No. 12-1437

IN THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

RAYMOND WOOLLARD, *et al.*,

Plaintiffs-Appellees,

v.

DENIS GALLAGHER, *et al.*,

Defendants-Appellants.

On Appeal from the United States District Court
for the District of Maryland
(Benson E. Legg, District Judge)

REPLY BRIEF OF APPELLANTS

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August 22, 2012

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REPLY ARGUMENT

Plaintiffs' brief concentrates on attacking a hypothetical statute prohibiting the "carrying of handguns for self-defense," Appellees' Br. 1; they argue insistently that the good-and-substantial reason requirement in Maryland's Permit Statute implicates a "fundamental right to carry arms for self-defense," *id.* at 8. They are wrong: The statute does not prohibit the carrying of handguns for self-defense, in public or otherwise. Maryland's Permit Statute does not in any way restrict the carrying of any type of arms for self-defense in one's home or business, nor does it restrict the carrying of arms other than handguns in public. The statute imposes only a minimal burden—that of obtaining a permit—on the carrying of handguns for self-defense in public by individuals with a demonstrable need to do so.

The question before this Court is not the broad hypothetical question of whether there is a general right to carry arms for self-defense, but rather the much narrower question of whether there is a specific constitutional right to carry one a particular type of firearm, a handgun, in public, in circumstances that the Permit Statute does not already allow (*see* Appellants' Br. 4-5), in the absence of any objectively-reasonable self-defense need. Maryland's good-and-substantial reason requirement does not burden any right secured by the Second Amendment and,

even if it did, the requirement is a reasonable fit to Maryland's compelling interests in promoting public safety and reducing handgun violence.

I. MARYLAND'S PERMIT STATUTE DOES NOT BURDEN ANY RIGHT PROTECTED BY THE SECOND AMENDMENT.

The Supreme Court, in *District of Columbia v. Heller*, held that the Second Amendment secures an individual right to carry a handgun for self-defense within one's home. *See* 554 U.S. 570, 635 (2008) (requiring issuance to the plaintiff, if not otherwise disqualified, of a license to "carry [his handgun] in the home"). Even if the right to carry a handgun for self-defense extends outside the home, that does not mean, or even imply, that there is a right to carry a loaded handgun, in public, *without* a demonstrable self-defense need to do so. *See id.* at 626 (Second Amendment right is "not a right to keep and carry any weapon whatsoever in any manner whatsoever and for whatever purpose").[1] Neither Plaintiffs' discussion of historical sources nor their mistaken reconception of *Heller* supports their contention that the Permit Statute prohibits conduct protected by the Second Amendment right.

[1] The Supreme Court signaled that its decision should not be understood as an indictment of existing firearms laws that do not completely ban possession of handguns within the home by cautioning that "it should not be thought that" previously-decided cases adjudicating gun-control laws "would necessarily have come out differently under" the interpretation of the Second Amendment right adopted by the Court. *Heller*, 554 U.S. at 624 n.24.

A. Plaintiffs Mischaracterize the Scope of the Permit Statute.

The first step in this Court's Second Amendment analysis is determining whether the challenged regulation "imposes a burden on conduct falling within the scope of the Second Amendment's guarantee," as historically understood. *United States v. Chester*, 628 F.3d 673, 680 (4th Cir. 2010) (internal quotation marks omitted). Plaintiffs fail to engage in any meaningful analysis of the Permit Statute's scope aside from an inaccurate and unsupported caricature of the permit process as turning on "some official's whim." Appellee's Br. 8.[2] In fact, the scope of Maryland's Permit Statute is significantly narrower than the hypothetical statute they attack. *See* Appellants' Br. 4-8, 18-19.

Plaintiffs' real disagreement with Maryland's Permit Statute is that its good-and-substantial reason requirement precludes individuals from carrying loaded handguns in public, outside of specified activities like hunting and target practice, when those individuals *do not* have an objectively-reasonable self-defense or other need to do so. Thus, while the mere "assertion of a self-defense interest," Appellee's Br. at 3, is not enough to obtain a permit, the requirement does not

[2] In making this assertion, Plaintiffs fail to address either the actual standards followed in assessing permit applications (J.A. 56-61), the numerous levels of review of initial decisions by an administrative board and courts, *see* Appellants' Br. 7-8, and the district court's rejection of Plaintiffs' allegation of arbitrariness (J.A. 151-53). Plaintiffs cite no factual support for their contention, and it is baseless.

prevent any Marylander with a demonstrable need to wear and carry a loaded handgun in public for self-defense from obtaining a permit, including on a same-day basis. (J.A. 60-61.)

B. Historical Sources Do Not Support a *Right* to Carry Handguns in Public in Circumstances Not Already Provided for in the Permit Statute.

This case is about whether the Permit Statute impermissibly intrudes on the Second Amendment *right*. Plaintiffs' historical discussion focuses primarily on identifying conduct that was not prohibited in the founding era based on then-prevailing needs, weapons technology, and policy choices. Plaintiffs implicitly and illogically rely on the assumption that conduct not banned in 1791 must have been believed to be protected as a matter of right. It is not difficult to draw the Venn diagram that distinguishes between things that may be regulated but are not from those that *must* not be regulated. There is no reason to believe that the Framers undertook to extend the right to keep and bear arms to the precise outer edge of what was allowable under then-prevailing laws. The pre-existing right codified in the Second Amendment had always co-existed with restrictions on the public carry of arms enacted to meet public safety needs. Appellants' Br. 23-30.

Indeed, the Supreme Court has expressly recognized that "the right secured by the Second Amendment is not unlimited." *Heller*, 554 U.S. at 626. For example, the Court limited the core right to "law-abiding, responsible citizens,"

Heller, 554 U.S. at 635, even though the amendment's text contains no such limitation, and no similar limitation applies to other rights secured by the Bill of Rights.

Importantly, the Supreme Court recognized as "presumptively lawful" several "longstanding" regulations that were not in existence until long after the Second Amendment's adoption. *Heller*, 554 U.S. at 626-27 & n.26. For example, the first state prohibition on the possession of concealed carry was not enacted until 1813, *see* Saul Cornell, *A Well-Regulated Militia: The Founding Fathers and the Origins of Gun Control in America* 138-41 (2006); prohibitions on the possession of firearms by felons were not commonplace until the 20th century, *see* Lawrence Rosenthal, McDonald v. Chicago*: Which Standard of Scrutiny Should Apply to Gun-Control Laws?*, 105 Nw. U. L. Rev. Colloquy 85, 92 (2010); and Congress did not prohibit the mentally ill from possessing guns until 1968, just three years before Maryland's Permit Statute was enacted, *see United States v. Yancey*, 621 F.3d 681, 683 (7th Cir. 2010). The Supreme Court in *Heller* thus made clear not only that the Second Amendment right is not unlimited, but that its public-safety focused limitations are not restricted only to those in place in 1791.

Indeed, a long history of regulation of the public wear and carry of arms, especially easily-concealable arms, in the interest of public safety serves to demonstrate that the Second Amendment would not have been understood to

preclude a regulation like the Permit Statute. *See* Appellants' Br. 23-30; Brief of Legal Historians (Doc. 34). None of the arguments by Plaintiffs and their *amici* undermine this critical point.

1. Historical Sources Do Not Support a *Right* to Carry Handguns in Public Absent a Self-Defense Need.

Plaintiffs argue incorrectly that statutes regulating or prohibiting the public carry of weapons in the 17th and 18th centuries universally required that the carry be accomplished in such a way as to terrorize the public. Appellants' Br. 40-45.

As an initial matter, Plaintiffs confuse the issue by focusing improperly on the crime of affray, which was sometimes linked with, but was often treated distinctly from, the carry of firearms in public. For example, the Statute of Northampton provided that no man could come before the King's justices or ministers "with force and arms, nor bring no force in affray of the peace, nor to go nor ride armed by night nor by day . . . nor in no part elsewhere . . . ." 2 Ed 3, c.3 (1328). The statute's construction, with clauses separated by "nor," prohibits both "bringing force in affray" and going or riding armed in public. Blackstone similarly treated these separately, listing each as a different "offence[] against the public peace." 4 William Blackstone, *Commentaries on the Laws of England* 145-49 (Clarendon Press 1769) (listing "Affrays (from *affraier*, to terrify)," and "*riding*

or going armed, with dangerous or unusual weapons," as separate offenses, several pages apart).[3]

Plaintiffs are also incorrect in claiming that early-American restrictions on public carry universally required fear or terror in others. For example, although the version of the Statute of Northampton adopted by Virginia prohibited going or riding armed "in terror of the Country," *A Collection of All Such Acts of the General Assembly of Virginia, of a Public and Permanent Nature, as Are Now in Force*, ch. 21, at 33 (1794) (Addendum 5), there is no indication that this criterion was understood to be required by the *right* secured by the Second Amendment, as opposed to the Virginia General Assembly's considered judgment about the needs of the Commonwealth at that time. In fact, the Virginia framers' consideration of including in their constitution a right to bear arms that would have been limited to

[3] Moreover, contrary to the implication of Plaintiffs and their *amici*, William Hawkins's statement that "Per[s]ons of Quality" were in no danger of offending the Statute of Northampton "by wearing common Weapons," William Hawkins, *1 Treatise of the Pleas of the Crown*, ch. 63, § 9 (1716), does not in any way suggest a general *right* to carry weapons in public, but instead constitutes an allowance for privileged members of English society that was not extended generally to other citizens, *see, e.g.*, John Trusler, *2 The Distinction Between Words Deemed Synonymous in the English Language Pointed Out, and the Proper Choice of Them Determined*, at 92-93 (1795) ("men of quality" are "men of rank and title") (Addendum 1), whose simple carrying of weapons in public might very well give rise to fear among those they would encounter.

one's "own land or tenements,"[4] and Virginia's ultimate decision not to constitutionalize any right to bear arms at all, strongly suggests the right was not so understood. Moreover, by the mid-19th century, a Virginia statute penalized going armed in public with no mention of whether the carry induced fear or terror among others: "If a person go armed with a deadly or dangerous weapon, without reasonable cause to fear violence to his person, family or property, he may be required to give a recognizance, with the right of appeal . . . ." *Third Edition of the Code of Virginia: Including Legislation to January 1, 1874*, Title 55, ch. 196, § 8, at 1223 (1873) (Addendum 10);[5] *see also Second Edition of the Code of Virginia, Including Legislation to the Year 1860*, Title 55, ch. 201, § 8, at 818 (1860) (Addendum 13).

By contrast, the version of the Statute of Northampton originally adopted by North Carolina provided that no man was permitted to "go nor ride armed by night nor by day, in fairs, markets, . . . nor in no part el[s]ewhere," without any mention of fear or terror. *A Collection of the Statutes of the Parliament of England in*

[4] Regardless of whether Jefferson's use of brackets suggested he was advocating an express limitation of the right to bear arms to one's "own land or tenements," Legal Historians Br. (Doc. 34) at 6, or, as Plaintiffs' *amici* suggest, setting it forth as an option, Brief Professors of Law, *et al.* (Doc. 80-1) at 12, this language certainly suggests that Jefferson did not believe the *right* necessarily extended beyond one's property line.

[5] Notably, this statute treated going armed in public separately from the offense of affray. *Id.* at 1223-24.

Force in the State of North Carolina, ch. 3, at 60-61 (1792) (Addendum 7). Although the North Carolina Supreme Court, ruling more than 50 years later, read into this statute a requirement that the arm be carried "to the annoyance and terror and danger" of other citizens, *State v. Huntly*, 25 N.C. 418, 422 (1843), that opinion is most notable for: (1) its holding that *any* firearm constitutes an "unusual weapon" even though most North Carolinians owned one; and (2) its observation that "[n]o man amongst us carries [a gun] about with him, as one of his every day accoutrements—as part of his dress—and never we trust will the day come when any deadly weapon will be worn or wielded in our peace loving and law-abiding State, as an appendage of manly equipment," *id.* at 422-23. The North Carolina court concluded that the statute in effect at that time permitted carry for "any lawful purpose—either business or amusement." *Id.* at 423. Notably, Maryland's Permit Statute protects public carry for lawful purposes of business, amusement, and, where a reasonable need exists, for self-defense.

The historical record thus includes statutes that prohibited the public carry of concealable weapons only if it incited fear or terror in others, and other statutes that prohibited it without any such limitation. Certain conclusions can be drawn from this record. First, it appears that these statutes were crafted based on considerations of public policy, rather than a constitutional imperative. Maryland's General Assembly has similarly made a policy choice to address a

significant public safety problem. Second, that certain statutes predicated the prohibition on giving rise to fear or terror in others, rather than the intent of the individual carrying the weapon, demonstrates there was no *right* to carry such readily-concealable weapons in public (at least unless the individual was under a reasonable apprehension of imminent harm). Third, even if the incitement of fear or terror in others were the key element in determining whether the public carry of firearms is within the Second Amendment's scope, the Maryland General Assembly could reasonably have determined, in light of the "alarming[]" increase in violent crimes involving the use of handguns in Maryland, Md. Code Ann., Crim. Law § 4-202, that the public carry of such weapons by individuals without a good and substantial reason to do so caused not only fear in, but unacceptable harm to, others.

Nor do state constitutions in force at the time the Second Amendment was ratified provide any support for Plaintiffs' claims. Of the 12 original states with founding-era constitutions, eight did not include any right to keep and bear arms,[6]

[6] Del. Const. (1776), 1 Francis Newton Thorpe, *The Federal and State Constitutions*, 562-68 (1909); Ga. Const. (1777), 2 Thorpe 777-85; Md. Const. (1776), 3 Thorpe 1686-1701; N.H. Const. (1776), 4 Thorpe 2451-53; N.J. Const. (1776), 5 Thorpe 2594-98; N.Y. Const. (1777), 5 Thorpe 2623-38; S.C. Const. (1778), 6 Thorpe 3248-57; Va. Const. (1776), 7 Thorpe 3812-19. Notably, Virginia did not adopt a constitutional right to keep and bear arms until 1971. John Dinan, *The Virginia State Constitution: A Reference Guide* 64 (2006). As a result, the Commonwealth's claimed "interest" that any decision by this Court in this case

two included rights to bear arms expressly for "the common defence" or "defence of the State,"[7] and the remaining two included rights to bear arms "in defence of himself and the State" or "for the defence of themselves and the State."[8] None of these constitutions reflect a right to carry, in public, a specific type of weapon, for purposes other than those already exempt from Maryland's Permit Statute, with no demonstrable self-defense need.

Moreover, even if all founding-era laws punished only the carry of arms that induced fear or terror in others, history demonstrates that the public carry of dangerous weapons has long been regulated in the interest of public safety. That the scope of those regulations changed over time based on significant social changes, developments in weapons technologies,[9] increasing urbanization, and changing threats is unsurprising. To the contrary, it would be surprising if the founders had decided to enshrine as a matter of constitutional right laws that were addressed to the specific circumstances in which they found themselves at that

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might influence the interpretation of its own constitutional provision seems farfetched. Brief of Virginia, *et al.* ("Virginia Br.") at 1.

[7] Mass. Const. Part the First, Art. XVII (1780), 3 Thorpe 1888, 1892; N.C. Declaration of Rights § 17 (1776), 5 Thorpe 2787, 2788.

[8] Conn. Const., Art. First, § 17 (1818), 1 Thorpe 536, 538; Pa. Declaration of Rights § XIII (1776), 5 Thorpe 3081, 3083.

[9] The first commercially-successful revolver in the United States was patented by Samuel Colt in 1836. U.S. Patent Office, Samuel Colt, *Improvement in Fire-Arms*, Patent 9430X (Feb. 25, 1836) (patent for "revolving gun" invention).

moment.[10] The historical record does not provide any reason to conclude that the founders acted in this manner.[11]

2. Nineteenth Century Cases Do Not Support a *Right* to Carry Handguns in Public in Circumstances Not Already Provided for in the Permit Statute.

Plaintiffs fail to squarely address the 19th-century cases cited by Defendants, which show the evolution of laws regulating public carry in the face of changing weapons technology and increased threats to public safety. Those authorities

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[10] For example, that citizens in 1791 were generally permitted to carry weapons into churches does not mean that the Second Amendment protects a *right* to carry firearms into churches, *see, e.g., Georgiacarry.org, Inc. v. Georgia*, __ F.3d __, No. 11-10387, 2012 U.S. App. LEXIS 14955, *59 (11th Cir. July 20, 2012) (Second Amendment does not guarantee right to carry a firearm in a place of worship against the owner's wishes).

[11] Plaintiffs' *Amici* California Rifle & Pistol Association Foundation, *et al.* ("California Rifle") (Doc. 82-1), crafts a misleading historical narrative by, for example: (1) citing *Judy v. Lashley*, 50 W.Va. 628, 629 (1902) for the statement that public carry was not considered "a breach of the peace" at common law, California Rifle Br. at 10, without acknowledging that the same decision found public carry of concealable weapons to constitute a "danger to life and limb of the citizens of the State," and thus was punishable under state (but not municipal) law, *Judy*, 50 W.Va. at 634-35; (2) claiming Defendants' citation to Dalton's *The Country Justice* is "particularly misleading" because it is an English source, without acknowledging that it, like other English sources on the laws that were imported into this country, was used as an important reference source in America, *see, e.g., Hays v. Commonwealth*, 27 Pa. 272, 274 (1856) (citing Dalton); *People v. Schuyler*, 6 Cow. 572, 575 (N.Y. Sup. Ct. 1827) (same); *see also Minnesota v. Dickerson*, 508 U.S. 366, 380-381 (1993) (Scalia, J., concurring) (same); and (3) claiming North Carolina's adoption of the Statute of Northampton "explicitly provided that the carrying of arms must be to the fear or terror of the country," California Rifle Br. at 8-9, when the statute itself did no such thing, *see* discussion above at 8-9.

demonstrate that laws completely banning the carry of concealable weapons were understood not to violate the pre-existing right secured by the Second Amendment or by state analogues. Plaintiffs' only response to those authorities is to claim that some of the statutes at issue did not bar carry of "*all* handguns" because they exempted expensive, military-issue handguns. Appellees' Br. 45-47. As an initial matter, it appears that only two of the statutes were interpreted to contain such an exemption. *See id.* More importantly, that those states chose to ban many types of easily-concealable weapons, but exempt another that was deemed important for military purposes, says nothing about the constitutionality of Maryland's Permit Statute.

Instead of addressing these authorities, Plaintiffs and their *amici* rely on a small group of cases that they claim stand for the proposition that a State can ban concealed carry or open carry, but not both. Appellees' Br. 37-38. One of these cases, *Andrews v. State*, 50 Tenn. 165 (1871), is to the contrary. In *Andrews*, the court reviewed complete bans, including in the home, on the carry of, among other weapons, a "belt or pocket pistol or revolver." *Id.* at 171. The court upheld the ban on the carry of a "belt or pocket pistol." *Id.* at 186. The court invalidated the ban on the carry of revolvers, but only because it applied to an individual's carry of a weapon "about his own home, or on his own premises," or traveling to a repair shop, or shooting a rabid dog in the street. *Id.* at 187. "If the Legislature think

proper," the court added, it could "regulate the carrying of [the revolver] publicly, or abroad, in such a manner as may be deemed most conducive to the public peace, and the protection and safety of the community from lawless violence." *Id.* at 187-88.

The other three cases primarily relied on by Plaintiffs and their *amici* state that a complete prohibition on open carry would violate the right to keep and bear arms. *State v. Chandler*, 5 La. Ann. 489, 490 (1850); *Nunn v. State*, 1 Ga. 243, 251 (1846); *State v. Reid*, 1 Ala. 612, 616-17 (1840). Those cases are directly contradictory to the decisions of West Virginia, Texas, Arkansas, and Tennessee high courts, which upheld complete prohibitions on the public carry of certain concealable weapons, *see* Appellants' Br. 27-29, as well as statutes restricting public carry in other parts of the country, *id.* at 25-26. Moreover, Maryland's Permit Statute does not ban either concealed or open carry.

Plaintiffs' reliance on Supreme Court case law is equally unavailing. None of the cases cited even raises the question of whether the Second Amendment right extends outside the home. *See Johnson v. Eisentrager*, 339 U.S. 763 (1950); *United States v. Miller*, 307 U.S. 174 (1939); *United States v. Cruikshank*, 92 U.S. 542 (1876). Although the *Dred Scott* decision seems to imply, in a passage devoid of analysis, that providing citizenship to African-Americans would have permitted them to carry weapons "wherever they went," *Dred Scott v. Sandford*, 60 U.S. (19

How.) 393, 417 (1857), Plaintiffs' reliance on a passage with no analysis from one of the most abhorrent and poorly-reasoned decisions in Supreme Court history is revealing as to the strength of this position.[12]

In sum, the Permit Statute does not implicate conduct within the scope of the Second Amendment right as historically understood.

II. EVEN IF MARYLAND'S PERMIT STATUTE BURDENS CONDUCT PROTECTED BY THE SECOND AMENDMENT, IT SATISFIES THE APPLICABLE LEVEL OF SCRUTINY.

A. The Applicable Level of Scrutiny Is Intermediate Scrutiny.

This Court, in *United States v. Masciandaro*, held that intermediate scrutiny applies to "laws that burden the right to keep and bear arms outside of the home." 638 F.3d 458, 471 (4th Cir. 2011). Because the Permit Statute, which regulates conduct occurring only outside the home, is "reasonably adapted" to the State's "substantial" interest in public safety, *id.*, it satisfies intermediate scrutiny. Plaintiffs' contention that this Court should instead apply the prior restraint doctrine is meritless. Indeed, no court, including the district court below, has adopted the prior restraint doctrine in the Second Amendment context. *See, e.g.*,

[12] Plaintiffs also mistakenly rely on two recent district court decisions. Although concluding the Second Amendment right extends outside the home to some degree, neither *United States v. Weaver*, No. 2:09-CR-00222, 2012 U.S. Dist. LEXIS 29613, *11-*13 (S.D. W.Va. March 7, 2012), nor *Bateman v. Perdue*, No. 5:10-CV-265-H, 2012 U.S. Dist. LEXIS 47336, *11-*12 (E.D.N.C. March 29, 2012) contains any analysis of the scope of that right outside the home.

Piszczatoski v. Filko, 840 F. Supp. 2d 813, 831-32 (D.N.J. 2012); *Kachalsky v. Cacace*, 817 F. Supp. 2d 235, 267 n.32 (S.D.N.Y. 2011).

1. The Prior Restraint Doctrine, Unique to First Amendment Rights, Does Not Apply in the Second Amendment Context.

Plaintiffs argue that Maryland's Permit Statute is an unconstitutional prior restraint on the right to bear arms. "Prior restraint," however, is a doctrine unique to the First Amendment, referring to restraints on *expressive* conduct. *See, e.g.*, *City of Lakewood v. Plain Dealer Pub. Co.*, 486 U.S. 750, 759 (1988) (describing prior restraints as licensing laws granting officials "substantial power to discriminate based on the content or viewpoint of speech by suppressing disfavored speech or disliked speakers"). Accordingly, to be a prior restraint, the challenged law "must have a close enough nexus to expression, or to conduct commonly associated with expression, to pose a real and substantial threat of . . . censorship." *Id.* The doctrine is tailored to the unique demands of the First Amendment, which has its roots in the centuries-old "struggle in England, directed against the legislative power of the licenser, result[ing] in renunciation of the censorship of the press." *Near v. Minnesota*, 283 U.S. 697, 713 (1931).

No similar historical justification exists for applying the doctrine here, nor is there any logical justification for "import[ing] the First Amendment's idiosyncratic doctrines wholesale into a Second Amendment context, where, without a link to

expressive conduct, they will often appear unjustified." *Chester*, 628 F.3d at 687 (Davis, J., concurring). Indeed, firearms regulations are not intended to limit or censor expressive conduct but rather to further compelling public safety interests. Unlike in the First Amendment context, where a state can "adequately serve[]" its interests by imposing "penalties . . . after freedom to speak has been so grossly abused that its immunity is breached," *Carroll v. President & Comm'rs of Princess Anne*, 393 U.S. 175, 180-81 (1968), the State has no "adequate[]" remedy for redressing gross abuse of one's right to bear arms, which may well result in an "unspeakably tragic act of mayhem," particularly "as one move[s] the right from the home to the public square." *Masciandaro*, 638 F.3d at 475-76.

In *Heller*, the Supreme Court acknowledged these public safety concerns, and the presumptive lawfulness of restraints not applied in the First Amendment context, 555 U.S. at 626-27, including bans on gun possession by felons and the mentally ill, *cf. Crawford-El v. Britton*, 523 U.S. 574, 592 (1998) (recognizing prisoners' First Amendment rights), and bans on carrying guns "in sensitive places such as schools and government buildings," *cf. Richmond Newspapers, Inc. v. Virginia*, 448 U.S. 555, 578 (1980) (holding that First Amendment protects "access" to public courtrooms). Far from suggesting such measures face a "heavy presumption against [their] validity," as "prior restraints" would, *Bantam Books*,

Inc. v. Sullivan, 372 U.S. 58, 70 (1963), the Court described them as "presumptively lawful," *Heller*, 554 U.S. at 627 n.26.[13]

Plaintiffs also improperly conflate concerns specific to First Amendment freedoms, *i.e.* "unbridled discretion . . . [that] may result in censorship," *Lakewood*, 486 U.S. at 757, with general concerns that unchecked discretion may work arbitrary deprivations of other constitutional rights, *see, e.g.*, *City of Chicago v. Morales*, 527 U.S. 41, 53, 60-61 (1998) (holding anti-loitering ordinance giving police officers "absolute discretion" to enforce law violated due process, but rejecting overbreadth challenge because statute did not "prohibit speech"); *Louisiana v. United States*, 380 U.S. 145, 153 (1965) (holding statute giving elections officers "arbitrary power" to determine voter qualifications infringed on voting rights). Courts can protect Second Amendment rights from official "whim" without importing an inapplicable prior restraint analysis.[14]

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[13] Plaintiffs' reliance on the Supreme Court's decision in *Staub v. City of Baxley*, 355 U.S. 313 (1958), to support application of prior restraint in the Second Amendment context is misplaced. *Staub* is a First Amendment case that cited other First Amendment decisions for the proposition that an ordinance regulating First Amendment freedoms could not be "contingent upon the uncontrolled will of an official," as that would be "an unconstitutional censorship or prior restraint upon the enjoyment of those freedoms." 355 U.S. 313, 322 (1958).

[14] Plaintiffs also attempt to analogize to the Fourth Amendment. *See* Appellees' Br. 17-18. Notably, "the Fourth Amendment has drawn a firm line at the entrance to the house." *Payton v. New York*, 445 U.S. 573, 590 (1980); *see also Illinois v. Lidster*, 540 U.S. 419, 424 (2004) ("The Fourth Amendment does not treat a motorist's car as his castle."); *United States v. Dunn*, 480 U.S. 294, 300-03 (1987)

2. Strict Scrutiny Does Not Apply to Firearms Regulations on Activity Outside the Home.

This Court's clear holding in *Masciandaro* that intermediate scrutiny applies to "laws that burden the right to keep and bear arms outside of the home," 638 F.3d at 471, forecloses Plaintiffs' argument that this Court should apply strict scrutiny. Although Plaintiffs argue that the Court should apply strict scrutiny because, they claim, the Permit Statute burdens a "fundamental" right, this Court in *Masciandaro* rejected that same argument based on the "longstanding out-of-the-home/in-the-home distinction" in firearms regulations. *Id.* at 470, 471.[15]

(core Fourth Amendment protection does not extend beyond curtilage of home); *Terry v. Ohio*, 392 U.S. 1, 6-7, 22-27 (1968) (allowing warrantless search of person on public street with reasonable suspicion).

[15] *Amicus* National Rifle Association, Inc. ("NRA") contends this Court erred in *Masciandaro* by failing to apply a categorical approach to firearms regulations. NRA's claim that *Heller* rules out traditional means-ends scrutiny is wrong. *Cf. Heller*, 554 U.S. at 628 n.27 (rejecting only rational basis review). Nor does the Court's rejection of an "interest-balancing" approach constitute a rejection of some form of heightened scrutiny; the former would require judicial assessment of the "proportion[ality]" of the statute's burdens and benefits, *id.* at 683, whereas the latter inquires only into the strength and fit of the governmental interest. Indeed, *Heller* referred to the lack of "interest-balancing" in the First Amendment context, *id.*, where regulations have long been subject to means-ends scrutiny. NRA further errs in relying on Chief Justice Roberts's comments at oral argument suggesting the Court look to "restrictions that existed at the time the amendment was adopted" and "lineal descendants of th[ose] restrictions." *See* Tr. of Oral Argument at 44, 77, *Heller* No. 07-290. Whatever the Chief Justice's views at oral argument, *Heller* did not hold that heightened scrutiny was inapt, and every circuit to consider the question has applied some form of heightened scrutiny. *See Heller v. District of Columbia*, 670 F.3d 1244, 1265-66 (D.C. Cir. 2011) (collecting cases). More relevant to the issues before this Court are the Chief Justice's remarks

B. The Permit Statute Is a Reasonable Fit to the State's Compelling Interests in Public Safety and Reducing Handgun Violence.

Plaintiffs contend erroneously that the good-and-substantial reason requirement is not a reasonable fit with the State's admittedly compelling interests in public safety and reducing handgun violence because, they contend, the Permit Statute serves only to deny exercise of the right itself without serving any legitimate purpose. In making this argument, Plaintiffs ignore completely the legislative findings of the Maryland General Assembly, improperly disregard the only evidence in the record about the importance of the good-and-substantial reason requirement, and rely on flawed and inapposite statistics.

1. Plaintiffs Fail to Counter the Record Evidence Submitted by Defendants.

Plaintiffs largely ignore the testimonial evidence submitted by Defendants, which is the only record evidence regarding the importance of the good-and-substantial reason requirement. *See* Appellants' Br. 44-51. Instead of engaging that evidence in any meaningful way, Plaintiffs deride as "self-described experts" three of Maryland's highest-ranking law enforcement officials and a professor of public policy who has been researching firearms violence for more than three decades. The law enforcement officers, with a collective 108 years of experience

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indicating that one acknowledged restriction on the right to bear arms is that "you can't take [a] gun to the marketplace." Tr. at 44, 77.

in law enforcement, are "experts" in the areas of public safety and firearms violence in every sense of the word, and Plaintiffs have not offered any reason to question that. (J.A. 108, 115, 126.) The credentials of Defendants' academic expert are similarly impeccable, with more than three decades of experience researching firearms violence and publishing books and articles on the subject. (J.A. 66-67, 82-107.) Plaintiffs fail to counter the substance of this evidence.

2. The Evidence on Which Plaintiffs Rely Is Flawed and Inapposite.

Although they argue that resolving statistical disputes about the impact on crime of so-called "shall issue" laws—laws that require issuance of permits to anyone who satisfies certain criteria that do not involve any consideration of the reason or need for the permit—is "beyond the Court's adjudicative capacity," Appellees' Br. at 62, Plaintiffs nonetheless wade into that area directly and by proxy, *id.* at 63 (deferring to *amici* to present "criminological evidence").

a. Social Science Evidence Relied on by Plaintiffs and Their *Amici* Is Flawed.

Plaintiffs' *amici* persist in relying on studies purportedly showing that "shall issue" gun permit statutes reduce crime. *See, e.g.*, Virginia Br. 17-18. However, such studies were debunked in a comprehensive 2004 National Research Council study that concluded that the data then available were insufficient to reach a scientifically-definitive conclusion about the impact of "shall issue" laws on crime

rates because of the sensitivity of that data to minor changes in the models that were used, the failure of the results to hold up when additional years of data were added, and "the statistical imprecision of the results." National Research Council, Firearms & Violence: A Critical Review, 7 (2004) ("NRC Report"), available at http://www.nap.edu/openbook.php?isbn=0309091241. The report did not conclude that there is no causal link between adoption of "shall issue" laws and crime rates, or that identification of such a link is not possible, just that current data and studies were not sufficiently robust to do so to a scientific certainty. *Id.* at 150-51.[16]

More recently, a 2011 study extensively reviewed, updated, and corrected certain errors in existing data. Abhay Aneja, John J. Donohue III, Alexandria

[16] Arguments of Plaintiffs and their *Amici* seek to impose on Maryland policy choices made by other States, essentially asking the Court to impose what Virginia refers to as a "broad political consensus against gun control," Virginia Br. 16. Doing so would not only be antithetical to federalism principles that both Maryland and (usually) Virginia hold dear, but would fail to account for significant differences between States. As one telling example, of the 87 geographical areas within the 50 United States and the District of Columbia identified by the U.S. Census Bureau as having a population density greater than 7,500 people per square mile in 2010, 72 areas (more than 82%)—are in California, D.C., Hawaii, Illinois, Maryland, Massachusetts, New York, and New Jersey, jurisdictions Plaintiffs have identified as having "may- or no-issue laws." U.S. Census Bureau, *Population, Housing Units, Area, and Density: 2010 – United States – Places with 50,000 or More Population by State; and for Puerto Rico (2010)*, available at http://factfinder2.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=DEC_10_SF1_GCTPH1.US14PR&prodType=table. The remaining 43 states combined have only 15 such areas. *Id.*

Zhang, *The Impact of Right-to-Carry Laws and the NRC Report: Lessons for the Empirical Evaluation of Law and Policy*, 13:2 American Law & Econ. Rev. 565 (Fall 2011), available at http://aler.oxfordjournals.org/content/13/2/565.abstract. Although the authors agreed with the NRC Report that the available data are insufficient to identify, to a scientific certainty, a causal link between "shall issue" laws and crime rates, they determined, using this updated and corrected data, that the only statistically-significant conclusion that could be drawn is that "shall issue" laws "likely increase the rate of aggravated assaults." *Id.* at 615-16.[17]

It is not for the courts to decide which side of the intense and unsettled debate over the impact of "shall issue" laws on crime is correct. The issue before this Court is not whether the Maryland General Assembly made the correct policy choice, but whether the Second Amendment forecloses that choice. Surely a State need not prove that a firearm regulation is scientifically-guaranteed to reduce crime to be sustained. *Cf., e.g., Gonzales v. Carhart*, 550 U.S. 124, 163 (2007) (explaining, in context of conflicting medical evidence pertaining to abortion

[17] Plaintiffs' citation to a study concluding that "defensive gun use is very common in the U.S., and that it probably is substantially more common than criminal gun use," Appellees' Br. 63 (citation omitted), also ventures into an area that is hotly contested. *See, e.g.*, NRC Report at 6-7; David Hemenway, *Policy and Perspective: Survey Research and Self-Defense Gun Use: An Explanation of Extreme Overestimates*, 87 J. Crim. L. & Criminology 1430 (1997) (concluding that the extreme overestimate of the frequency of defensive gun use comes from the study's reliance on self-reporting of a rare event).

regulation, that the "Court has given state and federal legislatures wide discretion to pass legislation in areas where there is medical and scientific uncertainty"); *Kansas v. Hendricks*, 521 U.S. 346, 360, n. 3 (1997) (noting, in response to conflicting scientific evidence pertaining to state's civil commitment statute, that "when a legislature undertakes to act in areas fraught with medical and scientific uncertainties, legislative options must be especially broad" (internal quotation marks omitted)).

b. Plaintiffs' Reliance on Other States' Rates of Permit Revocation Is Mistaken.

Plaintiffs rely on misleading statistics about the frequency of permit revocation in states with "shall issue" permit regimes. Appellees' Br. 63-65. This focus is mistaken first because it fails to address the numerous ways the good-and-substantial reason requirement advances Maryland's goal of promoting public safety and reducing handgun violence that do not depend on whether the individual with a permit intentionally commits a criminal act. *See* Appellants' Br. 44-51.

Moreover, revocation statistics are a poor proxy for identifying criminal activity by permit holders because they depend on states having adequately-staffed, efficient, and transparent mechanisms for their licensing authorities to receive information about, and then act on, criminal activities of permit holders. There is no evidence that the states whose revocation statistics Plaintiffs cite have any such

mechanisms. To the contrary, investigations have found the opposite. *See, e.g.*, Michael Luo, *Guns in Public, and Out of Sight*, N.Y. Times, Dec. 26, 2011 (newspaper investigation identified convictions of felonies or non-traffic misdemeanors by more than 2,400 North Carolina permit holders between 2007 and 2011, and found that, in "about half of the felony convictions, the authorities failed to revoke or suspend the holder's permit, including for cases of murder, rape and kidnapping"); *License to Carry: Florida's Flawed Concealed Weapon Law*, South Florida Sun-Sentinel, Jan. 28, 2007 (finding that concealed carry licenses were issued to hundreds of people found responsible by courts "for assaults, burglaries, sexual battery, drug possession, child molestation—even homicide").

Additionally, although the amount of information about activities of permit holders is severely limited,[18] the information that does exist demonstrates that, while a majority of handgun permit holders have not been charged with crimes, many crimes, including murders, are committed by permit holders, particularly in "shall issue" states. For example, using news and police reports, the Violence Policy Center has identified more than 450 *killings* by concealed carry permit holders just since May 2007. *See* Violence Policy Center, *Total People Killed By*

[18] As a result of a concerted campaign by certain advocacy groups, at least 28 states have laws or regulations that prevent public access to information about gun owners. *See* Reporters Committee for Freedom of the Press, *Open Government Guide* (2011), available at http://www.rcfp.org/open-government-guide.

Concealed Carry Killers (June 2012), available at http://www.vpc.org/fact_sht/ccwtotalkilled.pdf (last visited August 19, 2012).[19] Notably, the report has identified only two non-suicide killings in Maryland by permit holders (one of which was committed by a holder of a Virginia permit), *id.* at 65-66, whereas two "shall-issue" states that border it—Pennsylvania and Virginia—have *each* had 22 non-suicide killings by permit holders. *Id.* at 128-47 & 179-92.

Finally, the revocation statistics themselves show a different picture from that painted by Plaintiffs. For example, in Fiscal Year 2011, 5,021 carriers of Florida concealed weapon or firearms licenses had their licenses revoked or suspended due to a disqualifying arrest or domestic violence injunction. *See* Florida Department of Agriculture & Consumer Services, Division of Licensing,

[19] Plaintiffs' *amicus* International Law Enforcement Educators & Trainers Association ("ILEETA") unfairly attacks the VPC list on numerous grounds, including for risking double-counting by relying in part on state reports that anonymize data. ILEETA Br. 9-12. Although the VPC takes measures to protect against double-counting, data collection is hindered by the restrictions on public access urged by advocacy groups. Although ILEETA also objects to the inclusion of 132 suicides in the total list, omitting them still leaves more than 300 non-suicide killings. Most other ILEETA criticisms are either flawed, such as its claim that individuals who engaged in "a carefully planned premeditated crime" should not be included, *id.* at 11, or simply wrong, such as ILEETA's claim that the VPC report improperly lists a homicide of a Michigan law enforcement officer, ILEETA Br. 9-10, even though the homicide was reported by the State Police, *see* Michigan State Police, *Concealed Pistol Licensure, Annual Report, July 1, 2010 to June 30, 2011*, at 22 ("Michigan Report") available at http://www.michigan.gov/documents/msp/2011_CPL_Report_376632_7.pdf.

Concealed Weapon or Firearm License Report (2011), available at http://licgweb.doacs.state.fl.us/stats/07012010_06302011_cw_annual.pdf. Also in Fiscal Year 2011, 2,711 criminal charges were filed against Michigan concealed carry license holders. Michigan Report at 34. And in Utah, more than 1,000 concealed carry permit holders had their permits revoked in 2011 after committing offenses that include murder, armed robbery, kidnapping, and sexual exploitation of a minor. *Concealed Firearm Permit and Brady Bill Statistical Data*, available at http://publicsafety.utah.gov/bci/brady_statistics.html.

In sum, Plaintiffs have failed to undermine the evidence demonstrating that the good-and-substantial reason requirement is a reasonable fit to Maryland's compelling interests in maintaining public safety and combating handgun violence and the Permit Statute satisfies the intermediate scrutiny test.

CONCLUSION

The judgment of the United States District Court for the District of Maryland should be reversed, and the Court should direct entry of judgment in favor of Appellants.

Respectfully submitted,

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August 22, 2012

Attorneys for Appellants

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

No. 12-1437 **Caption:** Raymond Woollard, et al. v. Denis Gallagher, et al.

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Attorney for Appellants

Dated: August 22, 2012

THE

DISTINCTION

BETWEEN

WORDS ESTEEMED SYNONYMOUS

IN THE

ENGLISH LANGUAGE,

POINTED OUT,

AND THE PROPER CHOICE OF THEM

DETERMINED.

Uſeful to all who would either write or ſpeak with Propriety and Elegance.

By the Rev. Dr. JOHN TRUSLER.

IN TWO VOLUMES.

THE THIRD EDITION,

WITH ADDITIONS AND AMENDMENTS.

VOL. II.

LONDON:

Printed for the AUTHOR;

And Sold by J. PARSONS, Paternoſter-Row, and all Bookſellers.

M,DCC,XCV.

Diſagreeable circumſtances ſhall *vex* us; but it requires many, and in quick ſucceſſion, to *teaſe* us.

To *vex*, always puts out of humour; but a perſon may be ſometimes *teaſed* into good humour. *Vex* a child, and leave it, it will dwell on the *vexation* till it cries; but *teaſe* it immediately after, by tickling it, or rouſing it, and it will ſoon return to its original temper.

By *vexing* a perſon, we may ſour the beſt of tempers for the moment; but, by a continual *teaſing*, we may totally change it from good to bad.

Of *Faſhion*, of *Quality*, of *Diſtinction*.

As ſynonymous as theſe expreſſions may be, in the mouths of thoſe who uſe them, they imply particular characters, in their right ſignification, when we are obliged, on certain occaſions, to expreſs ourſelves properly.

By men of *faſhion*, is underſtood, ſuch men as live in the *faſhionable* world, and keep the beſt company. By men of *quality*, is underſtood, men of rank and title. By men of *diſtinction*, is underſtood, men of honourable ſuperiority, whether by wealth, by office, or pre-eminence in ſcience.

The firſt claſs of gentry, though, perhaps, not perſons of *quality*, are undoubtedly, perſons of *faſhion*. The nobles of the realm, and their children, whilſt the head of the family be living, are all perſons of *quality*, whether they are titled or not. Sheriffs, mayors, generals, admirals, governors, deans, graduate doctors, and very wealthy people, are all men of *diſtinction*; though, perhaps, not all men of *faſhion*, or *quality*.

Men of *faſhion* are admired; men of *quality* reſpected; and men of *diſtinction* revered.

A man diſtinguiſhed for his learning, and ſuperior

rior knowledge, who is a man of *diſtinction*, is, *cæteris paribus*, a much more reſpectable character, though he does not mix with the faſhionable world; than a man of *faſhion*, who has nothing to recommend him but his polite manners, and good connexions; or a man of *quality*, who owes his rank, perhaps, to the favour of his prince, without any deſerts of his own.

To *Foretell*, *Prophecy*, *Prognoſticate*, *Predict*, *Forebode*.

To *foretell* is a general term, and implies a capacity, by various means, to announce the arrival of a thing long before it happens; the other four are, as it were, different ſpecies of *foretelling*. To *prophecy*, is to *foretell* by inſpiration. To *prognoſticate*, is to *foretell* by ſymptoms; to *predict*, by the influence of heavenly bodies; and to *forebode*, is to *foretell* diſagreeable events only.

Learned men are enabled to *foretell*, by obſervation, and other means, events, before they occur. Prophets, by inſpiration, *propheſy* what is hid in the womb of time. Phyſicians *prognoſticate* the event of diſeaſes, by certain ſymptoms, or prognoſtics. Aſtrologers *predict* good or bad fortune, by means of the planets; and augurs *forebode* diſaſters to come, by the flight of birds, and the entrails of animals.

Prophecy, is the effect of a ſupernatural gift; *prognoſtication*, of real medical knowledge and obſervation; but *prediction*, and *foreboding*, are the effects of imagination. *Prophecies*, and *prognoſtications*, are to be depended on; *predictions* and *forebodings* are to be laughed at.

Iſaiah, and the Prophets of old, *foretold* in their *prophecies*, the birth of our Saviour, as circumſtantially as they would have written it, had they lived in his time. Medical men, by obſervations, are

are able to *prognoſticate* the criſis of diſorders with great certainty. Almanack-makers pretend to *predict* rain, or froſt, twelve months before it is to happen, with as much confidence, as they *foretell* the change of the moon; and perſons of a fanciful and melancholy caſt, will preſume to *forebode* miſchief; which is the viſion of their own diſordered conceptions, and merely in the lap of chance.

Fluid, Liquid.

Theſe words, philoſophically conſidered, have been indiſcriminately uſed. Every *liquid* is a *fluid*; but every *fluid* is not a *liquid*.

A *liquid*, under the ordinary preſſure of the air, has a ſurface parallel to the horizon, as water and quickſilver; but this is by no means the caſe with every *fluid*; as for example, air itſelf, ſmoke, vapour, ſteam.

All metals in fuſion are *liquids*. Quickſilver, for particular uſes, is often changed from its *liquid* ſtate, to a fixed one.

Sound is propagated by the *fluidity* of the air; for, having received the ſtroke of the voice, it ſo undulates, as to communicate that ſtroke to the adjoining air; thus, in ſucceſſion, it is carried to the ear, and theſe ſtriking the tympanum, or drum, occaſions that ſenſation which we call ſound.

Tranſparent, Clear.

The laſt word ſeems to riſe in brightneſs upon the firſt. I conceive, that a ſubſtance may be ſufficiently *tranſparent*, to ſee objects through; but not ſo *clear*, as if we had no medium to ſee through.

All water, in its nature, is *tranſparent*; but the water of a rivulet, pure and limpid; which ſuffers us

A COLLECTION

OF ALL SUCH

ACTS

OF THE

GENERAL ASSEMBLY

OF

VIRGINIA,

OF A PUBLIC AND PERMANENT NATURE, AS ARE NOW IN FORCE;

WITH A TABLE OF THE PRINCIPAL MATTERS.

TO WHICH ARE PREFIXED THE DECLARATION OF RIGHTS, AND CONSTITUTION, OR FORM OF GOVERNMENT.

PUBLISHED PURSUANT TO AN ACT OF THE GENERAL ASSEMBLY, INTITULED, "AN ACT PROVIDING FOR THE REPUBLICATION OF THE LAWS OF THIS COMMONWEALTH," PASSED ON THE TWENTY-EIGHTH DAY OF DECEMBER, ONE THOUSAND SEVEN HUNDRED AND NINETY-TWO.

R I C H M O N D:

Printed by Augustine Davis, Printer for the Commonwealth, 1794.

1786.

terposition disarmed of her natural weapons, free argument and debate, errors ceasing to be dangerous when it is permitted freely to contradict them:

II. *BE it enacted by the General Assembly*, That no man shall be compelled to frequent or support any religious worship, place, or Ministry whatsoever, nor shall be enforced, restrained, molested, or burthened in his body or goods, nor shall otherwise suffer on account of his religious opinions or belief; but that all men shall be free to profess, and by argument to maintain, their opinions in matters of religion, and that the same shall in no wise diminish, enlarge, or affect their civil capacities.

No man compelled to frequent or support any religious worship. All men free to profess, and by argument to maintain their religious opinions.

III. AND though we well know that this Assembly elected by the people for the ordinary purposes of legislation only, have no power to restrain the Acts of succeeding Assemblies, constituted with powers equal to our own, and that therefore to declare this Act to be irrevocable, would be of no effect in law; yet we are free to declare, and do declare, that the rights hereby asserted, are of the natural rights of mankind, and that if any Act shall be hereafter passed to repeal the present, or to narrow its operation, such Act will be an infringement of natural right.

Declaration that the rights by this Act asserted, are of the natural rights of mankind.

General Assembly, begun and held at the Public Buildings, in the City of *Richmond*, on *Monday*, the 16th Day of *October*, in the Year of our Lord, 1786.

CHAP. XXI.

An Act forbidding and punishing Affrays.

[Passed the 27th of November, 1786.]

BE *it enacted by the General Assembly*, That no man, great nor small, of what condition soever he be, except the Ministers of Justice in executing the precepts of the Courts of Justice, or in executing of their office, and such as be in their company assisting them, be so hardy to come before the Justices of any Court, or other of their Ministers of Justice, doing their office, with force and arms, on pain, to forfeit their armour to the Commonwealth, and their bodies to prison, at the pleasure of a Court; nor go nor ride armed by night nor by day, in fairs or markets, or in other places, in terror of the Country, upon pain of being arrested and committed to prison by any Justice on his own view, or proof by others, there to abide for so long a time as a Jury, to be sworn for that purpose by the said Justice, shall direct, and in like manner to forfeit his armour to the Commonwealth; but no person shall be imprisoned for such offence by a longer space of time than one month.

Punishment of persons going armed before Courts of Justice, or the Ministers of Justice, or in fairs or markets in terror of the Country

CHAP. XXII.

An Act against Conspirators.

[Passed the 27th of November, 1786.]

BE *it declared and enacted by the General Assembly*, That Conspirators be they that do confederate and bind themselves by oath, covenant, or other alliance, that every of them shall aid and bear the other falsely and maliciously, to move or cause to be moved any indictment or information against another on the part of the Commonwealth, and those who are convicted thereof at the suit of the Commonwealth, shall be punished by imprisonment and amercement, at the discretion of a Jury.

Who shall be deemed conspirators.

A COLLECTION OF THE STATUTES OF THE PARLIAMENT OF ENGLAND IN FORCE IN THE STATE OF NORTH-CAROLINA.

PUBLISHED ACCORDING TO A RESOLVE OF THE GENERAL ASSEMBLY.

By FRANCOIS-XAVIER MARTIN, Esq.
COUNSELLOR AT LAW.

NEWBERN:
FROM THE EDITOR'S PRESS.

1792.

CHAP. VIII.

Nothing ſhall be taken for Beaupleader.

ITEM, Whereas ſome of the realm have grievouſly complained, that they be grieved by Sheriffs, naming themſelves the King's approvers, which take money by extortion for Beaupleader, the King will, that the ſtature of Marlebridge ſhall be obſerved and kept in this point.

CHAP. XIV.

None ſhall commit Maintenance.

ITEM, Becauſe the King deſireth that common right be adminiſtered to all perſons, as well poor as rich, he commandeth and defendeth, that none of his Counſellors, nor of his houſe, nor none other of his Miniſters, nor no great man of the realm by himſelf, nor by other, by ſending of letters, nor otherwiſe, nor none other in this land, great nor ſmall, ſhall take upon them to maintain quarrels nor parties in the country, to the let and diſturbance of the common law.

Statutes made at Northampton, tribus Septimanis Paſchae, in the Second Year of the Reign of Edward the Third, and in the Year of our Lord 1328.

CHAP. I.

A Confirmation of the Great Charter and the Charter of the Foreſt.

[*Unneceſſary to be inſerted.*]

CHAP. III.

No Man ſhall come before the Juſtices, or go or ride armed.

ITEM, It is enacted, that no man great nor ſmall, of what condition ſoever he be, except the King's ſervants in his preſence, and his Miniſters in executing of the King's precepts, or of their office, and ſuch as be in their company aſſiſting them, and alſo upon a cry made for arms to keep the peace, and the ſame in ſuch places where ſuch acts happen, be ſo hardy to come before the King's Juſtices, or other of the King's

Miniſters doing their office with force and arms, nor bring no force in an affray of peace, nor to go nor ride armed by night nor by day, in fairs, markets, nor in the preſence of the King's Juſtices, or other miniſters, nor in no part elſewhere, upon pain to forfeit their armour to the King, and their bodies to priſon at the King's pleaſure. And that the King's Juſtices in their preſence, Sheriffs and other miniſters, in their bailiwicks, Lords of Franchiſes, and their bailiffs in the ſame, and Mayors and Bailiffs of cities and boroughs, within the ſame cities and boroughs, and borough-holders, conſtables and wardens of the peace within their wards ſhall have power to execute this act. And that the Juſtices aſſigned, at their coming down into the country, ſhall have power to enquire how ſuch officers and lords have exerciſed their offices in this caſe, and to puniſh them whom they find that have not done that which pertain to their office.

CHAP. V.

The Manner how Writs ſhall be delivered to the Sheriff to be executed.

ITEM where it was ordained by the ſtatute of Weſtminſter the ſecond, that they which will deliver their writs to the Sheriff ſhall deliver them in the full county, or in the rere county, and that the Sheriff or Under-Sheriff ſhall thereupon make a bill: it is accorded and eſtabliſhed, that at what time or place in the county a man doth deliver any writ to the Sheriff or to the Under-Sheriff, that they ſhall receive the ſame writs, and make a bill after the form contained in the ſame ſtatute, without taking any thing therefore. And if they refuſe to make a bill, others that be preſent ſhall ſet to their ſeals, and if the Sheriff or Under-Sheriff do not return the ſaid writs, they ſhall be puniſhed after the form contained in the ſaid ſtatute. And alſo the Juſtices of Aſſize ſhall have power to enquire thereof at every man's complaint, and to award damages, as having reſpect to the delay, and to the loſs and peril that might happen.

CHAP. VI.

Juſtices ſhall have Power to puniſh Breakers of the Peace.

ITEM, as to the keeping of the peace in time to come, it is ordained and enacted that the ſtatutes made in time paſt, with the ſtatute of Wincheſter, ſhall be obſerved and kept in every point: and where it is contained in the end of ſaid ſtatute of Wincheſter, that the Juſtices aſſigned ſhall have power to enquire of defaults, and to report to the King in his next parliament, and the King to remedy it, which no man hath yet ſeen, the ſame Juſtices ſhall have power to puniſh the offenders and diſobeyers.

THIRD EDITION

OF THE

CODE OF VIRGINIA:

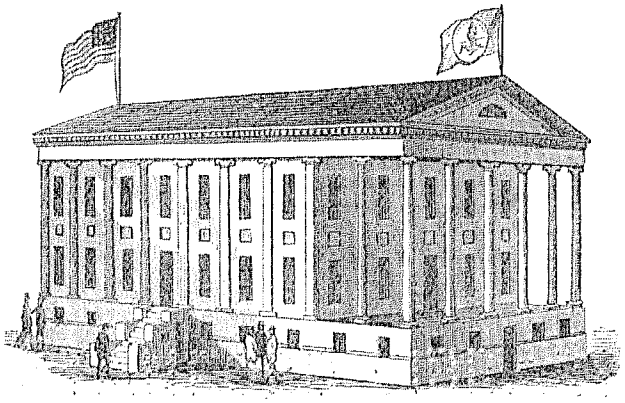
INCLUDING

LEGISLATION TO JANUARY 1, 1874.

PREPARED BY

GEORGE W. MUNFORD.

PUBLISHED FOR THE STATE OF VIRGINIA, PURSUANT TO LAW, UNDER THE DIRECTION OF R. F. WALKER, SUPERINTENDENT OF PUBLIC PRINTING.



RICHMOND:
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1873.

vator of the peace, and may require from persons not of good fame, security for their good behavior, for a term not exceeding one year.* 1847-8, p. 127, c. 14, § 1, 17. 1866-7, c. 118, § 1, p. 916.

2. If complaint be made to any such conservator that there is good cause to fear that a person intends to commit an offence against the person or property of another, he shall examine on oath the complainant, and any witnesses who may be produced, reduce the complaint to writing, and cause it to be signed by the complainant. Id., § 2.

3. If it appear proper, such conservator shall issue a warrant, reciting the complaint, and requiring the person complained of forthwith to be apprehended and brought before him or some other conservator. Id., § 3. 3 Munf., 458.

4. When such person appears, if the conservator, on hearing the parties, consider that there is not good cause for the complaint, he shall discharge the said person, and may give judgment in his favor against the complainant for his costs. If he consider that there is good cause therefor, he may require a recognizance of the person against whom it is, and give judgment against him for the costs of the prosecution, or any part thereof; and unless such recognizance be given, he shall commit him to jail by a warrant, stating the sum and time in and for which the recognizance is directed. The person giving judgment, under this section, for costs, may issue a writ of fieri facias thereon, if an appeal be not allowed; and proceedings thereupon may be according to the ninth and eleventh sections of chapter one hundred and forty-seven. 1845-6, p. 64, c. 87. 1847-8, p. 128, § 4-8. 1866-7, c. 118, § 4, p. 916. Ante, c. 147, § 9, 11.

5. A person from whom such recognizance is required, may, on giving it, appeal to the court of the county or corporation; in such case the officer from whose judgment the appeal is taken, shall recognize such of the witnesses as he thinks proper. 1847-8, p. 128, § 9-10. 1866-7, c. 118, § 5, p. 916.

Power of court thereupon, and when accused is committed.

6. The court may dismiss the complaint or affirm the judgment, and make what order it sees fit as to the costs. If it award costs against the appellant, the recognizance which he may have given, shall stand as a security therefor. When there is a failure to prosecute the appeal, such recognizance shall remain in force, although there be no order of affirmance. On any appeal the court may require of the appellant a new recognizance if it see fit. Id., § 6.

7. Any person committed to jail under this chapter may be discharged by the county or corporation court on such terms as it may deem reasonable. Id., § 7.

Persons armed; affrays and threats; recognized to keep peace.

8. If a person go armed with a deadly or dangerous weapon, without reasonable cause to fear violence to his person, family or property, he may be required to give a recognizance, with the right of appeal, as before provided, and like proceedings shall be had on such appeal. Id., § 8. 1 R. C., p. 554, c. 140.

9. If a person, in the presence of a court or a conservator of the 1847-8, p. 129, § 15.

*By § 16, post., special county police are to be appointed to exercise this authority. Police justices are also conservators.—See ante, c. 48, § 8, p. 464. By § 20, post., they are to be appointed for watering places, and for the university and incorporated colleges. And the Central agricultural society may appoint special constables with same authority.—Post., § 19; Acts 1859-60, c. 294, § 4.

1866-7, c. 118, § 9, p. 917.

peace, make an affray, or threaten to kill or beat another, or to commit violence against his person or property, or contend with angry words, to the disturbance of the peace, he may, without process or further proof, be required to give a recognizance.

Proceedings, when person suspected of retailing spirits without license.

Id., § 10.

10. If any justice suspect any person of selling, by retail, wine or ardent spirits, or a mixture thereof, contrary to law, he shall summon the person, and such witnesses as he may think proper, to appear before him; and upon the persons appearing, or failing to appear, if the justice, on examining the witnesses on oath, find sufficient cause, he shall direct the commonwealth's attorney for the court of his county or corporation to institute a prosecution against such person, and shall recognize the material witnesses, or cause them to be summoned, to appear at the next term of the said court. Such justice may also require the person suspected, to enter into a recognizance to keep the peace and be of good behavior, for a time not exceeding one year. If such recognizance be given, the condition thereof shall be deemed to be broken, if, during the period for which it is given, such person shall sell, by retail, wine or ardent spirits, or a mixture thereof, contrary to law.

Special county police; how appointed and removed.

1859-60, p. 172, c. 63, § 1. 1866-7, c. 118, § 11, p. 917.

11. The county courts of the several counties and corporations of this commonwealth may, if they deem it advisable, appoint a special police force, to consist of not less than twelve suitable and discreet persons, who shall serve as such until others are appointed in their place by the court.

Id., § 12.

12. The court may at any time remove any or all of such police, and appoint others, and may fill any vacancy that may occur in said police force, or may add to the number theretofore appointed.

Id., § 13.

13. The removal from the county in which he was appointed, shall vacate the office of such person so appointed, or he may resign or decline the appointment, and thereupon the vacancy shall be filled by the court.

Jurisdiction and power of such police; search warrants.

Id., § 14.

14. The jurisdiction and authority of said police shall extend no further than the limits of the county in which they are appointed; and a copy of the order of appointment, made by the court, attested by the clerk of such court, shall in all cases be received as evidence of their official character.

1866-7, c. 118, § 15, p. 918.

15. It shall be the duty of said special police so appointed, and they are hereby authorized to apprehend and convey before a justice of the peace, to be dealt with according to law, all persons whom they may be, by the warrant of a justice, directed to apprehend, or whom they have cause to suspect have violated the laws of the state, or intend so to do; and they shall be authorized to search for stolen property, at any time, upon the application of any one who will make affidavit before the captain, or any member of such police, or a justice of the peace, that he has lost property of a certain description, and that he

1865-6, c. 13, p. 82.

THE

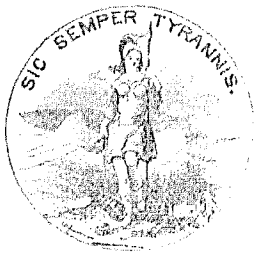
CODE OF VIRGINIA.

SECOND EDITION,

INCLUDING LEGISLATION TO THE YEAR

1860.

PUBLISHED PURSUANT TO LAW.



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1860.

any witnesses who may be produced, reduce the complaint to writing, and cause it to be signed by the complainant.

Id. § 3
3 Munf. 458

3. If it appear proper, such conservator shall issue a warrant reciting the complaint, and requiring the person complained of forthwith to be apprehended and brought before him or some other conservator.

1845-6, p. 64, c. 87
1847-8, p. 128, § 4, 5, 6, 7, 8

4. When such person appears, if the conservator, on hearing the parties, consider that there is not good cause for the complaint, he shall discharge the said person, and may give judgment in his favor against the complainant for his costs. If he consider that there is good cause therefor, he may require a recognizance of the person against whom it is, and give judgment against him for the costs of the prosecution, or any part thereof; and unless such recognizance be given, he shall commit him to jail by a warrant, stating the sum and time in and for which the recognizance is directed. The person giving judgment, under this section, for costs, may issue a writ of fieri facias thereon, if an appeal be not allowed: and proceedings thereupon may be according to the ninth and eleventh sections of chapter one hundred and fifty.

Ante, c. 150, § 9, 11

1847-8, p. 128, § 9, 10

5. A person from whom such recognizance is required, may, on giving it, appeal to the court of the county or corporation; in such case the officer, from whose judgment the appeal is taken, shall recognize such of the witnesses as he thinks proper.

Id. § 11, 12

6. The court may dismiss the complaint or affirm the judgment, and make what order it sees fit as to the costs. If it award costs against the appellant, the recognizance which he may have given shall stand as a security therefor. When there is a failure to prosecute the appeal, such recognizance shall remain in force, although there be no order of affirmance. On any appeal the court may require of the appellant a new recognizance, if it see fit.

Id. § 13, 14

7. Any person committed to jail under this chapter may be discharged by the county or corporation court, on such terms as it may deem reasonable.

Id. § 16
1 R. C. p. 554, c. 140

8. If a white person go armed with a deadly or dangerous weapon, without reasonable cause to fear violence to his person, family or property, he may be required to give a recognizance, with the right of appeal, as before provided, and like proceedings shall be had on such appeal.

Id
1847-8, p. 129, § 15

9. If a person, in the presence of a court or a conservator of the peace, make an affray, or threaten to kill or beat another, or to commit violence against his person or property, or contend with angry words, to the disturbance of the peace, he may, without process or further proof, if he be a white person, be required to give a recognizance, and if he be a negro, be punished with stripes.

Persons suspected of retailing liquors without license.

10. If any justice suspect any free person of selling, by retail, wine or ardent spirits, or a mixture thereof, contrary to law, he shall summon the person, and such witnesses as he may think proper, to appear before him; and upon the persons appearing, or failing to appear, if the justice on examining the witnesses on oath, find sufficient cause, he shall direct the commonwealth's attorney for the court of his county or corporation, to institute a prosecution against such person, and shall recognize the

CERTIFICATE OF SERVICE

I certify that, on this 22nd day of August 2012, I electronically filed with the Clerk of the Court via the CM/ECF System the foregoing Reply Brief of Appellants. Two bound hard copies of the foregoing Reply Brief of Appellant will also be sent by first-class mail, postage prepaid on August 23, 2012, to the following:

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