Spring 2018

William Todd Keller, Best of Section B

William Todd Keller

NO. 17-1234

In the

SUPREME COURT OF THE UNITED STATES

March 2018

Alexandra Hamilton,

Petitioner,

v.

County of Burr and Joan Adams,

Respondents.

ON WRIT OF CERTIOARI

TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTEENTH CIRCUIT

BRIEF FOR PETITIONER

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QUESTIONS PRESENTED

I. Whether the individual right to possess firearms extends beyond the home.

II. If so, whether the "good cause" requirement is a permissible limitation on an individual's right to possess a concealed firearm in public.

LIST OF PARTIES TO THE PROCEEDING

Petitioner, Alexandra Hamilton, was the plaintiff before the United States District Court for the Eastern District of Columbia and the appellee before the United States Court of Appeals for the Fourteenth Circuit.

Respondents, County of Burr and Joan Adams, were the defendants before the United States District Court for the Eastern District of Columbia, and the appellants before the United States Court of Appeals for the Fourteenth Circuit.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

CONSTITUTIONAL PROVISIONS

STATUTES

CASES

OPINIONS BELOW

The United States District Court for the Eastern District of Columbia's Opinion and Order granting Plaintiff's motion for summary judgment is unpublished. (R. at 7-13) The United States Court of Appeals for the Fourteenth Circuit's Opinion and Order is unpublished. (R. at 14-19)

STATEMENT OF JURISDICTION

The court of appeals entered judgment on July 1, 2017. (R. at 19) Petitioner timely filed a Petition for Writ of Certiorari, which the Court granted on November 13, 2017. (R. at 20) This Court's jurisdiction rests on 28 U.S.C. § 1254(1) (2012).

STANDARD OF REVIEW

This Court reviews a district court's fact findings for clear error and its legal conclusions de novo.

PROVISIONS INVOLVED

"A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed." U.S. Const. amend. II.

"A person may not carry a firearm in a public place unless they are in possession of a Permit to Carry a Concealed Weapon ("CCW Permit")." Columbia Penal Code § 900(A).

STATEMENT OF THE CASE

Alexandra Hamilton, the petitioner, is a resident of Weehawken in the State of Columbia. (R. at 7) Ms. Hamilton's son, John Church, was beaten and robbed in a home invasion at plaintiff's residence. (R. at 3) Mr. Church suffered permanent injuries for which he needed spinal surgery and ongoing rehabilitation treatment. (R. at 3) The assailant, a twenty-eight-year-old man with piercings and a facial tattoo, was apprehended and charged and is now serving five years in prison. (R. at 3) However, due to the attack, Ms. Hamilton has become severely emotionally distressed and has an immobilizing fear of men who look similar to her son's attacker. (R. at 3) Subsequently, to protect herself, Ms. Hamilton applied for a Permit to Carry a Concealed Weapon (CCW Permit) as required by Columbia law. Columbia Penal Code (CPC) § 900.1(A). (R. at 3) Columbia does not allow its citizens to open-carry in public. (R. at 3)

The Columbia statute requires a citizen to demonstrate a "good cause" as to why they should possess a CCW permit by showing that she or a family member is in harm's way. CPC § 900.1(F)(4). (R. at 3) Additionally, the statute requires a background check and a successful completion of a firearm safety course. (R. at 3) Ms. Hamilton met the "good cause" requirement by citing her son's robbery incident and her fear of further invasion and future criminal attacks at her home and place of work. (R. at 7) Upon meeting all of the requirements, Ms. Hamilton was lawfully issued a CCW permit. (R. at 3)

One evening, Ms. Hamilton arrived alone at Weehawken Rehabilitation to accompany her son during his rehabilitation treatment. (R. at 4) Outside the building's entrance, George Cornwallis, a thirty-three-year-old man, approached her apparently seeking directions to a part of the rehabilitation facility. (R. at 4) Mr. Cornwallis had tattoo sleeves on both arms and a piercing on his eyebrow. (R. at 3) Out of sudden fear, Ms. Hamilton pulled out her concealed pistol but

did not fire her weapon. (R. at 4) Mr. Cornwallis, a trained off-duty policeman, disarmed Ms. Hamilton. (R. at 4) Ms. Hamilton was unable to produce the required documents to Officer Cornwallis because she accidentally left her wallet at home. (R. at 4) As a result, Officer Cornwallis cited her with a failure to produce the proper permit and identification, violating CPC § 900.1(C). (R. at 4) She was fined $1,000 and her CCW permit was revoked by the Burr County Court, stating she no longer met the "good cause" requirements needed by the Columbia statute. (R. at 4)

The respondents are Burr County and Joan Adams (collectively "the County"), the Burr County Commissioner who is responsible for administering the County's laws, practices, policies, and customs that are currently in dispute. (R. at 2) Although Ms. Hamilton still desires to carry her firearm in public for self-defense, she is currently prohibited from doing so because of the County's enforcement of the statute. (R. at 4)

Ms. Hamilton filed suit in the District Court for the Eastern District of Columbia on Second Amendment grounds on November 9, 2015. (R. at 8) Ms. Hamilton sought injunctive relief and declaratory relief from the County's enforcement of the Columbia Penal Code § 900.1(F)(4). (R. at 7) Both parties filed motions for summary judgment. (R. at 7) Ms. Hamilton asserted that the Columbia statute violates her Second Amendment right by requiring her to demonstrate "good cause" in order to bear arms in public. (R. at 8) The district court granted Ms. Hamilton's motion for summary judgment and denied the County's summary judgment motion. (R. at 7) The County appealed the denial to the United States Court of Appeals for the Fourteenth Circuit, where the decision was reversed. (R. at 14) The Supreme Court granted certiorari to review whether the individual right to possess firearms extends beyond the home, and if so,

whether the "good cause" requirement is a permissible limitation on an individual's right to possess a concealed firearm in public. (R. at 20)

SUMMARY OF THE ARGUMENTS

I.

The Second Amendment protects an individual's fundamental right to carry firearms in public. The central component of the Second Amendment is self-defense against both private and public violence. In *Heller*, the Supreme Court indicates a historical distinction between the words "keep" and "bear" that suggests the right extends outside of the home. Although *Heller* states the right to self-defense is most acute in the home, a right exists beyond the home as well. Ms. Hamilton exemplifies a citizen who is exposed to danger and feels that she is in harm's way. Even though the Second Amendment right is not unlimited, a total ban is not permitted. Columbia's statutory scheme acts as a total ban, which is notably not listed as one of the longstanding prohibitions mentioned in *Heller*. Columbia's ban on public carry is not a traditionally recognized regulation of a fundamental right.

II.

The "good cause" requirement infringes on a fundamental right and is either a total ban on public carry or fails strict scrutiny. Carrying firearms in public is within the scope of the Second Amendment protection. Columbia's "good cause" requirement imposes a substantial burden on the Second Amendment conduct because it does not allow individuals to obtain a concealed-carry permit for legitimate self-defense purposes. Further, public open-carry is illegal in Columbia. Because this requirement infringes on a fundamental right, it should be struck down without applying scrutiny. However, if the court decides scrutiny is necessary to evaluate the law, strict scrutiny should apply because a fundamental right is involved. Under strict

scrutiny, the law is presumed to be invalid. The burden is on the County to prove its law is narrowly tailored to promote a compelling governmental interest. The statute will fail strict scrutiny because Columbia's permitting scheme is not narrowly tailored to further public safety and crime prevention. Therefore, the "good cause" requirement is unconstitutional.

ARGUMENTS

I. The Second Amendment protects an individual's right to carry firearms in public.

The Second Amendment provides that "a well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed." U.S. Const. amend. II. The Second Amendment protects a core right to keep a firearm within the home for purposes of lawful self-defense. *District of Columbia v. Heller*, 554 U.S. 570, 581 (2008). Additionally, the Fourteenth Amendment binds the application of the Second Amendment's protections to the states. *McDonald v. City of Chicago*, 561 U.S. 742, 791 (2010).

A. The plain meaning of the Second Amendment text protects the right to carry in public.

Heller interpreted the text of the Second Amendment itself, specifically focusing on the words "keep" and "bear." 554 U.S. at 581. A relevant historical review of the Amendment's text refutes the notion that the phrase "keep and bear arms" is a term of art with a unitary meaning. *Id*. at 591. Instead, the meanings of the two words codify distinct rights. *Drake v. Filko*, 724 F.3d 426, 444 (3d Cir. 2013) (Hardiman, C.J., dissenting). The word "keep" when used with "arms" simply means citizens are afforded the right to have weapons for protection. *Heller*, 554 U.S. at 581. Justice Ginsburg previously defined "bear" as wearing or carrying upon the person or in the clothing for self-defense. *Id*. at 584. Bearing arms includes being armed for action in case a conflict arises with another person. *Id*. The phrase "keep and bear arms" would not follow logically if it meant only to have weapons in the home, but not to carry them in public. *Id*. Such

an interpretation would contradict the plain language of the Second Amendment. *See Wrenn v. District of Columbia*, 864 F.3d 650, 663 (D.C. Cir. 2017) (holding the rights to keep and bear arms are Constitutional twins on equal footing). Therefore, the text of the Amendment confirms its protections are not strictly limited to the home. *Moore v. Madigan*, 702 F.3d 933, 936 (7th Cir. 2012).

B. The central component of the Second Amendment is self-defense.

Historically, self-defense is at the core of the Second Amendment. *Heller*, 554 U.S. at 599. Dating back to the Civil War era, using arms for self-defense was understood as an individual right protected by the Amendment. *Id.* at 616. The Second Amendment protects responsible, law-abiding citizens' right to use arms in defense of their home. *Id*. at 635. Further, the Amendment guarantees the right for citizens to possess and carry arms in the event of a confrontation. *Id.* at 592. This Court reaffirmed this position two years after *Heller*, stating the Second Amendment protects a fundamental right to use a handgun in the home for self-defense. *McDonald*, 561 U.S. at 767. Since the central component of the Second Amendment is self-defense in case of confrontation, it is obvious that conflicts may occur outside the home as well. *Wrenn*, 864 F.3d at 657.

The right to defend oneself is "most acute" in the home, but *Heller* suggests that the right does not stop there. *Id.* The fact that self-defense is most acute in the home does not mean it is not acute anywhere else. *Id.* Rather, it implies that there is, at a minimum, a lesser right for public self-defense. *United States v. Masciandaro*, 638 F.3d 458, 468 (4th Cir. 2011). *Heller's* holding provides for the existence of a broader right to keep and bear arms. *Id*. Otherwise, it would not be necessary for the court to use the word "most" when describing acute. *Id*. Several circuit courts have either concurred or assumed some right to keep and bear arms exists outside

the home. *See, e.g., Kachalsky v. Cty. of Westchester*, 701 F.3d 81, 89 (2d Cir. 2012) (assuming the Second Amendment has some application in the context of public possession); *Masciandaro*, 638 F.3d at 468 (stating the right to "keep and bear arms" extends to public areas beyond the home).

Traditionally, there are sensitive locations (*i.e.*, schools and government buildings) where the Second Amendment right has been constitutionally prohibited. *Masciandaro*, 638 F.3d at 468. There are also activities rooted in history that do not take place in the home, such as hunting and joining a militia. *Id*. Notably, all of the places mentioned were outside the home. *Id.* This indicates that the individual right to bear arms for self-defense is generally protected in public, with longstanding restrictions allowed. *Id.* If the Second Amendment right were strictly limited to self-defense in the home, the courts would have no reason to expressly acknowledge sensitive areas prohibited outside the home. *Id.*

Importantly, self-defense is as necessary outside of the home as it is inside. *Wrenn*, 864 F.3d at 657. The need to defend oneself may be at its zenith in the home, but an extension of that right exists in the public sphere. *Id*. The sources *Heller* used to reach its conclusion squarely cover carrying arms for self-defense beyond the home. *Id*. Not only is self-defense the core purpose of the Amendment, but the words "keep" and "bear" provide for armed protection in and outside of the home. *Id.* The Second Amendment secures the right to protect oneself against violence in public and private matters, thus extending the right of self-defense to wherever an individual could be exposed to violence. *Masciandaro*, 638 F.3d at 468. A person is just as likely, if not more, to run into danger outside the home. *Id*.

Ms. Hamilton has a right to protect herself in public just like she does in her home. As several courts noted, it goes without saying that individuals may run into a confrontation outside

the confines of their home. *Moore*, 702 F.3d at 936. Even if Ms. Hamilton were situated in the safest neighborhood possible, she still works alone at night and can easily come across danger while at her place of work. If her son was attacked within the safety of her own home, she is even more vulnerable to attack when she is out in public. *Id.* at 937. She is a prime example of someone who is exposed to potential attack and feels she may be in harm's way. Individuals would not assume that their right to defend themselves only extends to the property line of their domicile, nor does the Second Amendment limit that right so narrowly. *Id*. Confining Ms. Hamilton's right to be armed to her home would be like divorcing the Second Amendment from its core partner, self-defense. *See id*.

C. The Second Amendment right is not unlimited, but a total ban is constitutionally prohibited.

Although it is well established that this right is subject to longstanding regulations and bans, the Second Amendment still provides for the right to possess and carry arms publicly in some manner for self-defense. *Wrenn*, 864 F.3d at 659. There are many examples of lawful restrictions, such as sensitive locations (schools and government buildings), types of firearms, commercial sales, and classes of persons (felons and the mentally ill). *Id*. However, a ban on public carry is not a prohibition listed in *Heller*. *Id*. Some limitations on the Second Amendment have been approved, but no court has approved a total destruction of the right to carry in public. *Peruta v. County of San Diego*, 824 F.3d 919, 947 (9th Cir. 2016) (en banc) (Callahan, J., dissenting).

The government may regulate the manner in which an individual exercises his right to carry but may not entirely prohibit the right. *See Palmer v. District of Columbia*, 59 F. Supp. 3d 173, 182 (D.D.C. 2014) (holding that a complete ban on publicly carrying handguns is unconstitutional). There must be some accessible channel for carrying in public. *Wrenn*, 864

F.3d at 662. If no means are available to carry in public, such a restrictive scheme becomes equivalent to a total ban on bearing arms. *Id*. at 666. This defeats the core purpose of the Amendment: to ensure the right to self-defense is available to each law-abiding citizen. *Id.* Therefore, there is a general Second Amendment protection for individuals to carry firearms outside the home. *Id.* at 659.

II. Columbia's "good cause" requirement infringes on a fundamental right and is a total ban, or fails the application of strict scrutiny.

The Second Amendment is not a second-class right that has less protection than any other of the Bill of Rights. *McDonald*, 561 U.S. at 791. The "good cause" requirement significantly burdens the conduct of bearing arms and is a complete prohibition on the right to carry. *See Wrenn*, 864 F. 3d at 665-66. Under *Heller*, total bans on Second Amendment rights are struck down without applying scrutiny. *Id*. If scrutiny is deemed necessary, strict scrutiny should apply because a fundamental right is involved. *Clark v. Jeter*, 486 U.S. 456, 461 (1988). Columbia's limitation will not pass strict scrutiny because it is not narrowly tailored to promote a compelling governmental interest.

A. "Good cause" requirement imposes a substantial burden on the Second Amendment conduct of carrying in public.

A two-part test has been used to determine the scope of the Second Amendment's protections. *United States v. Chester*, 628 F.3d 673, 680 (4th Cir. 2010). The first question is whether Columbia's statute burdens activity that falls within the scope of the Second Amendment's guarantee, in other words, whether carrying a firearm in public for self-defense is protected by the Second Amendment. *See id*. If this conduct is outside of the Amendment's protection, the requirement is valid. *Id*. However, if carrying handguns in public is protected, the second step requires applying the appropriate level of means-end scrutiny. *See United States v.*

Marzzarella, 614 F.3d 85, 89 (3d Cir. 2010) (claiming if the challenged law imposes a burden on Second Amendment conduct, the law must be evaluated under some form of scrutiny).

B. "Good cause" requirement amounts to a total ban on public carry and is unconstitutional without applying scrutiny.

Columbia's "good cause" requirement infringes on a fundamental right because it does not allow individuals to obtain a CCW permit for legitimate self-defense purposes. Notably, Columbia does not allow its citizens to "open-carry" – carrying a handgun in public in plain view. (R. at 3) Concealed carry is only permissible if a citizen applies and is granted a CCW permit by the government. Since there is no open-carry, a concealed carry permit is the only way for Ms. Hamilton and others like her to exercise their right. This public carry policy contravenes the Second Amendment's core right of self-defense. *Wrenn*, 864 F.3d at 664. The Amendment guarantees the right of self-defense, not just a remote chance of it. *Id*. at 665. Most responsible, law-abiding citizens are unable to exercise their right because of the statute's inherent design. *Id*. The only way a citizen can carry in public is if he seeks prior permission from Burr County and satisfies the County's discretionary standard of "good cause." *See Peruta*, 824 F.3d at 951 (Callahan, J., dissenting). It is clear that this burdens the fundamental rights of many commonly situated citizens. *Id*.

People like Ms. Hamilton, who have a common level of need for self-defense, have little hope of protecting themselves and their families from public threats. *Id*. Ms. Hamilton has a justifiable concern for her personal safety with no recourse. Her son was brutally attacked and permanently injured. (R. at 3) She works late at night at a motel, by herself and in fear of violence. (R. at 3) Further, Columbia's statute even recognizes Ms. Hamilton's concerns within its text. It provides "the Commissioner may issue a CCW permit to an applicant who . . .

demonstrates that good cause exists . . . because the applicant, or a member of the applicant's family, is in harm's way." CPC § 900.1(F)(4).

The "good cause" provision's permitting scheme hinders the core right to "keep and bear arms" by prohibiting citizens from carrying a concealed firearm in public unless they can adequately show a particular risk of harm. *Wrenn*, 864 F.3d at 665. It is a total ban for most residents who have a need for self-defense. *Id*. at 666. The Burr County CCW application defines "good cause" as circumstances distinguishing an applicant from the mainstream. (R. at 24) Additionally, the statute allows for each county to "further define the provision for good cause . . . ," meaning that one county may be lenient in granting a CCW permit while another may be far more stringent. CPC § 900.1(E). The general public has little solace in knowing they cannot defend themselves unless they can overcome this statutory obstacle. The County's definition requires applicants to foresee threats in advance, in contradiction of the Second Amendment right to possess and carry. *Wrenn*, 864 F.3d at 664. Therefore, a Columbia resident desiring to obtain a CCW permit, who fails to meet the County's discretionary "good cause" standard, is left with no option for armed self-defense. *See id.* at 665. The result of this regulation is capricious enforcement because it allows for a subjective county-to-county standard that effectively constitutes a total ban on the right to carry in public for many typical citizens. *See id.* Any regulation that creates a total ban on a fundamental right is presumptively unlawful. *Heller*, 554 U.S. at 629.

Courts have reiterated why total bans are invalid and should be struck down without scrutiny. *Wrenn*, 864 F.3d at 666. *Heller* struck down a total ban on possessing firearms in the home without applying scrutiny. *Id*. It did so because the law banned possession of a handgun in the home by almost everyone, only making a few minor exceptions. *Id*. Since the right to possess

and carry are equals within the core, it is logical to treat a law banning carrying firearms outside the home the same. *Id*. Therefore, this restrictive scheme need not be subject to any tier of scrutiny because it would be unconstitutional to allow what amounts to a total ban on the right to carry in public. Even if the County is correct that the requirement helps promote public safety and reduce violence, no amount of positive effect created by Columbia's statute can justify a total ban. *See Heller*, 554 U.S. at 629.

C. The "good cause" requirement is not a longstanding prohibition recognized by *Heller*.

The "good cause" requirement is specifically missing from the presumptively lawful prohibitions traditionally recognized to limit Second Amendment rights. *See id. a*t 626-27. A law requiring citizens to show "good cause" in order to obtain a concealed handgun permit was not included in that list. Courts have noted that the exceptions identified by *Heller* all derived from historical regulations, but also acknowledged that the list was not exhaustive. *Drake*, 724 F.3d at 447 (Hardiman, C.J., dissenting). However, Columbia's regulation on public carry attempts to expand such longstanding regulations to novel areas beyond those acknowledged in *Heller*. *See id*. Courts have long exercised caution against extending prohibitions of the Second Amendment to other avenues of the law that are not rooted in history or tradition. *Id.* The hesitation to create a new prohibition is logical because the "good cause" requirement is more significant of a burden on the fundamental right than just the time, place, and manner. *See id*. at 449. If Columbia only limits one form of carry in public, an opportunity still exists to carry in another manner. *See id*. The opportunity to exercise the right to bear arms is eliminated when a law prohibits both forms of carry. *Id*. The County's licensing scheme illustrates how it effectively bans most citizens from exercising their Second Amendment rights.

D. If the "good cause" requirement is not a total ban, it nonetheless fails strict scrutiny.

Even if Columbia's statute is not construed as a total ban, the regulation substantially burdens the core right to bear arms. *See Wrenn*, 864 F.3d at 666. When a fundamental right is involved, this Court favors strict scrutiny. *Clark*, 486 U.S. at 461. It is well settled that the Second Amendment protects the fundamental right to keep and bear arms. *Heller*, 554 U.S. at 593. Longstanding prohibitions aside, law-abiding citizens must be afforded ample alternative channels to exercise their right to bear arms. *Wrenn*, 864 F.3d at 662. If no reasonable means to carry in public is available, it precludes most people from exercising their right at all. *Id*. at 665. Columbia's no open-carry law in conjunction with the "good cause" requirement creates a lack of ample accommodations to bear arms. *See id*. Thus, this statutory combination burdens a fundamental right. *See id*. Any limitation that affects a fundamental right should be evaluated under strict scrutiny. *See Chester*, 628 F.3d at 682-83.

A two-part test determines the appropriate level of scrutiny to apply: (1) the proximity of the law in question to the core protection of the Second Amendment, and (2) the severity of the burden the law imposes on that right. *United States v. Chovan*, 735 F.3d 1127, 1138 (9th Cir. 2013). If the law does not implicate the core of the Second Amendment, but substantially burdens the right, intermediate scrutiny should apply. *Id*. Strict scrutiny should apply if a core right is substantially restricted by the law. *Id*. Although some courts have previously applied intermediate scrutiny to firearms regulations, the laws being challenged were not a part of the Amendment's core. *Wrenn*, 864 F.3d at 666. The County argues that the "good cause" requirement is presumptively lawful and should be subject to intermediate scrutiny. *See, e.g., Woollard v. Gallagher*, 712 F.3d 865, 875-878 (4th Cir. 2013) (using intermediate scrutiny to balance the state's public interests with the individual interests in self-defense); *Drake*, 724 F3d

at 430 (applying intermediate scrutiny to the state's public carry regulation). However, the "good cause" requirement not only regulates the manner in which citizens may carry handguns, it forecloses it. *See Peruta*, 824 F.3d at 949 (Callahan, J., dissenting).

Columbia's statute is easily distinguishable from other cases applying intermediate scrutiny. *Wrenn*, 864 F.3d at 666. In those cases, the curtailment of guns rights was far less severe. *See, e.g.*, *Masciandaro,* 638 F.3d at 474 (using intermediate scrutiny on a law that criminalized possession of a loaded firearm in a vehicle in a public park); *Chester*, 628 F.3d at 677 (reviewing a law prohibiting domestic violence criminals from possessing firearms under intermediate scrutiny); *Marzzarella*, 614 F.3d at 97 (applying intermediate scrutiny to law prohibiting possession of firearms with obliterated serial numbers). Unlike the "good cause" requirement, those gun regulations did not deprive even ordinarily situated citizens of all means of carrying in self-defense. *See Wrenn*, 864 F.3d at 667. The conduct at issue here is not peripheral to the Second Amendment. *See id*. at 666. In contrast, it is an infringement of the right to bear arms in public. *See Peruta*, 824 F.3d at 949 (Callahan, J., dissenting). Burr County myopically presents the issue as whether the Second Amendment protects the right to carry a concealed firearm in public. *Id*. at 946. By doing so, it narrowly focuses on the concealed carry aspect of its law, ignoring the overall impact of the statutory scheme as a whole. *Id*. at 954. Under the *Chovan* test, strict scrutiny would properly evaluate the "good cause" restriction because the fundamental right to bear arms is severely burdened. *See Ezell v. City of Chicago*, 651 F.3d 684, 709 (7th Cir. 2011). Therefore, the only appropriate level of scrutiny is strict scrutiny. *Id*.

Strict scrutiny requires Burr County to show that the County has a compelling governmental interest, and that the statute is narrowly tailored to achieve that interest. *See Drake*,

724 F.3d at 436. It is the County's burden to establish that the "good cause" requirement survives strict scrutiny. *See Ezell*, 651 F.3d at 708-09. It is undisputed that Columbia's interest in protecting public safety and preventing crime is compelling, but the "good cause" requirement is not narrowly tailored to promote that interest. *See Peruta*, 824 F.3d at 956-57 (Callahan, J., dissenting).

First, the "good cause" requirement is inherently vague, and it allows for counties to apply their own arbitrary standards for obtaining a concealed carry permit. *See id.* at 957. There is no rationale behind why each county is allowed to decide for itself what "good cause" is and is not. *See id*. Columbia's law allows each county to establish different standards for granting a CCW permit without any reasonable explanation for the difference. *See id*. There is not a standard upon which individuals can rely, giving the law little consistency. By definition, a law that changes from county to county cannot be considered narrowly tailored. *See id*.

Second, Burr County cannot meet its burden of proving that the law is sufficiently tailored to achieve its interests. *See id*. The statute affects the general public, leaving only minor exceptions for those who qualify for the permit. *See id.* at 949. Further, the County has not provided substantial evidence that preventing trained, responsible law-abiding citizens helps public safety and minimizes gun violence. *See id*. at 957. A blanket prohibition on publicly carrying firearms prevents a citizen from defending himself with a gun anywhere except his home. *Moore*, 702 F.3d at 940. The County has not proven that an outright prohibition of carrying guns in public is the least restrictive means to promote its interests. *See id*. at 939. Columbia has many options for protecting the public from the potential danger of firearms without eliminating armed-self-defense entirely. *See id.* at 940. A ban as broad as Columbia's cannot be upheld simply because it is not irrational. *See Ezell*, 651 F.3d at 701. The County

could alter its licensing policy to individuals who have a greater risk of misusing firearms. *See id.* at 708.

If the "good cause" requirement is not a total ban, it still fails the application of strict scrutiny. The County cannot meet its burden showing that its licensing scheme is sufficiently narrowly tailored to meet its interest in public safety and crime prevention. Under either analysis, Columbia's statute is a violation of the Second Amendment.

CONCLUSION

The language of the Second Amendment, along with *Heller* and *McDonald* provide that there is a fundamental right for individuals to carry in public for lawful self-defense. Although the right is not unlimited, there must be some type of carry allowed in public. Because Columbia does not allow open carry, the "good cause" requirement infringes on a core fundamental right and is a total ban. It is unconstitutional and should not be subject to any tier of scrutiny. However, if scrutiny is applied, strict scrutiny would be the appropriate means-end test. Burr County cannot meet its burden of proving its statutory scheme is narrowly tailored to promote a compelling governmental interest. The "good cause" requirement allows for county-by-county regulation which does not provide responsible law-abiding citizens the right of armed self-defense. This regulation is a capricious standard that fails the application of strict scrutiny. For these reasons, the Columbia statute is unconstitutional.

PRAYER

For these reasons, Petitioner prays the Court will reverse the judgment of the Court of Appeals and reinstate the judgment of the District Court for the Eastern District of Columbia.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

Counsel for Petitioner certifies that this brief has been prepared and served on all opposing counsel in compliance with the Rules of the Freshman Moot Court Competition.

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APPENDIX

COLUMBIA PENAL CODE – CPC § 900

Public Safety Regulatory Provisions

PREAMBLE - It is the legislature's intent to create a standardized system for issuing concealed carry firearm licenses to prevent criminals from obtaining a permit to carry a firearm, to allow law abiding residents to obtain a license to carry a firearm, and to prescribe the rights and responsibilities of individuals who have obtained a license to carry a firearm.

Section 1. Permit to Carry a Concealed Weapon

(A) A person may not carry a firearm in a public place unless they are in possession of a Permit to Carry a Concealed Weapon ("CCW Permit").

(B) A "firearm" includes pistols and revolvers; shotguns with barrels less than eighteen inches in length; rifles with barrels less than sixteen inches in length; assault weapons; and any device designed to be used as a weapon by expelling any projectile.

(C) A person must have their CCW Permit and driver's license or other form of identification in immediate possession at all times when carrying a firearm.

(D) A holder of a CCW Permit must carry their weapon on their person in a belt or shoulder holster that is concealed and completely covered by other clothing, those persons listed in Section 2, subsection (B) excepted.

(E) Applications by Columbia residents for a CCW Permit shall be made to the Commissioner of the Department of Public Safety in the county where the applicant resides. The Department of Public Safety may further define the provision for good cause set forth in Section 1, subsection (F)(4).

(F) The Commissioner may issue a CCW Permit to an applicant who:
  (1) Is at least 21 years of age;
  (2) Is a citizen of or a person lawfully admitted into the United States;
  (3) Possesses a valid, lawfully obtained Columbia driver's license or official Columbia personal identification card;
  (4) Demonstrates that good cause exists for issuance of the CCW Permit because the applicant, or a member of the applicant's family, is in harm's way;
  (5) Obtains training in the safe use and handling of a firearm by successfully completing an appropriate firearm safety training course;
  (6) Is not subject to an order or disposition for any of the below, which will be confirmed by a background check:
    (a) Involuntary hospitalization, commitment or alternative treatment;

(b) Legal incapacitation;
(c) Have a diagnosed mental illness at the time the application is made; been found guilty but mentally ill of any crime; been found not guilty by reason of insanity of any crime;
(d) Have never been convicted of a felony in Columbia or elsewhere, or a misdemeanor violation in the six years preceding the application date; a felony or misdemeanor charge against the applicant is not pending in Columbia or elsewhere at the time of application;
(e) Have not been dishonorably discharged from the U.S. Armed Forces.

(G) The Commissioner reserves the privilege to revoke a person's CCW Permit at any time if facts brought to the Commissioner's attention show that the person no longer meet the requirements of Section 1, subsection (F).

Section 2. Possession of Firearm on Certain Premises Prohibited; Applicability

(A) Except as provided in Section 2, subsection (B), a person shall not possess a firearm on the premises or within 1,000 feet of any of the following:
(1) A courthouse and its surrounding premises;
(2) Government buildings;
(3) A theater;
(4) A sports arena;
(5) A day care center;
(6) An educational institution, including junior colleges and institutions of higher education; any grounds or buildings where an activity sponsored by a school is being conducted, or a transportation passage of a school;
(7) An establishment licensed under Columbia Liquor Control Act to vend, distribute, or otherwise earn income from dealing in liquor.

(B) Section 2, subsection (A) does not apply to any of the following:
(1) A law enforcement officer, employed by any municipality, city, or county, within the State of the Columbia, or by the State of Columbia;
(2) A person who owns, or is employed by or contracted by, an entity described in subsection (A) above if the possession of that firearm is to provide security services for that entity;
(3) A peace officer.

Section 3. Failure to Carry or to Show Permit; Penalty

(A) Any person to whom a permit has been issued who fails to carry the permit or fails to present the permit when asked to do so by a peace officer is subject to a civil penalty of up to $1,000. A court reserves the privilege to revoke a person's CCW Permit at any time if it concludes the person no longer meets the requirements of Section 1, subsection (F)