No.____

In the United States Supreme Court

Anthony A. Browne,

Petitioner,

v.

Kimberly K. Reynolds, in her official capacity as the Governor of the State of Iowa;
Brad Kunkel, in his official capacity as the Sheriff of Johnson County, Iowa,

Respondents.

APPLICATION TO THE HONORABLE BRETT KAVANAUGH FOR AN EXTENSION OF TIME WITHIN WHICH TO FILE A PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

Pursuant to Rules 13.5, 22, 30.2, and 30.3 of the Rules of the Supreme Court of the United States, Petitioner Anthony A. Browne, *pro se*, respectfully requests a 35-day extension of the date by which to file his Petition for Writ of Certiorari to the United States Court of Appeals for the Eighth Circuit. The court of appeals entered its judgment in *Browne v. Reynolds, et al.,* 150 F. 4th 975 (8th Cir.) (No. 24-1952) on Sept. 2nd, 2025. The Petitioner petitioned the court of appeals for rehearing on September 29th, 2025, and the petition for rehearing was denied on October 27th, 2025. The time permitted for the Petitioner to file a

Petition for Writ of Certiorari currently expires January 26th, 2026. The deadline extension, if granted, would move the deadline to March 2nd, 2026. The Petitioner seeks to invoke 28 U.S.C. 1254(1) as basis of this Court's jurisdiction.

Cause for Appellant's extension request is that Rohit Asirvatham from Willams and Connolly LLP, appointed by the Eighth Circuit for oral argument, withdrew after the court of appeals issued its opinion. The Petitioner has proceeded *pro se* thenceforth. Additionally, the Petitioner will have to prepare, print, file, and serve the Petition for Writ of Certiorari *pro se*, in accordance with Rule 33.1(a), since he is not indigent. The Petitioner needs additional time to collaborate with a firm specializing in printing, filing, and serving the Writ in booklet format to comply with Rule 33.1(a). Cause further exists due to the various responsibilities Petitioner has in his principal occupation as a full-time DevSecOps Engineer for Collins Aerospace leading to the likelihood that he will not be able to complete, print, file, and serve the Writ by January 26th, 2026.

1. Iowa Code § 914.7 (2025) entitled "Rights not restorable" infringes the Petitioner's right to keep and bear arms enshrined by the Second and Fourteenth Amendments—s*uspended* upon Mr. Browne's 1991 convictions under Iowa law for Willful Injury, a forcible felony, and Criminal Gang Participation—sentences he fully discharged nearly twenty-eight years ago (January 16th, 1998), paid all restitution, fines, or other financial obligations for, and for which he has had his other lost citizenship rights restored for over twenty years—by

barring him from having that right *restored for life*.

2. The Iowa Constitution vests clemency authority in the Governor "subject to such regulations as may be provided by law." Iowa Const. Art. IV, § 16. Unlike the U.S. Constitution, that text explicitly authorizes legislative regulation of clemency powers in Iowa. Iowa Const. Art. III, § 1 permits such regulation where "expressly directed or permitted." Read together, these provisions allow the Iowa General Assembly to regulate clemency's effects—a principle given effect by § 914.7.

3. The contrary Iowa constitutional and statutory construction reached by the panel below was not merely legally erroneous, but profoundly so. The holding in *Slater v. Olson*, 299 N.W. 879 at 881 (Iowa 1941) only addressed the recognition of "other collateral consequences" flowing from a pardon; it did not consider, nor purport to decide, whether the Iowa General Assembly could curtail the Governor's clemency authority to restore such rights in the first instance, as § 914.7 expressly does.

4. Thus, under Iowa law, the Petitioner cannot have his right to keep and bear arms *restored for life*, even by a gubernatorial pardon.

5. Initially, the Petitioner brought to the Southern District of Iowa's and the Eighth Circuit's attention that this permanent ban on restoration for

those with forcible felony convictions currently affects three[1] states, but since then, as of July 1st, 2025, the number of states with permanent bans has risen to four[2] and will continue to grow, without this Court's intervention.

6. The Petitioner is therefore not alone—even Jelly Roll cannot have his gun rights restored pursuant to Tennessee's new law Tenn. Code Ann. §§ 40-29-103(e)(B) whose effective date was July 1st, 2025, though Governor Lee granted him a full and unconditional pardon[3].

7. It is indisputable that the historical tradition of our Nation did not distinguish between nonviolent and violent criminal convictions in deciding whether to *suspend* a person's firearm rights, contrary to recent twentieth and twenty-first century public discourse concerning this subject.

8. It is indisputable that the first such attempt to so distinguish in our Nation's history occurred first with the Federal Firearms Act of 1938 for forcible felony convictions and the Act to Strengthen the Federal Firearms Act of 1961 and the Gun Control Act of 1968 for nonforcible felony convictions. *US v. Jackson*, 85 F.4th 468 at 427 (2023) (*en banc* denial).

9. It is indisputable that this legislative history is of recent vintage

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[1] *See*: Iowa Code § 914.7 (2025); 21 Okla. Stat. Ann. § 1283(B) (2025); Ark Code. Ann. § 5-73-103(d)(1) and (2) (2025).
[2] Tenn. Code Ann. §§ 40-29-103(e)(B)
[3] Jelly Roll says lifelong gun ban as a felon should have 'path to redemption,' wants his right to hunt back, Published December 10th, 2025 7:42pm EST, https://perma.cc/3ECA-UABW (last visited December 31st, 2025)

and alone cannot support the current felon-in-possession regimes.

10. All can agree the felon-in-possession laws in the United States, state or federal, facially comport with the Second Amendment by *suspending* the right to keep and bear arms for sufficient criminal cause.

11. The true nationwide disagreement that this Court must address is when the Second Amendment mandates the lifting of this *suspension*, consistent with our Nation's tradition.

12. This Court must grant certiorari and define the terms of the *restoration* of the right to keep and bear arms *suspended* for *any* felony conviction.

13. The Petitioner submits that is, and has always been, the true issue before the Court.

14. This Court should grant certiorari to address the issue of the restoration of gun rights after lawful suspension upon felony conviction, as it applies to millions of Americans and will continue to do so into the distant future.

Dated: December 31st, 2025

Respectfully submitted,

/s/ Anthony Browne

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Petitioner Pro Se

APPENDIX

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF IOWA
DAVENPORT DIVISION

ANTHONY BROWNE, Plaintiff, v. KIM REYNOLDS, in her official capacity as Governor of Iowa and BRAD KUNKEL, in his official capacity as Johnson County Sheriff, Defendants.	)	Case No. 3:23-cv-00053-SMR-HCA ORDER ON MOTIONS TO DISMISS AND MOTION TO REMAND

Plaintiff Anthony Browne was convicted of a forcible felony involving a firearm in 1991. Years later, he argues that he has rehabilitated himself after incarceration and has long since left the gang participation of his youth behind. Browne wishes to possess a firearm but is prohibited from doing so under federal and state law. To his credit, he has not violated these criminal prohibitions. Rather, he has filed a *pro se* lawsuit challenging these laws as violative of his rights to possess a firearm under the United States and Iowa Constitutions.

I. BACKGROUND

A. Factual Background[1]

Iowa prohibits possession of firearms by individuals convicted of a felony. Iowa Code § 724.26. However, some convicted felons may petition the Governor of Iowa for a restoration of their civil rights, which include the right to possess a firearm. *Id.* § 914.1. Not everyone is eligible

[1] These facts are pled in the Amended Complaint and taken as true; all factual allegations must be drawn in the light most favorable to the nonmoving party in a motion to dismiss for failure to state a claim. *Smithrud v. City of St. Paul*, 746 F.3d 391, 397 (8th Cir. 2014).

to ask the State's chief executive for this discretionary relief—the statute expressly excludes serious crimes such as forcible felonies, drug felonies involving use of a firearm, and other serious, weapons-related crimes. *Id.* § 914.7 (providing that a person convicted of the specified offenses are not eligible to have their rights restored "to the extent of allowing the person to receive, transport, or possess firearms"). Browne's conviction falls within this statutory exclusion because he was convicted of willful injury and criminal gang participation.[2] [ECF No. 15 ¶ 9]; *see also State v. Browne*, 494 N.W.2d 241, 242 (Iowa 1992). He was sentenced to ten years on the Willful Injury charge and five years for criminal gang participation. [ECF No. 15 ¶ 10]. He was released from prison in January 1998. *Id.* ¶ 13.

Browne's civil rights were restored by the Governor in 2005, including his right to vote, with the exception of his right to possess firearms.[3] According to the pleadings, he has since turned his life around admirably. Browne graduated from the University of Iowa in 2005 with a degree in computer science. He has been employed full time since 2006 as a software or a DevSecOps engineer.[4] Browne avers that he held a security clearance with the U.S. Department of Defense for his DevSecOps engineer position at Collins Aerospace while working on a tactical combat training program. *Id.* ¶¶ 14–19.

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[2] Browne was convicted of Willful Injury, a Class C Felony. [ECF No. 15 ¶ 9]. This is a forcible felony under Iowa law. Iowa Code §§ 702.11, 708.4.

[3] Browne's voting rights were again revoked by then-Governor Terry Branstad in an executive order in 2011. Governor Reynolds later restored his rights once more in 2020 through another executive order. [ECF No. 15 ¶¶ 23–24]; *see also* Exec. Order No. 70, https://www.legis.iowa.gov/docs/publications/EO/966056.pdf (issued Jan. 14, 2011); Exec. Order No. 07, https://www.legis.iowa.gov/docs/publications/EO/1139928.pdf (issued Aug. 5, 2020).

[4] DevSecOps stands for development, security, and operations. A DevSecOps professional is responsible for the security of the software development process. *See What is DevSecOps: Definition, Certifications & Careers*, Coursera, https://www.coursera.org/articles/devsecops (last visited Apr. 25, 2024).

B. Procedural Background

Browne filed this lawsuit against Governor Kim Reynolds and Johnson County Sheriff Brad Kunkel bringing two counts. Count I alleges that Iowa Code § 914.7 violates Browne's right to keep and bear arms under the Second Amendment to the United States Constitution. Count II asserts that the same statute violates Article I, Section 1A of the Iowa Constitution, which protects the right to keep and bear arms under the state constitutional analog.

Browne seeks three forms of substantive relief. First, he moves for a declaratory judgment that Iowa Code § 914.7 is unconstitutional under both the federal and state constitution. Second, Browne requests an injunction prohibiting the Governor "from enforcing Iowa Code § 914.7 insomuch as it encroaches upon the Governor's discretionary power to restore his right to keep and bear arms through a pardon." [ECF No. 15 at 7]. Finally, he asks the Court to issue an injunction prohibiting the Johnson County Sheriff from denying him "a permit to acquire firearms despite his felony conviction" and restrict the criteria for issuance of a permit to factors he specifies in the Amended Complaint. These factors include: (a) the totality of circumstances surrounding his felony conviction, (b) the length of time since the conviction, (c) his subsequent conduct since the conviction, and (d) a determination the restoring his right to keep and bear arms would not be contrary to the public interest.[5]

Browne initiated this case in state court in the Iowa District Court for Johnson County. [ECF No. 1-2]. Defendants soon filed a joint notice of removal to federal court on the basis of federal question jurisdiction in light of Browne's assertion that the law violates the Second Amendment to the United States Constitution. [ECF No. 1]. They argue that supplemental

[5] This fourth factor proposed by Browne appears to be a directive to conclude that it is in fact not contrary to the public interest to restore his right to possess firearms, not an assessment left to the Sheriff's discretion.

jurisdiction over the state constitutional claim is proper because none of the statutory factors permitting declination of supplemental jurisdiction are present in the case. Both Defendants soon filed motions to dismiss for failure to state a claim. [ECF Nos. 10, 11]. Browne then moved to remand the case back to state court. [ECF No. 14]. He also filed an Amended Complaint, which is the current operative pleading. [ECF No. 15]. Defendants again move to dismiss for failure to state a claim. [ECF Nos. 19, 22]. After resisting the renewed motions to dismiss, Browne filed another motion styled as a "Motion to Sever Counts" seeking a limited remand of the claim brought under the Iowa Constitution. [ECF No. 25].

II. DISCUSSION

A. Motion to Dismiss Standard

The Federal Rules of Civil Procedure require a complaint to present "a short and plain statement of the claim showing that the pleader is entitled to relief." Fed. R. Civ. P. 8(a)(2). Conversely, a complaint is subject to dismissal when it "fail[s] to state a claim upon which relief can be granted." Fed. R. Civ. P. 12(b)(6). To meet this standard, "a complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *Braden v. Wal-Mart Stores, Inc.*, 588 F.3d 585, 594 (8th Cir. 2009) (quoting *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009)). A claim is facially plausible "when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Iqbal*, 556 U.S. at 678. Although the plausibility standard "is not akin to a 'probability requirement,'" it demands the pleadings demonstrate "more than a sheer possibility that a defendant has acted unlawfully." *Id.* (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 556 (2007)). Thus, a complaint must plead more than mere "labels and conclusions" or "naked assertions devoid of further factual enhancement." *Id.* (cleaned up) (citation omitted). All

reasonable inferences must be drawn in the plaintiff's favor, but "the facts alleged in the complaint must be enough to raise a right to relief above the speculative level." *Clemons v. Crawford*, 585 F.3d 1119, 1124 (8th Cir. 2009) (cleaned up) (citation omitted).

B. Analysis

1. Second Amendment

The Second Amendment provides that, "[a] well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed." U.S. Const. amend. II. The United States Supreme Court has construed the Second Amendment as protecting the right of law-abiding, responsible citizens to possess firearms inside and outside the home for "ordinary self-defense needs." *New York State Rifle & Pistol Ass'n, Inc. v. Bruen*, 597 U.S. 1, 71 (2022); *District of Columbia v. Heller*, 554 U.S. 570, 635 (2008) (holding that the Second Amendment protects the right of "law-abiding, responsible citizens" to possess a firearm "in defense of hearth and home."). Two years after the Supreme Court recognized an individual right in *Heller*, the Second Amendment was incorporated against the states through the Fourteenth Amendment. *McDonald v. City of Chicago*, 561 U.S. 742, 778 (2010).

Browne expressly acknowledges in his brief that the felon in possession statutes under state and federal law are presumptively lawful under binding precedent from the United States Court of Appeals for the Eighth Circuit. [ECF No. 23-1 at 3] (citing *United States v. Jackson*, 69 F.4th 495, 501 (8th Cir. 2023)). He characterizes his lawsuit as not a challenge to "the felon in possession statutes, but rather, a very limited attack on Iowa Code § 914.7's ban for *life* on restoring a forcible felon's fundamental right to keep and bear arms in the jurisdiction of his conviction." *Id.* (emphasis in original). According to Browne, there is overwhelming evidence that he is currently a law-abiding convicted felon and not dangerous.

He grounds his position in the reasoning of *Bruen*, where the Supreme Court invalidated a New York law which allowed state officials to exercise discretion when issuing firearm licenses. 597 U.S. at 70–71. The *Bruen* Court also rejected the two-step framework that lower courts had applied in analyzing challenges under the Second Amendment, putting in its place "a test rooted in the Second Amendment's text, as informed by history" which required the Government to "affirmatively prove that its firearms regulation is part of the historical tradition that delimits the outer bounds of the right to keep and bear arms." *Id.* at 19. Browne believes that applying the historical analysis required by *Bruen* demonstrates that Iowa Code § 914.7 is unconstitutional. He cites to out-of-Circuit, non-binding precedent for further support. However, those cases are clearly distinguishable from the circumstances here.

The United States Court of Appeals for the Third Circuit rejected the argument by the Government that 18 U.S.C. § 922(g)(1), which prohibits possession of a firearm by a convicted felon, could be applied to a man who had been convicted of making a false statement to obtain food stamps nearly two decades earlier. *Range v. Attorney General*, 69 F.4th 96, 105 (3d Cir. 2023) (majority opinion). The en banc Third Circuit reversed the three-judge panel's determination that the law did not violate the Second Amendment as-applied to the man, finding that the Government failed to show that the nation's historical tradition of firearms regulation supported the deprivation. *Id.* at 106. The *Range* court emphasized at the conclusion of its opinion that its decision was "narrow." *Id.*

Browne also seeks support from the decision by the United States Court of Appeals for the Seventh Circuit in *Atkinson v. Garland*, 70 F.4th 1018 (7th Cir. 2023). In *Atkinson*, the panel reversed and remanded the case because the district court had decided the case pre-*Bruen* and rejected the defendant's constitutional challenge based on Circuit precedent. The panel held that

precedent could not survive on its own accord after *Bruen* because the Supreme Court now required a historical analysis in assessing the constitutionality of firearm laws. *Id.* at 1019–20.

The United States Court of Appeals for the Sixth Circuit recently surveyed case law across the Circuits regarding the constitutionality of § 922(g)(1). *United States v. Alvarado*, 95 F.4th 1047, 1051–52 (6th Cir. 2024). Noting that since *Bruen*, "courts have begun to revisit the constitutionality" of the law. *Id.* at 1051. The court observed that the constitutionality of the law is "unsettled" after noting the different holdings of the Eighth Circuit, Third Circuit, and Seventh Circuit. *Id.* at 1052 (quoting *United States v. Hill*, No. 22-2400, 2023 WL 2810289, at *2 (7th Cir. Apr. 6, 2023)). Accordingly, the panel held that it could not find plain error on appeal because a Circuit split "is good evidence that the issue is subject to reasonable dispute." *Id.* at 1053.[6]

Browne claims that the Court should draw a distinction here because he challenges Iowa law, not the federal felon in possession statutes. The Court rejects the Second Amendment claim because, as Browne concedes, the Eighth Circuit has held that felon in possession statutes are constitutional since *Bruen* was decided. *Jackson*, 69 F.4th at 502 (foreclosing as-applied challenges to § 922(g)(1) after concluding that "there is no need for felony-by-felony litigation"); *United States v. Cunningham*, 70 F.4th 502, 506–07 (8th Cir. 2023) (denying as-applied challenge by a non-violent felon); *United States v. Dunn*, 76 F.4th 1062, 1068 (8th Cir. 2023) (rejecting argument that § 922(g)(1) is overly broad); *see also United States v. Veasley*, --- F.4th ----, ----, 2024 WL 1649267, at *9 (8th Cir. Apr. 17, 2024) (finding that a facial challenge to § 922(g)(3) prohibiting possession of a firearm by a drug user fails, consistent with pre-*Bruen* Circuit precedent holding the same). The Eighth Circuit reasoned that "legislatures traditionally employed status-

[6] The Government apparently represented to the court in *Alvarado* that "more than 170 district courts have rejected constitutional challenges to § 922(g)(1)." *Id.* at 1052 n.3 (citation omitted).

based restrictions to disqualify categories of persons from possessing firearms" and it is "within the historical tradition" for Congress, or a state legislature to prohibit firearm possession by felons. *Jackson*, 69 F.4th at 505. Browne has provided no basis to conclude that a state-level prohibition on possession of a firearm by a felon should yield a different result, particularly given the Eighth Circuit's uniform rejection of Second Amendment claims.

Furthermore, Browne only challenges the law that limits the authority of the Governor to issue a pardon, which he believes would restore his right to possess a firearm. The underlying state criminal prohibition on possessing a firearm would remain. *See* Iowa Code § 724.26(1). That provision is consistent with federal law which prohibits the same class of individuals from possessing a firearm. As the Eighth Circuit has held and repeatedly affirmed, prohibitions on firearm possession by a felon do not violate the Second Amendment.

Also, the invalidation of a law that restricts the exercise of the Governor's pardon power would not require the Governor to *exercise* that discretion to the benefit of Browne. As Defendants point out, a pardon is not a legal entitlement and a court does not have authority to compel the issuance of a pardon by an executive official. *See Conn. Bd. of Pardons v. Dumschat*, 452 U.S. 458, 466 (1981) (holding that a standardless clemency statute did not create a protectable legal interest beyond the right to request clemency). The Iowa Code provision allowing individuals to apply for a gubernatorial pardon does not contain any specified criteria or mandatory requirements beyond a right to apply. *See* Iowa Code § 914.2. Recently, the Eighth Circuit again observed that there is no "liberty interest in discretionary commutations based on a statute with 'no definitions, no criteria, and no mandated shalls.'" *Snodgrass v. Robinson*, 512 F.3d 999, 1003 (8th Cir. 2008) (quoting *Dumschat*, 452 U.S. at 466). The restoration of an individual's civil rights is part of the pardon power and its substantive exercise is not subject to challenge in courts. *Beacham v.*

Braterman, 300 F. Supp. 182, 184 (S.D. Fla. 1969) (holding that the "act of clemency is not subject to judicial control"). Browne does not argue, nor could he, that the pardon statute contains standards or requirements on the Governor's exercise of the power, much less that it has not been applied properly.

In summary, the Amended Complaint does not state a claim that Iowa Code § 914.7 violates the Second Amendment as applied to Browne. Laws prohibiting the possession of a firearm by a convicted felon have been upheld by multiple courts, post-*Bruen*, under the Second Amendment. Browne does not identify, nor is the Court aware, of any court that has held that a person convicted of a violent felony involving the use of a firearm retains the right to keep and bear arms under the Second Amendment.

2. Iowa Constitutional Analysis

A new amendment to the Iowa Constitution took effect December 1, 2022. The language of that amendment largely parallels the Second Amendment:

> 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.

Iowa Const. art. I, sec. 1A. Browne also challenges Section 914.7 on the grounds that it violates Article I, Section 1A. Defendants argue that although the new amendment enshrines an important right in the Iowa Constitution, the new right attaches at the time of the amendment's passage and operates prospectively. [ECF No. 19-1 at 9]. Even if the new constitutional amendment is applied, Defendants argue that Section 914.7 survives strict scrutiny, as expressly required by the text of the provision.

Browne responds that Count II should not be considered by the Court and should be remanded to state court. He argues that it is a newly enacted constitutional amendment that

presents a novel and complex issue of state law. Browne points out that there is no case law concerning the correct interpretation of the constitutional provision.

A federal court may exercise supplemental jurisdiction over a state law claim when it is "so related to claims in the action within [its] original jurisdiction that they form part of the same case or controversy under Article III of the United States Constitution." 28 U.S.C. § 1367(a). Once claims over which the district court had original jurisdiction are dismissed, a court retains discretion over whether to continue exercising supplemental jurisdiction. *Id.* § 1367(c). A federal court may decline to exercise supplemental jurisdiction under four circumstances identified in the statute: (1) the claim raises a novel or complex issue of state law, (2) the claim substantially predominates over the claim or claims over which the district court has original jurisdiction, (3) all other claims over which the has original jurisdiction have been dismissed, or (4) there are other compelling reasons for declining jurisdiction. *Id.*

The Court agrees with Browne that the issue presented in Count II is better addressed by Iowa state courts. There is no published case law on the interpretation of the new amendment. Furthermore, the language of the amendment evinces a strong intent to protect the right to keep and bear arms under the Iowa Constitution. It describes the right as a "fundamental individual right" and brings within its scope "[a]ny and all restrictions" on the right, which must be subjected to "strict scrutiny." Iowa Const. art. I, sec. 1A. Although the Court is sympathetic to Defendants' arguments regarding retroactivity and the strict scrutiny analysis, it would be imprudent for a federal district court to opine on this important new constitutional amendment without *any* guidance from state courts. Accordingly, the Court will decline exercise of supplemental jurisdiction and remand the case to state court.

III. CONCLUSION

For the reasons discussed above, Defendants' Motions to Dismiss are GRANTED in part. [ECF Nos. 19, 22]. The Court will decline to exercise supplemental jurisdiction over Browne's state constitutional claim and will GRANT his Motion to Remand. [ECF No. 14]. The other pending Motions are MOOT. [ECF Nos. 10, 11, 25].

IT IS SO ORDERED.

Dated this 30th day of April, 2024.

Stephanie M. Rose

STEPHANIE M. ROSE, CHIEF JUDGE
UNITED STATES DISTRICT COURT

United States Court of Appeals
For The Eighth Circuit
Thomas F. Eagleton U.S. Courthouse
111 South 10th Street, Room 24.329
St. Louis, Missouri 63102

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September 02, 2025

Rohit Pranav Asirvatham
WILLIAMS & CONNOLLY
680 Maine Avenue, S.W.
Washington, DC 20024

RE: 24-1952 Anthony Browne v. Kimberly Reynolds, et al

Dear Counsel:

The court has issued an opinion in this case. Judgment has been entered in accordance with the opinion.

Please review Federal Rules of Appellate Procedure and the Eighth Circuit Rules on post-submission procedure to ensure that any contemplated filing is timely and in compliance with the rules. Note particularly that petitions for rehearing and petitions for rehearing en banc must be received in the clerk's office within 14 days of the date of the entry of judgment. Counsel-filed petitions must be filed electronically in CM/ECF. Paper copies are not required. Except as provided by Rule 25(a)(2)(iii) of the Federal Rules of Appellate Procedure, no grace period for mailing is allowed. Any petition for rehearing or petition for rehearing en banc which is not received within the 14-day period for filing permitted by FRAP 40 may be denied as untimely.

Susan E. Bindler
Clerk of Court

HAG

Enclosure(s)

cc: Shannon Archer
Anthony A. Browne
Clerk, U.S. District Court, Southern Iowa
Sarah A. Jennings
Susan D. Nehring
Jeffrey C. Peterzalek
Patrick Cannon Valencia
David Michael Van Compernolle

District Court/Agency Case Number(s): 3:23-cv-00053-SMR

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September 02, 2025

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RE: 24-1952 Anthony Browne v. Kimberly Reynolds, et al

Dear Sir or Madam:

A published opinion was filed today in the above case.

Counsel who presented argument on behalf of the appellant and appeared on the supplemental brief was Rohit Pranav Asirvatham, of Washington, DC.

Counsel who presented argument on behalf of appellee Kimberly Reynolds and appeared on the brief was Patrick Cannon Valencia, AAG, of Des Moines, IA. The following attorney(s) also appeared on the appellee brief; Jeffrey C. Peterzalek, AAG, of Des Moines, IA, Sarah A. Jennings, AAG, of Des Moines, IA.

Counsel who presented argument on behalf of appellee Brad Kunkel and appeared on the brief was David Michael Van Compernolle, of Iowa City, IA. The following attorney(s) also appeared on the appellee brief; Susan D. Nehring, of Iowa City, IA, Rachel Zimmermann Smith, of Iowa City, IA.

The judge who heard the case in the district court was Honorable Stephanie M. Rose.

If you have any questions concerning this case, please call this office.

Susan E. Bindler
Clerk of Court

HAG

Enclosure(s)
cc: MO Lawyers Weekly

District Court/Agency Case Number(s): 3:23-cv-00053-SMR

United States Court of Appeals
For the Eighth Circuit

No. 24-1952

Anthony A. Browne,

Plaintiff - Appellant,

v.

Kimberly Reynolds, in her official capacity as the Governor of the State of Iowa; Brad Kunkel, in his official capacity as the Sheriff of Johnson County, Iowa,

Defendants - Appellees.

Appeal from United States District Court
for the Southern District of Iowa - Eastern

Submitted: May 13, 2025
Filed: September 2, 2025

Before COLLOTON, Chief Judge, SMITH and SHEPHERD, Circuit Judges.

COLLOTON, Chief Judge.

Anthony Browne was convicted of a forcible felony in Iowa in 1991. As a result, he is prohibited by Iowa law to possess firearms, to apply for restoration of firearms rights, or to receive a permit to acquire a handgun. He sued Governor Reynolds of Iowa and Sheriff Kunkel of Johnson County, Iowa, seeking relief from

the prohibitions on the ground that they violate the Second Amendment. The district court* dismissed the complaint for failure to state a claim, and we affirm.

I.

In 1991, Browne was convicted in Iowa of committing willful injury causing serious injury to another, a Class C forcible felony, and criminal gang participation, a Class D felony. *See* Iowa Code §§ 708.4(1), 702.11(1), 723A.2 (1991). Iowa law generally forbids felons to possess firearms or to obtain a permit to acquire a handgun. *Id.* §§ 724.26(1), .15(1), .15(2)(b) (2023).

According to the complaint, Browne discharged his sentence in January 1998 and has behaved lawfully since then. He earned an undergraduate degree and secured gainful employment, including in one position that required him to obtain a security clearance. He paid all restitution, fines, and other financial obligations resulting from his 1991 convictions. Browne alleges that he now wants to keep a firearm for "hunting, target shooting, and home defense."

The governor has the "power to grant reprieves, commutations, and pardons, after conviction, for all offences except treason and cases of impeachment, subject to such regulations as may be provided by law." Iowa Const. art. IV, § 16. The Iowa Code provides that the governor's power includes the authority to restore rights of citizenship, including the right to bear arms. Iowa Code § 914.1. A person convicted of a criminal offense may apply to the governor for a pardon or restoration of rights. *Id.* § 914.2.

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*The Honorable Stephanie M. Rose, Chief Judge, United States District Court for the Southern District of Iowa.

A person convicted of a felony generally cannot possess a firearm in Iowa. *Id.* § 724.26(1). The prohibition does not apply to a person whose civil rights regarding firearms have been restored after a disqualifying conviction, *id.* § 724.27(1)(b), but this exception is not available to "a person who has been convicted of a forcible felony." *Id.* §§ 724.27(2), 914.7(1). A "forcible felony" is any felonious child endangerment, assault, murder, sexual abuse, kidnapping, robbery, human trafficking, arson in the first degree, or burglary in the first degree, with certain exceptions not applicable here. *Id.* § 702.11 (1991). Browne was convicted of a forcible felony, so he cannot obtain a restoration of civil rights regarding firearms. *Id.* § 724.27(2) (2023).

Browne sued the governor and the county sheriff in state court, alleging that § 914.7, the statute declaring rights not restorable to persons convicted of a forcible felony, is unconstitutional as applied to him under the Second Amendment. [R. Doc. 1-2, at 8]. The defendants removed the case to federal court. The operative complaint requests three forms of relief: (1) a declaratory judgment that § 914.7 is unconstitutional as applied to him under the Second Amendment; (2) an order enjoining the governor from enforcing § 914.7; and (3) an order enjoining the sheriff from denying Browne a permit to acquire a handgun without first determining whether Browne is "currently dangerous" based on four specified factors.

The district court ruled that § 914.7 does not violate the Second Amendment as applied to Browne and dismissed his complaint for failure to state a claim. *See* Fed. R. Civ. P. 12(b)(6). Browne also sought relief under the Iowa Constitution, and the court remanded that claim to state court. *See* 28 U.S.C. § 1367(c). Browne appeals the district court's dismissal of his federal claim, and we review the decision *de novo*.

II.

Before addressing the merits, the governor and the sheriff argue that Browne lacks standing to bring this suit. They argue that he pleads only a hypothetical injury because he does not allege that he has unsuccessfully applied for restoration of rights or for a gun permit. Browne alleges that he "would apply" if the disqualifying statutes were "declared unconstitutional."

A failure to submit an application does not deprive a plaintiff of standing if the attempt would have been futile. *Sporhase v. Nebraska ex rel. Douglas*, 458 U.S. 941, 944 n.2 (1982); *Pucket v. Hot Springs Sch. Dist. No. 23-2*, 526 F.3d 1151, 1162 (8th Cir. 2008). In this case, the governor has no discretion to grant Browne a restoration of firearms rights under § 914.7 because Browne stands convicted of a forcible felony. The sheriff has no authority, based on a prediction about current dangerousness, to grant a handgun permit to a felon who is ineligible to possess firearms under § 724.26. Iowa Code § 724.17(1), .15(2)(b). Thus, it would be futile for Browne to apply for restoration of firearm rights or for a handgun permit, and he has standing to challenge the constitutionality of the statutes that make his putative application futile.

The governor points out that she could deny an application for restoration of rights as a matter of discretion even if Browne were eligible for restoration. But even where other factors might lead an official to deny relief, an applicant has standing to challenge the legality of a barrier that requires denial. *Sporhase*, 458 U.S. at 944 n.2. An order declaring the Iowa statutes unconstitutional would redress Browne's alleged procedural injury by allowing him an opportunity to seek restoration of rights or a gun permit. *See Dep't of Educ. v. Brown*, 600 U.S. 551, 561-62 (2023). We therefore conclude that he has satisfied the requirements of Article III standing.

On the merits, however, the district court correctly dismissed Browne's claim. This court held in *United States v. Jackson*, 110 F.4th 1120 (8th Cir. 2024), *cert. denied*, 2025 WL 1426707 (U.S. May 19, 2025), that the federal prohibition on possession of firearms by felons is constitutional as a categorical matter. There is no need for a felony-by-felony analysis, and no requirement of an individualized determination of dangerousness as to each person in the class of prohibited persons. *Id.* at 1125-28; *accord United States v. Dubois*, 139 F.4th 887, 893 (11th Cir. 2025); *id.* at 894-900 (Pryor, C.J., concurring); *United States v. Duarte*, 137 F.4th 743, 747-48 (9th Cir. 2025) (en banc); *id.* at 768-72 (Collins, J., concurring in the judgment); *Vincent v. Bondi*, 127 F.4th 1263, 1265-66 (10th Cir. 2025); *United States v. Hunt*, 123 F.4th 697, 704-08 (4th Cir. 2024); *but see Range v. Att'y Gen.*, 124 F.4th 218, 228-32 (3d Cir. 2024) (en banc).

Browne's claim is an effort to make an end-run around *Jackson*. Although a legislature may dispossess forcible felons as a categorical matter, Browne argues that the State must make him eligible for restoration of firearms rights by the governor. He maintains that he is entitled to issuance of a handgun permit unless the sheriff concludes after an individualized determination that Browne is "currently dangerous." And it follows logically from his argument that the governor must restore a forcible felon's rights to possess firearms if he is not "currently dangerous" so that the sheriff may issue the requested permit.

Browne's argument is inconsistent with the relevant history and this court's conclusions in *Jackson*. Early-American legislatures ordered disarmament and authorized punishment of death for forcible felonies and even for some non-violent offenses. *Jackson*, 110 F.4th at 1127 (collecting sources); *see Dubois*, 139 F.4th at 895-96 (Pryor, C.J., concurring). As the D.C. Circuit explained in *Medina v. Whitaker*, 913 F.3d 152 (D.C. Cir. 2019), "it is difficult to conclude that the public, in 1791, would have understood someone facing death and estate forfeiture to be within the scope of those entitled to possess arms." *Id.* at 158. Even if some

legislatures chose to punish certain serious offenses by a term of years, death was the "standard penalty for all serious crimes," *Bucklew v. Precythe*, 587 U.S. 119, 129 (2019) (internal quotation omitted), and it would be imprudent to assume that founding-era legislatures maximally exercised their power to regulate or punish. *See United States v. Rahimi*, 602 U.S. 680, 739-40 (2024) (Barrett, J., concurring). Where death was historically accepted as a permissible punishment for forcible felonies, the lesser restriction of dispossession without opportunity for restoration of rights is also permissible. *See id.* at 699 (opinion of the Court).

Even if the historical tradition required an opportunity for restoration of rights to possess a firearm, moreover, Iowa provides that avenue through a gubernatorial pardon. A pardon exempts the recipient "from additional penalties and legal consequences in the form of disqualifications or disabilities based on his conviction." *Slater v. Olson*, 299 N.W. 879, 881 (Iowa 1941). Any attempt by the legislature to restrict a person's rights based on a pardoned conviction is "unconstitutional as a clear encroachment by the legislature upon the pardoning power" of the governor. *Id.* Browne may apply for a pardon from the governor, and the grant of a pardon would restore his rights to possess a firearm.

Browne contends that Iowa statutes would forbid him to possess a firearm even if he were granted a pardon. A statute provides that the prohibition on possession of firearms does not apply to a person who is eligible to have his civil rights regarding firearms restored, if the person's civil rights have been restored or the person is pardoned by the governor. Iowa Code § 724.27. Browne posits that because he is not eligible as a forcible felon to have his civil rights restored under § 914.7, the governor is unable to restore his firearms rights by granting a pardon.

Browne's argument misconstrues Iowa law. The governor's power to issue a pardon arises directly from the Constitution of the State of Iowa. Iowa Const. art. IV, § 16. There is no need for legislative authorization. "The Constitution vests the

pardoning power exclusively in the governor, and, because of the division of the powers of government . . . , neither the judiciary nor the legislature may interfere with or encroach upon this constitutional power lodged in the chief executive of the state." *Slater*, 299 N.W. at 881. When the governor issues a pardon, the recipient is relieved of disqualifications and disabilities based on his conviction: his rights of citizenship, including the right to possess firearms, are restored. That the legislature separately provided by statute for the restoration of firearms rights to certain offenders does not limit the constitutional authority of the governor to issue a pardon that restores rights of citizenship.

For these reasons, we conclude that the government has satisfied its burden to show that a lifetime restriction on the right of forcible felons to possess firearms, subject to a gubernatorial pardon, is consistent with the Nation's historical tradition of firearms regulation.

The judgment of the district court is affirmed.

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

No: 24-1952

Anthony A. Browne

Appellant

v.

Kimberly Reynolds, in her official capacity as the Governor of the State of Iowa and Brad Kunkel, in his official capacity as the Sheriff of Johnson County, Iowa

Appellees

Appeal from U.S. District Court for the Southern District of Iowa - Eastern
(3:23-cv-00053-SMR)

ORDER

The petition for rehearing en banc is denied. The petition for rehearing by the panel is also denied.

October 27, 2025

Order Entered at the Direction of the Court:
Clerk, U.S. Court of Appeals, Eighth Circuit.

/s/ Susan E. Bindler