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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MARYLAND

SHAWN J. TARDY, et al.

PLAINTIFFS

VS.

CIVIL NO. CCB-13-2841

MARTIN J. O'MALLEY, in his  
official capacity as Governor  
of the State of Maryland, et al.

DEFENDANTS

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JANE DOE, et al.

PLAINTIFFS

VS.

CIVIL NO. CCB-13-2861

MARTIN J. O'MALLEY, in his  
official capacity as Governor  
of the State of Maryland, et al.

DEFENDANTS

Baltimore, Maryland

October 1, 2013

The above-entitled case came on for a Temporary  
Restraining Order proceedings before the Honorable  
Catherine C. Blake, United States District Judge

Gail A. Simpkins, RPR  
Official Court Reporter

A P P E A R A N C E S

For the Plaintiffs:

Tara Sky Woodward, Esquire  
John Parker Sweeney, Esquire  
James W. Porter, III, Esquire

For the Defendants:

Matthew J. Fader, Esquire  
Dan Friedman, Esquire

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1           We have Steve Schneider, who is the owner of  
2 Atlantic Guns and is the President of Maryland  
3 Licensed Firearms Association, and John Josselyn,  
4 Legislative Vice President for the Associated Gun  
5 Clubs of Baltimore.

6           THE COURT: All right. Happy to have everybody  
7 here.

8           MR. SWEENEY: Thank you, Your Honor, for making  
9 yourself available on such short notice.

10           Ms. Woodward will address the Tardy motion for a  
11 TRO, and then following that I will address the  
12 handgun qualification license TRO.

13           THE COURT: All right.

14           MS. WOODWARD: Thank you, Your Honor. May I use  
15 the podium?

16           THE COURT: Sure, wherever you are comfortable.

17           MS. WOODWARD: May it please the Court, Sky  
18 Woodward on behalf of the plaintiffs. My colleague,  
19 Mr. Sweeney, has introduced them to Your Honor.

20           For the record, they include Andrew Turner,  
21 Shawn J. Tardy, Matthew Godwin, Wink's Sporting Goods,  
22 Atlantic Guns, Inc., and Association Plaintiffs,  
23 Associated Gun Clubs of Baltimore, Maryland Shall  
24 Issue, Maryland State Rifle and Pistol Association,  
25 the National Shooting Sports Foundation, and the

1 Maryland Licensed Firearms Dealers Association.

2           These plaintiffs, Your Honor, come to the Court  
3 today as the people of the State of Maryland, the real  
4 people, and not the government. In a democracy, the  
5 state represents at best a political majority of the  
6 people.

7           When the plaintiffs speak on behalf of enshrined  
8 individual rights, particularly those that are  
9 disfavored rights, they speak for all of the people,  
10 even those who may hate the right and wish its  
11 suppression.

12           The Court performs no more sacred duty than as  
13 it sits today, to protect the civil rights of the  
14 minority when disfavored by the political will of the  
15 majority. Whether that civil right is to marry the  
16 person you love, exercise your reproductive rights, or  
17 to exercise your Second Amendment rights, to keep and  
18 bear arms, it is in that vein that the plaintiffs come  
19 today seeking a TRO under Federal Rule 65.

20           I will address first, Your Honor, that the  
21 plaintiffs are likely to succeed on the merits of  
22 their claims.

23           THE COURT: Well, if you wouldn't mind, if you  
24 would first address why this lawsuit was not filed  
25 until the Friday before the Tuesday on which it was to

1 take effect.

2 MS. WOODWARD: The law obviously is set to take  
3 effect today, Your Honor. Had the plaintiffs come  
4 before the Court prior to the effective date of the  
5 Act, we are confident we would have been met with a  
6 standing challenge or a ripeness challenge.

7 Because the law allowed the purchase of the  
8 to-be-banned firearms up until yesterday, Your Honor,  
9 there is no reason to come before the Court for a law  
10 that is only to be in effect as of today.

11 THE COURT: But you anticipated. You obviously  
12 knew that it was going to be coming into effect, and  
13 you could have brought this suit, it seems to me.

14 I mean if you had standing on Friday, then you  
15 had standing sometime ago. It would have permitted a  
16 much more deliberate consideration of the law than  
17 what seems to be possible by filing it as late as you  
18 did.

19 MS. WOODWARD: Well, certainly a deliberate  
20 consideration, Your Honor, comes in the form of a  
21 preliminary injunction style hearing.

22 There is nothing in the rules or the law that  
23 suggests that the plaintiffs needed to come before  
24 this Court or any court prior to the effective date of  
25 the Act, and we would have been, to put it in a

1 certain way, Your Honor, I think damned if we did and  
2 damned if we didn't.

3 Because had we come to the Court as of the  
4 signing of the Bill in May, any time between now and  
5 then, Your Honor, the plaintiffs or the defendants  
6 would have been able to say to the Court they can  
7 exercise their right. There is no ban. They have the  
8 ability to purchase the things that are to be banned  
9 as of October 1. It's only as of today that the  
10 infringement of the right will begin, because it is  
11 the acquisition of the firearms to be banned that is  
12 the exercise of the right that as of today cannot  
13 occur.

14 THE COURT: Okay.

15 MS. WOODWARD: As to whether plaintiffs are  
16 likely to succeed on the merits of their claims, Your  
17 Honor, the plaintiffs and the individual association  
18 plaintiff members have clear fundamental individual  
19 rights under the Second Amendment to the United States  
20 Constitution to acquire and possess firearms and  
21 ammunition magazines in their home for defense of  
22 themselves, their family, and their property.

23 This is clear under the Heller case. It is  
24 clear under the McDonald case, as applied to the  
25 states. It is also clear under Fourth Circuit law

1 under Chester and Masciandaro.

2 As of today, as I've noted, that right, the  
3 Second Amendment right to keep and bear arms will be  
4 infringed as to an entire class of firearms that are  
5 in common use by plaintiffs and association members  
6 for use in their home.

7 THE COURT: When you call it an entire class,  
8 you're assuming that assault rifles are a class as  
9 compared to a subclass?

10 I mean there are certainly plenty of long guns,  
11 rifles and shotguns that are still perfectly legal for  
12 your clients to possess.

13 It appears to me more like a subclass, a limited  
14 group of weapons that your clients are not allowed to  
15 possess.

16 MS. WOODWARD: Well, Your Honor --

17 THE COURT: Acquire. They are not allowed to  
18 acquire going forward. Obviously, what they already  
19 have they are allowed to keep.

20 MS. WOODWARD: The list includes 68 to-be-banned  
21 firearms, Your Honor.

22 THE COURT: Uh-huh.

23 MS. WOODWARD: Whether one considers that class  
24 or subclass, it's a still a comprehensive class of a  
25 significant number of firearms that are in common use



1 and are desired to be purchased by law-abiding,  
2 responsible Marylanders for the purposes of  
3 self-defense and defense of home.

4 So whether an entire class or a subclass, these  
5 are nonetheless an entire category of weapons to be  
6 banned as of today.

7 Under Heller, under McDonald, under Chester, and  
8 Masciandaro, the Court has said that a class of  
9 firearms commonly used for defense of home, and if it  
10 is banned, that is unconstitutional.

11 THE COURT: Well, Heller, of course, was talking  
12 about handguns, and the Supreme Court made it quite  
13 clear that they thought handguns were the preferred  
14 weapon for self-defense for various reasons.

15 Now, you are not challenging, as I understand  
16 it, the continuing ban on certain types of assault  
17 pistols. This is just directed at the long guns and  
18 the magazines.

19 Let me just be clear about that. Is that  
20 correct?

21 MS. WOODWARD: That is correct vis-a-vis this  
22 lawsuit, Your Honor. The Doe lawsuit deals with  
23 handguns.

24 THE COURT: Yes.

25 MS. WOODWARD: But that's within the licensing

1 scheme, not the ban, not a ban.

2 THE COURT: Right. I understand that. But just  
3 talking about this case, it's the rifles and the  
4 magazines. Of course, as you alluded to, Heller said  
5 you can't have a total ban on handguns.

6 Now what evidence do you have that assault-style  
7 long guns and detachable magazines carrying more than  
8 ten rounds are ordinarily or commonly used for defense  
9 of the home?

10 MS. WOODWARD: Your Honor, the plaintiffs will  
11 proffer that there will be expert testimony that will  
12 be provided to the Court initially through  
13 declaration, affidavit, and through live testimony, if  
14 the Court will entertain it, in a preliminary  
15 injunction hearing. There will be testimony of  
16 experts that will address the Court's question, that  
17 these types of firearms to be banned are in common  
18 use.

19 THE COURT: Uh-huh.

20 MS. WOODWARD: In fact, one of the declarations  
21 presented in support of the TRO by Mr. Schneider has  
22 identified for the Court that the types of weapons to  
23 be banned are commonly purchased and commonly used.

24 The second point, Your Honor, on commonly used  
25 for defense of home, self and home, we will be able to

1 proffer that there will be expert testimony on that  
2 point as well, Your Honor, that it's not just the  
3 handguns that the U.S. Supreme Court in Heller found  
4 to be specifically protected and off the table for a  
5 state to ban, but that these types of weapons are also  
6 the types of weapons that responsible, law-abiding  
7 citizens in the State of Maryland would use in defense  
8 of home.

9 There are certain characteristics, Your Honor,  
10 of the firearms to be banned that make them more  
11 effective for defense of home, and there will be  
12 expert testimony and expert proof to support that.

13 THE COURT: Now I assume some of this would have  
14 been presented to the D.C. Circuit in the Heller case,  
15 the second Heller case, if you will. Are you going to  
16 be able to distinguish your evidence and the result  
17 here from what the D.C. Circuit did?

18 MS. WOODWARD: Yes, Your Honor, we will. We  
19 will be able to distinguish between.

20 We will also be able to demonstrate that the  
21 plaintiffs who we have in this case, and the members  
22 of association plaintiffs, that these are the types of  
23 firearms, these to-be-banned firearms are the types  
24 that for their personal self-protection and protection  
25 of the home, are the types of firearms that they

1 desire.

2 There is nothing in Heller, and there is nothing  
3 in McDonald, there is nothing in Chester, or  
4 Masciandaro, that restricts the application of the  
5 Second Amendment and the right to keep and bear arms  
6 to simply handguns. It is an open question, but one  
7 that requires strict scrutiny in our estimation as  
8 well, Your Honor.

9 THE COURT: Would you like to tell me why you  
10 think strict scrutiny would be applicable to this when  
11 we are talking -- again, I invite you to distinguish  
12 the D.C. Circuit's decision in Heller.

13 We are not talking about a ban, as I see it, on  
14 an entire class of weapons, and at least at this  
15 point, I don't believe there's evidence that they are  
16 commonly used for defense of the home. Why wouldn't  
17 intermediate scrutiny be the appropriate standard?

18 MS. WOODWARD: Well, the Fourth Circuit has not,  
19 as the State has said, adopted an intermediate  
20 scrutiny standard. The Heller case identifies strict  
21 scrutiny on a categorical ban of common firearms that  
22 are to be used in the home.

23 The Fourth Circuit --

24 THE COURT: I'm sorry. Where does the Heller  
25 case do that? I thought the Heller --

1 Do you mean the Supreme Court case?

2 MS. WOODWARD: Yes, yes.

3 THE COURT: I guess we should distinguish  
4 between the Supreme Court and --

5 MS. WOODWARD: Yes, the Supreme Court Heller,  
6 Your Honor.

7 THE COURT: I thought that they said we don't  
8 even need to decide what level of scrutiny applies.

9 MS. WOODWARD: Correct, Your Honor. I misspoke.

10 THE COURT: I haven't seen actually -- I  
11 certainly have not in this limited time read all the  
12 case law out there on this issue, but I haven't  
13 actually seen strict scrutiny applied.

14 MS. WOODWARD: In the context of these  
15 to-be-banned firearms in this instance.

16 THE COURT: Right.

17 MS. WOODWARD: At least within the Fourth  
18 Circuit, Your Honor, that is correct. There has not  
19 been an application of a level of scrutiny vis-a-vis  
20 these to-be-banned firearms.

21 The State has argued that it would be a lesser  
22 standard, that strict scrutiny would not apply. It is  
23 our position that the Fourth Circuit, to the extent it  
24 has spoken on this, and again, Chester and  
25 Masciandaro, which I probably continue to butcher --

1 it's a tough one. I'm not sure if the C is hard or  
2 it's soft.

3 THE COURT: I know which one you mean.

4 MS. WOODWARD: In any event, I presume that Your  
5 Honor knows the case of which I speak.

6 THE COURT: I do.

7 MS. WOODWARD: In both of those cases, Your  
8 Honor, before the Fourth Circuit, that Court has  
9 alluded to the fact that strict scrutiny would apply.

10 In fact, in Masciandaro, the Court said we  
11 assume that any law that would burden the fundamental  
12 core right of self-defense in the home by a  
13 law-abiding citizen would be subject to strict  
14 scrutiny.

15 There is nothing that the State has brought  
16 before this Court that they have even attempted to  
17 justify the ban, a categorical ban under a strict  
18 scrutiny standard. And ultimately, the government  
19 will bear the burden of proof to justify a ban, and  
20 must do so under strict scrutiny, in our estimation,  
21 consistent with Fourth Circuit precedent --

22 THE COURT: Well, as you --

23 MS. WOODWARD: Or even if it's under  
24 intermediate scrutiny.

25 THE COURT: Okay. Because Masciandaro assumes,

1 I think, but certainly does not decide, that strict  
2 scrutiny would apply. I think that it also said, as I  
3 believe you just quoted, that it would apply to any  
4 law that burdens the fundamental core right of  
5 self-defense.

6 So we sort of get back to the original question,  
7 if the fundamental core right of self-defense is  
8 implicated by the particular to-be-banned weapons on  
9 this list.

10 I mean there's at least an argument to be made,  
11 and I know that generally courts have tried to avoid  
12 making that decision at the first prong, but there is  
13 at least an argument to be made that these weapons  
14 don't even fall with the protection of the Second  
15 Amendment, that they are unusual and dangerous as  
16 opposed to common and ordinary.

17 MS. WOODWARD: If I may address that point, Your  
18 Honor, on the unusual and dangerous piece of this?

19 The defendants have made reference to the  
20 Heller, Supreme Court Heller decision, and the Court's  
21 discussion of M16 assault rifles, assault weapons.  
22 The defendants make much of this in their opposition  
23 papers to justify the categorical ban on semiautomatic  
24 rifles.

25 The State doesn't disclose to the Court a

1 critical difference between an M16 and the  
2 semiautomatic rifles that are to be banned here under  
3 this state law. The defendants attempt to equate the  
4 categorical ban of firearms, of the dangerous and  
5 unusual type, to be as outside the scope of the Second  
6 Amendment.

7 So to that point, Your Honor, the M16, as  
8 referenced in Supreme Court Heller, and as referenced  
9 in the State's papers as the type of weapon to be  
10 banned, the M16 is a fully automatic, military-only  
11 version, which is adapted from a Colt AR-15 that was  
12 manufactured over 50 years ago.

13 The AR-15, which is one of the models of  
14 semiautomatic rifles that the defendants have now  
15 banned, was developed for the civilian market before  
16 its military M16 version was developed.

17 Just some of the mechanics here, Your Honor.

18 THE COURT: Uh-huh.

19 MS. WOODWARD: If you are handling an M16, that  
20 firearm will continuously shoot bullets at a high rate  
21 of speed until the trigger is released, the gun jams,  
22 or it runs out of bullets. That's the M16.

23 When one operates one of the banned  
24 semiautomatic rifles, it's one bullet and only one  
25 shot until another is reloaded, and it cannot be shot



1 until there is another pull of the trigger. There is  
2 a mechanical distinction between the M16 assault  
3 weapon and an AR-15-style semiautomatic rifle, which  
4 is in the category of to be banned.

5 THE COURT: When you said reloaded, you just  
6 mean pulling the trigger again, right?

7 I mean on the semiautomatic, you don't have  
8 to -- you've got a magazine of at least ten rounds.

9 MS. WOODWARD: Correct, Your Honor.

10 THE COURT: Okay.

11 MS. WOODWARD: That's correct.

12 A couple more points on these mechanics.

13 A fully automated M16 can shoot over ten bullets  
14 per second. A semiautomatic AR-15 shoots  
15 approximately one bullet every two seconds.

16 Fully automatic weapons have been the subject of  
17 regulation since the 1930's. Fully automatic weapons  
18 are not in common use for the defense of the home.

19 The defendants also rely upon a faulty  
20 assumption, Your Honor, that the Court's focus should  
21 be on keeping banned classes of firearms off the  
22 streets and generalized public safety. It is our  
23 position, Your Honor, that the only focus of location  
24 would be the home, and that these to-be-banned  
25 semiautomatic firearms are entirely for the purpose of

1 self-defense in the home.

2 If I may touch upon magazine capacities, Your  
3 Honor?

4 THE COURT: Sure.

5 MS. WOODWARD: The defendants have  
6 mischaracterized the law as banning the possession of  
7 magazines holding more than ten rounds. The law in  
8 fact is that one can possess. One simply cannot  
9 acquire.

10 The State also states that firearm dealers would  
11 be able to simply alter the magazines to hold less  
12 than ten rounds, but that is not accurate. The  
13 firearm dealers are not able to simply alter magazines  
14 to hold less than ten.

15 The State does not address the critical fact  
16 that we have put forth to the Court, which is that the  
17 magazines in excess of ten rounds are necessary for  
18 our individual plaintiffs and individual members of  
19 associations to use their firearms at home.

20 THE COURT: Now there has been a 20-round limit  
21 in place for sometime; is that correct?

22 MS. WOODWARD: Yes. It is a 30 round maximum,  
23 20 round, yes, Your Honor, 20 round --

24 THE COURT: Do you think that's unconstitutional?

25 MS. WOODWARD: We are not challenging that

1 today, Your Honor. We are challenging this law which  
2 would limit to ten rounds per magazine.

3 Again, we will have expert testimony, as well as  
4 the testimony of our plaintiffs, that the limitation  
5 of a ten-round capacity essentially for individuals  
6 makes the use of the firearm --

7 It essentially prevents the use of the firearm  
8 in a way to defend one's self against a surprise  
9 attack or any attack in the home.

10 Your Honor, if we look to Heller, Supreme Court  
11 Heller, it is instructive.

12 The District of Columbia's law required that a  
13 handgun be kept inoperable, and the Supreme Court  
14 deemed that an unconstitutional requirement, because  
15 it made it impossible for citizens to use that firearm  
16 for self-defense. Rendering it inoperable meant it  
17 was of no use.

18 Individual plaintiffs and association  
19 plaintiffs, Your Honor, have the same situation as it  
20 relates to limitations of magazine capacities. As the  
21 affidavit or declarations demonstrate, and as would be  
22 demonstrated in an injunction hearing, Your Honor,  
23 there would be testimony to show that there are  
24 physical limitations of the plaintiffs that make  
25 magazines in excess of ten rounds useful and necessary

1 to exercise the fundamental right of that firearm in  
2 the home.

3 THE COURT: As I recall, that depends in part on  
4 your first argument, that the bullets that are going  
5 to be fired, many of them will miss their intended  
6 target, that it is very hard to be accurate in firing  
7 these bullets and, therefore, one needs to be able to  
8 fire more, which to me raises a question of what  
9 unintended targets are all those extra bullets going  
10 to hit?

11 MS. WOODWARD: Well, Your Honor, the instance  
12 that we are focused on is the defense of self in one's  
13 home. There are any number of scenarios that could  
14 play out, but a very specific one to your concern of  
15 where do the bullets go, Your Honor, we are talking  
16 about defensive situations of a law-abiding,  
17 responsible citizen in one's home, protecting the  
18 home, protecting one's self against an intruder,  
19 against a criminal.

20 We are not talking about an instance where there  
21 is gunfire in the streets, where there is activity  
22 outside the home. It is the ability of an individual  
23 to exercise that right, and to be able to do so  
24 effectively.

25 Our plaintiffs and members of association

1 plaintiffs are in positions, Your Honor, because of  
2 physical limitations to desire and to demonstrate that  
3 magazines in excess of ten are necessary for them to  
4 be able to use the firearms for self-protection and  
5 defense of home.

6 THE COURT: But you're not asking that only  
7 individuals with similar disabilities be allowed to  
8 have 20 rounds or higher magazines.

9 MS. WOODWARD: We are not limiting this, Your  
10 Honor, to individuals with physical limitations. We  
11 have identified for Your Honor individuals with such  
12 limitations.

13 THE COURT: Right.

14 MS. WOODWARD: And it is not to the exclusion of  
15 other law-abiding, responsible Maryland citizens to  
16 have the continued access to magazines in excess of  
17 ten rounds.

18 Your Honor, the plaintiffs have also, on the  
19 counts that we have brought to the Court, and again,  
20 on the likelihood of success on the merits, we have  
21 also brought a claim under the Equal Protection  
22 Clause.

23 The ban unfairly favors retired law enforcement  
24 officers.

25 THE COURT: What's the suspect classification,

1 suspect category?

2 MS. WOODWARD: Well, again, Your Honor, we have  
3 to start with the premise of Second Amendment applies,  
4 fundamental right, fundamental right to keep and bear  
5 arms of the type to be banned, and what the State has  
6 done is said that one class of citizens, law  
7 enforcement officers and retired law enforcement  
8 officers, will be able to continue to have access to  
9 these to-be-banned firearms. Non-law enforcement  
10 officers will not as of today.

11 THE COURT: So it essentially is still a Second  
12 Amendment right, isn't it, not an equal protection  
13 challenge?

14 MS. WOODWARD: It is a Second Amendment right,  
15 Your Honor. Our argument is that the State unfairly  
16 and unconstitutionally favors one segment of the  
17 population over another segment of the population.

18 There is no distinction, Your Honor, between a  
19 retired law enforcement agent, a law enforcement  
20 officer needing the protection of these types of  
21 to-be-banned firearms in one's home for  
22 self-protection compared to another citizen of the  
23 State of Maryland.

24 There is no distinction between who would need  
25 that in a time of attack in one's home, which is what

1 our point is vis-a-vis law enforcement officers  
2 compared to the citizens of Maryland.

3 We also challenge on vagueness of the Act, Your  
4 Honor, and this is essentially the copycat provision  
5 of the law.

6 The State has responded by suggesting that there  
7 is Office of the Attorney General guidance that says a  
8 similarity between the internal components and a  
9 function of the firearms in question is not vague.

10 The defendants translate this in other words to  
11 say an unlisted weapon must have interchangeable  
12 internal parts with the listed weapon to qualify as a  
13 copy, not merely a similar appearance.

14 That doesn't help. The State has offered an  
15 Attorney General's Opinion, but that is not in the  
16 law, and there are real questions, Your Honor, as to  
17 whether or not law-abiding, responsible citizens of  
18 Maryland actually know what these copycat weapons are.

19 It is not to be left --

20 THE COURT: I'm sorry. Just let me understand.

21 The copycat provisions of this new law, are they  
22 different from what has been in effect?

23 I mean obviously most of these assault rifles  
24 have been listed and regulated for sometime. The  
25 copycat provision, is that new? Did something change?

1 MS. WOODWARD: That is a new provision, Your  
2 Honor, that a firearm that's a copycat of a previously  
3 restricted is now banned. But it is that point, Your  
4 Honor, that is where the challenge lies, because one  
5 cannot distinguish between these firearms as an  
6 average, law-abiding responsible citizen of Maryland.

7 So one does not know if there's an attempt to  
8 purchase a copycat of a banned or not. It's too vague  
9 for the citizens to be able to know where there will  
10 be criminal penalties, and it is likewise challenging  
11 for the dealers, Your Honor, to be able to assess  
12 their sales in light of the vagueness of the copycat  
13 provisions.

14 THE COURT: Obviously you cited general case law  
15 on vagueness. Are you aware of this particular issue  
16 of vagueness being applied or resolved or ruled on in  
17 any other case applicable to copycat weapons?

18 Is there anything similar to what you are  
19 presenting to me now, any court ruling that you know  
20 of so far?

21 MS. WOODWARD: I don't have anything that comes  
22 to the ready, Your Honor. If I may take a --

23 THE COURT: Well, there may not be any. I don't  
24 know.

25 MS. WOODWARD: Right, right.



1 THE COURT: I mean I'm asking you.

2 MS. WOODWARD: Right.

3 THE COURT: May we can get to that later.

4 MS. WOODWARD: Your Honor, I was going to move  
5 from likelihood of success on the merits to balance of  
6 equities and the other factors of Winter, the  
7 requirements of Winter in a TRO.

8 THE COURT: Sure.

9 MS. WOODWARD: The balance of equities favors  
10 maintaining the status quo, Your Honor.

11 The defendants' enforcement of these  
12 unconstitutional provisions of the Act will  
13 irreparably injure plaintiffs' fundamental  
14 constitutional rights insofar as the plaintiffs will  
15 be unable to acquire and possess these certain  
16 commonly used firearms and standard-issued magazines  
17 for the purpose of defending themselves in their  
18 homes, and that is as of today.

19 This does potentially expose the individual  
20 plaintiffs and the individual members of the  
21 association plaintiffs to a risk of injury, perhaps  
22 even death, should a defensive need for a firearm  
23 arise or criminal prosecution should occur should they  
24 decide to exercise this fundamental constitutional  
25 right, despite the Act's provisions.

1           The benefits to the plaintiffs in obtaining a  
2 temporary restraining order, which would enable the  
3 plaintiffs to continue to exercise this fundamental  
4 right to purchase and keep these commonly used  
5 firearms for purposes of self-defense, greatly  
6 outweighs any potential harm to the defendants that  
7 would result from the granting of a TRO.

8           THE COURT: Now let me ask you, in this case,  
9 and again, we are not talking about Doe at the moment,  
10 if I recall correctly from the affidavits, most of  
11 your clients, the individual ones, that would want  
12 them for the home already have a number of these kind  
13 of to-be-banned weapons, and they are not being  
14 precluded from keeping those, as best I understand.

15           MS. WOODWARD: There's no preclusion on the  
16 keeping, Your Honor. But there's also no rationing of  
17 the right within Heller, or any of the Fourth Circuit  
18 case law, to suggest that by the mere ownership of one  
19 available firearm means that one does not have the  
20 constitutional right to secure another.

21           THE COURT: But if you are talking about  
22 likelihood of harm and balancing of the equities, and  
23 the need to have these weapons for self-defense in the  
24 home, they have that ability now with the weapons that  
25 they've got.

1 MS. WOODWARD: The individual plaintiffs, as  
2 part of this complaint, that is correct, Your Honor.

3 The association plaintiffs, the individual  
4 members of association plaintiffs, of which there are  
5 potentially 8,000 of which we know in the State of  
6 Maryland, also are affected by this ban, the  
7 to-be-banned firearms.

8 The possibility that a firearm that one  
9 currently has in one's home being rendered inoperable,  
10 broken, a failure of some type, these plaintiffs,  
11 although there may be firearms in their homes at this  
12 time, they will be prevented from acquiring the types  
13 of firearms that they have previously chosen, and  
14 would choose again, for defense of self in the home.

15 So I appreciate Your Honor's point that at least  
16 as to the individual plaintiffs who are before Your  
17 Honor on this motion have access, and may continue to  
18 have in their home, but it doesn't mean that the right  
19 is restricted simply because you already possess.

20 Again, for the purposes of self-defense, the  
21 desire to acquire new is a valid choice in this  
22 instance, Your Honor.

23 The public interest that the State puts forth,  
24 social science evidence that suggests that the types  
25 of firearms to be banned are used in an overwhelming

1 number of crimes, that social science evidence, Your  
2 Honor, the plaintiffs will be able to demonstrate that  
3 that evidence will show that it's less than three  
4 percent of crimes that these to-be-banned firearms are  
5 involved in.

6 For what it's worth, Your Honor, the State's  
7 attempt to put forth its social science evidence on  
8 this point, they suggest that it is only under a  
9 rational basis review or at most, intermediate  
10 scrutiny. But again, our argument is we are looking  
11 at these issues under strict scrutiny, and the State's  
12 burden is much higher than the mere introduction of  
13 social science evidence, as they have done.

14 The balance of equities, Your Honor, still on  
15 that point, there is a recent case by Judge Garbis in  
16 this district, PJK Food Service Corp. v Panache  
17 Cuisine, 2013 U.S. District LEXIS 50028 at 2 and 3.  
18 It was a 2013 case by Judge Garbis.

19 The Court stated that the balance of equities  
20 can include the courts considering, one, any  
21 irreparable harm that would be sustained by plaintiff  
22 if a TRO turns out to be erroneously denied against,  
23 two, any irreparable harm that would be sustained by  
24 the defendant if a preliminary injunction or TRO turns  
25 out to be erroneously granted.

1           So with that construct, Your Honor, I would also  
2 point the Court to Chase v. Town of Ocean City, also  
3 District of Maryland, at 825 F.Supp.2d 599.

4           In that case, Your Honor, there was a challenge  
5 to a city ordinance that threatened the plaintiffs  
6 with fines for exercising a First Amendment right.  
7 Ordinarily, such a threatened injury to plaintiff will  
8 easily outweigh whatever burden the injunction may  
9 impose because the government is in no way harmed by  
10 the issuance of an injunction that prevents the State  
11 from enforcing unconstitutional restrictions.

12           That Town of Ocean City case obviously was  
13 within the context of the First Amendment. We would  
14 submit to Your Honor that the Fourth Circuit case of  
15 Chester would liken the Second Amendment fundamental  
16 right to bear arms with the First Amendment free  
17 speech right, and that the Court could look to First  
18 Amendment context and find it equally applicable to  
19 the case here, and that in this instance, Your Honor,  
20 the State does not have an interest in the enforcement  
21 of an unconstitutional regulation.

22           Our plaintiffs, on the other hand, Your Honor,  
23 have a daily violation of constitutional rights that  
24 outweighs the government's purported interest. As we  
25 move into public interest supporting a TRO, obviously

1 those two factors, we can kind of morph in and out of  
2 the two of them.

3 But moving to the more specific on public  
4 interest, it is our position, Your Honor, that a TRO  
5 is necessary to preserve the status quo of the  
6 plaintiffs' right to acquire these certain commonly  
7 used firearms and magazines for self-defense in the  
8 home pending this Court's determination of whether to  
9 grant a preliminary injunction.

10 The granting of the plaintiffs' request for a  
11 TRO would allow both plaintiffs and defendants an  
12 opportunity to fully brief this issue at the  
13 preliminary injunction stage. But as I said a moment  
14 ago, the public has no interest in the enforcement of  
15 an unconstitutional law.

16 The public interest is best served by granting  
17 our requested TRO because it would ensure that the  
18 defendants do not impermissibly prevent law-abiding,  
19 responsible citizens from exercising a fundamental  
20 right to acquire and possess commonly used firearms in  
21 their homes for self-defense.

22 I would note, Your Honor, that if the public  
23 interest is so strong in banning these firearms and  
24 magazines as of today, why was it not so strong as to  
25 require an immediate ban earlier this year?

1           The General Assembly passed this Act on April  
2           4th. Defendant O'Malley signed the Act on May 16th.  
3           The State has identified nothing in the interim that  
4           suggests that the public is any more at risk today  
5           than they were yesterday.

6           THE COURT: Isn't it fairly common to give the  
7           public some time to adjust to a new law? I mean are  
8           you complaining that there was not time between April  
9           and October for folks to make plans, perhaps acquire  
10          additional weapons, perhaps file a lawsuit earlier?

11          MS. WOODWARD: That is not our point, Your  
12          Honor. Our point is, as it relates to the State's  
13          argument that it is in the public interest to deny a  
14          TRO today, our point is if it is in the public  
15          interest to deny the TRO such that the to-be-banned  
16          firearms -- such that the firearms ban goes into  
17          effect today, and the limitation on magazine  
18          capacities goes into effect today, why is today any  
19          more of a risk to public safety than was yesterday?

20          The State has not been able to demonstrate, has  
21          not refuted that particular point, that yesterday is  
22          any different from today.

23          To the point of irreparable harm, Your Honor,  
24          plaintiffs will suffer irreparable harm without a TRO.

25          At the very heart of this, Your Honor, is a

1 fundamental constitutional right. To be able to  
2 exercise that fundamental constitutional, enumerated  
3 right, one must be able to purchase a firearm of  
4 choice for use in the home that is in common use, and  
5 is not dangerous and unusual. It is that fundamental  
6 right that we are here on today.

7 A fundamental right is no right at all if a  
8 restraint on its exercise cannot be addressed by the  
9 Court the day of its implementation.

10 THE COURT: I'm going to need to ask you to wrap  
11 up so I have time for the rest of the arguments.  
12 Thanks.

13 MS. WOODWARD: I am concluding, Your Honor.

14 Your Honor has already pointed out some of the  
15 arguments that actually the State had made in its  
16 opposition papers, which was that the individuals  
17 perhaps already own a firearm for self-defense.  
18 Again, we submit that there is no rationing of the  
19 right available to the defendants.

20 This Court has the jurisdiction to enter a TRO.  
21 The defendants don't dispute that there is a  
22 constitutional right of individual business and member  
23 associations.

24 Plaintiffs, they do not dispute that beginning  
25 today the plaintiffs will be unable to acquire and



1 possess in their homes for self-protection certain  
2 commonly used firearms that will be banned, and the  
3 defendants have pointed to no adequate remedy at law  
4 by which the plaintiffs may exercise their rights in  
5 the absence of equitable relief from this Court.

6 Thank you, Your Honor.

7 THE COURT: Thank you very much. I appreciate  
8 it.

9 Mr. Fader.

10 MR. FADER: Good morning. May it please the  
11 Court.

12 By enacting Chapter 427 of the 2013 laws of  
13 Maryland, the General Assembly created a comprehensive  
14 measure to stem gun violence in Maryland. Two of the  
15 provisions that were critical in Chapter 427 were the  
16 provisions that are at issue in the Tardy case, a ban  
17 on the future purchase of assault weapons, and a ban  
18 on the future purchase of high-capacity magazines.

19 Through a lot of evidence that was presented to  
20 the General Assembly, the General Assembly determined  
21 that the public interest of the State of Maryland was  
22 best served by banning these very dangerous weapons  
23 that have led to significant -- that have led to mass  
24 shootings and other things that the General Assembly  
25 was very concerned about.

1 THE COURT: On that point, the evidence that was  
2 presented to the General Assembly, have you given me a  
3 comprehensive set of that in your memorandum response  
4 so far?

5 There were a few -- there were some exhibits  
6 attached, and you did refer to some testimony, but I'm  
7 not sure if I've got sort of, as of yet, a full  
8 picture of what evidence was presented to the General  
9 Assembly and whether it made any specific findings  
10 about this law.

11 MR. FADER: I don't believe we've given you a  
12 comprehensive set. As I understand it, the General  
13 Assembly did not make specific findings with respect  
14 to this law. It's the unusual case in which the  
15 General Assembly makes specific findings, and it's the  
16 information before it. In fact, I think the Court's  
17 review is not limited to the information before the  
18 General Assembly.

19 THE COURT: That's true.

20 MR. FADER: The Court can consider other  
21 evidence as well, and we've cited other evidence,  
22 including the evidence relied on by the District of  
23 Columbia Court of Appeals in the Heller II case,  
24 addressing exactly the same laws that are being  
25 challenged in this case before Your Honor.

1 THE COURT: Right.

2 MR. FADER: I just diverge for one second  
3 because in describing the law with respect to assault  
4 weapons, I believe there was some confusion before.

5 The law with respect to assault weapons is  
6 accomplished in three ways. One is there's a specific  
7 list of specific assault long guns that are covered.

8 Second, the law also applies to their copies.

9 THE COURT: Right.

10 MR. FADER: And third, there's a separate  
11 copycat provision. So the copies and copycat are two  
12 separate things.

13 Copies is what was briefed by the two parties.  
14 That's what has been in the law since 1996. That has  
15 not changed. There's nothing that has changed with  
16 respect to having copies covered.

17 There's a new provision that is a copycat  
18 provision that specifically identifies as copycat  
19 weapons weapons that have any two of three different  
20 features, being a folding stock, a grenade launcher or  
21 a flash suppressor.

22 That's the only thing that's new. It's not  
23 subject to any vagueness challenge that was raised in  
24 the complaint. In fact, it seems very  
25 straightforward. You have two of those things or you

1 don't.

2 The provision that was raised in the complaint  
3 by the plaintiffs as a claim of vagueness was the  
4 copies provision, which has not changed in the last 17  
5 years.

6 It is not vague, and even if it were otherwise  
7 to be determined that it could be ambiguous, it has  
8 been interpreted by the Maryland State Police and the  
9 Attorney General to basically be not just a cosmetic  
10 similarity, but it has to really be the same gun. It  
11 has to have interchangeable parts, and that's not  
12 something that there has been any concern raised with  
13 the way that has been enforced or lack of  
14 understanding of that in the 17 years that it has been  
15 in the law.

16 THE COURT: That was one of my questions. So  
17 that has not been challenged since 1996, I mean at  
18 least in the form of a lawsuit or any ruling on it by  
19 the Court of Appeals, anything?

20 MR. FADER: Certainly nothing that I am aware  
21 of, Your Honor, and I think that provision is not only  
22 in Maryland law, but it is a common provision in other  
23 states' laws that have banned assault weapons that are  
24 in place now as well.

25 I've just confirmed that there have been no

1 lawsuits that people who are even more familiar with  
2 this than I am are aware of either.

3 THE COURT: Okay. As to the copycat weapons, as  
4 you said, there has to be two of the three  
5 specifically identified features in order for it to be  
6 a copycat.

7 MR. FADER: That's correct, and these are some  
8 of the features that make these weapons so dangerous  
9 and able to be used in these incidents, some of which  
10 we referred to, some of these mass shooting incidents  
11 that have occurred in recent years that have been so  
12 devastating to society.

13 One more point of clarification. I think Ms.  
14 Woodward incorrectly said that we identified in our  
15 brief these assault weapons to be banned as the ones  
16 used in most crimes. I don't think that we said that  
17 in our brief. In fact, that's not true. The vast  
18 majority of weapons used in crimes as a general matter  
19 are handguns.

20 It's the use of assault weapons in a minority of  
21 crimes, but in the particularly heinous crimes that  
22 give rise to mass casualties that make them so  
23 particularly dangerous.

24 I wanted to clarify that as well.

25 THE COURT: Sure.

1 MR. FADER: Assault weapon bans in fact are not  
2 new, nor are challenges to their constitutionality.  
3 But what would be completely unprecedented would be a  
4 finding that assault weapon bans are unconstitutional.

5 Your Honor has already referred to the Heller II  
6 decision in which the Court of Appeals for the  
7 District of Columbia reviewed essentially the same  
8 bans, did a careful review of legislative history in  
9 those cases, other social science evidence, and  
10 concluded they were in fact constitutional.

11 A California intermediate appellate court in the  
12 People v. James decision also reviewed these laws and  
13 came to the same conclusion. We cited that case in  
14 our brief as well.

15 And it is the dangerousness of these weapons  
16 that are derived from military weapons that separates  
17 them from weapons that have been found to be  
18 protected, such as handguns, which were the issue in  
19 Heller and McDonald, and in other cases that have been  
20 before the Court.

21 On the point that was addressed as far as the  
22 similarity between these types of items and the M16,  
23 the Heller II decision I think deals with that very  
24 explicitly, and that's at page 1263, 670 F.3d 1263,  
25 where it dealt with this very issue of the quote from

1        Heller about M16 rifles.

2                And looking at evidence that was before the  
3        District Court in that case, it noted that the M16 is  
4        automatic and the AR-15 is semiautomatic, but said  
5        semiautomatics still fire almost as rapidly as  
6        automatics, based on evidence that was presented in  
7        that case.

8                The District of Columbia Court of Appeals  
9        specifically said it is difficult to draw meaningful  
10        distinctions between the AR-15 and the M16 based on  
11        that evidence. In fact, the Supreme Court in prior  
12        cases also reviewed in that Heller II decision has  
13        drawn comparisons between those two.

14                So by virtue of that, the Supreme Court's  
15        reference to seemingly, without the need for further  
16        analysis, the right to ban M16's and that kind of  
17        military weapon strongly suggests that the same result  
18        would be reached in this case.

19                Turning to the specific factors that the  
20        plaintiffs need to prove to demonstrate a right to  
21        preliminary injunctive relief, and that applies to  
22        preliminary injunction, as well as a temporary  
23        restraining order, they, of course, need to satisfy  
24        all four of those factors, not just one, two or three.

25                Taking first the factor of irreparable harm, I

1 thin it's pretty clear on this record that there is no  
2 prospect of irreparable harm to any of the plaintiffs  
3 as a result of this lawsuit going into effect.

4 The delay in bringing this lawsuit has been  
5 noted by the Fourth Circuit as an indication of an  
6 absence of irreparable harm. The plaintiffs are  
7 simply incorrect in stating that they would have been  
8 met by a standing challenge if a lawsuit had been  
9 filed earlier.

10 A declaratory judgment action to challenge a law  
11 in advance of its effective date is a common thing and  
12 helps to avoid last-minute challenges, for people to  
13 walk in and have created an emergency of their own.  
14 That itself is a factor that the Fourth Circuit has  
15 looked at and said is an indication of the absence of  
16 irreparable harm.

17 Moreover, as has been noted, each of the  
18 individual plaintiffs already possesses the weapons  
19 and magazines that are at issue, and if it really were  
20 essential to self-defense, would have the ability to  
21 use them. There simply has been no indication of any  
22 irreparable harm at all.

23 With respect to the likelihood of success on the  
24 merits, as to the assault weapons ban, first of all,  
25 every court that has looked at the constitutionality



1 of such ban before, and there haven't been many, but  
2 they have universally upheld them.

3 In fact, the Supreme Court in Heller did not  
4 identify a right to any category, a subcategory of  
5 weapons that somebody wants for self-defense. The  
6 Supreme Court identified an individual right protected  
7 by the Second Amendment for self-defense, for  
8 self-defense in the home, and in that context,  
9 recognized that handguns were unquestionably the  
10 category of weapon most used for self-defense within  
11 the home. I think the word the Supreme Court used was  
12 the overwhelming choice. If handguns are the  
13 overwhelming choice, then no other firearm can be the  
14 overwhelming choice.

15 Here, we are dealing with a specific subclass of  
16 long guns that is not the overwhelming choice of  
17 individuals for self-defense within the home, and is  
18 not protected as such, and, therefore, lies outside,  
19 at a minimum, outside the core protection of the  
20 Second Amendment.

21 That gets to the scrutiny issue that was being  
22 discussed earlier. The Fourth Circuit has very  
23 clearly identified that when the burden of a  
24 regulation falls on a right that is outside the core  
25 right of self-defense within the home, it is subject

1 not to strict scrutiny, but to intermediate scrutiny.

2 THE COURT: Assuming for the moment that we are  
3 talking about intermediate scrutiny, would you  
4 articulate for me just specifically the substantial  
5 purpose, the governmental substantial purpose served  
6 by this law, and the reasonable fit.

7 MR. FADER: Certainly, Your Honor.

8 The substantial purpose is the protection, is  
9 public safety from gun violence, and that certainly  
10 has been recognized as a compelling governmental  
11 interest, including by the Fourth Circuit in the  
12 Woollard case and the Masciandaro case, and the  
13 Chester case as well. So it is protecting the public  
14 from gun violence and furthering public safety.

15 The reasonable fit lies in the harm, protecting  
16 the public from the harm that these weapons can  
17 inflict. That was, of course, the subject of the  
18 testimony and some of the evidence that we presented,  
19 and a lot of the evidence that was before the General  
20 Assembly, and considered by the United States Court of  
21 Appeals for the District of Columbia Circuit in Heller  
22 II, that identifies the public safety risks of these  
23 guns, of course, as culminated in some of the  
24 tragedies that the General Assembly had very fresh in  
25 its mind when it enacted this law.

1           So the substantial fit is from the fact that  
2           these very dangerous weapons, to the extent that they  
3           proliferate and end up causing a danger to public  
4           safety, that the General Assembly has the right to  
5           determine that they are too dangerous in light of  
6           their specific features, the features that have caused  
7           them to be on this list, when people have access to  
8           handguns and other types of long guns for the lawful  
9           purpose of self-defense within the home, as well as  
10          for other purposes, like hunting and sport shooting,  
11          and things of that nature.

12          So it is not a ban on all weapons that could be  
13          used for self-defense. Those rights are preserved,  
14          the rights that the Heller court and the Fourth  
15          Circuit following from that have found must be  
16          protected by having weapons that can be used for  
17          self-defense within the home.

18          This does not affect that. This affects a  
19          particularly dangerous class of weapons suited for  
20          military-style assaults, not the weapon overwhelmingly  
21          chosen and best suited for self-defense within the  
22          home.

23          THE COURT: You have alluded to this a little  
24          bit. As I understood your papers, of course, the  
25          purpose generally is public safety, but specifically,

1 you are focused on the particular dangerousness of  
2 these weapons in connection with what I'll just call  
3 mass murders.

4 I also saw a reference to the safety of law  
5 enforcement officers. Is that something --

6 MR. FADER: It certainly is, Your Honor, and  
7 that was another issue that was discussed in  
8 particular in the Heller two decision, that these pose  
9 particular risks to law enforcement.

10 They are, again, they are designed to be able to  
11 be used for, you know, military-style assaults, and  
12 that's why they are called assault weapons, and that  
13 poses a particular risk to police officers in the  
14 field if they were to come in contact with somebody  
15 with these types of weapons, as distinct from a  
16 handgun or a different type of long gun. It's a  
17 particular danger to law enforcement.

18 THE COURT: As opposed to an argument that  
19 crimes generally are more likely to be committed by  
20 long guns. I mean you're not making that --

21 MR. FADER: Not at all. In fact, the opposite  
22 is true. Crimes generally are more likely to be  
23 committed using handguns.

24 THE COURT: Right. If we go forward with the  
25 preliminary injunction hearing -- I'm just curious at

1       this point -- do you have in mind additional evidence?  
2       Would you expect me simply to be looking at what's in  
3       your memorandum now and what's discussed in the Heller  
4       II, the D.C. Circuit Heller opinion, or have you  
5       contemplated that yet?

6               MR. FADER: We haven't gotten to the point of  
7       what additional evidence we might put in at that  
8       point. I think a couple of things on that.

9               First of all, I think the evidence that's there  
10       is certainly sufficient to show the reasonable fit to  
11       the government's interest.

12              Secondly, I think that obviously we are not here  
13       on the preliminary injunction, but there are a number  
14       of factors that I think could not be overcome on a  
15       preliminary injunction motion by the plaintiffs,  
16       including the complete absence of irreparable harm.

17              So I would question the utility of that at this  
18       point as opposed to proceeding to a hearing on the  
19       merits on a permanent injunction. But we have not  
20       gotten to the point of deciding what other evidence  
21       there might be. This was filed on Friday.

22              THE COURT: Sure, sure. Again, this is  
23       something I may just wind up discussing additionally  
24       with counsel, but I would have a question about  
25       whether, assuming it goes forward to an injunction

1 hearing, whether we even need to call it a preliminary  
2 injunction or whether it would make sense to just get  
3 to the merits, and whether there is or is not going to  
4 be a permanent injunction so that you all could get to  
5 the Fourth Circuit.

6 MR. FADER: I think there is a lot of sense in  
7 that, Your Honor.

8 I will only touch on briefly, I think that it is  
9 very clear that there is no evidence in the record  
10 that one needs more than ten rounds at one time in  
11 order to have a defense of the home. I think the  
12 plaintiffs have promised such evidence to come, but it  
13 is certainly not in this record and not something that  
14 the Court can rule on.

15 As far as the equal protection claim, that is a  
16 claim that would be subject to a rational basis.  
17 There is no suspect class involved in this, and for  
18 reasons we -- unless Your Honor has questions, I don't  
19 feel the need to go into further -- we think it's  
20 clear that retired law enforcement officers are not  
21 similarly situated with respect to this specific  
22 provision.

23 I addressed the vagueness issue I think already.

24 As far as the public interest, the General  
25 Assembly of the State of Maryland has identified what

1 is in the public interest here based on the evidence  
2 that the public safety requires this.

3 The fact that the General Assembly did not enact  
4 this as an emergency law to take effect immediately is  
5 irrelevant to that. The General Assembly determined  
6 that the public safety required this Act.

7 Moreover, Your Honor is correct. It's not  
8 unusual to have a time period. In fact, it is much  
9 more usual for all laws to go into effect in Maryland  
10 on October 1st. That's the standard. That's the  
11 norm.

12 Whether the recent dramatic increase in sales of  
13 these weapons in the last few months, if the General  
14 Assembly had to do it over again, whether it would  
15 have done it the same way is a question that nobody  
16 will know. But the General Assembly's choice was to  
17 have it go into effect in the normal course on October  
18 1st, and that doesn't at all implicate whether there  
19 is in fact a public interest basis for the law.

20 Unless Your Honor has further questions on this,  
21 I think I'll sit down.

22 THE COURT: That's fine.

23 MR. FADER: Thank you.

24 THE COURT: Thank you.

25 Do you all want to move on to the Doe case?

1 MS. WOODWARD: Your Honor, if I could just add  
2 two things to the record vis-a-vis this particular  
3 motion?

4 THE COURT: Sure.

5 MS. WOODWARD: Your Honor had asked a question  
6 regarding vagueness, and whether there was a case to  
7 bring to the Court's attention.

8 There is a case, Your Honor, People's Rights  
9 Organization versus City of Columbus, Court of Appeals  
10 for the Sixth Circuit. The court had noted in  
11 reference to other cases that nothing in the ordinance  
12 provided sufficient information to enable a person of  
13 average intelligence to determine whether a weapon  
14 they wish to purchase has a design history of the sort  
15 which would bring it within the ordinance's coverage,  
16 and there was a holding of a similar provision invalid  
17 because ascertaining the design history and action of  
18 a pistol is not something that can be expected of a  
19 person of common intelligence.

20 The record in that case indicated that the  
21 average gun owner knows very little about how the gun  
22 actually operates vis-a-vis its design features.

23 Now I don't want to suggest that a firearm user  
24 does not know how to operate their firearm. I don't  
25 want to put that out there and suggest that people



1 don't know what they are doing, but the mechanical  
2 distinctions, Your Honor, are beyond the common  
3 citizen.

4 THE COURT: Do you have a cite to that Sixth  
5 Circuit case?

6 MS. WOODWARD: The cite to the Sixth Circuit  
7 case, Your Honor, 152 F.3d 522, 1998.

8 THE COURT: Thank you.

9 MS. WOODWARD: Also on magazine rounds, Your  
10 Honor, you had a specific question regarding really,  
11 what's the difference between 10 and 20, I think to  
12 get to the heart of that question.

13 We would submit, Your Honor, that it is a  
14 15-to-19 round magazine that is common in popular  
15 handguns and commonly used handguns. There are no  
16 10-round magazines available for certain popular  
17 commonly used handguns.

18 We are not asking for unlimited capacity. What  
19 we are talking about here is what would be used on  
20 standard handguns that are protected by Heller.

21 I just wanted to make sure that we had  
22 information in the record that it is in excess of 10,  
23 perhaps less than 20, in that 15 to 19 range, Your  
24 Honor, that a plaintiff would use to have the  
25 effective use of a handgun in the home.

1 THE COURT: Okay.

2 MS. WOODWARD: Thank you, Your Honor.

3 THE COURT: Thank you.

4 MR. SWEENEY: May it please the Court, this is  
5 John Parker Sweeney again for the plaintiffs,  
6 addressing the Doe lawsuit.

7 We are here simply asking to be able to acquire  
8 handguns for use in the home for defense. This is the  
9 core right of the Second Amendment that was addressed  
10 by Heller and has been embraced by the Fourth Circuit.

11 The Fourth Circuit characterized it in Chester  
12 as the right of a law-abiding, responsible citizen to  
13 possess and carry a weapon for self-defense.

14 These rights are newly articulated, Your Honor.  
15 It has only been five years since Heller was decided  
16 in the Supreme Court, only three since McDonald came  
17 down, clearly applying Heller to the states.

18 Maryland, as you know, has no constitutional  
19 right to bear arms. It is one of the few states that  
20 doesn't. It never has. There's no tradition here in  
21 Maryland.

22 And it's not surprising that we hear hostility  
23 not only in this courtroom, but throughout the state,  
24 to the exercise of that newly articulated right.

25 I submit, Your Honor --

1 THE COURT: I will just interject to say that I  
2 am not hearing hostility to the core fundamental right  
3 of having at least handguns in the home for  
4 self-defense. I don't think that's what this case is  
5 about, not in this courtroom.

6 MR. SWEENEY: Well, Your Honor, when a hundred  
7 thousand individuals flocked to the shops, to the  
8 sporting good stores, to the Winks, to the Atlantic  
9 Guns to purchase firearms this year, they  
10 overwhelmingly chose handguns, and that is the vote  
11 with the feet of the citizens of Maryland for their  
12 weapon of choice for self-protection in the home.

13 Now the State said they regret that this has  
14 happened. The Maryland State Police have issued a  
15 number of releases, and this is not my first time in  
16 court with Mr. Fader and Mr. Friedman with respect to  
17 handgun regulation in Maryland. But this is my first  
18 time in federal court, Your Honor.

19 The reason we are here in federal court today is  
20 that today there is a de facto ban on acquiring  
21 handguns. Unless you are active or retired law  
22 enforcement or military, today you cannot go to the  
23 Winks, you cannot go to Atlantic Guns and fill out a  
24 Form 77R to purchase a handgun. You will be turned  
25 away. There is a moratorium.

1           When the General Assembly passed the handgun  
2           qualification requirement, I cannot believe, and there  
3           is no indication, that they would require on October 1  
4           a handgun qualification license for the purchase of a  
5           handgun if there was none that could be obtained in  
6           the State of Maryland, because the State of Maryland  
7           had not implemented the system.

8           We have learned from the State's response,  
9           Captain Dalaine Brady's affidavit, that they were  
10          aware of this qualification requirement being put into  
11          the Bill even before the Bill was introduced, that  
12          they had millions of dollars that were allocated for  
13          implementing the handgun qualification license  
14          requirement.

15          Today we've learned that they are going to offer  
16          them for the first time by application today, and that  
17          the State does not expect applications to come in  
18          right away. As Dalaine Brady's affidavit says, she  
19          expects they will be staggered as they come in.

20          Why is that? That's because the training and  
21          fingerprinting requirements for the new handgun  
22          qualification license aren't fully up and running and  
23          available to citizens.

24          I think it is quite telling that the State, in  
25          its opposition papers to our motion, nowhere says a

1 date certain when the first handgun qualification  
2 license will issue. They don't know, or if they know,  
3 they certainly are not sharing it with us.

4 This is hostility to the exercise of the right  
5 to acquire a handgun for self-protection in the home.

6 THE COURT: You're not challenging the licensing  
7 law is unconstitutional, are you?

8 MR. SWEENEY: I am not, but as implemented, it  
9 is becoming closer and closer to an implemented  
10 challenge. But that's not what I am here for today,  
11 Your Honor.

12 Today, no one, if you are not police or  
13 military, can purchase a handgun. No one can go to a  
14 store and apply, fill out a Form 77R for a handgun,  
15 because they don't have a handgun qualification  
16 license. This is a de facto moratorium.

17 Citizens of Maryland cannot buy a handgun today,  
18 and we don't know how long that period will last.  
19 We've asked. They haven't told us. We don't know.

20 So the denial of a right certainly starts with  
21 the delay in allowing its exercise. Individuals,  
22 individual members of association plaintiffs here  
23 today who want a handgun can't purchase it.

24 THE COURT: But you are not suggesting that it  
25 is unconstitutional, are you, that one --

1 MR. SWEENEY: I am suggesting -- I'm sorry.

2 Excuse me, Your Honor.

3 THE COURT: I'm sorry. Let me just finish.

4 That there be licensing and regulation schemes  
5 in effect that would require, for example, a  
6 background check, a delay?

7 I mean it is not unusual, I don't think, for  
8 people to have to wait some period of time to purchase  
9 a weapon.

10 MR. SWEENEY: The law of Maryland establishes a  
11 seven-day waiting period, Your Honor, for the purchase  
12 of a handgun. That law has been on the books for many  
13 years. It certainly predates Heller. No one has  
14 reviewed its constitutionality under Heller, and we  
15 are not here today challenging the constitutionality  
16 of that requirement. What we are challenging is  
17 something more than that.

18 The seven-day waiting period associated with the  
19 77R application to purchase a handgun has long been on  
20 the books. We have established only earlier this year  
21 that once that waiting period expires, a handgun may  
22 be transferred.

23 That is not the issue. The issue is when will  
24 anyone even be able to fill out a 77R to start that  
25 seven-day waiting period running? We don't know when

1 that could be. At the earliest, it will be sometime  
2 in November, at the earliest.

3 We have a de facto moratorium. They are not  
4 ready. They don't have the process in place. Their  
5 failure to implement the handgun qualification license  
6 in a timely manner has resulted in a catch-22. You  
7 need a license, but you can't get one. That's where  
8 we are today, and they haven't told us when it will  
9 happen.

10 Now, there is also a problem of the confusion  
11 which has been created by the conflicting signals from  
12 two of the defendants with respect to the massive  
13 backlog of applicants for handguns.

14 We have something approaching 50,000 applicants  
15 for handguns right now whose applications have not  
16 been processed and approved or not disapproved by the  
17 Maryland State Police.

18 The Attorney General's Office earlier this year,  
19 in response to a delegate inquiry, opined that anyone  
20 in the backlog as of October 1 could not receive  
21 transfer of that handgun, once approved, unless they  
22 had a handgun qualification license.

23 Suddenly, last week, the Maryland State Police  
24 said well, we're not going to enforce that  
25 requirement. It's not required, or maybe it's

1 required, but we are not going to enforce it, and has  
2 thrown complete confusion into the community.

3 What we are asking for here today, Your Honor,  
4 is a temporary restraining order and/or a preliminary  
5 injunction for at least 90 days to allow the State to  
6 get its act together, to have the handgun  
7 qualification license process up and running, to allow  
8 an opportunity for citizens to apply for a handgun  
9 qualification license, to take that license down to a  
10 shop and apply for a firearm. That's what we are  
11 asking for today.

12 As I understand it, the State has not challenged  
13 that this is a core Second Amendment right, but you  
14 can't exercise it if you can't buy a handgun.

15 They said this is a temporary, a temporary  
16 processing delay, and that we do not have a right to  
17 immediate possession.

18 We're not asking for immediate possession.  
19 That's not what we are asking here. We are asking for  
20 the law to be stayed that will allow us to continue to  
21 fill out Form 77R's and apply for the purchase of  
22 handguns while the process is implemented, and that's  
23 all we are asking for today. During this period of  
24 time the backlog can be processed and resolved.

25 Now one thing very important, and I want to be



1 very careful to distinguish because I fear that I may  
2 have struck with a little too broad a blade in my  
3 motions papers. We are not asking for this Court to  
4 stay all of Public Safety Article 5-117.1. We are  
5 only asking that the Court stay provisions (b) and (c)  
6 of that Article.

7 The reason we are only asking for those, those  
8 are what we call in the paper the handgun  
9 qualification license requirements. That is those  
10 provisions of the law that prohibit the sale, rental  
11 or transfer of a handgun to anyone without a handgun  
12 qualification license, and prohibit anyone from  
13 accepting that sale, rental or transfer without a  
14 handgun qualification license.

15 That's all we are asking to be stayed today,  
16 Your Honor. The State obviously misconstrued my  
17 papers, and we were all working on a tight deadline.  
18 We are not asking the application process to be  
19 stayed. We are not here for that today.

20 If the State is up and running today as they say  
21 they are -- and God bless them. I hope it works well,  
22 and things are up and running -- that's fine. We are  
23 not asking for a stay of that. What we want is a stay  
24 of the prohibitions, a stay of the prohibitions from  
25 our purchase today of handguns until the system is up

1 and running and handgun qualification licenses can be  
2 issued. Until then, only the police and the military  
3 can buy handguns.

4 We are proudly known as the Free State, Your  
5 Honor, but the Second Amendment and the Fourteenth  
6 Amendment to the Constitution were designed entirely  
7 so that we did not become a police state.

8 Citizens are entitled to purchase handguns for  
9 self-defense, and that is not happening today, and  
10 only Your Honor can change that.

11 Thank you.

12 THE COURT: Thank you, Mr. Sweeney.

13 Mr. Fader.

14 MR. FADER: Thank you, Your Honor.

15 I would just like to begin -- obviously Your  
16 Honor noted that you are not here in hostility to the  
17 fundamental right, nor is the State here in hostility  
18 to the fundamental right to self-defense in the home,  
19 including through the use of handguns, and this law is  
20 not hostile to that right.

21 This law requiring handgun qualification  
22 licenses in order to purchase handguns was enacted, as  
23 the rest of the package of laws in Chapter 427, for  
24 the purposes of protecting public safety based on  
25 scientific evidence of the value of this registration

1 system in keeping guns out of the hands of criminals.

2 Especially the fingerprint requirement that is  
3 part of the handgun qualification license severely  
4 curtails straw gun purchases that allow guns to get  
5 into the hands of people who should not possess them.

6 This is not a law that bans handguns or comes  
7 close to that, and the fact that there's an  
8 administrative process that individuals need to go  
9 through in order to get their handgun qualification  
10 license does not burden the Second Amendment right to  
11 ultimately possess those guns, and to have those guns  
12 in their homes for the purpose of self-defense.

13 There are administrative delays. There have  
14 been administrative delays in processing the firearm  
15 application, which I hope we made clear in our papers  
16 is a completely separate issue from the handgun  
17 qualification license that goes into effect today.

18 In fact, the process is up and running. I  
19 signed on this morning myself to make sure that it  
20 was, and established a log-in ID to get to the screen  
21 where you can start putting in your information to  
22 apply for one. So the system is up and running today.

23 The argument that Mr. Sweeney made about we know  
24 that there's not going to be any handgun qualification  
25 license issued until November, I certainly don't know

1 that. The process is underway for the application.

2 The State, by law, has 30 days to complete the  
3 review, but I don't think there's any indication that  
4 it is necessarily going to take that long for the  
5 first license to be issued, and there is not a  
6 challenge here to the underlying constitutionality of  
7 the requirement.

8 It's pure speculation to say that there are  
9 going to be delays out into the indefinite future in  
10 the issuance of these licenses, and as we noted in our  
11 papers, there's no case that we are aware of that says  
12 there is an immediate right to possession, without  
13 going through a reasonable administrative process that  
14 would result in background checks, including now  
15 through the extra layer of security of the fingerprint  
16 that is so important to making sure that the weapons  
17 don't get into the hands of people in whose hands they  
18 should not be.

19 There are two claims or at least two ways in  
20 which the plaintiffs have articulated their claim, the  
21 first, an allegation that there is essentially a de  
22 facto ban on possession of handguns, or the  
23 acquisition of handguns. It is certainly not a ban on  
24 the possession of handguns. Everybody who has a  
25 handgun and has had one continues to have one, and

1 handguns can be possessed and used for self-defense  
2 within the home.

3 With respect to future acquisition, the State  
4 has simply imposed a reasonable qualification process,  
5 and if there are going to be problems in that process,  
6 it's reasonable to let the process take its course and  
7 see how it actually functions before exercising the  
8 extraordinary equitable relief of enjoining a state  
9 statute that was enacted for the protection of public  
10 safety and protection to the citizens of the State of  
11 Maryland.

12 The second claim that has been made by the  
13 plaintiffs is really a complaint in search of a cause  
14 of action, and there is no legal claim or legal cause  
15 of action that they have articulated that could  
16 provide the basis for a temporary restraining order  
17 issued by the Court.

18 Their claim is that there is some sort of  
19 conflict between the Attorney General's Opinion that  
20 the law means what it says, which is you need a  
21 handgun qualification license to buy a handgun as of  
22 October 1st on the one hand, and the Maryland State  
23 Police's press release saying that they do not intend  
24 to enforce that requirement with respect to people who  
25 have applications to purchase firearms pending as of

1 October 1st.

2 There's no conflict between, on the one hand,  
3 the statement of what the law is, and on the other  
4 hand, the statement of an agency saying how they  
5 intend to enforce that law.

6 First of all, there's no conflict. Secondly,  
7 even if there were, the plaintiffs haven't identified  
8 an actual legal right or cause of action that would be  
9 implicated by that and that would provide any basis  
10 for equitable relief from this Court.

11 So the State does not believe that there is a  
12 likelihood of success with respect to either of the  
13 claims that the plaintiffs have raised on the merits,  
14 and much to the contrary, the likelihood of success  
15 weighs strongly in favor of the State.

16 With respect to irreparable harm, we also don't  
17 believe that there have been any allegations that rise  
18 to the level of a likelihood of irreparable harm on  
19 behalf of the plaintiffs. There has been a  
20 significant increase in purchases of handguns over the  
21 course of time since Chapter 427 has been enacted.

22 Handguns are possessed and have been acquired  
23 and will, through this new administrative process, be  
24 able to be acquired going forward, and there has not  
25 been any assertion of actual irreparable harm as a

1 result of either the past delays in processing of  
2 firearm applications, which are not even at issue in  
3 their lawsuit, or the speculation as to potential  
4 future delays in the process that has just gotten  
5 underway today.

6 The General Assembly of the State of Maryland  
7 determined, based on very strong scientific evidence  
8 linking these fingerprinting requirements to keeping  
9 handguns out of the hands of criminals, that it was in  
10 the public interest to the State of Maryland that this  
11 requirement went into place. The public interest,  
12 therefore, certainly weighs against issuing equitable  
13 relief.

14 And for the same reason, the balance of  
15 equities, based on the public interest supported by  
16 this law and this requirement going into effect, as  
17 contrasted with, really, an absence of anything other  
18 than possible economic harm to the dealer plaintiffs,  
19 also weighs against the issuance of preliminary  
20 equitable relief.

21 Unless Your Honor has any questions, thank you.

22 THE COURT: Thank you.

23 Mr. Sweeney.

24 MR. SWEENEY: If I may, Your Honor, very briefly  
25 respond?

1           One, the seven-day statutory requirement for  
2 Maryland State Police to act on 77R background checks  
3 has now morphed into almost four months. It takes  
4 four months after you apply for a handgun for you to  
5 hear back from the Maryland State Police on whether or  
6 not they have approved your application.

7           We have no idea how the handgun qualification  
8 license processing will go, but they have to do all  
9 the checks that are involved in the 77R application  
10 checking process, plus they have to look at and check  
11 fingerprints, and they have to look at and check  
12 training requirement satisfactions that aren't present  
13 in the current 77R.

14           So we expect it would take longer. We know  
15 there will be different personnel involved, but all  
16 I've heard again from Mr. Fader is speculation as to  
17 when it will be offered.

18           We have asked for very specific relief, Your  
19 Honor, very specific relief which will resolve this  
20 situation satisfactorily, consistent with the  
21 Constitution and the rights of the plaintiffs, as well  
22 as the needs of the State of Maryland, and that is  
23 that this Court issue a declaratory judgment that the  
24 de facto prohibition created by the State's catch-22  
25 is a violation of the Second Amendment, and a staying



1 of the effective date of only the prohibited  
2 paragraphs of Section 5-117.1(b) and (c), and allow  
3 the State to go ahead and process applications.

4 Thank you, Your Honor.

5 THE COURT: Thank you very much.

6 All right. Thank you all for your arguments.  
7 I'm going to take about a ten-minute recess, and I'll  
8 come back and give you a ruling.

9 (A recess was taken.)

10 THE COURT: Let me start by thanking counsel for  
11 their thorough arguments and briefing on short notice.  
12 I am here to consider the request for a temporary  
13 restraining order first in the Tardy v. O'Malley case  
14 and then in the Doe case.

15 Starting, of course, with the standards for a  
16 temporary restraining order, which will be the same in  
17 both cases, it is clear under current law, and I think  
18 this at least is not debated, that the plaintiffs have  
19 the burden of making a clear showing on all four  
20 factors in regard to a TRO or, for that matter, a  
21 preliminary injunction:

22 First, that they are likely to succeed on the  
23 merits; second, that they are likely to suffer  
24 irreparable harm; third, that a balance of hardships  
25 tips in the plaintiffs' favor; and fourth, that the

1 injunction is in the public interest, paying  
2 particular regard for the public consequences.

3 A couple of cases to cite for that are a 2013  
4 Fourth Circuit case, Pashby versus Delia, 709 F.3d  
5 307, and, of course, The Real Truth about Obama, 575  
6 F.3d 343, simply for the standard.

7 It is also worth noting that in terms of the TRO  
8 request, this is extraordinary relief. You need to  
9 demonstrate a true emergency, and I will point out  
10 again that it seems to me the plaintiffs have known  
11 for months that this law would take effect October  
12 1st, but the challenge was not filed until last  
13 Friday.

14 What the law does, and I am speaking now of the  
15 law at issue in Tardy, the challenge in Tardy,  
16 generally speaking, and I am not going to be precise  
17 about every statutory provision, but generally on and  
18 after October 1st, this law prohibits the sale and  
19 possession and receipt of assault weapons. These are  
20 defined as certain semiautomatic pistols, which are  
21 not the subject of the challenge. There are also  
22 certain semiautomatic rifles and shotguns that are  
23 defined as assault weapons and are affected by this  
24 new law.

25 The new law also generally prohibits sale and

1 receipt of detachable magazines with the capacity of  
2 over ten rounds of ammunition.

3 The law imposes criminal penalties for  
4 violation, but it permits individuals to retain,  
5 without penalty, all such long guns that were lawfully  
6 acquired, or where the purchase has been applied for  
7 prior to October 1st. Again, the assault pistol issue  
8 is not challenged.

9 So turning to the likelihood of success on the  
10 Second Amendment challenge, let me review some of the  
11 relevant case law. Of course, Heller, a Supreme Court  
12 case, established that the core element of the Second  
13 Amendment is an individual's right to use weapons in  
14 the defense of their home. Those weapons are those  
15 commonly possessed by law-abiding responsible citizens  
16 for that purpose, and the Court noted that handguns  
17 are far and away the preferred self-defense weapon for  
18 persons in their homes.

19 Heller, of course, involved a total ban on  
20 handguns.

21 This challenged law, the aspect of the law that  
22 is challenged, does not prohibit an entire class of  
23 weapons. It is a subclass of long guns only,  
24 classified as assault rifles.

25 The Second Amendment, as the Supreme Court

1 explained, does not protect dangerous and unusual  
2 weapons, which the Court in that Heller opinion at  
3 least mentioned included short barreled shotguns.

4 Heller was followed by the McDonald case, which  
5 described Heller as holding that the Second Amendment  
6 protects the right to possess a handgun in the home  
7 for the purpose of self-defense, and, of course, held  
8 the Second Amendment applicable to the states under  
9 the due process clause of the Fourteenth Amendment.  
10 So that's in part why we are here.

11 Counsel have referred to, and I agree it is a  
12 very significant Fourth Circuit opinion, U.S. versus  
13 Chester, 628 F.3d 673, from the Fourth Circuit, in  
14 2010. The Fourth Circuit adopted, as a number of  
15 other circuits have done, a two-part test, which is  
16 first whether the challenged law imposes a burden on  
17 conduct that falls within the scope of the Second  
18 Amendment's guarantee.

19 If it does not, and the example they gave was  
20 carrying a sawed-off shotgun, then the law is valid.  
21 At least it is not subject to a Second Amendment  
22 challenge.

23 If it does burden conduct within the scope of  
24 the Second Amendment, then the Court needs to  
25 determine, and then apply, the appropriate level of

1 means-end scrutiny.

2 In Chester, which, as you all know, criminalized  
3 possession of a firearm after a misdemeanor conviction  
4 for a crime of domestic violence, the Fourth Circuit  
5 chose intermediate scrutiny. The Court explained that  
6 the level of scrutiny to be applied depends on both  
7 the nature of the conduct that is being regulated and  
8 the degree to which the challenged law burdens those  
9 rights.

10 Under intermediate scrutiny, of course, the  
11 government has to demonstrate a reasonable fit between  
12 the challenged law and a substantial government  
13 objective.

14 In that case, the Fourth Circuit remanded to  
15 permit the government to offer evidence to establish  
16 that relationship.

17 I would note that in that case, one of the  
18 judges on the panel, Judge Davis, concurred, but added  
19 that he thought strict scrutiny would be unwarranted  
20 in a Second Amendment case.

21 Since then there have been other challenges to  
22 these criminal statutes. In Section 922(g)  
23 convictions, challenges have been denied by the Fourth  
24 Circuit under intermediate scrutiny. An example of  
25 that is United States versus Mahin, at 668 F.3d 119.

1           Now another case that counsel appropriately  
2 referred to, and I may or may not also pronounce it  
3 correctly, is United States versus Masciandaro, at 638  
4 F.3d 458, which applied intermediate scrutiny to  
5 uphold a conviction for carrying a loaded firearm in a  
6 car, in violation of National Park regulations. The  
7 Court did assume, but not decide in that case, that  
8 strict scrutiny would apply to any law that burdened  
9 the fundamental core right of self-defense in the home  
10 by law-abiding citizens.

11           Similarly, we have Woollard versus Gallagher --  
12 I believe that's the most recent one here from the  
13 Fourth Circuit -- 712 F.3d 865, where the Fourth  
14 Circuit again upheld under intermediate scrutiny the  
15 requirement that a person show good and substantial  
16 reason to wear and carry a handgun outside the home,  
17 again assuming, without deciding, that strict scrutiny  
18 would apply if the requirement were applied to  
19 carrying handguns inside the home. Again, a broader  
20 and different class of weapons was involved.

21           So it seems to me the question here first, on  
22 likelihood of success, when I at some point get to an  
23 actual decision on the merits, is whether the Second  
24 Amendment applies to these assault weapons at all or  
25 whether these are unusual and dangerous, like the

1 sawed-off shotgun; assuming, and again, a number of  
2 courts have just gone on to that second prong and  
3 assumed that some Second Amendment protection applies,  
4 what's the level of scrutiny?

5 I think an extremely persuasive opinion in this  
6 regard is Heller versus D.C., the D.C. Circuit case,  
7 at 670 F.3d 1244. Again, simply at this point for  
8 purposes of the temporary emergency relief and the  
9 factors that I need to look at, likelihood of success,  
10 I am likely to agree with the D.C. Circuit -- assuming  
11 that the Second Amendment applies at all, intermediate  
12 scrutiny is the correct standard; though, I am not  
13 making that determination at this point.

14 I note that despite some of the language about  
15 strict scrutiny in the Fourth Circuit cases, if you go  
16 back to the Chester case, the Fourth Circuit tells you  
17 that you also have to look at the degree to which the  
18 conduct burdens a core right, and this law is a  
19 prohibition only of a limited number of long guns that  
20 we are talking about. It does not affect law-abiding,  
21 responsible citizens' right to possess handguns in the  
22 home for self-defense, and the Supreme Court has told  
23 us that's the weapon of choice for self-defense. It  
24 does not impinge on law-abiding, responsible citizens'  
25 right to possess most long guns in the home for

1 self-defense as well.

2 Of course, those citizens can still have  
3 magazines that fire up to ten rounds without  
4 reloading.

5 The Heller case, assessing a very similar law,  
6 did note that assault rifles were in common use, and  
7 in this case plaintiffs have presented some evidence  
8 about the sale and common purchase of these kind of  
9 rifles; but the D.C. Circuit noted that they were not  
10 necessarily in common use for self-defense.

11 Plaintiffs' counsel tells me that they will be  
12 able to provide that evidence. There is certainly no  
13 evidence of that yet, that it is necessary or common  
14 for assault rifles and high capacity magazines to be  
15 used for self-defense in the home.

16 The D.C. Circuit decided that even if the Second  
17 Amendment were implicated, this ban on assault rifles  
18 and high capacity magazines was not a substantial  
19 burden on a core Second Amendment right, and that the  
20 government had showed a reasonable fit between this  
21 prohibition and the substantial governmental interest  
22 of protecting law enforcement officers and controlling  
23 crimes, especially those involving mass tragedies,  
24 mass wounding and murder, and there were a number of  
25 studies that were cited for that proposition in the



1 D.C. case.

2 So I do not find at this point that the  
3 plaintiffs have made a clear showing of a likelihood  
4 of success on the merits, as would be required to  
5 grant the extraordinary relief they seek, nor have  
6 they made a clear showing of the likelihood of  
7 irreparable harm.

8 First of all, I do believe that the delay in  
9 bringing this suit undercuts their argument of  
10 irreparable harm. This could have been brought months  
11 ago and was not.

12 Second of all, the individuals, and particularly  
13 the individual plaintiffs here, still have the assault  
14 weapons and high capacity magazines that were acquired  
15 legally before October 1st and have those available  
16 for self-defense.

17 There is a very limited amount of potentially  
18 economic harm that has been proffered on behalf of the  
19 dealers. Again, we are talking about not a  
20 necessarily lengthy period of time, so I don't think  
21 that's an irreparable harm that has been shown by the  
22 plaintiffs.

23 So turning for the moment to the public  
24 interest, I believe there is a strong public interest  
25 in upholding a duly enacted law that is directed at

1 the protection of public safety, including lessening  
2 the risk of mass tragedies, like Newtown, and others  
3 in the news, and lessening the risk of harm to law  
4 enforcement officers.

5 In some of the information and evidence provided  
6 by the State, which they have said they may wish to  
7 supplement, there is even reference to the fact that a  
8 necessity to pause to reload has enabled citizens in  
9 some instances to intervene and disarm people who are  
10 involved in these horrific crimes.

11 In any event, I do not find that the balance of  
12 harm, therefore, tips in favor of the plaintiffs,  
13 quite the contrary.

14 I don't find the plaintiffs' need to be able to  
15 fire more bullets, again, in the absence of some kind  
16 of evidence that this is necessary for self-defense,  
17 the need to fire more bullets in defense of the home,  
18 which appears to be based on the lack of accuracy that  
19 they propose the citizens would have in firing these  
20 weapons, I can't see that as tipping the balance in  
21 favor of the plaintiffs, or arguing against the strong  
22 public interest here.

23 The equal protection argument, to the extent  
24 that it is here to be made, I think the State has  
25 clearly shown a rational basis for distinction between

1 retired law enforcement officers and other citizens.  
2 Just to mention the training that they receive would  
3 be one element of that distinction.

4 And it is not a general right, as I understand  
5 it, for retired law enforcement officers to purchase  
6 any assault weapon they might want to in the future.  
7 It has to be connected to their retirement.

8 In terms of the vagueness challenge and  
9 likelihood of success, it appears that the law on  
10 copies has been the same since 1996, and it has not  
11 been shown that it has been difficult for the  
12 plaintiffs in this case, particularly dealers, and  
13 those experienced in firearms, to understand those  
14 definitions. The copycats are fairly clearly defined  
15 under the law, I believe, in terms of the features  
16 that are required.

17 Again, just in terms of likelihood of success, I  
18 am not making a final ruling, and I will certainly  
19 look at the Sixth Circuit case that the plaintiffs  
20 have mentioned, as well as any other information they  
21 might want to present about these definitions; but I  
22 do not, on the current record, believe that the  
23 plaintiffs have met the requirements for a temporary  
24 restraining order, for the reasons that I have just  
25 stated.

1           In terms of a preliminary injunction hearing, I  
2 think the most sensible thing for me to do is to ask  
3 counsel to confer and contact chambers, and we will  
4 set up a conference call to discuss a reasonable  
5 schedule for a preliminary injunction and what  
6 evidence either side might want to present, and again,  
7 the question of whether it should be purely a  
8 preliminary injunction hearing or a hearing on the  
9 merits. We can talk about that more with a conference  
10 call and consider further all the issues that both  
11 sides have raised today.

12           I will enter a separate very brief order -- this  
13 is obviously my oral opinion -- denying the temporary  
14 restraining order in the Tardy case.

15           Regarding the Doe case, I will also find that  
16 the plaintiffs have failed to meet the requirements  
17 for a temporary restraining order. This seems to me  
18 at this stage particularly speculative. The  
19 plaintiffs have not shown any irreparable harm.

20           There's a handgun qualification licensing system  
21 that is not challenged. It begins today. There is no  
22 showing yet of any unreasonable delay.

23           There is an administrative delay in place now  
24 for processing the applications. That is not the  
25 issue. That's not part of the new law. Of course,

1 that is caused by the extreme increase in applications  
2 for guns of various kinds that has occurred between  
3 the enactment of this law and the effective date here  
4 in October.

5 But as far as the handgun qualification  
6 licensing requirement, on the record in front of me,  
7 it is up and running today. Whether, or what degree  
8 of delay there will be, at this point is speculative.

9 With no challenge to the underlying  
10 constitutionality of the handgun qualification  
11 licensing requirements, and there being no right to  
12 immediate possession of even handguns, and no harm  
13 that I can see shown from the Maryland State Police  
14 saying that they may choose not to enforce some  
15 provisions in this law, I certainly can't see that  
16 there is a sufficient showing of likelihood of  
17 imminent harm, or a likelihood of success on the  
18 merits that would outweigh the public interest in  
19 permitting, again, a duly enacted law that is aimed at  
20 protecting public safety and keeping guns out of the  
21 hands of criminals from proceeding in effect as it is  
22 today.

23 So I will do a separate short order denying that  
24 and again can discuss with counsel in a separate  
25 conference call what schedule may be necessary for

1 further proceedings on that issue.

2 Anything I have not addressed, anything else  
3 anybody needs to say? I understand you disagree, but  
4 anything you feel I have not addressed or would like  
5 me to clarify?

6 MR. SWEENEY: Nothing further, Your Honor.

7 Thank you.

8 MS. WOODWARD: Thank you, Your Honor.

9 MR. FADER: Nothing further, Your Honor.

10 THE COURT: All right. Thank you all.

11 (The proceedings concluded.)

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