No. 12-1437

IN THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

RAYMOND WOOLLARD, *et al.*,

Plaintiffs-Appellees,

v.

DENIS GALLAGHER, *et al.*,

Defendants-Appellants

On Appeal From the United States District Court
for the District of Maryland

BRIEF AMICUS CURIAE OF NRA CIVIL RIGHTS DEFENSE FUND IN SUPPORT OF APPELLEES URGING THE COURT TO AFFIRM THE DISTRICT COURT RULING

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UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT
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Pursuant to FRAP 26.1 and Local Rule 26.1,

NRA Civil Rights Defense Fund
(name of party/amicus)

who is amicus, makes the following disclosure:
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2. Does party/amicus have any parent corporations? ☑ YES ☐ NO
If yes, identify all parent corporations, including grandparent and great-grandparent corporations:
National Rifle Association of America, a not for profit corporation established under IRC Sec. 501 (c) (4)

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4. Is there any other publicly held corporation or other publicly held entity that has a direct financial interest in the outcome of the litigation (Local Rule 26.1(b))? ☐YES ☑NO
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If yes, identify any trustee and the members of any creditors' committee:

Signature: /s/ Matthew D. Fender Date: 8/2/12

Counsel for: NRA Civil Rights Defense Fund

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I certify that on 8/2/12 the foregoing document was served on all parties or their counsel of record through the CM/ECF system if they are registered users or, if they are not, by serving a true and correct copy at the addresses listed below:

/s/ Matthew D. Fender (signature) 8/2/12 (date)

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Interest of the Amicus

The National Rifle Association (the "NRA") is America's oldest civil rights organization and is widely recognized as America's foremost defender of the Second Amendment. The NRA was founded in 1871 by Union generals who, based on their experiences in the Civil War, desired to promote marksmanship and expertise with firearms among the citizenry. Today, the NRA has over four million members and its programs reach millions more. The NRA is America's leading provider of firearms marksmanship and safety training for both civilians and law enforcement.

Amicus curiae the NRA Civil Rights Defense Fund was established by the NRA in 1978 for purposes that include assisting in the assertion and defense of the natural, civil, and constitutional rights of the individual to keep and bear arms in a free society. To accomplish this, the Fund provides legal and financial assistance to individuals and organizations defending their right to keep and bear arms. The Fund has a significant interest in the issues at stake in this case because the arguments made by the Appellants, if accepted by this Court, would limit the very rights the Fund was created to protect.

Your amicus has obtained the consent of all parties to file this brief. Counsel for the parties did not author this brief, either in whole or in part. No party, nor any party's counsel contributed money to the preparation or submission

of this brief. No person other than your amicus contributed money intended to fund preparing or submitting this brief.

Argument

I. Introduction

The State of Maryland has enacted a statutory scheme that completely bars its citizens from carrying handguns for self-defense outside the home unless they obtain prior permission from a government committee. This appeal presents the question of whether such a restriction is permissible in light of the Second and Fourteenth Amendments. The district court correctly concluded that the Maryland law is unconstitutional, and this Court should affirm.

In a pair of recent decisions, the Supreme Court of the United States has clearly articulated that the Second Amendment means what it says. *McDonald v. City of Chicago*, 130 S. Ct. 3020 (2010); *District of Columbia v. Heller*, 128 S. Ct. 2783 (2008). Despite these holdings, the Appellants remain recalcitrant in their attempt to enforce an unconstitutional statute and permitting regime on Appellee Woollard and others similarly situated.

The Court should not hesitate to follow the Supreme Court's precedents and uphold the constitutional rights of the Appellees. Appellants invoke visions of doom in an attempt to dissuade the Court from acting, but as the Supreme Court wrote in *McDonald*: "The right to keep and bear arms, however, is not the only constitutional right that has controversial public safety implications. All of the constitutional provisions that impose restrictions on law enforcement and on the

prosecution of crimes fall into the same category." *McDonald*, 130 S.Ct. at 3045. Maryland's predictions of doom have not occurred in the forty-one other states that recognize the natural and constitutionally-protected right to carry a handgun outside the home for self-defense. Maryland's unfounded speculation should not be accorded a heckler's veto over the Appellees' constitutional rights.

For the reasons below your amicus respectfully requests this Court affirm the trial court.

II. Carrying a Handgun Outside the Home is Covered by the Second Amendment

The conduct proscribed by the Maryland statute at issue here clearly proscribes conduct within the scope of the Second Amendment right to keep and bear arms. The district court reached the correct conclusion on this threshold issue, and this Court should affirm.

A. The Second Amendment Right to Keep and Bear Arms Applies Outside the Home

In *Heller*, the Supreme Court separately analyzed the words "keep" and "bear" in the context of the Second Amendment. 128 S. Ct. 2792-2796. The Court specifically rejected the idea that "keep and bear arms" is a term of art with a unitary meaning. *Id.* at 2797. Instead the Court carefully considered the original public meaning of what it means to "bear arms," and concluded that it means exactly what it appears to mean—to carry arms for self-defense. *Id.* at 2793

("[P]utting all of these textual elements together, we find that they guarantee the individual right to possess and carry weapons in case of confrontation."). The *Heller* Court explicitly rejected any kind of artful and esoteric interpretation of the Second Amendment in favor of its plain meaning: "[T]he Constitution was written to be understood by the voters; its words and phrases were used in their normal and ordinary course as distinguished from technical meaning. Normal meaning may of course include an idiomatic meaning, but it excludes secret or technical meanings that would not have been known to ordinary citizens in the founding generation." *Heller*, 128 S. Ct. at 2788.[1] Bear arms meant at the time of the founding the same thing it means now, "the carrying of arms outside of an organized militia." *Heller*, 128 S.Ct. at 2793.

Contrary to the Appellants' characterizations, the *Heller* court clearly held that "bear" has independent meaning. "At the time of the founding, as now, to

[1] Appellants go to great lengths in their opening brief to avoid the plain meaning of "bear." For example, they offer the unsupported assertion that: "The historical evidence does not suggest that the pre-existing right was commonly understood to protect an unqualified right to carry firearms in public, much less the carry in public of easily concealable, highly-lethal firearms without any justification beyond a general desire to have a handgun in case a subjectively-perceived need to brandish or fire the gun arises." Appellants' Brief at p.22. This case does not involve the assertion of an "unqualified right," but rather the question of whether there is a right to carry a handgun outside the home at all. Of course, self-defense is always based on a subjective need to use force. *See, e.g.*, *McGhee v. Virginia*, 219 Va. 560, 562 (1978)("[W]hether the danger is reasonably apparent is always to be determined from the viewpoint of the defendant at the time he acted.").

'bear' meant to 'carry.' When used with 'arms,' however, the term has a meaning that refers to carrying for a particular purpose—confrontation." *Heller*, 18 S. Ct. at 2793 (citations omitted). The Court also specifically rejected the idea that this right was limited to carrying arms while serving in a militia: "'[B]ear arms' was not limited to the carrying of arms in a militia." *Heller*, 128 S. Ct. at 2794. Appellants suggest that the right to "bear" arms might be properly limited to "bearing" them in the home. *See* Appellants' Brief at p.33. Such a construction, in light of the language in *Heller*, is, to borrow a phrase from Justice Scalia, "worthy of the mad hatter." *Heller*, 128 S. Ct. at 2796. Limiting the right to bear arms to the home would essentially collapse the right to bear into the right to keep—a construction the Supreme Court has rejected as explained above.[2]

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[2] Subsequent courts have reached mixed results on the scope of the right to bear arms. The Maryland state courts have insisted on an absurdly narrow construction of *Heller* and *McDonald*. *See Williams v. Maryland*, 417 Md. 479 (2011) ("[I]t is clear that prohibition of firearms in the home was the gravamen of the certiorari questions in both Heller and McDonald and their answers. If the Supreme Court, in this dicta, meant its holding to extend beyond home possession, it will need to say so more plainly."). In contrast, other courts have reached the correct result. *See, e.g.*, *United States v. Weaver*, No. 2:09-cr-00222, 2012 U.S. Dist. LEXIS 29613, at *11 (S.D. W. Va. Mar. 7, 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."); *Bateman v. Perdue*, No. 5:10-cv-265, 2012 U.S. Dist. LEXIS 47336 at **10-11 (E.D.N.C. March 29, 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."); *Michigan v. Yanna*, Nos. 304293 & 306144, 2012 Mich. App. LEXIS 1269 at *11 (Mich. Ct. App. June 26, 2012) ("The Second Amendment explicitly protects the right to 'carry' as well as the

Further, the fact that the *Heller* Court specifically delineated a list of presumptively-constitutional restrictions on carrying firearms in "sensitive places,"[3] none of which were inside the home, gives rise to the conclusion that the carrying of arms outside the home generally is covered. If the Court had meant to limit the scope of its decision to possession of firearms in the home, it could have simply listed something like, "laws forbidding the carrying of firearms outside the home," or just "laws forbidding the carrying of firearms." The Second Amendment protects a citizen's right to carry firearms for self-defense outside the home generally. Judge Niemeyer reached this same conclusion in his oft-cited opinion in *United States v. Masciandaro*, 638 F.3d 458, 468 (4th Cir. 2011) ("If the Second Amendment right were confined to self-defense in the home, the Court would not have needed to express a reservation for 'sensitive places' outside of the home.")

In light of the clear language from the Supreme Court, this Court should conclude, as did the district court, that the Second Amendment right to bear arms

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right to 'keep' arms….We therefore conclude that a total prohibition on the open carrying of a protected arm . . .is unconstitutional.").

[3] "[N]othing in our opinion should be taken to cast doubt on the 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 sales of arms." *Heller*, 128 S.Ct. at 2816-17.

applies outside the home. *Heller* conclusively addressed this question, and the appellants are not free to relitigate it now. 128 S.Ct. at 2793.

B. Because it Almost Completely Forecloses the Right to Carry Handguns for Self-defense Outside the Home, Maryland's Statute is in Conflict with the Second Amendment

Maryland Criminal Law Code § 4-203 not only implicates protected conduct but essentially forecloses the constitutionally-protected right to carry firearms outside the home altogether. Appellants attempt to portray the Maryland statute as narrow in scope, but this is not the case. The statute in fact prohibits the carrying of handguns outside the home under virtually all circumstances. The statute makes it a crime to "wear, carry, or transport" a handgun outside an individual's home, business, or other real estate under any circumstances unless the individual is a law enforcement officer or member of the armed forces—unless the individual has been granted a permit. Md. Crim. Code. § 4-203. The other exceptions that the Appellants repeatedly refer to apply only in very narrow circumstances[4] and require the handgun to be unloaded—rendering it useless for self-defense. *Id.*[5] Thus if carrying a handgun for self-defense outside the home is at all covered by the Second Amendment, then Maryland's statute infringes on that right.

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[4] Those circumstances include transporting a handgun to or from a place of purchase, sale, or repair; to or from a weapons exhibition; or to or from target shooting or hunting. Md. Crim. Code § 4-203.

[5] *See Heller*, 128 S. Ct. at 2818-19 (holding that a District of Columbia ordinance that required firearms to be rendered inoperable at all times, "makes it impossible for citizens to use them for self-defense and is hence unconstitutional.").

Self-defense is the core of the Second Amendment. *McDonald v. City of Chicago*, 130 S. Ct. 3020, 3036 (2010) ("Self-defense is a basic right, recognized by many legal systems from ancient times to present day, and in *Heller*, we held that individual self-defense is 'the central component' of the Second Amendment right.") Further, the Supreme Court has unequivocally held that handguns are within the ambit of the Second Amendment and central to the protected right of self-defense. *See McDonald*, 130 S. Ct. at 3036 ("Thus, we concluded, citizens must be permitted to use handguns for the core lawful purpose of self-defense.") Despite the Supreme Court's holdings, the only way a law-abiding citizen can legally carry a handgun in Maryland is to seek prior permission from the government and satisfy a panel of bureaucrats that he has a good enough reason, in their sole discretion, to be granted a permit.

A right that a citizen must seek prior government approval to exercise is no right at all. The Second and Fourteenth Amendments place negative limits on Maryland's power to regulate the possession and carrying of firearms. They guarantee that citizens are free from government interference in this sphere. As the district court aptly put it: "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." *Woollard v. Sheridan*, No. 1:10-cv-2068, 2012 U.S. Dist. LEXIS 28498 at *34 (D. Md. March 2, 2012).

III. To the Extent a Balancing Test is Appropriate at All, the Court Should Apply Strict Scrutiny to Analyze the Maryland Statute.

A. The Court Should Not Apply a Balancing Test to the Challenged Regulation

A balancing test involving a level of scrutiny is not the correct way for the Court to evaluate the Appellees' challenge to the Maryland statute at issue in this appeal. The Supreme Court has held that the right to keep and bear arms is a fundamental right—necessary to our system of ordered liberty. *McDonald*, 130 S. Ct. at 3042. Balancing tests are generally not suitable for fundamental rights.[6]

The Supreme Court clearly signaled in *Heller* that balancing tests are not the correct approach in analyzing restrictions on the Second Amendment right to keep and bear arms. *Heller* held that the D.C. handgun ban failed "under any of the standards of scrutiny that we have applied to enumerated constitutional rights." 128 S.Ct. at 2817. In fact, the Supreme Court expressed extreme skepticism that a balancing test was in any way appropriate when considering a sweeping prohibition on the exercise of the right to keep and bear arms:

> We know of no other enumerated constitutional right whose core protection has been subjected to a freestanding "interest-balancing" approach. The very enumeration of the right takes out of the hands of

[6] Even where courts do apply balancing tests, levels of scrutiny often do not appear to be particularly meaningful. *Compare Lawrence v. Texas*, 539 U.S. 558, 578 (2003) ("The Texas statute furthers no legitimate state interest which can justify its intrusion into the personal and private life of the individual.") *with Grutter v. Bollinger*, 539 U.S. 306, 342 (2003) (holding that diversity in the classroom is a compelling governmental interest sufficient to satisfy strict scrutiny).

> government--even the Third Branch of Government--the power to decide on a case-by-case basis whether the right is really worth insisting upon. A constitutional guarantee subject to future judges' assessments of its usefulness is no constitutional guarantee at all.

Heller, 128 S. Ct. at 2821. This Court should follow the same approach and need not resort to interest-balancing. Because Maryland's statute completely deprives its citizens of the ability to exercise a core component of a fundamental right, an interest-balancing test is inappropriate. It is a distinguishing feature of our constitution that certain core rights are enshrined beyond the reach of the legislature's power. The Supreme Court has stated that the Second Amendment means what is says, and this Court need only apply that principle to the facts here.

B. If the Court Decides to Apply a Balancing Test, the Correct Standard is Strict Scrutiny

Even if the Court decides that a balancing test is appropriate, the correct standard is strict scrutiny. Such an approach is necessary to safeguard the core elements of a fundamental right.

This Court has previously applied intermediate scrutiny to firearms regulations, but only where the challenged regulations were peripheral, rather than central elements of the Second Amendment right to keep and bear arms. In *Masciandaro*, this Court applied intermediate scrutiny to analyze a regulation that criminalized the possession of a loaded handgun in a national park. *Masciandaro*, 638 F.3d at 471 (analyzing whether the challenged regulation was "reasonably

adapted to a substantial governmental interest."). In *United States v. Chester*, this Court also applied intermediate scrutiny to determine whether a statutory prohibition on the possession firearms by a person previously convicted of a misdemeanor crime of domestic violence was constitutionally permissible. 628 F.3d 673, 683 (4th Cir. 2010). In both of those cases, the conduct in question was peripheral to the Second Amendment. In stark contrast, the statute at issue here completely eclipses a core part of the right to keep and bear arms, and so a higher level of scrutiny is appropriate.

The Supreme Court has consistently applied strict scrutiny in the context of the First Amendment right to free speech, and those principles are instructive here—where the Court lacks a robust body of Second Amendment law to rely on. When conduct at the core of the right to free speech is at issue, such as a government restriction on the content of speech, the Supreme Court consistently applies strict scrutiny. *See, e.g.*, *Brown v. Entm't Merchs. Ass'n*, 131 S. Ct. 2729, 2737 (2011) ("Crudely violent video games, tawdry TV shows, and cheap novels and magazines are no less forms of speech than The Divine Comedy, and restrictions upon them must survive strict scrutiny.") A reduced level of scrutiny is only applied in the First Amendment context when peripheral restrictions such as time, place, and manner regulations or restrictions on commercial speech are challenged. *See Ward v. Rock Against Racism*, 491 U.S. 781, 791 (1989) ("[E]ven

in a public forum the government may impose reasonable restrictions on the time, place, or manner of protected speech, provided the restrictions are justified without reference to the content of the regulated speech, that they are narrowly tailored to serve a significant governmental interest, and that they leave open ample alternative channels for communication of the information."); *44 Liquormart v. Rhode Island*, 517 U.S. 484, 507 (1996) ("As a result, even under the less than strict standard that generally applies in commercial speech cases, the State has failed to establish a 'reasonable fit' between its abridgment of speech and its temperance goal."). When these principles are applied to the Maryland statute, they demonstrate that strict scrutiny is the most appropriate balancing test.

The Maryland statute is not a peripheral restriction. Instead it is essentially a complete prohibition of the core Second Amendment right to "bear" arms. Maryland has not merely regulated how and when a citizen may carry a handgun, by, for example, requiring a suitable holster or prohibiting the carrying of arms in a particularly sensitive place, but rather has completely banned the carrying of handguns without prior government approval. A right that requires government permission is no right at all. As a panel of this Court held in *Chester*: "A severe burden on the core Second Amendment right of armed self-defense should require strong justification. But less severe burdens on the right, laws that merely regulate rather than restrict, and laws that do not implicate the central self-defense concern

of the Second Amendment, may be more easily justified." 628 F.3d at 682. Maryland's statute is a severe restriction because it amounts to an almost complete ban on carrying loaded handguns anywhere outside the home. If a balancing test is to be applied, it should be strict scrutiny.

Your amicus therefore respectfully urges the Court to strike down the Maryland statute as a clear violation of Appellees' Second Amendment rights without conducting a balancing test, or in the alternative to apply strict scrutiny in reaching the same result.

IV. Even Under Intermediate Scrutiny, the Maryland Statute Fails

If the Court chooses to apply a balancing test, Maryland's handgun permitting scheme fails even intermediate scrutiny. Maryland's total ban on possessing or transporting handgun anywhere outside the home unless the citizen in question is acting as an agent of the government or has previously satisfied a government committee that he has a "good and substantial reason" is not reasonably adapted to a substantial government interest, and it must therefore fail.

A. Maryland's Asserted Interest in Public Safety Extends Too Far

Maryland's putative interest in "protecting public safety and reducing handgun violence," (Appellants' Brief at p.40) is legitimate to the extent Maryland seeks to prevent criminal violence. However, while public safety is an important government interest, preventing the use of firearms in self-defense is not. The

Appellants and amici supporting them attempt to paint criminal acts and acts of self-defense with the same broad brush. *See* Brief of Amicus Curiae Brady Center to Prevent Gun Violence at p.8 ("In the last four years, concealed handgun permit-holders have shot and killed over 400 people, including twelve law enforcement officers.")[7] To the extent Maryland asserts an interest in preventing the use of handguns in self-defense, such an interest cannot be used to satisfy the first prong of intermediate scrutiny because it is not a legitimate interest—it has been taken off the table as a governmental objective by the Second and Fourteenth Amendments.

Self-defense is at the core of the Second Amendment right. *See McDonald*, 130 S. Ct. at 3036; *Heller* 128 S. Ct. at 2793. There is little doubt that armed citizens have and will continue to use force, including deadly force, to defend themselves on a regular basis. Reliable scholarship indicates that there are at least 2.5 million defensive uses of firearms in the United States each year.[8] *See* Jens Ludwig, *Self-Defense and Deterrence* (27 Crime and Justice 363), available at

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[7] This claim is based on a dubious study published by the Violence Policy Center that has been shown to be unreliable. *See* Clayton E. Cramer, *Violence Policy Center's Concealed Carry Killers: Less than it Appears* (College of Western Idaho working paper) *available at* http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2095754.

[8] This is a conservative estimate. At least one other study has concluded that as far back as 1995 there were approximately 4.7 million defensive firearms uses. *See* David McDowall, et al., *Measuring Civilian Defensive Firearm Use: A Methodological Experiment* 4 (16 Journal of Quantitative Criminology 1).

http://www.jstor.org/stable/1147667. Irrespective of Appellants "policy preferences," foreclosing the right of self-defense is not within the range of Maryland's range of governmental powers. The Second and Fourteenth Amendments exist specifically to remove such matters from the reach of shifting legislative and executive tides. *See Heller*, 128 S.Ct. at 2822 ("The enshrinement of constitutional rights necessarily takes certain policy choices off the table.") In analyzing Maryland's asserted governmental interest in public safety, the Court should properly consider only criminal violence, not the lawful use of force in self-defense.

B. Maryland's Regulatory Scheme is Not Reasonably Adapted to Reduce Acts of Criminal Violence.

Maryland's statute also fails because it is not reasonably calculated to advance Maryland's asserted interest. The district court analyzed the measure and concluded that it failed intermediate scrutiny because it is overly broad: there is no relationship between the individuals prevented from carrying handguns and those likely to commit crimes. *Woollard v. Sheridan*, No. 1:10-cv-2068, 2012 U.S. Dist. LEXIS 28498 at *30 (D. Md. March 2, 2012). After reciting the parade of horribles offered by the Appellants in support of their statute, the Court concluded: "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." *Id*. at *32.

The district court's conclusion was correct. In fact, a substantial body of scholarship has established that laws restricting the carrying of handguns do not reduce violent crime or promote public safety. If anything, the opposite is true. Maryland's statute cannot survive even intermediate scrutiny because it cannot be reasonably expected to help achieve Maryland's stated interests.

Forty-one states now either have non-discretionary (shall-issue) permit laws or do not require a permit to carry concealed handguns. John R. Lott, Jr., *What a Balancing Test Will Show for Right to Carry Laws*, 71 Md. L. Rev 1205, 1207 (2012). These states have provided a robust laboratory for social scientists to assess the impact of these laws. Overwhelmingly, reliable academic research has confirmed that right-to-carry laws do not increase violent crime but in fact reduce violent crime. "There have been a total of 29 peer reviewed studies by economists and criminologists, 18 supporting the hypothesis that shall-issue laws reduce crime, 10 not finding any significant effect on crime, including the NRC report, and ADZ's paper, using a different model and different data, finding that right-to-carry laws increase one type of violent crime, aggravated assault." Carlisle E. Moody, *et al*., *Trust But Verify: Lessons for the Empirical Evaluation of Law and Policy* 3 (College of Wm. & Mary working paper) *available at*

http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2026957&download=yes. In response to this extensive body of research and the natural experiments provided by 41 other states, Maryland responds only with speculation.

Maryland recites a litany of possible outcomes should it be compelled by the courts to bring its aberrant policy in line with the Constitution. Such idle speculation ought not be accorded any weight when considered in light of the expansive and reliable scholarship demonstrating that Maryland cannot reasonably expect its statute to improve public safety. Many other states have had right-to-carry laws now for many years, and ample data is available for analysis. The results demonstrate the unreasonableness of Maryland's position:

> The murder rate for these right-to-carry states fell consistently every year relative to non-right-carry states. When laws were passed, the average murder rate in right-to-carry states was 6.3 per 100,000 people. By the first and second full years of the law it has fallen to 5.9. Any by nine to ten years after the law, it had declined to 5.2. That averages to about a 1.7 percent drop in murder rates per year for ten years.

John R. Lott, Jr., *More Guns Less Crime: Understanding Crime and Gun Control Laws* 259 (3rd Ed. 2010).

Maryland's regulatory scheme is an unconstitutional infringement of a fundamental right. It is not reasonably adapted to advance Maryland's stated interest. In truth, Maryland's statute is not even rationally related to its purported

interest. Accordingly, it cannot survive even the most modest balancing test the Court might choose to apply.

V. Conclusion

For these reasons your amicus respectfully prays that the Court affirm the district court's judgment.

Respectfully Submitted,

/s/ Matthew D. Fender

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Certificate of Compliance

I hereby certify that according to the word count feature provided in Microsoft Word 2003 that the foregoing brief contains 4,464 words. The text of the brief is composed in Times New Roman 14 point font.

/s/ Matthew D. Fender
Matthew D. Fender

Certificate of Service

I hereby certify that on August 2, 2012, I filed the foregoing brief with the Clerk of the Court by causing a copy to be electronically filed and served via the appellate CM/ECF system. I also hereby certify that I have caused copies to be delivered to the Court by hand delivery, and caused copies to be served upon the following counsel by First Class Mail:

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UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

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