IN THE SUPREME COURT OF IOWA
Supreme Court No. 24-0261
Polk County No. SRCR372647

STATE OF IOWA,
Plaintiff–Appellee,

vs.

KEVIN DWAYNE WOODS, JR.,
Defendant–Appellant.

APPEAL FROM THE IOWA DISTRICT COURT
FOR POLK COUNTY
THE HONORABLE GREGORY D. BRANDT, JUDGE

BRIEF FOR APPELLEE

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STATEMENT OF THE ISSUE PRESENTED FOR REVIEW

I. Whether Iowa Code section 724.8B, which prohibits a person illegally possessing a controlled substance from also carrying dangerous weapons, violates Article I, Section 1A of the Iowa Constitution, the Second Amendment to the United States Constitution, or federal due process protections?

ROUTING STATEMENT

Woods challenges Iowa Code section 724.8B under Article I, Section 1A of the Iowa Constitution, the United States Supreme Court's two-part test for applying the Second Amendment to the United States Constitution announced in *New York State Rifle & Pistol Association, Inc. v. Bruen*, 597 U.S. 1 (2022), and federal due process protections. Appellant's Br. at 11, 17, 21–22. Although his due process challenge is routine, his challenges under Article I, Section 1A and the Second Amendment each present an issue of first impression for this Court. Retention is appropriate. *See* Iowa R. App. P. 6.1101(2); *see* Appellant's Br. at 7.

NATURE OF THE CASE

This is a direct appeal by the defendant Kevin Dwayne Woods, Jr. from his conviction for person ineligible to carry dangerous weapons in violation of section 724.8B following a conditional guilty plea. D0028, Sentencing Order (1/23/24). The Honorable Gregory D. Brandt presided.

STATEMENT OF THE FACTS

The State charged Woods by trial information with two counts: possession of a controlled substance (marijuana), a serious misdemeanor in violation of section 124.401(5) (count I), and person ineligible to carry dangerous weapons, a serious misdemeanor in violation of section 724.8B (count II). D0009, Trial Information (9/11/23).

Woods moved to dismiss count II, arguing that section 724.8B is unconstitutional under Article I, Section 1A, the Second Amendment, and federal due process. D0019, Motion to Dismiss at 2, 4–6 (11/7/23). The State resisted. D0021, Resistance to Motion to Dismiss (11/28/23). Following a hearing, the court denied Woods' motion. D0023, Order Denying Motion to Dismiss (11/29/23); D0036, Motion to Dismiss Tr. at 12:11–13:2 (11/29/23).

The parties ultimately reached a plea agreement. D0026, Guilty Plea at 4–5 (12/9/23). On December 19, 2023, Woods filed guilty pleas under Iowa Rule of Criminal Procedure 2.8(2)(*b*)(9) to both counts. D0026 at 1–2, 7. In support of the guilty pleas, Woods "agree[d] the Court can consider the minutes of testimony" and he "admit[ted] that the minutes of testimony are accurate." D0026 at 5.

JURISDICTIONAL STATEMENT

Under Iowa Code section 814.6(1)(*a*) this Court "generally lack[s] jurisdiction over direct appeals from guilty pleas." *State v. Rutherford*, 997 N.W.2d 142, 145 (Iowa 2023). But section 814.6(3) recognizes that appellate courts may have jurisdiction over conditional guilty pleas that reserve an issue for appeal. Under section 814.6(3), the Court has jurisdiction over only conditional pleas that were "entered by the court with

the consent of the prosecuting attorney and the defendant or the defendant's counsel" and "when the appellate adjudication of the reserved issue is in the interest of justice." Iowa Code § 814.6(3).

Here, Woods filed guilty pleas under rule 2.8(2)(*b*)(9) and stated he was "preserving the right to appeal a denied motion to dismiss Count II under the 2d Amendment to the U.S. Constitution, and Art. I, Sec. 1A of the Iowa Constitution." D0026 at 1–2, 7. The court accepted Woods' plea based on the written plea and the parties' statements. D0028. And although Woods asserts "appellate adjudication is in the interest of justice," he does not suggest why. *See* Appellant's Br. at 10.

Ordinarily, a defendant "bears the burden of establishing good cause to pursue an appeal of [his] conviction based on a guilty plea." *State v. Tucker*, 959 N.W.2d 140, 153 (Iowa 2021). Woods likewise bears the burden of satisfying section 814.6(3). *See id.* Absent such a showing, this Court should decide it is without jurisdiction to consider Woods' appeal.

ARGUMENT

I. The District Court Rightly Denied Woods' Motion to Dismiss Count II.

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). "Similarly, an issue that is not asserted on appeal is generally waived." *State v. Childs*, 898 N.W.2d 177, 190 (Iowa 2017) (Hecht, J., dissenting).

The State agrees Woods moved to dismiss count II, challenging section 724.8B under Article I, Section 1A and *Bruen*'s two-part test for applying the Second Amendment, and that he referenced federal due process protections. D0019 at 2, 4–6. Woods, however, did not say whether his challenges under Article I, Section 1A or the Second Amendment were "as-applied" to his particular circumstances, "facial" challenges to the statute in every application, or both. D0019 at 2–5, 4–6; D0036 at 2:13–6:3, 6:4–8:5, 10:23–12:7. And beyond his general references to due process, Woods did not otherwise develop that challenge. D0019 at 2, 4–6; D0036 at 3:12–18.

The court denied Woods' motion on the record and did not separately analyze, or explicitly reject, Woods' challenges as applied to him, facially, or both. D0036 at 12:11–13:4; D0023. Nor did it reference notice or an opportunity to be heard, or explicitly reject a due process challenge. D0036 at 12:11–13:4; D0023. The court's order denying Woods' motion to dismiss stated:

> Mr. Woods, there certainly is a constitutional right to bear arms, however, legislatures can place reasonable time, place, and manner restrictions on that right. That has historically been done for as long as we've had those types of laws.
>
> In this particular case, I think what the Iowa legislature had done, is it has actually narrow defined what is prohibited, now, while carrying a weapon, you cannot commit a crime, you cannot possess drugs, you cannot commit an indictable misdemeanor offense. I don't find it overbroad in any way, and it specifically tells the individual what the ramifications or the consequences will be if you do that particular conduct. I find that it is not vague in anyway, and that there is a historic precedence for these types of regulations, that type of activity is taking place.
>
> For those reasons, Sir, your Motion to Dismiss is denied.

D0036 at 12:11–13:4; *see* D0023 ("For the reasons set forth on the record the Motion to Dismiss is denied.").

Woods did not move for reconsideration or to enlarge. *See generally*, SRCR372647 Docket; Iowa R. Civ. P. 1.904.

On appeal, Woods again does not say—beyond his request for relief—whether his challenges are as-applied, facial, or both. Appellant's Br. at 14, 17–21, 23; D0019 at 2–5, 4–6; D0036 at 2:13–6:3, 6:4–8:5, 10:23–12:7.

"A constitutional challenge may be facial or as-applied." *Bonilla v. Iowa Board of Parole*, 930 N.W.2d 751, 764 (Iowa 2019). A facial challenge alleges "no application of the statute could be constitutional under any set

of facts." *Id.* "To succeed on a facial challenge, the challenger must show that a statute is totally invalid and therefore, incapable of *any valid application*." *Id.* (cleaned up) (emphasis in original). "[A] facial challenge to a statute 'is "the most difficult . . . to mount successfully" because it requires the challenger to show the statute under scrutiny is unconstitutional *in all its applications*.'" *Id.* (emphasis in original); *see also United States v. Veasley*, 98 F.4th 906, 908 (8th Cir. 2024) ("The question is whether criminalizing this conduct *always* violates the Second Amendment.").

"By contrast, 'an as-applied challenge alleges the statute is unconstitutional as applied to a particular set of facts.'" *Bonilla*, 930 N.W.2d at 764. An as-applied challenge requires the challenger to show not that a law is unconstitutional as written but that its application to their circumstances deprived them of a constitutional right. *See id.*; *see also United States v. Adams*, 914 F.3d 602, 605, 607 (8th Cir. 2019).

Because Woods points to several applications of section 724.8B dissimilar to his own circumstances that he believes violate Article I, Section 1A, Woods raises a facial challenge under the Iowa Constitution. *See* Appellant's Br. at 16 ("[T]oo many individuals are captured under the statute's broad net."). And because Woods similarly points to general

applications of section 724.8B that he believes are inconsistent with our Nation's history and tradition of firearm regulation, Woods raises a facial challenge under the Second Amendment, too. *See* Appellant's Br. at 21 ("The State cannot . . . justify disarming Mr. Woods and others merely based on *possession* of an illicit substance.").

Although Woods "requests that this Court find that Iowa Code § 724.8B is unconstitutional on its face and as applied," error-preservation and waiver principles prevent this Court's consideration of an as-applied challenge under either constitution. Appellant's Br. at 23; *Bonilla*, 930 N.W.2d at 766; *Meier*, 641 N.W.2d at 537; *Childs*, 898 N.W.2d at 190; *Soo Line R. Co. v. Iowa Dept. of Transp.*, 521 N.W.2d 685, 692 (Iowa 1994). Even assuming Woods presented both facial and as-applied challenges below, the court's order does not indicate that it considered or ruled on an as-applied challenge. D0036 at 12:11–13:4; *Bonilla*, 930 N.W.2d at 766.

This Court should decline to consider Woods' due process challenge, too. *See Lamasters v. State*, 821 N.W.2d 856, 864 (Iowa 2012). Again, assuming Woods presented a federal due process challenge below, the court's order does not indicate that it considered or ruled on it. D0036 at 12:11–13:4; *Lamasters*, 821 N.W.2d at 864.

Standard of Review

This Court reviews constitutional challenges to a statute de novo. *State v. Newton*, 929 N.W.2d 250, 254 (Iowa 2019). "Because we presume statutes are constitutional, '[t]he challenger bears a heavy burden, because it must prove the unconstitutionality beyond a reasonable doubt.'" *Id.* (citations omitted).

Merits

This appeal concerns Iowa Code section 724.8B, which states,

> A person determined to be ineligible to receive a permit to carry weapons under section 724.8, subsection 2, 3, 4, 5, or 6, a person who illegally possesses a controlled substance included in chapter 124, subchapter II, or a person who is committing an indictable offense is prohibited from carrying dangerous weapons. Unless otherwise provided by law, a person who violates this section commits a serious misdemeanor.

Iowa Code § 724.8B.

Woods first argues section 724.8B fails to survive strict scrutiny under Article I, Section 1A. Appellant's Br. at 12. He next argues section 724.8B fails to pass *Bruen*'s two-part. Appellant's Br. at 17–18, 20.

Section 724.8B as applied to Woods' own circumstances is a valid application under Article I, Section 1A and *Bruen*, so his facial challenge fails. *See Bonilla*, 930 N.W.2d at 764; *see United States v. Rahimi*, 602 U.S. ___, 144 S.Ct. 1889, 1898, 1903 (2024) (rejecting Rahimi's facial

challenge and finding the provision constitutional as applied to the facts of Rahimi's case). And while error-preservation and waiver principles do not support this Court considering an as-applied challenge under either constitution, an as-applied challenge similarly fails.

Lastly, Woods argues section 724.8B violates federal due process protections. Appellant's Br. at 22. This challenge fails, too, because Woods received notice and an opportunity to be heard for his conviction under section 724.8B.

A. Iowa Code section 724.8B satisfies Article I, Section 1A of the Iowa Constitution'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.

Courts begin this analysis by "'identify[ing] the nature of the individual right involved' and determin[ing] whether that right is fundamental." *State v. Groves*, 742 N.W.2d 90, 92 (Iowa 2007). "[T]he

second step is to apply the appropriate test." *Id.* at 93. If the court determines the right is fundamental, it will apply strict scrutiny. *Id.*

When applying strict scrutiny, courts generally "determine whether the statute is narrowly tailored to serve a compelling state interest." *Id.* 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.'"); *McDonald v. City of Chicago, Ill.*, 561 U.S. 742, 879 (2010) (Stevens, J., dissenting) ("No right is absolute."). 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 District of Columbia v. Heller*, 554 U.S. 570, 626 (2008) ("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."); *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. Iowa Const. art. I, § 1A. A democratically enacted law, like

section 724.8B, 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 724.8B does that here, satisfying Article I, Section 1A's strict scrutiny standard.

1. Public safety and law enforcement safety are compelling government interests.

The State has two compelling interests in prohibiting individuals from carrying a firearm while possessing a controlled substance: public safety and law enforcement safety.

Woods recognizes on appeal, as he did below, that public safety is a compelling state interest. Appellant's Br. at 14, 16; D0019 at 6; D0036 at 6:4–11; *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"); *Webb*, 144 So.3d at 978 (concluding Louisiana's illegal carrying of weapons statute "serves the compelling interest of public safety"). Although he recognizes this compelling interest, he argues that not all crimes are "more dangerous simply because there is a firearm there." D0036 at 8:1–2; *see* Appellant's Br. at 15–16.

The State, however, need not rebut each application of section 724.8B and "slay[] [each] straw man." *See Rahimi*, 144 S.Ct. at 1903; *Newton*, 929 N.W.2d at 255. Because section 724.8B as applied to Woods' circumstances is, at minimum, a valid application, both challenges fail. *See Rahimi*, 144 S.Ct. at 1898; *see also Bonilla*, 930 N.W.2d at 764.

"[D]rugs and guns are a dangerous combination" and section 724.8B, by prohibiting possession of controlled substances and carrying of firearms, serves the State's "compelling interest in ensuring public safety." *Smith v. United States*, 508 U.S. 223, 240 (1993); *State v. Merritt*, 467 S.W.3d 808, 814 (Mo. 2015); *Webb*, 144 So.3d at 978; *accord National Treasury Employees Union v. Von Raab*, 489 U.S. 656, 669 (1989) ("[I]t is well known[] that drug smugglers do not hesitate to use violence to protect their lucrative trade and avoid apprehension."). The legislature wisely declined to "treat the possession of a firearm and an illegal drug as some innocuous coincidence." *Webb*, 144 So.3d at 979 (concluding possessing marijuana is unlawful and those who possess marijuana "must have employed some unlawful means to obtain the drug"). "Indeed, '[t]he mere presence of a gun, *loaded or not*, can escalate the danger.'" *United States v. Smythe*, 363 F.3d 127, 129 (2d Cir. 2004) (citations omitted) (emphasis in original). "[A]n unloaded firearm may quickly and easily be loaded and used," thus

increasing the risk of danger. *Id.* (citing *Smith*, 508 U.S. at 240). And "the presence of a firearm may increase the risk that others will react in violent ways . . . 'because the mere "display of a gun instills fear in the average citizen" and "as a consequence . . . creases an immediate danger that a violent response will ensue.'" *Id.* (citations omitted).

Another compelling state interest is law enforcement safety. "There is no doubt that the government has a compelling interest in law enforcement officer safety." Raoul Shah, *Cop-Watch: An Analysis of the Right to Record Police Activity and Its Limits*, 37 MITCHELL HAMLINE L.J. PUB. POL'Y & PRAC. 215, 230–31 (Fall 2016) (discussing law enforcement safety as a compelling government interest in First Amendment context); *Pennsylvania v. Mimms*, 434 U.S. 106, 110 (1977) ("We think it too plain for argument that the State's proffered justification—the safety of the officer—is both legitimate and weighty."); *Maryland v. Wilson*, 519 U.S. 408, 413 (1997) (discussing the government's "weighty interest in officer safety"). And more narrowly, "[t]raffic stops are 'especially fraught with danger to police officers,'" particularly when officers encounter the risk that an individual may use "violence to prevent apprehension" "of a more serious crime." *Rodriguez v. United States*, 575 U.S. 348, 356 (2015) (addressing Fourth

Amendment challenge); *Wilson*, 519 U.S. at 414 ("Regrettably, traffic stops may be dangerous encounters.").

Public safety and law enforcement safety are compelling state interests.

2. Iowa Code section 724.8B is narrowly tailored to further the State's compelling interests.

Iowa Code section 724.8B is narrowly tailored to protect the public and law enforcement from the threat posed by the carrying of a firearm when engaged in certain conduct.[1] It does so by prohibiting "a person who illegally possesses a controlled substance included in chapter 124, subchapter II" from carrying a dangerous weapon or "who is committing an indictable offense" from carrying a dangerous weapon. Iowa Code § 724.8B.

Section 724.8B'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 prohibits persons from carrying a firearm in limited circumstances only (like when they possess a

[1] It also protects against the threat posed by certain categories of persons when armed—it prohibits a person from carrying a firearm if they are either (1) addicted to alcohol, (2) "likely to use a weapon unlawfully or in such other manner as would endanger the person's self or others," (3) a felon, (4) a domestic abuser or subject to a domestic abuse protective order, (5) convicted "within the previous three years" of any serious or aggravated assault, or (6) are otherwise "prohibited by federal law from shipping, transporting, possessing, or receiving a firearm." Iowa Code § 724.8B.

controlled substance or like Woods' "drug trafficking" example) because such circumstances threaten public safety and law enforcement safety. Iowa Code § 724.8B; Appellant's Br. at 16; *Muscarello v. United States*, 524 U.S. 125, 131, 134 (1998) (finding "carry" "in its ordinary sense includes carrying in a car" and reasoning that "'carry' implies personal agency and some degree of possession"); *see United States v. Jackson*, 555 F.3d 635, 636 (7th Cir. 2009) ("[T]he Constitution entitles citizens to keep and bear arms for the purpose of *lawful* self-protection, not for *all* self-protection. . . . [T]here is no constitutional problem with separating guns from drugs."); *see State v. Brecunier*, 564 N.W.2d 365, 370 (Iowa 1997) ("Brecunier was not convicted for bearing a firearm [under Iowa Code section 719.1][2]. His crime was having in his possession a firearm while he engaged in unlawful activity. The law may be unsettled as to the precise scope of what rights the Second Amendment protects, but we can be certain here in what it does *not* protect. Brecunier has no constitutional right to be armed while interfering with lawful police activity.") (emphasis in original); *see also State v. Mehner*, 480 N.W.2d 872, 879 (Iowa 1992) ("[Iowa Code section

[2] Iowa Code section 719.1 (1993) enhances an interference with official acts offense when the person was also armed with a firearm. Iowa Code § 719.1 (1993), *available at* 1993 Iowa Code.pdf at pdf pg. 5592 (last visited July 22, 2024).

204.401(1)(*e*) (1989 Supp.)][3] prohibits only the possession of firearms while participating in a drug offense; a criminal activity. The statute does not forbid conduct which is constitutionally protected.").

The context around the enactment of section 724.8B demonstrates the legislature intentionally drew this narrow reach. *Compare* Iowa Acts 2021 (89 G.A.) ch. 35, H.F. 756, § 17 (adding Iowa Code § 724.8B), *with* 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 (adding Article I, Section 1A of the Iowa Constitution). The Iowa Legislature twice approved the language of Article I, Section 1A (once in the 88th General Assembly and again in the 89th General Assembly) before submitting it to referendum. 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. The latter general assembly enacted a new section: section 724.8B. Iowa Acts 2021

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[3] In 1993, Iowa Code section 204.401(1)(*e*) (1989 Supp.) was renumbered to section 124.401(1)(*e*) when Iowa Code chapter 204 was transferred to chapter 124. Iowa Code ch. 204 (1993), *available at* 1993 Iowa Code.pdf at pdf pg. 1701 (last visited July 22, 2024); *compare*, Iowa Code § 204.401(1)(*e*) (1989 Supp.) (enhancing possession of a controlled substance with intent to deliver offense when person also has a firearm in their "immediate possession or control"), *available at* 1989 Iowa Code Supplement.pdf at pdf pg. 418 (last visited July 22, 2024), *with* Iowa Code § 124.401(1)(*e*) (1993) (same), *available at* 1993 Iowa Code.pdf at pdf pg. 1099 (last visited July 22, 2024); *see also* Iowa Code § 124.401(1)(*e*) (2024) (same).

(89 G.A.) ch. 35, H.F. 756, § 17. It also overhauled section 724.5. Iowa Acts 2021 (89 G.A.) ch. 35, H.F. 756, § 13. As amended, section 724.5 does not require a person carrying "a dangerous weapon, including a loaded firearm," openly or concealed to have a permit or license. Iowa Code § 724.5 (2021). Before this amendment, section 724.5 required a person carrying a concealed revolver, pistol, or pocket billy to have their permit in their "immediate possession." Iowa Code § 724.5 (2018). Fully aware of Article I, Section 1A, the legislature recognized "[t]he right of the people to keep and bear arms" and narrowly restricted that right by only excluding persons carrying a firearm in limited circumstances that threaten public safety. Iowa Code § 724.8B; *see* Iowa Acts 2021 (89 G.A.) ch. 35, H.F. 756, § 17; *see also* 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; *Smith*, 508 U.S. at 240.

Woods argues section 724.8B captures too much—it captures both the "dangerous drug sale" as well as "a defendant who is home alone, smoking legally purchased—albeit illegally possessed—marijuana in her bedroom, with her firearm safely secured." Appellant's Br. at 16. While Woods admits the former poses a threat to the public, he contends the later "does not pose a threat to anyone." Appellant's Br. at 16. Neither scenario advances his facial or as-applied challenges.

Damaging to Woods' facial challenge is his recognition that "[t]he State has a compelling safety interest in preventing drug dealers from using firearms in furtherance of drug trafficking" and that "[a] drug trafficker who uses a gun to make a dangerous drug sale violates Iowa Code § 724.8B." Appellant's Br. at 16. This, as Woods acknowledges, is a valid application of section 724.8B. Appellant's Br. at 16. Because Woods acknowledges a valid application of section 724.8B exists, his facial challenge must fail. *Bonilla*, 930 N.W.2d at 764 ("To succeed on a facial challenge, the challenger must show that a statute is totally invalid and therefore, incapable of *any valid application*."); *see Grutter v. Bollinger*, 539 U.S. 306, 326–27 (2003) (cleaned up) (noting narrow tailoring "does not require exhaustion of every conceivable . . . alternative"); *accord State v. Smith*, 571 A.2d 279, 281 (N.H. 1990) ("Conceivably some felons falling within the reach of [New Hampshire law prohibiting felons from having firearms] are not potentially dangerous. However, on the standard we apply here, the statute need not be perfectly tailored, simply narrowly tailored.").

For Woods' as-applied challenge, his eligibility to carry a firearm (here, a semi-automatic pistol with a loaded magazine attached plus two loaded high-capacity magazines and one unloaded magazine) was limited only after finding he also possessed two THC vape pens and marijuana

while driving a commercial vehicle. D0010, Minutes of Testimony at 5 (9/11/23); D0026 at 5; D0028; Iowa Code § 724.8B. Under section 724.8B, Woods maintained his right to keep and bear arms until his own illegal conduct qualified it. *See Hernandez-Lopez*, 639 N.W.2d at 239; *see also Jones v. Helms*, 452 U.S. 412, 418, 420 (1981) ("[A]ppellee's own misconduct had qualified his right to travel interstate before he sought to exercise that [fundamental] right."). Section 724.8B says nothing about Woods' right as an ordinary, law-abiding citizen to possess, carry, keep, or bear arms like a loaded semi-automatic pistol. But once he illegally possessed marijuana, he triggered section 724.8B's firearm limitation. Only in that limited circumstance—when he illegally possessed marijuana *and* carried a loaded semi-automatic pistol—did the legislature restrict any right to carry arms because of the threat that combination poses to public safety. Iowa Code § 724.8B; D0010 at 5; D0026 at 5. This narrow reach, closely tied to the State's compelling interest in ensuring public safety and law enforcement safety, shows section 724.8B satisfies Article I, Section 1A's strict scrutiny test.

Even assuming a person could possess a controlled substance and carry a firearm in a manner that does not pose a threat to anyone including themselves, such hypothetical does not bolster Woods' as-applied

challenge. *See United States v. Jackson*, 69 F.4th 495, 502 (8th Cir. 2023) (*vacated and remanded*, 2024 WL 3259675 (July 2, 2024)). Here, Woods was not home alone smoking legally purchased but illegally possessed marijuana in his bedroom with his firearm safely secured. *See* Appellant's Br. at 16; D0010 at 5; D0026 at 5. He was operating a commercial vehicle with no taillights and had two THC vape pens (one on the center console, the other in his pocket) and marijuana, a loaded semi-automatic pistol, two loaded high-capacity magazines, one unloaded magazine, and a scale all inside a backpack on the center console. D0010 at 5; D0026 at 5. As Woods recognizes, "100% it is dangerous for someone to have a firearm when they are being pulled over" for speeding or an indictable offense. D0036 at 6:25–7:6. That is because "[t]raffic stops are 'especially fraught with danger to police officers'" and are made more dangerous when officers encounter the risk that an individual may use "violence to prevent apprehension" "of a more serious crime [that] might be uncovered during the stop." *Rodriguez*, 575 U.S. at 356; *Wilson*, 519 U.S. at 414. Woods' decision not to use his firearm does not change section 724.8B's narrow tailoring as applied to his circumstances. *See* D0010 at 5; *see also* D0026 at 5. Narrow tailoring does not require the State draw the line only after the risk of danger transformed to harm in fact. Section 724.8B properly

demarcates where the risk of danger to the public and law enforcement is too great by criminalizing the carrying of a firearm (over the use of a firearm) and possession of a controlled substance.

While Woods complains section 724.8B makes it a serious misdemeanor to "commit[] an indictable offense" while carrying a dangerous weapon but not violate a speed limitation while carrying a dangerous weapon, the legislature's decision to limit section 724.8B's reach to indictable offenses over all offenses bolsters its narrow tailoring. *See McCullen v. Coakley*, 573 U.S. 464, 478 (2014) (discussing strict scrutiny and "least restrictive means of achieving a compelling state interest" in First Amendment context). Section 724.8B's application to Woods' circumstances satisfies Article I, Section 1A. His as-applied challenge must fail, too. *See Bonilla*, 930 N.W.2d at 764.

Another basis supports the narrow tailoring of section 724.8B: the element of carrying a firearm in section 724.8B operates much like an "enhancing factor." *See* Iowa Code § 724.8B; *see also Webb*, 144 So.3d at 980–81. The Supreme Court examined a Georgia statute that made the crime of child abandonment, ordinarily a misdemeanor, a felony "if a resident offender leaves the State after committing [child abandonment]." *Helms*, 452 U.S. at 422. It found that because the statute made leaving the

state (exercising a fundamental right) an enhancing factor to criminal conduct, the statute did not impermissibly infringe the appellee's constitutional right to travel. *Id.* at 420–23; *see also Webb*, 144 So.3d at 980–82. Here, the penalty for possession of marijuana is imprisonment not to exceed six months or a fine not to exceed $1,000. Iowa Code § 124.401(5)(*b*). But when a person possesses marijuana *and* carries a firearm, the penalty increases to imprisonment not to exceed one year and a fine not to exceed $2,565. Iowa Code §§ 124.401(5)(*b*), 724.8B, 903.1(1)(*b*). Much like the reasoning in *Helms* and *Webb*, viewing section 724.8B's firearm limitation as an enhancing factor supports its constitutionality. *Helms*, 452 U.S. at 423; *Webb*, 144 So.3d at 980–82.

Ensuring public safety and law enforcement safety are legitimate and compelling state interests, and section 724.8B is narrowly tailored to serve them. Because section 724.8B satisfies Article I, Section 1A's strict scrutiny standard, this Court should affirm.

B. Iowa Code section 724.8B 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.

Woods argues that section 724.8B violates the Second Amendment because it fails to pass *Bruen*'s two-part test. Appellant's Br. at 17–18, 20. He contends he is among "the people" that have a constitutional right under the Second Amendment to keep and bear arms, and that section 724.8B is inconsistent with the United States' history and tradition. Appellant's Br. at 17–18, 20.

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. at 595, 635. 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, or laws forbidding the carrying of firearms in sensitive places

such as schools and government buildings," and these "presumptively lawful regulatory measures" are not an "exhaustive" list. *Id.* at 626–27, n.26.

Two years later, in *McDonald v. City of Chicago, Ill.*, the Supreme Court held "that the Second Amendment right is fully applicable to the States" through the Fourteenth Amendment. 561 U.S. at 750, 791. 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 it *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 recognized what *Heller* and *McDonald* already did, "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 the Supreme Court reiterated 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).

The Supreme Court, however, emphasized "analogical reasoning under the Second Amendment" is not "a regulatory straightjacket." *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). The Supreme Court 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*—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.

As before, the Supreme Court repeated *Heller*'s assurances: "many such prohibitions, like those on the possession of firearms by 'felons and the mentally ill,' are 'presumptively lawful.'" *Id.* at 1902. And like in *Bruen*, it corrected any misunderstandings about "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. "Why and how the regulation burdens the right are central to this inquiry." *Id.*

"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).

Here, section 724.8B satisfies *Bruen*'s test. The Second Amendment does not cover the illegal possession a controlled substance and carrying of a firearm and section 724.8B is consistent with the principles that underpin our Nation's regulatory tradition.

2. The Second Amendment does not cover the illegal possession of a controlled substance and carrying of a firearm.

Woods, when charged under section 724.8B, was not an ordinary, law-abiding citizen. D0010 at 5; D0026 at 5. He had a backpack with marijuana, a loaded semi-automatic pistol, two loaded high-capacity magazines, one unloaded magazine, and a scale, stored on his center console. D0010 at 5; D0026 at 5. As Woods admits he violated Iowa law when he possessed marijuana. *See* D0010 at 5; *see also* D0026 at 5.

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) ("*Bruen* emphasized that *Heller* established the correct test for determining the constitutionality of gun restrictions.

And, like *Heller*, *Bruen* described Second Amendment rights as extending only to 'law-abiding, responsible citizens'" and *Rahimi* "does not change our analysis."); *see also Jackson*, 69 F.4th at 504 ("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."); *Veasley*, 98 F.4th at 910 (assuming, without deciding, that drug users "are part of 'the people' whom the Second Amendment protects'"). Illegal possession of a controlled substance sets one apart from the ordinary, law-abiding citizen. D0010 at 5; D0026 at 5. The Second Amendment does not cover Woods' conduct of illegally possessing a controlled substance and carrying a firearm. *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."); *Mehner*, 480 N.W.2d at 879; *see also Brecunier*, 564 N.W.2d at 370.

As the Supreme Court emphasized in *Bruen*, "nothing in our analysis should be interpreted to suggest the unconstitutionality of the 43 States' 'shall-issue' licensing regimes." *Bruen*, 597 U.S. at 38 n.9 (citations

omitted). While it did not "rule out" constitutional challenges to all shall-issue regimes, its concern for an unconstitutional one was aimed not at a shall-issue regime that denies *non*-law-abiding, ordinary citizens but one that denies *ordinary* citizens via "lengthy wait times in processing license applications or exorbitant fees." *Id.*

Woods contends "the Second Amendment protects the right to possess firearms without qualification." Appellant's Br. at 19. 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. Woods, if an ordinary, law-abiding citizen, had the right to carry a firearm. But Woods was not an ordinary, law-abiding citizen when he illegally possessed a controlled substance. *See Brecunier*, 564 N.W.2d at 370 ("Brecunier has no constitutional right to be armed while [engaging in criminal activity]."). The Second Amendment does not cover Woods' possession of a controlled substance and carrying of a firearm.

3. Iowa Code section 724.8B is consistent with the principles that underpin our Nation's regulatory tradition because it temporarily disarms categories of persons that threaten public safety.

Our Nation has a long historical tradition of disarming categories of persons (at times permanently) who deviate from legal norms or pose an unacceptable risk of dangerousness. *See, e.g.*, *Jackson*, 69 F.4th at 502–06 (discussing firearm restrictions from late 1600s England to 1960s United States). Section 724.8B is consistent with this historical tradition. Unlike contemporary prohibitions on the possession of firearms by felons—one the Supreme Court has repeatedly assured is "presumptively lawful"—section 724.8B's firearm prohibition is not permanent in most applications and, at minimum, is not permanent as-applied to Woods. *See Rahimi*, 144 S.Ct. at 1902. Much like founding-era laws that disarmed groups that posed a risk of danger to society while the perceived danger persisted or laws that either prohibited firearm use in certain circumstances or increased the penalty when firearms were used or possessed in criminal activity, section 724.8B prohibited Woods from carrying a firearm only when he illegally possessed a controlled substance (the "how") because illegal possession of a controlled substance while carrying a firearm poses an unacceptable risk of danger to public safety (the "why"). *See Rahimi*, 144 S.Ct. at 1898 ("Why and how the regulation burdens the right are central to this inquiry."); *see also Bruen*,

597 U.S. at 29; Joseph G.S. Greenlee, *The Historical Justification for Prohibiting Dangerous Persons from Possessing Arms*, 20 Wy. L. Rev. 249, 261 (2020) (hereinafter "Greenlee, *The Historical Justification*").

"History shows that the right to keep and bear arms was subject to restrictions that included prohibitions on [firearm] possession by certain groups of people," including "citizens who are not 'law-abiding'—*i.e.*, those who are 'unwilling to obey the government and its laws, whether or not they had demonstrated a propensity for violence.'" *Jackson*, 69 F.4th at 502.

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.* Two years later, an amendment was offered during the Parliamentary debate that would allow "Protestants to keep guns despite the traditional class-based prohibitions." *Id.* But, "[t]his measure was defeated by a vote of 169 to 65" and dismissed "as seeking 'to arm the mob, which [] is not very safe for any government.'" *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.*; Greenlee, *The Historical Justification*, 20 Wy. L. Rev. at 261 (emphasis added).

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 ("Parliament responded by writing the 'predecessor to our Second Amendment' into the 1689 English Bill of Rights."). "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. And more generally, "some American laws forbade carrying arms in an aggressive and terrifying manner." Greenlee, *The Historical Justification*, 20 Wy. L. Rev. at 262.

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.

"The American Revolution certainly did not change that English heritage" either "as the loyalists discovered when their firearms were confiscated." Bellesiles, *Gun Laws in Early America*, 16 LAW & HIST. REV. at 586. "In the era of the Revolutionary War, the Continental Congress, Massachusetts, Virginia, Pennsylvania, Rhode Island, North Carolina, and New Jersey prohibited possession of firearms by people who refused to declare an oath of loyalty." *Jackson*, 69 F.4th at 503 (collecting statutes); Greenlee, *The Historical Justification*, 20 Wy. L. Rev. at 264–65.

Founding-era legislatures continued this tradition of disarming those perceived as a threat to public safety, too. 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).

Three states (New Hampshire, Massachusetts, and Pennsylvania) recommended that the Constitution expressly exclude from the right to bear arms citizens that were, or had been, "in actual rebellion" or "for crimes committed, or real danger of public injury from individuals." Don B. Kates, Jr., *Handgun Prohibition and the Original Meaning of the Second Amendment*, 82 Mich. L. Rev. 204, 222 (1983); *Kanter*, 919 F.3d at 454 (Barrett, J., dissenting). Although these express limitations were rejected, "they are most helpful taken together as evidence of the scope of founding-era understandings regarding categorial exclusions from the enjoyment of the right to keep and bear arms." *Kanter*, 919 F.3d at 456 (Barrett, J., dissenting). As now-Justice Barrett observed, "[t]he concern common to all three . . . is about threatened violence and the risk of public injury[,]" "the

same concern that animated English and early American restrictions on arms possession." *Id.*

Some state laws allowed firearm rights to be regained or prohibited firearm use in certain circumstances. *See* Greenlee, *The Historical Justification*, 20 Wy. L. Rev. at 268. "Connecticut's 1775 law disarmed 'inimical' persons only 'until such time as he could prove his friendliness to the liberal cause'" and "Massachusetts's 1776 law disarming disaffected persons provided that 'persons who may have been heretofore disarmed by any of the committees of correspondence, inspection or safety' may 'receive their arms again . . . by the order of such committee or the general court.'" *Id.* New York "prohibited firing guns for the three days bracketing New Years, December 31 to January 2, because of the 'great Damages' done by those 'intoxicated with Liquor.'" *Veasley*, 98 F.4th at 911. In all, "once the perceived danger abated, the arms disability was often lifted." Greenlee, *The Historical Justification*, 20 Wy. L. Rev. at 268.

Other states enacted laws that increased the severity of punishment for some crimes if the defendant possessed a weapon during the commission of the crime. Massachusetts made burglary at night punishable by death if the defendant was armed with a dangerous weapon, but only punishable by hard labor for life if the defendant was not armed. MASS.

GEN. LAWS §§ 1, 2, (1806), *available at* 1807, MA, Laws of the Commonwealth of Massachusetts 1780 to 1807, in 3 vols, vol. 3.pdf (duke.edu) (last visited July 25, 2024); *see Commonwealth v. Hope*, 39 Mass. 1, 9–10 (Mass. 1839). Later, Louisiana made entering the dwelling of another with intent to commit any crime punishable by death if the defendant was armed with a dangerous weapon, but only punishable by hard labor not exceeding fourteen years if the defendant was not armed. *State v. Morris*, 27 La.Ann. 480, 480–81 (Lo. 1875). Massachusetts and Louisiana were not alone. *See United States v. Greeno*, 679 F.3d 510, 519–20 (6th Cir. 2012) (collecting cases where "states separately penalized, or increased the severity of punishment for, crimes committed by individuals who used a weapon during the commission of a crime").

And, as the Supreme Court recognized in *Rahimi*, states "specially addressed firearms violence" and "misuse" through surety laws ("[a] form of 'preventative justice'") and "'going armed' laws" ("a mechanism for punishing those who had menaced others with firearms"). 144 S.Ct. at 1899–1901. Under the 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. "In 1795, for example, Massachusetts enacted a law 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) (noting Massachusetts was not an outlier). *Id.* "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 the magistrate determined that cause existed for the charge, they would summon the accused who then "could respond to the allegations." *Id.* The going armed laws, however, "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). State laws "punished these acts with 'forfeiture of the arms . . . and imprisonment.'" *Id.*

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.* Missouri prohibited selling, exchanging, or giving a gun to "to any Indian" "unless such Indian shall be traveling through the state, and leave a written permit from the proper agent, or under the direction of such agent in proper person." 1844 Mo. Laws 577, An Act to Restrain Intercourse With Indians, ch. 80, § 4 (1844), *available at* 1844 Mo. Laws 577, An Act To Restrain Intercourse With Indians, ch. 80, § 4. | Duke Center for Firearms Law (last visited July 24, 2024).

Nineteenth-century state laws also recognized firearm regulations beyond these categorical restrictions. *Bruen*, 597 U.S. at 56. The firearm rights of anyone likely to "breach the peace" could be burdened when "attended with circumstances giving just reason to fear that he purposes to make an unlawful use of them." *Id.* at 56 (quoting William Rawle, A VIEW OF THE CONSTITUTION OF THE UNITED STATES OF AMERICA 126 (2d ed. 1829)). As the Supreme Court summarized in *Bruen*:

> The historical evidence from antebellum America does demonstrate that *the manner* of public carry was subject to reasonable regulation. Under the common law, individuals could not carry deadly weapons in a manner likely to terrorize others. Similarly, although surety statutes did not directly restrict public carry, they did provide financial incentives for responsible arms carrying. Finally, States could lawfully eliminate one kind of public carry—concealed carry—so long as they left open the option to carry openly.

Bruen, 597 U.S. at 59.

Of course, some of these prohibitions would be impermissible under other constitutional provisions today. *See, e.g.*, *Jackson*, 69 F.4th at 503. But they show that categorical prohibitions based on the group's perceived risk of danger underpin our Nation's tradition of firearm regulation. *Rahimi*, 144 S.Ct. at 1898; *Jackson*, 69 F.4th at 504; *Kanter*, 919 F.3d at 454 (Barrett, J., dissenting) ("The historical evidence . . . support[s] . . . that the legislature may disarm those who have demonstrated a proclivity for violence or whose possession of guns would otherwise threaten the public safety."); *United States v. Skoien*, 614 F.3d 638, 640 (7th Cir. 2010) ("That *some* categorial limits are proper is part of the original meaning, leaving to the people's elected representatives the filling in of details."); *Greeno*, 679 F.3d at 519–20. Limiting an individual's right to carry a firearm when they also possess a controlled substance based on the

unacceptable risk of danger that combination poses is consistent with that principle. *See Rahimi*, 144 S.Ct. at 1901. As the Supreme Court emphasized, *Rahimi* "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 724.8B "is by no means 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.

a. The "why"—Iowa Code section 724.8B burdens the right to carry a firearm while illegally possessing a controlled substance because that combination poses an unacceptable risk of danger.

Illegal possession of a controlled substance while carrying a firearm poses an unacceptable risk of danger to public safety. *Smith*, 508 U.S. at 240 ("[D]rugs and guns are a dangerous combination"); *Wilson*, 519 U.S. at 414; *Von Raab*, 489 U.S. at 669 ("[I]t is well known[] that drug smugglers do not hesitate to use violence to protect their lucrative trade and avoid apprehension."); *Veasley*, 98 F.4th at 917 ("Controlled substances can induce terrifying conduct, made all the more so by the possession of a firearm. All it takes is a few minutes flipping through the

pages of the Federal Reporter to locate some examples."); *United States v. Yancey*, 621 F.3d 681, (7th Cir. 2010) ("Ample academic research confirms the connection between drug use and violent crime."). Criminalizing possession of controlled substances recognizes that people do not possess controlled substances to put them in a drawer or place them on a shelf to forget about. Illegal possession of a controlled substance necessarily implies that the possessor received it and will use it themselves, received it and will redistribute it to another, or both. *Accord Rahimi*, 144 S.Ct. at 1901 ("Such conduct disrupted the 'public order' and 'le[d] almost necessarily to actual violence.'"). And illegal possession of a controlled substance is, on its own, prohibited conduct. Criminalizing the carrying of a firearm while possessing a controlled substance recognizes that those that possess controlled substances and carry a firearm are a threat to public safety and law enforcement safety.

This "why" is consistent with the principle underpinning the tradition of disarming categories of persons who pose an unacceptable risk of danger and "of keeping guns out of the hands of 'distrusted' groups." *Jackson*, 69 F.4th at 502–06; *Kanter*, 919 F.3d at 457–58 (Barrett, J., dissenting); *see United States v. Daniels*, 77 F.4th 347 (5th Cir. 2023) (*vacated and remanded*, 2024 WL 3259662 (July 2, 2024)) (acknowledging "postbellum

laws and § 922(g)(3) share a common 'why': preventing public harm by individuals who lack self-control and carry deadly weapons."). "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*, 69 F.4th at 504. Not all crimes in which the defendant was armed led to increased violence. *Accord Hope*, 39 Mass. at 9–10; *Morris*, 27 La.Ann. at 480–81. But section 724.8B, like founding-era categorical firearm bans and firearm enhancements, recognizes the increased risk of danger that accompanies categories of persons when armed and that accompanies the combination of firearms and criminal conduct. *See Jackson*, 69 F.4th at 504.

Section 724.8B's prohibition on the carrying of firearms by those found to also possess a controlled substance illegally, a combination that poses an unacceptable risk of danger to the public and law enforcement, is consistent with the principles that underpin our Nation's regulatory tradition.

b. The "how"—Iowa Code section 724.8B burdens the right to carry a firearm only so long as Woods chooses to illegally possess a controlled substance.

Section 724.8B prohibits the carrying of a firearm while possessing a controlled substance. An unlawful marijuana possessor like Woods "could regain his right to [carry] a firearm simply by" not illegally possessing marijuana. *Yancey*, 621 F.3d at 686. Woods was not "the 80-year-old grandmother who use[d] marijuana for a chronic medical condition and ke[pt] a pistol tucked away for her own safety." *See Veasley*, 98 F.4th at 917–18; D0010 at 5; D0026 at 5. He was driving a commercial vehicle with a loaded firearm and marijuana. D0010 at 5; D0026 at 5.

Unlike Title 18 U.S.C. § 922(g)(3) that bars an individual from possessing a firearm if he is an "unlawful user" of a controlled substance" (meaning regular drug use), section 724.8B bars an individual from carrying a firearm only while they also possess a controlled substance (illegal conduct). *Veasley*, 98 F.4th at 908; *Daniels*, 77 F.4th at 347–48 (finding "a considerable difference between someone who is actively intoxicated and someone who is an 'unlawful user'" which "captures regular users of marihuana" but "does not specify how recently an individual must 'use' drugs to qualify for the prohibition."). Unlike Title 18 U.S.C. § 922(g)(1) that makes it unlawful to posses a firearm as a previously

convicted felon (generally, a permanent status), section 724.8B's carrying of a firearm limitation is temporary (or as temporary as Woods chooses to make it). *See Jackson*, 69 F.4th at 498; *Yancey*, 621 F.3d at 687. Like the United States Court of Appeals for the Seventh Circuit reasoned regarding Section 922(g)(3), Woods "himself controls his right to [carry] a gun." *Yancey*, 621 F.3d at 687.

Again, the element of carrying a firearm in section 724.8B operates much like an "enhancing factor." It "increases" the penalty for possession of marijuana if done so while carrying a firearm. *Compare* Iowa Code § 124.401(5)(*b*) (allowing imprisonment not to exceed six months or a fine not to exceed $1,000 for possession of marijuana), *with* Iowa Code §§ 724.8B, 903.1(1)(*b*) (increasing penalty to imprisonment not to exceed one year and a fine not to exceed $2,565 for possession of marijuana *and* carrying of a firearm).

These two mechanisms (the "how") are consistent with the principles underpinning the tradition of disarming categories of persons who pose an unacceptable risk of danger. *Jackson*, 69 F.4th at 502–06. Unlike states that constitutionalized the disarmament of slaves and Native Americans based on those groups' perceived risk of danger, section 724.8B limits only the carrying of firearms while possessing a controlled substance. *Kanter*,

919 F.3d at 457–58 (Barrett, J., dissenting). In that way, section 724.8B's "how" is *less* onerous than some founding-era traditions. *See id.*

Indeed section 724.8B is much like founding-era laws that allowed firearm rights to be regained, or prohibited firearm use in certain circumstances (*i.e.*, removing the firearms prohibition once the perceived danger abated). Greenlee, *The Historical Justification*, 20 Wy. L. Rev. at 268; *Veasley*, 98 F.4th at 911; *accord Rahimi*, 144 S.Ct. at 1902 ("[L]ike surety bonds of limited duration, Section 922(g)(8)'s restriction was temporary as applied to Rahimi. Section 922(g)(8) only prohibits firearm possession so long as the defendant 'is' subject to a restraining order.").

And like the Massachusetts law or the Louisiana law that increased the severity of punishment for burglary if the defendant possessed a weapon during the commission of the crime, section 724.8B "increases" the penalty for possession of marijuana if they do so while carrying a firearm. Iowa Code §§ 124.401(5)(*b*), 903.1(1)(*b*); *see Hope*, 39 Mass. at 9–10; *Morris*, 27 La.Ann. at 480–81; *see also Greeno*, 679 F.3d at 519–20; *accord Jackson*, 555 F.3d at 636 (recognizing that "the Constitution entitles citizens to keep and bear arms for the purpose of *lawful* self-protection, not for *all* self-protection.").

In reasoning by analogy from this history, section 724.8B's "why" and "how" are consistent with the principles that underpin our regulatory tradition.

Woods points to the United States Court of Appeals for the Fifth Circuit's recent decision in *United States v. Daniels*, 77 F.4th, for support that there is no historical analogue for section 724.8B. Appellant's Br. at 20–21. But the Second Amendment does not require a "historical twin." *Rahimi*, 144 S.Ct. at 1898; *Bruen*, 597 U.S. at 30.

As the Supreme Court recognizes, "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." *Rahimi*, 144 S.Ct. at 1897–98. "[A]nalogical reasoning under the Second Amendment" is not "a regulatory straightjacket." *Bruen*, 597 U.S. at 30; *Rahimi*, 144 S.Ct. at 1925 (Barrett, J., concurring). It "requires only that the government identify a well-established and representative historical *analogue*, not a historical twin" or a "dead ringer." *Bruen*, 597 U.S. at 30; *Rahimi*, 144 S.Ct. at 1898. That is because "the Constitution can, and must, apply to circumstances beyond those the Founders specifically anticipated." *Bruen*, 597 U.S. at 28.

The controlled substances today do not pose the same "general societal problem" founding-era legislatures encountered with the "intoxicating substances" available to them. *See Daniels*, 77 F.4th at 343–45, n.7 (recognizing the Founders "were not familiar with widespread use of marihuana as a narcotic, nor the modern drug trade," and that "there was little regulation of drugs [related to guns or otherwise] until the late-19th century); Margarita Mercado Echegaray, Note, *Drug Prohibition in America: Federal Drug Policy and its Consequences*, 75 REV. JUR. U.P.R. 1215, 1215 (2006) (hereinafter "Echegaray, *Drug Prohibition in America*"); *but see Veasley*, 98 F.4th at 911 (viewing substance abuse as "a general societal problem that has persisted since the 18th century"). Today, "repercussions of the illegal drug trade are rampant; illicit drugs are readily available in America; drug prices have decreased while drug purity has increased; [and] millions of Americans use both licit and illicit drugs." Echegaray, *Drug Prohibition in America*, 75 REV. JUR. U.P.R. at 1215. Alcohol was available and consumed in the founding-era. *See, e.g.*, *Veasley*, 98 F.4th at 910 (noting signer of Declaration of Independence recognized that alcohol can be highly addictive). "Other drugs [including cannabis] were around then, too." *Id.* at 911 (citations omitted). But founding-era legislatures did not regulate the possession, use, manufacturing, or trading

of drugs like marijuana at all. *See id.*; *see also Daniels*, 77 F.4th at 343–44. Controlled substances are a modern development—as shown by our legislative history.

For example, "[i]t was not until 1906, with the passage of the Pure Food and Drug Act that the federal government began to regulate *some* aspects of the drug trade," namely by imposing labeling restrictions. Echegaray, *Drug Prohibition in America*, 75 REV. JUR. U.P.R. at 1219 (emphasis added); *Gonzales v. Raich*, 545 U.S. 1, 10 (2005). "Aside from these labeling restrictions, most domestic drug regulations prior to 1970 generally came in the guise of revenue laws, with the Department of the Treasury serving as the Federal Government's primary enforcer." *Gonzales*, 545 U.S. at 10. "Marijuana itself was not significantly regulated by the Federal Government until 1937 when accounts of marijuana's addictive qualities and physiological effects, paired with dissatisfaction with enforcement efforts at state and local levels, prompted Congress to pass the Marihuana Tax Act, 50 Stat. 551 (repealed 1970)." *Id.* at 11. The Marihuana Tax Act did not yet criminalize the possession or sale of marijuana. *Id.* Rather, it imposed "onerous administrative requirements." *Id.*

"Then in 1970, after [President Nixon declared a national] 'war on drugs,' federal drug policy underwent a significant transformation." *Id.*

at 10, 11. One part of this policy shift was "the Comprehensive Drug Abuse Prevention and Control Act," "prompted by a perceived need to consolidate the growing number of piecemeal drug laws and to enhance federal drug enforcement powers." *Id.* at 12. "The main objectives of the CSA were to conquer drug abuse and to control the legitimate and illegitimate traffic in controlled substances." *Id.* "In enacting the CSA, Congress classified marijuana as a Schedule I drug," meaning a "high potential for abuse, lack of any accepted medical use, and absence of any accepted safety for use in medically supervised treatment." *Id.* at 14. This demonstrates a problem not contemplated by the Founders—one which *Bruen* and *Rahimi* require nuance in reviewing.

Determining whether a challenged regulation is consistent with the principles that underpin our regulatory tradition does not end at the decision of founding-era lawmakers not to regulate marijuana at all, let alone in relation to firearms. *See Rahimi*, 144 S.Ct. at 1898. As Justice Barrett recognized in *Rahimi*'s concurrence:

> To be *consistent* with historical limits, a challenged regulation need not be an updated model of a historical counterpart. Besides, imposing a test that demands overly specific analogues has serious problems. To name two: It forces 21st-century regulations to follow late-18th-century policy choices, giving us "a law trapped in amber." And it assumes that founding-era legislatures maximally

> exercised their power to regulate, thereby adopting a "use it or lose it" view of legislative authority. Such assumptions are flawed, and originalism does not require them.
>
> "Analogical reasoning" under *Bruen* demands a wider lens: Historical regulations reveal a principle, not a mold.

Id. at 1925 (Barrett, J., concurring). Although the Fifth Circuit in *Daniels* acknowledged that "the Founding generation had no occasion to consider the relationship between firearms and intoxication via cannabis," its rejection of proffered "relevantly similar" laws required "a 'historical twin' rather than a 'historical analogue.'" *Rahimi*, 144 S.Ct. at 1903 (discussing the Fifth Circuit's Second Amendment analysis in *United States v. Rahimi*, 61 F.4th 443 (5th Cir. 2023)); *Daniels*, at 344–55 ("[T]he government's proffered analogues fall into three general buckets: (1) statutes disarming intoxicated individuals, (2) statutes disarming the mentally ill or insane, and (3) statutes disarming those adjudged dangerous or disloyal.").

Section 724.8B 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 laws that disarmed groups that posed a risk of danger to society, or laws that prohibited firearm use in certain circumstances, or laws that increased the punishment if the defendant possessed a weapon during the commission of a crime, or like surety bonds of limited duration,

section 724.8B prohibited Woods from carrying a firearm only when he illegally possessed a controlled substance because that combination poses an unacceptable risk of danger. This is "analogous enough" "to pass constitutional muster." *Id.* Because section 724.8B comports with the principles underlying the Second Amendment, this Court should reject Woods' challenge.

C. Woods received due process as guaranteed by the United States Constitution for his conviction under Iowa Code section 724.8B—he had notice and an opportunity to be heard.

The Fourteenth Amendment to the United States Constitution prohibits any State from "depriv[ing] any person of life, liberty, or property, without due process of law[.]" U.S. Const. amend. XIV, § 1.

Woods argues that section 724.8B deprives him of his fundamental right to keep and bear arms "without any requirement of process." Appellant's Br. at 21. In his view, "[s]ection 724.8B strips away individuals' right to bear arms without requiring any prior finding that the defendant represents a grave danger to society consistent with lawful firearm restrictions." Appellant's Br. at 22–23. Because Woods had notice and an opportunity to be heard for his conviction under section 724.8B, his due process challenge must fail.

"Due process is usually satisfied by 'notice and an opportunity to be heard.'" *State v. Hightower*, __ N.W.3d __, No. 22-1920, 2024 WL 3075781, at *7 (Iowa June 21, 2024). "As for notice, '[a]ll persons are presumed to know the law.'" *Id.* at *8 (citing Iowa Code § 701.6); *United States v. Howell*, No. CR07-2013-MWB, 2008 WL 313200, at *8 (N.D. Iowa Feb. 1, 2008). Woods is no different—he is presumed to know about section 724.8B. *Hightower*, No. 22-1920, 2024 WL 3075781, at *8. And section 724.8B's publication is "adequate notification to" Woods "as to what [section 724.8B] contain[s]." *Presbytery of Se. Iowa v. Harris*, 226 N.W.2d 232, 242 (Iowa 1975); *Howell*, No. CR07-2013-MWB, 2008 WL 313200, at *8–*9; Iowa Code § 701.6 ("All persons are presumed to know the law.").

"As for opportunity to be heard," defendants have "multiple chances to make any record that [they] want[] to make" during hearings held in open court before a court reporter or through motions filed with the court. *Hightower*, No. 22-1920, 2024 WL 3075781, at *8. Woods had, and used, many such chances here. D0019 (moving to dismiss, challenging constitutionality of section 724.8B); D0036 (arguing in support of motion to dismiss at hearing); D0026 (entering guilty pleas, admitting that he "knowingly possessed marijuana, and [he] knowingly carried a firearm while in possession of the marijuana"); *see* Iowa R. Civ. P. 1.904(2)

(outlining procedure to move for reconsideration); *see also* Iowa R. Crim. P. 2.8 (outlining arraignment conduct and plea proceedings), Iowa R. Crim. P. 2.23(1)(*b*) (requiring court to pronounce judgment after "a guilty plea, guilty verdict, or a special verdict upon which a judgment of conviction may be rendered").

Section 724.8B limits an individual's right to carry a firearm by making it a serious misdemeanor to "illegally possess[] a controlled substance" and carry a dangerous weapon. By its plain text, section 724.8B requires a judicial finding that Woods illegally possessed a controlled substance and carried a dangerous weapon. Woods moved to dismiss, challenging section 724.8B's constitutionality, and argued his position in open court before a court reporter. D0019; D0036. When the court denied his motion, he did not ask the court to reconsider its ruling. Instead, Woods chose to admit he illegally possessed marijuana and carried a firearm. D0026 at 1–2, 7. He could have required the State to prove the same. *See generally* D0026. Had he not admitted he possessed marijuana, or had the State failed to prove the same at trial, his conviction under section 724.8B could not stand. Woods "had ample opportunities to be heard." *See Hightower*, No. 22-1920, 2024 WL 3075781, at *8.

Because Woods received notice and an opportunity to be heard his due process challenge fails. This Court should affirm his conviction under section 724.8B.

CONCLUSION

Iowa Code section 724.8B satisfies Article I, Section 1A's strict scrutiny test and *Bruen*'s two-part test under the Second Amendment, and Woods' conviction under section 724.8B gave him notice and an opportunity to be heard as guaranteed by the Fourteenth Amendment. This Court should affirm.

REQUEST FOR NONORAL SUBMISSION

The State believes the parties' briefs are enough to resolve this appeal. In the event argument is scheduled, the State asks to be heard.

Respectfully submitted,

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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:

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