IN THE IOWA DISTRICT COURT FOR PLYMOUTH COUNTY

STATE OF IOWA, Plaintiff, vs. CHARLES WAYNE DICKSON, Defendant.	NO. FECR020524 ORDER

This matter came before the Court on September 11, 2024, for a re-hearing on the Defendant's motion to dismiss. The State of Iowa appeared by Assistant Plymouth County Attorney Jason Bring. The Defendant appeared, as did his attorney of record, Michael Jacobsma. The hearing was conducted by video conference, with the on-the-record consent of the parties. Denise Derby reported the entire hearing.

At the conclusion of the hearing, the Court took the motion under advisement. Having now considered the motion under the applicable legal standards, the Court finds and rules as follows.

I.

The Defendant is charged, by a trial information filed on January 11, 2024, with Count 1: Possession of Firearm or Offensive Weapon by Felon, a class D felony, in violation of Iowa Code § 724.26(1); Count 2: Possession of Firearm or Offensive Weapon by a Person Subject to a Protective Order, a class D felony, in violation of Iowa Code § 724.26(2)(a); Count 3: Possession of Firearm or Offensive Weapon by Felon, a class D felony, in violation of Iowa Code § 724.26(1); Count 4: Possession of Firearm or

Offensive Weapon by a Person Subject to a Protective Order, a class D felony, in violation of Iowa Code § 724.26(2)(a); Count 5: Possession of Firearm or Offensive Weapon by Felon, a class D felony, in violation of Iowa Code § 724.26(1); Count 6: Possession of Firearm or Offensive Weapon by a Person Subject to a Protective Order, a class D felony, in violation of Iowa Code § 724.26(2)(a); and Count 7: Possession of Ammunition by a Felon, a class D felony, in violation of Iowa Code § 724.26(2)(a).1 The Defendant entered pleas of not guilty to each of these charges, through a written arraignment and plea of not guilty form filed on January 15, 2024.

The Defendant filed the instant motion to dismiss on May 3, 2024. In that motion, the Defendant contends that Iowa Code §§ 724.26(1) and 724.26(2)(a) are unconstitutional as applied to him, under article I section 1A of the Iowa Constitution. On June 23, 2024, the Defendant filed a written brief in support of his motion.

The State filed a written resistance to the Defendant's motion on May 9, 2024, and a supplemental resistance on June 21, 2024.

A hearing on the Defendant's motion to dismiss was held before another judge of this Court on June 24, 2024. And on August 16, 2024, the Court entered an order denying the motion in its entirety.

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1 As indicated here, Count 7 charges the defendant with possession of ammunition by a felon. But Count 7 cites Iowa Code § 724.26(2)(a), which prohibits possession of ammunition by a person who is subject to a qualifying protective order, and the text of Count 7 references a protective order. And § 724.26(1), which prohibits the possession, by a felon, of firearms and offensive weapons, does not prohibit the possession of ammunition. So presumably Count 7 contains a typo, and should be understood to charge the Defendant with possession of ammunition by a person subject to a protective order. In any event, this apparent error in the trial information makes no difference to the Court's analysis herein.

On September 3, 2024, the Court conducted final pretrial conferences in a number of cases, including this one, which cases at that time all had been set for jury trial commencing on September 17, 2024. Following those pretrial conferences, the Court determined that this case would proceed to trial as scheduled, before the undersigned.

On September 5, 2024, the Court, *sua sponte*, entered an order informing the parties of the Court's intent to reconsider the Defendant's motion to dismiss, and in so doing to set the motion for another hearing. After informal consultation with the parties, that hearing was scheduled for the date set forth above.

II.

The Court, before taking up the substance of the Defendant's instant motion, first sets forth the authority pursuant to which the Court may *sua sponte* reconsider the earlier ruling on the motion.

Our Supreme Court has explained that "[w]hile it may be uncommon for a district court to reconsider a motion *sua sponte*, Iowa adheres to the general rule that a district court judge may review and change a prior interlocutory ruling of another district judge in the same case." *Hoefer v. Wisconsin Educ. Ass'n Ins. Trust*, 470 N.W.2d 336, 339 (Iowa 1991). The authority to reconsider such a ruling, "[w]hen exercised with discretion, . . . enhances the court's integrity by refusing to give either party a vested right to require the court to perpetuate its mistake." *Id.* (internal quotation omitted). Thus, "[t]he law here is clear: '[A] trial judge may correct another judge's ruling any time before final judgment.'" *Capital One Bank (USA), N.A. v. Taylor*, 873 N.W.2d 551 (Table), 2015 WL 7567398, at *3 (Iowa Ct. App. 2015) (quoting *U.S. Bank v. Barbour*, 770 N.W.2d 350, 352 (Iowa 2009) (alteration in original))). And thus, this Court has the discretion to reconsider — even *sua*

sponte — the earlier ruling on the Defendant's motion to dismiss.

Of course, that the Court *may* reconsider the earlier ruling on the Defendant's motion to dismiss does not answer the question whether, under the circumstances here, the Court *should* do so. But for the reasons set forth below, the Court concludes that the earlier ruling is erroneous. Accordingly, the Court concludes that it ought to exercise its authority to correct that error.

And finally with regard to this issue, the Court concludes that the manner in which the Court has here exercised that authority is procedurally proper. Neither of the parties sought out the undersigned for the purpose of obtaining a favorable ruling on the motion to dismiss. *Cf. Hoefer*, 470 N.W.2d at 339. Once the Court decided to reconsider the earlier ruling, the Court notified the parties (in a written order) of that decision, further notified the parties (in that written order) of the reasons for that decision, and reset the motion for hearing — thereby giving the parties both an opportunity to be further heard on the motion, and time to prepare to address the issues presented by the motion and the Court's decision to reconsider the motion. *Cf. id.* Since the instant order is filed prior to the original trial date, no delay has occurred as a result of the reconsideration. *Cf. id.* And neither party objected to the Court's *sua sponte* reconsideration of the prior ruling, or to the manner in which the Court did so.

III.

Having thus concluded that *sua sponte* reconsideration of the order denying the Defendant's instant motion to dismiss is permissible, the Court turns to the merits of that motion. In so doing, the Court will first consider the Defendant's statutory challenge to Counts 2, 4, 6 and 7 of the trial information, and thereafter the Court will consider the

Defendant's constitutional claims.

A.

The Defendant asserts that Counts 2, 4, 6, and 7 must be dismissed, because the minutes of testimony reflect that the statutory elements of those offenses cannot be satisfied. The State resists.

Iowa Rule of Criminal Procedure 2.11(8) establishes a mechanism through which a criminal defendant may attempt to obtain dismissal of a trial information. Pursuant to Rule 2.11(8):

> A motion to dismiss the . . . information may be made on the ground that the matters stated do not constitute the offense charged, that a prosecution for that offense is barred by the statute of limitations, or that the prosecution is barred by some other legal ground. If the court concludes that the motion is meritorious, it shall dismiss the . . . information unless the prosecuting attorney furnishes an amendment that cures the defect.

Id.

"At the motion to dismiss stage, 'the only relevant inquiry by the court is whether the facts the State has alleged in the trial information and attached minutes charge a crime as a matter of law.'" *State v. Bailey*, 2 N.W.3d 429, 436 (Iowa 2024) (quoting *State v. Gonzalez*, 718 N.W.2d 304, 309 (Iowa 2006)). A court faced with a motion to dismiss must "accept the facts alleged by the State in the trial information and minutes as true." *Id.* (citing *State v. Finders*, 743 N.W.2d 546, 548 (Iowa 2008)). "'A motion that merely challenges the sufficiency of the evidence supporting [a trial information] is not a ground for setting [it] aside . . . .'" *Id.* (quoting *State v. Doss*, 355 N.W.2d 874, 880 (Iowa 1984)). Thus, where a "trial information sets out facts which, if accepted as true, support a reasonable conclusion form which a jury could find beyond a reasonable doubt that" the

defendant committed the charged offense, a Rule 2.11(8)(a) motion to dismiss that charge must be denied. *See id.* at 436-37.

Accordingly, in resolving this aspect of the Defendant's instant motion, the Court must compare the facts alleged in the minutes of testimony to the elements of Counts 2, 4, 6, and 7, in order to determine whether, from those facts, a reasonable factfinder could find the Defendant guilty of the offenses charged in those counts.

As already mentioned, Counts 2, 4, 6, and 7 charge the Defendant with violating Iowa Code § 724.26(2)(a), which provides that with exceptions not relevant here,

> a person who is subject to a protective order under 18 U.S.C. § 922(g)(8) . . . and who knowingly possesses, ships, transports, or receives a firearm . . . or ammunition is guilty of a class "D" felony.

Id. And 18 U.S.C. § 922(g)(8) prohibits the possession of a firearm or ammunition by a person:

> who is subject to a court order that —
>
> (A) was issued after a hearing of which such person received actual notice, and at which such person had an opportunity to participate;
>
> (B) restrains such person from harassing, stalking, or threatening an intimate partner of such person or child of such intimate partner or person, or engaging in other conduct that would place an intimate partner in reasonable fear of bodily injury to the partner or child; and
>
> (C)(i) includes a finding that such person represents a credible threat to the physical safety of such intimate partner or child; or
>
> (ii) by its terms explicitly prohibits the use, attempted use, or threatened use of physical force against such intimate partner or child that would reasonably be expected to cause bodily injury . . . .

Id. Thus, in order for the Defendant to be found guilty of Counts 2, 4, 6, and 7, the State must prove that the Defendant possessed the relevant firearms and ammunition while he

was subject to a protective order that meets each of the criteria set forth in § 922(g)(8).

Here, the minutes to testimony allege that the Defendant was in possession of the firearms and ammunition from which Counts 2, 4, 6, and 7 arise, and that when he possessed those firearms and that ammunition, he was subject to a "no contact order" which had been entered on September 29, 2023, in Plymouth County case number FECR020387. A copy of that alleged no contact order is attached to the minutes.

The alleged no contact order satisfies most of the § 922(g)(8) criteria. The parties protected by the order, the minutes allege, are the Defendant's former spouse and their four mutual children.[2] A "former spouse" is an "intimate partner," for purposes of § 922(g)(8). *See* 18 U.S.C. § 921(a)(32).[3] The alleged no contact order prohibits the Defendant from "threaten[ing], assault[ing], stalk[ing], molest[ing], attack[ing], harass[ing], or otherwise abus[ing] the protected part[ies]," as well as "persons residing with the protected part[ies]" and "members of the protected part[ies'] family." It also prohibits the Defendant from "us[ing] or attempt[ing] to use or threaten[ing] to use physical force[] against the protected party that would reasonably be expected to cause bodily injury."

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2 The order itself appears to list, as protected parties, only the Defendant's children. But elsewhere the minutes include an allegation that the Defendant's former spouse is one of the protected parties, and the Court must, under the legal standard set forth above, view the minutes in the light most favorable to the State. And in any event, the order's relevant findings and prohibitions, when read in the light most favorable to the State, apply both to the named protected parties, and members of the protected parties' families and those living with them.

3 The "intimate partner" box on the no contact order — the box that the issuing judicial officer checks to indicate that the judicial officer "finds that the defendant and protected party meet the definitions of intimate partners as defined in 18 U.S.C. § 921(a)(32) — is not checked. But although the "intimate partner" box is not checked, a corresponding box, which box purports to prohibit the Defendant from possessing firearms while the order is in effect (and which box is cross-referenced in the "intimate partner" box), *is* checked.

And the alleged no contact order includes a finding that the Defendant "poses a threat to the safety" of the protected parties, persons residing with them, or members of their immediate family.

But nowhere do the minutes allege that the no contact order "was issued after a hearing of which [the Defendant] received actual notice, and at which [the Defendant] had an opportunity to participate." Indeed, the minutes suggest the contrary, since the no contact order itself indicates that the Defendant was not personally served with a copy of the order by the Court, and instead includes a provision ordering the Plymouth County Sheriff to serve the order on the Defendant. Put simply, even though the § 922(g)(8) hearing requirement is "a minimal one," *see United States v. Young*, 458 F.3d 998, 1009 (9th Cir. 2006), there is not a whisper of a suggestion in the minutes, much less an allegation amounting to substantial evidence, that the no contact order from which Counts 2, 4, 6, and 7 arise was entered after a hearing of any kind.

As such, only by resort to speculation could a factfinder conclude that the § 922(g)(8) notice-and-hearing requirement was satisfied. And such speculation is not enough to avoid dismissal of those charges on a motion like the Defendant's motion here. *Cf., e.g.*, *United States v. Bramer*, 956 F.3d 91, 97-98 (2d Cir. 2020) (holding that evidence of a "perfunctory" hearing, which hearing a defendant attended, at which hearing the defendant was not physically prevented from speaking, and at which hearing a judge explained "what an order of protection was," as a matter of law is not sufficient to satisfy the § 922(g)(8) hearing requirement).

The State, at the instant hearing, argued that the Defendant had had ample opportunity, between the issuance of the no contact order and the date of the alleged

offenses, to seek review of the no contact order. Essentially, then, the State asserted that the Defendant's opportunity for a post-order hearing satisfied the § 922(g)(8) notice-and-hearing requirement. But § 922(g)(8) does not prohibit the possession of firearms by a person subject to a protective order which the person could have challenged, or in relation to which the person could have requested a hearing. Indeed, § 922(g)(8) does not prohibit the possession of firearms by a person subject to a protective order in relation to which the person in fact requested and obtained a hearing, if the order was issued before the hearing. Rather, the plain text of § 922(g)(8), quoted above, provides that only an otherwise-qualifying protective order "issued *after* a hearing of which [the person subject of the protective order] received actual notice, and at which such person had an opportunity to participate," operates to prohibit the person from possessing firearms. *Id.* (emphasis added).

So the State's just-recounted argument fails in two ways. First, § 922(g)(8) requires an *actual* hearing, not the possibility of a hearing. *See, e.g.*, *United States v. Banks*, 339 F.3d 267, 270 (5th Cir. 2003) (explaining that a § 922(g)(8)(A) "'hearing must have been set for a particular time and place and the defendant must have received notice of that and thereafter the hearing must have been held at that time and place'" (quoting *United States v. Spruill*, 292 F.3d 207, 220 (5th Cir. 2002))); *accord United States v. Kaspereit*, 994 F.3d 1202, 1212 ns. 5-6 (10th Cir. 2021) (collecting cases). And second, § 922(g)(8) requires that that hearing be conduct *before* — not after — the issuance of the order. *See United States v. Skillern*, No. 1:07-cr-29-r, 2009 WL 1098721, at *3 (W.D. Ky. Apr. 22, 2009) ("An after-the-fact opportunity to present reasons why the already completed action should be undone does not satisfy [the § 922(g)(8) hearing]

requirement.").

The State also asserted, at the instant hearing, that the Defendant's argument about the lack of a pre-issuance hearing really amounts to a due process argument, and that the availability of a post-issuance hearing at the Defendant's request satisfies the relevant due process concerns. The Court suspects that in so arguing, the State is drawing from a footnote in the Supreme Court's recent decision in *United States v. Rahimi*, wherein the Court, in rejecting a Second Amendment facial challenge to § 922(g)(8), criticized a concurring opinion by Judge Ho in the case on review. *See United States v. Rahimi*, 602 U.S. ___, 144 S. Ct. 1889, 1903 n.2 (2024). But the *Rahimi* Court's criticism of the reasoning in Judge Ho's concurrence was rendered in the course of the Court's resolution of the question whether Congress may, consistent with the Second Amendment, prohibit persons subject to orders *which satisfy the requirements of § 922(g)(8)* from possessing firearms. *See id.* The inapplicability to that issue of Judge Ho's due process concerns have no bearing on the question presented by the portion of the Defendant's instant motion to dismiss that is presently before the Court — namely, the portion wherein the Defendant argues that the no contact order to which he was allegedly subject does not satisfy the § 922(g)(8) requirements. In other words, that an opportunity for an after-the-fact hearing may comport with the requirements of due process has no bearing on the question whether such an opportunity satisfies the § 922(g)(8) hearing requirement.

The Court also notes that the alleged no contact order expressly provides that the Defendant was prohibited from possessing firearms while the order was in effect. Perhaps that provision of the order was enforceable through contempt proceedings. *Cf.*

Allen v. Iowa District Court for Polk County, 582 N.W.2d 506, 508-09 (Iowa 1998) ("If there is jurisdiction of the parties and legal authority to make an order, the order must be obeyed however erroneous or improvident." (internal quotation omitted)). But even if enforceable, that express prohibition obviously does not satisfy the § 922(g)(8) requirement that in order for a protective order to operate to prohibit the subject of that order from possessing firearms, the order must have been issued after notice and a hearing. And the possession of firearms by the subject of a no contact order which, by its terms, purports to prohibit the subject from possessing firearms, but which does not satisfy the requirements of § 922(g)(8), does not violate § 724.26.

Finally with regard to this issue, the Court observes that the State has not requested leave to file a bill of particulars to remedy the deficiency in the minutes of testimony on which this portion of the Defendant's instant motion is based. *Cf. State v. Wells*, 629 N.W.2d 346, 352 n.2 (Iowa 2001).

Accordingly, the Court concludes, as a matter of law, that the allegations in the trial information and the minutes of testimony do not constitute the offenses charged in Counts 2, 4, 6, and 7. And so the Court further concludes that the Defendant's motion to dismiss those charges must be, and is, granted.

B.

The Court turns next to the Defendant's constitutional challenge to the remaining charges.

The Defendant contends that Iowa Code § 724.26(1), as applied to him in the remaining counts, is unconstitutional under article 1, section 1A of the Iowa Constitution. Titled "Right to keep and bear arms," article 1, section 1A 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.

Id.

Article 1, section 1A took effect on November 8, 2022, and it has yet to be interpreted, or even mentioned, by our appellate courts. So the question whether § 724.26(1) is consistent with article 1, section 1A, is an open one. *Cf. State v. Rupp*, 282 N.W.2d 125, 130 (Iowa 1979) (rejecting a claim that § 724.26 is unconstitutional under the Second and Fourteenth Amendments to the United States Constitution). And in order to resolve that question, the Court must determine, as a matter of first impression, the scope of the right protected by article 1, section 1A.

"In interpreting a law, the words of the text are of paramount importance." *Bribriesco-Ledger v. Klipsch*, 957 N.W.2d 646, 650 (Iowa 2021) (*citing Doe v. State*, 943 N.W.2d 608, 610 (Iowa 2020); Antonin Scalia & Bryan Garner, *Reading Law: The Interpretation of Legal Texts* 33 (2012)). "Words bear their ordinary meanings, unless the context indicates that a technical meaning applies." *Id.* (citing *Seavert v. Cooper*, 187 Iowa 1109, 1113, 175 N.W. 19, 21 (1919); Scalia & Garner, *Reading Law*, at 73).

One example of text with a technical meaning is the "legal term of art." *See Nahas v. Polk County*, 991 N.W.2d 770, 781 (Iowa 2023). When a legal text uses a "legal term of art, context suggests that the [drafter or ratifier] 'adopt[ed] the cluster of ideas that were attached to each borrowed word in the body of learning from which [the term of art] is taken.'" *Id.* (quoting *Air Wis. Airlines Corp. v. Hoeper*, 571 U.S. 237, 248 (2014); *accord* Scalia & Garner, *Reading Law*, at 73 ("[W]hen the law is the subject, ordinary legal

meaning is to be expected, which often differs from common meaning. . . . If a word is obviously transplanted from another legal source, whether common law or other legislation, it brings the old soil with it." (internal quotation and alteration omitted)).

There is reason to believe that this technical-meaning principle sheds light on the meaning of article 1, section 1A.

The Supreme Court of the United States has held that the "operative clause" of the Second Amendment — which clause provides that "the right of the people to keep and bear Arms, shall not be infringed," *cf. District of Columbia v. Heller*, 554 U.S. 570, 577 (2008) (distinguishing the "operative clause" and the "prefatory clause" of the Second Amendment) — "codifie[s] a *pre-existing* right," *see id.* at 592, and that the "contours" of that right may be delineated by an "examina[tion] [of] our 'historical tradition of firearm regulation.'" *See United States v. Rahimi*, ___ U.S. 602, 144 S. Ct. 1897 (2024) (quoting *New York State Rifle & Pistol Assoc. v. Bruen*, 597 U.S. 1, 17 (2022)). Thus, since the phrase "the right of the people to keep and bear Arms," as used in the Second Amendment, incorporates concepts not readily understandable by persons of ordinary intelligence from the words used and the context of the phrase, the phrase is at least arguably a legal term of art.[4]

4 This Court is aware that the *Heller* Court began its consideration of the question before it with a "textual analysis" focused on the "normal and ordinary meaning" of the language of the Second Amendment. *See Heller*, 554 U.S. at 576-77. Through that analysis, the Court determined that the Second Amendment "guarantee[s] the individual right to possess and carry weapons in case of confrontation." *Id.* at 592. But in addition to that determination, and as just mentioned, the *Heller* Court also determined that the Second Amendment "codifie[s] a *pre-existing* right." *See id.* And at least with regard to that second determination — the determination that the Second Amendment's language represents a pre-existing right, the contours of which must be determined by consideration of the relevant history — the language of the Second Amendment

And the first sentence of article 1, section 1A is, except with respect to non-substantive capitalization and punctuation, identical to the "operative clause" of the Second Amendment. *Compare* Iowa Const. art. 1, § 1A ("The right of the people to keep and bear arms shall not be infringed."), *and* U.S. Const. amend. II ("the right of the people to keep and bear Arms, shall not be infringed"). That article 1, section 1A "transplant[s]" the operative clause of the Second Amendment suggests that the "soil" — the scope of the right to bear arms recognized by the Second Amendment — comes with it. *See CFPB v. Cmty. Fin. Servs. Assoc. of Am., Ltd.*, 601 U.S. 416, 452-53 (2024) (Alito, J., dissenting) (applying the term-of-art/technical-meaning canon in the constitutional context).

The second sentence of article 1, section 1A, likewise suggests that the scope of the right protected by article 1, section 1A is the same as the scope of the right protected by the Second Amendment. That sentence recognizes the right to keep and bear arms "to be a fundamental individual right." And the Supreme Court of the United States has held that "the Second Amendment confer[s] an individual right to keep and bear arms," *Heller*, 554 U.S. at 595; and that "the right to keep and bear arms [is] among the fundamental rights necessary to our system of ordered liberty." *McDonald v. Chicago*, 561 U.S. 742, 778 (2010).

Article 1, section 1A lacks an equivalent to the prefatory clause of the Second Amendment. *See Heller*, 554 U.S. at 577 (identifying "A well regulated militia, being necessary to the security of a free State" as the prefatory clause of the Second Amendment). But that does not weigh against a determination of equivalence between

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constitutes a legal term of art.

the scope of the Second Amendment right and the scope of the right secured by article 1, section 1A — at least not in a way relevant here. *Heller* explains that generally, the prefatory clause does not limit the operative clause, but rather merely "announces a purpose." *Id.* at 577. That said, *Heller* also suggests that the prefatory clause may be relevant to determining what types of arms the people have the right to keep and bear. *See id.* at 577-78, 625-28. So perhaps, in that regard, the scope of the article 1, section 1A right to keep and bear arms is broader than the Second Amendment right. But even if that is so, since this case does not involve arms not "of the kind in common use," *cf. Heller*, 554 U.S. at 624, any such difference is immaterial here.

The final sentence of article 1, section 1A, however — the sentence which provides that "[a]ny and all restrictions of this right shall be subject to strict scrutiny" — presents a somewhat more difficult interpretative issue. Under "strict scrutiny" review — another legal term of art — the State must prove that a challenged government action "is narrowly tailored to the achievement of a compelling state interest." *See Sanchez v. State*, 692 N.W.2d 812, 817 (Iowa 2005). But in *Bruen*, the Court rejected "applying means-end scrutiny" — including strict scrutiny — "in the Second Amendment context." *Bruen*, 597 U.S. at 19. Instead, as alluded to above, in order for a firearms regulation to survive a Second Amendment challenge, "the government must affirmatively prove" only "that its firearms regulation is part of the historical tradition that delimits the outer bounds of the right to keep and bear arms." *Id.*; *accord Heller v. District of Columbia*, 670 F.3d 1244, 1274 (D.C. Cit. 2011) (Kavanaugh, J., dissenting) ("Indeed, governments appear to have *more* flexibility and power to impose gun regulations under a test based on text, history, and tradition than they would under strict scrutiny.").

But even this textual difference does not weigh against a conclusion that the rights protected by the Second Amendment and article 1, section 1A are equivalent. Rather, the final sentence of article 1, section 1A is most naturally understood as appending to the pre-existing right recognized by *Heller* and its progeny, the scope of which right is to be determined according to the *Bruen* analysis,[5] an additional layer of protection. Thus, in order for a firearms regulation to survive an article 1, section 1A challenge, the State must prove *both* that the challenged regulation "is part of the historical tradition that delimits the outer bounds of the right to keep and bear arms" — which would be sufficient to survive a Second Amendment challenge — *and* that the regulation is narrowly tailored to the achievement of a compelling state interest.

Having thus determined the general scope of the article 1, section 1A right to keep and bear arms, as well as the general analytical method through which an article 1, section 1A challenge to a firearms regulation must be resolved, the Court turns to the application of those principles to the question presented by the Defendant's instant motion.

Since § 724.26(1) indisputably prohibits the Defendant from engaging in conduct

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5 *Bruen* had not been decided when article 1, section 1A was "agreed to" by the General Assembly. *Cf.* Iowa Const. art. 10, § 1. But *Bruen* was decided before article 1, section 1A was ratified. *Cf. Bruen*, 597 U.S. at 82-83 (Barrett, J., concurring) (explaining that the understanding of a constitutional provision at the time of its ratification is the critical question for determination of the provision's meaning); *accord Rahimi*, 602 U.S. at ___, 144 S. Ct. at 1924 (Barrett, J., concurring) ("[T]he meaning of constitutional text is fixed at the time of its ratification . . . . [T]he history that matters most is the history surrounding the ratification of the text . . . ."). And in any event, *Bruen* persuasively explains how its rule necessarily follows the reasoning set forth in *Heller*. So the Court concludes that *Heller* and *Bruen* together delineate the scope of the "right to keep and bear arms" codified in article 1, section 1A.

covered by the text of the article 1, section 1A, the State, in order to prevail on the Defendant's challenge to that statute, must show that Iowa Code § 724.26(1) 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. "[T]he appropriate analysis" for answering that question "involves considering whether [§ 724.26(1)] is consistent with the principles that underpin our regulatory tradition." *Rahimi*, 602 U.S. at ___, 144 S. Ct. at 1898. This Court "must ascertain whether [§ 724.26(1)] 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.* (quoting *Bruen*, 597 U.S. at 29).

With regard to how this analysis is to be conducted, the United States Supreme Court explained:

> Why and how the regulation burdens the right are central to this inquiry. For example, if laws at the founding regulated firearm use to address particular problems, that will be a strong indicator that contemporary laws imposing similar restrictions for similar reasons fall within a permissible category of regulations. Even when a law regulates armsbearing for a permissible reason, though, it may not be compatible with the right if it does so to an extent beyond what was done at the founding. And when a challenged regulation does not precisely match its historical predecessors, it still may be analogous enough to pass constitutional muster. The law must comport with the principles underlying the Second Amendment, but it need not be a dead ringer or a historical twin.

Id. (internal quotations and citations omitted).

A "difficulty" with the application of this analysis is the "level of generality problem." *Id.* at ___, 144 S. Ct. at 1925 (Barret, J., concurring). To avoid this problem, courts applying the *Bruen* analysis must recall "that 'analogical reasoning' is not a 'regulatory straightjacket." *Id.* (Barret, J., concurring) (quoting *Bruen*, 597 U.S. at 30). In other words, "[t]o be *consistent* with historical limits, a challenged regulation need not be an updated

model of a historical counterpart." *Id.* (Barrett, J., concurring). "Historical regulations reveal a principle, not a mold." *Id.* (Barrett, J., concurring). That said, "a court must be careful not to read a principle at such a high level of generality that it waters down the right." *Id.* at ___, 144 S. Ct. at 1926 (Barrett, J., concurring); *accord id.* at ___, 144 S. Ct. at 1908 (Gorsuch, J., concurring) ("Courts must proceed with care in making comparisons to historic firearms regulations, or else they risk gaming away an individual right the people expressly preserved for themselves in the Constitution's text.").

The State, in arguing that it has made the required showing, relies on *United States v. Jackson*, 110 F.4th 1120 (8th Cir. 2024).

The defendant in *Jackson* was convicted of unlawful possession of a firearm as a previously convicted felon, in violation of 18 U.S.C. § 922(g)(1).[6] *See Jackson*, 110 F.4th at 1121. The defendant had two predicate prior state felony convictions, each for sale of a controlled substance. *See id.* at 1122. The defendant "argue[d] that § 922(g)(1) is unconstitutional as applied to him, because his drug offenses were 'non-violent' and do not show that he is more dangerous than the typical law-abiding citizen." *Id.* at 1125.

The *Jackson* Court rejected the defendant's argument, and held that § 922(g)(1) is constitutional as applied to him, for several reasons.

First, the Court relied on the declaration in *Heller* that the recognition of an individual right to keep and bear arms should not "be taken to cast doubt on longstanding prohibitions on the possession of firearms by felons." *Jackson*, 110 F.4th at 1125 (quoting

6 Pursuant to § 922(g)(1), "[i]t shall be unlawful for any person . . . who has been convicted in any court of, a crime punishable by imprisonment for a term exceeding one year . . . to . . . possess in or affecting commerce, any firearm or ammunition . . . ."

Heller, 554 U.S. at 626; *accord id.* at 1128-29 ("The Supreme Court in *Heller* cited this prohibition on the possession of firearms by felons as one of several 'presumptively lawful regulatory measures.'" (quoting *Heller*, 554 U.S. at 627 n.26). That declaration, the *Jackson* Court observed, was reiterated by the plurality opinion in *McDonald*, *see Jackson*, 110 F.4th at 1125 (citing *McDonald*, 561 U.S. at 786 (plurality opinion)), and by concurring opinions in *Bruen*. *See Jackson*, 110 F.4th at 1125 (citing *Bruen*, 597 U.S. at 72 (Alito, J., concurring)); *id.* (citing *Bruen*, 597 U.S. at 81 (Kavanaugh, J., concurring)). And, the *Jackson* Court noted, the Supreme Court made a similar statement in *Rahimi*. *See Jackson*, 110 F.4th at 1125 (citing *Rahimi*, 602 U.S. at ___, 144 S. Ct. at 1901-02); *accord Rahimi*, 602 U.S. at ___, 144 S. Ct. at 1901-02 ("[W]e do not suggest that the Second Amendment prohibits the enactment of laws banning the possession of guns by categories of persons thought by a legislature to present a special danger of misuse . . . . (citing *Heller*, 554 U.S. at 626)).

Second, the *Jackson* Court concluded, after a review of the historical evidence, 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.* at 1127. Putting the matter another way, the Court concluded that "Congress did not violate [the *Jackson* defendant's] rights by enacting § 922(g)(1)," because "[h]e is not a law-abiding citizen, and history supports the authority of Congress to prohibit possession of firearms by persons who have demonstrated disrespect for legal norms of society." *Id.*

Third, the *Jackson* 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," without any "requirement for an individualized determination of dangerousness as to each person in a class of prohibited persons." *Id.* at 1128. And, the Court further concluded, "Congress operated within this historical tradition when it enacted § 922(g)(1) to address modern conditions," by "prohibit[ing] 'categories of presumptively dangerous persons from transporting or receiving firearms' because they 'pose[d] an unacceptable risk of dangerousness.'" *Id.* (quoting *Barrett v. United States*, 423 U.S. 212, 218 (1976), *Lewis v. United States*, 445 U.S. 55, 64 (1980), *Dickerson v. New Banner Inst., Inc.*, 460 U.S. 103, 120 (1983)). "'Congress,'" the *Jackson* Court explained, "'obviously determined that firearms must be kept away from persons, such as those convicted of serious crimes, who might be expected to misuse them,'" and "[t]hat determination was not unreasonable." *Id.* (quoting *Dickerson*, 460 U.S. at 119.

And fourth, the *Jackson* Court rejected, as inconsistent with other language in *Heller*, any suggestion that what *Heller* called the "presumptive[]" lawfulness of the prohibition on the possession of firearms by felons can be rebutted on a case-by-case basis. *See Jackson*, 110 F.4th at 1128-29.

This Court, however, generally finds the historical analysis set forth in a dissenting opinion by then-Judge Barrett in *Kanter v. Barr*, 919 F.3d 437 (7th Cir. 2019),[7] to be more

7 *Kanter* pre-dates *Bruen*, and as discussed at length below, a portion of then-Judge Barrett's analysis consists of a means-ends inquiry of the kind that *Bruen* rejected. But the means-end inquiry employed by most federal Courts of Appeals (including the Seventh Circuit) prior to *Bruen* was only the second step of a two-step analysis, and *Bruen* approved of the first step of that analysis. *See Bruen*, 597 U.S. at 18-19. So then-Judge Barrett's step-one analysis remains instructive to the *Bruen* analysis here.

persuasive than the just-recounted analysis in *Jackson*.

The plaintiff in *Kanter* was prohibited by state (Wisconsin) and federal law from possessing firearms, on account of a prior mail fraud conviction. *See Kanter*, 919 F.3d at 438. In his lawsuit, the plaintiff argued that § 922(g)(1) and its Wisconsin equivalent are unconstitutional, as applied to him, under the Second Amendment. *See Kanter*, 919 F.3d at 440. A majority of the *Kanter* Court rejected the plaintiff's argument. *See id.* at 450-51.

Then-Judge Barrett dissented. *See Kanter*, 919 F.3d at 451 (Barrett, J., dissenting).

In her dissent, then-Judge Barrett, unlike the *Jackson* Court, declined to put much weight on the "presumptively lawful" language in *Heller*. She explained that she was "reluctant to place more weight on these passing references than the Court itself did" — "[t]he constitutionality of felon dispossession was not before the Court in *Heller*," she explained, and the *Heller* Court "explicitly deferred analysis of this issue," so "the scope of [the] assertion is unclear." *Kanter*, 919 F.3d at 453 (Barrett, J., dissenting); *see also id.* at 545 ("[J]udicial opinions are not statutes, and we don't dissect them word-by-word as if they were."). "*Heller*'s dictum," then "d[id] not settle the question." *Kanter*, 919 F.3d at 454 (Barrett, J., dissenting).

Then-Judge Barrett nonetheless found the *Heller* language useful, in that it "endorses the proposition that the legislature can impose some categorical bans on the possession of firearms." *Kanter*, 919 F.3d at 454 (Barrett, J., dissenting). But she reiterated that just because some such categorical bans are permissible does not mean that all are. *See id.* The question thus remained "whether *all* felons — violent and

nonviolent alike — comprise one such category." *See id.*

And although the historical evidence before the *Kanter* Court was largely the same as the evidence that was before the Court in *Jackson*, the conclusions that then-Judge Barrett drew from that evidence were different from those of the *Jackson* Court. She explained that "[t]he best historical support for a legislative power to permanently dispossess all felons would be founding-era laws explicitly imposing — or explicitly authorizing the legislature to impose — such a ban," but that "at least thus far, scholars have not been able to identify any such laws." *Kanter*, 919 F.3d at 454 (Barrett, J., dissenting). She acknowledged somewhat similar "proposals made in the New Hampshire, Massachusetts, and Pennsylvania ratifying conventions," each of which "proposals included limiting language arguably tied to criminality." *See id.* But she persuasively explained why none of these proposals provides historical support for disarming nonviolent felons. *See id.* at 454-56.

That said, then-Judge Barrett found those proposals to be "helpful taken together as evidence of the scope of founding-era understandings regarding categorical exclusions from the enjoyment of the right to keep and bear arms." *See id.* at 456. In particular, "[t]he concern common to all three is not about felons in particular or even criminals in general; it is about threatened violence and the risk of public injury." *See id.*

And other historical evidence, then-Judge Barrett explained, reveals that "[t]his is the same concern that animated English and early American restrictions on arms possession." *See id.* at 456-57. From that evidence — much of which, again, is the same evidence on which *Jackson* relies — then-Judge Barrett concluded that although "founding-era legislatures categorically disarmed groups whom they judged to be a threat

to the public safety," none of that historical evidence "supports a legislative power to categorically disarm felons because of their status as felons." *Id.* at 458.

Then-Judge Barrett also rejected another historical argument on which the *Jackson* Court relied — that "[b]ecause felons were routinely executed or stripped of all rights" in the founding era, "explicit provisions depriving them of firearms would have been redundant." *See Kanter*, 919 F.3d at 458 (Barrett, J., dissenting). Then-Judge Barrett persuasively explained that the historical evidence in support of "[t]he premise of this argument — that the states permanently extinguished the rights of felons, either by death or operation of law, in the eighteenth and nineteenth centuries — is shaky." *See id.* at 458-61. Rather, she determined, "history confirms that the basis for the permanent and pervasive loss of all rights cannot be tied generally to one's status as a convicted felon or to the uniform severity of punishment that befell the class." *Id.* at 461. Accordingly, "the argument that the severity of punishment at the founding implicitly sanctions the blanket stripping of rights from all felons, including those serving a term of years, is misguided." *Id.* Further, then-Judge Barrett persuasively argued, even if founding-era punishments for felons had been severe, "we wouldn't say," for example, "that the state can deprive felons of the right to free speech because felons lost that right via execution at the time of the founding." *See id.* So "[t]he obvious point that the dead enjoy no rights does not tell us what the founding-era generation would have understood about the rights of felons who lived, discharged their sentences, and returned to society." *Id.*

And then-Judge Barrett rejected the argument that legislatures may disarm felons because they are not virtuous. *See id.* at 462. Historical "virtue exclusions," she explained, are exclusively "associated with civic rights — individual rights that require

citizens to act in a collective manner for distinctly public purposes," like the rights to vote and to serve on juries. *See id.* (internal quotation and alteration omitted). But *Heller* "squarely holds that 'the Second Amendment confer[s] *an individual right* to keep and bear arms." *Kanter*, 919 F.3d at 463 (Barrett, J., dissenting) (quoting *Heller*, 554 U.S. at 595). Moreover, "virtue exclusions from the exercise of civic rights were explicit," and the Second Amendment lacks an express virtue exclusion. *See id.* at 463-64. Accordingly, then-Judge Barrett concluded that since "virtue exclusions don't apply to individual rights, they don't apply to the Second Amendment." *Id.* at 463.

That said, despite the differences in the historical analysis in *Jackson* and then-Judge Barrett's analysis in her *Kanter* dissent, then-Judge Barrett ultimately reached a conclusion similar to the conclusion of the *Jackson* Court — that although "[h]istory does not support the proposition that felons lose their Second Amendment rights solely because of their status as felons," history "does support the proposition that the state can take the right to bear arms away from a category of people that it deems dangerous." *Kanter*, 919 F.3d at 464 (Barrett, J., dissenting). And then-Judge Barrett further concluded, based on Seventh Circuit precedent at the time, that legislatures are "not limited to case-by-case exclusions of persons who have been shown to be untrustworthy with weapons" — rather, "the legislature can make that judgment on a class-wide basis," and "it may do so based on present-day judgment about categories of people whose possession of guns would endanger the public safety," because "[s]uch restrictions are lineal descendants of historical laws banning dangerous people from possessing guns." *Id.* (internal quotations omitted). Then-Judge Barrett still, however, would have ruled in favor of the *Kanter* plaintiff, based on an application of a means-ends-scrutiny test of the

kind rejected by *Bruen*. *See Kanter*, 919 F.3d at 465-69 (Barrett, J., dissenting).

Again, this Court is persuaded, by then-Judge Barrett's analysis of the historical evidence, that history does not support a conclusion that a legislature may disarm all felons — violent and nonviolent alike — merely on account of their status as felons.

But this Court is not convinced that the historical evidence discussed in *Jackson* and then-Judge Barrett's dissent in *Kanter* is really best read as establishing the principle that a legislature may, consistent with the right to keep and bear arms, prohibit the possession of arms by all of the members of any group which the legislature, constrained only by its own discretion, deems to be dangerous.

The Court's doubt about the conclusion is based in part on common sense. If that broad reading of the principle reflected in the historical evidence is correct, then, for example, Congress presumably could pass a statute categorically prohibiting all persons who are not members of the military or sworn peace officers from keeping and bearing arms, and so long as that statute contained a statement declaring that the law arose from Congress's conclusion that persons other than members of the military and sworn peace officers are too dangerous to possess firearms, the prohibition would be constitutional under the Second Amendment. It seems to this Court exceedingly unlikely that the right to keep and bear arms which the Second Amendment protects has ever been understood to permit firearms regulations of that kind, or to be consistent with a principle from which such a regulation could arise.

It also seems to the Court that distilling such an unreasonably broad principle from the historical evidence results from the application of an incorrect level of generality. As already mentioned, the Supreme Court has made clear that the *Bruen* analysis requires

"analogical reasoning," and does not mandate a "regulatory straightjacket"; that "[t]o be *consistent* with historical limits, a challenged regulation need not be an updated model of a historical counterpart"; that modern-day regulations need not "follow late-18th century policy choices"; and that "[h]istorical regulations reveal a principle, not a mold." *Rahimi*, 602 U.S. at ___, 144 S. Ct. at 1926 (Barrett, J., concurring). But even while searching for analogous historical principles and not historical dead-ringers, the *Rahimi* Court conducted its *Bruen* analysis at a much lower level of generality than that employed in *Jackson* and the *Kanter* dissent. *See Rahimi*, 602 U.S. at ___, 144 S. Ct. at 1898-1902.

And applying a lower level of generality makes a difference to the outcome of the *Bruen* analysis here. The historical regulations on which the *Kanter* dissent (the history of which, as mentioned above, this Court finds persuasive) and the persuasive portions of *Jackson* (the history of which this Court accepts only when not inconsistent with the *Kanter* dissent) rely, in support of their conclusions that legislatures may disarm those the legislatures deem dangerous, consist of laws which disarmed those suspected of disloyalty in the heat of the Revolutionary War, in times of unrest shortly thereafter, and during the aftermath of the Civil War, as well as other historical laws which disarmed Native Americans during the then-still-ongoing "project of expropriating Native American land." *Cf.* Joseph Blocher & Caitlan Carberry, *Historical Gun Laws Targeting "Dangerous" Groups and Outsiders*, in *New Histories of Gun Rights and Regulation* 131 (Joseph Blocher et al. eds. 2023). Perhaps from those laws one could distill the principle that legislatures may disarm categories of individuals whom they deem likely to be dangerous on account of disloyalty to the government, or categories whose members are dangerous on account of a risk of rebellion or unrest or the threat of war. Perhaps those

laws also stand for the principle that when the government is involved in an ongoing conflict with a group of people, the government may, consistent with the Second Amendment (if likely not other constitutional provisions), disarm all members of that group of people. But to discern from those laws the principle that a legislature may disarm *any* category of individuals, under *any* circumstances, based on nothing more than the legislature's own discretionary determination that that category of individuals is dangerous, is a generalization too far.

One additional matter warrants mention in relation to the level-of-generality issue. If a legislature may, consistent with the Second Amendment, disarm any category of individuals whom the legislature, in its unfettered discretion, deems to be dangerous, then why did the *Rahimi* Court engage in a relatively lengthy and complex historical analysis, searching for analogues of § 922(g)(8)(C)(i)? Obviously, Congress prohibited the possession of arms by those subject to court orders of the kind at issue in *Rahimi* because Congress concluded that members of the category of persons who are subject to such orders are dangerous. *Cf. Lewis*, 445 U.S. at 64 (explaining that 18 U.S.C. § 922(g) "prohibits categories of presumptively dangerous persons from transporting or receiving firearms"). If a legislature may disarm any category of persons whom it deems dangerous, then that should have been the end of the matter in *Rahimi*. That it was not the end of the matter suggests that the historical evidence cannot be construed so broadly — *Rahimi*'s offhand mention, in *dicta*, of the possibility of categorical dangerousness prohibitions notwithstanding. *Cf. Rahimi*, 602 U.S. at ___, 144 S. Ct. at 1901-02.

Accordingly, the Court is not persuaded that our General Assembly may, consistent with the right to keep and bear arms recognized in article 1, section 1A, disarm

any category of individuals whom the General Assembly deems to be dangerous. And the Court therefore concludes that the State has failed to carry its burden to "affirmatively prove that" § 724.26(1), as applied to nonviolent drug-offense felons like the Defendant here, "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.

Further, even were the Court to determine that § 724.26(1) passes muster under the *Bruen* analysis, the Court would still conclude that the Defendant's instant motion to dismiss Counts 1, 3, and 5 must be granted, because the Court concludes that § 724.26(1), as applied to the Defendant, does not pass muster under the required strict scrutiny analysis.

Then-Judge Barrett, in her application of a means-ends analysis in her dissent in *Kanter*, persuasively explains why this is so. *See also Jackson*, 110 F.4th at 1129 ("[H]istory and tradition show that a variety of gun regulations have coexisted with the Second Amendment right and are consistent with that right, as the Court said in *Heller*. By contrast, if courts applied strict scrutiny, then presumably very few gun regulations would be upheld.'" (quoting *Heller*, 670 F.3d at 1274 (Kavanaugh, J., dissenting).

Then-Judge Barrett determined, through an application of a means-ends analysis roughly equivalent to strict scrutiny,[8] that while "[t]here is no question that the interest" of

8 In deciding what level of means-ends scrutiny to apply, then-Judge Barrett explained that"felon dispossession statutes target the whole right" to keep and bear arms, "including at its core: they restrict even mere possession of a firearm in the home for the purpose of self-defense"; that the "burden is severe," since "it is a *permanent* disqualification from the exercise of a fundamental right," *id.*; and that as such, "a very strong public-interest justification and a close means-ends fit is required . . . ." *Kanter*, 919 F.3d at 465 (Barrett, J., dissenting). (internal quotation omitted).

"keeping guns out of the hands of those who are likely to misuse them . . . is very strong," a categorical ban like the ban in § 724.26(1), "which applies to *all* felons[,] is wildly overinclusive." *Id.* at 465-66. Of course, she explained, "those who have committed violent crimes like murder, assault, and rape" may be categorically banned from possessing arms — since "the characteristic common to all violent felons is a demonstrated propensity for violence, the ban on possessing firearms is constitutional as applied to all members of that class." *Kanter*, 919 F.3d at 466-67 (Barrett, J., dissenting). But the same is not true of a ban which " encompasses those who have committed *any* nonviolent felony," since " to state the obvious, the characteristic common to all nonviolent felons is that their criminal conduct was nonviolent." *Id.* at 467. Such nonviolent crimes thus "raise no particular suspicion that the convict is a threat to public safety," at least not as a matter of logic, and so "the reasoning that supports the categorical disarmament of violent felons — that past violence is predictive of future violence — simply does not apply," at least in the absence of evidence that a history of having committed a particular nonviolent offense at issue correlates to an increased risk of violence. *See id.*

That analysis applies here. The Defendant's prior felony convictions are for nonviolent drug distribution offenses. Nothing about such offenses inherently raises a suspicion that a person who has committed such offenses is a threat to public safety. And the State has produced no evidence suggesting that one convicted of such offenses is likely to be violent or dangerous.

Accordingly, the Court is unable to conclude that that § 724.26(1), to the extent that it disarms nonviolent felons like the Defendant, is narrowly tailored to serve a compelling government interest. And as such, the Court concludes that § 724.26(1) is

unconstitutional as applied to the Defendant, under article 1, section 1A of the Iowa Constitution, and that the Defendant's instant motion to dismiss Counts 1, 3, and 5 must be, and is, granted.

IT IS THEREFORE ORDERED:

1. All of the above.
2. The Defendant's motion to dismiss is granted in its entirety. Count 1 through Count 7 are dismissed.
3. Costs are taxed to the State.

SO ORDERED.

Clerk to notify.

State of Iowa Courts

Case Number	**Case Title**
FECR020524	STATE OF IOWA VS DICKSON, CHARLES WAYNE
Type:	ORDER OF DISPOSITION

So Ordered

District Judge, Zachary Hindman
Third Judicial District of Iowa

Electronically signed on 2024-09-13 17:45:05