IN THE SUPREME COURT OF IOWA
Supreme Court Nos. 23-1391, 23-1394
Story County Nos. FECR062466, FECR062327

STATE OF IOWA,
Plaintiff–Appellee,

vs.

JORDAN KEVIN COLE,
Defendant–Appellant.

APPEAL FROM THE IOWA DISTRICT COURT
FOR STORY COUNTY
THE HONORABLE STEVEN P. VAN MAREL, JUDGE

BRIEF FOR APPELLEE

BRENNA BIRD
Attorney General of Iowa

OLIVIA D. BROOKS
Assistant Attorney General
Hoover State Office Building, 2nd Floor
Des Moines, Iowa 50319
(515) 281-5976
Olivia.Brooks@ag.iowa.gov

TIMOTHY MEALS
Story County Attorney

MICHAEL RINGLE
Assistant County Attorney

ATTORNEYS FOR PLAINTIFF–APPELLEE

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Federal Cases

State Cases

Federal/State Statutes

Other Authorities

STATEMENT OF THE ISSUES PRESENTED FOR REVIEW

I. Whether Iowa Code section 724.26(2)(*a*), which prohibits an individual subject to a domestic abuse protective order under 18 U.S.C. Section 922(g)(8) from possessing a firearm, violates the Second Amendment to the United States Constitution or Article I, section 1A of the Iowa Constitution?

II. Whether resentencing is required?

ROUTING STATEMENT

Jordan Kevin Cole challenges his convictions under Iowa Code section 724.26(2)(*a*), arguing section 724.26(2)(*a*) fails the United States Supreme Court's two-part test in *New York State Rifle & Pistol Association, Inc. v. Bruen*, 597 U.S. 1 (2022) for applying the Second Amendment to the United States Constitution and Article I, section 1A of the Iowa Constitution's "strict scrutiny" test. Appellant's Br. at 19, 29. He also challenges his sentence, arguing it created an illegal condition. Appellant's Br. at 35. Although his sentencing challenge is routine, his challenges under the Second Amendment and Article I, section 1A each present an issue of first impression for this Court. Retention is appropriate. *See* Iowa R. App. P. 6.1101(2).

NATURE OF THE CASE

This is a direct appeal by Cole from his convictions and sentence for possession of a firearm or offensive weapon by domestic abuse offender in violation of Iowa Code section 724.26(2)(*a*) in two cases. D0043 (FECR062327), Judg. and Sent. (8/16/2023); D0039 (FECR062466), Judg. and Sent. (8/16/2023). The Honorable Steven P. Van Marel presided.

STATEMENT OF THE FACTS

On March 7, 2022, the court held a hearing on a petition for relief from domestic abuse under Iowa Code chapter 236 against Cole. First

Attachment to D0037 (FECR062327), Add. Min. of Test. at 1 (8/4/2023); Attachment to D0033 (FECR062466),[1] Add. Min. of Test. at 1 (8/4/2023). Cole "was personally served with a copy of the petition and the temporary protective order" notifying him of the hearing. Att. to D0033 (FECR062466) at 1–2. Both Cole and the party seeking relief were present and participated in the hearing, and each consented to the entry of the protective order. Att. to D0033 (FECR062466) at 1–2.

After the hearing the court entered a one-year protective order by consent agreement. Att. to D0033 (FECR062466) at 1. It found Cole and the protected party met "the definition of intimate partners as defined in 18 U.S.C. section 921(a)(32)." Att. to D0033 (FECR062466) at 2. It restrained Cole from "threaten[ing], assault[ing], stalk[ing], molest[ing], attack[ing], harass[ing] or otherwise abus[ing]" his intimate partner. Att. to D0033 (FECR062466) at 2. It explicitly prohibited Cole from "us[ing], or attempt[ing] to use, or threaten[ing] to use physical force against [his intimate partner] that would reasonably be expected to cause bodily injury." Att. to D0033 (FECR062466) at 2. It prohibited Cole "from

[1] The State filed the protective order as an attachment to the minutes in both cases. First Att. to D0037 (FECR062327); Att. to D0033 (FECR062466). For clarity, the State cites only to the protective order filed in FECR062466.

committing further acts of abuse or threats of abuse" and "from any contact with" his intimate partner. Att. to D0033 (FECR062466) at 1–2. And it granted his intimate partner the exclusive possession of their residence and temporary custody of their children. Att. to D0033 (FECR062466) at 1–2.

The protective order further prohibited Cole from "posses[sing], ship[ing], transport[ing] or receiv[ing] firearms, offensive weapons, or ammunition while this order is in effect pursuant to Iowa Code section 724.26(2)(*a*)." Att. to D0033 (FECR062466) at 2. It explained "[f]ederal *and state* laws provide penalties for possessing, transporting, shipping, or receiving any firearm or ammunition," including under section 724.26(2)(*a*). Att. to D0033 (FECR062466) at 1–2 (emphasis in original).

On March 8, 2022, Cole was served with the protective order. D0014 (FECR062327), Min. of Test. at 1–2 (3/28/2023); D0014 (FECR062466), Min. of Test. at 2 (5/1/2023). Cole does not contend, nor does the record show, that he objected to the order's entry or appealed. *See* Att. to D0033 (FECR062466).

Less than four months later Cole violated the protective order by selling a firearm on July 5, 2022. D0014 (FECR062327) at 1; Attachment to D0017 (FECR062327), Add. Min. of Test. (3/29/2023); D0037

(FECR062327), Add. Min. of Test. at 1–2 (8/4/2023); D0043 (FECR062327) at 1.

Four months after that, Cole violated the protective order again. D0014 (FECR062466) at 1–2; Att. to D0033 (FECR062466) at 2; D0033 (FECR062466), Add. Min. of Test. at 1–2 (8/4/2023); D0039 (FECR062466) at 1. This time Cole sold a different firearm on October 12, 2022. Att. to D0033 (FECR062466) at 1; D0033 (FECR062466) at 1–2; D0039 (FECR062466) at 1.

The State charged Cole in two cases: FECR062327 and FECR062466. D0013 (FECR062327), Trial Information (3/28/2023); D0025 (FECR062466), Amended Trial Information (6/22/2023). In FECR062327, the State charged Cole with one count under section 724.26(2)(*a*) for knowingly possessing a firearm while subject to a protective order under Section 922(g)(8). D0013 (FECR062327). In FECR062466, the State charged Cole with two counts under section 724.25(2)(*a*) for knowingly possessing a firearm while subject to a protective order under Section 922(g)(8) and one count of theft in the second degree. D0025 (FECR062466).

Cole moved to dismiss the section 724.26(2)(*a*) charges in both cases. D0026 (FECR062327), Motion to Dismiss (6/19/2023); D0019

(FECR062466), Motion to Dismiss (6/14/2023). The State resisted. D0032 (FECR062327), Resistance to Motion to Dismiss (7/12/2023); D0028 (FECR062466), Resistance to Motion to Dismiss (7/12/2023). Following a combined hearing for both cases, the court denied the motions. D0054 (FECR062466), Motion to Dismiss Tr. at 13:10–15:8 (7/13/2023).[2]

The parties ultimately reached an agreement in both cases. D0047 (FECR062466), Trial and Sentencing Tr. at 4:7–6:25 (8/16/2023).[3] The State agreed to dismiss counts II and III in FECR062466 and the parties proceeded to a bench trial on the minutes for the two section 724.26(2)(*a*) charges. D0047 (FECR062466) at 4:7–6:25. At trial, Cole's attorney acknowledged that Cole had stipulated to the protective order. D0047 (FECR062466) at 8:4–9.

The court found Cole guilty in both cases. D0047 (FECR062466) at 8:10–9:12.

---

[2] The State agrees the motion to dismiss hearing transcript was filed in both cases. D0059 (FECR062327), Motion to Dismiss Tr. (7/13/2023); D0054 (FECR062466); Appellant's Br. at 9. For clarity, the State cites only to the transcript filed in FECR062466, too.

[3] The State also agrees the trial and sentencing hearing transcript was filed in both cases. D0052 (FECR062327), Trial and Sentencing Tr. (8/16/2023); D0047 (FECR062466); Appellant's Br. at 9. Again, the State cites only to the transcript filed in FECR062466, too.

Cole requested immediate sentencing. D0047 (FECR062466) at 9:13–10:10. The court elected to follow the parties' agreed sentence: suspended five-year sentences and two-year probation terms (served concurrently). D0047 (FECR062466) at 9:13–10:10, 12:8–15:12. It also cautioned that "if the probations are ever revoked, the sentences may be ordered to be served consecutively." D0047 (FECR062466) at 15:18–16:4; *but see* D0043 (FECR062327) at 1; D0039 (FECR062466) at 1.

ARGUMENT

I. The District Court Rightly Denied Cole's Motion to Dismiss the Charges Under Iowa Code section 724.26(2)(*a*).

Preservation of Error

"It is a fundamental doctrine of appellate review that issues must ordinarily be both raised and decided by the district court before [appellate courts] will decide them on appeal." *Meier v. Senecaut*, 641 N.W.2d 532, 537 (Iowa 2002). The State does not contest that Cole challenged section 724.26(2)(*a*) on its face and as applied to his circumstances under the state and federal constitution in the district court, and the court's order indicates that it considered and ruled on it. D0026 (FECR062327); D0019 (FECR062466); D0054 (FECR062466) at 3:19–8:16, 13:10–15:3.

But because Cole consented to the underlying domestic abuse protective order and its firearm prohibition, and neither objected to it in

the chapter 236 proceeding nor appealed, he waived any complaints about the protective order in the subsequent criminal proceeding. Att. to D0033 (FECR062466) at 1–2; D0047 (FECR062466) at 8:4–9; *see Sims v. Rush*, No. 10-0237, 2010 WL 3503943, at *3 (Iowa Ct. App. Sept. 9, 2010) (holding party waived claim that protective order lacked continued threat finding where party failed to move to enlarge or amend findings) (citing *Michael v. Merchs. Mut. Bonding Co.*, 251 N.W.2d 531, 533 (Iowa 1997)); *In re Alatorre*, No. 01-0045, 2002 WL 576171, at *2 (Iowa Ct. App. Feb. 20, 2002) (rejecting claim that protective order violated constitutional right of association because party failed to present claim at hearing or move to reconsider); *Stewart v. Stewart*, 687 N.W.2d 116, 117 (2004) ("Under the plain language of [section 236.5], a consent order requires the agreement of the relevant parties." (quoting Black's Law Dictionary 67 (7th ed. 1999) (defining "agreement" in relevant part as a "mutual understanding between two or more persons"))).

Standard of Review

This Court reviews constitutional challenges to a statute de novo. *State v. Newton*, 929 N.W.2d 250, 254 (Iowa 2019).

Merits

This appeal concerns Iowa Code section 724.26(2)(*a*), which states:

> [A] person who is subject to a protective order under 18 U.S.C. § 922(g)(8) or who has been convicted of a misdemeanor crime of domestic violence under 18 U.S.C. § 922(g)(9) and who knowingly possesses, ships, transports, or receives a firearm, offensive weapon, or ammunition is guilty of a class "D" felony.

Iowa Code § 724.26(2)(*a*). Protective orders under Section 922(g)(8) must:

> (A) [be] issued after a hearing of which such person received actual notice, and at which such person had an opportunity to participate;
>
> (B) restrain[] such person from harassing, stalking, or threatening an intimate partner of such person or child of such intimate partner or person, or engaging in other conduct that would place an intimate partner in reasonable fear of bodily injury to the partner or child; *and*
>
> (C)(i) include[] a finding that such person represents a credible threat to the physical safety of such intimate partner or child; *or*
>
> (ii) by its terms explicitly prohibit[] the use, attempted use, or threatened use of physical force against such intimate partner or child that would reasonably be expected to cause bodily injury[.]

18 U.S.C. § 922(g)(8) (emphasis added).

Here, Cole was convicted under section 724.26(2)(*a*) in both cases for possessing a firearm while subject to a protective order under Section 922(g)(8).[4] D0047 (FECR062466) at 8:4–9, 8:10–9:12. Consistent with

[4] Section 724.26(2)(*a*) relies on 18 U.S.C. Section 922(g)(8) to define the requirements protective orders need to satisfy the elements of a conviction for "possession, receipt, transportation, or dominion and control of

Section 922(g)(8)(A) and (B), Cole's protective order "was issued after a hearing of which [he] received actual notice, and at which [he] had an opportunity to participate" and "restrain[ed] [him] from harassing, stalking, or threatening [his] intimate partner." Att. to D0033 (FECR062466) at 1–2; 18 U.S.C. § 922(g)(8). Consistent with Section 922(g)(8)(C), the protective order "explicitly prohibit[ed] the use, attempted use, or threatened use of physical force against [his] intimate partner . . . that would reasonably be expected to cause bodily injury[.]" Att. to D0033 (FECR062466) at 1–2; 18 U.S.C. § 922(g)(8)(C) (noting this subsection requires the order *either* "include[] a finding that such person represents a credible threat to the physical safety of such intimate partner" under Section 922(g)(8)(C)(i) *or* "explicitly prohibit[] the use, attempted use, or threatened use of physical force against such intimate partner . . . that would reasonably be expected to cause bodily injury" under Section 922(g)(8)(C)(ii)). Cole's protective order also prohibited him from

---

firearms, offensive weapons, and ammunition by felons and others" when the "others" are those subject to a protective order. The protective order here was issued under Iowa Code section 236.5 (2021). For clarity, the State notes section 236.5 was amended, effective July 2022, to allow courts to approve consent agreements without finding the defendant engaged in domestic abuse. Iowa Acts 2022 (89 G.A.) ch. 1042, H.F. 825, §§ 1, 2.

possessing firearms and explained that state and federal laws provide penalties for doing so. Att. to D0033 (FECR062466) at 1–2.

Although Cole frames his challenges as attacking the constitutionality of section 724.26(2)(*a*), his challenges are impermissible collateral attacks on the protective order by consent agreement entered in the chapter 236 domestic abuse proceeding. *See* Appellant's Br. at 13; *see also see also United States v. Reese*, 627 F.3d 792, 803–04 (10th Cir. 2010) (*abrogated on other grounds by Bruen*, 597 U.S. at 18, 19 & n.4) (concluding "Reese is precluded from collaterally attacking, in the context of this federal criminal proceeding, the merits or validity of the underlying protective order"); *cf. United States v. Bena*, 664 F.3d 1180, 1185 (8th Cir. 2011) (concluding "Bena's argument is an impermissible collateral attack on the predicate no-contact order" under the Fifth and Sixth Amendments).

After receiving notice and participating in the hearing, Cole consented to the protective order at issue. Att. to D0033 (FECR062466) at 1–2; D0047 (FECR062466) at 8:4–9. He did not bring any objections to the court's attention. The next day, he was served with the protective order. D0014 (FECR062327) at 1–2; D0014 (FECR062466) at 2. He did not move the court to reconsider the order he consented to, nor did he appeal.

Now, after being twice prosecuted for violating the order, he complains the protective order lacked findings that he engaged in domestic abuse and that he "represents a credible threat to the physical safety of [his] intimate partner." Appellant's Br. at 8, 19, 26–27, 29.

This Court should reject Cole's collateral attack on the protective order. Cole waived any complaints about the protective order and its firearm restriction by failing to raise them in the chapter 236 proceedings or in a direct appeal of the protective order, and by consenting to its entry. *Christenson v. Christenson*, 472 N.W.2d 279, 280 (Iowa 1991) (noting a finding of prior domestic abuse is a predicate to injunctive relief under chapter 236); *U.S. Cellular Corp. v. Board of Adjustment of City of Des Moines*, 589 N.W.2d 712, 720 (Iowa 1999) ("When a motion to enlarge or amend is not made, the appellate court 'assume[s] as fact an unstated finding that is necessary to support the judgment.'"); *Allen v. Iowa Dist. Court for Polk County*, 582 N.W.2d 506, 508 (Iowa 1998) ("As a general rule, a party cannot attack the validity of a court order which is the basis for the contempt charge on appeal from the judgment of contempt. The party must challenge the order by direct appeal."); *Gallimore v. State*, No. 10-1429, 2012 WL 837147, at *2 (Iowa Ct. App. Mar. 14, 2012) (rejecting ineffective assistance of counsel claim where counsel did not object to

violations of no-contact order under chapter 236 that lacked domestic abuse finding to establish element of stalking offense when defendant failed to challenge the order in the chapter 236 proceeding).

In any event, section 724.26(2)(*a*) satisfies the Second Amendment and Article I, section 1A. Temporarily disarming individuals subject to a domestic abuse protective order—persons that pose an unacceptable risk of harm to their intimate partner's physical safety, the public's safety, and present a special danger of firearm misuse—is consistent with the Second Amendment and Article I, section 1A.

A. Iowa Code section 724.26(2)(*a*) satisfies *New York State Rifle & Pistol Association, Inc. v. Bruen*'s two-part test for applying the Second Amendment to the United States Constitution.

The Second Amendment to the United States Constitution states that "[a] well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed." U.S. Const. amend. II.

Cole argues that section 724.26(2)(*a*) violates the Second Amendment because it fails *Bruen*'s two-part test. Appellant's Br. at 19. He contends he is among "the people" that have a constitutional right under the Second Amendment to keep and bear arms, and that section 724.26(2)(*a*) is

inconsistent with our Nation's history and tradition. Appellant's Br. at 19, 26–28.

1. *From* District of Columbia v. Heller *to* United States v. Rahimi*, the Supreme Court recognizes the Second Amendment protects the right of an ordinary, law-abiding citizen to keep and bear arms for lawful self-defense.*

The United States Supreme Court first announced "that the Second Amendment conferred an individual right to keep and bear arms" in *District of Columbia v. Heller*, describing it as "the right of law-abiding, responsible citizens to use arms in defense of hearth and home." 554 U.S. 570, 635 (2008). In doing so, it recognized that "[l]ike most rights, the right secured by the Second Amendment is not unlimited." *Id.* at 626. It cautioned that "nothing in [its] opinion should be taken to cast doubt on longstanding prohibitions on the possession of firearms by felons and the mentally ill," and these "presumptively lawful regulatory measures" are not an "exhaustive" list. *Id.* at 626–27 & n.26.

Two years later, *McDonald v. City of Chicago* held "that the Second Amendment right is fully applicable to the States" through the Fourteenth Amendment. 561 U.S. 750, 791 (2010). It repeated *Heller*'s assurances:

> It is important to keep in mind that *Heller*, while striking down a law that prohibited the possession of handguns in the home, recognized that the right to keep and bear arms is not "a right to keep and carry

> any weapon whatsoever in any manner whatsoever and for whatever purpose." We made it clear in *Heller* that our holding did not cast doubt on such longstanding regulatory measures as "prohibitions on the possession of firearms by felons and the mentally ill[.]"

Id. at 786.

In 2022 the Supreme Court decided *Bruen*. It reaffirmed "that the Second and Fourteenth Amendments protect the right of an ordinary, law-abiding citizen to possess a handgun in the home for self-defense," and held that the Second and Fourteenth Amendments cover "an individual's right to carry a handgun for self-defense outside the home." 597 U.S. at 8–10, 17.

It also clarified the "standard for applying the Second Amendment." *Id.* at 24. It emphasized that the "'two-step' framework [many courts adopted after *Heller*] for analyzing Second Amendment challenges that combine[d] history with means-end scrutiny" "is one step too many." *Id.* at 17, 19. It found that while "[s]tep one of the predominant framework is consistent with *Heller*" because it "demands a test rooted in the Second Amendment's text, as informed by history," "step two" is not because "*Heller* and *McDonald* do not support applying means-end scrutiny in the Second Amendment context." *Id.* at 17–19, 24.

So *Bruen* outlined the standard for applying the Second Amendment:

> In keeping with *Heller*, we hold that when the Second Amendment's plain text covers an individual's conduct, the Constitution presumptively protects that conduct. To justify its regulation, the government may not simply posit that the regulation promotes an important interest. Rather, the government must demonstrate that the regulation is consistent with this Nation's historical tradition of firearm regulation. Only if a firearm regulation is consistent with this Nation's historical tradition may a court conclude that the individual's conduct falls outside the Second Amendment's "unqualified command."

Id. at 17, 24, 26. In doing so, it recognized that the "historical inquiry that courts must conduct" "[w]hen confronting such present-day firearm regulations" "will often involve reasoning by analogy" and explained that "determining whether a historical regulation is a proper analogue for a distinctly modern firearm regulation requires a determination of whether the two regulations are 'relevantly similar.'" *Id.* at 28–29 (citations omitted).

Bruen, however, emphasized "analogical reasoning under the Second Amendment" is not "a regulatory straitjacket." *Id.* at 30. "[A]nalogical reasoning requires only that the government identify a well-established and representative historical *analogue*, not a historical *twin*. So even if a modern-day regulation is not a dead ringer for historical precursors, it still may be analogous enough to pass constitutional muster." *Id.* (emphasis in

original). *Bruen* explained that *Heller* and *McDonald* give two, non-exhaustive "metrics" that render regulations relevantly similar: "how and why the regulations burden a law-abiding citizen's right to armed self-defense." *Id.* at 29.

Not quite two years after *Bruen*, the Supreme Court decided *United States v. Rahimi*, 602 U.S. ____, 144 S.Ct. 1889 (June 21, 2024). It concluded "[a]n individual found by a court to pose a credible threat to the physical safety of another may be temporarily disarmed consistent with the Second Amendment." *Rahimi*, 144 S.Ct. at 1903. In doing so, it found that Section 922(g)(8) is "relevantly similar" to "founding era regimes in both why and how it burdens the Second Amendment right." *Id.* at 1901. For the "why" it reasoned "Section 922(g)(8) restricts gun use to mitigate demonstrated threats of physical violence, just as the surety and going armed laws do." *Id.* at 1901. And for the "how" it reasoned Section 922(g)(8)(C)(i)'s "credible threat" finding "matches the surety and going armed laws, which involved judicial determinations of whether a particular defendant likely would threaten or had threatened another with a weapon." *Id.* at 1901–02.

While *Rahimi*'s holding is narrow, *Rahimi* also emphasized that it does "not suggest that the Second Amendment prohibits the enactment of

laws banning the possession of guns by categories of persons thought by a legislature to present a special danger of misuse." *Id.* at 1898–99, 1901.

Like in *Bruen*, *Rahimi* clarified "the methodology of [its] recent Second Amendment cases." *Id.* at 1897. It reiterated:

> These precedents were not meant to suggest a law trapped in amber. As we explained in *Heller*, for example, the reach of the Second Amendment is not limited only to those arms that were in existence at the founding. Rather, it 'extends, prima facie, to all instruments that constitute bearable arms, even those that were not [yet] in existence.' By that same logic, the Second Amendment permits more than just those regulations identical to ones that could be found in 1791. Holding otherwise would be as mistaken as applying the protections of the right only to muskets and sabers.

Id. at 1897–98. The Supreme Court explained, "the appropriate analysis involves considering whether the challenged regulation is consistent with the principles that underpin our regulatory tradition." *Id.* at 1898. "When legislation and the Constitution brush up against each other, [a court's] task is to seek harmony, not to manufacture conflict." *Id.* at 1903. Courts "must ascertain whether the new law is 'relevantly similar' to laws that our tradition is understood to permit, 'apply[ing] faithfully the balance struck by the founding generation to modern circumstances.'" *Id.* at 1898. "The law must comport with the principles underlying the Second Amendment,

but it need not be a 'dead ringer' or a 'historical twin.'" *Id.* (citing *Bruen*, 597 U.S. at 30).

Section 724.26(2)(*a*) satisfies *Bruen*'s test. Violating a domestic abuse protective order is not conduct the Second Amendment covers, and section 724.26(2)(*a*) is consistent with the principles that underpin our Nation's regulatory tradition.

2. Violating a domestic abuse protective order is not conduct that the Second Amendment covers.

Cole, while subject to a domestic abuse protective order, was not an ordinary, law-abiding citizen. Att. to D0033 (FECR062466) at 1–2. In entering the protective order, the court found the risk of harm Cole posed to his intimate partner's safety made it necessary to restrain Cole from threatening, assaulting, stalking, molesting, attacking, or harassing his intimate partner and to prohibit him from using physical force, committing further acts of abuse, or threats of abuse. Att. to D0033 (FECR062466) at 1–2. It also prohibited Cole from possessing firearms for one year. Att. to D0033 (FECR062466) at 2.

The Second Amendment extends only to law-abiding citizens. *Bruen*, 597 U.S. at 8–10, 26, 29, 30, 31–32, 38, n.9, 60, 62, 70, 71; *Heller*, 554 U.S. at 580; *see United States v. Johnson*, No. 23-11885, 2024 WL 3371414, at *2, *3 (11th Cir. July 11, 2024) ("[L]ike *Heller*, *Bruen* described Second

Amendment rights as extending only to 'law-abiding, responsible citizens'" and *Rahimi* "does not change our analysis."); *see also United States v. Jackson*, No. 22-2879, 2024 WL11155, at *6 (8th Cir. Aug. 8, 2024) ("He is not a law-abiding citizen, and history supports the authority of Congress to prohibit possession of firearms by persons who have demonstrated disrespect for legal norms of society. . . . Legislatures historically prohibited possession by categories of persons based on a conclusion that the category as a whole presented an unacceptable risk of danger if armed."). Violating a domestic abuse protective order's firearm prohibition (whether Cole thinks it is unconstitutional or not) sets one apart from the ordinary, law-abiding citizen. D0047 (FECR062466) at 8:4–9:12; *Allen*, 582 N.W.2d at 508 ("This court has held that an erroneous, irregular, or improvident order furnishes no grounds for a person to disobey its terms."); *Gallimore*, No. 10-1429, 2012 WL 837147, at *2 ("Gallimore knew he was subject to the no-contact order. A court order must be obeyed even if the order is erroneous."). The Second Amendment does not cover Cole's conduct of possessing firearms in violation of a valid domestic abuse protective order. *See Bruen*, 597 U.S. at 62–63 (discussing nineteenth-century sources disarming "disorderly person[s], vagrant[s], or disturber[s] of the peace," and limiting the right to "all loyal and well-disposed inhabitants.").

Cole contends that a civil protective order does not remove him from the Second Amendment's reach. Appellant's Br. at 23. Not so. "Like most rights, the right secured by the Second Amendment is not unlimited. From Blackstone through the 19th-century cases, commentators and courts routinely explained that the right was not a right to keep and carry any weapon whatsoever in any manner whatsoever and for whatever purpose." *Heller*, 554 U.S. at 626. Cole, if an ordinary, law-abiding citizen, had the right to carry a firearm. But a court determined, after a hearing of which Cole participated, that a domestic abuse protective order restraining Cole from using physical force against his intimate partner and from possessing firearms was necessary, and Cole agreed. *See* Att. to D0033 (FECR062466) at 1–2; *Stewart*, 687 N.W.2d at 117. Cole then violated this order's firearm prohibition, conduct that section 724.26(2)(*a*) makes a class "D" felony. The Second Amendment does not cover Cole's conduct.

3. Iowa Code section 724.26(2)(a) is consistent with the principles that underpin our Nation's regulatory tradition because it temporarily disarms individuals who pose an unacceptable risk of harm to the physical safety of another and present a special danger of firearm misuse.

Cole acknowledges his circumstances "closely parallel" those in *Rahimi*. Appellant's Br. at 22. On that point, he is correct because a credible

threat to the physical safety of another underlies issuance of the protective order here.

Rahimi concluded "[a]n individual found by a court to pose a credible threat to the physical safety of another may be temporarily disarmed consistent with the Second Amendment." 144 S.Ct. at 1903. Cole, like *Rahimi*, was subject to a protective order that met Section 922(g)(8)'s requirements. 18 U.S.C. § 922(g)(8)(C) (providing two alternatives); Att. to D0033 (FECR062466) at 1–3 (noting Cole's protective order met one alternative under § 922(g)(8)(C)(ii)); *Rahimi*, 144 S.Ct. at 1895–96 (noting Rahimi's protective order met both alternatives under § 922(g)(8)(C)(i) and (ii)). The protective order here was entered under chapter 236 with Cole's consent. Att. to D0033 (FECR062466) at 2; D0047 (FECR062466) at 8:4–9. This necessarily reflects that the court found, and Cole agreed, that he posed a credible threat to his intimate partner's safety. *See United States v. Boyd*, 999 F.3d 171, 187 (3d Cir.2021), cert. denied, 142 S.Ct. 511 (2021) ("[W]e will not be so obtuse as to assume a court lacked credible concerns about a defendant's dangerousness merely because it does not say so expressly."); *Stewart*, 687 N.W.2d at 117, 118 n.2; D0047 (FECR062466) at 8:4–9; Att. to D0033 (FECR062466) at 1–2 (prohibiting Cole "from committing further acts of abuse or threats of abuse," from using,

attempting to use, or threatening to use physical force against his intimate partner, and "from any contact with" her); *see also* Iowa Code § 236.5(2) (noting a court may "extend the order if the court . . . finds that the defendant *continues to pose a threat* to the safety of the victim") (emphasis added); *see Clark v. Paul*, No. 14-0575, 2014 WL 6682397, at *4 (Iowa Ct. App. Nov. 26, 2014) ("The term 'continues' means 'to go on with a particular action or in a particular condition; persist.'"). *Rahimi* resolves Cole's Second Amendment complaints, and this Court should affirm. 144 S.Ct. at 1896–97.

Another basis supports affirmance: temporarily disarming an individual subject to a domestic abuse protective order under Section 922(g)(8) without a "credible threat" finding under Section 922(g)(8)(C)(i) is also consistent with the principles that underpin our Nation's tradition of firearm regulation because it temporarily disarms individuals that pose an unacceptable risk of harm to the physical safety of another and that present a special danger of firearm misuse. *See Rahimi*, 144 S.Ct. at 1898–1901, 1903; *Jackson*, No. 22-2879, 2024 WL11155, at *6–*7; *see also Boyd*, 999 F.3d at 187.

Our Nation has a long historical tradition of temporarily disarming individuals who threaten physical harm to others. *Rahimi*, 144 S.Ct. at

1896. We also have a long historical tradition of disarming, sometimes permanently, categories of persons who pose an unacceptable risk of dangerousness without "an individualized determination of dangerousness as to each person" in the category. *Jackson*, No. 22-2879, 2024 WL11155, at *5–*7. Section 724.26(2)(*a*) is consistent with the principles that underpin our regulatory tradition. Unlike contemporary prohibitions on the possession of firearms by felons—one the Supreme Court has repeatedly assured is "presumptively lawful"—section 724.26(2)(*a*)'s firearm prohibition is not permanent. *See Rahimi*, 144 S.Ct. at 1902. Much like founding-era surety and going armed laws or laws that disarmed groups that posed a risk of danger to society, section 724.26(2)(*a*) temporarily disarms individuals found by a court to pose an unacceptable risk of harm to another and that present a special danger of misusing firearms (the "how") to mitigate the risk of harm such individuals pose to their intimate partner and the public (the "why"). *See id.* at 1896, 1898, 1901–02 ("Why and how the regulation burdens the right are central to this inquiry."); *see also Jackson*, No. 22-2879, 2024 WL11155, at *6–*7.

Beginning with categorical firearm prohibitions. "History shows that the right to keep and bear arms was subject to restrictions that included prohibitions on possession by certain groups of people." *Jackson*, No. 22-

2879, 2024 WL11155, at *5, *7. Before the founding, the English government codified the right to bear arms in the Bill of Rights of 1689: "the Subjects, which are Protestants, may have Arms for their Defence suitable to their Conditions and as allowed by Law." Michael A. Bellesiles, *Gun Laws in Early America: The Regulation of Firearms Ownership, 1607–1794*, 16 LAW & HIST. REV. 567, 571 (1998) (hereinafter "Bellesiles, *Gun Laws in Early America*"). This statute qualified the right to bear arms in three ways: "it is limited by religious belief, social condition, and the law." *Id.* The English government also codified statutes that disarmed Catholics "declaring that they had no right to bear arms," established "levels of property ownership as prerequisites for possessing different kinds of firearms," and "granted the lords lieutenant the power to disarm anyone whenever they considered it necessary for public peace." *Id.*

Overall, this early tradition of firearm regulation allowed "a specific, reliable group of subjects" "access to firearms" while "disarming dangerous persons—violent persons and disaffected persons *perceived as threatening* to the crown." *Id.*; Joseph G.S. Greenlee, *The Historical Justification for Prohibiting Dangerous Persons from Possessing Arms*, 20 WY. L. REV. 249, 261 (2020) (emphasis added) (hereinafter "Greenlee, *The Historical Justification*").

This "tradition of disarming those perceived as dangerous" continued in American colonial times. Greenlee, *The Historical Justification*, 20 WY. L. REV. at 261–62; Bellesiles, *Gun Laws in Early America*, 16 LAW & HIST. REV. at 573; *Bruen*, 597 U.S. at 44. "Like English laws, colonial laws were sometimes discriminatory and overbroad—but even those were intended to prevent danger." Greenlee, *The Historical Justification*, 20 WY. L. REV. at 262.

Maryland passed a law "expropriating all the arms and ammunition of Catholics and mandating prison terms for any Catholic found concealing arms." Bellesiles, *Gun Laws in Early America*, 16 LAW & HIST. REV. at 574. Maryland also required that "any qualified individual," *i.e.*, not a Catholic, indentured servant, or slave, "who refused to serve in the militia forfeited any arms and ammunition he might own." *Id.* Maryland was not alone in disarming Catholics. Greenlee, *The Historical Justification*, 20 WY. L. REV. at 263. "[C]olonial gun laws continually sought to limit Indian access to firearms," too, a group they perceived to be dangerous even if some individuals within the group were not. Bellesiles, *Gun Laws in Early America*, 16 LAW & HIST. REV. at 574, 578–79, 584–85. "Every Southern colony legislated against the ownership of firearms by slaves" because "slave uprisings—real and imagined—persuaded colonial legislatures that

blacks as a group, slave or free, should not be allowed to own firearms." *Id.* at 574, 579, 584–85.

In short, colonial "legislatures followed the English example in denying the right to own guns to *potentially dangerous groups*: blacks, slave and free; Indians; propertyless whites; non-Protestants or potentially unruly Protestants." Bellesiles, *Gun Laws in Early America*, 16 LAW & HIST. REV. at 576 (emphasis added); *see also* Joseph G.S. Greenlee, *Disarming the Dangerous: The American Tradition of Firearm Prohibitions*, 16 DREXEL L. REV. 1, 81 (2024) ("In colonial- and founding-era America, . . . every restriction was designed to disarm people who were perceived as posing a danger to the community."); Greenlee, *The Historical Justification*, 20 WY. L. REV. at 262–67.

Founding-era legislatures continued this tradition. Bellesiles, *Gun Laws in Early America*, 16 LAW & HIST. REV. at 586; *Kanter v. Barr*, 919 F.3d 437, 458 (7th Cir. 2019) (Barrett, J., dissenting) ("In sum, founding-era legislatures categorically disarmed groups whom they judged to be a threat to the public safety."). To justify gun regulation, "[s]tate legislatures needed no further argument than public safety." Bellesiles, *Gun Laws in Early America*, 16 LAW & HIST. REV. at 586. "Every state had gun control legislation on its books at the time the Second Amendment was approved"

and "[e]very state continued to pass such legislation after the Second Amendment became the law of the land." *Id.* at 587; Greenlee, *The Historical Justification*, 20 WY. L. REV. at 265–68. "[M]any states even constitutionalized the disarmament of slaves and Native Americans," thereby continuing the tradition "of keeping guns out of the hands of 'distrusted' groups." *Kanter*, 919 F.3d at 457–58 (Barrett, J., dissenting). Other states laws allowed firearm rights to be regained "once the perceived danger abated." *See* Greenlee, *The Historical Justification*, 20 WY. L. REV. at 268.

By the Nineteenth-century, prohibitions on arms possession continued for groups of persons perceived as posing a danger to the community—slaves, freedmen, and "tramps" ("typically defined as males begging for charity outside of their home county"). Greenlee, *The Historical Justification*, 20 WY. L. REV. at 269–70. "New Hampshire, in 1878, imprisoned any tramp who 'shall enter any dwelling-house . . . without the consent of the owner . . . or shall be found carrying any fire-arm or other dangerous weapon[.]'" *Id.* at 270. Vermont, Rhode Island, Ohio, Massachusetts, Wisconsin, and Iowa all enacted similar laws. *Id.*; *see also Bruen*, 597 U.S. at 62–63 (discussing Reconstruction-era categorical limitations).

History also shows a regulatory tradition of disarming individuals who threaten physical harm to others or present a danger of firearm misuse. "From the earliest days of the common law, firearm regulations have included provisions barring people from misusing weapons to harm or menace others." *Rahimi*, 144 S.Ct. at 1899. "By the 1700s and early 1800s . . . two distinct legal regimes had developed that specifically addressed firearms violence"—surety laws ("[a] form of 'preventative justice'") and "going armed" laws ("a mechanism for punishing those who had menaced others with firearms"). *Id.* at 1899–1901.

Surety laws "derived from the ancient practice of frankpledges," a system that "compell[ed] adult men to organize themselves into ten-man 'tithing[s].'" *Id.* at 1899 (citations omitted). "The members of each tithing then 'mutually pledge[d] for each other's good behaviour.' Should any of the ten break the law, the remaining nine would be responsible for producing him in court, or else face punishment in his stead." *Id.* (citations omitted).

This system evolved into the individualized surety regime. *Id.* Under the founding-era surety laws, magistrates could "require individuals suspected of future misbehavior to post a bond. If an individual failed to

post a bond, he would be jailed." *Id.* at 1900. And if the individual posted bond but later broke the peace, they would forfeit the bond. *Id.*

Although "[t]he Angle-American common law originally provided that a husband . . . could subject his wife to corporal punishment or 'chastisement' so long as he did not inflict permanent injury upon her," and proscribing domestic violence is a modern solution to a modern problem (or rather modernly appreciated problem), surety laws served as a solution for spousal abuse even in the founding-era. Reva B. Siegel, *"The Rule of Love": Wife Beating as Prerogative and Privacy*, 105 YALE L.J. 2117, 2118 (1996) (hereinafter "Siegel, *"The Rule of Love"*); *United States v. Hayes*, 555 U.S. 415, 427 (2009) ("As of 1996, only about one-third of the States had criminal statutes that specifically proscribed *domestic* violence.") (emphasis in original). As *Rahimi* recognized:

> Well entrenched in the common law, the surety laws could be invoked to prevent all forms of violence, including spousal abuse. As Blackstone explained, "[w]ives [could] demand [sureties] against their husbands; or husbands, if necessary, against their wives." These often took the form of a surety of the peace, meaning that the defendant pledged to "keep the peace." Wives also demanded sureties for good behavior, whereby a husband pledged to "demean and behave himself well."

144 S.Ct. at 1900 (citations omitted) (alternations in original).

"[S]urety laws also targeted the misuse of firearms." *Id.* Massachusetts, for example, passed a law in 1795, "authorizing justices of the peace to 'arrest' all who 'go armed offensively [and] require of the offender to find sureties for his keeping the peace." *Id.* (citations omitted). Massachusetts later amended its surety laws, "authorizing the imposition of bonds from individuals '[who went] armed with a dirk, dagger, sword, pistol, or other offensive and dangerous weapon.'" *Id.* (citations omitted). "[T]he Commonwealth required any person who was reasonably likely to 'breach the peace,' and who, standing accused, could not prove a special need for self-defense, to pose a bond before publicly carrying a firearm." *Bruen*, 597 U.S. at 56. Massachusetts was not an outlier. *See id.* at 56, n.23 (collecting statutes).

Significant procedural protections often accompanied these laws. *Rahimi*, 144 S.Ct. at 1900. "Before the accused could be compelled to post a bond for 'go[ing] armed,' a complaint had to be made to a judge or justice of the peace by 'any person having reasonable cause to fear' that the accused would do him harm or breach the peace." *Id.* If, after hearing the evidence, the magistrate determined that cause existed for the charge, they would summon the accused who then "could respond to the allegations."

Id. These surety laws "provided a mechanism for preventing violence before it occurred." *Id.*

The other regime, "going armed" laws, "provided a mechanism for punishing those who had menaced others with firearms." *Id.* These laws stem from the common law prohibition on affrays. *Id.* at 1900–01 (noting "affray" "[d]erived from the French word 'affraier,' meaning 'to terrify'"). "[T]he going armed laws prohibited 'riding or going armed, with dangerous or unusual weapons, [to] terrify[] the good people of the land'" because "[s]uch conduct disrupted the 'public order' and 'le[d] almost necessarily to actual violence.'" *Id.* at 1901 (citations omitted). These acts were punished "with 'forfeiture of the arms . . . and imprisonment.'" *Id.*

This system was incorporated into American jurisprudence through the common law and into American laws through legislation. The North Carolina Supreme Court, for example, recognized "[t]he offense of riding or going armed with unusual and dangerous weapons, to the terror of the people, is an offense at common law, and is indictable in this State." *State v. Huntly*, 25 N.C. 418, 418 (1843). And "[a]t least four States—Massachusetts, New Hampshire, North Carolina, and Virginia—expressly codified prohibitions on going armed." *Rahimi*, 144 S.Ct. at 1901 (collecting statutes). South Carolina followed in 1870, "authoriz[ing] the arrest of 'all

who go armed offensively, to the terror of the people,' parroting earlier statutes that codified the common-law offense." *Id.* (citations omitted) (noting South Carolina was not an outliner).

Of course, some of these regulations would be impermissible under other constitutional provisions today. *See Jackson*, No. 22-2879, 2024 WL11155, at *5. But categorical prohibitions based on a perceived risk of danger taken together with surety and going armed laws confirm what common sense suggests: When an individual poses an unacceptable risk of physical harm to another or presents a special danger of firearm misuse, that individual may be disarmed. *See Rahimi*, 144 S.Ct. at 1898–1901; *Jackson*, No. 22-2879, 2024 WL11155, at *6–*7. As *Rahimi* emphasized, it "do[es] not suggest that the Second Amendment prohibits the enactment of laws banning the possession of guns by categories of persons thought by a legislature to present a special danger of misuse." 144 S.Ct. at 1901 (citing *Heller*, 554 U.S. at 626).

Section 724.26(2)(*a*) may not be identical to these founding era regimes, "but it does not need to be." *Rahimi*, 144 S.Ct. at 1901. Both its "why" and "how" are consistent with the principles that underpin our Nation's regulatory tradition.

The "why"—section 724.26(2)(*a*) burdens an individual's right to possess a firearm when they are subject to a domestic abuse protective order to mitigate the risk of harm that individual poses to the physical safety of their intimate partner and the public. Domestic violence is a serious problem. *In re J.P.*, 574 N.W.2d 340, 344 (Iowa 1998); Siegel, *"The Rule of Love"*, 105 YALE L.J. at 2118. When combined with firearms, its consequences are lethal. "All too often," as the Supreme Court observed a decade ago, "the only difference between a battered woman and a dead woman is the presence of a gun." *United States v. Castleman*, 572 U.S. 157, 160 (2014). And these lethal consequences are not limited to an intimate partner—"[r]obust findings illuminate how intimate partner homicides frequently include additional fatal victims." Kelly Roskam, et al., *The Case for Domestic Violence Protective Order Firearm Prohibitions Under* Bruen, 51 FORDHAM URB. L. J. 221, 253 (2023) (hereinafter "Roskam, *Firearm Prohibitions Under Bruen*").

Proscribing an individual subject to a domestic abuse protective order from possessing firearms recognizes that such individuals when armed are a threat to human life and public safety. As applied to Cole, the protective order here expressly prohibited physical force against his intimate partner and from committing additional acts of abuse or threats of abuse. Att. to

D0033 (FECR062466) at 1–2; *see* 18 U.S.C. § 922(g)(8)(C)(ii). Cole consented to the order. Att. to D0033 (FECR062466) at 1–2; D0047 (FECR062466) at 8:4–9; *Stewart*, 687 N.W.2d at 117. The entry of this order recognizes that the court found, and Cole agreed, that he posed an unacceptable risk of harm to his intimate partner and presented a special danger of firearm misuse. Section 724.26(2)(*a*) mitigates that increased, and indeed unacceptable, risk of harm and firearm misuse by prohibiting him from possessing firearms while the order is in effect.

This "why" is consistent with the principles underpinning the regulatory traditions of surety and going armed laws and laws on categories of persons who pose an unacceptable risk of danger. *Rahimi*, 144 S.Ct. at 1901; *Jackson*, No. 22-2879, 2024 WL11155, at *5–*7; *Kanter*, 919 F.3d at 457–58 (Barrett, J., dissenting). "There is little question that surety laws applied to the threat of future interpersonal violence." *Rahimi*, 144 S.Ct. at 1939 (Thomas, J., dissenting); *id.* at 1902–03 (recognizing that the dissent agrees Section 922(g)(8)'s "why" is sufficiently similar to historical traditions). Indeed, "[t]he right to demand sureties in cases of *potential* domestic violence was recognized not only by treatises, but also the founding-era courts. Records from before and after the Second Amendment's ratification reflect that spouses successfully demanded

sureties *when they feared* future domestic violence." *Id.* at 1939 (Thomas, J., dissenting) (emphasis added). And categorical bans applied to groups perceived to be dangerous with no "requirement for an individualized determination of dangerousness as to each person[.]" *Jackson*, No. 22-2879, 2024 WL11155, at *6; Bellesiles, *Gun Laws in Early America*, 16 LAW & HIST. REV. at 574, 578–79, 584–85. "Not all persons disarmed under historical precedents—not all Protestants or Catholics in England, not all Native Americans, not all Catholics in Maryland, not all early Americans who declined to swear an oath of loyalty—were violent or dangerous persons." *Jackson*, No. 22-2879, 2024 WL11155, at *6. Taken together these traditions reveal principles "relevantly similar" to section 724.26(2)(*a*)'s "why."

The "how"—section 724.26(2)(*a*) proscribes individuals subject to a protective order from possessing firearms only as long as the protective order remains in effect. It approaches this burden case-by-case. After a hearing of which Cole was present and participated, the court entered a one-year protective order by consent agreement. Att. to D0033 (FECR062466) at 1–2.

"[L]ike surety bonds of limited duration, Section 922(g)(8)'s restriction was temporary as applied to [Cole]." *Rahimi*, 144 S.Ct. at 1902;

see Att. to D0033 (FECR062466) at 1. Under section 724.26(2)(*a*), like founding-era laws that allowed firearm rights to be regained once the perceived danger abated, Cole could regain his right to possess firearms once the protective order expired. Greenlee, *The Historical Justification*, 20 WY. L. REV. at 268. Unlike categorical restrictions that disarmed individuals based on their association with a group perceived as dangerous, section 724.26(2)(*a*) reflects a case-by-case approach. In this way, it is more focused than the categorical bans that came before it. *See Rahimi*, 144 S.Ct. at 1902. Rather, section 724.26(2)(*a*), like surety laws, presume that Cole had a right to possess firearms and only burdened that right once he was found to pose an unacceptable risk of harm to his intimate partner's physical safety and present a special danger of firearm misuse. *Id.*

In reasoning by analogy from this history, section 724.26(2)(*a*)'s "why" and "how" are consistent with the principles that underpin our regulatory tradition. It is not a "dead ringer" for a founding-era law nor does it have a "historical twin." *Rahimi*, 144 S.Ct. at 1898. But much like founding-era surety and going armed laws and laws that disarmed groups that posed a risk of danger, section 724.26(2)(*a*) prohibited Cole from possessing firearms only when he was subject to a protective order under Section 922(g)(8) because of the unacceptable risk of harm he posed to his

intimate partner. *Rahimi*, 144 S.Ct. at 1896, 1898 (recognizing the facts of *Rahimi* "fit[] comfortably within [our] tradition."). This is "analogous enough" "to pass constitutional muster." *Id.* The Court should reject Cole's facial and as-applied challenges under the Second Amendment.

B. Article I, section 1A of the Iowa Constitution applies prospectively only, and in any event Iowa Code section 724.26(2)(*a*) satisfies Article I, section 1A's "strict scrutiny" test.

In 2022 Iowa adopted a constitutional amendment on the right to keep and bear arms. Iowa Acts 2019 (88 G.A.) ch. 168, S.J.R. 18, § 1; Iowa Acts 2021 (89 G.A.) ch. 185, S.J.R. 7, § 1. It states:

> The right of the people to keep and bear arms shall not be infringed. The sovereign state of Iowa affirms and recognizes this right to be a fundamental individual right. Any and all restrictions of this right shall be subject to strict scrutiny.

Iowa Const. art. I, § 1A.

Because Article I, section 1A operates prospectively only, and because section 724.26(2)(*a*) satisfies Article I, section 1A's strict scrutiny test, this Court should affirm.

1. Article I, section 1A's text shows no intent that it applies retroactively.

As Cole recognizes, Article I, section 1A took effect after he was subject to the domestic abuse protective order and after he unlawfully possessed firearms under section 724.26(2)(*a*). Appellant's Br. at 30;

D0014 (FECR062327) at 1–2; D0014 (FECR062466) at 2; Att. to D0033 (FECR062466) at 1.

Generally, constitutional provisions do not apply retroactively. *See State v. Bates*, 305 N.W.2d 426, 427 (Iowa 1981). Unless the text expressly shows an intent that the constitutional provision applies retroactively, courts apply them prospectively only. *See id.*; *see also State v. Harrison*, 914 N.W.2d 178, 205 (Iowa 2018) (citing *Dindinger v. Allsteel, Inc.*, 860 N.W.2d 557, 563 (Iowa 2015) ("It is well established that a statute is presumed to be prospective only unless expressly made retrospective.")); *see Jackson v. State*, 966 P.2d 1046, 1052 (Colo. 1998) ("Unless the language of a constitutional amendment manifests an intent to make its provisions retroactive in operation, we must presume that the amendment only has prospective application."); *see also State v. Belgarde*, 837 P.2d 599, 721–22 (Wash. 1992) ("Rules used to determine when a statute operates retroactively can also be used to determine if a constitutional amendment operates retroactively.").

Article I, section 1A "includes no language demonstrating an intent [] that it apply retrospectively[.]" *See Bates*, 305 N.W.2d at 427. Consistent with the general rule, Article I, section 1A applies prospectively only. *See id.*; *see also State v. Merritt*, 467 S.W.3d 808 (Mo. 2015).

Cole contends that Article I, section 1A nonetheless applies retroactively because it codified an implicit, pre-existing right to possess firearms under the Iowa Constitution. *See* Appellant's Br. at 32. While the Second Amendment "codified a pre-existing right," Article I, section 1A announced a fundamental right under the Iowa Constitution and requires restrictions of that right pass strict scrutiny. *Heller*, 554 U.S. at 592.

In 2008, *Heller* announced "that the Second Amendment conferred an individual right to keep and bear arms." 554 U.S. at 595, 635. Two years later, *McDonald* held "that the Second Amendment right is fully applicable to the States" through the Fourteenth Amendment. 561 U.S. at 750, 791. It concluded "that the Framers and ratifiers of the Fourteenth Amendment counted the right to keep and bear arms among those fundamental rights necessary to our system of ordered liberty," and noted that "[i]n 1868, 22 of the 37 States in the Union had state constitutional provisions explicitly protecting the right to keep and bear arms." *Id.* at 777–78.

Iowa was not among the States in 1868 that adopted a Second Amendment counterpart, and before Article I, section 1A, Iowa's Constitution included no such language. *State v. Downey*, 893 N.W.2d 603, 605 (Iowa 2017) ("The framers of the Iowa Constitution chose not to include any language in our constitution concerning the right to bear

arms."); *see* Iowa Acts 2019 (88 G.A.) ch. 168, S.J.R. 18, § 1; *see also* Iowa Acts 2021 (89 G.A.) ch. 185, S.J.R. 7, § 1. So after *Heller* and *McDonald*, Iowa courts, like courts across the county, applied the predominant two-step framework generally requiring only intermediate scrutiny when addressing Second Amendment challenges. *See State v. Grimes*, No. 12-0675, 2012 WL 5601848, at *1 (Iowa Ct. App. Nov. 15, 2012) (collecting cases).

While *Heller* declined "to establish a level of scrutiny for evaluating Second Amendment restrictions" (instead stating that challenged regulation would fail under any level of scrutiny), courts post-*Heller* determined the appropriate level of scrutiny based on "how close the law [came] to the core of the Second Amendment right." *Bruen*, 597 U.S. at 18–19; *Heller*, 554 U.S. at 628–29, 634. "If a 'core' Second Amendment right is burdened" (self-defense in the home) "courts appl[ied] 'strict scrutiny' and ask[ed] whether the Government can prove that the law is 'narrowly tailored to achieve a compelling government interest.'" *Bruen*, 597 U.S. at 18–19 (citations omitted). If the regulation did not burden self-defense in the home, courts "appl[ied] intermediate scrutiny and consider[ed] whether the Government [could] show that the regulation [was]

'substantially related to the achievement of an important governmental interest.'" *Id.* at 19 (citations omitted).

Fundamental rights are generally subject to strict scrutiny. *See State v. Groves*, 742 N.W.2d 90, 92 (Iowa 2007). But there are exceptions to this rule. *See Planned Parenthood of Heartland, Inc. v. Reynolds ex rel. State*, 9 N.W.3d 37, 51 (Iowa 2024). Although voting and free speech "are both fundamental rights enumerated in the Federal and State Constitutions," Iowa courts, like federal courts, apply "forms of intermediate scrutiny" "when evaluating burdens imposed by election laws and commercial speech and content-neutral speech regulations." *Id.*; *see Turner Broadcasting System, Inc. v. F.C.C.*, 512 U.S. 622, 637 (1994) ("[N]ot every interference with speech triggers the same degree of scrutiny under the First Amendment."); *Burdick v. Takushi*, 504 U.S. 428, 433–34 (1992) (recognizing "voting is of the most fundamental significance under our constitutional structure" but applying "a more flexible standard" than strict scrutiny).

"As with all federal constitutional rights, our state constitution can provide greater rights to Iowans." *Downey*, 893 N.W.2d at 605 (citing *State v. Ochoa*, 792 N.W.2d 260, 264–68 (Iowa 2010)). Article I, section 1A did that. Iowa did not adopt the Second Amendment. Iowa Const. art. I, § 1A;

U.S. Const. amend. II; *see Ochoa*, 792 N.W.2d at 267. Instead, it added a right to keep and bear arms under the state constitution and defined the scope of that right by marking the State's authority to regulate it. Iowa Const. art. I, § 1A; *see Downey*, 893 N.W2d at 605.

This Court should decline Cole's invitation to apply a constitutional amendment retroactively to his domestic abuse protective order and criminal convictions.

2. Section 724.26(2)(a) satisfies Article I, section 1A because it is narrowly tailored to achieve the State's compelling interests.

Article I, section 1A requires that restrictions on the right to keep and bear arms pass strict scrutiny. When applying strict scrutiny, courts generally "determine whether the statute is narrowly tailored to serve a compelling state interest." *Groves*, 742 N.W.2d at 93. But "there is no settled analysis as to how strict scrutiny applies to laws affecting the fundamental right to bear arms, which has historically been interpreted to have accepted limitations." *Dotson v. Kander*, 464 S.W.3d 190, 197 (Mo. 2015); *see Rahimi*, 144 S.Ct. at 1924; *see also State v. Webb*, 144 So.3d 971, 977 (La. 2014).

While "[s]trict scrutiny is the most rigorous test for determining whether a law is constitutional," it is not insurmountable. *Webb*, 144 So.3d

at 977–78; *In re Guardianship of L.Y.*, 968 N.W.2d 882, 898 (Iowa 2022); Adam Winkler*, Fatal in Theory and Strict in Fact: An Empirical Analysis of Strict Scrutiny in the Federal Courts*, 59 VAND. L. REV. 793, 795–96, 869–70 (2006) ("Courts routinely uphold laws when applying strict scrutiny, and they do so in every major area of law."). Even fundamental rights are not absolute. *See Hensler v. City of Davenport*, 790 N.W.2d 569, 583 (Iowa 2010) ("[T]he fundamental parental right to exercise care, custody, and control over children is not absolute. . . . [W]hen the child's welfare is threatened, the state can use a wide range of powers to limit parental freedom and authority."); *Atwood v. Vilsack*, 725 N.W.2d 641, (Iowa 2006) ("Although the liberty interest of an individual to be free from physical restraint has been described as 'a paradigmatic fundamental right,' the Supreme Court has noted that the interest is not absolute."); *State v. Hernandez-Lopez*, 639 N.W.2d 226, 238–40 (Iowa 2002) ("[I]n circumstances where the government interest is 'sufficiently weighty,' an individual's fundamental liberty interest may 'be subordinated to the greater needs of society.'"). The fundamental "right of the people to keep and bear arms" is no different, particularly where it has always been subject to limitations. Iowa Const. art. I, § 1A; *see Heller*, 554 U.S. at 626 ("Like most rights, the right secured by the Second Amendment is not

unlimited."); *see also Rahimi*, 144 S.Ct. at 1924 (Barrett, J., concurring) ("[T]he Second Amendment is not absolute.").

Article I, section 1A announces that the right to keep and bear arms is fundamental. A democratically enacted law, like section 724.26(2)(*a*), can infringe a fundamental right, like the right to keep and bear arms, when it is narrowly tailored to serve a compelling state interest. Section 724.26(2)(*a*) satisfies Article I, section 1A.

a. Protecting human life and public safety are compelling state interests.

The State has two compelling interests in temporarily disarming individuals subject to a domestic abuse protective order: protecting human life and public safety.

Cole recognizes on appeal, as he did below, that protecting intimate partners from domestic violence is a compelling government interest. D0054 (FECR062466) at 7:15–20; *see* Appellant's Br. at 17, 33–34; *see also State v. Musser*, 721 N.W.2d 734, 748 (Iowa 2006) (concluding protecting human life is a compelling state interest); *Cruzan v. Director, Dep't of Health*, 497 U.S. 261, 282 (1990) (holding "a State [has] an unqualified interest in the preservation of human life"); *see Rew v. Bergstrom*, 845 N.W.2d 764, 779 (Minn. 2014) ("There is little question that the prevention of domestic violence and the protection of the heath and safety of domestic-

abuse victims and members of their household and family are significant government interests."). Ensuring public safety is a compelling interest, too. *State v. Kellogg*, 534 N.W.2d 431, 434 (Iowa 1995) (recognizing public safety as a compelling interest); *United States v. Salerno*, 481 U.S. 739, 750, 755 (1987) (noting a government's "concern for the safety and indeed the lives of its citizens" and "the Government's general interest in preventing crime [are] compelling"); *see also Rahimi*, 144 S.Ct. at 1906 (Sotomayor, J., concurring) ("Because domestic violence is rarely confined to the intimate partner that receives the protective order, the Government's interest extends even further.").

Domestic violence "is a serious problem in Iowa and the nation as a whole." *In re J.P.*, 574 N.W.2d at 344; *State v. Davis*, 493 N.W.2d 820, 824 (Iowa 1992) (recognizing domestic violence is "a problem that has reached alarming proportions in this state"); Siegel, *"The Rule of Love"*, 105 YALE L.J. at 2118 ("[T]hirty-one percent of all women murdered in America are killed by their husbands, ex-husbands, or lovers."). "In the United States, as many as one in four women and one in nine men are victims of domestic violence." Martin R. Huecker, *Domestic Violence*, PUB. MED., *available at* https://www.ncbi.nlm.nih.gov/books/NBK499891/#article-40654.s2 (last visited August 9, 2024) (noting "[d]omestic violence is thought to be

underreported") (hereinafter "Huecker, *Domestic Violence*"). It affects those in the intimate relationship, their families, co-workers, and community. *Id.*; *Domestic Violence Fatality Chronicle, January 1995–September 2023*, IOWA ATTORNEY GENERAL'S OFFICE at 4, 35, *available at* https://www.iowaattorneygeneral.gov/media/documents/Complete_DV_Fatality_Chronicle_Narr_9D5545EAD6731.pdf (noting 74 bystanders were killed as result of domestic violence) (hereinafter "*Domestic Violence Fatality Chronicle*").

When combined with firearms, its consequences are especially serious. Roskam, *Firearm Prohibitions Under Bruen*, 51 FORDHAM URB. L. J. at 246–49. "Over half of all intimate partner homicides [] are by firearm." Geller, L.B., et al., *The Role of Domestic Violence in Fatal Mass Shootings in the United States, 2014–2019*, Inj. Epidemiology 8, 38 at 2 (2021), *available at* https://injepijournal.biomedcentral.com/articles/10.1186/s40621-021-00330-0 (last visited August 9, 2024) (hereinafter "Geller, *Domestic Violence in Fatal Mass Shootings*"). Iowa shares this grim reality: more than half of the domestic abusers that killed their partner or a bystander in Iowa between 1995 and 2023 used a firearm. *Domestic Violence Fatality Chronicle* at 1, 4, 6.

These lethal consequences are not limited to those in the intimate partner relationship, either. "Robust findings illuminate how intimate partner homicides frequently include additional fatal victims." Roskam, *Firearm Prohibitions Under Bruen*, 51 FORDHAM URB. L. J. at 253. "[B]etween the years 2003 and 2009, nearly 30% of [intimate partner homicide] resulted in multiple deaths." *Id.* at 253. "Indeed, men who used a firearm in a domestic homicide were almost two times as likely to kill at least one additional victim as men who killed their intimate partners by other means." *Id.*; *see Rahimi*, 144 S.Ct. at 1906 (Sotomayor, J., concurring) ("In roughly a quarter of cases where an abuser killed an intimate partner, the abuser also killed someone else, such as a child, family member, or roommate."). And it affects the community at large, including law enforcement. Huecker, *Domestic Violence*, PUB. MED ("The national economic cost of domestic and family violence is estimated to be over 12 billion dollars per year."); Federal Bureau of Investigation, *Law Enforcement Officers Killed and Assaulted 2019* Table 23, *available at* https://ucr.fbi.gov/leoka/2019/resource-pages/tables/table-23.xls (last visited August 8, 2024) (noting 9% of officers killed in the line of duty between 2015 and 2019 were responding to either domestic disturbance or violence calls); *see also Rahimi*, 144 S.Ct. at 1906 (Sotomayor, J.,

concurring) ("[O]ne study found that domestic disputes were the most dangerous type of call for responding officers, causing more officer deaths with a firearm than any other type of call.") (citations omitted).

"While firearms are used in intimate relationships to kill, they are also used to threaten and intimidate. Around 4.5 million women in the U.S. have been threatened with a firearm, and nearly 1 million women have been shot or shot at by an intimate partner." Geller, *Domestic Violence in Fatal Mass Shootings*, at 2. So while not always fatal, firearm-involved domestic abuse poses a significant threat to human life. Roskam, *Firearm Prohibitions Under Bruen*, 51 FORDHAM URB. L. J. at 248–50. One study showed that "[w]hen an abuser has access to firearms, the risk the female partner will be killed increases by 400%." Geller, *Domestic Violence in Fatal Mass Shootings*, at 2; Roskam, *Firearm Prohibitions Under Bruen*, 51 FORDHAM URB. L. J. at 247–48. More yet, "intimate partner violence that involves a firearm has a significantly higher likelihood of ending in homicide compared to intimate partner violence that involves other weapons." Roskam, *Firearm Prohibitions Under Bruen*, 51 FORDHAM URB. L. J. at 248; *United States v. Skoien*, 614 F.3d 638, 643 (7th Cir. 2010) (citing Linda E. Saltzman, et al., *Weapon Involvement and Injury Outcomes in Family and Intimate Assaults*, 267 J. AM. MEDICAL ASS'N 3043

(1992)) ("Domestic assaults with firearms are approximately twelve times more likely to end in the victim's death than are assaults by knives or fists."); *Castleman*, 572 U.S. at 160 ("All too often, . . . the only difference between a battered woman and a dead woman is the presence of a gun.").

This much is clear: domestic abuse and firearms are a dangerous, if not deadly, combination. The State has compelling interests in protecting human life and ensuring public safety against firearm-related domestic abuse. Section 724.26(2)(*a*) serves those important interests.

b. Section 724.16(2)(a) *is narrowly tailored to achieve the State's compelling interests.*

Section 724.26(2)(*a*) is narrowly tailored to protect human life and the public from firearm-related domestic abuse. It does so by making it a class "D" felony to possess a firearm while subject to a domestic abuse protective order. Iowa Code § 724.26(2)(*a*); *see* Iowa Code § 236.5. Although protective orders under chapter 236 may prohibit an individual from possessing a firearm independent of any criminal proceeding, section 724.26(2)(*a*) deters individuals subject to a protective order from possessing firearms by punishing violators with criminal penalties—imprisonment not to exceed five years and "a fine of at least one thousand twenty-five dollars but not more than ten thousand two hundred forty-five

dollars." Iowa Code § 724.26(2)(*a*); Iowa Code § 902.9(1)(*e*); *Christenson*, 472 N.W.2d at 280 ("[C]hapter 236 is protective rather than punitive.").

Section 724.26(2)(*a*)'s reach is narrow and closely tied to the interests at stake. The statute does not limit the right of all persons, or even ordinary, law-abiding citizens, to keep and bear arms. It proscribes persons subject to domestic abuse protective orders from possessing firearms and does so only while the order is in place. Iowa Code §§ 724.26(2)(*a*), (6). These are reasonable, limited restrictions narrowly tailored to address the State's compelling interests in protecting human life and ensuring public safety. *See State in Int. of D.W.*, 125 So.3d 1180, 1194 (La. Ct. App. 2013) (holding juvenile handguns prohibition survived strict scrutiny review).

Important to the narrow tailoring analysis is the recognition "that the risk of domestic violence escalates shortly after the victim attempts to separate from the abuser." Tom Lininger, *A Better Way to Disarm Batterers*, 54 HASTINGS L.J. 525, 567 (2003). One researcher "coined the phrase 'separation assault' to describe the tendency of batterers to commit retaliatory abuse immediately after their victims attempt to escape the relationship (e.g., through obtaining a restraining order)." *Id.*; Geller, *Domestic Violence in Fatal Mass Shootings*, at 2 ("Risk for homicide is also elevated when a woman attempts to, or successfully does, leave her abusive

partner."). Understanding that "a petition for a restraining order can 'fuel violent retaliation' by the respondent" and that firearms greatly increase the risk of intimate partner homicide, Iowa's legislature wisely prohibited those subject to a domestic abuse protective order from possessing firearms. Lininger, *A Better Way to Disarm Batterers*, 54 HASTINGS L.J. at 567; Geller, *Domestic Violence in Fatal Mass Shootings*, at 2; Iowa Code § 724.26(2)(*a*).

Section 724.26(2)(*a*) keeps firearms out of the hands of individuals who have been judicially determined to pose an unacceptable risk of harm to their intimate partner's physical safety and that present a special danger of firearm misuse. Cole contends domestic abuse protective orders, like his, without express findings that the individual represents a credible threat to the physical safety of their intimate partner are too loosely related to the State's compelling interests. Appellant's Br. at 33–35. Not so. The entry of such protective orders means a court decided it was necessary to not only restrain the individual from harassing, stalking, or threatening their intimate partner but it was also necessary to prohibit the use, attempted use, or threatened use of physical force against their intimate partner even if it did not expressly find the individual represented a credible threat to the

physical safety of their intimate partner. *See* Iowa Code § 724.26(2)(*a*); 18 U.S.C. § 922(g)(8). Cole's claim rings hollow when he agreed to its entry.

Recall that section 724.26(2)(*a*) proscribes persons subject to a protective order under Section 922(g)(8) from possessing firearms. Relying on Section 922(g)(8)'s requirements, section 724.26(2)(*a*) prohibits an individual subject to a domestic abuse protective order from possessing a firearm *only if* that order (1) was issued after a hearing of which they received actual notice and had an opportunity to participate, (2) restrained them from harassing, stalking or threatening their intimate partner, (3) and either included a finding that they represented a credible threat to the physical safety of their intimate partner or prohibited the use, attempted use, or threated use of physical force against their intimate partner. Iowa Code § 724.26(2)(*a*); 18 U.S.C. § 922(g)(8) (noting this section does not require a domestic abuse finding). A court's decision to enter a protective order under Section 922(g)(8) reflects that it found the individual posed an unacceptable risk of harm to their intimate partner. *See Boyd*, 999 F.3d at 187 ("[W]e will not be so obtuse as to assume a court lacked credible concerns about a defendant's dangerousness merely because it does not say so expressly."); *cf. Opat v. Ludeking*, 666 N.W.2d 597, 604 (Iowa 2003) ("[A] party requesting injunctive relief must establish '(1) an invasion or

threatened invasion of a right, (2) substantial injury or damages will result unless an injunction is granted, and (3) no adequate legal remedy is available.'").

On its face, section 724.26(2)(*a*) is narrowly tailored to serve the State's compelling interests in protecting human life and ensuring public safety. Domestic abuse is a dangerous problem, and when firearms are added to the mix it all too often becomes a lethal one. *Castleman*, 572 U.S. at 160; *In re J.P.*, 574 N.W.2d at 344. As Cole seems to (correctly) acknowledge, prohibiting individuals subject to domestic abuse protective orders that expressly find the individual committed domestic violence or that they represent a credible threat to the physical safety of their intimate partner from possessing firearms are circumstances in which section 724.26(2)(*a*)'s firearm prohibition are narrowly tailored and therefore constitutionally valid. *See Bonilla v. Iowa Board of Parole*, 930 N.W.2d 751, 764 (Iowa 2019) ("To succeed on a facial challenge, the challenger must show that a statute is totally invalid and therefore, incapable of *any valid application*.") (cleaned up) (emphasis in original).

As applied to Cole's circumstances, section 724.26(2)(*a*) is also narrowly tailored to serve the State's compelling interests (another valid application). Cole complains his protective order lacks findings that he

committed domestic abuse and that he represents a credible threat to the physical safety of his intimate partner. Neither complaint advances his as-applied challenge. First, Cole consented to the protective order. By consenting to the protective order, Cole agreed that such an order was indeed necessary because of the threat he posed to his intimate partner's physical safety. *See Stewart*, 687 N.W.2d at 117. Second, the court found it necessary to both restrain Cole from harassing, stalking, or threatening his intimate partner and prohibit the use, attempted use, or threatened use of physical force against his intimate partner. This order recognizes a judicial determination that Cole posed an unacceptable risk of harm to his intimate partner's physical safety and presented a special danger of firearm misuse. *See Reese*, 627 F.3d at 802, 804 (finding Section 922(g)(8) prohibits the possession of firearms by a narrow class of persons "who, based on their past behavior, are more likely to engage in domestic violence," and determining that although intermediate scrutiny is the appropriate standard, the defendant's as-applied challenge to an order lacking a "credible threat" finding under Section 922(8)(g)(C)(i) would fail under strict scrutiny, too). Section 724.26.(2)(*a*) properly demarcates where the risk of harm to human life and the public is too great by proscribing

persons subject to protective orders under Section 922(g)(8)(C)(ii) from possessing firearms.

More yet, Cole was subject to a protective order under chapter 236 which by its entry recognizes a judicial determination that Cole posed a credible threat to his intimate partner's safety. *See* Iowa Code § 236.5(2) (allowing courts to "extend the order if the court . . . finds that the defendant *continues to pose a threat* to the safety of the victim") (emphasis added); *see also Clark*, No. 14-0575, 2014 WL 6682397, at *4. The order also shows that the court found Cole committed acts of abuse or threats of abuse because it prohibited him "from committing *further* acts of abuse or threats of abuse," and "from any contact with" his intimate partner. Att. to D0033 (FECR062466) at 1–2 (emphasis added). After a hearing (at which Cole participated) the court determined it was necessary to enter a protective order (that Cole consented to) that retrained Cole from threatening, assaulting, attacking, harassing, or otherwise abusing his intimate partner, and prohibited him from using, attempting to use, or threatening to use physical force against his intimate partner. Att. to D0033 (FECR062466) at 1–2; D0047 (FECR062466) at 8:4–9; *see Boyd*, 999 F.3d at 187; *see also Stewart*, 687 N.W.2d at 117. If the court believed such an order was unnecessary, "it could have issued no order at all." Iowa Code

§ 236.5; *see Boyd*, 999 F.3d at 187. "It instead issued the type of order we would expect when faced with a person who posed a credible danger to his" intimate partner and family. *See Boyd*, 999 F.3d at 187.

Domestic abuse and firearms are a dangerous (if not lethal) combination. Section 724.26(2)(*a*) is narrowly tailored to serve the State's compelling interests in protecting human life and ensuring public safety. Because section 724.26(2)(*a*) on its face and as applied to Cole's circumstances satisfies Article I, section 1A's strict scrutiny standard, this Court should affirm.

II. No Resentencing Hearing is Necessary to Resolve the Discrepancy Between the Oral Pronouncement of Sentence and the Written Sentence.

Preservation of Error

The State does not contest error preservation. *State v. Lathrop*, 781 N.W.2d 288, 292–93 (Iowa 2010).

Standard of Review

Appellate courts review illegal sentence challenges for errors at law. *State v. Parker*, 747 N.W.2d 196, 203 (Iowa 2008).

Merits

"[T]he court may suspend the sentence and place the defendant on probation upon such terms and conditions as it may require." Iowa Code § 907.3. "The legislature has given the courts broad, but not unlimited,

authority in establishing the conditions of probation." *Lathrop*, 781 N.W.2d at 293.

Consistent with the parties' joint-recommendation, the oral sentence pronounced suspended Cole's concurrent five-year prison sentence and ordered concurrent probation terms. D0047 (FECR062466) at 9:13–10:10, 12:8–15:12. It also advised "if the probations are ever revoked, the sentences may be ordered to be served consecutively." D0047 (FECR062466) at 15:18–21. The written sentence, however, said more—"If probations are ever revoked, sentences shall run consecutive." D0043 (FECR062327) at 1; D0039 (FECR062466) at 1; *see State v. Collins*, No. 21-0638, 2022 WL 949747, at * (Iowa Ct. App. Mar. 30, 2022) (discussing Iowa Code § 908.11(4) which "allow[s] the probation violation court to, at most, 'revoke the probation . . . and require the defendant *to serve the sentence imposed or any lesser sentence*'") (emphasis in original).

But "[a] rule of nearly universal application is that 'where there is a discrepancy between the oral pronouncement of sentence and the written judgment and commitment, the oral pronouncement of sentence controls.'" *State v. Hess*, 533 N.W.2d 525, 528 (Iowa 1995) (citations omitted). Whether an accurate warning or not, the court's advice at sentencing on potential probation revocation consequences is not part of the sentence, or

a condition of probation. *See* D0047 (FECR062466) at 14:24–15:4, 15:18–21; *see also State v. Hogge*, 420 N.W.2d 458, 459–60 (Iowa 1988). No resentencing hearing is necessary as this matter can be addressed through the issuance of a corrected sentencing order consistent with the court's oral pronouncement. *See State v. West*, No. 23-0973, 2024 WL 2043148, at *3 (Iowa Ct. App. May 8, 2024); *State v. Boruch*, No. 14-1757, 2016 WL 4801325, at *6 (Iowa Ct. App. Sept. 14, 2016).

CONCLUSION

Section 724.26(2)(*a*) satisfies *Bruen*'s two-part test under the Second Amendment. Because Article I, section 1A applies prospectively only, this Court should decline to consider Cole's state constitution challenge. In any event, section 724.26(2)(*a*) also satisfies Article I, section 1A's strict scrutiny test. This court should affirm Cole's convictions. But because the record shows a discrepancy between the oral sentencing pronouncement and the subsequent written judgment entry, remand for the limited purpose of a correcting the sentencing order is appropriate.

REQUEST FOR NONORAL SUBMISSION

The parties' briefs are enough to resolve this appeal. Oral argument is not necessary.

Respectfully submitted,

BRENNA BIRD
Attorney General of Iowa

OLIVIA D. BROOKS
Assistant Attorney General
Hoover State Office Bldg., 2nd Fl.
Des Moines, Iowa 50319
(515) 281-5976
Olivia.Brooks@ag.iowa.gov

CERTIFICATE OF COMPLIANCE

This brief complies with the typeface requirements and type-volume limitation of Iowa Rs. App. P. 6.903(1)(g) and 6.903(1)(i)(1) or (2) because:

- This brief has been prepared in a proportionally spaced typeface using Georgia in size 14 and contains **12,607** words, excluding the parts of the brief exempted by Iowa R. App. P. 6.903(1)(i)(1).

Dated: August 16, 2024

OLIVIA D. BROOKS
Assistant Attorney General
Hoover State Office Bldg., 2nd Fl.
Des Moines, Iowa 50319
(515) 281-5976
Olivia.Brooks@ag.iowa.gov