No. 13-_____

In The
Supreme Court of the United States

RAYMOND WOOLLARD AND
SECOND AMENDMENT FOUNDATION, INC.,

Petitioners,

v.

DENIS GALLAGHER, et al.,

Respondents.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Fourth Circuit

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

This Court has held that the Second Amendment "guarantee[s] the individual right to possess and carry weapons in case of confrontation." *District of Columbia* v. *Heller*, 554 U.S. 570, 592 (2008). Maryland generally prohibits the carrying of handguns for self-defense absent a permit, issued only to individuals who first prove a "good and substantial reason" for doing so. Md. Code Ann., Pub. Safety § 3-506(a)(5)(ii).

The question presented is:

Whether state officials violate the Second Amendment by requiring that individuals wishing to exercise their right to carry a handgun for self-defense first prove a "good and substantial reason" for doing so.

RULE 29.6 DISCLOSURE STATEMENT

No parent or publicly owned corporation owns 10% or more of the stock in Second Amendment Foundation, Inc.

PARTIES TO THE PROCEEDINGS

Petitioners Raymond Woollard and Second Amendment Foundation, Inc., were Plaintiffs and Appellees below.

Respondents Denis Gallagher, Seymour Goldstein, Charles M. Thomas, Jr., and Marcus Brown were Defendants and Appellants below. Respondent Terrence Sheridan was a Defendant below.

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PETITION FOR A WRIT OF CERTIORARI

Raymond Woollard and Second Amendment Foundation, Inc. ("SAF") respectfully petition for a writ of certiorari to review the judgment of the United States Court of Appeals for the Fourth Circuit.

OPINIONS BELOW

The decision of the court of appeals, reported at 712 F.3d 865, is reprinted in the Appendix (App.) at 1a-42a. The district court's opinion, reported at 863 F. Supp. 2d 462, is reprinted at App. 53a-83a. The district court's opinion denying a stay pending appeal, also reported at 863 F. Supp. 2d 462, is reprinted at App. 43a-52a.

JURISDICTION

The court of appeals entered its judgment on March 21, 2013, and denied a petition for rehearing en banc on April 16, 2013. App. 85a-87a. This Court has jurisdiction under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS

The Second Amendment to the United States Constitution provides: "A well-regulated Militia, being necessary to the security of a free State, the

right of the people to keep and bear Arms, shall not be infringed."

Relevant provisions of the Maryland Code and Regulations are reprinted in the Appendix.

INTRODUCTION

"Freedom resides first in the people without need of a grant from government." *Hollingsworth* v. *Perry*, ___ U.S. ___, 2013 U.S. LEXIS 4919 at *55 (June 26, 2013) (Kennedy, J., dissenting).

Applying this principle, the district court below struck down Maryland's requirement that individuals prove a "good and substantial reason" to be exempted from a general prohibition against carrying handguns for self-defense. Md. Code Ann., Pub. Safety § 5-306(a)(5)(ii). "A citizen may not be required to offer a 'good and substantial reason' why he should be permitted to exercise his rights. The right's existence is all the reason he needs." App. 79a.

But contrary to this Court's precedent, and in conflict with the Seventh Circuit and various state appellate courts, the court of appeals below reversed. Dismissing the district court's evaluation of the evidence, the court of appeals merely deferred to police declarations asserting that carrying handguns for self-defense – the exercise of the fundamental, enumerated right to bear arms – is socially undesirable.

The morning after this Court declined to review a challenge to New York's substantially identical law, *Kachalsky* v. *Cacace*, 133 S. Ct. 1806 (2013), the lower court declined rehearing en banc. Maryland thus remains among the minority of states in which people lack the "right to carry weapons in case of confrontation," *District of Columbia* v. *Heller*, 554 U.S. 570, 592 (2008).

"[A] considerable degree of uncertainty remains as to the scope of [the Second Amendment] right beyond the home and the standards for determining whether and how the right can be burdened by governmental regulation." App. 21a (quoting *United States* v. *Masciandaro*, 638 F.3d 458, 467 (4th Cir. 2011)).

"[W]e do not know . . . the scope of that right beyond the home and the standards for determining when and how the right can be regulated by a government." App. 21a (quoting *Kachalsky* v. *County of Westchester*, 701 F.3d 81, 89 (2d Cir. 2012)). There is not

> even a general consensus among federal courts as to even the most basic points – such as whether the protections of the Second Amendment extend outside the home, or what standard the courts should apply in assessing government regulation of firearms outside the home.

Pineiro v. *Gemme*, 2013 U.S. Dist. LEXIS 42626, at *24-*25 (D. Mass. Mar. 26, 2013); *In re Pantano*, 429 N.J. Super. 478, 490, 60 A.3d 507, 514 (App. Div.

2013) ("lack of clarity that the Supreme Court in *Heller* intended to extend the Second Amendment right to a state regulation of the right to carry outside the home").

If, "in many ways, [*Heller*] raises more questions than it answers," *Kachalsky*, 701 F.3d at 88, the lower courts' conflicting responses call for this Court's intervention.

The court below stands among those holding that the Second Amendment has no practical impact beyond the threshold of one's home. In contrast, the Seventh Circuit asserts that the right is equally important outside the home as inside, and should (subject to regulation) be generally accessible to law-abiding individuals. Additionally, in rejecting application of prior restraint doctrine to the Second Amendment, the opinion below conflicts with state high court decisions recognizing that the right to carry arms is effectively eliminated if subjected to unbridled licensing discretion.

Yet the lower court's methodology also deepens a conflict regarding a far more basic question: whether Second Amendment rights have meaningful force in *any* context. "Without clear or complete guidance from the Supreme Court, lower court judges have proposed an array of different approaches and formulations, producing a 'morass of conflicting lower court opinions' regarding the proper analysis to apply" in Second Amendment cases. Allen Rostron, *Justice Breyer's Triumph in the Third Battle over the Second*

Amendment, 80 GEO. WASH. L. REV. 703, 706 (2012) (footnote omitted).

The court below is among those following the approach laid out by Justice Breyer's *Heller* dissent, resolving any Second Amendment question by presumptively deferring to the government's asserted regulatory rationale. With few exceptions, this purportedly "intermediate review" is the new "collective right" *Heller* rejected – a doctrine allowing courts to effectively erase the Second Amendment. That is especially apparent here, where the district court evaluated the competing public policy claims and found the government had failed to establish the right is too dangerous to allow, only to have its conclusion disregarded in the name of deference to police declarations.

The conflicts raised by the decision below are profound, recurring, and envelop numerous courts. Fortunately, this case presents an excellent, narrow vehicle by which to bring much-needed guidance to the Second Amendment field. The petition for certiorari should be granted.

STATEMENT OF THE CASE

1. Maryland generally prohibits the public carrying of handguns – openly or concealed – without a permit. Md. Code Ann., Crim. Law § 4-203; Md. Code Ann., Pub. Safety §§ 5-303, 5-308. Unlicensed handgun carrying is a misdemeanor offense first

punishable by 30 days to 3 years imprisonment and/or fine ranging from $250 to $2500. Md. Code Ann., Crim. Law § 4-203(c)(2)(i).

The Secretary of Maryland's State Police ("MSP") issues handgun carry permits upon determining, inter alia, that an 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." Md. Code Ann., Pub. Safety § 5-306(a)(5)(ii); Md. Code Regs. 29.03.02.04. On the same basis, Maryland's Handgun Permit Review Board may also issue handgun carry permits. Md. Code Ann., Pub. Safety § 5-312.

An applicant's assertion of a background interest in self-defense does not satisfy the "good and substantial reason" requirement. *Scherr* v. *Handgun Permit Review Bd.*, 163 Md. App. 417, 438, 880 A.2d 1137, 1148 (Md. App. 2005) (citation omitted).[1]

Maryland authorities rarely find that a "good and substantial reason" exists to issue a handgun carry permit. In 2010, barely over one-tenth of one percent of Maryland's adult population received original or

[1] *Heller* and *McDonald* v. *City of Chicago*, 130 S. Ct. 3020 (2010) would not compel Maryland courts to re-interpret the "good and substantial reason" requirement, as the state's high court does not recognize the Second Amendment extends to carrying handguns for self-defense. *Williams* v. *State*, 417 Md. 479, 10 A.3d 1167 (2011).

renewal permits to carry handguns for self-defense.[2] Including permits issued to non-residents, the number of Maryland's outstanding handgun carry permits totals only 0.3% of the state's population aged 20 and higher.[3] Neighboring Pennsylvania, where the right to bear arms is not subject to official whim, licenses 8.3% of its adult population aged 20 and higher to carry handguns. GAO Report at 76. Neighboring Virginia and West Virginia, which also do not examine an objectively-qualified applicant's need to bear arms, have issued gun-carry permits to individuals totaling 4.7% of their over-20 populations. *Id.* Unlike Maryland, its neighboring states allow carrying handguns openly without a permit.[4]

2. Petitioner Raymond Woollard "lives on a farm in a remote part of Baltimore County, Maryland." App. 55a. Following a violent Christmas Eve

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[2] See Maryland 2010 Census Data, http://planning.maryland.gov/msdc/census/cen2010/PL94-171/CNTY/18plus/2010_18up_Summary.pdf (last visited June 24, 2013) (adult population 4,420,588); Maryland State Police 2010 Annual Report 37 (2011), available at: http://www.mdsp.org/LinkClick.aspx?fileticket=r2vUnl9RVX8%3d&tabid=429&mid=2452 (last visited June 24, 2013) (4,645 total original and renewal permits issued).

[3] See U.S. Gen. Accounting Office, *States' Laws and Requirements for Concealed Carry Permits Vary Across Nation* 75 & 77 n.b (2012) ("GAO Report"), available at http://www.gao.gov/assets/600/592552.pdf (last visited June 29, 2013).

[4] Delaware maintains a similarly restrictive regime for permits to carry handguns concealed, but does not require permits to carry handguns openly. See, *e.g.*, *In re Application of McIntyre*, 552 A.2d 500, 501 n.1 (Del. Super. 1988).

home invasion, App. 55a-56a, "Woollard applied for, and was granted, a handgun carry permit" in 2003. App. 56a. His permit was renewed "shortly after [the intruder] was released from prison." *Id.* "In 2009, however, when Woollard again sought to renew his permit, he was informed that his request was incomplete." *Id.* (footnote omitted). "Evidence is needed to support apprehended fear (i.e. – copies of police reports for assaults, threats, harassments, stalking)." App. 101a.

On April 1, 2009, then-MSP Secretary Sheridan denied Woollard's handgun carry permit renewal application. App. 57a, 103a. An informal review resulted in another denial on July 28, 2009. App. 57a, 105a. Woollard administratively appealed to the Handgun Permit Review Board. App. 57a, 107a-110a.

> The MSP testified [Woollard] was advised that in order for his renewal to be approved he would need to submit documented threats or incidents that had occurred in the last three years. The MSP stated [Woollard] was told to contact them immediately if his situation changed or if he received threats.

App. 109a. Accordingly, Respondents Gallagher, Goldstein, and Thomas affirmed the denial of Woollard's application, finding Woollard "ha[d] not submitted any documentation to verify threats occurring beyond his residence, where he can already legally carry a handgun." App. 57a, 110a. Woollard "ha[d] not demonstrated a good and substantial reason to wear, carry or transport a handgun as a

reasonable precaution against apprehended danger in the State of Maryland." *Id.*

3. On July 29, 2010, Woollard brought suit in the United States District Court for the District of Maryland against Sheridan and the Handgun Permit Review Board members who had declined to renew Woollard's handgun carry permit.[5]

Woollard "aver[red] that, separate and apart from any concern he may have regarding [the intruder], he wishes to wear and carry a handgun for general self-defense." App. 57a. Petitioner SAF, a non-profit organization focusing on advancing Second Amendment rights, joined Woollard as a Plaintiff on its own behalf and on behalf of its membership. App. 53a; Am. Compl., Dist. Ct. Dkt. 19, ¶2. Petitioners claimed that Maryland's "good and substantial reason" prerequisite violated the Second Amendment, as well as the Fourteenth Amendment's Equal Protection Clause. The district court had subject matter jurisdiction under 28 U.S.C. §§ 1331 and 1343.

4. On March 5, 2012, the district court granted Petitioners' motion for summary judgment, denied Respondents' motion for summary judgment, and struck down Maryland's "good and substantial reason" prerequisite for a handgun carry permit, Md.

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[5] On September 8, 2011, Respondent Brown substituted for Sheridan upon succeeding him in office, pursuant to Fed. R. Civ. Proc. 25(d). See Dist. Ct. Dkt. No. 45.

Code Ann., Pub. Safety § 5-306(a)(5)(ii), as violating the Second Amendment.

Following circuit precedent, the district court found that "Woollard's asserted right falls within [a] category of non-core Second Amendment protection . . . [t]he statute he challenges, therefore, is properly viewed through the lens of intermediate scrutiny. . . ." App. 63a. Turning to the right's scope, the district court concluded that "Woollard has squarely presented the question" of whether the Second Amendment extends beyond the home, "and resolution of his case requires an answer." App. 65a. "[T]he instant suit does require the Court to determine whether Maryland's broad restriction on handgun possession outside the home burdens any Second Amendment right at all." *Id.*

The district court then determined that the Second Amendment secures a right to carry a handgun for self-defense outside the home. This Court's observation that the right to arms is "most acute" in the home "suggests that the right also applies in some form 'where that need is not most acute.'" *Id.* (citations omitted). The right "allow[s] for militia membership and hunting," activities manifested outside the home. *Id.* (citations omitted).

> *Heller*'s definition of one of the Amendment's central terms, "bear," further suggests that the right, though it may be subject to limitations, does not stop at one's front door: "To 'bear arms,' as used in the Second Amendment, is to 'wear, bear, or carry . . . upon the person or in the clothing or in a pocket, for

> the purpose . . . of being armed and ready for offensive or defensive action in a case of conflict with another person.'"

App. 66a (quoting *Heller*, 554 U.S. at 584 (citation omitted)). The district court located further support in this Court's statement that the Second Amendment secures rights "*most notably*" in the home. *Id.* (quoting *McDonald*, 130 S. Ct. at 3044) (emphasis added by district court). And it determined that as prohibitions against carrying firearms in "sensitive places" are "presumptively lawful," the Second Amendment's "protections necessarily extend outside the home, at least to some degree." App. 68a (citations and footnote omitted).

The district court declined to evaluate Maryland's "good and substantial reason" requirement as a prior restraint, App. 70a, and reasoned further that even were prior restraint doctrine applicable to the Second Amendment, Maryland officials are not granted "unbridled discretion" in determining whether an applicant's reason is "good and substantial." App. 72a.

But the court held that Maryland's law failed intermediate scrutiny owing to its "overly broad means." App. 76a. "[T]he regulation at issue is a rationing system. It aims, as Defendants concede, simply to reduce the total number of firearms carried outside of the home by limiting the privilege to those who can demonstrate 'good reason' beyond a general desire for self-defense." App. 77a.

> A law that burdens the exercise of an enumerated constitutional right by simply making

> that right more difficult to exercise cannot be considered "reasonably adapted" to a government interest, no matter how substantial that interest may be. Maryland's goal of "minimizing the proliferation of handguns among those who do not have a demonstrated need for them," is not a permissible method of preventing crime or ensuring public safety; it burdens the right too broadly. Those who drafted and ratified the Second Amendment surely knew that the right they were enshrining carried a risk of misuse, and states have considerable latitude to channel the exercise of the right in ways that will minimize that risk. States may not, however, seek to reduce the danger by means of widespread curtailment of the right itself.

App. 78a-79a (citation omitted).[6]

On Respondents' motion for a stay pending appeal, the district court ordered the parties to further brief the issue of the public's interest, as "persuasive evidence that states with more permissive regulatory schemes suffer more from handgun crime, or that states experience an increase in handgun violence when moving from a 'may issue' to a 'shall issue' framework, would certainly militate in favor of a stay." App. 51a.

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[6] Having struck down the law under the Second Amendment, the district court declined to do so under the Equal Protection Clause. App. 80a-82a.

The district court denied Respondents' motion:

> The parties have conducted commendably thorough research on the subject, and each has dedicated considerable time and energy to debating the relative merits of the studies and statistics offered by the other. The inescapable conclusion, however, is that the evidence does not point strongly in any one direction. As Defendants aptly state, "Identifying causal trends in crime data is notoriously difficult in any circumstance because of the multiplicity of variables that impact crime and the different effects of those variables in different places and on different people."

Id. (citation omitted).[7]

5. The court of appeals reversed. Condemning the district court's "trailblazing pronouncement that the Second Amendment right to keep and bear arms for the purpose of self-defense extends outside the home," App. 6a, the lower court refused to "needlessly demarcat[e] the reach of the Second Amendment," as requiring a "good and substantial reason" to bear arms would be constitutional in any event. App. 7a.

The lower court asserted that *Heller* limited the Second Amendment's "core protection" to the "defense of hearth and home." App. 19a-20a. But the court reiterated its belief that the scope of Second Amendment

[7] The court of appeals entered its own stay and expedited the appellate proceedings. See App. 18a.

rights beyond the home, and standards for evaluating the constitutionality of regulations reaching the right beyond the home, are clouded by "a considerable degree of uncertainty." App. 21a (citation omitted).

Nonetheless, the lower court was unwilling to consider whether the Second Amendment applies outside the home. Recounting the now-familiar two-step Second Amendment analysis, by which courts first ask whether the right is implicated, and if so, whether it was violated, the court noted that "we are not obliged to impart a definitive ruling at the first step. . . ." App. 22a. "[W]e merely assume that the *Heller* right [sic] exists outside the home and that such right of Appellee Woollard has been infringed," because under "intermediate scrutiny" the court determined that the right was not violated. App. 24a.[8]

The court recounted Maryland's substantial interest in reducing the high level of violent crime with which it is afflicted. App. 26a-27a. The court noted Petitioners' argument that Maryland's conceded public safety interests do not extend to an interest in suppressing the exercise of a fundamental right, App. 28a-29a, but did not address this argument beyond reciting its precedent rejecting application of strict

[8] The lower court employed the term "*Heller* right" five times. See App. 16a, 21a, 23a n.5, 24a & n.5; cf. *McDonald*, 130 S. Ct. at 3103 & 3115 (Stevens, J., dissenting). But *Heller* created no rights. Petitioners assert a fundamental right codified in the Second Amendment.

scrutiny to Second Amendment rights outside the home. App. 29a.

"In relevant part, the State's evidence consists of" three law-enforcement declarations. App. 27a n.6. Turning to these declarations, the court recited a litany of theories as to why carrying handguns in public for self-defense might be dangerous: guns might be stolen, App. 32a-33a; armed individuals are allegedly prone to violence, App. 33a; police might accidentally shoot armed bystanders, App. 33a-34a; "[c]urtailing the presence of handguns during routine police-citizen encounters," App. 34a; "[r]educing the number of 'handgun sightings' that must be investigated," *id.*; and "[f]acilitating the identification of those persons carrying handguns who pose a menace," *id.*

These police assertions "clearly demonstrated" that requiring a "good and substantial reason" to carry a handgun is constitutional. App. 32a. "We are convinced by the State's evidence that there is a reasonable fit between the good-and-substantial-reason requirement and Maryland's objectives of protecting public safety and preventing crime." App. 36a. "[W]e cannot substitute [contrary] views for the considered judgment of the General Assembly. . . ." App. 37a-38a. "[I]t is the legislature's job, not ours, to weigh conflicting evidence and make policy judgments." App. 38a (quoting *Kachalsky*, 701 F.3d at 99).

> In summary, although we assume that Appellee Woollard's Second Amendment right is

> burdened by the good-and-substantial-reason requirement, we further conclude that such burden is constitutionally permissible.

App. 40a. Because it rejected Woollard's as-applied challenge, the lower court upheld the facial validity of requiring a "good and substantial reason" to exercise Second Amendment rights. App. 40a-41a.

The lower court likewise rejected Petitioners' prior restraint arguments, following the Second Circuit's theory that prior restraint doctrine secures only the First Amendment, and that "good and substantial reason" is not an unduly vague term affording licensing authorities unbridled discretion. App. 41a n.11. The lower court further dismissed the Equal Protection challenge as duplicative. *Id.* The court denied rehearing en banc on April 16, 2013. App. 85a-87a.

REASONS FOR GRANTING THE PETITION

I. The Federal Courts of Appeals and State High Courts Are Divided Over Whether the Second Amendment Protects the Use of Firearms Outside the Home.

The lower court declared that the Legislature's "job" is to determine whether individuals should be allowed to carry handguns, and placed police beliefs on the topic beyond judicial review. Doing so yielded a result identical to those of courts that either limit *Heller* to its facts,[9] or for whatever reason refuse to

[9] See, *e.g.*, *Commonwealth* v. *Perez*, 952 N.E.2d 441, 451 (Mass. App. Ct. 2011) ("The Second Amendment does not protect the defendant in this case because he was in possession of the firearm outside his home") (footnote omitted); *United States* v. *Tooley*, 717 F. Supp. 2d 580, 596 (S.D. W. Va. 2010) ("possession of a firearm outside of the home or for purposes other than self-defense in the home are not within the 'core' of the Second Amendment right as defined by *Heller*"); *Wooden* v. *United States*, 6 A.3d 833, 841 (D.C. 2010) ("Neither self-defense as such, nor even self-defense in the home of another (with a weapon carried there), is entitled to such protection, as we have read *Heller*"); *Mack* v. *United States*, 6 A.3d 1224, 1236 (D.C. 2010) ("*Heller* did not endorse a right to carry weapons *outside* the home"); *Little* v. *United States*, 989 A.2d 1096, 1101 (D.C. 2010) ("appellant was outside of the bounds identified in *Heller*, *i.e.*, the possession of a firearm in one's private residence for self-defense purposes"); *People* v. *Dawson*, 934 N.E.2d 598, 605-06 (Ill. App. Ct. 2010) ("*Heller* specifically limited its ruling to interpreting the amendment's protection of the right to possess handguns in the home, not the right to possess handguns outside of the home in case of confrontation"); *People* v. *Perkins*, 62 A.D.3d 1160, 1161, 880 N.Y.S.2d 209, 210 (3d Dep't 2009) (no Second Amendment right where "defendant was not in his home"); *State* v. *Knight*, 241 P.3d 120, 133 (Kan. Ct. App. 2010)

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directly adjudicate Second Amendment controversies arising outside the home.[10]

(*Heller* "turned solely on the issue of handgun possession in the home . . . It is clear that the Court was drawing a narrow line regarding the violations related solely to use of a handgun in the home for self-defense purposes"); *People* v. *Davis*, 214 Cal. App. 4th 1322, 1332, 155 Cal. Rptr. 3d 128, 136 (2013) ("right to carry weapons outside the home was not addressed in . . . *Heller*, which narrowly held" home ban unlawful); *People* v. *Yarbrough*, 169 Cal. App. 4th 303, 313-14, 86 Cal. Rptr. 3d 674, 682 (2008) (statute proscribing public gun carrying does not implicate *Heller*); *Moreno* v. *New York City Police Dep't*, No. 10 Civ. 6269, 2011 U.S. Dist. LEXIS 76129 at *7-*8 (S.D.N.Y. May 9, 2011) ("*Heller* has been narrowly construed, as protecting the individual right to bear arms for the specific purpose of self-defense within the home"); *Young* v. *Hawaii*, Civ. No. 12-00336, 2012 U.S. Dist. LEXIS 169260 at *30 (D. Haw. Nov. 29, 2012) ("the Second Amendment right articulated by the Supreme Court in *Heller* and *McDonald* establishes only a narrow individual right to keep an operable handgun at home for self-defense. The right to carry a gun outside the home is not part of the core Second Amendment right") (citations omitted).

[10] *Williams*, 417 Md. at 496, 10 A.3d at 1177 ("If the Supreme Court . . . meant its holding [in *Heller* and *McDonald*] to extend beyond home possession, it will need to say so more plainly"); *Masciandaro*, 638 F.3d at 475 ("On the question of *Heller*'s applicability outside the home environment, we think it prudent to await direction from the Court itself"); *Doe* v. *Wilmington Hous. Auth.*, 880 F. Supp. 2d 513, 530 (D. Del. 2012) ("the Court declines to determine whether Second Amendment rights extend outside of the 'hearth and home' "); cf. *Hightower* v. *City of Boston*, 693 F.3d 61, 72 & n.8 (1st Cir. 2012) (interest in carrying concealed handguns outside the home "distinct" from *Heller*'s "core," but declining to "reach the issue of the scope of the Second Amendment as to carrying firearms outside the vicinity of the home without any reference to protection of the home").

The aversion to enforcing the Second Amendment among some of the lower courts is difficult to overstate. The District of New Jersey, for example, simply declared the entire Second Amendment field outside the home a nuisance from which it would shield government lawyers. "Given the considerable uncertainty regarding if and when the Second Amendment rights should apply outside the home, this Court does not intend to place a burden on the government to endlessly litigate and justify every individual limitation on the right to carry a gun in any location for any purpose." *Piszczatoski* v. *Filko*, 840 F. Supp. 2d 813, 829 (D.N.J. 2012), *appeal pending*, No. 12-1150 (3d Cir. filed Jan. 16, 2012).

But a growing number of federal and state courts recognize that the Second Amendment has substantial operative effect outside the home, and often do not hesitate to strike down laws or otherwise limit governmental conduct trenching upon the right to bear arms in public settings.[11] As one District Court surmised,

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[11] See, *e.g.*, *Ezell* v. *City of Chicago*, 651 F.3d 684, 708 (7th Cir. 2011) (striking down gun range ban as "a serious encroachment on the right to maintain proficiency in firearm use"); *United States* v. *Weaver*, No. 2:09-CR-00222, 2012 U.S. Dist. LEXIS 29613, at *13 (S.D. W. Va. Mar. 7, 2012) ("the Second Amendment, as historically understood at the time of ratification, was not limited to the home"); *Bateman* v. *Perdue*, 881 F. Supp. 2d 709, 714 (E.D.N.C. 2012) ("[a]lthough considerable uncertainty exists regarding the scope of the Second Amendment right to keep and bear arms, it undoubtedly is not limited

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> [t]he fact that courts may be reluctant to recognize the protection of the Second Amendment outside the home says more about the courts than the Second Amendment. Limiting this fundamental right to the home would be akin to limiting the protection of First Amendment freedom of speech to political speech or college campuses.

Weaver, 2012 U.S. Dist. LEXIS 29613, at *14 n.7.

The Seventh Circuit's decision striking down Illinois' prohibition of the carrying of handguns in public, *Moore* v. *Madigan*, 702 F.3d 933 (7th Cir. 2012), brings this split into sharp relief at the federal appellate level.

Moore explicitly rejected each of the tenets underlying the Fourth Circuit's decision. The court below held the Second Amendment's "core" interest was limited to the home, allowing for a fundamentally different, deferential approach to legislation impacting the right outside the home.[12] The Seventh

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to the confines of the home"); *People* v. *Yanna*, 297 Mich. App. 137, 146, 824 N.W.2d 241, 246 (Mich. Ct. App. 2012) ("a total prohibition on the open carrying of a protected arm . . . is unconstitutional"); *In re Brickey*, 70 P. 609 (Idaho 1902); cf. *Dickens* v. *Ryan*, 688 F.3d 1054, 1085 (9th Cir. 2012) (Reinhardt, J., dissenting) ("Carrying a gun, which is a Second Amendment right . . . cannot legally lead to a finding that the individual is likely to murder someone; if it could, half or even more of the people in some of our states would qualify as likely murderers").

[12] As the district court below demonstrated limiting the Second Amendment's "core" to the home does not require presuming the constitutionality of laws regulating the bearing of

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Circuit disagreed: "The Supreme Court has decided that the amendment confers a right to bear arms for self-defense, which is as important outside the home as inside." *Moore*, 702 F.3d at 942. Rejecting *Kachalsky*, which the court below followed, the Seventh Circuit rebuffed the "suggestion that the Second Amendment should have much greater scope inside the home than outside simply because other provisions of the Constitution have been held to make that distinction." *Id.* at 941. "[T]he interest in self-protection is as great outside as inside the home." *Id.* "To confine the right to be armed to the home is to divorce the Second Amendment from the right of self-defense described in *Heller* and *McDonald*." *Id.* at 937.[13]

The lower court barely paused to consider this Court's holding that to "bear arms" is to be "armed and ready . . . in a case of conflict with another person," *Heller*, 554 U.S. at 584 (citation omitted). But the Seventh Circuit applied *Heller* plainly. *Heller* "says that the amendment 'guarantee[s] the individual right to possess and carry weapons in case of confrontation.' 554 U.S. at 592. Confrontations

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arms beyond the home. Nonetheless, Petitioners note that five other circuits agree with the court below that the Second Amendment's "core" is limited to the home. See *Kachalsky*, 701 F.3d at 93; *Hightower*, 693 F.3d at 72; *United States* v. *Greeno*, 679 F.3d 510, 517 (6th Cir. 2012); *United States* v. *Barton*, 633 F.3d 168, 170 (3d Cir. 2011); *United States* v. *Reese*, 627 F.3d 792, 800 (10th Cir. 2010).

[13] The Illinois Court of Appeals has refused to follow the Seventh Circuit *Moore* decision. See *People* v. *Moore*, 2013 IL App (1st) 110793, ¶19, 987 N.E.2d 442, 446.

are not limited to the home." *Moore*, 702 F.3d at 936. The Seventh Circuit decried a prohibition on "carrying ready-to-use guns outside the home." *Id.* at 940.

The lower court viewed the right to carry a gun as a special dispensation from the police. In contrast, the Seventh Circuit held that the right to be armed in case of conflict secures generally the right of "a Chicagoan [who] is a good deal more likely to be attacked on a sidewalk in a rough neighborhood than in his apartment on the 35th floor of the Park Tower." *Id.* at 937. Allowing the right inside the home as a matter of course, but denying it in public, where the self-defense interest might well be stronger, is "arbitrary." *Id.* And unlike the lower court, the Seventh Circuit undertook a categorical approach, disclaiming the use of "degrees of scrutiny" to determine whether the right exists in the first place. *Moore*, 702 F.3d at 941.

Maryland's "good and substantial reason" would not have survived had the lower court truly acknowledged, as does the Seventh Circuit, the right to bear arms. This Court should grant certiorari to resolve the lower courts' significant and widespread confusion on this critical point.

II. The Lower Courts Are Deeply Split Regarding the Level of Deference Afforded the Political Branches in Restricting Second Amendment Rights.

While the Seventh Circuit affords meaningful review in Second Amendment cases, the D.C., Second, Fourth, and Fifth Circuits have largely resisted

McDonald and *Heller*, applying (whatever the label) a level of scrutiny functionally indistinguishable from rational basis review to perfunctorily dismiss significant Second Amendment arguments.

On balance, "the lower courts' decisions strongly reflect the pragmatic spirit of the dissenting opinions that Justice Stephen Breyer wrote in *Heller* and *McDonald*." Rostron, 80 GEO. WASH. L. REV. at 707. As Justice Breyer's approach would have sustained Washington, D.C.'s ban on the possession of handguns and all functional firearms in the home, it is unsurprising that the lower courts' adoption of that methodology largely renders the Second Amendment a dead letter. If the Second Amendment is to retain any substantive meaning, this Court should settle the conflict as to which of *Heller*'s opinions is controlling.

The lower courts have largely eschewed *Heller*'s interpretive or categorical approaches, preferring to adopt interest-balancing, means-ends review. Second Amendment analysis in the lower courts typically involves a two-step process. Courts claim to first examine whether the case implicates a right secured by the Second Amendment; if so, they select a standard of review to balance the right against any purported regulatory interest. App. 21a-22a. But courts have implemented this framework in highly disparate ways.

"Borrowing from the Court's First Amendment doctrine, the rigor of this judicial review will depend on how close the law comes to the core of the Second

Amendment right and the severity of the law's burden on the right." *Ezell*, 654 F.3d at 703 (citations omitted). Even in cases addressing the Second Amendment outside the home, the Seventh Circuit would apply greater than intermediate, "if not quite 'strict scrutiny.'" *Id.* at 708; *Moore*, 702 F.3d at 940 (state "would have to make a stronger showing in this case than [intermediate scrutiny]").

But this approach is unique. To begin, many courts simply dispense with the first step of discerning a right through interpretation, only assuming that a right (of abstract dimension) is implicated, thus carefully avoiding any holding that the right has any substantive content. By assuming, rather than finding and thus defining the right's existence, courts reduce the right to a cypher that cannot withstand the second step's application, always alleged to be intermediate scrutiny.

Following this formula, Second Amendment cases can be readily disposed of. See, *e.g.*, App. 24a ("we merely assume that the *Heller* right [sic] exists. . . . We are free to make that assumption because the [law] passes constitutional muster under what we have deemed to be the applicable standard – intermediate scrutiny"); *Schrader* v. *Holder*, 704 F.3d 980, 989 (D.C. Cir. 2013), *petition for cert. pending*, No. 12-1443 (filed June 11, 2013) ("[w]e need not resolve the first question"); *Kachalsky*, 701 F.3d at 89 ("the Amendment must have *some* application. . . . Our analysis proceeds on this assumption"); *Heller* v. *District of Columbia*, 670 F.3d 1244, 1261 (D.C. Cir.

2011) ("*Heller II*") ("[w]e need not resolve that [first] question, because even assuming [the laws] do impinge upon the right . . . the prohibitions survive [intermediate review]"); *Masciandaro*, 638 F.3d at 475 ("[w]e have no reason to expound on where the *Heller* right may or may not apply outside the home because . . . intermediate scrutiny of any burden on the alleged right would plainly lead the court to uphold the [provision]").

Maryland's "good and substantial reason" requirement should fail intermediate, or any other level of scrutiny, simply because that law denies the ability to carry defensive handguns the status of a *right*. If a right – determined through interpretation – exists, the state cannot "balance" it away no matter how strongly it asserts the right to be ill-advised.

In any event, while not as rigorous as strict scrutiny, intermediate scrutiny is nonetheless an exacting test that requires the government to show the challenged action is "'substantially related to an important governmental objective.'" *Clark* v. *Jeter*, 486 U.S. 456, 461 (1988). "[A] tight fit" between the regulation and the important or substantial governmental interest must be established – one "that employs not necessarily the least restrictive means but . . . a means narrowly tailored to achieve the desired objective." *Bd. of Trs.* v. *Fox*, 492 U.S. 469, 480 (1989).

And "[s]ignificantly, intermediate scrutiny places the burden of establishing the required fit squarely upon the government." *United States* v. *Chester*, 628 F.3d 673, 683 (4th Cir. 2010) (citing *Fox*, 492 U.S. at

480-81). The "justification must be genuine, not hypothesized or invented post hoc in response to litigation." *United States* v. *Virginia*, 518 U.S. 515, 533 (1996). Occasionally, courts purporting to apply intermediate scrutiny to Second Amendment claims will require the government to supply actual evidence justifying its regulations. *Chester*, 628 F.3d at 683; *United States* v. *Carter*, 669 F.3d 411, 419 (4th Cir. 2012); *Heller II*, 670 F.3d at 1259 (citations omitted).

Nonetheless, "intermediate" review is often indistinguishable from the rational basis review *Heller* forbade. The D.C. Circuit purportedly invoked intermediate scrutiny to uphold prohibitions on broad categories of firearms notwithstanding the "clear enough" record that such arms are in "common use." *Heller II*, 670 F.3d at 1261. That court also purportedly invoked intermediate scrutiny to uphold application of the *felon*-in-possession ban to all common law *misdemeanants* – a rather broad category of individuals – because some misdemeanors are "quite egregious." *Schrader*, 704 F.3d at 990.

The Second Circuit purportedly invoked intermediate scrutiny to uphold New York City's $340 fee for a three-year permit to possess a handgun in the home. *Kwong* v. *Bloomberg*, ___ F.3d ___, No. 12-1578-cv (2d Cir. July 9, 2013):

> Because the record demonstrates that the licensing fee is designed to allow the City of New York to recover the costs incurred through operating its licensing scheme, which is designed to promote public safety

> and prevent gun violence, we agree with the District Court that [a $340 fee to possess a handgun for three years] easily survives "intermediate scrutiny."

Kwong, slip op. at 13-14. The Second Circuit also found the $340 fee did not substantially burden the right.

The Fifth Circuit purportedly invoked intermediate scrutiny to uphold laws forbidding all adults aged 18-20 from purchasing handguns in the regulated market, on the theory that "as with felons and the mentally ill . . . Congress found that persons under 21 tend to be relatively irresponsible and can be prone to violent crime." *NRA* v. *BATFE*, 2012 U.S. App. LEXIS 26949 at *56-*57 (5th Cir. Oct. 25, 2012). It did not matter "that only 0.58% of 18- to 20-year olds were arrested for violent crimes in 2010," in contrast to a 2% correlation that this Court once held insufficient to uphold gender discrimination, *NRA* v. *BATFE*, 714 F.3d 334, 347 (5th Cir. 2013) (en banc) (Jones, J., dissenting) (citations omitted).

Likewise, the Second Circuit upheld New York's widespread prohibition of the right to bear arms, under the guise of demanding "proper cause" for its exercise, N.Y. Penal Law § 400.00(2)(f), by offering that "'substantial deference to the predictive judgments of [the legislature]' is warranted . . . our role is only 'to assure that, in formulating its judgments, [the state] has drawn reasonable inferences based on substantial evidence'" *Kachalsky*, 701 F.3d at 97 (citation omitted). "It is the legislature's job, not ours,

to weigh conflicting evidence and make policy judgments." *Id.* at 99; App. 38a.

Alas, the court's refusal to weigh the evidence is outcome-determinative where individuals, not the government, are assigned the burden of disproving a presumption of constitutionality:

> To be sure, "the enshrinement of constitutional rights necessarily takes certain policy choices off the table." *Heller*, 554 U.S. at 636. But there is also a "general reticence to invalidate the acts of [our] elected leaders." *Nat'l Fed'n of Indep. Bus.* v. *Sebelius*, 132 S. Ct. 2566, 2579 (2012). "'Proper respect for a coordinate branch of government' requires that we strike down [legislation] only if 'the lack of constitutional authority to pass [the] act in question is *clearly demonstrated*.'" *Id.*

Kachalsky, 701 F.3d at 100-01 (emphasis added) (citation omitted); see also *Schrader*, 704 F.3d at 990 ("*plaintiffs* have offered no evidence that individuals convicted of [common-law misdemeanors] pose an insignificant risk of future armed violence") (emphasis added).

It is pointless to have parties "conduct[ ] commendably thorough research" and "dedicate[ ] considerable time and energy to debating the relative merits of the studies and statistics offered by the other," App. 51a, and to have the trier of fact sort through the evidence and argument, if the police's declarations cannot be questioned. It may not be the courts' "job . . . to weigh conflicting evidence and make policy

judgments." App. 38a (quoting *Kachalsky*, 701 F.3d at 99). But review is needed to ensure the lower courts perform their "job" of enforcing the Constitution – including its Second Amendment.

III. The Fourth Circuit, and the High Courts of Several States, Are Split Regarding the Application of Prior Restraint Doctrine to Secure the Right to Bear Arms.

1. "Possibly the Second Amendment can best be understood to incorporate a common law rule against prior restraints." L.A. Powe, Jr., *Guns, Words, and Constitutional Interpretation*, 38 WM. & MARY L. REV. 1311, 1384 (1997). "[T]he rule against prior restraints offers a sound meaning [for the Second Amendment]." *Id.* at 1402.

> [A]n ordinance which . . . makes the peaceful enjoyment of freedoms which the Constitution guarantees contingent upon the uncontrolled will of an official – as by requiring a permit or license which may be granted or withheld in the discretion of such official – is an unconstitutional censorship or prior restraint upon the enjoyment of those freedoms.

Staub v. *City of Baxley*, 355 U.S. 313, 322 (1958).

As the right to bear arms stands among "the freedoms which the Constitution guarantees," *id.*, Maryland's "good and substantial reason" requirement is among the impermissible "illusory 'constraints'" on

licensing discretion amounting to "little more than a high-sounding ideal." *City of Lakewood* v. *Plain Dealer Publishing Co.*, 486 U.S. 750, 769-70 (1988); see, *e.g.*, *Largent* v. *Texas*, 318 U.S. 418, 422 (1943) (striking down ordinance allowing speech permit where mayor "deems it proper or advisable").

The lower court mistakenly asserted that prior restraint doctrine is exclusively a rule of substantive First Amendment protection. App. 41a n.11. But this Court has not apparently limited "freedoms which the Constitution guarantees," *Staub*, 355 U.S. at 322, to First Amendment rights. See, *e.g.*, *Kent* v. *Dulles*, 357 U.S. 116, 128-29 (1958) (Fifth Amendment right of international travel: Secretary of State lacks "unbridled discretion to grant or withhold a passport").

Indeed, the use of prior restraint doctrine to safeguard the right to bear arms dates at least to 1922, when Michigan's Supreme Court struck down a state law leaving to a Sheriff's discretion the licensing of handgun possession by immigrants. "The exercise of a right guaranteed by the Constitution cannot be made subject to the will of the sheriff." *People* v. *Zerillo*, 189 N.W. 927, 928 (Mich. 1922). "The [provision] making it a crime for an unnaturalized, foreign-born resident to possess a revolver, unless so permitted by the sheriff, contravenes the guaranty of such right in the Constitution of the State and is void." *Id.*

More recently, Rhode Island's Supreme Court upheld a discretionary handgun carry licensing scheme because state law offered a separate, non-discretionary licensing mechanism. *Mosby* v. *Devine*,

851 A.2d 1031, 1047 (R.I. 2004). Nonetheless, that court offered that it

> will not countenance any system of permitting under the Firearms Act that would be committed to the unfettered discretion of an executive agency. . . . One does not need to be an expert in American history to understand the fault inherent in a gun-permitting system that would allow a licensing body carte blanche authority to decide who is worthy of carrying a concealed weapon.

Id. at 1050.

Directly on-point, Indiana's intermediate appellate court utilized prior restraint principles to reject a licensing official's claim that a "proper reason" requirement allowed him discretion to deny handgun carry license applications. The official lacked "the power and duty to subjectively evaluate an assignment of 'self-defense' as a reason for desiring a license and the ability to grant or deny the license upon the basis of whether the applicant 'needed' to defend himself." *Schubert* v. *DeBard*, 398 N.E.2d 1339, 1341 (Ind. Ct. App. 1980).

> Such an approach contravenes the essential nature of the constitutional guarantee. It would supplant a right with a mere administrative privilege which might be withheld simply on the basis that such matters as the use of firearms are better left to the organized military and police forces even

> where defense of the individual citizen is involved.

Id. (footnote omitted).

2. The lower court further erred in offering that because "good and substantial reason" purportedly offers a standard of sorts, the law does not authorize unbridled discretion. "The existence of standards does not in itself preclude a finding of unbridled discretion, for the existence of discretion may turn on the looseness of the standards or the existence of a condition that effectively renders the standards meaningless as to some or all persons subject to the prior restraint." *Beal* v. *Stern*, 184 F.3d 117, 126 n.6 (2d Cir. 1999).

The issue is not that Petitioners "do not like" the purported standards. App. 41a n.11. Petitioners "do not like" the purported standards because they are unconstitutional. Respondents have no way of predicting whether, when, or where Woollard or anyone else would suffer a criminal attack, nor does any standard limit their discretion to issue or withhold handgun carry permits.

3. "Hew[ing] to a judicious course," App. 24a, would counsel dispensing with interest-balancing in favor of a categorical or prior restraint approach. Rather than pass judgment on a legislature's balancing of regulatory concerns against constitutional values, it is less intrusive upon, and more deferential to the democratic process, for courts to merely require in the first instance that licensing criteria be "narrow, objective and definite." *Shuttlesworth* v. *City of*

Birmingham, 394 U.S. 147, 151 (1969). Means-ends scrutiny may be useful in evaluating focused, objectively-defined licensing standards, but it is of little use when the governmental interest said to be advanced is an interest in suppressing the right itself.

Of course, prohibiting states from subjecting the right to arms to *unbridled* licensing discretion would not eliminate all discretionary licensing decisions. Petitioners do not challenge Maryland's provision allowing police discretion to deny handgun carry licenses where an investigation reveals applicants have "exhibited a propensity for violence or instability." Md. Code Ann., Pub. Safety § 5-306(a)(5)(i); see also *Kuck* v. *Danaher*, 822 F. Supp. 2d 109 (D. Conn. 2011) (upholding Connecticut's "suitable person" standard for handgun carry licenses, Conn. Gen. Stat. § 29-28(b), where licensing discretion is limited, subject to meaningful review, and unsuitability is determined by reference to an applicant's demonstrated conduct); see also *Mosby*, 851 A.2d at 1047-48.

State courts have long understood the difference between a system in which licensing officials may articulate a reason for denying a handgun license, consistent with legitimate, objectively-described criteria and subject to real procedural safeguards – and a system like Maryland's, where officials determine nothing less than whether an individual deserves to exercise his or her rights. This Court should likewise acknowledge this distinction, thereby safeguarding the right to bear arms without necessarily passing

judgment on any objectively-defined law regulating the carrying of handguns in the interest of public safety.

IV. The Court Below Decided an Important Question of Law In a Manner Contrary to This Court's Precedent.

The lower court erred in practically reading out of this Court's precedent the "right to carry weapons in case of confrontation," *Heller*, 554 U.S. at 592, on the theory that the Second Amendment's "core protection" extends only to the "defense of hearth and home." App. 19a-20a (citation omitted).

Three times, *Heller* succinctly describes the Second Amendment's "core" interest, to wit: (1) the Second Amendment's "core lawful purpose [is] self-defense," *Heller*, 554 U.S. at 630; (2) "Individual self-defense . . . was the *central component* of the right itself," *id.* at 599; (3) "the inherent right of self-defense has been central to the Second Amendment right." *Id.* at 628. Nothing in these terse definitions of the Second Amendment's "core" limits the self-defense interest to the home.

"[I]n [*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." *McDonald*, 130 S. Ct. at 3026. The syntax is clear: the holding, relating to self-defense, was applied in a factual setting arising inside the home.

The "policy choices [taken] off the table" by the Second Amendment "*include* the absolute prohibition of handguns held and used for self-defense in the home." *Heller*, 554 U.S. at 636 (emphasis added). But "since this case represents this Court's first in-depth examination of the Second Amendment, one should not expect it to clarify the entire field. . . ." *Id.* at 635. As the District Court noted, App. 65a-66a, this Court's observations that "the need for defense of self, family, and property is *most acute*" in the home, *Heller*, 554 U.S. at 628 (emphasis added), and that the Second Amendment right is secured "*most notably* for self-defense within the home," *McDonald*, 130 S. Ct. at 3044 (emphasis added), exclude the possibility that the right is limited to the home.

Moreover, there is *Heller*'s exposition of early state constitutional arms-bearing provisions, 554 U.S. at 584-86, which were often applied to secure the carrying of handguns in public;[14] its reliance upon authorities referencing defensive actions outside the home;[15] and its discussion of time, place and manner restrictions on the carrying of handguns.[16]

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[14] See, *e.g.*, *State* v. *Reid*, 1 Ala. 612 (1840) (interpreting Ala. Const. of 1819, art. I, § 27); *State* v. *Huntly*, 25 N.C. (3 Ired.) 418, 423 (1843) (N.C. Declaration of Rights § 17 (1776); *Simpson* v. *State*, 13 Tenn. 356 (1833) (Tenn. Const. of 1796, art. XI, § 26); *State* v. *Rosenthal*, 55 A. 610 (Vt. 1903) (Vt. Const. c. 1, art. 16 (1777)).

[15] See, *e.g.*, *Heller*, 554 U.S. at 588 n.10 (quoting Charles Humphreys, A COMPENDIUM OF THE COMMON LAW IN FORCE IN KENTUCKY 482 (1822)).

[16] See *Heller*, 554 U.S. at 626-27 & n.26.

The lower court crafted its "home" limitation via an extended elliptical quotation that proves incompatible with *Heller*'s logic. It began by borrowing from *Heller*'s response to Justice Breyer's dissent, that "[w]e know of no other enumerated constitutional right whose core protection has been subjected to a freestanding 'interest-balancing' approach." *Id.* at 634. To this use of "core," the lower court appended language borrowed from the lengthy paragraph's end, that "whatever else it leaves to future evaluation, [the Second Amendment] surely elevates above all other interests the right of law-abiding, responsible citizens to use arms in defense of hearth and home." *Id.* at 635.

But it is not a fair reading of *Heller* to suggest that interest-balancing inquiries may be substituted for "the scope [the Second Amendment was] understood to have when the people adopted [it]," *Heller*, 554 U.S. at 634-35 – the theory this Court rejected in the context of the lower court's elliptical citation – whenever the arms at issue are outside the home. Indeed, the level of deference shown by the lower court's purportedly "intermediate" review is incompatible with *McDonald*'s holding that the Second Amendment secures fundamental rights.

The Second Amendment does not guarantee the right "to contact [the state police] immediately" if one suffers "document[ed] threats or incidents" or "receive[s] threats." App. 109a. It guarantees the right to "carry weapons in case of confrontation." *Heller*, 554 U.S. at 592.

And because carrying weapons in case of confrontation is a "right," the police's opinions about the desirability of doing so are unimportant. If our legal system required that individuals prove a "good and substantial reason" to attend church, or to have an abortion, it could not seriously be claimed that the law secures a "right" to free religious exercise or terminate a pregnancy. "[A] constitutional prohibition cannot be transgressed indirectly by the creation of a statutory presumption any more than it can be violated by direct enactment. The power to create presumptions is not a means of escape from constitutional restrictions." *Speiser* v. *Randall*, 357 U.S. 513, 526 (1958) (citation omitted).

The Ninth Circuit recently demonstrated as much, striking down an Arizona provision barring abortions at 20 weeks' gestational life absent medical emergency because precedent secures abortion to the point of viability as a right. "Allowing a *physician* to decide if abortion is medically necessary is not the same as allowing a *woman* to decide whether to carry her own pregnancy to term." *Isaacson* v. *Horne*, ___ F.3d ___, 2013 U.S. App. LEXIS 10187, at *6 (9th Cir. May 21, 2013) (emphasis in original). "Moreover, regulations involve limitations as to the mode and manner of abortion, not preclusion of the choice to terminate a pregnancy altogether." *Id.*

By the same logic, allowing *Respondents* to determine whether bearing arms "is necessary as a reasonable precaution against apprehended danger," Md. Code Ann., Pub. Safety § 5-306(a)(5)(ii), is not the

same as allowing *Woollard* to decide whether to carry a handgun to advance his personal – constitutional – self-defense interest. Nor is limiting the "mode and manner" of bearing arms, a topic not here at issue, the same as precluding the choice to do so.

V. This Case Presents an Exceptional Vehicle to Clarify the Law.

Woollard, a responsible, law-abiding citizen who had a permit to carry handguns in Maryland for many years without incident, questions only whether he must prove to the police that he has a "good and substantial reason" to exercise a fundamental right. This case is extremely limited, implicating no other aspect of Maryland's regulatory scheme concerning the public carrying of firearms. App. 29a n.7.

At the same time, the case is not *too* limited, asking merely if the Second Amendment secures rights outside the home. Answering only such a narrow question – if, indeed, the question has not already been answered – would ordinarily be too abstract a venture to merit the Court's time. The lower court, and the Second Circuit, were only too pleased to "assume" for argument's sake that the right exists outside the home. Doing so made no practical difference in the outcomes.

This case is a suitable vehicle by which to clarify much of the confusion surrounding this right precisely because it involves a challenge to a purported licensing standard. After all, under the lower court's

reasoning, no restriction of the right to bear arms could ever be unconstitutional. Indeed, some judges have asserted not only that a "proper cause" standard could constitutionally govern a license to exercise the right, but that "[i]t should not be difficult to make reasonable arguments" supporting prohibitions on bearing arms in virtually every describable location visited by people, even "areas around . . . forests. . . ." *Moore* v. *Madigan*, 708 F.3d 901, 904 (7th Cir. 2013) (en banc) (Hamilton, J., dissenting). Considering this high level of judicial resistance, this "fundamental" right might well be largely worthless absent some standards providing it meaningful force.

Finally, because Maryland's law operates without distinction between the concealed and open carrying of handguns, confusing questions as to the manner in which Woollard might exercise his rights are avoided. Petitioners would assert that the Legislature may determine the manner in which handguns are carried, but that issue is absent here.

CONCLUSION

Petitioners respectfully pray that the Court grant the petition.

Respectfully submitted,

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July 9, 2013

PUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

RAYMOND WOOLLARD; SECOND AMENDMENT FOUNDATION, INC.,

Plaintiffs-Appellees,

v.

DENIS GALLAGHER; SEYMOUR GOLDSTEIN; CHARLES M. THOMAS, JR.; MARCUS L. BROWN,

Defendants-Appellants,

and

TERRENCE SHERIDAN,

Defendant.

No. 12-1437

AMERICAN PUBLIC HEALTH ASSOCIATION; AMERICAN COLLEGE OF PREVENTIVE MEDICINE; LEGAL COMMUNITY AGAINST VIOLENCE; LEGAL HISTORIANS; BRADY CENTER TO PREVENT GUN VIOLENCE; MARYLAND CHIEFS OF POLICE ASSOCIATION; INTERNATIONAL BROTHERHOOD OF POLICE OFFICERS; MAJOR CITIES CHIEFS ASSOCIATION,

Amici Supporting Appellants,

NRA Civil Rights Defense Fund; Buckeye Firearms Foundation, Inc.; International Law Enforcement Educators & Trainers Association; International Association of Law Enforcement Firearms Instructors, Inc.; Professor Clayton Cramer; Independence Institute; Commonwealth of Virginia; State of Alabama; State of Arkansas; State of Florida; State of Kansas; Commonwealth of Kentucky; State of Maine; State of Michigan; State of Nebraska; State of New Mexico; State of Oklahoma; State of South Carolina; State of South Dakota; State of West Virginia; Professors of Law, History, Politics, and Government; California Rifle and Pistol Association Foundation; Virginia Shooting Sports Association; Center for Constitutional Jurisprudence; Gun Owners Foundation; Gun Owners of America, Incorporated; Virginia Gun Owners Coalition; Virginia Citizens Defense League, Inc.; United States Justice Foundation; Conservative Legal Defense and Education Fund; The Associated Gun Clubs of Baltimore, Inc.; The Monumental Rifle & Pistol Club;

THE ILLINOIS STATE RIFLE ASSOCIATION; THE NEW YORK RIFLE AND PISTOL ASSOCIATION; THE ASSOCIATION OF NEW JERSEY RIFLE & PISTOL CLUBS, INC.; THE HAWAII RIFLE ASSOCIATION; NATIONAL RIFLE ASSOCIATION OF AMERICA, INC.,

Amici Supporting Appellees.

Appeal from the United States District Court
for the District of Maryland, at Baltimore.
Benson Everett Legg, District Judge.
(1:10-cv-02068-BEL)

Argued: October 24, 2012

Decided: March 21, 2013

Before KING, DAVIS, and DIAZ, Circuit Judges.

Reversed by published opinion. Judge King wrote the opinion, in which Judge Davis and Judge Diaz joined.

COUNSEL

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OPINION

KING, Circuit Judge.

The district court permanently enjoined enforcement of section 5-306(a)(5)(ii) of the Public Safety Article of the Maryland Code, to the extent that it conditions eligibility for a permit to carry, wear, or transport a handgun in public on having "good and substantial reason" to do so. Necessary to the entry of the court's injunction was its trailblazing pronouncement that the Second Amendment right to keep and bear arms for the purpose of self-defense extends outside the home, as well as its

determination that such right is impermissibly burdened by Maryland's good-and-substantial-reason requirement. *See Woollard v. Sheridan,* 863 F. Supp. 2d 462 (D. Md. 2012). Because we disagree with the court's conclusion that the good-and-substantial-reason requirement cannot pass constitutional muster, we reverse the judgment without needlessly demarcating the reach of the Second Amendment.

I.

A.

Under its permitting scheme, Maryland obliges "[a] person [to] have a permit issued . . . before the person carries, wears, or transports a handgun." Md. Code Ann., Pub. Safety § 5-303. Such permits are not needed, however, by persons in numerous specified situations, including those who are wearing, carrying, and transporting handguns in their own homes and businesses or on other real estate that they own or lease. *See* Md. Code Ann., Crim. Law § 4-203(b)(6). Maryland's statutory permit exceptions also extend to the following:

- Members of law enforcement and the military on active assignment;
- Persons moving handguns to and from places of legal purchase and sale, to and from bona fide repair shops, and between personal residences and businesses;

- Persons engaged in target shoots and practices, sport shooting events, hunting and trapping, firearms and hunter safety classes sponsored by the Department of Natural Resources, and dog obedience training classes and shows;
- Gun collectors participating in public and private exhibitions;
- Supervisory employees armed with handguns in the course of their employment and within the confines of the business establishment, when so authorized by the establishment's owner or manager;
- Boaters equipped with signal pistols and other visual distress signals approved by the United States Coast Guard; and
- Persons effecting court-ordered surrenders of their handguns.

See id. § 4-203(b)(1), (3)-(5), (7)-(9). Where a permit is mandated, a permitless person risks criminal penalties by "wear[ing], carry[ing], or transport[ing] a handgun, whether concealed or open, on or about the person" or "in a vehicle." *Id.* § 4-203(a)(1)(i)-(ii). Those penalties begin with imprisonment for a term of thirty days to three years, or a fine of $250 to $2500, or both. *Id.* § 4-203(c)(2)(i).

Handgun permits are issued by the Secretary of the Maryland State Police or the Secretary's designee. *See* Md. Code Ann., Pub. Safety § 5-301(d)-(e). The Secretary must issue a permit upon making

enumerated findings, including that the applicant is an adult without a disqualifying criminal record, alcohol or drug addiction, or propensity for violence. *Id.* § 5-306(a)(1)-(5)(i). Pursuant to the good-and-substantial-reason requirement, permit eligibility also necessitates the Secretary's finding, following 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.

Id. § 5-306(a)(5)(ii). The Secretary has assigned permitting responsibility to the Handgun Permit Unit, which determines, inter alia, whether the applicant's reasons for seeking a permit "are good and substantial," whether "the applicant has any alternative available to him for protection other than a handgun permit," and whether "the permit is necessary as a reasonable precaution for the applicant against apprehended danger." *See* Md. Code Regs. 29.03.02.04(G), (L), (O).

The Handgun Permit Unit has identified "four primary categories" under which an applicant may demonstrate "good and substantial reason" to obtain a handgun permit:

> (1) for business activities, either at the business owner's request or on behalf of an employee; (2) for regulated professions (security guard, private detective, armored car driver, and special police officer); (3) for "assumed risk" professions (e.g., judge, police officer,

> public defender, prosecutor, or correctional officer); and (4) for personal protection.

J.A. 57-58.[1] Regarding the first three of those categories, "the 'good and substantial reason' is usually apparent from the business activity or profession itself." *Id.* at 58. As for the fourth category – personal protection – the Permit Unit considers whether the applicant needs a handgun permit as a safeguard against "apprehended danger." *Id.* at 59-60.

The Handgun Permit Unit is guided by precedent of the Court of Special Appeals of Maryland, recognizing that "'whether there is "apprehended danger" to the applicant'" is an objective inquiry, and that apprehended danger cannot be established by, inter alia, a "'vague threat'" or a general fear of "liv[ing] in a dangerous society." *Scherr v. Handgun Permit Review Bd.,* 880 A.2d 1137, 1148 (Md. Ct. Spec. App. 2005) (quoting *Snowden v. Handgun Permit Review Bd.,* 413 A.2d 295, 298 (Md. Ct. Spec. App. 1980)). That same precedent, as the Permit Unit interprets it, "caution[s] the Unit against relying exclusively on apprehended threats." J.A. 60 (explaining that "failure to meet [the apprehended threat] criterion is not dispositive"). So, the Permit Unit examines such factors as

> (1) the "nearness" or likelihood of a threat or presumed threat; (2) whether the threat can

[1] Citations herein to "J.A. ___" refer to the contents of the Joint Appendix filed by the parties in this appeal.

> be verified; (3) whether the threat is particular to the applicant, as opposed to the average citizen; (4) if the threat can be presumed to exist, what is the basis for the presumption; and (5) the length of time since the initial threat occurred.

Id. The Permit Unit treats those factors as non-exhaustive, however, and "takes the applicant's entire situation into account when considering whether a 'good and substantial reason' exists." *Id.*

An initial handgun permit "expires on the last day of the holder's birth month following 2 years after the date the permit is issued," and "may be renewed for successive periods of 3 years each if, at the time of an application for renewal, the applicant possesses the qualifications for the issuance of a permit." Md. Code Ann., Pub. Safety § 5-309(a)-(b). An applicant denied a permit may request informal review by the Secretary or immediately appeal to the Handgun Permit Review Board appointed by the Governor. *Id.* §§ 5-301(b), 5-302(b), 5-311, 5-312. In the event the appeal is denied by the Permit Review Board, an applicant may seek further review in the Maryland state courts. *Id.* § 5-312(e).

B.

On July 29, 2010, Raymond Woollard and the Second Amendment Foundation, Inc. (together, the "Appellees"), initiated this action in the District of Maryland pursuant to 42 U.S.C. § 1983, asserting,

inter alia, that Maryland's good-and-substantial-reason requirement for obtaining a handgun permit contravenes the Second Amendment. The Appellees' Complaint, as well as their subsequent Amended Complaint of January 19, 2011, named the Secretary as a defendant, together with three members of the Handgun Permit Review Board (collectively, the "State").[2]

Adjudicating the parties' cross-motions for summary judgment, the district court explained that this action was prompted by the State's denial in 2009 of Appellee Woollard's request for a second renewal of a handgun permit originally granted in 2003 and renewed in 2006. *See Woollard,* 863 F. Supp. 2d at 465-66. Woollard, who resides on a farm in a remote part of Baltimore County, had obtained the permit after a harrowing home invasion:

> On Christmas Eve, 2002, Woollard was at home with his wife, children, and grandchildren when an intruder shattered a window and broke into the house. The intruder was Kris Lee Abbott, Woollard's son-in-law. Abbott, who was high on drugs and intent on driving into Baltimore city to buy more, was looking for his wife's car keys. Woollard grabbed a shotgun and trained it on Abbott,

[2] The then-Secretary and Superintendent of the Maryland State Police, Terrence Sheridan, has since been replaced by Marcus L. Brown. The defendant members of the Handgun Permit Review Board are Denis Gallagher, Seymour Goldstein, and Charles M. Thomas, Jr.

> but Abbott wrested the shotgun away. Woollard's son restored order by pointing a second gun at Abbott. Woollard's wife called the police, who took two-and-a-half hours to arrive.

Id. at 465. Abbott, the son-in-law, received a sentence of probation for the Christmas Eve 2002 incident, but was subsequently incarcerated for probation violations. *Id.* Woollard's 2006 permit renewal came shortly after Abbott was released from prison. *Id.* In 2009, however, the Secretary (via the Handgun Permit Unit) and the Handgun Permit Review Board refused Woollard a second renewal because he failed to satisfy the good-and-substantial-reason requirement. *Id.* at 465-66.

The Handgun Permit Review Board's decision of November 12, 2009, reflected that Woollard proffered solely the Christmas Eve 2002 incident in support of his request for a second renewal – i.e., as evidence that such a renewal was necessary as a reasonable precaution against apprehended danger – though he acknowledged that he had "not had any contact with his son-in-law [in the seven years since the 2002 incident]." J.A. 15. The decision also observed that, despite being advised that such proof was required in the circumstances of his renewal application, Woollard did not "submit documented threats or incidents that had occurred in the last three years," nor did he provide "documentation to verify threats occurring beyond his residence, where he can already legally carry a handgun." *Id.* Accordingly, the Permit

Review Board concluded that Woollard had "not demonstrated a good and substantial reason to wear, carry, or transport a handgun as a reasonable precaution against apprehended danger," and upheld the Permit Unit's denial of a second permit renewal. *Id.* at 16. Instead of employing the state court appeal process provided by Maryland law, Woollard elected to join with Appellee Second Amendment Foundation in this federal action, challenging the constitutionality of the good-and-substantial-reason requirement and asserting jurisdiction under 28 U.S.C. §§ 1331 and 1343.[3]

The district court credited the Appellees' claim that the good-and-substantial-reason requirement is facially violative of the Second Amendment, and thus that Woollard, "separate and apart from any concern

[3] Before it disposed of the parties' cross-motions for summary judgment, the district court denied the State's motion to dismiss the Second Amendment Foundation for lack of standing and to dismiss the Appellees' constitutional claims under the abstention doctrine articulated in *Younger v. Harris,* 401 U.S. 37 (1971), and its progeny. *See Woollard v. Sheridan,* No. 1:10-cv-02068, slip op. at 1 n.1 (D. Md. Dec. 29, 2010), ECF No. 16 (explaining that, because Woollard had standing to bring a facial challenge and only injunctive and declaratory relief was sought, there was no need to "'consider whether [the Second Amendment Foundation also had] standing to maintain the suit'" (quoting *Vill. of Arlington Heights v. Metro. Hous. Dev. Corp.,* 429 U.S. 252, 264 n.9 (1977))); *id.* at 9 (summarizing that "there is no ongoing state proceeding that warrants abstention under the *Younger* doctrine"). On appeal, the State does not contest, and we do not disturb, the court's rulings on the standing and *Younger* abstention issues.

he may have regarding Abbott," is entitled "to wear and carry a handgun for general self-defense." *See Woollard,* 863 F. Supp. 2d at 466. In so ruling, the district court "br[oke] ground that our superiors have not tread," proclaiming that the Second Amendment right recognized by the Supreme Court in *District of Columbia v. Heller,* 554 U.S. 570 (2008) – the right of individuals to possess and carry firearms in case of confrontation – is a right that extends beyond the home. *See United States v. Masciandaro,* 638 F.3d 458, 475 (4th Cir. 2011) (Wilkinson, J., writing for the Court as to Part III.B) (recognizing that the Supreme Court left open "the question of *Heller*'s applicability outside the home environment").

Notably, the district court gave considerable attention to our *Masciandaro* decision. There, Masciandaro challenged his conviction of carrying or possessing a loaded handgun in a motor vehicle within a national park area, in contravention of since-superseded 36 C.F.R. § 2.4(b), on the ground that the Second Amendment, as construed in *Heller,* "guaranteed to him the right to possess and carry weapons in case of confrontation and thus protected him from prosecution under § 2.4(b) for exercising that right in a national park area." *Masciandaro,* 638 F.3d at 465. Judge Niemeyer, writing only for himself, posited that "there is a plausible reading of *Heller* that the Second Amendment provides [a right to possess a loaded handgun for self-defense outside the home], at least in some form." *Id.* at 467 (Niemeyer, J., writing separately on this Part III.B). Judge Wilkinson wrote

for the majority of the three-judge panel, however, that it was "unnecessary to explore in [Masciandaro's] case the question of whether and to what extent the Second Amendment right recognized in *Heller* applies outside the home" – rendering it the prudent and respectful course "to await direction from the [Supreme] Court itself." *Id.* at 474, 475 (Wilkinson, J., writing for the Court as to Part III.B). That was so because the panel members unanimously agreed, by Judge Niemeyer's opinion for the Court, that even assuming the *Heller* right extended beyond the home, § 2.4(b) "pass[ed] constitutional muster under the [applicable] standard": intermediate scrutiny. *Id.* at 473.

In the present case, although the district court acknowledged "Judge Wilkinson's admonition that one should venture into the unmapped reaches of Second Amendment jurisprudence 'only upon necessity and only then by small degree,'" the court deemed itself obliged "to determine whether Maryland's broad restriction on handgun possession outside the home burdens any Second Amendment right at all." *Woollard,* 863 F. Supp. 2d at 469 (quoting *Masciandaro,* 638 F.3d at 475 (Wilkinson, J., writing for the Court as to Part III.B)). Guided by Judge Niemeyer's separate opinion in *Masciandaro,* as well as so-called "signposts" left by *Heller* and other recent precedent, the district court concluded that the individual right to possess and carry weapons for self-defense is not limited to the home. *See id.* at 469-71. Purporting to apply intermediate scrutiny, the court

then recognized that the good-and-substantial-reason requirement is undergirded by a substantial governmental interest in protecting public safety and preventing crime, but determined that "[t]he Maryland statute's failure lies in the overly broad means by which it seeks to advance this undoubtedly legitimate end." *Id.* at 474; *see also id.* at 476 ("find[ing] that Maryland's requirement of a 'good and substantial reason' for issuance of a handgun permit is insufficiently tailored to the State's interest in public safety and crime prevention," and "impermissibly infringes the right to keep and bear arms").[4]

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[4] In its opinion, the district court did not embrace every theory advanced by the Appellees in their attack on Maryland's good-and-substantial-reason requirement. The court rejected the Appellees' contention that the good-and-substantial-reason requirement amounts to an unconstitutional prior restraint on the exercise of Second Amendment rights. *See Woollard,* 863 F. Supp. 2d at 472 (expressing doubt that First Amendment prior restraint analysis applies to Second Amendment claim, and, in any event, "reject[ing] Woollard's assertion that Maryland's permitting scheme vests officials with unbridled discretion as regards its application"). Additionally, the court would not allow the Appellees to rely on the Equal Protection Clause of the Fourteenth Amendment as a separate means of attack on the good-and-substantial-reason requirement. In that regard, the court reasoned that, having awarded the Appellees relief under the Second Amendment, there was "no need to venture further into unmapped territory by determining whether or not Maryland's permitting scheme would also be unconstitutional [under the Fourteenth Amendment]." *Id.* at 475. The court further recognized that it need not entertain the Appellees' equal protection claim because it was essentially a restatement of their Second Amendment claim, and had been asserted "to

(Continued on following page)

The district court thus awarded summary judgment to the Appellees, *see Woollard v. Sheridan,* No. 1:10-cv-02068 (D. Md. Mar. 2, 2012), ECF No. 53, and permanently enjoined enforcement of the good-and-substantial-reason requirement, *see Woollard v. Brown,* No. 1:10-cv-02068 (D. Md. Mar. 30, 2012), ECF No. 63. After the State noted this appeal, the district court dissolved a preliminary stay of its judgment and denied the State's request for a stay pending appeal. *See Woollard v. Brown,* No. 1:10-cv-02068 (D. Md. July 23, 2012), ECF No. 72. Nevertheless, on August 1, 2012, we entered our own stay pending appeal and expedited the appellate proceedings, over which we possess jurisdiction pursuant to 28 U.S.C. § 1291.

II.

We review de novo a district court's award of summary judgment, viewing the facts and inferences reasonably drawn therefrom in the light most favorable to the nonmoving party. *See FOP Lodge No. 89 v. Prince George's Cnty.,* 608 F.3d 183, 188 (4th Cir. 2010). Summary judgment is appropriate only if the

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obtain review under a more stringent standard than [intermediate scrutiny]." *Id.* at 475-76. As the court explained, "to accept [the Appellees' equal protection] theory would be to erase, in one broad stroke, the careful and sensible distinctions that the Fourth Circuit and other courts have drawn between core and non-core Second Amendment protections and to ignore the principle that differing levels of scrutiny are appropriate to each." *Id.* at 476.

record shows "that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a).

Consistently with the summary judgment standard, our review of a decision granting an injunction is de novo where the contested issue is a question of law. *See Bacon v. City of Richmond,* 475 F.3d 633, 638 (4th Cir. 2007). That is, although "decisions pertaining to injunctive relief normally are reviewed solely for abuse of discretion in applying the injunction standard, we review such a decision *de novo* where it rests solely on a premise as to the applicable rule of law, and the facts are established or of no controlling relevance." *Va. Carolina Tools, Inc. v. Int'l Tool Supply, Inc.,* 984 F.2d 113, 116 (4th Cir. 1993) (citations and internal quotation marks omitted).

III.

A.

In the familiar words of the Second Amendment, "[a] well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed." U.S. Const. amend. II. We now know, in the wake of the Supreme Court's decision in *District of Columbia v. Heller,* that the Second Amendment guarantees the right of individuals to keep and bear arms for the purpose of self-defense. *See* 554 U.S. 570, 592 (2008). *Heller,* however, was principally concerned with the "core protection" of the Second Amendment: "the right of

law-abiding, responsible citizens to use arms in defense of hearth and home." *Id.* at 634-35. The *Heller* Court concluded that the District of Columbia's outright ban on the possession of an operable handgun in the home – proscribing "the most preferred firearm in the nation to keep and use for protection of one's home and family" – would fail to pass muster "[u]nder any of the standards of scrutiny that we have applied to enumerated constitutional rights." *Id.* at 628-29 (internal quotation marks omitted). Otherwise, the Court recognized that "the right secured by the Second Amendment is not unlimited" and listed examples of "presumptively lawful regulatory measures," but declined to "clarify the entire field" of Second Amendment jurisprudence. *See id.* at 626-27 & n.26, 635.

Two years after issuing its *Heller* decision, in *McDonald v. City of Chicago,* 130 S. Ct. 3020 (2010), the Supreme Court considered the constitutionality of municipal bans in Chicago and one of its suburbs on the possession of handguns in the home. On account of the similarities between those bans and the District of Columbia prohibition struck down in *Heller,* the *McDonald* defendants were left to "argue that their laws are constitutional because the Second Amendment has no application to the States." *See McDonald,* 130 S. Ct. at 3026. The Court recognized, however, that "the Second Amendment right is fully applicable to the States," and reiterated *Heller*'s holding "that the Second Amendment protects the right to possess a handgun in the home for the

purpose of self-defense." *Id.* at 3026, 3050. Accordingly, "a considerable degree of uncertainty remains as to the scope of [the *Heller*] right beyond the home and the standards for determining whether and how the right can be burdened by governmental regulation." *United States v. Masciandaro,* 638 F.3d 458, 467 (4th Cir. 2011); *see also Kachalsky v. County of Westchester,* 701 F.3d 81, 89 (2d Cir. 2012) ("What we know from [*Heller* and *McDonald*] is that Second Amendment guarantees are at their zenith within the home. What we do not know is the scope of that right beyond the home and the standards for determining when and how the right can be regulated by a government." (citation omitted)).

Like several of our sister circuits, we have found that "a two-part approach to Second Amendment claims seems appropriate under *Heller.*" *See United States v. Chester,* 628 F.3d 673, 680 (4th Cir. 2010) (citing *United States v. Marzzarella,* 614 F.3d 85, 89 (3d Cir. 2010)); *see also Nat'l Rifle Ass'n of Am., Inc. v. Bureau of Alcohol, Tobacco, Firearms, & Explosives,* 700 F.3d 185, 194 (5th Cir. 2012); *United States v. Greeno,* 679 F.3d 510, 518 (6th Cir. 2012); *Heller v. District of Columbia,* 670 F.3d 1244, 1252 (D.C. Cir. 2011); *Ezell v. City of Chicago,* 651 F.3d 684, 703-04 (7th Cir. 2011); *United States v. Reese,* 627 F.3d 792, 800-01 (10th Cir. 2010). Pursuant to our two-part *Chester* inquiry,

> [t]he first question is whether the challenged law imposes a burden on conduct falling within the scope of the Second Amendment's

> guarantee. This historical inquiry seeks to determine whether the conduct at issue was understood to be within the scope of the right at the time of ratification. If it was not, then the challenged law is valid. If the challenged regulation burdens conduct that was within the scope of the Second Amendment as historically understood, then we move to the second step of applying an appropriate form of means-end scrutiny.

628 F.3d at 680 (citations and internal quotation marks omitted).

As we have recognized, however, we are not obliged to impart a definitive ruling at the first step of the *Chester* inquiry. And indeed, we and other courts of appeals have sometimes deemed it prudent to instead resolve post-*Heller* challenges to firearm prohibitions at the second step – including where the challenge focuses on an outside-the-home prohibition. *Masciandaro* is just one example of such an incidence. *See also, e.g., Nat'l Rifle Ass'n of Am.,* 700 F.3d at 204 ("Although we are inclined to uphold the challenged federal laws [banning the sale of firearms to persons under the age of twenty-one] at step one of our analytical framework, in an abundance of caution, we proceed to step two. We ultimately conclude that the challenged federal laws pass constitutional muster even if they implicate the Second Amendment guarantee."); *United States v. Mahin,* 668 F.3d 119, 123-24 (4th Cir. 2012) (declining Mahin's invitation to "recognize that Second Amendment protections apply outside the home and extend to persons subject to

domestic protective orders," because we could assume Mahin "engaged in activity which implicates the Second Amendment" and yet "uphold [his] conviction"). *But cf. Kachalsky,* 701 F.3d at 89 ("Although the Supreme Court's cases applying the Second Amendment have arisen only in connection with prohibitions on the possession of firearms in the home, the Court's analysis suggests[ ] . . . that the Amendment must have *some* application in the very different context of the public possession of firearms. Our analysis proceeds on this assumption." (footnote omitted)).[5]

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[5] As the Appellees would have it, our Court recently confirmed in *United States v. Black* that the Second Amendment guarantees the right to carry firearms in public for self-protection. *See* No. 11-5084, slip op. at 13 (4th Cir. Feb. 25, 2013). There, we ruled that North Carolina police officers' investigatory detention of Black, along with five other men (including Troupe), was not justified by Troupe's lawful display of a firearm in public. The thrust of *Black* is that "where a state permits individuals to openly carry firearms, the exercise of this right, without more, cannot justify an investigatory detention." *Id.* Additionally, *Black* advises – but only in passing – that "even if the officers were justified in detaining Troupe for exercising his constitutional right to bear arms, reasonable suspicion as to Troupe does not amount to, and is not particularized as to Black." *Id.* That dicta is the basis for the Appellees' contention that *Black* proclaims the Second Amendment to have force outside the home. *Black,* however, can hardly be said to make such a momentous pronouncement.

Of course, in addition to the district court herein, a handful of courts – most prominently the Seventh Circuit – have declared outright that the *Heller* right extends beyond the home. *See Moore v. Madigan,* 702 F.3d 933, 942 (7th Cir. 2012) ("The

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We hew to a judicious course today, refraining from any assessment of whether Maryland's good-and-substantial-reason requirement for obtaining a handgun permit implicates Second Amendment protections. That is, we merely assume that the *Heller* right exists outside the home and that such right of Appellee Woollard has been infringed. We are free to make that assumption because the good-and-substantial-reason requirement passes constitutional muster under what we have deemed to be the applicable standard – intermediate scrutiny.

Supreme Court has decided that the amendment confers a right to bear arms for self-defense, which is as important outside the home as inside."); *see also, e.g., Bateman v. Perdue,* 881 F. Supp. 2d 709, 714 (E.D.N.C. 2012) ("Although considerable uncertainty exists regarding the scope of the Second Amendment right to keep and bear arms, it undoubtedly is not limited to the confines of the home."); *United States v. Weaver,* No. 2:09-cr-00222, 2012 WL 727488, at *4 (S.D. W. Va. Mar. 6, 2012) ("While it is true that the Fourth Circuit has so far stopped short of expressly recognizing a Second Amendment right to keep and bear arms outside the home, this Court has no such hesitation." (footnote omitted)).

Other courts have ruled to the contrary, concluding that the *Heller* right is confined to the home. Notably, Maryland's highest court falls within the latter category. *See Williams v. State,* 10 A.3d 1167, 1169 (Md. 2011) ("hold[ing] that Section 4-203(a)(1)(i) of the Criminal Law Article [of the Maryland Code], which prohibits wearing, carrying, or transporting a handgun, without a permit and outside of one's home, is outside the scope of the Second Amendment"). On a related note, the Tenth Circuit recently held "that the carrying of concealed firearms is not protected by the Second Amendment." *Peterson v. Martinez,* No. 11-1149, slip op. at 4 (10th Cir. Feb. 22, 2013).

B.

In *Masciandaro,* we announced that intermediate scrutiny applies "to laws that burden [any] right to keep and bear arms outside of the home." *See* 638 F.3d at 470-71 (explaining that "we assume that any law that would burden the 'fundamental,' core right of self-defense in the home by a law-abiding citizen would be subject to strict scrutiny. But, as we move outside the home, firearm rights have always been more limited, because public safety interests often outweigh individual interests in self-defense"); *accord Kachalsky,* 701 F.3d at 96 ("Because our tradition so clearly indicates a substantial role for state regulation of the carrying of firearms in public, we conclude that intermediate scrutiny is appropriate in this case."). As explained herein, the State has satisfied the intermediate scrutiny standard, in that it has demonstrated that the good-and-substantial-reason requirement for obtaining a Maryland handgun permit, as applied to Appellee Woollard, "is reasonably adapted to a substantial governmental interest." *See Masciandaro,* 638 F.3d at 471.

1.

We begin with the issue of whether the governmental interest asserted by the State constitutes a "substantial" one. The State explains that, by enacting the handgun permitting scheme, including the good-and-substantial-reason requirement, the General Assembly endeavored to serve Maryland's

concomitant interests in protecting public safety and preventing crime – particularly violent crime committed with handguns. Such purpose is reflected in codified legislative findings that

> (1) the number of violent crimes committed in the State has increased alarmingly in recent years;
>
> (2) a high percentage of violent crimes committed in the State involves the use of handguns;
>
> (3) the result is a substantial increase in the number of deaths and injuries largely traceable to the carrying of handguns in public places by criminals;
>
> (4) current law has not been effective in curbing the more frequent use of handguns in committing crime; and
>
> (5) additional regulations on the wearing, carrying, and transporting of handguns are necessary to preserve the peace and tranquility of the State and to protect the rights and liberties of the public.

Md. Code Ann., Crim. Law § 4-202. The language of those findings, adopted in 2002, was derived without substantive change from former article 27, section 36B(a) of the Maryland Code, which dates back to 1972.

The General Assembly's findings are buttressed by more recent evidence proffered by the State in these proceedings.[6] The State's evidence reflects that, although there has been "a significant improvement over past violent crime, homicide, and robbery totals," Maryland had the "eighth highest violent crime rate," "the third highest homicide rate," and "the second highest robbery rate of any state in 2009." J.A. 116. Over the course of that year, "97.4% of all homicides by firearm were committed with handguns," and handguns were "the weapon of choice" for robberies and carjackings. *Id.* at 116-17; *see also id.* at 110 (explaining that "[h]andguns are the weapon of choice for criminal activity in Baltimore because they are small, relatively lightweight, easy to carry and conceal, easy to load and fire, deadly at short range, and ideal for surprise attacks"). Furthermore, handguns have persisted as "the largest threat to the lives of Maryland's law enforcement officers." *Id.* at 117 (recounting that, "of the 158 Maryland law enforcement officers who have died in the line of duty from non-vehicular, non-natural causes, 132 – or 83.5% –

[6] In relevant part, the State's evidence consists of the March 18, 2011 declaration of Frederick H. Bealefeld III, then-Commissioner of the Baltimore Police Department, *see* J.A. 108-14; the March 17, 2011 declaration of Terrence Sheridan, then-Secretary and Superintendent of the Maryland State Police, *see id.* at 115-25; and the March 18, 2011 declaration of James W. Johnson, Chief of the Baltimore County Police Department, *see id.* at 126-34. Between them, Bealefeld, Sheridan, and Johnson have amassed more than 100 years of law enforcement experience in Maryland.

died as the result of intentional gunfire, usually from a handgun").

In these circumstances, we can easily appreciate Maryland's impetus to enact measures aimed at protecting public safety and preventing crime, and we readily conclude that such objectives are substantial governmental interests. *See, e.g., Schenck v. Pro-Choice Network of W. N.Y.,* 519 U.S. 357, 376 (1997) (referring to "the significant governmental interest in public safety"); *United States v. Salerno,* 481 U.S. 739, 750 (1987) (characterizing "the Government's general interest in preventing crime" as "compelling"); *United States v. Chapman,* 666 F.3d 220, 227 (4th Cir. 2012) (relying on *Schenck* and *Salerno* in holding "that reducing domestic gun violence is a substantial governmental objective"); *Masciandaro,* 638 F.3d at 473 (same in concluding that "the government has a substantial interest in providing for the safety of individuals who visit and make use of the national parks"). The district court itself recognized that, "[b]eyond peradventure, public safety and the prevention of crime are substantial, indeed compelling, government interests." *Woollard,* 863 F. Supp. 2d at 473.

For their part, the Appellees concede that "a compelling government interest in public safety" generally exists, but they maintain "that no legitimate government interest is at stake" here, because the State "cannot have an interest in suppressing a fundamental right" – including what the Appellees assert, and we assume, is the Second Amendment

right of law-abiding, responsible citizens to carry handguns in public for the purpose of self-defense. *See* Br. of Appellees 61-62; *see also McDonald,* 130 S. Ct. at 3042 (declaring "that the Framers and ratifiers of the Fourteenth Amendment counted the right to keep and bear arms among those fundamental rights necessary to our system of ordered liberty").[7] The Appellees would have us place the right to arm oneself in public on equal footing with the right to arm oneself at home, necessitating that we apply strict scrutiny in our review of the good-and-substantial-reason requirement.

Unfortunately for the Appellees, their argument is foreclosed by our precedent. First, in *Chester,* we rejected the proposition that we must "apply strict scrutiny whenever a law impinges upon a [fundamental] right." 628 F.3d at 682 (employing intermediate,

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[7] To be clear, the Appellees contest solely the restriction on the public carrying of handguns wrought by the good-and-substantial-reason requirement, without challenging any "other aspect of Maryland's regulatory scheme governing the right to carry handguns." Br. of Appellees 1. They also acknowledge that, included in the *Heller* Court's examples of "presumptively lawful regulatory measures," are "laws forbidding the carrying of firearms in sensitive places such as schools and government buildings." *Heller,* 554 U.S. at 626-27 & n.26; *see* Br. of Appellees 35. Accordingly, the crux of Appellees' argument is that, once an applicant satisfies the criteria other than the good-and-substantial-reason requirement, he has a right to obtain a Maryland handgun permit with all of the privileges that permit entails, subject to lawful restrictions on carrying firearms in certain public locations.

rather than strict, scrutiny in Chester's Second Amendment challenge to ban on firearm possession by domestic violence misdemeanants). Then, ruling in *Masciandaro* that intermediate scrutiny applies to laws burdening the assumed right to carry firearms in public, we recognized a "longstanding out-of-the-home/in-the-home distinction bear[ing] directly on the level of scrutiny applicable." 638 F.3d at 470. The Appellees therefore do not dissuade us from applying intermediate scrutiny, or from concluding that Maryland's interests in protecting public safety and preventing crime satisfy the "significant governmental interest" aspect of the intermediate scrutiny standard.[8]

2.

We thus turn to the question of whether the good-and-substantial-reason requirement, as applied to Appellee Woollard, is "reasonably adapted" to Maryland's significant interests. That is, we must decide if the State has demonstrated that there is a

[8] While the Appellees suggest that *Masciandaro* wrongly decided that intermediate scrutiny applies to restrictions on the carrying of firearms outside the home, *see* Br. of Appellees 59-61, the State contrarily asserts, for purposes of preserving the issue for further appeal, that a "reasonable regulation" standard would be more appropriate, *see* Br. of Appellants 39 n.8. We are bound, however, to follow *Masciandaro. See McMellon v. United States,* 387 F.3d 329, 332 (4th Cir. 2004) (en banc) (recognizing "the basic principle that one panel cannot overrule a decision issued by another panel").

"reasonable fit" between the good-and-substantial-reason requirement and the governmental objectives of protecting public safety and preventing crime. *See Chester,* 628 F.3d at 683. Importantly, the State must show a fit that is "'reasonable, not perfect.'" *United States v. Carter,* 669 F.3d 411, 417 (4th Cir. 2012) (quoting *Marzzarella,* 614 F.3d at 98). That test is satisfied if Maryland's interests are "substantially served by enforcement of the" good-and-substantial-reason requirement. *See id.* There is no necessity either that the good-and-substantial-reason requirement "be the least intrusive means of achieving the relevant government objective[s], or that there be no burden whatsoever on" Woollard's Second Amendment right. *See Masciandaro,* 638 F.3d at 474.

a.

At the outset of our reasonable fit inquiry, we must consider the precise contours of Maryland's handgun permitting scheme. *See Chapman,* 666 F.3d at 227 (citing *United States v. Staten,* 666 F.3d 154, 162 (4th Cir. 2011)). Under that scheme, even without a permit, Woollard may wear, carry, and transport handguns not only in his own home and on his personal and business properties, but also in many public places. *See* Md. Code Ann., Crim. Law § 4-203(b). For example, Woollard may move handguns to and from bona fide repair shops and places of legal purchase and sale. *Id.* § 4-203(b)(3). Woollard may also wear, carry, and transport handguns if he engages in target shoots and practices, sport shooting

events, hunting and trapping, specified firearms and hunter safety classes, and gun exhibitions. *Id.* § 4-203(b)(4)-(5).

Nevertheless, absent "good and substantial reason" to do so, Woollard cannot carry handguns in other public places where a permit is mandated. *See* Md. Code Ann., Pub. Safety § 5-306(a)(5)(ii). Woollard could satisfy the good-and-substantial-reason requirement by showing that he needs a permit for business activities, or because he is engaged in a regulated profession such as security guard or an assumed-risk profession such as correctional officer. *See* J.A. 57-58. Otherwise, Woollard could prove what he failed to substantiate in 2009: that a "permit is necessary as a reasonable precaution against apprehended danger." Md. Code Ann., Pub. Safety § 5-306(a)(5)(ii).

The State has clearly demonstrated that the good-and-substantial-reason requirement advances the objectives of protecting public safety and preventing crime because it reduces the number of handguns carried in public. That is, limiting the public carrying of handguns protects citizens and inhibits crime by, inter alia:

- Decreasing the availability of handguns to criminals via theft, *see* J.A. 111 (explaining that criminals often target victims "*precisely because* they possess handguns," and that Baltimore police have "frequently investigated homicides and robberies where it appears that one,

if not the primary, goal of the attacker was to deprive the victim of his handgun or other weapons"); *see also id.* at 119-20 ("[C]riminals in Maryland are constantly looking for ways to arm themselves with handguns, including by stealing them from others. It is not uncommon for criminals to obtain these guns during street altercations.");

- Lessening "the likelihood that basic confrontations between individuals would turn deadly," *id.* at 112 ("The presence of a handgun in an altercation, however petty, greatly increases the likelihood that it will escalate into potentially lethal violence."); *see also id.* at 132 ("Incidents such as bar fights and road rage that now often end with people upset, but not lethally wounded, take on deadly implications when handguns are involved.");

- Averting the confusion, along with the "potentially tragic consequences" thereof, that can result from the presence of a third person with a handgun during a confrontation between a police officer and a criminal suspect, *id.* at 113 ("In [such] a confrontation . . . , an additional person bearing a gun might cause confusion as to which side of the confrontation the person is on, which could lead to hesitation by the police officer and the potential for innocent victims, including the permit holder, innocent bystanders,

and police officers."); *see also id.* at 128 ("[C]ivilians without sufficient training to use and maintain control of their weapons, particularly under tense circumstances, pose a danger to officers and other civilians.");

- Curtailing the presence of handguns during routine police-citizen encounters, *id.* at 131 ("If the number of legal handguns on the streets increased significantly, [police] officers would have no choice but to take extra precautions before engaging citizens, effectively treating encounters between police and the community that now are routine, friendly, and trusting, as high-risk stops, which demand a much more rigid protocol and a strategic approach.");
- Reducing the number of "handgun sightings" that must be investigated, *id.* ("Increasing the number of people legally carrying handguns in the streets will also force [police] officers to spend more resources responding to reports about handgun sightings and engaging handgun carriers to ensure they are doing so lawfully."); and
- Facilitating the identification of those persons carrying handguns who pose a menace, *id.* at 113 ("Police officers would also have a harder time identifying potential security risks if more people without good and substantial reason to

> carry a handgun were able to do so, making it more difficult to respond when necessary.").

At the same time that it reduces the number of handguns carried in public, however, the good-and-substantial-reason requirement ensures that those persons in palpable need of self-protection can arm themselves in public places where Maryland's various permit exceptions do not apply. Consequently, according to the State, the good-and-substantial-reason requirement "strikes a proper balance between ensuring access to handgun permits for those who need them while preventing a greater-than-necessary proliferation of handguns in public places that . . . increases risks to public safety." J.A. 113.[9]

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[9] The Appellees take issue with the State's contention that allowing fewer handguns on the streets facilitates the identification of those persons carrying handguns who pose a security risk. The Appellees characterize the State's position as being that the good-and-substantial-reason requirement's curtailment of the public carrying of handguns affords the police "pretext" to detain handgun carriers on the streets. *See* Br. of Appellees 66. Having so characterized the State's position, the Appellees then accuse the State of having "low regard not only for the Second Amendment, but the Fourth as well, which condemns pretextual searches and seizures." *Id.*; *see also United States v. Black,* No. 11-5084, slip op. at 13 (4th Cir. Feb. 25, 2013) (recognizing that "where a state permits individuals to openly carry firearms, the exercise of this right, without more, cannot justify an investigatory detention"), *discussed supra* note 5. The State simply has not professed, however, that the police may detain handgun carriers without regard for their Fourth Amendment rights. Accordingly, there is no genuine dispute as to any material fact

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b.

We are convinced by the State's evidence that there is a reasonable fit between the good-and-substantial-reason requirement and Maryland's objectives of protecting public safety and preventing crime. In this regard, we find ourselves in agreement with much of the Second Circuit's recent decision in *Kachalsky,* rejecting the theory that New York's handgun licensing scheme violates the Second Amendment by requiring an applicant to demonstrate "proper cause" – i.e., a special need for self-protection – as a prerequisite for a license to carry a concealed handgun in public. *See* 701 F.3d at 83-84. We specifically subscribe to the *Kachalsky* court's analysis that New York's proper-cause requirement "is oriented to the Second Amendment's protections," and constitutes "a more moderate approach" to protecting public safety and preventing crime than a wholesale ban on the public carrying of handguns. *See id.* at 98-99. The same must be said of Maryland's comparable good-and-substantial-reason requirement.[10]

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that would render it inappropriate to dispose of this matter on the parties' cross-motions for summary judgment. *See* Fed. R. Civ. P. 56(a).

[10] The contrast between New York's (and Maryland's) "moderate approach" and a wholesale ban on the public carrying of firearms is underscored by the Seventh Circuit's recent decision in *Moore v. Madigan. See* 702 F.3d 933, 940, 942 (7th Cir. 2012) (declaring unconstitutional Illinois's "flat ban on carrying ready-to-use guns outside the home," but staying the mandate "to allow the Illinois legislature to craft a new gun law

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The good-and-substantial-reason requirement was inappropriately condemned by the district court for being a "rationing system," that "does no more to combat [threats to public safety] than would a law indiscriminately limiting the issuance of a permit to every tenth applicant." *See Woollard,* 863 F. Supp. 2d at 474. The court pointed out, inter alia, that the good-and-substantial-reason requirement "will not prevent those who meet it from having their guns taken from them." *Id.* The Appellees have added that, because "[c]rime is largely random and unpredictable," the State is "plainly incapable of predicting who might be victimized and thus have more practical use for firearms." Br. of Appellees 68. Additionally, the Appellees have suggested that a "shall-issue" regime, increasing the number of law-abiding handgun carriers, would more effectively protect public safety and prevent crime than does Maryland's current permitting scheme. *See id.* at 63. But we cannot substitute those views for the considered judgment of

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that will impose reasonable limitations"), *discussed supra* note 5. Writing for *Moore*'s panel majority, Judge Posner distinguished the Illinois prohibition from "[t]he [less-restrictive] New York gun law upheld in *Kachalsky*." 702 F.3d at 941. Thereafter, when rehearing en banc was denied on a 5-4 vote, the four nonprevailing judges joined in a dissent alerting the Illinois legislature that the panel majority left "a good deal of constitutional room for reasonable public safety measures concerning public carrying of firearms," including a measure along the lines of "New York's state law requiring 'proper cause' for issuance of a permit to carry a gun." *Moore v. Madigan,* No. 12-1269(L), slip op. at 6 (7th Cir. Feb. 22, 2013) (Hamilton, J., dissenting from the denial of rehearing en banc) (citing *Kachalsky*).

the General Assembly that the good-and-substantial-reason requirement strikes an appropriate balance between granting handgun permits to those persons known to be in need of self-protection and precluding a dangerous proliferation of handguns on the streets of Maryland. *See Kachalsky,* 701 F.3d at 100 ("New York determined that limiting handgun possession to persons who have an articulable basis for believing they will need the weapon for self-defense is in the best interest of public safety and outweighs the need to have a handgun for an unexpected confrontation.").

As the Second Circuit recognized in *Kachalsky,* "[i]t is the legislature's job, not ours, to weigh conflicting evidence and make policy judgments." 701 F.3d at 99. The duty of the courts is to ensure that the legislature's policy choice substantially serves a significant governmental interest. That is, the courts must be satisfied that there is a reasonable fit between the legislative policy choice and the governmental objective. *See Staten,* 666 F.3d at 167 (reiterating that "[i]ntermediate scrutiny does not require a perfect fit; rather only a reasonable one").

Thus, the district court was also wrong to denounce the good-and-substantial-reason requirement's failure to single-handedly safeguard the public from every handgun-related hazard. The court expressly faulted the good-and-substantial-reason requirement for not "ensuring that guns are kept out of the hands of those adjudged most likely to misuse them, such as criminals[,] the mentally ill," or "anyone whose conduct indicates that he or she is potentially a danger to

the public if entrusted with a handgun"; for not "ban[ning] handguns from places where the possibility of mayhem is most acute, such as schools, churches, government buildings, protest gatherings, or establishments that serve alcohol"; and for not "attempt[ing] to reduce accidents, as would a requirement that all permit applicants complete a safety course." *See Woollard,* 863 F. Supp. 2d at 474 (internal quotation marks omitted). Aside from disregarding the existence of other laws with many of those very aims – including separate provisions of Maryland's handgun permitting scheme – the court improperly conducted a review more reminiscent of strict scrutiny than intermediate scrutiny.

The district court's misapplication of the intermediate scrutiny standard is illustrated by its pronouncement that "[a] citizen may not be required to offer a 'good and substantial reason' why he should be permitted to exercise his rights," in that "[t]he right's existence is all the reason he needs." *Woollard,* 863 F. Supp. 2d at 475. There simply is no way to harmonize the district court's declaration with our recognition in *Masciandaro* that intermediate scrutiny applies to laws burdening any right to carry firearms outside the home, where "firearm rights have always been more limited, because public safety interests often outweigh individual interests in self-defense." *See* 638 F.3d at 470; *see also Kachalsky,* 701 F.3d at 99 n.23 (rejecting the notion that "handgun possession in public has the ring of an absolute constitutional right," and deeming it "quite obvious"

that "possession of a weapon in the home has far different implications than carrying a concealed weapon in public"); Br. of Appellants 43 ("The same factors that make handguns the weapon of choice for defense of the home also make them the weapon of choice for criminals outside the home. . . . Similarly, an individual's possession of a handgun in his own home obviously does not present the same risks to public safety as does his carry of the same handgun in public.").

In summary, although we assume that Appellee Woollard's Second Amendment right is burdened by the good-and-substantial-reason requirement, we further conclude that such burden is constitutionally permissible. That is, under the applicable intermediate scrutiny standard, the State has demonstrated that the good-and-substantial-reason requirement is reasonably adapted to Maryland's significant interests in protecting public safety and preventing crime.

C.

Because we conclude that the good-and-substantial-reason requirement is constitutional under the Second Amendment as applied to Appellee Woollard, we also must reject the Appellees' facial challenge. *See Masciandaro,* 638 F.3d at 474. As the Supreme Court has explained, "a person to whom a statute may constitutionally be applied will not be heard to challenge that statute on the ground that it may conceivably be applied unconstitutionally to

others, in other situations not before the Court." *Broadrick v. Oklahoma,* 413 U.S. 601, 610 (1973); *see also Gonzales v. Carhart,* 550 U.S. 124, 168 (2007) ("It is neither our obligation nor within our traditional institutional role to resolve questions of constitutionality with respect to each potential situation that might develop.").[11]

[11] Finally, as did the district court, we reject the Appellees' contentions that the good-and-substantial-reason requirement amounts to an unconstitutional prior restraint on the exercise of Second Amendment rights, and that such requirement contravenes the Equal Protection Clause of the Fourteenth Amendment. *See Woollard,* 863 F. Supp. 2d at 472, 475-76, *discussed supra* note 4. Like the Second Circuit – echoing the district court's discussion of the prior restraint theory herein – "[w]e are hesitant to import substantive First Amendment principles wholesale into Second Amendment jurisprudence." *See Kachalsky,* 701 F.3d at 91-92 (emphasis omitted) (citing *Woollard,* 863 F. Supp. 2d at 472). We also conclude that the Appellees' prior restraint theory would fail in that it is premised on an uncorroborated assertion that the good-and-substantial-reason requirement vests the State "with virtually unbridled and absolute power to deny permits." Br. of Appellees 58 (internal quotation marks omitted); *cf. Kachalsky,* 701 F.3d at 92 ("Plaintiffs' complaint is not that the proper cause requirement is standardless; rather, they simply do not like the standard – that licenses are limited to those with a special need for self-protection." (emphasis omitted)). As for the Appellees' equal protection claim, they now have essentially acknowledged that it is co-extensive with their Second Amendment claim. *See* Br. of Appellees 58 & n.14.

IV.

Pursuant to the foregoing, we reverse the judgment of the district court.

REVERSED

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

RAYMOND WOOLLARD, et al.	:	
Plaintiffs	:	Civil Case No.
v.	:	L-10-2068
MARCUS BROWN, et al.	:	
Defendants	:	

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MEMORANDUM

Presently pending before the Court is the Motion of Defendants for a Stay Pending Appeal. Docket No. 67. The issues have been comprehensively briefed, and the Court finds oral hearing unnecessary. *See* Local Rule 105.6 (D. Md. 2011). For the reasons set forth herein, the Court will, by separate Order, DENY the Motion.

I. PROCEDURAL BACKGROUND

This case involves a challenge to the constitutionality of the State of Maryland's handgun permitting scheme. In July of 2010, Plaintiff Robert Woollard filed suit contending that § 5-306(a)(5)(ii) of the Public Safety Article of the Maryland Code violates the Second Amendment to the United States Constitution. The provision in question requires that, prior to issuing a permit to wear or carry a handgun in the

state of Maryland, the Secretary of the State Police must make a finding 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."

The Court agreed with Woollard, and entered an Order permanently enjoining Defendants, their officers, agents, and employees, from enforcing § 5-306(a)(5)(ii). *See* Docket Nos. 52 and 63. The Court further ordered Defendants to promptly process Woollard's 2009 application for a permit renewal, the denial of which gave rise to the instant suit, without consideration of the "good and substantial reason" requirement. *Id.*

Defendants timely filed an application for stay and a notice of appeal to the Fourth Circuit Court of Appeals. Implementation of the Court's ruling was preliminarily stayed while the parties briefed the issue of whether a more permanent stay should be entered pending the Fourth Circuit's decision. Following expedited initial briefing, the Court convened a teleconference with counsel for all parties and ordered supplemental briefing, which has now been completed.

II. LEGAL STANDARD

Federal Rule of Civil Procedure 62(c) permits a District Court to stay pending appeal a final judgment that grants, dissolves, or denies an injunction.

In determining whether a stay is warranted, the Court must consider: "(1) whether the stay applicant has made a strong showing that he is likely to succeed on the merits; (2) whether the applicant will be irreparably injured absent a stay; (3) whether issuance of the stay will substantially injure the other parties interested in the proceeding; and (4) where the public interest lies." *Hilton v. Braunskill*, 481 U.S. 770, 776 (1987).

III. DISCUSSION

In this case, Defendants have failed to meet their burden of establishing that the aforementioned factors weigh in favor of a stay. The Court will briefly address each of these factors.

a. Likelihood of Success

Just as every party to appeal a trial court's judgment does so with the expectation (or at least the hope) of vindication, every court that renders a judgment does so in the belief that its judgment is the correct one. Accordingly, the "likelihood-of-success standard does not mean that the trial court needs to change its mind or develop serious doubts concerning the correctness of its decision in order to grant a stay pending appeal." *Goldstein v. Miller*, 488 F. Supp. 156, 172 (D. Md. 1980). A party seeking a stay, however, must nevertheless make a "strong showing" that he is likely to succeed. *Hilton*, 481 U.S. at 776.

Defendants rest their argument largely on the fact that this case involved difficult and novel issues in a largely undeveloped area of law. As this Court has long noted, however, a stay is not required "every time a case presents difficult questions of law." *St. Agnes Hosp., Inc. v. Riddick*, 751 F. Supp. 75, 76 (D. Md. 1990) (quoting *Miller*, 488 F. Supp. at 173). While the result in the case at bar was not ineluctably dictated by controlling precedent, it did flow naturally from the Supreme Court's decisions in *District of Columbia v. Heller*, 554 U.S. 570 (2008) and *McDonald v. City of Chicago*, 130 S. Ct. 3020 (2010), and, perhaps more importantly, from the Fourth Circuit's decision in *United States v. Masciandaro*, 638 F.3d 458 (4th Cir. 2011). These decisions, as the Court noted, left useful "signposts" and provided "a ready guide." Mem. Op. at 7, 6, Docket No. 52.

While Defendants have cited post-*Heller* decisions in which courts have upheld similar (though not identical) permitting regulations, they cite none from the Fourth Circuit. By contrast, as Woollard points out, subsequent to this Court's award of summary judgment another district court in the Fourth Circuit has also held, as this Court did, that "[a]lthough considerable uncertainty exists regarding the scope of the Second Amendment right to keep and bear arms, it undoubtedly is not limited to the confines of the home." *Bateman v. Perdue*, No. 5:10-CV-265H, 2012 U.S. Dist. LEXIS 47336, at *10-*11 (E.D.N.C. Mar. 29, 2012). In so doing, the United States District Court for the Eastern District of North Carolina, like

this Court, placed considerable reliance on Judge Niemeyer's non-controlling opinion in *Masciandaro*.

Defendants have beyond question shown that considerable difference of opinion exists throughout the country as to the proper scope and application of the Second Amendment following the Supreme Court's watershed decisions in *Heller* and *McDonald*. In the case at bar, the Fourth Circuit could certainly find reasonable grounds to reverse this Court's decision. Such an outcome does not appear so probable, however, as to outweigh the remaining considerations discussed below.

b. Irreparable Injury

Defendants point to little in the way of truly irreparable injury that is likely to result should their request for a stay be denied. First, Defendants urge that "their ability to protect public safety will be curtailed" because of their "inability to enforce an important component of the handgun permit regulations. . . ." Defs.' Mot for Stay 17, Docket No. 54. The problem with this line of argument is that it begs a question that has already been answered. To accept Defendants' contention would be to ignore the Court's determination that the "good and substantial reason" requirement is insufficiently tailored to serving the State's admittedly legitimate interest in public safety. This and other such arguments that seek to relitigate the merits of the case must fail.

Next, Defendants advert to what they characterize as "significant, immediate administrative burdens" that would be involved in implementing the Court's Order. *Id.* at 20. While the Court is not unsympathetic to the very real and often costly considerations involved in revamping a regulatory scheme, administrative hardship does not rise to the level of irreparable harm. As to the more concrete costs of compliance, "[m]ere economic injury is rarely, if ever, sufficient to warrant entry of a stay of judgment to protect a party against it. . . ." *Miller*, 488 F. Supp. at 175.

Nor does it seem likely that the attendant burdens would be as onerous as Defendants would have the Court believe. The Court's main concern involved the difficulty Defendants might have in revoking permits that will have already been issued should they succeed on appeal. On this point, the parties appear to agree that the Court's decision does not stop Defendants from tracking whether applicants have a "good and substantial reason," only from denying permits on this basis. While Defendants concede this point, they contend that "in light of the strong feelings surrounding this issue, [the Maryland State Police ('MSP')] nonetheless expects that a significant number of applicants who have good and substantial reason may decline to provide it during the Interim Period as a matter of principle." Defs.' Supp. Brief 4, Docket No. 68. Notably, however, Defendants offer no factual support for such an expectation. Moreover, applicants with good and substantial reason who decline to provide it would do so with the understanding

that, as a consequence, they might have their permits revoked and be forced to repeat the application process.

As to those new applicants without good and substantial reason, Defendants admit that "MSP expects that many such individuals would comply with its directions and return their permits." *Id.* While they assert that it would be "impractical" to track down and recover the remainder, *id.*, MSP is doubtless called upon to recover revoked permits from time to time. Furthermore, any permit holder who refused to voluntarily return a permit would be in knowing violation of MD Code, Public Safety, § 5-310, which requires the holder to "return the permit to the Secretary [of State Police] within 10 days after receipt of written notice of the revocation." Defendants have given the Court no basis from which to infer that a significant number of those applicants who have waited patiently for the outcome of this litigation and complied with the permit application process in full would, upon revocation, suddenly decline to adhere to the law.

c. Interest of Other Parties and the Public

Against costs to Defendants of complying immediately with the Court's ruling, the Court must balance the harm to Woollard and those like him. If a stay is granted, a sizeable number of people will be precluded from exercising, while the case is argued on appeal, what this Court has recognized as a valid

aspect of their Second Amendment right. In the First Amendment context, the Supreme Court has stated that "loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury." *Elrod v. Burns*, 427 U.S. 347, 373 (1976). As the Court discussed in its summary judgment opinion, there are substantial similarities between the First and Second Amendments, and the analogy is appropriate here as well.

The question of public interest is somewhat more involved. It is self-evident, as the Fourth Circuit has noted, that "[s]urely, upholding constitutional rights serves the public interest." *Newsom v. Albemarle Cnty. Sch. Bd.*, 354 F.3d 249, 261 (4th Cir. 2003). At the same time, however, the Court would not forget another admonition from the Fourth Circuit: that "[t]his is serious business. We do not wish to be even minutely responsible for some unspeakably tragic act of mayhem because in the peace of our judicial chambers we miscalculated as to Second Amendment rights" *Masciandaro*, 638 F.3d at 475.

For this reason, the Court directed the parties to file supplemental briefs addressing how Maryland's permitting scheme, without the "good and substantial reason" requirement, compares to the systems in force in other states and how Maryland's rate of handgun violence compares to that of other states with more liberal regulations. The Second Amendment does not "require judges to assess the costs and benefits of firearms restrictions and thus to make difficult

empirical judgments in an area in which they lack expertise." *McDonald*, 130 S. Ct. at 3050. Nevertheless, persuasive evidence that states with more permissive regulatory schemes suffer from more handgun crime, or that states experience an increase in handgun violence when moving from a "may issue" to a "shall issue" framework, would certainly militate in favor of a stay.

The parties have conducted commendably thorough research on the subject, and each has dedicated considerable time and energy to debating the relative merits of the studies and statistics offered by the other. The inescapable conclusion, however, is that the evidence does not point strongly in any one direction. As Defendants aptly state, "Identifying causal trends in crime data is notoriously difficult in any circumstance because of the multiplicity of variables that impact crime and the different effects of those variables in different places and on different people." Defs.' Supp. Brief 5, Docket No. 68. On this dimension, then, the Court cannot say that a stay would demonstrably serve or disserve the State's goal of preventing a potential increase in handgun violence pending appeal. Defendants have not established that the public interest weighs in favor of a stay.

IV. CONCLUSION

Having given due weight to the four *Hilton* factors, the Court determines that a stay pending

appeal is not warranted. The Court will, by separate Order, lift the temporary stay now in effect.

Dated this 23rd day of July, 2012

/s/
Benson Everett Legg
United States District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

RAYMOND WOOLLARD, et al. Plaintiffs v. TERRENCE SHERIDAN, et al. Defendants	Civil Case No. L-10-2068

MEMORANDUM

(Filed Mar. 2, 2012)

This case calls upon the Court to determine whether the State of Maryland's handgun regulation statute violates the Second Amendment to the United States Constitution insofar as it requires an applicant to demonstrate "good and substantial reason" for the issuance of a handgun permit. Plaintiffs Raymond Woollard and The Second Amendment Foundation[1] bring suit against Terrence Sheridan, Secretary of the Maryland State Police, and three members of the Maryland Handgun Permit Review Board. The facts

[1] The Second Amendment Foundation is a non-profit organization, the stated purposes of which include "promoting the exercise of the right to keep and bear arms; and education, research, publishing and legal action focusing on the Constitutional right to privately own and possess firearms, and the consequences of gun control." Am. Compl. 2. For ease of reference, Plaintiffs will be collectively referred to as "Woollard" throughout.

of the case are undisputed, and both sides have moved for summary judgment. *See* Docket Nos. 21 and 25.[2] The issues have been comprehensively briefed and the Court has heard oral argument.

Because the "good and substantial reason" requirement is not reasonably adapted to a substantial government interest, the Court finds this portion of the Maryland law to be unconstitutional. Woollard is entitled to summary judgment.

I. BACKGROUND

The state of Maryland prohibits the carrying of a handgun outside the home, openly or concealed, without a permit. *See* MD. CODE ANN., CRIM. LAW § 4-203; MD. CODE ANN., PUB. SAFETY § 5-303.[3] The Secretary of the State Police ("Secretary") is required to issue permits, but only to individuals who meet certain enumerated conditions. An applicant must establish that he has not been convicted of a felony or

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[2] The Court thanks counsel for their thorough and skillful briefs. The Court also thanks *amici curiae,* the Brady Center to Prevent Gun Violence and the Legal Community Against Violence, for their useful submissions.

[3] Maryland law does allow the transport of an unloaded handgun to and from places where it may legally be possessed without a permit, such as the owner's home, a repair shop, a target range, or a gun show. *See* MD. CODE ANN., CRIM. LAW § 4-203(b). With limited exceptions, Maryland also allows the unrestricted carrying of a "long gun," i.e., a rifle or shotgun, outside the home.

a misdemeanor for which a term of imprisonment greater than one year was imposed, has not been convicted of a drug crime, is not an alcoholic or drug addict, and has not exhibited a propensity for violence or instability. Of significance to this case, the Secretary must also make a determination 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." MD. CODE ANN., PUB. SAFETY § 5-306(a)(5)(ii).

In deciding whether the applicant has satisfied these criteria, the Handgun Permit Unit ("Permit Unit"), which reviews applications as the Secretary's designee, is required to take various factors into consideration. These include "the reasons given by the applicant as to whether those reasons are good and substantial," "whether the applicant has any alternative available to him for protection other than a handgun permit," and "whether the permit is necessary as a reasonable precaution for the applicant against apprehended danger." MD. CODE REGS. 29.03.02.04.

An individual whose permit application has been denied may appeal the decision to the Handgun Permit Review Board (the "Board"). MD. CODE ANN., PUB. SAFETY, § 5-312. The Board may sustain, reverse, or modify the Permit Unit's decision. *Id.*

Plaintiff Raymond Woollard lives on a farm in a remote part of Baltimore County, Maryland. On

Christmas Eve, 2002, Woollard was at home with his wife, children, and grandchildren when an intruder shattered a window and broke into the house. The intruder was Kris Lee Abbott, Woollard's son-in-law. Abbott, who was high on drugs and intent on driving into Baltimore city to buy more, was looking for his wife's car keys. Woollard grabbed a shotgun and trained it on Abbott, but Abbott wrested the shotgun away. Woollard's son restored order by pointing a second gun at Abbott. Woollard's wife called the police, who took two-and-a-half hours to arrive.

Abbott was convicted of first degree burglary and sentenced to three years' probation. He was later incarcerated after he violated his probation by assaulting a police officer and by committing another burglary.

In 2003, Woollard applied for, and was granted, a handgun carry permit. He was allowed to renew the permit in 2006, shortly after Abbott was released from prison.[4] In 2009, however, when Woollard again sought to renew his permit, he was informed that his request was incomplete. He was directed to submit evidence "to support apprehended fear (i.e. – copies of police reports for assaults, threats, harassments, stalking)." Letter from M. Cusimano, Handgun

[4] Permits expire "on the last day of the holder's birth month following two years after the date the permit is issued" and may be renewed for successive three-year terms. MD. CODE ANN., PUB. SAFETY, § 5-309.

Permit Section Supervisor, to Robert Woollard (Feb. 2, 2009), Pls.' Mot. Summ. J. Ex. A, Docket No. 12-3. Because Woollard was unable to produce evidence of a current threat, his application was denied.

Woollard appealed this decision, first through the Handgun Permit Unit's informal review procedures and eventually to the Board. On November 12, 2009, in a decision by Defendants Gallagher, Goldstein, and Thomas, the Board affirmed the denial of Woollard's application, finding that Woollard "ha[d] not submitted any documentation to verify threats occurring beyond his residence, where he can already legally carry a handgun." The Board concluded that Woollard "ha[d] not demonstrated a good and substantial reason to wear, carry or transport a handgun as a reasonable precaution against apprehended danger in the State of Maryland." Pls.' Mot. Summ. J. Ex. D, Docket No. 12-6.

On July 29, 2010, Woollard filed the instant suit, arguing that Maryland's handgun permitting scheme is facially violative of both the Second Amendment and the Equal Protection Clause of the Fourteenth Amendment. He avers that, separate and apart from any concern he may have regarding Abbott, he wishes to wear and carry a handgun for general self-defense.

II. LEGAL STANDARD

The Court may grant summary judgment when "the pleadings, depositions, answers to interrogatories, and admissions on file, together with affidavits,

if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(c); *Celotex Corp. v. Catrett,* 477 U.S. 317, 322-23 (1986); *see also Felty v. Graves-Humphreys Co.,* 818 F.2d 1126, 1128 (4th Cir. 1987) (recognizing that trial judges have "an affirmative obligation" to prevent factually unsupported claims and defenses from proceeding to trial). Nevertheless, in determining whether there is a genuine issue of material fact, the Court must view the facts, and all reasonable inferences to be drawn from them, in the light most favorable to the non-moving party. *Pulliam Inv. Co. v. Cameo Properties,* 810 F.2d 1282, 1286 (4th Cir. 1987). Hearsay statements or conclusory statements with no evidentiary basis cannot support or defeat a motion for summary judgment. *See Greensboro Prof'l Fire Fighters Ass'n, Local 3157 v. City of Greensboro,* 64 F.3d 962, 967 (4th Cir. 1995).

"When both parties file motions for summary judgment . . . [a] court applies the same standard of review." *McCready v. Standard Ins. Co.,* 417 F. Supp. 2d 684, 695 (D. Md. 2006) (citing *Taft Broad. Co. v. United States,* 929 F.2d 240, 248 (6th Cir. 1991)). Furthermore, "each motion [will be considered by a court] separately on its own merits to determine whether either of the parties deserves judgment as a matter of law." *Rossignol v. Voorhaar,* 316 F.3d 516, 523 (4th Cir. 2003).

III. ANALYSIS

The Second Amendment provides: "A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed." U.S. CONST. amend. II. These 27 words, so long untroubled by significant judicial scrutiny, have become newly fertile ground for interpretation following the Supreme Court's 2008 decision in *District of Columbia v. Heller,* 554 U.S. 570 (2008). In brief, *Heller* presented the question whether the Second Amendment confers an individual right to bear arms, or protects only the right to possess and carry a firearm in connection with militia service. After a lengthy examination of the historical record, the *Heller* majority held that the Constitution guarantees "the individual right to possess and carry weapons in case of confrontation," but left the contours of that right largely undefined. *Id.* at 592. Two years later, in *McDonald v. City of Chicago,* 130 S. Ct. 3020 (2010), the Supreme Court held that the Second Amendment's protections, whatever their bounds, apply fully to the States through the Fourteenth Amendment.

This case requires the Court to answer two fundamental questions. The first asks whether the Second Amendment's protections extend beyond the home, "where the need for defense of self, family, and property is most acute." *Heller,* 554 U.S. at 628. This question was left unanswered in *Heller,* and has not been authoritatively addressed in the Fourth Circuit's post-*Heller* decisions. Second, if the right to bear

arms does extend beyond the home, the Court must decide whether Maryland's requirement that a permit applicant demonstrate "good and substantial reason" to wear or carry a handgun passes constitutional muster. In undertaking these inquiries, the Court is guided by the Fourth Circuit's recent opinion in *United States v. Masciandaro,* 638 F.3d 458 (4th Cir. 2011), which helpfully laid the foundation for resolution of the case at bar.

A. Level of Scrutiny

The Supreme Court has traditionally chosen among three levels of scrutiny when examining laws challenged on constitutional grounds. The rational basis test presumes the law's validity and asks only whether the law is rationally related to a legitimate state interest. *City of Cleburne v. Cleburne Living Ctr.,* 473 U.S. 432, 440 (1985). Intermediate scrutiny requires more; the government's interest must be "significant," "substantial," or "important," *see, e.g., Turner Broad. Sys., Inc. v. FCC,* 512 U.S. 622, 662 (1994), and the "fit" between the challenged regulation and the asserted objective must be reasonable, though not perfect. *See, e.g., Lorillard Tobacco Co. v. Reilly,* 533 U.S. 525, 556 (2001). Finally, strict scrutiny requires the government to show that the law "furthers a compelling interest and is narrowly tailored to achieve that interest." *Citizens United v. FEC,* 130 S. Ct. 876, 898 (2010) (citing *FEC v. Wisconsin Right To Life, Inc.,* 551 U.S. 449, 464 (2007)).

The *Heller* majority declined to articulate the level of constitutional scrutiny that courts must apply when examining laws that are in tension with the Second Amendment. It determined that the regulation then under consideration would have failed "[u]nder any of the standards of scrutiny that we have applied to enumerated constitutional rights." 554 U.S. at 628. The majority did, however, reject both rational basis review, *see id.* at 628 n.27 and the "freestanding 'interest-balancing' approach" advocated by Justice Breyer in dissent. *Id.* at 634-35; *see also id.* at 689-90 (Breyer, J., dissenting).

The case of *United States v. Chester,* 628 F.3d 673 (4th Cir. 2010), called upon the Fourth Circuit Court of Appeals to decide the level of scrutiny applicable in a challenge to 18 U.S.C. § 922(g)(9), which prohibits the possession of a firearm by any person convicted of a misdemeanor crime of domestic violence.[5] Because Chester's prior conviction put him outside the ambit of the "core right identified in *Heller* – the right of a *law-abiding, responsible* citizen to possess and carry a weapon for self-defense," the court determined that intermediate scrutiny was more appropriate than strict scrutiny. *Id.* at 683 (emphasis original).

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[5] Commonly referred to as the "felon in possession" statute, § 922(g) is best known for proscribing the possession of a firearm or ammunition by anyone convicted of a crime punishable by a term of imprisonment exceeding one year. Lesser-known subsections also forbid firearm possession to those who have been dishonorably discharged from the armed forces, illegal aliens, and domestic violence misdemeanants.

Soon thereafter, *Masciandaro* presented the Fourth Circuit with another case involving the assertion of Second Amendment rights outside the "core" territory staked out by *Heller*. Sean Masciandaro was convicted of possessing a loaded handgun in a motor vehicle within a national park, a combination made unlawful at the time by a federal regulation, 36 C.F.R. § 2.4(b). 638 F.3d at 459. On appeal, Masciandaro argued that because the Second Amendment guaranteed him the right to possess and carry a weapon in case of confrontation, it shielded him from prosecution for exercising that right in a national park. The Fourth Circuit, in upholding Masciandaro's conviction, rejected his argument that the regulation should be tested under strict scrutiny. It noted that while Masciandaro, unlike Chester, was a law-abiding citizen with a clean criminal record, he possessed the handgun not in his home but in a public park. *Id.* at 469-70.

Drawing from First Amendment jurisprudence, the appeals court reasoned as follows:

> [W]e might expect that courts will employ different types of scrutiny in assessing burdens on Second Amendment rights, depending on the character of the Second Amendment question presented.
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> * * *
>
> As we observe that any law regulating the content of speech is subject to strict scrutiny, we assume that any law that would burden the "fundamental," core right of self-defense

> in the home by a law-abiding citizen would be subject to strict scrutiny. But, as we move outside the home, firearm rights have always been more limited, because public safety interests often outweigh individual interests in self-defense.

Id. at 470 (citation omitted).

The court concluded that "a lesser showing is necessary with respect to laws that burden the right to keep and bear arms outside of the home," and determined that intermediate scrutiny was appropriate to Masciandaro's challenge. *Id.* at 471. The court cited with approval precedent applying intermediate scrutiny to content-neutral time, place, and manner restrictions on speech in general, and on commercial speech in particular "in light of its 'subordinate position in the scale of First Amendment values.'" *Id.* (citing *Ward v. Rock Against Racism,* 491 U.S. 781, 791 (1989), and *Bd. of Trustees of State Univ. of N.Y. v. Fox,* 492 U.S. 469, 477 (1989)).

Woollard's asserted right falls within this same category of non-core Second Amendment protection. He already enjoys an unchallenged right to possess a handgun in his home; but, like Masciandaro, he also seeks to carry one into the wider world for general self-defense. The statute he challenges, therefore, is properly viewed through the lens of intermediate scrutiny, which places the burden on the Government to demonstrate a reasonable fit between the statute and a substantial governmental interest. *See Chester,* 628 F.3d at 683.

B. Scope of the Right

In *Masciandaro,* Judge Wilkinson, writing for the panel on this issue only,[6] found it "unnecessary to explore in this case the question of whether and to what extent the Second Amendment right recognized in *Heller* applies outside the home." 638 F.3d at 474. Judge Wilkinson reasoned that, if the right to carry a handgun outside the home does exist, the burden placed on that right by the regulation at issue clearly withstood intermediate scrutiny. He then determined that that the principle of constitutional avoidance counseled that the case be resolved on this narrower ground. *See id.* at 475 (*citing Ashwander v. Tenn. Valley Auth.,* 297 U.S. 288, 347 (1936) (Brandeis, J., concurring)). Because the Supreme Court had not clearly articulated the Second Amendment's reach, the Fourth Circuit declined to forge ahead into what Judge Wilkinson characterized as "a vast *terra incognita.*" *Id.* Rather, the court concluded that "[t]here simply is no need in this litigation to break ground that our superiors have not tread." *Id.*

In considering the case at bar, this Court is mindful of Judge Wilkinson's admonition that one should venture into the unmapped reaches of Second Amendment jurisprudence "only upon necessity and

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[6] Though the balance of the opinion is authored by Judge Niemeyer, his view as to the necessity of reaching the question of the Second Amendment's scope did not garner support from a majority of the three-judge panel. Thus, Judge Wilkinson's position on that issue is controlling.

only then by small degree." *Id.* Today, however, such necessity exists. Woollard has squarely presented the question, and resolution of his case requires an answer. While we may leave for another day the dauntingly nuanced "litigation over schools, airports, parks, public thoroughfares, and various additional government facilities," *see id.,* the instant suit does require the Court to determine whether Maryland's broad restriction on handgun possession outside the home burdens any Second Amendment right at all.

In undertaking this imposing task, the Court finds a ready guide in Judge Niemeyer's analysis in *Masciandaro.* While a majority of the panel found that Judge Niemeyer's reasoning was not essential to disposition of the case, it is both sound and persuasive. As Judge Niemeyer points out, the *Heller* Court's description of its holding as applying to the home, where the need "for defense of self, family, and property is most acute," suggests that the right also applies in some form "where that need is not 'most acute.'" *Id.* at 468 (Niemeyer, J., concurring) (quoting *Heller,* 554 U.S. at 628). This reasoning is consistent with the Supreme Court's historical understanding of the right to keep and bear arms as "an individual right protecting against both public and private violence." *Heller,* 554 U.S. at 594. In addition to self-defense, the right was also understood to allow for militia membership and hunting. *See id.* at 598. To secure these rights, the Second Amendment's protections must extend beyond the home: neither hunting nor militia training is a household activity,

and "self-defense has to take place wherever [a] person happens to be." *Masciandaro,* 638 F.3d at 468 (Niemeyer, J., concurring) (quoting Eugene Volokh, *Implementing the Right to Keep and Bear Arms for Self-Defense: An Analytical Framework and a Research Agenda,* 56 UCLA L. REV. 1443, 1515-18 (2009)).

Heller's definition of one of the Amendment's central terms, "bear," further suggests that the right, though it may be subject to limitations, does not stop at one's front door: "To 'bear arms,' as used in the Second Amendment, is to 'wear, bear, or carry . . . upon the person or in the clothing or in a pocket, for the purpose . . . of being armed and ready for offensive or defensive action in a case of conflict with another person.'" 554 U.S. at 584 (citation omitted). The same proposition finds additional support in *McDonald,* in which the Supreme Court characterized *Heller* as holding that "the Second Amendment protects a personal right to keep and bear arms for lawful purposes, *most notably* for self-defense within the home." 130 S. Ct. at 3044 (emphasis supplied).

In addition to its exposition of the Second Amendment's affirmative protections, the *Heller* Court took pains to clarify that nothing it had written "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,"

measures that it identified as "presumptively lawful." 554 U.S. at 571 & n.26.[7] What, if any, bearing this language has on the extent of the Second Amendment's reach beyond the home is not self-evident. As the Fourth Circuit acknowledged in *Chester,* "[i]t is unclear . . . whether *Heller* was suggesting that 'longstanding prohibitions' such as these were historically understood to be valid limitations on the right to bear arms or did not violate the Second Amendment for some other reason." 628 F.3d at 679.

Stated otherwise, there are two ways of conceptualizing presumptively lawful restrictions. First, these restrictions may be so ingrained in our understanding of the Second Amendment that there is little doubt that they withstand the applicable level of

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[7] The Court reiterated this point in *McDonald:*

> It is important to keep in mind that *Heller,* while striking down a law that prohibited the possession of handguns in the home, recognized that the right to keep and bear arms is not "a right to keep and carry any weapon whatsoever in any manner whatsoever and for whatever purpose." We made it clear in *Heller* that our holding did not cast doubt on such longstanding regulatory measures as "prohibitions on the possession of firearms by felons and the mentally ill," "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." We repeat those assurances here. Despite municipal respondents' doomsday proclamations, incorporation does not imperil every law regulating firearms.

130 S. Ct. at 3047 (citations omitted).

heightened scrutiny. Alternatively, the right itself can be seen as failing to extend into areas where, historically, limitations were commonplace and well accepted. While the Fourth Circuit was not required in *Masciandaro* to choose between these two interpretations, it did seem to indicate that the former reading is more likely correct than the latter: "The Court's use of the word 'presumptively' suggests that the articulation of sensitive places may not be a limitation on the scope of the Second Amendment, but rather on the analysis to be conducted with respect to the burden on that right." *Masciandaro,* 638 F.3d at 472.

This Court shares that view. The Supreme Court's choice of phrasing connotes that the restrictions it termed "presumptively lawful" pass muster under a heightened standard of review. It would likely not have used the modifier "presumptively" if those restrictions were subject, not to any form of elevated scrutiny, but only to the rational basis review that all laws are presumed to satisfy. If this is correct, and laws limiting the carrying of firearms in sensitive places are indeed implicated by the Second Amendment's protections, then those protections necessarily extend outside the home, at least to some degree.[8]

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[8] Definitive resolution of this quandary is not essential. To say that *Heller's* "presumptively lawful" regulations regarding sensitive places (e.g., schools, government buildings) are implicated by, but do not violate, a right to bear arms outside of the home obviously presumes the existence of such a right. A

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For all of these reasons, the Court finds that the right to bear arms is not limited to the home. The signposts left by recent Supreme Court and Fourth Circuit case law all point to the conclusion that Woollard's "claim to self-defense – asserted by him as a law-abiding citizen . . . – does implicate the Second Amendment, albeit subject to lawful limitations." *Masciandaro,* 638 F.3d at 468 (Niemeyer, J., concurring).[9]

C. Constitutionality of the "Good and Substantial Reason" Requirement

Having determined that the Second Amendment's protections extend beyond the "core" right identified in *Heller* to reach the challenged statute, and having identified the proper level of scrutiny, the Court now proceeds to the substance of Woollard's challenge. Woollard attacks Maryland's statutory scheme on three separate fronts. First, he contends

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determination that "presumptively lawful" regulations are outside the ambit of the Amendment's protections altogether, however, says nothing about where else those protections might extend. This latter reading would not, therefore, preclude application of heightened scrutiny to the statutory provision at issue in this case, which does not fall within any of *Heller*'s presumptively lawful categories.

[9] The Court acknowledges that courts in other jurisdictions have reached the opposite conclusion on this point. *See Moore v. Madigan,* ___ F. Supp. 2d ___, 2012 WL 344760 (C.D. Ill. Feb. 3, 2012); *Piszczatoski v. Filko,* ___ F. Supp. 2d ___, 2012 WL 104917 (D.N.J. Jan. 12, 2012).

that it amounts to an unconstitutional prior restraint on the exercise of his Second Amendment rights because it vests unbridled discretion in the officials responsible for issuing permits. Second, he argues that while the State has an undeniable interest in public safety, the law is not sufficiently tailored to that interest to withstand intermediate scrutiny. Finally, he urges that, even if the law does comport with the Second Amendment, it violates the Equal Protection Clause of the Fourteenth Amendment. The Court addresses each of these arguments in turn.

i. Prior Restraint

The Court declines Woollard's request to apply a prior restraint analysis to laws challenged on Second Amendment grounds. In the First Amendment context, any law that makes "freedoms which the Constitution guarantees contingent upon the uncontrolled will of an official – as by requiring a permit or license which may be granted or withheld in the discretion of such official – is an unconstitutional censorship or prior restraint upon the enjoyment of those freedoms." *Staub v. City of Baxley,* 355 U.S. 313, 322 (1958) (citations omitted).

A licensing or permitting scheme is unconstitutional when characterized by "unbridled discretion" of a government official or agency, which exists "when a licensing scheme does not impose adequate standards to guide the licensor's discretion." *Chesapeake B & M, Inc. v. Harford Cnty.,* 58 F.3d 1005, 1009 (4th Cir.

1995) (en banc). Standards governing prior restraints must be "narrow, objective and definite." *Shuttlesworth v. Birmingham,* 394 U.S. 147, 151 (1969). If the scheme "involves appraisal of facts, the exercise of judgment, and the formation of an opinion," the danger of censorship is considered too great. *Forsyth Cnty. v. Nationalist Movement,* 505 U.S. 123, 131 (1992) (quoting *Cantwell v. Connecticut,* 310 U.S. 296, 305 (1940)).

Woollard argues that the Second Amendment's right to keep and bear arms is among the "freedoms which the Constitution guarantees" within the meaning of *Staub*, and that the danger of chilling protected activity is just as great in the Second Amendment sphere as it is in free speech cases. He further contends that, far from being guided by the type of narrow, objective, and definite standards demanded of statutes requiring the issuance of a permit, Maryland's regulations are "entirely arbitrary, subjective, and boundless." Pls.' Mot. Summ. J. 17.

It is true that courts have often looked to First Amendment law for guidance in navigating uncharted Second Amendment waters.[10] No court has yet

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[10] *See, e.g., Ezell v. City of Chicago,* 651 F.3d 684, 708 (7th Cir. 2011) ("Labels aside, we can distill this First Amendment doctrine and extrapolate a few general principles to the Second Amendment context."); *Chester,* 628 F.3d at 682 ("[W]e agree with those who advocate looking to the First Amendment as a guide in developing a standard of review for the Second Amendment.") (citing *United States v. Marzzarella,* 614 F.3d 85,

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taken the quantum leap that Woollard proposes, however. Moreover, while the First Amendment undoubtedly provides a useful framework for analysis of laws burdening Second Amendment rights, especially when choosing the appropriate level of scrutiny, this Court would be hesitant to import constitutional doctrine wholesale from one field of law into another for which it was never designed. Those courts that painstakingly developed and expounded the prior restraint analysis on which Woollard relies today surely did not have Second Amendment challenges in mind when they did so.

Even if a prior restraint inquiry were appropriate, the Court rejects Woollard's assertion that Maryland's permitting scheme vests officials with unbridled discretion as regards its application. In support of his position, Woollard dusts off a 1967 case in which this Court struck down a provision of the Baltimore County Code providing that no permit for a public gathering would be issued unless the person, club, association, or corporation was deemed "fit, responsible and proper" to receive one by the chief of police. *See Norton v. Ensor,* 269 F. Supp. 533, 536 (D. Md. 1967). The Court ruled the law an unconstitutional prior restraint on the freedoms of speech and assembly, notwithstanding the defendants' assertion that police review was necessary to preserve the

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89 n.4 (3d Cir. 2010)); *United States v. Skoien,* 587 F.3d 803, 813-14 (7th Cir. 2009).

public safety in a time when racially charged rallies and demonstrations often threatened to devolve into violence. *Id.* at 536.

While *Norton* is superficially similar to the case at bar, the discretion of State officials who review handgun permit applications is, in point of fact, curtailed in several important respects. It is true, as Woollard highlights, that these officials are empowered to judge whether the "[r]easons given by the applicant . . . are good and substantial," MD. CODE REGS. 29.03.02.04(G), and in so doing take into account such seemingly nebulous considerations as "[i]nformation received from personal references and other persons interviewed," and "[i]nformation received from business or employment references as may be necessary in the discretion of the investigator." MD. CODE REGS. 29.03.02.04(J), (K). The above does not, however, constitute the full extent of the reviewing officials' guidance.

The Secretary has identified four general categories of "good and substantial reason" to carry a handgun in public: (1) business activities that involve heightened risk, such as the need to carry cash or other "street valued" commodities, (2) participation in "regulated professions," such as security guards or armored car personnel, (3) participation in "assumed risk" professions that involve the ability to restrict or take away civil liberties, such as judges, prosecutors, police officers, public defenders, and correctional officers, and (4) "personal protection." Decl. of Sgt. Michael Jones, Maryland State Police Licensing

Division Supervisor, Defs.' Mot. Summ. J. Ex. 3, at ¶¶ 8-12. Applicants claiming to fit within each category are required to submit specific supporting documentation. *See id.*

In assessing "personal protection" applications such as the one filed by Woollard, the Permit Unit is further guided by two cases from the Maryland Court of Special Appeals: *Snowden v. Handgun Permit Review Bd.,* 413 A.2d 295 (Md. Ct. Spec. App. 1980), and *Scherr v. Handgun Permit Review Bd.,* 880 A.2d 1137 (Md. Ct. Spec. App. 2005). While not overly detailed, these cases provide useful interpretation of the requirement that issuance of a permit be necessary as a reasonable precaution against apprehended danger. As construed by the Court of Special Appeals, this requirement calls for some sort of objectively heightened threat, above and beyond the "'personal anxiety'" or "apprehension of an average person." *See Scherr,* 880 A.2d at 1148 (quoting *Snowden,* 413 A.2d at 298). Simply living in a dangerous or high-crime area, for example, is not enough. *See id.*

Consistent with these cases, the Permit Unit considers several factors listed as persuasive by the Court of Special Appeals, including (1) the nearness or likelihood of a threat or presumed threat, (2) whether the threat can be verified, (3) whether the threat is particular to the applicant, as opposed to the average citizen, (4) if the threat can be presumed to exist, the basis for such a presumption, and (5) the length of time since the initial threat occurred. Jones Decl. ¶ 14.

Finally, decisions of the Permit Unit may be appealed to the full Board, whose rulings are, in turn, subject to judicial review. This judicial review yields published cases such as *Scherr* and *Snowden,* which provide further superintendence. In sum, the Permit Unit and the Board do not enjoy unbridled discretion in the issuance of permits. While the applicant bears the burden of demonstrating a "good and substantial reason," licensing officials are not simply left to their own views of what such a good reason might be. *Cf. Shuttlesworth v. City of Birmingham,* 394 U.S. 147, 150 (1969) (striking down a permitting requirement for parades, pursuant to which "the members of the Commission were to be guided only by their own ideas of 'public welfare, peace, safety, health, decency, good order, morals or convenience' "); *Staub,* 355 U.S. at 322 (finding unconstitutional a statute allowing the mayor and city council to deny a permit, required to solicit membership in any organization, "if they do not approve of the applicant or of the union or of the union's 'effects upon the general welfare of citizens of the City of Baxley' ").

ii. Intermediate Scrutiny

As stated, Maryland's permitting scheme, insofar as it requires a "good and substantial" reason for a law-abiding citizen to carry a firearm outside his home, is subject to intermediate scrutiny. In order to prevail, the State must demonstrate that the challenged regulation is reasonably adapted to a substantial governmental interest. Under this standard, the

"degree of fit" between the regulation and "the well-established goal of promoting public safety need not be perfect; it must only be substantial." *Heller v. Dist. of Columbia,* 698 F. Supp. 2d 179, 191 (D.D.C. 2010).

Beyond peradventure, public safety and the prevention of crime are substantial, indeed compelling, government interests. *See, e.g., United States v. Salerno,* 481 U.S. 739, 748-50 (1987) (noting that "the Government's regulatory interest in community safety can, in appropriate circumstances, outweigh an individual's liberty interest" and holding that the government's interest in preventing crime is not only important, but compelling); *Schall v. Martin,* 467 U.S. 253, 264 (1984) ("The legitimate and compelling state interest in protecting the community from crime cannot be doubted.") (citations and quotation marks omitted).

The Maryland statute's failure lies in the overly broad means by which it seeks to advance this undoubtedly legitimate end. The requirement that a permit applicant demonstrate "good and substantial reason" to carry a handgun does not, for example, advance the interests of public safety by ensuring that guns are kept out of the hands of those adjudged most likely to misuse them, such as criminals or the mentally ill. It does not ban handguns from places where the possibility of mayhem is most acute, such as schools, churches, government buildings, protest gatherings, or establishments that serve alcohol. It does not attempt to reduce accidents, as would a requirement that all permit applicants complete a

safety course. It does not even, as some other States' laws do, limit the carrying of handguns to persons deemed "suitable" by denying a permit to anyone "whose conduct indicates that he or she is potentially a danger to the public if entrusted with a handgun." *See Kuck v. Danaher,* No. 3:07cv1390(VLB), 2011 WL 4537976 at *11 (D. Conn. Sept. 29, 2011).

Rather, the regulation at issue is a rationing system. It aims, as Defendants concede, simply to reduce the total number of firearms carried outside of the home by limiting the privilege to those who can demonstrate "good reason" beyond a general desire for self-defense. In support of this limitation, Defendants list numerous reasons why handguns pose a threat to public safety in general and why curbing their proliferation is desirable. For example, they argue that an assailant may wrest a handgun away from its owner, and cite evidence that this possibility imperils even trained police officers. *See* Defs.' Mot. Summ. J. 15, Docket No. 26. They note that when a police officer is engaged in a confrontation with a criminal, the presence of an armed civilian can divert the officer's attention. *Id.* at 16. In addition, Defendants urge that while most permit holders are law-abiding, there is no guarantee that they will remain so. They cite studies purporting to show that the majority of murderers have no previous felony conviction that would have prevented them from obtaining a permit. *Id.* at 35. Thus, they argue, a permitting scheme that merely denies permits to convicted felons is inadequate.

These arguments prove too much. While each possibility presents an unquestionable threat to public safety, the challenged regulation does no more to combat them than would a law indiscriminately limiting the issuance of a permit to every tenth applicant. The solution, then, is not tailored to the problem it is intended to solve. Maryland's "good and substantial reason" requirement will not prevent those who meet it from having their guns taken from them, or from accidentally shooting themselves or others, or from suddenly turning to a life of crime. Indeed, issuing permits specifically to those applicants who can demonstrate an increased likelihood that they may need a firearm would seem a strange way to allay Defendants' fear that "when handguns are in the possession of potential victims of crime, their decision to use them in a public setting may actually increase the risk of serious injury or death to themselves or others." *Id.* at 15. If anything, the Maryland regulation puts firearms in the hands of those *most* likely to use them in a violent situation by limiting the issuance of permits to "groups of individuals who are at greater risk than others of being the victims of crime." *Id.* at 40.

A law that burdens the exercise of an enumerated constitutional right by simply making that right more difficult to exercise cannot be considered "reasonably adapted" to a government interest, no matter how substantial that interest may be. Maryland's goal of "minimizing the proliferation of handguns among those who do not have a demonstrated need

for them," *id.* at 40, is not a permissible method of preventing crime or ensuring public safety; it burdens the right too broadly. Those who drafted and ratified the Second Amendment surely knew that the right they were enshrining carried a risk of misuse, and states have considerable latitude to channel the exercise of the right in ways that will minimize that risk. States may not, however, seek to reduce the danger by means of widespread curtailment of the right itself. "[E]ven the most legitimate goal may not be advanced in a constitutionally impermissible manner." *Carey v. Brown,* 447 U.S. 455, 464-65 (1980).

At bottom, this case rests on a simple proposition: If the Government wishes to burden a right guaranteed by the Constitution, it may do so provided that it can show a satisfactory justification and a sufficiently adapted method. The showing, however, is always the Government's to make. A citizen may not be required to offer a "good and substantial reason" why he should be permitted to exercise his rights. The right's existence is all the reason he needs.

The Court wishes to emphasize the limits of this decision. While it finds Maryland's requirement that a permit applicant demonstrate "good and substantial reason" to be unconstitutional, the Court does not address any of the State's other regulations relating to the possession and use of firearms, many of which would qualify as presumptively lawful. Nor does the Court speculate as to whether a law that required a

"good and substantial reason" only of law-abiding citizens who wish to carry a *concealed* handgun would be constitutional.[11] Finally, the Court does not speak to Maryland's ability to declare that a specific applicant is unfit for a permit because of some particular aspect of the applicant's character or history.

iii. Fourteenth Amendment Challenge

Woollard has also challenged the Maryland statute under the Equal Protection Clause of the Fourteenth Amendment, which provides: "No State shall . . . deny to any person within its jurisdiction the equal protection of the laws." U.S. CONST. amend. XIV, § 1. The Equal Protection clause "is essentially a direction that all persons similarly situated should be treated alike." *City of Cleburne,* 473 U.S. at 440.

The Court declines to conduct a separate analysis under the Equal Protection Clause for several reasons. First, the above Second Amendment inquiry provides an adequate basis for resolution of the case. As such, there is no need to venture further into unmapped territory by determining whether or not

[11] Maryland law does not differentiate between open and concealed use, but some courts have held that states have a greater interest in reducing the number of concealed handguns "because of their disproportionate involvement in life-threatening crimes of violence, particularly in streets and other public places." *Peruta v. Cnty. of San Diego,* 758 F. Supp. 2d 1106, 1117 (S.D. Cal. 2010).

Maryland's permitting scheme would also be unconstitutional on Woollard's alternative grounds.

Second, while the Equal Protection Clause provides its own source of substantive protection, separate and apart from other provisions of the Constitution, Woollard's equal protection claim is essentially a restatement of his Second Amendment claim. In the First Amendment context, courts regularly refuse to hear substantive First Amendment arguments recast as equal protection claims.[12] The same logic obtains here.

Finally, Woollard's equal protection challenge is, in part, an effort to obtain review under a more stringent standard than the intermediate scrutiny the Court has already found to be appropriate. Woollard argues that, because the right to keep and bear arms is "fundamental" within the meaning of Fourteenth Amendment jurisprudence, the challenged law must be "given the most exacting scrutiny." *See*

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[12] *See, e.g., Orin v. Barclay,* 272 F.3d 1207, 1213 n.3 (9th Cir. 2001) (finding that equal protection claim was "no more than a First Amendment claim dressed in equal protection clothing" and was "subsumed by, and co-extensive with" plaintiff's First Amendment claim); *Lee v. York Cnty. Sch. Div.,* 418 F. Supp. 2d 816, 834 (E.D. Va. 2006) (finding it inappropriate to address equal protection argument that was "'a mere rewording of a First Amendment claim'" because plaintiff "asks this court to do under the Fourteenth Amendment what he asks it to do under the First Amendment: to evaluate the constitutionality of [the challenged statute]") (quoting *Edwards v. City of Goldsboro,* 178 F.3d 231, 250 (4th Cir. 1999)) (brackets omitted).

Clark v. Jeter, 486 U.S. 456, 461 (1988). Of course, to accept this theory would be to erase, in one broad stroke, the careful and sensible distinctions that the Fourth Circuit and other courts have drawn between core and non-core Second Amendment protections and to ignore the principle that differing levels of scrutiny are appropriate to each. The Court declines such an approach.[13]

IV. CONCLUSION

The Court finds that Maryland's requirement of a "good and substantial reason" for issuance of a handgun permit is insufficiently tailored to the State's interest in public safety and crime prevention. The law impermissibly infringes the right to keep and bear arms, guaranteed by the Second Amendment.

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[13] Nor is Woollard necessarily correct that strict scrutiny would apply to an equal protection challenge. Again, analogy to First Amendment law is useful. Though regulations that burden fundamental rights are generally subject to strict scrutiny, when a regulation "discriminates among speech-related activities in a public forum, the Equal Protection Clause mandates that the legislation be *finely tailored* to serve *substantial* state interests, and the justifications offered for any distinctions it draws must be carefully scrutinized." *Carey,* 447 U.S. at 461-62 (emphasis supplied); *see also Lucas v. Curran,* 856 F. Supp. 260, 272 (D. Md. 1994) ("It is now well-settled that if a statute discriminates between persons exercising their First Amendment rights (placing greater or lesser burdens on the exercise of those rights by some, but not others), based upon the content of their speech, the Equal Protection Clause requires [the intermediate scrutiny standard articulated in *Carey*].").

The Court will, by separate Order of even date, GRANT Woollard's Motion for Summary Judgment and DENY Defendants' Motion for Summary Judgment.

Dated this 2nd day of March, 2012

/s/
Benson Everett Legg
United States District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

RAYMOND WOOLLARD, et al. Plaintiffs v. TERRENCE SHERIDAN, et al. Defendants	Civil Case No. L-10-2068

ORDER

(Filed Mar. 2, 2012)

For the reasons set forth in the accompanying Memorandum of even date, it is, this 2nd day of March, 2012, hereby ORDERED as follows:

1. Plaintiffs' Motion for Summary Judgment (Docket No. 21) is hereby GRANTED,
2. Defendants' Motion for Summary Judgment (Docket No. 25) is hereby DENIED,
3. Plaintiffs' prior Motion for Summary Judgment (Docket No. 12) is DENIED AS MOOT, and
4. The Clerk is directed to CLOSE the case.

/s/
Benson Everett Legg
United States District Judge

FILED: April 16, 2013

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 12-1437
(1:10-cv-02068-BEL)

RAYMOND WOOLLARD; SECOND AMENDMENT FOUNDATION, INC.

Plaintiffs-Appellees

v.

DENIS GALLAGHER; SEYMOUR GOLDSTEIN; CHARLES M. THOMAS, JR.; MARCUS L. BROWN

Defendants-Appellants

and

TERRENCE SHERIDAN

Defendant

AMERICAN PUBLIC HEALTH ASSOCIATION; AMERICAN COLLEGE OF PREVENTIVE MEDICINE; LEGAL COMMUNITY AGAINST VIOLENCE; LEGAL HISTORIANS; BRADY CENTER TO PREVENT GUN VIOLENCE; MARYLAND CHIEFS OF POLICE ASSOCIATION; INTERNATIONAL BROTHERHOOD OF POLICE OFFICERS; MAJOR CITIES CHIEFS ASSOCIATION

Amici Supporting Appellant

NRA CIVIL RIGHTS DEFENSE FUND; BUCKEYE FIREARMS FOUNDATION, INC.; INTERNATIONAL LAW ENFORCEMENT EDUCATORS & TRAINERS ASSOCIATION; INTERNATIONAL ASSOCIATION OF LAW ENFORCEMENT FIREARMS INSTRUCTORS, INC.; PROFESSOR CLAYTON CRAMER; INDEPENDENCE INSTITUTE; COMMONWEALTH OF VIRGINIA; STATE OF ALABAMA; STATE OF ARKANSAS; STATE OF FLORIDA; STATE OF KANSAS; COMMONWEALTH OF KENTUCKY; STATE OF MAINE; STATE OF MICHIGAN; STATE OF NEBRASKA; STATE OF NEW MEXICO; STATE OF OKLAHOMA; STATE OF SOUTH CAROLINA; STATE OF SOUTH DAKOTA; STATE OF WEST VIRGINIA; PROFESSORS OF LAW, HISTORY, POLITICS, AND GOVERNMENT; CALIFORNIA RIFLE AND PISTOL ASSOCIATION FOUNDATION; VIRGINIA SHOOTING SPORTS ASSOCIATION; CENTER FOR CONSTITUTIONAL JURISPRUDENCE; GUN OWNERS FOUNDATION; GUN OWNERS OF AMERICA, INCORPORATED; VIRGINIA GUN OWNERS COALITION; VIRGINIA CITIZENS DEFENSE LEAGUE, INC.; UNITED STATES JUSTICE FOUNDATION; CONSERVATIVE LEGAL DEFENSE AND EDUCATION FUND; THE ASSOCIATED GUN CLUBS OF BALTIMORE, INC.; THE MONUMENTAL RIFLE & PISTOL CLUB; THE ILLINOIS STATE RIFLE ASSOCIATION; THE NEW YORK RIFLE AND PISTOL ASSOCIATION; THE ASSOCIATION OF NEW JERSEY RIFLE & PISTOL CLUBS, INC.; THE HAWAII RIFLE ASSOCIATION; NATIONAL RIFLE ASSOCIATION OF AMERICA, INC.

Amici Supporting Appellee

ORDER

The petition for rehearing en banc was circulated to the full court. No judge requested a poll under Fed. R. App. P. 35. The court denies the petition for rehearing en banc.

For the Court

/s/ Patricia S. Connor, Clerk

Md. Code Ann., Crim. Law § 4-203 provides:

Wearing, carrying, or transporting handgun

(a) Prohibited. –

(1) Except as provided in subsection (b) of this section, a person may not:

(i) wear, carry, or transport a handgun, whether concealed or open, on or about the person;

(ii) wear, carry, or knowingly transport a handgun, whether concealed or open, in a vehicle traveling on a road or parking lot generally used by the public, highway, waterway, or airway of the State;

(iii) violate item (i) or (ii) of this paragraph while on public school property in the State; or

(iv) violate item (i) or (ii) of this paragraph with the deliberate purpose of injuring or killing another person.

(2) There is a rebuttable presumption that a person who transports a handgun under paragraph (1)(ii) of this subsection transports the handgun knowingly.

(b) Exceptions. – This section does not prohibit:

(1) the wearing, carrying, or transporting of a handgun by a person who is on active assignment engaged in law enforcement, is authorized at the time and under the circumstances to wear, carry, or

transport the handgun as part of the person's official equipment, and is:

(i) a law enforcement official of the United States, the State, or a county or city of the State;

(ii) a member of the armed forces of the United States or of the National Guard on duty or traveling to or from duty;

(iii) a law enforcement official of another state or subdivision of another state temporarily in this State on official business;

(iv) a correctional officer or warden of a correctional facility in the State;

(v) a sheriff or full-time assistant or deputy sheriff of the State; or

(vi) a temporary or part-time sheriff's deputy;

(2) the wearing, carrying, or transporting of a handgun by a person to whom a permit to wear, carry, or transport the handgun has been issued under Title 5, Subtitle 3 of the Public Safety Article;

(3) the carrying of a handgun on the person or in a vehicle while the person is transporting the handgun to or from the place of legal purchase or sale, or to or from a bona fide repair shop, or between bona fide residences of the person, or between the bona fide residence and place of business of the person, if the business is operated and owned substantially by the person if each handgun is unloaded

and carried in an enclosed case or an enclosed holster;

(4) the wearing, carrying, or transporting by a person of a handgun used in connection with an organized military activity, a target shoot, formal or informal target practice, sport shooting event, hunting, a Department of Natural Resources-sponsored firearms and hunter safety class, trapping, or a dog obedience training class or show, while the person is engaged in, on the way to, or returning from that activity if each handgun is unloaded and carried in an enclosed case or an enclosed holster;

(5) the moving by a bona fide gun collector of part or all of the collector's gun collection from place to place for public or private exhibition if each handgun is unloaded and carried in an enclosed case or an enclosed holster;

(6) the wearing, carrying, or transporting of a handgun by a person on real estate that the person owns or leases or where the person resides or within the confines of a business establishment that the person owns or leases;

(7) the wearing, carrying, or transporting of a handgun by a supervisory employee:

(i) in the course of employment;

(ii) within the confines of the business establishment in which the supervisory employee is employed; and

(iii) when so authorized by the owner or manager of the business establishment;

(8) the carrying or transporting of a signal pistol or other visual distress signal approved by the United States Coast Guard in a vessel on the waterways of the State or, if the signal pistol or other visual distress signal is unloaded and carried in an enclosed case, in a vehicle; or

(9) the wearing, carrying, or transporting of a handgun by a person who is carrying a court order requiring the surrender of the handgun, if:

(i) the handgun is unloaded;

(ii) the person has notified the law enforcement unit, barracks, or station that the handgun is being transported in accordance with the court order; and

(iii) the person transports the handgun directly to the law enforcement unit, barracks, or station.

(c) Penalty. –

(1) A person who violates this section is guilty of a misdemeanor and on conviction is subject to the penalties provided in this subsection.

(2) If the person has not previously been convicted under this section, § 4-204 of this subtitle, or § 4-101 or § 4-102 of this title:

(i) except as provided in item (ii) of this paragraph, the person is subject to imprisonment for not less than 30 days and not exceeding 3 years or a fine of not less than $ 250 and not exceeding $ 2,500 or both; or

(ii) if the person violates subsection (a)(1)(iii) of this section, the person shall be sentenced to imprisonment for not less than 90 days.

(3) (i) If the person has previously been convicted once under this section, § 4-204 of this subtitle, or § 4-101 or § 4-102 of this title:

1. except as provided in item 2 of this subparagraph, the person is subject to imprisonment for not less than 1 year and not exceeding 10 years; or

2. if the person violates subsection (a)(1)(iii) of this section, the person is subject to imprisonment for not less than 3 years and not exceeding 10 years.

(ii) The court may not impose less than the applicable minimum sentence provided under subparagraph (i) of this paragraph.

(4) (i) If the person has previously been convicted more than once under this section, § 4-204 of this subtitle, or § 4-101 or § 4-102 of this title, or of any combination of these crimes:

1. except as provided in item 2 of this subparagraph, the person is subject to imprisonment

for not less than 3 years and not exceeding 10 years; or

2. A. if the person violates subsection (a)(1)(iii) of this section, the person is subject to imprisonment for not less than 5 years and not exceeding 10 years; or

B. if the person violates subsection (a)(1)(iv) of this section, the person is subject to imprisonment for not less than 5 years and not exceeding 10 years.

(ii) The court may not impose less than the applicable minimum sentence provided under subparagraph (i) of this paragraph.

Md. Code Ann., Pub. Safety § 5-303 provides:

Permit required

A person shall have a permit issued under this subtitle before the person carries, wears, or transports a handgun.

Md. Code Ann., Pub. Safety § 5-306 provides:

Qualifications for permit

(a) In general. – Subject to subsection (b) of this section, the Secretary shall issue a permit within a reasonable time to a person who the Secretary finds:

(1) is an adult;

(2) (i) has not been convicted of a felony or of a misdemeanor for which a sentence of imprisonment for more than 1 year has been imposed; or

(ii) if convicted of a crime described in item (i) of this item, has been pardoned or has been granted relief under 18 U.S.C. § 925(c);

(3) has not been convicted of a crime involving the possession, use, or distribution of a controlled dangerous substance;

(4) is not presently an alcoholic, addict, or habitual user of a controlled dangerous substance unless the habitual use of the controlled dangerous substance is under legitimate medical direction; and

(5) based on an investigation:

(i) has not exhibited a propensity for violence or instability that may reasonably render the person's possession of a handgun a danger to the person or to another; and

(ii) 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.

(b) Applicant under age of 30 years. – An applicant under the age of 30 years is qualified only if the Secretary finds that the applicant has not been:

(1) committed to a detention, training, or correctional institution for juveniles for longer than 1 year after an adjudication of delinquency by a juvenile court; or

(2) adjudicated delinquent by a juvenile court for:

(i) an act that would be a crime of violence if committed by an adult;

(ii) an act that would be a felony in this State if committed by an adult; or

(iii) an act that would be a misdemeanor in this State that carries a statutory penalty of more than 2 years if committed by an adult.

Md. Code Ann., Pub. Safety § 5-307 provides:

Scope of permit

(a) In general. – A permit is valid for each handgun legally in the possession of the person to whom the permit is issued.

(b) Limitations. – The Secretary may limit the geographic area, circumstances, or times of the day, week, month, or year in which a permit is effective.

Md. Code Ann., Pub. Safety § 5-308 provides:

Possession of permit required

A person to whom a permit is issued or renewed shall carry the permit in the person's possession whenever the person carries, wears, or transports a handgun.

Md. Code Ann., Pub. Safety § 5-309 provides:

Term and renewal of permit

(a) Term of permit. – A permit expires on the last day of the holder's birth month following 2 years after the date the permit is issued.

(b) Renewal of permit. – A permit may be renewed for successive periods of 3 years each if, at the time of an application for renewal, the applicant possesses the qualifications for the issuance of a permit and pays the renewal fee stated in this subtitle.

Md. Code Ann., Pub. Safety § 5-312 provides:

Action by Board

(a) Request for review authorized. –

(1) A person who is denied a permit or renewal of a permit or whose permit is revoked or limited may request the Board to review the decision of the Secretary by filing a written request with the

Board within 10 days after receipt of written notice of the Secretary's final action.

(2) A person whose application for a permit or renewal of a permit is not acted on by the Secretary within 90 days after submitting the application to the Secretary may request a hearing before the Board by filing a written request with the Board.

(b) Form of review. – Within 90 days after receiving a request to review a decision of the Secretary, the Board shall:

(1) review the record developed by the Secretary; or

(2) conduct a hearing.

(c) Evidence. – The Board may receive and consider additional evidence submitted by a party in conducting a review of the decision of the Secretary.

(d) Decision by Board. –

(1) Based on the Board's consideration of the record and any additional evidence, the Board shall sustain, reverse, or modify the decision of the Secretary.

(2) If the action by the Board results in the denial of a permit or renewal of a permit or the revocation or limitation of a permit, the Board shall submit in writing to the applicant or the holder of the permit the reasons for the action taken by the Board.

(e) Administrative procedures. –

(1) Any hearing and any subsequent proceedings of judicial review shall be conducted in accordance with Title 10, Subtitle 2 of the State Government Article.

(2) Notwithstanding paragraph (1) of this subsection, a court may not order the issuance or renewal of a permit or alter a limitation on a permit pending a final determination of the proceeding.

Md. Code Regs. 29.03.02.04 provides:

Criteria for Issuance of Permit.

In making a determination as to whether a permit will be issued to the applicant, the following areas will be a part of every investigation and will be considered in determining whether a permit will be issued:

A. Verification of the information supplied by the applicant in the application;

B. Occupation or profession of the applicant;

C. Geographical area of residence and employment of the applicant;

D. Criminal record of applicant, including any juvenile record for an applicant younger than 30 years old, as specifically outlined in Public Safety Article, § 5-306(b), Annotated Code of Maryland;

E. Medical history of applicant as it may pertain to the applicant's fitness to wear, carry, or transport a handgun;

F. Psychiatric or psychological background of applicant as it may pertain to the applicant's fitness to wear, carry, or transport a handgun;

G. Reasons given by the applicant as to whether those reasons are good and substantial;

H. Age of applicant;

I. Applicant's use of intoxicating beverages and drugs;

J. Information received from personal references and other persons interviewed;

K. Information received from business or employment references as may be necessary in the discretion of the investigator;

L. Whether the applicant has any alternative available to him for protection other than a handgun permit;

M. Whether the applicant falls within those classes of individuals who do not need permits as outlined in the Handgun Permit Law;

N. The applicant's propensity for violence or instability which could reasonably render his wearing, carrying, or transporting of a handgun a danger to himself or other persons he may come in contact with;

O. Whether the permit is necessary as a reasonable precaution for the applicant against apprehended danger.

STATE OF MARYLAND
MARYLAND STATE POLICE

[SEAL] [LOGO]

MARTIN O'MALLEY
GOVERNOR

ANTHONY G. BROWN
LT. GOVENOR

COLONEL TERRENCE B. SHERIDAN
SUPERINTENDENT

Licensing Division
1111 Reisterstown Road
Pikesville, Maryland 21208
(410) 653-4500

February 2, 2009

Raymond E. Woollard
[Home Address Omitted]
Hampstead, Maryland 21074

Dear: Mr. Woollard:

A review of your handgun permit application **438#65541** by the Maryland State Police Licensing Division Handgun Permit Unit revealed that additional information is required as follows:

1. **Evidence is needed to support apprehended fear (i.e. – copies of police reports for assaults, threats, harassments, stalking).**

If the above item(s) are not received in this office by **March 2, 2009**, your application will be **disapproved**.

Please return this letter and requested documentation to the Handgun Permit Unit at the above

address. **If you have any questions or need additional information, please contact Cpl. Cusimano**, at (410) 653-4500.

Sincerely,

/s/ M. Cusimano
M. Cusimano – Corporal
Supervisor
Handgun Permit Section

29-13(1/2003)

"Maryland's Finest"

STATE OF MARYLAND
MARYLAND STATE POLICE

[SEAL] [LOGO]

MARTIN O'MALLEY
GOVERNOR

ANTHONY G. BROWN
LT. GOVERNOR

COLONEL TERRENCE B. SHERIDAN
SUPERINTENDENT

Licensing Division
1111 Reisterstown Road
Pikesville, Maryland 21208
(410) 653-4500

April 1, 2009

Raymond E. Woollard
[Home Address Omitted]
Hampstead, Maryland 21074

Dear Mr. Woollard:

Title 5-306, of the Annotated Code of Maryland, establishes the qualifications and procedures for the issuance of a handgun permit. Based on that criteria, your request for a handgun permit has been **disapproved**.

You have ten (10) days from the receipt of this notice to request an informal review of your application with the Superintendent. An Informal Review Request has been attached at the bottom of this letter. If you do not want an informal review, you may appeal the Superintendent's decision directly to the Handgun Permit Review Board, also with [sic] ten (10) days of the receipt of this notice.

The Handgun Permit Review Board has the authority to sustain, reverse, or modify the Superintendent's decision. Your request to the Handgun Permit Review Board must be in writing to the following address, 300 E. Joppa Road, Suite 1000, Baltimore, Maryland 21286.

Sincerely,

/s/ M. Cusimano
M. Cusimano – Corporal
Handgun Permit Section

Informal Review Request

438-65541 **Date:** 4-07-09

Send To: Maryland State Police, Handgun Permit Unit, 1111 Reisterstown Road, Pikesville, Maryland 21208.

NAME: Raymond Earle Woollard

Current Address: [Home Address Omitted]
Hampstead, Maryland 21074

Phone Number: #

[Illegible]

29-9 (11/2006) [Received 4-04-09]

"Maryland's Finest"

STATE OF MARYLAND
MARYLAND STATE POLICE

[SEAL] [LOGO]

MARTIN O'MALLEY
GOVERNOR

ANTHONY G. BROWN
LT. GOVERNOR

COLONEL TERRENCE B. SHERIDAN
SUPERINTENDENT

Licensing Division
1111 Reisterstown Road
Pikesville, Maryland 21208
(410) 653-4500

July 28, 2009

Raymond E. Woollard
[Home Address Omitted]
Hampstead, Maryland 21074

Dear Mr. Woollard:

Title 5-306, of the Annotated Code of Maryland, establishes the qualifications and procedures for the issuance of a handgun permit. Based on that criteria, your request for a handgun permit has been **disapproved**.

You have ten (10) days from the receipt of this notice to request an informal review of your application with the Superintendent. An Informal Review Request has been attached at the bottom of this letter. If you do not want an informal review, you may appeal the Superintendent's decision directly to the Handgun Permit Review Board, also with [sic] ten (10) days of the receipt of this notice.

The Handgun Permit Review Board has the authority to sustain, reverse, or modify the Superintendent's decision. Your request to the Handgun Permit Review Board must be in writing to the following address, 300 E. Joppa Road, Suite 1000, Baltimore, Maryland 21286.

Sincerely,

/s/ M. Cusimano
M. Cusimano – Corporal
Handgun Permit Section

Informal Review Request

438-65541 **Date:** _____

Send To: Maryland State Police, Handgun Permit Unit, 1111 Reisterstown Road, Pikesville, Maryland 21208.

NAME: _____

Current Address: [Home Address Omitted]
Hampstead, Maryland 21074

Phone Number:

29-9 (11/2006)

"Maryland's Finest"

In the matter of the review of the decision of the Superintendent of the Maryland State Police denying the Renewal application for a handgun permit to Raymond Woollard [Home Address Omitted]	* * * * * * * * *	Before the Handgun Permit Review Board Case No. 09-4138 MSP No. 438-65541

* * * * * * * * * * *

DECISION OF THE HANDGUN PERMIT REVIEW BOARD

Statement of the Case

The applicant, Raymond Woollard, is appealing to the Handgun Permit Review Board (Board) from the decision of the Superintendent of the Maryland State Police (MSP) denying his renewal application for a handgun permit.

Background

The applicant, Raymond Woollard, submitted a renewal application for a handgun permit to the MSP on October 3, 2008. Mr. Woollard listed his occupation as electrician and his employer as the University of Maryland. The Superintendent of the MSP denied the permit application, because he concluded that the applicant had not: demonstrated a good and substantial reason to wear, carry, or transport a handgun as a reasonable precaution against apprehended danger.

On November 3, 2009, the Board held a hearing on Raymond Woollard's appeal. Present at the

hearing were Board members: Charles L. Washington, Denis Gallagher, Seymour Goldstein and Charles M. Thomas, Jr – Acting Chair, Present for the Maryland State Police was Sgt. Arthur Griffies. The applicant, Raymond Woollard was present as well as two witnesses, Deborah Woollard and Charles Knott. Testimony at the hearing was received from Raymond Woollard, Deborah Woollard, Charles Knott and Sgt. Griffies.

Applicant's Testimony

The applicant, Raymond Woollard, testified he was assaulted by his son-in-law, Mr. Kris Lee Abbott, on Christmas Eve 2002. The applicant stated that at the time Mr. Abbott was on drugs and had come to the house to get the applicant's daughter's car to drive to Baltimore City and acquire more drugs. The applicant testified he would not let Mr. Abbott into his house so Mr. Abbott began calling the house from outside on a cell phone. The applicant testified Mr. Abbott began running around the house rapping on each window when the phone calls were disconnected. The applicant testified Mr. Abbott broke into his house through a glass door and attacked him. The applicant stated his son came out of a room and aimed a shotgun at Mr. Abbott and told him to stop. The applicant testified at that time everyone went downstairs and waited for the police to arrive. The applicant stated that due to problems with the 9-1-1 system and the misunderstanding about which

county the applicant's house was in it took the Baltimore County Police 2 ½, hours to respond to the call.

The applicant stated he has had no contact with his son-in-law since the incident. In addition, the applicant feels strongly that the reason his son-in-law has not approached him is due to the fact that his son-in-law knows he had a handgun permit.

MSP Testimony

At the November 3, 2009 hearing, the MSP testified that the applicant was originally issued a permit in 2003. The MSP stated the applicant was a key witness in a trial that led to a conviction and the incarceration of his son-in-law, Kris Abbott. The MSP further stated the applicant's first renewal was based on information that Mr. Abbott was released from confinement in 2006 and Mr. Abbott had apprehended fear there would be retaliation.

The MSP testified the applicant was advised that in order for his renewal to be approved he would need to submit documented threats or incidents that had occurred in the last three years. The MSP stated the applicant failed to submit any documentation. The MSP testified the applicant was told to contact them immediately if his situation changed or if he received threats.

Findings of Fact

The Board finds the applicant was attacked by his son-in-law in December 2002 at his residence. The Board further finds the applicant has not had any contact with his son-in-law since then. In addition, the Board finds the applicant has not submitted any documentation to verify threats occurring beyond his residence, where he can already legally carry a handgun.

Conclusions of Law

Based upon its findings of fact, the Board finds 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 in the State of Maryland.

Order

On a motion to uphold the Maryland State Police, by a majority vote, with Charles Washington, abstaining, the decision of the Board is to uphold the action of the Superintendent of the Maryland State Police.

/s/ Charles M. Thomas, Jr.
Charles M. Thomas, Jr. –
Acting Chair
Date: November 12, 2009