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December 20, 2012

**Via ECF**

The Hon. Patricia S. Connor, Clerk  
United States Court of Appeals for the Fourth Circuit  
1100 East Main Street  
Richmond, Virginia 23219

Re: Case No. 12-1437, *Woollard v. Gallagher*  
Argued October 24, 2012

Response to Appellees' Notice of Supplemental Authority

Dear Ms. Connor:

*Moore v. Madigan*, No. 12-1269, 2012 U.S. App. LEXIS 25264 (7th Cir. Dec. 11, 2012), whether or not correct, casts no doubt on the constitutionality of Maryland's permit statute. The divided Seventh Circuit panel held unconstitutional "a flat ban on carrying ready-to-use guns outside the home"—the "only" such state law in the country. *Id.* at \*22. That ban is readily distinguishable from Maryland's statute, which allows public carry of handguns to applicants with objective self-defense needs.

Indeed, the *Moore* majority recognized this distinction in comparing Illinois's complete ban to New York's "proper cause" requirement, which "recognize[s] that the interest in self-defense extends outside the home." *Id.* at \*23. The *Moore* majority quoted *Kachalsky v. County of Westchester*, No. 11-3692, 2012 U.S. App. LEXIS 24363, \*13 (2d Cir. Nov. 27, 2012), which upheld

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New York's law, explaining that New York "'decided not to ban handgun possession [in public], but to limit it to those individuals who have an actual reason . . . to carry the weapon. In this vein, licensing is oriented to the Second Amendment's protections . . .'" *Moore* at \*25. In contrast to New York's—and Maryland's—laws, the court held that Illinois's "blanket prohibition on carrying [a] gun in public prevents a person from defending himself anywhere except inside his home." *Id.* at \*21.

*Moore* did not question *Kachalsky*'s holding. Rather, the *Moore* majority's only legal disagreement was with the Second Circuit's "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 \*26. But *Moore* emphasized that *Kachalsky* "used [this] distinction . . . mainly to suggest" that intermediate scrutiny applies to laws "limiting the carrying of guns outside the home." *Id.* Contrary to Appellees' inaccurate characterization, *Moore* did not reject applying intermediate scrutiny to laws limiting gun possession outside the home, and instead held, over a dissent, that "Illinois[] fail[ed] to justify" its complete ban, "the most restrictive gun law of any of the 50 states." *Id.* at \*26-27.

Very truly yours,

s/ Matthew J. Fader

Matthew J. Fader

cc: All counsel of record (via ECF)