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IN THE SUPREME COURT OF IOWA

SUPREME COURT NO. 23-0970

IN THE MATTER OF N.S.,

Petitioner/Appellant.

APPEAL FROM THE IOWA DISTRICT COURT FOR POTTAWATTAMIE COUNTY

HONORABLE MARGARET REYES

APPELLEE'S FINAL BRIEF

BRENNA BIRD
Attorney General of Iowa

SARAH JENNINGS
Assistant Attorney General
Hoover State Office Building
1305 E. Walnut St., 2nd Floor
Des Moines, Iowa 50319

JAMES BURGER
Assistant Pottawattamie County Attorney

ATTORNEYS FOR APPELLEE

CERTIFICATE OF SERVICE

On the 3rd day of January, 2024, the State served the Appellee's Brief on all other parties to this appeal via EDMS:

N.S. via counsel, Eric Puryear.

/s/ Sarah Anne Jennings
SARAH ANNE JENNINGS
Assistant Attorney General

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II. WHETHER IOWA CONSTITUTIONAL AMENDMENT 1A SHOULD BE APPLIED RETROACTIVELY DESPITE ANY TEXT INDICATING RETROACTIVE APPLICATION.

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ROUTING STATEMENT

The Supreme Court should retain this case, as it represents an issue of substantial first impression under Iowa R. App. P. 6.1101(2)(c) with regard to the retroactive applicability of Article 1, Section 1A to Iowa Code section 724.31.

STATEMENT OF THE CASE

Nature of the Case

This case raises two important issues of first impression for this Court. First, whether Amendment 1A to the Iowa Constitution applies retroactively despite codifying a new substantive protection and lacking any text confirming retroactive application. App. A27 (MHMH024891, Dkt. 58 at 2). Second, whether Iowa's firearms disability statute, which allows a person who has been involuntarily committed to regain his firearms rights by submitting evidence that he is no longer likely to act in a manner dangerous to the public safety, fails strict scrutiny. App. A29-30 (*Id.* at 3–4). Both of those questions come into play because the district court properly denied N.S.'s petition under longstanding law.

The district court got both issues right. Constitutional amendments "operate prospectively." *Id.* (quoting *State v. Bates*, 305 N.W.2d 426, 427 (1981)). And the State has a compelling interest in "prohibiting the possession of firearms by felons and the mentally ill." *Id.* (quoting *District of Columbia v. Heller*, 554 U.S. 570, 626 (2008)). Iowa's firearms disability restoration statute is "narrowly tailored to restrict only those individuals likely to act in a manner dangerous to themselves or others from possessing a firearm and it provides an avenue to restore their firearms rights when the individual is no longer a danger." *Id.* This Court should affirm.

STATEMENT OF THE FACTS

Summary of Involuntary Committal Cases

N.S.'s firearms disability stems from two cases for involuntary commitment due to a serious mental impairment and a substance-related disorder. A third application for involuntary commitment filed against him was dismissed and thus does not impact his firearms rights. Those three cases span from late 2006 to early 2008, when the last committal was dismissed. App. SA5; SA7

(Pottawattamie County cases MJMH017686—mental health; MJMH017687—substance abuse; and MJMH018396—dismissed application alleging serious mental impairment). During that period, N.S.'s parents completed applications twice alleging N.S. had a serious mental illness or substance-related disorder requiring involuntary commitment or treatment pursuant. App. A14 (MHMH017686 and MJMH017687 Dkt. 52 at 5).

In cases MJMH017686 and MJMH017687, N.S.'s family members filed two applications simultaneously to involuntarily commit him in November 2006. (*Id*). MJMH017686 alleged that N.S. was seriously mentally impaired and needed treatment under Iowa Code section 229.6. App. SA5 (Application Alleging Serious Mental Impairment Pursuant to Iowa Code section to 229.6 (229 Application) filed on November 13, 2006, in Pottawattamie County case MJMH017686). A companion case, MJMH017687, alleged that N.S. was a chronic substance abuser in need of treatment under Iowa Code section 125.75. App. SA7 (Application Alleging Serious Mental Impairment Pursuant to Iowa Code section to 125.75 (125

Application) filed on November 13, 2006, in Pottawattamie County case MJMH017687).

The mental health case's application describes N.S.'s diagnoses of bipolar disorder, attention deficit hyperactivity disorder (ADHD), and oppositional defiant disorder (ODD). The application details how N.S. refused to attend therapy and comply with his prescribed mental health medications. The application also indicates that N.S. had "threatened to take the life of his family—then his own." App. SA5 (MJMH017686 229 Application filed on November 13, 2006, at 1).

In the substance abuse case, the application describes N.S.'s underage alcohol use, marijuana abuse, unprescribed pain pill and cold medication abuse, and prescription medication abuse, including Adderall. The applicant expresses her concern that N.S. tends to "self-medicate" with substances. App. SA7 (MJMH017687 125 Application on November 13, 2006, at 1). The corroborating witness to the application indicates that the drug and alcohol abuse had gone on for "the past two years," so N.S. was 14 years old when

his substance-abuse problems began. App. SA8 (MJMH017687 125 Application – Affidavit in Support filed on November 13, 2006 at 1).

N.S. did not contest the committal hearings. App. SA13 (MJMH017686 and MJMH017687 Order filed on November 16, 2006 at 1). The district court notes in its order that N.S.'s father took N.S. to the hospital after N.S. drank more than a quart of vodka[1]. The district court refers to the "high probability" that N.S. has a substance dependence disorder, but also acknowledges that N.S.'s parents do not seem to agree with the severity of that diagnosis. App. SA13 (MJMH017686 and MJMH017687 Order filed on November 16, 2006 at 1). The district court also notes N.S.'s historical failure to comply with therapy and medication. N.S. and his parents "pledge" to the district court that he will participate in outpatient chemical dependency and mental health treatment. *Id.*

A November 16, 2006, letter from the evaluating physician, Dr. James Severa, indicates that N.S.'s "final diagnosis" is bipolar

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[1] In the Physician's Report of Examination, Dr. Severa notes that N.S. reported drinking one-half gallon of vodka between midnight and 5:30 AM prior to coming to the hospital, not a quart. App. SA9 (MJMH017686 and MJMH017687 Phys. Rpt. filed November 16, 2006 at 2).

disorder, depressed type; polysubstance abuse with preference to alcohol and THC (marijuana); and oppositional defiant characteristics. App. SA15 (MJMH017686 Letter from Dr. Severa filed November 17, 2006 at 2). Dr. Severa emphasizes that N.S. "needs ongoing psychiatric care, ongoing psychological counseling, and he is to stay on his medications as appropriate at the time as prescribed by a psychiatrist." (*Id*).

On December 8, 2006, a filing from Heartland Family Services indicated that N.S. failed to contact them. App. SA9 (MJMH017686 and MJMH017687 Progress Report (Prg. Rpt.) filed December 8, 2006). Despite that failure, the district court dismissed both cases in February 2007 after the district court found that N.S. complied with outpatient services. App. SSA4 (MJMH017686 and MJMH017687 Order filed February 1, 2007).

One year later, N.S.'s aunt and maternal grandfather filed another application alleging serious mental impairment. App. SA19 (MHMH018396 229 Application filed on January 31, 2008, in Pottawattamie County). That application describes N.S. as struggling with anger issues, paranoia, and suicidal ideation. App.

SA20 (*Id*. at 2). At the time, N.S. was also making threats against others, such as "I get so mad I could just hurt someone." (*Id*). The application notes that N.S. threatened to kill his mother several times. (*Id*). The corroborating witness echoes those statements and adds that N.S. destroys property when angry—an apparently frequent occurrence. The witness notes that N.S. has broken windows, punched holes in walls, and threatened to burn the house down with the occupants in it. App. SA21 (MJMH018396 229 Application – Affidavit in Support filed on January 31, 2008).

Dr. Narendra Reddy issued a Psychiatric Intake Report on N.S. following his committal. That report diagnosed him with a history of ADHD, combined type; oppositional defiant disorder; and a parental relational problem. His toxicology screen performed at the hospital is negative. App. SA23 (MHMH018396 Physician's Report of Examination (Phys. Rpt.) filed on January 31, 2008, at 5). Dr. Reddy concludes from his examination that N.S. is experiencing behavioral issues rather than mental illness and can be evaluated on an outpatient basis. App. SA23-24 (*Id.* at 1–2). Based on that report, the district court finds that N.S. was not seriously mentally

impaired at the time and dismisses the application. App. SSA5 (MHMH018396 Order filed on February 4, 2008, at 1).

Firearms Disability Relief Petition Case

During direct examination at the March 16, 2023, hearing, N.S. points to his mother—not his substance use, mental illness, or homicidal and suicidal threats—as the reason he was committed. "You know, me and my mother were not getting along." App. A42 (Tr. 8, ll. 20–21). When asked by his attorney, "Even though you don't agree with all the allegations, there was something going on with you and your mom as a juvenile, and that's what brought us into court," N.S. responds, "Yes, sir." App. A43 (Tr. 9, ll. 4-7).

On cross-examination, N.S. explains that he was committed because he "would stay out kind of late" skateboarding and that he "didn't really want to follow a lot of rules." App. A85 (Tr. 51, ll. 1-6). He contended that he and his "mom butted heads." *Id.* And that he "was a little bit of a troubled teenager, very difficult to raise up." *Id.* N.S. denies threatening "[his mother], myself, or anybody else" and does not acknowledge being a danger to himself or others at the time of the committal. App. A86 (Tr. 52, ll. 7-25).

This attitude of denial matches with N.S.'s behavioral health assessment from All Care Health Center: "[T]there is nothing wrong with me. I am completely fine." (MHMH024891, Ex. 1 at 1. The assessment took place on April 27, 2022, nearly one year before the hearing on N.S.'s firearms petition. He tells the evaluator that he was "committed for no reason, [his] mom was always off." (*Id*). In the assessment, N.S. denies any history of mental or psychiatric illness—a denial sharply contradicted by the record. (*Id*); (*See* Pottawattamie County cases MJMH017686 and MJMH017687). N.S. similarly denies experiencing anxiety in the assessment, which becomes significant later.

Perhaps given the ample evidence in the record, N.S. later retreats from his categorical denial of mental illness when he tells the evaluator that he has been depressed, that feeling sad is "normal" for him, and that his depression has lasted more than two weeks at a time. App. A108 (MHMH024891, Ex. 1 at 1). Consistent with that, the evaluator rates N.S.'s judgment as having a "mild impairment" and describes his insight as "mostly blam[ing] others

(parents and aunt for committing/forcing him to go to psychiatric treatment)." App. A112 (*Id.* at 5).

The evaluator mentions medical records that suggest N.S. suffered a traumatic brain injury and now experiences seizures. The assessment also reflects a history of alcohol use disorder and marijuana use. App. A109 (MHMH024891, Ex. 1 at 2). Missing from the assessment is when those diagnoses were made and what the prognosis is for N.S. given that history. *Id.*

Two days after the initial evaluation, on April 27, 2022, N.S. followed up with the evaluator via telehealth "to share some information that he did not share at this visit two days ago." App. A114 (MHMH024891, Ex. 1 at 7). N.S. tells the evaluator that his goal is to share the additional information because "you (provider) seem like a rational, well-put-together person, so I will be honest with you." *Id.* Recanting his previous protestations, N.S. admits being diagnosed with anxiety after sustaining a concussion.

After admitting his mental illness diagnosis, N.S. then paints an unsettling picture of Xanax addiction—running out of pills early, being racked with "withdrawals," and frequenting the emergency

room. *Id.* He describes taking up to four, two-milligram Xanax per day and developing a physical dependence to the point that he had to taper off Xanax with Valium, another benzodiazepine. *Id.* N.S. tells the evaluator he withheld that information during the initial assessment because he has "so much riding on this." *Id.*

Just as with his other mental health, commitment, and substance issues, N.S. is quick to pass the buck regarding his benzodiazepine addiction. He excuses his behavior by contending that "[w]hat they did to me was wrong (prescribing Xanax). They tried to kill me." App. A114 (MHMH024891, Ex. 1 at 7).

After checking the Iowa Prescription Monitoring Program, the evaluator notes that in January N.S. filled a prescription for 16 pills of another benzodiazepine, Oxazepam. App. A115 (MHMH024891, Ex. 1 at 8). He filled that prescription in Omaha, Nebraska, only three months before speaking with the evaluator. (*Id*). He also filled a prescription for oxycodone in late 2021, and a prescription for testosterone cypionate from a Houston, Texas provider in 2020 and 2021, all of which he failed to disclose to the evaluator. (*Id*).

Most of what N.S. disclosed to the evaluator he denied at the March hearing on his petition. On cross-examination, he again eschews an anxiety diagnosis, explaining that he "was not diagnosed with anxiety" although he has had "a few concussions in [his] life." App. A74 (Tr. 40, ll. 23-25). Despite his denials, later in his testimony he describes needing a recent prescription for benzodiazepines to cope with financial stressors as well as the stress of raising a child with special needs. App. A82 (Tr. 48, ll. 12-18).

The only testimony offered by N.S. at his hearing was his own. The individuals who allegedly authored the character witness statements did not appear in court to testify. App. A119-132 (MHMH024891, Exs. 8-12). The other documents he offered in support of his petition were (1) an official criminal history that revealed no criminal history; (2) a schedule of volunteer shifts, most of which were scheduled for after the hearing date; and (3) several drug tests, only some of which were random and none of which tested for benzodiazepines or alcohol. App. SA35-37 (MHMH024891, Exs. 13–14, 3–7); App. A78 (Tr. 44, ll. 1-23).

Course of Proceedings

N.S. filed a Petition for Relief from Firearms Disability on August 24, 2022. A hearing on the merits took place on March 16, 2023. On April 19, 2023, the district court issued a 14-page order denying N.S.'s petition. App. A10 (MHMH024891, Order under Iowa Code 724.31).

N.S. moved to Amend, Enlarge, and Reconsider on May 4, 2023. The Department of Health and Human Services filed a Resistance to that Motion on May 10, 2023. The State of Iowa filed a resistance on May 30, 2023. After a telephonic hearing on May 31, 2023, the district court issued an order on June 2, 2023, denying the Motion to Amend, Enlarge, and Reconsider. App. A27 (MHMH024891, Other Order).

N.S. filed a timely Notice of Appeal per Iowa Rule of Appellate Procedure 6.101(1)(b) on June 16, 2023. App. A33 (Notice of Appeal).

ARGUMENT

I. THE DISTRICT COURT CORRECTLY DENIED N.S.'S APPLICATION FOR FIREARMS DISABILITY RELIEF.

Standard of Review

A petitioner can appeal a denial of the relief requested in a petition to restore firearm privileges, and "the review on appeal shall be de novo." Iowa Code § 724.31(4). Under de novo review, the Court makes an "independent evaluation of the totality of the circumstances as shown by the entire record." *State v. Howard*, 509 N.W. 2d 764, 767 (Iowa 1993).

Preservation of Error

Error is preserved. N.S. timely appealed. Iowa Code section 724.31(4). While unnecessary for error preservation, N.S. also moved to Reconsider, Enlarge, or Amend the district court's order denying his petition prior to appealing. That Motion was denied.

Discussion

Before turning to the Constitutional questions, it is important for this Court to understand that under longstanding Iowa law, N.S. has failed to meet the burden for restoration of his firearm rights.

Iowans with a firearm rights disability may petition for restoration of their rights under the statutory scheme enacted by

the Iowa Legislature. Iowa Code § 724.31(2). The district court must consider evidence presented in all four categories outlined in Iowa Code section 724.31(3). Those categories include: (1) the circumstances of the petitioner's original commitment; (2) the petitioner's records, including mental health records and criminal history records; (3) the petitioner's reputation developed "at a minimum" through character witness statements, testimony, and other character evidence; and (4) any changes in the petitioner's condition or circumstances since the original committal order. Iowa Code § 724.31(3).

Burden of Proof

The petitioner bears the burden of proof in firearms disability relief proceedings. To carry that burden, the petitioner must prove "by a preponderance of the evidence that the petitioner will not be likely to act in a manner dangerous to the public safety and that the granting of the relief would not be contrary to the public interest." Iowa Code § 724.31(4). The petitioner bears the burden of production and the burden of proof for evidence sufficient to support his petition.

N.S. misstates the law when he contends that he should have his rights restored because the State failed to provide evidence—that burden lies squarely on his shoulders. *See* Appellant's Brief at 10, 14–15. The State and the Department of Health and Human Services (HHS) need not affirmatively present evidence against a petitioner because the petitioner must show that he is entitled to relief. Indeed, section 724.31 imposes no burden on the Department of Health and Human Services nor the State of Iowa to put on evidence—Iowa Code section 724.31(2) clarifies that HHS and the State "may" present evidence.

Iowa Code Section 724.31(3): Four Categories of Evidence

The Court decides whether a petitioner has met his burden based on evidence presented in the categories laid out in Iowa Code section 724.31(3). HHS argues that N.S.'s petition fails on all four categories, and the district court agreed. The district court thoroughly explains the shortfalls of N.S.'s petition in its April 19, 2023, ruling on the matter, which is also well-grounded in the leading interpretive Iowa case law on section 724.31. *Matter of A.M.,* 908 N.W. 2d 280 (Iowa Ct. App. 2018) (affirming district

court's denial of firearms disabilities relief petition despite the petitioner being generally law-abiding because he did not provide mental health records from intervening years to show a track record and because the evidence he did provide to show standing in the community came from possibly biased sources). The failings of N.S.'s petition in each category of evidence from Iowa Code section 724.31(3) are outlined briefly below.

Circumstances of the Original Issuance of the Order

Iowa Code section 724.31(3)(a) requires the court to consider evidence about the circumstances of the original issuance of the order that resulted in the imposition of the firearm disabilities. N.S. requested that the district court take judicial notice of all three underlying mental health files at the hearing: Pottawattamie County cases MJMH017686, MJMH017687, and MJMH018396. The circumstances of N.S.'s committals are covered in detail in the Facts section of the Department's brief.

Despite what N.S. implies in his testimony and behavioral health assessment, a family donnybrook is not what caused him to lose his firearm rights. App. A43 (Tr. 9, ll. 4-7); App. A108

(MHMH024891, Ex. 1 at 1). N.S. had significant substance use and mental health issues that led to his committals and, subsequently, the loss of his firearm rights.

Among the evidence the judge considered in N.S.'s committal cases were: (1) two applications and affidavits completed by N.S.'s mother and father attesting that N.S. had spoken of suicide, threatened to kill his family, continued to abuse multiple substances, and refused to comply with medication and therapy (Applications and Affidavits in Support filed on November 13, 2006, in Pottawattamie County cases MJMH017686 and MJMH017687); (2) a physician's examination that diagnosed N.S. with bipolar disorder, polysubstance abuse, and oppositional defiant characteristics App. SA15 (MJMH017686 and MJMH017687 Letter to the Court from Dr. Severa filed November 17, 2006 at 2); (3) a chemical dependency evaluation recommending residential treatment (*Id.*); and (4) the fact that N.S. drank "one-half gallon of vodka" from midnight to 5:30 AM prior to his father taking him to the hospital. App. SA9 (MJMH017686 and MJMH017687 Phys. Rpt. filed on November 16, 2006, at 2).

Those facts establish that N.S. had serious mental illness and substance abuse issues independent of any alleged family dysfunction at the time.

N.S.'s Record: Mental Health Records and Criminal History Records

Iowa Code section 724.31(3)(b) requires the district court to receive and consider evidence of the petitioner's record, which "shall include, at a minimum, the petitioner's mental health records and criminal history records . . . ." The court committed N.S. in November 2006; his firearms disability relief hearing took place in March 2023. For the intervening almost seventeen years, the only mental health records N.S. offered was a single document—his April 25, 2022, behavioral health assessment. App. A108 (MHMH024891, Ex. 1).

By N.S.'s own admission, he was less than candid in his assessment and had to follow up with the evaluator two days later to disclose topics that he withheld because he had "so much riding on this." *Id.* at 7. At N.S.'s second meeting with his evaluator, N.S. tells the provider that she "seem[s] like a rational, well-put-

together person, so [N.S.] will be honest with [her].” *Id.* And at the follow up, N.S. repeatedly denies any mental illness, refuses to take accountability for his Xanax addiction, and continues to withhold information from the evaluator concerning ongoing prescription drug use, including benzodiazepines. App. A115 (*Id.* at 8).

Troublingly, N.S.’s statement about finally being “honest” at the follow up casts a pall of doubt over both the first evaluation and the whole process. App. A114 (*Id.* at 7).

Lack of credibility notwithstanding, the April 2022 evaluation is only a snapshot in time. Sixteen years have passed since N.S.’s committal, and the lone mental health record he offered to the district court for consideration was a behavioral health assessment done with a provider he met with twice, solely for purposes of a “Psych Eval for ‘Concealed Carry Evaluation.’” App. A108 (MHMH024891, Ex. 1 at 1). In that evaluation, N.S. had strong incentive to portray himself in a falsely positive light. Indeed, N.S. admits that he presented himself in a false light. And that is the only mental health record the district court had to assess the status and prognosis of N.S.’s mental illness and substance use issues.

Missing from the record are therapy records, psychiatric records, counseling records, and any other documents that would have given the district court an objective source of information from which to evaluate N.S.'s mental status over the sixteen years since committal. Or even just an extended sense that N.S. had been stable for the time since his committal. The mental health evaluation offered to the district court is self-reported, and the evaluator emphasizes that she does not evaluate for fitness to hold any license. App. A113 (MHMH024891, Ex. 1 at 6). Additional records could have offered an opinion about N.S.'s mental health or fitness to have his firearm rights restored, both of which are lacking in the evaluation. App. A108 (MHMH024891, Ex. 1).

In *Matter of A.M.*, the district court faced a similar issue when A.M. failed to submit mental health records for the intervening six years between the committal and the time of the restoration hearing. The district court in *A.M.* rightly concluded that "without more of a track record, the court questions whether a string of bad luck or an unfortunate combination of stressors and difficulties still might lead [A.M.] to 'snap' and engage in conduct that caused him

and his family problems back in March 2010." 908 N.W.2d at 285. Here, while we do have an evaluation done within a year of the hearing, it left the district court with more questions than answers. The district court was not sure that N.S. was fully honest about his prescription drug use, traumatic brain injury or injuries, insight and judgment, and mental health diagnoses and prognosis. App. A108 (MHMH024891, Ex. 1).

N.S. also submitted several drug tests as part of his mental health records. App. A123-127 (MHMH024891, Exs. 3–7). But he testified that only some of these drug tests were random. App. A77-78 (Tr. 43-44). Moreover, none of the tests screened for alcohol or benzodiazepines, both of which N.S. has abused or become dependent on in the past. App. 109, 114 (MHMH024891, Ex. 1 at 2, 7). Thus, the drug tests submitted by N.S. have limited value, if any.

N.S.'s Reputation: Character Witness Statements, Testimony, and Other Character Evidence

The district court properly gave little weight to N.S.'s character witness statements as they were deficient in both

substance and form and would not justify the removal of his firearms disability. Iowa Code section 724.31(3)(c) requires the district court to receive and consider evidence of N.S.'s reputation, "developed, at a minimum, through character witness statements, testimony, and other character evidence."

But for N.S.'s own testimony, no one else testified on his behalf at the hearing. As for the "character witness statements" required by the code, N.S. offered, and had admitted into evidence, five character letters. Those letters were entered over HHS' hearsay and foundation objections. App. A128-132 (MHMH024891, Exs. 8–12). These letters were written by S.S., N.S.'s wife; H.S., N.S.'s employer; C.L., a family friend; J.L., a coworker; and S.S., father of N.S.'s coworker. App. A50-A67 (*Id.;* Tr. 16–33).

None of the character letters N.S. offered are in affidavit form. They are not witnessed or notarized, and only one—Exhibit 10—is dated. App. A130. Each letter is typewritten, so the district court could not rely on handwriting idiosyncrasies as indicia of authenticity. App. A128-132 (MHMH024891, Exs. 8–12). While all the letters do bear signatures written in black ink, two of the letters

have no contact information for the authors. App. A129-132 (MHMH024891, Exs. 9 and 12). None of the letters' authors attended the hearing to testify on N.S.'s behalf, none attended the hearing to authenticate their letters, and none subjected themselves to cross-examination. App. A63 (Tr. 29, ll. 20-25).

Given those shortcomings, the district court gave the letters little weight in evaluating N.S.'s character. The letters also speak to relatively small, recent windows of time compared to the sixteen years that have passed since his committal (N.S. has been an employee for "well over 4 years"; C.L. has known N.S. for "two and a half years"; J.L. met N.S. in "early . . . 2019"). App. A128-132 (MHMH024891, Exs. 8–12).

Finally, one letter is from N.S.'s wife. She is likely a biased source whose opinions the district court should not give significant weight. *See Matter of A.M.*, 908 N.W.2d at 286 ("Because the only witnesses called by A.M. to testify were close to him and may not have been objective, the court's ability to 'conduct a systematic inquiry' into the wisdom of restoring A.M.'s firearm privileges was significantly hampered."). Now, "relying on the same record on

appeal," this Court's "ability to assess . . . reputation and character is likewise limited." *Id.*

<u>*Changes in N.S.'s Condition or Circumstances*</u>

N.S. refuses to take responsibility for his actions, refuses to acknowledge the reasons that he was previously committed, and has failed to demonstrate a change in his conditions or circumstances to allow restoration of his gun rights. Iowa Code section 724.31(3)(d) requires the district court to receive and consider evidence of "any changes in the petitioner's condition or circumstances since the issuance of the original order or judgment that are relevant to the relief sought."

More than sixteen years after involuntary committal, N.S. does not accept that he has or had a mental illness, that he has or had a substance use disorder, or that he played any role in his involuntary committal. As for mental illness, he told the evaluator during his assessment, "There is nothing wrong with me. I am completely fine." App. A108 (MHMH024891, Ex. 1 at 1). N.S. later testified that he had so much stress that he took medication from a

class of drugs that, in his own words, almost killed him. App. A82-3; A114 (Tr. 48-49; MHMH024891, Ex. 1 at 7).

Still, N.S. has not participated in therapy since 2008 and disagreed that therapy might help him cope with his stress. App. A82-83 (Tr. 48–49). At the hearing, he also denied being diagnosed with anxiety despite telling the behavior health evaluator that he had anxiety. App. A75, A114 (Tr. 41, ll. 1–13; Ex. 1 at 7). He similarly rejected that he was an alcoholic, rationalizing that alcoholism was something he grew out of. App. A83 (Tr. 49, ll. 13–25). Lastly, N.S.'s still contends he was committed for "no reason" and his "mom being off—she is a hoarder." App. A108 (MHMH024891, Ex. 1 at 1). Nothing in the record supports that assertion.

All N.S.'s statements, contradictions, and denials underscore his disconcerting lack of judgment and insight into his committal. To ensure such problems do not recur, N.S. should acknowledge what happened and be able to explain why they will not happen again. N.S. repeatedly showed the district court that he is devoid of such insight. N.S.'s judgment is also lacking—he is not in therapy,

he continues to use a medication in the same class as one to which he was addicted, and he continues to drink alcohol when he has a history of alcoholism.

Indeed, the "only long-term change" that N.S. has shown in his life is that he alleges he no longer drinks to excess. 908 N.W.2d at 283; App. A83-84 (Tr. 49-50). N.S. testifies that he now drinks "one to three beers at very most, sometimes maybe once, twice a week at very most . . . ." App. A83-84 (Tr. 49, l. 25; 50, l. 1). N.S. explained at his hearing that he had not drunk a beer in "almost three weeks." That N.S. is keeping track of the last time he drank and celebrating such a short, dry stretch is peculiar.

Moreover, the district court had no information to corroborate N.S.'s drinking habits other than his own inconsistent self-reports. Purportedly drinking three beers twice a week when N.S. has a history alcoholism and drinking up to a half-gallon of vodka in a sitting does not provide sufficient evidence that he will not be likely to act in a manner dangerous to the public safety, or that the granting of the relief would not conflict with the public interest. Without affirmatively demonstrating that N.S. has overcome his

substance abuse issues, he should not have his firearms disability restored.

Ongoing Illegal Ownership/Possession Firearms

N.S.'s illegal, "innocent," ownership of firearms for decades does not counsel in favor of now restoring his firearm disability rights. N.S. stresses that he "innocently" owned firearms for "decades" as further proof that he should legally own firearms now. (Appellant's Brief at 8).

Both statute and case law reject that argument. First, Section 724.31 ensures that, when a person is subject to firearms disabilities under federal code, the person is informed of their rights and requisite prohibitions. *See* Iowa Code § 724.31(1); 18 U.S.C. §§ 922(d)(4), (g)(4). When the clerk of the district court forwarded the requisite information to the Department of Public Safety regarding N.S.'s prohibition, the clerk also had to notify N.S. of the prohibition. Iowa Code § 724.31(1).

Second, N.S. did not "innocently" own firearms; he illegally owned firearms and ammunition. 18 U.S.C. § 922(g)(4). N.S.'s unawareness of the law and thus his prohibition does not an

innocent make. "The usual rule [is] that ignorance of the law is no defense to a criminal charge." *United States v. Baez*, 983 F.3d 1029, 1042 (8th Cir. 2020). Indeed, federal courts have weighed in on this specific question about other violations of federal firearms disability, 18 U.S.C. § 922(g). *See United States v. Hutzell*, 217 F.3d 966, 967–68 (8th Cir. 2000).

The Eighth Circuit held that Hutzell's position conflicted with "the common maxim, familiar to all minds, that ignorance of the law will not excuse any person, either civilly or criminally." *Id.* at 968 (quoting *Barlow v. United States*, 32 U.S. 404, 411 (1833)). And *Hutzell* clarified that losing gun rights, albeit in the federal context, was not an "unfair surprise" that excused ignorance of the law. *Id.* (quoting *Lambert v. People of the State of California*, 355 U.S. 225, 227 (1957)).

Finally, N.S. cannot rely on his more than decade-long illegal firearm ownership to support his restoration of firearms disability now. That is analogous to saying that because one has driven without a driver's license for years and has remained accident-free, one is now qualified to drive legally. Neither law nor logic works

that way. Illegal possession of a firearm may be evidence considered in a court of law, but not in support of firearm disability rights restoration.

Distinguishing Matter of A.M.

Since N.S. makes much of the strength of his case compared to that in *Matter of A.M.*, a few important distinctions must be made. First, A.M. presented character witnesses at hearing; N.S. did not. Moreover, in *A.M.*, the county attorney supported A.M.'s petition; while here the county attorney opposed the petition. *Id.* Lastly, the *A.M.* court points out that "A.M. has weathered these life stressors without any tumult," referring to marriage, starting a family, and launching a business. *Id.* at 287. By contrast, N.S. has not weathered life's vicissitudes quite as well.

N.S. admits that, after his committal, he took Xanax prescribed for anxiety that spiraled into a dangerous addiction, complete with trips to the emergency room, withdrawals, and a tapering protocol with Valium. App. A114 (MHMH024891, Ex. 1 at 7). Even after that harrowing experience with benzodiazepines, he returned to that drug class in January 2022 to "help" with "stress."

App. A82 (Tr. 48, ll. 7-11). He turned to pills despite his past addiction due to “financial issues” and his “child with special needs.” (*Id.* ll. 12-19.)

While N.S.’s case has all the weaknesses of A.M.’s, it also has even more reasons to deny. Like A.M., N.S. failed to establish a mental health track record. Less persuasively than A.M., N.S. failed to show a meaningful change in condition or circumstance. N.S. testified that despite his history of alcohol use disorder, binge drinking, and problematic behavior while under the influence of alcohol, he still drinks—allegedly just no longer to excess. App. A83 (Tr. 49, ll. 9-25).

In *A.M.*, despite the petitioner’s progress and good standing in the community, the district court was “circumspect” about A.M.’s progress, identifying the only “long-term change” as “no longer drinking alcohol to excess.” *Matter of A.M.*, 908 N.W.2d at 287. Beyond those shortfalls, N.S. introduced a mental health evaluation that raised several red flags for the district court, including a lack of candor and undisclosed prescription drug use and abuse. App. A114 (MHMH024891, Ex. 1 at 7). To the extent

this Court seeks to apply *A.M.*, it should affirm the district court's denial of N.S.'s petition.

II. WHETHER IOWA CONSTITUTIONAL AMENDMENT 1A SHOULD BE APPLIED RETROACTIVELY DESPITE ANY TEXT INDICATING RETROACTIVE APPLICATION.

Standard of Review

A petitioner can appeal a denial of the relief requested in a petition to restore firearm privileges, and "the review on appeal shall be de novo." Iowa Code § 724.31(4). Under de novo review, the Court makes an "independent evaluation of the totality of the circumstances as shown by the entire record." *State v. Howard*, 509 N.W. 2d 764, 767 (Iowa 1993).

Preservation of Error

Error is preserved. N.S. raised the issue of strict scrutiny at hearing and again in his denied Motion to Reconsider, Enlarge, or Amend. N.S. timely appealed per Iowa Code section 724.31(4).

Discussion

Iowa Constitution Article I, Section 1A does not apply retroactively. "As a general rule, constitutional provisions operate prospectively." *See State v. Bates*, 305 N.W.2d 426, 427 (Iowa 1981).

In *Bates*, this Court explained that it would have only applied the Constitutional amendment at issue in that case retroactively if it found "language demonstrating an intent [ ] that it apply retrospectively." *Id.* The highest courts in other States explicitly rely on *Bates* in coming to similar determinations about the nonretroactive application of their States' Constitutions. *See Millennium Sols., Inc. v. Davis*, 603 N.W.2d 406, 410 (Neb. 1999); *State v. Cousan*, 684 So. 2d 382, 393 n.7 (La. 1996) (collecting cases).

Nahas v. Polk County illustrates how this Court has approached retroactivity in the statutory context—first by identifying the event that is affected by the substantive change in law and then by determining whether that law's applicability is retroactive. *See Nahas v. Polk County*., 991 N.W.2d 770, 777–780 (Iowa 2023). First, *Nahas* held that applying the provisions of a qualified immunity statute would be retrospective because it changed the legal consequences for conduct that happened prior to its enactment. *Id.* at 777. It declined to apply the statute to that conduct retroactively. *Id.* at 779.

Next, the Court held that the statute's heightened pleading requirement applied because the pleading was filed after the statute's enactment. *Id.* at 779. Because the pleading requirement changed before the pleading was filed, it applied.

Amendment 1A took effect on December 1, 2022, but regardless of when this Court seeks to determine the timing of its effect, the involuntary commitments *and* the firearms petition were all filed prior to Amendment 1A taking effect. *See Nahas*, 991 N.W.2d at 777–80.

Yes, Amendment 1A has a large substantive effect on how this Court need address purported infringements on the right to keep and bear arms going forward. Amendment 1A reads, "[t]he right of the people to keep and bear arms shall not be infringed . . . Any and all restrictions of this right shall be subject to strict scrutiny." Iowa Const. Art. I, § 1A. In Constitutional adjudication, strict scrutiny requires the most exacting examination by the Court. But that scrutiny does not apply retroactively here.

N.S.'s firearms disabilities were imposed on November 16, 2006. App. A8 (Petition for Relief from Disabilities at 1). N.S.

petitioned for relief on August 24, 2022. (*Id*). Both events occurred before Article 1 Section 1A. And unlike in some cases or controversies where that timing may be resolved by refiling or amending the petition, there are strict timing restrictions on petitions for gun rights restoration. *See* Iowa Code § 724.31(4) ("A person may file a petition for relief . . . not more than once every two years.)

Other States declined the retroactive application of Constitutional amendments guaranteeing the right to keep and bear arms. For example, Missouri amended its Constitution in 2014. When a similar fact pattern arose, the Supreme Court of Missouri did not apply that amendment retroactively. *See State v. Merritt*, 467 S.W.3d 808, 810 (Mo. 2015) ("The prior version of article I, section 23 applies in this case because this Court applies the constitution as it was written at the time of the offense."); *see also id.* at 812.

In *Merritt*, Missouri amended its Constitution to include the provision that "any restriction on [the right to keep and bear arms] shall be subject to strict scrutiny" among other extremely rights-

protective language. *Id.* at 811 (quoting *Dotson v. Kander*, 464 S.W.3d 190, 209 n.5 (Mo. 2015)). The Missouri Amendment passed during the pendency of a criminal appeal. *Id.* at 812. "Both parties argue[d] that the new version of article I, section 23 applie[d] retroactively." *Id.* Yet, despite the much closer timing and criminal nature of the case, the Missouri Supreme Court held true to the principle that without clear language to the contrary Amendments must "appl[y] prospectively only." *Id.*

And the general rule for prospective application of law is consistent with Iowa's approach to statutory amendments. When the Legislature enacted "stand your ground" amendments to Iowa Code chapter 814, this Court declined to apply those amendments retroactively. *See State v. Fordyce*, 940 N.W.2d 419, 427 (Iowa 2020) ("[T]he question is not the state of the law at the time the district court rendered its verdict, but the state of the law at the time Fordyce shot and killed [the victim]"); *State v. Williams*, 929 N.W.2d 621, 637 (Iowa 2019) (also holding those amendments were not retroactive).

Generally, both the Iowa and Federal Constitutions only require "retroactive application of *clarifications* to existing substantive law, not *changes* to substantive law." *See Nguyen v. State*, 878 N.W.2d 744, 754–56 (Iowa 2016). Amendment 1A is a substantive change in the law—protecting under State law an important Constitutional right—but that change does not apply to N.S.'s case.

Whether this Court sees the determining time as when N.S. was committed in 2006, or when he filed his petition prior to Amendment 1A's enactment in 2022 is a question the Court need not answer today. But clarity on Amendment 1A's potential for retroactive application will resolve not only this case, but also other cases that identify the same issue. This Court should rule consistent with its practice and with those of other States in holding that Amendment 1A applies prospectively.

III. WHETHER IOWA'S FIREARMS DISABILITY RESTORATION, WHICH PERMITS RESTORATION AFTER SHOWING BY A PREPONDERANCE OF THE EVIDENCE THAT A COURT FOUND A PETITIONER NO LONGER DANGEROUS, IS UNCONSTITUTIONAL.

Standard of Review

A petitioner can appeal a denial of the relief requested in a petition to restore firearm privileges, and "the review on appeal shall be de novo." Iowa Code § 724.31(4). Under de novo review, the Court makes an "independent evaluation of the totality of the circumstances as shown by the entire record." *State v. Howard*, 509 N.W. 2d 764, 767 (Iowa 1993).

Preservation of Error

Error is preserved. N.S. timely appealed per Iowa Code section 724.31(4). N.S. made a strict scrutiny argument at hearing and again in his Motion to Reconsider, Enlarge, or Amend the district court's order denying his petition prior to appealing. That Motion was denied.

Discussion

The State contends that Amendment 1A's strict scrutiny does not apply to N.S.'s case because that would require retroactive application. But even if this Court applies strict scrutiny, Iowa Code section 724.31(4) survives that heightened scrutiny.

For a statute to survive under strict scrutiny, the State must show that it holds a compelling interest in the law and that the law

is narrowly tailored to address that interest. *Hensler v. City of Davenport*, 790 N.W.2d 569, 580 (Iowa 2010). The United States Supreme Court has recognized that "longstanding prohibitions on the possession of firearms by felons and the mentally ill" meet stringent Constitutional scrutiny. *District of Columbia v. Heller*, 554 U.S. 570, 626 (2008). "Courts routinely uphold laws when applying strict scrutiny, and they do so in every major area of law." *Merritt*, 467 S.W.3d at 814 (quoting Adam Winkler, *Fatal in Theory and Strict in Fact: An Empirical Analysis of Strict Scrutiny in the Federal Courts*, 59 VAND L. REV. 793, 795–96 (2006)).

Section 724.31 is narrowly tailored to serve the State's compelling interest in protecting the public from the potential threat posed by gun ownership by citizens who do not abide by the law or are otherwise considered to create a greater risk for the community. It accomplishes that by prohibiting gun ownership by the narrow class of people that have been adjudicated as mentally ill or dangerous under federal law. *See* Iowa Code § 724.31; 18 U.S.C. §§ 922 (d), (g).

The United States Supreme Court establishes that Iowa's legal regime is Constitutional. That Court's cases defining the scope of the right to bear arms acknowledge that they do not cast doubt on "longstanding regulatory measures as 'prohibitions on the possession of firearms by felons and the mentally ill.'" *McDonald v. City of Chicago*, 561 U.S. 742, 786 (2010) (quoting *Heller*, 554 U.S. at 626–27). That supports the State's approach in denying the right to bear arms to the narrow class of people that have been adjudicated as excluded from gun rights under 18 U.S.C. § 922(d)(4) and (g)(4). Those federal restrictions are narrowly tailored, and gun rights disability in the State is narrowly tailored as well. Even then, the State provides ample due process to allow a person subject to firearm disabilities to petition for relief. Iowa Code § 724.31(2). For the State to impose a firearm disability under Iowa Code section 724.31, it must first prove by clear and convincing evidence that the person is "seriously mentally impaired." *See* Iowa Code § 229.12. Law-abiding citizens are not deprived of their gun rights unless a judge determines that they are seriously mentally impaired after reviewing the report of a licensed physician or

mental health professional and giving them the opportunity to testify and cross-examine witnesses. *Id*. That process significantly reduces the chance that the Court will prohibit someone who is not seriously mentally impaired from possessing firearms. If a person previously found to be mentally impaired believes that his disability is no longer warranted, he can petition the court to restore his rights. A petitioner must demonstrate by a preponderance of evidence that he no longer poses a threat to public safety and that the granting of the relief would not be contrary to public safety for those rights to be restored. Iowa Code § 724.31(4).

So, the State excludes from firearms ownership only a narrow class of persons that historically were also excluded from gun ownership. *See McDonald*, 561 U.S. at 786. That exclusion includes, for petitioners like N.S., an opportunity to have gun rights restored. *See* Iowa Code § 724.31(2). N.S.'s failure to provide to the district court a preponderance of evidence that his gun rights should be restored is not evidence of the statute's failure to meet strict scrutiny.

Addressing whether the federal section 922(g)(1) violates the Second Amendment, the Eighth Circuit upheld that statute's constitutionality. *United States v. Jackson*, 69 F.4th 495, 505 (8th Cir. 2023). In so doing, it "conclude[d] that legislatures traditionally employed status-based restrictions to disqualify categories of persons from possessing firearms." *Id.* While *Jackson* applied a different, albeit stringent, standard to section 922(g)(1)'s constitutionality than strict scrutiny, this Court can find the historical analysis persuasive.

Finally, the State wishes to briefly address N.S.'s forfeited claims under *New York State Rifle & Pistol Association v. Bruen*, 142 S. Ct. 2111 (2021). While N.S. raised a strict scrutiny argument under the Iowa Constitution, he did not raise a challenge under *Bruen*. That case imposes a "text, history, and tradition" test for the constitutionality of federal Second Amendment claims. *Jackson*, 69 F.4th at 505 (quoting *Heller v. District of Columbia*, 670 F.3d 1244, 1274 (D.C. Cir. 2011) (Kavanaugh, J., dissenting)).

Even if N.S. is now attempting to make a *Bruen* challenge, such a challenge raised for the first time on appeal will never satisfy

plain-error review. *United States v. Voelz*, 66 F.4th 1155, 1163–64 (8th Cir. May 8, 2023). But as N.S. did not raise *Bruen*, that argument is forfeited.

CONCLUSION

The State of Iowa asks that the district court's decision be affirmed. The State requests that the Court clarify in its opinion that strict scrutiny does not apply here due to the prospective application of Iowa Constitution Article I, Section 1A.

REQUEST FOR NON-ORAL SUBMISSION

The State does not request oral argument in the first instance, but if argument is granted, request an equal amount of time to present as granted to Appellant.

Respectfully submitted,

BRENNA BIRD
Attorney General of Iowa

/s/ Sarah A. Jennings
SARAH ANNE JENNINGS, AT0012549
Assistant Attorney General
1305 E. Walnut Street
Des Moines, IA 50319
Telephone: (515) 587-5243
Facsimile: (515) 281-7219
Email: sarah.jennings@ag.iowa.gov
ATTORNEYS FOR THE APPELLEE

CERTIFICATE OF COMPLIANCE

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

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/s/ Sarah A. Jennings
SARAH ANNE JENNINGS, AT0012549
Assistant Attorney General
1305 E. Walnut Street
Des Moines, IA 50319
Telephone: (515) 587-5243
Email: sarah.jennings@ag.iowa.gov