

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND**

BRIAN KIRK MALPASSO, et al.,

Plaintiffs,

vs.

WILLIAM M. PALLOZZI,

Defendant.

Civil Action No. 1: 18-cv-1064-MJG

**BRIEF OF *AMICUS CURIAE* GIFFORDS LAW CENTER TO PREVENT GUN
VIOLENCE IN SUPPORT OF DEFENDANT AND DISMISSAL**

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CORPORATE DISCLOSURE STATEMENT

Giffords Law Center to Prevent Gun Violence states that it has no parent corporations. It has no stock, and therefore no publicly held company owns 10% or more of its stock.

INTEREST OF THE *AMICUS CURIAE*

Amicus curiae Giffords Law Center to Prevent Gun Violence (“Giffords Law Center”) is a non-profit policy organization dedicated to researching, writing, enacting, and defending laws and programs proven to reduce gun violence and save lives. The organization was founded in 1993 after a gun massacre at a San Francisco law firm and was renamed Giffords Law Center to Prevent Gun Violence in October 2017 following a merger with the gun-safety organization founded by former Congresswoman Gabrielle Giffords. Today, Giffords Law Center provides free assistance and expertise to lawmakers, advocates, legal professionals, law enforcement officials, and citizens who seek to make their communities safer from gun violence. Its attorneys track and analyze firearm legislation, evaluate gun violence prevention research and policy proposals, and participate in Second Amendment litigation nationwide. Giffords Law Center has provided informed analysis as an *amicus* in numerous important firearm-related cases, including *District of Columbia v. Heller*, 554 U.S. 570 (2008), *McDonald v. City of Chicago*, 561 U.S. 742 (2010), *Woollard v. Sheridan*, 863 F. Supp. 2d 462 (D. Md. 2012), *Woollard v. Gallagher*, 712 F.3d 865 (4th Cir. 2013), and *Kolbe v. Hogan*, 849 F.3d 114 (4th Cir. 2017) (en banc).

INTRODUCTION AND SUMMARY OF THE ARGUMENT

Firearms cause hundreds of deaths and injuries in Maryland every year, and the ripple effect of each gunshot leaves many more people grieving and in fear for their safety.¹ In recent years, Maryland experienced an annual average of 313 gun homicides, 259 gun suicides, 825 non-fatal shootings, and 338 unintentional shootings.² These frequent incidents not only harm communities and leave survivors traumatized, they also impose enormous economic consequences, costing Maryland taxpayers an estimated \$294 million per year.³

This lawsuit challenges Maryland's settled authority to address devastating firearm violence within the State's borders through enforcement of meaningful licensing standards for the carrying of loaded, concealed handguns in public. Plaintiffs recycle precisely the same Second Amendment challenge to Maryland's "good and substantial reason" requirement for obtaining a concealed handgun permit that the Fourth Circuit rejected just five years ago in *Woollard v. Gallagher*, 712 F.3d 865 (4th Cir. 2013). *See also* MD. CODE ANN., PUB. SAFETY § 5-306(a).

Even if this Court were not bound by *Woollard*, nothing has changed since *Woollard* was

¹ *E.g.*, Kevin Rector, *These Baltimore Students Aren't Afraid of Mass Shootings. They're Facing Gun Violence In Their Everyday Lives.*, Baltimore Sun, Mar. 1, 2018, <http://www.baltimoresun.com/news/maryland/baltimore-city/bs-md-excel-students-on-guns-20180219-story.html>.

² Fatal firearm injury data is from the Centers for Disease Control and Prevention's WISQARS Fatal Injury Reports. Centers for Disease Control and Prevention, Web-based Injury Statistics Query and Reporting System (WISQARS) *Fatal Injury Reports*, <https://www.cdc.gov/injury/wisqars/fatal.html>. Non-fatal firearm injury data is from the Agency for Healthcare Research and Quality's HCUPnet Query System. Agency for Healthcare Research and Quality, Healthcare Cost and Utilization Project (HCUP) Query System, *Non-fatal firearm injuries*, <https://hcupnet.ahrq.gov/#setup>.

³ Giffords Law Center to Prevent Gun Violence, *The Economic Cost of Gun Violence in Maryland*, Feb. 2018, <http://lawcenter.giffords.org/wp-content/uploads/2018/02/Cost-of-Gun-Violence-in-Maryland.pdf>.

decided that would justify departing from the Fourth Circuit’s well-reasoned conclusion that Maryland’s good reason requirement “clearly” satisfies intermediate scrutiny. *Woollard*, 712 F.3d at 879. Plaintiffs evidently plan to argue that this binding precedent should be jettisoned because a divided panel of the D.C. Circuit reached a different conclusion in *Wrenn v. District of Columbia*, 864 F.3d 650 (D.C. Cir. 2017). That decision is irreconcilable not only with *Woollard*, but also with persuasive decisions from the First, Second, Third, Ninth, and Tenth Circuits. *See Peruta v. Cty. of San Diego*, 824 F.3d 919 (9th Cir. 2016) (en banc); *Drake v. Filko*, 724 F.3d 426, 429 (3d Cir. 2013); *Peterson v. Martinez*, 707 F.3d 1197, 1211 (10th Cir. 2013); *Kachalsky v. Cty. of Westchester*, 701 F.3d 81 (2d Cir. 2012); *Hightower v. City of Boston*, 693 F.3d 61 (1st Cir. 2012).

As the State’s motion correctly explains, Plaintiffs’ arguments are contrary to *stare decisis* and contradict every major Second Amendment decision the Fourth Circuit has issued. Even before *Woollard*, the Fourth Circuit had rejected each analytical step the D.C. Circuit’s two-judge majority employed in *Wrenn*, including *Wrenn*’s conclusion that carrying guns in public is “on par” with home possession, *Wrenn*, 864 F.3d at 664, and its error in failing to apply a form of means-end scrutiny. *See United States v. Masciandaro*, 638 F.3d 458, 470 (4th Cir. 2011) (stating that the “longstanding out-of-the-home/in-the-home distinction bears directly on the level of scrutiny applicable”); *United States v. Chester*, 628 F.3d 673, 682 (4th Cir. 2010) (ruling that under *Heller*, courts must “select between strict scrutiny and intermediate scrutiny”).

This *amicus* brief will present an additional reason that explains why Plaintiffs’ attempt to re-litigate *Woollard* fails: Since *Woollard* was decided in 2013, compelling new empirical evidence has confirmed the challenged law’s constitutionality under intermediate scrutiny. In light of the data catalogued in *Woollard* and the new evidence that has since emerged,

Maryland’s concealed carry regulations plainly do more than strike an “appropriate balance” between granting necessary handgun permits and reducing the risk of armed violence. *Woollard*, 712 F.3d at 881. Indeed, recent and reliable social science research confirms that Maryland’s regulations are not only appropriate and constitutional, but also the best-informed policy choice the state could make to protect the people of Maryland from increased rates of violent crime and homicide.

ARGUMENT

I. Compelling New Empirical Evidence Confirms the Constitutionality of the Good Reason Requirement Under Intermediate Scrutiny.

Masciandaro and *Woollard* held that regulations affecting the public carry of firearms are reviewable under intermediate scrutiny. This level of means-end scrutiny requires Maryland to demonstrate that its good-and-substantial-reason requirement (hereinafter, the “good reason requirement”) is “reasonably adapted to a substantial governmental interest.” *Masciandaro*, 638 F.3d at 471. There is no doubt that “protecting public safety and preventing crime—particularly violent crime committed with handguns,” *Woollard*, 712 F.3d at 880, remains as substantial a state interest today as it was when the Fourth Circuit decided *Woollard*.

A. Maryland’s Firearm Policy Choices Are Entitled to Deference.

The Second Amendment does not eliminate states’ ability to choose among various policies to prevent gun violence. *See McDonald v. City of Chicago*, 561 U.S. 742, 784–85 (2010). In *Woollard*, the Fourth Circuit recognized that more than one firearm policy in a given area, like the concealed carry of handguns, may be reasonably adapted to a substantial state interest and therefore survive intermediate scrutiny. It thus explained that intermediate scrutiny should be applied in deference to the legislature’s authority “to weigh conflicting evidence and make policy judgments.” *Woollard*, 712 F.3d at 881 (quoting *Kachalsky v. Cty. of Westchester*,

701 F.3d 81, 99 (2d Cir. 2012)).

Of course, deference to legislative judgment is an established principle of constitutional jurisprudence not limited to the Second Amendment. The Supreme Court has repeatedly explained that heightened means-end scrutiny, including intermediate scrutiny, does not require legislatures to provide exact empirical justifications for regulations. The Court has, for example, “permitted litigants to justify speech restrictions by reference to studies and anecdotes pertaining to different locales altogether, or even, in a case applying strict scrutiny, to justify restrictions based solely on history, consensus, and ‘simple common sense.’” *Lorillard Tobacco Co. v. Reilly*, 533 U.S. 525, 555 (2001) (quoting *Florida Bar v. Went For It, Inc.*, 515 U.S. 618, 628 (1995)); *see also Paris Adult Theatre I v. Slaton*, 413 U.S. 49, 60 (1973) (“We do not demand of legislatures ‘scientifically certain criteria of legislation.’” (internal citation and quotation omitted)). And, in a First Amendment case involving a crime-reduction measure that targeted secondary effects of protected speech, the Court credited city officials’ informed judgment, even where the city failed to furnish specific “empirical data that its ordinance will successfully lower crime.” *City of Los Angeles v. Alameda Books*, 535 U.S. 425, 439 (2002).

B. New Evidence Bolsters *Woollard*’s Holding that Maryland’s Regulations Are Reasonably Adapted to Substantial State Interests.

Deference to Maryland’s reasonable and informed legislative policy choices is certainly warranted in this case. Even if this Court were writing on a blank slate and evaluated the Maryland legislature’s policy choices more critically than the above precedents require, the Court would still be right to dismiss this case. New and compelling evidence demonstrates that states that allow public concealed carry of guns without imposing meaningful standards have experienced increased rates of violent crime and homicide. This growing body of evidence justifies Maryland’s choice to apply the good reason requirement with strong and specific

“empirical data that its [law] will successfully lower crime.” *Id.* at 439.

1. Permissive Concealed Carry Laws Are Associated with Higher Levels of Violent Crime.

Empirical evidence confirms the common sense idea that carrying firearms in public increases the risk of injury for the carrier and others. In the past year, persuasive new social science evidence has shown that permissive “shall-issue” concealed carry laws fuel violent crime and homicide.⁴ With the benefit of the latest and most robust evidence, it is now clearer than before that Maryland’s good reason requirement is substantially related to reducing armed violence.

First, a June 2017 study (recently revised in January 2018) by Stanford professor John Donohue and colleagues shows persistent increases in rates of violent assaults and other violent crimes in states with more lenient “shall-issue” concealed carry permitting systems (referred to as “right-to-carry” or “RTC” laws by the study’s authors).⁵ The study found that RTC laws are associated with higher aggregate violent crime rates, and the size and deleterious effects associated with the passage of RTC laws increases over time. Though overall crime rates declined nationwide during the study period, the nine states that never adopted RTC laws experienced a decline in violent crime that was approximately four times greater than in states

⁴ “Shall-issue” states require officials to grant handgun carry permits as long as applicants satisfy basic criteria (*e.g.*, no felony convictions). In contrast, “may issue” regimes, like the one at issue here, provide permitting officials more discretion in issuing carry permits. Michael Siegel, et al., *Easiness of Legal Access to Concealed Firearm Permits and Homicide Rates in the United States*, 107 *Am. J. Pub. Health* 1923, 1924-28 (Dec. 2017), <https://ajph.aphapublications.org/doi/pdf/10.2105/AJPH.2017.304057>.

⁵ John J. Donohue et al., *Right-to-Carry Laws and Violent Crime: A Comprehensive Assessment Using Panel Data, the LASSO, and a State-Level Synthetic Controls Analysis*, Nat’l Bureau Econ. Res. (June 2017, revised Jan. 2018), <http://www.nber.org/papers/w23510>.

that implemented RTC laws.⁶ RTC laws, in contrast, led to a thirteen to fifteen percent increase in violent crime after ten years beyond what would have been expected without the laws.⁷

Within five years after the passage of an RTC law, violent crime rates were approximately seven percent higher; within ten years, violent crime rates were approximately fifteen percent higher.⁸

The Stanford study also discussed the mechanisms by which RTC laws may increase violent crime, stating that “the statistical evidence shows us that whatever beneficial effects RTC laws have in reducing violence, they are outweighed by greater harmful effects.”⁹ These effects include, among others¹⁰:

- RTC permit holders may commit crimes that they would not have committed without a permit to carry a gun;
- Criminals may have easier access to guns in RTC states. For example, guns may be more easily stolen from cars. In fact, an investigation of data provided by police departments in 25 large U.S. cities found that parked cars have become a top target for gun thieves, reporting roughly 4,800 guns stolen from vehicles;¹¹ and
- Criminals may feel a greater need to carry guns as the number of armed people in public increases.

A second study by researchers at Boston University and Duke University supports and complements the findings of the Stanford study.¹² Whereas the Stanford study focused on violent crime, the Boston-Duke University study focused specifically on homicide, and is the

⁶ *Id.* at 4.

⁷ *Id.* at 36.

⁸ *Id.* at 32.

⁹ *Id.* at 37.

¹⁰ *Id.* at 37–38.

¹¹ Brian Freskos, *Guns are Stolen in America Up to Once Every Minute. Owners Who Leave Their Weapons in Cars Make It Easy for Thieves*, The Trace, Sept. 21, 2016, last updated Apr. 20, 2018, <https://www.thetrace.org/2016/09/stolen-guns-cars-trucks-us-atlanta/>.

¹² See Siegel et al., *supra* note 4.

first study to examine the specific impact of concealed carry laws on handgun versus long gun homicide rates. This differentiation is important. If permissive concealed carry laws actually deter crime, as advocates for RTC laws often argue, then gun homicides should be expected to decrease in states with shall-issue laws, and there should be no observable increase in handgun homicides.

The Boston-Duke University study, however, found that the opposite occurred. The study found that shall-issue laws were significantly associated with 6.5% higher total homicide rates, 8.6% higher firearm homicide rates, and 10.6% higher handgun homicide rates, but were not significantly associated with long-gun or non-firearm homicides.¹³ The fact that the homicide increase is attributable to handguns in particular bolsters the study's hypothesis that lax handgun concealed carry laws are responsible for homicide increases.¹⁴ The study's conclusion that permissive concealed carry laws substantially increase gun homicide rates means that conversely, Maryland's decision to apply a higher standard for concealed carry substantially furthers safety by protecting the public from firearm homicide.

These are only the two most recent studies. Other researchers have similarly found a strong connection between lax concealed carry licensing laws and increased gun violence.¹⁵ In sum, the strong empirical evidence that has recently emerged is more than sufficient to allow this Court to confirm the correctness of the Fourth Circuit's determination in *Woollard* that

¹³ *Id.* at 1927–28.

¹⁴ *Id.* at 1928.

¹⁵ See, e.g., Rashna Ginwalla et al., *Repeal of the Concealed Weapons Law and Its Impact on Gun-Related Injuries and Deaths*, 76 J. Trauma Acute Care Surg. 569, 569, 573 (2014) (lax concealed carry permitting laws are associated with increased gun fatalities); Daniel W. Webster et al., *Firearms on College Campuses: Research Evidence and Policy Implications* 8 (Oct. 15, 2016) (in the 41 states with RTC laws or no concealed carry regulations, the average death toll in high-fatality mass shootings increased following the implementation of an RTC law).

Maryland's good reason requirement survives intermediate scrutiny.

2. Firearms Are Rarely Used in Self-Defense and Do Not Increase Safety.

There is also a growing consensus that carrying firearms for self-defense produces no safety benefits and likely exposes gun carriers to greater harm. Recent research confirms that crime victims rarely use guns in self-defense and that persons carrying firearms are, in fact, no safer than other crime victims. A 2015 study found that victims of violent crimes use firearms in less than one percent of all criminal incidents.¹⁶ And, compared to other self-protective actions that do not involve a firearm, data from the National Crime Victimization Surveys provide little evidence that defensive gun use is beneficial in reducing the likelihood of injury or property loss.¹⁷ A 2015 analysis of data from the FBI's Uniform Crime Reporting program confirmed that while guns can be, and sometimes are, successfully used for defense, these cases are the exception.¹⁸

This research is consistent with the findings of an influential 2009 study that concluded that carrying a firearm may *increase* a victim's risk of injury during the commission of a crime. In an analysis of 677 shootings over a two-and-a-half-year period in Philadelphia, researchers found, after adjusting for confounding factors, that individuals carrying a gun were 4.46 times more likely to be shot in an assault than those not carrying a gun, and they were more than 4.23

¹⁶ See David Hemenway & Sara J. Solnick, *The Epidemiology of Self-Defense Gun Use: Evidence from the National Crime Victimization Surveys 2007–2011*, 79 *Preventive Med.* 22, 23 (Oct. 2015).

¹⁷ See *id.* at 23–24.

¹⁸ Violence Policy Ctr., *Firearm Justifiable Homicides and Non-Fatal Self-Defense Gun Use 7* (June 2015), <http://www.vpc.org/studies/justifiable15.pdf> (“When analyzing the most reliable data available, what is more striking is that in a nation of more than 300 million guns, how *rarely* firearms are used in self-defense.”).

times as likely to be fatally shot.¹⁹ The figures are higher for assaults where it was confirmed that the victim had some opportunity to resist. In these cases, individuals carrying guns were 5.45 times more likely to be shot.²⁰

The 2009 study was bolstered by a 2016 report from public health experts at Johns Hopkins University, which observed that defending oneself with a gun in public requires skills that few possess. “Shooting accurately and making appropriate judgments about when and how to shoot in chaotic, high-stress situations requires a high level of familiarity with tactics and the ability to manage stress under intense pressure.”²¹ Accuracy “is influenced by distance, the opponent shooter’s actions, lighting, use of cover, type of gun, and more.”²² The report confirmed that most people simply do not have the tactical ability to successfully use a gun for self-defense, particularly in urban or densely populated public areas, and may end up “wounding or killing innocent victims” in the process.²³

Moreover, regardless of their degree of tactical training, recent examples demonstrate that when individuals carry guns in public, there is an increased risk that they will wield their firearm in situations that actually place themselves and others in greater danger. Gun carriers—even those with training—have injured innocent people after mistakenly perceiving a threat.²⁴

¹⁹ See Charles C. Branas et al., *Investigating the Link Between Gun Possession and Gun Assault*, 99 Am. J. Pub. Health 2034, 2037 (Nov. 2009), <https://ajph.aphapublications.org/doi/abs/10.2105/AJPH.2008.143099>.

²⁰ See *id.*

²¹ Webster et al., *supra* note 15, at 10.

²² *Id.*

²³ *Id.*

²⁴ Fox4News.com Staff, *Police: Man Arrested for Shooting Uber Driver Thought He Was Helping*, Fox 4 News, May 16, 2017, <http://www.fox4news.com/news/man-spots-gun-inadvertently-shoots-uber-driver> (An army veteran shot a driver mistakenly believing he was

The presence of a gun can also exacerbate everyday disputes into lethal confrontations. In 2017, “road rage” incidents involving gun carriers increased nationally, and the Maryland State Police reported that its officers “encounter this kind of behavior daily.”²⁵

3. The Only Studies Supporting a Link Between Lenient Carry Laws and Lower Crime Have Been Discredited.

As illustrated above, there is growing, methodologically sound evidence that lenient concealed carry laws increase crime. The last time courts considered the constitutionality of Maryland’s “good reason” law, in *Woollard*, the challengers attempted to rely on competing studies that are now outdated and discredited.

The flawed hypothesis that crime rates are lower in states with shall-issue carry laws or RTC laws can be traced to a book published by John Lott in 1998.²⁶ But Lott’s conclusion that RTC laws are associated with lower crime rates has been widely rejected.²⁷ His research is

stopping a robbery); William Saletan, *Friendly Firearms: How an Armed Hero Nearly Shot the Wrong Man*, Slate, Jan. 11, 2011, http://www.slate.com/articles/health_and_science/human_nature/2011/01/friendly_firearms.html (during the 2011 mass shooting in Tucson perpetrated by a gunman targeting U.S. Congresswoman Gabrielle Giffords, a bystander with a concealed gun assaulted and nearly shot the man who had grabbed the shooter’s weapon).

²⁵ Kimberly Eiten, *Alarming, Rising Trend: Weapons Used During Road Rage Incidents*, CBS Baltimore, Apr. 10, 2017, <http://baltimore.cbslocal.com/2017/04/10/alarming-rising-trend-weapons-used-during-road-rage-incidents/>. Even law enforcement officials have drawn guns in road rage incidents, suggesting that the presence of a gun can dangerously escalate disputes no matter how well-trained the carrier is. Associated Press, *Federal Agent in Road Rage Pulls Gun on Civilian in Maryland*, Associated Press, Apr. 11, 2018, <https://wtop.com/anne-arundel-county/2018/04/federal-agent-in-road-rage-pulls-gun-on-civilian-in-maryland/>.

²⁶ See John R. Lott, Jr., *More Guns Less Crime* (1st ed. 1998).

²⁷ See, e.g., National Research Council, *Firearms and Violence: A Critical Review* 150 (Charles F. Wellford et al. eds., 2005), <https://www.nap.edu/read/10881/chapter/1> (“[W]ith the current evidence it is not possible to determine that there is a causal link between the passage of right to carry laws and crime rates.”); Ian Ayres & John J. Donohue III, *Shooting Down the More Guns, Less Crime Hypothesis*, 55 *Stanford L. Rev.* 1193, 1284 (Yale 2003), http://digitalcommons.law.yale.edu/fss_papers/1241 (“We take these results to be generally

tainted by two fundamental methodological errors. First, Lott aggregated the impact of gun law passage for all the states studied. When researchers disaggregated the effects for each state, it became clear that crime *increased* more often *after* the passage of concealed-carry laws than it decreased.²⁸ Second, Lott used crime data at the county-level and did not account for changing laws at the state level. When researchers adjusted his analysis to account for this oversight, the results became statistically insignificant.²⁹ Separate from these methodological errors, Lott himself was found to have committed academic fraud on multiple occasions, including making false public statements about his research.³⁰ He also admitted to fabricating an online identity for a nonexistent former student to praise his own research.³¹

As demonstrated above, there is increasingly strong evidence that lenient concealed carry permitting regimes increase gun violence and a lack of methodologically sound research to refute that evidence. *Woollard* thus continues to stand on empirically firm ground. It is more apparent than ever that Maryland's permitting regime is substantially related to the state's important interest in protecting the public from firearm violence.

devastating to Lott's 'More Guns, Less Crime' hypothesis"); *see also* Emily Badger, *More Guns, Less Crime? Not Exactly*, Wash. Post (July 29, 2014), <https://www.washingtonpost.com/news/wonk/wp/2014/07/29/more-guns-less-crime-not-exactly/> ("Numerous studies have critiqued [Lott's] methodology.").

²⁸ *See* Ayres & Donohue, *supra* note 27, at 39–40.

²⁹ *See* Mark Duggan, *More Guns, More Crime*, 109 J. Pol. Econ. 1086, 1109–10 (2001), <https://www.kellogg.northwestern.edu/faculty/dranove/htm/dranove/coursepages/Mgmt%20469/guns.pdf>.

³⁰ Devin Hughes and Evan DeFilippis, *The GOP's Favorite Gun 'Academic' is a Fraud*, ThinkProgress (Aug. 12, 2016, 4:45 PM), <https://thinkprogress.org/debunking-john-lott-5456e83cf326/>.

³¹ Richard Morin, *Scholar Invents Fan to Answer His Critics*, Wash. Post, Feb. 1, 2003, <https://www.washingtonpost.com/archive/lifestyle/2003/02/01/scholar-invents-fan-to-answer-his-critics/f3ae3f46-68d6-4eee-a65e-1775d45e2133>.

II. Plaintiffs' First Amendment Analogy Cannot Sustain Their Complaint.

Faced with binding precedent that forecloses their claims and a growing body of empirical evidence suggesting that lenient concealed carry laws endanger the public, Plaintiffs turn to First Amendment law and grasp for support by analogy. The Complaint suggests that Maryland's good reason requirement for concealed carry permits is "akin to a state law concluding that the general desire to advocate for lawful political change is not a sufficiently 'good and substantial reason' to exercise the right to free speech," an interpretation which would "gut" the First Amendment. *See* Pl. Compl. ¶ 3.

The substantive differences between the First and Second Amendments render this analogy inapposite. *Heller* importantly stated that "the right secured by the Second Amendment is not unlimited" and that "the majority of the 19th-century courts to consider the question held that prohibitions on carrying concealed weapons were lawful under the Second Amendment or state analogues." *Heller*, 554 U.S. at 626. *Heller* itself thus strongly affirms that it is lawful for governments to adopt public-safety-promoting regulations that have the effect of limiting the carry of concealed guns in public. This differentiates gun rights, and particularly the public carrying of guns, from other rights where discretion to regulate is more constrained. *See Berron v. Ill. Concealed Carry Licensing Review Bd.*, 825 F.3d 843, 847 (7th Cir. 2016) ("[E]veryone is entitled to speak and write, but not everyone is entitled to carry a concealed firearm in public.").

Plaintiffs' effort to import First Amendment principles wholesale into the Second Amendment context is illogical for the additional reason that, unlike First Amendment-protected expressive content, firearms can physically injure and kill people. *See, e.g., Bonidy v. U.S. Postal Serv.*, 790 F.3d 1121, 1126 (10th Cir. 2015) ("The risk inherent in firearms and other weapons distinguishes the Second Amendment right from other fundamental rights" that "can be exercised without creating a direct risk to others"). This distinction—and *Heller*'s recognition

that concealed carry bans were historically considered constitutional—must make it permissible for governments to regulate the lethal effects of firearms in ways they could not do with the effects of purely expressive activity.

Although this Court and many others have correctly determined that methodological analogies between the two rights can be useful,³² gun rights and speech rights differ sufficiently that it makes little sense to apply substantive First Amendment doctrine in Second Amendment challenges. *E.g.*, *Woollard*, 712 F.3d at 883 n.11 (“We are hesitant to import substantive First Amendment principles wholesale into Second Amendment jurisprudence.” (internal citation omitted)); *see also Teixeira v. Cty. of Alameda*, 873 F.3d 670, 688–90 (9th Cir. 2017) (en banc) (cataloging salient substantive differences between the First and Second Amendments).

CONCLUSION

Plaintiffs have offered no basis for concluding that Maryland’s good-and-substantial-reason requirement violates the Second Amendment, and no reason to depart from sound, binding Circuit precedent. The growing empirical consensus that laws like Maryland’s save lives confirms the Fourth Circuit’s conclusion that the requirement is constitutional. This Court should therefore grant Defendant’s Motion to Dismiss.

Respectfully submitted,

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³² *See supra* p. 5 (Discussing how First Amendment methodology informs the proper application of intermediate scrutiny in Second Amendment cases).

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CERTIFICATE OF SERVICE

I hereby certify that on June 18, 2018, I electronically filed the foregoing brief with the Clerk of the Court for the United States District Court for the District of Maryland via the CM/ECF System. I certify that all counsel in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

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