IN THE DISTRICT COURT OF APPEAL
FIRST DISTRICT, STATE OF FLORIDA

CHRISTOPHER MICHAEL MORGAN,

Appellant,

v.

Case No. 1D2025-0377
LT Case No.: 2022-CF-002746

STATE OF FLORIDA,

Appellee.
_____/

AMENDED MOTION FOR LEAVE TO FILE OUT OF TIME AMICUS BRIEF IN OPPOSITION TO APPELLEE'S SUPPLEMENTAL BRIEF

Pursuant to Florida Rule of Appellate Procedure 9.370, the Florida Prosecuting Attorneys Association, Inc., ("FPAA"), by and through the undersigned counsel, hereby moves this Honorable Court for leave to file, as *amicus curiae*, a brief opposing Appellee, State of Florida, and its supplemental brief filed March 18, 2026, and in support thereof states:

1. The FPAA is a nonprofit corporation whose members are the 20 elected State Attorneys as well as over 2,000 Assistant State Attorneys and was created to serve the needs of prosecutors and the administration of justice as prescribed by the Florida Constitution and laws of Florida.

2. At issue in this case is whether the prohibition on possession of a firearm by a felon, § 790.23, Fla. Stat., violates the Second Amendment as applied to Appellant Christopher Morgan. Despite filing an Answer Brief in opposition to Appellant, Appellee filed its March 18, 2026, Supplemental Brief confessing § 790.23 unconstitutional as applied to Appellant.

3. The FPAA's request to untimely file an Amicus Brief is due to the timing of Appellee's Supplemental Brief and its relinquishment of any opposition to Appellant. If permitted to file a brief as *amicus curiae*, the FPAA would provide the Court useful argument in opposition to the position set forth in Appellee's Supplemental Brief, specifically the constitutionality of Section 790.23, Florida Statutes as it pertains to the disarmament of felons and the determination of an individual's dangerousness.

4. Undersigned counsel attempted to confer with Appellant to gain consent for the filing of the amicus brief, but did not receive confirmation. The FPAA did receive consent from Appellee contingent on the inclusion of the following statement: The State does not oppose the FPAA's motion to file an amicus brief. The State emphasizes, however, that while the FPAA speaks for its

members, the State Attorneys through the FPAA as amicus curiae do not at this stage speak for the State. As Florida's chief legal officer, the Attorney General exclusively represents Florida on appeal, and has set forth the State's position in this matter. *See* Art. IV, § 4(b), Fla. Const.; § 16.01(4). The State intends to file a brief response to the amicus brief within 14 days, unless the Court orders otherwise.

WHEREFORE, the Florida Prosecuting Attorneys Association, Inc. respectfully requests that the Court grant it leave to file out of time a brief as *amicus curiae*, simultaneous with this motion, in opposition to Appellee, State of Florida, and its supplemental brief filed March 18, 2026.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 27th day of March, 2026, a copy of the foregoing was furnished to the following attorneys of record via the Florida Courts E-filing Portal for e-service on all counsel and parties of record herein:

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IN THE DISTRICT COURT OF APPEAL
FIRST DISTRICT OF FLORIDA

CASE NO. 1D2025-0377

LOWER TRIBUNAL CASE NO. 37-2022-CF-2746

ON APPEAL FROM THE FINAL JUDGMENT OF THE SECOND JUDICIAL CIRCUIT IN AND FOR LEON COUNTY, FLORIDA

CHRISTOPHER MICHAEL MORGAN,

Appellant,

v.

STATE OF FLORIDA,

Appellee.

BRIEF OF *AMICUS CURIAE* THE FLORIDA PROSECUTING ATTORNEYS ASSOCIATION IN OPPOSITION OF APPELLEE

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STATEMENT OF INTEREST OF *AMICUS CURIAE*

The Florida Prosecuting Attorneys Association, Inc., ("FPAA"), is a nonprofit corporation whose members are the 20 elected State Attorneys as well as over 2,000 Assistant State Attorneys and was created to serve the needs of prosecutors and the administration of justice as prescribed by the Florida Constitution and laws of Florida. The FPAA submits this *Amicus Curiae* Brief in support of the State of Florida, and in the interest of the administration of justice statewide.

The elected State Attorney represents the State of Florida (in each of their respective jurisdictions) at the trial court level in nearly every prosecution for alleged violations of F.S. § 790.23, and as such, the FPAA membership has a great interest in the substantive issues of this appeal.

The FPAA strongly supports the decision of the trial court below. Because the Attorney General has submitted a Supplemental Answer Brief on behalf of the State confessing error, the FPAA believes this Court should be appropriately briefed on the merits of the trial court's decision as well as the real-world effects of a decision by this Court to the contrary.

SUMMARY OF THE ARGUMENT

This Court need not accept the State's confession of error by the Attorney General. Rather, it should assess the merits of the parties' respective positions without regard to such a concession. Especially given the precedential value of a decision by this Court, it is important that the Court reach the *correct* legal conclusion, not merely one that has been agreed upon by the parties in a singular case or controversy.

Florida Statute § 790.23 is constitutional on its face and as applied to the Appellant in this case. The United States Supreme Court has addressed this issue on four separate occasions, each time indicating its belief that such statutes pass constitutional muster. Likewise, seven federal Circuit Courts of Appeal have subsequently held that substantially similar prohibitions on the possession of firearms by convicted felons are facially constitutional and that "as-applied" analyses are inappropriate in such cases, as have three Florida District Courts of Appeal.

It was well-accepted at the time of the ratification of the Bill of Rights that a person convicted of a felony—having already been afforded due process during the conviction process—could be

stripped of rights otherwise guaranteed by the Constitution, including the right to keep and bear arms. Indeed, the penalty for conviction of a felony at the time of the founding often included death or estate forfeiture. Even those felony offenses that carried lesser penalties permitted the imprisonment of offenders for lengthy terms of years, necessarily resulting in the removal of their right to possess firearms.

Additionally, the precedent created by the adoption of the parties' position would effectively render § 790.23 unenforceable. Save for the most egregious circumstances, nearly every felon could present *some* colorable argument as to why they *personally* are not a dangerous or violent felon, and why the statute is unconstitutional as applied to them. Not only would this individualized determination bog down the criminal justice system with needless litigation, it would likely render the entire section void for vagueness, as no felon would reasonably know whether they belong to the class of people barred by the statute constitutionally or not.

ARGUMENT

I. THIS COURT NEED NOT—AND SHOULD NOT—ACCEPT THE CONFESSION OF ERROR BY THE APPELLEE.

This Court need not accept the State's confession of error in its Supplemental Answer Brief. *See*, *e.g.*, *Sims v. State*, 260 So. 3d 509 (Fla. 1st DCA 2018) ("[W]e are not required to accept the State's confession, and before we reverse any criminal judgment, we must be certain the law requires reversal."). Rather, "[i]t is the practice of Florida appellate courts not to accept erroneous concessions by the state." *Perry v. State*, 808 So. 2d 268, 268 (Fla. 1st DCA 2002). "Indeed, a Florida appellate court may properly affirm a judgment even where the appellee fails to file an answer brief or wrongly confesses error." *Crist v. State*, 419 So.3d 183, 203 (Fla. 5th DCA 2025) (citing *Freeman v. State*, 373 So. 3d 1255, 1257 (Fla. 1st DCA 2023).

Given the precedential value of any decision by this Court, it is especially important that this Court reach the *correct* legal conclusion, not merely one that has been agreed upon by the parties. *See id.* at 203. "Simply stated, shortcuts and omissions in appellate briefs do not relieve [the court] of [its] obligation to get the law right.

Otherwise, an appellant's initial brief and an appellee's omissions or concessions could combine to re-write the law." *Id.* This court must not cede its duty to determine the constitutionality of a duly enacted statute to the parties' agreement and collaboration.

As is discussed in greater detail below, the confession of error by the State in its Supplemental Answer Brief is misplaced. The trial court was correct, and the case does not merit reversal.

II. FLORIDA STATUTES SECTION 790.23 IS CONSTITUTIONAL ON ITS FACE AND AS APPLIED TO MORGAN.

Florida Statute § 790.23 is constitutional, both on its face and as applied to the Appellant in this case. The United States Supreme Court initially addressed the issue in *Distrct of Colombia v. Heller*, 554 U.S. 570 (2008). In *Heller*, the Court first addressed the question of whether the Second Amendment protects an individual's right to possess a firearm for personal protection. *Id.* In holding that the Second Amendment does confer such a right, the Court was careful to state that "*nothing in our opinion should be taken to cast doubt on longstanding prohibitions on the possession of firearms by felons* and the mentally ill, or laws forbidding the carrying of firearms in sensitive places such as schools and government buildings, or laws

imposing conditions and qualifications on the commercial sale of arms." *Id.* at 626-27 (emphasis added).

Since *Heller*, the Supreme Court has heard three additional Second Amendment cases. In each circumstance, the Court has reiterated that caveat. *See United States v. Rahimi*, 602 U.S. 680, 699 (2024) ("*Heller* never established a categorical rule that the Constitution prohibits regulations that forbid firearm possession in the home. In fact, our opinion stated that many such prohibitions, like those on the possession of firearms by 'felons and the mentally ill,' are 'presumptively lawful.'"); *New York State Rifle & Pistol Ass'n, Inc. v. Bruen*, 597 U.S. 1, 81 (2022) ("Like most rights, the right secured by the Second Amendment is not unlimited. From Blackstone through the 19th-century cases, commentators and courts routinely explained that the right was not a right to keep and carry any weapon whatsoever in any manner whatsoever and for whatever purpose . . . . [N]othing in our opinion should be taken to cast doubt on longstanding prohibitions on the possession of firearms by felons . . . ." (Justice Kavanaugh, concurring)); *McDonald v. Chicago*, 561 U.S. 742, 786 (2010) ("We made it clear in *Heller* that our holding did not cast doubt on such longstanding regulatory

measures as 'prohibitions on the possession of firearms by felons and the mentally ill,' . . . We repeat those assurances here.").

While not binding on this Court, seven federal Circuit Courts have likewise held (post-*Bruen*) that a substantially similar prohibition on the possession of firearms by convicted felons is facially constitutional and that "as-applied" analyses are inappropriate in such cases. *See*, *e.g.*, *United States v. Williams*, 2026 WL 482175 (11th Cir. Feb. 20, 2026); *Vincent v. Bondi*, 127 F.4th 1263 (10th Cir. 2025); *Zherka v. Bondi*, 140 F.4th 68 (2d Cir. 2025); *United States v. Duarte*, 137 F.4th 743 (9th Cir. 2025) (*en banc*); *United States v. Dubois*, 139 F.4th 887 (11th Cir. 2025); *United States v. Hunt*, 123 F.4th 697 (4th Cir. 2024); *United States v. Jackson*, 110 F.4th 1120 (8th Cir. 2024). In each circumstance, a petition for *certiorari* was denied by the United States Supreme Court—most recently on March 2, 2026. *See Vincent*, 127 F.4th 1263 (*cert.* denied 2026 WL 568283).

On the other hand, only two federal Circuit Court decisions have held such a statute to be unconstitutional as applied. *United States v. Cockerham*, 162 F.4th 500 (5th Cir. 2025); *Range v. Attorney*

General, 124 F.4th 218, 232 (3d Cir. 2024).[1] While no petition for *certiorari* was filed with regard to the final opinion in *Range*, a petition is currently pending before the Supreme Court with respect to *Cockerham*.

Florida District Courts have also opined on the issue. In *Edenfield v. State*, this Court addressed the issue twofold. First, it relied upon "the assurances in *Bruen* that its holding applied only to 'law-abiding, responsible citizens'" in upholding the constitutionality of § 790.23. 379 So. 3d 5, 9 (Fla. 1st DCA 2023). Then, even applying the *Bruen* test *de novo*, it determined that the constitutional

[1]In *Range*, the Third Circuit Court of Appeals based its "narrow" opinion not only on the nature of the charges (food stamp fraud), but also on the fact that Range's conviction was "[m]ore than two decades" old and that there was no other evidence on the record that he "pose[d] a physical danger to others." 124 F.4th at 232.

In *Cockerham*, the Fifth Circuit likened a conviction for the felony offense of failure to pay child support to that of a "debtor" at the time of the founding (who could only be temporarily disarmed) as opposed to a "thief" (who could be permanently disarmed). 162 F.4th at 511.

Of note, the Fifth Circuit overlooked the element of *willful refusal* in the Mississippi statute at issue, which would have made Cockerham a thief, not a debtor. And, Range, who was convicted of food stamp fraud, is clearly a thief—who by the plain language of *Cockerham* could also have been permanently disarmed at the founding. In other words, both opinions require some degree of mental gymnastics to reach their result.

challenge failed, because "a prohibition on felons possessing firearms adheres to historical tradition." *Id.* at 9.

Rahimi is the only binding case decided after *Edenfield*, and nothing in the language of that opinion affects the validity of the analysis by this Court. Again, to the contrary, *Rahimi reiterated* those assurances. 602 U.S. at 699. There is simply no reason to retreat from this Court's previous holding in *Edenfield*.

Each of Florida's other District Courts that have opined on the issue have come to the same conclusion. *See Gibbs v. State*, 2025 WL 2845189 at slip op. 1 (Fla. 3d Cir. 2025) (citing *Paul v. State*, 381 So. 3d 617 (Fla. 4th DCA 2024); *Fleming v. State*, 414 So. 3d 175 (Fla. 4th DCA 2025)).

"Whether based on the language from *McDonald*, *Heller*, and *Bruen* excluding convicted felons from having protected Second Amendment rights, or whether based on the historical tradition of the Second Amendment as given by *Bruen*, [*Gibbs*] conclude[d] that Florida law prohibiting convicted felons from possessing firearms survives Second Amendment scrutiny." *Id.* *Gibbs* specifically noted that its conclusion was unaffected by the Supreme Court's language in *Rahimi*. *Id.* at 1 (citing *United States v. Warner*, 131 F.4th 1137,

1148 (10th Cir. 2025) (even after *Rahimi*, "§ 922(g)(1) is constitutional as applied to non-violent felons.").

A. Barring convicted felons from possessing firearms is consistent with the nation's historical tradition.

As a threshold matter, the issue is not whether there were specific statutes analogous to F.S. § 790.23 at the time of the ratification of the Second and Fourteenth Amendments. The issue is whether the *result* of the statute is consistent with the historical tradition of the nation. *See Bruen*, 597 U.S. at 30. "[A]nalogical reasoning requires only that the government identify a well-established and representative historical analogue, not a historical twin." *Id.* The Court's direction is "not meant to suggest a law trapped in amber." *Rahimi*, 602 U.S. at 691.

"[W]hen legislation and the Constitution brush up against each other, [a court's] task is to seek harmony, not to manufacture conflict." *Rahimi*, 605 U.S. at 701 (quoting *United States v. Hansen*, 599 U.S. 762, 781 (2023).

As this Court noted in *Edenfield*, "[t]he death penalty was ubiquitous in the Founding Era." 379 So. 3d at 9. "'[S]omeone facing death and estate forfeiture' would not be 'within the scope of those

entitled to possess arms.'" *Id.* (citing *Folajtar v. Attorney General*, 980 F.3d 897, 904–05 (3d Cir. 2020). "[A]t common law, felons 'could not be trusted' to bear arms." *Id.*

Similarly, Chief Judge Pryor's concurring opinion[2] in *Dubois* sums up the nation's historical tradition well:

> There is a long tradition of legislatures subjecting felons to severe punishment for their crimes. In eighteenth-century England, "[t]he idea of [a] felony" was "so generally connected with that of capital punishment, that ... it [was] hard to separate them." Felony convictions often led to the escheat of the felon's estate and the forfeiture of his real and personal property. Even felons convicted of nonviolent offenses like fraudulent bankruptcy, violating quarantine, or forging a marriage license faced capital punishment and forfeiture of their property. And when legislatures exercised discretion to "make[] any new offen[s]e [a] felony, the law implie[d] that it shall be punished with death ... as well as with forfeiture."
>
> In America, death continued to be "the standard penalty for all serious crimes at the time of the [F]ounding."
>
> . . .
>
> Notably, as in England, colonies—and later states—continued routinely to sentence to death even those

[2] While the majority opinion resolved the case based upon prior precedent, he wrote separately to explain that the result would be the same even if decided "on a clean slate."

> convicted of nonviolent felonies like counterfeiting and theft.

Dubois, 139 F.4th at 894-95 (citing, among others, 4 William Blackstone, Commentaries at 94-95, 98, 156, 161-63, 380-86; *Bucklew v. Precythe*, 587 U.S. 119, 139 (2019)) (internal citations omitted).

It is true that today's felonies are generally punishable by far lesser sanctions. "But that some Founding-era legislatures began to impose lesser sentences for some felonies does not mean that modern legislatures have since lost the power to punish felonies severely." *Id.* (citing *Nat'l Rifle Ass'n v. Bondi*, 133 F.4th 1108, 1125 (11th Cir. 2025) (*en banc*)). And, of course, "[t]hat felons could be permanently deprived of their rights to life, liberty, and property at the Founding suggests that class-wide disarmament of all felons today would be 'permissible' as a 'lesser restriction.'" *Id.* (citing *Rahimi*, 602 U.S. at 699-700; *Medina v. Whitaker*, 913 F.3d 152, 158 (D.C. Cir. 2019)).[3]

[3] While the State retreated from the position taken in its original Answer Brief, the FPAA finds the brief's more detailed recitation of nation's historical tradition of barring felons from possessing firearms accurate, and would direct the Court to that analysis without reiterating it here. *See* Answer Brief at 16-27.

Finally, it is important to note that *Bruen's* call for an analysis of "[w]hy and how" the historical and challenged regulations "burden a law abiding citizen's right to armed self-defense" simply doesn't apply with respect to F.S. § 790.23, because the class of individuals barred from possession by the statute are, by definition, not "law abiding citizens." *See Bruen*, 597 U.S. at 29.[4]

B. From a constitutional perspective, all felons are dangerous felons.

Bruen reiterated *Heller's* assurance that the Second Amendment protects only the rights of "law abiding, responsible citizens" to keep and bear arms. 597 U.S. at 26. While *Rahimi* clarified that a person may not be disarmed solely on the ground that they are "irresponsible," it did nothing to suggest that a case-by-case analysis of the nature of each prior felony is appropriate to determine whether someone is a "law abiding, responsible citizen." 602 U.S. at 701-02. Rather, it is rightly assumed the terms "convicted felon" and "law abiding, responsible citizen" are mutually exclusive antonyms.

[4] This is especially true where, as discussed in further detail below, the barred individuals do not simply demonstrate a *risk* of unlawful behavior; they have been adjudicated guilty as the result of a robust and constitutionally protective criminal justice process.

Indeed, it appears from the context of the phrase in both *Heller* and *Bruen* that the term was selected for precisely that purpose—to contrast the "convicted felon." *See* 554 U.S. at 626, 636; *Bruen*, 597 U.S. at 26, 81.[5]

In *Williams*, the Eleventh Circuit discussed the effect of *Rahimi* on the Supreme Court's prior precedent. 2026 WL 482175 at slip op. 2. As noted there, *Rahimi's* observation that lower courts have "misunderstood" the holding in *Bruen* was not a suggestion that the constitution mandates a class of nonviolent felons be permitted to possess firearms. *Id.* Rather, *Rahimi's* language meant to make clear that there are *additional* categories of people for whom the constitution permits disarmament—namely *non-felon* "individuals who pose a credible threat to the physical safety of others."[6] *Id.*

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[5] "[The Second Amendment] surely elevates above all other interests the right of law-abiding, responsible citizens to use arms in defense of hearth and home," yet "nothing in our opinion should be taken to cast doubt on longstanding prohibitions on the possession of firearms by felons and the mentally ill."

[6] In its Supplemental Answer Brief, the State's lengthy recitation of historical firearm regulations demonstrates its misunderstanding of that holding. *See* Supplemental Answer Brief at 7-27. The eight-justice majority in *Rahimi* explicitly rejected Justice Thomas's more constrained view, even where the historical analogs in that case—surety laws vs. injunctions for protection—are significantly less similar than here).

As a simple fact, one need not have exhibited violence in the past to be "dangerous."[7] Of course, the commission of a violent crime is *one way* that a person can demonstrate dangerousness. But the commission of other felonies is equally telling. A person who chooses to act in their own self-interest in a manner that risks being sent to prison *is* a dangerous person. Such a person has demonstrated their disregard for the law, without concern for the consequences. From a constitutional perspective, it is a class of people who were historically barred from possession of a firearm, precisely *because* they are dangerous. *See*, *e.g.*, *Zherka*, 140 F.4th at 91 ("Such violations of the social compact indicate a serious disregard for fundamental legal norms.").

In its Supplemental Answer Brief, the State attempts to explain why some seemingly non-violent crimes are still dangerous, while conceding that others are not. This distinction appears somewhat contrived and forced. The very rationale presented by the State as to

[7] For example, a person who is mentally infirm (generally through no fault of their own—unlike a convicted felon, whose own choices designated them so), is considered to be "dangerous" because of the *risk* they pose, not because they have exhibited a particular violent behavior in the past.

the first category applies equally to the second. For example, the State endorses the position that "a person in possession of unlawful drugs has demonstrated a willingness to undertake illicit means, potentially including violence, to maintain possession and access to contraband." Supp. Brief of Appellee at 32 (citing *United States v. Williams*, 113 F.4th 637, 663 (6th Cir. 2024). But this is true of every felon. When a person is engaged in criminal activity—especially serious criminal activity punishable by prison—the reliance on extrajudicial self-help (including violence) when disputes arise or when confronted with their criminal activity increases exponentially as compared to the law-abiding, responsible citizen.

C. The removal of the right to bear arms is part of the punishment for a criminal conviction for which Due Process is already guaranteed and afforded.

Unlike other classes of individuals addressed by the United States Supreme Court's recent Second Amendment jurisprudence, the class at issue here, convicted felons, have already been adjudicated as non-law-abiding citizens.[8] Since 1955, Florida has

[8] For "historical tradition" purposes, it matters not whether the modern sanction is imposed as part of a sentence or as a collateral consequence of the conviction.

banned felons from possessing pistols and other firearms. Gen. Acts and Resolutions, ss. 1, 2, 3, ch. 29766 (1955). This is a fact well known to the legislature when it chooses to designate any particular offense as a felony. It is likewise well known to those who would commit those offenses: a result of their conviction will be the permanent loss of their right to possess firearms.

It is common for defendants accused of felony offenses to attempt to negotiate a plea agreement that doesn't result in the loss of that right (either through reduction of the charge or by withhold of adjudication). And if that attempt fails, it is likewise common for such defendants to proceed to trial based upon that concern. In other words, it is a contemplated punishment for the crime for which they are accused—and for which due process is afforded at every turn of the criminal case.

Many constitutionally protected rights are lost as a result of conviction of a crime. For example, the Constitution permits the permanent removal of a felon's right to vote or their right to sit on a jury as a result of such a conviction. *Medina*, 913 F.3d at 160 (D.C. Cir. 2019) (citing 28 U.S.C. § 1865(b)(5) (barring convicted felons from serving on a federal jury); *Richardson v. Ramirez*, 418 U.S. 24, 56

(1974) (upholding state felon disenfranchisement)). Likewise, for some period of time after conviction, a defendant loses even more constitutional rights as punishment for the crime during any term of prison or probation. *See Range*, 124 F.4th at 226-27. Undeniably, the right to possess firearms are among those lost (along with, for example, the right to be free from search and seizure without probable cause or the right to freely assemble). *Id.* Which of these rights are lost and for how long are within the purview of the legislature—bound, of course, by the Eight Amendment protection against cruel and unusual punishment.

Put simply, unless the permanent prohibition on possession of a firearm as punishment for a particular crime offends the Eighth Amendment (which is not claimed by the Appellant here), it passes constitutional muster regardless of the application of the *Bruen* test.[9]

[9] While the Constitution permits a permanent bar to a felon's possession of firearms as a punishment for those offenses, F.S. § 790.23 makes clear that offenders can seek restoration of their civil rights and firearm authority. In fact, given the relevant mitigators before a clemency board, the Appellant's unique circumstances here might very well result in the restoration those rights.

III. PERMITTING CASE-BY-CASE, AS-APPLIED CHALLENGES BASED UPON THE NATURE OF A FELON'S PRIOR OFFENSE(S) WOULD LEAD TO UNCERTAINTY, CONFUSION, AND INCONSISTENT APPLICATION OF THE LAW.

In formulating its opinion in this case, this Court must recognize the precedential value of its holding. Presently, only three District Courts of Appeal have addressed this issue post-*Bruen*—the First (*Edenfield*, 379 So. 3d 5), the Third (*Gibbs*, 2025 WL 2845189), and the Fourth (*Paul*, 381 So. 3d 617; *Fleming*, 414 So. 3d 175)—all of which have consistently held that the prohibition on possession of firearms by convicted felons is constitutional. As there are no conflicting decisions from other districts, these holdings are binding on all trial courts in the State. *See Pardo v. State*, 596 So. 2d 665 (1992) ("[I]n the absence of interdistrict conflict, district court decisions bind all Florida trial courts.").

However, if this court were to overturn (or distinguish this case from) *Edenfield*, its holding would not only be binding on every trial court within the First District, its opinion would be persuasive authority in the three districts that have not yet opined on the issue, further complicating the issue. *Id.*

In the absence of a change in the United States Supreme Court jurisprudence (which, as discussed above, *Rahimi* does not provide), any change in this Court's precedent would serve only to create uncertainty, confusion, and inconsistent application of the law.

A. The lack of guidance or direction to prosecutors and law enforcement resulting from the application of case-by-case analyses would render the statute virtually unenforceable.

Unfortunately, the nature of a judicial system that determines outcomes with respect only to a single case or controversy at a time renders it difficult, if not impossible, for this Court to permit case-by-case, as applied challenges to F.S. § 790.23 and still provide sufficient guidance to those who are tasked with applying its precedent in the future.

As a practical matter, the complications are obvious. As is made clear in *Range*, the variables that a court could consider in determining whether any particular felony conviction sufficiently demonstrates the offender to be "dangerous" are endless. 124 F.4th 218, 232. That court based its ultimate holding not only on the nature of the offense for which the defendant was convicted, but also

on the age of conviction and the lack of other evidence on the record that he "pose[d] a physical danger to others."[10] *Id.*

Even within the relatively narrow band of opinions that have permitted "as applied" challenges to the constitutionality of felon-in-possession statutes, courts disagree on the factual and historical rationale. For example, after attempting to liken the Appellee to a debtor as opposed to a thief, the Fifth Circuit in *Cockerham* stated boldly and without reservation that "during the Founding era, thieves were treated differently from debtors. Thieves were subject to permanent disarmament[, while d]ebtors were not." 162 F. 4th at 510. Yet, in *Range*, where the defendant was unequivocally a convicted thief (having been adjudicated guilty of stealing funds through fraud), the Third Circuit utterly ignores the fact that "during the Founding era, . . . [t]hieves were subject to permanent

[10] Would a more recent conviction for the same offense allow for a prohibition on the possession of a firearms? What about an older conviction for a more violent crime? Seemingly, even facts about the offender *entirely outside the scope of the crime or conviction* could affect the analysis, as the court referenced a lack of other evidence of the Appellant's dangerousness. *See also*, *e.g.*, *Williams*, 113 F.4th at 659–60 ("When evaluating a defendant's dangerousness, a court may consider a defendant's entire criminal record—not just the specific felony underlying his [felon-in-possession] conviction.").

disarmament," basing its rationale on entirely different factors. *See Range*, 124 F.4th 218.

Under these (to some degree conflicting) rubrics, there is simply no practical way for law enforcement or prosecutors to discern which felons may be constitutionally prohibited from possessing firearms and which may not.[11]

Even worse, as a legal matter, this level of uncertainty and confusion regarding which felons may lawfully possess a firearm and which may not could render the entire statute void for vagueness. *See Brown v. State*, 629 So. 2d 841, 842 (Fla. 1994). "The standard for testing vagueness under Florida law is whether the statute gives a person of ordinary intelligence fair notice of what constitutes forbidden conduct." *Id.* (citing *Papachristou v. City of Jacksonville*, 405 U.S. 156 (1972)). "The language of the statute must 'provide a definite warning of what conduct' is required or prohibited, 'measured by common understanding and practice.'" *Warren v.*

[11] Similarly, the constitutionally substantive nature of the issue potentially opens the door to the postconviction re-litigation of the many thousands of past convictions for possession by a felon. *See*, *e.g.*, *Toye v. State*, 133 So. 3d 540 (Fla. 2d DCA 2014) (citing *Witt v. State*, 387 So.2d 922 (Fla. 1980)).

State, 572 So.2d 1376, 1377 (Fla. 1991) (quoting *State v. Bussey*, 463 So.2d 1141, 1144 (Fla. 1985)). Indeed, if prosecutors and police have difficulty determining which acts are prohibited by a criminal statute, how is the average citizen expected to do so with any level of confidence?

Even if it were practicable for law enforcement and prosecutors to make those types of individualized determinations with respect to each unique circumstance, there would nevertheless be a flood of civil litigation, as any arrest under the section could result in a claim of civil rights violations in federal and state court. Not only would such a deluge bog down the court system, the public cost of defending such claims would be enormous, and the mere threat of such claims would have a chilling effect on the enforcement of the statute as a whole—even in circumstances that might otherwise appear plainly constitutional.

B. The confusion created by such case-by-case analyses would reach beyond those defendants charged only under § 790.23.

Florida Statutes § 790.23 does not operate in a vacuum. In addition to the statute's criminal liability, whether a person is

lawfully in possession of a firearm is a fundamental element of other offenses.

The most obvious example can be seen with respect to Stand-Your-Ground immunity claims pursuant to F.S. § 776.032. Chapter 776 grants immunity from criminal charges to those defendants who are engaged in the justifiable use of force. Sections 776.012 and 776.031 provide that a person "does not have a duty to retreat and has the right to stand his or her ground if the person . . . is not engaged in a criminal activity." Florida courts have held that a person does not enjoy the benefits of the Stand-Your-Ground provisions of chapter 776 when they are already acting in violation of § 790.23. *See State v. Wonder*, 162 So. 3d 59 (Fla. 4th DCA 2014); *Little v. State*, 111 So. 3d 213 (Fla. 2d DCA 2013). Thus, a precedent permitting case-by-case, as applied challenges to the application of § 790.23 will result in the same challenges with respect to every use of force by a felon with a firearm, fundamentally changing the analysis as to whether the justifiable use of force defense applies and whether the defendant is entitled to immunity.

CONCLUSION

For the reasons set forth above, *amicus curiae*, the Florida Prosecuting Attorneys Association, Inc., urges this Court to affirm the decision of the trial court below. Prohibitions on the possession of firearms by convicted felons are consistent with the nation's historical tradition and are likewise justified as the lawful punishment for the conviction of criminal offenses. Any opinion to the contrary would result in needless uncertainty, confusion, and inconsistent application of the law.

Respectfully submitted this 27th day of March, 2026,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 27th day of March, 2026, a true and correct copy of the foregoing was served upon all counsel or parties of record via electronic transmission through the Florida Courts E-Filing Portal, including:

/s/ Douglas A. Wyler

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CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY that the type size and style used in this brief is double-spaced 14-point Bookman Old Style font in compliance with Florida Rule of Appellate Procedure 9.045(b), and that this brief does not exceed 5,000 words, pursuant to Florida Rule of Appellate Procedure 9.370(b).

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