

No. 16-1222

**In the
United States Court of Appeals for the Fourth Circuit**

JAMES HAMILTON,
Plaintiff-Appellant,

v.

WILLIAM L. PALLOZZI, *et al.*,
Defendants-Appellees.

**On Appeal from the
United States District Court for
the District of Maryland**

Brief *Amicus Curiae* of Gun Owners of America, Inc., Gun Owners Foundation,
The Heller Foundation, United States Justice Foundation, Downsize DC
Foundation, DownsizeDC.org, Policy Analysis Center, and Conservative Legal
Defense and Education Fund in Support of Petition for Rehearing *En Banc*

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4. Is there any other publicly held corporation or other publicly held entity that has a direct financial interest in the outcome of the litigation (Local Rule 26.1(b))? YES NO
If yes, identify entity and nature of interest:
5. Is party a trade association? (amici curiae do not complete this question) YES NO
If yes, identify any publicly held member whose stock or equity value could be affected substantially by the outcome of the proceeding or whose claims the trade association is pursuing in a representative capacity, or state that there is no such member:
6. Does this case arise out of a bankruptcy proceeding? YES NO
If yes, identify any trustee and the members of any creditors' committee:

Signature: /s/ Robert J. Olson

Date: March 10, 2017

Counsel for: Gun Owners of America, et al.

CERTIFICATE OF SERVICE

I certify that on March 10, 2017 the foregoing document was served on all parties or their counsel of record through the CM/ECF system if they are registered users or, if they are not, by serving a true and correct copy at the addresses listed below:

/s/ Robert J. Olson
(signature)

March 10, 2017
(date)

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INTEREST OF *AMICI CURIAE*

Gun Owners of America, Inc., Gun Owners Foundation, The Heller Foundation, United States Justice Foundation, Downsize DC Foundation, DownsizeDC.org, Policy Analysis Center, and Conservative Legal Defense and Education Fund are nonprofit organizations, exempt from federal taxation under sections 501(c)(3) or 501(c)(4) of the Internal Revenue Code. Each is dedicated, *inter alia*, to the correct construction, interpretation, and application of the law.¹ Most of these *amici* joined an *amicus curiae* brief in this case filed on April 18, 2016.²

STATEMENT OF THE CASE

In 2006, Appellant James Hamilton was convicted of three felonies in Virginia. Hamilton v. Pallozzi, 2017 U.S. App. LEXIS 2821 (4th Cir. 2017) at *2. In 2013, the Governor of Virginia entered a judgment restoring most of his civil rights. *Id.*

¹ *Amici* requested and received the consent of Defendants-Appellees to the filing of this brief *amicus curiae*, pursuant to Rule 29(a), Federal Rules of Appellate Procedure. Counsel for Plaintiff-Appellant takes no position on the filing of this brief. No party's counsel authored the brief in whole or in part. No party or party's counsel contributed money that was intended to fund preparing or submitting the brief. No person other than these *amici curiae*, their members or their counsel contributed money that was intended to fund preparing or submitting this brief.

² <http://lawandfreedom.com/wordpress/wp-content/uploads/2016/04/Hamilton-amicus-brief.pdf>.

Then, in 2014, the Circuit Court for Spotsylvania County, Virginia, restored his Second Amendment right to keep and bear arms. *Id.* at *3. Accordingly, neither Virginia nor the federal government consider Hamilton to be a felon, ineligible to possess firearms. Now Hamilton has moved from Virginia to Maryland, where he now wishes to possess a firearm. *Id.* The State of Maryland, however, refuses to recognize Hamilton’s Second Amendment rights, claiming that Maryland law does not allow for restoration of firearm rights except by pardon.

Hamilton brought suit in federal court to challenge his disarmament by Maryland, asserting that his “non-violent background, unremarkable criminal history, stable family life, role in the community, and employment as an armed guard ... suffice to establish Hamilton’s entitlement to relief.” Appellant’s Br. at 3. The district court countered that Hamilton’s “crimes are not technical or regulatory offenses: they are black-letter *mala in se* felonies reflecting grave misjudgment and maladjustment.” Hamilton v. Pallozzi, 165 F. Supp. 3d 315, 326 (D. Md. Feb. 18, 2016). Likewise, the panel viewed Hamilton’s crimes to be “significant offenses reflecting disrespect for the law,” and was unwilling to consider “evidence of rehabilitation, the likelihood of recidivism, and the passage of time....” Hamilton v. Pallozzi, 2017 U.S. App. LEXIS 2821, *23, 26.

These *amici*, however, offered a different approach, one that did not focus on

the caliber of Hamilton as a person. Rather, *amici* argued that, since a Virginia court has already entered a judgment restoring Hamilton’s right to keep and bear arms, the Full Faith and Credit Clause of the U.S. Constitution requires the judgment be given “as much respect and credit as it would receive in the rendering state.” W. Reynolds, “The Iron Law of Full Faith and Credit,” 53 MD. L. REV. 412 (1994), at 417.

Amici do not raise any new issues that are not already a part of this case, but rather supplement the theory raised by Hamilton, that Maryland has violated his Second Amendment rights. At oral argument, Judge Shedd asked counsel for Appellant whether he wished to adopt *amici*’s Full Faith and Credit argument, and Appellant’s counsel agreed that the Full Faith and Credit Clause “does inform your decision here.”³ Appellee’s brief disputed the application of the clause (Appellee’s Br. at 15, n.7) and the panel addressed the Full Faith and Credit argument, and rejected it.

ARGUMENT

In its opinion, the panel casually dismissed *amici*’s Full Faith and Credit

³ The panel incorrectly claimed that “[b]oth parties have disavowed such an argument....” Hamilton at *24.

argument.⁴ However, in doing so, the panel completely misconstrued it. *Amici* had argued that this Court and the district court in Maryland must give Full Faith and Credit to **the Virginia judgment** which restored Hamilton’s rights. The panel, however, ruled on an entirely different matter, finding that Maryland is not required to give Full Faith and Credit to **a Virginia statute**.

Amici’s argument does not relate in any way to recognition of **statutes** enacted by the state legislature, as the panel assumed. Rather, these *amici*’s argument is based on the constitutional obligation to recognize final **judgments** issued by the judiciary of a sister state.

As the U.S. Supreme Court has noted, “[o]ur precedent **differentiates** the credit owed to **laws** (legislative measures and common law) and to **judgments**.” Baker at 232 (emphasis added). With respect to **statutes**, the Supreme Court has stated

⁴ First, the panel noted that “[i]n our federal system, each state is permitted to create its own **laws** so long as they do not run afoul of the Constitution, federal laws, and treaties....” Hamilton at *24 (emphasis added). These *amici* agree, and never argued otherwise. Second, the panel stated that “The Full Faith and Credit Clause does not compel ‘a state to substitute the **statutes** of other states for its own **statutes**....’” Hamilton at *24 n.15 (citing Baker by Thomas v. General Motors, 522 U.S. 222, 232 (1998)) (emphasis added). Again, these *amici* completely agree, and never argued otherwise. The Full Faith and Credit Clause clearly imposes no requirement that states adopt the policies and statutes of other states which conflict with their own, as the U.S. Supreme Court has held numerous times. Indeed, it is Maryland which, in this case, wishes to look to the Virginia criminal judgment which took away Hamilton’s Second Amendment rights, but then ignore the Virginia judgment which restored them.

exactly what the panel noted — that “[t]he Full Faith and Credit Clause does not compel ‘a state to substitute the **statutes** of other states for its own **statutes** dealing with a subject matter concerning which it is competent to legislate.’” *Id.* at 232 (emphasis added). But the U.S. Supreme Court then stated that:

[r]egarding **judgments**, however, the full faith and credit obligation is exacting. A final **judgment** in one State, if rendered by a court with adjudicatory authority over the subject matter and persons governed by the judgment, qualifies for recognition throughout the land. ... in other words, the judgment of the rendering State gains nationwide force. [*Id.* at 233 (emphasis added)].

The Full Faith and Credit principle applies to judgments **even if** “the forum would not be required to entertain the suit on which the judgment was founded.” *Id.* at 232. And the rule requires courts’ “submission ... **even to** hostile policies reflected in the judgment of another State....” *Id.* at 233 (emphasis added).

Applying these principles to this case, Hamilton clearly could not have brought a petition in circuit court in Maryland asking for the judge to restore his firearm rights based on the Virginia statute. But, since his petition was properly adjudicated by a Virginia court, restoring to him his firearm rights, Maryland courts (and, indeed, state courts across the land) now are obliged to recognize it, and to permit Hamilton, free of any disability, to exercise his rights in the same

way as may any other Marylander.⁵

Virginia has not attempted to reach into Maryland and tell the state how to conduct its affairs. Rather, a Virginia court simply entered a judgment on a Virginia issue (revocation and restoration of firearm rights) involving a Virginia resident — thus dealing with both a person and “**a subject matter concerning which it is competent to legislate.**”” See Hamilton at *24 n.15, citing Baker at 232 (quoting Pac. Emp’rs Ins. Co. v. Indus. Accident Comm’n, 306 U.S. 493, 501 (1939) emphasis added). It is Maryland which now seeks to second guess the outcome of that Virginia judicial proceeding, attempting to use a Maryland statute to effectively overturn the decision of a Virginia court.

Rather than granting “full faith and credit,” the panel actually criticized and belittled the Virginia judgment, claiming that “restoration of firearms rights to a felon in Virginia appears to be a rather pro forma matter,” because “[t]he order entered here by the Spotsylvania County Circuit Court indicates no special factors related specifically to Hamilton....” Hamilton at *24. But the panel has no right to second guess the propriety of the Virginia statute and the merits of the Virginia judgment. Likewise, Maryland has no jurisdiction to decide to impose ongoing

⁵ Of course, Maryland’s laws still must comply with the Second Amendment, and these *amici* have in other cases argued that many of its restrictions on the right to keep and bear arms do not.

punishment for a Virginia crime, when Virginia has already seen fit to eliminate that punishment and restore the rights lost. Restoration of the civil rights of a person convicted under Virginia law is wholly within the cognizance of Virginia, and wholly outside the jurisdiction of Maryland. Thus, the Virginia court’s judgment restoring Hamilton’s right to keep and bear arms constitutes a judgment to which a Maryland court is constitutionally obligated to give “full faith and credit.”

CONCLUSION

The petition for rehearing *en banc* should be granted.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE WITH RULE 32(a)

IT IS HEREBY CERTIFIED:

1. That the foregoing Brief *Amicus Curiae* of Gun Owners of America, Inc., *et al.* in Support of Petition for Rehearing *En Banc* complies with the word limitation set forth by Fed. R. App. P. 29(b)(4), because this brief contains 1,531 words, excluding the parts of the brief exempted by Rule 32(a)(7)(B)(iii).

2. This brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using WordPerfect version 18.0.0.200 in 14-point Times New Roman.

/s/ Robert J. Olson

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Dated: March 10, 2017

CERTIFICATE OF SERVICE

IT IS HEREBY CERTIFIED that service of the foregoing Brief *Amicus Curiae* of Gun Owners of America, Inc., *et al.*, in Support of Petition for Rehearing *En Banc*, was made, this 10th day of March, by the Court's Case Management/Electronic Case Files system upon the attorneys for the parties.

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