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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 REPLY BRIEF

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REPLY ARGUMENT

I. This Court Must Exercise Appellate Jurisdiction over this Appeal.

This court can properly exercise jurisdiction over this appeal. The traditional rule that a guilty plea waives all defenses and challenges to the plea was changed when Iowa R. Crim P. 2.8(2)(b)(9) was adopted. Under a conditional guilty plea, appellate courts have jurisdiction over an appeal when "the reserved issue is in the interest of justice." Iowa Code § 814.6(3). Reviewing a contested constitutional claim—whether Iowa's statute prohibiting possession of firearms of certain persons violates Iowa's newest constitutional amendment—"fulfills the quintessential purpose of the newly enacted scheme of conditional guilty pleas." *State v. Scullark*, No. 23-1218, 2024 WL 3886203 at *2 (Iowa Ct. App. August 21, 2024). Because it is "fair and right" to decide this issue, an appellate court has jurisdiction to proceed. *Id.*

II. The State has failed to Establish that Iowa Code Section 724.8B is Narrowly Tailored.

Iowa's Constitution is clear: the right to keep and bear arms is a fundamental right and any restriction upon this right "shall be subject to strict scrutiny." IOWA CONST. ART. I, § 1A. This Amendment was deliberately placed at the top of Iowa's Bill of Rights to emphasize that this right is paramount within our state. *See Hoover v. Iowa State Highway Comm'n*, 222 N.W.2d 438, 439 (Iowa 1928). Under this exacting standard, the law being challenged is presumptively invalid, and the burden

is on the state to prove the law is constitutional. *Planned Parenthood of the Heartland, Inc. v. Reynolds (PPH III)*, 962 N.W.2d 37, 47–48 (Iowa 2021); *Mitchell County v. Zimmerman*, 810 N.W.2d 1, 16 (Iowa 2012); *In re S.A.J.B.*, 679 N.W.2d 645, 649 (Iowa 2004). In order to meet this burden, the state must show that the law is "narrowly tailored to serve a compelling state interest." *PPH III*, 962 N.W.2d at 47–48. In other words, the statute must be the least restrictive means of attaining the compelling state interest. *Zimmerman*, 810 N.W.2d at 16. The state has failed to meet their burden of showing Iowa Code § 724.8B is narrowly tailored to serve the compelling interests of public and law enforcement officer safety. Therefore, this court must hold that Iowa Code § 724.8B is unconstitutional.

The state's briefing ignores the independent nature of state constitutional interpretation. Fundamental to our federalist form of government is the duty of state supreme courts to interpret their state constitutions independently of the United States Supreme Court. *State v. White*, 9 N.W.3d 1, 10-11 (Iowa 2024) (collecting cases). "[S]tate constitutions have been a crucial front of equality, civil rights, and civil liberties from the incipience of our republic." *State v. Baldon*, 829 N.W.2d 785, 791 (Iowa 2013). The state points to multiple decisions of the United States Supreme Court and the Federal Circuit Courts of Appeals to provide justification for disarming Mr. Woods. *See* Appellee's Br. at 25, 28-32. But none of those decisions are binding on this court's interpretation of the Iowa Constitution; "the federal

interpretation should not govern [state court] interpretation" of the Iowa Constitution. *State v. Burns*, 988 N.W.2d 352, 360 (Iowa 2023); *State v. Short*, 851 N.W.2d 474, 485 (Iowa 2014) ("Any review of the relationship between state and federal constitutional interpretation that fails to understand or ignores this fundamental and powerful legal riptide is flawed."). The state is correct that other courts typically apply a modified form of scrutiny when analyzing laws affecting the right to bear arms. The people of Iowa, however, have charted a different path. *See State v. Brooks*, 888 N.W.2d 406, 410 (Iowa 2016) (ruling that the Iowa Constitution must be interpreted independently even if other constitutions contain similar language, scope, import and purpose). The language of Amendment 1A requires strict scrutiny analysis—anything less would deviate from the clear textual command of the amendment. *See White*, 9 N.W.3d at 6; *Nguyen v. State*, 878 N.W.2d 744, 755 (Iowa 2016) ("We are free to interpret our constitution more stringently than its federal counterpart, providing greater protection for our citizens' constitutional rights.").

The state spends considerable time discussing the differences between an as-applied constitutional challenge and a facial constitutional challenge. This distinction only aims to overcomplicate and confuse the issue. Classifying constitutional challenge in this manner "appears simple enough, yet it is unclear and 'more illusory than the ready familiarity of the terms suggests.'" *Bonilla v. Iowa*

Board of Parole, 930 N.W.2d 751, 764 (Iowa 2019) (quoting *Honomichl v. Valley View Swine, LLC,* 914 N.W.2d 223, 231 (Iowa 2018)). Categorizing this appeal as either type of challenge is inappropriate when the legal test and appropriate level of judicial scrutiny is baked into Amendment 1A. Under the facial challenge approach, which the state urges this court to apply, a law is constitutional if any *valid* application of the law exists. *See Bonilla*, 930 N.W.2d at 764. Inversely, strict scrutiny deems a law *unconstitutional* if any *invalid* application exists. These approaches are irreconcilable in this case. The state is asking this Court to deviate from Amendment 1A's text and apply a form of intermediate scrutiny. Gillian Metzger, *Facial Challenges and Federalism*, 105 COLUM. L. REV. 873, 914 (2005) (suggesting that facial challenges are more akin to intermediate than strict scrutiny). Instead, the Court must apply strict scrutiny.

Under a strict scrutiny analysis, section 724.8B fails. Mr. Woods does not contest that public safety and law enforcement safety are compelling state interests; however, section 724.8B must actually further these interests. *See Holt v. Hobbs*, 574 U.S. 352, 362-64 (2015). Despite the state's extensive briefing, it is still unclear how disarming Mr. Woods—an individual who merely possessed a firearm and a user quantity of marijuana at the same time—furthers these interests. *Carey v. Population Servs., Intl.*, 431 U.S. 678, 690-91 (1977) (requiring legislation to actually serve the State's asserted interests). The state's argument that Mr. Woods

was dangerous is undercut by the facts in the case. Mr. Woods was pulled over for inspection of a commercial motor vehicle with an inoperable taillight. D0010, Minutes of Testimony, at 5 (9/11/2023). This is not a felony or inherently dangerous offense. *See* Iowa Code §§ 321.385; 321.385A. When Mr. Woods was pulled over, he did what responsible gun owners do—he informed the officer that he had a firearm. D0010, at 5. He was not actively using nor experiencing the intoxicating effects of marijuana during his arrest. *See id.*; *United States v. Veasley*, 98 F.4th 906, 917 (8th Cir. 2024) (requiring a defendant to be intoxicated under 18 U.S.C. § 922(g)(3) before they can be disarmed). The state's interest is not furthered by strictly enforcing § 724.8B every time a person commits any indictable offense.

Additionally, Iowa Code § 724.8B fails the narrow tailoring requirement. Simply put, the law "Sweeps too broadly to survive strict scrutiny." *Planned Parenthood of the Heartland, Inc. v. Reynolds (PPH IV)*, 975 N.W.2d 710, 755 (Iowa 2022) (Christensen, C.J., concurring in part). Its firearms prohibition applies to all persons illegally possessing a controlled substance and all persons committing any indictable offense. But it takes no steps to limit its application only to those individuals who actually pose a credible danger to law enforcement or others. The State relies heavily on *State v. Webb*, 144 So.3d 971 (La. 2014) to argue that Iowa Code § 724.8B is narrowly tailored. *See* Appellee's Br. at 19–22, 31–32. Louisiana's constitution, along with Missouri's constitution, are the only other state constitutions

which subject firearms regulations to strict scrutiny. While the State is correct that the Louisiana Supreme Court found that Louisiana Statute 14:95 (prohibiting firearm possession by certain persons) survives strict scrutiny, the State failed to explain *why*.

The Iowa and Louisiana constitutions are nearly identical; both constitutions recognize the right to keep and bear arms as a fundamental right subject to strict scrutiny. *Compare* IOWA CONST. ART. I § 1A *with* LOUISIANA CONST. ART. I, § 11. This is where the similarities between this appeal and *Webb* end, however. Iowa Code § 724.8B is anemic when compared to Louisiana Statute 14:95. In its entirety, Iowa's prohibition on certain individuals carrying firearms 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. In comparison, the relevant portion of the Louisiana statute reads:

> If the offender uses, possesses, or has under his immediate control any firearm, or other instrumentality customarily used or intended for probable use as a dangerous weapon, **while committing or attempting to commit a crime of violence or while unlawfully in the possession of a controlled dangerous substance except the possession of fourteen grams or less of marijuana**, **or during the unlawful sale or distribution of a controlled dangerous substance**, the offender shall be fined not more than ten thousand dollars and imprisoned at hard

> labor for not less than five nor more than ten years without the benefit of probation, parole, or suspension of sentence. Upon a second or subsequent conviction, the offender shall be imprisoned at hard labor for not less than twenty years nor more than thirty years without the benefit of probation, parole, or suspension of sentence.

La. R.S. 14:95 (E) (emphasis added). While Iowa's prohibition against carrying firearms applies to anyone committing any possible indictable offense, the Louisiana statute is much more narrowly tailored towards the state's compelling safety interests. Like the federal statute, La. R.S. 14:95 (E) applies when a defendant is committing or attempting to commit a crime of violence or distributes a controlled substance. *See* 18 U.S.C. § 922(g)(3). Notably, the Louisiana statute also contains specific carve out: individuals who possess fourteen grams or less of marijuana—the same substance Woods possessed. La. R.S. 14:95 (E). Just because the State agrees with the conclusion of *Webb*—that a different statute regulating firearm possession survives strict scrutiny—this does not make *Webb's* conclusion applicable to Iowa's statute. While Louisiana's statute is constitutional, that is because it is narrowly tailored. Section 724.8B is not.

Lastly, as the final state subjecting firearms regulations to strict scrutiny, Missouri's constitution and criminal laws require discussion. The law in Missouri further demonstrates how overly broad § 724.8B is. Missouri's constitutional protection on the right to bear arms is unique:

> That the right of every citizen to keep and bear arms, ammunition, and accessories typical to the normal function of such arms, in defense of

> his home, person, family and property, or when lawfully summoned in aid of the civil power, shall not be questioned. The rights guaranteed by this section shall be unalienable. Any restriction on these rights shall be subject to strict scrutiny and the state of Missouri shall be obligated to uphold these rights and shall under no circumstances decline to protect against their infringement. Nothing in this section shall be construed to prevent the general assembly from enacting general laws which limit the rights of **convicted violent felons** or those **adjudicated by a court to be a danger to self or others as result of a mental disorder or mental infirmity**.

MO. CONST. ART. I, § 23 (emphasis added). The text of Art. I, § 23 does some of the heavy lifting for a strict scrutiny analysis by explicitly allowing regulations on violent felons and the mentally incompetent. Thus, Missouri's statute prohibiting possession firearms states:

> 1. A person commits the offense of unlawful possession of a firearm if such person knowingly has any firearm in his or her possession and:
>
> (1) Such person **has been convicted of a felony** under the laws of this state, or of a crime under the laws of any state or of the United States which, if committed within this state, would be a felony; or
>
> (2) Such person is a fugitive from justice, **is habitually in an intoxicated** or **drugged** condition, or is **currently adjudged mentally incompetent**.

Mo. Ann. St. § 571.071 (emphasis added).[1] The Missouri Supreme Court has faced multiple challenges to § 571.071 but found each time that the statute survives strict scrutiny. *Alpert v. State*, 543 S.W.3d 589 (Mo. 2018); *State v. Clay*, 481 S.W.3d 531,

[1] Simple possession of marijuana is typically charged as a misdemeanor and will only become a felony if a defendant has prior drug convictions. 21 U.S.C. § 844.

532-33 (Mo. 2016); *State v. Merritt*, 467 S.W.3d 808 (Mo. 2015). This conclusion was easy for the Missouri Supreme Court to reach, because, like Louisiana, only felons or those adjudicated incompetent are prevented from possessing firearms. *Clay*, 481 S.W.3d at 538. Again, this is where the overbreadth of § 724.8B becomes clear. Mr. Woods never admitted, and the state never proved, that he is a felon, has been habitually intoxicated, or adjudged mentally incompetent. Nonetheless, his right to keep and bear arms has been infringed.

"If a less restrictive alternative would serve the Government's purpose, the legislature must use that alternative." *State v. Musser*, 721 N.W.2d 734, 744 (Iowa 2006) (quoting *Playboy Entm't Group, Inc.*, 529 U.S. 803, 813 (2000)). As shown by the laws in Louisiana and Missouri, less restrictive alternatives exist that survive strict scrutiny. Section 724.8B is not narrowly tailored and must be struck down.

III. The State has failed to meet its Burden of Showing § 724.8B is consistent with the Second Amendment's text and History.

"The presumption against restrictions on keeping and bearing firearms is a central feature of the Second Amendment. That Amendment does not merely narrow the Government's regulatory power. It is a barrier, placing the right to keep and bear arms off limits to the government." *United States v. Rahimi*, 144 S.Ct. 1889, 1931 (2024) (Thomas, J., dissenting).

The state correctly lays out the historical analogue test under *New York State Rifle & Pistol Ass'n Inc. v. Bruen*, 597 U.S. 1 (2022), but then failed to identify a

single statute that § 724.8B is consistent with. Without evidence, the state asserts that Woods "posed a risk of danger to society." Appellee Br. at 41. The central analysis is whether the historical regulations "impose a comparable burden" that is "comparably justified." *Bruen*, 597 U.S. at 29. None of the laws cited by the state are comparably justified to § 724.8B. For example, the state cites to a 1783 law that prohibited firing guns during New Years, Act of Mar. 1, 1783, 1783 Mass. Acts and Laws ch.13, pp. 218–219. Appellee Br. at 47. The purpose of this law was to reduce the harms caused by drunken revelers. *Rahimi*, 144 S.Ct. at 1897. This purpose is not analogous to § 724.8B at all.

The closest historical analogue to § 724.8B is 1931 Cal. Laws 2316, ch. 1098 § 2. Yet, this statute only prohibited those felons or those who are "addicted to the use of any narcotic drug" from possessing firearms. The possession of drugs was not the historical concern—it was the *addiction* to those drugs. *See Veasley*, 98 F.4th, at 917 ("Just like its historical counterparts, § 922(g)(3) does not criminalize mere possession. It requires another act, the taking of drugs…."). It is true that someone who is addicted to drugs could pose a danger to society that is exacerbated by having firearms. But addiction is wholly distinct from possession or even casual use. This historical law was justified because it disarmed individuals who posed a credible threat to public safety.

Then, the state attempts to use surety laws as a historical justification. This too is inadequate under *Bruen*. Surety laws merely "provide financial incentives for responsible arms carrying." *Bruen*, 597 U.S. at 59. In other words, surety laws were aimed at preventing violence "by requiring someone who posed *a credible threat of violence to another* to post surety…." *Rahimi*, 144 S.Ct. at 1904 (Sotomayor, J. concurring) (emphasis added). While surety laws were meant to preserve the right to bear arms after notice and a hearing, § 724.8B seeks to strip away that right.

At its essence, the state's argument boils down to this: Mr. Woods was not a law-abiding citizen when he possessed marijuana. Therefore, the state is wholly justified in disarming him. Justice Thomas recently disapproved of a similar argument in *Rahimi*:

> At the outset of this case, the Government contended that the Court has already held the Second Amendment protects only "responsible, law-abiding" citizens. The plain text of the Second Amendment quashes this argument. The Amendment recognizes "the right of the *people* to keep and bear Arms." When the Constitution refers to "the people," the term "unambiguously refers to all members of the political community." The Government's claim that the Court already held the Second Amendment protects only "law-abiding, responsible citizens" is specious at best.

Rahimi, 144 S.Ct., at 1944 (Thomas, J., dissenting) (citations omitted). One reason this argument was easily rejected by both Justice Thomas and the *Rahimi* majority is because it would allow the legislature to impose any firearm restriction as long as it aimed those regulations at citizens it deemed "irresponsible" or "unfit." *Id.* at 1901,

1945-46. Conditioning the Second Amendment on ambiguous terms such as "responsible," which was not defined by the Supreme Court in *Heller* or *Bruen*, runs contrary to the Constitution. *Id.* at 1946. The government has not met its burden to prove § 724.8B is consistent with the Second Amendment's text and historical understanding.

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 to Mr. Woods. 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 6,500 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 September 13, 2024, I served the foregoing Defendant-Appellant's Brief by mailing one copy to the following:

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