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Recent Development

People v. Burns: The Unconstitutionality of the Illinois Aggravated Unlawful Use of a Weapon Statute

*Maria Elena Martinez**

On December 17, 2015, the Illinois Supreme Court decided *People v. Burns*.[1] In a decision written by Justice Burke, the court found section 24-1.6(a)(1), (a)(3)(A) of the aggravated unlawful use of a weapon ("AUUW") statute, 720 ILCS 5/24-1.6, unconstitutional on its face because it is a flat ban on carrying ready-to-use guns outside the home, without being limited to a subset of persons, such as felons.[2] The court further held that the provision is not enforceable against anyone, and it thus vacated defendant Edward Burns's conviction and sentence for AUUW.[3] Justice Garman, joined by Justice Thomas, specially concurred, arguing that the statute as applied to the defendant does not violate the Second Amendment, and thus it cannot be facially unconstitutional on that basis.[4] Instead, the concurrence contended, the statute is facially unconstitutional because it violates due process, as it does not require the State to plead and prove an essential element of the

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* Loyola University Chicago School of Law, J.D. expected May 2016; B.S., Massachusetts Institute of Technology, 2013. She would like to thank the Editorial Board for Volume 47 of the *Loyola University Chicago Law Journal* for this opportunity and its hard work editing this Recent Development.

1. People v. Burns, 2015 IL 117387.

2. *Id.* ¶ 25. The AUUW statute provides that a person commits an AUUW offense when he or she knowingly:

> Carries on or about his or her person or in any vehicle or concealed on or about his or her person except when on his or her land or in his or her abode, legal dwelling, or fixed place of business, or on the land or in the legal dwelling of another person as an invitee with that person's permission, any pistol, revolver, stun gun or taser or other firearm; . . . [and] the firearm, other than a pistol, revolver, or handgun, possessed was uncased, loaded, and immediately accessible at the time of the offense . . . .

720 ILL. COMP. STAT. 5/24-1.6(a)(1), (a)(3)(A) (2016).

3. *Burns*, 2015 IL 117387, ¶ 32.

4. *Id.* ¶ 35.

offense—the defendant's lack of Second Amendment rights.[5]

In deciding the case, the majority in *Burns* extended its previous 2013 decision in *People v. Aguilar*,[6] noting that some of the language used in the modified opinion had inappropriately referred to the Class 2 and Class 4 forms of the AUUW offense.[7] In *Aguilar*, the court held that section 24-1.6(a)(1), (a)(3)(A) of the AUUW statute operates as a ban on an individual's right to possess a gun for self-defense outside the home, and was thus facially unconstitutional under the Second Amendment to the U.S. Constitution.[8] Yet, it limited the holding to the "Class 4 form" of the offense.[9] The *Burns* majority noted that such offenses do not exist, and the elements of AUUW are those explicitly contained in subsection (a) of the statute.[10] Therefore, section 24-1.6(a)(1), (a)(3)(A) of the AUUW statute is facially unconstitutional without limitation.[11]

The AUUW statute sets forth the two-prong structure of the AUUW offense in subsection (a), first providing that a person commits such offense when he or she:

> [K]nowingly (1) [c]arries on or about his or her person or in any vehicle or concealed on or about his or her person except when on his or her land or in his or her abode, legal dwelling, or fixed place of business . . . any pistol, revolver, stun gun or taser or other firearm; *or* (2) [c]arries or possesses on or about his or her person, upon any public street, alley, or other public lands[,] . . . for the purpose of the display of such weapon or the unlawful commerce in weapons, . . . any pistol, revolver, stun gun or taser or other firearm . . . .[12]

Second, one of eleven aggravating factors must be present.[13] The aggravating factor at issue in *Burns* was factor (a)(3)(A), which states, "the firearm, other than a pistol, revolver, or handgun, possessed was

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5. *Id.* ¶ 51.

6. 2 N.E.3d 321 (Ill. 2013).

7. *Burns*, 2015 IL 117387, ¶ 22 ("However, we now acknowledge that our reference in *Aguilar* to a 'Class 4 form' of the offense was inappropriate.").

8. *Aguilar*, 2 N.E.3d at 327–28.

9. *Id.* at 327 n.3 ("[W]e reiterate and emphasize that our finding of unconstitutionality in this decision is specifically limited to the Class 4 form of AUUW, as set forth in section 24-1.6(a)(1), (a)(3)(A), [and] (d) of the AUUW statute. We make no finding, express or implied, with respect to the constitutionality of unconstitutionality of any other section or subsection of the AUUW statute."). The "Class 4 form" of AUUW referred to a conviction that was subject to sentencing as a Class 4 felony pursuant to section (d) of the statute.

10. *Burns*, 2015 IL 117387, ¶¶ 22–23.

11. *Id.* ¶ 25.

12. 720 ILL. COMP. STAT. 5/24-1.6(a)(1)–(2) (2016) (emphasis added).

13. *Id.* at 5/24-1.6(a)(3)(A)–(I).

uncased, loaded, and immediately accessible at the time of the offense."[14] Subsection (d)(1) of the statute, titled "Sentence," provides that the offense of AUUW is a Class 4 felony, and a second or subsequent offense is a Class 2 felony.[15] It then lists certain factors that increase the classification of an individual's felony class.[16] For example, the classification increases from a Class 4 felony to a Class 2 felony if the person found guilty of committing the offense is a convicted felon.[17]

Appellant Edward Burns was arrested on June 13, 2009, for AUUW.[18] Earlier that day, two police officers in a marked squad car responded to a call of shots fired.[19] As they approached the intersection, one of the officers observed a four-door Nissan with three individuals entering it.[20] When the squad car pulled up in front of the Nissan, the officer saw the front passenger, later identified as Burns, exiting with a gun in his hand.[21] When the police officer ordered him to put his hands up, Burns tossed the gun back into the car and fled on foot.[22] While the officer pursued him, Burns threw a firearm magazine containing bullets on the ground.[23] The second officer recovered from the car the firearm that Burns had thrown, which contained a live round.[24] The magazine recovered during the chase fit the recovered firearm.[25] Burns was eventually apprehended when he came back to the Nissan.[26]

Burns was charged by an indictment that contained eleven counts: count I alleged that Burns was an armed habitual criminal; counts II and III alleged unlawful use of a weapon by a felon; and counts IV through XI alleged AUUW.[27] After the court entered an order of *nolle prosequi* on four counts alleging AUUW based on Burns's possession of a

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14. *Id.* at 5/24-1.6(a)(3)(A).
15. *Id.* at 5/24-1.6(d)(1). For a Class 2 felony, the person "shall be sentenced to a term of imprisonment of not less than 3 years and not more than 7 years." *Id.*
16. *Id.* at 5/24-1.6(d)(2)–(4).
17. *Id.* at 5/24-1.6(d)(3).
18. Brief for Plaintiff-Appellee at 1, People v. Burns, 4 N.E.3d 151 (Ill. App. Ct. 2013) (No. 1-12-0929).
19. *Id.*
20. *Id.*
21. Brief for Defendant-Appellant at 3, *Burns*, 4 N.E.3d 151 (No. 1-12-0929).
22. Brief for Plaintiff-Appellee, *supra* note 18, at 1.
23. Brief for Defendant-Appellant, *supra* note 21, at 3.
24. *Id.*
25. Brief for Plaintiff-Appellee, *supra* note 18, at 2.
26. Brief for Defendant-Appellant, *supra* note 21, at 3.
27. People v. Burns, 2015 IL 117387, ¶ 8.

firearm without a valid Firearm Owner Identification ("FOID") card, the State proceeded on counts I, II, III, VI, and X.[28] The trial court found Burns guilty on all counts at a bench trial, classified him as a Class X offender, and sentenced him to serve ten years' imprisonment.[29]

Burns filed a motion to reconsider in the circuit court, arguing that the State failed to prove that he had a prior felony conviction, a necessary element of the charged offenses, and that as a result his convictions must be vacated.[30] The circuit court agreed that a prior felony conviction was a necessary element of both the armed habitual criminal and unlawful use of a weapon by a felon offenses and accordingly vacated those convictions; however, it denied Burns's motion with regard to the AUUW convictions, finding that a prior felony conviction is not an element of AUUW, but rather a sentencing factor.[31] At sentencing, the State presented evidence of Burns's prior felony conviction and the circuit court ruled that Burns's conviction for AUUW was a Class 2 felony pursuant to subsection (d) of the AUUW statute.[32]

Burns appealed, arguing that his AUUW conviction must be vacated because section 24-1.6(a)(1), (a)(3)(A) of the AUUW statute, under which he was convicted, infringed on his Second Amendment rights.[33] The Illinois Appellate Court for the First District affirmed Burns's AUUW convictions.[34] The court relied on the modified opinion of the Illinois Supreme Court in *People v. Aguilar*, which held that section 24-1.16(a)(1), (a)(3)(A) of the AUUW statute is facially unconstitutional for the Class 4 form of the AUUW offense.[35] The court reasoned that

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28. *Id.* ¶ 10. Counts VI and X alleged violations of section 24-1.6(a)(1), (a)(3)(A) and section 24-1.6(a)(2), (a)(3)(A) of the AUUW statute based on the possession of an uncased, loaded, and readily accessible firearm in a vehicle and on a public way, respectively. *Id.*

29. Brief for Defendant-Appellant, *supra* note 21, at 4; Brief for Plaintiff-Appellee, *supra* note 18, at 4.

30. *Burns*, 2015 IL 117387, ¶ 11. The State introduced a certified copy of conviction for a "Damion Smith" at trial, alleging that it was an alias, but it did not present evidence to show Burns was that individual. *Id.*

31. *Id.* ¶ 12.

32. *Id.* ¶ 13; *see also* 720 ILL. COMP. STAT. 5/24-1.6(d)(3) (2016) (providing a felony classification increase to Class 2 if the person found guilty is also a convicted felon). The circuit court ultimately sentenced Burns as a Class X felon and imposed a ten-year sentence because the State presented evidence in aggravation of two other prior felony convictions. *Burns*, 2015 IL 117387, ¶ 13.

33. *Id.* ¶ 14; Brief for Defendant-Appellant, *supra* note 21, at 5.

34. People v. Burns, 4 N.E.3d 151, 152 (Ill. App. Ct. 2013).

35. *Id.* at 152, 157 ("The modified opinion in *Aguilar*, however, specifies the decision 'is

because the ruling in *Aguilar* referenced the Class 4 form of the offense, the Class 2 form of the offense, which enhances the penalty for felons, could remain enforceable.[36] Noting that the U.S. Supreme Court and the Illinois Supreme Court have recognized the prohibition of firearm possession by felons, it concluded that felons lack Second Amendment rights.[37] Consequently, it held that a conviction under section 24-1.6(a)(1), (a)(3)(A) of the AUUW statute, which pursuant to subsection (d) is a Class 2 felony because the defendant has a prior felony conviction, is not unconstitutional.[38] The court concluded that the so-called "Class 2 form" of the offense was enforceable and affirmed Burns's conviction.[39] Burns appealed again.

The sole issue argued to the Illinois Supreme Court was whether section 24-1.6(a)(1), (a)(3)(A) of the AUUW statute is facially unconstitutional because it violates the rights to keep and bear arms, as guaranteed by the Second Amendment to the U.S. Constitution.

Appellant Burns argued that the appellate court erred in holding that the "Class 2 form" of the AUUW statute was constitutional, and that in fact, a "Class 2 form" of AUUW does not exist.[40] Burns relied on the language of section 24-1.6(a)(1), (a)(3)(A) to contend that there is only one offense of AUUW, and that a prior felony conviction is not an element of that offense.[41] Instead, a prior felony conviction is merely used at sentencing to elevate the offense from a Class 4 felony to a Class 2 felony.[42] Furthermore, Burns pointed to *Aguilar*, where the court held that the same provision of the AUUW statute under which he was convicted was facially unconstitutional.[43] Thus, as Burns argued, his conviction must be reversed.[44]

The State's argument relied on the principle that a statute is facially unconstitutional only if no set of circumstances exists under which the

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specifically limited to the Class 4 form of AUUW.'" (quoting People v. Aguilar, 2 N.E.3d 321, 328 n.3 (Ill. 2013))).

36. *Id.* at 157.

37. *Id.* at 158 ("Thus, we conclude the possession of firearms by felons is conduct that falls outside the scope of the second amendment's protection.").

38. *Id.*

39. *Id.*

40. People v. Burns, 2015 IL 117387, ¶ 20.

41. *Id.*

42. *Id.*; *see* 720 ILL. COMP. STAT. 5/24-1.6(d)(3) (2016) ("Aggravated unlawful use of a weapon by a person who has been previously convicted of felony in this State or another jurisdiction is a Class 2 felony for which the person shall be sentenced to a term of imprisonment of not less than 3 years and not more than 7 years.").

43. *Burns*, 2015 IL 117387, ¶ 20; People v. Aguilar, 2 N.E.3d 321, 323 (Ill. 2013).

44. *Burns*, 2015 IL 117387, ¶ 20.

statute would be valid.[45] The State maintained that because section 24-1.6(a)(1), (a)(3)(A) of the AUUW statute can be applied to felons without violating the Second Amendment, it was not facially unconstitutional.[46]

The court relied on its *Aguilar* decision to hold that section 24-1.6(a)(1), (a)(3)(A) of the AUUW statute was unconstitutional as written.[47] In *Aguilar*, the court held that the section operated as an absolute ban on an individual's right to possess a gun for self-defense outside the home, making it facially unconstitutional under the Second Amendment.[48] The *Burns* court noted, however, that its *Aguilar* decision inappropriately referenced a "Class 4 form" of the AUUW offense, to which it limited the holding.[49] It found that neither a "Class 4 form" nor "Class 2 form" AUUW offense exists.[50] In so doing, it looked to the elements of the offense contained in subsection (a) of the statute, which provides that a person commits the offense of AUUW when, first, he or she knowingly carries or possesses "any pistol, revolver, stun gun or taser or other firearm" that is "on or about his or her person or in any vehicle" or "on or about his or her person, upon any public street," and second, one of the eleven aggravating factors is present.[51] The court reasoned that to obtain a conviction, the State need only prove those elements.[52]

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45. *Id.* ¶ 26. This principle was enunciated by the U.S. Supreme Court in *United States v. Salerno*, 481 U.S. 739, 745 (1987).

> A facial challenge to a legislative Act is, of course, the most difficult challenge to mount successfully, since the challenger must establish that no set of circumstances exists under which the Act would be valid. The fact that the [statute] might operate unconstitutionally under some conceivable set of circumstances is insufficient to render it wholly invalid, since we have not recognized an "overbreadth" doctrine outside the limited context of the First Amendment.

481 U.S. at 745.

46. *Burns*, 2015 IL 117387, ¶ 26.

47. *Id.* ¶¶ 21–25.

48. *Aguilar*, 2 N.E.3d at 327–28. The *Aguilar* decision expressly adopted the Seventh Circuit's analysis and holding in *Moore v. Madigan* that sections 24-1.6(a)(1), (a)(3)(A) of Illinois's AUUW statute operated as a "flat ban on carrying ready-to-use guns outside the home," and thus was unconstitutional on its face. *Aguilar*, 2 N.E.3d at 326 (quoting Moore v. Madigan, 702 F.3d 933, 940 (7th Cir. 2012)). The Illinois Supreme Court has reaffirmed the holding of *Aguilar* in two unanimous opinions. *See* People v. Mosley, 33 N.E.3d 137, 150 (Ill. 2015) ("[B]ecause defendant's conviction under count II involves the same subsection of the AUUW statute found unconstitutional in *Aguilar*, that portion of the trial court's judgment vacating count II is affirmed."); *In re* Jordan G., 33 N.E.3d 162, 165 (Ill. 2015) (noting the *Aguilar* holding).

49. *Burns*, 2015 IL 117387, ¶ 22.

50. *Id.* ¶ 22.

51. 720 ILL. COMP. STAT 5/24-1.6(a) (2016); *Burns*, 2015 IL 117387, ¶ 23.

52. *Burns*, 2015 IL 117387, ¶ 23.

The court then looked to subsection (d), entitled "Sentence," and noted that it provides that the offense of AUUW is a Class 4 felony, and lists factors that increase the sentence from one classification to a higher level classification.[53] The court declared that the sentencing factor by which the legislature increases the penalty for any violation of the statute from a Class 4 felony to a Class 2 felony—the person found guilty of AUUW is convicted felon—does not create separate and distinct offenses of AUUW or transform the AUUW offense into a different "form."[54] Furthermore, it held that these factors only come into play after the defendant is found guilty.[55] Thus, the Court concluded that it had improperly limited the holding in *Aguilar* as applying only to the "Class 4 form" of the offense, and clarified that section 24-1.6(a)(1), (a)(3)(A) of the AUUW statute is facially unconstitutional without limitation.[56]

Next, the court rejected the State's argument that, because the statute could be applied to felons without violating the Second Amendment, it was not facially unconstitutional.[57] The court noted that the statutory provision prohibited the possession and use of a firearm for self-defense outside the home, amounting to a wholesale ban on the exercise of a right guaranteed by the Constitution.[58] The court reasoned it was precisely because the prohibition is not limited to a subset of person, such as felons, that the statute is unconstitutional on its face.[59]

Relying on the U.S. Supreme Court decision of *District of Columbia v. Heller*,[60] the court found that the legislature indeed could constitutionally prohibit felons from carrying readily accessible guns outside the home.[61] The court noted, however, the legislature did not

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53. 720 ILL. COMP. STAT. 5/24-1.6(d); *Burns*, 2015 IL 117387, ¶ 24.

54. *Burns*, 2015 IL 117387, ¶ 24. Subsection (d)(3) of the statute, under "Sentence," provides: "Aggravated unlawful use of a weapon by a person who has been previously convicted of a felony in this State or another jurisdiction is a Class 2 felony . . . ." 720 ILL. COMP. STAT. 5/24-1.6(d)(3).

55. *Burns*, 2015 IL 117387, ¶ 24.

56. *Id.* ¶ 25.

57. *Id.* ¶ 26.

58. *Id.* ¶ 25 (citing *In re* Jordan G., 33 N.E.3d 162, 165 (Ill. 2015); People v. Aguilar, 2 N.E.3d 321, 327–28 (Ill. 2013)).

59. *Id.*

60. 554 U.S. 570, 626–27 (2008) ("Although we do not undertake an exhaustive historical analysis today of the full scope of the Second Amendment, nothing in our opinion should be taken to cast doubt on longstanding prohibitions on the possession of firearms by felons and the mentally ill.").

61. *Burns*, 2015 IL 117387, ¶¶ 28–29. In fact, Illinois has legislation prohibiting felons from possessing guns at all. *See* 720 ILL. COMP. STAT. 5/24-1.1(a) (2016) (setting forth the elements

regulate this activity in section 24-1.6(a)(1), (a)(3)(A) of the AUUW statute, as it did not include a prior felony conviction as an element of the offense.[62] For this reason, the court concluded that the fact that the statute is applied to convicted felons—a category of persons who the legislature could have regulated had it seen fit to do so—does not make it become constitutional.[63]

Finally, the court considered improperly conditioning the constitutionality of the provision on the State's proof of a defendant's felony conviction when the legislature itself did not make that requirement an element of the offense.[64] It noted that to do so would be to do the job reserved for the legislature.[65] Ultimately, the court decided that the legislature would have to act to prevent the provision from being facially unconstitutional.[66]

Thus, relying on a modification of *Aguilar*, and also considering the plain language of section 24-1.6(a)(1), (a)(3)(A) of the AUUW statute, the court held that such provision was facially unconstitutional, and therefore, Burns's conviction and sentence for AUUW were vacated.

In a concurrence joined by Justice Thomas, Justice Garman also found section 24-1.6(a)(1), (a)(3)(A) of the AUUW statute facially unconstitutional, but on the basis that it violated due process, as it did not require the State to plead and prove an essential element of the offense.[67] The concurrence contended that because the *Aguilar* opinion was modified, the court had not previously held that the statutory section at issue was facially unconstitutional.[68] Nevertheless, Justice Garman argued, the court never considered whether the statutory section could constitutionally be enforced against those subject to sentences other than Class 4 sentences—those who have been previously convicted of a felony and who have diminished Second Amendment rights.[69] While the concurrence recognized that the

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of unlawful use of a weapon by a felon).

62. *Burns*, 2015 IL 117387, ¶ 29.

63. *Id.*

64. *Id.* ¶ 30.

65. *Id.* ("In essence, we would be 'rewrit[ing] state law to conform it to constitutional requirements' and 'substitut[ing] the judicial for the legislative department of the government.'" (alterations in original) (quoting Ayotte v. Planned Parenthood of N. New England, 546 U.S. 320, 329–30 (2006))).

66. *See id.*

67. *Id.* ¶ 35 (Garman, J., concurring). In fact, the concurrence held that the statute as applied to Burns did not violate the Second Amendment. *Id.*

68. *Id.* ¶ 36.

69. *Id.*

provision restricted conduct protected by the Second Amendment, it disagreed with the majority that a ban on certain conduct within the scope of the amendment is inherently facially unconstitutional.[70] Citing decisions by a variety of courts, the concurrence noted that certain classes of individuals can be restricted from possessing and using weapons.[71] Therefore, it concluded "that the AUUW statute as applied to someone without full [S]econd [A]mendment rights is not unconstitutional based on a violation of the [S]econd [A]mendment."[72]

The concurrence criticized the majority's holding as straying from the "no set of circumstances" rule.[73] It noted that the majority's assertion that the court should not consider the application of the statutory provision to felons when determining whether the section is facially constitutional was incorrect because the section applied to all individuals.[74] Because the U.S. Constitution permits the government to restrict the right to keep and bear arms for individuals with prior felonies and the Illinois legislature chose to do so through the AUUW statute, the concurring opinion concluded that the law at issue was restrictive, and thus, the majority should have considered its application to felons when determining whether the law was facially unconstitutional.[75] As a result, the concurrence found that as applied to Burns, the law did not violate any right protected by the Second Amendment and that it could not be facially unconstitutional on that ground.[76] It contended that the majority's holding expands the doctrine of overbreadth by imposing a requirement that the statute specifically state that it applies to felons, or to those with diminished Second Amendment rights, to comply with the Second Amendment.[77]

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70. *Id.* ¶ 37.

71. *Id.* ¶¶ 41–43 (mentioning classes such as felons, the mentally ill, minors, and illegal aliens).

72. *Id.* ¶ 43.

73. *Id.* ¶ 44.

74. *Id.* ¶ 46 ("The AUUW section at issue here applies to all individuals; therefore, felons are part of 'the group for whom the law is a restriction.'" (quoting Planned Parenthood of Se. Pa. v. Casey, 505 U.S. 833, 894 (1992))).

75. *Id.*

76. *Id.*

77. *Id.* ¶ 47. The doctrine of overbreadth allows a challenger to prove that a law is facially unconstitutional even if it is valid in some circumstances if he can show that "a substantial number of its applications are unconstitutional, judged in relation to the statute's plainly legitimate sweep." *Id.* (quoting United States v. Stevens, 559 U.S. 460, 473 (2010)). Additionally, the concurrence noted that overbroad statutes are considered facially unconstitutional in the context of the First Amendment because of the chilling effects such laws have on free speech, but that there is no similar concern that the AUUW statute will have an

Finally, the concurrence argued that the section cannot be enforced even against those with diminished Second Amendment rights without violating due process.[78] It noted that the Due Process Clause of the Constitution requires the State to prove every element of the offense beyond a reasonable doubt, including any fact, other than a prior conviction, that subjects the defendant to a harsher penalty.[79] Consequently, because a defendant cannot constitutionally be convicted of AUUW under section (a)(1), (a)(3)(A) unless he or she lacks Second Amendment rights, the lack of such a right is a fact that the State must prove.[80] The statute, however, does not include that requirement. Therefore, the concurrence concluded that the statute is facially unconstitutional based on a violation of due process.

The *People v. Burns* decision will likely appeal to criminal defendants. An Illinois appellate court has already remanded a case to the trial court for re-sentencing in light of *Burns*.[81] Similarly, in *People v. McGee*, the appellate court acknowledged that under *Burns*, *any* conviction under section 24-1.6(a)(1), (a)(3)(A) is unconstitutional and therefore void ab initio, regardless of the person's criminal background.[82] The case raises questions about whether prosecutors will be able to sustain unlawful possession convictions.[83] It also reveals the continuing challenge gun possession cases present to Illinois judges, and the difficulty in interpreting Illinois gun laws.[84] The Illinois Supreme Court's decision in *Burns*, and the appeals that will likely arise, might suggest that the Illinois legislature needs to repeal the current gun laws and draft ones that are easier to interpret and enforce. Until then, the implications from *Burns* might prove favorable for felons

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inappropriate chilling effect on those with full Second Amendment rights who wish to carry firearms. *Id.* ¶ 49.

78. *Id.* ¶ 51.

79. *Id.* ¶ 51 (citing Apprendi v. New Jersey, 530 U.S. 466, 490 (2000); *In re* Winship, 397 U.S. 358, 364 (1970)).

80. *Id.* ¶ 51.

81. *See generally* People v. Smith, 2016 IL App (2d) 130997 (finding that the defendant's AUUW conviction was invalid and could not be considered in aggravation of a separate sentence).

82. People v. McGee, 2016 IL App (1st) 141013, ¶¶ 15, 19.

83. *See, e.g.*, Jim Dey, *State High Court Ruling in Gun Case May Affect Local Case*, NEWS-GAZETTE (Jan. 5, 2016), http://www.news-gazette.com/opinion/columns/2016-01-05/jim-dey-state-high-court-ruling-gun-case-may-affect-local-case.html ("[T]he ruling raises questions about whether Champaign County prosecutors will be able to sustain on appeal an unlawful possession conviction against Matt Sinclair, a former University of Illinois football player and staff member.").

84. *See generally id.*

convicted of AUUW offenses.