IN THE CIRCUIT COURT FOR BALTIMORE COUNTY

PETITION OF

EDWARD HOLMES WHALEN

FOR JUDICIDAL REVIEW OF THE DECISION OF THE MARYLAND OFFICE OF ADMINISTRATIVE HEARINGS

IN THE CASE OF EDWARD HOLMES WHALEN OAH CASE NO. MSP-LD-50B-20-23317 CASE NO. C-03-CV-21-000853

PETITIONER'S NOTICE OF SUPPLEMENTAL AUTHORITIES

Petitioner respectfully submits this supplemental memorandum so as bring to the Court's attention the June 29, 2022, decision of the Court of Special Appeals in *Fooks v. State*, --- A.3d -- , 2022 WL 2339412 (Ct.of Sp.Appeals, June 29, 2022). The decision in *Fooks* supports petitioner's pending motion for summary reversal on the basis of the Supreme Court's decision in *New York State Rifle & Pistol Association, Inc. v. Bruen*, --- S.Ct. ----2022 WL 225130 (June 24, 2022). A copy of *Fooks* is attached for the convenience of the Court.

In *Fooks*, the defendant (Fooks) was charged with illegal possession of a regulated firearm in violation of MD Code, Public Safety, 5-133(b)(2), which provides that "a person may not possess a regulated firearm if the person . . . has been convicted of a violation classified as a common law crime and received a term of imprisonment of more than 2 years." Fooks likewise was convicted of violating MD Code, Public Safety, § 5-205(b)(2), which provides that "[a] person may not possess a rifle or shotgun if the person: . . . has been convicted of a violation classified as a crime under common law and received a term of imprisonment of more than 2 years." Fooks had been previously convicted of common law criminal contempt for willfully failing to pay child support and was sentenced to prison for more than 2 years. See *Fooks*, slip op. at 1 n.3. On appeal, CASE NO. C-03-CV-21-000853 - 1

Fooks contended that his conviction under Section 5-133(b)(2) and Section 5-205(b)(2) violated the Second Amendment because the prior common law criminal contempt conviction for failing to pay child support could not be used as a disqualifying offense under the Second Amendment.

The Court of Special Appeals sustained the convictions and rejected Fooks' Second Amendment defense. Applying *Bruen*, the Court of Special Appeals held that nothing in *Buren* changed the principle, articulated by the Court in *District of Columbia v. Heller*, 554 U.S. 570, 626-27 (2008), that the Second Amendment did not ban "prohibitions on the possession of firearms by felons and the mentally ill." *Fooks*, slip op. at 5, 6. The Court of Special Appeals recognized that in *Bruen* "the Supreme Court declined to adopt both prongs of the two-prong test' for assessing Second Amendment challenges, and had thus rejected "means-ends scrutiny in the Second Amendment context." Slip op. at 11. The Court of Special Appeals also recognized that *Buren* "defines the boundaries of firearms regulation solely in historical terms." (*Id.* at 12). See also *id.* at 6 ("The Court defined those boundaries solely by reference to historical traditions of firearms regulation and eliminated any means-ends analysis of those laws."). Applying these principles, the Court of Special Appeals held that Fooks was properly considered to be a disqualified person for purposes of applying Section 5-133(d)(2) and Section 5-205(b)(2).

The analysis and reasoning applied in *Fooks* supports summary reversal here. Unlike the defendant in *Fooks*, it is undisputed that petitioner here is a responsible, law-abiding citizen. As noted in the motion for summary reversal, petitioner was denied a carry permit *solely* because the State Police found that he lacked a "good and substantial reason" for a permit under MD Code, Public Safety, § 5-306(a)(6)(ii). *Fooks* correctly recognizes that "firearms regulation" must be justified "solely in historical terms" and that "means-end scrutiny" can no longer be used to justify

such regulations. That analysis applies here. As the motion for summary reversal details, *Buren* holds that law-abiding, responsible citizens have a constitutional right to armed self-defense outside the home, and there is no "historical" justification for limiting that right only to persons who have a "special need" to protect themselves. See *Bruen*, slip op. at 24-25 n.8 (we conclude . . . that a State may not prevent law-abiding citizens from publicly carrying handguns because they have not demonstrated a special need for self-defense"). That is the end of the inquiry. Summary reversal is appropriate.

CONCLUSION

For all the foregoing reasons, and for the reasons set forth in petitioner's motion for summary reversal, this Court should summarily reverse the decision of the Office of Administrative Hearings and remand with instructions to order the Maryland State Police to issue a carry permit to petitioner without further delay.

Respectfully submitted,

/s/ Mark W. Pennak

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The undersigned counsel hereby certifies that on June 30, 2022, foregoing PETITIONER'S

NOTICE OF SUPPLEMENTAL AUTHORITIES was served via electronic MDEC service on all

counsel, including the following counsel:

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