IN THE SUPREME COURT OF IOWA
Supreme Court No. 24-0239
Cerro Gordo County No. FECR031848

STATE OF IOWA,
Plaintiff–Appellee,

vs.

AUSTIN MAHANA,
Defendant–Appellant.

APPEAL FROM THE IOWA DISTRICT COURT
FOR CERRO GORDO COUNTY
THE HONORABLE ADAM D. SAUER, JUDGE

AMENDED BRIEF FOR APPELLEE

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STATEMENT OF THE ISSUE PRESENTED FOR REVIEW

I. Iowa Code section 724.26(1) does not violate the Second Amendment of the United States Constitution or Article I, Section 1A of the Iowa Constitution its face or as applied.

ROUTING STATEMENT

Mahana challenges Iowa Code section 724.26(1), Iowa's felon-in-possession-of-a-firearm law, under the United States Supreme Court's two-part test for applying the Second Amendment of the United States Constitution as set forth in *New York State Rifle & Pistol Association, Inc. v. Bruen*, 597 U.S. 1 (2022), and under Article I, Section 1A of the Iowa Constitution. The State agrees Mahana raises issues of first impression for this Court and that retention is appropriate. See Iowa R. App. P. 6.1101(2).

NATURE OF THE CASE

The defendant, Austin Mahana, appeals his conviction of being a felon in possession of a firearm in violation of Iowa Code sections 724.25(1) and 724.26(1). He argues Iowa Code section 724.26(1) violates the United States Constitution's Second Amendment and article I, Section 1A of the Iowa Constitution both on its face and as applied to him.

STATEMENT OF THE FACTS

On December 16, 2022, the State filed a trial information charging Mahana with two counts of being a prohibited person in possession of a firearm. D0019, Trial Information (12/16/2022). Count I was predicated on a violation of Iowa Code section 724.26(2) (person who is subject to a protective order under 18 U.S.C. § 922(g)(8) is prohibited from possessing

a firearm)[1] and Count II was predicated on a violation of Iowa Code sections 724.25(1) and 724.26(1) (person with a previous conviction of an offense involving firearms punishable in a jurisdiction for a term exceeding one year is prohibited from possessing a firearm). D0019.

The minutes of testimony specified that on May 25, 2018, Mahana was convicted in Hancock County of carrying weapons in violation of Iowa Code section 724.4 (2017),[2] an aggravated misdemeanor. D0069, Additional Minutes of Testimony (Secure Attachment: Judgment and Sentence) (2/23/2023)).

On December 22, 2022, Mahana filed a motion in the district court to represent himself, with standby counsel; the district court granted the motion. D0025, Waiver of Counsel (12/22/2022), D0034, Order Appointing Standby Counsel (12/28/2023). Mahana, pro se, then moved to dismiss the charges. D0030, Motion to Dismiss (12/28/2022), D0049, Amended Motion to Dismiss (1/10/2023). He urged that Iowa Code section 724.26 violated his right to possess a firearm under the United States and

[1] The trial information was later amended to remove the allegation that he violated Iowa Code section 724.26(2) and to charge Count I, based on a December 5, 2022, of violation of section 724.26(1), and Count II, based on a May 27, 2022 violation of section 724.26(1). D0067, Amended Trial Information (7/23/2023). The State eventually dismissed Court II. D0111, Motion to Dismiss (11/1/2023).

[2] Amended by Iowa Acts 2021 (89 G.A.) ch. 35, H.F. § 9.

Iowa Constitutions, specifically mentioning Article I, section 1A of the Iowa Constitution and *Bruen*. D0030, D0049. The State resisted. D0050, State's Resistance to Motion to Dismiss (1/10/2023).

After a hearing, the district court denied Mahana's motion to dismiss.[3] D0057, Ruling on Motion for Dismissal and Temporary Injunction (2/3/2023). In its order, the district court found Iowa Code section 724.26(1) survived Mahana's challenge under *Bruen* because of the nation's "history of laws that are relevantly similar to current laws that prohibit felons from possessing firearms." D0057 at 4. It also found that section 724.26 survived a strict scrutiny challenge on its face and as applied to Mahana under the Iowa Constitution. D0057 at 5-6.

On June 12, 2023, Mahana filed a renewed motion to dismiss repeating his assertion that section 724.26(1) violated his constitutional rights to keep and bear firearms. D0097, Resistance to the State's Motion in Limine and Renewed Motion to Dismiss (6/12/2023). The State resisted. D0104, State's Supplemental Resistance to Supplemental Motion(s) to Dismiss (7/23/2023).

[3] The Supreme Court denied Mahana's application for interlocutory appeal of this ruling. D0063, Application for Interlocutory Appeal (2/23/2023), D0084, Order (4/14/2023).

Following a July 19, 2023, hearing, the district court denied Mahana's renewed motion to dismiss. D0106, Ruling on Defendant's Renewed Motion to Dismiss (8/22/2023. The State dismissed Count II of the trial information Mahana. D0111, Motion to Dismiss (11/1/2023).

Mahana waived his right to a jury trial. D0116, Ruling Following Trial on the Minutes and Setting Sentencing (12/12/2023). Following a bench trial on the stipulated minutes of evidence, the district court set forth the following facts:

> In the morning of December 5, 2022, Mason City Police Department Lt. Rich Jensen contacted the Defendant by phone to inform Defendant that he was disqualified from possessing a firearm in the State of Iowa due to a previous conviction of an aggravated misdemeanor involving a firearm. Defendant became very upset during the conversation and began to argue with Lt. Jensen.
>
> At approximately noon on December 5, 2022, Lt. Jensen was at the Mason City Police Department headquarters when he witnessed the Defendant enter the east doors of the lobby. Lt. Jensen confirmed that the individual was the Defendant and he asked the Defendant if he was currently armed with a firearm. Defendant responded that he was armed and Lt. Jensen could see the grip of a pistol sticking out of Defendant's right pants pocket. Defendant was handcuffed, the firearm was removed, and Defendant was placed under arrest.

D0116[4]. The district court concluded Mahana was guilty of violating Iowa Code section 724.26(1). D0118. It sentenced him to a term of imprisonment not to exceed five years and suspended the sentence. D0118, Judgment and Sentence (2/7/2024).

ARGUMENT

I. Iowa Code section 724.26(1) does not violate the Second Amendment of the United States Constitution or Article I, Section 1A of the Iowa Constitution its face or as applied.

Preservation of Error

The district court determined Mahana's challenge to section 724.26(1) survived a facial challenge under the Second Amendment and Article I, Section 1A of the Iowa Constitution and that also found that the statute was constitutional as applied to him under the strict scrutiny review required by the Iowa Constitution. D0030, D0049, D0057, D0106. The State does not challenge error preservation on these issues.

It is less clear whether Mahana raised an as applied challenge under the Second Amendment in the district court. D0030, D0049. Yet the district court did not address this issue. D0057, D0106. Mahana needed to file a motion to enlarge under Iowa Rule of Civil Procedure 1.904(2) to preserve this issue for appeal. *See Meier v. Senecaut*, 641 N.W.2d 532, 537

[4] The State also introduced Exhibit #6, a recording of the phone call between Mahana and Lieutenant Jensen. D0107, Exhibit #6 (8/23/2024).

(Iowa 2002) ("When a district court fails to rule on an issue properly raised by a party, the party who raised the issue must file a motion requesting a ruling in order to preserve error for appeal.").

Standard of Review

The Court "review[s] constitutional challenges to a statute de novo." *State v. Hernandez-Lopez*, 639 N.W.2d 226, 233 (Iowa 2002). "Statutes are presumed constitutional, imposing on the challenger the heavy burden of rebutting that presumption." *Santi v. Santi*, 633 N.W.2d 312, 316 (Iowa 2001).

Merits

Iowa Code section 724.26(1) provides "[a] person who is convicted of a felony in a state or federal court, . . . who knowingly has under the person's dominion and control or possession, receives, or transports or causes to be transported a firearm or offensive weapon is guilty of a class 'D' felony."

Iowa Code section 724.25(1) defines a felony to mean "any offense punishable in the jurisdiction where it occurred by imprisonment for a term exceeding one year, but does not include any offense, other than an offense involving a firearm or explosive, classified as a misdemeanor under the

laws of the state and punishable by a term of imprisonment of two years or less."

Mahana's 2018 conviction for carrying weapons, an aggravated misdemeanor,[5] meets section 724.25(1)'s definition of a felony because it was punishable for a term exceeding one year and was an offense involving a firearm. *See* Iowa Code § 724.4 (2018). He urges that together Iowa Codes sections 724.25(1) and 724.26(1) violate his right to keep and bear arms under the Second Amendment of the United States Constitution and Article I, Section 1A of the Iowa Constitution both on their face and as applied to him.

A facial challenge alleges "no application of the statute could be constitutional under any set of facts." *Bonilla v. Iowa Board of Parole*, 930 N.W.2d 751, 764 (Iowa 2019). "To succeed on a facial challenge, the challenger must show that a statute is totally invalid and therefore, incapable of *any valid application*." *Id.* (cleaned up) (emphasis in original). "By contrast, 'an as-applied challenge alleges the statute is unconstitutional as applied to a particular set of facts.'" *Bonilla*, 930

[5] *See* Iowa Code section 903.1(2) (maximum penalty for an aggravated misdemeanor "shall be imprisonment not to exceed two years").

N.W.2d at 764 (quoting *Honomichl v. Valley View Swine, LLC*, 914 N.W.2d 223, 231 (Iowa 2018)).

A. Iowa Code section 724.26(1) does not violate the Second Amendment of the United States Constitution on its face or as applied to Mahana.

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. In *District of Columbia v. Heller*, 554 U.S. 570 (2008), the United States Supreme Court first announced "that the Second Amendment conferred an individual right to keep and bear arms" 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 *Heller,* the Court recognized that "[l]ike most rights, the right secured by the Second Amendment is not unlimited." *Id.* at 626. It cautioned that "nothing in our 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 that these are "presumptively lawful regulatory measures[.]" *Id.* at 626-27, n.26. These "categorical exclusions" are sometimes "refer[ed] to collectively as the

'Heller safe harbor.'" Brannon P. Denning & Glenn H. Reynolds, Heller, *High Water(Mark)? Lower Courts and the New Right to Keep and Bear Arms*, 60 Hastings L.J. 1245, 1248 (2009).

This *Heller* safe-harbor-caution was repeated in *McDonald v. City of Chicago, Ill.*, 561 U.S. at 750, 791 (2010), holding "that the Second Amendment right is fully applicable to the States" through the Fourteenth Amendment. The Court noted that "it made clear in *Heller* that *our holding did not cast doubt on such longstanding regulatory measures as "prohibitions on the possession of firearms by felons*[.]" *Id.* at 786 (emphasis added).

In 2022 the Supreme Court decided *Bruen*, in which it clarified the "standard for applying the Second Amendment." *Bruen*, 597 U.S. at 24. "Notably, six justices agreed *Bruen* did nothing to undermine the *Heller* Safe Harbor." *United States v. McReynolds*, No. 2:21-CR-0028-WFN-1, 2024 WL 872974, at *2 (E.D. Wash. Feb. 29, 2024). "Under the *Bruen* test, a court must first evaluate whether a statute implicates Second Amendment rights. Then, if it does, the question is whether the restrictions on gun ownership, carry, or use are consistent with long-standing American traditions of firearms regulation." Brannon P. Denning & Glenn H.

Reynolds, *Trouble's Bruen: The Lower Courts Respond*, 108 Minn. L. Rev. 3187, 3204 (2024).

In considering the constitutionality of felon-in-possession statutes, some courts have first determined whether people who have been convicted of felonies are among the people covered by the Second Amendment. *See United States v. Hunt*, 123 F.4th 697, 705 (4th Cir. 2024) (finding "Section 922(g)(1) 'regulates activity'—that is, the possession of firearms by felons—that 'fall[s] outside the scope of the [Second Amendment] right as originally understood'") (quoting *Bruen*, 597 U.S. at 18 (quotation marks removed)); *United States v. Carpio-Leon*, 701 F.3d 974, 979 (4th Cir. 2012) (collecting cases holding Second Amendment protected only "law-abiding" citizens); *United States v. Tyner*, No. 2:23-CR-13-PPS-JEM, 2024 WL 517828, at *3 (N.D. Ind. Feb. 9, 2024) (finding "that people who have been adjudicated as felons simply do not fall into a class of citizens protected by the Second Amendment"); *United States v. Medrano*, No. 3:21-CR-39, 2023 WL 122650, at *2 (N.D.W. Va. Jan. 6, 2023) ("The bottom line is Mr. Medrano's status as a felon removes him from "the people" enumerated in the Second Amendment."); *United States v. Hill,* No. CR H-22-249, 2022 WL 17069855, at *5 (S.D. Tex. Nov. 17, 2022) ("the natural deduction is that felon-in-possession statutes fail at the first step of the *Bruen* test — i.e.,

felons do not fall within the 'plain text' of the Second Amendment"); *People v. Alexander*, 308 Cal. Rptr. 3d 380, 387 (Cal. App. 4th Dist. 2023) ("[T]he Second Amendment right afforded to law-abiding citizens does not extend to convicted felons who are presently refraining from committing additional crimes."); *see also* Todd E. Pettys, *The N.R.A.'s Strict-Scrutiny Amendments*, 104 IOWA L. REV. 1455, at 1467–69 (2019) (noting courts have concluded that felons, juveniles, and non-citizens all fall outside the Second Amendment's protection); Don B. Kates, Jr., *Handgun Prohibition and the Original Meaning of the Second Amendment*, 82 Mich. L. Rev. 204, 266 (1983) (felons, historically, "did not fall within the benefits of the common law right to possess arms"). *But see Range v. Att'y Gen. United States,* 124 F.4th 218, 228 (3d Cir. 2024) (rejecting "the Government's contention that "felons are not among 'the people' protected by the Second Amendment").

Assuming that Mahana is protected by the Second Amendment, *Bruen's* second step is to "demonstrate that the regulation is consistent with this Nation's historical tradition of firearm regulation." *Bruen,* 597 U.S. at 24. This "analogical 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 *Bruen* 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-defence." *Id.* at 29.

Not quite two years after *Bruen*, the Supreme Court decided *United States v. Rahimi*, 602 U.S. 680, 693 (2024), wherein it considered whether 18 U.S.C. Section 922(g)(8), prohibiting a person from possessing a firearm while subject to a domestic violence restraining order, was constitutional on its face under the Second Amendment. As in *Bruen,* the Supreme Court repeated *Heller*'s-safe-harbor 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. 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.* "Why and how the regulation burdens the right are central to this inquiry." *Id.*

The Court found that "[f]rom the earliest days of the common law, firearm regulations have included provisions barring people from misusing weapons to harm or menace others." *Rahimi*, 602 U.S. 680, 693 (2024). It relied on the historical analogue of surety and going armed laws and "confirm[ed] what common sense suggests: When an individual poses a clear threat of physical violence to another, the threatening individual may be disarmed." *Rahimi,* 602 U.S. 680, 698. 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*, 602 U.S. at 700.

Mahana contends that the State failed to "identify a historical analogue to our statute restricting possession of firearms only for

nonviolent misdemeanants, reclassified as felons only for the purpose of stripping their Second Amendment right to bear arms." Appellant's Br. at 13. Mahana also argues that *Rahimi* can be distinguished because "it concerned a temporary disarming of a person specifically found to be a threat to the safety of another." Appellant's Br. at 17-18. He maintains there "must be some kind of finding that the person poses some kind of threat in order to be deprived of his fundamental right in keeping with the historical in the analogue of firearm laws." Appellant's Br. at 19 (citing *Kanter v. Barr,* 919 F.3d 437, 459 (7th Cir. 2019) (Barrett, J. dissenting)).

In *United States v. Jackson,* 110 F.4th 1120, 1125 (8th Cir. 2024), a post-*Rahimi* decision, the Eighth Circuit considered a nonviolent felon's as applied challenge to the Section 922(g)(1), prohibiting felons from possessing firearms. Jackson argued "his drug offenses were 'non-violent' and do not show that he is more dangerous than the typical law-abiding citizen." *Id.*

The Court first noted *Heller's* safe harbor assurances and the repetition of them in *McDonald, Bruen*, and *Rahimi.* It concluded that "[g]iven these assurances by the Supreme Court, and the history that supports them[,]" "there is no need for felony-by-felony litigation regarding the constitutionality of § 922(g)(1)." *Id.* at 1125. *See also United States v.*

Williams, 113 F.4th 637, 665 (6th Cir. 2024) (Davis, J, concurring) (finding *Rahimi* "did not intend for courts of appeals to abandon prior decisions that relied on the presumption in favor of conducting independent historical surveys to determine what it already settled: categorical bans that prohibit felons from possessing firearms are 'presumptively lawful' and thus survive constitutional challenge.").

Even so, the Court examined Jackson's contention that a finding of dangerousness is essential to a constitutional deprivation of the Second Amendment. It explained that

> [t]here appear to be two schools of thought on the basis for these regulations. One view is that legislatures have longstanding authority and discretion to disarm citizens who are not law-abiding and are unwilling to obey the law. Jackson contends that a legislature's traditional authority is narrower and limited to prohibiting possession of firearms by those who are deemed more dangerous than a typical law-abiding citizen.

Id. at 1126. Under either school of thought, the Court concluded, Section 922(g)(1) was constitutional as applied to Jackson "because the law 'is consistent with the Nation's historical tradition of firearm regulation.'" *Id.* (quoting *Bruen*, 597 U.S. at 24).

First, the Court found that the "historical record suggests that legislatures traditionally possessed discretion to disqualify categories of

people from possessing firearms to address a danger of misuse by those who deviated from legal norms, not merely to address a person's demonstrated propensity for violence." *Id.* 1t 1127. Jackson was "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." *Id.*

Next, the Court concluded that "[l]egislatures 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." *Id.* at 1127-28. It noted "[n]ot 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." *Id.* at 1128. "This history demonstrates that there is no requirement for an individualized determination of dangerousness as to each person in a class of prohibited persons." *Id.* at 1128.

The Court explained "that legislatures traditionally employed status-based restrictions to disqualify categories of persons from possessing firearms. Whether those actions are best characterized as restrictions on persons who deviated from legal norms or persons who presented an

unacceptable risk of dangerousness," Section 922(g)(1) is consistent with "historical tradition." *Id.* at 1129. It found Section 922(g)(1) constitutional as applied to a nonviolent felon. *Id.*

The Fourth Circuit Cout of Appeals adopted the reasoning of *Jackson* in *United States v. Hunt*, 123 F.4th 697, 705-08 (Fourth Cir. 2024). It agreed that under either school of thought, the tradition of "disarm[ing] citizens who are not law-abiding and are unwilling to obey the law" or "prohibiting possession of firearms by those who are deemed more dangerous than a typical law-abiding citizen[,]" "§ 922(g)(1) [was constitutional] as applied to [Hunt] and other convicted felons." *Hunt* 123 F.4th at 706 (quoting *Jackson,* 110 F. 4th at 1126). *See also United States v. Diaz*, 116 F.4th 458, 467, 472 (5th Cir. 2024) (rejecting an as applied and facial challenge to § 922(g)(1) because the appellant convicted of car theft, evading arrest, and possessing a firearm as a felon "fits neatly" into the historical tradition of firearm regulation); *United States v. Williams*, 113 F.4th 637, 663 (6th Cir. 2024) ("Our nation's historical tradition confirms *Heller*'s assumption that felon-in-possession laws are 'presumptively lawful.'"); *People v. Anderson*, 324 Cal. Rptr. 3d 661, 676 (2024) ("The right to arms familiar to [the founders] allowed for both categorical disarmament of groups that the legislature assessed as threatening to the

community, and individual disarmament as a consequence for criminal conduct."); *People v. Brooks*, 242 N.E.3d 247, 271 (Ill. App. Ct. 1st Dist. 2023) ("Since the defendant in the instant case was twice convicted of a felony, albeit nonviolent ones, he is not a law-abiding citizen, and the armed habitual criminal statute that prohibits his possession of firearms is constitutional as applied to him."); *State v. Parras*, 531 P.3d 711, 716-17 (Or. Ct. App. 2023) (explaining that post-*Bruen* courts have upheld restrictions on felons in possession of firearm bans and "there is no historical basis for distinguishing between types of felonies based on whether they were violent or nonviolent"); *State v. Martinez*, No. 84824-1-I, 2024 WL 5039954, at *7 (Wash. Ct. App. Dec. 9, 2024) ("Restrictions on firearm possession by a felon, regardless of whether the crime of conviction was violent or nonviolent, do not violate the rights guaranteed by the Second Amendment."). *But see Range*, 124 F.4th 232 (concluding § 922(g)(1) was unconstitutional as applied to defendant, convicted of a nonviolent felony of buying food stamps because Government had "not shown that the principles underlying the Nation's historical tradition of firearms regulation support depriving Range of his Second Amendment right to possess a firearm").

Because "legislatures traditionally employed status-based restrictions to disqualify categories of persons from possessing firearms[,]" *Jackson,* 110 F.4th at 1129, the district court correctly found Iowa Code section 724.26(1) satisfies *Bruen*'s two-part test under the Second Amendment. And because section 724.26(1) is constitutional as applied to Mahana, it survives a facial challenge. *See Rahimi,* 602 U.S. 700 ("Section 922(g)(8) can be applied lawfully to Rahimi" and "survives *Rahimi's* facial challenge").

B. Iowa Code section 724.26(1) does not violate Article I, Section 1A of the Iowa Constitution.

The Iowa Constitution was amended in 2022 to provide:

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

See Iowa Acts 2019 (88 G.A.) ch. 168, S.J.R. 18, § 1, and Iowa Acts 2021 (89 G.A.) ch. 185, S.J.R. 7, § 1. "The text of Amendment 1A expressly contemplates valid restrictions on the state constitutional right to possess firearms but requires courts to apply strict scrutiny to a challenged governmental restriction." *Int. of N.S.,* 13 N.W.3d at 826.

Under a strict scrutiny challenge "[i]t is the government's burden to show the challenged statute 'serves a compelling state interest and is the

least restrictive means of attaining that interest.'" *Id.* at 820 (quoting *Mitchell County v. Zimmerman*, 810 N.W.2d 1, 6 (Iowa 2012).

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

Compelling government interests are "only those interests of the highest order." *Wisconsin v. Yoder*, 406 U.S. 205, 215 (1972). Iowa has a compelling state interest in protecting the public. *In re Det. of Garren*, 620 N.W.2d 275, 286 (Iowa 2000) ("confinement of sexually violent predators "serves a compelling state interest-protection of the public."); s*ee also State v. Musser*, 721 N.W.2d 734, 744 (Iowa 2006) ("protection of public health by discouraging the transmission of the AIDS virus" is compelling state interest); *State v. Kellogg*, 534 N.W.2d 431, 434 (Iowa 1995) (recognizing public safety as compelling interest).

The protection of the public's safety includes protecting society at large from gun violence. *See Kanter* 919 F.3d at 448 (7th Cir. 2019), abrogated by *Bruen,* 597 U.S. 1 ("The government identifies its interest as preventing gun violence by keeping firearms away from persons, such as those convicted of serious crimes, who might be expected to misuse them."); *United States v. Mesa-Rodriguez*, 798 F.3d 664, 673 (7th Cir. 2015) ("[T]he government has [a] strong interest in preventing people who have already disrespected the law (including . . . felons . . .) from

possessing guns."); *United States v. Skoien*, 614 F.3d 638, 642 (7th Cir. 2010) ("[N]o one doubts that the goal of [18 U.S.C. section 922(g)(9)], preventing armed mayhem, is an important governmental objective."); *State v. Eberhardt*, 145 So. 3d 377, 385 (La. 2014) (state's felon-in-possession prohibition "serves a compelling governmental interest that has long been jurisprudentially recognized and is grounded in the legislature's intent to protect the safety of the general public from felons convicted of specified serious crimes, who have demonstrated a dangerous disregard for the law and the safety of others and who present a potential threat of further or future criminal activity."); *State v. McCoy*, 468 S.W.3d 892, 897 (Mo. 2015) ("The State has a compelling interest in ensuring public safety and reducing firearm-related crime."); *State v. Craig*, 807 N.W.2d 453, 462 (Minn. Ct. App. 2011) ("Protecting the public from offenders who use guns is certainly an important governmental objective, if not a compelling state interest."); and *State v. Roundtree*, 952 N.W.2d 765, 773 (Wis. 2021) (considering felon-in-possession statute and finding "[p]ublic safety and the protection of human life is a state interest of the highest order") (citation 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.").

Both public safety and law enforcement safety are compelling state interests.

2. Iowa Code section 724.26(1) is narrowly tailored to protect the public and law enforcement from the threat posed by a felon carrying of a firearm.

Narrow tailoring "simply demands the challenged law 'not unduly harm members of any … group.'" *Int. of N.S.*, 13 N.W.3d at 831 (quoting

Grutter v. Bollinger, 539 U.S. 306, 341 (2003)). In *N.S.* this Court applied the narrow-tailoring standard used by the New Hampshire Supreme Court which provided that "the statute need not be perfectly tailored, simply narrowly tailored." *Id.* (quoting *State v. Smith*, 571 A.2d 279, 281 (N.H. 1990) (rejecting state constitutional strict-scrutiny challenge to felon-in-possession law even though some felons are not potentially dangerous)).

Iowa Code section 724.26(1) is narrowly tailored because the "legislature considers [felons] dangerous." *State v. Buchanan*, 604 N.W.2d 667, 669 (Iowa 2000). Felons' prior conduct demonstrates their unsuitability to possess firearms. *See Kanter,* 919 F.3d at 448; *Clay*, 481 S.W.3d at 535–36 ("[p]rohibiting felons from possessing firearms is narrowly tailored to that interest because [i]t is well-established that felons are more likely to commit violent crimes than are other law abiding citizens") (internal quotation marks omitted); *State v. Merritt*, 467 S.W.3d 808, 816 (Mo. 2015) (felon-in-possession statute "narrowly tailored to achieve the compelling interest of protecting the public from firearm-related crime"); *Roundtree*, 952 N.W.2d at 774 ("even if a felon has not exhibited signs of physical violence, it is reasonable for the State to want to keep firearms out of the hands of those who have shown a willingness to not only break the law, but to commit a crime serious enough that the

legislature has denominated it a felony"); Sean Phillips, *Long-Range Analogizing After* Bruen: *How to Resolve the Circuit Split on the Federal Felon-in-Possession Ban*, 92 Fordham L. Rev. 2233, 2268–69 (2024) ("an individual's past criminal conduct, even if not violent, correlates with an increased likelihood of more criminal conduct in the future and, specifically, criminal conduct that is violent").

In *Eberhardt*, the Louisianna Supreme Court found a felon-in-possession statute was narrowly tailored because it prohibited possession of firearms for "only ten years" and only applied to "those convicted of the enumerated felonies determined by the legislature to be offenses having the actual or potential danger of harm to other members of the general public." 145 So. 3d at 385.

Although section 724.26(1)'s prohibition of possession of firearms is not temporary, and applies to all felonies, a prohibited person may seek restoration of his or her right to possess firearms. *See* Iowa Code § 724.27(1) (the right to possess a firearm may be restored if a person is "pardoned by the President of the United States or the chief executive of a state for a disqualifying conviction[,]" or if "[t]he person's civil rights have been restored after a disqualifying conviction . . . [,] or if "[t]he person's

conviction for a disqualifying offense has been expunged"). Section 724.26(1) survives a strict scrutiny challenge on its face.

Section 724.26(1) also survives an as applied challenge. Mahana minimizes his 2018 conviction of carrying weapons because this offense was an aggravated misdemeanor and because it is no longer a crime to carry weapons. *See* Iowa Code § 724.5. Even so, the relevance of the conviction is that he violated the law on the books at the time. And, although the conviction which made him subject to section 726(1)'s firearm restriction was carrying weapons, this was not Mahana's first conviction. See D0117, Presentence Investigation Report at 3-5 (2/2/2024). Mahana's dangerousness is additionally reflected in his 2019 convictions for using a concealed knife in a crime and domestic abuse assault and his 2022 conviction of first-degree criminal mischief causing over $10,000 of damage. D0017 at 5. Because felons "present[] an unacceptable risk of dangerousness," *Jackson,* 110 F.4th at 129, section 724.26(1) is constitutional as applied to Mahana's own circumstances under Article I, Section 1A.

Iowa Code section 724.26(1) satisfies *Bruen*'s two-part test under the Second Amendment and Article I, Section 1A's strict scrutiny test both on its face and as applied to Mahana.

CONCLUSION

For all the reasons set forth above, the State requests that this Court affirm Mahana's conviction for being a felon in possession of a firearm.

REQUEST FOR NONORAL SUBMISSION

The State believes that this case can be resolved by reference to the briefs without further elaboration at oral argument.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

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