No. 10-1207

In the Supreme Court of the United States

CHARLES F. WILLIAMS, JR.,
Petitioner,

v.

STATE OF MARYLAND,
Respondent.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE COURT OF APPEALS OF MARYLAND

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether peaceably carrying or transporting a registered handgun outside the home, without a carry permit that is unobtainable by ordinary, law-abiding citizens, is outside of the scope of "the right of the people to . . . bear arms" protected by the Second Amendment to the United States Constitution.

PARTIES TO PROCEEDING

Petitioner Charles F. Williams, Jr., is an individual who, at the time of his conviction for possessing a lawfully owned handgun outside of his home, was a resident of Temple Hills, Maryland. Respondent is the State of Maryland. No corporate entities are involved in this case, and no Rule 29.6 disclosure statement is required.

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The opinion of the Court of Appeals of Maryland is reported as *Williams v. State*, 417 Md. 479, 10 A.3d 1167 (2011). App. 1a. The opinion of the Court of Special Appeals of Maryland is reported as *Williams v. State*, 188 Md. App. 691, 982 A.2d 1168 (Md. App. 2009). App. 33a. Excerpts from the transcript of the bench trial, containing the decision of the Circuit Court for Prince George's County on the Second Amendment issues, are set forth at App. 50a. The opinion and order by the Circuit Court denying Petitioner's motion to dismiss the indictment on Second Amendment grounds is set forth at App. 73a.

JURISDICTION

On January 5, 2011, the Court of Appeals of Maryland rendered judgment affirming the decision of the Maryland Court of Special Appeals. The Court of Appeals held that the Maryland statutes challenged by petitioner are not repugnant to the Second Amendment, and that petitioner has no right under the Second and Fourteenth Amendments to be free from conviction under those statutes. This Court has jurisdiction under 28 U.S.C. § 1257(a).

CONSTITUTION, STATUTES AND REGULATIONS

The texts of the following are in the Appendix: U.S. Const., Amends. II and XIV, § 1; Md. Code Ann., Crim. Law, § 4-203 (2002); Md. Code Ann., Pub. Safety, §§ 5-301-5-314 (2003); Md. Code Regs. 29.03.01.03; Md. Code Regs. 29.03.02.01 *et seq*.

STATEMENT OF THE CASE

(i) Proceedings in the Courts Below

In the spring of 2008, Petitioner Charles F. Williams, Jr., was indicted in a one-count indictment in the Circuit Court of Prince George's County, Maryland. App. 54a-55a. Petitioner, who was transporting his lawfully owned handgun from his girlfriend's residence to his own residence, was charged with carrying a handgun on or about his person in violation of § 4-203(a)(1)(i) of the Criminal Law Article of the Maryland Code. App. 69a.

Before trial, Petitioner moved to dismiss the indictment on grounds that the Supreme Court's decision in *District of Columbia v. Heller*, 554 U.S. 570 (2008), held that individuals have the right to keep and bear arms for personal defense under the Second Amendment, and that the Maryland statutes prohibiting the carrying of handguns unconstitutionally restrict that right. App. 79a.

Section 4-203(a) makes it a crime to "wear, carry or transport a handgun, whether concealed or open, on or about the person," unless an exception applies. App. 83a. Section 4-203(b) contains several exceptions, including an exception for an individual's residence or owned or leased property. The only exception related to defense outside one's residence or property is for persons to whom a permit to wear, carry or transport a handgun has been issued under Title 5, Subtitle 3 of the Public Safety Article. App. 85a.

The motion to dismiss was denied by the Circuit Court by opinion and order dated September 23, 2008. App. 73a. The Circuit Court held that the Maryland statutes comply with *Heller* because they permit possession within an individual's residence. App. 81a-82a.

A bench trial on the merits was held on October 6, 2008, based on stipulated facts. App. 58a-61a. Petitioner argued that under *Heller* he had "the right to carry that handgun in a lawful manner," that he had not applied for a permit to carry under the Maryland statute [§§ 5-301-5-314], that applying for a permit to carry "was not a necessary step," and that accordingly he should be found not guilty. App. 57a. Petitioner "also challenge[d] the Constitutionality of the statute named in the indictment [§ 4-203(a)(1)(i)] on the same grounds," *i.e.*, under the Second Amendment. *Id.*

The trial court found that the Maryland statute

provides for wearing, carrying or transporting a handgun by a person to whom a permit has been issued, and that "the restrictions on obtaining one of those permits seem to be precisely the ones that are approved by the Supreme Court in *Heller*." App. 68a-69a.

The court therefore did not "find that the statute on its face, nor as applied to Mr. Williams, violates the Supreme Court decision in *Heller* or the Second Amendment in general." App. 69a. Accordingly, Petitioner was convicted, was sentenced to three years' imprisonment with all but one year suspended, and was placed on three years of supervised probation. App. 71a. The court directed that Petitioner would remain free on bond pending appeal. *Id.*

The Court of Special Appeals of Maryland affirmed the conviction on October 30, 2009. *Williams v. State*, 982 A.2d 1168 (Md. Ct. Spec. App. 2009). App. 33a. Petitioner argued "that both CL § 4-203 and the regulations which control applications for handgun permits are unconstitutional based on *Heller*." *Id.* at 1169-70. The Court held that *Heller* did not apply because the Second Amendment had not been incorporated against the states, and because Maryland law allows possession within one's residence. *Id.* at 1171-72. It also upheld Maryland's handgun carry permit scheme as "clearly within the state's police power . . . ." *Id.* at 1172-73.

The Court of Appeals of Maryland granted certiorari to answer the following question: "Are Md. Code Ann. Criminal Law § 4-203, Public Safety §§ 5-301 *et seq.*, and COMAR 29.03.02.04 unconstitutional in light of *Heller v. District of Columbia*?" *Williams v. State*, 10 A.3d 1167, 1169 (Md. 2011). App. 1a, 3a. The Court held that carrying or transporting a handgun outside one's home without a permit is "outside of the scope of the Second Amendment." *Id.* at 1169, 1178. It also concluded that Williams lacked standing to challenge §§ 5-301 *et seq.* because he had not applied for a carry permit. *Id.* at 1169, 1173. It was ordered on January 5, 2011, that the judgment of the Court of Special Appeals was affirmed. *Id.* at 1179.

(ii) Statement of Facts

The facts in the Circuit Court were stipulated. Petitioner purchased a handgun from a retail establishment in Maryland on August 15, 2007. App. 60a. At that time, he completed the Maryland State Police application and affidavit required under Md. Code Regs. 29.03.01.03 to acquire a "regulated firearm," which under Maryland law includes handguns. App. 60a, 100a. He completed the required Maryland firearms safety training course, and received the certificate of completion on August 15, 2007. App. 60a.

Petitioner paid the balance due on September 14, 2007, and picked up the handgun from the dealer.

App. 60a. Pursuant to 18 U.S.C. § 922(t), acquisition of the firearm required that he pass a check by the National Instant Criminal Background System to ensure that he had no legal disabilities under federal or state law, such as a criminal record or mental commitment.

On October 1, 2007, Petitioner stopped by his girlfriend's house after work to retrieve his handgun, which he had temporarily left at her residence, in order to return it to his own residence. App. 60a. At approximately 5:00 p.m., in broad daylight, a police officer observed Petitioner going through a backpack near a bus stop. After turning his cruiser around, he saw Petitioner turn and place something in some bushes. App. 59a. The police officer approached Petitioner, and asked what he had placed in the bushes, and Petitioner responded "my gun." *Id.* The officer retrieved the handgun from the bush area, and Petitioner gave a written statement acknowledging possession of the gun. App. 59a. Petitioner was arrested, charged, and convicted as stated above.

No evidence was submitted that Petitioner was engaged in any illegal activity apart from having a lawfully-owned, registered handgun in his possession outside his place of residence. Petitioner had purchased the handgun for self-defense. App. 60a.

It is undisputed that Petitioner did not file an application for a handgun carry permit. He contended

instead "that as a result of the regulatory scheme, 'any such application would have been denied.'" *Williams*, 10 A. 3d 1173, n. 7. The record does not disclose any documented threats, assaults or robberies against Petitioner that are a prerequisite to even potentially being able to obtain a carry permit for personal defense under the Maryland statutory scheme. *See* Part II.A., below.

ARGUMENT

THE WRIT SHOULD BE GRANTED TO RESOLVE WHETHER THE SECOND AMENDMENT RIGHT TO "BEAR ARMS" INCLUDES CARRYING A FIREARM OUTSIDE THE HOME, WHICH IS DENIED BY FEDERAL AND STATE COURTS IN CONFLICT WITH THIS COURT'S *HELLER* AND *MCDONALD* DECISIONS

Introduction

Maryland prohibits exercise of the right to bear arms unless one has a permit which is not generally available to law-abiding persons. For a first offense, it is a crime punishable by up to three years' imprisonment to "wear, carry, or transport a handgun, whether concealed or open, on or about the person . . . ." Md. Code Ann., Crim. Law, § 4-203(a)(1)(i) (2002). Section 4-203(b) makes an exception if the person has a permit issued under Md. Code Ann., Pub. Safety, §§

5-301 - 5-314 (2003).

To obtain a permit, the Secretary of the Department of Public Safety must find that the applicant "has good and substantial reason to wear, carry, or transport a handgun, such as a finding that the permit is necessary as a reasonable precaution against apprehended danger." *Id.* § 5-306(a)(5)(ii). Md. Code Regs. 29.03.02.04 specifies consideration of the following criteria:

> G. Reasons given by the applicant as to whether those reasons are good and substantial; . . .
> O. Whether the permit is necessary as a reasonable precaution for the applicant against apprehended danger.

As discussed in Part II.A. below, the Maryland State Police, the Maryland Handgun Permit Review Board, and the Maryland courts have consistently interpreted these provisions to require the applicant to document, typically with police reports, that he or she has been the victim of assaults, threats, or robberies, except for applications involving certain occupations. Thus Maryland law deprives Petitioner and nearly all law-abiding citizens of the right to possess a handgun for self-defense outside the home.

The Maryland Court of Appeals upheld Williams' conviction, holding that "Section

4-203(a)(1)(i) of the Criminal Law Article, which prohibits wearing, carrying, or transporting a handgun, without a permit and outside of one's home, is outside of the scope of the Second Amendment." *Williams*, 10 A.3d at 1169.

As the Maryland court acknowledged, this Court stated that the phrase "bear Arms" refers to the "carrying of weapons," including for self-defense. *Id.* at 1175, quoting *District of Columbia v. Heller,* 554 U.S. 570, 584-87 (2008). It further quoted this Court's statement that the *Heller* decision did not "cast doubt on," *inter alia*, "laws forbidding the carrying of firearms in sensitive places such as schools and government buildings . . . ." *Id.*, quoting *Heller*, 554 U.S. at 626-27. That statement was repeated in *McDonald v. City of Chicago*, 130 S.Ct. 3020, 3047 (2010). *Williams*, 10 A.3d at 1176.

Instead of analyzing *Heller* in more detail, the Maryland court opined that *Heller* (and *McDonald*) only "address[ed] prohibitions against handgun possession in the home . . . ." *Id.* at 1176 & n.10 (string citing to cases). The court referred to "*dicta* in *McDonald* that 'the Second Amendment protects a personal right to keep and bear arms for lawful purposes, most notably for self-defense within the home . . . .'" *Id.* at 1177, quoting *McDonald*, 130 S.Ct. at 3044. The Maryland court continued:

> Although Williams attempts to find

> succor in this dicta, it is clear that prohibition of firearms in the home was the gravamen of the certiorari questions in both *Heller* and *McDonald* and their answers. If the Supreme Court, in this dicta, meant its holding to extend beyond home possession, it will need to say so more plainly.

Id. at 1177.

The Maryland court concluded that the right to bear arms exists only in one's home: "It is the exception permitting home possession in Section 4-203(b)(6) that takes the statutory scheme embodied in Section 4-203 outside of the scope of the Second Amendment, as articulated in *Heller* and *McDonald*." *Id.* at 1178.

No fewer than ten state and federal courts have refused, relying on *Heller*, to recognize a constitutional right to bear arms outside the home. *See* Part II.B., below. Several have expressly acknowledged that they will not recognize such a right unless this Court does. The Fourth Circuit, relying on the Maryland Court of Appeals' decision in the instant case, recently stated:

> On the question of Heller's applicability outside the home environment, we think it prudent to await direction from the Court itself. *See Williams v. State*, 10

> A.3d 1167, 1177 (Md.2011) ("If the Supreme Court, in [*McDonald*'s] dicta, meant its holding to extend beyond home possession, it will need to say so more plainly."); *see also Sims v. United States*, 963 A.2d 147, 150 (D.C.2008).

United States v. Masciandaro, No. 09-4839, 2011 WL 1053618, at *16 (4th Cir. Mar. 24, 2011).

Although this Court has specifically ruled only on the right to keep a handgun in the home, it is evident from the Court's analyses and plain statements in *Heller* and *McDonald* that the right to bear arms exists outside the home. *See* Part I.B., below. Thus, the Maryland court's decision and the other decisions limiting the scope of that right to the home (discussed in Part II.B.) have decided an important federal question in a way that conflicts with relevant decisions of this Court. If it should be contended that *Heller* and *McDonald* did not clearly establish that the Second Amendment applies outside the home, then this is an important question of federal law that has not been, but should be, settled by this Court.

I. THE RIGHT TO BEAR OR CARRY ARMS OUTSIDE THE HOME IS NOT "OUTSIDE THE SCOPE" OF THE SECOND AMENDMENT

A. The Second Amendment's Text Prohibits Infringement of the Right to "Bear Arms," and Does Not Limit That Right to One's House

The Second Amendment provides in part that "the right of the people to keep and bear arms, shall not be infringed." This guarantees not only the right to "keep" arms, such as in one's house, but also to "bear arms," which simply means to carry arms without reference to a specific place. When the Framers intended that a provision of the Bill of Rights related to a house, they said so.[1] They did not recognize a limited right to keep and bear arms only in one's house.

Despite this plain textual reference prohibiting infringement on the right to "bear arms," the Maryland court argued that the right need not be recognized *at all* because this Court has not decided cases directly on

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[1]U.S. Const., Amend. III ("No soldier shall, in time of peace be quartered in any house, without the consent of the owner, nor in time of war, but in a manner to be prescribed by law."); Amend. IV ("The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated").

point. "But general statements of the law are not inherently incapable of giving fair and clear warning . . . ." *United States v. Lanier*, 520 U.S. 259, 271 (1997).[2] This Court explained:

> When broad constitutional requirements have been "made specific" *by the text or settled interpretations*, willful violators "certainly are in no position to say that they had no adequate advance notice that they would be visited with punishment. . . . [T]hey are not punished for violating an unknowable something."

Id. at 267 (emphasis added), quoting *Screws v. United States,* 325 U.S. 91, 104-05 (1945).

Officials may not ignore the plain text of the Constitution under the theory that no case on point has been decided by this Court to verify that the constitutional command must actually be obeyed. As stated in the Fourth Amendment context: "Given that the particularity requirement is set forth in the text of the Constitution, no reasonable officer could believe that a warrant that plainly did not comply with that

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[2]"The easiest cases don't even arise. There has never been . . . a section 1983 case accusing welfare officials of selling foster children into slavery; it does not follow that if such a case arose, the officials would be immune from damages [or criminal] liability." *Id.* (citation omitted).

requirement was valid." *Groh v. Ramirez*, 540 U.S. 551, 563 (2004).

To disregard explicit constitutional text based on supposedly insufficient judicial precedent ignores the primacy of the Constitution and the fundamental rights it protects.[3] A right is "fundamental" if it is "explicitly or implicitly protected by the Constitution, thereby requiring strict judicial scrutiny." *San Antonio Independent School District v. Rodriguez*, 411 U.S. 1, 17, 33 (1973). Indeed, the Second Amendment is incorporated through the Due Process Clause of the Fourteenth Amendment because "the right to keep and bear arms is fundamental to our scheme of ordered liberty," and is deeply rooted in this Nation's history and tradition . . . ." *McDonald*, 130 S.Ct. at 3036.[4]

B. This Court Recognized in *Heller* the General Right to Carry Arms

Recognition of the right to bear arms was integral to the decision in *Heller*, which found: "At the

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[3]"This constitutional protection must not be interpreted in a hostile or niggardly spirit." *Ullmann v. United States*, 350 U.S. 422, 426 (1956). "To view a particular provision of the Bill of Rights with disfavor inevitably results in a constricted application of it. This is to disrespect the Constitution." *Id.* at 428-29.

[4]"[C]lassifications affecting fundamental rights . . . are given the most exacting scrutiny." *Clark v. Jeter*, 486 U.S. 456, 461 (1988).

time of the founding, as now, to 'bear' meant to 'carry.' . . . When used with 'arms,' however, the term has a meaning that refers to carrying for a particular purpose – confrontation." *Heller*, 554 U.S. at 584. The term includes to "wear, bear, or carry . . . upon the person or in the clothing or in a pocket, for the purpose . . . of being armed . . . ." *Id.* (citation omitted).[5]

Both now and in the 18th century, "'bear arms' was unambiguously used to refer to the carrying of weapons outside of an organized militia." *Id.* A number of states in the early Republic guaranteed a right of citizens to "bear arms in defense of themselves and the state" or "bear arms in defense of himself and the state." *Id.* at 584-85. These provisions "guarantee the individual right to possess and carry weapons in case of confrontation." *Id.* at 592. To be sure, "we do not read the Second Amendment to protect the right of citizens to carry arms for any sort of confrontation, just as we do not read the First Amendment to protect the right of citizens to speak for any purpose." *Id.* at 595.

Although protection of bearing arms for militia use was not the sole purpose of the Second

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[5] The statute under which Petitioner was convicted tracks this language closely, making it a crime to "wear, carry, or transport a handgun, whether concealed or open, on or about the person...." Md. Code Ann., Crim. Law, § 4-203(a). The statute essentially criminalizes "bearing arms" in the sense that term is used in the Second Amendment.

Amendment, it was certainly one of the purposes. As Judge Niemeyer recently observed in *Masciandaro*, describing *Heller*: "[T]he right to keep and bear arms was found to have been understood to exist not only for self-defense, but also for membership in a militia and for hunting, [citing *Heller*, 128 S.Ct. at 2801], neither of which is a home-bound activity." *Masciandaro*, 2011 WL 1053618, at *9 (separate opinion by Niemeyer, J.).

Heller favorably cited a decision which "construed the Second Amendment as protecting the 'natural right of self-defence' and therefore struck down a ban on carrying pistols openly." *Id.* at 612, quoting *Nunn v. State*, 1 Ga. 243, 251 (1846). The Court's quotation from *Nunn* makes clear the broad meaning of "infringe": "The right of the whole people . . . to keep and bear *arms* of every description, . . . shall not be *infringed,* curtailed, or broken in upon, in the smallest degree . . . ." *Id.*

Heller further noted another decision which "held that citizens had a right to carry arms openly . . . ." *Id.* at 613, citing *State v. Chandler*, 5 La. Ann. 489, 490 (1850). Nineteenth-century courts "held that prohibitions on carrying concealed weapons were lawful," for "the right was not a right to keep and carry any weapon whatsoever in any manner whatsoever and for whatever purpose." *Id.* at 626.

Having made clear that there is indeed a right to bear arms and that it may be regulated – not prohibited – *Heller* added:

> nothing in our opinion should be taken to cast doubt on longstanding prohibitions on the possession of firearms by felons and the mentally ill, or laws forbidding the carrying of firearms in sensitive places such as schools and government buildings, or laws imposing conditions and qualifications on the commercial sale of arms. *Id.* at 626-27.[6]

The presumptive validity of "laws forbidding the carrying of firearms in sensitive places" obviously means that the right to bear arms includes the carrying of firearms in non-sensitive places. It is inconsistent to rely on this passage in arguing in support of prohibitions on the right to bear arms, and at the same time to deny that *Heller* made any binding decision that there is a right to bear arms outside the home and that it extends to places that are not sensitive.[7] *Heller*'s lengthy opinion regarding the

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[6]"We identify these presumptively lawful regulatory measures only as examples; our list does not purport to be exhaustive." *Id.* at 627 n.26.

[7]Concerning the above passages from *Heller*, *United States v. Skoien*, 614 F.3d 638, 641 (7th Cir. 2010) (en banc), states: "This is the sort of message that, whether or not technically dictum, a

meaning of the right to "bear arms" is every bit as binding as its brief reference to "presumptively lawful regulatory measures."

Similarly, given that "the inherent right of self-defense has been central to the Second Amendment right," the fact that it is the home where "the need for defense of self, family, and property is most acute" does not imply that such need is non-existent outside the home. *Id.* at 628. Indeed, *Heller* proceeded to note: "Few laws in the history of our Nation have come close to the severe restriction of the District's handgun ban. And some of those few have been struck down." *Id.* at 629. It cited two cases that invalidated prohibitions on carrying handguns openly or concealed, and quoted from a third case that upheld a ban on concealed carry because the law allowed open carry: "A statute which, under the pretence of regulating, amounts to a destruction of the right, or which requires arms to be so borne as to render them wholly useless for the purpose of defence, would be clearly unconstitutional." *Id.*, quoting *State v. Reid*, 1 Ala. 612, 616-617 (1840).

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court of appeals must respect, given the Supreme Court's entitlement to speak through its opinions as well as through its technical holdings."

C. This Court in Recognized in *McDonald* that the Right to Bear Arms is Infringed by Laws Restricting the Right to Persons With Licenses Not Available to Law-Abiding Citizens Generally

McDonald, 130 S.Ct. at 3026, began by stating that in *Heller*, "we held that the Second Amendment protects the right to keep and bear arms for the purpose of self-defense, and we struck down a District of Columbia law that banned the possession of handguns in the home." Recognition of the right to bear arms was part of the holding, not just dicta as suggested by the Maryland court.

The Court continued: "Self-defense is a basic right, recognized by many legal systems from ancient times to the present day, and in *Heller,* we held that individual self-defense is 'the *central component*' of the Second Amendment right." *Id.* at 3036 (citation omitted, emphasis added). Obviously, the need to defend one's life may arise outside the home.

McDonald specifically addressed prohibitions on the carrying of firearms without a license. At the beginning of its discussion of the infringements the Fourteenth Amendment was designed to remedy, *McDonald* pinpointed state laws requiring a license to carry a firearm which was not available to all law-abiding citizens. Typical was the Mississippi law providing that "no freedman, free negro or mulatto, not

in the military service of the United States government, and not licensed so to do by the board of police of his or her county, shall keep or carry fire-arms of any kind . . . ." 130 S.Ct. at 3038, quoting Certain Offenses of Freedmen, 1865 Miss. Laws p. 165, § 1, in 1 *Documentary History of Reconstruction* 289 (W. Fleming ed.1950).[8]

McDonald described a petition from black citizens in South Carolina who petitioned Congress complaining of a law "to deprive us [of] arms" as violative of "the right to keep and bear arms." *McDonald*, 130 S.Ct. at 3038 n.18. Rep. George W. Julian described that law and another in urging adoption of the Fourteenth Amendment:

> Florida makes it a misdemeanor for colored men to *carry* weapons without a license to do so from a probate judge, and the punishment of the offense is whipping and the pillory. South Carolina has the same enactments . . . . Cunning legislative devices are being invented in

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[8] *McDonald* further referred to "Regulations for Freedmen in Louisiana," *id.*, which included the following: "No negro who is not in the military service shall be allowed to *carry* firearms, or any kind of weapons, within the parish, without the written special permission of his employers, approved and indorsed by the nearest and most convenient chief of patrol." 1 *Documentary History of Reconstruction* at 279-80. (emphasis added).

> most of the States to restore slavery in fact.

Cong. Globe, 39th Cong., 1st Sess., 3210 (June 17, 1866). (emphasis added).

"The most explicit evidence of Congress' aim" regarding the Fourteenth Amendment, *McDonald* continued, appeared in its recognition in the Freedmen's Bureau Act of 1866 of "the right . . . to have full and equal benefit of all laws and proceedings concerning personal liberty, personal security, and the acquisition, enjoyment, and disposition of estate, real and personal, *including the constitutional right to bear arms* . . . ." *McDonald*, 130 S.Ct. at 3040 (emphasis in original). *McDonald* rejected the argument that the above Act and the Fourteenth Amendment sought only to provide a non-discrimination rule. The Act referred to the "full and equal benefit," not just "equal benefit." *Id.* at 3043.

In his concurrence, Justice Thomas referred to states that "enacted legislation prohibiting blacks from *carrying* firearms without a license," *id.* at 3082, and quoted Frederick Douglass as stating that "the black man has never had the right either to keep *or bear* arms," which would be remedied by adoption of the

Fourteenth Amendment. *Id.* at 3083 (Thomas, J., concurring) (emphasis added).[9]

Having completed its historical analysis, *McDonald* proceeded to state "our central holding in *Heller*: that the Second Amendment protects a personal right to keep and bear arms for lawful purposes, most notably for self-defense within the home." *Id.* at 3044. The Maryland court in this case commented: "If the Supreme Court, in this dicta, meant its holding to extend beyond home possession, it will need to say so more plainly." *Williams*, 10 A.3d at 1177. Yet this Court could not have been plainer. It referred to "our central holding," not dicta. The Amendment refers not just to the right to "keep" arms, which obviously includes home possession, but also to

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[9]The traditional linguistic meaning of "bearing arms" as carrying arms off of one's premises may be illustrated by reference to Maryland history itself, in the same epoch *McDonald* described. Antebellum Maryland prohibited slaves and free blacks from carrying a firearm without a license. Maryland Code 454 (1860). At its 1867 constitutional convention, it was moved to add the guarantee that "every citizen has the right to bear arms in defence of himself and the State." Perlman, *Debates of the Maryland Convention of 1867* at 79, 151 (1867). When a delegate moved to insert "white" after "every," another insisted: "Every citizen of the State means every white citizen, and none other." *Id.* at 150-51. When it appeared that no right to "bear arms" would be recognized, it was proposed that "the citizen shall not be deprived of the right to keep arms on his premises," but that too failed. Perlman at 151. At any rate, the "right to bear arms" was clearly distinguished from "the right to keep arms on his premises."

"bear arms," a term hardly limited to home possession. The right is guaranteed "most notably for self-defense within the home," which implies a right to bear arms outside the home (even if not quite as "notably" as in the home).[10]

D. State Court Decisions Have Categorically Voided Laws That Prohibit Bearing Arms Both Openly and Concealed

The courts of some states which have constitutional guarantees of the right to bear arms have decided cases which offer guidance to this Court on how the Second Amendment right to bear arms should be interpreted. Maryland has no such guarantee.

Traditionally, State courts applied a categorical approach similar to *Heller* to restrictions on the carrying of firearms. As noted, *State v. Reid*, 1 Ala. 612, 616-17 (1840), upheld a ban on carrying a weapon concealed, but added: "A statute which, under the pretence of regulating, amounts to a destruction of the right, or which requires arms to be so borne as to render them wholly useless for the purpose of defence,

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[10]"[S]peech on public issues occupies the highest rung of the hierarchy of First Amendment values and is entitled to special protection." *Snyder v. Phelps,* 131 S.Ct. 1207, 1211 (2011) (internal quotation marks and citation omitted). That does not imply that other speech enjoys *no* protection.

would be clearly unconstitutional." A prohibition on carrying a handgun for self-defense both openly and concealed, as in the Maryland statute, amounts to a destruction of the right.

While this case does not involve a restriction on carrying a handgun in which a permit is available to any law-abiding citizen, some courts have invalidated such regulatory schemes. For instance, *State v. Rosenthal*, 55 A. 610, 611 (Vt. 1903), invalidated a prohibition on carrying a pistol, openly or concealed, without a permit as violative of the right to bear arms.

Similarly, *State v. Kerner*, 107 S.E. 222, 225 (N.C. 1921), invalidated a requirement of a license to carry a handgun, even openly. "'[P]istol' ex vi termini is properly included within the word 'arms,' and . . . the right to bear such arms unconcealed cannot be infringed." *Id.* at 225. The court held that "this is void because an unreasonable regulation, and, besides, it would be void because for all practical purposes it is a prohibition of the constitutional right to bear arms. There would be no time or opportunity to get such permit . . . on an emergency." *Id.* at 225.

Selectively favoring only privileged persons to exercise the right to bear arms persisted well after adoption of the Fourteenth Amendment. In one instance, it was recognized that "the Act [requiring a license to carry a firearm] was passed for the purpose of disarming the negro laborers . . . . The statute was

never intended to be applied to the white population . . . ." *Watson v. Stone,* 4 So.2d 700, 703 (Fla. 1941) (Buford, J., concurring).

Invalidating an ordinance which prohibited firearms from being transported or possessed in a vehicle or place of business for self-defense, *City of Lakewood v. Pillow*, 501 P.2d 744, 745 (Colo. 1972), reasoned:

> A governmental purpose . . . under the police power, may not be achieved by means which sweep unnecessarily broadly and thereby invade the area of protected freedoms. . . . Even though the governmental purpose may be legitimate and substantial, that purpose cannot be pursued by means that broadly stifle fundamental personal liberties when the end can be more narrowly achieved.[11]

Employing similar reasoning, *State ex rel. City of Princeton v. Buckner*, 377 S.E.2d 139, 144 (W.Va. 1988), invalidated a statute which prohibited carrying a handgun without a license, in that it "operates to

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[11]*See also City of Las Vegas v. Moberg*, 485 P.2d 737, 738 (N.M. Ct. App. 1971) ("an ordinance may not deny the people the constitutionally guaranteed right to bear arms"; ban on carrying weapon, concealed or otherwise, void).

impermissibly infringe upon this constitutionally protected right to bear arms for defensive purposes."

Bleiler v. Chief, Dover Police Dep't., 927 A.2d 1216, 1222 (N.H. 2007), upheld the requirement of a license to carry a concealed weapon because it "does not prohibit carrying weapons; it merely regulates the manner of carrying them. . . . Even without a license, individuals retain the ability to keep weapons in their homes or businesses, and to carry weapons in plain view." The same cannot be said here.

In sum, state courts have often taken a categorical approach, holding that laws that prohibit both the open and concealed carrying of a handgun for self-defense violate the right to bear arms. Where licensing is required, licenses must be available to law-abiding persons generally.

II. THE DECISION OF THE MARYLAND COURT DIRECTLY CONFLICTS WITH *HELLER* AND *MCDONALD*, AND PRESENTS AN IMPORTANT FEDERAL QUESTION THAT SHOULD BE SETTLED BY THIS COURT

A. The Maryland Statutory Scheme Completely Prohibits Ordinary, Law-Abiding Citizens from Carrying a Handgun, Openly or Concealed, for Purposes of Defense

Section 4-203 criminalizes carrying a handgun outside the home for purposes of self-defense without a permit. Section 5-306 contains a list of "qualifications" for issuance of a permit, including a finding by the Secretary of State Police, based on an investigation, that the applicant "has good and substantial reason to wear, carry, or transport a handgun, such as a finding that the permit is necessary as a reasonable precaution against apprehended danger." Further, Md. Code Regs. 29.03.02.04 requires the issuing authority to consider in all cases "[w]hether the permit is necessary as a reasonable precaution for the applicant against apprehended danger."

As that provision is interpreted by Maryland administrative authorities and the courts, it is impossible for an ordinary, law-abiding Marylander, including Petitioner, to obtain a carry permit. Petitioner alleged "that as a result of the regulatory

scheme, 'any such application would have been denied.'" *Williams*, 10 A. 3d 1173, n. 7. That statement is entirely correct.

On the application for a handgun permit, the Maryland State Police categorize permits according to whether the application is submitted by a correctional officer, former police officer, private detective, security guard, holder of a special police commission (such as university police), holder of a railroad police commission, or certain other businesses or occupations.[12] Permits for most of these categories are apparently issued routinely and without any particularized proof of danger to the applicant.

Unlike these occupations, the ordinary citizen who desires a permit for "personal protection" must include "documented evidence of recent threats, robberies, and/or assaults, supported by official police reports or notarized statements from witnesses," according to the application form. Those requirements, which will be impossible for most citizens to meet, have been upheld by the state Handgun Permit Review Board and the Maryland courts.

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[12]The permit application form is available on the same Maryland State Police website as a report cited by the Court of Appeals. *Williams*, 10 A. 3d 1173, n. 7. *See* http://www.mdsp.org/Downloads/Licensing_Application.pdf. *See also* discussion below regarding the report cited by the Court of Appeals.

In *Scherr v. Handgun Permit Review Board*, 880 A.2d 1137, 1141 (Md. Ct. Spec. App. 2005), the applicant "was a law abiding citizen with an excellent reputation." Because his application contained "no evidence and/or reference" to previously having been subjected to either "assaults, threats, or robberies," the state police sent Scherr a "shortage letter" asking him to provide such documentation, corroborated by police reports. Ultimately it was recommended that the handgun permit be denied, *inter alia,* because of the lack of prior robberies, threats, or assaults, and because there was no showing that the applicant's "level of threat and/or danger" was "any greater than that of an *ordinary citizen*." *Id.* at 1142 (emphasis added).

Because of this lack, the Maryland Handgun Permit Review Board concluded that the applicant "has not demonstrated a good and substantial reason to wear, carry or transport a handgun as a reasonable precaution against apprehended danger." *Id.* at 1143. At a second hearing, the state police officer responsible for reviewing permit applications testified that "except for former police officers, he had *never* approved an application where the applicant had failed to produce evidence of a threat," and that police reports were generally required. *Id.* (emphasis added). The reviewing court noted that if general fears of criminal attack "justified issuance of a handgun permit, it is hard to see how the Review Board could deny any law-abiding citizen a permit." *Id.* at 1148.

Snowden v. Handgun Permit Review Board, 413 A.2d 295 (Md. Ct. Spec. App. 1980) similarly affirmed the denial of a permit. Mr. Snowden was active in community work dealing with drug and crime control. He presented statements to the Handgun Permit Review Board that he had received threats after calling on public officials to engage in a crackdown on drug pushers, and had reported the threats to the county narcotics division and the State's Attorney. *Id.* at 296.

The Board found that he had received threats, but had never actually been assaulted. He had thus not demonstrated a "good and substantial reason" to carry and had not met "the statutory requirements for issuance of a handgun permit." *Id.* The Court of Special Appeals affirmed, noting that "it is the Board not the applicant" that decides whether there is "apprehended danger." *Id.* at 298. Otherwise, "each person could decide for himself or herself that he or she was in danger," the State Police would become a "rubber stamp," and the legislation would be "rendered absolutely meaningless." *Id.* *See also Onderdonk v. Handgun Permit Review Board*, 407 A.2d 763 (Md. Ct. Spec. App. 1979) (holding that break-ins at applicant's residence did not justify issuance of permit).

Under these statutes, regulations, administrative practices, and court decisions, it is plain that Petitioner, like other ordinary, law-abiding Marylanders, is flatly ineligible to obtain a handgun

carry permit for purposes of personal protection. The "exception" in § 4-203 for permits issued under §§ 5-301 *et seq.* is illusory.

To refute Petitioner's contention that a handgun permit application by him would be denied, the Court of Appeals implied that permits are available as a matter of course in Maryland, noting that "The State counters that nearly 93 percent of handgun permit applicants from 2006 to 2009 were issued permits. See Maryland Department of State Police 2009 Annual Report, http://www.mdsp.org/downloads/2009_Annual_Report.pdf." *Williams,* 10 A.3d at 1173 n.7.

Instead, the figures in the State Police Annual Report quoted by the Court of Appeals confirm that the Maryland statutory scheme is extremely restrictive. According to that Report, 6,771 original and 9,255 renewal permits were issued in the four year period 2006-2009, totaling 16,026 permits. The average number of permits issued each year is therefore 4,007. The population of Maryland in 2009 as estimated by the Census Bureau was 5,699,478.[13]

Thus, in each year, the ratio of permits issued to population is 0.000703, substantially less than one for

[13]http://quickfacts.census.gov/qfd/states/24000.html

every thousand Maryland residents.[14] Given the number of security guards, private investigators, retired law enforcement officers, and other favored occupations, it is easy to see that these occupations account for most of the permits in Maryland. That also explains the "high" approval rate: security related occupations will receive permits routinely, but only a miniscule percentage of ordinary citizens will even bother to apply.

Recent official statistics demonstrate that the permits issued for personal defense are an insignificant portion of the small number of permits issued overall. Data released by the Maryland State Police in 2007 pursuant to a Public Information Act request revealed that 28.9% of permits had been issued to police (mostly retired and special police); 37.6% to corrections, security, judicial, and government personnel; and 31.8% for business purposes (*e.g.*, bail bondsmen, merchants who carry large sums of money, and others with occupational need).[15] *Only 1.7% of the permits actually issued were for personal protection or death threats.*

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[14]The number of existing permit holders will be somewhat higher, because Maryland permits expire every two or three years, depending on where one is in the renewal cycle. Md. Code Ann., Pub. Safety, § 5-309.

[15]http://www.marylandshallissue.org/ccwdata.html

The Maryland statutes effectively deprive Petitioner and other ordinary Marylanders of the right to carry a handgun for defense outside the home. In doing so, those statutes and the Court of Appeals' decision conflict with the fundamental right to bear arms recognized in *Heller* and confirmed in *McDonald*, and their holding that "individual self-defense is 'the *central component*' of the Second Amendment right." *McDonald*, 130 S.Ct. at 3036 (emphasis added).

B. Certiorari Should be Granted to Correct the Widespread Misapprehension That Under *Heller* and *McDonald* the Second Amendment's Scope Does Not Extend Beyond the Home

Because the Maryland Court of Appeals held that carrying or transporting a handgun outside one's home without a permit is "outside of the scope of the Second Amendment," *Williams*, 10 A.3d at 1169, 1178, that court did not apply any level of constitutional scrutiny, strict, intermediate, or otherwise, to the challenged statutes.

Due to a perceived lack of guidance, most other post-*Heller* federal and state court decisions involving carrying a firearm outside the home have also held that such conduct is outside the scope of the Second Amendment and have not engaged in a strict scrutiny or even an intermediate scrutiny analysis. The recent case of *United States v. Masciandaro*, No. 09-4839, 2011 WL 1053618 (4th Cir. Mar. 24, 2011) involved the

peaceable possession of a loaded gun in a National Park, contrary to regulation. One judge on the three judge panel would have held that the Second Amendment was clearly implicated. The majority of the Fourth Circuit panel, however, expressly refused to decide if the Second Amendment applied outside the home, but held that that the restriction would survive intermediate scrutiny if the Second Amendment applied. The majority stated, 2011 WL 1053618 at *16-17:

> On the question of *Heller*'s applicability outside the home environment, we think it prudent to await direction from the Court itself. . . . There may or may not be a Second Amendment right in some places beyond the home, but we have no idea what those places are, what the criteria for selecting them should be, what sliding scales of scrutiny might apply to them, or any one of a number of other questions. . . . [I]n this instance we believe the most respectful course is to await that guidance from the nation's highest court.

In *Gonzalez v. Village of West Milwaukee*, No. 09-CV-0384, 2010 WL 1904977 (E.D. Wis. May 11, 2010), Plaintiff brought a Section 1983 action against governmental defendants for being twice arrested when he was peaceably and openly carrying a

holstered pistol, which was not illegal under Wisconsin law. The court held that there was nevertheless probable cause to arrest him because others were alarmed, and "The Supreme Court has never held that the Second Amendment protects the carrying of guns outside the home [citing *Heller*]." 2010 WL 1904977 at *4. *See also United States v. Hart*, 726 F. Supp.2d 56 (D. Mass. 2010) (*Terry* stop justified on suspicion of concealed weapon, and Second Amendment rights not violated, because under *Heller* and *McDonald* Second Amendment "protects the right to possess a handgun **in the home**. . . . ") (emphasis in original).

In People v. Dawson, 934 N.E.2d 598 (Ill. App. Ct. 2010), the Defendant was convicted under a statute barring carrying any firearm, openly or concealed, if uncased, loaded, and immediately accessible. Noting that *McDonald* held that the Second Amendment "protected a fundamental right," the Court stated it must determine "the scope of that right" under *Heller* and *McDonald*. The Court refused to apply strict scrutiny because of "the holdings in both cases explicitly limiting the stated right to possession in the home. . . ." *Id.* at 604. Because under the statute an individual can possess a firearm in one's "legal dwelling," the court held that the statute proscribing both open and concealed carry outside the home "does not implicate the fundamental right to keep and bear arms in one's home for self-defense." *Id.* at 607.

California appellate courts have taken a similarly restrictive approach. *People v. Flores*, 86 Cal. Rptr.3d 804 (Cal. Ct. App. 2008) (conviction for carrying loaded weapon in public does not preclude the use "of handguns held and used for self-defense in the home" and does not significantly burden core right announced in *Heller* to use arms "in defense of hearth and home"); *People v. Yarbrough*, 86 Cal. Rptr.3d 674 (Cal. Ct. App. 2008) (conviction under concealed carry statute of individual who possessed a pistol in a private residential driveway does not contravene Second Amendment rights as interpreted in *Heller*; driveway is "publicly sensitive place" and carry statute does not "prohibit conduct protected by the Second Amendment").

The District of Columbia also has upheld an ordinance that bans carrying of handguns on grounds that the Second Amendment does not apply outside the home. In *Sims v. United States*, 963 A.2d 147 (D.C. 2008), the court emphasized that *Heller* applies only to the home, and that there was no evidence that appellant was "within the boundary lines (or curtilage) of his home...." *Id.* at 150. *See also Little v. United States*, 989 A.2d 1096, 1101 (D.C. 2010) ("Appellant concedes that he was not in his own home. Thus, appellant was outside the bounds identified in *Heller*. . . .").

A post-*Heller* but pre-*McDonald* case held that the Second Amendment did not apply to the states, but

upheld a concealed carry statute under a *Heller* analysis (apparently applying the Kansas constitutional provision). *State v. Knight*, 218 P.3d 1177 (Kan. 2009). The Court concluded that *Heller* related "solely to use of a handgun in the home for self-defense purposes."

In each of these cases, all of which involved carrying a firearm openly or concealed, the court applied a "categorical" test in which the Second Amendment was found to be inapplicable outside the home, despite the clear language of *Heller* and *McDonald*.

A few courts have held or assumed post-*Heller* that the Second Amendment may apply outside the home, but have utilized intermediate scrutiny to uphold the challenged restrictions.[16] *See, e.g., Brown v. United States*, 979 A.2d 630 (D.C. 2009); *People v. Aguilar*, No. 1-09-0840, 2011 WL 693241 (Ill. App. Ct. Feb. 23, 2011); (applying categorical test limiting Second Amendment protection to the home, and then also applying intermediate scrutiny).

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[16] As noted, in *Masciandaro* one judge found that the Second Amendment applied outside the home, but two judges refused to decide that issue. The panel believed that the challenged regulation would survive intermediate scrutiny if the Second Amendment did apply.

In cases that have challenged statutes relating to possession of firearms by persons who are *not* law-abiding, or in which the right of self-defense is not impinged upon, intermediate scrutiny has been the most common standard applied. *See, e.g., United States v. Skoien*, 614 F.3d 638 (7th Cir. 2010)(en banc) (possession by individual convicted of misdemeanor crime of domestic violence); *United States v. Tooley*, 717 F. Supp.2d 580 (S.D. W.Va 2010) (same); *United States v. Marzzarella*, 614 F.3d 85, 97 (3d Cir. 2010) (possession of firearm with obliterated serial number).

But the instant case involves the conviction of a law-abiding citizen for the mere act of exercising his Second Amendment rights outside the home, when Maryland allows him no lawful avenue to do so. Because of the erroneous interpretation of *Heller* in the instant case, and the widespread misapprehension that *Heller* did not recognize any Second Amendment protection outside the home, certiorari should be granted.

C. Petitioner has Standing to Challenge the Restrictions on his Second Amendment Rights That Led to his Conviction.

Without analysis, the Maryland Court of Appeals held that "because Williams failed to file an application for a permit to carry a handgun, he lacks standing to challenge the constitutionality of Sections 5-301 et seq." and the Maryland handgun permit

regulations. *Williams*, 10 A.3d at 1173. The Court of Appeals articulated no reasoning, but instead simply cited two Maryland cases, neither of which is remotely applicable to this case. *Id.*[17]

This is completely unfounded given Petitioner's criminal conviction. Under this Court's precedents, it is not a requirement for standing to challenge an allegedly unconstitutional permit requirement that one must apply for the permit and be denied. A long line of cases have invalidated permit requirements to exercise First Amendment rights in which the defendants who were convicted did not apply for permits. One of the more recent cases is *Watchtower Bible & Tract Society of New York, Inc. v. Village of Stratton*, 536 U.S. 150, 156 (2002) (invalidating permit requirement even though "Petitioners did not apply for a permit.").

The test for Article III standing was summarized by this Court in *Steel Co. v. Citizens for a Better Environment*, 523 U.S. 83, 103 (1998):

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[17]*Gregg v. State*, 976 A.2d 999, 1002 n.2 (Md. 2009) (court observed in one-sentence footnote that individual *did* have standing to file petition for post-conviction review, because his offense was specifically listed in statute permitting review); *Evans v. State*, 914 A.2d 25 (Md. 2006) (non-profit organizations could not challenge death penalty execution procedures where they had suffered no special damage and their only asserted basis for standing was that they "oppose capital punishment and desire to see that the death penalty is not carried out").

> First and foremost, there must be alleged (and ultimately proved) an "injury in fact"—a harm suffered by the plaintiff that is "concrete" and "actual or imminent, not 'conjectural' or 'hypothetical." . . . Second, there must be causation—a fairly traceable connection between the plaintiff's injury and the complained-of conduct of the defendant. . . . And third, there must be redressability—a likelihood that the requested relief will redress the alleged injury. (citations omitted.)

Under the first test, Petitioner unquestionably suffered an injury in fact when he was convicted and sentenced to imprisonment for carrying a firearm without a permit. He was further injured by the deprivation of his constitutional right to bear arms.[18]

Under the second test (causation), Petitioner has standing to challenge the handgun permit statutes and regulations, which are incorporated by reference in the specific statute under which he was convicted, and which form an integral part of the statutory scheme relating to carrying a handgun. Petitioner claims that

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[18] *See Elrod v. Burns*, 427 U.S. 347, 373-74 (1976) ("the loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury").

his Second Amendment rights are violated by this scheme, because Maryland criminalizes carrying a handgun outside the home without a permit, and any request for a permit by him would be denied.[19] Thus, the Maryland permit statutes prevent his exercise of his Second Amendment rights outside the home, and caused him grave injury when he attempted to exercise those rights.

Under the third test, there can be no doubt that if Petitioner were to be successful in having the

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[19]In most states, a permit to carry a concealed handgun must be issued to any law-abiding citizen who is not statutorily disqualified. Steven W. Kranz, Comment, *A Survey of State Conceal and Carry Statutes: Can Small Changes Help Reduce the Controversy?*, 29 Hamline L. Rev. 637, 647 n. 77 (2006). This source lists 34 states as having "shall issue" concealed carry laws. Since it was published, Iowa, Kansas, and Nebraska have passed "shall issue" laws. Iowa Code § 724.7 (2011); Kan. Stat. Ann. §§ 75-7c03, 75-7c04 (2010); Neb. Rev. Stat. §§ 69-2430, 69-2433 (2010). In addition, Alabama's and Connecticut's discretionary "may issue" laws are generally applied in a non-restrictive fashion. In Vermont, concealed or open carry without a permit has been held to be a constitutional right. *State v. Rosenthal*, 55 A. 610 (Vt. 1903). Thus, 40 states now recognize that concealed carry outside the home is a right that may be freely exercised by law-abiding citizens. More than two dozen states allow open carry without a permit.

Petitioner takes no position on whether the failure to apply for a permit would jeopardize the assertion of a Second Amendment claim in a prosecution for carrying a handgun without a permit in a state where, unlike Maryland, such a permit is required to be issued to law-abiding citizens.

Maryland statutory scheme declared unconstitutional and his conviction overturned, his injury would be redressed. Petitioner thus has Article III standing.

But even if there were some general requirement for Petitioner to submit an application in order to challenge the permit statute, that requirement would be eliminated here under the doctrine of futility. This court has made it clear in various contexts that litigants are not required to perform a futile act. *See, e.g., Palazzolo v. Rhode Island,* 533 U.S. 606, 625-26 (2001) (where limitations imposed by wetland regulations were clear, and there was no indication that kind of use sought by landowner would have been allowed, court did not require submission of "futile applications" with other agencies); *McCarthy v. Madigan*, 503 U.S. 140, 148 (1992) (summarizing prior Supreme Court cases, including cases holding that exhaustion not required where "any such application [would have been] utterly futile" or where requiring that administrative process be invoked "would be to demand a futile act"). See also *Bach v. Pataki*, 408 F.3d 75, 77, 83 (2d Cir. 2005), *cert. denied* 546 U.S. 1174 (2006) (plaintiff could challenge New York's refusal to issue firearms permits to non-residents because he had made "a substantial showing that application for the permit would have been futile").

In sum, Petitioner was ineligible for a handgun carry permit, as are almost all Marylanders. There is

no evidence in the record that Petitioner could have satisfied requirements that he submit police reports of threats, robberies or assaults committed against him. He has standing to challenge the statutory scheme that criminalized his carrying a handgun for personal protection.

CONCLUSION

This Court should grant this petition for a writ of certiorari.

Respectfully submitted,

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