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An Infamous Case: How the Iowa Supreme Court's Minimalist Approach Forced Everyone to Come Back for More in *Chiodo v. Section 43.24 Panel*, 846 N.W.2d 845 (Iowa 2014)

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Note*

An Infamous Case: How the Iowa Supreme Court’s Minimalist Approach Forced Everyone to Come Back for More in *Chiodo v. Section 43.24 Panel*, 846 N.W.2d 845 (Iowa 2014)

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I. INTRODUCTION

Every first year law student will learn—and eventually become all too comfortable with—the common axiom “hard cases make bad law.” While these hard cases may produce worthy academic discussion, they also create challenging legal hurdles for future courts, future litigants, and sometimes, citizens who have no intention of ever stepping through the courthouse doors. Occasionally, a court may allude to the

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notion that its decision is “bad law,” either through its own admission or through a complete lack of precedential support for a given outcome.¹ In these situations, the court ultimately faces a crucial decision: should the court limit its holding in the narrowest sense possible, or should the court instead show its work and attempt to rationalize the volatile or suspect result?

Every word in an opinion is important.² In a legal universe where stare decisis is nearly sacrosanct, every word written by a court may be potentially relied on for decades.³ Thus, it would seem to follow that hard cases—and the corresponding “bad law”—should, whenever possible, address only the most narrow issues to dispose of a case. This approach, known as judicial minimalism, has been most strongly advocated by distinguished law scholar Cass Sunstein as an approach to limit the largely non-democratic role of the judicial branch.⁴ Minimalist courts act with the mindset of, “Today I’ll tell you a little. If you bring me your next dispute tomorrow, I’ll tell you a little more. But you must keep coming back to me to get the answers.”⁵ However, some hard cases demand a court show its work and give state actors and citizens reliable guidance. Some cases require that a court soundly theorize its holding and pronounce a clear rule for future application.

In April 2014, the Iowa Supreme Court heard and decided *Chiodo v. Section 43.24 Panel*,⁶ which presented the question of whether operating while intoxicated (OWI), second offense, was an “infamous crime” within the meaning of Iowa’s voter disqualification constitutional provision.⁷ Article II, section 5 of the Iowa Constitution pro-

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1. See, e.g., *Haig v. Agee*, 453 U.S. 280, 319 (1981) (Brennan, J., dissenting) (“I suspect that this case is a prime example of the adage that ‘bad facts make bad law.’”); see also *N. Sec. Co. v. United States*, 193 U.S. 197, 364 (1904) (Holmes, J., dissenting) (writing that great cases, like hard cases, make “what previously was clear seem doubtful, and before which even well settled principles of law will bend”).
 2. See Adam N. Steinman, *To Say What the Law Is: Rules, Results, and the Dangers of Inferential Stare Decisis*, 99 VA. L. REV. 1737, 1792–1807 (2013) (emphasizing the importance of a court’s explicitly articulated rules to determine the binding nature of a decision).
 3. See Frank B. Cross & James F. Spriggs II, *The Most Important (and Best) Supreme Court Opinions and Justices*, 60 EMORY L.J. 407, 429–43 (2010) (quantifying the “importance” of a Supreme Court decision, in part, based on the number of citations in subsequent decisions).
 4. See Cass R. Sunstein, *Commentary, Incompletely Theorized Agreements*, 108 HARV. L. REV. 1733, 1753 (1995) (noting that judicial invocation of large theories against the democratic process should be a “rare event”).
 5. Ronald F. Wright, *When Do We Want Incomplete Agreements? A Comment on Sunstein’s Holmes Devise Lecture*, 31 WAKE FOREST L. REV. 459, 465 (1996).
 6. 846 N.W.2d 845 (Iowa 2014).
 7. *Id.* at 847.

vides that a person “convicted of any infamous crime”⁸ is not entitled to vote in statewide elections or run for statewide office.⁹ All things considered, *Chiodo* was a hard case.¹⁰ Accordingly, *Chiodo* will likely be seen as bad law: a three-justice plurality overruled a nearly 100-year-old decision, cast serious doubt on an equally tenured doctrine, and offered a new framework to define infamous crime with no more explanation than necessary.¹¹ Meanwhile, a two-justice special concurrence disagreed that the court’s precedent must be overruled, but nevertheless departed from that precedent and applied its own reasoning.¹² Further, one dissenting justice disapproved of the analysis by both the plurality and concurrence, and instead concluded the court’s century-old doctrine should have bound the court in the current case.¹³ Post-*Chiodo*, the interpretation of “infamous crime,” which affects every Iowan’s right to vote,¹⁴ is undeniably more ambiguous than ever before.¹⁵

This Note explores whether a court must avoid judicial minimalism in certain cases and instead develop a broad theoretical foundation for its holding. Part II first presents the facts of *Chiodo*, provides the reasoning of the court’s three opinions, and outlines the basic tenets of Sunstein’s judicial minimalism doctrine.¹⁶ Section III.A identifies two distinct levels of judicial minimalism that appear in the *Chiodo* decision.¹⁷ Section III.B advances four indicators for future courts to consider in determining whether judicial minimalism is an

8. IOWA CONST. art. II, § 5.

9. Article II, section 5 of the Iowa Constitution only disqualifies persons convicted of an infamous crime from voting. However, state law requires that any person seeking elective office must also be an eligible elector. IOWA CODE § 39.26 (2013). See *infra* text accompanying notes 46–48.

10. As noted by Justice Mansfield in his specially concurring opinion, the Iowa Legislature’s definition of OWI, second offense, as an “aggravated misdemeanor” blurred the once-clear line between simple misdemeanors and felonies. *Chiodo*, 846 N.W.2d at 861 (Mansfield, J., specially concurring). Iowa law now trifurcates misdemeanors as either simple, serious, or aggravated. Punishment for these crimes ranges from a \$65 fine to two years imprisonment. See IOWA CODE § 903.1 (2014).

11. See *Chiodo*, 846 N.W.2d at 848–57 (plurality opinion).

12. See *id.* at 857–63 (Mansfield, J., specially concurring).

13. See *id.* at 863–65 (Wiggins, J., dissenting).

14. See *infra* text accompanying notes 46–48.

15. A policy discussion of whether voter disqualification provisions are constitutional is beyond the scope of this Note. See, e.g., Lauren Handelsman, Note, *Giving the Barking Dog a Bite: Challenging Felon Disenfranchisement Under the Voting Rights Act of 1965*, 73 *FORDHAM L. REV.* 1875 (2005); see generally *Richardson v. Ramirez*, 418 U.S. 24 (1974) (holding that the Equal Protection Clause of the U.S. Constitution does not prevent states from disqualifying certain voters).

16. See *infra* Part II.

17. See *infra* section III.A (identifying that the entire court reached an incompletely theorized agreement, while the plurality in particular arrived at an incompletely specified agreement).

efficient or beneficial use of the court's resources in disposing of the case.¹⁸

Subsection III.B.1 proposes courts should avoid minimalism when interpreting constitutional rights.¹⁹ Subsection III.B.2 suggests courts should employ minimalism only to the extent that the doctrine of stare decisis applies.²⁰ Subsection III.B.3 posits courts should avoid minimalism when a decision involves repeat state actors or institutions.²¹ Finally, subsection III.B.4 proposes courts should not employ minimalism if there is substantial risk of increased future litigation.²² Because all four indicators were present in *Chiodo*, the case operates as a constructive example of the consequences that may result if a court nevertheless adopts a minimalist approach.²³ Ultimately, this Note concludes that certain cases, based on these indicators, should not be disposed of using minimalism because of inevitable adverse consequences.

II. BACKGROUND

A. *Chiodo v. Section 43.24 Panel Facts*

On March 11, 2014, Anthony Bisignano filed an affidavit of candidacy to run for the Iowa Senate.²⁴ Bisignano had previously been convicted of OWI, second offense, and was sentenced to seven days in jail and two years of probation.²⁵ After Bisignano filed for office, another candidate, Ned Chiodo, filed an objection to Bisignano's entrance into the senate race on the grounds that Bisignano was disqualified from holding public office under article II, section 5 of the Iowa Constitution.²⁶ Under section 5, "A person adjudged mentally incompetent to vote or a person convicted of any infamous crime shall not be entitled

18. See *infra* section III.B; *infra* note 23. While these indicators are only intended to apply to a jurisdiction's highest court, lower courts may also consider the described indicators before reaching a disposition.

19. See *infra* subsection III.B.1 (arguing that because the judiciary is the final arbiter of a constitution's text, an incompletely specified agreement can only negatively affect the individual rights provided for therein).

20. See *infra* subsection III.B.2 (arguing that a rejection of stare decisis should generally lead a court to supplant that precedent with a comparable substitute).

21. See *infra* subsection III.B.3 (arguing that a minimalist approach in cases involving governmental actors increases the probability of future inconsistent administrative application).

22. See *infra* subsection III.B.4 (arguing that a court should avoid a minimalist disposition if its holding will create future litigation for itself or lower courts).

23. The four indicators in section III.B are not necessarily conjunctive or disjunctive. Instead, a court may determine that a minimalist approach is inappropriate or inefficient if one indicator is particularly strong or if several indicators appear in one case.

24. *Chiodo v. Section 43.24 Panel*, 846 N.W.2d 845, 847 (Iowa 2014).

25. *Id.*

26. *Id.*

to the privilege of an elector.”²⁷ Because Iowa law requires any person seeking elective office to be an “eligible elector” at the time of the election,²⁸ Chiodo believed that Bisignano should be barred from running.

Pursuant to Iowa law, Chiodo’s objection was heard by a panel comprised of the Iowa Attorney General, the Iowa Auditor of State, and the Iowa Secretary of State (the Panel).²⁹ The Panel denied Chiodo’s objection, finding that OWI, second offense, was not an infamous crime within the meaning of section 5, and therefore Bisignano was eligible to run for state senate.³⁰ Chiodo appealed to the district court, which affirmed the Panel’s decision.³¹ Almost immediately, the Iowa Supreme Court granted expedited review.³² A mere fifteen days separated the district court’s affirmance of the Panel’s findings, submission of appellate briefs, oral argument, and issuance of the Supreme Court’s final opinion.³³

B. *Chiodo v. Section 43.24 Panel Opinions*

The issue presented to the Iowa Supreme Court in *Chiodo* was quite clear: whether OWI, second offense, is an infamous crime within the meaning of article II, section 5 of the Iowa Constitution.³⁴ The

27. IOWA CONST. art. II, § 5. In 2008, Iowa voters amended article II, section 5 of the Iowa Constitution to “update descriptions of mentally incompetent persons we no longer use.” *Chiodo*, 846 N.W.2d at 854 n.3. Because the 2008 amendment did not implicate the provision’s infamous crime language, the plurality did not consider the amendment in its analysis. *Id.* However, Justice Mansfield considered the amendment relevant insofar as it substantiated the Iowa Legislature’s definition of “infamous crime” at the time the amendment was passed by the legislature and by voters. *See id.* at 861–63 (Mansfield, J., specially concurring).

28. *See* IOWA CODE § 39.26 (2013).

29. *Chiodo*, 846 N.W.2d at 847 (plurality opinion); *see* IOWA CODE § 43.24(3)(a) (2013).

30. *Chiodo*, 846 N.W.2d at 847 (plurality opinion).

31. *Id.*

32. *See id.* at 847–48; *see also* IOWA R. APP. P. 6.1101(2)(d) (providing that the supreme court shall ordinarily retain cases “presenting fundamental and urgent issues of broad public importance requiring prompt or ultimate determination by the supreme court”).

33. It is quite possible the court’s review was substantially affected by the limited timeframe. The district court affirmed the Panel’s decision on April 2. *Chiodo*, 846 N.W.2d at 847. Ned Chiodo and the State of Iowa, as legal representative of the Panel, filed briefs with the Iowa Supreme Court on April 4 and April 7, respectively. Brief for Appellant, *Chiodo*, 846 N.W.2d 845 (No. 14-0553), 2014 WL 2991821; Respondent/Appellee’s Final Brief, *Chiodo*, 846 N.W.2d 845 (No. 14-0553), 2014 WL 2991822. Oral argument was held on April 9 before the court. Oral Argument, *Chiodo*, 846 N.W.2d 845 (No. 14-0553), *archived at* <http://perma.unl.edu/JU9J-Z5LK>. Ultimately, the court’s opinion was issued on April 15, as corrected on April 16. *See* Frederick Schauer, *Giving Reasons*, 47 STAN. L. REV. 633, 656–59 (1995), for a general discussion of the importance of time in order for a decision-maker to reach a well-reasoned conclusion.

34. *Chiodo*, 846 N.W.2d at 848.

Iowa Supreme Court is not the first state high court to interpret the phrase “infamous crime” for purposes of a voter disqualification constitutional provision;³⁵ in fact, seven other state constitutions provide for voter disqualification after conviction of a crime deemed “infamous.”³⁶ While some courts cited precedent to interpret the phrase,³⁷ others simply deferred to a legislative definition.³⁸ Still others engaged in an independent textual analysis of the phrase.³⁹ Remarkably, *Chiodo* drew on all three interpretive approaches before reaching a conclusion.⁴⁰

Unfortunately, the outcome of *Chiodo* was less than clear: a three-justice plurality found the crime is not infamous because it is not a “particularly serious” crime that tends to undermine the electoral process.⁴¹ A two-justice concurrence agreed the crime is not infamous, but only because the crime is not a felony.⁴² The lone dissenting justice argued the crime is categorically infamous because it carries a punishment of confinement in prison.⁴³ Ultimately, because five of the six participating justices⁴⁴ agreed that Bisignano’s crime—an aggravated misdemeanor—was not infamous, he was eligible to run for the Iowa Senate.⁴⁵

Chief Justice Mark Cady, who authored the court’s plurality opinion, first recognized the gravity and significance of the case by imme-

35. See, e.g., *Snyder v. King*, 958 N.E.2d 764 (Ind. 2011).

36. See ALA. CONST. § 182; IND. CONST. art. II, § 8; MD. CONST. art. I, § 4; N.M. CONST. art. VII, § 1; N.Y. CONST. art. II, § 3; TENN. CONST. art. I, § 5; WASH. CONST. art. VI, § 3; see also KY. CONST. § 145 (disqualifying persons convicted of a “high misdemeanor”); S.C. CONST. art. II, § 7 (disqualifying persons convicted of a “serious crime”); TEX. CONST. art. VI, § 1(b) (disqualifying persons convicted of “other high crimes”).

37. See, e.g., *Md. Green Party v. Md. Bd. of Elections*, 832 A.2d 214, 223 (Md. 2003) (citing *State v. Bixler*, 62 Md. 354 (1884) for the proposition that a citizen is disqualified from voting if the crime was “infamous” at common law).

38. See, e.g., *Farrakhan v. Washington*, 338 F.3d 1009, 1012 n.1 (9th Cir. 2003) (supplementing the Washington Constitution’s infamous crime disqualification provision with a statutory definition).

39. See, e.g., *People v. Fabian*, 85 N.E. 672 (N.Y. 1908); *Snyder*, 958 N.E.2d at 773–77.

40. See *infra* text accompanying notes 50–68.

41. *Chiodo v. Section 43.24 Panel*, 846 N.W.2d 845, 856 (Iowa 2014) (plurality opinion).

42. *Id.* at 857 (Mansfield, J., specially concurring).

43. *Id.* at 863–64 (Wiggins, J., dissenting).

44. Justice Brent Appel took no part in the decision. Given the court’s splintered holding, Justice Appel’s participation in any future case implicating article II, section 5 could very likely “do some mind changing.” Ryan Koopmans, *Iowa Supreme Court Splits Over What Kinds of Criminals Can Vote*, ON BRIEF: IOWA’S APPELLATE BLOG (Apr. 16, 2014, 11:12 AM), <http://www.iowaappeals.com/iowa-supreme-court-rules-that-aggravated-misdemeanors-arent-infamous/>, archived at <http://perma.unl.edu/7NF7-MTEE>.

45. *Chiodo*, 846 N.W.2d at 857 (plurality opinion).

diately refocusing the issue from whether conviction of an infamous crime precluded a candidate from running for office to whether conviction of an infamous crime precludes a citizen from voting in an election.⁴⁶ “An ‘eligible elector’ under our law is a person who possesses the qualifications to be a registered voter. . . . Thus, restrictions on those who run for office are actually restrictions on those who can vote.”⁴⁷ Uncontroverted by the concurrence or the dissent, the entire court clearly recognized that *Chiodo’s* holding would impact every Iowan’s fundamental right to vote in future democratic statewide elections.⁴⁸

The plurality next recognized it did not begin its “resolution of this case on a clean slate.”⁴⁹ Namely, the plurality was referring to a trilogy of cases—dating back to 1916—which defined infamous crime as any crime punishable by imprisonment in the penitentiary.⁵⁰ The plurality acknowledged that the court’s precedent had given the phrase “a rather direct and straightforward definition[.]”⁵¹ however, the plurality determined the phrase “infamous crime” was intended to disqualify voters based on *conviction* of any particular crime, not the resulting *punishment* for the crime.⁵² “The drafters of our constitution easily could have chosen to disqualify those convicted of crimes ‘punishable by imprisonment in the penitentiary;’ . . . [b]ut, our drafters did not.”⁵³ Thus, the plurality overruled one case of its trilogy and formally disapproved of the remaining two.⁵⁴

46. *Id.* at 848 (plurality opinion).

47. *Id.*

48. *Id.*; see generally *Devine v. Wonderlich*, 268 N.W.2d 620, 623 (Iowa 1978) (observing that the right to vote is a fundamental political right).

49. *Chiodo*, 846 N.W.2d at 849 (plurality opinion).

50. See *State ex rel. Dean v. Haubrich*, 83 N.W.2d 451 (Iowa 1957); *Blodgett v. Clarke*, 159 N.W. 243 (Iowa 1916) (per curiam); *Flannagan v. Jepson*, 158 N.W. 641 (Iowa 1916).

51. *Chiodo*, 846 N.W.2d at 849 (plurality opinion).

52. *Id.* at 851.

53. *Id.* at 852 (citing OREGON CONST. art. II, § 3 (providing that the privileges of an elector are forfeited “upon conviction of any crime which is punishable by imprisonment in the penitentiary”)).

54. *Id.* Only *Blodgett v. Clarke* rested exclusively on an interpretation that “infamous crime” should be defined by the punishment of a crime, not the nature of the crime itself. 159 N.W. at 244 (“As the punishment . . . for forgery is confinement in the penitentiary not more than ten years, the offense is infamous.”). Accordingly, the plurality found *Blodgett* to be clearly erroneous and overruled it. *Chiodo*, 846 N.W.2d at 852 (plurality opinion). However, *Haubrich* and *Flannagan* primarily addressed other matters of law. See *Haubrich*, 83 N.W.2d at 459–60 (holding that a presidential pardon is not necessary for the reinstatement of a person’s right to hold state office after conviction of a federal crime); *Flannagan*, 158 N.W. at 644 (holding that a person sentenced to the penitentiary must be afforded procedural due process rights). The plurality formally disapproved of “any suggestion” in *Haubrich* or *Flannagan* that infamous crime means a crime

After alluding to its precedent, the plurality confronted a definition the Iowa Legislature gave to the phrase “infamous crime” in 1994.⁵⁵ For purposes of administering statewide elections, infamous crime means “a felony as defined [in Iowa law] or an offense classified as a felony under federal law.”⁵⁶ The legislature’s definition classified “infamous crime” in terms of conviction, not punishment, which was consistent with the plurality’s earlier conclusion. However, the plurality nevertheless determined that “felony” and “infamous crime” must have different meanings since the framers did not simply use the word “felony” to disqualify voters.⁵⁷ Notably, the plurality observed that “[w]hile the legislature may help provide meaning to the constitution by defining undefined words and phrases, the definition provided by our legislature itself must be constitutional. . . . In the end, it is for the courts to interpret the constitution.”⁵⁸ Thus, the court proceeded to analyze the phrase independently.

The plurality then reached a conclusion contrary to both its own precedent and the legislature’s statutory definition. Because the voter disqualification provision was placed in article II of the Iowa Constitution, titled “Right of Suffrage,”⁵⁹ the plurality determined the provision was intended to serve a regulatory, not punitive, function.⁶⁰ Accordingly, a felony for purposes of the Iowa criminal code was distinct from an infamous crime for purposes of voter disqualification.⁶¹ Together, these findings led the plurality to conclude that infamous crimes, for purposes of voter disqualification, are only those that tend to indicate the voter may “compromise the integrity . . . of democratic governance through the ballot box.”⁶²

To define which crimes should be deemed “infamous,” the plurality cited cases from other states interpreting the phrase. Crimes presenting “a reasonable probability that a person . . . poses a threat to the

punishable by imprisonment in the penitentiary. *Chiodo*, 846 N.W.2d at 852 (plurality opinion).

55. *Chiodo*, 846 N.W.2d at 852 (plurality opinion).

56. IOWA CODE § 39.3(8) (2013).

57. *Chiodo*, 846 N.W.2d at 853–54 (plurality opinion) (“[I]f our founders intended the infamous crimes clause to mean all felony crimes, we must presume they would have used the word ‘felony’ instead of the phrase ‘infamous crime.’” (citing *Snyder v. King*, 958 N.E.2d 764, 771 (Ind. 2011))).

58. *Id.* at 852–53; see *infra* subsection III.B.1 (arguing that because the judiciary is the final arbiter of the constitution’s text, an incompletely specified agreement can only negatively affect the individual rights provided for therein).

59. IOWA CONST. art. II.

60. *Chiodo*, 846 N.W.2d at 855 (plurality opinion) (“Within this context and setting, the concept of disenfranchisement was not meant to punish certain criminal offenders or persons adjudged incompetent, but to protect ‘the purity of the ballot box.’” (quoting *Washington v. State*, 75 Ala. 582, 585 (1884))).

61. *Id.* at 853 (“Our framers knew the meaning of felony and knew how to use the term.”).

62. *Id.* at 856.

integrity of elections,”⁶³ offenses that “involve the charge of falsehood,”⁶⁴ or offenses constituting “great moral turpitude”⁶⁵ had all been considered infamous by other state courts. Ultimately, the plurality unveiled its original two-pronged analytical framework to determine whether a citizen commits a crime so infamous as to be disqualified from voting in a statewide election. First, the crime must be classified as “particularly serious.”⁶⁶ Second, the crime must reveal that voters who have committed the crime “tend to undermine the process of democratic governance through elections.”⁶⁷

Because all misdemeanor crimes are categorically not particularly serious for purposes of this framework, the plurality concluded Bisignano’s crime of OWI, second offense—an aggravated misdemeanor—was not infamous.⁶⁸ Chief Justice Cady then abruptly ended the plurality’s analysis by stating:

It will be prudent for us to develop a more precise test that distinguishes between felony crimes and infamous crimes within the regulatory purposes of article II, section 5 when the facts of the case provide us with the ability and perspective to better understand the needed contours of the test. This case does not. . . .

. . . .
Our decision today is limited. It does not render the legislative definition of “infamous crime” under Iowa Code section 39.3(8) unconstitutional. We only hold OWI, second offense, is not an “infamous crime” under article II, section 5, and leave it for future cases to decide which felonies might fall within the meaning of “infamous crime[s]” that disqualify Iowans from voting.⁶⁹

The plurality’s opinion was met with strong criticism from both concurring and dissenting justices. Justice Edward Mansfield, who authored the special concurrence, agreed with the plurality that OWI, second offense, was not an infamous crime; however, Justice Mansfield would have instead adopted a bright-line felony–misdemeanor rule to determine whether a crime is infamous.⁷⁰ The justice primarily objected to the plurality’s unclear reasoning and lack of foresight, instead categorizing the plurality’s mode of interpretation as “an odd

63. *Snyder v. King*, 958 N.E.2d 764, 782 (Ind. 2011).

64. *Commonwealth ex rel. Baldwin v. Richard*, 751 A.2d 647, 652 (Pa. 2000).

65. *Washington*, 75 Ala. at 585.

66. *Chiodo*, 846 N.W.2d at 856 (plurality opinion).

67. *Id.*

68. *Id.* at 857–58.

69. *Id.* at 857.

70. *Id.* (Mansfield, J., specially concurring). Notably, Justice Mansfield did not support the plurality’s opinion insofar as it overruled *Blodgett v. Clarke* and formally disapproved of *Flannagan v. Jepson* and *State ex rel. Dean v. Haubrich* because “when those cases were decided, ‘felony’ and ‘crime punishable by imprisonment in the penitentiary’ were synonymous.” *Id.* at 861. Because a majority of the justices did not overrule *Blodgett*, it continues to bind Iowa lower courts. *See infra* note 96 and accompanying text.

mix of half-hearted originalism and excessive fealty to a court decision from Indiana.”⁷¹ But Justice Mansfield also voiced serious concern for the future of ballot and voting rights cases given the new, relatively indeterminate framework offered by the plurality.⁷²

Justice David Wiggins, who authored the dissent, was similarly concerned with the uncertain future of Iowa voting rights. Justice Wiggins would have affirmed the court’s precedent and continued to define “infamous crime” as any crime carrying a punishment of incarceration instead of the plurality’s “rewriting nearly one hundred years of caselaw.”⁷³ The justice was not primarily concerned with future litigation, but instead focused on the effect *Chiodo* may have on individual voters.⁷⁴ Under the plurality’s new framework, which Justice Wiggins described as “dangerous and uncharted waters,”⁷⁵ otherwise qualified voters may be discouraged from voting for fear of being prosecuted for voter fraud.⁷⁶

C. Judicial Minimalism

Many courts—some more frequently than others—have written something to the effect of: “The issue before this court is X. We assume, without concluding, that X is permissible. However, we need not address X to dispose of the case currently before us.”⁷⁷ This approach largely reflects an interpretive philosophy called judicial minimalism, which provides that a court should avoid broad rules or abstract theories, say no more than is necessary to justify an outcome, and leave as much as possible undecided.⁷⁸

Distinguished legal scholar Cass Sunstein is one of the most significant advocates of judicial minimalism and has written extensively on the advantages and disadvantages of its use.⁷⁹ The doctrine is

71. *Chiodo*, 846 N.W.2d at 858 (Mansfield, J., specially concurring).

72. *Id.* (“When we overrule precedent that established a definite rule, we owe the public more than a welcome mat for future lawsuits.”); see *infra* subsection III.B.4 (arguing that a court should avoid a minimalist disposition if its holding will create future litigation for itself or lower courts).

73. See *Chiodo*, 846 N.W.2d at 863 (Wiggins, J., dissenting).

74. *Id.* at 864.

75. *Id.* at 865.

76. See *id.* at 864–65.

77. See, e.g., *Ashcroft v. Iqbal*, 556 U.S. 662, 684 (2009) (“It is important to note, however, that we express no opinion concerning the sufficiency of respondent’s complaint against the defendants who are not before us. Respondent’s account . . . alleges . . . misconduct that we need not address here. Our decision is limited to the determination that respondent’s complaint does not entitle him to relief from petitioners.”).

78. See CASS R. SUNSTEIN, ONE CASE AT A TIME: JUDICIAL MINIMALISM ON THE SUPREME COURT 3–4, 9 (1999).

79. See, e.g., *id.*; Cass R. Sunstein, *Problems with Minimalism*, 58 STAN. L. REV. 1899 (2006); Cass R. Sunstein, *Foreword: Leaving Things Undecided*, 110 HARV. L.

founded on the belief that the judicial branch—the least democratic of all three branches—should avoid deciding complex issues that could otherwise be resolved by elected legislative or executive representatives.⁸⁰ By doing so, the judiciary more effectively maximizes democracy and free deliberation.⁸¹ Judicial minimalism is also founded on the idea that every decision inevitably includes both decision costs and error costs.⁸² Thus, if a court avoids well-theorized doctrines and broad generalizations, it can decrease the burden of its decision and reduce any future misinterpretation of an ambiguous or vague holding.⁸³

Judicial minimalism can generally take one of two forms in a court's decision: an incompletely *theorized* agreement or an incompletely *specified* agreement.⁸⁴ First, Sunstein describes an incompletely theorized agreement as one in which a court reaches the disposition of a case but does not actually agree on the high-level principles or justifications that ultimately support that disposition.⁸⁵ To some extent, incompletely theorized agreements are an inherent by-product of multimember courts and may result from several concurring opinions.⁸⁶ Second, judicial minimalism may take the form of an incompletely specified agreement if the agreement is unified on a high level of abstraction, but the court declines to articulate how its holding must be applied in future cases.⁸⁷ This approach allows judges to reach an exact conclusion in the present case without establishing a

REV. 4 (1996); Cass R. Sunstein, *General Propositions and Concrete Cases (with Special Reference to Affirmative Action and Free Speech)*, 31 WAKE FOREST L. REV. 369 (1996) [hereinafter Sunstein, *General Propositions*]; Sunstein, *supra* note 4.

80. See SUNSTEIN, *supra* note 78, at 3–4.

81. See *id.*; see also Christopher J. Peters, *Assessing the New Judicial Minimalism*, 100 COLUM. L. REV. 1454 (2000) (distinguishing procedural minimalism from substantive minimalism in determining whether judicial minimalism furthers accountability and democracy). *But cf.* Cass R. Sunstein, *Nondelegation Canons*, 67 U. CHI. L. REV. 315, 330–37 (2000) (discussing whether certain canons of construction are a catalyst or a barrier for democracy).

82. See SUNSTEIN, *supra* note 78, at 46–50. Decision costs usually take one of two forms: a court may be faced with the burdensome task of creating a rule that covers all imaginable situations, or it may create a broad rule that is later declared irrelevant because of changed circumstances. *Id.* at 46–48. Alternatively, error costs include future mistaken judgments rendered by courts misinterpreting a court's overbroad rule. *Id.* at 49. In this context, error cost can manifest itself in a "large number of small mistakes or a small number of large mistakes." *Id.* Sunstein writes that minimalism is "the best way" to reduce both decision and error costs. *Id.* at 50.

83. See *id.* at 46–50.

84. Wright, *supra* note 5, at 459–60.

85. *Id.* at 459.

86. See SUNSTEIN, *supra* note 78, at 47.

87. Wright, *supra* note 5, at 459–60.

concrete general rule that may later lead to absurd or ridiculous results.⁸⁸

Judicial minimalism is not a hard-and-fast rule. Several commentators have criticized its use and noted the substantial adverse effects judicial minimalism may have on various aspects of the legal system.⁸⁹ Instead, these scholars have encouraged “judicial maximalism” in some cases, which occurs when judges set broad rules for future application and provide thorough or ambitious theoretical underpinning for a decision.⁹⁰ Sunstein himself does concede that a minimalist approach may harm future courts and future litigants when those parties need to know the rule of law in advance to plan for the future.⁹¹ However, according to Sunstein, these situations are uncommon and judicial minimalism largely represents the most democratic and efficient approach for a court to decide the issues it is presented.⁹²

III. ANALYSIS

A. Dual Disorder: Two Levels of Minimalism

Justice Mansfield remarked in his specially concurring opinion that “the plurality has done a good job of saying what the legal standard for disqualification *isn't* . . . [But] the plurality offers no further guidance as to what the standard *is*.”⁹³ This statement presumably echoes the reaction of any legal scholar asked to explain *Chiodo's* holding and the state of the law moving forward. The plurality avoided any broad, theoretical underpinning to its new two-pronged analysis, it declined to apply the framework to any other crime except OWI, second offense, and it refused to elaborate which elements of a crime

88. *Id.* at 460–61; *see also* Sunstein, *General Propositions*, *supra* note 79, at 371–72 (advocating for incompletely specified agreements because “general principles do not decide concrete cases” (citing *Lochner v. New York*, 198 U.S. 45, 76 (1905) (Holmes, J., dissenting))).

89. *See, e.g.*, Yavar Bathaee, Comment, *Incompletely Theorized Agreements: An Unworkable Theory of Judicial Modesty*, 34 *FORDHAM URB. L.J.* 1457 (2007) (arguing that minimalism is less viable when the Supreme Court adjudicates constitutional issues); Lawrence Friedman, *Reactive and Incompletely Theorized State Constitutional Decision-Making*, 77 *MISS. L.J.* 265, 294–303 (2007) (arguing that minimalism negatively affects state constitutional decision-making); Wright, *supra* note 5, at 464–66 (arguing that minimalism is unsound when a court must define the relationship between governmental actors).

90. SUNSTEIN, *supra* note 78, at 9–10.

91. *See id.* at 48, 54–57; *see also* Sunstein, *supra* note 4, at 1767 (“I am thus declining to endorse . . . a claim that incompletely theorized agreements are always the appropriate approach to law and that more ambitious theory is always illegitimate in law.”).

92. *See* Sunstein, *supra* note 4, at 1767 (preferring an approach where “[j]udges . . . adopt a presumption rather than a taboo against high-level theorization”).

93. *Chiodo v. Section 43.24 Panel*, 846 N.W.2d 845, 860 (Iowa 2014) (Mansfield, J., specially concurring).

would “tend to undermine the process of democratic governance.”⁹⁴ The plurality opinion plainly employed a minimalist approach in deciding *Chiodo*. But more generally, the entire court took part in a second, larger level of minimalist thinking—an approach that leaves the state of the law equally unclear.

The court as a whole (including the plurality, concurrence, and dissent) all took part in an incompletely theorized agreement.⁹⁵ In other words, the court could not agree on a high-level principle that led it to conclude that OWI, second offense, is not an infamous crime for purposes of the voter disqualification provision. Mathematically, five of the six participating justices concluded the crime was not infamous. However, the disposition is incompletely theorized because the agreement is supported by two alternative theories: first, because OWI, second offense, is not a crime that tends to undermine the electoral process (the plurality’s view); and second, because it is not defined as a felony by law (the special concurrence’s view).

The court’s incompletely theorized agreement will impact future Iowa voting rights cases simply because no opinion received a majority of the justices’ endorsement. The plurality’s overruling of *Blodgett* and formal disapproval of *Flannagan* and *Haubrich* certainly sends a powerful message; however, the cases remain “good” law because a majority of the justices did not agree that the cases should be overruled.⁹⁶ Thus, if the Iowa Supreme Court were to interpret article II, section 5 again in the near future, three still-viable arguments could be made after *Chiodo*. “Infamous crime” could either mean a crime that tends to undermine the democratic process, a crime that is classified as a felony as defined by the legislature, or a crime carrying a punishment of incarceration. Put simply, disposition of a future case implicating Iowans’ fundamental political right to vote depends on one justice from *Chiodo* changing his vote.⁹⁷

But second, and more troubling, the plurality engaged in an incompletely specified agreement when it vaguely concluded that “infamous crime” means a particularly serious felony that evinces a voter’s tendency to undermine the electoral process.⁹⁸ The plurality’s reasoning is incompletely specified because although it determined OWI, second

94. *Id.* at 856 (plurality opinion).

95. See sources cited *supra* notes 84–86 for a general discussion of incompletely theorized agreements.

96. See *Audubon-Exira Ready Mix, Inc. v. Ill. Cent. Gulf R.R. Co.*, 335 N.W.2d 148, 151 (Iowa 1983) (holding that a prior plurality decision is not binding as precedent); *cf.* *State Inst. for Feeble Minded v. Stillman*, 20 N.W.2d 417, 420 (Iowa 1945) (noting that while plurality opinions are not binding, they are “very persuasive” nonetheless).

97. See *supra* note 44 and accompanying text.

98. See sources cited *supra* notes 87 and 88 for a general discussion of incompletely specified agreements.

offense, was not particularly serious enough to be an infamous crime, it refused to articulate the contours of its nascent framework and give lower courts or citizens guidance for future cases. Instead, the plurality determined it would further articulate its framework for voter disqualification at a later date.⁹⁹

The plurality's incompletely specified agreement is far more detrimental than the court's general incompletely theorized agreement because, even though it is non-binding, the plurality's reasoning will strongly influence future courts in determining the condition of Iowans' voting rights.¹⁰⁰ While the plurality confidently rejected court precedent and legislative authority, it failed to replace existing law with any guidance or substantive direction.¹⁰¹ Thus, lower courts interpreting Iowa's voter disqualification provision will be faced with two questions. First, as a threshold matter, these courts must determine whether the plurality's new framework applies at all, given its non-binding status. Second, these courts must then determine *how* the framework applies for any crime other than OWI, second offense.

B. More Harm than Good: Four Indicators

Judicial minimalism—incompletely specified agreements in particular—may promote democracy and judicial efficiency in certain cases.¹⁰² However, in other cases, a minimalist approach will adversely affect individual rights and foster chronic inefficiency. The presence of four indicators outlined below may encourage a court to avoid a minimalist approach and instead completely theorize its holding. These indicators are not conjunctive or disjunctive; instead, a court may wish to avoid a minimalist approach if one indicator is particularly strong or if several indicators appear in any given case. All four indicators are present in *Chiodo*, and for that reason, the case operates as a valuable illustration of the consequences that may result if a court nevertheless adopts a minimalist approach.

1. *Final Arbiter of Constitutional Rights*

Courts should avoid a minimalist approach in deciding cases of constitutional interpretation because of the judiciary's inherent role

99. *Chiodo*, 846 N.W.2d at 857.

100. *See, e.g.*, *State v. Iowa Dist. Court for Webster Cnty.*, 801 N.W.2d 513, 519–23 (Iowa 2011) (evaluating two United States Supreme Court plurality opinions thoroughly before eventually applying the opinions' reasoning).

101. The plurality also expressly declined to declare the Iowa Legislature's definition of "infamous crime" unconstitutional. *Chiodo*, 846 N.W.2d at 857. This decision alone may lead to confusion in administering Iowa's voting laws. *See* discussion *infra* subsection III.B.3.

102. *See* sources cited *supra* notes 79–83.

within the democratic three-branch system.¹⁰³ The doctrine of judicial minimalism is largely premised on the belief that elected officials—not appointed judges—should define the rights and privileges of citizens.¹⁰⁴ “For reasons of both policy and principle,” Sunstein writes, “the development of large-scale theories of the right and the good is most fundamentally a democratic task, not a judicial one.”¹⁰⁵ However, in cases involving constitutional interpretation, it is well established that a legislative definition or administrative opinion does not constitute binding authority over a jurisdiction’s highest court.¹⁰⁶ Because the judiciary’s primary role in a three-branch system is to act as final arbiter of constitutional text, it makes little sense to yield the duty of interpreting the framers’ intent to democratically elected officials.¹⁰⁷ Thus, in cases where a court is interpreting constitutional provisions, the court cannot under-theorize its holding because a failure to do so may actually negatively affect the exercise of that constitutional right.

In *Chiodo*, the plurality correctly observed that the Iowa Supreme Court ultimately has the last word in interpreting the Iowa Constitution.¹⁰⁸ “This important principle has, more than any other, helped allow our democracy to advance with each passing generation with our constitutional beliefs intact.”¹⁰⁹ However, it appears the plural-

103. A majority of the academic interest in judicial minimalism focuses on the federal judicial system. See, e.g., Neil S. Siegel, *A Theory in Search of a Court, and Itself: Judicial Minimalism at the Supreme Court Bar*, 103 MICH. L. REV. 1951 (2005). Although this Note only discusses judicial minimalism as it relates to state courts, the concept of judicial review does not substantially differ between the federal and state systems. See Jack L. Landau, *Some Thoughts About State Constitutional Interpretation*, 115 PENN ST. L. REV. 837, 848–50 (2011).

104. See SUNSTEIN, *supra* note 78, at 210. Admittedly, all Iowa state court judges, including supreme court justices, must periodically stand for retention and are subject to removal by voters. IOWA CONST. amend. 21, § 17. However, the probability that a particular judge will actually be removed pursuant to a judicial-retention election is extremely low. See Larry Aspin, *Judicial Retention Election Trends 1964–2006*, 90 JUDICATURE 208 (2007). But see generally F. Andrew Hanssen, *The Effect of Judicial Institutions on Uncertainty and the Rate of Litigation: The Election Versus Appointment of State Judges*, 28 J. LEGAL STUD. 205 (1999) (finding that elected state high court justices and their appointed peers affect future litigation differently).

105. Sunstein, *supra* note 4, at 1763.

106. See, e.g., *Junkins v. Branstad*, 421 N.W.2d 130, 134–35 (Iowa 1988) (citing *United States v. Nixon*, 418 U.S. 683, 703–05 (1974)).

107. This duty does not prevent a court from considering legislative findings in reaching a conclusion. In this context, “Legislative judgments are generally regarded as the most reliable objective indicators of community standards” and should account for persuasive authority. *State v. Bruegger*, 773 N.W.2d 862, 873 (Iowa 2009) (citing *McCleskey v. Kemp*, 481 U.S. 279, 301–02 (1987)).

108. *Chiodo v. Section 43.24 Panel*, 846 N.W.2d 845, 853 (Iowa 2014) (plurality opinion).

109. *Id.*

ity's bold observation was only asserted to negate the legislature's otherwise clear definition of infamous crime—effectively, the plurality only used its power to interpret constitutional rights as a shield against legislative intervention, not as a sword for constructive future guidance. Once the plurality defended against the clear felony–misdemeanor rule proposed by the Iowa Legislature, it failed to articulate the contours of its own framework.

In his dissenting opinion, Justice Wiggins took issue with the plurality's new interpretation and its impact on an Iowan's right to vote.¹¹⁰ Although he agreed with the plurality that the Iowa Legislature cannot define provisions of the Iowa Constitution,¹¹¹ Justice Wiggins criticized the plurality's new imprecise standard and maintained an Iowa citizen convicted of a crime may “ha[ve] no idea as to whether he or she is eligible to vote.”¹¹² To illustrate this confusion, Justice Wiggins noted that under Iowa law, a person who steals property valued at \$1,000 will be convicted of an aggravated misdemeanor, while a person who steals property valued at \$1,001 will be convicted of a felony.¹¹³ Using the first prong of the plurality's test, the first convict would definitely not be disqualified from voting because misdemeanors are categorically not particularly serious for purposes of the analysis.¹¹⁴ However, the second convict may be disqualified from voting if the court were to determine the theft indicated the convict tends to undermine the political process.¹¹⁵ Accordingly, Justice Wiggins rejected the new analysis and concluded that “[t]his uncertainty will keep many [otherwise] qualified voters from the polls for fear of prosecution for voter fraud.”¹¹⁶

Surely, judicial minimalism cannot prevail at the cost of discouraging a citizen from voting. In many cases, minimalism may promote democracy through public accountability in the executive and legislative branches. However, in cases where the judiciary is called to interpret a constitutional provision affecting an individual right, the court cannot under-theorize its holding simply because it believes another case in the future may provide it with the “ability . . . to better understand the needed contours of the test.”¹¹⁷ This is especially true when a court expressly dismisses legislative authority but fails to replace that authority with a suitable alternative.

110. *Id.* at 863–65 (Wiggins, J., dissenting).

111. *Id.* at 864.

112. *Id.*

113. *Id.* at 864–65 n.11 (citing IOWA CODE § 714.2(2)–(3) (2014)).

114. *Id.* at 857 (plurality opinion).

115. *Id.*

116. *Id.* at 865 (Wiggins, J., dissenting).

117. *Id.* at 857 (plurality opinion).

2. *Application of Stare Decisis*

Courts should only embrace judicial minimalism when also giving strong effect to the doctrine of stare decisis.¹¹⁸ As a general matter, only the highest court in a particular jurisdiction is “allowed” to reject stare decisis and instead reconsider its precedent to reach an alternative conclusion.¹¹⁹ However, high courts that reject stare decisis must develop a theorized holding to take that precedent’s place. Before overruling precedent, courts often engage in a practice called “justificatory ascent,” a practice where the court thoroughly identifies its precedent as flawed before reaching its new, more principled holding.¹²⁰ By its very nature, justificatory ascent often leads a court to theorize its new holding.¹²¹ If a court engages in justificatory ascent but instead concludes with a narrow or incompletely specified holding, the court creates more confusion than before it began its analysis.

The tandem of justificatory ascent followed by a minimalist disposition is clearly incompatible. In *Chiodo*, the plurality first acknowledged, “We do not begin our resolution of this case on a clean slate.”¹²² Namely, the plurality was referring to the court’s three doctrinal cases—referred to as “the trilogy” by all interested parties¹²³—which dated back nearly one hundred years. By the court’s own admission, the trilogy had given infamous crime “a rather direct and straightforward definition”¹²⁴; a crime was categorically infamous if it was punishable by imprisonment in the penitentiary.¹²⁵ However, as the plurality proceeded to analyze its precedent rather thoroughly, it be-

118. See generally Bathaee, *supra* note 89, at 1463–78 (discussing the relationship between judicial minimalism and the doctrine of stare decisis).

119. High courts may appropriately reject stare decisis, especially when interpreting a constitutional provision. See, e.g., *Seminole Tribe of Fla. v. Florida*, 517 U.S. 44, 66 (1996) (noting that because the issue before the Court involved the interpretation of the U.S. Constitution, “none of the policies underlying *stare decisis*” required the Court to adhere to its precedent).

120. See RONALD DWORKIN, *JUSTICE IN ROBES* 51–53 (2006); Ronald Dworkin, *In Praise of Theory*, 29 ARIZ. ST. L.J. 353, 356–57 (1997); see, e.g., *W. Coast Hotel Co. v. Parrish*, 300 U.S. 379, 388–400 (1937) (engaging in a thorough discussion of its precedent before overruling in part *Adkins v. Children’s Hosp. of D.C.*, 261 U.S. 525 (1923)); see also *Planned Parenthood of Se. Pa. v. Casey*, 505 U.S. 833, 860–64 (1992) (discussing the significance of overruling precedent instead of recognizing stare decisis).

121. Bathaee, *supra* note 89, at 1474–75.

122. *Chiodo*, 846 N.W.2d at 849 (plurality opinion).

123. Brief for Appellant, *supra* note 33, at 23; Respondent/Appellee’s Final Brief, *supra* note 33, at 15; Brief of Intervenor Respondent-Appellee, *Chiodo*, 846 N.W.2d 845 (No. 14-0553), 2014 WL 2991823, at *1.

124. *Chiodo*, 846 N.W.2d at 849 (plurality opinion).

125. *Id.* (citing *State ex rel. Dean v. Haubrich*, 83 N.W.2d 451 (Iowa 1957); *Blodgett v. Clarke*, 159 N.W. 243 (Iowa 1916) (per curiam); *Flannagan v. Jepson*, 158 N.W. 641 (Iowa 1916)).

came remarkably clear the plurality would eventually depart from its precedent in favor of a new theoretical framework.

The Iowa Supreme Court first interpreted the phrase “infamous crime” in 1916 as it relates to due process rights protected by the U.S. Constitution.¹²⁶ The court relied in part on the U.S. Supreme Court decision *Ex parte Wilson*¹²⁷ and concluded a crime was infamous, for purposes of due process rights, if it carried a punishment of incarceration in the penitentiary.¹²⁸ Although the *Flannagan* Court provided a straightforward definition of “infamous crime,” the interpretation clearly did not address Iowa’s voter disqualification provision.¹²⁹ This alone was enough for the *Chiodo* plurality to effectively disregard *Flannagan*’s interpretation, reasoning the opinion “made no effort” to define “infamous crime” for purposes of Iowa’s voter disqualification constitutional provision.¹³⁰

However, the court unambiguously defined the phrase only months after deciding *Flannagan*, this time for purposes of the voter disqualification provision. In a brief explanation, the court in *Blodgett v. Clarke* stated:

To be eligible to an elected office created by the Constitution a person must be a qualified elector. Section 5 of article 2 of the Constitution of Iowa declares “that no . . . person convicted of any infamous crime shall be entitled to the privilege of an elector.” *Any crime punishable by imprisonment in the penitentiary is an infamous crime.* As the punishment prescribed by statute for forgery is confinement in the penitentiary not more than ten years, the offense is infamous.¹³¹

The *Blodgett* Court clearly addressed the phrase “infamous crime” within the context of the voter disqualification statute; however, the *Chiodo* plurality suggested that because “we provided no other analysis in explaining our decision,” *Blodgett* was not necessarily dispositive of the issue presented.¹³² The plurality similarly distinguished *State ex rel. Dean v. Haubrich*, the third of the trilogy, which held that the phrase meant any crime punishable by imprisonment in the penitentiary for purposes of article II, section 5 of the Iowa Constitution.¹³³ The plurality concluded these decisions were inadequate

126. *Flannagan*, 158 N.W. at 643.

127. 114 U.S. 417 (1885).

128. *Flannagan*, 158 N.W. at 644.

129. The issue presented to the court in *Flannagan* arose when the defendant was sentenced to one year in the state penitentiary for violating a court-ordered injunction. *Id.* at 641–42.

130. *Chiodo*, 846 N.W.2d at 850 (plurality opinion).

131. *Blodgett v. Clarke*, 159 N.W. 243, 244 (Iowa 1916) (per curiam) (emphasis added) (citing *Flannagan*, 158 N.W. 641).

132. *Chiodo*, 846 N.W.2d at 851 (plurality opinion).

133. *State ex rel. Dean v. Haubrich*, 83 N.W.2d 451, 452 (Iowa 1957) (citing *Blodgett*, 159 N.W. 243; *Flannagan*, 158 N.W. 641).

because the court had not engaged in an independent textual analysis of the phrase.¹³⁴

Iowa's highest court is certainly free to reject the doctrine of stare decisis when interpreting a provision of the state constitution. The *Chiodo* plurality appropriately engaged in conscientious justificatory ascent before rejecting its precedent, which generally supplies valuable theoretical underpinnings for the court's resulting new interpretation. However, the plurality ultimately failed to deliver a valuable and constructive opinion on Iowa voting rights because it abruptly followed its justificatory ascent with an incompletely specified agreement.¹³⁵ After it thoroughly concluded that the case could not be disposed of using past precedent or legislative interpretation, the court did not adequately articulate why the disqualification provision should instead serve a regulatory, administrative purpose.¹³⁶ Courts giving less deference to stare decisis should avoid judicial minimalism and more thoroughly develop the underlying theory of a particular disposition.

3. Repeat Players and Institutional Relationships

Courts should avoid a minimalist approach when deciding cases involving "repeat players," or in other words, state institutions or public actors. Unlike cases between private litigants, cases involving governmental actors generally involve issues of public interest. Accordingly, these issues are more likely to appear in future litigation and the repeat players "will themselves be back to the court room, if the court insists on playing some . . . ill-defined role in the controversy."¹³⁷ Thus, incompletely theorized agreements involving repeat

134. *Chiodo*, 846 N.W.2d at 851 (plurality opinion) ("This background reveals that we have never engaged in a textual analysis of the meaning of 'infamous crime' in article II, section 5. . . . We feel obligated to conduct this analysis before relying on [our precedent] to resolve this case.").

135. The plurality did reference early Iowa territorial legislation and early drafts of the Iowa Constitution after eluding its precedent and the legislature's statutory definition. *Id.* at 854–55. However, this authority only led the plurality to conclude once again that the legislature does not have carte blanche to define "infamous crime." *Id.* (comparing the Iowa provision with IND. CONST. art. II, § 8, which delegates the authority to define infamous crime to the legislative branch). After concluding that the provision should serve a regulatory, not punitive, purpose, the plurality eventually concluded that a definition "is not easy to articulate." *Chiodo*, 846 N.W.2d at 856 (plurality opinion).

136. *Chiodo*, 846 N.W.2d at 856; see *supra* text accompanying notes 59–62. The plurality acknowledged that the regulatory purpose "helps frame both the governmental interest at stake . . . and the individual's vital interest in participating meaningfully in their government[;]" however, the plurality ultimately postponed articulating how those interests should interact. *Chiodo*, 846 N.W.2d at 857.

137. Wright, *supra* note 5, at 465. In addition to this re-litigation problem, governmental actors must also make "coordinated, systemwide choices" about issues of

players are essentially a judicial power grab.¹³⁸ Alternatively, a more theorized rule provides other state actors with advanced notice and planning, which in turn yields consistent, jurisdiction-wide application.¹³⁹

Chiodo only focused on the meaning of one two-word phrase within one section of the Iowa Constitution.¹⁴⁰ But beneath this constitutional phrase is a legislative, regulatory, and judicial framework that involves county and state officials, both elected and unelected. Consequently, a change to the interpretation of one constitutional phrase inevitably leads to numerous adjustments within this framework. As the clarity of the court's interpretation decreases, the confusion and inconsistency within this framework necessarily increases. In this case, the plurality's hesitance to fully theorize its new interpretation will ultimately lead to inconsistent administration of Iowa's election laws. These inconsistencies will manifest themselves in constant litigation involving state actors and confusion regarding the current state of the law.

The Iowa Code includes the procedure for comprehensive voter registration,¹⁴¹ the administration of statewide elections,¹⁴² and voter disqualification.¹⁴³ In addition, state law provides the procedures for restoration of individual rights.¹⁴⁴ Together, these sections of the Code cover the potential "lifespan" of an Iowa voter: from initial voter registration, to the exercise of that right via primary and general elections, potential voter disqualification, and possible restoration of the right to vote. In theory, state law should mirror the Iowa Supreme Court's interpretation of "infamous crime"—or at least reflect the meaning of the court's previous interpretation from 1957.¹⁴⁵ To the

public interest, choices which will affect "many private parties simultaneously." *Id.* at 465–66.

138. *Id.* at 465. "At least in a field crowded with other legal actors, it is an insistence that the judge remain the final word, time after time." *Id.*
139. See SUNSTEIN, *supra* note 78, at 55 ("Minimalism might be threatening to the rule of law insofar as it does not ensure that decisions are announced in advance. . . . [I]t is more important for people to know what the law is than for the law to have any particular content."). See *infra* note 157 for an illustration of how *Chiodo* may plausibly lead to inconsistent jurisdiction-wide future application.
140. *Chiodo*, 846 N.W.2d at 848 (plurality opinion) ("We thus proceed only to consider *Chiodo's* main contention that the Panel's ruling that OWI, second offense, was not an infamous crime was contrary to the Iowa Constitution.").
141. See IOWA CODE ch. 48A (2014).
142. See *id.* ch. 39 (2014).
143. *Id.* § 48A.6 (disqualifying a person from voting after having "been convicted of a felony").
144. See *id.* ch. 914 (2014).
145. See *State ex rel. Dean v. Haubrich*, 83 N.W.2d 451, 452 (Iowa 1957) (establishing that any crime punishable by imprisonment in the penitentiary is an infamous crime).

contrary, the Iowa Legislature defined “infamous crime” in 1994 as “a felony as defined in section 701.7, or an offense classified as a felony under federal law.”¹⁴⁶ This definition stands in stark contrast to the court’s 1957 definition of the phrase¹⁴⁷ and the court’s definition in *Chiodo*.¹⁴⁸

The Iowa Secretary of State, who is designated as the state commissioner of elections,¹⁴⁹ is responsible for prescribing uniform election practices and procedures and supervising county commissioners of elections.¹⁵⁰ Together with the county commissioners of elections, the Secretary of State is responsible for facilitating “widespread availability of voter registration services.”¹⁵¹ Yet within the voter registration framework, the Iowa Code states:

The following persons are disqualified from registering to vote and from voting:

1. A person who has been convicted of a felony as defined in section 701.7, or convicted of an offense classified as a felony under federal law. If a person’s rights are later restored by the governor, or by the president of the United States, the person may register to vote.
2. A person who is incompetent to vote.¹⁵²

Chapter 914 of the Iowa Code provides the Governor with the power to restore rights of citizenship to certain individuals convicted of crimes.¹⁵³ But within this entire statutory framework, voter registration and restoration of voting rights are both predicated on the conviction of a felony, not an infamous crime.¹⁵⁴

It is certainly problematic that the meaning of “infamous crime” pre-*Chiodo* was inconsistent between Iowa’s legislative, executive, and judicial branches. But far more troubling was the plurality’s decision not to discard the Iowa Legislature’s definition of the phrase once that definition was disapproved of in its opinion. The plurality stated that its decision “does not render the legislative definition of ‘infamous

146. IOWA CODE § 39.3(8). Section 701.7 generally defines a public offense as a felony “when the statute defining the crime declares it to be a felony.” *Id.* § 701.7 (2014).

147. An infamous crime, according to the court in *Haubrich*, is “[a]ny crime punishable by imprisonment in the penitentiary.” 83 N.W.2d at 452.

148. An infamous crime, according to the *Chiodo* plurality, must be particularly serious and must reveal that the voter who committed the crime “would tend to undermine the process of democratic governance through elections.” *Chiodo v. Section 43.24 Panel*, 846 N.W.2d 845, 856 (Iowa 2014) (plurality opinion).

149. IOWA CODE § 47.1(1) (2014).

150. *Id.*

151. *Id.* § 48A.1 (2014); see also *id.* § 48A.3 (2014) (assigning county commissioners of elections the same responsibility).

152. *Id.* § 48A.6 (2014).

153. *Id.* § 914.1 (2014) (providing that the Governor’s authority to restore rights of citizenship “shall not be impaired”).

154. See *infra* text accompanying notes 158–59.

crime' under Iowa Code section 39.8(8) unconstitutional."¹⁵⁵ By doing so, the plurality effectively authorized three interpretations of the phrase to remain viable: its own new interpretation, the interpretation of its trilogy precedent, and the Iowa Legislature's interpretation.¹⁵⁶ The decision not to dispel this confusion means the definition of infamous crime is arguably more inconsistent post-*Chiodo* than it was before the court issued its opinion.¹⁵⁷

State institutions have had a difficult time interpreting the court's holding in *Chiodo*. Soon after the *Chiodo* opinion was released, the Iowa Governor's Office noted in a "Frequently Asked Questions" section of its Restoration of Citizenship Rights webpage that (1) the impact of *Chiodo* means all aggravated misdemeanors are not infamous crimes, and also stated (2) any person convicted of a felony is disqualified from voting.¹⁵⁸ Interestingly, both of these statements are only true depending on the authority from which they derive: the plurality declared in *Chiodo* that all misdemeanors are not infamous for the purpose of voter disqualification, but only Iowa law disqualifies a person from voting if they have been convicted of a felony.¹⁵⁹

The plurality's minimalist approach in *Chiodo* will affect state actors in administering Iowa's election laws. While the plurality proposed a framework in which not all felonies are infamous, it declined to strike down a statute defining all felonies as infamous crimes. The plurality's interpretation of "infamous crime" is clearly different from the bright-line distinction between misdemeanors and felonies; how-

155. *Chiodo v. Section 43.24 Panel*, 846 N.W.2d 845, 857 (Iowa 2014) (plurality opinion).

156. See *supra* text accompanying notes 96, 100, and 155.

157. The plurality's opinion may very well lead to inconsistent results among Iowa's lower courts. Illustrating an "unlikely but possible" scenario, Iowa practicing attorney Ryan Koopmans has correctly identified that while lower courts may reach contradictory conclusions after *Chiodo*, those contradictory conclusions may actually be affirmed *as a matter of law* upon further immediate review by the Iowa Supreme Court. See Ryan Koopmans, *Chiodo v. Bisignano: What Happens Now?*, ON BRIEF: IOWA'S APPELLATE BLOG (Apr. 16, 2014, 4:19 PM), <http://www.iowaappeals.com/chiodo-v-bisignano-what-happens-now/>, archived at <http://perma.unl.edu/S585-4N2E>. Specifically, Koopmans applied the court's *Chiodo* analysis to OWI, *third* offense, which is defined as a felony and carries a punishment of incarceration. See IOWA CODE § 321J.2(2)(c) (2014). Assuming Justice Brent Appel would still be recused, see *supra* note 44, Justices Mansfield and Waterman would now join Justice Wiggins in concluding that the crime was infamous. Because the vote would now tie 3–3, the lower court would automatically be affirmed. Thus, any contradictory lower court decisions would be upheld as a matter of law. Koopmans, *supra* note 157.

158. RESTORATION OF CITIZENSHIP RIGHTS FAQ, OFFICE OF THE GOVERNOR OF IOWA (last updated Apr. 17, 2014) (on file with author).

159. A high court is not bound by legislative definition when interpreting a constitutional provision. See *supra* notes 106–07 and accompanying text. However, it is unclear which definition should apply when the two definitions conflict and are both declared constitutional by the high court.

ever, the nuanced approach is effectively irrelevant if state law dictates all felons are statutorily barred from registering to vote. By attempting to leave as much as possible unsaid and to avoid establishing a theorized rule, the plurality instead created more hurdles for individuals attempting to retain or restore their right to vote.

4. *Increased Future Litigation*

Courts should avoid a minimalist approach if the court anticipates a particular holding will result in a substantial increase of future litigation. Judicial minimalism, as effected through a narrow decision, generally reduces misinterpretation in later application by either the same court or in its lower courts.¹⁶⁰ However, a court should not narrow its reasoning or disposition simply because it can. Even Sunstein concedes that while “[d]ecision costs may be low for the judge in the case at hand, . . . a narrow, shallow judgment in case A will lead to dramatically increased decision costs for judges in cases B through Z.”¹⁶¹ By developing a broader rule in the case at hand, a court may reduce this aggregate decision-cost problem and establish a more consistent interpretation for lower courts to apply. Future litigation is inevitable in cases involving constitutional interpretation of individual rights and those involving repeat state actors.¹⁶² Thus, in cases involving several indicators like *Chiodo*, the plurality should have especially sought to reduce the aggregate decision-cost problem by instead properly theorizing its holding.

Unfortunately, the plurality in *Chiodo* did not account for future litigation costs when it under-theorized its nascent framework—a move well documented by the concurrence and dissenting opinions.¹⁶³ Justice Mansfield noted in his specially concurring opinion: “I think most people would agree that [the plurality’s] unrefined standards basically offer no guidance at all, therefore leaving the door wide open for future litigation.”¹⁶⁴ Justice Mansfield was primarily concerned with an increase in litigation from current inmates demanding they be allowed to vote while incarcerated.¹⁶⁵ Given the plurality’s reasoning and new framework, Justice Mansfield considered those ensuing lawsuits inevitable.¹⁶⁶ Echoing Justice Mansfield’s disapproval, Justice Wiggins wrote in his dissent that the plurality’s imprecise standards

160. See Sunstein, *supra* note 78, at 49–50.

161. *Id.* at 55. See *supra* note 82 for an explanation of decision and error costs.

162. See discussion *supra* subsections III.B.1, III.B.3.

163. See *Chiodo v. Section 43.24 Panel*, 846 N.W.2d 845, 857, 863 (Iowa 2014).

164. *Id.* at 858 (Mansfield, J., specially concurring).

165. *Id.*

166. *Id.* at 860 (“[T]his standard is essentially no standard at all and will lead to more voting and ballot cases as we sort out the implications of today’s ruling.”).

will create election day problems and lead to “an inordinate amount” of provisional ballots being cast.¹⁶⁷

Whether or not a person can vote in a statewide election if they are currently incarcerated largely depends on the state’s voter disqualification constitutional provision. If the state constitution is silent, a court must determine whether the government has the independent authority to disqualify those voters.¹⁶⁸ While some state constitutions expressly prohibit current inmates from voting,¹⁶⁹ other state high courts have concluded the authority to disqualify currently incarcerated individuals falls within a state’s police power.¹⁷⁰ Iowa’s voter disqualification provision is silent as it relates to currently incarcerated prisoners;¹⁷¹ however, the court’s long-held doctrine effectively neutralized the issue: if an infamous crime depended on the crime’s punishment, incarcerated individuals were de facto disqualified from voting upon conviction. The plurality’s new interpretation of the phrase no longer depends on the punishment associated with a conviction or whether the crime is categorized as a felony.¹⁷² Thus, while the constitution continues to remain silent as to current inmates, situations may now realistically arise where an inmate has been incarcerated for a crime that is not infamous according to the plurality’s framework.¹⁷³

In this respect, the plurality’s omission does appear to be what Justice Mansfield called “a welcome mat for future lawsuits.”¹⁷⁴ The plurality’s minimalist approach could have easily included a declaration that currently incarcerated inmates are disqualified from voting under the state’s police power, such as the Indiana Supreme Court’s holding in *Snyder v. King*.¹⁷⁵ However, the plurality did not take such measures, and even if it would have, the opinion did not receive a majority of the justices’ approval. “Regardless of the merits of *Snyder*’s

167. *Id.* at 865 (Wiggins, J., dissenting) (citing IOWA CODE § 49.81 (2014)).

168. *See, e.g.*, *Snyder v. King*, 958 N.E.2d 764, 784 (Ind. 2011).

169. *See, e.g.*, R.I. CONST. art. II, § 1 (“No person who is incarcerated in a correctional facility upon a felony conviction shall be permitted to vote until such person is discharged from the facility. Upon discharge, such person’s right to vote shall be restored.”).

170. *See, e.g.*, *Snyder*, 958 N.E.2d at 785–86.

171. *See* IOWA CONST. art. II, § 5 (“A person adjudged mentally incompetent to vote or a person convicted of any infamous crime shall not be entitled to the privilege of an elector.”).

172. *See Chiodo*, 846 N.W.2d at 856 (plurality opinion).

173. *Id.* at 858 (Mansfield, J., specially concurring) (“[U]nder the plurality’s approach, even a person who is presently serving a lifetime-without-parole-sentence can argue that he or she should be able to vote from prison because barring him or her from voting would ‘undermine the process of democratic governance through elections.’”).

174. *Id.*

175. 958 N.E.2d at 785–86.

reasoning,” wrote Justice Mansfield, “the opinion at least has the virtue of clarifying that current inmates will not be able to vote. The plurality opinion here leaves that highly important question unanswered.”¹⁷⁶ Instead, the plurality may have unintentionally invited future litigation from currently incarcerated inmates.¹⁷⁷

The special concurrence and the dissent also agreed that the plurality’s uncertain interpretation could also lead to future litigation of claims from ex-convicts who have been released from incarceration, but have still nonetheless been convicted of a high-level aggravated misdemeanor or felony crime that does not undermine the democratic process.¹⁷⁸ In *Snyder*, the Indiana Supreme Court held ex-convicts may regain their right to vote in statewide elections once they are released, unless the convicted crime was akin to treason, perjury, malicious prosecution, or election fraud.¹⁷⁹ In other words, the ex-convict would only remain disqualified if they were convicted of a crime involving elements of deceit and dishonesty.¹⁸⁰

The plurality failed to address whether such a distinction will apply in Iowa. Justices Mansfield and Wiggins were appropriately concerned that the plurality’s framework will lead to an increase in future litigation because of the plurality’s aversion to establish a comprehensive ruling.¹⁸¹ Further, every inmate or ex-convict who challenges whether they are disqualified from voting once released necessarily involves the regulatory agency charged with administering Iowa’s elections.¹⁸² Thus, the challenge does not simply involve two private entities, but also involves governmental actors. A contested dispute must then be heard through the judiciary, who will refer to *Chiodo* in interpreting whether the crime is infamous and apply a framework that has not been fully articulated or widely tested. As the number of

176. *Chiodo*, 846 N.W.2d at 860 (Mansfield, J., specially concurring).

177. See generally Martine J. Price, *Addressing Ex-Felon Disenfranchisement: Legislation vs. Litigation*, 11 J.L. & POL’Y 369, 391–95 (describing various avenues through which felon disenfranchisement provisions are typically challenged in state courts).

178. E.g., *Chiodo*, 846 N.W.2d at 860 (Mansfield, J., specially concurring) (observing that because the plurality went “only partway on *Snyder*” regarding ex-convicts, the opinion “does not pass [a] clarity threshold and instead fosters uncertainty”).

179. *Snyder*, 958 N.E.2d at 782.

180. *Id.*

181. See, e.g., *Chiodo*, 846 N.W.2d at 864–65 (Wiggins, J., dissenting) (“I see no reason why at this time we should redefine the term ‘infamous crimes.’ Today I fear we are abandoning a seaworthy vessel to swim into dangerous and uncharted waters.”).

182. Iowa law provides that the registration of any voter may be challenged by another voter if the “challenged registrant has been convicted of a felony, and the registrant’s voting rights have not been restored.” IOWA CODE § 48A.14(1)(e) (2014). The voter’s challenge must then be accepted and heard by the county commissioner of elections. See *id.* § 48A.15 (2014).

decisions increase, the number of contradictory rulings will inevitably increase as well.

IV. CONCLUSION

Often times, a court wants to say as little as possible when it knows it is dealing with a hard case. Hard cases make bad law. But in some cases, a court must give everyone—from law students to convicted felons—future guidance on how its decision must be interpreted and put into operation. While judicial minimalism can promote efficiency and democracy by deferring change to representative actors, these particular cases require that a court fully theorize its holding and establish a clear rule.

In *Chiodo v. Section 43.24 Panel*,¹⁸³ the entire Iowa Supreme Court took part in an incompletely theorized agreement: the court made unclear whether Iowa's voter disqualification constitutional provision depends on the nature of a crime, the category of a crime, or the punishment for a crime. But more importantly, the plurality in *Chiodo* authored an incompletely specified agreement. Whether a crime is infamous, according to the plurality, depends on the nature of a crime—but the plurality made unclear how lower courts, state actors, or individuals should determine when a particular crime undermines the political process.

The plurality opinion in *Chiodo* did not receive a majority of votes from the Iowa Supreme Court—that much is clear. But, the plurality's reasoning *did* receive the most votes from participating justices. Thus, the opinion ultimately illustrates the most up-to-date, popular opinion of the court. *Chiodo* implicated all four indicators articulated in this Note; however, the plurality failed to theorize its interpretation of infamous crime and instead embraced judicial minimalism through an incompletely specified agreement. Accordingly, the *Chiodo* decision may produce several unintended consequences and appropriately illustrates these indicators in practice.

First, a court interpreting a constitutional provision that implicates an individual right should avoid under-theorization because its decision may adversely affect exercise of the individual right itself. Second, a court giving less deference to stare decisis (or completely rejecting it) must adequately theorize its eventual holding; conversely, a court applying stare decisis may more appropriately adopt a minimalist approach. Third, a court must more completely theorize its holding when the case involves repeat governmental actors or implicates state institutional relationships. A failure to do so will leave a state's statutory framework, such as Iowa's voting administrative procedures, in complete disarray. Finally, a court should avoid under-

183. 846 N.W.2d 845.

theorizing its decision if the court anticipates a substantial increase in future litigation. Although the long-term effects of *Chiodo v. Section 43.24 Panel* have not yet been realized, the presence of these indicators suggests the court may be confronted with another challenge to Iowa's voter disqualification constitutional provision sooner rather than later.¹⁸⁴

184. On November 7, 2014, the American Civil Liberties Union filed a lawsuit on behalf of Kelli Jo Griffin against the Iowa Governor and Secretary of State, seeking a declaratory judgment to reinstate Ms. Griffin's voting rights. See Griffin v. Branstad, ACLU (Nov, 9, 2014), <https://www.aclu.org/cases/griffin-v-branstad>, archived at <http://perma.unl.edu/BEH4-VUF3>. Griffin was convicted of a non-violent felony in 2008 and successfully discharged her sentence in 2013. Relying on *Chiodo's* "nascent test," Ms. Griffin's suit asks the court to permit residents who have been convicted of felonies that "do not meet the constitutional threshold test for infamous crimes" to become eligible to vote. Petition for Declaratory Judgment and Supplemental Injunctive and Mandamus Relief at 10, 18, Griffin v. Branstad, No. EQCE077368, archived at <http://perma.unl.edu/MM78-C7EB>. This case will be heard by the Iowa Supreme Court on review from the Polk County District Court.