

**IN THE SUPREME COURT  
FOR THE STATE OF IOWA  
Case No. 24-0261**

---

**STATE OF IOWA,  
Plaintiff-Appellee,**

**vs.**

**KEVIN DWAYNE WOODS, JR.,  
Defendant-Appellant.**

---

**APPEAL FROM THE IOWA DISTRICT COURT  
FOR POLK COUNTY, CASE NO. SRCR372647  
HONORABLE GREGORY D. BRANDT**

---

**DEFENDANT-APPELLANT'S BRIEF**

---

Jessica Donels  
Parrish Kruidenier, L.L.P.  
2910 Grand Avenue  
Des Moines, Iowa 50312  
Telephone: (515) 284-5737  
Fax: (515) 284-1704  
Email: [jdonels@parrishlaw.com](mailto:jdonels@parrishlaw.com)  
**ATTORNEY FOR  
DEFENDANT-APPELLANT**

Brenna Bird  
Iowa Attorney General's Office  
Criminal Appeals Division  
Hoover State Office Building  
Des Moines, Iowa 50319  
Telephone: (515) 281-5164  
Fax: (515) 281-4209  
**ATTORNEY FOR  
PLAINTIFF-APPELLEE**

**TABLE OF CONTENTS**

TABLE OF AUTHORITIES .....4

STATEMENT OF ISSUES PRESENTED FOR REVIEW .....7

ROUTING STATEMENT.....7

NATURE OF THE CASE .....7

STATEMENT OF FACTS .....8

JURISDICTIONAL STATEMENT .....10

ARGUMENT .....10

    I. The district court erred in denying Mr. Woods’ motion to dismiss under Article I, section 1A of the Iowa Constitution.....10

        A. Preservation of Error.....10

        B. Standard of Review.....11

        C. Argument .....11

            1. This Court must evaluate Mr. Woods’ state constitutional claim separately from the federal framework.....12

            2. Iowa Code § 724.8B cannot survive strict scrutiny. ....12

    II. The district court erred in denying Mr. Woods’ motion to dismiss under the Second Amendment to the United States Constitution.....16

        A. Preservation of Error.....16

        B. Standard of Review.....16

        C. Argument .....17

            1. Iowa Code § 724.8B is unconstitutional because it fails to pass the two-part test set forth in Bruen.....17

2. Iowa Code § 724.8B is unconstitutional because it fails to comply with the requirements of due process before suspending individuals' Second Amendment rights.....21

CONCLUSION.....23

ORAL ARGUMENT NOTICE .....23

CERTIFICATE OF COMPLIANCE AND SERVICE .....24

## TABLE OF AUTHORITIES

### Cases

<i>Arnett v. Kennedy</i> , 416 U.S. 134 (1974).....	22
<i>District of Columbia v. Heller</i> , 554 U.S. 570 (2008) .....	18, 19
<i>Griswold v. Connecticut</i> , 381 U.S. 479 (1965).....	18
<i>Joint Anti-Fascist Comm. v. McGrath</i> , 341 U.S. 123 (1951) .....	22
<i>Mathews v. Eldridge</i> , 424 U.S. 319 (1976) .....	21, 22
<i>McDonald v. City of Chicago, Ill.</i> , 561 US. 742 (2010).....	19
<i>Morrissey v. Brewer</i> , 408 U.S. 471 (1972).....	22
<i>New York State Rifle &amp; Pistol Ass’n v. Bruen</i> , 597 U.S. 1 (2022) .....	17, 19, 20, 21
<i>Oregon v. Hass</i> , 420 U.S. 714 (1975).....	12
<i>Planned Parenthood v. Reynolds</i> , 962 N.W.2d 37 (Iowa 2021) .....	11, 16
<i>Reno v. Flores</i> , 507 U.S. 292 (1993) .....	12
<i>Santi v. Santi</i> , 633 N.W.2d 312 (Iowa 2001).....	12
<i>State v. Newton</i> , 929 N.W.2d 250 (Iowa 2019).....	21
<i>State v. Ochoa</i> , 792 N.W.2d 260 (Iowa 2010).....	12
<i>State v. Pals</i> , 805 N.W.2d 767 (Iowa 2011) .....	12
<i>Tinker v. Des Moines Indep. Cmty. Sch. Dist.</i> , 393 U.S. 503 (1969) .....	18
<i>United States v. Burchard</i> , 580 F.3d 341 (6th Cir. 2009).....	14
<i>United States v. Cook</i> , 970 F.3d 866 (7th Cir. 2020).....	14, 15

<i>United States v. Daniels</i> , 77 F.4th 337 (5th Cir. 2023). .....	17, 20
<i>United States v. Harrison</i> , 2023 WL 1771138 (W.D. Okla. 2023).....	18, 20, 22
<i>United States v. Harvey</i> , 609 F. Supp. 3d 759 (D. Neb. 2022).....	22
<i>United States v. Rahimi</i> , 61 F.4th 443 (5th Cir. 2023) .....	18
<i>United States v. Richard</i> , 350 Fed. App’x 252 (10th Cir. 2009).....	14
<i>United States v. Veasley</i> , 23-1114 (8th Cir. Apr. 17, 2024) .....	15, 21
<i>United States v. Yancey</i> , 621 F.3d 681 (7th Cir. 2010) .....	15

**Constitutional Provisions**

IOWA CONST. art. I, § 1A.....	9, 11, 12, 14
U.S. CONST. amend. I.....	18
U.S. CONST. amend. II.....	9, 17, 19
U.S. CONST. amend. IV .....	18
U.S. CONST. amend. XIV .....	21

**Rules**

Iowa R. Crim. P. 2.8(b)(9).....	10, 16
---------------------------------	--------

**Statutes**

18 U.S.C. § 922(g)(3).....	14, 15, 20, 21
Iowa Code § 124.401 .....	7, 9
Iowa Code § 321J.21.....	15
Iowa Code § 702.7 .....	13

Iowa Code § 721.2 .....15

Iowa Code § 722.3 .....15

Iowa Code § 724.8 ..... 13, 14

Iowa Code § 724.8B..... *passim*

Iowa Code § 731.6 .....15

## **STATEMENT OF ISSUES PRESENTED FOR REVIEW**

- I. The district court erred in denying Mr. Woods' motion to dismiss under Article I, section 1A of the Iowa Constitution.
- II. The district court erred in denying Mr. Woods' motion to dismiss under the Second Amendment to the United States Constitution.

## **ROUTING STATEMENT**

This case should be retained by the Iowa Supreme Court, as it presents substantial constitutional questions as to the validity of a statute, fundamental and urgent issues of broad public importance, and substantial questions of changing legal principles. Iowa R. App. P. 6.1101(2)(a), (d), and (f).

## **NATURE OF THE CASE**

The Defendant-Appellant, Kevin Woods, appeals following the entry of a conditional guilty plea. On December 19, 2023, Mr. Woods pleaded guilty to Count I: Possession of a Controlled Substance – Marijuana (Serious Misdemeanor), in violation of Iowa Code § 124.401(5); and Count II: Person Ineligible to Carry Dangerous Weapons (Serious Misdemeanor), in violation of Iowa Code § 724.8B. (D0026, Written Guilty Plea at 1 (12/19/23)). Mr. Woods entered into the guilty plea on the condition that he preserve the right to appeal his previously denied motion to dismiss Count II: Person Ineligible to Carry Dangerous Weapons under both the Iowa Constitution and United States Constitution. (*Id.* at 2).

The court imposed a suspended sentence of concurrent terms of imprisonment not to exceed 180 days for Count I and 365 days for Count II. (D0028, Disposition at 2 (1/23/24)). Mr. Woods timely appealed as to Count II only, pursuant to the terms of the conditional plea. (D0030, Notice of Appeal (2/15/24); D0032, Certified Notice of Appeal (2/15/24)).

### **STATEMENT OF FACTS**

As a factual basis for his guilty plea for Count II, Mr. Woods stated that on or about July 31, 2023, in Polk County, Iowa, he knowingly carried a firearm while in possession of marijuana. (D0026, Written Guilty Plea at 5 (12/19/23)). Both items were found within Mr. Woods' vehicle. (*Id.*). Mr. Woods further stated that the district court could rely upon the Minutes of Testimony to establish a factual basis and admitted that the Minutes were accurate. (*Id.*).

The Minutes establish that Mr. Woods was arrested following a traffic stop of his commercial vehicle on July 31, 2023. (D0010, Minutes of Testimony at 5 (9/11/23)). During the stop, law enforcement seized two THC vape pens from the vehicle and Mr. Woods' person. (*Id.*) Mr. Woods truthfully informed law enforcement that a backpack stored in the vehicle contained marijuana and a firearm. (*Id.*). In addition to the vape pens, law enforcement seized marijuana, a pistol, and several magazines from the vehicle. (*Id.*). Mr. Woods was charged with Count I: Possession of a Controlled Substance – Marijuana (Serious Misdemeanor), in



violation of Iowa Code § 124.401(5); and Count II: Person Ineligible to Carry Dangerous Weapons (Serious Misdemeanor), in violation of Iowa Code § 724.8B. (D0009, Trial Information at 1 (9/11/23)).

Mr. Woods filed a motion to dismiss Count II, alleging that Iowa Code § 724.8B unconstitutionally infringed upon his constitutional right to possess a firearm under Article I, section IA of the Iowa Constitution and the Second Amendment to the United States Constitution. (D0019, Motion to Dismiss at 2 (11/7/23)). After a hearing, the district court denied the motion. (D0023, Order Denying Motion to Dismiss at 1 (11/29/23); D0024, Court Reporter Memorandum and Certificate (11/30/23)).

Following the denial of his motion to dismiss, Mr. Woods entered a conditional guilty plea, which preserved his right to appeal the denied motion to dismiss as to Count II. (D0026, Written Guilty Plea at 2 (12/19/23)). Mr. Woods pleaded guilty to Count I: Possession of a Controlled Substance – Marijuana (Serious Misdemeanor), in violation of Iowa Code § 124.401(5); and Count II: Person Ineligible to Carry Dangerous Weapons (Serious Misdemeanor), in violation of Iowa Code § 724.8B. (*Id.* at 1). The court imposed a suspended sentence of concurrent terms of imprisonment not to exceed 180 days for Count I and 365 days for Count II. (D0028, Disposition at 2 (1/23/24)). Mr. Woods now appeals the denial of his motion to dismiss Count II.

## JURISDICTIONAL STATEMENT

Mr. Woods has demonstrated good cause under Iowa Code § 814.6(1)(a)(3) because this appeal stems from a conditional guilty plea pursuant to Iowa R. Crim. P. 2.8(2)(b)(9). (D0026, Written Guilty Plea at 2 (12/19/23); D0029, Disposition at 1 (1/23/24)). Mr. Woods entered into a guilty plea on the condition that he preserve the right to appeal his denied motion to dismiss Count II under both the Iowa Constitution and United States Constitution. (D0026, Written Guilty Plea at 2 (12/19/23)). Pursuant to Iowa Code § 814.6(3), this Court has jurisdiction over Mr. Woods' conditional guilty plea because the issue was properly preserved for review and appellate adjudication is in the interest of justice.

## ARGUMENT

### **I. The district court erred in denying Mr. Woods' motion to dismiss under Article I, section 1A of the Iowa Constitution.**

#### ***A. Preservation of Error***

Mr. Woods filed a motion to dismiss Count II of the trial information, challenging the validity of Iowa Code § 724.8B under both the Iowa and United States Constitutions. (D0019, Motion to Dismiss (11/7/23)). Following a hearing, the court denied the motion. (D0023, Order Denying Motion to Dismiss (11/29/23)). Error was preserved when Mr. Woods entered a conditional guilty plea pursuant to Iowa R. Crim. P. 2.8(b)(9), reserving the right to appellate review of the district

court's denial of Mr. Woods' motion to dismiss Count II. (D0026, Written Guilty Plea at 2 (12/19/23)).

### ***B. Standard of Review***

The Court reviews constitutional challenges de novo. *Planned Parenthood of the Heartland, Inc. v. Reynolds*, 962 N.W.2d 37, 45 (Iowa 2021) (internal citation omitted).

### ***C. Argument***

The district court erred when it denied Mr. Woods' motion to dismiss Count II under the Iowa Constitution. Iowa Code § 724.8B violates article I, section 1A of the Iowa Constitution's Bill of Rights, which provides:

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.

The Iowa Constitution goes beyond the Second Amendment to the United States Constitution to protect the fundamental individual right to keep and bear arms. This amendment was affirmed by voters in 2021 and added to the Iowa Constitution in 2022. Its placement in section 1A – before the right to political power, freedom of religion, equal protection, and free speech, among other rights – demonstrates the importance that Iowans and the legislature placed upon this fundamental right in particular.

**1. This Court must evaluate Mr. Woods’ state constitutional claim separately from the federal framework.**

The Court’s analysis of Mr. Woods’ state constitutional claim must begin with the text of the state constitution, rather than mirroring the framework used by federal courts or even the United States Supreme Court. *See, e.g., Oregon v. Hass*, 420 U.S. 714, 719 (1975) (noting that each state “is free as a matter of its own law to impose greater restrictions. . . than those this Court holds to be necessary upon federal constitutional standards”); *State v. Pals*, 805 N.W.2d 767, 771 (Iowa 2011) (Iowa state courts “jealously protect [the] court’s authority to follow an independent approach under our state constitution”); *State v. Ochoa*, 792 N.W.2d 260, 267 (Iowa 2010) (recognizing the “independent nature of our state constitutional provisions”). As Article I, § 1A explicitly calls for strict scrutiny review of any and all restrictions placed on the fundamental individual right to keep and bear arms, the Court must determine whether Iowa Code § 724.8B can withstand this heightened review.

**2. Iowa Code § 724.8B cannot survive strict scrutiny.**

Strict scrutiny serves as a form of “heightened protection” which applies “only to those cases implicating fundamental rights.” *Santi v. Santi*, 633 N.W.2d 312, 318 (Iowa 2001). Under strict scrutiny review, the government cannot “infringe certain ‘fundamental’ liberty interests *at all*. . . unless the infringement is narrowly tailored to serve a compelling state interest.” *Id.* (citing *Reno v. Flores*, 507 U.S. 292, 301-02 (1993)).

Iowa Code § 724.8B cannot survive strict scrutiny. It directly infringes upon a fundamental individual right by creating sweeping categories of individuals who are ineligible to carry dangerous weapons, including firearms. *See* Iowa Code § 702.7 (defining “dangerous weapon”). Iowa Code § 724.8B 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. Iowa Code § 724.8 provides, in relevant part:

No professional or nonprofessional permit to carry weapons shall be issued to a person who is subject to any of the following:

- (2) Is addicted to the use of alcohol.
- (3) Probable cause exists to believe, based upon documented specific actions of the person, where at least one of the actions occurred within two years immediately preceding the date of the permit application, that the person is likely to use a weapon unlawfully or in such other manner as would endanger the person’s self or others.
- (4) Is subject to the provisions of section 724.26.
- (5) Has, within the previous three years, been convicted of any serious or aggravated misdemeanor defined in chapter 708 not involving the use of a firearm or explosive.
- (6) Is prohibited by federal law from shipping, transporting, possessing, or receiving a firearm.

Iowa Code § 724.8. In short, a marijuana user may be prohibited from possessing a firearm in three ways: under the “person who illegally possesses a controlled substance” provision of section 724.8B; under the “person who is committing an indictable offense” provision of section 724.8B; or under the “prohibited by federal law” provisions of sections 724.8B and 724.8(6). Each provision is unconstitutionally overbroad because it prohibits more protected conduct than necessary to serve the compelling state interest of promoting public safety.

Under section 724.8B, an individual who illegally possesses a controlled substance loses the “fundamental individual right” to keep and bear arms. IOWA CONST. art. I, § 1A. There is no requirement that the individual use the controlled substance or that the firearm be possessed in furtherance of drug trafficking activities. In this way, the Iowa law is significantly broader than its federal counterpart, 18 U.S.C. § 922(g)(3), which prohibits a person from possessing a firearm if he is “an unlawful user of or addicted to any controlled substance.” Federal courts generally define an “unlawful user” as someone who regularly takes drugs over an extended period of time, as opposed to a one-time user or someone who merely possesses the drug but does not partake. *See, e.g., United States v. Burchard*, 580 F.3d 341, 351 (6th Cir. 2009); *United States v. Cook*, 970 F.3d 866, 874 (7th Cir. 2020); *United States v. Richard*, 350 Fed. App’x 252, 263 (10th Cir. 2009). Some courts have gone so far as to require that the unlawful drug use “must be

contemporaneous with the defendant’s possession of a gun.” *Cook*, 970 F.3d at 874 (citing *United States v. Yancey*, 621 F.3d 681, 687 (7th Cir. 2010) (per curiam)). A recent Eighth Circuit opinion, holding that section 922(g)(3) survived a facial challenge, noted that “[j]ust like its historical counterparts, § 922(g)(3) does not criminalize mere possession,” but “requires another act, the taking of drugs.” *United States v. Veasley*, 23-1114, at \*17 (8th Cir. Apr. 17, 2024). In Iowa, however, mere possession is enough. This is troubling, especially given Iowa’s clear constitutional directive to safeguard the fundamental individual right to possess firearms.

Similarly, an individual who possesses a firearm while committing *any* indictable offense violates section 724.8B. Any indictable offense qualifies – even those that are nonviolent and unrelated to drug possession. An individual could be charged with violating section 724.8B while driving with a revoked license following an OWI (Iowa Code § 321J.21), committing non-felonious misconduct in office (Iowa Code § 721.2), committing bribery in sports (Iowa Code § 722.3), or interfering with the right to join a union (Iowa Code § 731.6). None of these offenses require a judicial determination of dangerousness prior to losing the right to possess a gun. None of these offenses are made inherently more dangerous simply because the offender possesses a firearm. None of these offenses justify stripping countless Iowans of their constitutional right to possess arms.

The State has a compelling safety interest in preventing drug dealers from using firearms in furtherance of drug trafficking. But too many individuals are captured under the statute's broad net. A drug trafficker who uses a gun to make a dangerous drug sale violates Iowa Code § 724.8B, but so too does a defendant who is home alone, smoking legally purchased – albeit illegally possessed – marijuana in her bedroom, with her firearm safely secured. This individual does not pose a threat to anyone. Because section 724.8B is not narrowly tailored, it cannot pass strict scrutiny. The district court erred in failing to dismiss Count II of the Trial Information.

**II. The district court erred in denying Mr. Woods' motion to dismiss under the Second Amendment to the United States Constitution.**

***A. Preservation of Error***

Error was preserved when Mr. Woods entered a conditional guilty plea pursuant to Iowa R. Crim. P. 2.8(b)(9), reserving the right to appellate review of the district court's denial of Mr. Woods' motion to dismiss Count II. (D0026, Written Guilty Plea at 2 (12/19/23)).

***B. Standard of Review***

Constitutional questions are reviewed de novo. *Planned Parenthood*, 962 N.W.2d at 45.



### ***C. Argument***

#### ***1. Iowa Code § 724.8B is unconstitutional because it fails to pass the two-part test set forth in Bruen.***

The Second Amendment protects the right to the people to keep and bear arms.

U.S. CONST. amend. II. The United States Supreme Court recently clarified:

When the Second Amendment’s plain text covers an individual’s conduct, the Constitution presumptively protects that conduct. The government must then justify its regulation by demonstrating that it is consistent with the Nation’s historical tradition of firearm regulation.

*New York State Rifle & Pistol Ass’n v. Bruen*, 597 U.S. 1, 24 (2022). This two-step analysis asks the Court to first determine whether the text of the Second Amendment covers the conduct in question. As Iowa Code § 724.8B restricts conduct protected by the plain text of the Second Amendment, the Government holds the burden to show that prohibiting marijuana users from possessing firearms is “consistent with the Nation’s historical tradition of firearm regulation.” *Bruen*, 597 U.S. at 24.

#### ***a. Mr. Woods’ conduct is presumptively covered by the Second Amendment.***

Mr. Woods’ conduct in this case is presumptively covered by the Second Amendment. First, Mr. Woods is one of “the people” whose right to keep and bear arms is protected by the Second Amendment. Marijuana users are not excluded from the definition of “the people” entitled to Second Amendment protections. *See United States v. Daniels*, 77 F.4th 337, 342 (5th Cir. 2023). Second, Mr. Woods’ conduct –

possessing a gun – is clearly the type of conduct that the Second Amendment was intended to cover.

Mr. Woods is one of “the people” to whom the Second Amendment refers. “The people” is a phrase of inclusion, not of exclusion. The Bill of Rights refers several other times to “the people,” notably in the First Amendment’s Assembly and Petition Clause and in the Fourth Amendment’s Search and Seizure Clause. U.S. CONST. amends. I, IV. Nowhere in the Constitution do the Founders limit the phrase “the people” to expressly exclude individuals who use or possess certain substances. *See United States v. Harrison*, 2023 WL 1771138, at \*3 (W.D. Okla. 2023) (rejecting the notion that lawbreakers or marijuana users are categorically excluded from “the people”). The term “unambiguously refers to *all* members of the political community, not an unspecified subset.” *District of Columbia v. Heller*, 554 U.S. 570, 580 (2008) (emphasis added); *see also Tinker v. Des Moines Indep. Cmty. Sch. Dist.*, 393 U.S. 503, 511 (1969) (refusing to exclude students from the class of “persons” granted protection under the Constitution); *Griswold v. Connecticut*, 381 U.S. 479, 483 (1965) (refusing to exclude individuals from “the people” based on “their race or ideology [*sic*]”). “More than just ‘model citizen[s]’ enjoy the right to bear arms.” *United States v. Rahimi*, 61 F.4th 443, 453 (5th Cir. 2023), *cert. granted*, No. 22-915 (June 30, 2023).

Individuals who use or possess drugs are not denied their First Amendment right to peaceably assemble or to petition the government. Nor are they categorically denied the right to be free from unreasonable searches and seizures. The Second Amendment is not a “second class right, subject to an entirely different body of rules than the other Bill of Rights guarantees.” *McDonald v. City of Chicago, Ill.*, 561 U.S. 742, 780 (2010) (plurality opinion). Put simply, the Second Amendment protects the right to possess firearms without qualification.

Next, Mr. Woods’ conduct itself – possessing a firearm – is covered by the plain text of the Second Amendment, which protects the right to keep and bear arms. U.S. CONST. amend. II. The Supreme Court has extended this right to modern arms, “even those that were not in existence at the time of the founding.” *Bruen*, 597 U.S. at 28 (citing *Heller*, 554 U.S. at 582). The firearm in question in this case, a 9-millimeter Canik brand pistol, is one of the “modern instruments that facilitate armed self-defense,” even though “the Second Amendment’s definition of ‘arms’ is fixed according to its historical understanding.” *Id.* The plain text of the Second Amendment provides protection to all “the people,” not just those the Government believes are worthy of the right. For this reason, Iowa Code § 724.8B is presumptively unconstitutional.

***b. Iowa Code § 724.8B is inconsistent with the United States' history of firearm regulations.***

As Mr. Woods' conduct is covered by the plain text of the Second Amendment, the burden shifts to the Government to "affirmatively prove that its firearms regulation is part of the historical tradition that delimits the outer bounds of the right to keep and bear arms." *Bruen*, 597 U.S. at 19. The Government cannot do so.

The Court must consider *only* whether there is a valid historical basis for restricting the Second Amendment right, not whether the Government can invent a compelling reason for doing so. Courts may not "engage in independent means-end scrutiny under the guise of an analogical inquiry." *Id.* at 29, n.7. Recent case law on the constitutionality of federal statute 18 U.S.C. § 922(g)(3) suggests that there is no historical precedent that would justify prohibiting drug possessors from enjoying the rights promised to them by the Second Amendment. *See, e.g., Daniels*, 77 F.4th at 355; *Harrison*, 2023 WL 1771138, at \*6. In *Daniels*, the Fifth Circuit rejected the Government's suggested "analogues" and determined that section 922(g)(3) could not withstand *Bruen*'s two-part test. 77 F.4th at 355. Similarly, the court in *Harrison* found that the historical understanding of the Second Amendment was that the Constitution permitted only the disarming of individuals who showed "they would present a danger to the public if armed." 2023 WL 1771138, at \*15. Unable to find a historical analogue to section 922(g)(3), the court concluded that the statute was

unconstitutional. *Cf. Veasley*, 23-1114, at \*18 (rejecting a facial challenge to section 922(g)(3) because “all we need to know is that at least some drug users and addicts fall within a class of people who historically have had limits placed on their right to arms,” but leaving the door open for a future as-applied challenge).

The State cannot point to an appropriate historical analogue that would justify disarming Mr. Woods and others merely based on *possession* of an illicit substance, without further evidence to suggest that the disarmed individuals are dangerous. For this reason, the State cannot meet its burden under *Bruen*’s second prong. The district court erroneously denied Mr. Woods’ motion to dismiss.

**2. Iowa Code § 724.8B is unconstitutional because it fails to comply with the requirements of due process before suspending individuals’ Second Amendment rights.<sup>1</sup>**

The government may not deprive an individual of life, liberty, or property without an adequate legal process. U.S. CONST. amend. XIV; *Mathews v. Eldridge*, 424 U.S. 319, 332-33 (1976). Yet under Iowa Code § 724.8B, individuals may be disarmed – thereby losing a fundamental individual right – without any requirement of process.

---

<sup>1</sup> Iowa courts “reserve the right to apply the due process provisions of the Federal and State Constitutions independently.” *State v. Newton*, 929 N.W.2d 250, 256 (Iowa 2019). In this case, however, the state constitutional analysis was not raised separately in the lower court, so Mr. Woods raises only the federal due process issue on appeal. (D0019, Motion to Dismiss at 4-5 (11/7/23)).

“The ‘right to be heard before being condemned to suffer grievous loss of any kind, even though it may not involve the stigma and hardships of a criminal conviction, is a principle basic to our society.’” *Mathews*, 424 U.S. at 333 (quoting *Joint Anti-Fascist Comm. v. McGrath*, 341 U.S. 123, 168 (1951) (Frankfurter, J., concurring)). “[D]ue process is flexible and calls for such procedural protections as the particular situation demands.” *Morrissey v. Brewer*, 408 U.S. 471, 481 (1972). Determining whether a procedure is “constitutionally sufficient requires analysis of the governmental and private interests that are affected.” *Mathews*, 424 U.S. at 334 (citing *Arnett v. Kennedy*, 416 U.S. 134, 167-68 (1974) (Powell, J., concurring in part)).

Iowa Code § 724.8B does not require any sort of process before an individual is disarmed. In contrast, a person convicted of a felony only loses the right to bear arms after an individualized adversarial hearing. *Harrison*, 2023 WL 1771138, at \*10. Similarly, those subject to a domestic abuse restraining order are only disarmed *after* the court finds reason to enter the order, and those subject to restrictions on gun ownership due to mental illness also have the right to due process before they are disarmed. *See United States v. Harvey*, 609 F. Supp. 3d 759, 768 (D. Neb. 2022) (dismissing an indictment under § 922(g) because the defendant had not been adjudicated mentally deficient or committed to an institution). Section 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 firearms restrictions.

Mr. Woods lost his Second Amendment right to possess a firearm simply because he possessed an unlawful drug. There was no prior finding that he was using marijuana or that his marijuana possession was in any way connected to his firearm possession. There was no prior finding that Mr. Woods was a felon or mentally incompetent due to his marijuana possession. Due process requires more before an individual loses a fundamental right. The district court erred in denying Mr. Woods' motion to dismiss Count II of the Trial Information.

### **CONCLUSION**

The district court erred in denying Mr. Woods' motion to dismiss Count II under both the United States and Iowa Constitutions. Mr. Woods respectfully requests that this Court find that Iowa Code § 724.8B is unconstitutional on its face and as applied. This Court should dismiss Count II of the Trial Information if the Court has jurisdiction to do so. In the alternative, the Court should reverse the judgment of the district court and remand this case so that Count II may be dismissed.

### **ORAL ARGUMENT NOTICE**

Mr. Woods respectfully requests oral argument of 15 minutes.

## **CERTIFICATE OF COMPLIANCE AND SERVICE**

This brief complies with the typeface requirements of Iowa R. App. P. 6.903(1)(g) and the type-style requirements of Iowa R. App. P. 6.903(1)(h) because this brief has been prepared in a proportionally spaced serif typeface, Times New Roman, in 14-point font size.

This brief complies with the type-volume limitation of Iowa R. App. P. 6.903(1)(i)(1) because it contains fewer than 13,000 words, excluding the parts of the brief that are exempt from the limitation, such as the captions, tables of contents or authorities, statement of the issues, signature blocks, and certificates.

I hereby certify that on April 18, 2024, I served the foregoing Defendant-Appellant's Brief by mailing one copy to the following:

Kevin Woods  
**DEFENDANT-APPELLANT**

*/s/ Jessica Donels*

\_\_\_\_\_  
Jessica Donels  
**ATTORNEY FOR**  
**DEFENDANT-APPELLANT**