, which can include state staff and typical administration expenses as well as training costs.

### **Eligible Project Uses of Environmental Mitigation Trust:**

The eligible projects described in the settlement focus on replacing or repowering older diesel vehicles with new diesel or alternative fuel vehicles. Alternative fuel vehicles listed are compressed natural gas, propane, hybrid or all-electric. We continue to advocate for biofuels-related projects, but eligibility remains uncertain. Vehicles can be government owned or non-government owned. Types of vehicles include large freight trucks, school buses, shuttle buses, transit buses, freight switchers, ferries and /or tugs, medium duty trucks, airport ground support equipment, fork lifts and port cargo handling equipment. Electric vehicle charging stations are eligible, however, it is worth noting that VW will be spending \$2 billion nationally on ZEV investments. States may also use what is called the Diesel Emission Reduction Act (DERA) option, which is an existing EPA program that funds a variety of similar diesel emission reduction projects. This opens up another list of potentially eligible projects, such as idle reduction equipment, off-road equipment, and diesel generators. The Iowa Department of Natural Resources currently administers some of EPA's DERA funds in Iowa.

### **Timeline/Potential Next Steps (actual dates are subject to determination of Trust Effective Date):**

- **Set up a working group meeting late early January 2017.**
- **Identify project priorities by the working group (By February 2017)**
  - o At present, several parties have already expressed an interest in VW settlement funding. These potential projects, as well as forthcoming broad public solicitation for potential projects will be discussed at the first working group meeting;
  - o Identify state priorities;
  - o Review submitted projects;
  - o Recommendations submitted to Governor's Office.
- **Develop & Submit Beneficiary Mitigation Plan (March 2017 through May 2017 – but not later than three months after being deemed a beneficiary).**
- **Begin Implementation.**

**If your agency would like to be part of the working group, please respond with the name of a representative to Angie Poole at the Iowa Department of Transportation by December 30, 2016. Angie can be reached at 515-239-1351 or at [angela.poole@iowadot.us](mailto:angela.poole@iowadot.us)**

--

**Doug Hoelscher** | Director of State-Federal Relations

Office of the Governor, State of Iowa

Gov. Terry Branstad & Lt. Gov. Kim Reynolds

202-624-5479 | [Doug.Hoelscher@iowa.gov](mailto:Doug.Hoelscher@iowa.gov)

[www.governor.iowa.gov](http://www.governor.iowa.gov)

[www.ltgovernor.iowa.gov](http://www.ltgovernor.iowa.gov)





**Tabor, Eric [AG]**

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**Sent:** Tuesday, December 20, 2016 4:47 PM  
**To:** Miller, Max [AG]; Bellus, Benjamin [AG]; Whitney, Jessica [AG]  
**Subject:** FW: Volkswagen Settlement -- State Agency Working Group Coordination  
**Attachments:** VW Working Group Memo\_v2.1.docx.docx

FYI

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Des Moines, IA 50319  
Office: 515.725.2205  
Cell: 515.418.7271  
[janet.phipps@iowa.gov](mailto:janet.phipps@iowa.gov)*



Iowa Department of Administrative Services

*Service • Efficiency • Value*

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Subject: Volkswagen Settlement -- State Agency Working Group Coordination

To: "Gerd Clabaugh [IDPH]" <gerd.clabaugh@idph.iowa.gov>, "Durham, Debi [IEDA]" <Debi.Durham@iowa.gov>, Charles Gipp <chuck.gipp@iowa.gov>, Geri Huser <geri.huser@iub.iowa.gov>, Mark Lowe <mark.lowe@dot.iowa.gov>, "Northey, Bill [IDALS]" <whn@iowaagriculture.gov>, "Gen. Janet Phipps" <janet.phipps-burkhead@iowa.gov>, "Wise, Ryan" <ryan.wise@iowa.gov>, Siew-san Wong <siew-san.wong@iowa.gov>, David Roederer <david.roederer@iowa.gov>  
Cc: Stephanie Groen <stephanie.groen@iowa.gov>, Michael Bousselot <michael.bousselot@iowa.gov>, Tracie Gibler <tracie.gibler@iowa.gov>, Cord Overton <cord.overton@iowa.gov>, Theodore Stopulos <ted.stopulos@iowa.gov>, Lawrence Johnson Jr <larry.johnson@iowa.gov>, Colin Smith <colin.smith@iowa.gov>, Deborah Thompson <deborah.thompson@idph.iowa.gov>, Rita Grimm <rita.grimm@ieda.iowa.gov>, "Bruce Trautman [DNR]" <bruce.trautman@iowa.gov>, "Louis Vander Streek [IUB]" <louis.vanderstreek@iub.iowa.gov>, "Derby, Mikel" <mikel.derby@iowadot.us>, "Anderson, Stuart" <stuart.anderson@iowadot.us>, Mike Naig <michael.naig@iowaagriculture.gov>, "Gronewald, Matt [IDALS]" <matt.gronewald@iowaagriculture.gov>, Linda Fandel <linda.fandel@iowa.gov>

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Bill Northey, Iowa Secretary of Agriculture

Janet Phipps, Director, Iowa Department of Administrative Services

Ryan Wise, Director, Iowa Department of Education

San Wong, Director, Iowa Department of Human Rights

Dave Roederer, Director, Iowa Department of Management

From: Doug Hoelscher (IGOV), Stephanie Weisenbach (IEDA), & Angie Poole (IDOT)  
cc: Mike Bousselot (IGOV)

Date: December 20, 2016

Re: Volkswagen Settlement State Agency Working Group

## Overview:

The Governor's Office has asked the Iowa Department of Transportation to coordinate the state of Iowa's response to the Volkswagen settlement. We are asking you to **provide an agency representative to participate** in this state agency working group. The purpose is to coordinate with other partner state agencies to identify/recommend potential projects and recommend a process for allocating these funds. The recommendations from this group will be prepared for the Governor's Office consideration.

**Volkswagen (VW) has agreed to pay \$14.7 billion to resolve litigation regarding failure to comply with emissions standards captioned the *United States v. Volkswagen Group of America*.** Of that:

- **Zero Emission Vehicle Investments (ZEV):** \$2 billion will be allocated to national ZEV investments (\$800 million for California and \$1.2 billion nationally), and
- **Environmental Mitigation Trust (Trust)** \$2.7 billion will be allocated to Trust, which states and territories may use to invest in transportation projects that will reduce Nitrogen Oxides emissions (NOx), which contribute to ozone and raise health concerns.
- **Vehicle Purchase & Upgrades:** The remaining \$10 billion dollars will be spent by VW purchase or upgrade faulty VW vehicles.

To access or download the partial and amended consent decree, go to the following link on the Environmental Protection Agency's website: <https://www.epa.gov/enforcement/201-partial-and-amended-consent-decree>.

## National Zero Emission Vehicle (ZEV) Investments:

The \$2 billion allocated to ZEV Investment will be distributed as described in the ZEV Investment Plan developed by Volkswagen and approved by EPA. The plan will focus on three primary activities:

1. Investing in electric vehicle charging infrastructure.
2. Increasing awareness and fostering education about electronic vehicles, their benefits, and charging availability.
3. Launching a Green City initiative in the state of California.

Volkswagen is required to obtain input on this plan and they are accepting project proposals through January 16, 2017. The Iowa Economic Development Authority (IEDA), in coordination with the Iowa DOT, will prepare a proposal for fast charging corridors shaped by the local interest from property owners and stakeholders primarily along high volume corridors including I-35 and I-80.

## Environmental Mitigation Trust:

**The state of Iowa is eligible to receive an allocation of \$20,179,540.80 from the Trust, which can be spent over approximately ten years.**

**Timeframe for the Trust:**

States (referred to as beneficiaries) must wait until a Trustee has been selected to act as a third-party to administer the funding. Selection of the trustee and determination of Trust Effective Date (TED) is expected to occur in early CY 2017. Within two months of the TED, each beneficiary will submit certification for its lead agency. Within 90 days of becoming and beneficiary, a Beneficiary Mitigation Plan is due to the Trustee broadly describing intended uses for the funding and associated emissions benefits. Each beneficiary is allowed up to 15 percent of its allocation for administration costs, which can include state staff and typical administration expenses as well as training costs.

**Eligible Project Uses of Environmental Mitigation Trust:**

The eligible projects described in the settlement focus on replacing or repowering older diesel vehicles with new diesel or alternative fuel vehicles. Alternative fuel vehicles listed are compressed natural gas, propane, hybrid or all-electric. We continue to advocate for biofuels-related projects, but eligibility remains uncertain. Vehicles can be government owned or non-government owned. Types of vehicles include large freight trucks, school buses, shuttle buses, transit buses, freight switchers, ferries and /or tugs, medium duty trucks, airport ground support equipment, fork lifts and port cargo handling equipment. Electric vehicle charging stations are eligible, however, it is worth noting that VW will be spending \$2 billion nationally on ZEV investments. States may also use what is called the Diesel Emission Reduction Act (DERA) option, which is an existing EPA program that funds a variety of similar diesel emission reduction projects. This opens up another list of potentially eligible projects, such as idle reduction equipment, off-road equipment, and diesel generators. The Iowa Department of Natural Resources currently administers some of EPA's DERA funds in Iowa.

**Timeline/Potential Next Steps (actual dates are subject to determination of Trust Effective Date):**

- **Set up a working group meeting late early January 2017.**
- **Identify project priorities by the working group (By February 2017)**
  - o At present, several parties have already expressed an interest in VW settlement funding. These potential projects, as well as forthcoming broad public solicitation for potential projects will be discussed at the first working group meeting;
  - o Identify state priorities;
  - o Review submitted projects;
  - o Recommendations submitted to Governor's Office.

· **Develop & Submit Beneficiary Mitigation Plan (March 2017 through May 2017 – but not later than three months after being deemed a beneficiary).**

· **Begin Implementation.**

**If your agency would like to be part of the working group, please respond with the name of a representative to Angie Poole at the Iowa Department of Transportation by December 30, 2016. Angie can be reached at 515-239-1351 or at [angela.poole@iowadot.us](mailto:angela.poole@iowadot.us)**

--

**Doug Hoelscher** | Director of State-Federal Relations

Office of the Governor, State of Iowa

Gov. Terry Branstad & Lt. Gov. Kim Reynolds

202-624-5479 | [Doug.Hoelscher@iowa.gov](mailto:Doug.Hoelscher@iowa.gov)

[www.governor.iowa.gov](http://www.governor.iowa.gov)

[www.ltgovernor.iowa.gov](http://www.ltgovernor.iowa.gov)



**Tabor, Eric [AG]**

---

**From:** Thompson, Jeffrey [AG]  
**Sent:** Tuesday, December 20, 2016 2:18 PM  
**To:** Tabor, Eric [AG]  
**Subject:** FW: Volkswagen Settlement -- State Agency Working Group Coordination  
**Attachments:** VW Working Group Memo\_v2.1.docx.docx

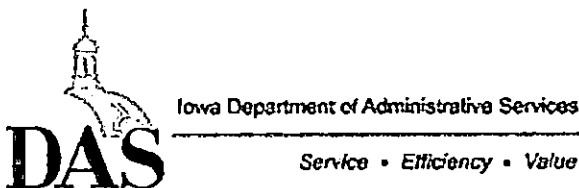
Eric,

FYI See attached from Janet.

**From:** Phipps, Janet [mailto:janet.phipps@iowa.gov]  
**Sent:** Tuesday, December 20, 2016 12:57 PM  
**To:** Thompson, Jeffrey [AG]  
**Subject:** Fwd: Volkswagen Settlement -- State Agency Working Group Coordination

Just FYI -

*Janet E. Phipps, Director  
Dept. of Administrative Services  
Hoover Building, 3rd Floor  
1305 E. Walnut  
Des Moines, IA 50319  
Office: 515.725.2205  
Cell: 515.418.7271  
[janet.phipps@iowa.gov](mailto:janet.phipps@iowa.gov)*



**BE GREEN -- Please consider the environment before printing this e-mail.**

----- Forwarded message -----

**From:** Hoelscher, Doug <doug.hoelscher@iowa.gov>  
**Date:** Tue, Dec 20, 2016 at 12:53 PM  
**Subject:** Volkswagen Settlement -- State Agency Working Group Coordination  
**To:** "Gerd Clabaugh [IDPH]" <gerd.clabaugh@idph.iowa.gov>, "Durham, Debi [IEDA]" <Debi.Durham@iowa.gov>, Charles Gipp <chuck.gipp@iowa.gov>, Geri Huser <geri.huser@iub.iowa.gov>, Mark Lowe <mark.lowe@dot.iowa.gov>, "Northey, Bill [IDALS]" <whn@iowaagriculture.gov>, "Gen. Janet Phipps" <janet.phipps-burkhead@iowa.gov>, "Wise, Ryan" <ryan.wise@iowa.gov>, Siew-san Wong <siew-san.wong@iowa.gov>, David Roederer <david.roederer@iowa.gov>

Cc: Stephanie Groen <[stephanie.groen@iowa.gov](mailto:stephanie.groen@iowa.gov)>, Michael Boussetot <[michael.boussetot@iowa.gov](mailto:michael.boussetot@iowa.gov)>, Tracie Gibler <[tracie.gibler@iowa.gov](mailto:tracie.gibler@iowa.gov)>, Cord Overton <[cord.overton@iowa.gov](mailto:cord.overton@iowa.gov)>, Theodore Stopulos <[ted.stopulos@iowa.gov](mailto:ted.stopulos@iowa.gov)>, Lawrence Johnson Jr <[larry.johnson@iowa.gov](mailto:larry.johnson@iowa.gov)>, Colin Smith <[colin.smith@iowa.gov](mailto:colin.smith@iowa.gov)>, Deborah Thompson <[deborah.thompson@idph.iowa.gov](mailto:deborah.thompson@idph.iowa.gov)>, Rita Grimm <[rita.grimm@ieda.iowa.gov](mailto:rita.grimm@ieda.iowa.gov)>, "Bruce Trautman [DNR]" <[bruce.trautman@iowa.gov](mailto:bruce.trautman@iowa.gov)>, "Louis Vander Streek [IUB]" <[louis.vanderstreek@iub.iowa.gov](mailto:louis.vanderstreek@iub.iowa.gov)>, "Derby, Mikel" <[mikel.derby@iowadot.us](mailto:mikel.derby@iowadot.us)>, "Anderson, Stuart" <[stuart.anderson@iowadot.us](mailto:stuart.anderson@iowadot.us)>, Mike Naig <[michael.naig@iowaagriculture.gov](mailto:michael.naig@iowaagriculture.gov)>, "Gronewald, Matt [IDALS]" <[matt.gronewald@iowaagriculture.gov](mailto:matt.gronewald@iowaagriculture.gov)>, Linda Fandel <[linda.fandel@iowa.gov](mailto:linda.fandel@iowa.gov)>

Attached and pasted below, please find a memo regarding the State's coordination on the Volkswagen Settlement. Please also inform me if you think anyone should be added to distribution list.



**Memo**

**To:**

Gerd Clabaugh, Director, Iowa Department of Public Health  
Debi Durham, Director, Iowa Economic Development Authority  
Chuck Gipp, Director, Iowa Department of Natural Resources  
Geri Huser, Chair, Iowa Utilities Board  
Mark Lowe, Interim Director, Iowa Department of Transportation  
Bill Northey, Iowa Secretary of Agriculture  
Janet Phipps, Director, Iowa Department of Administrative Services  
Ryan Wise, Director, Iowa Department of Education  
San Wong, Director, Iowa Department of Human Rights  
Dave Roederer, Director, Iowa Department of Management

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**cc:** Mike Boussetot (IGOV)

**Date:** December 20, 2016

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--

**Doug Hoelscher** | Director of State-Federal Relations

Office of the Governor, State of Iowa

Gov. Terry Branstad & Lt. Gov. Kim Reynolds

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[www.ltgovernor.iowa.gov](http://www.ltgovernor.iowa.gov)



## **Tabor, Eric [AG]**

---

**From:** Melohn, Janelle [AG]  
**Sent:** Tuesday, December 20, 2016 8:22 AM  
**To:** McCarthy, Kevin [AG]; Tabor, Eric [AG]  
**Subject:** FW: ProclamationforSlaveryandHumanTraffickingPreventionandAwarenessMonth.pdf

The most recent "ask" from George Belitsos re: the HT on the Hill day. I'm okay with having Celine participate, but wanted to check in to be sure. I'm also happy to accompany if she's concerned at all. Celine is stellar though and I'm not concerned at all with her ability to represent the AGO well.

Let me know.



### **Janelle Melohn**

#### **Director**

Office of the Attorney General of Iowa  
Crime Victim Assistance Division  
321 East 12<sup>th</sup> Street  
Des Moines, Iowa 50319  
Main: (515) 281-5044 | Direct: (515) 242-6109  
Email: [janelle.melohn@iowa.gov](mailto:janelle.melohn@iowa.gov) | [www.iowaattorneygeneral.gov](http://www.iowaattorneygeneral.gov)  
Like us on Facebook at <https://www.facebook.com/CrimeVictimAssistanceDivision>  
Follow us on twitter @CVADInfo

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**From:** George Belitsos [<mailto:gbelitsos55@gmail.com>]  
**Sent:** Monday, December 19, 2016 5:38 PM  
**To:** Villongco, Celine [AG]; Ryan, Roxann [DPS]  
**Cc:** Teresa Davidson; Bernadette Rixner; Jan Beran; Margaret Epplin; George Belitsos  
**Subject:** RE: ProclamationforSlaveryandHumanTraffickingPreventionandAwarenessMonth.pdf

Holiday greetings. Today I had a conversation with the governor's press secretary and he proposed that the only speakers at the press conference on January 9th at 9 a.m. be the governor, lieutenant governor, and myself. After the press conference at 9:30, it is planned that Roxanne Ryan and someone representing the Attorney General's office be identified and present to answer questions from the media. Please let me know if you should be identified or if it is someone else. I am copying this email to Roxanne to also inform her of all of this.

FYI at 9:45 p.m. we will reconvene in the governor's formal office for the proclamation signing. It would be great if you and Roxanne could be present for the Proclamation signing.

You were going to look at any national theme for this year's observance of January as anti Human Trafficking month. Were you able to locate any national theme or information?

Finally, the Network board will meet at approximately 10:15 a.m. to 11:30 a.m. following the proclamation signing. We would really appreciate it if you and Roxanne could be in attendance for this face to face board

meeting. Since we will be right there at the state capitol building it would be very helpful to get a progress report from both the Attorney General's office and DPS. Please let me know.

Thanks. Dr. George  
George P. Belitsos  
YSS Founder & CEO Emeritus  
Board Chair, Iowa Network Against Human Trafficking  
515-290-1909 mobile  
515-292-9475 home  
5508 W. Lincolnway  
Ames, IA 50014  
[Gbelitsos55@gmail.com](mailto:Gbelitsos55@gmail.com) (primary)

On Dec 19, 2016 2:39 PM, "Villongco, Celine [AG]" <[Celine.Villongco@iowa.gov](mailto:Celine.Villongco@iowa.gov)> wrote:

Hi Dr. George,

I'm still waiting for confirmation from the main office on if they will be sending someone to serve in an official press-capacity, but that has not been made clear yet. I will keep you informed if hear something, but wanted to clarify that unless I receive the official go-ahead from them, I won't be authorized to speak to press on the record.

Thanks!

Celine

## Celine Villongco



**Human Trafficking Coordinator**  
Office of the Attorney General of Iowa  
321 E. 12<sup>th</sup> Street

Des Moines, Iowa 50319

Phone: (515)-281-5044 | Direct: (515) 725-4109  
Email: [Celine.Villongco@iowa.gov](mailto:Celine.Villongco@iowa.gov) | [www.iowaattorneygeneral.gov](http://www.iowaattorneygeneral.gov)

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reply email or telephone. Any unintended transmission of this email message does not constitute a waiver of any applicable privilege or protection. Thank you.

**From:** George Belitsos [<mailto:gbelitsos55@gmail.com>]

**Sent:** Monday, December 19, 2016 12:40 PM

**To:** Hammes, Ben [IGOV]

**Cc:** George Belitsos; Jacobs, Austin [IGOV]; Maggie Tinsman; Villongco, Celine [AG]; Teresa Davidson; Jan Beran; Ryan, Roxann [DPS]; Ruth Buckels

**Subject:** ProclamationforSlaveryandHumanTraffickingPreventionandAwarenessMonth.pdf

Greetings. Thanks for the phone call and clarification regarding the governors January 9th 9 a.m. anti human trafficking press conference. I will be writing up proposed comments for the governor, lieutenant governor, and myself. We will be the only speakers during the press conference. I will send you the proposed comments the week before the press conference in order for you to review and place and final form.

At the end of the press conference, other allies in the fight against human trafficking will be available to answer questions from the press, for example Commissioner Roxanne Ryan, Celine Villongco from the Attorney General's office, and providers of services for trafficking victims.

At 9:45 a.m. we will reconvene in the governor's formal office for the signing of the proclamation. At that time we will also be recognizing several Iowans for their work to combat human trafficking.

Thanks. Dr. George  
George P. Belitsos  
YSS Founder & CEO Emeritus  
Board Chair, Iowa Network Against Human Trafficking  
515-290-1909 mobile  
515-292-9475 home  
5508 W. Lincolnway  
Ames, IA 50014  
[Gbelitsos55@gmail.com](mailto:Gbelitsos55@gmail.com) (primary)

## Tabor, Eric [AG]

---

**From:** Tabor, Eric [AG]  
**Sent:** Friday, December 16, 2016 3:56 PM  
**To:** Triick, Mary [DHS]  
**Cc:** Kraemer, Gretchen [DHS]  
**Subject:** RE: DEC Workgroup Report

Mary – Thanks for doing this. Eric



**Eric Tabor**  
**Chief Deputy Attorney General**  
Office of the Attorney General of Iowa  
1305 E. Walnut St.  
Des Moines, Iowa 50319  
Main: (515) 281-5164 | Direct: (515) 281-5191  
Email: [Eric.Tabor@iowa.gov](mailto:Eric.Tabor@iowa.gov) | [www.iowaattorneygeneral.gov](http://www.iowaattorneygeneral.gov)

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---

**From:** Triick, Mary A. [<mailto:mtriick@dhs.state.ia.us>]  
**Sent:** Wednesday, December 14, 2016 9:04 AM  
**To:** Tabor, Eric [AG]  
**Cc:** Kraemer, Gretchen [DHS]  
**Subject:** FW: DEC Workgroup Report

Eric – Attached is an advanced copy of the report completed following the meeting of the Drug Endangered Children Workgroup that I represented our office on this fall. The report will be sent to the legislature tomorrow. ~Mary



**Mary A. Triick**  
**Assistant Attorney General**  
Office of the Attorney General of Iowa  
1305 E. Walnut St.  
Des Moines, Iowa 50319  
Main: (515) 281-5164 | Direct: (515) 281-8439  
Email: [mtriick@dhs.state.ia.us](mailto:mtriick@dhs.state.ia.us) | [www.iowaattorneygeneral.gov](http://www.iowaattorneygeneral.gov)

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**From:** Sher, Susie [<mailto:susie.sher@iowa.gov>]

**Sent:** Wednesday, December 14, 2016 8:58 AM

**To:** Roeder-Grubb, Laura [DHR]; Harvey, Janee C.; Hennessey, Jim [DIA]; Triick, Mary A.; Barber, Gail [JB]; Lukan, Steven [ODCP]; Jennifer; Scott Nicholson; Brad Shutts; Kristie Oliver; Contact; Beth Schmitz; Jason Haglund; Hurley, Douglas [DPS]; Liz Cox

**Cc:** Sher, Susie [ODCP]; Woolery, Dale [ODCP]

**Subject:** DEC Workgroup Report

DEC Workgroup members,

This is a courtesy advanced copy of the DEC Workgroup Report that will be submitted to the legislature tomorrow.

Thank you for your time and hard work.

Susie

Susie Sher  
Budget Analyst  
Governor's Office of Drug Control Policy  
215 E. 7th St, 5th Floor  
Des Moines, IA 50319  
515-725-0308  
[susie.sher@iowa.gov](mailto:susie.sher@iowa.gov)  
<https://odcp.iowa.gov/>

## Tabor, Eric [AG]

---

**From:** Tabor, Eric [AG]  
**Sent:** Friday, December 16, 2016 3:38 PM  
**To:** Schuling, Mark [OCA]  
**Subject:** FW: SUBMITTED - Filing in RMS

FYI

**From:** linc-alerts@legis.iowa.gov [mailto:linc-alerts@legis.iowa.gov]  
**Sent:** Wednesday, December 07, 2016 8:15 AM  
**To:** Tabor, Eric [AG]  
**Subject:** SUBMITTED - Filing in RMS

The following filing has been successfully submitted:

Rule Title: 64 IA 34 Property Owner's Rights

Status and updates can be viewed in the Rules Management System (RMS)  
<https://www.legis.iowa.gov/portal/rms>

Notices of Intended Action are reviewed by the Governor's Office prior to routing to the Administrative Code Office (ACO) for publication in the Iowa Administrative Bulletin and Iowa Administrative Code.

All other rule makings are reviewed by the Administrative Code Office prior to publication.

If the Governor's Office or ACO provide or request feedback, you will receive an e-mail, and the tracking information in RMS will reflect the exchange.

Please do not reply to this e-mail as this e-mail account is not monitored.



## Tabor, Eric [AG]

---

**From:** Tabor, Eric [AG]  
**Sent:** Thursday, December 15, 2016 3:56 PM  
**To:** 'freeasininfo@gmail.com'  
**Cc:** White, Cathleen [AG]  
**Subject:** RE: Contact information for FOIA

The public records officer for the Iowa Attorney General's Office is Eric Tabor - contact information is below. This Office does maintain a list of public record officers in other Iowa state agencies. You may want to contact the Iowa Governor's Office.

Eric Tabor  
Chief Deputy Attorney General  
Office of the Attorney General of Iowa  
1305 E. Walnut St.  
Des Moines, Iowa 50319  
Main: (515) 281-5164 | Direct: (515) 281-5191  
Email: Eric.Tabor@iowa.gov | [www.iowaattorneygeneral.gov](http://www.iowaattorneygeneral.gov)

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-----Original Message-----

**From:** freeasininfo@gmail.com [mailto:freeasininfo@gmail.com]  
**Sent:** Friday, December 09, 2016 12:42 AM  
**To:** Tabor, Eric [AG]  
**Subject:** Contact information for FOIA

To Whom It May Concern:

Pursuant to the Iowa Open Records Law (Code Chapter 22), I hereby request the following records:

Please provide me with the contact information of all registered FOIA departments/groups/agencies/branches and their respective officers or agents.

If this information is already available in a central and public location, please provide me with such information.

If this information is not stored nor maintained, please let me know so that this request can be narrowed so that fungible information will be provided instead.

If there are any questions or concerns, I can be reached through phone or email.

The requested documents will be made available to the general public, and this request is not being made for commercial purposes.

In the event that there are fees, I would be grateful if you would inform me of the total charges in advance of fulfilling my request. I would prefer the request filled electronically, by e-mail attachment if available or CD-ROM if not.

Thank you in advance for your anticipated cooperation in this matter. I look forward to receiving your response to this request within 10 business days, as the statute requires.

Sincerely,

Matt Chapman

## Tabor, Eric [AG]

---

**From:** Tabor, Eric [AG]  
**Sent:** Thursday, December 15, 2016 10:41 AM  
**To:** 'Jeff Danielson'  
**Subject:** RE: VW settlement?

Senator Danielson – I am sorry I am tardy in getting back to you – I have been traveling. I have pasted below the news release describing the VW settlement. The \$3.5 million will be used by our office for consumer protection education and litigation. The \$20 million for environmental mitigation efforts is administered by the Governor. He has delegated IDEA and DOT to draft the State Mitigation Fund. I believe the contact at IDEA is Stephanie Weisenbach and the contact at DOT is Stu Anderson. I understand they will call a stakeholders meeting sometime in January.



**Eric Tabor**  
**Chief Deputy Attorney General**  
Office of the Attorney General of Iowa  
1305 E. Walnut St.  
Des Moines, Iowa 50319  
Main: (515) 281-5164 | Direct: (515) 281-5191  
Email: [Eric.Tabor@iowa.gov](mailto:Eric.Tabor@iowa.gov) | [www.iowaattorneygeneral.gov](http://www.iowaattorneygeneral.gov)

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<https://www.iowaattorneygeneral.gov/newsroom/volkswagen-emissions-fraud-settlement/>

**From:** Jeff Danielson [mailto:[jeffdanielson@gmail.com](mailto:jeffdanielson@gmail.com)]  
**Sent:** Monday, December 05, 2016 8:59 AM  
**To:** Tabor, Eric [AG]  
**Subject:** VW settlement?

Is Iowa expected to get settlement money from the VW case?  
If so, how much do we estimate?

Yours in Service,  
Senator Jeff Danielson  
319.231.7192  
**Let's be Facebook friends! LIKE my page:**  
<https://www.facebook.com/senatorjeffdanielson>

**Tabor, Eric [AG]**

---

**From:** Greenwood, Geoff [AG]  
**Sent:** Tuesday, December 13, 2016 4:03 PM  
**To:** Erin Murphy  
**Subject:** RE: Question  
**Attachments:** 1923 Op Atty Gen 263.pdf

Erin:

Here's a little more explanation.

Notably, Iowa courts have never addressed this issue.

In all four historical cases of vacancies by Iowa governors, the lieutenant governor who succeeded the governor was viewed and regarded in all respects as the governor.

Our office carefully reviewed the Iowa Constitution.

A significant formal attorney general opinion from 1923 states that (in case of death, resignation or removal from office of the governor) the lieutenant governor becomes governor (I attached the opinion and highlighted the pertinent section on page 2).

Case law, statutory, and constitutional analyses from other states are consistent with this provision.

Finally, the Iowa Code supports this position. State law establishes that, the lieutenant governor, after taking office as governor, appoints a new lieutenant governor.

This research leads us to concur with Governor Branstad's conclusion that, upon his resignation, Lt. Governor Reynolds will become Governor. In her capacity as Governor, Governor Reynolds will have the authority to appoint a new lieutenant governor.

Hopefully that helps clear things up.

Again, sorry about the delay.

Geoff



**Geoff Greenwood**  
**Communications Director**  
Office of the Attorney General of Iowa  
1305 E. Walnut St.  
Des Moines, Iowa 50319  
Main: (515) 281-5164 | Direct: (515) 281-6699  
Email: [geoff.greenwood@iowa.gov](mailto:geoff.greenwood@iowa.gov) | [www.iowaattorneygeneral.gov](http://www.iowaattorneygeneral.gov)

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---

**From:** Erin Murphy [mailto:Erin.Murphy@lee.net]  
**Sent:** Tuesday, December 13, 2016 2:55 PM  
**To:** Greenwood, Geoff [AG]  
**Subject:** RE: Question

Sounds good, and thanks for the heads-up.

I think I'm clear except on one piece ... Iowa Code clearly states the governor fills a vacancy for lieutenant governor. But the constitution says only that the powers of the governor's office fall on the lieutenant governor ... it does not necessarily say the lieutenant governor becomes governor. And, as the code states, only a governor can name a lieutenant governor.

So that's the bridge I'm trying to cross here.

**Erin Murphy**  
Lee Enterprises  
Des Moines Bureau chief

W: 515-422-9061  
C: 515-681-7388  
T: @ErinDMurphy

---

**From:** Greenwood, Geoff [AG] [mailto:Geoff.Greenwood@iowa.gov]  
**Sent:** Tuesday, December 13, 2016 2:53 PM  
**To:** Erin Murphy <Erin.Murphy@lee.net>  
**Subject:** RE: Question

Erin:

Sorry to leave you hanging. I'll get back to you soon.

Geoff

---

**From:** Erin Murphy [mailto:Erin.Murphy@lee.net]  
**Sent:** Tuesday, December 13, 2016 1:44 PM  
**To:** Greenwood, Geoff [AG]  
**Subject:** RE: Question

Hey, Geoff. I don't wish to pester, but just circling back on this only because I'm hoping to piece this together today, and wanted to make sure you saw it.

**Erin Murphy**  
Lee Enterprises  
Des Moines Bureau chief

W: 515-422-9061  
C: 515-681-7388  
T: @ErinDMurphy

---

**From:** Erin Murphy  
**Sent:** Tuesday, December 13, 2016 9:35 AM  
**To:** 'Rod Boshart' <Rod.Boshart@thegazette.com>

Cc: 'Greenwood, Geoff [AG]' <[Geoff.Greenwood@iowa.gov](mailto:Geoff.Greenwood@iowa.gov)>  
Subject: RE: Question

Geoff:

I'm following up on this, trying to put a bow on this whole thing. In particular, I'm interested in the new lieutenant governor piece.

Can you point me to the sections of the code and constitution that gave the AG's office clarity on this?

**Erin Murphy**  
Lee Enterprises  
Des Moines Bureau chief

W: 515-422-9061  
C: 515-681-7388  
T: [@ErinDMurphy](https://twitter.com/ErinDMurphy)

---

**From:** Rod Boshart [<mailto:Rod.Boshart@thegazette.com>]  
**Sent:** Tuesday, December 13, 2016 7:27 AM  
**To:** Erin Murphy <[Erin.Murphy@lee.net](mailto:Erin.Murphy@lee.net)>  
**Subject:** FW: Question

---

**From:** Greenwood, Geoff [AG] [<mailto:Geoff.Greenwood@iowa.gov>]  
**Sent:** Monday, December 12, 2016 4:29 PM  
**To:** Rod Boshart  
**Subject:** RE: Question

Rod,

Following up on your question from Friday.

Our office has researched the law and consulted with the Governor's office. We concur with the Governor's conclusion that, upon the resignation of Governor Branstad, Lt. Governor Reynolds will become Governor and will have the authority to appoint a new Lieutenant Governor.

Thanks,

Geoff



**Geoff Greenwood**  
**Communications Director**  
Office of the Attorney General of Iowa  
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---

**From:** Greenwood, Geoff [AG]  
**Sent:** Friday, December 09, 2016 10:12 AM  
**To:** 'Rod Boshart'  
**Subject:** RE: Question

Not yet. We're still doing some research and conferring with the Governor's office.

---

**From:** Rod Boshart [<mailto:Rod.Boshart@thegazette.com>]  
**Sent:** Friday, December 09, 2016 9:44 AM  
**To:** Greenwood, Geoff [AG]  
**Subject:** Question

Has the AG's office reached any conclusions on how the transfer of power will work when Gov. Branstad steps down and Lt. Gov. Reynolds steps into her new role?

## Tabor, Eric [AG]

---

**From:** Greenwood, Geoff [AG]  
**Sent:** Thursday, December 08, 2016 2:41 PM  
**To:** Mark O. Lambert  
**Cc:** Tabor, Eric [AG]  
**Subject:** RE: Constitutional issue re: Lt. Gov assuming Gov's powers

Thanks. We were carefully examining that word yesterday when this came up.

Geoff

---

**From:** Mark O. Lambert [mailto:marklambert@mchsi.com]  
**Sent:** Thursday, December 08, 2016 2:01 PM  
**To:** Greenwood, Geoff [AG]  
**Cc:** Tabor, Eric [AG]  
**Subject:** Re: Constitutional issue re: Lt. Gov assuming Gov's powers

Geoff and Eric,  
Just one more thing (I promise!). I note the Iowa Constitution says upon a vacancy in the position of Governor, the Governor's power shall "devolve" to the Lt. Governor. (It does not say the Lt. Gov. assumes the office of Governor). I think this wording is important.

Note this dictionary definition of "devolve":

de·volve  
[də'vɔlv]

### VERB

1. transfer or delegate (power) to a lower level, especially from central government to local or regional administration:

"measures to devolve power to the provinces" ·

[more]

"devolved and decentralized government"

synonyms: delegate · depute · pass (down/on) · download ·

[more]

hand down/over/on · transfer · transmit · assign · consign · convey · entrust · turn over · give · cede · surrender · relinquish · deliver · bestow · grant

- (devolve on/upon/to)

(of duties or responsibility) pass to (a body or person at a lower level):



"his duties devolved on a comrade"

- o formal

(devolve into)

degenerate or be split into:

"the Empire devolved into separate warring states"

Powered by Oxford Dictionaries · © Oxford University Press

Ok, I just find this fascinating. Good luck with your research!

Mark

---

**From:** "Geoff Greenwood [AG]" <[Geoff.Greenwood@iowa.gov](mailto:Geoff.Greenwood@iowa.gov)>  
**To:** "Mark O. Lambert" <[marklambert@mchsi.com](mailto:marklambert@mchsi.com)>  
**Cc:** "Eric Tabor [AG]" <[Eric.Tabor@iowa.gov](mailto:Eric.Tabor@iowa.gov)>  
**Sent:** Thursday, December 8, 2016 11:13:41 AM  
**Subject:** RE: Constitutional issue re: Lt. Gov assuming Gov's powers

Thanks, Mark.

---

**From:** Mark O. Lambert [<mailto:marklambert@mchsi.com>]  
**Sent:** Thursday, December 08, 2016 11:12 AM  
**To:** Greenwood, Geoff [AG]  
**Cc:** Tabor, Eric [AG]  
**Subject:** Re: Constitutional issue re: Lt. Gov assuming Gov's powers

Thanks, Geoff. One more thing, historically, when an Iowa Gov has left office before the end of his term, there has not been a Lt. Gov. appointed. Most of the time, these were very short periods of time, though.  
[https://en.wikipedia.org/wiki/List\\_of\\_Governors\\_of\\_Iowa](https://en.wikipedia.org/wiki/List_of_Governors_of_Iowa)

Mark

---

**From:** "Geoff Greenwood [AG]" <[Geoff.Greenwood@iowa.gov](mailto:Geoff.Greenwood@iowa.gov)>  
**To:** "Mark O. Lambert" <[marklambert@mchsi.com](mailto:marklambert@mchsi.com)>, "Eric Tabor [AG]" <[Eric.Tabor@iowa.gov](mailto:Eric.Tabor@iowa.gov)>  
**Sent:** Thursday, December 8, 2016 10:25:12 AM  
**Subject:** RE: Constitutional issue re: Lt. Gov assuming Gov's powers

Thanks for contacting us, Mark. We're researching it and will add this to the conversation.

Best regards,



**Geoff Greenwood**  
**Communications Director**  
Office of the Attorney General of Iowa  
1305 E. Walnut St.  
Des Moines, Iowa 50319  
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---

**From:** Mark O. Lambert [<mailto:marklambert@mchsi.com>]  
**Sent:** Thursday, December 08, 2016 9:54 AM  
**To:** Greenwood, Geoff [AG]; Tabor, Eric [AG]  
**Subject:** Constitutional issue re: Lt. Gov assuming Gov's powers  
**Importance:** High

Eric and Geoff:

In Massachusetts, when Governor William Weld resigned in 1997, Lt. Gov. Paul Cellucci became "Acting Governor" -- not "Governor." When Celluci resigned to become US Ambassador to Canada during the Bush Administration in 2001, his Lt. Gov. Jane Swift became "Acting Governor."

Massachusetts Constitution has a similar provision to the Iowa Constitution:

III.--Whenever the chair of the Governor shall be vacant, by reason of his death, or absence from the Commonwealth, or otherwise, the Lieutenant-Governor, for the time being, shall, during such vacancy, perform all the duties incumbent upon the Governor, and shall have and exercise all the powers and authorities, which by this Constitution the Governor is vested with, when personally present.

Hope this is helpful.

--Mark

Mark Lambert  
Attorney at Law  
Polk City  
515-681-0285

## Tabor, Eric [AG]

---

**From:** Greenwood, Geoff [AG]  
**Sent:** Thursday, December 08, 2016 11:14 AM  
**To:** Mark O. Lambert  
**Cc:** Tabor, Eric [AG]  
**Subject:** RE: Constitutional issue re: Lt. Gov assuming Gov's powers

Thanks, Mark.

---

**From:** Mark O. Lambert [mailto:marklambert@mchsi.com]  
**Sent:** Thursday, December 08, 2016 11:12 AM  
**To:** Greenwood, Geoff [AG]  
**Cc:** Tabor, Eric [AG]  
**Subject:** Re: Constitutional issue re: Lt. Gov assuming Gov's powers

Thanks, Geoff. One more thing, historically, when an Iowa Gov has left office before the end of his term, there has not been a Lt. Gov. appointed. Most of the time, these were very short periods of time, though.  
[https://en.wikipedia.org/wiki/List\\_of\\_Governors\\_of\\_Iowa](https://en.wikipedia.org/wiki/List_of_Governors_of_Iowa)

Mark

---

**From:** "Geoff Greenwood [AG]" <Geoff.Greenwood@iowa.gov>  
**To:** "Mark O. Lambert" <marklambert@mchsi.com>, "Eric Tabor [AG]" <Eric.Tabor@iowa.gov>  
**Sent:** Thursday, December 8, 2016 10:25:12 AM  
**Subject:** RE: Constitutional issue re: Lt. Gov assuming Gov's powers

Thanks for contacting us, Mark. We're researching it and will add this to the conversation.

Best regards,



**Geoff Greenwood**  
**Communications Director**  
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1305 E. Walnut St.  
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**Sent:** Thursday, December 08, 2016 9:54 AM  
**To:** Greenwood, Geoff [AG]; Tabor, Eric [AG]

**Subject:** Constitutional issue re: Lt. Gov assuming Gov's powers  
**Importance:** High

Eric and Geoff:

In Massachusetts, when Governor William Weld resigned in 1997, Lt. Gov. Paul Cellucci became “Acting Governor” – not “Governor.” When Cellucci resigned to become US Ambassador to Canada during the Bush Administration in 2001, his Lt. Gov. Jane Swift became “Acting Governor.”

Massachusetts Constitution has a similar provision to the Iowa Constitution:

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Hope this is helpful.

--Mark

Mark Lambert  
Attorney at Law  
Polk City  
515-681-0285

## Tabor, Eric [AG]

---

**From:** Greenwood, Geoff [AG]  
**Sent:** Thursday, December 08, 2016 10:25 AM  
**To:** Mark O. Lambert; Tabor, Eric [AG]  
**Subject:** RE: Constitutional issue re: Lt. Gov assuming Gov's powers

Thanks for contacting us, Mark. We're researching it and will add this to the conversation.

Best regards,



**Geoff Greenwood**  
**Communications Director**  
Office of the Attorney General of Iowa  
1305 E. Walnut St.  
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**Sent:** Thursday, December 08, 2016 9:54 AM  
**To:** Greenwood, Geoff [AG]; Tabor, Eric [AG]  
**Subject:** Constitutional issue re: Lt. Gov assuming Gov's powers  
**Importance:** High

Eric and Geoff:

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Hope this is helpful.

--Mark

Mark Lambert  
Attorney at Law

Polk City  
515-681-0285

## Tabor, Eric [AG]

---

**From:** Tabor, Eric [AG]  
**Sent:** Thursday, December 08, 2016 9:13 AM  
**To:** Eric Tabor  
**Subject:** Fwd: Succession  
**Attachments:** Article IV.pdf; ATT00001.htm; Gov succession steps.docx; ATT00002.htm

Sent from my iPhone

Begin forwarded message:

**From:** "Greenwood, Geoff [AG]" <[Geoff.Greenwood@iowa.gov](mailto:Geoff.Greenwood@iowa.gov)>  
**Date:** December 8, 2016 at 10:09:40 AM EST  
**To:** "Tabor, Eric [AG]" <[Eric.Tabor@iowa.gov](mailto:Eric.Tabor@iowa.gov)>  
**Subject:** RE: Succession

See attached.

---

**From:** Tabor, Eric [AG]  
**Sent:** Thursday, December 08, 2016 9:06 AM  
**To:** Greenwood, Geoff [AG]  
**Subject:** Re: Succession

Could you reformat? Came a little funky. Thanks.

Sent from my iPhone

On Dec 8, 2016, at 9:59 AM, Greenwood, Geoff [AG] <[Geoff.Greenwood@iowa.gov](mailto:Geoff.Greenwood@iowa.gov)> wrote:

Eric:

Here's the pertinent area of Article IV:

**Lieutenant governor to act as governor.** SEC. 17. In case of the death, impeachment, resignation, removal from office, or other disability of the governor, the powers and duties of the office for the residue of the term, or until he shall be acquitted, or the disability removed, shall devolve upon the lieutenant governor.  
Referred to in §7.14 of the Code

**Duties of lieutenant governor.** SEC. 18. The lieutenant governor shall have the duties provided by law and those duties of the governor assigned to the lieutenant governor by the governor.  
Repealed and rewritten 1988, Amendment [42]

**Succession to office of governor and lieutenant governor.** SEC. 19. If there be a vacancy in the office of the governor and the lieutenant governor shall by reason of death, impeachment, resignation, removal from office, or other disability become incapable of performing the duties pertaining to the office of governor, the president of the senate shall act as governor until the vacancy is filled or the disability removed; and if the president of the senate, for any of the above causes, shall be incapable of performing the duties pertaining to the office of governor the same shall devolve upon the speaker

of the house of representatives; and if the speaker of the house of representatives, for any of the above causes, shall be incapable of performing the duties of the office of governor, the justices of the supreme court shall convene the general assembly by proclamation and the general assembly shall organize by the election of a president by the senate and a speaker by the house of representatives. The general assembly shall thereupon immediately proceed to the election of a governor and lieutenant governor in joint convention.

Repealed and rewritten, 1988,  
Amendment [42] Referred to in  
§7.14 of the Code

Here's Matt's analysis from earlier in the day:

1. Resignation of the Governor – Must be made in writing to the General Assembly, if in session, if not, to the Secretary of State. Iowa Code § 69.4(1).
2. Upon resignation, the Office of Governor is considered vacant. § 69.2(1)(d).
3. The vacancy is filled by the Lieutenant Governor. Iowa Const. Art. IV, Sec. 17 (“In the case of the death, impeachment, resignation . . . of the governor, the powers and duties of the office for the residue of the term, . . . shall devolve upon the lieutenant governor.”)
4. Once the Lt. Governor becomes governor, it creates a vacancy in the Lt. Governor’s office because of the prohibition against simultaneously holding more than one elective office. See Iowa Code § 69.2(1)(h).
5. In general, vacancies in state offices are filled by the governor. § 69.8(2).
6. The Code specifically provides, “an appointment by the governor to fill a vacancy in the office of the lieutenant governor shall be for the balance of the unexpired term.” § 69.8(2).

Accordingly, a resignation by Gov. Branstad would create a vacancy that would be filled by Lt. Gov. Reynolds. Once she assumed the office of Governor, a vacancy would be created in the Lt. Governor’s office. The governor has the power and authority to appoint a new Lt. Governor who would serve for the balance of the Branstad/ Reynolds term.

We have reviewed for any relevant case law or Attorney General Opinions, and have not found any that would alter the above analysis.



Geoff

**Geoff Greenwood**  
**Communications Director**

<image001.png>  
Office of the Attorney General of Iowa  
1305 E. Walnut St.  
Des Moines, Iowa 50319  
Main: (515) 281-5164 | Direct: (515) 281-6699  
Email: [geoff.greenwood@iowa.gov](mailto:geoff.greenwood@iowa.gov) | [www.iowaattorneygeneral.gov](http://www.iowaattorneygeneral.gov)

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## Tabor, Eric [AG]

---

**From:** Greenwood, Geoff [AG]  
**Sent:** Thursday, December 08, 2016 9:10 AM  
**To:** Tabor, Eric [AG]  
**Subject:** RE: Succession  
**Attachments:** Article IV.pdf; Gov succession steps.docx

See attached.

---

**From:** Tabor, Eric [AG]  
**Sent:** Thursday, December 08, 2016 9:06 AM  
**To:** Greenwood, Geoff [AG]  
**Subject:** Re: Succession

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Repealed and rewritten 1988, Amendment [42]  
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6. The Code specifically provides, “an appointment by the governor to fill a vacancy in the office of the lieutenant governor shall be for the balance of the unexpired term.” § 69.8(2).

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We have reviewed for any relevant case law or Attorney General Opinions, and have not found any that would alter the above analysis.

Geoff

**Geoff Greenwood**

**Communications Director**

<image001.png>

Office of the Attorney General of Iowa

1305 E. Walnut St.

Des Moines, Iowa 50319

Main: (515) 281-5164 | Direct: (515) 281-6699

Email: [geoff.greenwood@iowa.gov](mailto:geoff.greenwood@iowa.gov) | [www.iowaattorneygeneral.gov](http://www.iowaattorneygeneral.gov)

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## Tabor, Eric [AG]

---

**From:** Tabor, Eric [AG]  
**Sent:** Thursday, December 08, 2016 9:06 AM  
**To:** Greenwood, Geoff [AG]  
**Subject:** Re: Succession

Could you reformat? Came a little funky. Thanks.

Sent from my iPhone

On Dec 8, 2016, at 9:59 AM, Greenwood, Geoff [AG] <[Geoff.Greenwood@iowa.gov](mailto:Geoff.Greenwood@iowa.gov)> wrote:

Eric:

Here's the pertinent area of Article IV:

**Lieutenant governor to act as governor.** SEC. 17. In case of the death, impeachment, resignation, removal from office, or other disability of the governor, the powers and duties of the office for the residue of the term, or until he shall be acquitted, or the disability removed, shall devolve upon the lieutenant governor.

Referred to in §7.14 of the Code

**Duties of lieutenant governor.** SEC. 18. The lieutenant governor shall have the duties provided by law and those duties of the governor assigned to the lieutenant governor by the governor.

Repealed and rewritten 1988, Amendment [42]

**Succession to office of governor and lieutenant governor.** SEC. 19. If there be a vacancy in the office of the governor and the lieutenant governor shall by reason of death, impeachment, resignation, removal from office, or other disability become incapable of performing the duties pertaining to the office of governor, the president of the senate shall act as governor until the vacancy is filled or the disability removed; and if the president of the senate, for any of the above causes, shall be incapable of performing the duties pertaining to the office of governor the same shall devolve upon the speaker of the house of representatives; and if the speaker of the house of representatives, for any of the above causes, shall be incapable of performing the duties of the office of governor, the justices of the supreme court shall convene the general assembly by proclamation and the general assembly shall organize by the election of a president by the senate and a speaker by the house of representatives. The general assembly shall thereupon immediately proceed to the election of a governor and lieutenant governor in joint convention.

Repealed and rewritten 1988, Amendment [42]  
Referred to in §7.14 of the Code

Here's Matt's analysis from earlier in the day:

1. Resignation of the Governor – Must be made in writing to the General Assembly, if in session, if not, to the Secretary of State. Iowa Code § 69.4(1).
2. Upon resignation, the Office of Governor is considered vacant. § 69.2(1)(d).
3. The vacancy is filled by the Lieutenant Governor. Iowa Const. Art. IV, Sec. 17 (“In the case of the death, impeachment, resignation . . . of the governor, the powers and duties of the office for the residue of the term, . . . shall devolve upon the lieutenant governor.”)

4. Once the Lt. Governor becomes governor, it creates a vacancy in the Lt. Governor's office because of the prohibition against simultaneously holding more than one elective office. See Iowa Code § 69.2(1)(h).
5. In general, vacancies in state offices are filled by the governor. § 69.8(2).
6. The Code specifically provides, "an appointment by the governor to fill a vacancy in the office of the lieutenant governor shall be for the balance of the unexpired term." § 69.8(2).

Accordingly, a resignation by Gov. Branstad would create a vacancy that would be filled by Lt. Gov. Reynolds. Once she assumed the office of Governor, a vacancy would be created in the Lt. Governor's office. The governor has the power and authority to appoint a new Lt. Governor who would serve for the balance of the Branstad/ Reynolds term.

We have reviewed for any relevant case law or Attorney General Opinions, and have not found any that would alter the above analysis.

Geoff

**Geoff Greenwood**  
**Communications Director**  
Office of the Attorney General of Iowa  
<image001.png> 1305 E. Walnut St.  
Des Moines, Iowa 50319  
Main: (515) 281-5164 | Direct: (515) 281-6699  
Email: [geoff.greenwood@iowa.gov](mailto:geoff.greenwood@iowa.gov) | [www.iowaattorneygeneral.gov](http://www.iowaattorneygeneral.gov)

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## **Tabor, Eric [AG]**

---

**From:** Greenwood, Geoff [AG]  
**Sent:** Thursday, December 08, 2016 9:00 AM  
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**Subject:** Succession

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Referred to in §7.14 of the Code

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Accordingly, a resignation by Gov. Branstad would create a vacancy that would be filled by Lt. Gov. Reynolds. Once she assumed the office of Governor, a vacancy would be created in the Lt. Governor's office. The governor has the power and authority to appoint a new Lt. Governor who would serve for the balance of the Branstad/ Reynolds term.

We have reviewed for any relevant case law or Attorney General Opinions, and have not found any that would alter the above analysis.

Geoff



**Geoff Greenwood**  
**Communications Director**  
Office of the Attorney General of Iowa  
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McCarthy, Kevin [AG]

From: morningreport@meltwaternews.com
Sent: Thursday, May 04, 2017 7:04 AM
To: McCarthy, Kevin [AG]
Subject: 33 hits from Meltwater News

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Report Overview

Table with 3 columns: AGENT, MEDIA TYPE, HITS. Rows include Iowa Attorney General (15 hits), Tom Miller (7 hits), Geoff Greenwood (1 hit), and @AGIowa (2 hits).

Iowa Attorney General

Meyer case goes to jury

The Daily Iowan | 05/04/17 01:23

...public through the media. In summing up the state s defense, Iowa Assistant Attorney General George Carroll told jurors, This case is not about...

WORDS MATCHED Attorney General, Iowa

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### Prosecution witnesses testify in Tait Purk murder trial

TamaToledoNews.com | 05/04/17 00:00

*...being prosecuted by Tama County Attorney Brent Heeren and Assistant Iowa Attorney General Laura Roan. Purk is represented by public defenders...*

WORDS MATCHED Attorney General, Iowa



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### Des Moines speed cameras still issuing tickets, despite judge's ruling

The Des Moines Register | 05/03/17 20:16

*...the court stay the judge's order while they appeal the case. Iowa Attorney General Tom Miller wrote in a motion that cities have no reason to...*

WORDS MATCHED Attorney General, Iowa



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### Iowa GOP requests attorney general's documents on gubernatorial succession opinion

The Des Moines Register | 05/03/17 20:16

*Iowa GOP requests attorney general's documents on gubernatorial succession opinion Republicans ramped up political pressure against Iowa Attorney...*

WORDS MATCHED Attorney General, attorney general, Iowa

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### Grassley casts doubt on FBI credibility in political inquiries

KPVI News 6 | 05/03/17 19:30

[8 other sources...](#)

*...by the Justice Department came in a letter dated Tuesday. The Iowa Republican wrote to Deputy Attorney General Rod Rosenstein, asking that he...*

WORDS MATCHED Attorney General, Iowa



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### Former animal shelter director faces sentencing May 15

Oskaloosa | 05/03/17 19:05

*...in March was delayed, state prosecutors said. Scott Brown, an assistant attorney general with the state of Iowa, said Lindsey Nicole Sime, 30,*

WORDS MATCHED attorney general, Iowa

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### Editorial: Reynolds should listen to the attorney general

The Des Moines Register | 05/03/17 18:46

*Miller's ruling on Lt. governor succession 'absurd' RELATED: Iowa GOP requests attorney general's documents on gubernatorial succession opinion If that...*

WORDS MATCHED attorney general, Iowa



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### Former jail administrator charged with felony after allegedly stealing cash from inmates

The Muscatine Journal | 05/03/17 18:30

*admitted the amount should have been closer to \$30,000. Assistant Attorney General for the State of Iowa, Andrew Prosser, said he was asked to...*

WORDS MATCHED Attorney General, Iowa

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## University of Iowa discrimination case goes to jury

Sentinel-Tribune | 05/03/17 16:43

[33 other sources...](#)

*...public through the media. In summing up the state's defense, Iowa Assistant Attorney General George Carroll told jurors, "This case is not about...*

WORDS MATCHED Attorney General, Iowa

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## BC-US--Iowa-Athletics Trial,2nd Ld-Writethru, US

AP (Hosted) | 05/03/17 16:22

*...public through the media. In summing up the state's defense, Iowa Assistant Attorney General George Carroll told jurors, "This case is not about...*

WORDS MATCHED Attorney General, Iowa

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## Obscure GOP-Based Regulatory Commission Might Determine Keystone's Fate

The Daily Caller | 05/03/17 14:50

*...the president of activist group Bold Alliance, which pushed Iowa's attorney general last year into investigating ExxonMobil following reports...*

WORDS MATCHED attorney general, Iowa

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## BC-US--Iowa-Athletics Trial,1st-LdWritethru, US

AP (Hosted) | 05/03/17 14:14

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WORDS MATCHED Attorney General, Iowa

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---

## Jane Meyer lawsuit against University of Iowa goes to jury

TheGazette.com | 05/03/17 13:53

*...is not about Tracey Griesbaum, George Carroll, an assistant Iowa Attorney General representing the university, told the jury during his closing...*

WORDS MATCHED Attorney General, Iowa

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## Reynolds has constitutional authority to appoint lieutenant

TheGazette.com | 05/03/17 12:41

*...by law she absolutely cannot hold both offices at the same time. Attorney General Miller The law of Iowa is definite: when Lt. Governor Reynolds ...*

WORDS MATCHED Attorney General, Iowa

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**AP-IA--Iowa News Digest 1:30 pm, IA**

AP (Hosted) | 05/01/17 13:35

*along with all updates. TOP STORIES: IOWA GOVERNOR-TRANSITION DES MOINES Iowa's attorney general says Lt. Gov. Kim Reynolds will not have the...*

WORDS MATCHED attorney general, Iowa

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**Tom Miller**

**Guest: AG Miller's finding smacks of partisanship**

Quad-City Times | 05/04/17 00:30

*...thinking more about the office of lieutenant governor ever since state Attorney General Tom Miller's surprising announcement. His surprise ? In...*

WORDS MATCHED Attorney General, attorney general, Tom Miller

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**Iowa Democrat Says Kim Reynolds Needs to Have Power to Choose Her Lieutenant**

WHOTV.com | 05/03/17 21:01

*...doesn't allow her to then that law needs to change. On Monday Attorney General Tom Miller announced that Reynolds won't have the power to choose a...*

WORDS MATCHED Attorney General, Tom Miller

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**Des Moines speed cameras still issuing tickets, despite judge's ruling**

The Des Moines Register | 05/03/17 20:16

*...court stay the judge's order while they appeal the case. Iowa Attorney General Tom Miller wrote in a motion that cities have no reason to pursue...*

WORDS MATCHED Attorney General, Tom Miller

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**Iowa GOP requests attorney general's documents on gubernatorial succession opinion**

The Des Moines Register | 05/03/17 20:16

*Iowa GOP requests attorney general's documents on gubernatorial succession opinion Republicans ramped up political pressure against Iowa Attorney ...*

WORDS MATCHED Attorney General, attorney general, Tom Miller



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### Editorial: Reynolds should listen to the attorney general

The Des Moines Register | 05/03/17 18:46

*Editorial: Reynolds should listen to the attorney general Lt. Gov. Kim Reynolds has yet to assume the duties of Iowa s governor, but already ...*

WORDS MATCHED Attorney General, attorney general, Tom Miller



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### Reynolds has constitutional authority to appoint lieutenant

TheGazette.com | 05/03/17 12:41

*...by law she absolutely cannot hold both offices at the same time. Attorney General Miller The law of Iowa is definite: when Lt. Governor Reynolds ...*

WORDS MATCHED Attorney General, Tom Miller

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### AP-IA--Iowa News Digest 1:30 pm, IA

AP (Hosted) | 05/01/17 13:35

*...updates. TOP STORIES: IOWA GOVERNOR-TRANSITION DES MOINES Iowa's attorney general says Lt. Gov. Kim Reynolds will not have the authority to appoint...*

WORDS MATCHED Attorney General, attorney general, Tom Miller

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## Geoff Greenwood

### Iowa GOP requests attorney general's documents on gubernatorial succession opinion

The Des Moines Register | 05/03/17 20:16

*...and "respond pursuant to Iowa s open records law." Spokesman Geoff Greenwood defended the opinion as was based on the law rather than politics ,*

WORDS MATCHED Geoff Greenwood

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## Iowa Attorney General





### Congress Agrees To Give Jeff Sessions \$0 To Wage War On Medi...

zerohedge.com | 05/03/17 19:04

part, a result of Attorney General Jeff Sessions' anti-cannabis rhetoric. Though he reportedly privately assured senators he would not crack down on states where it is legal, he also recently warned that while states can pass their own laws, " ...it does remain a violation of federal law to distribute marijuana

throughout any place in the United States, whether a state legalizes it or not." In February, a U.S. Attorney for the Department of Justice claimed an Obama-era rule instructing the agency



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**DMRegister** @DMRegister

05/03/17 17:30

The Iowa GOP is accusing the Democratic attorney general of flip-flopping and putting partisanship first.

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**The Governor's office accused Attorney General Tom Miller o.....**

05/03/17 16:33

The Governor's office accused Attorney General Tom Miller of "playing politics" when he announced this week that Kim Reynolds won't be able to choose her own Lieutenant Governor. Well now an Iowa Democrat who wants to challenge Reynolds in 2018 is agreeing with her. Political Director Dave Price explains. [https://video.xx.fbcdn.net/v/t42.1790-2/18292462\\_1672910323016317\\_5180995611528265728\\_n.mp4?efg=eyJybjHliOjMwMCwicmxiho1MTIsInZlbnNvZGVfdGFnljoic3ZlX3NkIn0%3D&rl=300&vabr=148&oh=58c0ebf60a84ddc3b151a535b36cef26&oe=590DAA62](https://video.xx.fbcdn.net/v/t42.1790-2/18292462_1672910323016317_5180995611528265728_n.mp4?efg=eyJybjHliOjMwMCwicmxiho1MTIsInZlbnNvZGVfdGFnljoic3ZlX3NkIn0%3D&rl=300&vabr=148&oh=58c0ebf60a84ddc3b151a535b36cef26&oe=590DAA62)

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**desmoinesdaily** @desmoinesdaily

05/03/17 16:30

Iowa GOP requests attorney general's documents on gubernatorial succession opinion

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**Trump Loses "Bigly" In The New Spending Bill**

jobsanger.blogspot.com | 05/03/17 15:42

used for cities and towns that decide to not cooperate with federal efforts to arrest undocumented immigrants. Attorney General Jeff Sessions was shut down in court last week for threatening to cut funding from such jurisdictions. The omnibus does not contain any language prohibiting funds for these cities. 9. Funding for Puerto Rico Last week, Trump drew a line in the sand on funding for Puerto Rico, currently grappling with a debt crisis: He told Reuters the next day: "I don't think that's fair

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**Jane Meyer lawsuit against University of Iowa goes to jury [...]**

05/03/17 15:06

"This case is not about Tracey Griesbaum," George Carroll, an assistant Iowa Attorney General representing the university, told the jury during his closing argument Wednesday morning. Instead, Carroll said, the jury should focus on Meyer's "unprofessional" actions. DES MOINES - A Polk County jury started deliberations shortly after noon Wednesday in a high-profile employment discrimination case that's given Iowans an off-the-field, sometimes locker-room look at the University of Iowa Athletics Department.

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**Congressional Protections For Legal State Medical Marijuana ...**

blog.norml.org | 05/03/17 14:52

deciding to maintain protections for state-sanctioned medical marijuana programs in the era of a Department of Justice being led by Attorney General Jeff Sessions means that patients ailing from conditions that range from cancer to PTSD can breathe a temporary sigh of relief. Once approved, states

will be able to continue to service and implement these programs without fear of federal incursion until September 30 of this year. Yet, this action is only a stopgap measure at best. Ultimately, Congress

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**Tom Miller**

**f** **The Governor's office accused Attorney General Tom Miller o.....** 05/03/17 16:33  
The Governor's office accused Attorney General Tom Miller of "playing politics" when he announced this week that Kim Reynolds won't be able to choose her own Lieutenant Governor. Well now an Iowa Democrat who wants to challenge Reynolds in 2018 is agreeing with her. Political Director Dave Price explains. [https://video.xx.fbcdn.net/v/t42.1790-2/18292462\\_1672910323016317\\_5180995611528265728\\_n.mp4?efg=eyJybjHliOjMwMCwicmxhIjo1MTIsInZlbnNvZGVfdGFnljoic3ZlX3NkIn0%3D&rl=300&vabr=148&oh=58c0ebf60a84ddc3b151a535b36cef26&oe=590DAA62](https://video.xx.fbcdn.net/v/t42.1790-2/18292462_1672910323016317_5180995611528265728_n.mp4?efg=eyJybjHliOjMwMCwicmxhIjo1MTIsInZlbnNvZGVfdGFnljoic3ZlX3NkIn0%3D&rl=300&vabr=148&oh=58c0ebf60a84ddc3b151a535b36cef26&oe=590DAA62)


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**@AGIowa**

 **jasonnobleDMR** @jasonnobleDMR 05/03/17 13:51  
@IowaGOP @AGIowa 2 of the @AGIowa officials the @IowaGOP is asking for documents from are considering runs for sta... <https://t.co/xybHqFzD0>

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 **ronmparker29** @ronmparker29 05/03/17 09:13  
When @AGIowa issued opinion about the transition process that @KimReynoldsIA didn't like, the @IowaGOP establishment screamed: "Sexism."

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**McCarthy, Kevin [AG]**

**From:** morningreport@meltwaternews.com  
**Sent:** Wednesday, May 03, 2017 7:05 AM  
**To:** McCarthy, Kevin [AG]  
**Subject:** 48 hits from Meltwater News

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AGENT	MEDIA TYPE	HITS
Iowa Attorney General	News	15 in 1 day
Tom Miller	News	17 in 1 day
Iowa Attorney General		11 in 1 day
Tom Miller		5 in 1 day

**Iowa Attorney General**

**Branstad moves closer to confirmation, debate continues on**

Siouxland Matters | 05/03/17 00:36

...or not. "We've tried to get it right," said Iowa Attorney General Tom Miller. Miller says when Lieutenant Governor Kim Reynolds takes over for...

WORDS MATCHED Attorney General, Iowa

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**Democrats: We need answers on Reynolds' transition**



Waterloo-Cedar Falls Courier | 05/03/17 00:15

...a successor when Gov. Terry Branstad steps down. A day after Iowa Attorney General Tom Miller



*issued an opinion saying Reynolds doesn't have...*

WORDS MATCHED Attorney General, Iowa

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### **That IRS collections call might now be legit**

The Daily Nonpareil | 05/03/17 00:00

*That IRS collections call might now be legit For years, the Iowa Attorney General's office has given Iowans this advice: The caller claiming ...*

WORDS MATCHED Attorney General, Iowa

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### **Treasurer raises questions about paying Iowa's bills; GOP disputes claims**

The Des Moines Register | 05/02/17 21:49

*...pointedly made a reference to a formal legal opinion issued Monday by Iowa Attorney General Tom Miller, a Democrat, which concluded Reynolds cannot...*

WORDS MATCHED Attorney General, Iowa

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### **New Iowa governor won't have power to pick lieutenant**

WOWT | 05/02/17 21:22

*...won't have power to pick lieutenant DES MOINES, Iowa (AP) - Iowa's attorney general has concluded that Lt. Gov. Kim Reynolds will not have the...*

WORDS MATCHED attorney general, Iowa

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### **Succession question over Lt. Gov Kim Reynolds could end up in court**

TheGazette.com | 05/02/17 20:15

*...Gov. Terry Branstad resigns to head to China. A day after Iowa Attorney General Tom Miller issued a legal opinion saying Reynolds won't have ...*

WORDS MATCHED Attorney General, Iowa

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### **Top Senate Republican Wants DOJ To Twist Screws On Probe Into FBI Deputy Director McCabe**

The Daily Caller | 05/02/17 19:46

*In Chairman Grassley's letter to the recently-confirmed deputy attorney general, the Iowa Republican reiterated issues related to FBI Deputy ...*

WORDS MATCHED attorney general, Iowa

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### **Iowa Democrat seeks resolution to Lt. Gov. question**

Sioux City Journal | 05/02/17 19:46

*...a successor when Gov. Terry Branstad steps down. A day after Iowa Attorney General Tom Miller issued an opinion saying Reynolds doesn't have...*

WORDS MATCHED Attorney General, Iowa

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### Top Democrat says Lt. governor appointment question needs to be resolved

LakeExpo.com | 05/02/17 18:15

[1 other source...](#)

*...a successor when Gov. Terry Branstad steps down. A day after Iowa Attorney General Tom Miller issued an opinion saying Reynolds doesn't have...*

WORDS MATCHED Attorney General, Iowa

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### Miller might be wrong, but he's no political pawn

TheGazette.com | 05/02/17 11:56

*...no political pawn So let me get this straight. In December, Iowa Attorney General Tom Miller made a snap judgment on the question of whether...*

WORDS MATCHED Attorney General, Iowa

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### Senator Grassley weighs in on appointment of lieutenant governor

Radio Iowa | 05/02/17 09:56

*...on my staff to look at it. Back in December, Iowa Attorney General Tom Miller announced that should Lieutenant Governor Kim Reynolds become governor,*

WORDS MATCHED Attorney General, attorney general, Iowa

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### AG: New Iowa governor won't have power to pick lieutenant

NewtonDailyNews.com | 05/02/17 09:37

*...Iowa governor won't have power to pick lieutenant DES MOINES (AP) Iowa's attorney general has concluded that Lt. Gov. Kim Reynolds will not have...*

WORDS MATCHED Attorney General, attorney general, Iowa

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### New Iowa governor won't have power to pick lieutenant

St. Joseph Post | 05/02/17 08:09

*New Iowa governor won't have power to pick lieutenant DES MOINES, Iowa (AP) Iowa's attorney general has concluded that Lt. Gov. Kim Reynolds ...*

WORDS MATCHED attorney general, Iowa

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### AP-IA--Iowa News Digest 6 pm, IA

AP (Hosted) | 05/01/17 18:05

*...BRIEFS AND STORY LENGTHS. TOP STORIES: IOWA GOVERNOR-TRANSITION DES MOINES Iowa's attorney general says Lt. Gov. Kim Reynolds will not have the...*

WORDS MATCHED attorney general, Iowa

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### AP-IA--Iowa News Digest 1:30 pm, IA

AP (Hosted) | 05/01/17 13:35

*along with all updates. TOP STORIES: IOWA GOVERNOR-TRANSITION DES MOINES Iowa's attorney*

*general says Lt. Gov. Kim Reynolds will not have the...*

WORDS MATCHED attorney general, Iowa

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**Tom Miller**

**Governor-in-Waiting Kim Reynolds on Picking her Successor and "Historic Legislative Session"**

Iowa Public Radio | 05/03/17 04:43

*...will make Lt. Governor Kim Reynolds the next Governor. Attorney General Tom Miller issued an opinion this week concluding Reynolds should not...*

WORDS MATCHED Attorney General, Tom Miller

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**Branstad moves closer to confirmation, debate continues on**

Siouxland Matters | 05/03/17 00:36

*...not. "We've tried to get it right," said Iowa Attorney General Tom Miller. Miller says when Lieutenant Governor Kim Reynolds takes over for Terry...*

WORDS MATCHED Attorney General, Tom Miller

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**Democrats: We need answers on Reynolds' transition**

Waterloo-Cedar Falls Courier | 05/03/17 00:15

*...successor when Gov. Terry Branstad steps down. A day after Iowa Attorney General Tom Miller issued an opinion saying Reynolds doesn't have the...*

WORDS MATCHED Attorney General, Tom Miller

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**Treasurer raises questions about paying Iowa's bills; GOP disputes claims**

The Des Moines Register | 05/02/17 21:49

*...a reference to a formal legal opinion issued Monday by Iowa Attorney General Tom Miller, a Democrat, which concluded Reynolds cannot appoint...*

WORDS MATCHED Attorney General, Tom Miller

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**New Iowa governor won't have power to pick lieutenant**

WOWT | 05/02/17 21:22

*...power to pick lieutenant DES MOINES, Iowa (AP) - Iowa's attorney general has concluded that Lt. Gov. Kim Reynolds will not have the authority ...*

WORDS MATCHED Attorney General, attorney general, Tom Miller



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## Succession question over Lt. Gov Kim Reynolds could end up in court

TheGazette.com | 05/02/17 20:15

*...Gov. Terry Branstad resigns to head to China. A day after Iowa Attorney General Tom Miller issued a legal opinion saying Reynolds won't have the...*

WORDS MATCHED Attorney General, Tom Miller

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## Iowa Democrat seeks resolution to Lt. Gov. question

Sioux City Journal | 05/02/17 19:46

*...successor when Gov. Terry Branstad steps down. A day after Iowa Attorney General Tom Miller issued an opinion saying Reynolds doesn't have the...*

WORDS MATCHED Attorney General, Tom Miller

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## Top Democrat says Lt. governor appointment question needs to be resolved

LakeExpo.com | 05/02/17 18:15

[1 other source...](#)

*...successor when Gov. Terry Branstad steps down. A day after Iowa Attorney General Tom Miller issued an opinion saying Reynolds doesn't have the...*

WORDS MATCHED Attorney General, Tom Miller



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## Miller's ruling on Lt. governor succession 'absurd'

The Des Moines Register | 05/02/17 17:39

*...by law she absolutely cannot hold both offices at the same time. Attorney General Tom Miller's opinion that the offices "essentially merge,"*

WORDS MATCHED Attorney General, Tom Miller



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## Miller: Reynolds has no power to appointment replacement

Fairfield Ledger | 05/02/17 11:59

*...office, but she won't have the power to appoint her own replacement, Attorney General Tom Miller said on Monday. The attorney general's 23-page opinion...*

WORDS MATCHED Attorney General, attorney general, Tom Miller



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## Miller might be wrong, but he's no political pawn

TheGazette.com | 05/02/17 11:56

*...political pawn So let me get this straight. In December, Iowa Attorney General Tom Miller made a snap judgment on the question of whether Lt.*

WORDS MATCHED Attorney General, attorney general, Tom Miller



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## Senator Grassley weighs in on appointment of lieutenant governor

Radio Iowa | 05/02/17 09:56

...staff to look at it. Back in December, Iowa Attorney General Tom Miller announced that should Lieutenant Governor Kim Reynolds become governor ,

WORDS MATCHED Attorney General, attorney general, Tom Miller


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### AG: New Iowa governor won't have power to pick lieutenant

NewtonDailyNews.com | 05/02/17 09:37

...won't have power to pick lieutenant DES MOINES (AP) Iowa's attorney general has concluded that Lt. Gov. Kim Reynolds will not have the power...

WORDS MATCHED Attorney General, attorney general, Tom Miller

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### Miller: Reynolds has no power to appoint replacement

Free Republic | 05/02/17 08:22

but she won't have the power to appoint her own replacement, Attorney General Tom Miller said Monday. The attorney general's 23-page opinion...

WORDS MATCHED Attorney General, attorney general, Tom Miller



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### New Iowa governor won't have power to pick lieutenant

St. Joseph Post | 05/02/17 08:09

...have power to pick lieutenant DES MOINES, Iowa (AP) Iowa's attorney general has concluded that Lt. Gov. Kim Reynolds will not have the authority...

WORDS MATCHED Attorney General, attorney general, Tom Miller

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### AP-IA--Iowa News Digest 6 pm, IA

AP (Hosted) | 05/01/17 18:05

...LENGTHS. TOP STORIES: IOWA GOVERNOR-TRANSITION DES MOINES Iowa's attorney general says Lt. Gov. Kim Reynolds will not have the authority to appoint...

WORDS MATCHED Attorney General, attorney general, Tom Miller

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### AP-IA--Iowa News Digest 1:30 pm, IA

AP (Hosted) | 05/01/17 13:35

...updates. TOP STORIES: IOWA GOVERNOR-TRANSITION DES MOINES Iowa's attorney general says Lt. Gov. Kim Reynolds will not have the authority to appoint...

WORDS MATCHED Attorney General, attorney general, Tom Miller

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**There's a little bit of Donald Trump in all of us**

salon.com | 05/03/17 06:06

Trump is President of the United States, champion of the "free world," etc., others pay attention. They not only try to divine meaning and intent, but also try to anticipate his actions. Eager beavers Worse, his subordinates will take these Twitter utterings to be literal statements of national intent and policy. That is all the more risky as his senior appointees include persons of a dogmatic bent fixed on doing radical surgery on the American body politic. Take Attorney General Jefferson

[Archive](#) · [Share](#) **Guest blog: What do judges say about the jury system?**

blog.texasbar.com | 05/02/17 20:50

know. Since I've been involved in this profession, two U.S. presidents came very close to going to prison, one from each party; one had to resign, one got impeached. The former attorney general of the state of Texas, the highest law enforcement officer in the state, someone I knew well, I liked, I respected, he served more than four years in federal prison. Don't think for a minute that the law intrudes only in other people's lives. I live in what I think is an okay neighborhood, but I'll tell

[Archive](#) · [Share](#) **shanevanderhart** @shanevanderhart

05/02/17 20:10

Iowa's Attorney General beclowned himself yesterday with his formal opinion re. @KimReynoldsIA appointing a new LG

[Archive](#) · [Share](#) **Daily Kos Elections Live Digest: 5/1**

dailykos.com | 05/02/17 14:13

Welcome to the Daily Kos Elections Live Digest, your liveblog of all of today's campaign news. Please note: This is a 2016 and 2020 Democratic presidential primary-free zone Monday, May 1, 2017 · 3:36:00 PM +00:00 · Jeff Singer MO-Sen: On behalf of the local newsletter the Missouri Scout, the GOP pollster Remington Research takes a look at two hypothetical Republican Senate primaries. In a one-on-one matchup between Attorney General Josh Hawley and Rep. Ann Wagner, Hawley leads 37-16. Things

[Archive](#) · [Share](#) **Markolambert** @Markolambert

05/02/17 13:00



RT @jasonnobleDMR: Breaking: Iowa Attorney General Tom Miller says lieutenant governor MAY NOT appoint a new lt. gov. when she becomes gove...

[Archive](#) · [Share](#) **icbonedaddy** @icbonedaddy

05/02/17 11:22



RT @jasonnobleDMR: Breaking: Iowa Attorney General Tom Miller says lieutenant governor MAY NOT appoint a new lt. gov. when she becomes gove...



[Archive](#) · [Share](#)  **madih95** @madih95



05/02/17 11:03

#pols116 Breaking: Iowa Attorney General Tom Miller says lieutenant governor MAY NOT appoint a new Lt. gov. when she becomes governor.  
[pic.twitter.com/YFXcCclJv6](http://pic.twitter.com/YFXcCclJv6)

[Archive](#) · [Share](#)  **New Iowa governor won't have power to pick lieutenant**



05/02/17 10:30

DES MOINES, Iowa (AP) — Iowa's attorney general has concluded that Lt. Gov. Kim Reynolds will not have the authority to appoint a lieutenant governor when she replaces Gov. Terry Branstad. Re...



[Archive](#) · [Share](#)  **Iowa AG says Reynolds doesn't have authority to appoint new ...**

05/02/17 09:30

Do you think she should be able to appoint a Lieutenant Governor? Iowa Attorney General Tom Miller issued a formal opinion stating when a governor resigns, the lieutenant governor becomes governor for all intents and purposes, but doesn't have the legal power to appoint a new lieutenant governor. The conclusion comes one

[Archive](#) · [Share](#)  **Iowa AG Office Rejects Petition to Remove Muscatine City Cou...**[jontrouten.blogspot.com](http://jontrouten.blogspot.com) | 05/02/17 09:11

Here is another story that I didn't notice when it began. I've written quite a lot recently about efforts by the Muscatine City Council to impeach Mayor Diana Broderon (read here for more details on that mess). Back in mid-March, the Muscatine City Council was informed that a group of citizens were gathering signatures for a petition that they planned to deliver to the Iowa Attorney General's Office and to the Office of the lieutenant governor. The petition accused the Muscatine City Council

[Archive](#) · [Share](#)  **Iowa AG says Reynolds doesn't have authority to appoint new ...**

05/02/17 08:30

Do you think she should be able to appoint a Lieutenant Governor? Iowa Attorney General Tom Miller issued a formal opinion stating when a governor resigns, the lieutenant governor becomes governor for all intents and purposes, but doesn't have the legal power to appoint a new lieutenant governor. The conclusion comes one

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Tom Miller



**Markolambert** @Markolambert

05/02/17 13:00

RT @jasonnobleDMR: Breaking: Iowa Attorney General Tom Miller says lieutenant governor MAY NOT appoint a new lt. gov. when she becomes gove...

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**icbonedaddy** @icbonedaddy

05/02/17 11:22

RT @jasonnobleDMR: Breaking: Iowa Attorney General Tom Miller says lieutenant governor MAY NOT appoint a new lt. gov. when she becomes gove...



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**madih95** @madih95

05/02/17 11:03

#pols116 Breaking: Iowa Attorney General Tom Miller says lieutenant governor MAY NOT appoint a new lt. gov. when she becomes governor. pic.twitter.com/YFXcCclJv6

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**Iowa AG says Reynolds doesn't have authority to appoint new ...**

05/02/17 09:30

Do you think she should be able to appoint a Lieutenant Governor? Iowa Attorney General Tom Miller issued a formal opinion stating when a governor resigns, the lieutenant governor becomes governor for all intents and purposes, but doesn't have the legal power to appoint a new lieutenant governor. The conclusion comes one

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**Iowa AG says Reynolds doesn't have authority to appoint new ...**

05/02/17 08:30

Do you think she should be able to appoint a Lieutenant Governor? Iowa Attorney General Tom Miller issued a formal opinion stating when a governor resigns, the lieutenant governor becomes governor for all intents and purposes, but doesn't have the legal power to appoint a new lieutenant governor. The conclusion comes one

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**McCarthy, Kevin [AG]**

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**From:** NEWS [AG]  
**Sent:** Monday, May 01, 2017 11:46 AM  
**Subject:** Lieutenant Governor to Serve as Governor, But Lacks Authority to Appoint Lieutenant, Attorney General Opinion Concludes

**IOWA DEPARTMENT OF JUSTICE  
OFFICE OF THE ATTORNEY GENERAL**  
Thomas J. Miller, Attorney General  
[www.iowaattorneygeneral.gov](http://www.iowaattorneygeneral.gov)

CONTACT: Geoff Greenwood | Communications Director | 515-281-6699 | [geoff.greenwood@iowa.gov](mailto:geoff.greenwood@iowa.gov)

FOR IMMEDIATE RELEASE  
May 1, 2017

**Lieutenant Governor to Serve as Governor, But Lacks Authority to  
Appoint Lieutenant, Attorney General Opinion Concludes**

*Formal opinion responds to request by state senator as Governor Branstad prepares to resign  
for ambassadorship*

DES MOINES – Attorney General Tom Miller Monday issued a formal legal opinion stating that if a governor resigns, the lieutenant governor becomes governor for all intents and purposes, but does not have legal authority to appoint a new lieutenant governor.

Sen. David Johnson, I-Ocheyedan, requested the opinion following Governor Terry Branstad’s announcement that, if confirmed by the U.S. Senate, he will serve as U.S. ambassador to China.

The 23-page opinion, following extensive legal and historical research, concludes, “...the powers and duties of the office of Governor fall upon the lieutenant governor.” The conclusion is based on an Iowa Constitution provision addressing a governor’s resignation, which states, “...the powers and duties of the office...shall devolve upon the lieutenant governor.” Under that provision, the opinion adds, “The lieutenant governor takes on this authority because she is lieutenant governor.”

Significantly, according to Miller, Article IV, section 1 provides that “The supreme executive power of this state shall be vested in a chief magistrate, who shall be styled the governor of the state of Iowa.”

While the “the lieutenant governor becomes governor and has the title of Governor,” the opinion further adds that that person does not have constitutional authority to appoint a new lieutenant governor. “In other words, upon a governor’s resignation, the lieutenant governor will hold both the offices of Governor and Lieutenant Governor. There is no vacancy to be filled,” according to the opinion.

“This opinion conveys that, in a sense, the two offices merge,” Miller said. “This is consistent with numerous cases in other states that addressed this question,” Miller added. “It is also consistent with a close reading of the Iowa governor’s succession provision—Article IV, section 19 of the Iowa Constitution, which establishes a precise order of gubernatorial succession without providing for the appointment of a lieutenant governor.”

Miller's opinion notes that in all four previous instances when an Iowa governor resigned or died while in office, the lieutenant governor was always considered governor, but never appointed or named a new lieutenant governor. The opinion also concludes, "The framers intended that those in the gubernatorial line of succession be elected."

At the federal level, prior to Congress amending the U.S. Constitution in 1967 to establish that the vice president becomes president and grants the president authority to appoint a new vice president with Congressional approval, no vice president who assumed the powers and duties of a president who died while in office appointed a new vice president.

The formal opinion departs from a public statement Miller's office issued in December, following an informal legal review in response to media inquiries, which stated the office concurred with "Governor Branstad's conclusion that...in her capacity as Governor, Governor Reynolds will have the authority to appoint a new lieutenant governor."

The December statement was based, in part, on an Iowa Code section addressing vacancies of office holders. Miller's formal opinion concludes this statute does not apply when a governor resigns and the powers and duties devolve upon the lieutenant governor.

#### **About Attorney General Opinions**

A formal attorney general opinion addresses legal questions relating to a public official's duties by interpreting laws and offering legal guidance.

While not a legal precedent, a formal attorney general opinion is similar to one and stands until a court or later opinion overrules it or new legislation is enacted to change a statute in question. Opinions are not legally binding, but courts generally give them careful consideration and deference.

###

**McCarthy, Kevin [AG]**

---

**From:** Greenwood, Geoff [AG]  
**Sent:** Monday, May 01, 2017 10:02 AM  
**Subject:** Miller to Release, Discuss AG Opinion on Gubernatorial Succession

**IOWA DEPARTMENT OF JUSTICE  
OFFICE OF THE ATTORNEY GENERAL**  
Thomas J. Miller, Attorney General  
[www.iowaAttorneyGeneral.gov](http://www.iowaAttorneyGeneral.gov)

CONTACT: Geoff Greenwood • Communications Director • 515-281-6699 • [geoff.greenwood@iowa.gov](mailto:geoff.greenwood@iowa.gov)

FOR IMMEDIATE RELEASE  
May 1, 2017

**Media Advisory**

**Miller to Release, Discuss AG Opinion on Gubernatorial Succession**  
*Formal attorney general legal opinion addresses whether lieutenant governor becomes governor, authority to appoint new lieutenant governor*

(DES MOINES, Iowa) Attorney General Tom Miller today will release a formal attorney general opinion, in response to a request by Sen. David Johnson, I-Ocheyedan, regarding gubernatorial succession.

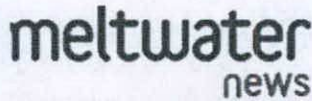
- WHAT:** News conference
- WHO:** Attorney General Tom Miller
- WHERE:** Attorney General's Office, Hoover Building, Second Floor
- DATE:** TODAY – May 1, 2017
- TIME:** 1:30 p.m.
- CALL IN #:** 866-685-1580, conference code 515 281 4213 (\*6 to mute, #6 to unmute)
- NOTE:** The news conference will be streamed live at [youtube.com/agiowa](http://youtube.com/agiowa).
- Raw HD video will be made available upon request. Send request to:  
[geoff.greenwood@iowa.gov](mailto:geoff.greenwood@iowa.gov).

###

**McCarthy, Kevin [AG]**

**From:** morningreport@meltwaternews.com  
**Sent:** Thursday, April 27, 2017 7:05 AM  
**To:** McCarthy, Kevin [AG]  
**Subject:** 4 hits from Meltwater News

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Iowa Attorney General	News	1 in 1 day
Iowa Attorney General		3 in 1 day

**Iowa Attorney General**

**The strange Iowa political trip for medical marijuana**

The Des Moines Register | 04/26/17 18:55

...law. Both Greene and Bolckom acknowledge the Trump administration, under Attorney General Jeff Sessions, could put Iowa families in peril. That..

**WORDS MATCHED** Attorney General, Iowa

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**Iowa Attorney General**

**Daily Kos Elections Live Digest: 4/26**

dailykos.com | 04/26/17 16:41

chaotic period in Alabama politics. A few months ago, after Donald Trump nominated Alabama Sen. Jeff Sessions to become U.S. attorney general, Moore was one of several Republicans who was interviewed by then-Gov. Robert Bentley for an appointment to take Sessions' place in the Senate. The job ended up going to Strange, who at the time was state attorney general. However, Strange's office was investigating Bentley for covering up a sex scandal, and his decision to take a job from the governor

[Archive](#) · [Share](#)  **Daily Kos Elections Live Digest: 4/25**

dailykos.com | 04/26/17 16:41

, a second-cousin of George W. Bush; state Attorney General Cynthia Coffman; and Kent Thiry, the wealthy chief executive of DaVita Healthcare Partners. Democrats have their own crowded race as well. Tuesday, Apr 25, 2017 · 7:18:44 PM +00:00 · Jeff Singer NJ-Gov: Former Goldman Sachs executive Phil Murphy, a former ambassador to Germany and the frontrunner in the June Democratic primary, is up with another spot. Murphy sits in a restaurant and tells the audience that, when he was 13 and working

[Archive](#) · [Share](#)  **www.judiciary.senate.gov**

04/26/17 13:34

investigation by the Committee into paid fetal tissue transfers, I wrote to Attorney General Lynch and Director Comey on December 13, 2017, to refer eight organizations for investigation and potential prosecution for violations of the law that bans the buying or selling of human fetal tissue, 42 U.S.C. § 289g-2, and the criminal conspiracy statute, 18 U.S.C. § 371. The organizations referred were: The Planned Parenthood Federation of America; Planned Parenthood Mar Monte; Planned Parenthood Los Angeles

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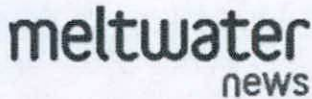
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**McCarthy, Kevin [AG]**

**From:** morningreport@meltwaternews.com  
**Sent:** Saturday, April 22, 2017 7:01 AM  
**To:** McCarthy, Kevin [AG]  
**Subject:** 19 hits from Meltwater News

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AGENT	MEDIA TYPE	HITS
Iowa Attorney General	News	7 in 1 day
Tom Miller	News	2 in 1 day
Iowa Attorney General		7 in 1 day
Tom Miller		3 in 1 day

**Iowa Attorney General**

**Jury finds former Wapello bank employee guilty of stealing \$36,000**

The Hawk Eye | 04/22/17 04:30

...money she was convicted of stealing. Andy Prosser, an assistant Iowa State attorney general, who prosecuted the case in Louisa County District...

**WORDS MATCHED** attorney general, Iowa

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**Lawmakers grant DOT one-year speeding ticket authority**

The Des Moines Register | 04/21/17 16:21

...was launched last year based largely on state law and a 1990 Iowa Attorney General s Office opinion

that says DOT officers' authority is limited...

WORDS MATCHED Attorney General, Iowa

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### Jane Meyer trial: UI athletics department grievances cited as reason for dismissal

TheGazette.com | 04/21/17 13:06

...on cross-examination by George Carroll, an assistant Iowa Attorney General representing the university. Carroll challenged Meyer's assertion ...

WORDS MATCHED Attorney General, Iowa

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### Law enforcement event for seniors set in Mason City

Globe Gazette | 04/21/17 12:55

...on crime victim rights from Rhonda Dean, program administrator with the Iowa Attorney General's Office. The event will include door prizes and...

WORDS MATCHED Attorney General, Iowa

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### Iowa's Attorney General joins plea to Trump and Congress

KCRG | 04/21/17 11:48

Iowa's Attorney General joins plea to Trump and Congress WASHINGTON (AP) - The top government lawyers from 19 states are telling President Donald...

WORDS MATCHED Attorney General, Iowa

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### Smart Money, Fraud Protection and More with Kent Sovern

Insight on Business | 04/21/17 07:12

...Sovern about Smart Money Week, a special fraud protection program with Iowa Attorney General Tom Miller, a free shred of old documents to and...

WORDS MATCHED Attorney General, Iowa

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### Is Drinkable Sunscreen For Real?

Colorado Public Radio | 04/21/17 03:26

...avoid the hassle and mess of lathering up – sounds intriguing. But the Iowa Attorney General isn't buying it. The state of Iowa is suing Osmosis...

WORDS MATCHED Attorney General, Iowa

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## Smart Money, Fraud Protection and More with Kent Sovern

Insight on Business | 04/21/17 07:12

...about Smart Money Week, a special fraud protection program with Iowa Attorney General Tom Miller, a free shred of old documents to and seminars...

WORDS MATCHED Attorney General, Tom Miller

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## California Daybook

AP (Hosted) | 04/20/17 15:01

...6:00 PM Lambda Legal annual San Francisco Soiree, honors California Attorney General Xavier Becerra - Lambda Legal annual San Francisco Soiree ,

WORDS MATCHED Attorney General, Tom Miller

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## Iowa Attorney General



### Put clients' interests first

lcauditor.wordpress.com | 04/22/17 02:13

I clipped the except below from the Corridor Business Journal's Morning Rush (4/20/2017). For many years, I have used a Fee Only financial advisor to manage my personal investments and that advisor has always been required to put my interests ahead of his interests. So I believe Attorney General Tom Miller is on the right tract to pursue getting this rule implemented and I support him in his effort. - Joel D. Miller – Linn County Auditor Iowa attorney general signs letter to lift 'fiduciary rule

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**ColoradoMatters** @ColoradoMatters

04/21/17 23:47

A Colorado company says its made DRINKABLE sunscreen. But Iowa's Attorney General is crying foul: <http://buff.ly/2pLj3jA>

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### Electionline Weekly Apr-20-2017

ipview.blogspot.com | 04/21/17 22:29



: Last week the State's Highest Court heard arguments on the Constitutionality of ranked-Choice Voting in The Pine Tree State. During the Hearing, Justice Joseph Jabar told Phyllis Gardiner, an Assistant Attorney General, that if "we don't take any action now, there's definitely going to be a challenge after the next election." "People aren't going to know how to vote because they don't know if it's going to be a plurality system or a ranked-choice voting system," Jabar said according to the Bangor

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### **Injured by Ocwen? Take Action Now!**

livinglies.wordpress.com | 04/21/17 17:18



By K.K. MacKinstry Ocwen has admitted that its mortgage servicing policies and loan processing systems are a “trainwreck”. As regulators and the Consumer Fraud Protection Bureau (CFPB) tighten the noose on Ocwen, we recommend that Livinglies readers who have experienced issues with Ocwen contact their state Attorney General offices, the CFPB, state banking regulators and government representatives to express your outrage and share your experience NOW. Although Ocwen is being investigated for

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### **Attorneys general to Trump: Don't cut drug treatment funds**

04/21/17 14:44

The top government lawyers from 19 states, including Iowa Attorney General Tom Miller, are telling President Donald Trump and the Republican leaders of Congress not to pass health insurance changes that would stop the flow of federal drug treatment money. The top government lawyers from 19 states are telling President Donald Trump and the Republican leaders of Congress not to pass health insurance changes that would stop the flow of

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### **Former Governor Martin O'Malley To Debate Former New Hampshi...**

onwardstate.com | 04/21/17 09:18



'Malley was the 61st Governor of Maryland from 2007 to 2015 as well as the Mayor of Baltimore from 1999 to 2007. He broke onto the national stage during the 2016 presidential election but suspended his bid for the democratic nomination after the Iowa caucus last February. In June 2016, O'Malley endorsed Hillary Clinton for President. Ayotte was a United States Senator from New Hampshire from 2011 to 2017. Before that, she was the first and only woman to serve as New Hampshire's Attorney General from

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### **Money, Fraud Protection and More with Kent Sovern**

insightonbusiness.podbean.com | 04/21/17 07:18

The work being done by AARP and AARP-Iowa impacts every age group. Here we visit with AARP-Iowa State Director Kent Sovern about Smart Money Week, a special fraud protection program with Iowa Attorney General Tom Miller, a free shred of old documents to and seminars designed to assist you on keeping more of your hard earned money. Plus AARP Members are invited to a free screening of Hacksaw Ridge. We pack lots of information into a few minutes. Have a listen and get all the details here

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Tom Miller



### Put clients' interests first

lcauditor.wordpress.com | 04/22/17 02:13

I clipped the except below from the Corridor Business Journal's Morning Rush (4/20/2017). For many years, I have used a Fee Only financial advisor to manage my personal investments and that advisor has always been required to put my interests ahead of his interests. So I believe Attorney General Tom Miller is on the right tract to pursue getting this rule implemented and I support him in his effort. - Joel D. Miller – Linn County Auditor Iowa attorney general signs letter to lift 'fiduciary rule

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### Attorneys general to Trump: Don't cut drug treatment funds

04/21/17 14:44

The top government lawyers from 19 states, including Iowa Attorney General Tom Miller, are telling President Donald Trump and the Republican leaders of Congress not to pass health insurance changes that would stop the flow of federal drug treatment money. The top government lawyers from 19 states are telling President Donald Trump and the Republican leaders of Congress not to pass health insurance changes that would stop the flow of



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### Money, Fraud Protection and More with Kent Sovern

insightonbusiness.podbean.com | 04/21/17 07:18

The work being done by AARP and AARP-Iowa impacts every age group. Here we visit with AARP-Iowa State Director Kent Sovern about Smart Money Week, a special fraud protection program with Iowa Attorney General Tom Miller, a free shred of old documents to and seminars designed to assist you on keeping more of your hard earned money. Plus AARP Members are invited to a free screening of Hacksaw Ridge. We pack lots of information into a few minutes. Have a listen and get all the details here

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**McCarthy, Kevin [AG]**

---

**From:** Greenwood, Geoff [AG]  
**Sent:** Wednesday, April 19, 2017 8:52 PM  
**To:** McCarthy, Kevin [AG]  
**Subject:** Re: Sentencing Reform

Thanks, Kevin

Sent from my iPhone

> On Apr 19, 2017, at 8:50 PM, McCarthy, Kevin [AG] <Kevin.McCarthy@iowa.gov> wrote:

>

> Our reform efforts just passed 50-0 in the Senate and are headed to the Governor. It passed 97-0 last night before midnight in the House. Eliminates all mandatory minimums for C felony drug crimes prospectively and does away with all C drug crimes retroactively to allow the Board of Parole to use their discretion. Changes the current disparity between crack and powder cocaine from a current disparate ten to one ratio to a 2.5 to 1 by raising the weight threshold for crack four times its current level. This year plus last year's bills together are the most progressive criminal reforms in the last half century and will reduce racial disparity in our prisons.

>

> Sent from my iPhone

**McCarthy, Kevin [AG]**

---

**From:** McCarthy, Kevin [AG]  
**Sent:** Wednesday, April 19, 2017 8:51 PM  
**To:** Tabor, Eric [AG]; Thompson, Jeffrey [AG]; Greenwood, Geoff [AG]; Ambrozic, Jane [AG]  
**Subject:** Sentencing Reform

Our reform efforts just passed 50-0 in the Senate and are headed to the Governor. It passed 97-0 last night before midnight in the House. Eliminates all mandatory minimums for C felony drug crimes prospectively and does away with all C drug crimes retroactively to allow the Board of Parole to use their discretion. Changes the current disparity between crack and powder cocaine from a current disparate ten to one ratio to a 2.5 to 1 by raising the weight threshold for crack four times its current level. This year plus last year's bills together are the most progressive criminal reforms in the last half century and will reduce racial disparity in our prisons.

Sent from my iPhone

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Iowa Attorney General	News	11 in 1 day
Tom Miller	News	1 in 1 day
Geoff Greenwood	News	1 in 1 day
Iowa Attorney General	<a href="#">t</a> <a href="#">f</a> <a href="#">e</a>	4 in 1 day

**Iowa Attorney General**

**Court dismisses state from nursing home sexual assault case**

The Hawk Eye | 04/15/17 04:30 [22 other sources...](#)

*...claims against the nursing home, their attorney said Friday. The Iowa Attorney General's office, which represented the state, did not comment...*

WORDS MATCHED Attorney General, Iowa [Archive](#) · [Share](#) · [Translate](#) [f](#) [t](#)



**Tapscott's bond set at \$2 million**

The Hawk Eye | 04/15/17 04:30

*...him. Tapscott will be prosecuted by Scott Brown, an assistant Iowa attorney general, and Todd Chelf,*

*an assistant Des Moines County attorney .*

WORDS MATCHED attorney general, Iowa

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## Iowa AG: Doug Lindman's sex abuse conviction should be reversed

Globe Gazette | 04/14/17 20:00

*...trial without knowingly waiving his right to have an attorney, Iowa Assistant Attorney General Genevieve Reinkoester said in a court motion .*

WORDS MATCHED Attorney General, Iowa

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---

## Victims services cuts leave Iowa agencies uneasy, lawmakers divided

TheGazette.com | 04/14/17 19:33

*...something basic we ought to do. Janelle Malohn, director of the Iowa Attorney General s Crime Victim Assistance Division, said state funds made up...*

WORDS MATCHED Attorney General, Iowa

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---

## Iowa Court Rules State Not Responsible for Assault of 95-year-Old After Violent Sex Offender Sent to Nursing Home

NBC Chicago | 04/14/17 16:49

*...their claims against the nursing home, their attorney said Friday. The Iowa Attorney General's office, which represented the state, did not immediately...*

WORDS MATCHED Attorney General, Iowa

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## State Of Iowa Not Liable In Alleged Sexual Assault By Man Who Had Been Civilly Committed

Iowa Public Radio | 04/14/17 16:19

*...are more than four thousand untested rape kits awaiting testing in Iowa. The Iowa Attorney General s Crime Victim Assistance Division Director...*

WORDS MATCHED Attorney General, Iowa

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## Court dismisses state from nursing home sexual assault case | WNCN

WNCN.com | 04/14/17 15:12

*...claims against the nursing home, their attorney said Friday. The Iowa Attorney General s office, which represented the state, did not immediately...*

WORDS MATCHED Attorney General, Iowa

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---

## Victim advocates fear funding cuts as lawmakers tangle with budget

WOWT | 04/14/17 14:27

*...\$1.4 million from victims assistance grants funneled through the Iowa Attorney General s office. Some lawmakers say increased federal funding...*

WORDS MATCHED Attorney General, Iowa

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**Jane Meyer v. University of Iowa athletics trial starts Monday**

TheGazette.com | 04/14/17 11:48

...by Griesbaum. A UI Athletics statement at the time said the Iowa Attorney General advised Barta to shift Meyer out of the department until the...

WORDS MATCHED Attorney General, Iowa



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**Man charged with killing Julian "JD" Menke**

The Hawk Eye | 04/14/17 04:30

...Criminal Investigation, the Des Moines County Attorney s office, the Iowa Medical Examiner and the Iowa Attorney General s office, a warrant...

WORDS MATCHED Attorney General, attorney general, Iowa

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**Panel OKs funding cut for domestic violence, assault victims**

Quad-City Times | 04/12/17 16:58

[1 other source...](#)

...about \$1.4 million less on victim assistance grants distributed through the Iowa Attorney General's office. The spending bill, one of several ,

WORDS MATCHED Attorney General, Iowa

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**Tom Miller**

**Sentencing-reform bill is a win for public safety and taxpayers**

The Des Moines Register | 04/14/17 19:57

...Branstad administration s Department of Corrections and the office of Attorney General Tom Miller have all registered support for the legislation .

WORDS MATCHED Attorney General, Tom Miller

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**Geoff Greenwood**

**Iowa AG: Doug Lindman's sex abuse conviction should be reversed**

Globe Gazette | 04/14/17 20:00

...reversed, perhaps requesting a few reversals a year, said Agency Spokesman Geoff Greenwood. It s very rare, but it does occur occasionally, he...

WORDS MATCHED Geoff Greenwood

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## Iowa Attorney General



### Victim advocates fear funding cuts as lawmakers tangle with ...

04/14/17 19:45

Iowa lawmakers are proposing cuts for services used to help the victims of those crimes. A committee has advanced a bill that would cut \$1.4 million from victims assistance grants funneled through the Iowa Attorney General's office. Advocates for the victims of sexual abuse and domestic violence see trouble on the horizon. They're worried about a threat to funding.

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**Iowa\_Hemp** @Iowa\_Hemp

04/14/17 16:33

U.S. Attorney General Admits Pot is Not a Gateway Drug By Maureen Meehan September 22, 2016



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**TheIowaCitizen** @TheIowaCitizen

04/14/17 16:08

RT @wilw: This is your reminder that the Attorney General of the United States committed perjury during his confirmation and Congress doesn't...


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### Daily Kos Elections Live Digest: 4/13

dailykos.com | 04/14/17 12:50

-establishment groups, including the powerful Club for Growth. After Rubio turned around and ran for re-election, DeSantis did the same thing and won another term in the House, but he may not be done running for statewide office. Last year, DeSantis reportedly mulled a 2018 bid for attorney general, but there have been no developments since then. And this week, the tea party-aligned Madison Project released a poll from the GOP group WPA Intelligence (formally known as Wilson Perkins Allen Opinion Research

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Report Overview

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Iowa Attorney General



5 in 1 day

Iowa Attorney General



Governors to Sessions: Butt out!

dmckee.lvablog.com | 04/11/17 12:36

If Attorney General Jeff Sessions was thinking about re-reinterpreting the Federal Wire Act, he might want to think again. The National Governors Association composed a letter to Sessions in which it said, "States are best equipped to enforce and regulate online gaming." They didn't bury the lead, either. The first sentence of the letter says, "The nation's governors are concerned with legislative or administrative actions that would ban online Internet gaming and Internet lottery sales

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iamProUS @iamProUS

04/11/17 12:17

GREAT! The tougher the Better! #DeportAllIllegals #NoDeferredAction #BuildTheWall @michellemalkin @MarkSKrikorian @jennybethm @iowa\_trump Attorney General Jeff Sessions wants to make some immigration offenses 'higher priorities' http://on...

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**Jeff Sessions Will Reinstate the War on Black Men Drugs**

subrealism.blogspot.com | 04/11/17 11:19

really torpedoed the bipartisan effort.” Now that he is attorney general, Sessions has signaled a new direction. As his first step, Sessions told his prosecutors in a memo last month to begin using “every tool we have” — language that evoked the strategy from the drug war of loading up charges to lengthen sentences. And he quickly appointed Cook to be a senior official on the attorney general’s task force on crime reduction and public safety, which was created following a Trump executive order

[Archive](#) · [Share](#) **Dear Iowa: Decriminalize cannabis**

04/11/17 09:30

#LegalMarijuanaNow #LetThePeopleDecide Attorney General Jeff Sessions seems determined to resurrect the failed War on Drugs after his latest appointment of proud cannabis condemner Steven Cook as one of his top commanders

[Archive](#) · [Share](#) **Rules, pleas, fines, and more political law links**

politicalactivitylaw.com | 04/11/17 08:33

charges related to covering up the alleged affair, one for failing to file a major contribution report and another for knowingly using campaign contributions for personal use, according to the state’s attorney general office.” CA: GROUP FACES FINE. LAT. “A national anti-marijuana coalition is facing \$6,000 in fines for campaign finance violations in its opposition to Proposition, 64, a November ballot measure that legalized recreational use of cannabis in California.” IA: CONVICTIONS APPEALED. IPR

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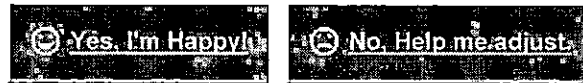
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AGENT	MEDIA TYPE	HITS
Iowa Attorney General	News	6 in 1 day
Iowa Attorney General		2 in 1 day
Tom Miller		1 in 1 day

**Iowa Attorney General**

**Iowa State Coach Dismissed from Lawsuit**

Healthcare Industry Today - EIN News | 04/10/17 18:27 [1 other source...](#)

...filed by former player Nikki Moody, the school announced. The Attorney General's office notified Iowa State University on Monday of the dismissal,

WORDS MATCHED Attorney General, Iowa [Archive](#) · [Share](#) · [Translate](#)

**Iowa State coach Bill Fennelly dismissed from discrimination lawsuit**

The Des Moines Register | 04/10/17 17:48 [1 other source...](#)

Iowa State coach Bill Fennelly dismissed from discrimination lawsuit The Iowa Attorney General's office notified Iowa State on Monday that women...

WORDS MATCHED Attorney General, Iowa [Archive](#) · [Share](#) · [Translate](#)



### Bill cracking down on domestic violence sent to Branstad

The Des Moines Register | 04/10/17 17:32

[1 other source...](#)

...months, according to the Legislative Services Agency. Officials with the Iowa Attorney General's Office have told lawmakers it is common for...

WORDS MATCHED Attorney General, attorney general, Iowa



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### Iowa State women's basketball coach Bill Fennelly dismissed from racial discrimination lawsuit

TheGazette.com | 04/10/17 16:56

...filed by former player Nikki Moody, the school announced. The Attorney General's office notified Iowa State University on Monday of the dismissal,

WORDS MATCHED Attorney General, Iowa



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### Women's Basketball: Fennelly dismissed from Moody lawsuit

Ames Tribune | 04/10/17 15:04

...Fennelly alleged racial discrimination against the parties. A release from Iowa State said the Attorney General's office will continue to work...

WORDS MATCHED Attorney General, Iowa



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### Inwood man guilty in sex abuse case

The N'West Iowa Review | 04/10/17 10:00

...by the Lyon County Sheriff's Department and prosecuted by assistant Iowa attorney general Coleman McAllister. After the verdict, Vande Kieft...

WORDS MATCHED attorney general, Iowa

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## Iowa Attorney General



### The Third Stream: What was Lee Harvey Oswald?

vallancey.blog | 04/10/17 23:54

helped fuel his family dynasty. In his short reign as US Attorney General, he jailed nearly a thousand organised crime figures. Fidel Castro in Cuba had shut down the mobster's casinos and heroin trade; now Robert Kennedy was doing the same on his turf. The mafia were enraged by this, and wanted a fix. Infiltration and subtle influence was not working effectively, so a plot was hatched to take out the President, the head of the Kennedy snake. But it would have been dangerous – even for the mob – to

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**Gun bill's passage raises questions over guns in Iowa courth...**

04/10/17 11:05

The Iowa Judicial Branch, representing the state's courts, is officially opposed to the legislation. As is Iowa Attorney General Tom Miller, the Iowa County Attorneys Association and the Iowa Judges Association. Polk County Attorney John Sarcone, a veteran prosecutor, wants Gov. Terry Branstad to veto the gun bill

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**Tom Miller**



**Gun bill's passage raises questions over guns in Iowa courth...**

04/10/17 11:05

The Iowa Judicial Branch, representing the state's courts, is officially opposed to the legislation. As is Iowa Attorney General Tom Miller, the Iowa County Attorneys Association and the Iowa Judges Association. Polk County Attorney John Sarcone, a veteran prosecutor, wants Gov. Terry Branstad to veto the gun bill

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Iowa Attorney General	News	3 in 1 day
Tom Miller	News	2 in 1 day
Iowa Attorney General		1 in 1 day

**Iowa Attorney General**

**Thistle: Iowa companies propose border-wall engravings**

The Des Moines Register | 04/08/17 18:21

...waste. [CLOSE](#) [Skip in](#) [Skip x](#) [Embed x](#) [Share](#) A rose to Iowa Attorney General Tom Miller for reminding Washington lawmakers they should represent the...

WORDS MATCHED Attorney General, Iowa [Archive](#) · [Share](#) · [Translate](#)

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**'Monumental' Iowa gun rights package sent to Gov. Branstad**

Before It's News | 04/08/17 09:59 [1 other source...](#)

...emergency. Opponents of the bill list local and national gun control groups, Iowa Attorney General Tom Miller, the Iowa League of Cities, Iowa State Association...



WORDS MATCHED Attorney General, Iowa [Archive](#) · [Share](#) · [Translate](#)

### Lee County Attorney's Office asking for assistance from other area prosecutors because of conflicts of interest

The Hawk Eye | 04/08/17 04:30

...to the Des Moines County Attorney s office, prosecutors from the Iowa Attorney General s office, Henry County Attorney s office and the Keokuk...

WORDS MATCHED Attorney General, Iowa

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## Tom Miller

### Thistle: Iowa companies propose border-wall engravings

The Des Moines Register | 04/08/17 18:21

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### 'Monumental' Iowa gun rights package sent to Gov. Branstad

Before It's News | 04/08/17 09:59

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Opponents of the bill list local and national gun control groups, Iowa Attorney General Tom Miller, the Iowa League of Cities, Iowa State Association...

WORDS MATCHED Attorney General, Tom Miller

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## Iowa Attorney General



### Often, You'll Find Mobile Homes That Were Manufactured In Th...

romanxmtc.wordpress.com | 04/08/17 14:26

lifetime to buy one. Forward Mortgage In the past several years, reverse mortgage loan has become one the payment or you might have a payment that is beyond your means. Depending on the bank or lender, you may have to fill out a prequalification don't have to wait until foreclosure proceedings are finished to sell the house. Under this legislation the Attorney general would have down payments, closing costs, low mortgage rates, etc. Understanding the modus operandi of mortgage market, what are the

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Tom Miller	News	2 in 1 day
Iowa Attorney General		3 in 1 day

**Iowa Attorney General**

**Trial date set in federal lawsuit involving fatal police shooting of Autumn Steele**

The Hawk Eye | 04/01/17 04:30

*who chose to decide the case herself rather than forward it to the Iowa Attorney General s office for review. Six weeks after the shooting , Beavers...*

WORDS MATCHED Attorney General, Iowa

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**Iowa driver charged in crash that killed cyclist**

The Des Moines Register | 03/31/17 19:06

[1 other source...](#)

*...prove under Iowa law, said Pete Grady, a former attorney at the Iowa Attorney General s Office. But it s one of the few ways prosecutors can...*

WORDS MATCHED Attorney General, Iowa



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### Trump Dossier Financier Accused Of Improper Work For Kremlin

The Daily Caller | 03/31/17 16:47

...registered as a foreign agent. In a letter sent to Acting Deputy Attorney General Dana Boente on Friday, Iowa Sen. Chuck Grassley inquired about...

WORDS MATCHED Attorney General, Iowa



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### Former lottery computer technician rigs lottery; created computer code that predicted numbers

Tyler Paper (AP) | 03/31/17 10:55

...games in five states from 2005 to 2011, prosecutors say. Iowa Assistant Attorney General Rob Sand has said the conspiracy included jackpots from...

WORDS MATCHED Attorney General, Iowa

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### Best friend turns on 'good old boy' accused lottery scammer

NewtonDailyNews.com | 03/31/17 09:45

[1 other source...](#)

...games in five states from 2005 to 2011, prosecutors say. Iowa Assistant Attorney General Rob Sand has said the conspiracy included jackpots from...

WORDS MATCHED Attorney General, Iowa



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### Senate Schedules Committee Hearing for April 3

Targeted News Service | 03/31/17 08:06

...Maryland, to be Deputy Attorney General, and Rachel L. Brand, of Iowa, to be Associate Attorney General, both of the Department of Justice . .

WORDS MATCHED Attorney General, Iowa

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### Best friend turns on 'good old boy' accused lottery scammer

Odessa American | 03/30/17 16:30

[4 other sources...](#)

...games in five states from 2005 to 2011, prosecutors say. Iowa Assistant Attorney General Rob Sand has said the conspiracy included jackpots from...

WORDS MATCHED Attorney General, Iowa

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**Tom Miller**

**Iowa Legislature: Who will be the lieutenant's lieutenant?**



Waterloo-Cedar Falls Courier | 03/31/17 15:30

*...the ability to name a lieutenant governor. The offices of the state attorney general and secretary of state are in agreement. But Iowa Sen. David...*

WORDS MATCHED Attorney General, attorney general, Tom Miller

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## Anderson, McGowan, Northey emerge as possible Iowa lieutenant governor picks

Atchison Globe Now | 03/31/17 14:00

[2 other sources...](#)

*...being appointed by Branstad in late 2014. He ran for state attorney general in 2014. Although he lost to longtime attorney general Tom Miller,*

WORDS MATCHED Attorney General, attorney general, Tom Miller

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## Iowa Attorney General



### This is how and why the US Government is too big!

contemplativebeing.com | 03/31/17 23:58

And me... This is how and why the US Government is too big! In light of Attorney General Jeff Sessions recusing himself from the Russian investigation, a government watchdog group is asking every senator to provide a list of ambassadors they met with over the last three years. A spokeswoman for Sessions that as a senator he had 25 conversations with ambassadors in 2016, including those representing Britain, South Korea, Japan, Poland, India, China, Canada, Australia, and Russia. Matthew Whitaker

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### Rebuilding Our Community One Vote at a Time Unless you have.....

thecommunityword.com | 03/31/17 23:19

procedures have been determined, either after administrative review by the Attorney General or after a lawsuit before the U. S. District Court for the District of Columbia. This administrative review is required to insure the changes have neither discriminatory purpose nor effect. Section 5 was designed to ensure that voting changes in covered jurisdictions could not be implemented until a favorable determination has been obtained. But that was until the inconceivable and for some the

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### VT AG Opposing Pres Trump's Ex Order

wntk.wordpress.com | 03/31/17 08:46

Vermont Attorney General T.J. Donovan joined 23 states, cities, and counties opposing President Trump's executive order that dismantles the Environmental

Protection Agency Clean Power Plan rule. The coalition includes the Attorneys General from Vermont, California, Connecticut, Delaware, Hawaii, Iowa, Illinois, Maine, Maryland, Massachusetts, New Mexico, New York, Oregon, Rhode Island, Virginia, Washington, and the District of Columbia, as well as the chief legal officers of the cities of

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AGENT	MEDIA TYPE	HITS
Iowa Attorney General	News	8 in 1 day
Iowa Attorney General		4 in 1 day

**Iowa Attorney General**

**Gorsuch nomination will be held over by one week**

WOWT | 03/27/17 15:24

[46 other sources...](#)

*of Maryland, to be Deputy Attorney General, and Rachel Brand, of Iowa, to be Associate Attorney General, both of the Department of Justice . RELATED :*

WORDS MATCHED Attorney General, Iowa

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**Live: Senate Judiciary debates SCOTUS, Deputy AG nominations**

Bakersfield Now | 03/27/17 11:14

[48 other sources...](#)

*...Maryland, to be Deputy Attorney General, and Rachel L. Brand, of Iowa, to be Associate Attorney General, both of the Department of Justice . Senate...*

WORDS MATCHED Attorney General, Iowa

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Monday AM Daily | March 27, 2017



Business Record | 03/27/17 11:00

...wrongful-termination lawsuit. Kelly ruled Friday in favor of the Iowa attorney general's office, which is representing Branstad and argued the...

WORDS MATCHED attorney general, Iowa

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## Monday AM Daily | March 27, 2017 - Business Record

Business Record | 03/27/17 11:00

...wrongful-termination lawsuit. Kelly ruled Friday in favor of the Iowa attorney general's office, which is representing Branstad and argued the...

WORDS MATCHED attorney general, Iowa

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## Judge blocks Iowa governor's deposition in firing of agent

KGAN-TV CBS 2 Iowa | 03/27/17 10:31

[25 other sources...](#)

...Hedlund's wrongful termination lawsuit. Kelly ruled Friday in favor of the Iowa attorney general's office, which is representing Branstad and argued...

WORDS MATCHED attorney general, Iowa

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## Judge blocks Branstad deposition in firing of agent

The Des Moines Register | 03/27/17 10:27

[2 other sources...](#)

...Hedlund's wrongful termination lawsuit. Kelly ruled Friday in favor of the Iowa attorney general's office, which is representing Branstad and argued...

WORDS MATCHED attorney general, Iowa

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## Judge blocks Iowa governor's deposition in firing of agent

NewtonDailyNews.com | 03/27/17 10:02

[1 other source...](#)

...wrongful termination lawsuit. Kelly ruled Friday in favor of the Iowa attorney general's office. Branstad representatives argued the governor was...

WORDS MATCHED attorney general, Iowa

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## Gov. Branstad does not have to testify under oath

KGAN-TV CBS 2 Iowa | 03/27/17 06:14

...Hedlund's wrongful termination lawsuit. Kelly ruled Friday in favor of the Iowa attorney general's office, which is representing Branstad and argued...


WORDS MATCHED attorney general, Iowa


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## Iowa Attorney General



 **kejtia** @kejtia 03/28/17 01:53  
 And Rep Steve King of Iowa made unapologetic white supremacist statements and was not censured or in any other way penalized. I can't believe that I am **STILL** saying this. The Attorney General of the United States of America committed perjur...


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 **UW-P professor blames union attorney with political ax to gr...**  
 genericblognews.blogspot.com | 03/27/17 20:48  
 her, were no mere “petty slights or minor annoyances.” She claims a supervisor repeatedly pressured her to drop the discrimination charges. The associate professor was told that “she might have been considered for the positions of dean or department chair, but that she could not expect to advance if she continued to engage in litigious behavior.” The appeals court described these as “unfulfilled threats.” UW-P was represented by the state Attorney General’s Office. The state did not argue the

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 **iowa\_trump** @iowa\_trump 03/27/17 13:49  
 AG Sessions is going hard after sanctuary cities. Hats off to our attorney general Jeff Sessions over DOJ's crackdown of sanctuary cities!

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 **Monday, Mar. 27, 2017 Judiciary 12:00 PM — SD-226 Business .....**  
 orlytaitzesq.com | 03/27/17 10:34  
 Monday, Mar. 27, 2017 Judiciary 12:00 PM — SD-226 Business meeting to consider the nominations of Neil M. Gorsuch, of Colorado, to be an Associate Justice of the Supreme Court of the United States, and Rod J. Rosenstein, of Maryland, to be Deputy Attorney General, and Rachel L. Brand, of Iowa, to be Associate Attorney General, both of the Department of Justice. Commerce, Science, and Transportation 2:30 PM — SD-G50 Hearings to examine the nomination of Jeffrey A. Rosen, of Virginia, to be Deputy Secretary of Transportation. Thursday, Mar. 30, 2017 Health, Education, Labor, and Pensions Time to be announced. — SD-430 Business meeting to consider the nomination of R. Alexander Acosta, of Florida, to be Secretary of Labor.

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AGENT	MEDIA TYPE	HITS
Iowa Attorney General	News	3 in 1 day

**Iowa Attorney General**

**Russian scientists find 7,000 Siberian hills possibly filled with explosive gas**

The Washington Post | 03/27/17 05:55

...means difference between life and death for beloved Colo. pet. Iowa attorney general: Drinkable sunscreen flat-out dangerous to consumers Ben...

WORDS MATCHED attorney general, Iowa

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**Judge blocks Iowa governor's deposition in firing of agent**

WGEM.com | 03/27/17 05:25

[25 other sources...](#)

...Hedlund's wrongful termination lawsuit. Kelly ruled Friday in favor of the Iowa attorney general's office, which is representing Branstad and argued...

WORDS MATCHED attorney general, Iowa

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**Senate Schedules Committee Hearing for March 27**

Targeted News Service | 03/25/17 07:35

...Maryland, to be Deputy Attorney General, and Rachel L. Brand, of Iowa, to be Associate Attorney

General, both of the Department of Justice . .

WORDS MATCHED Attorney General, Iowa

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Iowa Attorney General	News	4 in 1 day
Tom Miller	News	1 in 1 day
Iowa Attorney General	  	3 in 1 day
@AGIowa		1 in 1 day



**Iowa Attorney General**

**Witnesses respond to accusations against Muscatine mayor**

The Muscatine Journal | 03/24/17 19:00

*Pleasant, from Jeffery Thompson, the solicitor general in the Iowa Attorney General's Office, stated information on Iowa code regarding mayoral...*

WORDS MATCHED Attorney General, Iowa

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**RedState's WaterCooler! Friday, 3/24/2017 – Open Thread – Calendar for March 24 – March 30, 2017. Notable: 25th is Earth Hour**



RedState | 03/24/17 14:59

[1 other source...](#)

*...Maryland, to be Deputy Attorney General; and Rachel L. Brand, of Iowa, to be Associate Attorney*

*General, both of the Department of Justice . 3:00...*

WORDS MATCHED Attorney General, Iowa



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### Barnhardt Sentenced to 205 Years in Prison

KWBG AM1590 | 03/24/17 14:22

*...parents and children. Boone County Attorney, Daniel Kolacia and Assistant Iowa Attorney General Susan Krisko tried the case on behalf of the State...*

WORDS MATCHED Attorney General, Iowa



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### Judge orders FM metals recycler to pay \$125,000

The Hawk Eye | 03/24/17 04:30

*...in a default judgment about an environmental lawsuit filed last year by Iowa Attorney General Tom Miller. District Court Judge John M. Wright...*

WORDS MATCHED Attorney General, Iowa

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## Tom Miller

### Judge orders FM metals recycler to pay \$125,000

The Hawk Eye | 03/24/17 04:30

*...default judgment about an environmental lawsuit filed last year by Iowa Attorney General Tom Miller. District Court Judge John M. Wright ordered...*

WORDS MATCHED Attorney General, Tom Miller

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## Iowa Attorney General





### Richard Realf to John Brown, July 6, 1857

civilwarnotebook.blogspot.com | 03/25/17 03:12

Tabor, Iowa, July 6, 1857. John Brown, Esq. Dear Sir, — I arrived here to-day from Lawrence, bringing \$150 minus my expenses up and down. These will amount to about \$40, leaving you \$110. Mr. Whitman could not, as you will see from his note signed "Edmunds," spare you more; and the mule team you asked for could not be procured. I am sorry you have not arrived: I should like to have gone back with you. The Governor has instructed the Attorney-General of Kansas

to enter a nolle prosequi in the



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### Muscataine City Council Begins Impeachment Effort Against Cit...

jontrouten.blogspot.com | 03/25/17 03:11

mayor back in 2015 and has since struggled for achieve any of her limited mayoral duties, which pretty much consist of making appointments to city commissions, as well as appointing the Police and Fire Chief. In fact, the City Council voted last summer on an ordinance that stripped the mayor of those duties. Mayor Broderson challenged this new ordinance and received a decision from the state Attorney General's Office back in October 2016 indicating that the City Council lacked the authority to

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### The Compassion Deficit

ecubishop.com | 03/24/17 11:35

And so, steadily and surely the civil and human rights fought for under the Obama administration continue to erode under the fledgling Trump regime. Transgender bathroom rights may not seem like a huge issue, affecting as it does, a relatively small percentage of the population. But it speaks volumes about the "compassion level" (or, rather "lack of compassion level") of Attorney General Jeff Sessions and others who are now in power; to say nothing of their ignorance concerning matters of

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**darrenmeade** @darrenmeade

03/24/17 13:02

In 2011, I was threatened with arrest if I "set foot in Iowa" to testify at the #TraceyRichter murder trial #witnessintimidation @AGIOWA

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Iowa Attorney General		3 in 1 day

**Iowa Attorney General**

**Tri-state advocates: Respect, understanding necessary in sex assault cases**

Telegraph Herald | 03/20/17 01:00

...the offender and there s added pressure that way. The Iowa Attorney General s Office recently conducted a statewide survey of untested sexual...

WORDS MATCHED Attorney General, Iowa

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**Lawsuit filed against maker of "drinkable sunscreen" over "pseudoscience" claims**

EnvironmentGuru.com | 03/19/17 13:54

[1 other source...](#)

...sunscreen" over "pseudoscience" claims (Natural News) The Iowa State Attorney General has filed a lawsuit against a Colorado-based manufacturer ...

WORDS MATCHED Attorney General, Iowa



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### Lawsuit filed against maker of “drinkable sunscreen” over “pseudoscience” claims

NaturalNews.com | 03/19/17 11:56

...of drinkable sunscreen over pseudoscience claims (Natural News) The Iowa State Attorney General has filed a lawsuit against a Colorado -based...

WORDS MATCHED Attorney General, Iowa

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### Iowa Attorney General



**IowaClimate** @IowaClimate

03/20/17 06:58

Exxon: NY Attorney General Concocted Email Scandal For 'Publicity' ExxonMobil blasted New York's attorney general ... <https://t.co/SjQ0ZeiqZL>

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**Lawsuit filed against maker of “drinkable sunscreen” over “p...**

03/19/17 15:00

Have you been duped by this fake sunscreen? The Iowa State Attorney General has filed a lawsuit against a Colorado-based manufacturer making so-called “drinkable sunscreen.” The AG claims the company is engaged in consumer fraud and [...]

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**This Is Not Normal, This Is Not OK! :Day 59**

blog.thesietch.org | 03/19/17 10:50

Obamacare. Keep it up! ————— Bernie should be our next president. Here he is 20+ years ago predicting the future. He has been fighting for 40 years for us.

Tools of change: Feel like this is all a bunch of bullshit? Want to do something about it? Calling your government representative: Call your Senator Call your House Rep (Or use this spreadsheet) Call your Governor Call your Attorney General Or try this website Fax Congress here (free!) You can also use

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Iowa Attorney General	News	12 in 1 day
Tom Miller	News	3 in 1 day
Iowa Attorney General		7 in 1 day

**Iowa Attorney General**

**Harmonizing Water At Center Of Lawsuit Over Sunscreen Claims**

CBS Denver - CBS Local | 03/17/17 22:08

...doctor from Evergreen are facing a consumer fraud lawsuit by the Iowa Attorney General. The company, Osmosis Skincare LLC and Harmonized Water...

WORDS MATCHED Attorney General, Iowa

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**Man accused of careless driving, causing Highway 1 crash**

News4Jax | 03/17/17 19:47

causing Highway 1 crash FHP tickets Brandon Sparks More News Headlines Iowa attorney general files lawsuit against makers of 'drinkable sunscreen'

WORDS MATCHED attorney general, Iowa



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### DCI investigating four Cedar Rapids establishments over gaming machines

KCRG | 03/17/17 19:19

*...lose money on the deal. The DCI adds it is working with the Iowa Attorney General's office to determine if the machines are legal. Josh Scheinblum ,*

WORDS MATCHED Attorney General, Iowa



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### Iowa attorney general files lawsuit against makers of 'drinkable sunscreen'

News4Jax | 03/17/17 18:42

*Iowa attorney general files lawsuit against makers of 'drinkable sunscreen' Owner stands by product joe Raedle/Getty Images More News Headlines...*

WORDS MATCHED Attorney General, attorney general, Iowa



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### Drinkable Sunscreen Could Protect Your Skin

MyFoxZone.com | 03/17/17 14:57

*...being sold around the world. But a new lawsuit filed by the Iowa attorney general alleges Johnson is breaking the law in his state because he...*

WORDS MATCHED attorney general, Iowa

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### 'Drinkable sunscreen' prompts lawsuit

KIRO-TV | 03/17/17 12:14

[8 other sources...](#)

*...may want to think twice. Read more trending news According to Radio Iowa, the Attorney General of Iowa is filing a lawsuit against a Colorado-based...*

WORDS MATCHED Attorney General, Iowa

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### 'Drinkable sunscreen' prompts lawsuit

Access Atlanta | 03/17/17 12:05

[11 other sources...](#)

*...may want to think twice. Read more trending news According to Radio Iowa, the Attorney General of Iowa is filing a lawsuit against a Colorado-based...*

WORDS MATCHED Attorney General, Iowa



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### State Says "Drinkable Sunscreen" Is "Flat-Out Dangerous"

Consumerist | 03/17/17 10:09

*...Iowa alleges that such claims are not only unproven, but dangerous. Iowa Attorney General Tom Miller alleges in a lawsuit [PDF] filed this week...*

WORDS MATCHED Attorney General, Iowa



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### Iowa attorney general sues makers of 'drinkable sunscreen'

WGN -TV | 03/17/17 08:55

**lowa attorney general sues makers of drinkable sunscreen Osmosis Skincare \* lowa attorney general sues makers of drinkable sunscreen Osmosis...**

WORDS MATCHED attorney general, lowa



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### Behold the most terrifying images in these declassified nuclear test videos

The Washington Post | 03/17/17 04:19

...zoo Watch: Brazilian robbers pick on the wrong Mormon missionary **lowa attorney general: Drinkable sunscreen flat-out dangerous to consumers Ben...**

WORDS MATCHED attorney general, lowa

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### Company claims drinkable sunscreen will protect from sun

Fox 5 NY News | 03/16/17 21:09

[5 other sources...](#)

...being sold around the world. But a new lawsuit filed by the **lowa attorney general** claims Johnson is breaking the law in his state, because Johnson...

WORDS MATCHED attorney general, lowa


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### Company claims drinkable sunscreen will protect from sun - Story | WTTG

FOX 5 DC | 03/16/17 21:09

...being sold around the world. But a new lawsuit filed by the **lowa attorney general** claims Johnson is breaking the law in his state, because Johnson...

WORDS MATCHED attorney general, lowa

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**Tom Miller**

### Harmonizing Water At Center Of Lawsuit Over Sunscreen Claims

CBS Denver - CBS Local | 03/17/17 22:08

...doctor from Evergreen are facing a consumer fraud lawsuit by the **lowa Attorney General**. The company, Osmosis Skincare LLC and Harmonized Water LLC ,

WORDS MATCHED Attorney General, Tom Miller



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### lowa attorney general files lawsuit against makers of 'drinkable sunscreen'

News4Jax | 03/17/17 18:42

**lowa attorney general** files lawsuit against makers of 'drinkable sunscreen ' Owner stands by product joe Raedle/Getty Images More News Headlines.. .

WORDS MATCHED Attorney General, attorney general, Tom Miller



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**State Says "Drinkable Sunscreen" Is "Flat-Out Dangerous"**

Consumerist | 03/17/17 10:09

...alleges that such claims are not only unproven, but dangerous. Iowa Attorney General Tom Miller alleges in a lawsuit [PDF] filed this week that...

WORDS MATCHED Attorney General, Tom Miller


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**Iowa Attorney General**


 **Iowa attorney general files lawsuit against makers of 'drink...** 03/17/17 22:30

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 **wjxt4 @wjxt4** 03/17/17 22:30


Iowa attorney general files lawsuit against makers of 'drinkable sunscreen' - <http://bit.ly/2nBeg36>

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 **SocietyforSBM @SocietyforSBM** 03/17/17 22:00


Iowa attorney general: Drinkable sunscreen 'flat-out dangerous to consumers'

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 **Since Being Nominated To The Supreme Court, Judge Neil Gors.....** 03/17/17 18:53

Missouri Attorney General Josh Hawley: Gorsuch "Possesses An Incisive Legal Mind, Writes With Skill And Wit, And Is Scrupulously Fair." "I observed in the year that I worked at the court what many litigants and commentators have since noted, that Gorsuch possesses an incisive legal mind, writes with skill and wit, and is scrupulously fair." (Josh Hawley, Op-Ed, "Neil Gorsuch Is Exactly The Kind Of Supreme Court Justice We Need," CNN , 3/3/17) Former Federal Judge John L. Carroll: Gorsuch Has

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 **This Is Not Normal, This Is Not OK! :Day 57**



blog.thesietch.org | 03/17/17 10:51

credit unions, watch them crumble. ————— It's time to get rid of Joe Manchin. ————— If you live in New Mexico, call your representatives NOW! —————

————— Tools of change: Feel like this is all a bunch of bullshit? Want to do something about it?



Calling your government representative: Call your Senator Call your House Rep  
(Or use this spreadsheet) Call your Governor Call your Attorney General Or try  
this website Fax Congress here (free!) You can also use 5Calls.org if you are

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### Iowa attorney general sues makers of 'drinkable sunscreen'

03/17/17 10:07

The manufacturers say that drinking their product will offer "protection comparable to an SPF 30." The makers of a 'drinkable sunscreen' are being accused of dangerous consumer fraud. The Iowa attorney general's office filed a lawsuit against the Colorado-based company Osmosis. According to Osmosis, the drinkable sunscreen -- called UV Neutralizer -- contains a form of radio frequencies called "s...

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### Sketchy Doctor Being Sued For Ridiculous And Dangerous 'Drin...

03/17/17 08:30

I don't think I could bring myself to drink sunscreen... On March 14th, the Iowa Attorney General's Office filed a consumer fraud lawsuit that claimed Osmosis Skincare and Harmonized Water—which is billed as "drinkable sunscreen"

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**Iowa Attorney General**

**Behold the devastating power of nuclear weapon tests in newly declassified videos**

The Washington Post | 03/17/17 04:19

...zoo Watch: Brazilian robbers pick on the wrong Mormon missionary Iowa attorney general: Drinkable sunscreen flat-out dangerous to consumers Ben...

WORDS MATCHED attorney general, Iowa

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**'Senseless act of violence': Thief steals New York City ambulance and fatally**

### runs over EMT

The Washington Post | 03/17/17 01:01

*...zoo Watch: Brazilian robbers pick on the wrong Mormon missionary Iowa attorney general: Drinkable sunscreen flat-out dangerous to consumers Ben...*

WORDS MATCHED attorney general, Iowa

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### Drinkable Sunscreen Is Under Fire After Lawsuit Claims It's "Flat-Out Dangerous"

AllMediaNY | 03/17/17 00:45

[3 other sources...](#)

*...is reporting on a consumer fraud lawsuit was filed by the Iowa Office of the Attorney General claiming Osmosis Skincare and Harmonized Water...*

WORDS MATCHED Attorney General, Iowa



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### Company claims drinkable sunscreen will protect from sun

FOX 13 News | 03/16/17 21:09

*...being sold around the world. But a new lawsuit filed by the Iowa attorney general claims Johnson is breaking the law in his state, because Johnson...*

WORDS MATCHED attorney general, Iowa

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### Petition goal: Remove city council

The Muscatine Journal | 03/16/17 17:20

*...Ann Brumback, also an organizer, delivered the petition to the Iowa Attorney General s Office and the Office of the lieutenant governor on Thursday .*

WORDS MATCHED Attorney General, Iowa

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### Lawsuit filed against Colorado company behind drinkable sunscreen product

The Denver Channel | 03/16/17 16:03

*...sued for allegedly being "dangerous to consumers." According to Iowa Attorney General Tom EVERGREEN, Colo. When an Evergreen company announced...*

WORDS MATCHED Attorney General, Iowa

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### Drinkable Sunscreen Faces Consumer Fraud Lawsuit

Teen Vogue | 03/16/17 15:11

*...good to be true, well, it probably is. At least, the Iowa Office of the Attorney General thinks so. On Tuesday, a consumer fraud lawsuit was...*

WORDS MATCHED Attorney General, Iowa

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### JUST IN: 'Drinkable sunscreen' prompts lawsuit

The Palm Beach Post | 03/16/17 14:42

[1 other source...](#)

*...buy drinkable sunscreen, you want to think twice. According to Radio Iowa, the Attorney General of Iowa is filing a lawsuit against a Colorado-based...*

WORDS MATCHED Attorney General, Iowa

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## 'Drinkable sunscreen' prompts lawsuit

The Palm Beach Post | 03/16/17 14:42

[1 other source...](#)

*...buy drinkable sunscreen, you want to think twice. According to Radio Iowa, the Attorney General of Iowa is filing a lawsuit against a Colorado-based...*

WORDS MATCHED Attorney General, Iowa



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## Alleged scam emails hitting area

Torrington Telegram | 03/16/17 11:59

*...most likely a scam, said an investigator with the office of the Iowa Attorney General in Des Moines. The emails, copies of which arrived Wednesday...*

WORDS MATCHED Attorney General, Iowa

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## Money adviser gets 20 years in prison for investment scam

NewtonDailyNews.com | 03/16/17 09:49

[2 other sources...](#)

*...to buy cars and to support his wife and 10 children, said Assistant Iowa Attorney General Rob Sand, who prosecuted the case. Johnson, 57, an...*

WORDS MATCHED Attorney General, Iowa



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## The maker of drinkable sunscreen has been accused of 'dangerous' consumer fraud

CNBC | 03/16/17 09:35

*...health hazards," according to a consumer fraud lawsuit filed Tuesday by the Iowa Attorney General's Office. The makers of two brands of "drinkable...*

WORDS MATCHED Attorney General, Iowa



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## This New Zealand river now has the same legal rights as a human being

The Washington Post | 03/16/17 05:11

*...judges rebuke Trump for personal attacks on judiciary, intimidation Iowa attorney general: Drinkable sunscreen flat-out dangerous to consumers...*

WORDS MATCHED attorney general, Iowa

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## AP-TX--Texas News Digest 12 am, TX

AP (Hosted) | 03/16/17 00:02

*...to buy cars and to support his wife and 10 children, said Assistant Iowa Attorney General Rob Sand, who prosecuted the case. Johnson, 57, an...*

WORDS MATCHED Attorney General, Iowa

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Tom Miller

### Lawsuit filed against Colorado company behind drinkable sunscreen product

The Denver Channel | 03/16/17 16:03

...for allegedly being "dangerous to consumers." According to Iowa Attorney General Tom EVERGREEN, Colo. When an Evergreen company announced it ...

WORDS MATCHED Attorney General, Tom Miller

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### Drinkable Sunscreen Is Under Fire After Lawsuit Claims It's "Flat-Out Dangerous"

Yahoo! News | 03/16/17 15:48

[1 other source...](#)

...true, well, it probably is. At least, the Iowa Office of the Attorney General thinks so. On Tuesday, a consumer fraud lawsuit was filed by the Iowa...

WORDS MATCHED Attorney General, Tom Miller

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### Drinkable Sunscreen Faces Consumer Fraud Lawsuit

Teen Vogue | 03/16/17 15:11

...true, well, it probably is. At least, the Iowa Office of the Attorney General thinks so. On Tuesday, a consumer fraud lawsuit was filed by the Iowa...

WORDS MATCHED Attorney General, Tom Miller

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### Iowa sues over 'drinkable sunscreen'

Health Medicine Network | 03/16/17 14:53

...a consumer fraud lawsuit filed in Polk County District Court, Attorney General Tom Miller argues that Colorado-based company Osmosis has been...

WORDS MATCHED Attorney General, Tom Miller

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### Iowa sues over 'drinkable sunscreen'

1010 WCSI | 03/16/17 13:59

[2 other sources...](#)

...a consumer fraud lawsuit filed in Polk County District Court, Attorney General Tom Miller argues that Colorado-based company Osmosis has been...

WORDS MATCHED Attorney General, Tom Miller



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### Iowa sues over 'drinkable sunscreen';

News Radio WGMD 92.7 | 03/16/17 11:50

...a consumer fraud lawsuit filed in Polk County District Court, Attorney General Tom Miller argues that Colorado-based company Osmosis has been...

WORDS MATCHED Attorney General, Tom Miller



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### The maker of drinkable sunscreen has been accused of 'dangerous' consumer fraud

CNBC | 03/16/17 09:35

...hazards," according to a consumer fraud lawsuit filed Tuesday by the Iowa Attorney General's Office. The makers of two brands of "drinkable sunscreen "

WORDS MATCHED Attorney General, Tom Miller


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## Iowa Attorney General

 **State of Iowa sues maker of 'drinkable sunscreen' alleging f...** 03/16/17 17:00

Iowa's Attorney General has filed a lawsuit against an Evergreen, Colorado company that is selling what it claims is "drinkable Sunscreen."

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 **There is a city council meeting tonight in Muscatine and th.....** 03/16/17 16:11

There is a city council meeting tonight in Muscatine and there is a document being presented that has 1100 names that are asking that the city council be removed.. The document was hand delivered to the Iowa Attorney General and the lieutenant Governor of Iowa this afternoon.

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 **Consumer fraud lawsuit filed against maker of 'drinkable sun...** 03/16/17 14:13

Claims that the water can protect against UV rays, repel mosquitos, cure acne, reverse aging cannot be substantiated, lawsuit says. <http://gibn.ca/pOkTgA> Iowa's Attorney General Tom Miller filed the lawsuit against Colorado-based Osmosis LLC, Harmonized Water LLC and the owner Benjamin Taylor Johnson on Tuesday.

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**Consumer fraud lawsuit filed against maker of 'drinkable sun...**

03/16/17 14:13

Claims that the water can protect against UV rays, repel mosquitos, cure acne, reverse aging cannot be substantiated, lawsuit says. <http://glbn.ca/mYBWxB>  
Iowa's Attorney General Tom Miller filed the lawsuit against Colorado-based Osmosis LLC, Harmonized Water LLC and the owner Benjamin Taylor Johnson on Tuesday.

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03/16/17 11:14

Iowa attorney general: Drinkable sunscreen 'flat-out dangerous to consumers' - Washington Post - <http://chronlaw.com/2017/03/iowa-attorney-general-drinkable-sunscreen-flat-out-dangerous-to-consumers-washington-post/> ...

[Archive](#) [Share](#) **Iowa Sues Over 'Drinkable Sunscreen'**

newser.com | 03/16/17 10:48

The state of Iowa thinks a company's claim that people can protect themselves by drinking sunscreen is a bunch of hooey. In a consumer fraud lawsuit filed in Polk County District Court, Attorney General Tom Miller argues that Colorado-based company Osmosis has been selling what it claims is the world's...

[Archive](#) [Share](#) **PubRadioTracy** @PubRadioTracy

03/16/17 09:18

Wait a minute. I'm not supposed to drink it? Cause I been doing that fer years. This seems like a terrible idea Iowa attorney general: Drinkable sunscreen 'flat-out dangerous to consumers' <http://wapo.st/2nuTuCv>

[Archive](#) [Share](#) **jacobjanssen** @jacobjanssen

03/16/17 09:16

I dunno it sounds like the official beverage of the @SteveKingIA future. The sunburned, sunscreen drunk, ultra-white hellscape. Iowa attorney general: Drinkable sunscreen "flat-out dangerous to consumers" <http://wapo.st/2mwYXYk>

[Archive](#) [Share](#) **DashWell01** @DashWell01

03/16/17 08:55

Drinkable sunscreen??? Do we even need that. Iowa attorney general: Drinkable sunscreen "flat-out dangerous to consumers" <http://wapo.st/2mwYXYk>

[Archive](#) [Share](#) **AwesomestBen** @AwesomestBen

03/16/17 08:55

But govt regulation is bad for business Iowa attorney general: Drinkable sunscreen "flat-out dangerous to consumers" <http://wapo.st/2mwYXYk>

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**AACMaven** @AACMaven

03/16/17 07:54

Iowa attorney general: Drinkable sunscreen 'flat-out dangerous to consumers'

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**Consumer fraud lawsuit filed against maker of 'drinkable sun...**

03/16/17 14:13

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03/16/17 14:13

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**Iowa Sues Over 'Drinkable Sunscreen'**

newsr.com | 03/16/17 10:48

The state of Iowa thinks a company's claim that people can protect themselves by drinking sunscreen is a bunch of hoey. In a consumer fraud lawsuit filed in Polk County District Court, Attorney General Tom Miller argues that Colorado-based company Osmosis has been selling what it claims is the world's...

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**aslamtarek7** @aslamtarek7

03/16/17 13:07

@MariaCHeard @AGIowa BUILD 4 DIFFERENT, LARGE, INEXPENSIVE,



HIGHLY PRODUCTIVE HYDRO GARDENS WITH HYDROPONIC PLANS  
<https://t.co/ivooplAFvI>

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**McCarthy, Kevin [AG]**

**From:** morningreport@meltwaternews.com  
**Sent:** Wednesday, March 15, 2017 7:01 AM  
**To:** McCarthy, Kevin [AG]  
**Subject:** 36 hits from Meltwater News

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Iowa Attorney General	News	7 in 1 day
Tom Miller	News	8 in 1 day
Iowa Attorney General		19 in 1 day
Tom Miller		1 in 1 day
@AGIowa		1 in 1 day

**Iowa Attorney General**

**Iowa Senate approves protection of nuisance lawsuits**

Waterloo-Cedar Falls Courier | 03/15/17 00:45

*...verbal slaughter of a major industry that provides 160,000 jobs for Iowa. Hard to swallow The Attorney General's Office has filed suit in Polk...*

WORDS MATCHED Attorney General, Iowa



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**Iowa AG sues Colorado company marketing "drinkable sunscreen"**

KTIV News Channel 4 | 03/14/17 22:48

*and can protect you against the sun's damaging rays? Neither has Iowa 's Attorney General. Tom Miller has filed a lawsuit against Osmosis LLC ,*

WORDS MATCHED Attorney General, Iowa



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### **Iowa attorney general alleges 'dangerous' consumer fraud against Colorado 'drinkable sunscreen'**

9News.com | 03/14/17 16:49

*Iowa attorney general alleges 'dangerous' consumer fraud against Colorado 'drinkable sunscreen' DENVER BUSINESS JOURNAL - The Iowa State Attorney...*

WORDS MATCHED Attorney General, attorney general, Iowa



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### **Iowa Attorney General Suing Colorado Company Over Drinkable Sunscreen**

WHOTV.com | 03/14/17 16:21

*Iowa Attorney General Suing Colorado Company Over Drinkable Sunscreen Please enable Javascript to watch this video DES MOINES, Iowa -- Iowa Attorney...*

WORDS MATCHED Attorney General, Iowa


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### **Patients to move next week into new levels of UI Children's Hospital**

Press-Citizen (AP) | 03/14/17 15:27

*...opening of the new 14-story hospital came after lawyers with the Iowa Attorney General's Office filed notice that UI intended to appeal to the...*

WORDS MATCHED Attorney General, Iowa



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### **Iowa Attorney General is suing a maker of "drinkable sunscreen"**

KIMT.com | 03/14/17 10:40

*Iowa Attorney General is suing a maker of drinkable sunscreen DES MOINES, Iowa State Attorney General Tom Miller is suing the Colorado -based...*

WORDS MATCHED Attorney General, Iowa



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### **Yearlong survey identifies untested sexual assault kits: Local law enforcement says untested kits are not holding up legal cases**

The Southwest Iowa News Source | 03/13/17 18:00

*...holding up cases, according to local law enforcement. Last week, Iowa Attorney General Tom Miller announced over 4,200 kits had been identified ...*

WORDS MATCHED Attorney General, Iowa

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### Iowa Senate approves protection of nuisance lawsuits

Waterloo-Cedar Falls Courier | 03/15/17 00:45

*...that provides 160,000 jobs for Iowa. Hard to swallow The Attorney General s Office has filed suit in Polk County claiming the makers of drinkable...*

WORDS MATCHED Attorney General, Tom Miller

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### Iowa AG sues Colorado company marketing "drinkable sunscreen"

KTIV News Channel 4 | 03/14/17 22:48

*...protect you against the sun's damaging rays? Neither has Iowa's Attorney General. Tom Miller has filed a lawsuit against Osmosis LLC, By Matt Breen ,*

WORDS MATCHED Attorney General, Tom Miller

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### Iowa Politics Today: Don't drink sunscreen, not even 'drinkable sunscreen'

TheGazette.com | 03/14/17 20:11

*...provides 160,000 jobs for Iowa. HARD TO SWALLOW: The Attorney General s Office has filed suit in Polk County claiming the makers of drinkable ...*

WORDS MATCHED Attorney General, Tom Miller

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### IOWA CAPITOL DIGEST: Bill targets farm nuisance suits

Quad-City Times | 03/14/17 19:05

*...provides 160,000 jobs for Iowa. HARD TO SWALLOW: The Attorney General s Office has filed suit in Polk County claiming the makers of drinkable ...*

WORDS MATCHED Attorney General, Tom Miller

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### Iowa attorney general alleges 'dangerous' consumer fraud against Colorado 'drinkable sunscreen'

9News.com | 03/14/17 16:49

*Iowa attorney general alleges 'dangerous' consumer fraud against Colorado 'drinkable sunscreen' DENVER BUSINESS JOURNAL - The Iowa State Attorney ...*

WORDS MATCHED Attorney General, attorney general, Tom Miller

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### Iowa Attorney General Suing Colorado Company Over Drinkable Sunscreen

WHOTV.com | 03/14/17 16:21

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WORDS MATCHED Attorney General, Tom Miller



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KIMT.com | 03/14/17 10:40

*Iowa Attorney General is suing a maker of drinkable sunscreen DES MOINES, Iowa State Attorney General Tom Miller is suing the Colorado -based...*

WORDS MATCHED Attorney General, Tom Miller



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WORDS MATCHED Attorney General, Tom Miller

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**Iowa Attorney General**



**Daily Kos Elections Live Digest: 2/28**

dailykos.com | 03/15/17 06:27

interested, though Gomez says she may decide to go for a different statewide office. One big wildcard hanging over the race is ex-state Attorney General Richard Cordray, who serves as head of the Consumer Financial Protection Bureau. However, even if Cordray wants to go back home and run for governor, he may not be able to. The GOP would love to gut or kill the CFPB and if Cordray resigns, he'll make their job far easier. Cordray can't run for office as long as he holds his job in D.C. but if he

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**Daily Kos Elections Live Digest: 3/9**

dailykos.com | 03/15/17 06:27

anything about the race since then. WMUR's John DiStaso also says there's speculation that state Attorney General Joseph Foster, a former state Senate majority leader who leaves office at the end of the month, could run, though Foster hasn't said anything. In New Hampshire, attorneys general are appointed by the governor to a four-year term and approved by the Executive Council rather than elected statewide, but a few have been elected to higher office. Most recently, Republican Kelly Ayotte

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**Interlocutory Injunctions Update Part I: Patent Cases**

sufficientdescription.com | 03/15/17 01:13

cases are indeed decided without assessing the balance of convenience. This contrasts with the approach in other Canadian jurisdictions. As Seaton JA put it in *British Columbia (Attorney General) v Wale* 1986 CanLII 171, 6-7 (BCCA) aff'd [1991] 1 SCR 62, "It is important to note that clear proof of irreparable harm is not required. Doubt as to the adequacy of damages as a remedy may support an injunction," citing *Cyanamid* and quoting *Sharpe* as stating that irreparable harm, status quo, and

[Archive](#) · [Share](#) **Ka`u News Briefs Thursday, Feb. 23, 2017**

kaunewsbriefs.blogspot.com | 03/15/17 00:41

Connecticut; Bill Nelson, of Florida; and Dick Durbin, of Illinois. The lowest rating was 0 percent, and went to former Senator and new U.S. Attorney General Jeff Sessions and Richard Shelby, both of Alabama; Tom Cotton of Arkansas; David Perdue, of Georgia; Dan Coats of Indiana and Joni Earnst of Iowa. In the House of Representatives, Ka`u's member Tulsı Gabbard earned 100 percent, as did urban Hawai`i's Rep. Colleen Hanabusa. Gabbard stated, "In Hawai'i, we know that protecting our 'āina and caring for

[Archive](#) · [Share](#) **DENSmallBiz @DENSmallBiz**

03/14/17 23:53

Lawsuit by Iowa attorney general alleges 'dangerous' consumer fraud by Colorado maker of 'drinkable... <http://dlvr.it/NdHcHh> #Denver

[Archive](#) · [Share](#) **youreyeondenver @youreyeondenver**

03/14/17 22:05

Who would trust something like this?? ICYMI Lawsuit by Iowa attorney general alleges 'dangerous' consumer fraud by Colorado maker of 'drinkable sunscreen' <http://bizj.us/1p3g5o> [pic.twitter.com/R6jqxKwFSD](http://pic.twitter.com/R6jqxKwFSD)

[Archive](#) · [Share](#) **While We Were Distracted by Trump, Republicans Advanced Thes...**

mollystrongheart.blogspot.com | 03/14/17 20:27

-wing ideology. However unlikely these bills' passage would have seemed in the 114th Congress, the possibility of these nine bills becoming law is much higher now, especially considering the flurry of headlines around Donald Trump's ties to Russia, Attorney General Jeff Sessions' recusal on the ongoing investigation into the president's Russian connections, and Russian ambassador Sergey Kislyak's multiple meetings with several of Trump's top lieutenants. Here are the nine worst bills to keep an

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### Travel: Presidential Libraries and Museums

cannundrum.blogspot.com | 03/14/17 17:48

a Rhodes Scholar at Oxford, got a law degree from Yale, where he met Hillary, was Attorney General for Arkansas, then Governor of Arkansas, then President of the U.S. for two terms from 1993 to 2001. He involved the U.S. in the Bosnia and Kosovo Wars, was impeached by the U.S. House of Representatives for perjury and obstruction of justice, yet left office with a very high approval rating. As he was the great communicator, I expected an amazing museum, but it was impersonal and sterile. The

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### Muscatine City Council Begins Impeachment Effort Against Cit...

jontrouten.blogspot.com | 03/14/17 17:44

mayor back in 2015 and has since struggled for achieve any of her limited mayoral duties, which pretty much consist of making appointments to city commissions, as well as appointing the Police and Fire Chief. In fact, the City Council voted last summer on an ordinance that stripped the mayor of those duties. Mayor Broderson challenged this new ordinance and received a decision from the state Attorney General's Office back in October 2016 indicating that the City Council lacked the authority to

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### Midway Memories: The Decision

farsideoffifty.blogspot.com | 03/14/17 17:41

to walk a Midway and take in the sights and sounds, after all it was my home for 6 years and Far Guys home away from home for 23 years. Our oldest daughter Trica spent her first summer being a carnie kid. During that summer there were some problems in Iowa...her photo was featured in a newspaper. (Mason City Iowa) The Attorney General for the State of Iowa didn't like the way the law on gambling was written, games of chance were gambling. Entering a cow in the fair and getting a blue ribbon was



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### DONALD TRUMP'S CAMPAIGN DECLARATIONS

amijkopstein.com | 03/14/17 17:31

becoming lobbyists after they leave office. (Trump is already having staff and Cabinet members sign pledges.. 206. Institute a lifetime ban on White House officials lobbying on behalf of a foreign government. 207. Ban foreign lobbyists from raising money for American elections. 208. Appoint an attorney general who will reform the Department of Justice "like it was necessary after Watergate." HILLARY CLINTON 209. "Lock her up." Instruct the attorney general to appoint a special prosecutor to investigate

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**Iowa Attorney General Suing Colorado Company Over Drinkable ...**

03/14/17 17:25

Make sure to...drink your sunscreen? The Colorado-based company sells a product claiming to protect people from harmful UV rays by being sprayed into the mouth, but Attorney General Tom Miller warns that the product does not work. DES MOINES, Iowa – Iowa Attorney General Tom Miller is accusing a company of ripping people off by selling what they claim is drinkable sunscreen. The product is called Harmonized Water, and claims to be a "UV neutralizer" that can protect people from harmful solar rays by being sprayed into the...

[Archive](#) · [Share](#) **Howard**

03/14/17 17:19

United States (Art. I, §6, cl. 2 & Art. II, §1, cl. 7) •Pay the Debts (Art. I, §8, cl. 1 & Art. VI, cl.1) •Pay tax collectors (Art. I, §8, cl.1) •Regulate commerce with foreign Nations, among the several States, and with Indian Tribes (Art. I, §8, cl.3) •Immigration office (Art. I, §8, cl.4) •The mint (Art. I, §8, cl. 5) •Attorney General to handle the small amount of authorized federal litigation involving the national government (e.g., Art. I, §8, cls. 6 & 10) •Post offices & post roads (Art. I

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03/14/17 14:48

#BREAKING: Iowa attorney general alleges 'dangerous' consumer fraud against Colorado maker of 'drinkable sunscreen'. <http://bizj.us/1p3g5o>

[Archive](#) · [Share](#) **We Resist: Day 54**

shakesville.com | 03/14/17 12:18

Exxon Mobil Corp.'s chief executive: Wayne Tracker. Tillerson sent messages from the account to discuss the risks posed by climate change, New York Attorney General Eric Schneiderman said in a court filing about his office's fraud investigation of the company. Tillerson, whose middle name is Wayne, used the Wayne Tracker account on the Exxon system from at least 2008 through 2015, Schneiderman said. "This fucking guy. [CN: White supremacy] Chris Massie at CNN: Steve King: Blacks and Hispanics

[Archive](#) · [Share](#) **First Latina Senator: 'Racist Rhetoric' Like Steve King's Ha...**

huffingtonpost.com | 03/14/17 12:04

Tuesday. Cortez Masto said a Mexican consulate in her home state was recently vandalized — a swastika spray-painted on it. And similar incidents happened to synagogues and elementary schools in Nevada. "I've never seen that before until now," she said, citing her eight years as attorney general in the state. "Whether it's the rhetoric coming out from the Trump administration, or people affiliated with that administration, or members of Congress who are continuing down this path of this racist

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**Daines ducks constituents, complains too few in DC drive pic...**



combatblog.net | 03/14/17 11:12

US Senator from Montana and convicted goblin Steve Daines Steve Daines's first six weeks as a senator have not been easy. He happened to be presiding over the confirmation hearings for Attorney General Jeff Sessions last month, when Majority Leader Mitch McConnell instructed him to gavel down Sen. Elizabeth Warren (D-MA). That got him on the news. Then he cast the deciding vote to confirm Secretary of Education Betsy DeVos, despite calls to recuse himself after she gave \$48,000 to his campaign

[Archive](#) · [Share](#)  **This Is Not Normal, This Is Not OK! :Day 54**

blog.thesietch.org | 03/14/17 10:59

representative: Call your Senator Call your House Rep (Or use this spreadsheet) Call your Governor Call your Attorney General Or try this website Fax Congress here (free!) You can also use 5Calls.org if you are having a hard time figuring out what to say. Tell them in no uncertain terms that you want them to fight to stop Trump from doing these things. Tell them you will be watching them closely on how they vote, and will hold them accountable during the next election if they cave to Trump. You

[Archive](#) · [Share](#)  **Why Some Workers Have to Pay to Get Paid**

nextcity.org | 03/14/17 10:06

transparency and fewer ongoing fees like monthly maintenance or balance inquiry. The office of N.Y. Attorney General Eric Schneiderman conducted a 2014 investigation into payroll debit card usage and fees. According to that examination, 40 percent of employers using payroll debit cards did not offer employees the option of getting paid by check, even though it is technically illegal in New York state to require employees to receive payment via payroll debit cards. Since 2007 no fewer than nine bills

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03/14/17 17:25

Make sure to...drink your sunscreen? The Colorado-based company sells a product claiming to protect people from harmful UV rays by being sprayed into the mouth, but Attorney General Tom Miller warns that the product does not work.

DES MOINES, Iowa -- Iowa Attorney General Tom Miller is accusing a company of ripping people off by selling what they claim is drinkable sunscreen. The product is called Harmonized Water, and claims to be a "UV neutralizer" that can protect people from harmful solar rays by being sprayed into the...

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**MomSkelton** @MomSkelton

03/14/17 13:27

@SenSasse @DevinNunes @RepKristiNoem @GOPoversight @JudiciaryDems @AGlowa @ChuckGrassley But Chuck Sits w/Russian...

<https://t.co/ClhoCwSnQC>

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Meltwater is headquartered at 225 Bush Street, Suite 1000, San Francisco, California, USA, 94104. This report has been configured for you by a consultant at Meltwater News. To find out more please contact your consultant using their direct contact details at the top of this mail report. If you wish to unsubscribe you can also contact your consultant, or contact us using the link below.

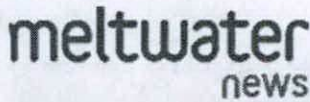
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**McCarthy, Kevin [AG]**

**From:** morningreport@meltwaternews.com  
**Sent:** Friday, March 10, 2017 7:03 AM  
**To:** McCarthy, Kevin [AG]  
**Subject:** 12 hits from Meltwater News

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AGENT	MEDIA TYPE	HITS
Iowa Attorney General	News	4 in 1 day
Tom Miller	News	4 in 1 day
Iowa Attorney General		4 in 1 day

**Iowa Attorney General**

**Davenport PD reports 463 untested sexual assault kits**

Quad-Cities Online | 03/09/17 20:17

...being stored by the department. A report released Tuesday by the Iowa Attorney General's Crime Victim Assistance Division revealed 4,265 untested...

**WORDS MATCHED** Attorney General, Iowa

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**ANALYSIS: Decorah Police have 39 untested sexual assault evidence kits. Here's why**

Decorah News | 03/09/17 16:22

...have 39 untested sexual assault evidence kits. Here's why The Iowa Attorney General's Crime Victim Assistance Division made news early this week...

**WORDS MATCHED** Attorney General, Iowa



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**Iowa needs stronger rules for evidence of possible sexual assault**

TheGazette.com | 03/09/17 12:37

...evidence kits, or roughly a fifth of the statewide total. Iowa Attorney General Tom Miller estimates about half of the previously untested kits...

WORDS MATCHED Attorney General, Iowa



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**Pottawattamie official says county not part of state 'backlog' of more than 4,200 untested sex assault evidence kits**

Omaha.com | 03/09/17 01:00

...more than 4,200 untested sex assault evidence kits COUNCIL BLUFFS Iowa Attorney General Tom Miller this week announced findings that more than 4,200...

WORDS MATCHED Attorney General, Iowa

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Quad-Cities Online | 03/09/17 20:17

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WORDS MATCHED Attorney General, Tom Miller



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WORDS MATCHED Attorney General, Tom Miller



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**Bids now open for Whispering Maples**

Sun Community News & Printing | 03/09/17 06:00

...Supervisor Michael Cashman. Early repair estimates for the freestanding mausoleum on Tom Miller Road, just behind Champlain Centre, are \$ 47,000 .

WORDS MATCHED attorney general, Tom Miller

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**Pottawattamie official says county not part of state 'backlog' of more than**





## 4,200 untested sex assault evidence kits

Omaha.com | 03/09/17 01:00

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WORDS MATCHED Attorney General, Tom Miller

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### Iowa Attorney General



#### Sad

siouxlander.blogspot.com | 03/10/17 00:26

Massachusetts to vote illegally in Delaware. I would imagine they also believe 44 is a Muslim born in Kenya and that Trump's PI's are still snooping around Hawaii, where they're finding unbelievable stuff. Remember that one? I'd rather not know how many people believe all of that. But this madness is complicated by the fact that 45 is the POTUS. Therefore, he could simply call in Attorney General Sessions and ask him if there is any truth to the charge. By 6:00 a.m., if not before, Trump could know if



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#### Linkee-poo, don't give up, I know you can make it good

storybones.blogspot.com | 03/09/17 16:54

hearing to become attorney general." Okay, I'm developing a theory that people in NSA are leaking. Don't these politicians know that someone is always watching? Jeez, trade craft, people. Learn the trade. We didn't bring enough shoes for this. (Grokked from John Scalzi) "Republicans on a House committee with jurisdiction over the Obamacare repeal legislation will be viewing the current version of the bill in secret in a basement room of a office building adjoining the Capitol Thursday, the

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#### The Real Goal Of Trump's 'Merit-Based' Immigration Plan May ...

huffingtonpost.com | 03/09/17 10:06

American workers first. Their legislation, which was co-sponsored last year by then-Sen. Jeff Sessions (R-Ala.), now Trump's attorney general, would also prioritize H-1B applicants with higher levels of education. Currently, the limited number of these visas are given out each year via lottery. Trump has said he would crack down on visa abuse, even promising to direct the Labor Department to begin investigating the H-1B program on his first day in office. He didn't, but the Trump administration

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**All About Redistricting -- Who draws the lines**

03/09/17 09:00

elected officials, like the State Treasurer or state Attorney General. In Oklahoma, a 2010 citizen's initiative blended these models, establishing a backup commission composed of the Lieutenant Governor, and several members selected by the majority party's legislative leadership and the Governor. Politician commissions In all of the states above, the legislature is primarily in charge of redistricting. Elsewhere, some other entity draws the lines. Seven states -- Arkansas, Colorado, Hawaii

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**McCarthy, Kevin [AG]**

---

**From:** Tabor, Eric [AG]  
**Sent:** Tuesday, March 07, 2017 4:30 PM  
**To:** Swaim, Kurt [SPD]; Hamill, Robert [AG]; Melohn, Janelle [AG]  
**Cc:** McCarthy, Kevin [AG]  
**Subject:** RE: Sexual Assault Kit Initiative

Kurt – Can we meet tomorrow and discuss this? I will talk with my team in the morning re: good times. What is convenient for you? Thanks. Eric



**Eric Tabor**  
**Chief Deputy Attorney General**  
Office of the Attorney General of Iowa  
1305 E. Walnut St.  
Des Moines, Iowa 50319  
Main: (515) 281-5164 | Direct: (515) 281-5191  
Email: [Eric.Tabor@iowa.gov](mailto:Eric.Tabor@iowa.gov) | [www.iowaattorneygeneral.gov](http://www.iowaattorneygeneral.gov)

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**From:** Swaim, Kurt [mailto:[kswaim@spd.state.ia.us](mailto:kswaim@spd.state.ia.us)]  
**Sent:** Tuesday, March 07, 2017 2:22 PM  
**To:** Tabor, Eric [AG]  
**Subject:** Fwd: Sexual Assault Kit Initiative

Eric,

I am forwarding an email from Janelle Melohn and Adam's email in response. Can you help us get the information?

If you'd like to discuss, please give me a call. My direct number is 515-725-2012. Or, if more convenient for you, feel free to call me on my cell. It is 641-208-6330. Thanks.

Best,

Kurt

Kurt Swaim  
First Assistant State Public Defender

----- Forwarded message -----  
From: **Gregg, Adam** <[agregg@spd.state.ia.us](mailto:agregg@spd.state.ia.us)>

Kevin McCarthy

5/8/2017 3:10 PM

Date: Tue, Mar 7, 2017 at 2:04 PM

Subject: Re: Sexual Assault Kit Initiative

To: "Melohn, Janelle [AG]" <[Janelle.Melohn@iowa.gov](mailto:Janelle.Melohn@iowa.gov)>

Cc: "Swaim, Kurt [SPD]" <[kswaim@spd.state.ia.us](mailto:kswaim@spd.state.ia.us)>, "Nichols Cook, Erica [SPD]" <[enicholscook@spd.state.ia.us](mailto:enicholscook@spd.state.ia.us)>, "Hamill, Robert [AG]" <[Robert.Hamill@iowa.gov](mailto:Robert.Hamill@iowa.gov)>

Ms. Melohn-

Thanks for your recollections and perspective on the conversations which took place at about this time last year. However, it seems to me the best evidence of our agreement is the amendment language which was negotiated between our organizations, and which was subsequently adopted by both houses of the legislature and signed by the Governor. That language, of course, is now law.

I would respectfully propose the following path forward:

-The Office of the SPD again requests the information which is required to be provided under paragraph 3 of H.F. 2420. I may be misunderstanding your statement that this information was not collected. That would be very concerning, because that information was required to be collected under paragraph (2)(c)(5) of H.F. 2420. If I am understanding your email correctly and that information was not collected, I would propose that your office circle back to the respective agencies to gather the legally required information in cases which resulted in a conviction.

-The Office of the SPD again requests the information which is required to be provided under paragraph 6 of H.F. 2420. Under the bill, this information is not limited to cases which resulted in a conviction.

Thank you for your consideration.

**Adam C. Gregg**

State Public Defender

State of Iowa

515-242-6158

[agregg@spd.state.ia.us](mailto:agregg@spd.state.ia.us)

On Tue, Mar 7, 2017 at 9:38 AM, Melohn, Janelle [AG] <[Janelle.Melohn@iowa.gov](mailto:Janelle.Melohn@iowa.gov)> wrote:

Mr. Gregg,

Since you weren't present for any of the meetings leading up to this legislation being passed and since Kurt seemed to be happy with the information we provided, it appears there's a bit of a disconnect as to what the intent of the language was and what Kurt and his colleague (Amy?) said they were hoping to achieve. Since we based our submission to you all on what was discussed, it's important to have the context.

60 days-We explained to Kurt when we met, the entire survey was being conducted with federal grant dollars. Our grant required approval through the Federal Bureau of Justice Assistance (BJA) prior to releasing any of the data collected under the grant and we were up front we would not be able to provide any data until the end of the audit. We received this approval from BJA about a week and a half ago and provided this information to your agency as quickly as we were able, well within the 60 day timeframe and before the report had been made public.



The scope of this grant was to collect data to benefit victims who may not have received justice due to their SA kit not having been tested. SPD was hoping to piggyback on this data piece to explore whether or not offenders also received justice in their convictions, especially in the event someone had been wrongfully convicted. We didn't argue the language of the bill, because of our conversations with Kurt and Amy and our disclosures of what we could and couldn't provide and why. Kurt made very clear, you all were hoping to get information around kits that had not been tested, but where convictions were obtained. We explained we could not provide raw data from the survey, wherein information had been disclosed to us which would not have otherwise been made public record, except in the case of a conviction. There were also elements SPD wanted that we did not obtain, since the focus of the grant was not on offenders and our survey tool also required approval through BJA.

I say all of this to say, we have provided you with exactly what was agreed upon in our conversations with Kurt and Amy. The elements in paragraph 3 that were not provided, were because we did not collect them. We did, however, provide more information than was required in this same paragraph to try to uphold what we had discussed with Amy and Kurt. Paragraph 3 only required us to provide the defendant's name, case number and county of conviction. We didn't capture anything but the case number out of these elements, but tried to provide context for each so SPD could further investigate. We have met the terms of our requirements under this paragraph.

Paragraph 6 was a moot point given what we'd discussed with Kurt, as he'd indicated SPD wasn't interested in general information about kits, but rather just kits that hadn't been tested, where convictions were obtained.

It is time consuming to filter down 4,200+ rows of information, to give you only the date a kit was collected, the facility where it was collected and the case number as is required under paragraph 6, especially if it's not going to be helpful to SPD (which is what we were told). We are happy to provide you with this list, however, if you've since determined it is now somehow helpful to your work.

Please let me know how SPD would like to proceed given this context.

**Janelle Melohn**  
Director  
Office of the Attorney General of Iowa

Crime Victim Assistance Division

321 East 12<sup>th</sup> Street

Des Moines, Iowa 50319

Main: (515) 281-5044 | Direct: (515) 242-6109

Email: [janelle.melohn@iowa.gov](mailto:janelle.melohn@iowa.gov) | [www.iowaattorneygeneral.gov](http://www.iowaattorneygeneral.gov)



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**From:** Gregg, Adam [mailto:[agregg@spd.state.ia.us](mailto:agregg@spd.state.ia.us)]  
**Sent:** Monday, March 06, 2017 4:54 PM  
**To:** Hamill, Robert [AG]  
**Cc:** Swaim, Kurt [SPD]; Melohn, Janelle [AG]; Nichols Cook, Erica [SPD]  
**Subject:** Re: Sexual Assault Kit Initiative

Mr. Hamill-

Thank you sending this report. However, it does not appear to comply with the requirements of House File 2420.

For cases which resulted in a conviction, paragraph 3 of the bill very clearly requires the attorney general to provide my office with the defendant's name, case number, and county where the conviction occurred. This report does not appear to provide the information required by the law. I would also note that this information was to be provided to my office on a rolling basis, within 60 days of the AG's office receiving such information. It does not appear any ongoing disclosures occurred.

Instead, this report appears to be providing some of the information required by paragraph 6. The paragraph 6 disclosures were not limited to cases which resulted in a conviction. Therefore, the information to be provided under paragraph 6 is to be provided for all survey responses.

I respectfully request that the Office of the Attorney General provide the information required by law, namely:

-adhere to the directive of paragraph 3 of H.F. 2420, which requires the disclosure of the defendant's name, case number, and county of conviction for any cases in which a conviction was obtained for any crime associated with an untested kit;

-adhere to the directive of paragraph 6 of H.F. 2420, which requires the disclosure of the date the kit was collected, the location where the kit was collected, and the case number associated with the kit.

**Adam C. Gregg**

State Public Defender

State of Iowa

515-242-6158

[agregg@spd.state.ia.us](mailto:agregg@spd.state.ia.us)

On Mon, Mar 6, 2017 at 1:49 PM, Hamill, Robert [AG] <[Robert.Hamill@iowa.gov](mailto:Robert.Hamill@iowa.gov)> wrote:

Hello Adam, Kurt,

I hope this email finds you well. As you probably recall my office received a grant from the Bureau of Justice Assistance and compiled an inventory of untested sexual assault kits statewide. Per HF2420 signed last March, we are providing your office with a list of kits identified by law enforcement agencies as not submitted due to suspect admission/conviction.

We also wanted to extend a courtesy invitation to the State Public Defender's office to a press conference tomorrow morning at 10 AM in Hoover on level A in conference room 7. AG Miller will be discussing the results of the survey and next steps on this grant project. Upon release tomorrow, the full report will be publicly available on our website.

Please don't hesitate to let me know if have questions. My direct line is 515-242-6110.

Thank you,

Robert

Kevin McCarthy

5/8/2017 3:10 PM



**Robert Hamill**  
**Compensation and SAE Administrator**  
Office of the Attorney General of Iowa

Crime Victim Assistance Division  
321 E. 12th St.

Des Moines, Iowa 50319

Main: (515) 281-5044 | Fax: (515) 281-8199  
Email: [Robert.hamill@iowa.gov](mailto:Robert.hamill@iowa.gov) | [www.iowaattorneygeneral.gov](http://www.iowaattorneygeneral.gov)

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**McCarthy, Kevin [AG]**

---

**From:** Tabor, Eric [AG]  
**Sent:** Tuesday, March 07, 2017 2:53 PM  
**To:** Greenwood, Geoff [AG]  
**Cc:** McCarthy, Kevin [AG]  
**Subject:** FW: Sexual Assault Kit Initiative

FYI

**From:** Swaim, Kurt [mailto:kswaim@spd.state.ia.us]  
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Eric,

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Kurt Swaim  
First Assistant State Public Defender

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**Date:** Tue, Mar 7, 2017 at 2:04 PM  
**Subject:** Re: Sexual Assault Kit Initiative  
**To:** "Melohn, Janelle [AG]" <Janelle.Melohn@iowa.gov>  
**Cc:** "Swaim, Kurt [SPD]" <kswaim@spd.state.ia.us>, "Nichols Cook, Erica [SPD]" <enicholscook@spd.state.ia.us>, "Hamill, Robert [AG]" <Robert.Hamill@iowa.gov>

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**Sent:** Tuesday, March 07, 2017 7:02 AM  
**To:** McCarthy, Kevin [AG]  
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**Report Overview**

AGENT	MEDIA TYPE	HITS
Iowa Attorney General	News	3 in 1 day
Geoff Greenwood	News	1 in 1 day

**Iowa Attorney General**

**Cannibals before the high court**

TheGazette.com | 03/07/17 05:00

...2013 gambling referendum. The commission s attorney, Assistant Attorney General David Ranscht, argued Iowa law gives commissioners broad authority...

WORDS MATCHED Attorney General, Iowa

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**I9 investigation finds there are 4,265 untested rape kits in Iowa, oldest dates back to 1992**

KCRG | 03/06/17 21:56

...(KCRG-TV9) -- In a report expected to be released Tuesday, the Iowa Attorney General's office will unveil the number of untested rape kits in Iowa .

WORDS MATCHED Attorney General, Iowa



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### Iowa Capitol Digest: Branstad hopes to be US-China 'go-between'

Quad-City Times | 03/06/17 10:46

...adversely affect Iowa ag producers and businesses. *RESPONSE COMING: The Iowa Attorney General's Office is preparing a response to questions an...*

WORDS MATCHED Attorney General, Iowa

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### Geoff Greenwood

### Iowa Capitol Digest: Branstad hopes to be US-China 'go-between'

Quad-City Times | 03/06/17 10:46

...General's Office about the status of that request. Attorney general spokesman Geoff Greenwood said a response is forthcoming, but he doesn't know when .

WORDS MATCHED Geoff Greenwood

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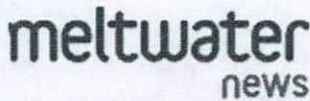
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AGENT	MEDIA TYPE	HITS
Iowa Attorney General		4 in 1 day

**Iowa Attorney General**

**Demonstrators Descend On Dianne Feinstein Event To Protest H...**  
 huffingtonpost.com | 02/24/17 19:14  
 January, about 200 people gathered outside her home in the city's tony Pacific Heights neighborhood to demand she vote against confirming Trump's pick for attorney general, Jeff Sessions. The next day, about 50 Bay Area attorneys protested outside her downtown San Francisco office, also in opposition to the attorney general. (Feinstein ultimately voted against Sessions' confirmation.) Indivisible East Bay, an activist group formed in resistance to the Trump administration, will host an "empty chair"

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**Let's Rebuild the Democratic Party, Chapter I: 2018 Governor...**  
 northumbriancountdown.wordpress.com | 02/24/17 16:04  
 's race in one of the most Democratic states in the country should most certainly be on the table. My pick is state attorney general Maura Healey. Don't confuse her with Martha Coakley, the previous attorney general, who botched both the 2014 race against Baker and the special election to fill Ted Kennedy's seat. Coakley is

a much more natural politician and has a fascinating biography that includes captaining the Harvard women's basketball team. She's technically declined to enter the race, but

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**Let's Rebuild the Democratic Party, Chapter VIII: 2020 Senat...**

northumbriancountdown.wordpress.com | 02/24/17 16:04

race- I'd be shocked if Kelly Ayotte doesn't try to win New Hampshire's other senate seat. But if he prevails, Pappas would be the first openly gay man in the U.S. Senate. Illinois: Dick Durbin will be just shy of 76, and the Senate Minority Whip- having seen his onetime junior senator Barack Obama become president- might hang up his hat. If so, expect a massive bloodbath in the Democratic primaries. Attorney general Lisa Madigan is probably likely to run and probably likely to win. But I want

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**Elder Use of Marijuana**

timegoesby.net | 02/24/17 08:45

and Congress in Washington. Although President Donald Trump said during the campaign that he did not object to medical marijuana, so far he has reversed himself on almost every campaign promise. Plus, both the new attorney general, Jeff Sessions, and the new secretary of Health and Human Services, Tom Price, have long records of opposing legalization or decriminalization of marijuana. Without stretching one's imagination too far and with the growing use of cannabis by elders to control age-related conditions and diseases, any attempt by the federal government to remove or limit its use could be seen as withholding medication from sick and dying elders.

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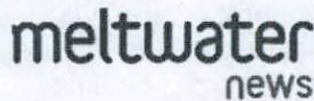
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AGENT	MEDIA TYPE	HITS
Iowa Attorney General	News	7 in 1 day
Tom Miller	News	6 in 1 day
Geoff Greenwood	News	3 in 1 day
Iowa Attorney General		7 in 1 day
Tom Miller		2 in 1 day

**Iowa Attorney General**

**Ban on sale of fetal body parts advances in Iowa Senate**

Press-Citizen (AP) | 02/22/17 19:30  
...said the enactment of state legislation would help to ensure that Iowa Attorney General Tom Miller could become involved if problems surfaced in...



**WORDS MATCHED** Attorney General, Iowa [Archive](#) · [Share](#) · [Translate](#)

**Iowa One Call Lawsuits Filed**

KICD AM 1240 | 02/22/17 17:02

... One Call Lawsuits Filed Des Moines, IA (KICD/RI) Iowa s Attorney General has filed seven lawsuits covering five counties for alleged violations...

WORDS MATCHED Attorney General, Iowa



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### Senators advance bill to end ban on public school teachers wearing religious garb

Atchison Globe Now | 02/22/17 13:34

...end ban on public school teachers wearing religious garb ARTICLE: Iowa attorney general won t defend state in labor dispute More about School...

WORDS MATCHED attorney general, Iowa



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### Iowa AG Sues Boyden Man Over Gas Pipeline Damage

Sioux County Daily News | 02/22/17 11:23

Iowa A Boyden man is one of seven entities being sued by the Iowa Attorney General s Office for alleged violations of the Iowa One Call law .

WORDS MATCHED Attorney General, Iowa



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### Lawsuits filed against 7 businesses for hitting underground gas pipes

Radio Iowa | 02/22/17 11:07

Lawsuits filed against 7 businesses for hitting underground gas pipes Iowa s Attorney General has filed seven lawsuits covering five counties ...

WORDS MATCHED Attorney General, Iowa



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### Iowa attorney general wants to be excused from collective bargaining suit

KTIV News Channel 4 | 02/22/17 09:09

Iowa attorney general wants to be excused from collective bargaining suit DES MOINES, IA (AP) - Iowa's top attorney wants to excuse himself from...

WORDS MATCHED attorney general, Iowa



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### Nebraska Legislature, Day 32

Atchison Globe Now | 02/22/17 07:00

...say Iowa governor s impaired driving bill overly broad ARTICLE: Iowa attorney general won t defend state in labor dispute More about Requirement...

WORDS MATCHED attorney general, Iowa

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**Tom Miller**

## Ban on sale of fetal body parts advances in Iowa Senate

Press-Citizen (AP) | 02/22/17 19:30

*...enactment of state legislation would help to ensure that Iowa Attorney General Tom Miller could become involved if problems surfaced in Iowa .*

WORDS MATCHED Attorney General, Tom Miller



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## Iowa One Call Lawsuits Filed

KICD AM 1240 | 02/22/17 17:02

*...Lawsuits Filed Des Moines, IA (KICD/RI) Iowa s Attorney General has filed seven lawsuits covering five counties for alleged violations of the...*

WORDS MATCHED Attorney General, Tom Miller



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## Lawsuits filed against 7 businesses for hitting underground gas pipes

Radio Iowa | 02/22/17 11:07

*...against 7 businesses for hitting underground gas pipes Iowa s Attorney General has filed seven lawsuits covering five counties for alleged violations...*

WORDS MATCHED Attorney General, Tom Miller



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## Iowa's top attorney wants to be excused from union lawsuit

NewtonDailyNews.com | 02/22/17 10:22

*...released Tuesday that he wants to avoid a potential conflict of interest . Attorney General Tom Miller said he will seek DES MOINES (AP) Iowa...*

WORDS MATCHED Attorney General, Tom Miller



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## Iowa attorney general wants to be excused from collective bargaining suit

KTIV News Channel 4 | 02/22/17 09:09

*Iowa attorney general wants to be excused from collective bargaining suit DES MOINES, IA (AP) - Iowa's top attorney wants to excuse himself from...*

WORDS MATCHED Attorney General, attorney general, Tom Miller

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## Outside legal help sought to defend state in collective bargaining lawsuit

Fort Madison Daily Democrat | 02/22/17 08:00

*...released Tuesday that he wants to avoid a potential conflict of interest . Attorney General Tom Miller said he will seek DES MOINES (AP) Iowa...*

WORDS MATCHED Attorney General, Tom Miller

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Geoff Greenwood

Iowa One Call Lawsuits Filed

KICD AM 1240 | 02/22/17 17:02

...the Iowa One Call law. Attorney General Tom Miller s spokesman, Geoff Greenwood, says the people involved in each of these cases failed to make...

WORDS MATCHED Geoff Greenwood

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Iowa AG Sues Boyden Man Over Gas Pipeline Damage

Sioux County Daily News | 02/22/17 11:23

...to have underground utility lines marked. Iowa Attorney General Spokesman Geoff Greenwood says the people involved in each case failed to make ...

WORDS MATCHED Geoff Greenwood

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Lawsuits filed against 7 businesses for hitting underground gas pipes

Radio Iowa | 02/22/17 11:07

...underground utility lines marked. Attorney General Tom Miller s spokesman , Geoff Greenwood, says the people involved in each of these cases failed...

WORDS MATCHED Geoff Greenwood

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Iowa Attorney General

DEMOCRATAS, LIBERALES TIENEN FIEBRE MCCARTHISTA

pueblossinfronteras.wordpress.com | 02/23/17 06:41

histeria ha sido incesante. Ryan Lizza del New Yorker en un tono usual de fiscales lanzo las siguientes interrogantes: "Did Trump instruct Flynn to discuss a potential easing of sanctions with Russia? Did Flynn update Trump on his calls with the Russian Ambassador? Did Trump know that Flynn lied to Pence about those contacts? What did the White House counsel do with the information that he received from [Acting Attorney General Sally] Yates about Flynn being vulnerable to blackmail?" ?Acaso

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**Français -- La République Restaurée devient une réalité avec...**


frenchlovenlightmessages.blogspot.com | 02/22/17 16:49

membres du cabinet entrant, et particulièrement le Ministre de la Justice (Attorney General) Jeff Sessions. On s'attend à ce que ce dernier reprenne les poursuites judiciaires contre Bill et Hillary Clinton, et fort probablement beaucoup d'autres. Indépendamment de cela, attendez-vous à ce que d'énormes changements sans précédents soient entrepris dans notre nation au cours des 100 premiers jours de fonction du Président Trump. LE GOUVERNEMENT DES ETATS-UNIS A  
AUTORISE L'USAGE DE LA PROPAGANDE

[Archive](#) · [Share](#)  **Water is life, but not to WI GOP leaders**

thepoliticalenvironment.blogspot.com | 02/22/17 12:27

into what he promised would he run with "a chamber of commerce mentality." \* Fellow corporate captive Wisconsin GOP Attorney General Brad Schimel gave legislators the opinion they sought to help make Fitzgerald's predictable bill fly, as I wrote last May: [Updated from 1:44 p.m. Tuesday, 5/10] Now look for blatantly pro-corporate legislation to land on the desk of our pro-corporate Governor to implement a pro-corporate opinion from Wisconsin's pro-corporate Attorney General that will eventually

[Archive](#) · [Share](#)  **Lawsuits filed against 7 businesses for hitting underground ...**

radioiowa.com | 02/22/17 11:33

Iowa's Attorney General has filed seven lawsuits covering five counties for alleged violations of the "Iowa One Call" law. The law requires anyone who is going to be digging to call at least 48 hours in advance to have underground utility lines marked. Attorney General Tom Miller's spokesman, Geoff Greenwood, says the people involved in [...]

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02/22/17 09:15


confidential issues. At the BOEE November meeting, case number 16-124 was reviewed in closed session by the BOEE and they found probable cause. They set it for an administrative hearing in front of an Administrative Judge at a date to be determined. However, they moved the case to the Iowa Attorney General's office. Their representative at the Attorney General's office took the case over from that point. Cases are confidential until the minutes of the meeting are approved at the next BOEE meeting. In

[Archive](#) · [Share](#)  **Elder Use of Marijuana**

timegoesby.net | 02/22/17 08:41

and Congress in Washington. Although President Donald Trump said during the campaign that he did not object to medical marijuana, so far he has reversed himself on almost every campaign promise. Plus, both the new attorney general,

Jeff Sessions, and the new secretary of Health and Human Services, Tom Price, have long records of opposing legalization or decriminalization of marijuana. Without stretching one's imagination too far and with the growing use of cannabis by elders to control age-related conditions and diseases, any attempt by the federal government to remove or limit its use could be seen as withholding medication from sick and dying elders.



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02/22/17 07:47

ICYMI, #Iowa's Attorney General Tom Miller (D) asking for outside counsel to defend new collective bargaining law

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**Tom Miller**



**Lawsuits filed against 7 businesses for hitting underground ...**

radioiowa.com | 02/22/17 11:33

Iowa's Attorney General has filed seven lawsuits covering five counties for alleged violations of the "Iowa One Call" law. The law requires anyone who is going to be digging to call at least 48 hours in advance to have underground utility lines marked. Attorney General Tom Miller's spokesman, Geoff Greenwood, says the people involved in [...]



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ICYMI, #Iowa's Attorney General Tom Miller (D) asking for outside counsel to defend new collective bargaining law

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AGENT	MEDIA TYPE	HITS
Iowa Attorney General	News	14 in 1 day
Tom Miller	News	21 in 1 day
Iowa Department of Justice	News	1 in 1 day
Iowa Attorney General		16 in 1 day
Tom Miller		9 in 1 day

**Iowa Attorney General**

**Attorney General Tom Miller Not Representing State in Collective Bargaining Lawsuit**

WHOTV.com | 02/21/17 22:14

...lawsuit is decided in court. Because of his close ties to AFSCME, Iowa Attorney General Tom Miller will not be the lawyer arguing on the state's...

WORDS MATCHED Attorney General, Iowa



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**Three incidents result in One Call penalties**

Journal Express | 02/21/17 21:16

*...in One Call penalties Three lawsuits in Marion County from the Iowa Attorney General for One Call Law violations have been settled by consent...*

**WORDS MATCHED** Attorney General, Iowa



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## No Nebraska consensus on restroom access; districts decide

Atchison Globe Now | 02/21/17 20:30

*...for re-election to Omaha City Council More about Lawsuit ARTICLE: Iowa attorney general won't defend state in labor dispute ARTICLE: UPDATE :*

**WORDS MATCHED** attorney general, Iowa

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## Political Landscape Shifts

Atchison Globe Now | 02/21/17 16:21

*Blunt for town hall meetings on Obamacare, Trump policies ARTICLE: Iowa attorney general won't defend state in labor dispute ARTICLE: Nebraska ...*

**WORDS MATCHED** attorney general, Iowa

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## Iowa Attorney Tom Miller to ask Executive Council to approve outside legal counsel to defend state

96.5 KSOM | 02/21/17 15:22

*...to approve outside legal counsel to defend state (Des Moines) Iowa Attorney General Tom Miller says he will ask the Iowa Executive Council to...*

**WORDS MATCHED** Attorney General, Iowa



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## Iowa Attorney General Miller won't defend state in collective bargaining lawsuit

TheGazette.com | 02/21/17 15:15

*Iowa Attorney General Miller won't defend state in collective bargaining lawsuit DES MOINES Iowa Attorney General Tom Miller announced Tuesday ...*

**WORDS MATCHED** Attorney General, Iowa

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## Iowa attorney general won't defend state in labor dispute

LibertyTribune.com | 02/21/17 14:59

[8 other sources...](#)

*Iowa attorney general won't defend state in labor dispute DES MOINES Iowa Attorney General Tom Miller announced Tuesday that he will ask the...*

**WORDS MATCHED** Attorney General, attorney general, Iowa



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## Miller won't defend state in labor dispute

Sioux City Journal | 02/21/17 13:25

*Miller won't defend state in labor dispute DES MOINES Iowa Attorney General Tom Miller announced Tuesday that he will ask the Iowa Executive ...*

WORDS MATCHED Attorney General, Iowa



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**Iowa Attorney General wants out of representing state in AFSCME lawsuit**

WeAreIowa | 02/21/17 13:22

*Iowa Attorney General wants out of representing state in AFSCME lawsuit DES MOINES - One day after the lawsuit was filed by AFSCME, Iowa Attorney...*

WORDS MATCHED Attorney General, Iowa



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**A.G. Tom Miller won't defend state officials against collective bargaining lawsuit**

The Des Moines Register | 02/21/17 13:08

*...won't defend state officials against collective bargaining lawsuit Iowa Attorney General Tom Miller is declining to defend state officials against...*

WORDS MATCHED Attorney General, Iowa



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**Iowa Attorney General wants to be excused from collective bargaining suit**

WOWT | 02/21/17 12:42

*Iowa Attorney General wants to be excused from collective bargaining suit DES MOINES, Iowa (AP) - Iowa's top attorney wants to excuse himself ...*

WORDS MATCHED Attorney General, Iowa



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**A.G. Tom Miller won't defend state officials against AFSCME lawsuit**

Press-Citizen (AP) | 02/21/17 12:06

*Tom Miller won't defend state officials against AFSCME lawsuit Iowa Attorney General Tom Miller is declining to defend state officials against...*

WORDS MATCHED Attorney General, Iowa



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**Iowa AG sues diggers who damaged gas lines**

Sioux City Journal | 02/21/17 10:30

*Iowa AG sues diggers who damaged gas lines DES MOINES | Iowa Attorney General Tom Miller on Monday filed lawsuits in two Northwest Iowa counties...*

WORDS MATCHED Attorney General, Iowa

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**'Do your job,' 'meet with us' protesters shout, disrupting Deb Fischer's Lincoln speech**

Atchison Globe Now | 02/21/17 01:00

*Blunt for town hall meetings on Obamacare, Trump policies ARTICLE: Iowa attorney general won't defend state in labor dispute ARTICLE: Nebraska ...*



WORDS MATCHED attorney general, iowa

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## Tom Miller



### Iowa's top attorney wants to be excused from union lawsuit

TimesRepublican.com | 02/22/17 00:05

[5 other sources...](#)

...Tuesday that he wants to avoid a potential conflict of interest. **Attorney General Tom Miller** said he will seek DES MOINES Iowa s top attorney ...

WORDS MATCHED Attorney General, Tom Miller



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### Attorney General Tom Miller Not Representing State in Collective Bargaining Lawsuit

WHOTV.com | 02/21/17 22:14

**Attorney General Tom Miller Not Representing State in Collective Bargaining Lawsuit** Please enable Javascript to watch this video DES MOINES ,

WORDS MATCHED Attorney General, Tom Miller



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### Three incidents result in One Call penalties

Journal Express | 02/21/17 21:16

...One Call penalties Three lawsuits in Marion County from the Iowa **Attorney General** for One Call Law violations have been settled by consent decree .

WORDS MATCHED Attorney General, Tom Miller

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### Iowa AG wants to be excused from union lawsuit

Fulton Sun | 02/21/17 18:02

[1 other source...](#)

...released Tuesday that he wants to avoid a potential conflict of interest . **Attorney General Tom Miller** said he will DES MOINES, Iowa (AP ) Iowa's...

WORDS MATCHED Attorney General, Tom Miller

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### Iowa's top attorney wants to be excused from union lawsuit

Semiconductors - EIN News | 02/21/17 17:33

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...released Tuesday that he wants to avoid a potential conflict of interest . **Attorney General Tom Miller** said he will DES MOINES, Iowa (AP ) Iowa's...

WORDS MATCHED Attorney General, Tom Miller



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**Iowa Attorney Tom Miller to ask Executive Council to approve outside legal counsel to defend state**

96.5 KSOM | 02/21/17 15:22

*Iowa Attorney Tom Miller to ask Executive Council to approve outside legal counsel to defend state (Des Moines) Iowa Attorney General Tom Miller...*

WORDS MATCHED Attorney General, Tom Miller



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**Iowa Attorney General Miller won't defend state in collective bargaining lawsuit**

TheGazette.com | 02/21/17 15:15

*Iowa Attorney General Miller won't defend state in collective bargaining lawsuit DES MOINES Iowa Attorney General Tom Miller announced Tuesday...*

WORDS MATCHED Attorney General, Tom Miller

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**Iowa AG wants to be excused from collective bargaining suit**

Semiconductors - EIN News | 02/21/17 15:02

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*...a lawsuit that challenges a new collective bargaining law. Attorney General Tom Miller announced Tuesday that he wants outside legal counsel...*

WORDS MATCHED Attorney General, Tom Miller

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**Iowa attorney general won't defend state in labor dispute**

LibertyTribune.com | 02/21/17 14:59

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*Iowa attorney general won't defend state in labor dispute DES MOINES Iowa Attorney General Tom Miller announced Tuesday that he will ask the...*

WORDS MATCHED Attorney General, attorney general, Tom Miller



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**Miller won't defend state in labor dispute**

Sioux City Journal | 02/21/17 13:25

*Miller won't defend state in labor dispute DES MOINES Iowa Attorney General Tom Miller announced Tuesday that he will ask the Iowa Executive ...*

WORDS MATCHED Attorney General, Tom Miller



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**Iowa Attorney General wants out of representing state in AFSCME lawsuit**

WeArelowa | 02/21/17 13:22

*Iowa Attorney General wants out of representing state in AFSCME lawsuit DES MOINES - One day after the lawsuit was filed by AFSCME, Iowa Attorney ...*

WORDS MATCHED Attorney General, Tom Miller

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**Iowa AG wants to be excused from collective bargaining suit | WBAY**

WBAY-TV | 02/21/17 13:09



**HUFFPOST HILL - CPAC Refuses To Normolopoulize Pedophilia**



huffingtonpost.com | 02/21/17 17:06

right, this : "Today is the deadline for former Oklahoma attorney general Scott Pruitt to hand over thousands of emails. A judge set the deadline last week, a day before Pruitt was confirmed as the new head of the Environmental Protection Agency. The Center for Media and Democracy first requested the emails in 2015 over concern for Pruitt's interests with energy companies as attorney general, specifically oil, gas, and coal companies, and conservative organizations. Nearly 2,600 emails have

[Archive](#) · [Share](#)  **Iowa Attorney Tom Miller to ask Executive Council to approve...**

02/21/17 15:26

<http://965ksom.com/iowa-attorney-tom-miller-to-ask-executive-council-to-approve-outside-le-gal-counsel-to-defend-state/> (Des Moines) Iowa Attorney General Tom Miller says he will ask the Iowa Executive Council to seek outside legal counsel to defend the state against the lawsuit challenging the constitutionality of House File 291, the collective bargaining bill signed into law on Friday. "As the new collective bargai...

[Archive](#) · [Share](#)  **Letter: Miller's argument is nonsense**



02/21/17 15:00

"As a North Iowan who values our nation's safety, I'm disappointed that these two politicians have thrown in with those whose efforts will make it harder to keep out people who may have bad intentions." Recently, Iowa's Attorney General Tom Miller joined 15 other state Attorneys General in support of federal lawsuits against President Trump's executive orders on immigration. Miller supports an...

[Archive](#) · [Share](#)  **Iowa AG wants to be excused from collective bargaining suit**



02/21/17 14:00

Citing conflict of interest, Iowa's attorney general is seeking to recuse himself from defending the state in a lawsuit brought by AFSCME challenging Iowa's new collective bargaining law. AFSCME claims the law, which removes most collective bargaining rights for public workers, is unconstitutional.

[Archive](#) · [Share](#)  **Iowa AG wants to be excused from collective bargaining suit**

02/21/17 13:59

Iowa Attorney General Tom Miller wants to excuse himself from defending the state in a lawsuit that challenges a new collective bargaining law. KMTV, your source for news about Omaha, Nebraska, The Huskers, and the world.

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**Iowa Attorney General wants to be excused from collective ba...**

02/21/17 13:45

To avoid questions of potential conflicts of interest the Iowa Attorney General wants to be excused from defending the state in a lawsuit regarding the states new collective bargaining laws. Iowa's top attorney wants to excuse himself from defending the state in a lawsuit that challenges a new collective bargaining law.

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02/21/17 13:01

Iowa Attorney General wants out of representing state in AFSCME lawsuit...

[Archive](#) · [Share](#) **Iowa AG wants to be excused from collective bargaining suit**

02/21/17 12:51

JUST IN: Attorney General Tom Miller wants to seek outside legal counsel to represent the state in a lawsuit filed Monday by the American Federation of State, County and Municipal Employees Iowa Council 61. Iowa's top attorney wants to excuse himself from defending the state in a lawsuit that challenges a new collective bargaining law. Attorney General Tom Miller announced Tuesday he wants to seek outside legal counsel to represent the state in a lawsuit filed

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02/21/17 12:51

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[Archive](#) · [Share](#) **Iowa AG wants to be excused from collective bargaining suit**

02/21/17 12:42

Iowa AG wants to be excused from collective bargaining suit  
[http://www.kjan.com/index.php/2017/02/iowa-ag-wants-to-be-excused-from-collective-bargaini ng-suit/](http://www.kjan.com/index.php/2017/02/iowa-ag-wants-to-be-excused-from-collective-bargaini-ng-suit/) DES MOINES, Iowa (AP) – Iowa's top attorney wants to excuse himself from defending the state in a lawsuit that challenges a new collective bargaining law. Attorney General-Tom-Miller-an...



[Archive](#) · [Share](#) **Iowa AG Tom Miller wants to be excused from collective barga...**

02/21/17 12:41

Attorney General Tom Miller said today he wants to seek outside legal counsel to represent the state in a lawsuit filed Monday by the American Federation of State,



County and Municipal Employees Iowa Council 61. Iowa's top attorney wants to excuse himself from defending the state in a lawsuit that challenges a new collective bargaining law.



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**idaveprice** @idaveprice

02/21/17 12:37

Iowa Attorney General refuses to represent state in AFSCME lawsuit over collective bargaining. Recommends they seek outside counsel.


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**MilitaryCon\_** @MilitaryCon\_

02/21/17 12:13

DMRegister: #BREAKING: Iowa Attorney General Tom Miller won't defend Branstad in AFSCME lawsuit



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**Attorney Beshear Joins Other Egg Producing States to Have Sh...**

02/21/17 11:25

Attorney General Andy Beshear announced Thursday, February 16, that he would be joining with egg-producing states Alabama, Iowa, Missouri, Nebraska, and Oklahoma to ask the U.S. Supreme Court to review a decision that upheld California's "Shell Egg Laws." As the country's largest consumer of eggs, C...



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**Month three of the Trumpocalypse**

stumbledownunder.com | 02/21/17 08:57

affected countries could not be sent back to their home countries. The court did not address whether the order is constitutional and a hearing is scheduled in February. Similar stays have been issued in other cases in Virginia and Washington. Lawyers have said that authorities were unwilling to follow judges' rulings. Not surprisingly, Trump, the Department of Homeland Security, and Priebus have defended the order. Trump even fired acting attorney general Sally Yates after she ordered Justice

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**Tom Miller**



**desmoinesdem** @desmoinesdem

02/21/17 22:36

Who's up late? #Iowa's AG Tom Miller wants outside counsel to defend state in collective bargaining lawsuit <http://www.bleedingheartland.com/2017/02/21/iowa-attorney-general-outside-counsel-should-defend-collective-bargaining-law/> ... #...

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**Iowa Attorney Tom Miller to ask Executive Council to approve...**

02/21/17 15:26

<http://965ksom.com/iowa-attorney-tom-miller-to-ask-executive-council-to-approve-outside-legal-counsel-to-defend-state/> (Des Moines) Iowa Attorney General Tom Miller says he will ask the Iowa Executive Council to seek outside legal counsel to defend the state against the lawsuit challenging the constitutionality of House File 291, the collective bargaining bill signed into law on Friday. "As the new collective bargai...

[Archive](#) · [Share](#) **Letter: Miller's argument is nonsense**

02/21/17 15:00

"As a North Iowan who values our nation's safety, I'm disappointed that these two politicians have thrown in with those whose efforts will make it harder to keep out people who may have bad intentions." Recently, Iowa's Attorney General Tom Miller joined 15 other state Attorneys General in support of federal lawsuits against President Trump's executive orders on immigration. Miller supports an...

[Archive](#) · [Share](#) **Iowa AG wants to be excused from collective bargaining suit**

02/21/17 13:59

Iowa Attorney General Tom Miller wants to excuse himself from defending the state in a lawsuit that challenges a new collective bargaining law. KMTV, your source for news about Omaha, Nebraska, The Huskers, and the world.

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02/21/17 12:51

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JUST IN: Attorney General Tom Miller wants to seek outside legal counsel to represent the state in a lawsuit filed Monday by the American Federation of State, County and Municipal Employees Iowa Council 61. Iowa's top attorney wants to excuse himself from defending the state in a lawsuit that challenges a new collective bargaining law. Attorney General Tom Miller announced Tuesday he wants to seek outside legal counsel to represent the state in a lawsuit filed



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**Iowa AG wants to be excused from collective bargaining suit**



02/21/17 12:42

Iowa AG wants to be excused from collective bargaining suit  
<http://www.kjan.com/index.php/2017/02/iowa-ag-wants-to-be-excused-from-collective-bargaini ng-suit/> DES MOINES, Iowa (AP) – Iowa's top attorney wants to excuse himself from defending the state in a lawsuit that challenges a new collective bargaining law. Attorney General Tom Miller an...

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02/21/17 12:41

Attorney General Tom Miller said today he wants to seek outside legal counsel to represent the state in a lawsuit filed Monday by the American Federation of State, County and Municipal Employees Iowa Council 61. Iowa's top attorney wants to excuse himself from defending the state in a lawsuit that challenges a new collective bargaining law.

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02/21/17 12:13

DMRegister: #BREAKING: Iowa Attorney General Tom Miller won't defend Branstad in AFSCME lawsuit

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**McCarthy, Kevin [AG]**

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**From:** McCarthy, Kevin [AG]  
**Sent:** Tuesday, February 21, 2017 3:46 PM  
**To:** Maggie Smith-Fitzgerald  
**Subject:** Fwd: HF 377 / Rep. Nunn

fYI

**From:** "McCarthy, Kevin [AG]" <[Kevin.McCarthy@iowa.gov](mailto:Kevin.McCarthy@iowa.gov)>  
**Date:** February 21, 2017 at 3:06:24 PM CST  
**To:** "Nunn, Zach [LEGIS]" <[zach.nunn@legis.iowa.gov](mailto:zach.nunn@legis.iowa.gov)>  
**Subject:** HF 377 / Rep. Nunn

Rep. Nunn,

My name is Kevin McCarthy and I used to serve in the legislature. My last year was the year before you were elected. Thank you for taking the lead this year on sentencing reform legislation. Last year, I worked with Cord Overton from the Governor's Office, Chairman Baltimore, Rep. Rizer and others from the Senate on part of last years successful reform package. This year I am registered to lobby as a limited scope lobbyist under House Rule 20 for the sole issue of sentencing reform. In that regard I have been working with FAMM (Maggie) and others. I know you are very busy. Do you have any time for a ten minute visit tomorrow at a place of your choosing in the Capitol?

Thank you,

Kevin McCarthy

First Assistant Iowa Attorney General

**McCarthy, Kevin [AG]**

---

**From:** McCarthy, Kevin [AG]  
**Sent:** Tuesday, February 21, 2017 3:06 PM  
**To:** Nunn, Zach [LEGIS]  
**Subject:** HF 377 / Rep. Nunn

Rep. Nunn,

My name is Kevin McCarthy and I used to serve in the legislature. My last year was the year before you were elected. Thank you for taking the lead this year on sentencing reform legislation. Last year, I worked with Cord Overton from the Governor's Office, Chairman Baltimore, Rep. Rizer and others from the Senate on part of last years successful reform package. This year I am registered to lobby as a limited scope lobbyist under House Rule 20 for the sole issue of sentencing reform. In that regard I have been working with FAMM (Maggie) and others. I know you are very busy. Do you have any time for a ten minute visit tomorrow at a place of your choosing in the Capitol?

Thank you,

Kevin McCarthy

First Assistant Iowa Attorney General

**McCarthy, Kevin [AG]**

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**From:** NEWS [AG]  
**Sent:** Tuesday, February 21, 2017 2:12 PM  
**Subject:** Miller Statement on AFSCME Lawsuit

**IOWA DEPARTMENT OF JUSTICE  
OFFICE OF THE ATTORNEY GENERAL  
Thomas J. Miller, Attorney General  
[www.iowaattorneygeneral.gov](http://www.iowaattorneygeneral.gov)**

CONTACT: Geoff Greenwood | Communications Director | 515-281-6699 | [geoff.greenwood@iowa.gov](mailto:geoff.greenwood@iowa.gov)

FOR IMMEDIATE RELEASE  
February 21, 2017

## **Statement from Attorney General Tom Miller on AFSCME Lawsuit over Collective Bargaining Law**

*Miller to ask Executive Council to approve outside legal counsel to defend state*

DES MOINES – Attorney General Tom Miller today announced that he will ask the Iowa Executive Council to seek outside legal counsel to defend the state against the lawsuit challenging the constitutionality of House File 291, the collective bargaining bill signed into law on Friday.

The American Federation of State, County and Municipal Employees (AFSCME) Iowa Council 61 filed the lawsuit Monday in Polk County District Court.

The Executive Council, comprised of the governor, secretary of state, state treasurer, secretary of agriculture and state auditor, must approve the appointment of outside counsel to represent the state.

“As the new collective bargaining law has the potential to existentially threaten the viability of public sector unions—many of the very same organizations that have supported me in the past—I am recommending that the Executive Council seek outside legal representation to defend this lawsuit in order to avoid any questions about a potential conflict,” Miller said. “While the extraordinarily professional and skilled attorneys in my office have vigorously defended Governor Branstad and the legislature in past lawsuits involving AFSCME, I think it’s most prudent in this highly charged legal dispute to avoid any appearance of politics clouding our office’s legal representation and judgment.”

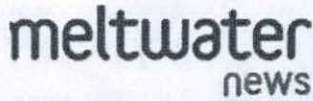
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Iowa Attorney General	News	2 in 1 day
Tom Miller	News	2 in 1 day
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**Iowa Attorney General**

**UIHC officials say children's hospital to open this week**

Press-Citizen (AP) | 02/20/17 10:46

...the injunction Jan. 10. On Feb. 7, lawyers from the Iowa Attorney General's office filed notice that UI would be appealing Anderson's ruling...

**WORDS MATCHED** Attorney General, Iowa

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**Missouri AG shouldn't make Proposition 2 partisan issue**

Blogs - WATTAgNet | 02/20/17 10:04

...five joined Koster's fight before Hawley was even elected. Iowa Attorney General Tom Miller and Kentucky Attorney General Andy Beshear are also...

**WORDS MATCHED** Attorney General, Iowa

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### Tom Miller

#### Missouri AG shouldn't make Proposition 2 partisan issue

Blogs - WATTAgNet | 02/20/17 10:04

...Republicans and Democrats see California egg law as unfair Missouri Attorney General Josh Hawley should be commended for his efforts to keep...

WORDS MATCHED Attorney General, attorney general, Tom Miller

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#### Used car complaints top list in 2016 for Iowa's Consumer Protection Division

KROS 1340 AM | 02/20/17 05:27

...filed last year with Iowa's Consumer Protection Division. Iowa Attorney General Tom Miller says over 2,800 written complaints were investigated ...

WORDS MATCHED Attorney General, Tom Miller

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### Iowa Attorney General



#### Trump Chose Gay Rights Over State Sanctioned Bigotry

jiveinthe415.com | 02/20/17 09:45

When Senator Jeff Sessions (R-AL) testified before the Senate Judiciary Committee during his confirmation hearing, he promised to protect the civil rights of lesbian, gay, bisexual and transgender (LGBT) Americans. I was watching the hearing and heard him say that with my own ears and I laughed. While I was surprised, I knew better than to give him credit for evolving and changing his mind on LGBT issues. Just a few hours after he was sworn in as Donald Trump's new Attorney General, he directed

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#### This Is Not Normal, This Is Not OK! :Day 21

blog.thesietch.org | 02/20/17 09:44

Twenty Days, lets see if we can get lady liberty to a full month under Trump, Keep fighting, keep resisting! Trump Messed This Up Today: Racist, homophobic, misogynist, and all around horrible excuse for a human being Jeff Sessions has been made the Attorney General. If you live in a state with a Republican Senator,



its time to call them up and tell them that you will be voting against them next time, approving this asshole is a new low. ————— Jesus lord above have mercy on us, Trump is



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### Daily Kos Elections Live Digest: 2/15

dailykos.com | 02/20/17 07:56

. Wednesday, Feb 15, 2017 · 11:29:40 PM +00:00 · Jeff Singer AL-Gov, AL-Sen: On Wednesday, we learned two things that we long suspected: Alabama GOP Gov. Robert Bentley is still under investigation, and new Sen. Luther Strange may be even less ethical than the governor who just appointed him. On Monday, Bentley appointed prosecutor Steve Marshall to replace Strange as Alabama attorney general; two days later, Marshall announced that he was recusing himself from investigating Bentley for allegedly using



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### Daily Kos Elections Live Digest: 2/6

dailykos.com | 02/20/17 07:56

the Iowa border, violently swung from 58-41 Obama to 47.4-46.6 Trump , and House Democrats would almost certainly prefer it if Bustos decided to stay in D.C. Monday, Feb 6, 2017 · 6:18:45 PM +00:00 · Jeff Singer MA-Gov: Democratic Attorney General Maura Healey ruled out a 2018 bid against GOP Gov. Charlie Baker a long time ago, but Politico reports that some Bay State Democrats hope she'll reconsider. Healey already has made a name for herself suing the Trump administration and she memorably

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**Iowa Attorney General**

**Capitol Digest: Subcommittee calls for year-round daylight saving time in Iowa**

Atchison Globe Now | 02/16/17 00:15

[2 other sources...](#)

...Used auto sales topped the list of complaints filed with the Iowa Attorney General s consumer protection division in 2016 for the second year...

WORDS MATCHED Attorney General, Iowa

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**Capitol Digest: Iowa House subcommittee backs permanent time change**

Gladstone Dispatch | 02/15/17 20:45

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Used auto sales topped the list of complaints filed with the Iowa Attorney General s consumer protection division in 2016 for the second year ...

WORDS MATCHED Attorney General, Iowa

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**Iowa Politics Today: Bill switching Iowa to yearlong daylight saving time advances further in House**

TheGazette.com | 02/15/17 20:10

*Used auto sales topped the list of complaints filed with the Iowa attorney general's consumer protection division last year for the second year ...*

**WORDS MATCHED** Attorney General, attorney general, Iowa

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**Iowa Capitol Digest: Iowa lawmakers still considering time change**

LakeExpo.com | 02/15/17 18:10

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*Used auto sales topped the list of complaints filed with the Iowa Attorney General's consumer protection division in 2016 for the second year ...*

**WORDS MATCHED** Attorney General, Iowa



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**Iowa Students Can Put School Logos on Marijuana Shirts**

Bloomberg BNA | 02/15/17 11:00

*...Baker Daniels LLP represented the students. The Office of the Iowa Attorney General represented the university. To contact the reporter on this...*

**WORDS MATCHED** Attorney General, Iowa



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**No quid pro quo**

The Storm Lake Times | 02/15/17 08:49

*...Bolkcom, D-Iowa City, to formally request an opinion from Iowa Attorney General Tom Miller, a Democrat. Miller was a passionate young lawyer ...*

**WORDS MATCHED** Attorney General, Iowa

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**Tom Miller**



**Capitol Digest: Iowa House subcommittee backs permanent time change**

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**Iowa Politics Today: Bill switching Iowa to yearlong daylight saving time**

### advances further in House

TheGazette.com | 02/15/17 20:10

...auto sales topped the list of complaints filed with the Iowa attorney general's consumer protection division last year for the second year in...

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### Iowa Capitol Digest: Iowa lawmakers still considering time change

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### No quid pro quo

The Storm Lake Times | 02/15/17 08:49

...Bolkcom, D-Iowa City, to formally request an opinion from Iowa Attorney General Tom Miller, a Democrat. Miller was a passionate young lawyer who...

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## Iowa Attorney General



**naomicorrie** @naomicorrie

02/16/17 04:05

RT @nonpareilonline: Missouri's attorney general will appeal a California egg law that has also affected Iowa, Nebraska and other states ht...



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**nonpareilonline** @nonpareilonline

02/16/17 01:00

Missouri's attorney general will appeal a California egg law that has also affected Iowa, Nebraska and other states... <https://t.co/aVQD7gZYJI>

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### Bipartisan Senate Duo Push Justice Department For Briefing O...

[huffingtonpost.com](http://huffingtonpost.com) | 02/15/17 20:05



&HPTrack.Vid.Vidible&m.fwkeyvalues The Senate Judiciary Committee's top Republican and Democrat are together pressing Attorney General Jeff Sessions and FBI Director James Comey to provide the committee with more details on former national security adviser Michael Flynn and his contacts with Russian officials. Flynn resigned from his post on Monday following revelations that he had discussed U.S. sanctions against Russia with that country's U.S. ambassador, Sergey Kislyak, prior to President



[Archive](#) · [Share](#)  **Ted Cruz Introducing Bill Revoking Citizenship Of Americans ...**



liddblog.com | 02/15/17 19:34

, Prime Minister Benjamin Netanyahu asked his attorney general to look into giving him power to revoke a terrorist's citizenship. "Whoever joins ISIS will not be an Israeli citizen. And if he leaves the borders of the state, he will not return," Netanyahu said in 2015. "I think this lesson is becoming increasingly clear throughout the international arena." France also moved to institute a similar plan, but the move fell apart spectacularly. As a result of the controversy, the country dropped its

[Archive](#) · [Share](#)  **2017 Illinois Budget Address As prepared for delivery by Go.....**

02/15/17 13:15

2017 Illinois Budget Address As prepared for delivery by Governor Bruce Rauner... Good afternoon: President Cullerton Speaker Madigan Leader Radogno Leader Durkin Lieutenant Governor Sanguinetti Attorney General Madigan Secretary White Comptroller Mendoza Treasurer Frerichs Members of the General Assembly Ladies and Gentlemen: "The occasion is piled high with difficulty, and we must rise with the occasion... We must think anew and act anew." "We must think anew and act anew." Abraham Lincoln. Two

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Tom Miller	News	8 in 1 day
Iowa Department of Justice	News	2 in 1 day
Iowa Attorney General		5 in 1 day
Iowa Department of Justice		1 in 1 day
Tom Miller		2 in 1 day

**Iowa Attorney General**

**Branstad dismisses questions about successor's authority**

Radio Iowa | 02/07/17 04:54

...once Branstad leaves. State Senator David Johnson of Ocheyedan has asked Iowa's attorney general to issue a written opinion about the matter,

WORDS MATCHED attorney general, Iowa

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### IA AG joins fight over federal immigration restrictions

KIMT.com | 02/06/17 18:05

...AG joins fight over federal immigration restrictions DES MOINES, Iowa Attorney General Tom Miller is supporting Minnesota and Washington s lawsuit...

WORDS MATCHED Attorney General, Iowa



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### Iowa Attorney General Joins Support of Lawsuit Against President Trump's Executive Order on Immigration

WHOTV.com | 02/06/17 18:00

Iowa Attorney General Joins Support of Lawsuit Against President Trump s Executive Order on Immigration \* Iowa Attorney General Joins Support...

WORDS MATCHED Attorney General, Iowa



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### Iowa AG Tom Miller joins amicus brief supporting lawsuit against Trump executive order

KGAN-TV CBS 2 Iowa | 02/06/17 17:53

...against Trump executive order DES MOINES, Iowa (CBS2/FOX28) Iowa Attorney General Tom Miller has joined 15 other state attomey generals in support...

WORDS MATCHED Attorney General, Iowa

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### Miller joins Attorneys General supporting Washington State lawsuit against President's immigration order

KCRG | 02/06/17 17:20

...President's immigration order DES MOINES, Iowa (KCRG-TV9) -- Iowa Attorney General Tom Miller is joining 15 state attomeys in a friend of the court brief...

WORDS MATCHED Attorney General, Iowa



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### The Scamming School That Bore a Striking Resemblance to Trump University

True Viral News | 02/06/17 16:04

...of independent study who might advise students on postsecondary options . Iowa s attorney general filed suit to bar Famous Writers from sending...

WORDS MATCHED attorney general, Iowa



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### Mylan: \$5 Billion Potential Liability From EpiPen Underpayment Of CMS Rebates

Seeking Alpha | 02/06/17 09:34

...story that said: "In a letter sent to Senator Chuck Grassley of Iowa , the assistant attorney general said the DOJ would not be able to testify..."

WORDS MATCHED attorney general, Iowa



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### Human trafficking can happen in North Iowa, officials say

Globe Gazette | 02/06/17 00:00

...s Area Prosecutions Division. In 2012, Ferjak was selected by Iowa Attorney General Tom Miller to lead the Iowa Department of Justice Human Trafficking...

WORDS MATCHED Attorney General, Iowa

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### Branstad: State constitution clear on governor succession

Globe Gazette | 02/06/17 18:49

...Iowa Senate. CLEAR SUCCESSION: A lawmaker s request for an attorney general s opinion on how and whether a lieutenant governor is replaced if...

WORDS MATCHED Attorney General, attorney general, Tom Miller



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### IA AG joins fight over federal immigration restrictions

KIMT.com | 02/06/17 18:05

...joins fight over federal immigration restrictions DES MOINES, Iowa Attorney General Tom Miller is supporting Minnesota and Washington s lawsuit...

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### Iowa Attorney General Joins Support of Lawsuit Against President Trump's Executive Order on Immigration

WHOTV.com | 02/06/17 18:00

Iowa Attorney General Joins Support of Lawsuit Against President Trump s Executive Order on Immigration \* Iowa Attorney General Joins Support ...

WORDS MATCHED Attorney General, Tom Miller



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### CAPITOL DIGEST: Branstad pooh-poohs lawmaker's request

Quad-City Times | 02/06/17 17:54

...lawmaker's request CLEAR SUCCESSION: A lawmaker s request for an attorney general s opinion on how and whether a lieutenant governor is replaced if...

WORDS MATCHED Attorney General, attorney general, Tom Miller

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### Iowa AG Tom Miller joins amicus brief supporting lawsuit against Trump executive order



KGAN-TV CBS 2 Iowa | 02/06/17 17:53

Iowa AG **Tom Miller** joins amicus brief supporting lawsuit against Trump executive order DES MOINES, Iowa (CBS2/FOX28) Iowa **Attorney General Tom...**

**WORDS MATCHED** Attorney General, Tom Miller



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### Attorney General Tom Miller joins lawsuit against President Trump's immigration order

KWWL.com | 02/06/17 17:51

**Attorney General Tom Miller** joins lawsuit against President Trump 's immigration order Email Connect sbelmont@kwwl.com **Attorney General Tom Miller...**

**WORDS MATCHED** Attorney General, Tom Miller



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### Miller joins Attorneys General supporting Washington State lawsuit against President's immigration order

KCRG | 02/06/17 17:20

...immigration order DES MOINES, Iowa (KCRG-TV9) -- Iowa **Attorney General Tom Miller** is joining 15 state attorneys in a friend of the court brief...

**WORDS MATCHED** Attorney General, Tom Miller



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### Human trafficking can happen in North Iowa, officials say

Globe Gazette | 02/06/17 00:00

...Force while continuing to work as the criminal investigator for the **Attorney General s Area Prosecutions Division**. In 2012, Ferjak was selected...

**WORDS MATCHED** Attorney General, Tom Miller

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## Iowa Department of Justice

### Iowa Attorney General Joins Support of Lawsuit Against President Trump's Executive Order on Immigration

WHOTV.com | 02/06/17 18:00

...lawsuit against President Trump s executive order on immigration. The Iowa Department of Justice released a statement on Monday, stating that...

**WORDS MATCHED** Iowa Department of Justice

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### Human trafficking can happen in North Iowa, officials say

Globe Gazette | 02/06/17 00:00

...in suburban Chicago. In 1998, he was recruited by the Iowa Department of Justice as the lead

investigator for its Sexually Violent Predator Unit .

WORDS MATCHED Iowa Department of Justice

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## Iowa Attorney General



**WHORadio** @WHORadio

02/06/17 18:25

Iowa Attorney General supports states suing Trump | WHO Radio News | WHO Radio

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**Iowa Attorney General supports states suing Trump | WHO Radi...**

02/06/17 18:25

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**Iowa Attorney General Joins Support of Lawsuit Against Presi...**

02/06/17 18:08

"The president has broad authority to oversee our nation's immigration policies and procedures, but not even the president has authority to circumvent our Constitution's fundamental guarantees of equal protection, religious freedom and due process," said Iowa Attorney General Tom Miller. DES MOINES, Iowa -- On Monday, Iowa Attorney General Tom Miller joined 15 state attorneys general in support of the Washington state and Minnesota federal lawsuit against President Trump's executive order on immigration. The Iowa Department of Justice released a statement on Monday, stating that i...

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**desmoinesdaily** @desmoinesdaily

02/06/17 18:01

Iowa Attorney General Joins Support of Lawsuit Against President Trump's Executive Order on Immigration: DES...

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**Illinois AG Lisa Madigan files amicus brief to halt travel b...**

02/06/17 17:17

She joins 15 others, including the Iowa Attorney General. Illinois' Attorney General Lisa Madigan joined 15 other Attorneys General Monday and asked the Appellate Court to permanently end the President's executive order to implement a travel ban.



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[See More Results](#)**Iowa Department of Justice****Iowa Attorney General Joins Support of Lawsuit Against Presi...**

02/06/17 18:08

"The president has broad authority to oversee our nation's immigration policies and procedures, but not even the president has authority to circumvent our Constitution's fundamental guarantees of equal protection, religious freedom and due process," said Iowa Attorney General Tom Miller. DES MOINES, Iowa -- On Monday, Iowa Attorney General Tom Miller joined 15 state attorneys general in support of the Washington state and Minnesota federal lawsuit against President Trump's executive order on immigration. The Iowa Department of Justice released a statement on Monday, stating that i...

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02/06/17 18:08

"The president has broad authority to oversee our nation's immigration policies and procedures, but not even the president has authority to circumvent our Constitution's fundamental guarantees of equal protection, religious freedom and due process," said Iowa Attorney General Tom Miller. DES MOINES, Iowa -- On Monday, Iowa Attorney General Tom Miller joined 15 state attorneys general in support of the Washington state and Minnesota federal lawsuit against President Trump's executive order on immigration. The Iowa Department of Justice released a statement on Monday, stating that i...

[Archive](#) · [Share](#)  **Attorney General Tom Miller joins lawsuit against President ...**

02/06/17 17:47

Attorney General Tom Miller joins lawsuit against President Trump's immigration order Attorney General Tom Miller today joined 15 state attorneys general in an amicus, or friend of the court, brief in support of the states of Washington and Minnesota in the federal lawsuit against P...

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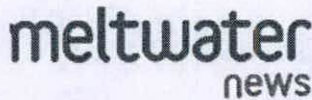
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Tom Miller	News	1 in 1 day
Iowa Attorney General		4 in 1 day
Tom Miller		1 in 1 day

**Iowa Attorney General**

**Iowa sex abusers escape mandatory prison time: 'How is this possible?'**

Myinformatics | 02/04/17 19:32

*In addition, the prosecuting attorneys training coordinator, a division of Iowa Attorney General Tom Miller's office, held an online training ...*

**WORDS MATCHED** Attorney General, Iowa

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**Sheriff examines detainer policy**

The N'West Iowa Review | 02/04/17 04:05

*...met again since Trump s orders but on the advice of Kunstle and the Iowa Attorney General s Office,*

he s decided to keep the policy in place...

WORDS MATCHED Attorney General, Iowa

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**Tom Miller**

**Iowa sex abusers escape mandatory prison time: 'How is this possible?'**

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...addition, the prosecuting attorneys training coordinator, a division of Iowa Attorney General Tom Miller's office, held an online training session...

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**Iowa Attorney General**



**Iowa\_Hemp** @Iowa\_Hemp

02/05/17 03:03

Nevada Attorney General Opposes Marijuana, Cites Child Safety Concerns By Mike Adams August 26, 2016

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**Edging Away from Cruel Eggs Part 4—California, and now Massa...**

randyschickenblog.blogspot.com | 02/05/17 01:01

might even "benefit consumers." Score one for the chickens AND consumers! It is also worth noting that Missouri Attorney General Chris Koster who led the anti-chicken suit lost in his bid to be Missouri governor, while California Attorney General Kamala Harris who led the pro-chicken forces was just elected as California's new US Senator. Karma, don't you think? With California, Washington, Oregon, and now Massachusetts legislating in favor of more humane standards for chickens, inertia is

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**What to Expect from the Trump Administration: A Protectionis...**

shinasaki.blogspot.com | 02/04/17 17:51

hope not. That would be crazy. I doubt very much that this is the type of "change" that American voters want, i.e. more neocon-inspired wars of aggression abroad. 8. The Trump administration is expected to show little respect for the environment Scott Pruitt, the new Head of the Environmental Protection Agency (APA) is



openly a denier of climate science and of clean air legislation. As Attorney General of the state of Oklahoma, he opposed the Environmental Protection Agency (EPA) over its Clean



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**Howard**

02/04/17 08:14

the United States (Art. I, §6, cl. 2 & Art. II, §1, cl. 7) •Pay the Debts (Art. I, §8, cl. 1 & Art. VI, cl.1) •Pay tax collectors (Art. I, §8, cl.1) •Regulate commerce with foreign Nations, among the several States, and with Indian Tribes (Art. I, §8, cl.3) •Immigration office (Art. I, §8, cl.4) •The mint (Art. I, §8, cl. 5) •Attorney General to handle the small amount of authorized federal litigation involving the national government (e.g., Art. I, §8, cls. 6 & 10) •Post offices & post roads (Art

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**Tom Miller**



**CrweWorld** @CrweWorld

02/04/17 22:03

Statement by Attorney General Tom Miller on EPA Renewable Fuel Standard (RFS) Action <https://t.co/olmRCKVSD0>

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Iowa Attorney General	News	4 in 1 day
Iowa Attorney General		18 in 1 day

**Iowa Attorney General**

**Date set for retrial of man accused of the 2009 shooting death of Iowa City landlord**

TheGazette.com | 02/03/17 16:15

...District Judge Sean McPartland stayed proceedings because the prosecutor asked the Iowa Attorney General to request a review of the case by the...

WORDS MATCHED Attorney General, Iowa

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**Iowa Attorney General Publishes Misleading Article About Help Your Diabetes and Dr. J. Murray Hockings**

NewsOn6.com | 02/03/17 12:09

[93 other sources...](#)

Iowa Attorney General Publishes Misleading Article About Help Your Diabetes and Dr. J. Murray Hockings DALLAS, TX - 3 Feb, 2017 - The Iowa Attorney...

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### Iowa Attorney General Publishes Misleading Article About Help Your Diabetes and Dr. J. Murray Hockings - WDRB 41 Louisville News

WDRB 41 Louisville | 02/03/17 09:40

*Iowa Attorney General Publishes Misleading Article About Help Your Diabetes and Dr. J. Murray Hockings - WDRB 41 Louisville News DALLAS, TX -*

WORDS MATCHED Attorney General, Iowa



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### Iowa Attorney General Publishes Misleading Article About Help Your Diabetes and Dr. J. Murray Hockings - WFMJ.com News weather sports for Youngstown-Warren Ohio

WFMJ TV-21 | 02/03/17 09:27

*Iowa Attorney General Publishes Misleading Article About Help Your Diabetes and Dr. J. Murray Hockings - WFMJ.com News weather sports for Youngstown-Warren...*

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## Iowa Attorney General



### What Each State Googled More Frequently Than Any Other State...

blog.estately.com | 02/04/17 06:41

people in other states. To do this we used Google Trends to measure search traffic for hundreds of terms, names, and questions that relate to both current events and the new Donald Trump administration. To be clear, the list below does not represent things each state Googled the most since the election, it simply shows the searches each state Googled more frequently than the other 49 states. ALABAMA: Jeff Sessions / Will Jeff Sessions be the next Attorney General? / Who is Frederick Douglass

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### Obama Reckons with a Trump Presidency

02/03/17 21:30



alt-right media or he was knowingly lying. In other words, Trump was Trump. As the plane headed to Charlotte, I sat with Roy Cooper, the attorney general of North Carolina and its Democratic candidate for governor, and David Simas, Obama's political director. Cooper, who had worked in the tobacco fields as a kid, now seemed as disconnected from the Trump voter in rural North Carolina as any pointy-headed quote machine in the CNN greenroom. "I'm as perplexed as the next person," he said. Simas

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**First Monday in Trump White House**



allsoulsaremine.wordpress.com | 02/03/17 17:39

Alabama, to be Attorney General. – David J. Shulkin, of Pennsylvania, to be Secretary of Veterans Affairs. – Rex W. Tillerson, of Texas, to be Secretary of State. – Seema Verma, of Indiana, to be Administrator of the Centers for Medicare and Medicaid Services, vice Marilyn B. Tavenner. – Vincent Viola, of New York, to be Secretary of the Army, vice Eric Kenneth Fanning. – Ryan Zinke, of Montana, to be Secretary of the Interior. Filed under: All Souls Are Mine

[Archive](#) · [Share](#)  **HUFFPOST HILL - Je Suis Bowling Green**

huffingtonpost.com | 02/03/17 17:07

: “Sen. Jeff Sessions (R-Ala.), soon to be confirmed as President Donald Trump’s attorney general, may have helped invent this grief response to mass shootings. Eight days after 12 students and one teacher were killed at Colorado’s Columbine High School in 1999, Sessions joined a chorus of conservative cultural warriors who argued that the horrifying shooting didn’t require new gun laws, but a deeper examination of Hollywood. The senator didn’t stop there. In a speech on the Senate floor

[Archive](#) · [Share](#)  **State Lawmakers Across the U.S. Are Cracking Down on Protest...**

02/03/17 15:58

with business or the enjoyment of one’s home. The legislation, driven by demonstrations at the residence of an attorney general and \$15-an-hour pay demands at fast-food restaurants, died in December. “A bill like this is all the more needed in the current environment,” Glenn said in an interview. In recent years, opponents of financial injustice, police brutality and pipeline projects such as the Keystone XL have rekindled mass demonstrations – some with violent elements at their fringes -- at

[Archive](#) · [Share](#)  **DiabetesBits** @DiabetesBits

02/03/17 15:49

Iowa Attorney General Publishes Misleading Article About Help Your Diabetes and Dr. J. Murray ... .. <http://11r.net>

[Archive](#) · [Share](#)  **TennesseeHeadli** @TennesseeHeadli

02/03/17 10:03

Iowa Attorney General Publishes Misleading Article About Help Your Diabetes and Dr. J. Murray Hockings <http://dlvr.it/NH8pkt>

[Archive](#) · [Share](#)  **bismarcknewsupd** @bismarcknewsupd

02/03/17 10:02

Iowa Attorney General Publishes Misleading Article About Help Your Diabetes and Dr. J. Murray Hockings <http://dlvr.it/NH8n7q>

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**concordnewsnow** @concordnewsnow

02/03/17 09:50

Iowa Attorney General Publishes Misleading Article About Help Your Diabetes and Dr. J. Murray Hockings <http://dlvr.it/NH8YG7>

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**nebraskanewsdes** @nebraskanewsdes

02/03/17 09:42

Iowa Attorney General Publishes Misleading Article About Help Your Diabetes and Dr. J. Murray Hockings <http://dlvr.it/NH8QnF>

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**latestsharenews** @latestsharenews

02/03/17 09:39

Iowa Attorney General Publishes Misleading Article About Help Your Diabetes and Dr. J. Murray Hockings <http://dlvr.it/NH8MhC>

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**universalnewspo** @universalnewspo

02/03/17 09:39

Iowa Attorney General Publishes Misleading Article About Help Your Diabetes and Dr. J. Murray Hockings <http://dlvr.it/NH8M90>

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**allstatejournal** @allstatejournal

02/03/17 09:39

Iowa Attorney General Publishes Misleading Article About Help Your Diabetes and Dr. J. Murray Hockings <http://dlvr.it/NH8Lvq>

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**KansasNewsHeadl** @KansasNewsHeadl

02/03/17 09:35

Iowa Attorney General Publishes Misleading Article About Help Your Diabetes and Dr. J. Murray Hockings <http://dlvr.it/NH8H5p>

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**innocentinforma** @innocentinforma

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**UniversalPRNews** @UniversalPRNews

02/03/17 09:26

Iowa Attorney General Publishes Misleading Article About Help Your Diabetes and Dr. J. Murray Hockings <http://dlvr.it/NH84hc>

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**Various Leftists Who Hate Good Policy, People, and Causes**

patriotmongoose.wordpress.com | 02/03/17 08:48

. Barbara Williams-Skinner, Eastern Shore, MD 100. Reverend Charles Williams,

Detroit, MI 101. Reverend Lavisha S. Williams, Raleigh, NC 102. Presiding Elder Melvin E. Wilson, Brooklyn-Westchester District, NY 103. Reverend Patrick Young, E. Elmhurst, NY Source: <http://www.pfaw.org/press-releases/100-african-american-faith-leaders-call-on-senate-to-reject-jeff-sessions-for-attorney-general/>  
More Guys Against Sessions Asian & Pacific Islander American Health Forum (APIAHF), Asian American

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### Photos from 2nd Amendment's post

02/03/17 07:38

Alps severs a ski-lift cable, sending a tram crashing to the ground and killing 20 people 2005 Alberto Gonzales won Senate confirmation as the nation's first Hispanic Attorney General 2006 An Egyptian passenger ferry sank in the Red Sea during bad weather, killing more than 1,000 passengers. 2012 Federal prosecutors dropped their investigation of Lance Armstrong, ending a nearly two-year effort aimed at determining whether the seven-time Tour de France winner and his teammates had participated in a doping program.

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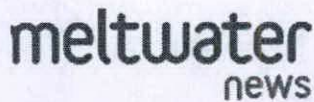
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Iowa Attorney General		1 in 1 day
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**Iowa Attorney General**

**Qualifications of Iowa's Next Governor Questioned**

Radio 570 WNAX | 02/03/17 04:26

...Governor Questioned The only independent in the state legislature is asking Iowa's attorney general to issue a written opinion on the proper...

**WORDS MATCHED** attorney general, Iowa

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**Four Trump Nominees Received by U.S. Senate**

Targeted News Service | 02/02/17 15:57

...Maryland, to be Deputy Attorney General. Rachel L. Brand, of Iowa, to be Associate Attorney

*General. Steven Andrew Engel, of the District of...*

WORDS MATCHED Attorney General, Iowa

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### Supreme Court Pick Tough Decision for Democrats; White House Press Conference with Sean Spicer, Michael Flynn; Trump Tweets about

AP (Hosted) | 02/02/17 13:40

*...president sent the following nominations to the Senate: Rachel L. Brand of Iowa to be associate attorney general. Stephen Andrew Engle ( ph) of D.C .*

WORDS MATCHED attorney general, Iowa

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### Press Briefing by Press Secretary Sean Spicer, 2/1/2017, #6

NewsroomAmerica | 02/01/17 02:54

*...President sent the following nominations to the Senate: Rachel L. Brand , of Iowa, to be Associate Attorney General; Steven Andrew Engel , of D.C.,*

WORDS MATCHED Attorney General, Iowa

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### Democratic attorneys general in 4 states challenge Trump

WFXG FOX 54 | 01/31/17 11:40

*...do "a big number" on the bill that created the agency. Iowa Attorney General Tom Miller told the AP that protecting the office is a priority .*

WORDS MATCHED Attorney General, Iowa

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## Tom Miller

### Qualifications of Iowa's Next Governor Questioned

Radio 570 WNAX | 02/03/17 04:26

*...Questioned The only independent in the state legislature is asking Iowa s attorney general to issue a written opinion on the proper transfer of power...*

WORDS MATCHED Attorney General, attorney general, Tom Miller

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### Lawmaker asks AG to review ascension plans for governor

NewtonDailyNews.com | 02/02/17 10:46

*...ascension to governor. Sen. David Johnson sent a letter Wednesday to Attorney General Tom Miller seeking an DES MOINES An Iowa lawmaker has asked the...*

WORDS MATCHED Attorney General, Tom Miller

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### Democratic attorneys general in 4 states challenge Trump

WFXG FOX 54 | 01/31/17 11:40

...protections, health care, and other major issues. New York Attorney General Eric Schneiderman told The Associated Press that lawyers, including attorneys...

**WORDS MATCHED** Attorney General, attorney general, Tom Miller

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### Iowa Attorney General



**ergasiaedo** @ergasiaedo

02/02/17 09:10

Special Assistant United States Attorney (HIDTA/ Iowa Attorney General's Office) | United States Attorney Southern... <http://ift.tt/2kleoT9>

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### @AGIowa



**commentoniowa** @commentoniowa

02/02/17 16:43

@AGIowa SF2 designates "STATE family planning services program" As family plans hv biological & religious mingling, SF2 unconstitutional

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**McCarthy, Kevin [AG]**

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**From:** Melohn, Janelle [AG]  
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**To:** Willits, Emily [AG]; Tabor, Eric [AG]; McCarthy, Kevin [AG]  
**Cc:** Dugdale, Grant [AG]; Phillips, Donna [AG]  
**Subject:** RE: Attorney Assignment

Yes, Amber Lewis at IFA is who he should get in touch with:

Thank you!



**Janelle Melohn**

**Director**

Office of the Attorney General of Iowa  
Crime Victim Assistance Division  
321 East 12<sup>th</sup> Street  
Des Moines, Iowa 50319  
Main: (515) 281-5044 | Direct: (515) 242-6109  
Email: [janelle.melohn@iowa.gov](mailto:janelle.melohn@iowa.gov) | [www.iowaattorneygeneral.gov](http://www.iowaattorneygeneral.gov)  
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**Cc:** Dugdale, Grant [AG]  
**Subject:** RE: Attorney Assignment

We can assist them – is there a contact there Grant should reach out to? Emily

---

**From:** Tabor, Eric [AG]  
**Sent:** Thursday, February 02, 2017 1:24 PM  
**To:** Willits, Emily [AG]; Melohn, Janelle [AG]; McCarthy, Kevin [AG]  
**Subject:** FW: Attorney Assignment

Emily – Could grant handle this for IFA? Thanks. Eric



**Eric Tabor**

**Chief Deputy Attorney General**

Office of the Attorney General of Iowa  
1305 E. Walnut St.  
Des Moines, Iowa 50319  
Main: (515) 281-5164 | Direct: (515) 281-5191  
Email: [Eric.Tabor@iowa.gov](mailto:Eric.Tabor@iowa.gov) | [www.iowaattorneygeneral.gov](http://www.iowaattorneygeneral.gov)

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**Subject:** Attorney Assignment

Eric/Kevin,

Could you please tell me which of our attorneys is assigned to represent the Iowa Council on Homelessness, run through the Iowa Finance Authority? Apparently their admin rules/code states they are to have representation and they are needing legal advice on a conflict of interest issue. When they inquired with the Governor's Office they had Donna Phillips listed as their counsel, which is obviously incorrect. I told them I would try to find out, so any help you can give would be appreciated.

Thanks!



**Janelle Melohn**

**Director**

Office of the Attorney General of Iowa

Crime Victim Assistance Division

321 East 12<sup>th</sup> Street

Des Moines, Iowa 50319

Main: (515) 281-5044 | Direct: (515) 242-6109

Email: [janelle.melohn@iowa.gov](mailto:janelle.melohn@iowa.gov) | [www.iowaattorneygeneral.gov](http://www.iowaattorneygeneral.gov)

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**McCarthy, Kevin [AG]**

---

**From:** Willits, Emily [AG]  
**Sent:** Thursday, February 02, 2017 1:49 PM  
**To:** Tabor, Eric [AG]; Melohn, Janelle [AG]; McCarthy, Kevin [AG]  
**Cc:** Dugdale, Grant [AG]  
**Subject:** RE: Attorney Assignment

We can assist them – is there a contact there Grant should reach out to? Emily

---

**From:** Tabor, Eric [AG]  
**Sent:** Thursday, February 02, 2017 1:24 PM  
**To:** Willits, Emily [AG]; Melohn, Janelle [AG]; McCarthy, Kevin [AG]  
**Subject:** FW: Attorney Assignment

Emily – Could grant handle this for IFA? Thanks. Eric



**Eric Tabor**  
**Chief Deputy Attorney General**  
Office of the Attorney General of Iowa  
1305 E. Walnut St.  
Des Moines, Iowa 50319  
Main: (515) 281-5164 | Direct: (515) 281-5191  
Email: [Eric.Tabor@iowa.gov](mailto:Eric.Tabor@iowa.gov) | [www.iowaattorneygeneral.gov](http://www.iowaattorneygeneral.gov)

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**From:** Melohn, Janelle [AG]  
**Sent:** Thursday, February 02, 2017 12:38 PM  
**To:** Tabor, Eric [AG]; McCarthy, Kevin [AG]  
**Subject:** Attorney Assignment

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Kevin McCarthy

5/8/2017 3:11 PM

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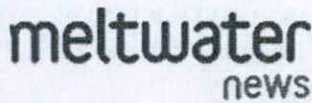
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**McCarthy, Kevin [AG]**

**From:** morningreport@meltwaternews.com  
**Sent:** Thursday, February 02, 2017 7:05 AM  
**To:** McCarthy, Kevin [AG]  
**Subject:** 43 hits from Meltwater News

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**Report Overview**

AGENT	MEDIA TYPE	HITS
Iowa Attorney General	News	19 in 1 day
Tom Miller	News	10 in 1 day
Geoff Greenwood	News	2 in 1 day
Iowa Attorney General		10 in 1 day
Tom Miller		1 in 1 day
@AGIowa		1 in 1 day

**Iowa Attorney General**

**Officials spar over refugee proposal**

The Daily Iowan | 02/02/17 02:39

...one religion over another, he said. Sen. Chuck Grassley, R-Iowa, disagrees with the attorney general. Based on the Office of Legal Counsel s...

**WORDS MATCHED** attorney general, Iowa



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**Letter: Sue Trump for election slander**

Quad-City Times | 02/02/17 00:30

*...defense of the honor, integrity and competence of election officials throughout Iowa, I would support the attorney general of Iowa, alone or...*

WORDS MATCHED attorney general, Iowa



[Archive](#) · [Share](#) · [Translate](#)  **Democratic attorneys general in 4 states challenge Trump**

New Britain Herald: Central Connecticut Communications | 02/01/17 19:33

[4 other sources...](#)

*...do "a big number" on the bill that created the agency. Iowa Attorney General Tom Miller told the AP that protecting the office is a priority .*

WORDS MATCHED Attorney General, Iowa



[Archive](#) · [Share](#) · [Translate](#)  **Press Briefing by Press Secretary Sean Spicer, 2/1/2017, #6**

Before It's News | 02/01/17 16:55

[1 other source...](#)

*...President sent the following nominations to the Senate: Rachel L. Brand , of Iowa, to be Associate Attorney General; Steven Andrew Engel , of D.C.,*



WORDS MATCHED Attorney General, Iowa

[Archive](#) · [Share](#) · [Translate](#)  **Committee OKs Sen. Sessions For Attorney General But Not Without Drama**

NYSE Post | 02/01/17 16:34

*...us, assure me that Senator Sessions will make an outstanding Attorney General", said Iowa Senator Chuck Grassley, Senate Judiciary Committee ...*

WORDS MATCHED Attorney General, Iowa

[Archive](#) · [Share](#) · [Translate](#)  **Senator asks for clarity on Iowa lieutenant governor succession**

Sioux City Journal | 02/01/17 16:10

[13 other sources...](#)

*...of lieutenant governor, and the lone independent member of the Iowa Legislature is asking Attorney General Tom Miller to resolve that question .*

WORDS MATCHED Attorney General, Iowa



[Archive](#) · [Share](#) · [Translate](#)  **Lawmaker raises legal questions about Branstad-Reynolds' transition**

The Des Moines Register | 02/01/17 15:44

[1 other source...](#)

*Lawmaker raises legal questions about Branstad-Reynolds' transition An Iowa legislator is asking Attorney General Tom Miller for an official legal...*

WORDS MATCHED Attorney General, Iowa

[Archive](#) · [Share](#) · [Translate](#)  **UPDATE: Senator asks for clarity on Iowa lieutenant governor succession**



Waterloo-Cedar Falls Courier | 02/01/17 15:15

*...of lieutenant governor, and the lone independent member of the Iowa Legislature is asking Attorney*



*General Tom Miller to resolve that question .*

WORDS MATCHED Attorney General, Iowa



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## Clarity sought on Iowa lieutenant governor succession

TheGazette.com | 02/01/17 14:11

*...of lieutenant governor, and the lone independent member of the Iowa Legislature is asking Attorney General Tom Miller to resolve that question .*

WORDS MATCHED Attorney General, Iowa

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## State Sen. Johnson seeks clarification from AG on transition between Branstad and Reynolds

KTVO | 02/01/17 13:45

[3 other sources...](#)

*...Independent in the Iowa Legislature is seeking clarification from Iowa Attorney General Tom Miller about the pending transition between Republican...*

WORDS MATCHED Attorney General, Iowa



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## Senator asks: will Reynolds get title of governor when Branstad leaves?

Radio Iowa | 02/01/17 13:23

*...Branstad leaves? The only independent in the state legislature is asking Iowa's attorney general to issue a written opinion on the proper transfer...*

WORDS MATCHED attorney general, Iowa

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## Former Mt. Pleasant school secretary accused of padding her kid's lunch accounts

Radio Iowa | 02/01/17 13:23

*...filed with the Iowa Division of Criminal Investigation, the Henry County Attorney's Office, and the Iowa Attorney General's Office. Pat Curtis*

WORDS MATCHED Attorney General, Iowa



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## Supreme Court Pick Tough Decision for Democrats; White House Press Conference with Sean Spicer, Michael Flynn; Trump Tweets about Travel Ban. Aired 1:30-2p ET

CNN.com - Transcripts | 02/01/17 12:30

*...president sent the following nominations to the Senate: Rachel L. Brand of Iowa to be associate attorney general. Stephen Andrew Engle (ph) of D.C .*

WORDS MATCHED attorney general, Iowa

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## Breaking down Trump's SCOTUS pick on tech

Politico | 02/01/17 09:08

*...House release. They include Rod Rosenstein, of Maryland, for deputy attorney general; Rachel Brand,*

of Iowa, for associate attorney general;

WORDS MATCHED attorney general, Iowa

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### Trump to nominate Maryland lawyer as Deputy Attorney General

WMDT 47 News | 02/01/17 07:09

[2 other sources...](#)

*...House also announced that Trump will nominate Rachel L. Brand of Iowa to be associate attorney general and Steven Andrew Engle of Washington ,*

WORDS MATCHED attorney general, Iowa

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### Trump to Nominate Maryland Lawyer as Deputy Attorney General

WBOC.com | 02/01/17 07:08

*...House also announced that Trump will nominate Rachel L. Brand of Iowa to be associate attorney general and Steven Andrew Engle of Washington ,*

WORDS MATCHED attorney general, Iowa

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### 3 states: Democratic attorneys general challenge Trump on immigration ban

The Frederick News-Post | 01/31/17 16:19

*...to do a big number on the bill that created the agency. Iowa Attorney General Tom Miller told the AP that protecting the office is a priority .*

WORDS MATCHED Attorney General, Iowa

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### Trump To Nominate Maryland's Top Federal Prosecutor As Deputy Attorney General

WBAL Radio 1090 AM | 01/31/17 05:57

*...House also announced that Trump will nominate Rachel L. Brand of Iowa to be associate attorney general and Steven Andrew Engle of Washington ,*

WORDS MATCHED attorney general, Iowa

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### Trump To Nominate Maryland Lawyer As Deputy Attorney General

WBAL Radio 1090 AM | 01/31/17 05:26

*...House also announced that Trump will nominate Rachel L. Brand of Iowa to be associate attorney general and Steven Andrew Engle of Washington ,*

WORDS MATCHED attorney general, Iowa

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## Officials spar over refugee proposal

The Daily Iowan | 02/02/17 02:39

...constitutionality and effectiveness of President Trump's executive order on immigration. **Attorney General Tom Miller** (a Democrat) said this is a troublesome...

**WORDS MATCHED** Attorney General, attorney general, Tom Miller

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## Democratic attorneys general in 4 states challenge Trump

New Britain Herald: Central Connecticut Communications | 02/01/17 19:33

[4 other sources...](#)

...protections, health care, and other major issues. New York **Attorney General Eric Schneiderman** told *The Associated Press* that lawyers, including attorneys...

**WORDS MATCHED** Attorney General, attorney general, Tom Miller

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## Iowa lawmaker asks AG to review ascension plans for governor

News 12 Mankato | 02/01/17 16:52

[27 other sources...](#)

...Johnson, an independent from Ocheyedan, sent a letter Wednesday to **Attorney General Tom Miller** seeking an opinion on language in the Iowa Constitution...

**WORDS MATCHED** Attorney General, Tom Miller

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## Senator asks for clarity on Iowa lieutenant governor succession

Sioux City Journal | 02/01/17 16:10

[13 other sources...](#)

...governor, and the lone independent member of the Iowa Legislature is asking **Attorney General Tom Miller** to resolve that question. Sen. David Johnson,

**WORDS MATCHED** Attorney General, attorney general, Tom Miller

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## Lawmaker raises legal questions about Branstad-Reynolds' transition

The Des Moines Register | 02/01/17 15:44

[1 other source...](#)

...Branstad-Reynolds' transition An Iowa legislator is asking **Attorney General Tom Miller** for an official legal opinion regarding the constitutionality...

**WORDS MATCHED** Attorney General, Tom Miller



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## UPDATE: Senator asks for clarity on Iowa lieutenant governor succession

Waterloo-Cedar Falls Courier | 02/01/17 15:15

...governor, and the lone independent member of the Iowa Legislature is asking **Attorney General Tom Miller** to resolve that question. Sen. David Johnson,

**WORDS MATCHED** Attorney General, attorney general, Tom Miller

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## Clarity sought on Iowa lieutenant governor succession

TheGazette.com | 02/01/17 14:11

*...Iowa lieutenant governor succession Senator asks for opinion of state attorney general DES MOINES*

*There s little if any disagreement that if..*

WORDS MATCHED Attorney General, attorney general, Tom Miller

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### State Sen. Johnson seeks clarification from AG on transition between Branstad and Reynolds

KTVO | 02/01/17 13:45

[3 other sources...](#)

*...in the Iowa Legislature is seeking clarification from Iowa Attorney General Tom Miller about the pending transition between Republican Governor...*

WORDS MATCHED Attorney General, Tom Miller

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### Senator asks: will Reynolds get title of governor when Branstad leaves?

Radio Iowa | 02/01/17 13:23

*...leaves? The only independent in the state legislature is asking Iowa s attorney general to issue a written opinion on the proper transfer of power...*

WORDS MATCHED Attorney General, attorney general, Tom Miller

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### 3 states: Democratic attorneys general challenge Trump on immigration ban

The Frederick News-Post | 01/31/17 16:19

*...protections, health care, and other major issues. New York Attorney General Eric Schneiderman told The Associated Press that lawyers, including attorneys...*

WORDS MATCHED Attorney General, attorney general, Tom Miller

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## Geoff Greenwood

### Senator asks for clarity on Iowa lieutenant governor succession

Sioux City Journal | 02/01/17 16:10

*...resignation, Lt. Governor Reynolds will become Governor. However, Geoff Greenwood said the Attorney General s Office will review its research before...*

WORDS MATCHED Geoff Greenwood

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### UPDATE: Senator asks for clarity on Iowa lieutenant governor succession

Waterloo-Cedar Falls Courier | 02/01/17 15:15

*upon his resignation, Reynolds will become governor. However, Geoff Greenwood said the Attorney General s Office will review its research before...*

WORDS MATCHED Geoff Greenwood

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[See More Results](#)**Iowa Attorney General****Iowan Nominated To Serve In Trump Justice Department**

02/01/17 21:45

An Iowa native is nominated to serve in the US Justice Department in the Trump Administration. WASHINGTON, D.C. -- An Iowa native has been nominated to serve in a high ranking position in Donald Trump's Justice Department. Rachel Brand has been nominated to serve as Associate Attorney General to the United States. This wouldn't be her first time working in the Justice Department. She serv...

[Archive](#) · [Share](#) **The Truth Behind the Election**

wyattblogsabouthistory.wordpress.com | 02/01/17 20:58

several predominantly Islamic countries just days ago, and fired his acting Attorney General for disobeying his orders to enforce it. America got what it voted for, and this WAS a Trump campaign promise, yet America elected him anyway, so obviously it has some support. However, Liberals are crying up a storm. Conservatives have put up with Obama for 8 years without being violent and tearing apart friends and families. By comparison, Trump does one small thing and liberals are ready for a Civil

[Archive](#) · [Share](#) **Independent senator questions whether Reynolds will get titl...**

02/01/17 20:05

Independent senator questions whether Reynolds will get title of governor <http://www.kjan.com/index.php/2017/02/independent-senator-questions-whether-reynolds-will-get-title-of-governor/> The only independent in the state legislature is asking Iowa's attorney general to issue a written opinion on the proper transfer of power when Republican Governor Terry Branstad resigns to b...

[Archive](#) · [Share](#) **Wells Fargo Foreclosure: Another Unconscionable Foreclosure ...**

livinglies.wordpress.com | 02/01/17 16:23

State Attorney General's Office, to name just two. When mortgages are resold, consumers are not supposed to become collateral damage during the process. Mortgage companies have a legal obligation to protect consumers. That means paperwork should never be lost and should never hinder a consumer's chance to save their home from unnecessary foreclosure. Famous last words and, ultimately, empty promises for Leanne. Two weeks ago her home was sold at foreclosure for \$55,000. Not only did she lose

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**State Sen. Johnson seeks clarification from AG on transition...**

02/01/17 16:01

Johnson said there are several legal questions that have come up as lawmakers prepare for Governor Branstad's pending resignation. The sole Independent in the Iowa Legislature is seeking clarification from Iowa Attorney General Tom Miller about the pending transition between Republican Governor Terry Branstad and Lieutenant Governor Kim Reynolds, once he is confirmed as the next U.S.

[Archive](#) · [Share](#) **Home**

02/01/17 15:08

Bankruptcy of the UNITED...www.youhavetheright.com/tour3 Background- 1933 The Bankruptcy of the UNITED STATES. ... passed House Joint Resolution 192 which served ... impossible as notes of debt do not pay for anything ... Gonzales v. Oregon, 546 U.S. 243 (2006), was a decision by the United States Supreme Court, which ruled that the United States Attorney General could not enforce the federal Controlled Substances Act against physicians who prescribed drugs, in compliance with Oregon state law, for

[Archive](#) · [Share](#) **Trump's AG Pick Sessions Approved By Senate Committee - Silv...**

02/01/17 14:27

<http://www.brotherjohnf.com/trumps-ag-pick-sessions-approved-senate-committee/> - Trump's AG Pick Sessions Approved By Senate Committee. -- zerohedge.com / by Tyler Durden / Feb 1, 2017 Despite relentless obstructionism by Democrats, a Senate committee voted to confirm Jeff Sessions to be the next US attorney general on Wednesday, two days after the growing controversy surrounding President Trump's travel ban on seven Muslim nations led to the firing of the acting AG for "betrayal." Sessions

[Archive](#) · [Share](#) **Senator asks: will Reynolds get title of governor when Brans...**

radioiowa.com | 02/01/17 13:24

The only independent in the state legislature is asking Iowa's attorney general to issue a written opinion on the proper transfer of power when Republican Governor Terry Branstad resigns to become ambassador to China. "Although a number of legal experts believe it's a settled issue, there are others that don't," Senator David Johnson of Ocheyedon [...]



[Archive](#) · [Share](#) **Trump's AG Pick Sessions Approved By Senate Committee**

zerohedge.com | 02/01/17 10:50

to slow progress on other Trump nominees, including Steve Mnuchin, Rep. Tom Price, and Scott Pruitt. The Alabama senator's path to confirmation was made more complicated by Trump's firing of acting Attorney General Sally Yates, who



deemed the president's order illegal and said she would not have Justice attorneys defend it. Committee Democrats on Tuesday praised Yates for her actions and accused Sessions of helping Trump draft the order, a claim Committee Chair Chuck Grassley (R-Iowa) denied. "I



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**SiouxCitylow** @SiouxCitylow

02/01/17 09:36

KTIV President Trump fires acting Attorney General over refugee ban KTIV Trump fires acting... <https://t.co/tOrNFLqZDD> #SiouxCity #Iowa

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**Tom Miller**



**State Sen. Johnson seeks clarification from AG on transition...**

02/01/17 16:01

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**@AGIowa**



**IowaInsDiv** @IowaInsDiv

02/01/17 10:05

Good piece for consumers by #IowaFraudFighters partner @AGIowa. Common for this scam to be mentioned at our events.  
<https://www.iowaattorneygeneral.gov/for-consumers/consumer-focus/consumer-focus/sweetheart-scams/sweetheart-scams/> ...

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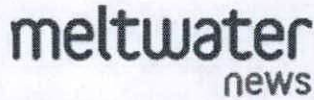
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**McCarthy, Kevin [AG]**

**From:** morningreport@meltwaternews.com  
**Sent:** Friday, January 27, 2017 7:06 AM  
**To:** McCarthy, Kevin [AG]  
**Subject:** 11 hits from Meltwater News

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**Report Overview**

AGENT	MEDIA TYPE	HITS
Iowa Attorney General	News	5 in 1 day
Tom Miller	News	2 in 1 day
Iowa Attorney General		3 in 1 day
@AGIowa		1 in 1 day

**Iowa Attorney General**

**Animal shelter official accused of theft, forgery**

Oskaloosa | 01/26/17 23:51

...asked for help from the Marion County Sheriff s Office and the Iowa Attorney General s office to probe the allegations in order to avoid any...

**WORDS MATCHED** Attorney General, Iowa

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**Investigation finds former ISU employee took thousands of dollars**

Radio Iowa | 01/26/17 12:06

...Safety, the Iowa Division of Criminal Investigation, the Story County Attorney s Office, and the Iowa

Attorney General s Office. Dar Danielson

WORDS MATCHED Attorney General, Iowa

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### Southeast Iowa woman faces theft and forgery charges

KTVO | 01/26/17 11:33

*...the Sheriff's Office were assisted in the case by the Marion County Sheriff's Office and the Iowa Attorney General's Office. by KTVO News Desk*

WORDS MATCHED Attorney General, Iowa

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### Governor's charity discloses donors, after IRS deadline

NewtonDailyNews.com | 01/26/17 10:36

*million in the bank. The IRS declined to comment. A spokesman for Iowa Attorney General Tom Miller, a Democrat, said that unlike many states ,*

WORDS MATCHED Attorney General, Iowa

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### Justice proposal is worth discussion

TheGazette.com | 01/26/17 09:16

*...strong appeal. Maybe the solution is creating a position in the Iowa Attorney General s Office designated to handle officer-involved incidents .*

WORDS MATCHED Attorney General, Iowa

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## Tom Miller

### Georgia AG named to Human Trafficking Combat Committee

All On Georgia Floyd County | 01/27/17 05:02

*...to Human Trafficking Combat Committee Chris Carr has not been the Georgia Attorney General for long, but he has already landed himself on a high...*

WORDS MATCHED Attorney General, Tom Miller

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### Governor's charity discloses donors, after IRS deadline

NewtonDailyNews.com | 01/26/17 10:36

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WORDS MATCHED Attorney General, Tom Miller

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[See More Results](#)**Iowa Attorney General****The Mystery of Rudy Giuliani's Moral Decline Isn't Such a My...**

01/26/17 18:00

-choice? I don't think anyone's asked him. I tried to ask a spokesman, but he didn't respond to emails about Giuliani's ideological journey.) Still, something pushed him over the edge this election cycle. From the small number of old Rudy hands who agreed to talk with me (always without their names attached and usually not for attribution), a few theories emerged. First, simply, he wanted an important job, and specifically, secretary of State. Attorney general is horizontal, from Rudy's

[Archive](#) · [Share](#) **Feinstein delays Sessions committee vote, showing that we ne...**

dailykos.com | 01/26/17 14:21

Campaign Action Sen. Dianne Feinstein (D-CA), citing the power behind the massive Women's March all around the country as her inspiration, has delayed a committee vote on Sen. Jeff Sessions (R-AL) nomination to be attorney general. "Many, many millions of Americans are deeply concerned about what the future will bring. That's a hallmark of what happened this past Saturday in the march," Feinstein told her committee colleagues Tuesday. "The least we can do is tell them that we're being as

[Archive](#) · [Share](#) **Donald Trump can't come to terms with his popular vote loss,...**

salon.com | 01/26/17 07:27

at a later date from whatever transaction we make from Mexico. Now, I could wait a year and I could hold off the wall. But I wanna build the wall. We have to build the wall. We have to stop drugs from pouring in. We have to stop people from just pouring into our country. We have no idea where they're from. And I campaigned on the wall. And it's very important. But that wall will cost us nothing." ... and about how Sen. Jeff Sessions, Trump's pick for attorney general, is opposed to the DREAM Act

[Archive](#) · [Share](#) [See More Results](#)**@AGIowa**



**Obiden1konobe** @Obiden1konobe

01/26/17 21:04

@AGlowa Please stand in opposition to federal efforts to strip states of the right to license #poker websites. #CronyCapitalism

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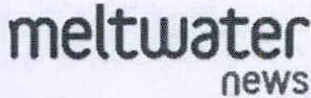
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**McCarthy, Kevin [AG]**

**From:** morningreport@meltwaternews.com  
**Sent:** Thursday, January 26, 2017 7:09 AM  
**To:** McCarthy, Kevin [AG]  
**Subject:** 28 hits from Meltwater News

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AGENT	MEDIA TYPE	HITS
Iowa Attorney General	News	9 in 1 day
Tom Miller	News	9 in 1 day
Iowa Department of Justice	News	1 in 1 day
Iowa Attorney General		6 in 1 day
@AGIowa		3 in 1 day

**Iowa Attorney General**

**Stephen Memorial Animal Shelter Charged With Theft And Forgery**

Oskaloosa News | 01/25/17 17:00

...s Office were assisted by the Marion County Sheriff s Office and the Iowa Attorney General s Office with this investigation. As a reminder , a...

**WORDS MATCHED** Attorney General, Iowa

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**Iowa governor's charity discloses donors, after IRS deadline**

KGAN-TV CBS 2 Iowa | 01/25/17 15:08

[137 other sources...](#)

*million in the bank. The IRS declined to comment. A spokesman for Iowa Attorney General Tom Miller, a Democrat, said that unlike many states ,*

WORDS MATCHED Attorney General, Iowa

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### Iowa governor's charity belatedly discloses donors

The Salt Lake Tribune | 01/25/17 14:45

*million in the bank. The IRS declined to comment. A spokesman for Iowa Attorney General Tom Miller, a Democrat, said that unlike many states ,*

WORDS MATCHED Attorney General, Iowa

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### Iowa governor's charity discloses donors, after IRS deadline

94.5 WGTK The Answer | 01/25/17 11:33

[11 other sources...](#)

*million in the bank. The IRS declined to comment. A spokesman for Iowa Attorney General Tom Miller, a Democrat, said that unlike many states ,*

WORDS MATCHED Attorney General, Iowa

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### Iowa governor's charity discloses donors, after IRS deadline | WNCN

WNCN.com | 01/25/17 11:26

*million in the bank. The IRS declined to comment. A spokesman for Iowa Attorney General Tom Miller, a Democrat, said that unlike many states ,*

WORDS MATCHED Attorney General, Iowa

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### A charity controlled by Iowa Gov. Terry Branstad has disclosed the names of donors who collectively gave \$1 million toward 2015 events celebrating his tenure in office, two months after missing a deadline for doing so

The Register-Guard | 01/25/17 11:07

*million in the bank. The IRS declined to comment. A spokesman for Iowa Attorney General Tom Miller, a Democrat, said that unlike many states ,*

WORDS MATCHED Attorney General, Iowa

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### Iowa governor's charity discloses donors, after IRS deadline | WCBD News 2

Count On News 2 | 01/25/17 11:02

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WORDS MATCHED Attorney General, Iowa

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### Iowa governor's charity discloses donors, after IRS deadline | Nation



The Sentinel - Cumberlink | 01/25/17 10:59

*million in the bank. The IRS declined to comment. A spokesman for Iowa Attorney General Tom Miller,*



a Democrat, said that unlike many states ,

WORDS MATCHED Attorney General, Iowa



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### "Iowa governor's charity discloses donors, after IRS deadline"

The Big Story | 01/25/17 10:59

million in the bank. The IRS declined to comment. A spokesman for Iowa Attorney General Tom Miller, a Democrat, said that unlike many states ,

WORDS MATCHED Attorney General, Iowa

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## Tom Miller



### Iowa governor's charity discloses donors, after IRS deadline

KGAN-TV CBS 2 Iowa | 01/25/17 15:08

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### Iowa governor's charity belatedly discloses donors

The Salt Lake Tribune | 01/25/17 14:45

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WORDS MATCHED Attorney General, Tom Miller



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### Attorney General Chris Carr Appointed to National Committee to Combat Human Trafficking

Coosa Valley News | 01/25/17 12:09

Attorney General Chris Carr Appointed to National Committee to Combat Human Trafficking Attorney General Chris Carr has been appointed by the...

WORDS MATCHED Attorney General, Tom Miller

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### Iowa governor's charity discloses donors, after IRS deadline

94.5 WGTK The Answer | 01/25/17 11:33

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WORDS MATCHED Attorney General, Tom Miller



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### Iowa governor's charity discloses donors, after IRS deadline | WNCN

WNCN.com | 01/25/17 11:26

*...in the bank. The IRS declined to comment. A spokesman for Iowa Attorney General Tom Miller, a Democrat, said that unlike many states, his office...*

WORDS MATCHED Attorney General, Tom Miller



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The Register-Guard | 01/25/17 11:07

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WORDS MATCHED Attorney General, Tom Miller

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### Newton students taking a stance against sex trafficking

WeArelowa | 01/25/17 23:00



...from people like former criminal investigator Mike Ferjack who served on the **Iowa Department of Justice**. "We have programs that come in and give..."

WORDS MATCHED Iowa Department of Justice

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Iowa Attorney General



President Donald Trump's ABC Interview And The 13 Most WTF M...

huffingtonpost.co.uk | 01/26/17 06:35

they're getting out. We're gonna get them out. We're gonna get 'em out fast. General Kelly is — I've given that as his number one priority. DAVID MUIR: Senator Jeff Sessions, your pick for attorney general, as you know during his confirmation hearing said that ending DACA, this is President Obama's policy protecting the dreamers — that, "Ending it certainly would be constitutional." That you could end the protection of these dreamers. Is that a possibility? PRESIDENT TRUMP: We're gonna be



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01/26/17 01:28

Bankruptcy of the UNITED...www.youhavetheright.com/tour3 Background- 1933 The Bankruptcy of the UNITED STATES. ... passed House Joint Resolution 192 which served ... impossible as notes of debt do not pay for anything ... Gonzales v. Oregon, 546 U.S. 243 (2006), was a decision by the United States Supreme Court, which ruled that the United States Attorney General could not enforce the federal Controlled Substances Act against physicians who prescribed drugs, in compliance with Oregon state law, for



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TRANSCRIPT: ABC News Anchor David Muir Interviews President ...

01/26/17 01:14

have really bad people that are here. Those people have to be worried 'cause they're getting out. We're gonna get them out. We're gonna get 'em out fast. General Kelly is — I've given that as his number one priority. DAVID MUIR: Senator Jeff Sessions, your pick for attorney general, as you know during his confirmation hearing said that ending DACA, this is President Obama's policy protecting the dreamers — that, "Ending it certainly would be constitutional." That you could end the protection of

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01/25/17 23:08

... Gonzales v. Oregon, 546 U.S. 243 (2006), was a decision by the United States Supreme Court, which ruled that the United States Attorney General could not

enforce the federal Controlled Substances Act against physicians who prescribed drugs, in compliance with Oregon state law, for the assisted suicide of the terminally ill. It was the first major case heard under the leadership of Chief Justice John Roberts.[1] It is the duty of every lawful Bloodline American to oppose all enemies of this

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### Inspired By Women's March, Dianne Feinstein Delays Vote On T...

huffingtonpost.com | 01/25/17 16:05

&HPTrack.Vid.Vidible&m.fwkeyvalues WASHINGTON — The Senate Judiciary Committee has delayed its vote on President Donald Trump's attorney general nominee by one week at the urging of Sen. Dianne Feinstein (D-Calif.), who implored her colleagues to listen to the concerns of the women who turned out to march on Saturday. "Many, many millions of Americans are deeply concerned about what the future will bring. That's a hallmark of what happened this past Saturday in the march," Feinstein told her

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### Howard

01/25/17 10:01

the United States (Art. I, §6, cl. 2 & Art. II, §1, cl. 7) •Pay the Debts (Art. I, §8, cl. 1 & Art. VI, cl.1) •Pay tax collectors (Art. I, §8, cl.1) •Regulate commerce with foreign Nations, among the several States, and with Indian Tribes (Art. I, §8, cl.3) •Immigration office (Art. I, §8, cl.4) •The mint (Art. I, §8, cl. 5) •Attorney General to handle the small amount of authorized federal litigation involving the national government (e.g., Art. I, §8, cls. 6 & 10) •Post offices & post roads (Art

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### Fight4Poker1 @Fight4Poker1

01/25/17 19:15

@AGlowa Opponents of state-licensed iPoker cannot show ONE out-of-state or underage player. This lobbying for a ban is #CronyCapitalism.

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### Zeek111 @Zeek111

01/25/17 10:03

@AGlowa Opponents of state-licensed iPoker cannot show ONE out-of-state or underage player. This lobbying for a ban is #CronyCapitalism.

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**Yildiz1862** @Yildiz1862

01/25/17 08:36

@AGlowa Opponents of state-licensed iPoker cannot show ONE out-of-state or underage player. This lobbying for a ban is #CronyCapitalism.

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**McCarthy, Kevin [AG]**

---

**From:** Ambrozic, Jane [AG]  
**Sent:** Wednesday, January 25, 2017 2:38 PM  
**To:** McCarthy, Kevin [AG]  
**Subject:** RE: Feb 2

Yes.

---

**From:** McCarthy, Kevin [AG]  
**Sent:** Wednesday, January 25, 2017 2:25 PM  
**To:** Ambrozic, Jane [AG]  
**Subject:** RE: Feb 2

Can I claim 2pm for that meeting?



**Kevin McCarthy**  
**First Assistant Attorney General**  
Office of the Attorney General of Iowa  
1305 E. Walnut St.  
Des Moines, Iowa 50319  
Main: (515) 281-5164  
Fax: (515) 281-4209  
Email: [kevin.mccarthy@iowa.gov](mailto:kevin.mccarthy@iowa.gov) | [www.iowaattorneygeneral.gov](http://www.iowaattorneygeneral.gov)

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**From:** Ambrozic, Jane [AG]  
**Sent:** Wednesday, January 25, 2017 2:24 PM  
**To:** McCarthy, Kevin [AG]  
**Subject:** RE: Feb 2

A 9:00 a.m. call and lunch w/ the Lt. Governor. Otherwise pretty clear.

---

**From:** McCarthy, Kevin [AG]  
**Sent:** Wednesday, January 25, 2017 2:19 PM  
**To:** Ambrozic, Jane [AG]  
**Subject:** Feb 2

What does Tom's schedule look like next Thursday the 2<sup>nd</sup>? It is for a meeting with the FBI here.



**Kevin McCarthy**  
**First Assistant Attorney General**  
Office of the Attorney General of Iowa  
1305 E. Walnut St.  
Des Moines, Iowa 50319  
Main: (515) 281-5164  
Fax: (515) 281-4209  
Email: [kevin.mccarthy@iowa.gov](mailto:kevin.mccarthy@iowa.gov) | [www.iowaattorneygeneral.gov](http://www.iowaattorneygeneral.gov)

Kevin McCarthy

5/8/2017 3:11 PM

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**McCarthy, Kevin [AG]**

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**From:** McCarthy, Kevin [AG]  
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**McCarthy, Kevin [AG]**

**From:** morningreport@meltwaternews.com  
**Sent:** Thursday, January 19, 2017 7:06 AM  
**To:** McCarthy, Kevin [AG]  
**Subject:** 12 hits from Meltwater News

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**Report Overview**

AGENT	MEDIA TYPE	HITS
Iowa Attorney General	News	5 in 1 day
Tom Miller	News	1 in 1 day
Iowa Attorney General		6 in 1 day

**Iowa Attorney General**

**Jan. 19, 2017**

Waterloo-Cedar Falls Courier | 01/19/17 01:30

...[brian-chapman@uiowa.edu](#). Q: Why does the Iowa Attorney General allow companies to advertise their workout equipment stating it can help people...

WORDS MATCHED Attorney General, Iowa

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**Alexander: Legal fees might frame Muscatine impeachment**

Quad-City Times | 01/19/17 01:00

...legal fees defending the council against Broderson's complaints filed with Iowa Attorney General's Office and other entities, City Attorney Matt...

WORDS MATCHED Attorney General, attorney general, Iowa



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### Legal fees, costs of litigation may be behind council action

The Muscatine Journal | 01/18/17 19:00

...*Sen. Rich Taylor, D-Mt. Pleasant, was sent to the Iowa Attorney General's Office, and the response stated an opinion on Iowa code regarding mayoral...*

WORDS MATCHED Attorney General, Iowa

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### Should Iowa raise its fines for polluters?

Myinforms | 01/18/17 17:57

[1 other source...](#)

...\$10,000. Violations exceeding that amount are referred to the Iowa Attorney General's office for prosecution. Lawmakers approved a bill in 2005...

WORDS MATCHED Attorney General, Iowa



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### Don't Be Fooled by Family Emergency Grandparent Scam

Iowa State University Extension and Outreach | 01/18/17 13:44

...or bank account information to strangers by telephone. The Iowa Attorney General indicates that these types of transactions, which generally...

WORDS MATCHED Attorney General, Iowa

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### Tom Miller



### Should Iowa raise its fines for polluters?

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WORDS MATCHED Attorney General, attorney general, Tom Miller

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### Iowa Attorney General



### Q&A: Advocate upbeat about Midwest as Trump administration I...

midwestenergynews.com | 01/19/17 06:31

pass stronger laws in case the Trump administration weakens or does not enforce



federal protections? On the clean water and clean air and clean energy fronts, it's clear we're going to need to play defense in Washington D.C. Trump nominated Oklahoma Attorney General Scott Pruitt to be U.S. EPA Administrator. Mr. Pruitt has spent his career as an Attorney General persistently suing the EPA to stop or stall standards to protect clean air and safe drinking water. It is the fox guarding the chicken

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### Trump's Pick for EPA Chief Wants to Partner With, Not Punish...

[dailysignal.com](#) | 01/18/17 18:08

President-elect Donald Trump's pick to run the Environmental Protection Agency explained how he would make cooperating with the states a priority of the department during a Wednesday hearing on Capitol Hill. Scott Pruitt, the Oklahoma attorney general, stressed "cooperative federalism" would be his guiding philosophy in running EPA, meaning he wants the often-controversial agency to work with states. "Cooperative federalism is at the heart of many of the environmental statutes that have been

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### Daily Kos Elections Live Digest: 1/17

[dailykos.com](#) | 01/18/17 12:46

recently endorsed Alabama Sen. Jeff Session's nomination for U.S. attorney general. Yellow Hammer State Democrats don't exactly have a formidable bench, but it's possible that Cobb has just burned too many bridges to win a contested primary. Cobb says she's being encouraged by supporters to run for governor in 2018, though she says she hasn't made a decision. And it wouldn't be an election year in Alabama if we didn't get to whip out one of our favorite headlines, "Parker Griffith Can Lose." That's

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### 2016 Was The Hottest Year On Record

[huffingtonpost.com](#) | 01/18/17 11:20

Donald Trump is sworn into office. Many of his Cabinet appointees have either downplayed the effects of climate change or denied its existence and generally oppose the energy policies scientists say are necessary to slow the global rise in temperature. His picks include Exxon Mobil CEO Rex Tillerson, whose company is under investigation for climate denial, as secretary of state; Oklahoma Attorney General Scott Pruitt to lead the Environmental Protection Agency, which he is suing to stop power plant

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### Safe Spaces for Fascists

[warsclerotic.com](#) | 01/18/17 10:29

"content-based", the heckler's veto allows the left to shut down events by a combination of student protests and administration security fees. Unlike NYU and DePaul, the University of California can't move forward with an outright ban. But

“fee bans” worked at Iowa State and North Dakota State. With the UC Santa Barbara event canceled, that leaves UC Berkeley. University of Washington president Ana Mari Cauce had consulted the Attorney General to find grounds to ban the tour while warning, in a message



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### 2016 Was The Hottest Year On Record

[huffingtonpost.com](#) | 01/18/17 10:07

is sworn into office. Many of his Cabinet appointees have either downplayed the effects of climate change or denied its existence and generally oppose the energy policies scientists say are necessary to slow the global rise in temperature. His picks include Exxon Mobil CEO Rex Tillerson, whose company is under investigation for climate denial, as secretary of state; Oklahoma Attorney General Scott Pruitt to lead the Environmental Protection Agency, which he is suing to stop power plant

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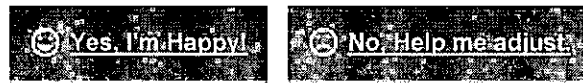
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Iowa Attorney General	News	2 in 1 day
Tom Miller	News	1 in 1 day

**Iowa Attorney General**

**Scammers who target unsuspecting elderly steal billions each year**

KCCI Channel 8 | 01/15/17 20:02

...exploitation that reached authorities, 44 cases went unreported. Iowa Assistant Attorney General Chantelle Smith said solid statistics on all...

WORDS MATCHED Attorney General, Iowa

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**Branstad appoints ex-deputy AG to public information board**

KTVO | 01/15/17 08:30

[26 other sources...](#)

...the board that expires in 2020. Pottorff served for years under Iowa Attorney General Tom Miller and often gave advice to state and local agencies...

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**Tom Miller**



### Branstad appoints ex-deputy AG to public information board

KTVO | 01/15/17 08:30

[26 other sources...](#)

...Iowa Public Information Board. Branstad announced Friday that former deputy **attorney general Julie Pottorff** will fill a DES MOINES, Iowa (AP )

**WORDS MATCHED** Attorney General, attorney general, Tom Miller

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Iowa Attorney General	News	4 in 1 day
Tom Miller	News	1 in 1 day
Iowa Attorney General		8 in 1 day

**Iowa Attorney General**

**Bringing stalking out of the shadows**

TimesRepublican.com | 01/15/17 00:05

...319-242-7536 or jodi@iunaiowa.org. For additional resources, contact the Iowa Attorney General's Crime Victim Assistance Division at 1-800-373-5044...

WORDS MATCHED Attorney General, Iowa Archive - Share - Translate

**Thistle: State ignores law on online horse-race wagering**

The Des Moines Register | 01/14/17 17:44

...story, and he appears to be correct. A spokesman for the Iowa attorney general's office says only that the office has reviewed the situation ,

WORDS MATCHED attorney general, Iowa Archive - Share - Translate





## Iowa Says NO to Jeff Sessions

Reader Supported News | 01/14/17 12:04

...*Moinés office to protest the nomination of Senator Jeff Sessions as Attorney General. Iowa Says NO to Jeff Sessions from Reader Supported News...*

**WORDS MATCHED** Attorney General, Iowa



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## Branstad appoints ex-deputy AG to public information board

Roanoke.com | 01/13/17 12:59

...*the board that expires in 2020. Pottorff served for years under Iowa Attorney General Tom Miller and often gave advice to state and local agencies...*

**WORDS MATCHED** Attorney General, Iowa

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### Tom Miller

## Branstad appoints ex-deputy AG to public information board

Roanoke.com | 01/13/17 12:59

...*Iowa Public Information Board. Branstad announced Friday that former deputy attorney general Julie Pottorff will fill a DES MOINES, Iowa (AP)*

**WORDS MATCHED** Attorney General, attorney general, Tom Miller

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### Iowa Attorney General



## Muscatine City Council Begins Impeachment Effort Against Cit...

jontrouten.blogspot.com | 01/15/17 02:31

struggled for achieve any of her limited mayoral duties, which pretty much consist of making appointments to city commissions, as well as appointing the Police and Fire Chief. In fact, the City Council voted last summer on an ordinance that stripped the mayor of those duties. Mayor Broderson challenged this new ordinance and received a decision from the state Attorney General's Office back in October 2016 indicating that the City Council lacked the authority to make these changes and that it was

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**Still Tricky After All These Years**

brain-on-fire.com | 01/14/17 23:31

derogatory information to combat advocates of unpopular causes have long since passed. We are out of that business forever." "The collection and dissemination of information today is carefully regulated by privacy statutes and by Attorney General guidelines which will soon be embodied as a part of a legislative charter for the F.B.I.," he said. "Criminal conduct is the key requirement for all domestic investigations of the F.B.I." Names Deleted From Papers The bureau could not say today how many

[Archive](#) · [Share](#)  **2 arrested in protest in US Sen. Grassley's Iowa office**

01/14/17 20:00

Two people participating in a sit-in at U.S. Sen. Chuck Grassley's office have been arrested. A news release by the Iowa Citizens for Community Improvement Action Fund says the arrests followed a four-hour sit-in Friday at Grassley's office in Des Moines to protest the nomination of fellow Republican Sen. Jeff Sessions as the next attorney general by President-elect Donald Trump. DES MOINES, Iowa (AP) — Two people participating in a sit-in at U.S. Sen. Chuck Grassley's office have been arrested.

[Archive](#) · [Share](#)  **Hidden figures: What Trump's AG pick Jeff Sessions wants to ...**

salon.com | 01/14/17 14:33

Attorney General nominee Sen. Jeff Sessions, R-Ala., smiles while greeting the press with Sen. Charles Grassley, R-Iowa, Chairman of the Senate Judiciary Committee, on Capitol Hill Tuesday, Nov. 29, 2016 in Washington. (AP Photo/Molly Riley) (Credit: AP) As the Senate hearings for Jeff Sessions' nomination as attorney general ran into their second day, I kept thinking about the movie "Hidden Figures," which my wife Judith and I saw three days earlier. The film is based on a book by Margot Lee

[Archive](#) · [Share](#)  **2 arrested in protest in US Sen. Grassley's Iowa office**

01/14/17 14:30

Nearly 100 people showed up at the office and pledged not to leave until Grassley agreed to block Sen. Jeff Sessions' appointment as Attorney General. Two people participating in a sit-in at U.S. Sen. Chuck Grassley's office have been arrested. A news release by the Iowa Citizens for Community Improvement Action Fund says the arrests followed a four-hour sit-in Friday at Grassley's office in Des Moines to



[Archive](#) · [Share](#)  **2 arrested in protest in US Sen. Grassley's Iowa office**

01/14/17 14:30

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### Rosie O'Donnell has declared she would endorse Marital Law .....

01/14/17 13:05

Rosie O'Donnell has declared she would endorse Marital Law to delay Don Trump's inauguration to check him out in several areas. If she has the courage to make such a brave statement, will so do I. Why don't we do a check it out thing, on All appointees. Jeff Sessions, Attorney General selected by the business man has recently stated, "Good people don't smoke marijuana" Right there, that illuminates him, for making false and ignorant statements. Our Green & Political Movement has our largest



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### January 12, 2017

floydjfernandez.wordpress.com | 01/14/17 07:47

GOOD NEWS: Those who have a wide array of reasons to get an extension for their Employment Authorization Document (EAD), ranging from those eligible for asylum to those applying out of an application for cancellation of removal, now have a new regulatory permission, effective Tuesday the 17th, that as long as they file before the time in which they must to get their renewals considered, they get an automatic 6-month extension of their EAD. Instead of the likes of former Kansas Attorney General

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Report Overview

Table with 3 columns: AGENT, MEDIA TYPE, HITS. Rows include Iowa Attorney General (News, 3 in 1 day), Tom Miller (News, 3 in 1 day), and Iowa Attorney General (6 in 1 day with social media icons).

Iowa Attorney General

Branstad Appoints Ex-Deputy AG to Public Information Board

News 12 Mankato | 01/13/17 20:26

...the board that expires in 2020. Pottorff served for years under Iowa Attorney General Tom Miller and often gave advice to state and local agencies...

WORDS MATCHED Attorney General, Iowa

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Branstad appoints ex-deputy AG to public information board

Clinton Herald | 01/13/17 18:00

24 other sources...

...the board that expires in 2020. Pottorff served for years under Iowa Attorney General Tom Miller and often gave advice to state and local agencies...

WORDS MATCHED Attorney General, Iowa

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### NAACP, others hold sit-in against Sessions at Grassley's office

The Deming Headlight | 01/13/17 15:33

[98 other sources...](#)

...him to block the confirmation of Alabama Sen. Jeff Sessions as **attorney general**. The NAACP, the Iowa NAACP president Cornell Brooks and members...

**WORDS MATCHED** attorney general, Iowa

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## Tom Miller

### Branstad Appoints Ex-Deputy AG to Public Information Board

News 12 Mankato | 01/13/17 20:26

...Iowa Public Information Board. Branstad announced Friday that former deputy **attorney general** Julie Pottorff will fill a term on the board that...

**WORDS MATCHED** Attorney General, attorney general, Tom Miller



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### Moody's to pay \$864M to settle claims it inflated ratings

WQAD.com | 01/13/17 19:57

...holding Moody's accountable for harming investors and our economy, said **Attorney General Tom Miller**. In addition to the monetary settlement, Moody...

**WORDS MATCHED** Attorney General, Tom Miller

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### Branstad appoints ex-deputy AG to public information board

Clinton Herald | 01/13/17 18:00

[24 other sources...](#)

...Iowa Public Information Board. Branstad announced Friday that former deputy **attorney general** Julie Pottorff will fill a DES MOINES, Iowa (AP )

**WORDS MATCHED** Attorney General, attorney general, Tom Miller

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## Iowa Attorney General





### Most TDCJ sex assault victims housed in just a few units, mo...

gritsforbreakfast.blogspot.com | 01/14/17 06:44

assault, only nine were sentenced to serve time." Just as there's an argument for

creating a division at the Attorney General to prosecute police misconduct to take decisions out of the hands of local prosecutors, there's an equally good argument to be made for doing the same thing when prosecuting TDCJ guards. Elected, rural prosecutors understandably are reticent to go after workers at the largest employer in town, and may feel more in common with TDCJ staff than their victims. That's a recipe

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### 9/11 it says, and granite pillars do not lie???

zaetsch.blogspot.com | 01/14/17 04:46

constructive dialogue." [links in original omitted, excerpt from article end] Browder is mentioned in that item, with a NYT link to this other NYT follow-the-money item, stating in part: Mr. Browder has hired the law firm of John D. Ashcroft, the former United States attorney general, to represent him in New York in a request for a subpoena for bank wire transfer and other records that Mr. Ashcroft contends will prove Mr. Browder's allegations. The filing is a new twist on Mr. Browder's case, which

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**fdlx\_com** @fdlx\_com

01/13/17 19:13

#news #Moody's Pays Iowa \$9 Million for Inflating Investment Ratings that Worsened 2008 Financial Crisis (Iowa Attorney General) #business ...


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### Here's a Look at the Potential Short List for Trump's Suprem...

dailysignal.com | 01/13/17 17:04

. The Senate confirmed him in September 2003 by a vote of 94-1. Colloton previously served as a U.S. attorney for the Southern District of Iowa. The 53-year-old graduate of Yale Law School clerked for the late Supreme Court Chief Justice William Rehnquist. Judge Neil Gorsuch, 49, of the U.S. Court of Appeals for the 10th Circuit in Colorado, was appointed in 2006 by Bush. The Senate confirmed him by a voice vote in July 2006. Before that, Gorsuch was a deputy assistant attorney general at the

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### Grassley Opens Judiciary Hearing on U.S. Attorney General No...

01/13/17 13:02

possess integrity is to invite trust. The UNC has been reluctant to undertake a post mortem of its unpopularity while in office, and also why it lost a series of elections in succession. We here note however, that in the Westminster system, governments lose power and not that oppositions win. The video clip is instructive. Prepared Statement by Senator Chuck Grassley of Iowa Chairman, Senate Judiciary Committee Hearing on Nomination of Senator Jeff Sessions to be United States ... <https://www.youtube.com/embed/KVc742EiUyM?autoplay=1>

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01/13/17 07:49

in transfer of debt. HJR-192 ... .Background- 1933 The Bankruptcy of the UNITED...www.youhavetheright.com/tour3 Background- 1933 The Bankruptcy of the UNITED STATES. ... passed House Joint Resolution 192 which served ... impossible as notes of debt do not pay for anything ... Gonzales v. Oregon, 546 U.S. 243 (2006), was a decision by the United States Supreme Court, which ruled that the United States Attorney General could not enforce the federal Controlled Substances Act against physicians who

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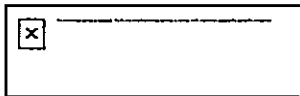
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Iowa Attorney General	News	10 in 1 day
Tom Miller	News	1 in 1 day
Iowa Department of Justice	News	2 in 1 day
Iowa Attorney General		13 in 1 day

**Iowa Attorney General**

**Muscatine City Council to vote on process to remove the mayor**

LakeExpo.com | 01/11/17 17:30

[1 other source...](#)

...approval. According to a letter from the Iowa Department of Justice Office of the Attorney General to Iowa state Sen. Rich Taylor, D-Mount Pleasant,

WORDS MATCHED Attorney General, Iowa

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**Muscatine City Council to vote on request to begin process to remove the mayor**

LakeExpo.com | 01/11/17 17:30



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*Iowa State Sen. Rich Taylor, of Mt. Pleasant, that...*

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## Chief Justice Mark Cady says budget restraints could hurt Iowa courts

KHQA 7 Online | 01/11/17 16:54

[3 other sources...](#)

*It means additional costs may be added to the state's budget." Iowa Attorney General Tom Miller says this message comes at the right time . "In...*

**WORDS MATCHED** Attorney General, Iowa

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## Black lawmakers say Sessions unfit to be attorney general

Journal Gazette & Times-Courier | 01/11/17 14:30

[9 other sources...](#)

*Andrew Harnik Senate Judiciary Committee Chairman Sen. Charles Grassley , R-Iowa, right, accompanied by Attorney General-designate, Sen. Jeff...*

**WORDS MATCHED** Attorney General, Iowa



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## Handgun, ammunition found in police shooting suspect's truck

Clinton Herald | 01/11/17 13:30

*...and former regent Mary Andringa in their individual capacities. The Iowa Attorney General's Office had already been defending five regents named...*

**WORDS MATCHED** Attorney General, Iowa

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## Regents retain private counsel in U. Iowa open meetings case

News 12 Mankato | 01/11/17 13:22

[22 other sources...](#)

*...and former regent Mary Andringa in their individual capacities. The Iowa Attorney General's Office had already been defending five regents named...*

**WORDS MATCHED** Attorney General, Iowa

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## NAACP head calls Sessions "unfit" for attorney general

Journal Gazette & Times-Courier | 01/11/17 12:25

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*Andrew Harnik Senate Judiciary Committee Chairman Sen. Charles Grassley , R-Iowa, right, accompanied by Attorney General-designate, Sen. Jeff...*

**WORDS MATCHED** Attorney General, Iowa



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## NAACP head calls Sessions 'unfit' for attorney general

The Joplin Globe | 01/11/17 11:46

*Andrew Harnik Senate Judiciary Committee Chairman Sen. Charles Grassley , R-Iowa, right, accompanied by Attorney General-designate, Sen. Jeff...*

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### Regents retain private counsel in UI open meetings case

Press-Citizen (AP) | 01/11/17 10:59

*...and former regent Mary Andringa in their individual capacities. The Iowa Attorney General's Office had already been defending five regents named...*

WORDS MATCHED Attorney General, Iowa

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### Black lawmakers to speak out against Sessions in hearing

Journal Gazette & Times-Courier | 01/11/17 10:28

[5 other sources...](#)

*Andrew Hamik Senate Judiciary Committee Chairman Sen. Charles Grassley, R-Iowa, right, accompanied by Attorney General-designate, Sen. Jeff...*

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## Tom Miller



### Chief Justice Mark Cady says budget restraints could hurt Iowa courts

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*...means additional costs may be added to the state's budget." Iowa Attorney General Tom Miller says this message comes at the right time. " In the...*

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## Iowa Department of Justice



### Muscatine City Council to vote on process to remove the mayor

LakeExpo.com | 01/11/17 17:30

[1 other source...](#)

*...powers, subject to council approval. According to a letter from the Iowa Department of Justice Office of the Attorney General to Iowa state Sen .*

WORDS MATCHED Iowa Department of Justice

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### Muscatine City Council to vote on request to begin process to remove the mayor

LakeExpo.com | 01/11/17 17:30





[1 other source...](#)

*...to the approval of the council. According to a letter from the Iowa Department of Justice Office of the*






Attorney General to Iowa State Sen. Rich...

WORDS MATCHED Iowa Department of Justice

Archive  Share  Translate  [See More Results](#)**Iowa Attorney General****2018 Governors: Overextended Republicans Seek to Thwart Hist...**




centerforpolitics.org | 01/12/17 02:49

, along with Sen. Pat Toomey's (R) narrow reelection win, but a deeper look shows positive signs for Democrats, too. The party swept three statewide executive office elections (attorney general, state auditor general, and state treasurer) despite Trump and Toomey's triumphs. Much will depend on the quality of the Republican nominee, and there are many possible contenders. This is a race we easily could have put in the second group of races, the ones where one party does not start as a favorite, but we

Archive  Share  **Read the letter Coretta Scott King wrote opposing Sessions's...**

mcfriiction.blogspot.com | 01/11/17 20:35

The career of Jeff Sessions, President-elect Donald Trump's nominee for attorney general, has been shadowed by his prosecution of the "Marion Three." Sessions brought forth the voter fraud case as a U.S. attorney in 1985, and his critics alleged the charges to be racially motivated. (Video: Dalton Bennett/Photo: Dalton Bennett/The Washington Post) Coretta Scott King, the widow of civil rights leader Martin Luther King Jr., urged Congress in a letter to block the 1986 nomination of Jeff Sessions

Archive  Share  **JUST IN Condoleezza Rice Makes SHOCK Decision About Trump's ...**

01/11/17 19:45



IT'S OFFICIAL... DO YOU SUPPORT TRUMP? LIKE = YES!! The first black woman to serve as America's secretary of state has come out in support of Sen. Jeff Sessions, R-Ala., to become the next attorney general. Condoleezza Rice, a native of Birmingham, Ala., wrote to Senate Judiciary Committee Chairman Chuck Grassley, R-Iowa, to urge the committee to con...

Archive  Share  **Sessions Swats Down Bigotry Charges on Day One of AG Confirm...**

ruthfullyyours.com | 01/11/17 16:24

a troubling attitude toward ballot access: The case, said Sessions, "was in response to pleas from African-American incumbent elected officials who claimed the absentee ballot process involved a situation in which ballots cast for them

were stolen, altered and cast for their opponents." He emphasized that, as attorney general, he would prosecute anyone who sought to violate the integrity of the ballot box. (Albert Turner Jr., whose parents were the defendants in Perry County, recently endorsed



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### Black Dem: Testifying Last In Sessions' Hearing Is Like Bein...

[huffingtonpost.com](http://huffingtonpost.com) | 01/11/17 16:04

&HPTrack.Vid.Vidible&m.fwkeyvalues WASHINGTON — The chairman of the Congressional Black Caucus slammed Sen. Chuck Grassley (R-Iowa) on Wednesday for making black lawmakers wait until the end of a hearing to testify against U.S. attorney general nominee Jeff Sessions, comparing it to "being made to go to the back of the bus." Rep. Cedric Richmond (D-La.), who leads the 49-member caucus, joined Sen. Cory Booker (D-N.J.) and Rep. John Lewis (D-Ga.), a civil rights icon, on the final panel in a



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### THE RYAN-KUSHNER MEETING — What SESSIONS, COLLINS AND KELLY ...

[billpressshow.com](http://billpressshow.com) | 01/11/17 15:28

'care repeal/replace: 'Still thinking that through'" \*\*SUBSCRIBE to Playbook: <http://politi.co/1M75UbX> HAPPENING TODAY — Jared Kushner's 36th birthday. How many other 36 year olds are discussing tax-reform packages with the speaker of the House? NEWS — SCOTUS UPDATE — MULTIPLE GOP SOURCES tell us that PRESIDENT-ELECT DONALD TRUMP is not likely to introduce his SCOTUS nominee until Sen. Jeff Sessions (R-Ala.) is confirmed as attorney general. Why? Handing the Judiciary Committee a SCOTUS nominee



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### Action Alert: Call Your Senators to Oppose Attorney Gernal N...

[inpraiseoffolly.wordpress.com](http://inpraiseoffolly.wordpress.com) | 01/11/17 15:09

AND LAST NAME) a constituent from (CITY AND STATE) "I am calling to voice my strong opposition to Jeff Sessions as the next attorney general of the United States. Senator Sessions has a clear record of supporting racist, sexist, anti-LGBT, anti-environment, and anti-immigrant policies. He opposes voting rights and criminal-justice reform, as well as marriage equality. I am asking Senator (NAME OF SENATOR) to vote against Sen. Sessions at his confirmation hearing. Americans deserve an attorney

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**IowaPeg** @IowaPeg

01/11/17 14:57

Good job on marching against our new attorney general. Amazing work.  
@DreadPhil1 @IowaPeg @Cheesburglar @SallyAlbright @Jacqratt @peterdaou  
It is exciting. Thanks!

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**Women's Action for New Directions Demands US Senate Confirm ...**

seniorwomen.com | 01/11/17 14:36

picks like Rex Tillerson (for secretary of state), Jeff Sessions (for attorney general), and Rick Perry (for energy secretary) as among those who might not fit the bill. Of Perry, for example, the group notes that he " famously couldn't remember the name of the Department of Energy, but claimed he planned to eliminate it if president. Sixty percent of the department's budget relates to nuclear weapons and has most recently been run by trained physicists. The most recent Energy Secretary, Ernie

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**IowaPeg @IowaPeg**

01/11/17 14:08

RT @deray: Dial 1-844-6-RESIST today to reach your Senator to urge them to vote against Jeff Sessions as our Attorney General. Your voice...

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**Consumer Financial Protection Bureau**

01/11/17 13:35

State of New Hampshire seemed to find humor in that particular process. The insurance companies and the legal offices are located in the Commonwealth of MA. Some business men and women work in the sister states in the New England Region. The Attorney General's Office in Boston MA and most all the federal agencies are full of corrupt employees that do whatever they are told to do and retaliate,harass and intimidate people if they file complaints or know of corrupt practices. I asked the names of the

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**Today on The Michelangelo Signorile Show on SiriusXM PROGRES...**

signorile2003.blogspot.com | 01/11/17 12:45

confirmation hearings, with committee chairman Chuck Grassley (R-Iowa) saying that he intended to hold the hearings even before Donald Trump is sworn in Jan. 20, in order to try to get Sen. Sessions promptly confirmed. However, there is growing movement of people and groups trying to shut down his confirmation on account of his past actions and comments. Joining me today to talk all about the fight against Sen. Sessions' confirmation as our next Attorney General is John Nichols the National

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**Civil rights icon Rep. John Lewis to testify against Jeff Se...**

01/11/17 09:18

"Democrats see this break in tradition as an insult to caucus members and a way for Republicans to distract from the testimony of Lewis, a respected longtime congressman and civil rights leader. The 76-year-old was in the news recently when he led a sit-in on the floor of Congress to encourage the enforcement of gun control." Democratic senators have requested that Rep. John Lewis, D-Ga., and other members of the Congressional Black Caucus be allowed to testify at the Jan. 11 confirmation hearing of Jeff Sessions, Donald Trump's pick for attorney

general, who has faced allegations of racism in the past. Iowa Republican S...

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**McCarthy, Kevin [AG]**

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**From:** Hyatt, Anna <Anna.Hyatt@legis.iowa.gov>  
**Sent:** Tuesday, January 10, 2017 12:00 PM  
**To:** McCarthy, Kevin [AG]  
**Subject:** FW: RELEASE: Gov. Branstad delivers the 2017 Condition of the State address to the Iowa General Assembly

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**From:** Press Releases from Iowa Governor's Office [mailto:IowaGovernorsOffice@public.govdelivery.com]  
**Sent:** Tuesday, January 10, 2017 10:45 AM  
**To:** Hyatt, Anna  
**Subject:** RELEASE: Gov. Branstad delivers the 2017 Condition of the State address to the Iowa General Assembly

**OFFICE OF THE GOVERNOR**  
Governor Terry E. Branstad ★ Lt. Governor Kim Reynolds

FOR IMMEDIATE RELEASE: Tuesday, Jan. 10, 2017  
CONTACT: Governor's Office 515-281-5211

**Gov. Branstad delivers the 2017 Condition of the State  
address to the Iowa General Assembly**

(DES MOINES) – Gov. Terry E. Branstad today delivered the 2017 Condition of the State address, entitled “*Smaller and Smarter Government*,” to the Iowa General Assembly and the people of Iowa.

In his address, Gov. Branstad struck an enthusiastic tone that this new General Assembly brings new dynamics, new expectations and new opportunities to deliver positive results for Iowans. The governor spoke about the need for a responsible budget including submitting adjustments to the current fiscal year and the need for a biennial budget for fiscal year 2018 and 2019 that sets supplemental state aid for K-12 education in the first 30 days of the legislative session.

Gov. Branstad and Lt. Gov. Reynolds’ program initiatives for this upcoming session include a commitment to a smaller and smarter government, a focus on the jobs of today and tomorrow, obtaining a 21<sup>st</sup> century education for all students and making our Iowa roads safer.

**[VIEW THE BUDGET IN BRIEF HERE INCLUDING THE FISCAL YEAR 2017 BUDGET ADJUSTMENTS \(PAGE 73 & 74\)](#)**

**HIGHLIGHTS OF THE BUDGET ADJUSTMENTS:**

- Adjustments are required by law.
- Does not include across-the-board cuts.

- Does not reduce funding for supplemental state aid for K through 12 education.
- Does not reduce property tax credits.
- Modernized Medicaid resulting in over \$110 million in savings for Iowa taxpayers.

### **VIEW THE FULL FISCAL YEAR 2018 AND 2019 BUDGET HERE**

#### **HIGHLIGHTS:**

- The governor and Lt. governor's 2-year budget is again balanced and stable.
- The budget fits within five-year budget projections.
- Based on the principles laid out by the Iowa Taxpayers Association.
- Prioritizes education, health care, economic development and public safety.
- Gives schools the predictability and stability they need with an increase of over \$78.8 million in supplemental state aid in fiscal year 2018 and includes an additional \$63.5 million for fiscal year 2019.
- Modernized Medicaid resulting in \$232 million in savings for Iowa taxpayers.
- Redirects family planning money to organizations that focus on providing health care for women and eliminates taxpayer funding for organizations that perform abortions.

### **SMALLER AND SMARTER GOVERNMENT:**

#### **HIGHLIGHTS:**

- Gov. Branstad & Lt. Gov. Reynolds are calling for replacing the current antiquated collective bargaining system for public employees.
  - Move to one comprehensive statewide health care contract for public employees.
  - This will provide quality health care to public employees at a significantly lower cost and give local governments more flexibility to provide better wages and meet other needs.
  - Rewards public employees for taking ownership of their own health by conducting health risk assessments and taking other actions that improve their own health.
- Work with the General Assembly to address unnecessary barriers that prevent competition and raise costs through a series of regulatory and licensing reforms.

### **FOCUSING ON THE JOBS OF TODAY AND TOMORROW:**

#### **HIGHLIGHTS:**

- Modernizing water quality infrastructure that will create jobs in rural Iowa and promote cleaner water.
  - Calling on discussions to begin with the House-passed water quality bill from last session which provided for a long-term, dedicated source of revenue for implementation of projects outlined in the Nutrient Reduction Strategy.
- Prioritizes initiatives that will grow the state's talent pipeline including STEM (Science,



Technology, Engineering & Math), Future Ready Iowa, registered apprenticeships and work-based learning for Iowa students.

## **21<sup>st</sup> CENTURY EDUCATION:**

### **HIGHLIGHTS:**

- Legislation encouraging all elementary, middle and high school students to have access to high-quality computer science programs by 2019. We want them to:
  - Offer at least one high-quality computer science course in every high school;
  - Provide exploratory computer science curriculum in every middle school and;
  - Include an introduction to computer science basics in every elementary school.
- Establish high-quality computer science standards.
- Create a computer science professional development incentive fund to train teachers.
- Convene an advisory group to recommend how to count computer science as a math credit toward high school graduation.

## **SAFER IOWA ROADS:**

### **HIGHLIGHTS:**

- Traffic fatalities spiked from 315 in 2015, to 402 in 2016.
- Gov. Branstad & Lt. Gov. Reynolds believe this is unacceptable.
- They are calling for legislation that drastically reduces the amount of distracted and impaired drivers on Iowa roads.
  - Restrict the use of mobile devices while driving.
- Gov. Branstad & Lt. Gov. Reynolds are also calling on the legislature to examine and implement strategies from the Department of Public Safety's task force that will make Iowa's roads safer.

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**Gov. Branstad's 2017 Condition of the State Address, as prepared for delivery, is as follows:**

*Madam Lieutenant Governor*

*Mr. President*

*Madam Speaker*

*Legislative leaders, legislators, justices and judges, elected officials, distinguished guests, family, friends and fellow Iowans.*

*I'm honored and humbled to once again address a joint session of the General Assembly delivering the Condition of the State for the final time as your governor.*

*For 22 years, I have addressed this body as governor and today I want to especially welcome the 22 new legislators with us—from both sides of the aisle—who were elected in November.*

*Your constituents sent you to work hard, to work for them, and help make Iowa a better place.*

*I hope you are filled with the same sense of excitement and eagerness that I had when I first served in the Legislature in 1973.*

*Lt. Gov. Reynolds and I look forward to working with each of you and listening to your ideas on how to make our state an even better place for families to live, work and grow.*

*In that spirit, I am today extending an invitation to each legislator to meet with me personally during this legislative session.*

*We also gather again with shared sadness, returning to do our work without our friend, Sen. Joe Seng of Davenport.*

*Joe was a devout Catholic and a true statesman.*

*We enjoyed his contagious and positive personality and working with him.*

*As I look back on my years of public service, I am thankful for those Iowans who have stepped forward to serve their fellow citizens.*

*In particular, please join me in applauding those Iowans who have helped make our state and nation safer by serving in the military, law enforcement or as first responders.*

*Since taking office in 2011, we have made the necessary changes to strengthen our economy and improve the quality of life across our state.*

*We've made tough decisions to give Iowans a smaller and smarter government.*

*We have stayed the course with an unwavering commitment to create jobs, increase family incomes, reduce the size of government, and give Iowa students a globally competitive education.*

*We have provided significant tax relief for Iowans the past five years, especially for commercial property taxpayers.*

*And last month, Lt. Gov. Reynolds and leaders from the Economic Development Authority and Department of Transportation unveiled Iowa's most comprehensive Energy Plan.*

*The plan was developed after collaboration with the private sector, public sector, educators, non-profits and utilities.*

*Iowa is already a leader in low-cost and renewable energy.*

*The comprehensive new energy plan will help build on our past energy successes and reaffirms our*



*commitment to maintaining Iowa's energy leadership in the future.*

*I'm proud that we have made government smaller and smarter.*

*We've seen unemployment in our state drop from 6.2 percent to 3.8 percent.*

*The state has helped attract more than 13 and a half billion in private-sector capital investment, which has translated into great-paying jobs across Iowa.*

*And more Iowans have been employed these past few years than at any other period in our state's history.*

*We have also made the tough decisions to ensure government lives within its means like Iowa families must do.*

*We have accomplished this with a relentless focus on fiscal discipline, demanding budget predictability, fully restoring Iowa's reserve accounts and reducing the state's debt liability.*

*Together we have made progress toward our goal of restoring Iowa's schools to best in the nation through a series of landmark reforms and innovative policies.*

*To improve Iowa's education standing, we needed to make sure our hardworking teachers had all the tools necessary to succeed given higher expectations for all students.*

*So, we created a new Teacher Leadership System that better utilizes the expertise of top teachers to improve education, instruction and foster greater collaboration.*

*I'm proud to say that every public school in Iowa today is participating in our Teacher Leadership System.*

*To ensure that our children are prepared for a 21<sup>st</sup> century economy we advanced a nationally recognized STEM initiative that gives students the confidence and skills for rewarding careers.*

*The STEM initiative is led by Lt. Gov. Kim Reynolds and Kemin Industries President & CEO Dr. Chris Nelson and has seen outstanding growth and success.*

*Sustaining these measures over time is critical to get the right results for our students and our state.*

*The ability of Iowans to overcome challenges bolsters my optimism for our state's future.*

*When faced with challenges, Iowans consistently seek opportunities.*

*Some of the challenges we have overcome--like the Farm Crisis of the 1980s--tore at the very fabric of our communities.*

*In the 1980s, Bloomfield, Ia.--a community in Davis County in southeast Iowa--struggled like many communities across the state.*

*An uninsured bank in Bloomfield closed in 1983 and caused great losses for area families and businesses.*

*And area farmers were straddled with debt and limited market opportunities for their crops.*

*However, through a persistent focus on economic diversification and an entrepreneurial spirit to rebuild its community, Bloomfield now has new manufacturers that are growing alongside innovative startups.*

*And, to continue their effort to stay on the cutting edge community leaders are instituting aggressive strategies to become Iowa's first energy independent community by 2030.*

*I visited Bloomfield last year and was impressed with the Main Street revitalization, a new hardware store and the M3 Fabrication manufacturing plant.*

*And Woodbine, Ia., is another example of a community that took its future into its own hands.*

*The community showed how an integrated approach to community revitalization that focuses on historic preservation and community sustainability can redefine a struggling, small rural community.*

*Woodbine also had a bank closure in the 1980s, but the community turned its challenges into future growth and diversification.*

*Lt. Gov. Reynolds and I visited Woodbine and were impressed with the success of their Main Street program.*

*And Waterloo, Ia., after experiencing economic challenges throughout the previous three decades embraced the challenge of reshaping its industrial heritage to succeed in modern times.*

*Cedar Valley Tech Works has made Waterloo a nationally recognized leader for manufacturing innovation.*

*And John Deere continues to be a leading manufacturer and innovator in Waterloo.*

*In the balcony, we have leaders from Bloomfield, Woodbine and Waterloo.*

*Please join me in congratulating their accomplishments and supporting their future success.*

*Iowa's industries are increasingly high tech, including advanced manufacturing.*

*In total, Iowa has over 6,100 manufacturers that contribute more than \$31 billion to Iowa's economy and employ over 200,000 Iowans.*

*Over the next year, the Iowa Economic Development Authority will work with Iowa's manufacturers to advance a "Year of Manufacturing" in Iowa to help grow this important part of the Iowa economy.*

*We should also be proud that Iowa remains an agricultural powerhouse that feeds and fuels the world thanks to the hard work and innovation of Iowa's farmers and agricultural producers.*

*We just set an all-time record for ethanol production, set a new record for biodiesel production by an additional 55 million gallons and lead the nation in percentage of electricity generated by wind.*

*We now generate over 35 percent of our electricity from wind and expect this number to exceed 40 percent*



*Over the past 30 years, we've significantly added value to our agricultural commodities.*

*We've also diversified the Iowa economy by expanding exports and supporting growth in biofuels, wind energy, data centers, fertilizer plants, bio-renewable chemicals, advanced manufacturing, insurance and financial services.*

*These newer industries employ hundreds of thousands of Iowans in rewarding careers.*

*And while I am pleased with this progress and optimistic about Iowa's future, I believe there is more work to be done.*

*We must seize the opportunities before us.*

*This new General Assembly brings new dynamics, new expectations and new opportunities to deliver positive results for Iowans.*

*Our state is in an admirable position.*

*Many states are strapped with crushing debt, poor credit ratings and a bleak economic outlook.*

*But Iowa is a shining example of what hard work and smart, tough choices can do for growing businesses and nurturing families.*

*While the December Revenue Estimate is lower than previous projections the estimate still shows a modest increase in state revenues.*

*Although we have faced a headwind out of Washington, D.C., that is stifling our agricultural economy, we still have positive state revenue growth.*

*But we must proceed with caution and not repeat the mistakes of the past.*

*With that prudence in mind, I present my proposed adjustments to the current fiscal year budget to you today.*

*These adjustments are required by law.*

*My proposal does not include across-the-board cuts, does not reduce funding for K through 12 education, does not reduce property tax credits and does not include furloughs for state employees.*

*The budget reductions I am recommending for this fiscal year are difficult.*

*But they maintain funding for our mutual priorities.*

*I am committed to working with legislative leaders to implement these adjustments.*

*For the coming biennium, I am presenting a complete two-year budget that is balanced each year and*

*meets our five-year projections for a sustainable future.*

*This budget is based on the principles laid out by the Iowa Taxpayers Association.*

*It prioritizes education, health care, economic development and public safety.*

*And it redirects family planning money to organizations that focus on providing health care for women and eliminates taxpayer funding for organizations that perform abortions.*

*On my first trip to China in 1984, I learned that the Chinese word for danger and opportunity is one in the same.*

*Today, America and Iowa exist in a challenging world.*

*But we must seize the opportunity to make it a better place.*

*In 2010, Lt. Gov. Reynolds and I promised to reduce the size and scope of government.*

*I'm proud to report that we have a smaller, smarter government with a steady focus on improving services for our citizens in a more timely and efficient manner.*

*Yet, while the size of government is smaller, benefits for public employees at the state and local level have increased.*

*Unfortunately, the cost of these benefits has grown dramatically because of our antiquated collective bargaining system that has led to over 500 health-care plans, many of which are inefficient and way too costly for public employees and Iowa taxpayers.*

*Under our present system, a few adverse health outcomes will destroy the budget of a city, county or school district.*

*By replacing this system with one comprehensive statewide health-care contract we can spread the risk and dramatically reduce costs.*

*Using a uniform health-care benefit system similar to the IPERS program for retirement we can provide quality health care at a significantly lower cost and give local governments more flexibility to provide better wages and meet other needs.*

*The statewide health-care contract also needs to reward employees who take ownership of their own health by conducting health risk assessments and taking actions to improve their own health.*

*We have made a commitment to examine every dollar of revenue and expenditure in order to maximize efficiency and respect hardworking taxpayers.*

*We are committed to a smaller, smarter government that seeks innovative ways to provide services rather than blind adherence to the way things have always been done.*

*I'm asking the General Assembly to take a comprehensive review of all of our state's boards and*



*commissions to address unnecessary barriers that prevent competition and raise costs.*

*I encourage you to ask the tough questions that challenge the status quo.*

*In Iowa, 90 percent of our general fund budget is spent on three items; K through 12 education, Medicaid and employee wages and benefits.*

*The state has significantly increased funding for education since 2011, amounting to over 654 million additional dollars.*

*Education and job training are the foundation for our future economic growth.*

*Growing our state's talent pipeline needs to be a top priority.*

*Even with our modest revenue growth my recommendation includes an increase of \$73 million for K-12 education for fiscal year 2018 and an additional \$61 million for fiscal year 2019 which equates to roughly 2 percent growth each year.*

*So this year, let's show Iowans we can make these decisions early and meet the legal requirements of setting supplemental state aid for fiscal year 2018 and fiscal year 2019 in the first 30 days.*

*The second largest driver of our state budget is health and human services spending.*

*Together, we have transformed our mental health system to a community-based model, we obtained a federal waiver for our Iowa Health and Wellness Plan which has reduced charity care for hospitals and, like 39 other states, we have modernized our Medicaid program.*

*As a result, we have created a new system where more Iowans have access to mental health services closer to home than ever before; more Iowans are covered with health insurance than ever before; and more than 80 new value-added services are now being offered under our modernized Medicaid program.*

*We've also replaced the old Medicaid system with a coordinated team of health-care professionals to ensure patients see the right provider at the right time.*

*As a result of these reforms and innovation, we have improved the focus on health outcomes and saved the taxpayers \$110 million.*

*Our increase in education funding last year was made possible because of our modernized Medicaid efforts.*

*Without these vital reforms, the budget choices before us today would be twice as hard.*

*In order to grow Iowa, we must also look at policies and reforms that will continue growing family incomes.*

*One way to do this is to close the skills gap which in many ways is the biggest challenge our state faces over the next decade.*

*That is why Lt. Governor Reynolds and I set the Future Ready Iowa goal that 70 percent of Iowans in the workforce should have education or training beyond high school by 2025.*

*Today, less than half of our workforce does.*

*Accomplishing this ambitious goal will create unprecedented opportunities for Iowans and better position our state to compete in an increasingly knowledge-based, digital economy.*

*That is why we established the Future Ready Iowa Alliance, co-chaired by Lt. Governor Reynolds and Dan Houston of Principal, which will make recommendations by Oct. 31, 2017, to assure more Iowans have the careers they deserve and employers can hire the skilled workers they need to grow and innovate.*

*Even with a tight budget, we should continue to prioritize initiatives that will grow the state's talent pipeline like the STEM initiative, registered apprenticeships and work-based learning for Iowa's students.*

*Please help me recognize the students here with us today from Jackson Elementary School in Des Moines, Bondurant-Farrar Middle School and Waukee High School, which has one of the premier work-based learning programs in our state.*

*The students in the gallery represent children across Iowa who are counting on all of us to modernize schools for the 21st century.*

*That's why Lt. Governor Reynolds and I are launching a comprehensive computer science initiative.*

*We are encouraging every high school to offer at least one high-quality computer science course, every middle school to provide exploratory computer science, and every elementary school to include an introduction to computer science.*

*All students need to learn how computers operate because it is fundamental to life and work today.*

*Computer science will provide students a chance to join one of the fastest-growing and best-paying fields.*

*No student should miss out on this opportunity because of where they live.*

*This is another step to better align education and training with essential workforce needs.*

*We all care deeply for the safety of our families, our friends, and our neighbors.*

*However, a troubling trend has begun to emerge that threatens Iowans' safety on our roads.*

*Traffic deaths went from 315 in 2015 to 400 in 2016.*

*This is unacceptable.*

*Earlier this year, I called on the Department of Public Safety and the Governor's Traffic Safety Bureau to lead a working group to study this disturbing trend.*

*The group, with the support of key stakeholders, including law enforcement, made recommendations worth your consideration.*



*I am asking you to take a hard look at these recommendations and evaluate which can be put into law to make our roads safer.*

*Unfortunately, too many innocent bicyclists, motorcyclists, pedestrians and passengers have lost their lives on our roads.*

*Last year, I received a handwritten note from Christine and Darrel Harken, parents of Grace Harken, who live near Riceville.*

*They wrote "our daughter Gracie's life was so sadly ended July 29, 2015, by someone who was driving and texting."*

*Grace was biking safely and lawfully during a morning bike ride, when a driver who was texting struck and killed her.*

*They went on to write, "Grace would have forgiven the driver and moved forward.*

*"That is what we have chosen to do. But we miss her so."*

*Grace Harken's life was tragically ended way too early.*

*Modern technologies should come with new responsibilities.*

*I ask that all Iowans join the Iowa law-enforcement community, first responders, the League of Cities, all the major cell-phone carriers, the insurance industry, and the medical community in demanding real change in the laws for distracted and impaired drivers.*

*Last year, I called on the Legislature to send me a water-quality improvement bill.*

*I was pleased to see bipartisan progress made on this front with the House passing House File 2541 last session.*

*This bill was approved by the Agriculture, Ways and Means and Appropriations Committees and passed the House with 65 votes.*

*This bill provided for a long-term, dedicated and growing source of revenue to help implement projects to improve habitat and water quality directed by the Iowa Nutrient Reduction Strategy.*

*The bill also provided funding for community conservation practices and improvements to wastewater and drinking water facilities.*

*By leading on this issue, together we have the opportunity to modernize Iowa's agricultural infrastructure, create jobs in rural Iowa and promote collaboration between urban and rural communities.*

*I believe our discussions should begin with the House-passed bill from last session.*

*I hope we can work together to perfect and improve the legislation that will provide a long-term, dedicated and growing source of revenue for water-quality improvements.*

*I've been so blessed to serve as your governor, leading the state I love, for 22 years.*

*I am confident Iowa will continue to move forward because Iowans care deeply about their neighbors, their communities and creating an even better future.*

*And I'm extremely thankful for perhaps the most patient person in the state -- my wife, Chris -- as she has also served Iowa as first lady with grace.*

*She has welcomed Iowans and visitors from around the world to Terrace Hill and she has volunteered to help in many ways, including reading with Jackson Elementary students.*

*To Chris and my entire family, thank you for your sacrifice during my time in public service.*

*I am also thankful for the friendships we have made in all 99 counties -- friendships that we will always cherish.*

*And I am grateful for the prayers from Iowans who have encouraged me along the way.*

*There is no better job in the world than being the governor of the state that you love.*

*But sometimes we are called to serve in ways we had never imagined.*

*As I approach the U.S. Senate confirmation process my main priority is to continue serving the people of Iowa with the same energy and passion that I have brought to this office each and every day.*

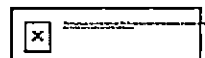
*Thank you.*

*God Bless you and all the people of Iowa.*

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**McCarthy, Kevin [AG]**

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**From:** Hyatt, Anna <Anna.Hyatt@legis.iowa.gov>  
**Sent:** Tuesday, January 10, 2017 12:00 PM  
**To:** McCarthy, Kevin [AG]  
**Subject:** FW: LSA's Preliminary Analysis of the Governor's FY 2018 and FY 2019 Budget Recommendations

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**From:** Lyons, Holly [LEGIS]  
**Sent:** Tuesday, January 10, 2017 10:48 AM  
**To:** All Legislators; All Staff  
**Subject:** LSA's Preliminary Analysis of the Governor's FY 2018 and FY 2019 Budget Recommendations

Members of the General Assembly and staff,

The Fiscal Services Division has published a **Preliminary Analysis of the Governor's FY 2018 Budget Recommendations**.

This document is available on the web at:

<https://www.legis.iowa.gov/docs/publications/LAGRP/851273.pdf>

Paper copies have been delivered to legislators' desks. The document contains:

- An overview of the Governor's budget recommendations for FY 2017, FY 2018 and FY 2019.
- Balance sheets for the General Fund, Environment First Fund (EFF), Rebuild Iowa Infrastructure Fund (RIIF), Technology Reinvestment Fund (TRF), Skilled Worker and Job Creation Fund (SWJCF), and State Bond Repayment Fund (SBRF)
- Appropriation tracking documents for the General Fund and Other Appropriated Funds.

Fiscal Services is in the process of completing a more detailed summary document titled ***Summary of FY 2018 and FY 2019 Budget and Governor's Recommendations***. This document should be available **Thursday afternoon, January 12**.

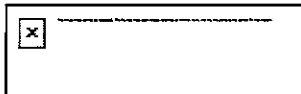
Please feel free to contact me or our staff if you have any questions!

**Holly M. Lyons**  
Fiscal Services Division Director  
Legislative Services Agency  
State Capitol Building  
Des Moines, IA 50319  
515-281-7845

**McCarthy, Kevin [AG]**

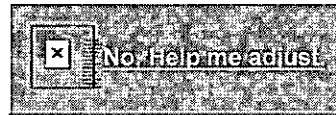
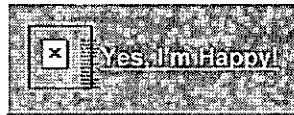
**From:** morningreport@meltwaternews.com  
**Sent:** Tuesday, January 10, 2017 7:06 AM  
**To:** McCarthy, Kevin [AG]  
**Subject:** 13 hits from Meltwater News

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**Report Overview**

AGENT	MEDIA TYPE	HITS
Iowa Attorney General	News	3 in 1 day
Iowa Attorney General		10 in 1 day

**Iowa Attorney General**

**No Iowa jail time for Hot Lotto conspirator**

Press-Citizen (AP) | 01/09/17 14:26

...and be subject to electronic monitoring for up to six months, Assistant Iowa Attorney General Rob Sand said. He will be required to testify in...

WORDS MATCHED Attorney General, Iowa

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**Khizr Khan: 'Americans deserve better' than Sessions for AG**

The Hill | 01/09/17 13:56

...Trump Treasury nominee NAACP Legal Defense Fund: Sessions should be disqualified for attorney general post MORE (R-Iowa) and ranking member Sen .

WORDS MATCHED attorney general, Iowa

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## Trials for brothers charged in Iowa lottery scandal delayed until July

NewtonDailyNews.com | 01/09/17 10:55

...additional charge of money laundering at his upcoming trial. Assistant Iowa Attorney General Rob Sand, who is prosecuting the cases, alleges ...

**WORDS MATCHED** Attorney General, Iowa

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### Iowa Attorney General



#### Cory Booker To Testify Against Jeff Sessions: It's 'A Call T...

huffingtonpost.com | 01/10/17 00:03

WASHINGTON — Throughout his four years in the Senate, Cory Booker has remained relatively uncontroversial. On Wednesday, that will change when the New Jersey Democrat testifies against the nomination of Sen. Jeff Sessions to be attorney general. It's an unprecedented move — marking the first time in Senate history that a sitting senator will testify in a confirmation hearing against another senator for a Cabinet position. "I do not take lightly the decision to testify against a Senate colleague

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#### Civil rights icon Rep. John Lewis to testify against Jeff Se...

01/09/17 22:13

Democratic senators have requested that Rep. John Lewis, D-Ga., and other members of the Congressional Black Caucus be allowed to testify at the Jan. 11 confirmation hearing of Jeff Sessions, Donald Trump's pick for attorney general, who has faced allegations of racism in the past. Iowa Republican S...

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#### Daily Kos

01/09/17 20:52

The GOP. The party of white identity politics... "California Sen. Dianne Feinstein, ranking member on the Senate Judiciary Committee, has pressed Chairman Chuck Grassley, an Iowa Republican, to include Rep. John Lewis and other members of the Congressional Black Caucus in the confirmation hearings for Sen. Jefferson Beauregard Sessions III to be attorney general. Grassley has agreed—in a separate but equal kind of way. " "The Iowa Republican was willing to do so, but on the condition that the

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**Trump/Grassley: #StopSessions protest action**

01/09/17 16:35

FRIDAY: Take action and FIGHT BACK as we demand Senator Chuck Grassley to stop the fast-tracking of Jeff Sessions, Trump's racist, anti-immigrant nominee for U.S. Attorney General. Grassley, who has spent 9 months refusing to hold a hearing for nominee Merrick Garland for the U.S. Supreme Court, is laying out the red carpet for Jeff Sessions, an Alabama senator who's spent his career attacking civil rights and promoting hateful rhetoric towards people of color, immigrants and the LGBTQ

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**State Lawmakers Urge Rejection of Militaristic, Conflict-Rid...**

01/09/17 14:59

"The letter does not name any of Trump's nominees specifically, but an accompanying press release pointed to picks like Rex Tillerson (for secretary of state), Jeff Sessions (for attorney general), and Rick Perry (for energy secretary) as among those who might not fit the bill. Of Perry, for example, the group notes that he "famously couldn't remember the name of the Department of Energy, but claimed he planned to eliminate it if president. Sixty percent of the department's budget relates to

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**Democrats push to have Congressional Black Caucus members te...**

dailykos.com | 01/09/17 11:19

California Sen. Dianne Feinstein, ranking member on the Senate Judiciary Committee, has pressed Chairman Chuck Grassley, an Iowa Republican, to include Rep. John Lewis and other members of the Congressional Black Caucus in the confirmation hearings for Sen. Jefferson Beauregard Sessions III to be attorney general. Grassley has agreed—in a separate but equal kind of way. The Iowa Republican was willing to do so, but on the condition that the lawmakers appear only after a group of outside

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**What the Homo 'Movement' Really Wants**

globalwarmingracket.blogspot.com | 01/09/17 10:32

marriage ban, and others who announced they would be part of a statewide campaign for nondiscrimination protections. Their announcement came a day after Texas Attorney General Ken Paxton issued a written opinion that county clerks in Texas who have religious objections to same-sex marriage can opt out of issuing such licenses, though they should be prepared to face fines or legal challenges, the Tribune reported. Democrat proposals for statewide nondiscrimination laws have failed to gain any



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**Speaking in front of the Senate Armed Services Committee Fr.....**

01/09/17 10:32



them as public officials, such as reimbursing them for travel costs. "Ironically, Florida Attorney General Pam Bondi, who has issued a number of Advisory Legal Opinions on dual-office holding, was a presidential elector," the briefing said. "Her name was on the Governor's certification list of Republican electors, and also Attorney General Bondi cast her electoral ballot on December 19. Joe Negron, who also cast an electoral vote, is currently president of the Florida Senate." The report lists the



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### Trump's Cabinet picks undergo grueling prep for hearings

kstreet607.com | 01/09/17 10:19

the number of billionaires among Trump's Cabinet picks, including Betsy DeVos for education, Steven Mnuchin for Treasury and Wilbur Ross for commerce, the team is even prepping nominees for questions on quotidian transactions like the price of milk or a gallon of gas — fearful the billionaires might seem out of touch if they stumble in their answers. Sen. Jeff Sessions, Trump's choice for attorney general and the first to face a Senate panel, is spending Sunday in the mock hearing room to prep

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### BREAKING RUMOR. Chuck Grassley Is Collaborating With Democra...

01/09/17 08:51

Absolutely UNCONSCIONABLE... Chairman of the Senate Judiciary Committee, Chuck Grassley (R-Iowa) is colluding with Charles Schumer and the Dem SMEAR MACHINE to allow them to slander and destroy Jeff Sessions... Repeat -- the CHAIR of the Senate Judiciary Committee is creating a forum for DEMOCRAT lies, in order to prevent the best Attorney General in 30 years... That's what this disgrace plans to do -- Chuck Grassley: two-faced, back-stabbing, cretinous LOSER. Rumor has it that Chuck Grassley is going to permit a special panel to investigate Jeff Sessions' civil right record

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**McCarthy, Kevin [AG]**

---

**From:** Melohn, Janelle [AG]  
**Sent:** Monday, January 09, 2017 10:56 AM  
**To:** McCarthy, Kevin [AG]  
**Cc:** Tabor, Eric [AG]  
**Subject:** Press Conf/HT proclamation

Just wanted you to know it went well. Gov. Branstad made a short mention about the collaborative efforts of our office and DPS on this initiative. Dr. George Belitsos did speak to the influx of federal funding granted out to HT service providers around the state. No one from our office spoke formally, but Rhonda, Celine and I all attended the press conference and proclamation signing. On invitation, Celine also attended the Board Meeting of the Network Against Human Trafficking IA Chapter directly following the proclamation signing over at the Capitol.

After the proclamation, I was able to speak to Commissioner Ryan (her schedule freed up and she was able to attend after all) and we confirmed our meeting on the 13<sup>th</sup>. She told me she's concerned about the lack of funding for their analyst position. I told her we'd be happy to discuss it in our meeting with her.

Overall, everything went well this morning. Please let me know if you have any questions.

 **Janelle Melohn**  
**Director**  
Office of the Attorney General of Iowa  
Crime Victim Assistance Division  
321 East 12<sup>th</sup> Street  
Des Moines, Iowa 50319  
Main: (515) 281-5044 | Direct: (515) 242-6109  
Email: [janelle.melohn@iowa.gov](mailto:janelle.melohn@iowa.gov) | [www.iowaattorneygeneral.gov](http://www.iowaattorneygeneral.gov)  
Like us on Facebook at <https://www.facebook.com/CrimeVictimAssistanceDivision>  
Follow us on twitter @CVADInfo

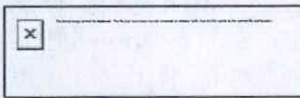
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AGENT	MEDIA TYPE	HITS
Iowa Attorney General		7 in 1 day

**Iowa Attorney General**

**Midwestern senators meet with Trump's pick to lead US EPA**  
 biodieselmagazine.com | 01/07/17 02:02  
 Sen. Chuck Grassley, R-Iowa, hosted a meeting with several Midwest senators and Oklahoma Attorney General Scott Pruitt, President-elect Donald Trump's nominee to serve as administrator of the U.S. EPA. Topics discussed included the rule of law.

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**Five Chilling Ways Senator Jeff Sessions Could Attack Immigr...**  
 huffingtonpost.com | 01/06/17 16:04  
 The nomination of Senator Jeff Sessions (R-AL) to be U.S. Attorney General is a clear and ominous sign that President-elect Donald Trump fully intends to make good on his call for mass deportation, registration of Muslims and radical restrictions on legal immigration. Since he entered the U.S. Senate twenty years ago, Jeff Sessions has made his mark as one of the most vehemently nativist, anti-immigrant legislators in American history. Rather than join colleagues who've

reached across the aisle



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### National Sheriffs' Association

01/06/17 15:32

Earlier today, Senator Chuck Grassley, Chairman of the Senate Judiciary Committee, met with law enforcement leaders to discuss the nomination of Senator Jeff Sessions to Attorney General. On hand were our Executive Director/CEO Jonathan Thompson and our President Sheriff Greg Champagne from St. Charles Parish Sheriff's Office Also there: Sheriff Steve Sheldon, Richland County Sheriff's Office, Ohio Sheriff Michael Adkinson, Walton County Sheriff, Michael A. Adkinson, Jr. Sheriff Robert Ivey



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### CSRA\_prsn @CSRA\_prsn

01/06/17 14:57

I see you live in Iowa. I used CA and NY as examples. Any Democratic state Attorney General have the power to sue. @sharitari10 @jbandery



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### Neo-Nazis in American Politics: Follow the Money

01/06/17 14:35

Below is the list of politicians who have accepted money from David Duke supporters. As you'll see, it includes John McCain, Rand Paul, Mitt Romney, Rick Santorum, Steve King and David Vitter among many others. Sen. George Allen (R-VA), U.S. Senator and Governor, Former Sharron Angle (R-NV), Candidate for U.S. Senate Rep. Dick Armey (R-TX), Former John Ashcroft (R-MO), U.S. Attorney General and U.S. Senator, Former Rep. (Elect) Brian Babin (R-TX) Rep. Lou Barletta (R-PA) Rep. Bob Barr (R-GA)

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### Ernst and Grassley talk ethanol with Trump's EPA nominee

radioiowa.com | 01/06/17 12:19

Both of Iowa's U.S. Senators say they've been reassured that the Trump Administration will back the federal ethanol production mandate. On Thursday, Senator Joni Ernst met with Scott Pruitt, the state attorney general from oil-rich Oklahoma. Trump has nominated Pruitt to serve as director of the Environmental Protection Agency. "The first thing that I brought [...]"




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### If the republicans in the Senate and the House vote to rati.....

01/06/17 07:28

allegedly voted illegally in the Electoral College. Pam Bondi is the attorney general of the state of Florida and the Florida Constitution says that you cannot hold two offices. And she holds the office of Attorney General and she holds the office of federal elector in the Electoral College. That is a violation of the law. That is a violation of the Constitution. And the vote that she cast in this election is illegal." A joint congressional session is scheduled to ratify the 2016 Electoral College

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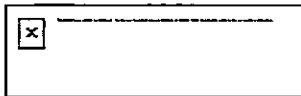
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**McCarthy, Kevin [AG]**

**From:** morningreport@meltwaternews.com  
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AGENT	MEDIA TYPE	HITS
Iowa Attorney General	News	8 in 1 day
Tom Miller	News	6 in 1 day
Iowa Attorney General		12 in 1 day

**Iowa Attorney General**



**Lawsuit re-filed in police shooting**

Waterloo-Cedar Falls Courier | 01/05/17 21:45  
...Thomas Frein and Mark Nissen are named as defendants. An Iowa Attorney General review of the incident concluded Frein and Nissen acted reasonably ...  
WORDS MATCHED Attorney General, Iowa [Archive](#) [Share](#) [Translate](#)

**Industry spokesman criticizes Iowa for not cracking down on online horse wagering violations**

TheGazette.com | 01/05/17 20:32  
Moss said. He expressed frustration that neither the commission nor the Iowa Attorney General's Office have acted in the matter. Moss said the...

WORDS MATCHED Attorney General, Iowa

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### Online gaming operators skirt law, critics say

Quad-City Times | 01/05/17 16:43

[1 other source...](#)

*...Iowa, Moss said. He expressed frustration that neither the commission nor the Iowa Attorney General's office have acted in the matter. Moss said...*

WORDS MATCHED Attorney General, Iowa



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### Online gaming operators skirt law, Iowa critics say

Globe Gazette | 01/05/17 16:07

*...Iowa, Moss said. He expressed frustration that neither the commission nor the Iowa Attorney General's office have acted in the matter. Moss said...*

WORDS MATCHED Attorney General, Iowa



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### Iowa's vital records could get easier to see

TheGazette.com | 01/05/17 14:23

*...the state and county levels, stated a March petition by the Iowa Attorney General's Office on behalf of the state health department. However,*

WORDS MATCHED Attorney General, Iowa



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### California cash advance company to cease Iowa solicitations

Business Record | 01/05/17 14:22

*...advances on largely military pensions will cease offering Iowans what Iowa Attorney General Tom Miller alleges are illegal and exorbitant high-interest...*

WORDS MATCHED Attorney General, Iowa



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### California cash advance company to cease Iowa solicitations - Business Record

Business Record | 01/05/17 14:22

*...advances on largely military pensions will cease offering Iowans what Iowa Attorney General Tom Miller alleges are illegal and exorbitant high-interest...*

WORDS MATCHED Attorney General, Iowa



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### Attorney general alleges illegal high-interest loans

Fairfield Ledger | 01/05/17 12:03

*...advances on largely military pensions will cease offering Iowans what Iowa Attorney General Tom Miller alleges are illegal and exorbitant high-interest...*

WORDS MATCHED Attorney General, Iowa

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### Industry spokesman criticizes Iowa for not cracking down on online horse wagering violations

TheGazette.com | 01/05/17 20:32

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WORDS MATCHED Attorney General, Tom Miller

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### Online gaming operators skirt law, critics say

Quad-City Times | 01/05/17 16:43

[1 other source...](#)

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WORDS MATCHED Attorney General, Tom Miller

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### Online gaming operators skirt law, Iowa critics say

Globe Gazette | 01/05/17 16:07

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WORDS MATCHED Attorney General, Tom Miller

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### California cash advance company to cease Iowa solicitations

Business Record | 01/05/17 14:22

...on largely military pensions will cease offering Iowans what Iowa Attorney General Tom Miller alleges are illegal and exorbitant high-interest...

WORDS MATCHED Attorney General, Tom Miller

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### California cash advance company to cease Iowa solicitations - Business Record

Business Record | 01/05/17 14:22

...on largely military pensions will cease offering Iowans what Iowa Attorney General Tom Miller alleges are illegal and exorbitant high-interest...

WORDS MATCHED Attorney General, Tom Miller

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### Attorney general alleges illegal high-interest loans



Fairfield Ledger | 01/05/17 12:03

**Attorney general alleges illegal high-interest loans** A California- based company that charged up to 200 percent interest for cash advances on...

**WORDS MATCHED** Attorney General, Attorney general, Tom Miller

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### Iowa Attorney General



#### At Least 50 Trump Electors Were Illegitimately Seated as Ele...

01/05/17 23:29

about people voting illegally,” Clayton continued. “We have a list of a bunch of Republicans that allegedly voted illegally in the Electoral College. Pam Bondi is the attorney general of the state of Florida and the Florida Constitution says that you cannot hold two offices. And she holds the office of Attorney General and she holds the office of federal elector in the Electoral College. That is a violation of the law. That is a violation of the Constitution. And the vote that she cast in this



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#### American Indian Airwaves Rundown 01/15/2017

kpfk.org | 01/05/17 21:54

Sioux Nations), son of Leonard Peltier, joins us for the second segment of tonight's program to discuss the Leonard Peltier public art statue being removed from in front of the American University Art Museum in Washington D.C. after FoxNews and other media outlets referred to Peltier as a “cop killer” and complaints made by the FBI Agents Association, freedom of speech, censorship; former Iowa Attorney General and top prosecutor for Peltier trial, James Reynolds statement calling for President



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#### Daily Kos Elections Live Digest: 1/3

dailykos.com | 01/05/17 18:28

considered a gubernatorial bid and would likely have been the GOP's strongest candidate, but as we noted when he first made his interest known, his public hostility toward Donald Trump during last year's presidential race would have left him vulnerable in a primary—and according to Jon Ralston, that's exactly what Heller feared. Citing unnamed sources, Ralston says that state Attorney General Adam Laxalt had "indicated" he might run for governor even if Heller did the same, which apparently convinced

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#### Daily Kos Elections Live Digest: 1/4

dailykos.com | 01/05/17 18:28

while on the bench (where he's served since 2013), so he'd have to step down in order to run for the governorship, which will be open next year because Republican incumbent John Kasich is termed out. A large number of other Democrats are also looking at the race, though so far no one has gotten in. Several Republicans are weighing the contest as well, and state Attorney General Mike DeWine actually announced his entry last year. Wednesday, Jan 4, 2017 · 10:12:10 PM +00:00 · Jeff Singer SC-Gov: In

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### U S Senate Committee on Judiciary : Grassley Welcomes Positi...

4-traders.com | 01/05/17 18:18

(4-traders.com) Sen. Chuck Grassley of Iowa today convened a meeting among several senators from biofuels-producing states and Oklahoma Attorney General Scott Pruitt, President-elect Trump's nominee to head the Environmental Protection Agency. Grassley organized the meeting because he wanted to convey the importance of biofuels to job... <http://www.4-traders.com/news/U-S-Senate-Committee-on-Judiciary-Grassley-Welcomes-Positive-Statement-on-Renewable-Fuel-Standard-23650930/>

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### GOP Plans 'Pre-Emptive' Law Crackdown On Liberal City Agenda...

zerohedge.com | 01/05/17 18:04

Arizona lawmakers passed last year. That law would allow the state to cut off funding to cities that refuse to give up laws that run counter to state law. The city of Tucson is in the midst of a legal battle over a local gun control measure that Attorney General Mark Brnovich (R) says stands in contrast to state law. And Trump has been quite clear that he intends to pursue a similar strategy when it comes to withholding federal funding from states that refuse to enforce federal laws, like

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### National Sheriffs' Association

01/05/17 17:54

Senate Judiciary Committee Chairman Chuck Grassley met with law enforcement personnel from across the country who support the nomination of Senator Jeff Sessions to be the next Attorney General. "Law enforcement personnel know, like those of us who have served with him in the Senate, that Senator Sessions is an honorable man, and they have good reason to support his nomination to be Attorney General," Senator Grassley said. "I was glad to meet with them and hear their thoughts on the nomination

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### Challenging the Electoral College The Electoral College's r.....

01/05/17 15:42

laws treating them as public officials, such as reimbursing them for travel costs. "Ironically, Florida Attorney General Pam Bondi, who has issued a number of



Advisory Legal Opinions on dual-office holding, was a presidential elector," the briefing said. "Her name was on the Governor's certification list of Republican electors, and also Attorney General Bondi cast her electoral ballot on December 19. More Negron, who also cast an electoral vote, is currently president of the Florida Senate." The




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### Photos from National Sheriffs' Association's post

01/05/17 14:57

Earlier today, Senator Chuck Grassley, Chairman of the Senate Judiciary Committee, met with law enforcement leaders to discuss the nomination of Senator Jeff Sessions to Attorney General. On hand were our Executive Director/CEO Jonathan Thompson and our President Sheriff Greg Champagne from St. Charles Parish Sheriff's Office Also there: Sheriff Steve Sheldon, Richland County Sheriff's Office, Ohio Sheriff Michael Adkinson, Walton County Sheriff, Michael A. Adkinson, Jr. Sheriff Robert Ivey




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### More Than 1,300 Law Professors Oppose Jeff Sessions For AG

[huffingtonpost.com](http://huffingtonpost.com) | 01/05/17 14:04

WASHINGTON — More than 1,300 law professors are urging the Senate Judiciary Committee to reject Sen. Jeff Sessions (R-Ala.) as U.S. attorney general, citing a lousy record on civil rights and that time he was rejected as a federal judge for being too racist. In an open letter to leaders of the committee, which will hold confirmation hearings for Sessions next week, professors from 178 law schools raise concerns about the Alabama senator's ability to treat black people fairly given what




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### Iowa, Nebraska senators to meet with EPA pick Scott Pruitt t...

01/05/17 13:50

Scott Pruitt's ability to reassure farm-state lawmakers during a meeting scheduled for today could determine whether he's confirmed as Donald Trump's pick to head the EPA. <http://on.omaha.com/2iFvL2j> Oklahoma Attorney General Scott Pruitt has a date with a group of Midwestern senators.




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### Identity Theft | Consumer Information

01/05/17 12:31

Department of Justice Attn: Office of Privacy Protection P.O. Box 944255  
Sacramento, CA 94244-2550 (916) 322-3360; Toll-free in California: (800) 952-5225 For Residents of Iowa: You may also obtain information about preventing and avoiding identity theft from the Iowa Attorney General's Office, whose contact information is as follows: Iowa Attorney General's Office Director of Consumer Protection Division 1305 E. Walnut Street Des Moines, IA 50319 (515) 281-5926 [www.iowaattorneygeneral.gov](http://www.iowaattorneygeneral.gov) For Residents

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**McCarthy, Kevin [AG]**





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Iowa Attorney General	News	7 in 1 day
Tom Miller	News	2 in 1 day
Iowa Attorney General	  	11 in 1 day
@AGIowa		8 in 1 day

**Iowa Attorney General**



**Capitol Digest: Attorney general action**

Globe Gazette | 01/04/17 20:29

[1 other source...](#)

...advances on largely military pensions will cease offering Iowans what Iowa Attorney General Tom Miller alleges are illegal and exorbitant high-interest...

**WORDS MATCHED** Attorney General, Iowa

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**Osceola auto dealer charged with ID theft**

Radio Iowa | 01/04/17 17:25

...after a former service technician at Anchor Motor made a call to the Iowa Attorney General's office.

He was alerted that an employee number that...

WORDS MATCHED Attorney General, Iowa

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
### Iowa Capitol Digest: Company to issue refunds for high-interest loans

LakeExpo.com | 01/04/17 16:39

[1 other source...](#)

...advances on largely military pensions will cease offering Iowans what Iowa Attorney General Tom Miller claims are illegal and exorbitant high-interest...

WORDS MATCHED Attorney General, Iowa



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### Veal to be mentally evaluated

KIMT.com | 01/04/17 14:30

...judge ruled Veal to be psychiatrically evaluated. Scott Brown with the Iowa Attorney General's Office says once Veal is evaluated, he'd like...

WORDS MATCHED Attorney General, Iowa

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### Top 10 stories in Mitchell County for 2016

Globe Gazette | 01/04/17 13:00

[4 other sources...](#)

...days in March, according to the prosecutor in the case, Iowa Assistant Attorney General Coleman McAllister. At one point Lenz took the victim ...

WORDS MATCHED Attorney General, Iowa



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### Barchman likely to take Watkins' place

KTVO | 01/04/17 12:05

...basis. Barchman is a veteran prosecutor who formerly worked in the Iowa Attorney General's office. She also testified against Watkins during...

WORDS MATCHED Attorney General, Iowa



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### Reisinger charged with 5 counts of felony identity theft

Osceola Sentinel Tribune | 01/04/17 11:09

...Moters has had its own troubles, as well. A file at the Iowa Attorney General's office contains 31 complaints spanning from April 2016 back to the...

WORDS MATCHED Attorney General, Iowa

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## Capitol Digest: Attorney general action

Globe Gazette | 01/04/17 20:29

[1 other source...](#)

*Capitol Digest: **Attorney general** action A roundup of state government and Capitol news items of interest for Wednesday, Jan. 4, 2017: **ATTORNEY** ...*

**WORDS MATCHED** Attorney General, Attorney general, Tom Miller, ATTORNEY GENERAL

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## Iowa Capitol Digest: Company to issue refunds for high-interest loans



LakeExpo.com | 01/04/17 16:39

[1 other source...](#)

*...A roundup of state government and Capitol news items for Wednesday: **ATTORNEY GENERAL***

*ACTION: A California-based company that charged up to 200...*

**WORDS MATCHED** Attorney General, Tom Miller, ATTORNEY GENERAL

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## Iowa Attorney General



### At least 50 Donald Trump electors were illegally seated as E...

salon.com | 01/05/17 06:48

electors, and also Attorney General Bondi cast her electoral ballot on December 19. More Negrón, who also cast an electoral vote, is currently president of the Florida Senate." The report lists the following states and their number of illegitimate electors based on dual-office holders: Alabama (two), Florida (12), Georgia (four), Iowa (two), Kansas (four), Kentucky (one), Michigan (one), Missouri (one), Nebraska (one), North Carolina (one), Ohio (one), Oklahoma (two), Pennsylvania (two), South



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### Home

01/05/17 01:36



which served ... impossible as notes of debt do not pay for anything ... *Gonzales v. Oregon*, 546 U.S. 243 (2006), was a decision by the United States Supreme Court, which ruled that the United States Attorney General could not enforce the federal Controlled Substances Act against physicians who prescribed drugs, in compliance with Oregon state law, for the assisted suicide of the terminally ill. It was the first major case heard under the leadership of Chief Justice John Roberts.[1] It is the duty

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### Nebraska, Iowa law professors join push urging Senate to rej...

billydteacher.wordpress.com | 01/04/17 23:25

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### 1100 Legal Scholars sign letter saying: NO JEFF SESSIONS FOR...

richalaska.blogspot.com | 01/04/17 20:38

<http://politicaldig.com/trump-livid-over-1100-top-law-experts-write-blistering-open-letter-against-his-ag-pick/> A group of 1,140 legal scholars from 170 different universities in 48 states are uniting in resistance to President-elect Trump's pick for Attorney General. The law professors sent a letter to Congress on Tuesday urging the Senate to reject the nomination of Sen. Jeff Sessions.(R-Ala.), saying that "given his record, Sen. Sessions is unable to fairly enforce our nation's laws and

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### The Trump Effect on Ag Issues in Washington (via Successful ...

rdlassociates.wordpress.com | 01/04/17 18:51

' bottom lines. With his cabinet nominations, Trump assures a conservative turn in federal policy, arguably the greatest shift in direction since President Reagan broke the hold of New Deal-era philosophy on government operations in the 1980s. Trump selected Oklahoma attorney general Scott Pruitt, who sued to block WOTUS, to run EPA; former Governor Rick Perry of Texas, the number 1 cattle and oil state, for energy secretary; and Representative Ryan Zinke of Montana, a supporter of an all-of-the-above

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### How to Hide \$400 Million- New York Times

tigerliquan.blogspot.com | 01/04/17 18:17

": Customers would provide their credit card number for a "trial offer," only to be charged a monthly fee, disclosed in the fine print and difficult to cancel. In 2010, Oesterlund, on behalf of his companies, signed an agreement with the Florida attorney general promising to abstain from deceptive marketing practices. But officials in Iowa and Oregon also began scrutinizing the businesses. Despite Oesterlund's promises, consumer complaints continued to pile up, and in 2013, Florida's attorney

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### Florida's felons inch closer to regaining right to vote

01/04/17 17:37

Restoration Coalition. "So the overwhelming majority of people we're talking about are people who haven't spent one day in prison. They're out in the community trying to regain their lives. They're our family, our friends, our congregations." As it stands now, the only way they can get back their voting rights is through a clemency board consisting of the governor and his cabinet — the state attorney general, the commissioner of agriculture and the chief financial officer. That board has wide

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**LisaLooksAt** @LisaLooksAt

01/04/17 15:02

A #timeshare agreement is a significant legal and financial commitment that can last indefinitely, even if you don't use the property. Iowa Attorney General: Timeshares...Take Time Before You Sign.  
<http://www.dickinsoncountynews.com/st...>

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**Police End NAACP Sit-In Against Attorney General Nominee**

ambroseehirim.com | 01/04/17 12:44

ASSOCIATED PRESS WEDNESDAY, JANUARY 04, 2017 Attorney General nominee Sen. Jeff Sessions, R-Ala., is shown while meeting with Sen. Charles Grassley, R-Iowa, Chairman of the Senate Judiciary Committee, on Capitol Hill in Washington. Several NAACP members, led by their national president, staged a sit-in Tuesday, Jan. 3, 2017, at the Alabama office of U.S. Sen. Jeff Sessions to protest his nomination to be the nation's next attorney general. MONTGOMERY, ALABAMA (AP) — The national president of

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**TODAY: MORNING MESSAGE Jeff Bryant The Carolina Coup and th.....**

01/04/17 10:37

similar measure passed his committee overwhelmingly last year before stalling out in the face of opposition from law-and-order conservatives." "Treasury Nominee Steve Mnuchin's Bank Accused of 'Widespread Misconduct' in Leaked Memo" scoops The Intercept's David Dayen: "Donald Trump's nominee for treasury secretary, Steven Mnuchin, ran from 2009 to 2015, repeatedly broke California's foreclosure laws during that period, according to a previously undisclosed 2013 memo from top prosecutors in the state attorney general's office." Progressive Breakfast is a daily morning email highlighting news stories of interest to activists. Progressive Breakfast and OurFuture.org are projects of People's Action.

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**Howard**

01/04/17 09:34

the United States (Art. I, §6, cl. 2 & Art. II, §1, cl. 7) •Pay the Debts (Art. I, §8, cl. 1 & Art. VI, cl.1) •Pay tax collectors (Art. I, §8, cl.1) •Regulate commerce with foreign Nations, among the several States, and with Indian Tribes (Art. I, §8, cl.3) •Immigration office (Art. I, §8, cl.4) •The mint (Art. I, §8, cl. 5) •Attorney General to handle the small amount of authorized federal litigation involving the national government (e.g., Art. I, §8, cls. 6 & 10) •Post offices & post roads (Art

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**TheShadow7478** @TheShadow7478

01/05/17 02:55

@AGIowa Please oppose the #CronyCapitalism push for a federal ban on state-licensed #poker websites. Let the states decide.

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**commentoniowa** @commentoniowa

01/04/17 20:11

.@AGIowa Meals from the Heartland seems 2B using child labor @DMRegister Can't find nonprofit form report online nor source of raw goods

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**JacklynHei** @JacklynHei

01/04/17 20:09

@AGIowa Please oppose the #CronyCapitalism push for a federal ban on state-licensed #poker websites. Let the states decide.

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**redeyeriz** @redeyeriz

01/04/17 18:34

@FBIlosAngeles @FBINewYork NFL Roger Goodell is a Lying Felon! @AGIowa @KSAGOffice @kyoag @NFLPLAYOFFS2017

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**thomasmurphy40** @thomasmurphy40

01/04/17 14:39

@AGIowa Please oppose the #CronyCapitalism push for a federal ban on state-licensed #poker websites. Let the states decide.

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**Yildiz1862** @Yildiz1862

01/04/17 14:17

@AGIowa Please oppose the #CronyCapitalism push for a federal ban on state-licensed #poker websites. Let the states decide.

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**mwbrinegar** @mwbrinegar

01/04/17 13:27

@AGIowa Please oppose the #CronyCapitalism push for a federal ban on state-licensed #poker websites. Let the states decide.

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**RichMuny** @RichMuny

01/04/17 12:43

@AGIowa Please oppose the #CronyCapitalism push for a federal ban on state-licensed #poker websites. Let the states decide.

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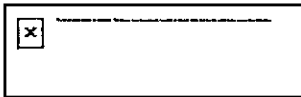
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**McCarthy, Kevin [AG]**

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**To:** McCarthy, Kevin [AG]  
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Iowa Attorney General	News	1 in 1 day
Iowa Attorney General		9 in 1 day

**Iowa Attorney General**

**Purk pleads innocent to 1st degree murder charge**

TamaToledoNews.com | 01/04/17 00:00

...*"additional discoveries."* The release said DCI agents worked with the Iowa Attorney General's Office, Tama County Attorney's Office and Sheriffs...

WORDS MATCHED Attorney General, Iowa

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**Iowa Attorney General**



**Civil rights at risk under Sessions BY JESSE JACKSON Januar.....**

01/04/17 01:47



was then. Now Donald Trump and Sen. Charles "Chuck" Grassley, R-Iowa, are intent on putting Sessions in charge of enforcing those very laws. The attorney general of the United States is a powerful position. The person who holds this office has immense discretion in how the law is enforced — which cases the office chooses to prosecute and which it does not. The attorney general heads several agencies, including the FBI, the Drug Enforcement Administration and the immigration courts. Given his

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**Rainbow PUSH Coalition**

01/04/17 01:46



was then. Now Donald Trump and Sen. Charles "Chuck" Grassley, R-Iowa, are intent on putting Sessions in charge of enforcing those very laws. The attorney general of the United States is a powerful position. The person who holds this office has immense discretion in how the law is enforced — which cases the office chooses to prosecute and which it does not. The attorney general heads several agencies, including the FBI, the Drug Enforcement Administration and the immigration courts. Given his

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**Trump Administration Already Leaning Towards Supporting Mons...**

wearechange.org | 01/04/17 01:19



animal cruelty, pollution or any other hazard. He also supports GM crops and received thousands from Monsanto for his re-election bid. Another possible win for Monsanto and Big Agribusiness was Trump's pick of Alabama Senator Jeff Sessions for US Attorney General. Though Sessions is not explicitly pro-GMO as he voted against an anti-labeling measure in the Senate last July, he is expected — if confirmed — to approve Bayer's \$66 billion merger with Monsanto, a bid that is currently undergoing

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**The Huffington Post: "The Tilting Floor: On Colson Whitehead'...**

alltrinidadtobago.com | 01/03/17 22:07

fierce for the open seat. Lt. Gov. Brian Calley and Michigan Attorney General Bill Schuette, both Republicans, have left open the possibility of a run, as has U.S. Rep. Dan Kildee (D-Flint Township). The list of possible candidates suggests that the Flint water crisis, a widespread source of outrage in the state, could still be a major issue once campaigning actually begins. Kildee has been a vocal advocate for residents in his district dealing with undrinkable tap water. Schuette, too, has been

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**lisa\_breland** @lisa\_breland

01/03/17 19:02

@stylistkavin @Lee\_in\_Iowa @SheWhoVotes @goldengateblond @sherrilee7 @cher @DebraMessing @bluedillygal @IMPLORABLE #StopSessions

@rpdnplstk call your senators and tell them to #StopSessions as Attorney general.

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**Branstad says Trump assures EPA chief will be pro-ethanol**

radioiowa.com | 01/03/17 18:34

Iowa's governor says President-elect Donald Trump has reassured him the Trump Administration will be pro-ethanol. Governor Terry Branstad was concerned initially when he heard Trump asked the attorney general from oil-rich Oklahoma to be head of the Environmental Protection Agency. "Donald Trump told both me and my son, Eric: 'Don't worry. He's going to support [...]"

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**Grassley priorities: Sentencing & juvenile justice reform, b...**

radioiowa.com | 01/03/17 09:19

As the new session of Congress opens, Iowa Senator Chuck Grassley anticipates one of his first orders of business will be the nomination of Senator Jeff Sessions of Alabama as the new Attorney General. Grassley expects two days of hearings on Sessions next week followed by a likely floor vote on his confirmation right after [...]"

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**laredoacplus @laredoacplus**

01/03/17 08:20

Texas Attorney General Blocks Transgender Surgery Rule  
https://t.co/C6qs6bUlaU via @realDonaldTrump #DALLAS #HOUSTON #OHIO #IOWA #LAREDO

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**Harrington Writes Book about Iowa Journalist**

agwired.com | 01/03/17 07:19

, uncovering an illegal liquor and gambling set-up. Verne Marshall, tempestuous editor of the Cedar Rapids Gazette, sensed a bigger story and a wider network of corruption. His aggressive investigative reporting led to multiple resignations, nearly fifty indictments and the dramatic trial of the state's attorney general. These explosive exposés earned Verne Marshall and the paper the 1936 Pulitzer Prize. Author Jerry Harrington traces the legacy of Marshall's incendiary crusade across Iowa's

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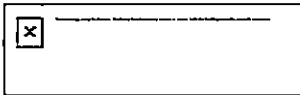
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**McCarthy, Kevin [AG]**

**From:** morningreport@meltwaternews.com  
**Sent:** Wednesday, December 21, 2016 7:04 AM  
**To:** McCarthy, Kevin [AG]  
**Subject:** 13 hits from Meltwater News

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Iowa Attorney General	News	7 in 1 day
Iowa Attorney General		6 in 1 day

**Iowa Attorney General**

**Man sentenced to prison for sexual abuse**

Waterloo-Cedar Falls Courier | 12/21/16 03:00

...when he was arrested in Texas and fought extradition, said Assistant Iowa Attorney General Scott Brown, who prosecuted the case. Jarrett was...

WORDS MATCHED Attorney General, Iowa

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**RETIRED DUPONT PIONEER MARKETER WRITES BOOK ON IOWA PULITZER PRIZE WINNER**

Agri Marketing | 12/21/16 02:23

...of nearly 50 individuals and a high-profile graft trial of Iowa's attorney general. Harrington was marketing public relations manager for DuPont...

WORDS MATCHED attorney general, Iowa



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### UPDATE: Victim in Mitchell kidnapping case says justice was served

Waterloo-Cedar Falls Courier | 12/20/16 14:14

...days in March, according to the prosecutor in the case, Iowa Assistant Attorney General Coleman McAllister. At one point Lenz took the victim ...

WORDS MATCHED Attorney General, Iowa

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### Mitchell man sentenced to life in prison for kidnapping

Waterloo-Cedar Falls Courier | 12/20/16 11:38

[1 other source...](#)

...two days in March, according to prosecutor in the case, Iowa Assistant Attorney General Coleman McAllister. Get news headlines sent daily to...

WORDS MATCHED Attorney General, Iowa



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### Audit: former Delhi city clerk paid credit card bill with city funds

Radio Iowa | 12/20/16 11:29

...Office, the Iowa Division of Criminal Investigation, the Delaware County Attorney s Office, and the Iowa Attorney General s Office. Dar Danielson

WORDS MATCHED Attorney General, Iowa



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### Update: Victim in Mitchell kidnapping case says justice was served

Globe Gazette | 12/20/16 11:28

...days in March, according to the prosecutor in the case, Iowa Assistant Attorney General Coleman McAllister. At one point Lenz took the victim ...

WORDS MATCHED Attorney General, Iowa



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### Special investigation shows Delhi sewer customers overbilled \$250K

KWWL.com | 12/20/16 09:05

...Sheriff's Office, the Iowa Division of Criminal Investigation, the Delaware County Attorney's Office and the Iowa Attorney General' s Office .

WORDS MATCHED Attorney General, Iowa

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Iowa Attorney General



### Trump to nominate EPA critic Pruitt to lead agency

omnitalk.wordpress.com | 12/21/16 05:38

President-elect Donald Trump is planning to nominate Oklahoma Attorney General Scott Pruitt – an outspoken critic of the EPA – to lead the environmental agency, a senior transition source confirmed to Fox News. Word of Trump's EPA choice came as the president-elect also named Iowa Gov. Terry Branstad as his pick for ambassador to China and asked retired Gen. John Kelly to lead the Department of Homeland Security. Trump announced late Wednesday as well that he'll nominate Linda McMahon, former



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### What Each State Googled More Frequently Than Any Other State...

blog.estately.com | 12/20/16 22:50

Carlson (commentator) / coup in Turkey / The Secret Life of Pets (2016 film) / Orionids (meteor shower) / Janet Reno (former U.S. Attorney General who passed in 2016) Are you living in the wrong state? Ready to move somewhere where people search the internet more like you do? Estatefy can't help you pack, but we can help you find your dream home when you decide where to live. Start searching on Estatefy.com or with the Estatefy iPhone App. Download it for free today!

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### Daily Kos Elections open thread: 12/19

dailykos.com | 12/20/16 13:50

on 2018 once his boss joins the Trump administration. But as McMaster waits for Gov. Nikki Haley to become Donald Trump's U.N. ambassador, he, like Reynolds, still faces the prospect of an intra-party challenge. Several Republicans are still considering bids, and now state Attorney General Alan Wilson confirms he hasn't ruled one out, either. Previously, a spokesperson had said as much, but now Wilson himself tells the National Journal's Zachary Cohen that he's taking a "wait and see" approach to



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### Mitchell man sentenced to life in prison for kidnapping

12/20/16 13:25

Lenz, 23, of Mitchell, confined and beat a woman he was romantically involved with over the course of two days in March, according to prosecutor in the case, Iowa Assistant Attorney General Coleman McAllister. OSAGE -- Nicholas Lenz was sentenced to life in prison without the possibility of parole Tuesday after a Mitchell County jury found him guilty of first-degree kidnapping in October.

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
### A Victory for Religious Liberty

empoweringgodspople.blogspot.com | 12/20/16 11:52

Four pastors in Massachusetts (MA) are dropping their lawsuit against the state after the attorney general's office revised the interpretation of a new gender identity anti-discrimination law which categorized churches as places of public



accommodation. The state's move protects the 1st Amendment rights of MA churches to express their beliefs about gender and sexuality and operate their bathrooms in a manner consistent with their theology. Classifying churches as places of public accommodation



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### Counting Our Pro-Life Blessings At Christmas

greaterfitchburgforlife.blogspot.com | 12/20/16 10:46

president, over the last three weeks Trump's appointments have already included Sen. Jeff Sessions as Attorney General; Rep. Tom Price to be Secretary of Health and Human Services; Republican National Chairman Reince Priebus to be chief of staff; South Carolina Gov. Nikki Haley as ambassador to the United Nations; Dr. Ben Carson as Secretary of Housing and Urban Development; Rep. Mike Pompeo to be director of the CIA; and Betsy DeVos as Secretary of Education; Iowa Gov. Terry Branstad, who will

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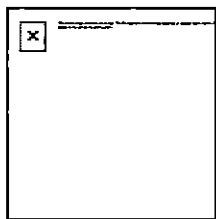
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**McCarthy, Kevin [AG]**

---

**From:** Melohn, Janelle [AG]  
**Sent:** Tuesday, December 20, 2016 2:54 PM  
**To:** McCarthy, Kevin [AG]  
**Cc:** Tabor, Eric [AG]  
**Subject:** RE: ProclamationforSlaveryandHumanTraffickingPreventionandAwarenessMonth.pdf

Sounds good, thanks for the affirmation!

**Janelle Melohn****Director**

Office of the Attorney General of Iowa  
Crime Victim Assistance Division  
321 East 12<sup>th</sup> Street  
Des Moines, Iowa 50319  
Main: (515) 281-5044 | Direct: (515) 242-6109  
Email: [janelle.melohn@iowa.gov](mailto:janelle.melohn@iowa.gov) | [www.iowaattorneygeneral.gov](http://www.iowaattorneygeneral.gov)  
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**From:** McCarthy, Kevin [AG]  
**Sent:** Tuesday, December 20, 2016 2:54 PM  
**To:** Melohn, Janelle [AG]  
**Cc:** McCarthy, Kevin [AG]; Tabor, Eric [AG]  
**Subject:** Re: ProclamationforSlaveryandHumanTraffickingPreventionandAwarenessMonth.pdf

Janelle,  
Handle this the way you feel best. Either you...or Celene on our behalf. Given that we are not a formal part of the program it is whatever you think is best.  
Thanks,  
Kevin

On Dec 20, 2016, at 8:21 AM, Melohn, Janelle [AG] <[Janelle.Melohn@iowa.gov](mailto:Janelle.Melohn@iowa.gov)> wrote:

The most recent "ask" from George Belitsos re: the HT on the Hill day. I'm okay with having Celine participate, but wanted to check in to be sure. I'm also happy to accompany if she's concerned at all. Celine is stellar though and I'm not concerned at all with her ability to represent the AGO well.

Let me know.

**Janelle Melohn****Director**

<image001.png> Office of the Attorney General of Iowa  
Crime Victim Assistance Division  
321 East 12<sup>th</sup> Street  
Des Moines, Iowa 50319



Main: (515) 281-5044 | Direct: (515) 242-6109  
Email: [janelle.melohn@iowa.gov](mailto:janelle.melohn@iowa.gov) | [www.iowaattorneygeneral.gov](http://www.iowaattorneygeneral.gov)  
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**From:** George Belitsos [<mailto:gbelitsos55@gmail.com>]  
**Sent:** Monday, December 19, 2016 5:38 PM  
**To:** Villongco, Celine [AG]; Ryan, Roxann [DPS]  
**Cc:** Teresa Davidson; Bernadette Rixner; Jan Beran; Margaret Epplin; George Belitsos  
**Subject:** RE: ProclamationforSlaveryandHumanTraffickingPreventionandAwarenessMonth.pdf

Holiday greetings. Today I had a conversation with the governor's press secretary and he proposed that the only speakers at the press conference on January 9th at 9 a.m. be the governor, lieutenant governor, and myself. After the press conference at 9:30, it is planned that Roxanne Ryan and someone representing the Attorney General's office be identified and present to answer questions from the media. Please let me know if you should be identified or if it is someone else. I am copying this email to Roxanne to also inform her of all of this.

FYI at 9:45 p.m. we will reconvene in the governor's formal office for the proclamation signing. It would be great if you and Roxanne could be present for the Proclamation signing.

You were going to look at any national theme for this year's observance of January as anti Human Trafficking month. Were you able to locate any national theme or information?

Finally, the Network board will meet at approximately 10:15 a.m. to 11:30 a.m. following the proclamation signing. We would really appreciate it if you and Roxanne could be in attendance for this face to face board meeting. Since we will be right there at the state capitol building it would be very helpful to get a progress report from both the Attorney General's office and DPS. Please let me know.

Thanks. Dr. George  
George P. Belitsos  
YSS Founder & CEO Emeritus  
Board Chair, Iowa Network Against Human Trafficking  
515-290-1909 mobile  
515-292-9475 home  
5508 W. Lincolnway  
Ames, IA 50014  
[Gbelitsos55@gmail.com](mailto:gbelitsos55@gmail.com) (primary)

On Dec 19, 2016 2:39 PM, "Villongco, Celine [AG]" <[Celine.Villongco@iowa.gov](mailto:Celine.Villongco@iowa.gov)> wrote:

Hi Dr. George,

I'm still waiting for confirmation from the main office on if they will be sending someone to serve in an official press-capacity, but that has not been made clear yet. I will keep you informed if hear something, but wanted to clarify that unless I receive the official go-ahead from them, I won't be authorized to speak to press on the record.

Thanks!

Celine

## Celine Villongco

### Human Trafficking Coordinator

Office of the Attorney General of Iowa  
321 E. 12<sup>th</sup> Street

<image001.png>

Des Moines, Iowa 50319

Phone: (515)-281-5044 | Direct: (515) 725-4109  
Email: [Celine.Villongco@iowa.gov](mailto:Celine.Villongco@iowa.gov) | [www.iowaattorneygeneral.gov](http://www.iowaattorneygeneral.gov)

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**From:** George Belitsos [<mailto:gbelitsos55@gmail.com>]

**Sent:** Monday, December 19, 2016 12:40 PM

**To:** Hammes, Ben [IGOV]

**Cc:** George Belitsos; Jacobs, Austin [IGOV]; Maggie Tinsman; Villongco, Celine [AG]; Teresa Davidson; Jan Beran; Ryan, Roxann [DPS]; Ruth Buckels

**Subject:** ProclamationforSlaveryandHumanTraffickingPreventionandAwarenessMonth.pdf



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Thanks. Dr. George  
George P. Belitsos  
YSS Founder & CEO Emeritus  
Board Chair, Iowa Network Against Human Trafficking  
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515-292-9475 home  
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Gbelitsos55@gmail.com (primary)

**McCarthy, Kevin [AG]**

---

**From:** McCarthy, Kevin [AG]  
**Sent:** Tuesday, December 20, 2016 2:54 PM  
**To:** Melohn, Janelle [AG]  
**Cc:** McCarthy, Kevin [AG]; Tabor, Eric [AG]  
**Subject:** Re: ProclamationforSlaveryandHumanTraffickingPreventionandAwarenessMonth.pdf

Janelle,  
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Thanks,  
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Office of the Attorney General of Iowa  
Crime Victim Assistance Division

<image001.png>

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Kevin McCarthy

5/8/2017 3:11 PM

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**McCarthy, Kevin [AG]**

---

**From:** Ambrozic, Jane [AG]  
**Sent:** Tuesday, December 20, 2016 10:31 AM  
**To:** McCarthy, Kevin [AG]  
**Subject:** FW: Mtg w/ Governor and Attorney General

---

**From:** Freed, Alicia [IGOV]  
**Sent:** Monday, November 21, 2016 9:52 AM  
**To:** Ambrozic, Jane [AG]  
**Subject:** RE: Mtg w/ Governor and Attorney General

No problem.

Alicia Freed  
Executive Scheduler  
Office of Governor Terry Branstad  
515-725-3510  
[Alicia.freed@iowa.gov](mailto:Alicia.freed@iowa.gov)

---

**From:** Ambrozic, Jane [AG]  
**Sent:** Monday, November 21, 2016 9:52 AM  
**To:** Freed, Alicia [IGOV]  
**Subject:** RE: Mtg w/ Governor and Attorney General

That works nicely. Thanks for your help.

---

**From:** Freed, Alicia [IGOV]  
**Sent:** Monday, November 21, 2016 9:46 AM  
**To:** Ambrozic, Jane [AG]  
**Subject:** RE: Mtg w/ Governor and Attorney General

Thanks for your patience would 12/21 at 11:00 am work?

Alicia Freed  
Executive Scheduler  
Office of Governor Terry Branstad  
515-725-3510  
[Alicia.freed@iowa.gov](mailto:Alicia.freed@iowa.gov)

---

**From:** Ambrozic, Jane [AG]  
**Sent:** Wednesday, November 16, 2016 1:34 PM  
**To:** Freed, Alicia [IGOV]  
**Subject:** RE: Mtg w/ Governor and Attorney General

No a problem at all. Thanks!

---

**From:** Freed, Alicia [IGOV]  
**Sent:** Wednesday, November 16, 2016 1:27 PM  
**To:** Ambrozic, Jane [AG]  
**Subject:** RE: Mtg w/ Governor and Attorney General

Let me see what I can do. It might take me a few days. Is that okay?

Alicia Freed  
Executive Scheduler  
Office of Governor Terry Branstad  
515-725-3510  
[Alicia.freed@iowa.gov](mailto:Alicia.freed@iowa.gov)

---

**From:** Ambrozic, Jane [AG]  
**Sent:** Tuesday, November 15, 2016 11:05 AM  
**To:** Freed, Alicia [IGOV]  
**Subject:** Mtg w/ Governor and Attorney General

I've been asked to schedule a time for the Attorney General and the director of Corrections to meet with the Governor to discuss additional justice reform for the upcoming legislative session.

That being said, the AG is out a bunch. He has some availability December 2<sup>nd</sup>, 5<sup>th</sup> and 6<sup>th</sup> (leaving on the 6<sup>th</sup> mid afternoon for a flight); December 15<sup>th</sup> and the week of December 19<sup>th</sup>.

Are you able to make anything work with the Governor's schedule?

Thanks for your help.



**Jane Ambrozic**  
**Executive Secretary**  
**Office of the Attorney General of Iowa**  
1305 E. Walnut St.  
Des Moines, Iowa 50319  
Main: (515) 281-5164 | Direct: (515) 281-5166  
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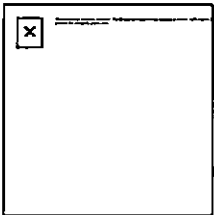
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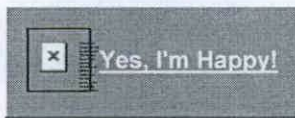
**From:** morningreport@meltwaternews.com  
**Sent:** Wednesday, December 14, 2016 7:06 AM  
**To:** McCarthy, Kevin [AG]  
**Subject:** 16 hits from Meltwater News

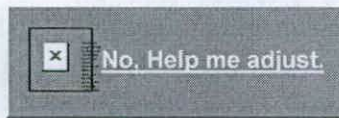
Help Center | help@meltwater.com





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#### Report Overview

AGENT	MEDIA TYPE	HITS
Iowa Attorney General	News	5 in 1 day
Tom Miller	News	2 in 1 day
Geoff Greenwood	News	2 in 1 day
Iowa Attorney General		6 in 1 day
Tom Miller		1 in 1 day


#### Iowa Attorney General

#### Expert testifies that Bills had to be texting

The Messenger | 12/14/16 00:06

*...while driving. Why did you do that? Coleman McAllister, assistant Iowa attorney general, asked Wenke during court. Cause I thought that the time...*

WORDS MATCHED attorney general, Iowa

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Trump's business practices could help curb the crazy high drug prices



The Hill - Blogs | 12/13/16 15:00

*...diligence' on Sessions nomination Senate sets date for hearings on Sessions's attorney general nomination MORE (R-Iowa), which provides a sound regulatory...*

WORDS MATCHED attorney general, Iowa



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### Iowa Taxpayers Handing Out \$60K Settlement To California Gamblers Who Were Legally Robbed Of \$100K By State Troopers

Techdirt | 12/13/16 13:54

*however. They'll just be more distributed. Jeff Thompson, also of Iowa Attorney General Tom Miller's office, told the board Monday that the Iowa Department...*

WORDS MATCHED Attorney General, Iowa



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### No prison for teacher sex offender under court review

Press-Citizen (AP) | 12/13/16 11:07

*...case law with similar circumstances. Scott Brown, an assistant Iowa attorney general, said in a recent interview that the sentencing requirement...*

WORDS MATCHED Attorney General, attorney general, Iowa



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### 'Flip Or Flop' Stars Tarek And Christina El Moussa Split After Huge Blow-Up And Reported Suicide Attempt

The Inquisitr News | 12/13/16 07:57

*Unfortunately, Brockfield never got her money back and filed a case with the Ohio Attorney General. In Iowa, Lori Ingersoll gave the couple some \$41,297...*

WORDS MATCHED Attorney General, Iowa

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## Tom Miller

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**WORDS MATCHED** Attorney General, attorney general, Tom Miller

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## Geoff Greenwood



### Reynolds will be governor with full authority, state officials say

Waterloo-Cedar Falls Courier | 12/14/16 03:10

[8 other sources...](#)

...authority to appoint a new lieutenant governor, attorney general spokesman **Geoff Greenwood** said in an emailed statement. Reynolds said she plans ...

**WORDS MATCHED** Geoff Greenwood



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### Governor transition

Waterloo-Cedar Falls Courier | 12/14/16 01:15

...authority to appoint a new lieutenant governor, attorney general spokesman **Geoff Greenwood** said in an emailed statement. Reynolds said she plans ...

**WORDS MATCHED** Geoff Greenwood

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## Iowa Attorney General



### Swamp Draining Will Expose Corrupt Climate Crocodiles

sppiblog.org | 12/14/16 06:17

later, Trump picked Oklahoma Attorney General Scott Pruitt, a carbon-caused Armageddon skeptic and fierce EPA regulatory overreach critic, to head the agency. For example, he led a legal suit by attorneys general of 28 states which produced a Supreme Court stay of the Obama administration's war on coal (aka, "Clean Power Plan"). Fittingly, Pruitt can also be counted on to drain EPA's swamp of wetland regulations, including its claimed authority over farm ponds as navigable waterways.

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### The dirty deplorables: Who's who on Trump's team

grist.org | 12/14/16 01:18

and appointees here, continuing as they make their way through the confirmation

process, so check back for updates. EPA Administrator: Scott Pruitt Secretary of State: Rex Tillerson Secretary of Interior: Ryan Zinke Secretary of Energy: Rick Perry Attorney General: Jeff Sessions Secretary of Transportation: Elaine Chao Secretary of Housing and Urban Development: Ben Carson Secretary of Health and Human Services: Tom Price Secretary of Defense: James Mattis U.N. Ambassador: Nikki Haley Chief of

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**John Glenn: 1921–2016**

bathroomreader.com | 12/13/16 18:50

Glenn returned to Earth, he decided to go into politics. Why? In part, it was because the extensive psychological testing he underwent to see if he was fit to be an astronaut determined that he'd make a good public servant. Also convincing him: He was friends with the Kennedy family. In 1962, Attorney General Robert Kennedy told him to run for a Senate seat from his home state of Ohio in 1964. Glenn gave NASA his retirement papers, declared his candidacy...and then hit his head on a bathtub. Glenn

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**Trump's holiday bonus for big ag**

blog.hsif.org | 12/13/16 14:27

A number of anti-animal politicians have been under consideration for cabinet posts in the Trump administration, but the president-elect has selected one of the very worst to lead the Environmental Protection Agency: Oklahoma Attorney General Scott Pruitt. An elected official who abused the power of his office to attack charities on behalf of agribusiness interests will now lead the federal agency responsible for a number of important animal issues, including animal testing for pesticides and

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**desmoinesdem** @desmoinesdem

12/13/16 08:50

Not lately. I think AG Tom Miller clashed w/Branstad during his 1st stretch as #Iowa governor, though (maybe over honoring AFSCME contract)? @desmoinesdem Have you seen our current Attorney General EVER have an adversarial relationshi...

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**CFACT**

12/13/16 07:46

ratepayer handouts; and a host of politicians and cronies who apply "save the world" hype to fill campaign coffers and personal bank accounts. So finally, just how influential was Gore in convincing the new President-Elect about a fossil-fueled climate menace? To be very generous, not so much. prOnly two days later, Trump picked Oklahoma Attorney General Scott Pruitt, a carbon-caused Armageddon skeptic and fierce EPA regulatory overreach critic, to head the agency. For example, he led a legal suit by

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Tom Miller



**desmoinesdem** @desmoinesdem

12/13/16 08:50

Not lately. I think AG Tom Miller clashed w/Branstad during his 1st stretch as #Iowa governor, though (maybe over honoring AFSCME contract)? @desmoinesdem Have you seen our current Attorney General EVER have an adversarial relationshi...

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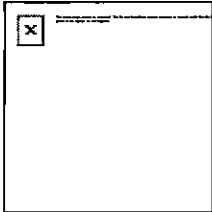
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**McCarthy, Kevin [AG]**

---

**From:** McCarthy, Kevin [AG]  
**Sent:** Tuesday, December 13, 2016 11:07 AM  
**To:** 'DAVID DAWSON'  
**Subject:** RE: David Dawson -- Application for District Court Judge, Judicial District 3B

Thanks for letting me know. I thought they select three?



**Kevin McCarthy**  
**First Assistant Attorney General**  
Office of the Attorney General of Iowa  
1305 E. Walnut St.  
Des Moines, Iowa 50319  
Main: (515) 281-5164  
Fax: (515) 281-4209  
Email: [kevin.mccarthy@iowa.gov](mailto:kevin.mccarthy@iowa.gov) | [www.iowaattorneygeneral.gov](http://www.iowaattorneygeneral.gov)

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---

**From:** DAVID DAWSON [mailto:[daviddawson\\_73@msn.com](mailto:daviddawson_73@msn.com)]  
**Sent:** Monday, December 12, 2016 11:12 AM  
**To:** McCarthy, Kevin [AG]  
**Subject:** Re: David Dawson -- Application for District Court Judge, Judicial District 3B

Thank you for your support in this process. I wanted to let you know that the Commission met on Friday and did not nominate me as one of the two judicial finalists.

Best wishes to you and your family for a great new year.

Dave Dawson

---

**From:** McCarthy, Kevin [AG] <[Kevin.McCarthy@iowa.gov](mailto:Kevin.McCarthy@iowa.gov)>  
**Sent:** Tuesday, December 6, 2016 9:56:19 AM  
**To:** DAVID DAWSON  
**Subject:** Re: David Dawson -- Application for District Court Judge, Judicial District 3B

Let me know if you make the final three. I may be of some help then. I do not know any members of the nominating commission.

Sent from my iPhone

On Dec 3, 2016, at 4:08 PM, DAVID DAWSON <[daviddawson\\_73@msn.com](mailto:daviddawson_73@msn.com)<[mailto:daviddawson\\_73@msn.com](mailto:daviddawson_73@msn.com)>> wrote:

I am not sure if a word of support from each of you will be as effective as from those listed below, but if you have any words of support to provide to the Governor or the Commission members, I would appreciate anything you can do to help. Thanks.

Dave Dawson



From: DAVID DAWSON <daviddawson\_73@msn.com<mailto:daviddawson\_73@msn.com>>  
Sent: Saturday, December 3, 2016 3:35 PM  
To: [chris.hagenow@legis.iowa.gov](mailto:chris.hagenow@legis.iowa.gov)<mailto:chris.hagenow@legis.iowa.gov>;  
[rob.bacon@legis.iowa.gov](mailto:rob.bacon@legis.iowa.gov)<mailto:rob.bacon@legis.iowa.gov>;  
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[clel.baudler@legis.iowa.gov](mailto:clel.baudler@legis.iowa.gov)<mailto:clel.baudler@legis.iowa.gov>;  
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[Chuck.Holz@legis.iowa.gov](mailto:Chuck.Holz@legis.iowa.gov)<mailto:Chuck.Holz@legis.iowa.gov>;  
[dan.huseman@legis.iowa.gov](mailto:dan.huseman@legis.iowa.gov)<mailto:dan.huseman@legis.iowa.gov>;  
[megan.jones@legis.iowa.gov](mailto:megan.jones@legis.iowa.gov)<mailto:megan.jones@legis.iowa.gov>;  
[ron.jorgensen@legis.iowa.gov](mailto:ron.jorgensen@legis.iowa.gov)<mailto:ron.jorgensen@legis.iowa.gov>;  
[jarad.klein@legis.iowa.gov](mailto:jarad.klein@legis.iowa.gov)<mailto:jarad.klein@legis.iowa.gov>;  
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[dawn.pettengill@legis.iowa.gov](mailto:dawn.pettengill@legis.iowa.gov)<mailto:dawn.pettengill@legis.iowa.gov>;  
[Ken.Rizer@legis.iowa.gov](mailto:Ken.Rizer@legis.iowa.gov)<mailto:Ken.Rizer@legis.iowa.gov>; [walt.rogers@legis.iowa.gov](mailto:walt.rogers@legis.iowa.gov)<mailto:walt.rogers@legis.iowa.gov>;  
[sandy.salmon@legis.iowa.gov](mailto:sandy.salmon@legis.iowa.gov)<mailto:sandy.salmon@legis.iowa.gov>;  
[Mike.Sexton@legis.iowa.gov](mailto:Mike.Sexton@legis.iowa.gov)<mailto:Mike.Sexton@legis.iowa.gov>;  
[David.Sieck@legis.iowa.gov](mailto:David.Sieck@legis.iowa.gov)<mailto:David.Sieck@legis.iowa.gov>; [rob.taylor@legis.iowa.gov](mailto:rob.taylor@legis.iowa.gov)<mailto:rob.taylor@legis.iowa.gov>;  
[matt.windschitl@legis.iowa.gov](mailto:matt.windschitl@legis.iowa.gov)<mailto:matt.windschitl@legis.iowa.gov>;  
[gary.worthan@legis.iowa.gov](mailto:gary.worthan@legis.iowa.gov)<mailto:gary.worthan@legis.iowa.gov>  
Subject: David Dawson -- Application for District Court Judge, Judicial District 3B

I am writing to let you know that I applied this week for a District Court Judge vacancy in Judicial District 3B. I believe that I had a good working relationship with each of you over my 4 years in the Iowa House and that you would have the ability to comment on my qualifications to serve as a trial judge.

I am asking if you may be willing to contact members of the Judicial Nominating Commission that you may know or contact the Governor to indicate your support for my nomination and eventual appointment to serve as a trial judge.

If you are unable to do so, I understand. If you would like to discuss this matter with me, please call me. My cell phone is: (712) 898-5804.

Thank you for considering this matter.

Dave Dawson  
Former State Representative  
400 Essex Street  
Sioux City, Iowa 51103  
[daviddawson\\_73@msn.com](mailto:daviddawson_73@msn.com)<mailto:daviddawson\_73@msn.com>  
cell: (712) 898-5804

The following is the information about the 8 persons who have applied and the 11 members of the Judicial Nominating Commission for Judicial District 3B in Northwest Iowa:

PRESS RELEASE

Kevin McCarthy

5/8/2017 3:11 PM

The 3B Judicial Nominating Commission has received eight applications for the district judge position that exists as a result of the retirement of District Judge Mary Jane Sokolovske. The attorneys applying to fill the judicial vacancy include:

Tod Deck: Judicial Magistrate and Deck Law, LLP, Sioux City, Iowa  
David Dawson: Assistant County Attorney-Woodbury County, Sioux City, Iowa  
Zachary Hindman: Mayne, Arneson, Hindman, Hisey & Daane, Sioux City, Iowa  
Michael Jacobsma: Jacobsma & Clabaugh PLC, Orange City, Iowa  
Roseanne Lienhard: Second Opinion Legal Center and Mediation Services, Hinton, Iowa  
Billy Oyadare: Attorney – State Public Defender’s Office, Sioux City, Iowa  
Darin Raymond: Plymouth County Attorney, LeMars, Iowa  
Julie Schumacher: District Associate Judge, Schleswig, Iowa

Each applicant will be interviewed on December 9th, 2016 at the Woodbury County Courthouse in Sioux City, Iowa.

Applicants must be members of the bar of Iowa, residents of the Judicial District 3B, and of such age that they will be able to serve an initial and one regular term of office before reaching the age of seventy-two years.

Judicial District 3B consists of Crawford, Ida, Monona, Plymouth, Sioux and Woodbury counties.

The Commission will submit the names of two nominees to Governor Branstad. Governor Branstad will then appoint one of the nominees to be a district judge. The judge selected will ultimately stand for retention election.

The members of the 3B Nominating Commission include:

Judge John D. Ackerman [John.Ackerman@iowacourts.gov](mailto:John.Ackerman@iowacourts.gov)<<mailto:John.Ackerman@iowacourts.gov>>  
Woodbury County Courthouse  
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Ireton, Iowa 51027-7588

Rachel Raak [RachelRaak1407@gmail.com](mailto:RachelRaak1407@gmail.com)<<mailto:RachelRaak1407@gmail.com>>  
1407 Megan's Way  
Correctionville, Iowa 51016

Delana Ihrke [Ihrkeshome@frontiernet.net](mailto:Ihrkeshome@frontiernet.net)<<mailto:Ihrkeshome@frontiernet.net>>  
613 3rd Avenue SE  
LeMars, Iowa 51031

Jennifer Zupp [Jennifer@ZuppandZupp.com](mailto:Jennifer@ZuppandZupp.com)<<mailto:Jennifer@ZuppandZupp.com>>  
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Orange City, Iowa 51041

Dan Moore [dmoore@mooreheffernanlaw.com](mailto:dmoore@mooreheffernanlaw.com)<<mailto:dmoore@mooreheffernanlaw.com>>  
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Sioux City, Iowa 51102-3207

Scott Hindman [SHindman@MayneLaw.com](mailto:SHindman@MayneLaw.com)<<mailto:SHindman@MayneLaw.com>>  
PO Box 1678  
Sioux City, Iowa 51101

Amanda Van Wyhe [AVanWyhe@siouxcitydivorcelawyer.com](mailto:AVanWyhe@siouxcitydivorcelawyer.com)<<mailto:AVanWyhe@siouxcitydivorcelawyer.com>>  
1720 Summit St.  
Sioux City, Iowa 51105

Dr. Robert Stewart [StewartR@cableone.net](mailto:StewartR@cableone.net)<<mailto:StewartR@cableone.net>>  
29 45th Street



Kevin McCarthy  
Sioux City, Iowa 51104-1553

5/8/2017 3:11 PM

Arlan Ecklund [ArlanEcklund@Haleyequipmentinc.com](mailto:ArlanEcklund@Haleyequipmentinc.com)<<mailto:ArlanEcklund@Haleyequipmentinc.com>>  
519 North 19th St.  
Denison, Iowa 51442-1665

The Iowa Judicial Branch dedicates itself to providing independent and accessible forums for the fair and prompt resolution of disputes, administering justice under law equally to all persons.

Leesa A. McNeil  
District Court Administrator-Third Judicial District  
Woodbury County Courthouse, Room 210  
620 Douglas Street, Sioux City, Iowa 51101-1249  
phone: 712-279-6608 fax: 712-279-6631  
[Leesa.McNeil@iowacourts.gov](mailto:Leesa.McNeil@iowacourts.gov)<<mailto:Leesa.McNeil@iowacourts.gov>>

**McCarthy, Kevin [AG]**

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**From:** DAVID DAWSON <daviddawson\_73@msn.com>  
**Sent:** Monday, December 12, 2016 11:12 AM  
**To:** McCarthy, Kevin [AG]  
**Subject:** Re: David Dawson -- Application for District Court Judge, Judicial District 3B

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Dave Dawson

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**Sent:** Tuesday, December 6, 2016 9:56:19 AM  
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Sent from my iPhone

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Dave Dawson

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**From:** DAVID DAWSON <daviddawson\_73@msn.com<mailto:daviddawson\_73@msn.com>>  
**Sent:** Saturday, December 3, 2016 3:35 PM  
**To:** chris.hagenow@legis.iowa.gov<mailto:chris.hagenow@legis.iowa.gov>;  
rob.bacon@legis.iowa.gov<mailto:rob.bacon@legis.iowa.gov>;  
chip.baltimore@legis.iowa.gov<mailto:chip.baltimore@legis.iowa.gov>;  
clel.baudler@legis.iowa.gov<mailto:clel.baudler@legis.iowa.gov>;  
Terry.Baxter@legis.iowa.gov<mailto:Terry.Baxter@legis.iowa.gov>;  
Brian.Best@legis.iowa.gov<mailto:Brian.Best@legis.iowa.gov>;  
Gary.Carlson@legis.iowa.gov<mailto:Gary.Carlson@legis.iowa.gov>;  
peter.cownie@legis.iowa.gov<mailto:peter.cownie@legis.iowa.gov>; joel.fry@legis.iowa.gov<mailto:joel.fry@legis.iowa.gov>;  
tedd.gassman@legis.iowa.gov<mailto:tedd.gassman@legis.iowa.gov>;  
stan.gustafson@legis.iowa.gov<mailto:stan.gustafson@legis.iowa.gov>;  
maryann.hanusa@legis.iowa.gov<mailto:maryann.hanusa@legis.iowa.gov>;  
greg.heartsill@legis.iowa.gov<mailto:greg.heartsill@legis.iowa.gov>;  
dave.heaton@legis.iowa.gov<mailto:dave.heaton@legis.iowa.gov>;  
jake.highfill@legis.iowa.gov<mailto:jake.highfill@legis.iowa.gov>;  
Steven.Holt@legis.iowa.gov<mailto:Steven.Holt@legis.iowa.gov>;  
Chuck.Holz@legis.iowa.gov<mailto:Chuck.Holz@legis.iowa.gov>;  
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ron.jorgensen@legis.iowa.gov<mailto:ron.jorgensen@legis.iowa.gov>;



Kevin McCarthy

5/8/2017 3:11 PM

jarad.klein@legis.iowa.gov<mailto:jarad.klein@legis.iowa.gov>;  
dave.maxwell@legis.iowa.gov<mailto:dave.maxwell@legis.iowa.gov>;  
Zach.Nunn@legis.iowa.gov<mailto:Zach.Nunn@legis.iowa.gov>;  
dawn.pettengill@legis.iowa.gov<mailto:dawn.pettengill@legis.iowa.gov>;  
Ken.Rizer@legis.iowa.gov<mailto:Ken.Rizer@legis.iowa.gov>; walt.rogers@legis.iowa.gov<mailto:walt.rogers@legis.iowa.gov>;  
sandy.salmon@legis.iowa.gov<mailto:sandy.salmon@legis.iowa.gov>;  
Mike.Sexton@legis.iowa.gov<mailto:Mike.Sexton@legis.iowa.gov>;  
David.Sieck@legis.iowa.gov<mailto:David.Sieck@legis.iowa.gov>; rob.taylor@legis.iowa.gov<mailto:rob.taylor@legis.iowa.gov>;  
matt.windschitl@legis.iowa.gov<mailto:matt.windschitl@legis.iowa.gov>;  
gary.worthan@legis.iowa.gov<mailto:gary.worthan@legis.iowa.gov>  
Subject: David Dawson -- Application for District Court Judge, Judicial District 3B

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If you are unable to do so, I understand. If you would like to discuss this matter with me, please call me. My cell phone is: (712) 898-5804.

Thank you for considering this matter.

Dave Dawson  
Former State Representative  
400 Essex Street  
Sioux City, Iowa 51103  
daviddawson\_73@msn.com<mailto:daviddawson\_73@msn.com>  
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David Dawson: Assistant County Attorney-Woodbury County, Sioux City, Iowa  
Zachary Hindman: Mayne, Arneson, Hindman, Hisey & Daane, Sioux City, Iowa  
Michael Jacobsma: Jacobsma & Clabaugh PLC, Orange City, Iowa  
Roseanne Lienhard: Second Opinion Legal Center and Mediation Services, Hinton, Iowa  
Billy Oyadare: Attorney – State Public Defender’s Office, Sioux City, Iowa  
Darin Raymond: Plymouth County Attorney, LeMars, Iowa  
Julie Schumacher: District Associate Judge, Schleswig, Iowa

Each applicant will be interviewed on December 9th, 2016 at the Woodbury County Courthouse in Sioux City, Iowa. Applicants must be members of the bar of Iowa, residents of the Judicial District 3B, and of such age that they will be able to serve an initial and one regular term of office before reaching the age of seventy-two years. Judicial District 3B consists of Crawford, Ida, Monona, Plymouth, Sioux and Woodbury counties. The Commission will submit the names of two nominees to Governor Branstad. Governor Branstad will then appoint one of the nominees to be a district judge. The judge selected will ultimately stand for retention election. The members of the 3B Nominating Commission include:

Judge John D. Ackerman     John.Ackerman@iowacourts.gov<mailto:John.Ackerman@iowacourts.gov>  
Woodbury County Courthouse  
Room 210

Kevin McCarthy  
620 Douglas Street, Sioux City, Iowa 51101

5/8/2017 3:11 PM

Tammy J. Kobza TammyKobza@gmail.com<mailto:TammyKobza@gmail.com>  
2708 450th Street  
Ireton, Iowa 51027-7588

Rachel Raak RachelRaak1407@gmail.com<mailto:RachelRaak1407@gmail.com>  
1407 Megan's Way  
Correctionville, Iowa 51016

Delana Ihrke Ihrkeshome@frontiernet.net<mailto:Ihrkeshome@frontiernet.net>  
613 3rd Avenue SE  
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PO Box 1678  
Sioux City, Iowa 51101

Amanda Van Wyhe AVanWyhe@siouxcitydivorcelawyer.com<mailto:AVanWyhe@siouxcitydivorcelawyer.com>  
1720 Summit St.  
Sioux City, Iowa 51105

Dr. Robert Stewart StewartR@cableone.net<mailto:StewartR@cableone.net>  
29 45th Street  
Sioux City, Iowa 51104-1553

Arlan Ecklund ArlanEcklund@Haleyequipmentinc.com<mailto:ArlanEcklund@Haleyequipmentinc.com>  
519 North 19th St.  
Denison, Iowa 51442-1665

The Iowa Judicial Branch dedicates itself to providing independent and accessible forums for the fair and prompt resolution of disputes, administering justice under law equally to all persons.

Leesa A. McNeil  
District Court Administrator-Third Judicial District  
Woodbury County Courthouse, Room 210  
620 Douglas Street, Sioux City, Iowa 51101-1249  
phone: 712-279-6608 fax: 712-279-6631  
Leesa.McNeil@iowacourts.gov<mailto:Leesa.McNeil@iowacourts.gov>



**McCarthy, Kevin [AG]**

**From:** morningreport@meltwaternews.com  
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AGENT	MEDIA TYPE	HITS
Iowa Attorney General	News	10 in 1 day
Tom Miller	News	2 in 1 day
Geoff Greenwood	News	1 in 1 day
Iowa Attorney General		14 in 1 day
Tom Miller		2 in 1 day
@AGIowa		1 in 1 day

**Iowa Attorney General**



**State argues against lawsuit over officers' ticketing power**

KWWL.com | 12/08/16 06:01

[4 other sources...](#)

...barring the department's officers from issuing tickets. A 1990 Iowa attorney general opinion said the officers' authority is limited to drunken...

**WORDS MATCHED** attorney general, Iowa



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## State argues against lawsuit over officers' ticketing power

KIMT.com | 12/08/16 05:50

*...barring the department s officers from issuing tickets. A 1990 Iowa attorney general opinion said the officers authority is limited to drunken...*

WORDS MATCHED attorney general, Iowa

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## IIHS top safety picks, Trump and more: 5 things you need to know Thursday

Courier-Post | 12/08/16 05:01

[1 other source...](#)

*...as U.S. ambassador to China. Trump also tapped Oklahoma Attorney General Scott Pruitt to Trump visits Iowa after adding more hardliners to his...*

WORDS MATCHED Attorney General, Iowa

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## 5 things you need to know Thursday

TCPalm.com | 12/08/16 02:28

[1 other source...](#)

*...as U.S. ambassador to China. Trump also tapped Oklahoma Attorney General Scott Pruitt to Trump visits Iowa after adding more hardliners to his...*

WORDS MATCHED Attorney General, Iowa

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

## As Branstad prepares for China, transfer of power process unfolds

The Des Moines Register | 12/07/16 20:08

[1 other source...](#)

*...Reynolds. Geoff Greenwood, communications director for the Office of the Attorney General, said his office As Iowa Gov. Terry Branstad prepares...*

WORDS MATCHED Attorney General, Iowa



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## Trump administration announces Branstad nomination; reaction pours in

KWQC-TV6 News | 12/07/16 14:44

*...on behalf of the United States as he did for the people of Iowa. Iowa Attorney General Tom Miller, a Democrat, also congratulated the governor...*

WORDS MATCHED Attorney General, Iowa

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

## Iowa DOT: Don't make us stop issuing traffic tickets

The Des Moines Register | 12/07/16 12:57

[1 other source...](#)

*...merely the decision in one case, lawyers from the office of Iowa Attorney General Tom Miller argued in the newly filed court documents . Judge...*

WORDS MATCHED Attorney General, attorney general, Iowa

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## What happens if Gov. Branstad takes the U.S. Ambassador to China appointment?

KTIV News Channel 4 | 12/07/16 12:10



...China appointment, Lieutenant Governor Kim Reynolds would become Governor of Iowa. According to the Iowa Attorney General's Office, Reynolds ...

WORDS MATCHED Attorney General, Iowa



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### News Briefs: Sioux City Treatment Plant Management Under FBI Scrutiny

Treatment Plant Operator Magazine | 12/07/16 10:46

...penalties at \$10,000, the Iowa Environmental Protection Commission asked Iowa's attorney general to pursue a federal case. Related: NY DEP announces...

WORDS MATCHED attorney general, Iowa



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### Arson, burglary charges dropped against former Forest City cop

Globe Gazette | 12/07/16 05:00

...dismiss filed by Winnebago County Attorney Adam Sauer and Assistant Iowa Attorney General Scott Brown. District Court Judge DeDra Schroeder granted...

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## Tom Miller

### Trump administration announces Branstad nomination; reaction pours in

KWQC-TV6 News | 12/07/16 14:44

...the United States as he did for the people of Iowa. Iowa Attorney General Tom Miller, a Democrat, also congratulated the governor calling it...

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### Iowa DOT: Don't make us stop issuing traffic tickets

The Des Moines Register | 12/07/16 12:57

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...the decision in one case, lawyers from the office of Iowa Attorney General Tom Miller argued in the newly filed court documents. Judge Lauber...

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## Geoff Greenwood



## As Branstad prepares for China, transfer of power process unfolds

The Des Moines Register | 12/07/16 20:08

[1 other source...](#)

...governmental power is transferred to Lt. Gov. Kim Reynolds. Geoff Greenwood, communications director for the Office of the Attorney General ,

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

### Iowa Attorney General



#### Daily Kos Elections Live Digest: 12/7

dailykos.com | 12/08/16 04:36

, while he doesn't think he'll run for office ever again, he's still not closing the door on the idea completely. Wednesday, Dec 7, 2016 · 6:57:45 PM +00:00 · Jeff Singer AL-Sen: Last month, GOP state Attorney General Luther Strange said he planned to run in the special election to succeed Republican Sen. Jeff Sessions, who is Donald Trump's nominee for U.S. attorney general. On Tuesday, Strange announced that he is raising money for a Senate bid and is "officially announcing my intention to seek

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#### Daily Kos Elections Live Digest: 12/5

dailykos.com | 12/08/16 04:36

· 7:41:47 PM +00:00 · Stephen Wolf NC-Gov : Republican Gov. Pat McCrory has finally conceded defeat to Democratic Attorney General Roy Cooper. Cooper led by 4,480 votes on election night and now leads by just over 10,000 , or 0.22 percent. After a recount in heavily Democratic Durham County proved fruitless for McCrory , he finally threw in the towel. The governor's concession brings to a close one of the utmost contentious races in the country in 2016. Although Cooper's election night lead

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#### Dear Governor Robert Bentley of Alabama, appoint Congressman...

therainmanperspective.blogspot.com | 12/08/16 02:09

Given that President-elect Donald J. Trump has nominated Senator Jeff Sessions to be Attorney General and will likely be confirmed once Trump takes office after January 20, 2017; Sessions will have to resign as Senator as soon as he becomes Attorney General. This means as Governor you will have the duty of nominating an interim replacement until a special election can take place(in this case 2018 midterm elections), I recommend Congressman Mo Brooks. Why you might ask? For one, since Mo Brooks

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**Ok, here is everyone (that I know of) that Trump has picked.....**

12/07/16 21:28

. Supports eliminating the EPA's greenhouse gas registry program. He signed the Americans for Prosperity's No Climate Tax pledge. He has called for the elimination of wind power production tax credits, calling them an "enormous government handout". Opposes the Affordable Care Act. Supports the federal Government shutdown of 2013 Attorney General: Senator Jeff Sessions- Net worth \$16 million. A racist. Was turned down for a judgeship years ago because he was too racist for the position. He has

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**Three more Trump selections**

12/07/16 21:14

President-elect Trump has made at least three more selections for top-level jobs. Gen. John Kelly is his pick to head the Department of Homeland Secretary. Trump has also chosen Oklahoma attorney general Scott Pruitt to head the EPA and Iowa governor Terry Branstad to be the U.S. ambassador to China...

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**Trump taps Branstad as China ambassador, Kelly as DHS chief**

thechinabizz.com | 12/07/16 18:34

He tapped retired Marine Gen. John F. Kelly to be his homeland security chief, Iowa Gov. Terry Branstad as ambassador to China and Oklahoma Attorney General Scott Pruitt to lead the Environmental Protection Agency. Trump's decision to pick Pruitt — an ... ( read original story ...)

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**Trump fills homeland security, environment, China ambassador...**

firstpost.com | 12/07/16 18:18

By Richard Cowan | WASHINGTON WASHINGTON President-elect Donald Trump on Wednesday picked a fossil fuel industry defender as his top environmental official, another retired general as homeland security chief and Iowa's governor as U.S. ambassador to China in choices at odds with some of his recent pronouncements. Trump, continuing to build his Cabinet as he prepares to take office on Jan. 20, said Oklahoma Attorney General Scott Pruitt, 48, would be nominated to head the Environmental Protection Agency. The post Trump fills homeland security, environment, China ambassador jobs | Reuters appeared first on Firstpost.

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**HUFFPOST HILL - 78-Year Streak Of A White Supremacist Not Be...**

huffingtonpost.com | 12/07/16 18:03

going to work something out that's going to make people happy and proud. But that's a very tough situation.'" [ HuffPost] GOOD NEWS FOR THE INHALER INDUSTRY - Prediction: Pruitt will allow drilling for oil on the faces of teenaged

boys. OIL! OIL! Kate Sheppard: "President-elect Donald Trump has picked Oklahoma Attorney General Scott Pruitt to serve as the head of the Environmental Protection Agency, Reuters reported Wednesday. Pruitt has been a vocal critic of EPA regulations and defender of

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### Three more Trump selections

12/07/16 16:30

Nice President-elect Trump has made at least three more selections for top-level jobs. Gen. John Kelly is his pick to head the Department of Homeland Secretary. Trump has also chosen Oklahoma attorney general Scott Pruitt to head the EPA and Iowa governor Terry Branstad to be the U.S. ambassador to China...



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### Trump to nominate EPA critic Pruitt to lead agency

warsclerotic.com | 12/07/16 15:18

for the Environmental Protection Agency came as the president-elect also named Iowa Gov. Terry Branstad as his pick for ambassador to China and asked retired Gen. John Kelly to lead the Department of Homeland Security. Pruitt may be the most controversial pick of the three. Pruitt, 48, has been a reliable booster of the fossil fuel industry and a critic of what he derides as the EPA's "activist agenda." Representing his state as attorney general since 2011, Pruitt has repeatedly sued the EPA to

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### Bad science, accountability and courage – speech by AG Tom M...

12/07/16 12:44

clivebates.com/?p=4547 Now U know @drstanbrook it's illegal to give false info in Ohio U can be charged w/ a criminal act @JAMAInternalMed Bad science, accountability and courage – speech by AG Tom Miller clivebates.com On 17 November 2016, the Iowa Attorney General, Tom Miller, gave a speech at the E-cigarette Summit 2016 (with biography) on e-cigarettes examining the claims of anti-vaping activists, and their sc...

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### Senator Desperate to Pass 'Lame Duck' Bills

azconservative.org | 12/07/16 12:30

that have been beaten in the streets has been seriously injured. Unless this changes, the Attorney General sees no reason to get the Department involved." Ironically, the Jim Crow Era crimes cited by Jacobs were carried out by Democrats in support of racist governments run by Democrats. Given the widespread insanity emanating from the supporters of the defeated Hillary Clinton, it is impossible to rule out the possibility that the lack of casualties can be taken as a lamentation for a loss of

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### Most U.S. Drivers Do Not Trust Auto Repair Shops according t...

paristn.net | 12/07/16 11:23

Affairs or Attorney General's office can provide those complaints. Visit the auto repair shop for a minor job such as an oil change or tire rotation. While waiting, talk with shop employees and inspect the shop's appearance, amenities, technician credentials, and parts and labor warranty. If you find the service to be good, stick with them. Build a relationship with the technician so they can get to know you and your vehicle. Check for certification by the National Institute for Automotive Service

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### Iowa disbands state forfeiture team, OKs \$60,000 settlement ...

orrazz.com | 12/07/16 08:34

recommended Monday's \$60,000 settlement in "light of the complexity of the case and the potential exposure to the state." The settlement is on top of the \$90,000 that was already returned to the gamblers. Jeff Thompson, also of Iowa Attorney General Tom Miller's office, told the board Monday that the Iowa Department of Public Safety had disbanded the interdiction team. He said state and local law enforcement agencies may continue to pursue forfeitures but not under the concerted effort of the longtime

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## Tom Miller



### Bad science, accountability and courage – speech by AG Tom M...

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concerted effort of the longtime

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**jgitchell** @jgitchell

12/07/16 15:44

@NoceraNYT @DavidDorn\_VTTV Joe - if you've not seen:  
<http://truthinitiative.org/news/re-thinking-nicotine-and-its-effects> ... and  
<http://www.clivebates.com/?p=4547> Key to #RethinkNicotine @AGIowa

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**McCarthy, Kevin [AG]**

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**From:** NEWS [AG]  
**Sent:** Wednesday, December 07, 2016 12:37 PM  
**Subject:** Miller Statement on Branstad Nomination as Ambassador to China

**IOWA DEPARTMENT OF JUSTICE  
OFFICE OF THE ATTORNEY GENERAL  
Thomas J. Miller, Attorney General  
[www.iowaattorneygeneral.gov](http://www.iowaattorneygeneral.gov)**

CONTACT: Geoff Greenwood | Communications Director | 515-281-6699 | [geoff.greenwood@iowa.gov](mailto:geoff.greenwood@iowa.gov)

FOR IMMEDIATE RELEASE  
December 7, 2016

**Miller Statement on Branstad Nomination as Ambassador to China**

*Miller: "I know he'll serve the U.S. well and will carry his deep passion for our state and our nation to China."*

DES MOINES – Attorney General Tom Miller today released the following statement regarding the announcement by President-Elect Donald Trump's transition team that Governor Terry Branstad will be nominated to serve as U.S. ambassador to China:

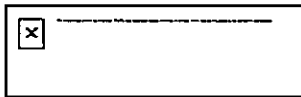
"I congratulate Governor Branstad for the tremendous honor of being asked to represent our nation's interests in China. I know he'll serve the U.S. well and will carry his deep passion for our state and our nation to China. I am confident the Governor will work very hard on trade partnerships, and that's good for Iowa farmers and our state's economy."

###

**McCarthy, Kevin [AG]**

**From:** morningreport@meltwaternews.com  
**Sent:** Wednesday, December 07, 2016 7:06 AM  
**To:** McCarthy, Kevin [AG]  
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AGENT	MEDIA TYPE	HITS
Iowa Attorney General	News	3 in 1 day
Tom Miller	News	1 in 1 day
Iowa Attorney General		4 in 1 day
@AGIowa		2 in 1 day

**Iowa Attorney General**

**Iowa RV park owners pay \$20,000 fine**

RV Daily Report | 12/06/16 14:32

...the facility. In 2014, Sabear also allowed open burning of impermissible materials on its property.

SOURCE: Iowa Attorney General press release

WORDS MATCHED Attorney General, Iowa

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**Distributed Guessing Attack: Credit Crooks Now Crowdsourcing Credential Compromise**

Security Intelligence | 12/06/16 10:15



...stores, never click on malicious links and, according to the **Iowa attorney general**, opt for websites that contain the HTTPS designator in the...

WORDS MATCHED attorney general, Iowa



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### Iowa Will Pay Poker Players Robbed by Forfeiture-Hungry State Cops

Before It's News | 12/06/16 09:35

...unrelated to the case, which drew national attention to Iowa's forfeiture abuses. Assistant Attorney General Jeffrey Peterzalek recommended the...

WORDS MATCHED Attorney General, Iowa

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### Tom Miller

### Iowa RV park owners pay \$20,000 fine

RV Daily Report | 12/06/16 14:32

...District Court. The consent decree resolves a lawsuit filed Wednesday by Attorney General Tom Miller. Sabeer is owned by James and Sandra Gingerich...

WORDS MATCHED Attorney General, Tom Miller

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### Iowa Attorney General



### ANALYSIS: Finding the Loyalists in Trump's Administration – ...

12/07/16 05:32

As President-elect Donald Trump puts together his White House team and makes his cabinet picks, he's tapped governors, business executives and retired military officers, but there's one group largely absent from the President-elect's appointments so far: long-time Trump loyalists. With the exception of Sen. Jeff Sessions, R-Alabama, who supported Trump early and landed the nomination for attorney general, Trump's most high-profile political supporters during the campaign — Chris Christie, Rudy

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### December 5, 2016--Breakfast With FDR

behindthentimes.blogspot.com | 12/06/16 19:28

the Obama administration's roster of well-graduated mugwumps, the talented

people surrounding Franklin Roosevelt stood very definitely outside the era's main academic currents. Harry Hopkins, Roosevelt's closest confidant, was a social worker from Iowa. Robert Jackson, the U.S. Attorney General whom Roosevelt appointed to the Supreme Court, was a lawyer who had no law degree. Jessie Jones, who ran Roosevelt's bailout program, was a businessman from Texas with no qualms about putting the

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**Reminder: Ben Carson Is An Anti-Muslim Conspiracy Theorist W...**

[huffingtonpost.com](http://huffingtonpost.com) | 12/06/16 12:04

, and has said he doesn't "see Islam as a religion" but "as a political ideology." Other nominees — including Sen. Jeff Sessions (R-Ala.) for attorney general and Rep. Mike Pompeo (R-Kan.) for CIA director — have a history of anti-Muslim political speech. Clare Lopez, an anti-Muslim conspiracy theorist who works at the Center for Security Policy, is reportedly being considered as a deputy national security adviser. On Monday, American Muslim leaders wrote Trump an open letter. They're calling on


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**Morning Digest: Facing reality, Pat McCrory finally concedes...**

[dailykos.com](http://dailykos.com) | 12/06/16 08:18

Leading Off • NC-Gov: On Monday afternoon, Republican Gov. Pat McCrory finally conceded defeat to Democratic Attorney General Roy Cooper. Cooper led by 4,480 votes on election night and now is up by just over 10,000 ballots cast, or 0.22 percent. After a recount in heavily Democratic Durham County proved fruitless for McCrory, he finally threw in the towel, bringing to a close one of the most contentious races in the country in 2016. It also saw the ugliest possible finish, all thanks to the

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**VaperPix** @VaperPix

12/06/16 14:01

RT: GregTHR <https://twitter.com/GregTHR/status/806226526073135104> ... #vaperpix This is excellent. A great speech by @agiowa with supporting documentation added by @Clive\_Bates. #ecigs #vaping [https://twitter.com/Clive\\_Bates/status/80621364...](https://twitter.com/Clive_Bates/status/80621364...)




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**Clive\_Bates** @Clive\_Bates

12/06/16 13:08

Bad science, accountability & courage: see no-nonsense @AGlōwa #ecigsummit speech now on my blog with links + data >

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**McCarthy, Kevin [AG]**

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**From:** DAVID DAWSON <daviddawson\_73@msn.com>  
**Sent:** Tuesday, December 13, 2016 11:16 AM  
**To:** McCarthy, Kevin [AG]  
**Subject:** RE: David Dawson -- Application for District Court Judge, Judicial District 3B  
**Attachments:** image001.png

Only 2 for district court judge.

Sent from my Verizon Wireless 4G LTE smartphone

----- Original message -----

**From:** "McCarthy, Kevin [AG]" <Kevin.McCarthy@iowa.gov>  
**Date:** 12/13/2016 11:06 AM (GMT-06:00)  
**To:** 'DAVID DAWSON' <daviddawson\_73@msn.com>  
**Subject:** RE: David Dawson -- Application for District Court Judge, Judicial District 3B

Thanks for letting me know. I thought they select three?



**Kevin McCarthy**  
**First Assistant Attorney General**  
Office of the Attorney General of Iowa  
1305 E. Walnut St.  
Des Moines, Iowa 50319  
Main: (515) 281-5164  
Fax: (515) 281-4209  
Email: [kevin.mccarthy@iowa.gov](mailto:kevin.mccarthy@iowa.gov) | [www.iowaattorneygeneral.gov](http://www.iowaattorneygeneral.gov)

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**Sent:** Monday, December 12, 2016 11:12 AM  
**To:** McCarthy, Kevin [AG]  
**Subject:** Re: David Dawson -- Application for District Court Judge, Judicial District 3B

Thank you for your support in this process. I wanted to let you know that the Commission met on Friday and did not nominate me as one of the two judicial finalists.

Best wishes to you and your family for a great new year.

Dave Dawson

---

**From:** McCarthy, Kevin [AG] <Kevin.McCarthy@iowa.gov>  
**Sent:** Tuesday, December 6, 2016 9:56:19 AM  
**To:** DAVID DAWSON  
**Subject:** Re: David Dawson -- Application for District Court Judge, Judicial District 3B



Kevin McCarthy

5/8/2017 3:18 PM

Let me know if you make the final three. I may be of some help then. I do not know any members of the nominating commission.

Sent from my iPhone

On Dec 3, 2016, at 4:08 PM, DAVID DAWSON <[daviddawson\\_73@msn.com](mailto:daviddawson_73@msn.com)<[mailto:daviddawson\\_73@msn.com](mailto:daviddawson_73@msn.com)>> wrote:

I am not sure if a word of support from each of you will be as effective as from those listed below, but if you have any words of support to provide to the Governor or the Commission members, I would appreciate anything you can do to help. Thanks.

Dave Dawson

---

From: DAVID DAWSON <[daviddawson\\_73@msn.com](mailto:daviddawson_73@msn.com)<[mailto:daviddawson\\_73@msn.com](mailto:daviddawson_73@msn.com)>>

Sent: Saturday, December 3, 2016 3:35 PM

To: [chris.hagenow@legis.iowa.gov](mailto:chris.hagenow@legis.iowa.gov)<<mailto:chris.hagenow@legis.iowa.gov>>;

[rob.bacon@legis.iowa.gov](mailto:rob.bacon@legis.iowa.gov)<<mailto:rob.bacon@legis.iowa.gov>>;

[chip.baltimore@legis.iowa.gov](mailto:chip.baltimore@legis.iowa.gov)<<mailto:chip.baltimore@legis.iowa.gov>>;

[clel.baudler@legis.iowa.gov](mailto:clel.baudler@legis.iowa.gov)<<mailto:clel.baudler@legis.iowa.gov>>;

[Terry.Baxter@legis.iowa.gov](mailto:Terry.Baxter@legis.iowa.gov)<<mailto:Terry.Baxter@legis.iowa.gov>>;

[Brian.Best@legis.iowa.gov](mailto:Brian.Best@legis.iowa.gov)<<mailto:Brian.Best@legis.iowa.gov>>;

[Gary.Carlson@legis.iowa.gov](mailto:Gary.Carlson@legis.iowa.gov)<<mailto:Gary.Carlson@legis.iowa.gov>>;

[peter.cownie@legis.iowa.gov](mailto:peter.cownie@legis.iowa.gov)<<mailto:peter.cownie@legis.iowa.gov>>; [joel.fry@legis.iowa.gov](mailto:joel.fry@legis.iowa.gov)<<mailto:joel.fry@legis.iowa.gov>>;

[tedd.gassman@legis.iowa.gov](mailto:tedd.gassman@legis.iowa.gov)<<mailto:tedd.gassman@legis.iowa.gov>>;

[stan.gustafson@legis.iowa.gov](mailto:stan.gustafson@legis.iowa.gov)<<mailto:stan.gustafson@legis.iowa.gov>>;

[maryann.hanusa@legis.iowa.gov](mailto:maryann.hanusa@legis.iowa.gov)<<mailto:maryann.hanusa@legis.iowa.gov>>;

[greg.heartsill@legis.iowa.gov](mailto:greg.heartsill@legis.iowa.gov)<<mailto:greg.heartsill@legis.iowa.gov>>;

[dave.heaton@legis.iowa.gov](mailto:dave.heaton@legis.iowa.gov)<<mailto:dave.heaton@legis.iowa.gov>>;

[jake.highfill@legis.iowa.gov](mailto:jake.highfill@legis.iowa.gov)<<mailto:jake.highfill@legis.iowa.gov>>;

[Steven.Holt@legis.iowa.gov](mailto:Steven.Holt@legis.iowa.gov)<<mailto:Steven.Holt@legis.iowa.gov>>;

[Chuck.Holz@legis.iowa.gov](mailto:Chuck.Holz@legis.iowa.gov)<<mailto:Chuck.Holz@legis.iowa.gov>>;

[dan.huseman@legis.iowa.gov](mailto:dan.huseman@legis.iowa.gov)<<mailto:dan.huseman@legis.iowa.gov>>;

[megan.jones@legis.iowa.gov](mailto:megan.jones@legis.iowa.gov)<<mailto:megan.jones@legis.iowa.gov>>;

[ron.jorgensen@legis.iowa.gov](mailto:ron.jorgensen@legis.iowa.gov)<<mailto:ron.jorgensen@legis.iowa.gov>>;

[jarad.klein@legis.iowa.gov](mailto:jarad.klein@legis.iowa.gov)<<mailto:jarad.klein@legis.iowa.gov>>;

[dave.maxwell@legis.iowa.gov](mailto:dave.maxwell@legis.iowa.gov)<<mailto:dave.maxwell@legis.iowa.gov>>;

[Zach.Nunn@legis.iowa.gov](mailto:Zach.Nunn@legis.iowa.gov)<<mailto:Zach.Nunn@legis.iowa.gov>>;

[dawn.pettengill@legis.iowa.gov](mailto:dawn.pettengill@legis.iowa.gov)<<mailto:dawn.pettengill@legis.iowa.gov>>;

[Ken.Rizer@legis.iowa.gov](mailto:Ken.Rizer@legis.iowa.gov)<<mailto:Ken.Rizer@legis.iowa.gov>>; [walt.rogers@legis.iowa.gov](mailto:walt.rogers@legis.iowa.gov)<<mailto:walt.rogers@legis.iowa.gov>>;

[sandy.salmon@legis.iowa.gov](mailto:sandy.salmon@legis.iowa.gov)<<mailto:sandy.salmon@legis.iowa.gov>>;

[Mike.Sexton@legis.iowa.gov](mailto:Mike.Sexton@legis.iowa.gov)<<mailto:Mike.Sexton@legis.iowa.gov>>;

[David.Sieck@legis.iowa.gov](mailto:David.Sieck@legis.iowa.gov)<<mailto:David.Sieck@legis.iowa.gov>>; [rob.taylor@legis.iowa.gov](mailto:rob.taylor@legis.iowa.gov)<<mailto:rob.taylor@legis.iowa.gov>>;

[matt.windschitl@legis.iowa.gov](mailto:matt.windschitl@legis.iowa.gov)<<mailto:matt.windschitl@legis.iowa.gov>>;

[gary.worthan@legis.iowa.gov](mailto:gary.worthan@legis.iowa.gov)<<mailto:gary.worthan@legis.iowa.gov>>

Subject: David Dawson -- Application for District Court Judge, Judicial District 3B

I am writing to let you know that I applied this week for a District Court Judge vacancy in Judicial District 3B. I believe that I had a good working relationship with each of you over my 4 years in the Iowa House and that you would have the ability to comment on my qualifications to serve as a trial judge.

I am asking if you may be willing to contact members of the Judicial Nominating Commission that you may know or contact the Governor to indicate your support for my nomination and eventual appointment to serve as a trial judge.

If you are unable to do so, I understand. If you would like to discuss this matter with me, please call me. My cell phone is: (712) 898-5804.

Thank you for considering this matter.

Dave Dawson  
Former State Representative  
400 Essex Street  
Sioux City, Iowa 51103  
[daviddawson\\_73@msn.com](mailto:daviddawson_73@msn.com)<[mailto:daviddawson\\_73@msn.com](mailto:daviddawson_73@msn.com)>  
cell: (712) 898-5804

The following is the information about the 8 persons who have applied and the 11 members of the Judicial Nominating Commission for Judicial District 3B in Northwest Iowa:

PRESS RELEASE

The 3B Judicial Nominating Commission has received eight applications for the district judge position that exists as a result of the retirement of District Judge Mary Jane Sokolovske. The attorneys applying to fill the judicial vacancy include:

Tod Deck: Judicial Magistrate and Deck Law, LLP, Sioux City, Iowa  
David Dawson: Assistant County Attorney-Woodbury County, Sioux City, Iowa  
Zachary Hindman: Mayne, Arneson, Hindman, Hisey & Daane, Sioux City, Iowa  
Michael Jacobsma: Jacobsma & Clabaugh PLC, Orange City, Iowa  
Roseanne Lienhard: Second Opinion Legal Center and Mediation Services, Hinton, Iowa  
Billy Oyadare: Attorney – State Public Defender’s Office, Sioux City, Iowa  
Darin Raymond: Plymouth County Attorney, LeMars, Iowa  
Julie Schumacher: District Associate Judge, Schleswig, Iowa

Each applicant will be interviewed on December 9th, 2016 at the Woodbury County Courthouse in Sioux City, Iowa.

Applicants must be members of the bar of Iowa, residents of the Judicial District 3B, and of such age that they will be able to serve an initial and one regular term of office before reaching the age of seventy-two years.

Judicial District 3B consists of Crawford, Ida, Monona, Plymouth, Sioux and Woodbury counties.

The Commission will submit the names of two nominees to Governor Branstad. Governor Branstad will then appoint one of the nominees to be a district judge. The judge selected will ultimately stand for retention election.

The members of the 3B Nominating Commission include:

Judge John D. Ackerman [John.Ackerman@iowacourts.gov](mailto:John.Ackerman@iowacourts.gov)<<mailto:John.Ackerman@iowacourts.gov>>  
Woodbury County Courthouse  
Room 210  
620 Douglas Street, Sioux City, Iowa 51101

Tammy J. Kobza [TammyKobza@gmail.com](mailto:TammyKobza@gmail.com)<<mailto:TammyKobza@gmail.com>>  
2708 450th Street  
Ireton, Iowa 51027-7588

Rachel Raak [RachelRaak1407@gmail.com](mailto:RachelRaak1407@gmail.com)<<mailto:RachelRaak1407@gmail.com>>  
1407 Megan's Way  
Correctionville, Iowa 51016

Delana Ihrke [Ihrkeshome@frontiernet.net](mailto:Ihrkeshome@frontiernet.net)<<mailto:Ihrkeshome@frontiernet.net>>  
613 3rd Avenue SE  
LeMars, Iowa 51031

Jennifer Zupp [Jennifer@ZuppandZupp.com](mailto:Jennifer@ZuppandZupp.com)<<mailto:Jennifer@ZuppandZupp.com>>  
1919 Fourth Avenue South, Suite 2  
Denison, Iowa 51442

Debra DeJong [deb.dejong@dejonglawpc.com](mailto:deb.dejong@dejonglawpc.com)<<mailto:deb.dejong@dejonglawpc.com>>  
108 Central Ave. SW  
PO Box 135  
Orange City, Iowa 51041

Dan Moore [dmoore@mooreheffernanlaw.com](mailto:dmoore@mooreheffernanlaw.com)<<mailto:dmoore@mooreheffernanlaw.com>>



Kevin McCarthy  
PO Box 3207  
Sioux City, Iowa 51102-3207

5/8/2017 3:18 PM

Scott Hindman [SHindman@MayneLaw.com](mailto:SHindman@MayneLaw.com)<<mailto:SHindman@MayneLaw.com>>  
PO Box 1678  
Sioux City, Iowa 51101

Amanda Van Wyhe [AVanWyhe@siouxcitydivorcelawyer.com](mailto:AVanWyhe@siouxcitydivorcelawyer.com)<<mailto:AVanWyhe@siouxcitydivorcelawyer.com>>  
1720 Summit St.  
Sioux City, Iowa 51105

Dr. Robert Stewart [StewartR@cableone.net](mailto:StewartR@cableone.net)<<mailto:StewartR@cableone.net>>  
29 45th Street  
Sioux City, Iowa 51104-1553

Arlan Ecklund [ArlanEcklund@Haleyequipmentinc.com](mailto:ArlanEcklund@Haleyequipmentinc.com)<<mailto:ArlanEcklund@Haleyequipmentinc.com>>  
519 North 19th St.  
Denison, Iowa 51442-1665

The Iowa Judicial Branch dedicates itself to providing independent and accessible forums for the fair and prompt resolution of disputes, administering justice under law equally to all persons.

Leesa A. McNeil  
District Court Administrator-Third Judicial District  
Woodbury County Courthouse, Room 210  
620 Douglas Street, Sioux City, Iowa 51101-1249  
phone: 712-279-6608 fax: 712-279-6631  
[Leesa.McNeil@iowacourts.gov](mailto:Leesa.McNeil@iowacourts.gov)<<mailto:Leesa.McNeil@iowacourts.gov>>





**McCormally, John [AG]**

---

**From:** Hill, William [AG]  
**Sent:** Wednesday, February 08, 2017 2:29 PM  
**To:** Wallace, H [AG]; McCormally, John [AG]; Siefert, Nick [AG]; Lindebak, Layne [AG]  
**Subject:** FW: MEDIA RELEASE: Corrections Director Announces Budget Adjustment Plans

FYI – I called Fred’s work cellphone and it indicates that Fred has retired and to call Lettie Prell with all questions.

**From:** Prell, Lettie [<mailto:lettie.prell@iowa.gov>]  
**Sent:** Wednesday, February 08, 2017 2:26 PM  
**To:** Hill, William [AG]  
**Subject:** Fwd: MEDIA RELEASE: Corrections Director Announces Budget Adjustment Plans

----- Forwarded message -----

**From:** Prell, Lettie <[lettie.prell@iowa.gov](mailto:lettie.prell@iowa.gov)>  
**Date:** Wed, Feb 8, 2017 at 11:13 AM  
**Subject:** MEDIA RELEASE: Corrections Director Announces Budget Adjustment Plans  
**To:** Lettie Prell <[Lettie.Prell@iowa.gov](mailto:Lettie.Prell@iowa.gov)>

**IOWA DEPARTMENT OF CORRECTIONS**

FOR IMMEDIATE RELEASE: February 8, 2017

CONTACT: Lettie Prell

(p) 515/725-5718

(e) [Lettie.Prell@iowa.gov](mailto:Lettie.Prell@iowa.gov)

**Iowa Department of Corrections Director Jerry Bartruff announces budget adjustment plans**

(DES MOINES) – Iowa Department of Corrections (DOC) Director Jerry Bartruff today announced his plan for adjusting the agency’s FY2017 budget by \$5.5 million as required by law.

Director Bartruff commented on these adjustments by stating: “The Department of Corrections understands the fiscally challenging position that the state is in, and thanks the Governor, Lt. Governor, and legislature for enacting budget adjustments that allow the Department to strategically streamline services. The department has been studying the best way to implement these adjustments for weeks. We’ve worked collaboratively with all institutions and community based corrections districts to identify the most strategic way to implement these changes. The actions that we are taking meet the high expectation of safety in our facilities, while also ensuring that the Department does not have to close any of our institutions. While change is rarely easy, the Department

of Corrections will make the necessary reallocation of resources to ensure the highest level of safety for the public, the staff, and the offenders under our supervision.”

**Highlights from the Budget Adjustments:**

To strategically implement the required adjustments within the Department, the DOC will suspend services in the following units:

- Luster Heights Camp (Harper’s Ferry)
- Lodge Unit (Clarinda)
- John Bennett Unit (Fort Madison)
- Residential Treatment Services (Sheldon; community based corrections)

In total, these adjustments in services comply with Senate File 130, result in an estimated reduction in staff positions of three percent, and ensure public safety remains the highest priority.

The Department has begun to notify staff across the state that may be impacted by the consolidations, and many will have the opportunity to work in other units or institutions within the Department.

###

**McCormally, John [AG]**

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**From:** NEWS [AG]  
**Sent:** Monday, May 01, 2017 11:46 AM  
**Subject:** Lieutenant Governor to Serve as Governor, But Lacks Authority to Appoint Lieutenant, Attorney General Opinion Concludes

**IOWA DEPARTMENT OF JUSTICE  
OFFICE OF THE ATTORNEY GENERAL**  
Thomas J. Miller, Attorney General  
[www.iowaattorneygeneral.gov](http://www.iowaattorneygeneral.gov)

CONTACT: Geoff Greenwood | Communications Director | 515-281-6699 | [geoff.greenwood@iowa.gov](mailto:geoff.greenwood@iowa.gov)

FOR IMMEDIATE RELEASE  
May 1, 2017

## **Lieutenant Governor to Serve as Governor, But Lacks Authority to Appoint Lieutenant, Attorney General Opinion Concludes**

*Formal opinion responds to request by state senator as Governor Branstad prepares to resign for ambassadorship*

DES MOINES – Attorney General Tom Miller Monday issued a formal legal opinion stating that if a governor resigns, the lieutenant governor becomes governor for all intents and purposes, but does not have legal authority to appoint a new lieutenant governor.

Sen. David Johnson, I-Ocheyedan, requested the opinion following Governor Terry Branstad’s announcement that, if confirmed by the U.S. Senate, he will serve as U.S. ambassador to China.

The 23-page opinion, following extensive legal and historical research, concludes, “...the powers and duties of the office of Governor fall upon the lieutenant governor.” The conclusion is based on an Iowa Constitution provision addressing a governor’s resignation, which states, “...the powers and duties of the office...shall devolve upon the lieutenant governor.” Under that provision, the opinion adds, “The lieutenant governor takes on this authority because she is lieutenant governor.”

Significantly, according to Miller, Article IV, section 1 provides that “The supreme executive power of this state shall be vested in a chief magistrate, who shall be styled the governor of the state of Iowa.”

While the “the lieutenant governor becomes governor and has the title of Governor,” the opinion further adds that that person does not have constitutional authority to appoint a new lieutenant governor. “In other words, upon a governor’s resignation, the lieutenant governor will hold both the offices of Governor and Lieutenant Governor. There is no vacancy to be filled,” according to the opinion.

“This opinion conveys that, in a sense, the two offices merge,” Miller said. “This is consistent with numerous cases in other states that addressed this question,” Miller added. “It is also consistent with a close reading of the Iowa governor’s succession provision—Article IV, section 19 of the Iowa Constitution, which establishes a precise order of gubernatorial succession without providing for the appointment of a lieutenant governor.”

Miller's opinion notes that in all four previous instances when an Iowa governor resigned or died while in office, the lieutenant governor was always considered governor, but never appointed or named a new lieutenant governor. The opinion also concludes, "The framers intended that those in the gubernatorial line of succession be elected."

At the federal level, prior to Congress amending the U.S. Constitution in 1967 to establish that the vice president becomes president and grants the president authority to appoint a new vice president with Congressional approval, no vice president who assumed the powers and duties of a president who died while in office appointed a new vice president.

The formal opinion departs from a public statement Miller's office issued in December, following an informal legal review in response to media inquiries, which stated the office concurred with "Governor Branstad's conclusion that...in her capacity as Governor, Governor Reynolds will have the authority to appoint a new lieutenant governor."

The December statement was based, in part, on an Iowa Code section addressing vacancies of office holders. Miller's formal opinion concludes this statute does not apply when a governor resigns and the powers and duties devolve upon the lieutenant governor.

#### **About Attorney General Opinions**

A formal attorney general opinion addresses legal questions relating to a public official's duties by interpreting laws and offering legal guidance.

While not a legal precedent, a formal attorney general opinion is similar to one and stands until a court or later opinion overrules it or new legislation is enacted to change a statute in question. Opinions are not legally binding, but courts generally give them careful consideration and deference.

###



**McCormally, John [AG]**

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**From:** NEWS [AG]  
**Sent:** Tuesday, February 21, 2017 2:12 PM  
**Subject:** Miller Statement on AFSCME Lawsuit

**IOWA DEPARTMENT OF JUSTICE  
OFFICE OF THE ATTORNEY GENERAL  
Thomas J. Miller, Attorney General  
[www.iowaattorneygeneral.gov](http://www.iowaattorneygeneral.gov)**

CONTACT: Geoff Greenwood | Communications Director | 515-281-6699 | [geoff.greenwood@iowa.gov](mailto:geoff.greenwood@iowa.gov)

FOR IMMEDIATE RELEASE  
February 21, 2017

**Statement from Attorney General Tom Miller on AFSCME Lawsuit over  
Collective Bargaining Law**

*Miller to ask Executive Council to approve outside legal counsel to defend state*

DES MOINES – Attorney General Tom Miller today announced that he will ask the Iowa Executive Council to seek outside legal counsel to defend the state against the lawsuit challenging the constitutionality of House File 291, the collective bargaining bill signed into law on Friday.

The American Federation of State, County and Municipal Employees (AFSCME) Iowa Council 61 filed the lawsuit Monday in Polk County District Court.

The Executive Council, comprised of the governor, secretary of state, state treasurer, secretary of agriculture and state auditor, must approve the appointment of outside counsel to represent the state.

“As the new collective bargaining law has the potential to existentially threaten the viability of public sector unions—many of the very same organizations that have supported me in the past—I am recommending that the Executive Council seek outside legal representation to defend this lawsuit in order to avoid any questions about a potential conflict,” Miller said. “While the extraordinarily professional and skilled attorneys in my office have vigorously defended Governor Branstad and the legislature in past lawsuits involving AFSCME, I think it’s most prudent in this highly charged legal dispute to avoid any appearance of politics clouding our office’s legal representation and judgment.”

###

**McCormally, John [AG]**

---

**From:** NEWS [AG]  
**Sent:** Wednesday, December 07, 2016 12:37 PM  
**Subject:** Miller Statement on Branstad Nomination as Ambassador to China

**IOWA DEPARTMENT OF JUSTICE  
OFFICE OF THE ATTORNEY GENERAL**

**Thomas J. Miller, Attorney General**

[www.iowaattorneygeneral.gov](http://www.iowaattorneygeneral.gov)

CONTACT: Geoff Greenwood | Communications Director | 515-281-6699 | [geoff.greenwood@iowa.gov](mailto:geoff.greenwood@iowa.gov)

FOR IMMEDIATE RELEASE

December 7, 2016

**Miller Statement on Branstad Nomination as Ambassador to China**

*Miller: "I know he'll serve the U.S. well and will carry his deep passion for our state and our nation to China."*

DES MOINES – Attorney General Tom Miller today released the following statement regarding the announcement by President-Elect Donald Trump's transition team that Governor Terry Branstad will be nominated to serve as U.S. ambassador to China:

"I congratulate Governor Branstad for the tremendous honor of being asked to represent our nation's interests in China. I know he'll serve the U.S. well and will carry his deep passion for our state and our nation to China. I am confident the Governor will work very hard on trade partnerships, and that's good for Iowa farmers and our state's economy."

###

**McCormally, John [AG]**

**From:** Polk County Bar Association <info@pcbaonline.ccsend.com> on behalf of Polk County Bar Association <cphillips@pcbaonline.org>  
**Sent:** Friday, April 21, 2017 12:03 PM  
**To:** McCormally, John [AG]  
**Subject:** Are you stressed? | Wing man | Get CLEs | Honor winners | More

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# The Advocate

April/May 2017

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## From the President . . . .

Pressure  
 You  
 have to  
 learn to  
 pace  
 yourself

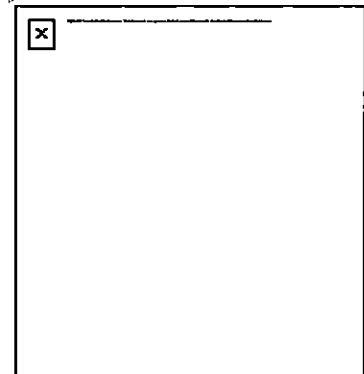
Pressure  
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 everybo  
 dy else

Pressure  
 You've only had to run so far  
 So good

But you will come to a place  
 Where the only thing you feel  
 Are loaded guns in your face  
 And you'll have to deal with

Pressure

This President's Message is tardy. I apologize. It was on my To Do list, but it fell to the bottom. I know I am not the only PCBA member who often feels pulled in a dozen directions at the same time, with the



PCBA President Bridget Penick

### Upcoming Events

- April 28: PCBA Spring CLE
- May 2: Bench & Bar Spring Social
- May 9: PCBA Law Day Luncheon
- June 9: PCBA Golf Outing
- June 13: PCBA Law Clerk Luncheon

### Meet Your Representatives

Officers

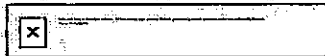
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Board of Governors

Committees

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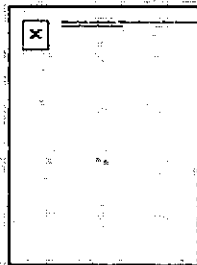
[www.pcbaonline.org](http://www.pcbaonline.org)



### On the Move

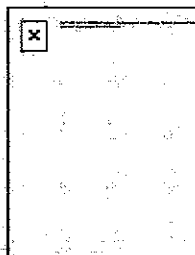
Shayla L. McCormally and Maureen C. Cosgrove have formed McCormally & Cosgrove, P.L.L.C. in Des Moines.

Shayla maintains a general practice, including civil litigation, family law, surrogacy and personal injury. She earned her J.D. from the University of Iowa College of Law in 2007. Her previous experience includes working at Wandro & Associates, P.C. and as a trial attorney with the United States Department of Justice.



Shayla McCormally

Maureen maintains a general practice that includes litigation and in the areas of family personal injury, and earned her J.D. from School of Law in 2009. a corporate attorney, an Iowa Attorney General's associate at the Baer



Maureen Cosgrove

transactional work law, business law, probate. She Hamline University Maureen has been assistant with the Office, and an Law Office in Des

sense that I am just spinning my wheels trying to keep juggling all the balls in the air. PRESSURE.

I have learned that April, coincidentally, is Stress Awareness Month. Recognized since 1992, each April, health care professionals and health promotion experts across the country join forces to increase public awareness about both the causes and cures for our modern stress epidemic. We also see various tornado and severe weather drills at this time each spring, to try to prepare us for the possibility of a natural disaster. But what prepares us to deal with the PRESSURE of the practice of law?

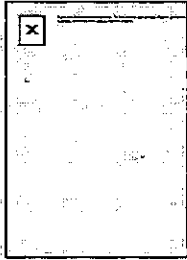
While I'm sure each occupation has its stressors, we know all too well the mounting pressure we face in our practice, whether private practice, in house, government, or elsewhere. The demand for faster, less costly legal advice, coupled with the blessing and curse of technology that allows us to be connected and accessible 24/7 sends thousands of lawyers each year into a tailspin of stress and pressure. Add in family, health, community stressors and even the uncertainty of our national security and changes in politics and government-it's a recipe for disaster that no April tornado drill or disaster preparedness training can touch.

It is no surprise to scan the Iowa Supreme Court's disciplinary decisions and find that many lawyers who find themselves in front of the Grievance Commission have succumbed to the pressure and sought solace in controlled substances, only deepening the downward spiral. The ABA reports that more than 50% of all disciplinary cases involve impaired lawyers. Lawyers abuse alcohol at a 50-80% higher rate than the general population.

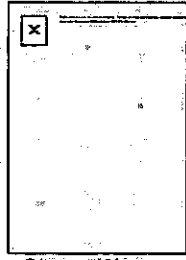
Although we often refer to ourselves



Moines, Iowa

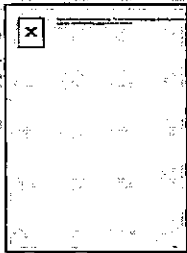


Brent Cashatt

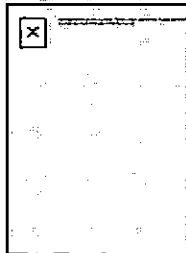


Stacey Warren

**Brent Cashatt** and **Stacey Warren** have announced their new law practice: CashattWarren Family Law, a boutique law firm specializing in complex divorces, child custody issues, and situations with large scale or complicated asset management and separation. A husband/wife combination, Cashatt and Warren are the only two lawyers in the state of Iowa recognized by a worldwide association of practicing lawyers, the International Academy of Family Lawyers, as the most experienced and skilled family law specialists in their respective countries. In addition, both Cashatt and Warren are recognized Fellows in the American Academy of Matrimonial Lawyers. Cashatt is currently serving as the Vice President of the Board of Governors and has chaired the Admissions Committee. Cashatt and Warren are in the middle of a build-out of their office space in the East Village.



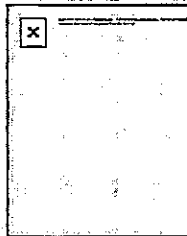
Paige Thorson



Colleen MacRae

**Paige Thorson, Colleen MacRae, and Rebecca Moore** have joined Nyemaster Goode's Des Moines office.

Paige is in Nyemaster's Government Affairs Department representing clients before the Iowa Legislature, Governor's office, and state agencies. Her work as legislative counsel involves a broad spectrum of public policy issues including health care, insurance, economic development, utilities, and renewable energy. Prior to joining the firm, Paige served in various positions in Iowa state government for the Department on Aging, Office of the State Long-Term Care Ombudsman, and Department of Human Services. Most recently, she served as the policy advisor and legislative liaison for the Iowa Department of Human Services. Paige received her J.D. from Drake University in 2010. She can



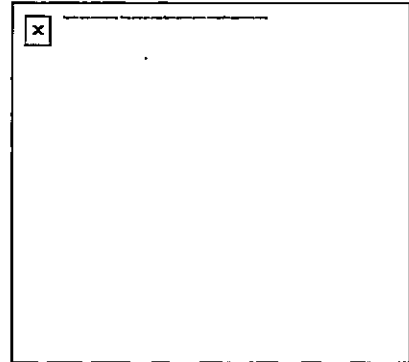
Rebecca Moore

as "attorneys and counselors," I am not proclaiming to be one who can expertly help my fellow lawyers deal with such pressure. Sure, there are the usual tips that seem to be window dressing and overly obvious:

[Read more ...](#)

### Hail our wing-eating hero!

Our intrepid PCB Attorney Past President Nathan Overberg



Nathan Overberg rolls up his sleeves and prepares to beat the wing-eating competition.

has proved to be a wing eater extraordinaire - and an awesome fundraiser to boot! Nathan took top honors at the recent charity wing-eating Eat-a Thon competition at the Drake neighborhood Jethro's BBQ and raised some \$3,300 for the PCBA Volunteer Lawyer's Project.

Thank you to everyone who donated and to Nathan for being such a good sport to eat so many wings! [Click here to see photos from the event.](#)

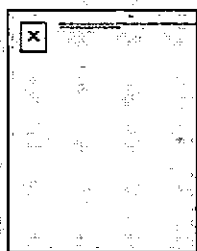
### Help us honor our Law Day winners

be contacted at (515) 283-8194 or [pthorson@nyemaster.com](mailto:pthorson@nyemaster.com).

Colleen is in Nyemaster's Business, Finance, and Real Estate Department where she assists clients with the formation of businesses, corporate restructuring, and contract drafting and negotiations. She provides counseling and transactional services to financial institutions in connection with regulatory compliance, operations and a variety of acquisitions. Colleen's practice also includes real estate leasing and economic development and prior to joining the firm, Colleen represented clients in environmental matters including permitting, land use, and water quality. She can be contacted at (515) 283-8175 or [cmacrae@nyemaster.com](mailto:cmacrae@nyemaster.com).

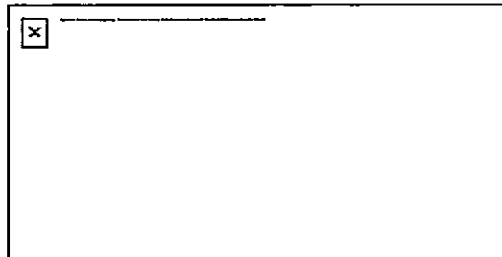
Rebecca is in Nyemaster's Tax, Estate Planning, and Employee Benefits Department. Rebecca's practice includes assisting clients with estate planning, trust and estate administration, and tax issues. Before joining Nyemaster, she was a partner at Buchanan law office in Algona, Iowa. Rebecca obtained her undergraduate degree in Political Science and Sociology at Iowa State University. She can be contacted at (515) 283-3175 or [rmoore@nyemaster.com](mailto:rmoore@nyemaster.com).

International law firm **Dorsey & Whitney LLP** has opened an office in Dallas, Texas, to bring on a team of Dallas-based lawyers who are practitioners in mezzanine finance, private equity and a broad range of other corporate finance, M&A and securities work. With more than 530 lawyers worldwide, Dorsey now has 14 offices strategically located across the United States, three in China, two in Canada and one in London.



Allison Kerndt

Nyemaster Goode, P.C. has announced that **Allison E. Kerndt** has joined the firm as a shareholder in its rapidly growing Intellectual Property Department. Allison focuses her practice on advising clients on issues related to the management of their intellectual property portfolios. Her experience spans a wide range of technical areas, including pharmaceutical, chemical, and cosmetic arts, biomedical devices, electronic devices, and business methods. She is experienced in the preparation and prosecution of patent and trademark applications and is registered to practice before the United States Patent and Trademark Office. Allison received her J.D., with distinction, from The University of Iowa College of Law in 2005. She has more than a decade of experience in intellectual property, which includes a judicial clerkship with the United States Court of Appeals for the Federal Circuit, the court that hears appeals of all patent litigation in the country. Allison can be reached at (515) 283-3193 or [akerndt@nyemaster.com](mailto:akerndt@nyemaster.com).



The PCBA and ARAG are proud to sponsor our annual Law Day competition to give Polk County K-12 students an opportunity to showcase their creative talents, learn about the law and have the opportunity to win prizes! This year's competition included coloring, poster, and essay categories for kindergarten through fifth grade students in Polk County; and visual arts, music and performing arts, essay, and poetry categories for sixth through twelfth grade students.

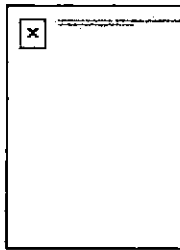
This year's theme, *The Fourteenth Amendment: Transforming American Democracy*, provided the opportunity to explore the many ways that the Fourteenth Amendment has reshaped American law and society.

Student winners will be honored at the PCBA & ARAG Law Day Awards Luncheon on **May 9** at the Downtown Marriott Hotel featuring keynote speaker The Hon. Romonda Belcher, District Associate Judge, Fifth Judicial District. [Click here for details and to download the reservation form.](#)

### Consider becoming a Law Day sponsor

Please consider supporting our Law Day program and enriching the experience for Polk County area students. For just \$100, you or your firm can sponsor a winning student,

**Christopher J. Jessen** has joined Belin McCormick, P.C. as an associate in the litigation practice group. Christopher will handle a broad range of litigation matters with a particular emphasis on complex commercial litigation. He joins the law firm after serving as the judicial clerk for the Honorable Christopher McDonald of the Iowa Court of Appeals. Christopher is a 2016 graduate of the Drake University Law School where he earned Order of the Coif recognition, graduating with highest honors. He was Research Editor of the *Drake Law Review*.

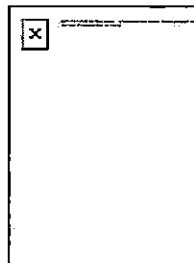


Christopher Jessen

the student's teacher, and the student's parent or parents. Sponsors may also sit with the winning students at our Law Day luncheon, as space allows, and they will be recognized in the written program. [Click here for details.](#)

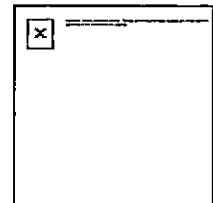
**Member Spotlight: Who will be next?**

**Rob Poggenklass** has joined the staff of Iowa Legal Aid's Central Iowa Regional Office. He is a 2010 graduate of William & Mary School of Law. Originally from Iowa, Rob returned to the state after working with the Public Defender's office in Newport News, Virginia, and the American Civil Liberties Union of Virginia.



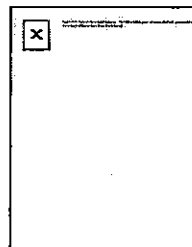
Rob Poggenklass

The PCBA Membership Committee is accepting nominations for future "Member Spotlight" features.



Please email your nominations to Maggie Hanson at [maggiehanson@davisbrownlaw.com](mailto:maggiehanson@davisbrownlaw.com).

**Kristie Kunstman-Stern** has been hired as a Staff Attorney in Iowa Legal Aid's Central Iowa Regional Office. She is a 1997 graduate of the University of Dayton School of Law in Dayton, Ohio. Prior to joining the staff of Iowa Legal Aid, Ms. Kunstman-Stern was the Director of Legal Services at the Center for Law & Social Work in Chicago, Illinois. She has also worked with the Office of the Public Guardian in Chicago.

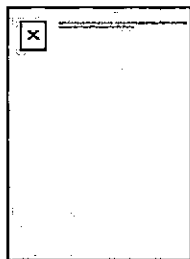


Kristie Kunstman-Stern

**Something for everyone at Spring CLE**

You won't want to miss our Spring General Practice CLE on **Friday, April 28**, at the Downtown Marriott Hotel, where a wide variety of important topics will be covered.

**Kudos**



David Luginbill

Attorney **David Luginbill** has become a Fellow of the American College of Trial Lawyers, one of the premier legal associations in North America. The induction ceremony took place recently before an audience of approximately 600 persons during the 2017 Spring Meeting of the College in Boca Raton, Florida. David is a partner in the firm of Ahlers & Cooney, P.C. With 40 years of litigation experience, he has lead counsel experience trying

complex and difficult high-stakes litigation and routinely handles litigation through trial and/or appeal for clients in a wide range of litigation matters. He has represented national and international clients, as well as clients located in Iowa. David received his law degree from Drake University.

This event is FREE for current members, but there is a \$25 charge for printed materials (note that the materials will also be posted in the Members Only area of our website following the event). We have received approval for 7.5 State CLE credit hours with 1 hour Ethics and 1 hour Federal credit.

[Click here to download the registration form and the agenda.](#)

**You are cordially invited**

As reported in the February 15, 2017 issue of the *Bond Buyer's Midwest Yearend Review*, **Ahlers & Cooney, P.C.** ranked No. 1 in Iowa for Bond Counsel: Competitive Issues for 2016, with \$1,599,700,000 in total issuance. See: [http://cdn.bondbuyer.com/media/pdfs/BB021517\\_Mid\\_West.pdf](http://cdn.bondbuyer.com/media/pdfs/BB021517_Mid_West.pdf). With one exception, Ahlers & Cooney, P.C. has led the state of Iowa as bond counsel on competitive issues since 2006.

*Don't miss an opportunity to share your news and special announcements with fellow PCBA Members! [Click here.](#)*

The PCBA Bench & Bar Committee invites you to attend our spring social on **Tuesday, May 2**, from 4:30 to 7:30 p.m., at the ISBA Conference Center, 625 East Court Avenue in Des Moines. Please join us in recognizing the newly appointed judges. Complimentary Hors d'Oeuvres and beverages will be served.

### **You won't want to miss June luncheon**

Join us on **Tuesday, June 13**, at noon for our annual law clerk luncheon. Our speakers are Pat McNulty from Grefe & Sidney, PLC and Theresa Weeg, Iowa Attorney General's Office (retired) who will share their experiences working with the International Criminal Tribunal for the former Yugoslavia.

The luncheon will be held at the Wakonda Club, 3915 Fleur Dr., in Des Moines, and the cost is \$25 with advance reservation and \$27 at the door. Please note that seating is limited and we may not be able to accommodate walk ins, so be sure to make your reservation early. [Click here for complete details and a reservation form.](#)

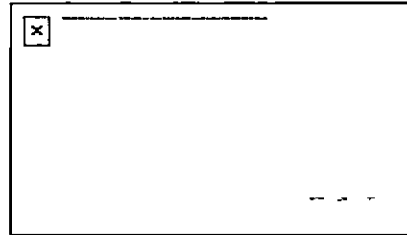
### **Get the latest Courts phone chart**

The updated Polk County Court phone chart has just been released and we have made it available to PCBA members on our website. To get the latest court room assignments, phone numbers, and court attendant and court reporter contacts for each judge, [just click here.](#) Member login required.



## Our box office is now open

One of the many benefits of belonging to the



Polk County Bar Association is access to discounted tickets on top-quality Broadway productions at the Des Moines Civic Center. Each year, we purchase season tickets - and we will also buy group tickets if there are enough people interested for a particular show - and we pass the savings on to you!

Take a look at the shows listed below. If you are interested in attending, just email [Sonja Diener](mailto:SonjaDiener@polkcountybar.org) and let her know which shows and how many tickets for each show you would like. You don't have to buy tickets for every show - you can pick and choose. This is not an obligation to buy. It just gives us an idea of how many group tickets, in addition to the season's tickets, we will need to buy. If you have questions, just call our office at (515) 697-7880.

### **Willis Broadway series tickets**

All shows are at 7:30 p.m. on a Thursday. \$73.50 each:

Oct. 12, 2017 - *Something Rotten*

Nov. 2, 2017 - *The Color Purple*

Dec. 7, 2017 - *Waitress*

Feb. 22, 2018 - *On Your Feet! The Emilio & Gloria Estefan Musical*

April 5, 2018 - *The Humans*

Please note that *Hamilton* is SOLD OUT. All the tickets that we can receive are spoken for. We hope to be able to buy more tickets, but that

is not guaranteed. If you would like to be put on our very long list of people interested in tickets, just send an email to [sdiener@pcbaonline.org](mailto:sdiener@pcbaonline.org). No more than three tickets per person please. And again, there is no guarantee that we will be able to buy more tickets.

**Add On Shows**

All shows are at 7:30 p.m. We will buy these only if enough people are interested. We don't know the price or location of seats yet.

Friday, Jan. 26, 2018 - *Stomp*

Friday, March 9, 2018 - *Chicago*

Thursday, April 19, 2018 - *Les Miserables*

Saturday, May 12, 2018 - *Leslie Odom Jr. in Concert with the Des Moines Symphony*

**Golf with us for a good cause**

It's time to dust off those golf clubs and



join us for the PCBA's annual Bench and Bar Golf Outing to benefit the Volunteer Lawyers Project. This year's event will be held on **Friday, June 9**, at the Waveland Golf Course in Des Moines. Registration begins at noon with a shotgun start at 1 p.m.

If you register before May 6, you can take advantage of our early bird special and pay only \$100 per person, which includes green fees, cart, and dinner following golf. You can also order a box lunch for \$10.

[Click here for details and to download the registration form.](#)

### **Why not become a golf sponsor?**

This year, the PCBA Volunteer Lawyers Project is offering two sponsorship levels for our Bench & Bar Golf Tournament. The Gold level is an exclusive hole sponsorship which includes one large sign at each hole and one Foursome as part of the package. The cost is \$1,000. Only 18 Gold sponsorships are available. The Silver level sponsorship is \$500 and includes signage on display at the tournament starting box.

[Click here for sponsorship details](#) and [click here for a sponsorship invoice.](#)

### **Notice of Magistrate vacancies**

There are nine magistrate vacancies in judicial election district 5-C (Polk County) as a result of the July 31, 2017 expiration of the terms of office of the six current magistrates and the allocation of three additional positions to Polk County. The term of office of a magistrate is four years. The terms of office of the magistrates appointed to fill these vacancies will begin on August 1, 2017 and expire on July 31, 2021. Appointments to fill these vacancies will be made on or before June 1, 2017. The deadline for submitting applications is Tuesday, May 2, at 4 p.m. [Click here for complete details.](#)

### **See what you've missed**

The PCBA monthly luncheons are a great way to network, keep on top of current events, and get up close and personal with Iowa movers and shakers. Recent speakers have included The Honorable Mark Cady



[Redacted]

and Court of Appeals Chief Judge The Honorable David Danilson who explored current Judicial Branch issues; State Representative Zach Nunn, Matthew Eslick (Nyemaster Goode), and Jesse Johnston (Dickinson Law) who shared their Mock Trial experiences; and Iowa State University Men's Head Basketball coach Steve Prohm who gave a behind-the-scenes look at the Cyclone's winning season.

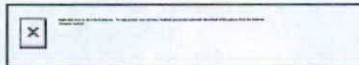
[Click here to see photos of each of these events.](#)

Polk County Bar Association, 625 East Court Ave., Suite 100, Des Moines, IA 50309-2007

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Sent by [cphillips@pcbaonline.org](mailto:cphillips@pcbaonline.org) in collaboration with



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**McCormally, John [AG]**

**From:** Polk County Bar Association <info@pcbaonline.ccsend.com> on behalf of Polk County Bar Association <cphillips@pcbaonline.org>  
**Sent:** Friday, February 17, 2017 5:33 AM  
**To:** McCormally, John [AG]  
**Subject:** Bridget's tattoo | Get up close with the Bench | Need CLEs? | Job postings | More

Having trouble viewing this email? [Click here](#)

**The Advocate**

February/March 2017

<b>In This Issue</b>	<b>From the President . . . .</b>
<p><a href="#"><u>Something for everyone at Feb. CLE</u></a></p> <p><a href="#"><u>More CLE opportunities coming up</u></a></p> <p><a href="#"><u>Students wanted for Law Day contest</u></a></p> <p><a href="#"><u>We're looking for Law Day sponsors</u></a></p> <p><a href="#"><u>Member Spotlight: Who will be next?</u></a></p> <p><a href="#"><u>Save the date: Spring CLE is April 28</u></a></p> <p><a href="#"><u>Check out these job vacancies</u></a></p> <p><a href="#"><u>Get the latest Courts phone chart</u></a></p> <p><a href="#"><u>Have you renewed your membership?</u></a></p> <p><a href="#"><u>Symposium to explore poverty issues</u></a></p> <p><a href="#"><u>Changes impact deployed parents</u></a></p> <p><a href="#"><u>Follow MVS during National Ag Week</u></a></p> <p><a href="#"><u>In memoriam: Harley A. Whitfield</u></a></p>	<div style="border: 1px solid black; width: 150px; height: 100px; margin-bottom: 10px; position: relative;"> <span style="position: absolute; top: 5px; left: 5px; font-size: 8px;">x</span> </div> <p>I have a tattoo of the scales of justice on my shoulder blade. I was inspired by Robert DeNiro's tattoo sprawling across his back in Cape Fear, but I was not gutsy enough for that for my first (or any) tattoo. As a lawyer, I suppose it may seem too cutesy, or perhaps it is seen as shameless self-promotion. It is a permanent reminder, though, of the integrity of our U.S. justice system.</p> <p style="text-align: right; font-weight: bold; margin-top: 10px;"><i>PCBA President Bridget Penick</i></p> <p>The scales of justice symbolize the idea of the fair distribution of law, with no influence of bias, privilege or corruption. Given recent events in this country, I could not be more proud of our judiciary and my fellow lawyers upholding and embodying what the scales of justice represent.</p> <p>I am writing this message on Valentine's Day, and I was fortunate to have a Valentine's lunch date with more than a dozen judges and justices and dozens of Polk County Bar Association lawyers. I shared a table with our speakers, Iowa Supreme Court Chief Justice Mark Cady and Iowa Court of</p>

## Upcoming Events

**March 14:** PCBA Luncheon  
**April 11:** PCBA Luncheon  
**April 28:** PCBA Spring CLE  
**May 9:** PCBA Annual Mtg & Law Day Luncheon  
**June 13:** PCBA Law Clerk Luncheon

## Meet Your Representatives

### Officers

### Board of Directors

### Board of Governors Committees

## Visit our Website

[www.pcbaonline.org](http://www.pcbaonline.org)



## On the Move

### Holly Logan

recently joined the Davis Brown Law Firm as Special Counsel in the Litigation Division. For more than 15 years, Holly has practiced in the areas of white collar criminal defense, internal investigations, and business litigation. She has defended individuals, companies, and boards of directors in governmental investigations and at trial. Prior to joining Davis Brown, Holly practiced at her own boutique white collar and business litigation firm in Des Moines. She earned her J.D. from the University of Iowa College of Law



Logan

Appeals Chief Judge David Danilson. As I chatted with them informally and then listened to their prepared remarks, I was reminded of how incredibly proud I am that Iowa has merit selection instead of judicial elections, to minimize politics swaying our scales of justice in one way or the other. As Chief Justice Cady noted, the U.S. Chamber of Commerce ranked Iowa's court system as 4th in the nation. The State of Nevada has adopted a court of appeals system mirrored after Iowa's mode.

As Chief Danilson (sort of) joked, the Iowa Court of Appeals is like the second chair lawyer at trial who does the majority of the work but gets none of the recognition. **Read more (and see the tattoo).**

## Something for everyone at Feb. CLE

The PCBA Bench and Bar Committee invites you to attend its Spring CLE on February 23 from 1:30 p.m. to 4:45 p.m. at the ISBA Conference Center. The topics are: Juvenile Justice, Iowa Access to Justice Commission, Cyber-security Risk Management Basics, and a Legislative Update. We anticipate three hours of State CLE credit to be approved. Following the seminar, there will be a Networking Social with complimentary Hors d'Oeuvres and beverages.

The CLE is free for current PCBA members. If you are not a member, you may join the PCBA on the day of the seminar in order to attend for free. [Click here for the registration form.](#) If you are unable to attend the seminar, you are welcome to join us for the Networking Social following the CLE, which will begin at 4:45 p.m.

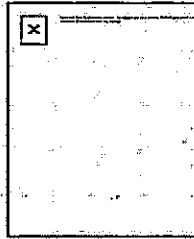
## More CLE opportunities coming up

Mark your calendar for two additional noon hour CLE seminars sponsored by the PCBA Bench and Bar Committee.

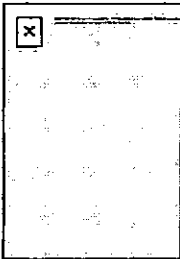
The first, on **Monday, March 27**, from noon to 1 p.m., at the Polk County Justice Center, will feature Christopher Patterson, District Court Administrator, on the Court Complex overview; Anne Sheeley, Polk County Clerk of Court on Case Processing; and

where she graduated with Distinction.

**Lara Q. Plaisance** has joined Hopkins & Huebner, P.C as a shareholder attorney in the Des Moines office. Lara earned her J.D. from University of Missouri-Kansas City School of Law. She will practice primarily in workers' compensation.



Plaisance



Hilligas

**Aaron Hilligas** has joined Ahlers & Cooney, P.C. as an Associate Attorney. Aaron is a member of the firm's Employment & Labor Law practice area, serving public entities, higher education and K-12

educational institutions. He advises clients on a variety of labor and employment related matters and represents employers in collective bargaining agreement negotiations, in cases before the Public Employment Relations Board, and in grievance arbitrations. Prior to Ahlers & Cooney, Aaron worked in the Office of the General Counsel for the National Labor Relations Board (NLRB) for the Division of Advice, as well as in-house as an attorney with labor organizations covering a variety of industries in the public and private sectors, including K-12 and higher education. He received his Juris Doctor in 2002 from the University of Wisconsin.

### Kudos

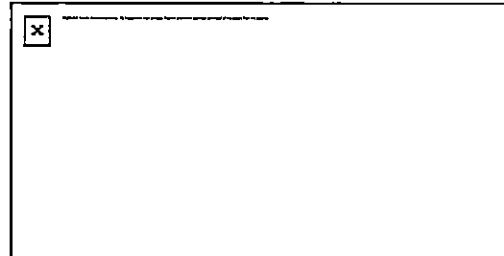
Attorneys **Jason Comisky** and **Kristin Billingsley Cooper** were recently elected shareholders at Ahlers & Cooney, P.C.

Hon. Rachael Seymour, District Associate Judge - 5th Judicial District on Juvenile Court.

The second, on **Thursday, April 20**, from noon to 1 p.m., at the U.S. District Court, will feature Judge Helen Adams who will discuss proposed local federal rules. [Click here to download the registration form.](#)

### Students wanted for Law Day contest

Each year, the Polk County Bar Association teams up with ARAG to give Polk County students in



grades K through 12 a chance to get creative with the law as part of our Law Day celebration. Chief among the activities is the visual arts, music, essay, and poetry competitions.

This year's theme, *The 14th Amendment: Transforming American Democracy*, enables students to explore the many ways that the 14th Amendment has reshaped American law and society. Ratified during Reconstruction a century and a half ago, the Fourteenth Amendment serves as the cornerstone of landmark civil rights legislation, the foundation for numerous federal court decisions protecting fundamental rights, and a source of inspiration for all those who advocate for equal justice under law.

[Click here for complete details.](#) The deadline for entries is April 10, and the winning students will be honored at the PCBA Annual Meeting and Law Day Luncheon on May 9.

### We're looking for Law Day sponsors

Please consider supporting our Law Day program and enriching the experience for Polk County area students. For just \$100, you or your firm can sponsor a winning student, the student's teacher, and the student's parent or parents. Sponsors may also sit with the winning students at our Law Day



Jason is a member of the firm's Public Finance & Law and Corporate, Business & Tax practice areas, and also serves as the Procurement/ Contracting

Practice Group Leader. Jason

works closely with cities and counties on urban renewal and economic development issues, and he provides general legal services to small businesses and individuals, such as mergers and acquisitions, business formations, contracts, estate planning, estate administration, and real estate transactions. Prior to joining Ahlers & Cooney in 2014, Jason practiced law in Dubuque and Fort Dodge, Iowa. He is a graduate of the University of Iowa College of Law.

Kristin works primarily in the firm's Public Finance and Law area, with a focus on municipal finance, including municipal bonding, economic development and urban renewal.

Kristin also works in the Corporate, Business and Tax practice area, providing business services for both public and private entities in real estate and other business transactions. She also assists Iowa colleges and universities with higher education business matters. Kristin joined the firm as an associate in 2011. Previously, she worked as a legal intern for the Honorable Celeste F. Bremer at the Southern District of Iowa, and then as a summer associate with the firm. Prior to law school, Kristin assisted real estate clients as a commercial real estate agent, providing services in buying, selling, and leasing commercial real estate. Kristin is a graduate of Drake University Law School.



Comisky



Billingsley  
Cooper

luncheon, as space allows, and they will be recognized in the written program. [Click here for details.](#)

## Member Spotlight: Who will be next?

The PCBA Membership Committee is accepting nominations for future "Member Spotlight" features. Please email your nominations to Jessica Cleerman at [cleerj1@nationwide.com](mailto:cleerj1@nationwide.com).

## Save the date: Spring CLE is April 28

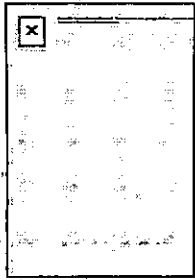
Mark your calendar now so you don't miss our Spring General Practice CLE on **Friday, April 28**, at the Downtown Marriott Hotel. This event is FREE for current members. There is a \$25 charge for printed materials, but they will also be posted in the Members Only area of our website following the event.

We anticipate approval for 7.5 State CLE credit hours with 1 hour Ethics and 1 hour Federal credit. Watch our website for agenda details as they are finalized. Meanwhile, [click here to download the registration form.](#)

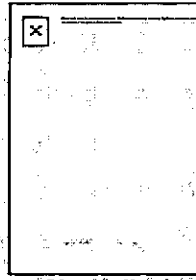
## Check out these job vacancies

York Risk Services Group is seeking a Senior Casualty Claims Adjuster to investigate, evaluate, and adjust Public Entity claims; and Stinson Leonard Street LLP is seeking a Transactional Attorney with experience in the areas of corporate law, business transactions, secured lending transactions, and/or commercial real estate to join its Mankato, Minnesota office. [Get the details on our website](#) (*member login required*). And don't forget to let us know if you have job opportunities to post. Contact [sdiener@pcbaonline.org](mailto:sdiener@pcbaonline.org) with details.

## Get the latest Courts phone chart

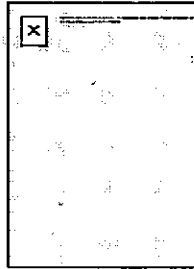


Piepmeier



Sieverding

The Davis Brown Law Firm has announced that **Amy Piepmeier, Craig Sieverding, and Emily Stork** have been elected shareholders, effective January 2017.



Stork

Amy is a member of the firm's business division, practicing primarily in the areas of securities law and corporate transactions. She regularly counsels public and private companies regarding equity and debt financing structure and transactions, including private placements and registered offerings, SEC reporting and regulation, Sarbanes-Oxley compliance, corporate governance matters, contract negotiation and other business and transactional matters.

Craig is a member of the firm's business division, focusing on the health care industry. He represents and provides counsel to a wide variety of health care providers, including health systems, hospitals, long-term care facilities, and home health care agencies, on regulatory and compliance, licensing, audits and investigations, data privacy and security, contracting, and reimbursement matters.

Emily is a member of the firm's business division and maintains a general real estate practice. She represents both commercial and residential clients in matters including wind energy acquisition and development, abstract examinations

The new Polk County Court phone chart is now available and we have it available on our website for you! [Click here to download the chart](#), which includes the law clerks and three new judicial specialists. *Member login required.*

### Have you renewed your membership?

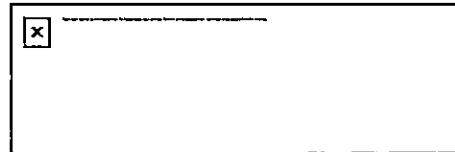
One of the best things you can do for your career is to belong to the Polk County Bar Association. Your PCBA membership entitles you to FREE CLE seminars to sharpen your skills, monthly luncheons to explore current issues, access to the court-sponsored mediation program, news and information you can't get anywhere else, discounts on programs and services, and much, much more. [Click here to learn more and to download the renewal form.](#)

And, as a bonus, first-time PCBA members and those who renew their membership for 2017 are entitled to attend one of our informative and timely PCBA luncheons on us - FREE of CHARGE - No strings attached! If you have questions about your membership, contact PCBA Executive Director Carol Phillips. [Click here for details and to download the membership form.](#)

*P.S. You can now pay your dues by credit card online!*

### Symposium to explore poverty issues

The 31st Annual Des Moines Civil & Human Rights Symposium is scheduled for March 15 in the Des Moines University Student Education Center. The theme for this year's symposium is *Poverty affects us all*, and a number of sessions will be of particular interest to the legal community.



The symposium runs from 8 a.m. to 4:45 p.m. Admission is free and includes breakfast and lunch. This event is approved for 4.5 hours of CLE credits. For more information, [click here to download a flyer.](#)

### Changes impact deployed parents



and title opinions/title commitments, easements and covenants, closings, and leases among others.

---



Wallace

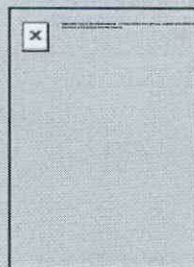
Belin McCormick, P.C. attorneys voted for Matt Wallace to become a shareholder of the Des Moines law firm effective January 1. Matt is a member of the corporate practice group and he has

negotiated for buyers and sellers, across several industries, in transactions small and large. He combines his understanding of the law, Master's degree in accounting, and business acumen to solve issues for his clients. Matt graduated with honors from the University of Chicago Law School. He was a member of the University of Chicago Law Review.

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Two associate attorneys with Nyemaster Goode - **Neal Coleman** and **Katie Graham** - have been admitted to the firm as shareholders effective January 1.

Neal is a shareholder with the Business, Finance and Real Estate Department. Neal's practice focuses primarily on commercial transactions, general representation of business organizations in all phases of an entity's life cycle, and real estate law, with a particular emphasis on commercial real estate financing transactions. He graduated with honors from the University of Texas at Austin in 2011.



Coleman

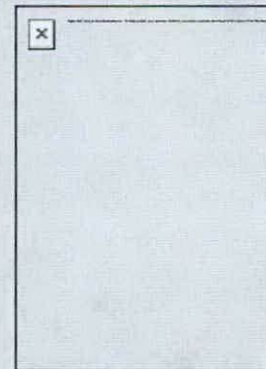
Beginning July 1, 2016 Iowa Code Chapter 598C provides a mechanism by which service member parents who are deployed may ask that a nonparent take over their parenting responsibility during their deployment. The nonparent must be an adult family member of the child or an adult with whom the child has a close and substantial relationship. The deployment must be more than 90 days but less than 18 months. The deployment must be one where family members cannot go with the service member. [Click here for a Q & A.](#)

### Follow MVS during National Ag Week

Follow the [Filewrapper Blog](#), written by McKee, Voorhees, and Sease, PLC, Intellectual Property Attorney Caitlin M. Andersen during National Ag Week, March 19-25. The blogs will offer an in-depth look at how technology and intellectual property influence both crop and animal production agriculture. National Ag Week is sponsored each year by the Agriculture Council of America and aims to recognize and celebrate the many impacts agriculture has on the world.

### In memoriam: Harley A. Whitfield

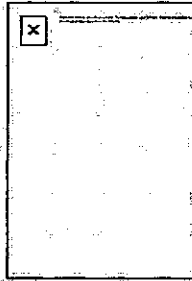
Harley A. Whitfield, 86, passed away on January 9 at Sarasota Memorial Hospital in Sarasota, Florida. Harley was a resident of Des Moines until retiring and moving to Spirit Lake, Iowa. Harley was born October 7, 1930, to Allen and Irma Cowan Whitfield. Allen was the founding partner of Whitfield & Allen in 1928, the predecessor to Whitfield & Eddy Law.



Harley A. Whitfield

Following his service as a lieutenant in the Air Force, Harley attended Drake University Law School, graduating with honors in 1956 and earning membership in the Order of the Coif. Harley practiced with Whitfield & Eddy Law and its predecessor firms from 1956 until his retirement in 1995, specializing in business and corporate law. He led the firm as the chairman of its Executive Committee for many years, with exceptional business and political acumen.

Katie is a shareholder in the firm's Litigation Department. Katie is a trial attorney, and her practice focuses primarily on litigating employment

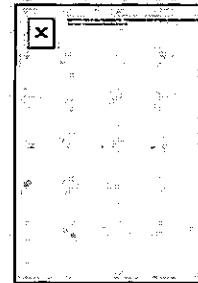


matters involving allegations of age, gender, disability, race, and religious discrimination, sexual harassment, common law retaliatory discharge, and violations of the FMLA and FLSA. She graduated with high honors from Drake University Law School in 2011.

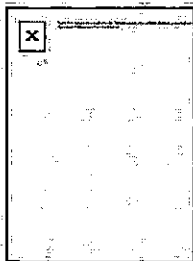
Graham

### More Kudos

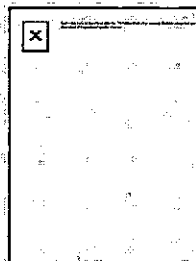
**Brandon W. Clark**, chair of the Copyright, Entertainment, and Media Law Practice Group at McKee, Voorhees & Sease, PLC, has received the Industry Supporter of the Year award by the Greater Des Moines Music Coalition. Brandon represents a wide variety of clients including artists, songwriters, producers, record labels, and more generally, creators. Brandon worked at both record labels and music publishing companies before joining McKee, Voorhees & Sease in 2015. In addition, he is an adjunct professor at Drake University where he teaches Copyright Law and a course on the music industry entitled, Performing Arts Management.



Clark



Drake



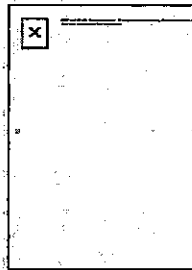
Scales

McKee, Voorhees & Sease, P.L.C. has been selected for the 2016 Des Moines Small Business Excellence Award in the Lawyers classification by the Des Moines Small Business Excellence Award Program. McKee, Voorhees & Sease helps its clients obtain and protect their intellectual property rights through patents, trademark and copyright registrations both domestically and internationally.

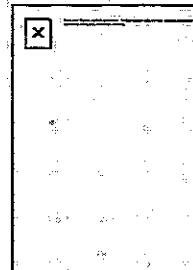
Whitfield & Eddy Law has announced that **Jennifer L. Drake** and **William C. Scales** are the newest members of the firm effective January 1.

Jennifer joined the firm in 2016 and is active in the Real Estate and Construction Practice Groups. She represents commercial and residential real estate owners, developers, brokers, and managers in negotiations, contracts, leases, and financial transactions. She received her J.D. from Drake University Law School in 2003.

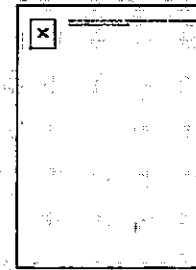
William represents businesses and individuals in all phases of civil litigation and also represents creditors in bankruptcy proceedings. He is an associate fellow in the Litigation Counsel of America and was selected for inclusion in the Great Plains Super Lawyers in the area of Banking as a Rising Star in 2015-2016. He joined the firm as a Law Clerk from 2009-2011 and was an associate attorney



McDermott



Cartmill



Barber

**Matt McDermott** has been elected president of Belin McCormick, P.C. Matt is a shareholder of the firm, and he focuses on civil and criminal trials and appeals. He handles a wide variety of litigation matters. Matt earned his law degree at the University of California at Berkeley in 2003 (California Law Review).

Attorneys **Nola Cartmill** and **Nate Barber** join Matt on the three-person Belin McCormick, P.C. Management Committee. Nola earned her law degree from Harvard University in 2009, and Nate earned his law degree from the University of California, Berkeley in 2002 (Order of the Coif, California Law Review).



from 2011-2016. He received his J.D. from Drake University Law School in 2011.

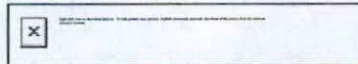
*Don't miss an opportunity to share your news and special announcements with fellow PCBA Members! [Click here.](#)*

Polk County Bar Association, 625 East Court Ave., Suite 100, Des Moines, IA 50309-2007

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**McCormally, John [AG]**

**From:** Polk County Bar Association <info@pcbaonline.ccsend.com> on behalf of Polk County Bar Association <cphillips@pcbaonline.org>  
**Sent:** Thursday, December 15, 2016 6:06 AM  
**To:** McCormally, John [AG]  
**Subject:** Stay humble and kind | Social Club | Family Law | CLE materials | More

Having trouble viewing this email? [Click here](#)

# The Advocate

December/January 2017

<p style="text-align: center; margin: 0;"><b>In This Issue</b></p> <p style="margin: 5px 0;"><a href="#" style="color: white; text-decoration: none;">All about the Des Moines Social Club</a></p> <p style="margin: 5px 0;"><a href="#" style="color: white; text-decoration: none;">Get up close with the Court</a></p> <p style="margin: 5px 0;"><a href="#" style="color: white; text-decoration: none;">Attention Family Law attorneys</a></p> <p style="margin: 5px 0;"><a href="#" style="color: white; text-decoration: none;">Member Spotlight: Nathan Mundy</a></p> <p style="margin: 5px 0;"><a href="#" style="color: white; text-decoration: none;">Justice Center is open for business</a></p> <p style="margin: 5px 0;"><a href="#" style="color: white; text-decoration: none;">Fall CLE materials are now online</a></p> <p style="margin: 5px 0;"><a href="#" style="color: white; text-decoration: none;">Students wanted for Law Day contest</a></p> <p style="margin: 5px 0;"><a href="#" style="color: white; text-decoration: none;">It's time to renew your membership</a></p> <p style="margin: 5px 0;"><a href="#" style="color: white; text-decoration: none;">Support the Volunteer Lawyers Project and get a tax deduction</a></p> <p style="margin: 5px 0;"><a href="#" style="color: white; text-decoration: none;">Note these new Workers' Compensation numbers</a></p>	<p><b>From the President . . . .</b></p> <p style="margin-top: 10px;"><b>Always stay humble and kind</b></p> <p>So much has happened in this world - this country - this state - this county - since my last president's message in early October. I'll refrain from political commentary on the presidential election, but focus on the positive and express gratitude at the results of the judicial retention election. Thank you to each of you who helped educate a friend or family member on the purpose of our judicial retention election process. Thanks to all who attended the ribbon cutting for the Polk County Justice Center. Congratulations to the National Bar Association for the groundbreaking on "A Monumental Journey."</p> <div style="border: 1px solid black; width: 200px; height: 150px; margin: 10px auto; position: relative;"> <div style="position: absolute; top: 5px; left: 5px; border: 1px solid black; padding: 2px;">x</div> </div> <p style="text-align: right; margin-top: 10px;"><i>PCBA President Bridget Penick</i></p> <p>Anyone who knows me knows that music is important to me. Only a handful of you who know me well may recall that I was a country music DJ at KCUI while attending Central College. Blame it all on my roots, but country song lyrics speak to me. As we are in the midst of the holiday season, yet also in the midst of a very divided and embittered country, (and yes, as I tried but was</p>
<p style="text-align: center; margin: 0;"><b>Upcoming Events</b></p> <p style="margin-top: 10px;">Jan. 10: PCBA Luncheon</p>	

**Feb. 14:** Bench & Bar Luncheon  
**March 14:** PCBA Luncheon  
**April 11:** PCBA Luncheon  
**May 9:** PCBA Annual Mtg & Law Day Luncheon

unable to get great tickets to the Soul 2 Soul concert coming to Des Moines next summer), I find myself singing these lyrics of late:

*"When those dreams you're dreamin' come to you  
When the work you put in is realized  
Let yourself feel the pride  
But always stay humble and kind."*

- From "Humble and Kind", written by Lori McKenna and performed by Tim McGraw

### Meet Your Representatives

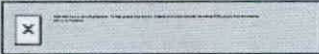
Officers

Board of Directors

Board of Governors  
Committees

### Visit our Website

[www.pcbaonline.org](http://www.pcbaonline.org)



As lawyers, we dutifully attend CLEs and amass our ethics credits. We hear speeches about civility. We know we are duty-bound to act with "professional courtesy and professional integrity in the fullest sense of those terms." Iowa Standards for Professional Conduct, Rule 33.1(1). Are we collectively fulfilling this obligation? Are you personally living it? Or, has the negativity and turmoil in the last few months led us astray? **Read more....**

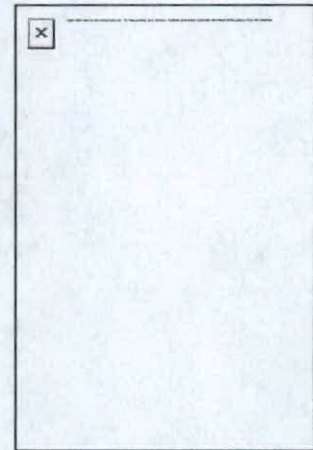
### On the Move

Whitfield & Eddy Law has welcomed **Sean M. Callison** as an associate attorney in the Des Moines office. He is a member of the firm's business and banking, construction, labor and employment, trucking, and litigation practice groups. He has written about the use of unmanned aircraft (drones), in the construction industry and presented on the topic as well. Sean is a recent graduate of Drake University Law School and was a law clerk at the firm from 2014 - 2016.



### All about the Des Moines Social Club

Mark your calendar and plan to join us on **Tuesday, Jan. 10**, for the first PCBA luncheon of the new year featuring Pete De Kock, executive director of the Des Moines Social Club. Pete joined the Social Club as Executive Director in 2015. He leads the DMSC team with specific responsibilities around org strategy, team building, fundraising, community partnerships, and finances. He is a graduate of Grinnell College and Harvard University, where he studied political and social ethics.

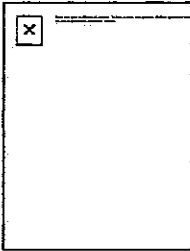


*Pete De Kock*

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**Stephanie A. Koltookian, Abigail M. Hillers** and **Robert J. Thole** have joined Bradshaw, Fowler, Proctor & Fairgrave, P.C., in Des Moines, Iowa.

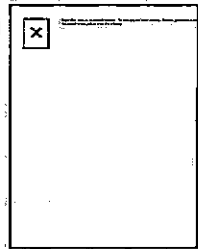
The luncheon will be held at the ISBA Building, 625 E. Court, from noon to 1 p.m. Tickets are \$17 in advance and \$19 at the door, but keep in mind that space is limited and we may not be able to accommodate walk ins. **Click here for details and a reservation form** or call 243-3904.

**Stephanie** joined the firm as an associate attorney in the firm's litigation division. She earned her J.D. from The University of Iowa College of Law in May 2015. Prior to joining the Bradshaw Law Firm, Stephanie clerked for Justice Thomas D. Waterman of the Iowa Supreme Court.



### Get up close with the Court

We invite you to be our valentine and attend the PCBA Bench & Bar Luncheon on **Tuesday, Feb. 14**, at noon. This year's featured guests will be Iowa Supreme Court Chief Justice Mark Cady and Court of Appeals Chief-Judge David Danilson. Watch the PCBA website for details as they become available.

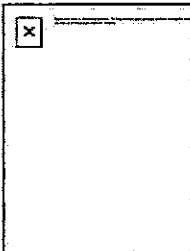


**Abigail** joined the firm as an associate attorney in the firm's transactional division, representing clients in the area of Wills, Trusts, Estate Planning, Probate Law, and Real Estate Law. She earned her J.D. from Valparaiso University Law School in 2009. Prior to joining the Bradshaw Law Firm, Abigail worked as a wealth management and trust officer, and general counsel, for a local bank.

### Attention Family Law attorneys

The Polk County Bar Association Family Law Committee invites you to attend the annual transition meeting with the Family Law Judges, which is scheduled for **Tuesday, Dec. 20**, from noon until 1:30 p.m. at the Polk County Courthouse, 500 Mulberry Street, in Courtroom 302. Chief Judge Arthur Gamble, Judges Eliza Ovrom, Douglas Staskal and the newly appointed Judge will be in attendance to discuss the transition and answer any questions that you may have.

**Robert** has joined the litigation division of the firm as an associate attorney. He earned his J.D. from Drake University Law School in May 2012. While attending law school, Robert clerked for both the Bradshaw Law Firm and the Honorable Robert B. Hanson of the 5th Judicial District in Polk County, Iowa. Prior to joining the Bradshaw Law Firm, Robert was engaged in private practice in Des Moines.

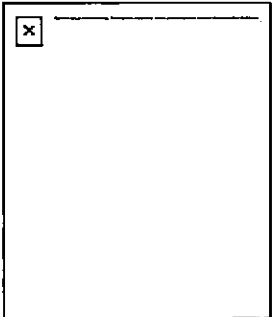


### Member Spotlight: Nathan Mundy

*This is the latest in a series of features on our own PCBA members. The PCBA Membership Committee is accepting nominations for future "Member Spotlight" segments. Please email your nominations to Jessica Cleerman at [cleerj1@nationwide.com](mailto:cleerj1@nationwide.com).*

### Tell us about yourself:

I am Nathan Mundy and I am an attorney in private practice in Des Moines. I am married to another attorney, Anna Mundy, who is in-house at Principal Financial Group. We met at Drake Law School in 2004 and were married in 2007. We have two wonderful boys, Jack (5) and Ben (1). We live in Des Moines on the Northwest side with our Wheaten Terrier, Tessie.



### Kudos

**Fredrikson & Byron** has been ranked in the Tier 1 of Metropolitan "Best Law Firm" in 28 practice areas by *U.S. News - Best Lawyers® in 2017* including the Des Moines office



ranking for Immigration Law and Litigation - Labor & Employment. To be eligible for a ranking, a firm must have at least one lawyer recognized by The Best Lawyers in America® 2017 in that practice area and metro. This year the following Des Moines attorneys were named Best Lawyers: **Bret A. Dublinske, Bridget R. Penick and J. Marc Ward.**

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**Nyemaster Goode, P.C.**, has been recognized in the seventh edition (2017) of the "Best Law Firm" rankings recently released by *U.S. News & World Report and Best Lawyers®*. Nyemaster Goode achieved 39 practice rankings, including 26 "Tier 1" rankings. Here are the rankings for the Des Moines office: **Tier 1:** Appellate Practice, Banking and Finance Law, Business Organizations (including LLCs and Partnerships), Closely Held Companies and Family Businesses Law, Commercial Litigation, Corporate Law, Employee Benefits (ERISA) Law, Employment Law - Management, Family Law, Government Relations Practice, Insurance Law, Litigation - Bankruptcy, Litigation - Labor and Employment, Litigation - Tax, Mergers & Acquisitions Law, Non-Profit/Charities Law, Personal Injury Litigation - Defendants, Real Estate Law, Tax Law, Trusts & Estates Law, and Workers' Compensation Law - Employers. **Tier 2:** Bankruptcy and Creditor Debtor Rights/Insolvency and Reorganization Law, Corporate Governance Law, Financial Services Regulation Law, Franchise Law, Health Care Law, Immigration Law, Labor Law - Management, Litigation - Banking & Finance, Litigation - Real Estate, Mortgage Banking Foreclosure Law, and Product Liability Litigation - Defendants. **Tier 3:** Administrative/Regulatory Law.

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**Belin McCormick, P.C.** has earned Tier 1 ranking from Best Lawyers "Best Law Firms" in 21 categories. The 26-attorney Des Moines law firm, has added "Litigation - Tax" to its Tier

I was born on an Air Force base in Mountain Home, Idaho. We lived there for two years until we moved to Cannon Air Force Base in New Mexico. We moved to Des Moines when I was in first grade and I have lived here ever since. I went to Lincoln High School where I was All-Conference in football, ran track including a role on the team for the 1600m medley relay at the State Track Meet, participated in show choir, some small theater roles, and the State-Champion All-Male Dance Team. I was moderately successful in the academic classroom.

I received a football scholarship to play at St. Ambrose University in Davenport, IA. While I only played football for two years, it did introduce me to the next phase in my life, the law. There I majored in Political Science and Philosophy and founded the SAU Chapter of the Phi Alpha Delta Law Fraternity and re-started the Mock Trial Program as its captain. I also served on the Student Government Association and was on the committee that drafted the SGA Mission Statement. I was also an alumni ambassador to our vast regional alumni network.

**[Read more....](#)**



## Justice Center is open for business

A number of PCBA members were on hand on Nov. 14 when the Polk County Board of Supervisors hosted a ribbon cutting for the grand opening of the Polk County Justice Center. The building is one of three downtown buildings undergoing extensive renovation as part of an \$81 million referendum that was passed by voters in November of 2013. [Click here to read Judge Arthur Gamble's remarks at the historic event.](#)

## Fall CLE materials are now online

Some 275 PCBA members gathered at the Downtown Des Moines Marriott on November 18 to network and stay on top of their profession at the

1 recognition. The 2017 Tier One designated specialty areas where Belin McCormick, P.C. are recognized: Appellate Practice, Banking and Finance Law, Commercial Litigation, Communications Law, Corporate Law, Employment Law - Management, Environmental Law, Financial Services Regulation Law, Labor Law - Management, Litigation - Banking & Finance, Litigation - Environmental, Litigation - Municipal, Litigation - Labor & Employment, Litigation - Real Estate, Litigation - Tax, Litigation - Trusts & Estates Mergers & Acquisitions Law, Personal Injury - Defendants Real Estate Law, Tax Law, and Trusts & Estates Law.

Davis Brown associate attorney **Margaret (Maggie) Hanson** recently received news that her request for clemency for a pro bono client was approved by President Obama. The Office for the Pardon Attorney, U.S. Department of Justice, personally called Maggie to share that her client's sentence would be commuted. Senior Shareholder **Nikki Mordini** accepted the request and advised Maggie as well as **Sarah Crane, Sarah Franklin, Emily Stork, and Elizabeth Van Arkel** in the preparation of the petitions. Paralegal **Natalie Rivera** assisted greatly in the effort.

Davis Brown attorneys **Emily Stork** and **Elizabeth Van Arkel** have also received word from the U.S. Department of Justice Pardon Attorney that petitions they submitted for clemency were approved by President Obama.

International law firm **Dorsey & Whitney LLP** announced that *U.S. News - Best Lawyers®* recognized the Commercial Litigation, Health Care Law, and Public Finance Law practices in Dorsey's Des Moines office for inclusion in its "Best Law Firms" rankings for 2017. The practices received a tier 1 ranking,

Fall general practice seminar. As always, the CLE provided a full day of thought-provoking presentations covering a wide array of topics pertinent to the practice of law in Iowa. The program, which was offered FREE to members, was approved for 7.5 hours of State CLE credit, including 1 hour Ethics and 3 hours Federal. [Click here to download the materials.](#) **Member login required.**

## Students wanted for Law Day contest

Each year, the Polk County Bar Association teams up with ARAG to give Polk County students a



chance to get creative with the law as part of our Law Day celebration. Chief among the activities is the visual arts, music, essay and poetry competition for students in grades 6 through 12.

This year's theme, The Fourteenth Amendment: Transforming American Democracy, provides the opportunity for students to explore the many ways that the Fourteenth Amendment has reshaped American law and society. Through its Citizenship, Due Process and Equal Protection clauses, this transformative amendment advanced the rights of all Americans. It also played a pivotal role in extending the reach of the Bill of Rights to the states. Ratified during Reconstruction a century and a half ago, the Fourteenth Amendment serves as the cornerstone of landmark civil rights legislation, the foundation for numerous federal court decisions protecting fundamental rights, and a source of inspiration for all those who advocate for equal justice under law.

The deadline for entries is April 10. [Click here for complete details.](#) The winning students will be honored at the PCBA Annual Meeting and Law Day Luncheon on Tuesday, May 9.

**It's time to renew your membership**



**Fredrikson & Byron** received a nearly perfect score of 95 percent on the 2017 Corporate Equality Index (CEI), a national benchmarking survey and report on corporate policies and practices relating to lesbian, gay, bisexual and transgender (LGBT) workplace equality, administered by the Human Rights Campaign (HRC). Fredrikson's score reflects a commitment to LGBT workplace equality, with respect to tangible policies, benefits and practices.

*Don't miss an opportunity to share your news and special announcements with fellow PCBA Members! [Click here.](#)*

One of the best things you can do for your career is to belong to the Polk County Bar Association. Your PCBA membership entitles you to FREE CLE seminars to sharpen your skills, monthly luncheons to explore current issues, access to the court-sponsored mediation program, news and information you can't get anywhere else, discounts on programs and services, and much, much more. [Click here to learn more and to download the renewal form.](#)

And, as a bonus, first-time PCBA members and those who renew their membership for 2017 are entitled to attend one of our informative and timely PCBA Luncheons on us - FREE of CHARGE - No strings attached! [Click here for more information from PCBA President Bridget Penick](#) and click here to [download our membership form.](#)

P.S. You can now pay your dues by credit card online!

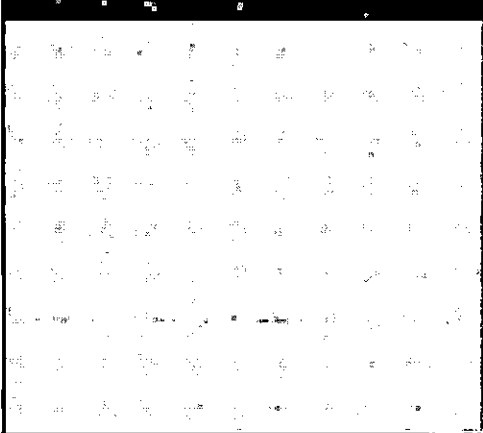
### **Support the Volunteer Lawyers Project and get a tax deduction**

As 2016 draws to a close, our attention turns to year-end finances and tax returns. Don't forget that you can make a contribution to the Polk County Bar Association Volunteer Lawyers Project before the end of the year and get a tax deduction.

The PCBA VLP is a charitable organization established with the mission of providing legal services to low income residents of Polk County. With your help, PCBA VLP is one of the most successful volunteer lawyer programs in the country, with Polk County lawyers donating approximately 5,000 hours of their time annually.

Unfortunately, demand for PCBA VLP services has never been higher while our funding continues to decline. To help make it easier to support our efforts, The PCBA VLP now offers you the ability to make donations on a monthly, quarterly, or annual basis - all you need to do is check the appropriate option on your PCBA membership renewal form. And don't forget that the PCBA VLP is a tax-exempt, charitable organization. That means any donation you make is tax deductible. You can also designate the PCBA VLP as the recipient on your United Way donation.

[Click here to learn more from PCBA VLP President](#)

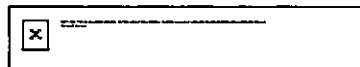
	<p><u>Alex Johnson.</u></p> <p><b>Note these new Workers' Compensation phone numbers</b></p> <p>The Workers' Compensation Division of Iowa Workforce Development has its own unique toll-free and local phone numbers effective Nov. 1. They are <b>800-645-4583</b> and <b>515-725-4120.</b></p>
---	---

Polk County Bar Association, 625 East Court Ave., Suite 100, Des Moines, IA 50309-2007

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## 2017 Session Talking Points

November 17, 2016

### I. Judicial Branch Budget

FY 17: The legislature appropriated the same amount of funding as the judicial branch received in FY 16, over \$5 million short of the amount needed to maintain the current level of service to lowans. Unfortunately, this means some very difficult decisions have been made.

For FY 17 the court decided to

- Establish a hiring freeze for all vacancies in the judicial branch with very, very few exceptions
- Hold open judicial vacancies for an average of six months
- Reduce travel by 10%
- Reduce furniture and non-IT equipment by 50%
- Shift some funding for IT operations to the Court Technology Fund
- Institute a moratorium on the expansion of specialty courts
- District must obtain approval of the supreme court before eliminating any specialty courts

In making these decisions, the court tried to minimize disruption of services to lowans by making evidence based decisions. As part of the effort to develop long term planning options, the court has asked the state court administrator to complete a workload study of all aspects of judicial branch operations. The results of the workload study will guide future budget decisions by the judicial branch. More information regarding the judicial branch budget can be found on the judicial branch website.

FY 18: Potential consequences if the judicial branch receives the same amount of funding for FY 18 as FY 16 and 17:

- Juvenile Court Officers reducing face to face visits with at-risk children
- Elimination of specialty courts (family treatment courts, drug courts, mental health courts, etc)
- lowans, especially business owners, will experience delays in civil litigation as priority will be criminal cases.
- Delayed maintenance of electronic filing system (EDMS)
- No development of additional technological services
- Closing or reduction of hours of courthouses
- Layoffs

Anticipated minimum FY 18 budget request: \$10 million (5.5%)

- Mitigation of FY 17 reductions in services
- Juvenile court officers to visit at-risk children
- Court service days in rural counties
- Continuation/expansion of specialty courts (family treatment courts, drug courts, mental health courts, etc.)
- Maintenance and upgrade of electronic filing system (EDMS)



Additional services in need of funding:

- Maintenance and upgrade of technology services for lowans:
  - Update of jury software and development of a juror app
  - Judicial Branch website upgrade and enhancements
  - Disaster recovery
  - Criminal Justice Information Systems (CJIS) exchanges for more automated exchange of data between criminal justices agencies and the Judicial Branch.
  - Development of apps for self-represented litigants to use to access the court system
  - Development of an online conservator reporting system
  - Protecting lowans' personal information on court documents

II. Judicial salaries

- There is a decline in the number of applicants for judicial vacancies
- There are fewer private practicing attorneys submitting their names for judicial vacancies thereby reducing the practice setting diversity of the pools
- Stagnant judicial salaries is a factor in the decline of interest in judicial vacancies
- Reluctance to increase salaries affects morale of sitting judges
- Prior to January 3, 2014, Iowa judges and magistrates had not received a salary increase since July 1, 2008. Between 2008 and 2014, most other state employees received increases in their base pay of at least 13%.

III. Here is what we want you to drive home to legislators

- Providing critical and unduplicated services to lowans in all 99 counties
- Good stewards of taxpayer dollars
- As efficient as possible-trying to maximize the efficiencies of technology
- Only 2.5% of general fund budget
- The services provided by the judicial branch to lowans needs to be a priority for state resources

Please tell Sydney about your meetings with legislators, especially any issues that they expressed an interest in.

**Sand, Rob [AG]**

---

**From:** Google Alerts <googlealerts-noreply@google.com>  
**Sent:** Wednesday, May 03, 2017 5:27 PM  
**To:** Sand, Rob [AG]  
**Subject:** Google Alert - "iowa attorney general"



## "iowa attorney general"

Daily update - May 3, 2017

NEWS

### Miller might be wrong, but he's no political pawn

The Gazette: Eastern Iowa Breaking News and Headlines (blog)

**Iowa Attorney General Tom Miller** holds a news conference Monday, May 1, 2017, to announce his legal opinion that Lt. Gov. Kim Reynolds will serve ...

AG: New Iowa governor won't have power to pick lieutenant - Newton Daily News

New Iowa governor won't have power to pick lieutenant - WOWT

Miller's ruling on Lt. governor succession 'absurd' - DesMoinesRegister.com

Full Coverage



Flag as irrelevant

### Treasurer raises questions about paying Iowa's bills; GOP disputes claims

DesMoinesRegister.com

He pointedly made a reference to a formal legal opinion issued Monday by **Iowa Attorney General Tom Miller**, a Democrat, which concluded Reynolds ...



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### That IRS collections call might now be legit

The Daily Nonpareil

For years, the **Iowa Attorney General's** office has given Iowans this advice: The caller claiming to collect on an IRS debt is not legitimate, so hang up ...



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**From:** Google Alerts <googlealerts-noreply@google.com>  
**Sent:** Tuesday, May 02, 2017 5:00 PM  
**To:** Sand, Rob [AG]  
**Subject:** Google Alert - "iowa attorney general"



## "iowa attorney general"

Daily update · May 2, 2017

NEWS

### Attorney General opinion on succession is reversal of December statement KCCI Des Moines

**Iowa Attorney General** Tom Miller on Monday released a formal attorney general opinion regarding gubernatorial succession. KCCI | Updated: 2:30 ...

**Iowa Attorney General** says Lt. Gov. Reynolds can't choose her successor - OurQuadCities

AG rules Reynolds can't pick lieutenant governor - DesMoinesRegister.com

Attorney General Concludes Reynolds Can't Appoint Lt. Gov.; Republicans Cry Foul - Iowa Public Radio Full Coverage



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### Miller: Reynolds has no power to appoint replacement

Quad City Times

**Iowa Attorney General** Tom Miller announces at a news conference Monday that his legal opinion is that Lt. Gov. Kim Reynolds will serve as governor ...



Flag as irrelevant

### AG declines to pursue petition to remove Muscatine council

Muscatine Journal

The **Iowa Attorney General** will not take action on a petition to remove the Muscatine City Council over allegations they acted improperly during the ...



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### Double standard? University of Iowa volleyball coach not fired after parent complaints of verbal ...

The Gazette: Eastern Iowa Breaking News and Headlines

asked George Carroll, an assistant **Iowa Attorney General** representing the UI. "Not while she was there," Heller said. "I got it within a few months after ...



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Photo by Jimmy Emerson, DVM

KMAland




(Des Moines, IA) – Iowa Attorney General Tom Miller says Kim Reynolds won't have a lieutenant governor when she takes the top statewide office.

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### Senator Grassley weighs in on appointment of lieutenant governor

Radio Iowa

Back in December, Iowa Attorney General Tom Miller announced that should Lieutenant Governor Kim Reynolds become governor, she -would- be ...

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### Debt Collectors Calling On Behalf Of IRS May Not Be Scammers

Iowa Public Radio

The Iowa Attorney General's Office says that for once, a caller claiming to be working on behalf of the Internal Revenue Service may not be a scammer, ...

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### Tait Purk murder trial underway

Tama News-Herald - Toledo Chronicle

The cold case was reopened by the Iowa Division of Criminal Investigation, Tama County Attorney and Iowa Attorney General's offices, Tama County ...

   Flag as irrelevant

### A Sugar Land Man Helped Pull Off the Biggest Ever Multi-State Lottery Scam

Houston Press

Later, when Tommy was facing trial, Assistant Iowa Attorney General Robert Sand would file a motion to bar any mention of the legendary man-beast ...

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### 'Sharing experiences'

Marshalltown Times Republican

After a showing of the documentary film 'Papers,' which discusses DREAMers and undocumented youth in America, panelists discussed the film's ...

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### Capsule preview of the Jazz-Warriors series

Beloit Daily News

May 01, 2017 at 12:53 pm | DES MOINES, Iowa (AP) — Iowa's attorney general has concluded that Lt. Gov. Kim Reynolds will not have the power to ...

   Flag as irrelevant

### STATE AG RULES REYNOLDS CANNOT PICK A NEW LT. GOVERNOR

KSCJ

**Iowa Attorney General Tom Miller says Kim Reynolds can indeed take over as Governor when Terry Branstad resigns to become U.S. Ambassador to ...**



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### Attention Times-Republican readers

Marshalltown Times Republican

The Times-Republican for Wednesday, May 3 will be delivered to you through the postal system for all readers within Marshall County. Your paper will ...



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**Sand, Rob [AG]**

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**From:** NEWS [AG]  
**Sent:** Monday, May 01, 2017 11:46 AM  
**Subject:** Lieutenant Governor to Serve as Governor, But Lacks Authority to Appoint Lieutenant, Attorney General Opinion Concludes

**IOWA DEPARTMENT OF JUSTICE  
OFFICE OF THE ATTORNEY GENERAL  
Thomas J. Miller, Attorney General  
[www.iowaattorneygeneral.gov](http://www.iowaattorneygeneral.gov)**

CONTACT: Geoff Greenwood | Communications Director | 515-281-6699 | [geoff.greenwood@iowa.gov](mailto:geoff.greenwood@iowa.gov)

FOR IMMEDIATE RELEASE  
May 1, 2017

## **Lieutenant Governor to Serve as Governor, But Lacks Authority to Appoint Lieutenant, Attorney General Opinion Concludes**

*Formal opinion responds to request by state senator as Governor Branstad prepares to resign for ambassadorship*

DES MOINES – Attorney General Tom Miller Monday issued a formal legal opinion stating that if a governor resigns, the lieutenant governor becomes governor for all intents and purposes, but does not have legal authority to appoint a new lieutenant governor.

Sen. David Johnson, I-Ocheyedan, requested the opinion following Governor Terry Branstad’s announcement that, if confirmed by the U.S. Senate, he will serve as U.S. ambassador to China.

The 23-page opinion, following extensive legal and historical research, concludes, “...the powers and duties of the office of Governor fall upon the lieutenant governor.” The conclusion is based on an Iowa Constitution provision addressing a governor’s resignation, which states, “...the powers and duties of the office...shall devolve upon the lieutenant governor.” Under that provision, the opinion adds, “The lieutenant governor takes on this authority because she is lieutenant governor.”

Significantly, according to Miller, Article IV, section 1 provides that “The supreme executive power of this state shall be vested in a chief magistrate, who shall be styled the governor of the state of Iowa.”

While the “the lieutenant governor becomes governor and has the title of Governor,” the opinion further adds that that person does not have constitutional authority to appoint a new lieutenant governor. “In other words, upon a governor’s resignation, the lieutenant governor will hold both the offices of Governor and Lieutenant Governor. There is no vacancy to be filled,” according to the opinion.

“This opinion conveys that, in a sense, the two offices merge,” Miller said. “This is consistent with numerous cases in other states that addressed this question,” Miller added. “It is also consistent with a close reading of the Iowa governor’s succession provision—Article IV, section 19 of the Iowa Constitution, which establishes a precise order of gubernatorial succession without providing for the appointment of a lieutenant governor.”



Miller's opinion notes that in all four previous instances when an Iowa governor resigned or died while in office, the lieutenant governor was always considered governor, but never appointed or named a new lieutenant governor. The opinion also concludes, "The framers intended that those in the gubernatorial line of succession be elected."

At the federal level, prior to Congress amending the U.S. Constitution in 1967 to establish that the vice president becomes president and grants the president authority to appoint a new vice president with Congressional approval, no vice president who assumed the powers and duties of a president who died while in office appointed a new vice president.

The formal opinion departs from a public statement Miller's office issued in December, following an informal legal review in response to media inquiries, which stated the office concurred with "Governor Branstad's conclusion that...in her capacity as Governor, Governor Reynolds will have the authority to appoint a new lieutenant governor."

The December statement was based, in part, on an Iowa Code section addressing vacancies of office holders. Miller's formal opinion concludes this statute does not apply when a governor resigns and the powers and duties devolve upon the lieutenant governor.

#### **About Attorney General Opinions**

A formal attorney general opinion addresses legal questions relating to a public official's duties by interpreting laws and offering legal guidance.

While not a legal precedent, a formal attorney general opinion is similar to one and stands until a court or later opinion overrules it or new legislation is enacted to change a statute in question. Opinions are not legally binding, but courts generally give them careful consideration and deference.

###

**Sand, Rob [AG]**

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**From:** AAA-owner@iabar.org on behalf of Young Lawyers Division <AAA@iabar.org>  
**Sent:** Thursday, April 13, 2017 11:58 AM  
**To:** Young Lawyers Division  
**Subject:** Trustee Succession

Good Morning,

My clients are a mother and daughter, mother is trustee, daughter is successor trustee of deceased father's testamentary trust, Mother is beginning to experience symptoms of dementia and would like to transfer the trustee role to daughter. My assumption is that I would need to file an application to appoint successor trustee under the probate file, and ideally have both the current and successor trustee sign as petitioners. Is this correct or should I take a different route?

Thanks!



**YOUNG LAWYERS DIVISION**  
IOWA STATE BAR ASSOCIATION

AskAnAdvocate is an anonymous listserv allowing Young Lawyers the ability to email inquiries anonymously and receive feedback. The list is moderated by ISBA staff and all inquiries and responses are only shared after identifying information has been removed.

To send an anonymous inquiry or response please send an email to [AskAnAdvocate@iabar.org](mailto:AskAnAdvocate@iabar.org). View [listserv guidelines here](#).

To unsubscribe from this list, send a mail message to "[unsubscribe@iabar.org](mailto:unsubscribe@iabar.org)" with the following in the subject and the first line in the body of the message:  
unsubscribe aaa



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**From:** Google Alerts <googlealerts-noreply@google.com>  
**Sent:** Monday, April 10, 2017 7:37 PM  
**To:** Sand, Rob [AG]  
**Subject:** Google Alert - "iowa attorney general"



## "iowa attorney general"

Daily update · April 11, 2017

### NEWS

---

#### Bill cracking down on domestic violence sent to Branstad

DesMoinesRegister.com

Officials with the **Iowa Attorney General's** Office have told lawmakers it is common for victims of domestic homicides to have been stalked by their ...



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**Sent:** Saturday, April 08, 2017 5:01 PM  
**To:** Sand, Rob [AG]  
**Subject:** Google Alert - "iowa attorney general"



## "iowa attorney general"

Daily update · April 8, 2017

### NEWS

#### 'Monumental' Iowa gun rights package sent to Gov. Branstad

Guns.com

Opponents of the bill list local and national gun control groups, Iowa Attorney General Tom Miller, the Iowa League of Cities, Iowa State Association of ...



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**From:** junkmail-release@dsmgw01.iowa.gov  
**Sent:** Thursday, April 06, 2017 3:08 PM  
**To:** Sand, Rob [AG]  
**Subject:** Iowa Junkmail Summary: [ 1 message(s) quarantined from Thu, 06 Apr 2017 14:00:00 -0500 to Thu, 06 Apr 2017 15:00:00 -0500 ]



The following messages were quarantined by OCIO's email gateway servers because they appeared to be junkmail.

NOTE: Please do not put this message in the Spam Mail folder.

Date:	From:	Subject:	Actions:
Thu, 06 Apr 2017 14:19:03 -0500	"Schippers, Nicolle" <district5c@iabar.org>	[ISBA District5c] Update from March ISBA Board of Governors' Meeting	<a href="#">Release</a> <a href="#">Delete</a>

**Instructions:**

- Click on **Release** link to send a request to have the message sent to your inbox.
- Click on **Delete** link to send a request to delete the message from your junkmail.
- [Click Here](#) to send a request to **Delete all messages** from your junkmail.

**Other:**

To view your entire quarantine inbox or manage your preferences, [Click Here](#)

**State of Iowa OCIO Cloud E-Mail Team**

OCIO.Servicedesk@iowa.gov  
515-281-5703

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**From:** Google Alerts <googlealerts-noreply@google.com>  
**Sent:** Wednesday, April 05, 2017 5:02 PM  
**To:** Sand, Rob [AG]  
**Subject:** Google Alert - "iowa attorney general"



## "iowa attorney general"

Daily update - April 5, 2017

### NEWS

#### Gun rights bill passes Iowa Senate; likely headed to Branstad

DesMoinesRegister.com

Opponents include Iowans for Gun Safety, the Iowa County Attorneys Association, Iowa Attorney General Tom Miller, the American Civil Liberties ...



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#### Man accused in attempted abduction in northwest Iowa tied to other suspected crimes

KTIV

The investigation into Lee is on-going and additional charges may be forthcoming. The Iowa Attorney General's Office, Area Prosecutions Division is ...



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#### UPDATE: Kidnapping suspect arrested for enticement in Grundy County

Waterloo Cedar Falls Courier

GRUNDY CENTER – An Ankeny man who is awaiting trial for kidnapping and enticement charges in Jasper and Monona counties has now been ...

Ankeny man allegedly lured minors statewide - DesMoinesRegister.com

Full Coverage



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**From:** Google Alerts <googlealerts-noreply@google.com>  
**Sent:** Wednesday, March 29, 2017 5:03 PM  
**To:** Sand, Rob [AG]  
**Subject:** Google Alert - "iowa attorney general"



## "iowa attorney general"

Daily update · March 29, 2017

### NEWS

#### GOP group takes aim at Democratic state AGs

The Hill

Democrats will defend 13 incumbents next year, though most are in safely blue states. Republicans are likely to target **Iowa Attorney General Tom ...**



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#### Iowa Teacher Moves to Defend Union Bargaining Reform Law from Union Lawsuit

National Right to Work Foundation (blog)

Rohne's motion is particularly important at this time due to the fact that the state official charged with defending the law, **Iowa Attorney General Tom ...**



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#### Northwood man arrested on sex abuse charges

Mason City Globe Gazette

... Manly Police Department, Clear Lake Police Department and the **Iowa Attorney General Area Prosecutions Division** assisted in the investigation.



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#### Judge blocks Iowa governor's deposition in firing of agent

Newton Daily News

The **Iowa attorney general's** office, which is representing the governor, argued a deposition would "significantly interfere" with Branstad's duties.



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#### Former Iowa State employee suing university officials on basis of sex discrimination

Iowa State Daily

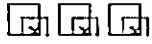
"We will be represented by the **Iowa Attorney General's** office and our response to the lawsuit will be filed in Story County District Court," the university ...



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**Miller joins attorney generals in opposing effort to dismantle Clean Power Plan**  
Business Record

Democratic Iowa Attorney General Tom Miller joined a coalition of 23 states, cities and counties opposing President Donald Trump's executive order ...



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**From:** Google Alerts <googlealerts-noreply@google.com>  
**Sent:** Tuesday, March 28, 2017 5:00 PM  
**To:** Sand, Rob [AG]  
**Subject:** Google Alert - "iowa attorney general"



## "iowa attorney general"

Daily update · March 28, 2017

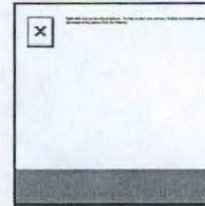
### NEWS

**Judge blocks Branstad deposition in firing of agent**  
DesMoinesRegister.com

The **Iowa attorney general's** office, which is representing the governor, argued a deposition would "significantly interfere" with Branstad's duties.



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**From:** Google Alerts <googlealerts-noreply@google.com>  
**Sent:** Monday, March 27, 2017 5:01 PM  
**To:** Sand, Rob [AG]  
**Subject:** Google Alert - "iowa attorney general"



## "iowa attorney general"

Daily update · March 27, 2017

### NEWS

#### Judge Blocks Iowa Governor's Deposition in Firing of Agent

U.S. News & World Report

Kelly ruled Friday in favor of the **iowa attorney general's** office, which is representing Branstad and argued the governor was too busy to face a ...



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#### Marshalltown man to serve 122.5 years in prison before parole

Boone News-Republican

Boone County Attorney, Daniel Kolacia and Assistant **Iowa Attorney General** Susan Krisko tried the case, on behalf of the state of Iowa, for the ...



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**From:** Google Alerts <googlealerts-noreply@google.com>  
**Sent:** Friday, March 24, 2017 5:01 PM  
**To:** Sand, Rob [AG]  
**Subject:** Google Alert - "iowa attorney general"



## "iowa attorney general"

Daily update - March 24, 2017

### NEWS

---

Environmental lawyer Josh Mandelbaum challenges Hensley's council seat  
DesMoinesRegister.com

Former Lt. Governor Sally Pederson and former **Iowa Attorney General** Bonnie Campbell have signed on as Mandelbaum's campaign co-chairs, ...



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Judge orders FM metals recycler to pay \$125000

Burlington Hawk Eye

... company to pay a \$125,000 penalty in a default judgment about an environmental lawsuit filed last year by **Iowa Attorney General** Tom Miller.



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**From:** The Iowa Healthiest State Initiative <info@iowahealthieststate.com>  
**Sent:** Thursday, March 23, 2017 2:49 PM  
**To:** Sand, Rob [AG]  
**Subject:** Rob, here is your news from the Healthiest State Initiative

Momentum Newsletter

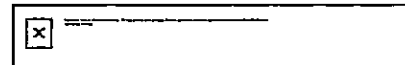
No Images? [Click here](#)



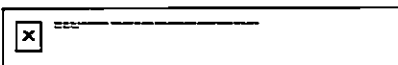
Rob, *Momentum* is your friend. If you have it, be grateful. If you've lost it, be intentional and get it back!

---

SPRING HAS ARRIVED!



It's time to take advantage of the longer days and warmer weather, time to shed the winter coats and get outside to enjoy the spring season. [Read more for ideas and Iowa resources to get you outside and moving this spring.](#)

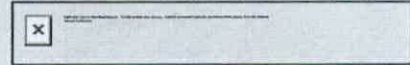


### Iowa State Parks Fitness Events

Are you ready for a race in a park? Combine some of Iowa's most beautiful landscapes with your love of fitness challenges by checking out a new page on the Department of Natural Resources website.

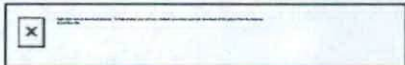
Find a list of events held in Iowa's state parks at [www.iowadnr.gov/parksfitnesssevents](http://www.iowadnr.gov/parksfitnesssevents).

## ANNOUNCING THE 2017 HSI ANNUAL CONFERENCE!



Spots are filling up fast for our all-day annual conference on May 2 at the Scheman Building at Iowa State Center Ames! The day will be focused around this year's theme of **"Eat Well. Move More. Feel Better."**

We'll start the day with a keynote by Philip Bors from Active Living by Design. Throughout the day, guests will have the opportunity to participate in six of our breakout sessions. The luncheon will feature keynote John Coyle – speaking on resiliency and design thinking with a focus on stress management and balance. For more information and to reserve your spot, visit our website.



### Set the Pace in 2017

The Healthiest State Initiative is teaming up with the Grand Blue Mile, the Midwest's premier one-mile fitness walk/run for all ages and abilities.

**Register now for a chance to win \$10,000 for your community!** It's all part of Grand Blue Mile's Set the Pace Challenge. All you have to do is register for the Grand Blue Mile and participate on April 25.

Visit [GrandBlueMile.com](http://GrandBlueMile.com) to register today!



### Growing Bolder Hunger Summit

Tuesday, May 9th, 2017

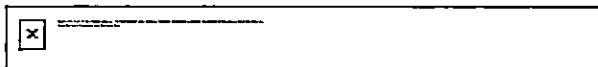
Blank Park Zoo, Des Moines, IA

Come learn about the work being done to reduce food insecurity and provide

seniors with nutritious foods to encourage healthy aging. Key note speaker, Dr. Craig Gundersen, lead researcher on Feeding America's Map the Meal Gap project. Cost to attend is \$25, lunch is included. [Register Here](#)

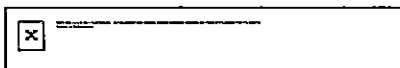
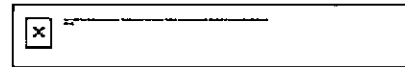
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Iowa Bankers Insurance and Services, Inc. (IBIS) is proud to sponsor the Iowa Healthiest State's Annual Conference. IBIS is a full-service insurance provider for banks. Since 1971, IBIS has specialized in creating quality insurance programs, including health benefit programs designed for banks and their employees that we offer through the Iowa Bankers Benefit Plan (IBBP). IBBP serves more than 30,000 Iowans. [Click here](#) to learn more.



## PARTNER NEWS

- [IPHA's Public Health Matters, Spring Publication](#)
- NE Iowa Food & Fitness [Garden Education Curriculum](#)
- [What's New In School Nutrition Webinar](#), Iowa Dept. of Education, March 27
- Iowa Action for Healthy Kids: [School Grants are Available!](#) Deadline is April 7



## ENDORSED EVENTS

- [Beaverdale Spring Run](#), 4/1
- [Hawk Open 2017](#), 4/1
- [CBS2 Your Health Expo](#), 4/2
- [Live Healthy Iowa 5K](#), 4/8
- [American Lung Association Fight For Air Climb](#), 4/9
- [Iowa Governor's Conference on Public Health](#), 4/11-4/12



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- [F.A.S.T. 5k, 4/21](#)
- [2017 Central Iowa Heart Walk, 4/22](#)
- [Grand Blue Mile, 4/25](#)
- [Drake Relay Road Race, 4/29](#)
- [Central Iowa Kidney Walk, 4/29](#)
- [Harlan Community HS Light the Night, 4/30](#)

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Des Moines, IA 50309

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**From:** myLawCLE <events@businesslawcle.com>  
**Sent:** Thursday, March 16, 2017 11:30 AM  
**To:** Sand, Rob [AG]  
**Subject:** Collateral Consequences of Marijuana Laws

Join attorney Rochelle S. Berliner as she presents a CLE Video Re-Broadcast on *Collateral Consequences of Marijuana Laws* on March 30, 2017....

**myLawCLE**  
(877) 406-8636

## **Collateral Consequences of Marijuana Laws: Defending Clients against Marijuana Charges with the Least Impact on Immigration, Licensing, Housing & Education >>**

*CLE Video Re-Broadcast | March 30, 2017*

*3 HR CLE (2:00 pm – 5:15 pm Eastern)*

As of January 2017, recreational marijuana use is legal in eight states: California, Oregon, Washington, Alaska, Colorado, Washington D.C., Nevada and Massachusetts.

(Legalization in Maine does not take effect until "30 days after the Governor certifies the election results.")

Twenty-eight (28) states, plus Washington, D.C. and Guam, have legalized medical marijuana, although in the most recent three states – Arkansas, North Dakota and Florida – the laws have not yet taken effect.

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In this program, attorneys Rochelle S. Berliner, Shelley Albert and Ami Kim discuss the conflict between state and federal law and the collateral consequences of a marijuana conviction in terms of immigration, licensing, housing and education.

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**Key topics to be discussed:**

- Federal Marijuana laws
- State medical marijuana and legalization statutes
- Collateral consequences of a marijuana conviction in connection with, among other things, immigration, professional licensing, education and housing
- How state laws are affected by federal law
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Rochelle S. Berliner Upon graduating New York Law School in June 1991, Ms. Berliner began her legal career as an Assistant District Attorney in the office of Robert M. Morgenthau, the New York County District Attorney. She spent two years working in the Appeals Bureau, writing briefs and arguing them in the Appellate Division, First Department. She then spent another twelve years in the Office of the Special Narcotics Prosecutor. While there, Ms. Berliner worked on long-term and short-term drug investigations, a lengthy wiretap case and hundreds of street-level drug sale and possession cases. During that time, Mr. Berliner tried approximately 50-60 cases to verdict and acquired extensive litigation skills and experience.

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**To:** Sand, Rob [AG]  
**Subject:** Google Alert - "iowa attorney general"



## "iowa attorney general"

Daily update - March 7, 2017

### NEWS

**Iowa Capitol Digest: Branstad hopes to be US-China 'go-between'**  
Quad City Times

**RESPONSE COMING:** The Iowa Attorney General's Office is preparing a response to questions an Iowa senator raised about the succession of Gov.



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**19 investigation finds there are 4265 untested rape kits in Iowa, oldest dates back to 1992**

KCRG

**DES MOINES, Iowa (KCRG-TV9) –** In a report expected to be released Tuesday, the Iowa Attorney General's office will unveil the number of untested ...



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**Magellan: Third-party contractor caused Iowa pipeline leak**

DesMoinesRegister.com

A third-party excavator caused a pipeline leak that spilled 46,830 gallons of diesel fuel Worth County in January, the company that owns the pipeline ...



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**Lawyers probe possible evidence planting by former Des Moines police**

DesMoinesRegister.com

The Iowa Attorney General's Office has opposed remanding the case back to district court, arguing that it should move forward through the appellate ...



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## "iowa attorney general"

Daily update · February 21, 2017

### NEWS

#### **Iowa Attorney General** wants to be excused from collective bargaining suit WOWT

DES MOINES, Iowa (AP) - Iowa's top attorney wants to excuse himself from defending the state in a lawsuit that challenges a new collective bargaining ...

AG Tom Miller won't defend state officials against AFSCME lawsuit - DesMoinesRegister.com  
Full Coverage



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#### **McAllister Requested In VandeKieft Case**

KIWARadio.com

The court records indicate Lyon County Attorney Shayne Mayer requested Special Prosecutor Coleman McAllister from the Iowa Attorney General's ...



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**Sand, Rob [AG]**

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**From:** NEWS [AG]  
**Sent:** Tuesday, February 21, 2017 2:12 PM  
**Subject:** Miller Statement on AFSCME Lawsuit

**IOWA DEPARTMENT OF JUSTICE  
OFFICE OF THE ATTORNEY GENERAL  
Thomas J. Miller, Attorney General  
[www.iowaattorneygeneral.gov](http://www.iowaattorneygeneral.gov)**

CONTACT: Geoff Greenwood | Communications Director | 515-281-6699 | [geoff.greenwood@iowa.gov](mailto:geoff.greenwood@iowa.gov)

FOR IMMEDIATE RELEASE  
February 21, 2017

## **Statement from Attorney General Tom Miller on AFSCME Lawsuit over Collective Bargaining Law**

*Miller to ask Executive Council to approve outside legal counsel to defend state*

DES MOINES – Attorney General Tom Miller today announced that he will ask the Iowa Executive Council to seek outside legal counsel to defend the state against the lawsuit challenging the constitutionality of House File 291, the collective bargaining bill signed into law on Friday.

The American Federation of State, County and Municipal Employees (AFSCME) Iowa Council 61 filed the lawsuit Monday in Polk County District Court.

The Executive Council, comprised of the governor, secretary of state, state treasurer, secretary of agriculture and state auditor, must approve the appointment of outside counsel to represent the state.

“As the new collective bargaining law has the potential to existentially threaten the viability of public sector unions—many of the very same organizations that have supported me in the past—I am recommending that the Executive Council seek outside legal representation to defend this lawsuit in order to avoid any questions about a potential conflict,” Miller said. “While the extraordinarily professional and skilled attorneys in my office have vigorously defended Governor Branstad and the legislature in past lawsuits involving AFSCME, I think it’s most prudent in this highly charged legal dispute to avoid any appearance of politics clouding our office’s legal representation and judgment.”

###

**Sand, Rob [AG]**

---

**From:** myLawCLE <events@businesslawcle.com>  
**Sent:** Tuesday, February 21, 2017 12:31 PM  
**To:** Sand, Rob [AG]  
**Subject:** Collateral Consequences of Marijuana Laws

---

Join attorney Rochelle S. Berliner as she presents a Live CLE Video Broadcast on *Collateral Consequences of Marijuana Laws: Defending Clients against Marijuana Charges with the Least Impact on Immigration, Licensing, Housing & Education* on February 23, 2017....

**myLawCLE**  
(877) 406-8636

## **Collateral Consequences of Marijuana Laws: Defending Clients against Marijuana Charges with the Least Impact on Immigration, Licensing, Housing & Education >>**

*Live CLE Video Broadcast | February 23, 2017*

*3 HR CLE (1:00 pm - 4:15 pm Eastern)*

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(Legalization in Maine does not take effect until "30 days after the Governor certifies the election results.")

Twenty-eight (28) states, plus Washington, D.C. and Guam, have legalized medical marijuana, although in the most recent three states – Arkansas, North Dakota and Florida – the laws have not yet taken effect.

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[Learn more / Register online...](#)



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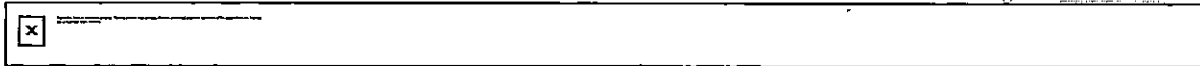
**Sand, Rob [AG]**

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**From:** The Iowa Healthiest State Initiative <info@iowahealthieststate.com>  
**Sent:** Thursday, February 16, 2017 4:39 PM  
**To:** Sand, Rob [AG]  
**Subject:** Rob, here is your news from the Healthiest State Initiative

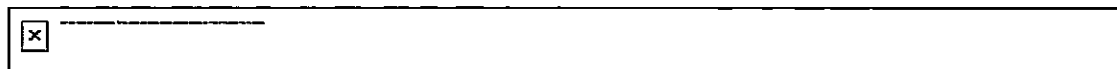
Momentum Newsletter

No Images? [Click here](#)



# Rob, Keep Your *Momentum* Going By Having Constantly Greater Goals!

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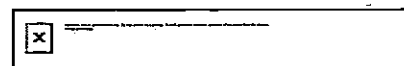


## HEALTHIEST STATE INITIATIVE RELEASES HEALTH- TRANSPORTATION REPORT AND OPENS APPLICATIONS FOR IOWA WALKING COLLEGE

In response to recommendations developed as part of a walkable communities workshop held last year, the Healthiest State Initiative and Active Living Iowa announces the creation of the Iowa Walking College. The Iowa Walking College is an interactive, online educational program for walkable community advocates based on the National Walking College created by America Walks. [Read more...](#)

The Healthiest State is accepting applications for fellows now until March 10, 2017. Additional information about the Iowa Walking College and to complete an application is available at <http://www.iowahealthieststate.com/iowa-walking-college/>.

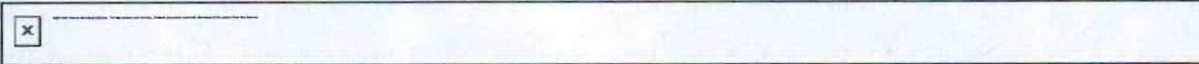
ANNOUNCING THE 2017 HSI ANNUAL  
CONFERENCE!





Join us for the Healthiest State [annual conference](#) on May 2, 2017 at the Scheman Building at the Iowa State Center Ames. Professionals gather from across the state of this one-day event. [Learn more here!](#)

Registration will open at 8:30am with a light breakfast, a buffet luncheon, and the day will come to a close at 4pm.



## FEEL BETTER: BECOME A VOLUNTEER!

How do you feel after you volunteer for your local community? Those endorphins are usually running high for me not only while I'm volunteering but often for days. Often I walk away having gained more from the experience than what the organization gained from having me. So how does volunteering tie in with the Healthiest State Initiative? [Read more here to find out...](#)

## JOIN US FOR THE GIVE BACK IOWA CHALLENGE!

The [Give Back Iowa Challenge](#) is an eight-week statewide employer-supported volunteer initiative, to serve as a competitive way to encourage organizations and businesses alike to participate in community volunteering. The Challenge runs from April 1st through May 31st. It's simple; register your organization, track the hours of your employees, record those hours on our system, and celebrate your employees!

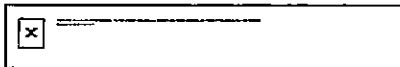
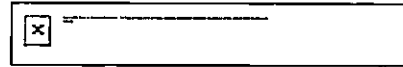


## 572 WEEKS OF FITNESS HELPED ME RECOVER FROM COLON CANCER SURGERY.

A few years ago we posted a story about a gentleman who had joined a fitness center in Cedar Rapids Iowa with a simple goal: to go as many times a week as possible for a month to get back in shape. That gentleman was John Fields. **John has now successfully completed 572 consecutive weeks of exercise.** Not even missing a week as he underwent a surgery for colon cancer. [Here is his update...](#)

## PARTNER NEWS

- Iowa Action fro Healthy Kids: [School Grants are Available!](#)
- [Trees For Kids Grant Applications](#) are Available!
- UWCI 2017 Community [Garden Mini Grants - Now Accepting Applications!](#)
- [FoodCorps Service Member Applications](#) Open!
- [Iowa Ride Share Has a New Website](#) - Check it Out!



## ENDORSED EVENTS

- [Every Family Rocks, 2/18](#)
- [Greater Des Moines League of Wellness Roundtable, 2/20](#)
- [Leadership in Aging: Inspiring Tomorrow's Leaders Today, 3/3](#)
- [Feed Greater Des Moines Conference, 3/4](#)
- [Beaverdale Spring Run, 4/1](#)
- [Hawk Open 2017, 4/1](#)
- [CBS2 Your Health Expo, 4/2](#)
  
- [Live Healthy Iowa 5K, 4/8](#)
- [American Lung Association Fight For Air Climb, 4/9](#)
- [Iowa Governor's Conference on Public Health, 4/11-4/12](#)
- [F.A.S.T. 5k, 4/21](#)
- [2017 Central Iowa Heart Walk, 4/22](#)
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Rob Sand

5/8/2017 3:22 PM

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**From:** myLawCLE <events@businesslawcle.com>  
**Sent:** Thursday, February 16, 2017 9:03 AM  
**To:** Sand, Rob [AG]  
**Subject:** Collateral Consequences of Marijuana Laws: Defending Clients against Marijuana Charges with the Least Impact on Immigration, Licensing, Housing & Education

Join attorney **Rochelle S. Berliner** as she presents a Live CLE Video Broadcast on *Collateral Consequences of Marijuana Laws: Defending Clients against Marijuana Charges with the Least Impact on Immigration, Licensing, Housing & Education* on February 23, 2017....

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(877) 406-8636

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*Live CLE Video Broadcast | February 23, 2017*

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[Learn more / Register online...](#)

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## "iowa attorney general"

Daily update · February 13, 2017

### NEWS

#### Editorial: Here's one state job we don't need

DesMoinesRegister.com

Iowa Attorney General Tom Miller has backed up the Branstad administration, providing informal guidance that suggests once the governor leaves ...



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#### Let's find common ground in a divisive age

DesMoinesRegister.com

... the U.S. Department of Justice, Iowa Attorney General's office, representatives from state and federal law enforcement, and individuals representing ...



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## "iowa attorney general"

Daily update - February 7, 2017

### NEWS

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#### Branstad Knocks Johnson's Questions Of Reynolds

KIWARadio.com

State Senator David Johnson of Ocheyedan has asked **Iowa's attorney general** to issue a written opinion about the matter, including whether Reynolds ...



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#### Your Views: Readers share their views on scams, collective bargaining and borders

The Daily Nonpareil

The **Iowa Attorney General** and other law enforcement here are on the case. Anyone with personal data on their PC who has been a victim should ...



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## "iowa attorney general"

Daily update - February 2, 2017

### NEWS

#### Lawmaker raises legal questions about Branstad-Reynolds' transition

DesMoinesRegister.com

"Two months ago, the Iowa Attorney General and the Iowa Secretary of State gave Iowans a definitive answer that Kim Reynolds will become governor ...

Senator asks: will Reynolds get title of governor when Branstad leaves? - Radio Iowa

Johnson seeking official opinion from Iowa AG - Spencer Daily Reporter

Full Coverage



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#### Former Mt. Pleasant school secretary accused of padding her kid's lunch accounts

Radio Iowa

... report has been filed with the Iowa Division of Criminal Investigation, the Henry County Attorney's Office, and the Iowa Attorney General's Office.



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**Sand, Rob [AG]**

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**From:** Michael <mlahamm@aol.com>  
**Sent:** Tuesday, January 31, 2017 5:50 PM  
**To:** Sand, Rob [AG]  
**Subject:** RE: District Judge Nomination

Thanks, Rob! Anyone close to the Governor helps!

Mike

Sent from my Verizon Wireless 4G LTE DROID On Jan 31, 2017 5:20 PM, "Sand, Rob [AG]" <Robert.Sand@iowa.gov> wrote:

- >
- > Mike,
- >
- > That is fantastic! You'd be a great judge. I'll give Adam a call and tell him about my experience with you. I don't know Jeff. Anyone else I can call?
- >
- > Rob
- >
- > Rob Sand
- > Assistant Attorney General
- > Iowa Attorney General's Office
- > 1305 E. Walnut St
- > Des Moines, IA 50309
- > Phone: 515-281-5536
- > Fax: 515-281-4209
- >
- > \_\_\_\_\_
- > From: Michael K. Lahammer [mlahamm@aol.com]
- > Sent: Monday, January 30, 2017 11:10 AM
- > To: Sand, Rob [AG]
- > Subject: District Judge Nomination
- >
- > Rob,
- > I have been nominated, along with Andrew Chappell from the Johnson
- > County Attorneys Office, civil division, for the position of District
- > Judge here in the 6th Judicial District. I interview with the
- > Governor this Friday Feb. 3rd.
- > I have been meeting with various individuals the past few weeks who
- > are making recommendations to the Governor about my appointment. I
- > have a couple more interviews this Wed. one with Adam Gregg, State
- > Public Defender, and another with Jeff Goodman, the Governor's former
- > Chief of Staff.
- > I just wanted to let you know in case you get an opportunity to put
- > in a good word on my behalf to the "powers that be" in your office.
- > I also just wanted to let you know!
- >
- > Mike
- >

Rob Sand

5/8/2017 3:22 PM

> Michael K. Lahammer

> Attorney at Law

> 425 2nd Street SE, Ste. 1010

> Cedar Rapids, IA 52401

> (319) 364-1140

>

>



**Sand, Rob [AG]**

---

**From:** Sand, Rob [AG]  
**Sent:** Tuesday, January 31, 2017 5:24 PM  
**To:** Gregg, Adam [SPD]  
**Subject:** 6th District Judge Position

Adam,

I understand you spoke with Mike LaHammer recently and plan to make a recommendation to the Governor soon about whom he should appoint. I tried a case with Mike and if you haven't made your recommendation yet, would like to share my (very positive) experience. You can call me at the number below.

Rob

Rob Sand  
Assistant Attorney General  
Iowa Attorney General's Office  
1305 E. Walnut St  
Des Moines, IA 50309  
Phone: 515-281-5536  
Fax: 515-281-4209

**Sand, Rob [AG]**

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**To:** Michael K. Lahammer  
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Rob Sand  
Assistant Attorney General  
Iowa Attorney General's Office  
1305 E. Walnut St  
Des Moines, IA 50309  
Phone: 515-281-5536  
Fax: 515-281-4209

---

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**Sent:** Monday, January 30, 2017 11:10 AM  
**To:** Sand, Rob [AG]  
**Subject:** District Judge Nomination

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Mike

Michael K. Lahammer  
Attorney at Law  
425 2nd Street SE, Ste. 1010  
Cedar Rapids, IA 52401  
(319) 364-1140

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**To:** Sand, Rob [AG]  
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Mike

Michael K. Lahammer  
Attorney at Law  
425 2nd Street SE, Ste. 1010  
Cedar Rapids, IA 52401  
(319) 364-1140

**Sand, Rob [AG]**

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**From:** Google Alerts <googlealerts-noreply@google.com>  
**Sent:** Thursday, January 26, 2017 4:00 PM  
**To:** Sand, Rob [AG]  
**Subject:** Google Alert - "iowa attorney general"



**"iowa attorney general"**

Daily update - January 26, 2017

NEWS

**Iowa governor's charity discloses donors, after IRS deadline**  
DesMoinesRegister.com

A spokesman for Iowa Attorney General Tom Miller, a Democrat, said that unlike many states, his office has limited jurisdiction over nonprofits and ...

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**COMPLAINT LEADS TO THEFT CHARGE AT ANIMAL SHELTER**

KBOE 104.9 FM

The County Attorney's Office and the Sheriff's Office were assisted by the Marion County Sheriff's Office and the Iowa Attorney General's Office with this ...

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**Sent:** Friday, January 13, 2017 5:16 PM  
**To:** Sand, Rob [AG]  
**Subject:** Google Alert - "iowa attorney general"



## "iowa attorney general"

Daily update · January 13, 2017

NEWS

### Branstad appoints ex-deputy AG to public information board

kwwl.com

Pottorff served for years under **Iowa Attorney General** Tom Miller and often gave advice to state and local agencies about the Iowa open records and ...



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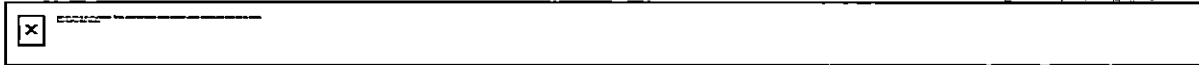
**Sand, Rob [AG]**

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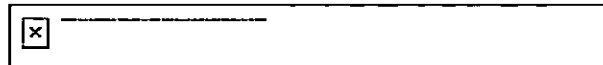
**From:** The Iowa Healthiest State Initiative <info@iowahealthieststate.com>  
**Sent:** Thursday, January 12, 2017 2:30 PM  
**To:** Sand, Rob [AG]  
**Subject:** Rob, here is your news from the Healthiest State Initiative

Momentum Newsletter

No Images? [Click here](#)



# Rob, Take Action to Produce a New *Momentum* in Your Life!

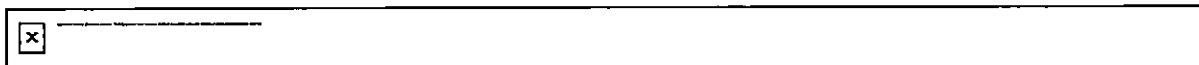


**New tools available for Iowa communities to improve overall well-being. *Complete a Statement of Interest today!***

Did you know your zip code could impact your health more than your genetic code? When it comes to overall health — zip code may be more important than genetic code.

Just think about your normal day. Do you drive to the store rather than walk? Is processed food easier to fit into your hectic schedule than a healthy meal? How often are you on your phone or tablet? Our day-to-day activities and where we live impact our health. [Read more...](#)

-----



Iowa Safe Routes to School Conference - January 19th

A fun and informative opportunity for anyone interested or involved in Safe Routes to School. We will start our day off with keynote speaker Colin Harris, form Alta Planning, then roll into an exciting Pecha Kucha session in the morning. The afternoon session will provide insight on how to get your program funded by bringing together local, metro, regional, and state funding sources in a panel discussion. [REGISTER HERE](#)

### Is Your Community Interested in implementing Complete Streets?

Smart Growth America is offering a new technical assistance opportunity—the [Complete Streets Consortium Series](#)—now open to all units of local government.

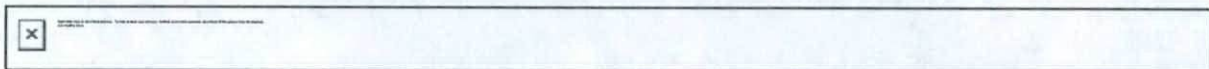
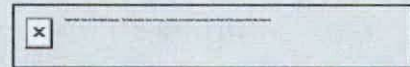
**The Complete Streets Consortium Series is an opportunity for three communities from the same state to work closely together to implement Complete Streets—streets that are safe and accessible for people of all ages and abilities.**

**Applications are due Thursday, February 2, 2017. Apply Here.**

### 1 Billion Steps Challenge

Starting today, [American Public Health Association](#) begins the ambitious goal of walking 1 billion steps by the end of National Public Health Week (April 9). The benefits of walking are well known, and whether you are already stepping it up or just getting started, we want YOU to be a part of the challenge.

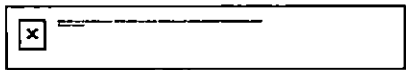
[Join the Iowa Healthiest State's team](#), or start your own team with a group of friends or co-workers. [Read more...](#)



### Change YOUR Choices...Change YOUR Life!

Are you looking for a new [CHALLENGE](#) to push you towards achieving your personal goals of health and well-being?

The purpose of challenges is to encourage healthier lifestyle behaviors. Challenges are successful when a supportive, positive climate of fun and camaraderie support people to adopt or maintain a healthy way of living. [Read more...](#)



### Need a Service Project? Order a Do-It-Yourself Meal Packaging Kit Today!

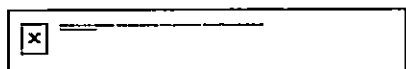
Whether you can help package meals or lift heavy boxes or just want to greet people at the door, [The Outreach Program](#) needs your help! The Outreach Program (based in Union, Iowa) works to provide safe water, food, medical care, and education to those in need, at home and abroad.

Host a [meal packaging event](#) and help to end hunger in Iowa. <http://outreachprogram.org/host-an-event/how-it-works/>

### SPONSOR SPOTLIGHT: RDG PLANNING & DESIGN



Did you know we office inside of [RDG Planning & Design](#) building in downtown Des Moines? RDG provides services through every phase of design using a collaborative and integrated process from start to finish. We are proud to call them a partner!



### ENDORSED EVENTS

- [Agricultural Urbanism Annual Event](#), 1/13
- [Safe Routes To School Conference](#), 1/19
- [Clinton Community College B-rrry Scurry 4-Mile Run](#), 2/4
- [YMCA Red Flannel Run](#), 2/11
- [Every Family Rocks](#), 2/18



- [American Lung Association Fight For Air Climb](#), 4/9
- [Iowa Governor's Conference on Public Health](#), 4/11-4/12
- [2017 Central Iowa Heart Walk](#), 4/22
- [Central Iowa Tour de Cure](#), 6/10

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Healthiest State Initiative  
301 Grand Avenue  
Des Moines, IA 50309

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**Sand, Rob [AG]**

---

**From:** Jessi Steward <jsteward@iowaabi.org>  
**Sent:** Friday, January 06, 2017 2:09 PM  
**To:** Sand, Rob [AG]  
**Subject:** Curriculum Feedback (Leadership Iowa)



**THE COURSE FOR OUR STATE**

Dear Leadership Iowa Alumni,

Happy New Year! We hope yours is off to the Best or Greatest start ever!

The Leadership Iowa Board of Governors is interested in your opinions. We are focused on ensuring that the Leadership Iowa experience is stimulating, educational and relevant to its participants.

The Curriculum Committee has developed a quick survey regarding curriculum planning. We would like your feedback in order to help us customize the best experience possible for future LI participants. **Responses are requested by Friday, January 13, please.**

- Here is the link for the survey: [www.surveymonkey.com/r/9VMPGB5](http://www.surveymonkey.com/r/9VMPGB5)

In addition, you are welcome to nominate a community (can be yours or another) for consideration to host a future Leadership Iowa session. Nominations are ongoing. The calendar for the coming LI year is typically determined in February.

- Here is the link for that survey: [www.surveymonkey.com/r/TYJ5D8Y](http://www.surveymonkey.com/r/TYJ5D8Y)

We appreciate your thoughtful consideration of our request, and we hope you will attend an Alumni dinner on January 11!

Please also consider joining or renewing your Alumni Society membership if you haven't already. In addition to alumni news and events, funds help to provide scholarships to future Leadership Iowa attendees.

RSVP for the alumni dine-arounds, make a contribution to Leadership Iowa and, of course, nominate future participants all online at [Leadershiplowa.com](http://Leadershiplowa.com).

Thank you,

**Brent Willett, CEcD**  
Executive Director  
Iowa's Cultivation Corridor  
Leadership Iowa (BCE) 2008-2009

**Barb Baker, CPCU**  
Advertising Director  
Grinnell Mutual  
Leadership Iowa (BCE) 2011-2012

**Sand, Rob [AG]**

---

**From:** Google Alerts <googlealerts-noreply@google.com>  
**Sent:** Tuesday, December 13, 2016 4:01 PM  
**To:** Sand, Rob [AG]  
**Subject:** Google Alert - "iowa attorney general"



## "iowa attorney general"

Daily update · December 13, 2016

NEWS

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### No prison for teacher sex offender under court review

DesMoinesRegister.com

Scott Brown, an assistant **iowa attorney general**, said in a recent interview that the sentencing requirement for mandatory reporters is not predicated on ...



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### Branstad could oversee one last legislative session before China departure

DesMoinesRegister.com

The governor's office and the **iowa Attorney General's** Office last week said they still needed more time to review iowa law to determine how ...



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### Nativity scene inside iowa Capitol called free speech

DesMoinesRegister.com

Geoff Greenwood, a spokesman for **iowa Attorney General** Tom Miller, said Monday the attorney general's office believes that the iowa Department of ...



Flag as irrelevant

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### Bird hits ground running as Fremont County attorney

Miami County Republic

After losing the **iowa attorney general's** race to incumbent Tom Miller in 2010, Bird served as Governor Branstad's legal counsel until February, 2015.



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---

### Iowa Taxpayers Handing Out \$60K Settlement To California Gamblers Who Were Legally Robbed ...

Techdirt

Jeff Thompson, also of **iowa Attorney General** Tom Miller's office, told the board Monday that the iowa Department of Public Safety had disbanded the ...



Flag as irrelevant

## Mason City man to be tried on sexually violent predator status

Mason City Globe Gazette

MASON CITY | A Mason City man completing a prison sentence for sexual exploitation of a minor will be tried next month to determine if he is a ...



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**Sand, Rob [AG]**

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**From:** Google Alerts <googlealerts-noreply@google.com>  
**Sent:** Monday, December 12, 2016 4:01 PM  
**To:** Sand, Rob [AG]  
**Subject:** Google Alert - "iowa attorney general"



## "iowa attorney general"

Daily update · December 12, 2016

### NEWS

---

#### Iowa's forfeiture team: Is it really gone?

DesMoinesRegister.com

Jeff Thompson of **Iowa Attorney General** Tom Miller's office noted the dismantling of the interdiction team during a public meeting last week where the ...



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#### Bird hits ground running as Fremont County attorney

KMAIand

After losing the **Iowa attorney general's** race to incumbent Tom Miller in 2010, Bird served as Governor Branstad's legal counsel until February, 2010.



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**Sand, Rob [AG]**

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**From:** Google Alerts <googlealerts-noreply@google.com>  
**Sent:** Thursday, December 08, 2016 4:00 PM  
**To:** Sand, Rob [AG]  
**Subject:** Google Alert - "iowa attorney general"



## "iowa attorney general"

Daily update · December 8, 2016

### NEWS

**Trump administration announces Branstad nomination; reaction pours in**  
KWQC-TV6

**Iowa Attorney General Tom Miller**, a Democrat, also congratulated the governor calling it a tremendous honor. "I know he'll serve the U.S. well and will ...



Flag as irrelevant

**State argues against lawsuit over officers' ticketing power**

kwwl.com

**DES MOINES, Iowa (AP)** - The state of Iowa says it would damage public safety if the state were forced to refund traffic fines and remove wrongful ...



Flag as irrelevant

**Poker Players Win Civil Forfeiture Case against Iowa Police**

Casino.Org News

The **Iowa Attorney General's** office declined to say whether the two decisions were related. Until the 1980s, civil forfeiture was used almost exclusively ...



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**Iowa Police Ordered To Return Money To Poker Players**

Online Poker.net

In the meantime, Iowa law enforcement has announced that it would be disbanding its forfeiture team, although the **Iowa Attorney General's** office ...



Flag as irrelevant

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**Sand, Rob [AG]**

---

**From:** district5c-owner@iabar.org on behalf of Schippers, Nicolle <district5c@iabar.org>  
**Sent:** Monday, December 19, 2016 4:42 PM  
**To:** District5C@iabar.org  
**Subject:** [ISBA District5c] ISBA District 5C December Update - Judicial Budget  
**Attachments:** Judicial Branch Budget Talking Points.pdf

Good afternoon – The ISBA Board of Governors recently held their meeting on Wednesday, December 14<sup>th</sup> and you will be receiving your update about that meeting soon. One of the items that was discussed is the Judicial Branch Budget which cannot wait until the update and needs to be brought to your attention immediately. Specifically the judicial branch is requesting a 6.9% budget increase and needs our help to ensure our courts are fully funded. This email is to ask you to contact you state legislators and tell them to support this increase.

By way of explanation, last year our courts did not receive any new funding. This means the judicial branch had to accomplish the same duties with increasing demands and costs with the same amount of funding as the year before. If the judicial branch continues to be underfunded, it will result in additional hiring freezes, furloughs, travel restrictions for judges, or closures and reduction in hours across our state. This year is especially a concern as the revenue estimating conference for this fiscal year budget recently met and revised their estimates for the overall budget downward. All state departments have submitted status quo budgets which is a de-facto decrease. The judicial branch cannot submit a status quo budget as the aforementioned consequences will become a reality and therefore, they must request the 6.9% increase.

WHY? Unlike state departments, the judicial branch is a branch of government. It needs to be funded to do its job, which is to provide justice for lowans. The legislature needs to be reminded that the judicial branch is an equal branch of government to ensure all lowans have access to justice. Attached you will find talking points you can use when you talk to your state legislators about supporting the budget increase. Below you will also find links to your state legislators:

Senators <https://www.legis.iowa.gov/legislators/senate>  
 Representatives <https://www.legis.iowa.gov/legislators/house>

Iowa has a reputation for having one of the best judicial systems in the country. Failing to provide full funding for our courts damages this reputation and the quality of services received by lowans.

Please contact your legislators as an advocate for your clients and for all lowans to ensure their access to justice.

If you have any questions, please contact your district 5C representatives individually and do not reply to this list serve.

Thank you for your help.

Nicolle Schippers, District 5c Representative.

Your District 5c Representatives:

Dawn Boucher  
 Willard Boyd III  
 Emily Chafa  
 Mark Godwin  
 Debra Hockett-Clark  
 Kathy Law

Abhay Nadipuram  
 Nathan Overberg  
 Nicolle Schippers  
 Anjela Shutts  
 Donald Stanley



2017 Session Talking Points  
November 17, 2016

I. Judicial Branch Budget

FY 17: The legislature appropriated the same amount of funding as the judicial branch received in FY 16, over \$5 million short of the amount needed to maintain the current level of service to lowans. Unfortunately, this means some very difficult decisions have been made.

For FY 17 the court decided to

- Establish a hiring freeze for all vacancies in the judicial branch with very, very few exceptions
- Hold open judicial vacancies for an average of six months
- Reduce travel by 10%
- Reduce furniture and non-IT equipment by 50%
- Shift some funding for IT operations to the Court Technology Fund
- Institute a moratorium on the expansion of specialty courts
- District must obtain approval of the supreme court before eliminating any specialty courts

In making these decisions, the court tried to minimize disruption of services to lowans by making evidence based decisions. As part of the effort to develop long term planning options, the court has asked the state court administrator to complete a workload study of all aspects of judicial branch operations. The results of the workload study will guide future budget decisions by the judicial branch. More information regarding the judicial branch budget can be found on the judicial branch website.

FY 18: Potential consequences if the judicial branch receives the same amount of funding for FY 18 as FY 16 and 17:

- Juvenile Court Officers reducing face to face visits with at-risk children
- Elimination of specialty courts (family treatment courts, drug courts, mental health courts, etc)
- lowans, especially business owners, will experience delays in civil litigation as priority will be criminal cases.
- Delayed maintenance of electronic filing system (EDMS)
- No development of additional technological services
- Closing or reduction of hours of courthouses
- Layoffs

Anticipated minimum FY 18 budget request: \$10 million (5.5%)

- Mitigation of FY 17 reductions in services
- Juvenile court officers to visit at-risk children
- Court service days in rural counties
- Continuation/expansion of specialty courts (family treatment courts, drug courts, mental health courts, etc.)
- Maintenance and upgrade of electronic filing system (EDMS)

Additional services in need of funding:

- Maintenance and upgrade of technology services for lowans:
  - Update of jury software and development of a juror app
  - Judicial Branch website upgrade and enhancements
  - Disaster recovery
  - Criminal Justice Information Systems (CJIS) exchanges for more automated exchange of data between criminal justices agencies and the Judicial Branch.
  - Development of apps for self-represented litigants to use to access the court system
  - Development of an online conservator reporting system
  - Protecting lowans' personal information on court documents

## II. Judicial salaries

- There is a decline in the number of applicants for judicial vacancies
- There are fewer private practicing attorneys submitting their names for judicial vacancies thereby reducing the practice setting diversity of the pools
- Stagnant judicial salaries is a factor in the decline of interest in judicial vacancies
- Reluctance to increase salaries affects morale of sitting judges
- Prior to January 3, 2014, Iowa judges and magistrates had not received a salary increase since July 1, 2008. Between 2008 and 2014, most other state employees received increases in their base pay of at least 13%.

## III. Here is what we want you to drive home to legislators

- Providing critical and unduplicated services to lowans in all 99 counties
- Good stewards of taxpayer dollars
- As efficient as possible-trying to maximize the efficiencies of technology
- Only 2.5% of general fund budget
- The services provided by the judicial branch to lowans needs to be a priority for state resources

Please tell Sydney about your meetings with legislators, especially any issues that they expressed an interest in.

**Gavin, Meghan [AG]**

---

**From:** Gavin, Meghan [AG]  
**Sent:** Thursday, May 04, 2017 10:45 AM  
**To:** Jim Claypool  
**Subject:** RE: [REDACTED]

I didn't. Thank you for the sentiment, I appreciate it.

-----Original Message-----  
**From:** Jim Claypool [mailto:jclaypool@iowatelecom.net]  
**Sent:** Thursday, May 04, 2017 10:00 AM  
**To:** Gavin, Meghan [AG]  
**Subject:** RE: [REDACTED]

Will do.

Did you see my P.S.?

-----Original Message-----  
**From:** Gavin, Meghan [AG] [mailto:Meghan.Gavin@iowa.gov]  
**Sent:** Thursday, May 04, 2017 9:58 AM  
**To:** Jim Claypool <jclaypool@iowatelecom.net>  
**Subject:** RE: [REDACTED]

[REDACTED]

Thanks,  
Meghan

---

**From:** Jim Claypool [jclaypool@iowatelecom.net]  
**Sent:** Thursday, May 04, 2017 9:49 AM  
**To:** Gavin, Meghan [AG]  
**Subject:** RE: [REDACTED]

Dear Meghan,

[REDACTED]

Very truly yours,  
Jim Claypool

P.S. I see that a Drake Professor doesn't like the AG opinion on whether Kim Reynolds will have constitutional authority to appoint a new Lt. Governor. He has an guest opinion column in today's Cedar Rapids Gazette.

I read the AG Op. and saw your name as a contributor. I thought the Op. was convincing. I don't know the Professor, but his column was too snarky and dismissive to be convincing. My 2 cents, for what it's worth. Here's the link:

<http://www.thegazette.com/subject/opinion/guest-columnists/reynolds-has-constitutional-authority-to-appoint-lieutenant-20170503>.

-----Original Message-----

From: Gavin, Meghan [AG] [mailto:Meghan.Gavin@iowa.gov]  
Sent: Wednesday, May 03, 2017 9:09 AM  
To: Jim Claypool <jclaypool@iowatelecom.net>  
Subject: RE: [REDACTED]

Sounds good. Thanks for the update.

---

From: Jim Claypool [jclaypool@iowatelecom.net]  
Sent: Wednesday, May 03, 2017 9:05 AM  
To: Gavin, Meghan [AG]  
Subject: [REDACTED]

Jim

-----Original Message-----

From: Gavin, Meghan [AG] [mailto:Meghan.Gavin@iowa.gov]  
Sent: Wednesday, May 03, 2017 9:03 AM  
To: Jim Claypool <jclaypool@iowatelecom.net>  
Subject: RE: [REDACTED]

Good morning. Are you available to talk today about [REDACTED]

Thank you,  
Meghan

---

From: Jim Claypool [jclaypool@iowatelecom.net]  
Sent: Friday, April 28, 2017 11:25 AM  
To: Gavin, Meghan [AG]  
Subject: RE: [REDACTED]

Thank you. I'll study these over the weekend.

From: Gavin, Meghan [AG] [mailto:Meghan.Gavin@iowa.gov]  
Sent: Friday, April 28, 2017 11:22 AM  
To: Jim Claypool <jclaypool@iowatelecom.net>  
Subject: RE: [REDACTED]

Mr. Claypool,

I am happy to talk with you about [REDACTED]  
[REDACTED] Let's talk next week after you have had time to review.

Thanks,  
Meghan

From: Jim Claypool [mailto:jclaypool@iowatelecom.net]  
Sent: Friday, April 28, 2017 11:05 AM  
To: Gavin, Meghan [AG]  
Subject: [REDACTED]

Dear Ms. Gavin,

I represent [REDACTED] in the above-referenced matter. When might be a good time for us to discuss this matter by telephone? I'm available this afternoon as well as most days next week. [REDACTED]  
[REDACTED]

Very truly yours,

James E. Claypool  
Attorney at Law  
Claypool & Claypool  
Tel. (319) 668-1170

The information contained in this communication is a transmission from Claypool & Claypool, Attorneys at Law and is information protected by the attorney/client and/or attorney work product privilege. It, along with any attachments hereto, is also covered by the Electronic Communications Privacy Act, 18 USC 2510-2512. It is intended only for the personal and confidential use of the recipient(s) named in the communication, and the privileges are not waived by virtue of this being sent by electronic mail. If the person actually receiving this communication or any other reader of the communication is not the named recipient, any use, dissemination, distribution or copying of the communication is strictly prohibited. If you have received this communication in error, please immediately notify us and delete the original communication from your system.

## **Gavin, Meghan [AG]**

---

**From:** Gavin, Meghan [AG]  
**Sent:** Tuesday, January 24, 2017 11:59 AM  
**To:** Philip Mears  
**Subject:** RE: James Moriarty ALJ ruling

Mr. Moriarty's brief is due today.

---

**From:** Philip Mears [mailto:philmears@mearslawoffice.com]  
**Sent:** Tuesday, January 24, 2017 5:11 AM  
**To:** Gavin, Meghan [AG]  
**Subject:** Re: James Moriarty ALJ ruling

Could you tell me where in the appeal process the case is now? Have briefs been submitted?

**Philip Mears**  
Mears Law Office  
209 E Washington Street  
Suite #203  
Iowa City, IA 52240  
Phone: 319.351.4363  
Fax: 319.351.7911

On Mon, Jan 23, 2017 at 11:21 AM, Gavin, Meghan [AG] <[Meghan.Gavin@iowa.gov](mailto: Meghan.Gavin@iowa.gov)> wrote:

Normally, the alj's decision would be reviewed by the head of the agency. In this case, however, Mr. Gregg was called as a witness so he cannot serve as the final decisionmaker. SPD requested and the governor appointed a substitute decisionmaker. The substitute decisionmaker for Mr. Moriarty's appeal is Bob Bird at the Iowa Utilities Board.

The rules governing this appeal are at Iowa Administrative Code rule 493—11.10.

---

**From:** Philip Mears [mailto:philmears@mearslawoffice.com]  
**Sent:** Monday, January 23, 2017 10:39 AM

**To:** Gavin, Meghan [AG]  
**Subject:** Re: James Moriarty ALJ ruling

What is a substitute decision maker? Is there any administrative code provision that governs any appeal?

**Philip Mears**

Mears Law Office

209 E Washington Street

Suite #203

Iowa City, IA 52240

Phone: 319.351.4363

Fax: 319.351.7911

On Mon, Jan 23, 2017 at 10:19 AM, Gavin, Meghan [AG] <[Meghan.Gavin@iowa.gov](mailto:Meghan.Gavin@iowa.gov)> wrote:

Sure. Mr Moriarty has appealed the ALJ's decision to the substitute decisionmaker. Mr. Moriarty has requested additional briefing and oral argument, which we are in the process of completing. I would expect a final agency decision in the spring.

---

**From:** Philip Mears [<mailto:philmeears@mearslawoffice.com>]

**Sent:** Monday, January 23, 2017 10:13 AM

**To:** Gavin, Meghan [AG]

**Subject:** Re: James Moriarty ALJ ruling

Thank you for sending me the ruling. I understand the public records issue could be complicated. This decision is dated November 21, 2017. Can you tell me what has happened since then? I am not asking for documents. I just would like to know at what stage is any appeal.

Philip

**Philip Mears**

Mears Law Office

209 E Washington Street

Suite #203

Iowa City, IA 52240

Phone: 319.351.4363

Fax: 319.351.7911

On Mon, Jan 23, 2017 at 10:02 AM, Gavin, Meghan [AG] <[Meghan.Gavin@iowa.gov](mailto: Meghan.Gavin@iowa.gov)> wrote:

Philip,

Attached please find the ALJ's decision regarding Mr. Moriarty. Throughout this litigation there has been a dispute as to whether records related to the case are public records. As such, I have Mr. Moriarty's counsel until Friday to provide me with legal grounds for holding the decision confidential. He did not do so. I am not aware of any legal basis for concluding the ALJ's decision is confidential.

If you have any additional questions, please let me know.

Thank you,

Meghan

---

**From:** Philip Mears [<mailto:philmears@mearslawoffice.com>]

**Sent:** Wednesday, January 18, 2017 8:59 AM

**To:** Gavin, Meghan [AG]

**Cc:** Swaim, Kurt [SPD]

**Subject:** James Moriarty ALJ ruling

Good morning Meghan

Could I get a copy of the ALJ ruling in Mr. MNoriarty's case. Kurt Swaim said you would be the person to contact.

Thanks

Philip

**Philip Mears**



Mears Law Office

209 E Washington Street

Suite #203

Iowa City, IA 52240

Phone: 319.351.4363

Fax: 319.351.7911

## Gavin, Meghan [AG]

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**Sent:** Monday, January 23, 2017 11:21 AM  
**To:** Philip Mears  
**Subject:** RE: James Moriarty ALJ ruling

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Mears Law Office  
209 E Washington Street  
Suite #203  
Iowa City, IA 52240  
Phone: 319.351.4363  
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**To:** Gavin, Meghan [AG]  
**Subject:** Re: James Moriarty ALJ ruling

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Philip

**Philip Mears**

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Suite #203

Iowa City, IA 52240

Phone: 319.351.4363

Fax: 319.351.7911

On Mon, Jan 23, 2017 at 10:02 AM, Gavin, Meghan [AG] <[Meghan.Gavin@iowa.gov](mailto: Meghan.Gavin@iowa.gov)> wrote:

Philip,

Attached please find the ALJ's decision regarding Mr. Moriarty. Throughout this litigation there has been a dispute as to whether records related to the case are public records. As such, I have Mr. Moriarty's counsel until Friday to provide me with legal grounds for holding the decision confidential. He did not do so. I am not aware of any legal basis for concluding the ALJ's decision is confidential.

If you have any additional questions, please let me know.

Thank you,

Meghan

---

**From:** Philip Mears [<mailto: philmears@mearslawoffice.com>]  
**Sent:** Wednesday, January 18, 2017 8:59 AM  
**To:** Gavin, Meghan [AG]  
**Cc:** Swaim, Kurt [SPD]  
**Subject:** James Moriarty ALJ ruling

Good morning Meghan

Could I get a copy of the ALJ ruling in Mr. MNoriarty's case. Kurt Swaim said you would be the person to contact.

Thanks

Philip

**Philip Mears**

Mears Law Office

209 E Washington Street

Suite #203

Iowa City, IA 52240

Phone: 319.351.4363

Fax: 319.351.7911

## **Gavin, Meghan [AG]**

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**From:** Philip Mears <philmeears@mearslawoffice.com>  
**Sent:** Tuesday, January 24, 2017 5:11 AM  
**To:** Gavin, Meghan [AG]  
**Subject:** Re: James Moriarty ALJ ruling

Could you tell me where in the appeal process the case is now? Have briefs been submitted?

**Philip Mears**  
Mears Law Office  
209 E Washington Street  
Suite #203  
Iowa City, IA 52240  
Phone: 319.351.4363  
Fax: 319.351.7911

On Mon, Jan 23, 2017 at 11:21 AM, Gavin, Meghan [AG] <[Meghan.Gavin@iowa.gov](mailto: Meghan.Gavin@iowa.gov)> wrote:

Normally, the alj's decision would be reviewed by the head of the agency. In this case, however, Mr. Gregg was called as a witness so he cannot serve as the final decisionmaker. SPD requested and the governor appointed a substitute decisionmaker. The substitute decisionmaker for Mr. Moriarty's appeal is Bob Bird at the Iowa Utilities Board.

The rules governing this appeal are at Iowa Administrative Code rule 493—11.10.

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**From:** Philip Mears [mailto:[philmeears@mearslawoffice.com](mailto:philmeears@mearslawoffice.com)]  
**Sent:** Monday, January 23, 2017 10:39 AM

**To:** Gavin, Meghan [AG]  
**Subject:** Re: James Moriarty ALJ ruling

What is a substitute decision maker? Is there any administrative code provision that governs any appeal?

**Philip Mears**  
Mears Law Office  
209 E Washington Street

Suite #203

Iowa City, IA 52240

Phone: 319.351.4363

Fax: 319.351.7911

On Mon, Jan 23, 2017 at 10:19 AM, Gavin, Meghan [AG] <[Meghan.Gavin@iowa.gov](mailto: Meghan.Gavin@iowa.gov)> wrote:

Sure. Mr Moriarty has appealed the ALJ's decision to the substitute decisionmaker. Mr. Moriarty has requested additional briefing and oral argument, which we are in the process of completing. I would expect a final agency decision in the spring.

---

**From:** Philip Mears [<mailto:philmeears@mearslawoffice.com>]

**Sent:** Monday, January 23, 2017 10:13 AM

**To:** Gavin, Meghan [AG]

**Subject:** Re: James Moriarty ALJ ruling

Thank you for sending me the ruling. I understand the public records issue could be complicated. This decision is dated November 21, 2017. Can you tell me what has happened since then? I am not asking for documents. I just would like to know at what stage is any appeal.

Philip

**Philip Mears**

Mears Law Office

209 E Washington Street.

Suite #203

Iowa City, IA 52240

Phone: 319.351.4363

Fax: 319.351.7911

On Mon, Jan 23, 2017 at 10:02 AM, Gavin, Meghan [AG] <[Meghan.Gavin@iowa.gov](mailto: Meghan.Gavin@iowa.gov)> wrote:

Philip,

Attached please find the ALJ's decision regarding Mr. Moriarty. Throughout this litigation there has been a dispute as to whether records related to the case are public records. As such, I have Mr. Moriarty's counsel until Friday to provide me with legal grounds for holding the decision confidential. He did not do so. I am not aware of any legal basis for concluding the ALJ's decision is confidential.

If you have any additional questions, please let me know.

Thank you,

Meghan

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**Sent:** Wednesday, January 18, 2017 8:59 AM  
**To:** Gavin, Meghan [AG]  
**Cc:** Swaim, Kurt [SPD]  
**Subject:** James Moriarty ALJ ruling

Good morning Meghan

Could I get a copy of the ALJ ruling in Mr. MNoriarty's case. Kurt Swaim said you would be the person to contact.

Thanks

Philip

**Philip Mears**

Mears Law Office

209 E Washington Street

Suite #203

Iowa City, IA 52240

Phone: 319.351.4363

Fax: 319.351.7911



**White, Cathleen [AG]**

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**From:** White, Cathleen [AG] on behalf of AG Webteam [AG]  
**Sent:** Tuesday, May 02, 2017 8:21 AM  
**To:** 'KEITH KAY ACHESON'  
**Subject:** RE: To Tom Miller

Keith, General Miller appreciates hearing from lowans, whether in support or not.

Thank you for your email.

---

**From:** KEITH KAY ACHESON [<mailto:herbnkz@msn.com>]  
**Sent:** Monday, May 01, 2017 6:13 PM  
**To:** AG Webteam [AG]  
**Subject:** To Tom Miller

**Your recent remark ref. Lt. Government enforces my belief that you are a political hack. Shame on your change of position re. appointment. You are fired!!!!. Keith Acheson 1609 Army Post Rd. West Des Moines,**

**White, Cathleen [AG]**

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**From:** White, Cathleen [AG] on behalf of AG Webteam [AG]  
**Sent:** Tuesday, May 16, 2017 12:42 PM  
**To:** 'Nicholas Johnson'  
**Subject:** RE: Iowa Attorney General Tom Miller

Yes, I certainly will share this email. Thank you.

---

**From:** Nicholas Johnson [<mailto:njohnsoniowa@gmail.com>]  
**Sent:** Tuesday, May 16, 2017 9:41 AM  
**To:** AG Webteam [AG]  
**Cc:** 'Nicholas Johnson'  
**Subject:** Iowa Attorney General Tom Miller

Please pass along to Tom Miller and the members of the team that put together that May 1, 23-page legal opinion regarding the Lieutenant Governor's powers my congratulations on a job of research and writing very well done.

I was going to write on the subject and have now concluded there is really nothing more to say. So I'm just going to add a link to it from my newly evolving General Resources Web page (<https://www.nicholasjohnson.org/resources>).

Nick

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**Nicholas Johnson**  
**Email:** [mailbox@nicholasjohnson.org](mailto:mailbox@nicholasjohnson.org)  
**Blog:** [FromDC2Iowa.blogspot.com](http://FromDC2Iowa.blogspot.com)  
**Web:** [www.nicholasjohnson.org](http://www.nicholasjohnson.org)  
**Phone:** 319-337-5555  
**Fax:** 319-335-9019  
**Postal:** P.O. Box 1876, Iowa City IA 52244-1876  
**Parcels:**  
**Nicholas Johnson**  
**UI College of Law/290 BLB**  
**Iowa City IA 52242-1113**

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**White, Cathleen [AG]**

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**From:** White, Cathleen [AG]  
**Sent:** Tuesday, May 02, 2017 8:58 AM  
**To:** Gavin, Meghan [AG]  
**Subject:** RE: Lt. Governor / Attorney General situation

Will do. Thank you!

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**From:** Gavin, Meghan [AG]  
**Sent:** Tuesday, May 02, 2017 8:50 AM  
**To:** White, Cathleen [AG]  
**Subject:** RE: Lt. Governor / Attorney General situation

The opinion specifically addresses the issue he is talking about. I think we can just provide him with the opinion and point him to pages 11-15.

---

**From:** White, Cathleen [AG] On Behalf Of AG Webteam [AG]  
**Sent:** Tuesday, May 02, 2017 8:30 AM  
**To:** Gavin, Meghan [AG]  
**Subject:** FW: Lt. Governor / Attorney General situation

Meghan, can you help with a response to Mr. Bowman?

**From:** Beau Bowman [<mailto:beaubowman13@gmail.com>]  
**Sent:** Monday, May 01, 2017 2:43 PM  
**To:** AG Webteam [AG]  
**Subject:** Lt. Governor / Attorney General situation

Hi there,

My name is Beau Bowman and I have a question about the recent release by the attorney general concerning the Lt. Governor's new title and power to appoint a new Lt. Governor.

I agree with the Attorney General that Lt. Governor Kim Reynolds should not be able to appoint a new Lt. Governor.

What I do not agree with is her title "Governor Reynolds."

The Iowa Constitution (Article IV sec. 17) states: "In case of the death, impeachment, **resignation**, removal from office, or other disability of the governor, the powers and duties of the office for the residue of the term, or until he shall be acquitted, or the disability removed, **shall devolve upon the lieutenant governor.**"

The legal definition of the word devolve is: "when property is automatically transferred from one party to another"

No where in the constitution does it say that Reynolds would become the Governor, but only take on the responsibility of Governor for the remainder of the term.

Therefore, Reynolds' title should stay as Lt. Governor. She should not be able to appoint a new Lt. Governor because there is no vacancy in that office.

My email and phone number are listed at the bottom of this email. Thank you for hearing me out.

--  
***Beau Bowman***

[beaubowman13@gmail.com](mailto:beaubowman13@gmail.com) | (563) 370-4818

## White, Cathleen [AG]

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**From:** White, Cathleen [AG] on behalf of AG Webteam [AG]  
**Sent:** Wednesday, May 03, 2017 8:52 AM  
**To:** 'beaubowman13@gmail.com'  
**Subject:** RE: Lt. Governor / Attorney General situation  
**Attachments:** Johnson\_opinion\_1741\_D8D94636D652C.pdf

Mr. Bowman, our opinion specifically addresses the issue you are talking about on pages 11-15. I have attached the opinion.

Thank you for sharing your thoughts on this issue with our office.

**From:** Beau Bowman [<mailto:beaubowman13@gmail.com>]  
**Sent:** Monday, May 01, 2017 2:43 PM  
**To:** AG Webteam [AG]  
**Subject:** Lt. Governor / Attorney General situation

Hi there,

My name is Beau Bowman and I have a question about the recent release by the attorney general concerning the Lt. Governor's new title and power to appoint a new Lt. Governor.

I agree with the Attorney General that Lt. Governor Kim Reynolds should not be able to appoint a new Lt. Governor.

What I do not agree with is her title "Governor Reynolds."

The Iowa Constitution (Article IV sec. 17) states: "In case of the death, impeachment, **resignation**, removal from office, or other disability of the governor, the powers and duties of the office for the residue of the term, or until he shall be acquitted, or the disability removed, **shall devolve upon the lieutenant governor.**"

The legal definition of the word devolve is: "when property is automatically transferred from one party to another"

No where in the constitution does it say that Reynolds would become the Governor, but only take on the responsibility of Governor for the remainder of the term.

Therefore, Reynolds' title should stay as Lt. Governor. She should not be able to appoint a new Lt. Governor because there is no vacancy in that office.

My email and phone number are listed at the bottom of this email. Thank you for hearing me out.

--  
***Beau Bowman***

[beaubowman13@gmail.com](mailto:beaubowman13@gmail.com) | (563) 370-4818

THOMAS J. MILLER  
ATTORNEY GENERAL



1305 E. WALNUT ST.  
DES MOINES, IA 50319  
P: 515-281-5164  
[www.iowaattorneygeneral.gov](http://www.iowaattorneygeneral.gov)

IOWA DEPARTMENT OF JUSTICE  
OFFICE OF THE ATTORNEY GENERAL

IOWA ATTORNEY GENERAL OPINION  
#17-04-1

May 1, 2017

The Honorable David Johnson  
State Senator  
PO Box 279  
Ocheyedan, Iowa 51354

Dear Senator Johnson:

Thank you for your letter of February 1, 2017. Your letter references Governor Terry Branstad's recent nomination to serve as United States Ambassador to China and poses nine specific questions about the effect of his potential resignation as Governor of Iowa. We agree that your letter raises important legal questions about Iowa's constitutional framework for the succession of executive power. This office has not previously addressed these questions directly, nor has the Iowa Supreme Court. Thus, we believe they are appropriately addressed in an official opinion of the Attorney General under Iowa Code section 13.2(e).

We share your belief that these important issues require a thoughtful and detailed analysis. Taken as a whole, the nine questions you pose implicate two central constitutional questions. Those two important questions of law are:

First question: If the governor resigns, does the lieutenant governor become governor?

Second question: If the lieutenant governor becomes governor, may she then appoint a new lieutenant governor?

The answers to these questions must flow from a careful consideration of the succession framework set forth in the words and structure of the Iowa constitution. See *Rudd v. Ray*, 248 N.W.2d 125, 129 (Iowa 1976) ("The framers of our constitution necessarily gave us their ideas in the words they agreed upon."). The debates of the 1857 constitutional convention also shed important light on the meaning and intent of the constitutional provisions establishing that framework. See *N. W. Halsey & Co v. City of Belle Plaine*, 104 N.W. 494, 496 (Iowa 1905) (noting that reading the constitutional debates may aid in a fuller understanding of constitutional provisions). Finally, our answers can and should be informed by interpretations of the same or similar

provisions in other states' constitutions. See *Van Horn v. City of Des Moines*, 191 N.W. 144, 148 (Iowa 1922) (considering "similar provisions in the Constitution[s] of other states" to decide an issue of first impression).

## I. Background

We first provide context for the legal questions by identifying the relevant constitutional provisions, examining portions of the 1857 constitutional convention, and noting historical practice both in Iowa and on the federal level.

**A. Constitutional Provisions.** Article IV of the Iowa Constitution establishes the executive branch and sets forth a framework for the succession of executive power. Some provisions of article IV have been amended since 1857, but we initially focus on the original provisions because those established the original framework. In doing so, we consider *all* the original executive branch provisions without placing undue significance on one section. See *Rolfe State Bank v. Gunderson*, 794 N.W.2d 561, 565 (Iowa 2011) ("[W]e avoid placing undue importance on isolated portions of an enactment by construing all parts of the enactment together."). We also remain mindful not to render any provision meaningless or redundant. See Iowa Code § 4.4(2) (2017) (presuming every piece of language is intended to be effective); *Mall Real Estate, L.L.C. v. City of Hamburg*, 818 N.W.2d 190, 198 (Iowa 2012) ("We . . . interpret statutes in such a way that portions of it do not become redundant or irrelevant."); see also *Junkins v. Branstad*, 448 N.W.2d 480, 483 (Iowa 1989) ("Constitutional provisions are generally subject to the same rules of construction as statutes.").

Considering article IV as a whole promotes a holistic understanding of the constitutional framework, because each provision can inform the others. See Iowa Code § 4.1(38) ("Words and phrases shall be construed according to the context . . ."); see also *Allen v. Clayton*, 18 N.W. 663, 667 (Iowa 1884) (noting that to determine the meaning of a constitutional provision, "the sections preceding and following it, which have reference to the same subject-matter, must be read and considered"); *State ex rel. Martin v. Heil*, 7 N.W.2d 375, 381 (Wis. 1942) ("[T]he provision should be examined in its setting in order to find out . . . the real meaning and substantial purpose of those who adopted it."). The following constitutional provisions are relevant to our analysis.

Article IV, section 1 provides that "The supreme executive power of this state shall be vested in a chief magistrate, who shall be styled the governor of the state of Iowa." Iowa Const. art. IV, § 1. In other words, the person who has the power is governor. This section has remained unchanged since 1857.

Article IV, sections 2 and 3 originally established that the governor and lieutenant governor would be elected by the people—but not on the same ticket. Article IV, section 6 required candidates for both offices to have the same qualifications.

Article IV, section 10 provided, “When any office shall, from any cause, become vacant, and no mode is provided by the Constitution and laws for filling such vacancy, the Governor shall have power to fill such vacancy, by granting a commission, which shall expire at the end of the next session of the General Assembly, or at the next election by the people.”

Article IV, section 14 provided, “No person shall, while holding any office under the authority of the United States, or this State, execute the office of Governor, or Lieutenant Governor, except as hereinafter expressly provided.”

Article IV, section 15 established that the lieutenant governor would serve until a successor was elected and qualified, and that “while acting as Governor,” the lieutenant governor would receive the same pay as provided for the governor.

Article IV, section 17 provides,

In case of the death, impeachment, resignation, removal from office, or other disability of the governor, the powers and duties of the office for the residue of the term, or until he shall be acquitted, or the disability removed, shall devolve upon the lieutenant governor.

This section has remained unchanged since 1857.

Article IV, section 18 made the lieutenant governor President of the Senate with a tiebreaking vote, but provided that “when [the lieutenant governor] shall exercise the office of Governor, the Senate shall choose a President pro tempore.”

Article IV, section 19 continued the line of succession beyond the lieutenant governor:

If the Lieutenant Governor, while acting as Governor, shall be impeached, displaced, resign, or die, or otherwise become incapable of performing the duties of the office, the President pro tempore of the Senate shall act as Governor until the vacancy is filled, or the disability removed; and if the President of the Senate, for any of the above causes, shall be rendered incapable of



performing the duties pertaining to the office of Governor, the same shall devolve upon the Speaker of the House of Representatives.

Although each provision is important, article IV, section 17 plays the biggest part in answering both questions. “[T]he purpose of art. IV, § 17 is to ensure that the citizens of Iowa are not without a person capable of performing the constitutional and statutory duties imposed upon a governor.” 1980 Op. Att’y Gen. 550, 1980 WL 25903, at \*3 (Iowa Att’y Gen. Jan. 2, 1980).

Two notable aspects of article IV, section 17 inform our analysis. First, while death and resignation are permanent exits from office, the phrase “other disability” includes temporary conditions such as physical or mental incapacity or time spent undergoing a medical procedure. See 1923 Op. Att’y Gen. 263, 263 (Iowa Att’y Gen. Aug. 23, 1923) (answering a question posed by the governor about the operation of article IV, section 17 during a several-month hiatus recommended by his physician). Therefore, article IV, section 17 must operate within a framework applicable to several possible factual scenarios without creating “friction in the machinery of government.” *Fitzpatrick v. McAlister*, 248 P. 569, 576 (Okla. 1926). Because the provision applies equally to permanent and temporary disabilities, so too must the answers to the legal questions we address.

The second important aspect of article IV, section 17 is the word “devolve.” That word “is defined by lexicographers and in law dictionaries as meaning to roll or tumble down or descend.” *Id.* at 573 (citing authorities indicating that meaning as of 1926); see also “Devolve,” *Black’s Law Dictionary* (10th ed. 2014) (defining “devolve” to include transferring rights, duties, or powers and passing by transmission); “Devolve,” *Webster’s Third New Int’l Dictionary* (1993) (defining “devolve” as “to flow or roll from a situation viewed as higher to one that is lower” and “to fall or be passed . . . as an obligation or responsibility”); 12 *Words & Phrases* 546 (1954). The overall concept is that the word connotes downward movement. This downward movement means the powers and duties of the office of Governor *fall* upon the lieutenant governor; the lieutenant governor does not *rise* to the office of Governor. See Okla. Op. Att’y Gen. No. 65-235, at 1-2 (Okla. Att’y Gen. May 19, 1965) (“The office of Governor devolves upon the Lieutenant Governor, he does not ascend to it.”). This distinction is both important and purposeful.

Viewing article IV as a whole, section 1 and original section 18 complement each other and dovetail with sections 17 and 19. The words in section 18 indicate that when the powers and duties devolved (as section 17 instructed), the lieutenant governor would “exercise the office of Governor.” That aligns with the foundational principle that the person who has the power is governor. Iowa Const. art. IV, § 1. The foundational principle is paramount.

Sections 17 and 19 operate to ensure that there is always a successor designated to exercise those “powers and duties”—even in the absence of the elected lieutenant governor.

Additionally, article IV, section 14 is instructive because it expressly permits one person to hold more than one office if the constitution provides for it. The 1857 constitution provided for two possibilities immediately following section 14, both of which referred specifically to the lieutenant governor: the lieutenant governor as governor and the lieutenant governor as senate president. See Iowa Const. art. IV, §§ 17–19 (original 1857 version). Section 19 further contemplated other officials holding more than one office by providing for the senate president as governor and the speaker of the house as governor.

**B. Constitutional Debates.** The Iowa Constitution of 1846 made no provision for a lieutenant governor. However, as the 1857 constitutional convention began, one delegate proposed that a committee dedicated to formulating the executive branch of government consider “providing for the election of a Lieutenant Governor who, by virtue of his office, shall . . . exercise all the powers and have the title of Governor in case of the death, removal, or other disability of the Governor.” 1 *The Debates of the Constitutional Convention of the State of Iowa* 39 (W. Blair Lord rep., 1857) [hereinafter *The Debates*]. The convention agreed to the resolution. *Id.* Accordingly, the drafters of article IV, section 17 envisioned that the lieutenant governor would “have the title of Governor” if the governor left office, *id.*—and utilized the word “devolve” to accomplish that result. See *Heil*, 7 N.W.2d at 381–82 (recounting similar debate from the Wisconsin constitutional convention in 1847).

The framers of our 1857 constitution also spent significant time debating the constitutional line of succession. Several of the delegates questioned the need for a lieutenant governor at all—possibly because Iowa had no lieutenant governor before 1857—and offered amendments to article IV, section 17. For instance, delegate Warren proposed an amendment substituting the words “Secretary of State” for “Lieutenant Governor.” 1 *The Debates* at 587. Delegate Clarke of Johnson County<sup>1</sup> proposed instead “that the duties of the office of Governor, in case of a vacancy, shall devolve upon the president of the Senate.” *Id.* The convention actually passed Clarke’s amendment, eliminating the position of lieutenant governor from the 1857 constitution and altering the constitutional line of succession.

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<sup>1</sup> “There were two men named Mr. Clarke and one named Mr. Clark at the Iowa convention.” *State v. Senn*, 882 N.W.2d 1, 13 n.7 (Iowa 2016); see 1 *The Debates*, at 6.

The next morning, however, delegate Gray asked his colleagues "to consider well the importance of the matter before striking" the provisions regarding the lieutenant governor. *Id.* at 591. An advantage of retaining the office was the fact that the lieutenant governor "will be elected directly by the people, instead of by the Legislature." *Id.* Gray found that important because "We all seem to agree in placing elections, as far as possible, directly in the power of the people." *Id.* Delegate Clarke of Henry County agreed:

Gentlemen [of the convention] do not reflect that they may be taking from the people the power of selecting their own chief magistrate. When a man is a candidate for the office of Lieutenant Governor, the people always vote for him with the understanding that circumstances may arise which will make him their Governor. But if you give to the Senate the power of selecting the man who may be the Governor of the people, you take from the people this power and put it into the hands of the Senate.

*Id.* at 591-92.

Delegate Gray's remarks sparked renewed debate on the subject, and some delegates changed their minds. For example, delegate Wilson offered that although he had originally voted to eliminate the position of lieutenant governor, "upon reflection . . . the advantages in favor of [having a lieutenant governor] are far superior to the disadvantages." *Id.* at 593. Most significant, however, were Mr. Clark's remarks:

I voted yesterday to strike out the office of Lieutenant-Governor. I had not reflected upon it well, and I am inclined to the opinion that I did not vote right. Upon hearing the argument thus far upon the question, and upon reflection, I am disposed to favor the office of Lieut[enant] Governor, for one reason, if there were no other: I believe that an executive officer, whoever he may be that shall perform the duties of that office, whether Governor or Lieutenant-Governor, ought to be elected directly by the people, in all cases, at least so far as it is possible to provide for it. We elect the Governor by the direct votes of the people—by the popular will—by the popular voice. In case of his removal or disability, I see no reason why the person filling his place should not be elected directly by the whole people as much as the Governor himself.

*Id.* at 594.

After some further debate, the convention voted 19-14 against the amendment that would have struck the office of lieutenant governor. *Id.* at

595. Accordingly, the convention also restored other provisions relating to the office of lieutenant governor. *See id.* at 596.

It is evident, both from this historical record and because “[a]ll political power is inherent in the people,” Iowa Const. art. I, § 2, that this “elective principle” lies at the core of our constitutional framework. The framers intended that those in the gubernatorial line of succession be elected. Section 3 further reinforced the framers’ commitment to the elective principle by requiring that the lieutenant governor “*be elected.*”

**C. Iowa Historical Practice.** Four Iowa governors have either resigned or died while in office. In 1877, Governor Samuel Kirkwood resigned to become a candidate for the United States Senate. Lieutenant Governor Joshua Newbold assumed the powers and duties of Governor upon the resignation. Governor Albert Cummins resigned in 1908 after his election to the United States Senate. Lieutenant Governor Warren Garst assumed the powers and duties of the Governor upon the resignation. In 1954, Governor William Beardsley was killed in an automobile accident. Upon his death, Lieutenant Governor Leo Elthon assumed the powers and duties of Governor. Finally, in 1969 Governor Harold Hughes resigned to take his seat in the United States Senate. Lieutenant Governor Robert Fulton assumed the powers and duties of the Governor upon the resignation.

In each of these four instances, the lieutenant governor (upon whom the powers and duties of the office devolved) was treated as Governor in every respect, but did not appoint a new lieutenant governor. In each of these four instances, a new lieutenant governor was eventually elected by popular vote at the same time the next governor was elected.

This historical practice reveals several significant trends. First, upon the death or resignation of a sitting governor, the lieutenant governor has *always* been considered governor. Second, the new governor has *never* appointed or named a new lieutenant governor.

**D. Federal Language and History.** In 1857, when the Iowa Constitution was ratified, article II, section 1, clause 6 of the United States Constitution read: “In Case of the Removal of the President from Office, or of his Death, Resignation, or Inability to discharge the Powers and Duties of the said Office, the Same shall devolve on the Vice President . . .” Thus, article IV, section 17 of the Iowa Constitution closely tracked language in the United States Constitution at the time.

Under that federal language, multiple presidents died in office. Following each death, the Vice President was considered President in full. Two of these



instances occurred before 1857: John Tyler in 1841 and Millard Fillmore in 1850. Because of this history, the delegates to the 1857 Iowa constitutional convention likely understood the word "devolve" to mean that upon the governor's exit from office, the lieutenant governor would be governor following a downward movement of powers. See *State v. Baldon*, 829 N.W.2d 785, 810 (Iowa 2013) (Appel, J., specially concurring) (noting "the drafters of the Iowa Constitution were well aware" of existing federal law when writing in 1857); *Gallarno v. Long*, 243 N.W. 719, 723 (Iowa 1932) ("[H]istorical . . . matters may be taken into consideration when interpreting the Constitution.").

A federal court decision from 1867 confirms this understanding:

Three times, since the adoption of the constitution, the president has died, and, under [article II, section 1, clause 6], the powers and duties of the office of president have devolved upon the vice president. All branches of the government have, under such circumstances, recognized the vice president as holding the office of president, as authorized to assume its title . . . . It has never been supposed that, under the provision of the constitution, the vice president . . . acted as the servant, or agent, or locum tenens of the deceased president, or in any other capacity than as holding the office of president fully, for the time being, by virtue of express authority emanating from the United States.

*Merriam v. Clinch*, 17 F. Cas. 68, 70 (C.C.S.D.N.Y. 1867). The three instances to which the court referred were President Tyler, President Fillmore, and President Andrew Johnson in 1865.

Likewise, the Oklahoma Supreme Court relied upon federal history several decades later in analyzing the word "devolve:"

[U]pon the death of President Wm. H. Harrison, Vice President Tyler became President of the United States. For almost a century this construction of the federal Constitution has stood without question. It has been recognized as correct, and acquiesced in, not only by the departments of state and all the states of the Union, but officially recognized by every civilized government in the world.

. . . .

Defendant suggests that no court has ever pronounced that to be the law. To our mind, it is so clearly correct that no one has ever presumed to test its correctness in the courts. Therefore it should have greater weight than an ordinary departmental

construction, not only because it has stood for almost a century, but because it has been recognized as the correct conception of our system of government, and because, for eighty-five years under this construction, there has been no friction in the machinery of government by reason of such construction.

*Fitzpatrick*, 248 P. at 576; see also *Olcott v. Hoff (Olcott I)*, 181 P. 466, 467 (Or. 1919) (“[U]pon the death of the president no one has ever claimed that the vice president . . . would not succeed to the office of president itself . . . .”); 1939 Mich. Att’y Gen. Rep. 69, 73 (Mich. Att’y Gen. Mar. 28, 1939) (“No one would contend that upon death or resignation of the President, the Vice President does not thereby become President of the United States . . . .”). Between *Merriam* in 1867 and *Fitzpatrick* in 1926, three more presidents died in office—and once again, after each death, the vice President was considered President.<sup>2</sup> The consistent federal understanding of the word “devolve” over several decades further informs our determination of what “devolve” means in article IV, section 17 of the Iowa Constitution.

Moreover, President Tyler did not appoint a new vice president in 1841. A new vice president did not take office until 1845, following the election of George Dallas to the office almost four years later. In 1850, when Millard Fillmore assumed the powers and duties of the presidency upon Zachary Taylor’s death, he too did not appoint a new vice president. Once again, the country waited for a new vice president for almost three years until the election of William King.

This historical practice continued upon the death of every President. The most recent instance occurred upon the death of President John F. Kennedy. President Lyndon Johnson did not appoint a new vice president in 1963. Our nation’s next vice president, Hubert Humphrey, was elected in 1964.

Having established this historical perspective, we now proceed to analyze the legal questions.

## **II. If the Governor Resigns, Does the Lieutenant Governor Become Governor?**

Beyond dictionary definitions, another important guidepost in determining the meaning of “devolve” is what it was understood to mean at the time it was enacted:

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<sup>2</sup> The three were President Chester Arthur in 1881, President Theodore Roosevelt in 1901, and President Calvin Coolidge in 1923.

In the interpretation of the Constitution . . . we are to ascertain the meaning by getting at the intention of those making the instrument. What thought was in the mind of those making the Constitution—what was their intention, is the great leading rule of construction.

*Ex parte Pritz*, 9 Iowa 30, 32 (1858); accord *Griffin v. Pate*, 884 N.W.2d 182, 186 (Iowa 2016) (beginning analysis of a constitutional provision “by looking back to review the history” of it “to gain a better understanding of the concept” as applied in a current case); *Redmond v. Ray*, 268 N.W.2d 849, 853 (Iowa 1978) (“In construing a constitution, our purpose is to ascertain the intent of the framers.”). The framers of our 1857 constitution were undoubtedly aware of the federal precedent under the “devolve” framework. This federal practice, and the framers’ resolution that the lieutenant governor could “have the title of Governor” if the governor left office, 1 *The Debates* at 39, are strong indications that the verb “devolve” was thought to convey the entire office of Governor upon the lieutenant governor.

**A. Other States’ Experiences.** Iowa is not the first state to face significant legal questions regarding a governor’s permanent departure from office. While other states’ constitutions and experiences do not alone determine what the Iowa Constitution means, see *Handeland v. Brown*, 216 N.W.2d 574, 577 (Iowa 1974), we find valuable to our analysis the language used in those states’ constitutions and court decisions or attorney general opinions involving that language.

Our review of available authority reveals a relatively even divide. When the relevant constitutional provision utilized the word “devolve,” some authorities in other states have concluded that the lieutenant governor becomes governor. In view of the question as we have phrased it, we call these the “yes” decisions. See, e.g., *Bryant v. English*, 843 S.W.2d 308, 311 (Ark. 1992) (“[W]e hold that . . . the Lieutenant Governor serves as Governor for the residue of the term . . . .”); *State ex rel. Lamey v. Mitchell*, 34 P.2d 369, 370 (Mont. 1934) (“[W]hen the Governor resigns or is permanently removed from office, there is no vacancy in the office of Governor in the sense that there is no one left with power to discharge the duties imposed upon the Governor.”); *Fitzpatrick*, 248 P. at 577 (“Mr. Trapp is just as much a Governor, in every literal and practical sense and effect, as though he had been elected to the office.”); *Chadwick v. Earhart*, 4 P. 1180, 1181 (Or. 1884) (“[I]t is not shown how . . . . a person can fill the office of governor without being governor.”); *State ex rel. Murphy v. McBride*, 70 P. 25, 26 (Wash. 1902) (“The constitution having provided that in case of the death of the governor the duties of the office shall devolve upon the lieutenant governor, there is no vacancy in the office of governor.”); 1939 Mich. Att’y Gen. Rep. at 73 (concluding when the governor

dies, the lieutenant governor is “governor of the state [for] all intents and purposes”).

Others have concluded that the lieutenant governor or next person “in line” is not truly governor. We call these the “no” decisions. *See, e.g., State ex rel. De Concini v. Garvey*, 195 P.2d 153, 154 (Ariz. 1948) (concluding the person upon whom the powers and duties of governor devolve after the governor’s death or resignation “is not governor de jure or de facto but merely ex officio”); *Futrell v. Oldham*, 155 S.W. 502, 504 (Ark. 1913) (concluding under a previous version of the Arkansas Constitution that the person upon whom the powers and duties of governor devolve “acts as Governor . . . merely by virtue of his office as president of the senate, and does not actually become Governor”); *People ex rel. Lynch v. Budd*, 45 P. 1060, 1060 (Cal. 1896) (“[I]t would hardly be contended that when the powers and duties of the governor devolve upon the lieutenant governor the latter thereby becomes governor . . . .”); *State ex rel. Hardin v. Sadler*, 47 P. 450, 450 (Nev. 1897) (“If a vacancy occurs in the office of governor, the powers and duties of the office devolve upon the lieutenant governor . . . . The officer remains lieutenant governor, but invested with the powers and duties of governor.”); *State v. Heller*, 42 A. 155, 157 (N.J. 1899) (“The language used is not ambiguous. It declares that the powers, duties, and emoluments of the office shall devolve on the president of the senate; it does not confer upon him the title of the office.”); *State ex rel. Martin v. Ekern*, 280 N.W. 393, 399 (Wis. 1938) (“[T]he lieutenant governor does not become governor. He remains lieutenant governor, upon whom devolves the powers and duties of governor.”).

**B. Analysis.** The substantial number of “no” decisions is significant. The “no” decisions are based on a careful parsing of the word “devolve” and the other relevant constitutional language. When resolving legal questions, precision and nuance matter. *See Rivera v. Woodward Res. Ctr.*, 865 N.W.2d 887, 897 (Iowa 2015). Thus, placing Iowa among the “no” decisions would be legally defensible. Indeed, in 1977, the Idaho Attorney General acknowledged that, although he believed them to be somewhat counterintuitive, the “no” decisions suggested “the lieutenant governor *never* truly succeeds to the office of governor” under the Idaho Constitution (which at the time used the word “devolve”). Idaho Op. Att’y Gen. No. 77-1, 1977 WL 25063, at \*1 (Idaho Att’y Gen. Jan. 4, 1977). The Idaho Attorney General went on to recommend that only the Idaho Supreme Court could answer the question definitively as a matter of Idaho law. *See id.*

Nonetheless, we find the “yes” decisions more persuasive than the “no” decisions for several reasons. First, we believe the “no” decisions elevate form over substance, which the Iowa Supreme Court has repeatedly cautioned against. *See, e.g., Lewis v. Jaeger*, 818 N.W.2d 165, 179 (Iowa 2012); *State ex*



*rel. Miller v. Smokers Warehouse Corp.*, 737 N.W.2d 107, 110 (Iowa 2007); *Van Baale v. City of Des Moines*, 550 N.W.2d 153, 156 (Iowa 1996). The “no” decisions are somewhat technical, drawing a linguistic distinction that, while noteworthy, makes no substantive difference under the circumstances presented here. See *Harriman v. State*, 2 Greene 270, 285 (Iowa 1849) (considering it the court’s “imperative duty” to “disregard . . . unmeaning technicalities, and to look more to the substance and merits of each case”); see also *Heil*, 7 N.W.2d at 381 (“It is extremely important in the interpretation of constitutional provisions that we avoid determinations based purely on technical . . . argument and that we seek to discover the true spirit and intent of the provisions examined.”). Under Iowa’s framework, there could be little dispute that if the governor resigns, the lieutenant governor would possess authority to sign legislation, issue pardons, and even receive the governor’s salary. Instead, any dispute centers on the exact description of his or her new role.

On that score, article IV, section 1 of the Iowa Constitution carries significant weight. That section provides, “The supreme executive power of this state shall be vested in a chief magistrate, who shall be styled the governor of the state of Iowa.” Iowa Const. art. IV, § 1. In other words, the person who has the power is governor. As the Arkansas Supreme Court concluded under a similar provision in the Arkansas Constitution, this means when the powers and duties of governor devolve upon the lieutenant governor, that person is thereafter styled the governor. See *Bryant*, 843 S.W.2d at 313; accord *Fitzpatrick*, 248 P. at 572 (“The person who . . . fills the office of chief magistrate is styled ‘the Governor of Oklahoma.’ He is the ‘Governor’ for the simple reason that he governs.”). Thus, there is no substantive difference between governor and acting governor. See *State ex rel. Chatterton v. Grant*, 73 P. 470, 474 (Wyo. 1903) (concluding that, after the governor died, the question whether a person “[wa]s in fact the governor of the state” was immaterial because, whether governor or acting governor, the person had the powers and duties of the office). A person acting as governor after the powers have devolved is governor, because of article IV, section 1.<sup>3</sup>

Second, the “yes” decisions comport with the Iowa framers’ understanding of the lieutenant governor’s role and with our state’s historical practice. In creating the office of lieutenant governor, the framers expected that person to “have the title of Governor” if the governor left office. 1 *The Debates* at 39. Furthermore, each time the governor of Iowa has resigned or

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<sup>3</sup> This office’s 1923 opinion acknowledges, as it must, that in some instances the powers and duties will devolve only on a temporary basis. To the extent the 1923 opinion describes *acting as* governor to be substantively different from *being* governor, we now clarify that issue.

died in office, the lieutenant governor was thereafter treated as governor. See William H. Fleming, *The Second Officer in the Government*, reprinted in *Annals of Iowa: A Historical Quarterly*, Vol. XIII, No. 1, at 533–34 (1921) [hereinafter *Annals of Iowa*] (recalling Governor Kirkwood’s resignation in 1877 and Governor Cummins’s resignation in 1908); Legis. Servs. Agency, *Pieces of Iowa’s Past: Lieutenant Governors Who Have Become Governor* 2–3 (Mar. 8, 2017), available at <https://www.legis.iowa.gov/docs/publications/TB/855445.pdf> (noting Governor Beardsley’s death in 1954 and Governor Hughes’s resignation in 1969). Indeed, one history of Iowa referred to Kirkwood’s successor as the “ninth governor of Iowa” following Kirkwood’s resignation. 4 Benjamin F. Gue, *History of Iowa: From the Earliest Times to the Beginning of the Twentieth Century* 199–200 (1903). Although historical practice standing alone does not mandate a similar result now, the historical practice is consistent with the framework of executive power we have described. *Gallarno*, 243 N.W.2d at 723 (noting history is important in interpreting constitutional provisions); see *Bryant*, 843 S.W.2d at 312 (finding it “of some persuasion” that, when the governor of Arkansas died in office or resigned, the lieutenant governor was historically treated as governor).

Finally, many of the “no” decisions are driven by legal problems that Iowa’s framework avoids. For example, in Arizona, the court concluded one reason the secretary of state did not become governor was the absence of a provision bestowing upon that person “the emoluments of the office of governor . . . when acting [as] governor.” *Garvey*, 195 P.2d at 157–58. By contrast, article IV, section 15 of the Iowa Constitution expressly provides that “while acting as governor,” the lieutenant governor is “paid the compensation . . . prescribed for the governor.” Iowa Const. art. IV, § 15.

Likewise, the Arkansas Supreme Court expressed concerns in *Futrell* about the president of the senate—a legislative officer—performing executive branch duties. See *Futrell*, 155 S.W. at 504; see also *Bryant*, 843 S.W.2d at 312 (explaining that creating the position of lieutenant governor alleviated any separation-of-powers concerns). Iowa’s framework has always avoided that problem. Article III, section 1 permitted the lieutenant governor to preside over the senate by allowing one person to perform both legislative and executive duties where expressly provided. Further, under the 1857 constitution, when the lieutenant governor was also president of the senate, article IV, section 18 directed the senate to elect a president pro tempore when the lieutenant governor was exercising the office of governor. And today, the lieutenant governor no longer has any legislative duties, so there is no separation-of-powers problem. Without potential issues like those faced in Arizona and Arkansas, we find the “yes” decisions to be a better analytical guide.

Iowa's amendments to article IV do not change or alter our analysis of the effect of article IV, section 17. A 1952 amendment to article IV, section 19 removed a reference to the lieutenant governor "acting as" governor, replacing it with "if there be a vacancy in the office of Governor"—and that language remains today. There is a natural tendency to ascribe significance to the change, but that amendment doesn't really say much about the title of the person upon whom the powers and duties devolve—because article IV, section 1 controls that question. And in any event, as we have explained, "acting as" governor is simply what the lieutenant governor does when the powers and duties devolve, not a substantive limit on his or her power or title.

The more significant piece of the 1952 amendments, in our view, was a section providing that if the governor-*elect* died, resigned, or failed to qualify, the lieutenant governor-elect would "assume the powers and duties of governor" upon inauguration. As we have noted, article IV, section 1 would therefore make the person with the powers the governor. In other words, the 1952 amendment solidified—not altered—the existing framework for the transfer of executive power in the event of a constitutional contingency.<sup>4</sup>

In 1972, several provisions of article IV were changed, but they did not affect sections 1 or 17. Originally, article IV, sections 2 and 3 provided the governor and lieutenant governor served two-year terms. The 1972 amendment merely increased both terms to four years. Thus, it does not indicate any significant change in the constitutional framework for transferring executive power. Indeed, the 1972 amendments retained the requirement that the governor and lieutenant governor be elected, and that they serve until successors were elected and qualified.

Iowa enacted more significant amendments in 1988. The 1988 amendments provided for the first time that the governor and lieutenant governor are elected together, on one ticket, "as if these two offices were one and the same." Iowa Const. art. IV, § 3. Before 1988, it was possible for the governor and lieutenant governor to represent different political parties. The amendment brought to fruition a constitutional delegate's statement at the 1857 convention: "The governor and lieutenant-governor will always, I presume, be the same in politics, and why not have the successor of the governor of the same politics, instead of bringing in one of the antagonistic party?" 1 *The Debates* at 593.

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<sup>4</sup> Additionally, Governor Beardsley's death occurred in 1954, after the 1952 amendments—but our state's practice of treating the lieutenant governor as governor remained the same.

The 1988 amendments also recast the lieutenant governor's duties. Under original article IV, section 18, the lieutenant governor was president of the senate and possessed a tiebreaking vote. If the lieutenant governor was absent, impeached, or exercising the office of Governor, the Senate was instructed to choose a president pro tempore to preside and break ties. However, the 1988 amendments revised article IV, section 18 to provide that the lieutenant governor "shall have the duties provided by law and those duties of the governor assigned to the lieutenant governor by the governor." In other words, the 1988 amendments removed the lieutenant governor's status as president of the Senate.

The only remaining duty "provided by law" is to receive the powers and duties of governor under article IV, section 17 if the governor leaves office; there are no additional statutory duties imposed upon the lieutenant governor. In other words, the lieutenant governor becomes governor *because* he or she is already lieutenant governor. As the Montana Supreme Court put it:

When the framers of the Constitution provided for the election of a Governor and a Lieutenant Governor as members of the executive department of the state, but conferred upon the latter no executive power or authority other than in the contingencies mentioned . . . , they manifested the intention that the people elect two qualified heads of that department—the one active, the other his lieutenant, ready at a moment's notice to assume the duties of the office, should his superior officer, for any reason, either temporarily or permanently, become unable to perform them.

*Mitchell*, 34 P.2d at 371-72; see also *State ex rel. Sathre v. Moodie*, 258 N.W. 558, 567 (N.D. 1935) ("The Lieutenant Governor, elected at the same election, . . . has been chosen by the people to act as Governor in [the] event the Governor fails to qualify, or is unable to act because of disability."); *Olcott I*, 181 P. at 483 ("[W]hen the people elected Mr. Olcott . . . , by the very terms of the constitution they elected him to become governor upon the death of Governor Withycombe."); *Heil*, 7 N.W.2d at 383 (noting the lieutenant governor "was deliberately chosen by the people for no other important purpose than to substitute for the governor"). Therefore, the 1988 amendments do not alter our analysis on this question.

**C. Answer.** After considering the Iowa Constitution's language and structure, placing it in historical perspective, and comparing other legal analyses on similar constitutional provisions, it is our opinion that under article IV, section 17 of the Iowa Constitution, if the governor resigns and the

powers and duties of the office devolve upon the lieutenant governor, the lieutenant governor becomes governor and has the title of Governor.<sup>5</sup>

### **III. If the Lieutenant Governor Becomes Governor, May She Then Appoint a New Lieutenant Governor?**

The framers of our 1857 constitution knew the federal precedent of *not* appointing a new vice president when the office of president “devolved” to the elected vice president. See *Iowa Ins. Inst. v. Core Grp. of Iowa Ass’n for Justice*, 867 N.W.2d 58, 76 (Iowa 2015) (considering the “circumstances under which the statute was enacted” in order to derive legislative intent); *Rudd*, 248 N.W.2d at 129 (“When words are enshrined in a governmental charter, so as to speak across centuries, their history, purpose, and intended meaning must be closely examined.”). Yet, despite this precedent, our framers chose not to depart from the federal model and made no express provision for the appointment of a new lieutenant governor when the elected lieutenant governor was performing the duties of the office of Governor. On the contrary, they provided—in article IV, section 19—a clear, tight and complete line of succession for the powers of the executive even in the absence of the elected lieutenant governor. The federal practice, the framers’ decision not to provide for a vacancy in the office of lieutenant governor, and the specific constitutional line of succession are strong indications that they did not see the need for a new lieutenant governor.

The governor has always had authority to fill vacancies in state offices when the constitution and laws did not otherwise provide for doing so. Iowa Const. art. IV, § 10. Yet, despite this provision, in the four prior instances when a governor has resigned or died in office, the new governor has not relied upon the authority in section 10 to fill any “vacancy” in the office of lieutenant governor—suggesting that the constitutional framework avoided one. See *Annals of Iowa* at 533 (noting Governor Newbold did not appoint a new lieutenant governor after Governor Kirkwood’s resignation “because the lieutenant-governorship was not vacant”).

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<sup>5</sup> Two of your nine original questions ask whether the lieutenant governor would be required to take a new oath of office and who would be empowered to administer that oath. In light of our opinion as detailed above, the answer to those questions is that no new oath is required. When the lieutenant governor is elected and qualifies by taking an oath before the general assembly to discharge the duties of the office of Lieutenant Governor, those duties already include receiving the powers and duties of Governor should a constitutional contingency arise. Nevertheless, we understand each of the four Iowa lieutenant governors who became governor after the resignation or death of a sitting governor chose to take a ceremonial oath of office (in one form or another) when they assumed their new duties. This is because while no new oath is *required*, the constitution does not prohibit one.

**A. Other States' Experiences.** In answering question one, we noted considerable debate among states which use constitutional language similar to our own ("devolve") as to whether the lieutenant governor "becomes" governor or is something less. Interestingly, however, we found virtually *no* debate on whether the new governor can appoint a new lieutenant governor. The widely-accepted answer to that question is no.

Oregon's experience and constitution mirrors Iowa's in every major respect save one: upon the governor's death the duties of the office devolve upon the Secretary of State, not the lieutenant governor. The Oregon Supreme Court closely examined whether the governor's permanent departure created a vacancy in the office of the Secretary of State. *State ex rel. Roberts v. Olcott (Olcott II)*, 187 P. 286 (Or. 1920). Oregon, like Iowa, had a constitutional provision generally allowing for the governor to fill vacancies in state offices. The Oregon Supreme Court determined, however, that there was no vacancy in the office of Secretary of State when the governor died and the duties (and office) of governor devolved on the Secretary. *Id.* at 289. The court reasoned that the constitution set forth an unbroken and automatic line of succession. *Id.*

The same result was reached in a 1939 Michigan Attorney General opinion. That opinion noted that under the "devolve" framework it is well-settled that when the powers and duties of the superior office devolve upon the inferior officer, there is no vacancy in the inferior office. 1939 Mich. Att'y Gen. Rep. at 72 (noting "plain rules of common sense" make clear "that the people never intended to intrust the responsibilities of the governorship to one who has not been elected"); 22 R.C.L. *Public Officers* § 97, at 442-43 (1918). In other words, when the powers and duties of governor devolve upon the lieutenant governor, there is no vacancy in the office of lieutenant governor.<sup>6</sup>

Other states have agreed. *See, e.g., Garvey*, 195 P.2d at 154 (adhering to the "prevailing view" that "the inferior officer does not vacate his office"); *Budd*, 45 P. at 1060 ("It is clear that the Lieutenant Governor does not vacate his office when he assumes the powers and duties of the Governorship."); *Mitchell*, 34 P.2d at 372 (holding the assumption of the duties of the office of governor does not create a vacancy in the office of lieutenant governor because "he is discharging the functions of Governor by the mandate of the Constitution, and that by reason of being the Lieutenant Governor"); *Sadler*, 47 P. at 450 (holding when the powers and duties devolve, "there is no vacancy created thereby in

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<sup>6</sup> That legal principle remains true in Michigan even though the Michigan Constitution was thoroughly redrafted in 1961. *See* 1968 Mich. Att'y Gen. Rep. 234, 235 (Mich. Att'y Gen. Apr. 22, 1968) (recounting debate from the 1961 Michigan constitutional convention that stated if the lieutenant governor became governor after the governor's death or resignation, "there is no replacement for him").

the office of lieutenant governor”); *Heller*, 42 A. at 156 (finding no vacancy); *McBride*, 70 P. at 26 (“[T]he office of lieutenant governor did not . . . become vacant, but the officer “remained lieutenant governor, intrusted with the powers and duties of governor.”); *Ekern*, 280 N.W. at 399 (“He remains lieutenant governor, upon whom devolved the powers and duties of governor. In such a contingency no vacancy occurs in the office of lieutenant governor.”); Okla. Op. Att’y Gen. No. 65-235, at 1 (concluding that when the office of governor “devolves upon, descends to, the Lieutenant Governor, . . . [i]n no sense does the Lieutenant Governor vacate his office”); see also Idaho Op. Att’y Gen. No. 77-1, 1977 WL 25063, at \*3 (“[M]ost courts hold that resignation of a governor does not create a ‘vacancy’ in the office of lieutenant governor when that person assumes the devolved duties as governor.”).

There are two court decisions in other states which have reached the opposite conclusion, but neither is persuasive. By statute, Arkansas provides for the special election of a new lieutenant governor. Ark. Code § 7-7-105; *Stratton v. Priest*, 932 S.W.2d 321 (Ark. 1996) (affirming the constitutionality of the statute). Iowa lacks a comparable statute calling for a special election. Moreover, a special election upholds the elective principle, whereas simply appointing a new lieutenant governor does not.

Under very trying circumstances a divided New York Court of Appeals held that a catchall statute allowing the governor to fill vacancies could be used to fill a vacancy in the office of lieutenant governor. *Skelos v. Paterson*, 915 N.E.2d 1141, 1142 (N.Y. 2009). We do not find the *Skelos* majority’s reasoning persuasive, because it *assumes* a vacancy exists and decides only *who* is empowered to fill it. In Iowa, given our framers’ focus on the elective principle and the near-unanimous authority predating *Skelos*, we hesitate to make a similar assumption. See Okla. Op. Att’y Gen. No. 65-235, at 1 (declining to acquiesce in the “erroneous assumption” that “the office of Lieutenant Governor becomes vacant when the Lieutenant Governor acquires the powers and duties of the Governorship”).

Interestingly, in 1943 the New York Attorney General had opined that a statute allowing the governor to make appointments could not be applied to a lieutenant governor vacancy because it “would lead to the anomalous result that a Governor by appointing a Lieutenant Governor and then resigning could impose upon the people his own choice as their Governor.” 1943 N.Y. Op. Att’y Gen. No. 378, 1943 WL 54210, at \*4 (N.Y. Att’y Gen. Aug. 2, 1943).

**B. Analysis.** Having taken this wealth of information into consideration, we find the answer to your question in the intersection between article IV, sections 14, 15, 17, 18, and 19 of the Iowa Constitution. Section 14 prohibits an individual from holding two offices “except as herein expressly

provided.” The subsequent sections then go on to provide for the line of succession in the event of the governor’s death, resignation, removal, or disability. This juxtaposition is not coincidental. In fact, the entire scheme suggests that our framers intended for situations when a single individual would hold two offices—including the offices of Governor and Lieutenant Governor.<sup>7</sup> Indeed, it means that when the executive powers and duties devolve from the governor to the lieutenant governor, those two offices essentially merge. As we previously stated—the lieutenant governor becomes governor *because* she is lieutenant governor.

We are persuaded that “[i]f the framers of the Constitution had intended that there should be a vacancy in the office of Lieutenant Governor upon the resignation, death, or permanent removal of the Governor, they could have easily said so.” *Mitchell*, 34 P.2d at 372; *accord Heller*, 42 A. at 156 (concluding if the framers intended a vacancy in the lower office, “it is reasonable to believe they would have said so in no uncertain language”). Our framers did not do so. This omission is telling, especially because our constitution was drafted shortly after two Presidents died in office—and especially when other states *have* amended their constitutions to do so. *See, e.g.*, Del. Const. art. III, § 20 (“Whenever the powers and duties of the office of Governor shall devolve upon the Lieutenant-Governor, . . . his or her office shall become vacant . . . .”); Tex. Const. art. IV, § 16(d) (“On becoming Governor, the person vacates the office of Lieutenant Governor . . . .”); Utah Const. art. VII, § 10(3)(a)(i) (defining vacancies in the office of Lieutenant Governor to include when “the Lieutenant Governor . . . becomes Governor”).

In addition to the framers’ distinct decision not to provide for a vacancy, other provisions referring to the lieutenant governor “acting as” governor or “exercising the office” of governor are further compelling evidence that there is no vacancy in the office of lieutenant governor. These provisions referring to the lieutenant governor performing particular functions—as opposed to saying merely “the lieutenant governor”—would be unnecessary and even meaningless if the new governor could simply appoint a “replacement” lieutenant governor. *See* Iowa Const. art. IV, §§ 15, 18–19 (1857 original version).

The express language of original section 19 (“If the Lieutenant Governor, while acting as Governor . . . .”) contemplates a *series* of events—something happens to the elected Governor and then something happens to the elected

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<sup>7</sup> For example, Article III, section 1 prohibits any person from exercising the powers of two branches of government “except in cases hereinafter expressly directed or permitted.” The primary exception to this separation of powers provision originally lay in article IV, sections 15 and 18, which called for the Lieutenant Governor to serve as President of the Senate, and article IV, section 19, which named the President of the Senate and Speaker of the House of Representatives to the line of succession.



Lieutenant Governor. As the Oregon Supreme Court noted, the purpose of creating a line of succession is to ensure the automatic transfer of power—to ensure that someone is always endowed with the powers of Chief Magistrate. *See Olcott II*, 187 P. at 289. We believe that was also the purpose of article IV, section 19—to extend the line of gubernatorial succession beyond the lieutenant governor. Inserting a newly-appointed “replacement” lieutenant governor in that order would interrupt the line the framers deliberately chose and make it impossible for section 19’s provisions ever to be fully carried out.

Moreover, allowing for the appointment of a new lieutenant governor would subvert the elective principle that the Iowa framers clearly endorsed. Like his or her predecessor, under our Constitution an appointed lieutenant governor would assume the powers and duties of governor upon the governor’s death, resignation, removal, or disability. In other words, if a lieutenant governor who becomes governor can appoint a new lieutenant, Iowa could have a governor who was not elected by the people. This would be a particularly unpalatable result because a primary reason for creating the office of lieutenant governor, as expressed at the 1857 constitutional convention, was to ensure that the person first in the line of succession was a statewide elected official. *See Mitchell*, 34 P.2d at 372 (concluding an unelected governor “was never contemplated and never intended by the framers of the Constitution, or the people who adopted it”); 1939 Mich. Att’y Gen. Rep. at 69 (“[I]t was never intended . . . that any person, who has not received the sanction of the electors by direct vote, should be appointed to a position which would entitle him, in certain eventualities, to the high office of governor.”).

Finally, as we have noted, section 17’s devolution provision applies equally to both permanent and temporary disabilities. So must the answer to this question. While Governor Branstad’s prospective resignation would be permanent, it is easy to imagine situations which would remove a governor from office only temporarily. For example, on June 29, 2002 and July 21, 2007, Vice President Dick Cheney assumed the powers and duties of the presidency while President George W. Bush underwent medical procedures. If the lieutenant governor assumed the power and duties of the governorship under similar (temporary) circumstances and appointed a new lieutenant governor, what would happen to those two officials upon the temporarily-disabled governor’s return to the office of Governor? Allowing for the appointment of a new lieutenant governor during a temporary disability would be an absurd result. *See Mitchell*, 34 P.2d at 372 (“[I]f the Governor were . . . unable temporarily to perform the duties of his office, it could hardly be argued that while the Lieutenant Governor was discharging the duties of the office of Governor, he could appoint a Lieutenant Governor.”); *Heller*, 42 A. at 158 (concluding a vacancy in the lower office made little sense for temporary

disabilities and “could not have been within the contemplation” of those drafting the constitutional provision).

The subsequent amendments to article IV in 1952 and 1988 reinforce our conclusion. In 1952, article IV, section 19 was amended to provide,

If there be a vacancy in the office of Governor and the Lieutenant Governor shall by reason of death, impeachment, resignation, removal from office, or other disability become incapable of performing the duties pertaining to the office of Governor, the President pro tempore of the Senate shall act as Governor until the vacancy is filled or the disability removed. . . .

Like its predecessor, this version of section 19 contemplates a series of events where the governor is first incapacitated and then the lieutenant governor—while exercising the powers and duties of governor—becomes incapacitated. Just like the original 1857 constitution, nothing in the 1952 amendments contemplates that there is a vacancy in the office of lieutenant governor when the sitting governor resigns or dies. See *Ekern*, 280 N.W. at 398–99 (concluding under language materially identical to revised article IV, section 19 that there is no lieutenant governor vacancy when the powers and duties of governor devolve). Tellingly, the historical practice of not appointing a new lieutenant governor continued following the death of Governor Beardsley in 1954 and the resignation of Governor Hughes in 1969—after the 1952 amendments.

As noted previously, in 1988 article IV was amended to provide for the election of governor and lieutenant governor on the same ticket and to alter the lieutenant governor’s duties by removing her role as president of the senate. The 1988 amendments also amended article IV, section 2 to provide, that “[t]he governor and the lieutenant governor shall be elected by the qualified electors.” This latter amendment reinforces the framers’ commitment to the elective principle.

Nothing in the 1988 amendments specifically altered the line of succession outlined in sections 17 and 19. Contemporary editorials do not indicate that the voters contemplated anything other than the single-ticket issue and the lieutenant governor’s duties.<sup>8</sup> See, e.g., Editorial, *Preventive Maintenance*, Des Moines Reg., Oct. 16, 1988, at 2C; Thomas A. Fogarty,

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<sup>8</sup> This is in stark contrast to Utah, where its 1980 constitutional amendments addressing gubernatorial succession were presented to the voters as mirroring the succession of the federal government—which by this time had adopted the 25th Amendment. Utah Op. Att’y Gen. No. 03-001, 2003 WL 21996258 (Utah Att’y Gen. Aug. 18, 2003).

*Lawmakers Seek to Have Governor, Lt. Gov. Run as Team*, Des Moines Reg. (Feb. 3, 1988); Thomas A. Fogarty, *Voters to Decide if Governor, Lt. Gov. Should Run as a Team*, Des Moines Reg. (Apr. 13, 1988); Linda Lantor, *Lieutenant Governor Amendments Big Winners*, Des Moines Reg. (Nov. 9, 1988).

The 1988 amendments' failure to alter the line of succession or address the question of a vacancy in the office of lieutenant governor is striking considering the intervening history between 1952 and 1988. Originally the U.S. Constitution contained language mirroring Iowa's devolution framework. The U.S. Constitution, however, was amended in 1967 following the assassination of President Kennedy. The 25th Amendment to the United States Constitution expressly provided that the vice president becomes president and granted the President the authority to appoint a new vice president with Congressional approval. U.S. Const. amend. 25, §§ 1, 2.

Iowa's legislators and voters in 1988 were obviously aware of the change in the federal system; President Ford became the first unelected U.S. President just the decade before. Yet, Iowa did not attempt to follow the new federal model. While it is often dangerous to reach a conclusion based upon legislative *inaction*, by declining to adopt the federal model, we believe the amendments ratified our historical precedent—namely, that the lieutenant governor assumes the title, powers, and duties of governor, but does not appoint a new lieutenant governor. See *Chiodo v. Section 43.24 Panel*, 846 N.W.2d 845, 862 (Iowa 2014) (Mansfield, J., specially concurring).

Because it is our opinion that upon a governor's resignation, the lieutenant governor will hold both the Office of Governor and the Office of Lieutenant Governor, as expressly permitted by Article IV, section 14, there is no vacancy in the office of lieutenant governor to be filled. Cf. *Olcott I*, 181 P. at 481 (relying on "except as permitted" language to conclude an individual could "hold the offices of governor and secretary of state at the same time"). As a result, under these facts, Iowa Code section 69.8 does not apply. See Iowa Code § 69.8(2) (referring to the governor filling "*a vacancy* in the office of lieutenant governor" (emphasis added)). Consequently, we need not opine on the statute's constitutionality.<sup>9</sup>

**C. Answer.** It is our opinion that if the governor resigns and the powers and duties of the office devolve upon the lieutenant governor, that person does

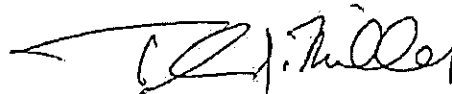
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<sup>9</sup> Because it is not the factual context in which you have asked your questions, we do not address whether section 69.8 would be applicable if the lieutenant governor resigned or died in office while the governor remained. The Wisconsin Supreme Court has suggested that a vacancy in the office of lieutenant governor exists in *that* factual scenario, but not when the powers and duties of governor devolve upon the lieutenant governor. See *Ekern*, 280 N.W. at 399.

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State Senator  
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not have constitutional authority to appoint a new lieutenant governor. Upon the governor's resignation, the powers and duties of the office will devolve or fall upon the lieutenant governor—who does not ascend or rise to the office of Governor. However, under our constitutional framework, by possessing the powers and duties of the chief magistrate, the lieutenant governor becomes governor for all intents and purposes, is entitled to use the title of Governor, and is entitled to the compensation of governor for the remainder of the term. The lieutenant governor takes on this authority because she is lieutenant governor. In other words, upon a governor's resignation, the lieutenant governor will hold both the offices of Governor and Lieutenant Governor. There is no vacancy to be filled. Furthermore, on these facts, permitting the appointment of a new lieutenant governor would disregard Iowa's historical practice, violate the elective principle, and interrupt the clear, tight and complete line of succession set out in our constitution.

Very truly yours,



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Jeffrey S. Thompson  
Solicitor General

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