IN THE SUPREME COURT OF IOWA

SUPREME COURT NO. 24-0297

MONONA COUNTY MHMH001061

IN THE MATTER OF N.F.,

Petitioner/Appellee.

APPEAL FROM THE IOWA DISTRICT COURT FOR MONONA COUNTY

HONORABLE JEFFREY NEARY

REPLY BRIEF FOR APPELLANTS

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CERTIFICATE OF FILING AND SERVICE

On the 14th day of June 2024, the State electronically filed this brief with the Clerk of Court and served on all other parties to this appeal via EDMS.

/s/ Sarah Anne Jennings
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ARGUMENT

The State may appeal adverse decisions in section 724.31 actions, the district court inappropriately discounted N.F.'s substance abuse committal, and the district court should not have granted N.F.'s Petition. N.F. attempts to counter those three conclusions with cases drawn heavily from criminal law jurisprudence to support his assertions that the State has no right of appeal here. But those comparisons are unavailing. In N.F.'s proffered cases, the courts denied defendants their appellate rights because those defendants tried to shoehorn civil rules into criminal contexts. But this section 724.31 case is civil, and so bars on State appeals in criminal cases do not apply.

N.F. also improperly raises new arguments for the first time on appeal. Those new arguments include (1) a *Bruen* challenge and (2) a denial that N.F. ever had a firearms disability because, under a novel interpretation of commitment, N.F. was never committed. Neither argument was preserved and so both are forfeited on appeal. Error preservation aside, firearms regulations hewing to the longstanding American tradition of limiting mentally ill of their Second Amendment rights are presumptively lawful under *Heller*. As to N.F.'s contention that

he was never committed because he was discharged, all committals are eventually dismissed or discharged even if the patient does not comply. A discharge or dismissal does not vitiate the committal itself under state or federal firearms prohibitions. But such a firearms disability may be remedied by following the procedure codified in section 724.31.

Finally, N.F. introduces no corroborating evidence to support his assertions that he is a "stable, employed, and law-abiding young adult." (Appellee's Brief, at 42.) The district court relied solely on N.F.'s own testimony for evidentiary support. N.F. offered no credible character evidence, no witness testimony, and no mental health records at hearing. His petition should fail.

I. HHS AND THE STATE OF IOWA HAVE THE RIGHT OF APPEAL IN SECTION 724.31 ACTIONS.

Nothing in statute nor common law deprives HHS or the State of Iowa of a right to appeal. Iowa Code § 724.31(4). N.F. relies on criminal cases and statutes to buttress his assertion that HHS may not appeal Iowa Code section 724.31 decisions. (Appellee's Brief, at 16, 18, 20-22.) But criminal law operates under different rules, both statutory and Constitutional—rules that do not apply to firearms disability relief cases.

Criminal proceedings have heightened constitutional guarantees and separate rules of procedure. For example, the State in criminal cases never has the right to appeal a judgment except on "a finding of invalidity of an ordinance or statute." Iowa R. Crim. P. 2.72(1). In "all other cases, an appeal may only be taken by the defendant." *Id*. By contrast, in civil cases, both sides have the right to appeal any final order or judgment of the district court involving the merits. Iowa R. App. P. 6.103.

***State v. Lepon* Does Not Forbid Appeals in this Civil Context**

N.F. alleges that the State holds an inconsistent position with its stance in *State v. Lepon,* in which the State acknowledged that appeals from some adverse criminal final judgments are impermissible. (Appellee's Brief, at 20-22); *State v. Lepon*, 928 N.W.2d 873 (Iowa Ct. App. 2019). That tells an incomplete story.

N.F. omits that the decision not to apply Iowa Rule of Appellate Procedure 6.103 to criminal defendant LePon's appeal turned on the fact that LePon's was a criminal case to which the rules of civil procedure do not apply. (Appellee's Brief, at 21-22); *LePon*, 928 N.W.2d at 873. For that reason, *LePon* referenced another criminal case where the defendant

attempted to invoke a right to appeal through the inapplicable civil rules of procedure. *State v. Coughlin,* 200 N.W.2d 525 (Iowa 1972).

> In *Coughlin*, the Iowa Supreme Court interpreted 1971's Iowa Rule of Civil Procedure 331, which is materially identical to Iowa Rule of Appellate Procedure 6.103. Despite the broad language of the rule, the *Coughlin* court held there was no appeal as a matter of right from an order granting a new trial *in a criminal case*. *Coughlin* remains controlling because the rules are virtually identical.

LePon, 928 N.W.2d at 873 (emphasis added, cleaned up).

Another distinguishing factor is that criminal defendant LePon's appeal arose "from the denial of his third motion for new trial." *Lepon*, 928 N.W.2d at 873. LePon tried to appeal an order that the Court of Appeals found "not a final judgment of sentence." *Id.* (cleaned up). Even applying N.F.'s proposed rule forbidding appeals, the order the State appeals from now is a final order or judgment involving the merits, not a "decisio[n], opinion[n], or findin[g]." *Id.* The order appealed from here "terminate[d] the litigation between the parties on the merits." *Id.*, quoting *State v. Propps*, 897 N.W.2d 91, 96 (Iowa 2017).

Coughlin, as *LePon* recognized, acknowledged the general civil law did not apply "to criminal cases." *Coughlin,* 200 N.W.2d at 526. The Court further explained that the "Rules of Civil Procedure have no application

to criminal cases unless a statute makes them applicable." *Id.* That maxim does not extend to civil cases, for which the Rules of Civil Procedure were expressly crafted.

By glossing over the critical distinction between civil and criminal cases, N.F. draws no substantive contradiction between the State's position in *LePon* and its position now. Indeed, in the quoted portions of the State's brief from *LePon*, the State uses the limiting language "in a criminal case" and cites the code section that lists the permissible appeals in criminal law "applying only to *criminal* appeals." (Appellee's Brief, at 21) (emphasis added).

All criminal appeals are tightly circumscribed by two statutes that delineate the only times an appeal may occur. Iowa Code § 814.5, 814.6. The statutes use strong language: "right of appeal is granted." *Id.* Even so, the statute governing the State contains the flexible catch-all: "A final judgment or order raising a question of law important to the judiciary and the profession." Iowa Code § 814.5(d). That strict framework is not analogous to the rules of appellate procedure that allows parties to appeal any final order or judgment in a civil case. Iowa R. App. P. 6.103(1).

Distinguishing State v. Beach

Because *State v. Beach* construes a statute's silence on a right to mean an affirmative deprivation of such, N.F. next contends that the lack of mention of the State's authority to appeal under section 724.31 means no such right exists. *State v. Beach*, 630 N.W.2d 598. (Iowa 2001); (Appellee's Brief, at 18). But *Beach*'s statement of law was more specific than N.F. recognizes. This second attempt to apply criminal law in the civil context fails too. While section 724.31(4) may not spell out the State's right of appeal, the Iowa Rules of Appellate Procedure do. Iowa R. App. P. 6.103(1), 6.107(1). That distinguishes *Beach*. *Beach*, 630 N.W.2d 598.

Beach addressed which of several sentencing options the Legislature intended in enacting an amended statute. *Id.* at 601. At the start, the law gave a court wishing to bypass incarceration three alternative sentencing options. *Id.* The legislative amendment removed two of the options. *Id.* *Beach* explained that the two eliminated options clearly expressed the Legislature's intent to render those sentencing options illegal. *Id.* Beach's sentence was then vacated because the Supreme Court of Iowa recognized that the Legislature intended to

"remedy" his predicament when it eliminated the sentencing options it did upon amendment. *Id*.

But *Beach*'s statutory history—an explicit removal of an earlier part of law—is very different from the statute here—which explicitly grants a right of appeal to petitioners. There are no competing versions of the statute where the elimination of options speaks clearly to legislative intent.

And there is a strong reason to understand why the Legislature may have been especially careful to explicitly lay out the right of appeal for petitioners—after a petition there is a two-year cooling off period before the petitioner may apply next for firearm disability relief. Without such an explicit right of appeal, the courts may have thought that the initial hearing was the only opportunity to seek rights restoration.

Finally, N.F. misunderstands the Attorney General's Office authority when he suggests that the Attorney General cannot represent the Iowa Department of Health and Human Services in an appeal. It makes no difference for the right of appeal, as HHS is a party to this action and has a statutory right to "appear, support, object to, and present evidence." (D0004 (MHMH001061), Appearance (8/31/23)); Iowa

Code § 724.31(2). The State of Iowa has the same right and was indexed to the case as a party in EDMS as represented by Sarah Delanty, the Monona County Attorney.

Indeed, the transcript for the proceedings reflects that Assistant Attorney General Sarah A. Jennings appeared "[f]or the State." (Tr. 1.) Judge Neary, in making a record of the parties, says this: "Sarah Jennings, an assistant attorney general with the Department of Health and Human Services, is here representing the State of Iowa." (Tr. 2: 13–16.)

To the extent they exist at all, one-sided appellate rights are a rarity in purely civil law outside of narrow, long-known, criminal-adjacent contexts like habeas corpus. Constitutional protections like Double Jeopardy endemic to criminal law do not similarly prohibit appeals in civil suits. U.S. Const. amend. V. To interpret Iowa Code section 724.31 to prohibit the State appealing an adverse ruling in the firearm right restoration context would be to both misread the law and to create the potential for real danger in Iowa communities.

II. THE DISTRICT COURT IMPROPERLY DISCOUNTED N.F.'S SUBSTANCE ABUSE COMMITTAL IN ITS ANALYSIS.

Reporting of Substance Abuse Records

Involuntary substance abuse committal information are supposed to be reported to the Department of Public Safety for entry into the National Instant Criminal Background Check System ("NICS"). N.F. discusses federal statutes governing the confidentiality of substance abuse records at length while omitting key provisions. (Appellee's Brief, at 44-47.) The same statute N.F. claims shields all substance abuse treatment records from discovery in all legal proceedings contains a key exception: "Whether or not the patient . . . gives written consent, the content of such record may be disclosed . . . [i]f authorized by . . . order of a court of competent jurisdiction granted after application showing good cause therefor, including . . . to avert a substantial risk of death or serious bodily harm." 42 U.S. Code §§ 290dd-2(b)(2)(c), 2(c).

Further, firearms disability relief proceedings are closed hearings with sealed records: "the court shall receive and consider evidence in a closed proceeding," and the "record shall remain confidential and shall be disclosed only to a court in the event of an appeal." Iowa Code §§ 724.31(3), (4). The same protections apply to disability relief from involuntary substance abuse committals as they arise from the same

subsection of the code. Iowa Code § 724.31(1). Also, when litigants put their mental health at issue—as they do by bringing a section 724.31 action—they waive certain privileges. Iowa Code § 622.10(3).

The practice of imposing firearms disabilities following an involuntary substance abuse committal is consistent with both state and federal law. *See* 18 U.S.C. §§ 922(d)(4), (g)(4); 27 C.F.R. § 478.11; Iowa Code §§ 724.31(1), 724.31A(1). Indeed, other states impose firearms prohibitions based on substance abuse treatment. *e.g.*, Haw. Rev. Stat. Ann. § 134-7 (West 2023); 720 Ill. Comp. Stat. Ann. 5/24-3.1. More importantly, Iowa's laws require clerks of court to report substance abuse committal information to the Department of Public Safety. Iowa Code § 724.31A; (Appellant's Brief filed May 8, 2024, at 25-33).

N.F. contends that State law may not impose a firearms disability following an involuntary drug-related commitment. But N.F. is wrong. First, commitment and active addiction to a controlled substance are already federal firearms prohibitors. 18 U.S.C. §§ 922(d)(4), (g)(3), (g)(4); 27 C.F.R. § 478.11; Iowa Code §§ 724.31(1), 724.31A(1). Second, whether Iowa reports the commitment to the Department of Public Safety and thus NICS in practice does not affect the legality of a post-committal

purchase under either state or federal law. 18 U.S.C. §§ 922(d)(4), (g)(4); 27 C.F.R. § 478.11.

Iowa formerly had a backup plan to prevent active substance abusers from acquiring firearms—its permit application process—but constitutional carry rendered that process superfluous. Iowa Code §§ 724.8(2), (6) (making anyone prohibited by federal law ineligible for permit to carry weapons); Iowa Const. Art. I, § 1A. Now, someone committed for a substance-related disorder may possess and carry a firearm without a permit—but only after successfully restoring his firearms rights. Otherwise, that right is prohibited by state and federal law.

III. THE DISTRICT COURT ERRED IN GRANTING N.F.'S PETITION FOR FIREARMS DISABILITY RELIEF.

Error Preservation Issues

The State preserved error at the district court level, including argument at hearing that N.F. had not met his burden and a Motion to Reconsider. (Tr. 33:10–19; 46–50; D0036 (MHMH001061), Motion to Reconsider (2/8/2024).) N.F. cannot say the same. He makes several novel arguments inappropriately for the first time on appeal, including a *Bruen* challenge to 18 U.S.C. section 922(g)(4) and an assertion that N.F. never

should have been prohibited because his committal was dismissed after he was found to be seriously mentally impaired. (Appellee's Brief, at 30–42.)

The Supreme Court "may decide an issue presented to, but not decided by, the district court when it is urged on appeal by the appellee as an alternative ground for affirmance." *Star Equip., Ltd. v. State, Iowa Dep't of Transp.*, 843 N.W.2d 446 (Iowa 2014). A supreme court is a "court of review, not of first view." *UE Loc. 893/IUP v. State*, 928 N.W.2d 51, 60 (Iowa 2019) (quoting *Plowman v. Fort Madison Cmty. Hosp.*, 896 N.W.2d 393, 413 (Iowa 2017)).

Because error preservation is based on "fairness . . . both parties should be bound by the rule" that the Supreme Court does not decide an issue not decided by the district court first. *DeVoss v. State*, 648 N.W.2d 56, 63 (Iowa 2002). This serves to "protect the district court from being ambushed by parties raising issues on appeal that were not raised in the district court." *Id.*

N.F. presented no *Bruen* or other constitutional challenges and no contentions that his firearms disability does not actually exist to the district court. (*See* MHMH001061; Tr. 4–45.) He did not brief or argue

these issues to the district court, thereby depriving the State of the opportunity to respond in kind. The Court should consider none of N.F.'s novel arguments, including his disavowal of his firearms disability and his potpourri of constitutional claims.

Bruen Challenge to 18 U.S.C. Section 922(g)(4)

While the State maintains that N.F.'s *Bruen* challenge to 18 U.S.C. section 922(g)(4) is improperly raised for the first time on appeal, the law still survives under *Bruen*. The Second Amendment's right to "keep and bear arms" is "not unlimited." U.S. Const. amend. II; *D.C. v. Heller*, 554 U.S. 570, at 626 (2008). Rather, the Second Amendment permits a "variety" of regulations, including "longstanding prohibitions on the possession of firearms by . . . the mentally ill." *Id*. at 626, 636; *McDonald v. City of Chicago*, 561 U.S. 742, 786 (2010) ("We made it clear in *Heller* that our holding did not cast doubt on such longstanding regulatory measures as prohibitions on the possession of firearms by felons and the mentally ill . . . We repeat those assurances here." (cleaned up). *Heller* described those longstanding statutes as "presumptively lawful regulatory measures." *Heller*, 554 U.S. at 627, n.26.

In *Bruen*, the Supreme Court rejected the two-step analysis commonly employed by courts after *Heller* and *McDonald*. *New York State Rifle & Pistol Ass'n, Inc. v. Bruen,* 597 U.S. 1, at 17-24 (2022). In its place, the *Bruen* framework requires a court to ask of a challenged law (1) whether the plain text of the Second Amendment applies to the regulated conduct at issue and, if so, (2) whether the government has shown that the regulation "is consistent with this Nation's historical tradition of firearm regulation." *Bruen*, 597 U.S. at 17. While *Bruen* partially abrogated cases like *Heller* and *McDonald* for applying means-end scrutiny, *Bruen* did not second-guess the "longstanding regulatory measures" the Supreme Court found "presumptively lawful" in those cases. *McDonald*, 561 U.S. at 786; *Heller*, 554 U.S. at 627, n.26. Quite the opposite—the *Bruen* decision "made the constitutional standard in *Heller* more explicit" rather than setting it aside. *Bruen*, 597 U.S. at 31.

When defining the Second Amendment's scope, *Heller* refers to "law-abiding, responsible citizens." *Heller*, 554 U.S. at 635. *Bruen* echoes that phrase, referencing "ordinary, law-abiding citizens." *Bruen*, 597 U.S. at 26. Those cases explain that individuals who have been involuntarily committed to a mental institution are not responsible citizens with the

full Second Amendment rights as other citizens. (Monona County cases MJMH000811 and MJMH000812.)

Persuasive in interpreting federal constitutional rights, the Eighth Circuit recently held that regulations forbidding the possession of firearms by felons and the mentally ill constitutional. *United States v. Jackson*, 69 F.4th 495, 505 (8th Cir. 2023). *Jackson* explained that the Supreme Court attached the "presumptive" portion of the "presumptively lawful" descriptor in *Heller* because those specific regulations were not at issue. *Id*. If such regulations are lawful, the Second Amendment does not protect the right of those committed to a mental institution to keep and bear arms.

That said, even proceeding to the next step of the *Bruen* analysis, historical tradition supports the constitutionality of 18 U.S.C. section 922(g)(4). Courts first look to what "societal problem" section 922(g)(4) seeks to address. *United States v. Gould*, 672 F. Supp. 3d 167, 181-82 (S.D. W. Va. 2023). In looking at the common denominator of those adjudicated mentally defective or involuntarily committed, the two definitions overlap in that both are persons found to be a "danger to themselves or others." *Id*. Thus, section 922(g)(4) addresses "firearm

violence by individuals who have been determined to be a danger to themselves or others," rather than those who are only mentally ill. *Id*. at 182.

Statutory history complements that analysis. Congress passed the Gun Control Act of 1968 in response to "widespread traffic in firearms and with their general availability to those whose possession thereof was contrary to the public interest." *Huddleston v. United States*, 415 U.S. 814, 824 (1974). Congress had two purposes for enacting section 922(g)(4): "(1) protecting the community from crime and (2) preventing suicide, both . . . accomplished by cut[ting] down or eliminat[ing] firearms deaths caused by persons who are not criminals, but who commit sudden, unpremeditated crimes with firearms as a result of mental disturbances." *Gould*, 672 F. Supp. 3d at 182, quoting 114 Cong. Rec. 21,829 (1968) (cleaned up).

Having identified the societal problem at issue, the next step of a *Bruen* analysis is determining if the regulation "is consistent with this Nation's historical tradition of firearm regulation." *Bruen*, 597 U.S. at 17. The State must show that history and tradition support "prohibiting

individuals who have been determined to be a danger to themselves or others." *Gould*, 672 F. Supp. 3d at 182.

Regulations specifically dispossessing the mentally ill of firearms likely did not exist at the Founding because justices of the peace could "lock up lunatics who were dangerous to be permitted to go abroad." Carlton F.W. Larson, *Four Exceptions in Search of A Theory: District of Columbia v. Heller and Judicial Ipse Dixit,* 60 Hastings L.J. 1371, 1377 (2009). The mentally ill were "often removed from the community at large through home confinement or involuntary commitment to welfare and penal institutions," making "formal" disarmament laws unnecessary. *Gould*, 672 F. Supp. 3d at 183, quoting Gerald N. Grob, *The Mad Among Us: A History of the Care of America's Mentally Ill* 5-21, 29, 43 (1994). Still, these practices offer analogous historical support for 922(g)(4)—if Founding-era Americans found it acceptable to lock away the mentally ill, they likely would have accepted the lesser liberty deprivation of a firearms disability.

Heller recognizes the 1689 English Declaration of rights as the "predecessor of our Second Amendment." *Heller*, 554 U.S. at 593. That Declaration allowed "that the subjects, which are protestants, may have

arms for their defence suitable to their condition, and as allowed by law." *Id.* at 608, (quoting 1 W. & M., c. 2, § 7, in 3 Eng. Stat. at Large 441 (1698)). *Heller* further identifies the Address and Reasons of Dissent of the Minority of the Convention of the State of Pennsylvania to Their Constituents as a "highly influential" "precursor" to the Second Amendment. *Heller*, 554 U.S. at 604. That report "asserted that citizens have a personal right to bear arms unless for committed, or deal danger of public injury." *United States v. Skoien*, 614 F.3d 638, 640 (7th Cir. 2010) (cleaned up).

Those historical, Founding-era, and pre-Founding era restrictions are analogous enough given *Heller* and *McDonald*'s explicit language to find 18 U.S.C. section 922(g)(4) and section 724.31 constitutional here. Historians have written that the Founding-era "right to arms was inextricably and multifariously linked to that of civic virtù (i.e., the virtuous citizenry)," and that "[o]ne implication of this emphasis on the virtuous citizen is that the right to arms does not preclude laws disarming the unvirtuous citizens (i.e., criminals) or those who, like children or the mentally imbalanced, are deemed incapable of virtue."

Don B. Kates & Clayton E. Cramer, *Second Amendment Limitations and Criminological Considerations*, 60 Hastings L.J. 1339, 1360 (2009).

And under the "virtuous citizen" theory, the Founders would have endorsed restricting or prohibiting "the ownership of firearms by minors, felons, and the mentally impaired." *Nat'l Rifle Ass'n of Am., Inc. v. Bureau of Alcohol, Tobacco, Firearms, & Explosives*, 700 F.3d 185, 201 (5th Cir. 2012) (quotation omitted), *abrogated on other grounds by Bruen*, 597 U.S. 1. And this is not a permanent disability imposed on Second Amendment rights—there is a process for someone to restore those rights after a committal. Iowa Code § 724.31(2).

The government's right to dispossess firearms from a person who was committed for mental illness applies regardless of the eventual disposition of the committal once the application has been sustained. All involuntary committals are eventually dismissed and the proceedings terminated, even when the respondent fails to comply or cannot be found—that does not vitiate the committal. The only disposition that would make 18 U.S.C. section 922(d)(4) or (g)(4) inapplicable is if someone had never been committed at all. In other words, if the committal application had been denied and the proceeding terminated

because the contention that the "respondent is seriously mentally impaired ha[d] not been sustained by clear and convincing evidence." Iowa Code § 229.12(3)(c).

That is not what happened here. N.F. was represented by counsel, had a hearing, and was found by a district associate judge to be "afflicted with a mental illness and lack[ing] sufficient judgment to make responsible treatment decisions with respect to his treatment or hospitalization and . . . likely . . . to inflict physical injury on himself or others." (D0009 (MJMH000811) Hospitalization Order at 1, 4 (3/30/2016).) He underwent inpatient treatment for over a month, and his providers recommended at the time of the dismissal that he continue treatment "at a PMIC level of care for . . . 90-120 days." (D0011 (MJMH000811), Prog. Rpt. at 1 (4/27/2016).) The district court then prematurely dismissed N.F.'s committal because the treatment provider failed to have an appropriately credentialed medical practitioner sign the last Progress Report. (D0012 (MJMH000811) Order Dismissing (4/28/2016).) The committal was discontinued on a legal technicality, not because providers believed that N.F. no longer required treatment or that he never should have been committed at all. (*Id.*; D0011 (MJMH000811).)

Rather than contend N.F. vacated the committal as improper—which would raise a thornier question—N.F. instead contends that an early release means he was not committed at all. If that is the case, N.F. should have disputed the code's requirement to go through the disability relief process at all. He did not.

N.F.'s arguments also do not hold water when considered against the collateral-consequences exception to the mootness doctrine in chapter 229 cases. Respondents may appeal involuntary committals even after they are no longer subject to inpatient treatment and after they have been discharged from court-ordered treatment and placement because of the collateral consequences of committal, including, but not limited to, the "right to possess firearms." *In re B.B.*, 826 N.W.2d 425, 431 (Iowa 2013).

Moreover, Iowa law affords many protections for those facing involuntary commitment, including a finding of dangerousness by a judge, in N.F.'s case. (D0009 (MJMH000811) at 1) ("is likely if allowed to remain at liberty to inflict physical injury on himself and/or others.") A respondent in a chapter 229 action is entitled to notice and hearing in front of a judge, who must find the respondent seriously mentally

impaired by clear and convincing evidence or deny the application and terminate the proceeding. Iowa Code §§ 229.7; 229.12(3)(c). The respondent then has a right of appeal to the district court and the Iowa Supreme Court. Iowa Code §§ 229.17; 229.21.

No agency, administrative body, or executive branch entity makes the decision to commit someone under Iowa Code section 229, so N.F.'s theorizing about what would happen "if [his] . . . commitment had been done by a federal agency" has no place here. (Appellee's Brief, at 39); Iowa Code §§ 229.7, 229.21. The differences between the actions of an administrative body and the judiciary are vast. Paramount among them is that decisions involving the disarmament of irresponsible or dangerous citizens historically have been reserved for legislative judgments or express judicial findings of dangerousness. As discussed above, historical tradition supports those decisions by judges and legislatures, but it does not support giving administrative officials the same powers.

N.F. Failed to Meet the Evidentiary Burden of Section 724.31

The dangers of taking a person's word for his own stability are plain when that person has been homicidal, suicidal, and found to be seriously mentally impaired by clear and convincing evidence. (D0001

(MJMH000821), Hearing (6/27/2016); D0002 (MJMH000811), Application (3/24/2016); D0009 (MJMH000811); Iowa Code section 229.12(3)(c).) The district court and N.F. failed to recognize those dangers. (Appellee's Brief, at 47-54.)

N.F. again takes the Procrustean approach of imposing the rules of criminal laws where those procedures do not fit. (Appellee's Brief, at 48.) A firearms disability relief action is not a parole hearing. (*Id*.) The "circumstances surrounding" the committal are one of the categories of evidence the code requires the court to "receive and consider." Iowa Code § 724.31(3)(a). Indeed, when N.F. offered scant or no evidence in the three other statutorily required categories, there is little else to discuss aside from his failure to meet his statutory burden.

N.F. did not "prove" he had no mental health records since the committal—he failed to provide mental health records as required by law Iowa Code § 724.31(3)(b); *Matter of A.M.*, 908 N.W.2d 280, 283 (Iowa Ct. App. 2018) (affirming denial of disability relief despite "A.M . . . offer[ing] his criminal-history records showing only speeding tickets since the time of the burglary and assaults.") *A.M.* noted that A.M. offered only "his psychological and medical reports" from the committal. *A.M.*, 908 N.W.2d

at 285. The court had "no mental health records or assessments from the intervening six years" and emphasized that a "recent evaluation would have assisted the district court in deciding if A.M. required any long-term counseling or treatment and if he could be trusted with a firearm." *Id.*

The absence of evidence is not proof. It would make no sense for the code to call for "at a minimum, mental health records" and then negate the requirement with "if any," which the State believes modifies "criminal history records." *Id*. The code thus allows for petitioners who do not have a criminal history but still requires independent proof of such. Neither mental health records nor criminal history[1] records are optional under the code: "the petitioner's record, which shall include, at a minimum." Iowa Code § 724.31(3)(b).

In the same vein, the judiciary cannot rely on self-report for assurances that mental health records are not required because the petitioner has elected not to get mental health treatment. That determination comes from N.F., the same person a judge found "lack[ing] sufficient judgment to make responsible decisions with respect to his

[1] N.F. did submit an official criminal history, which the State overlooked in its previous Brief. N.F. submitted an official criminal history from the Iowa DCI on January 10, 2024. (D0029, Exhibit 101 (1/10/2024).)

treatment or hospitalization." (D0009 (MJMH000811) at 1.) N.F. gets no presumptions of perspicacity or healing simply because time has passed. The burden is still his, and by the evidence we do have, he is ill-equipped to speak to his own treatment needs.

Again, much of what N.F. points to as evidence is the absence of adverse evidence—and his own self-serving testimony. (Appellee's Brief, at 50, 53) ("this condition would have resulted in another contact with the juvenile or criminal justice systems . . . [b]ut that never happened.") No contact with the system is not proof of anything. The notion that someone can be mentally ill or harbor a substance abuse disorder and not have contact with the system is possible, and it is not the State's burden to prove that it is so. It is N.F.'s burden to prove otherwise. Iowa Code § 724.31(4).

N.F. appears to raise an error preservation argument with the State's objections to the weight of N.F.'s character statements. That they were unsigned and unnotarized would go to their weight, not their admissibility, as questions of credibility. The courts tend to give a wide berth to the admissibility of "other character evidence," even if the statements are not from "witnesses" and otherwise may be lacking in

indicia of authenticity. Iowa Code § 724.31(3)(c). The State did argue against the weight of that evidence: "We do have a criminal history and we have character letters, but they're unsigned and un-notarized by people what [sic] didn't appear in court to testify today, and I do ask the Court to consider that in assessing the weight of that evidence." (Tr. 48: 16–20.)

N.F.'s arguments that he met his burden are unpersuasive. He repeatedly says that everything changed for him when he was taken in by his foster family but failed to provide evidence of that to the district court. N.F. can only point to negatives, not affirmatives, in an anemic attempt to shore up his case. In the end, the district court had no mental health records to fill in the last eight years of N.F.'s life, no substance abuse evaluations, no live witness testimony, weak character evidence, and testimony littered with red flags. If a firearms disability petitioner can walk into court with only his own account and two letters from biased, layman sources and have his rights restored, then Iowa Code section 724.31 has been rendered effectively meaningless.

CONCLUSION

The State of Iowa asks the Court to reverse the district court's decision and deny N.F.'s petition.

CERTIFICATE OF COST

No costs were incurred to print or duplicate paper copies of this brief because the brief is being filed only electronically.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

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

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