

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF WEST VIRGINIA

WEST VIRGINIA CITIZENS DEFENSE  
LEAGUE, INC., *et al.*,

\*

Plaintiffs,

v.

\*

Civil Action No.: 2:11-cv-0048

CITY OF CHARLESTON, *et al.*,

\*

Defendants.

\*

\*

\* \* \* \* \*

**MOTION OF *AMICUS CURIAE* BRADY CENTER  
TO PREVENT GUN VIOLENCE FOR LEAVE TO FILE  
AN *AMICUS BRIEF* IN SUPPORT OF DEFENDANTS**

Through undersigned counsel, the Brady Center to Prevent Gun Violence apply to the Court for leave to file a brief as *amicus curiae* in this case for the facts and reasons stated below. The proposed brief is attached hereto as Exhibit A for the convenience of the Court and counsel.

The Brady Center to Prevent Gun Violence is the nation’s largest non-partisan, non-profit organization dedicated to reducing gun violence through education, research, and legal advocacy. Through its Legal Action Project, the Brady Center has filed numerous briefs *amicus curiae* in cases involving both state and federal gun laws, including cases involving public carry regulations. *See, e.g., McDonald v. City of Chicago*, 130 S. Ct. 3020 (2010); *United States v. Hayes*, 129 S. Ct. 1079, 1087 (2009) (citing amicus brief of Brady Center to Prevent Gun Violence); *District of Columbia v. Heller*, 554 U.S. 570 (2008); *Bateman v. Perdue*, No. 5:10-CV-265-H (D.N.C. Jan. 20, 2011) (order granting application as “timely and useful”).

MOTION OF *AMICUS CURIAE* BRADY  
CENTER TO PREVENT GUN VIOLENCE

District courts have inherent power to grant third parties leave to file briefs as *amici curiae*, particularly “where they provide helpful analysis of the law, they have a special interest in the subject matter of the suit, or existing counsel is in need of assistance.” *Bryant v. Better Bus. Bureau of Greater Md., Inc.*, 923 F. Supp. 720, 728 (D. Md. 1996) (internal citations omitted); *see also Mid Atlantic Storage Systems, Inc. v. City of Milton*, 903 F. Supp. 995, 996 (S.D.W.V. 1995) (noting court’s acceptance of *amicus curiae* briefs); *Westfall v. Kendle International*, No. 1:05-cv-00118, 2007 WL 1289900, at \*1 (N.D.W.V. May 1, 2007) (same). Here, *amicus* brings a broad and deep perspective to the issues raised in this case and has a compelling interest in the federal courts’ interpretation of Second Amendment issues. *Amicus* thus respectfully submits the attached brief to assist the Court with the constitutional issues in this case, including important matters of first impression under the Second Amendment.

The proposed brief provides an overview of recent and longstanding Supreme Court Second Amendment jurisprudence and the policy implications of extending the Second Amendment right beyond the home. The brief then applies the lower courts’ and Fourth Circuit’s two-prong approach that asks (1) whether the law or regulation at issue implicates protected Second Amendment activity, and if so, (2) whether it passes the appropriate standard of review to the regulations at issue in this case. *See, e.g., United States v. Chester*, 628 F.3d 673, 680 (4th Cir. 2010); *United States v. Marzzarella*, 614 F.3d 85, 89 (3d Cir. 2010). The brief concludes that the contested regulations pass both parts of the test because (1) the regulations do not implicate protected Second Amendment activity because they do not impact the right of law-abiding citizens to possess firearms in the home for the purpose of self-defense, and (2) that even if the regulations did implicate protected Second Amendment activity, it would survive both the appropriate level of review – the reasonable regulation test– and the slightly higher standard of

intermediate scrutiny because it is a valid exercise of the state's police powers to enact legislation designed to protect public safety and the regulations are substantially related to an important government interest. *Amicus*, therefore, respectfully submits the attached brief to assist the Court in deciding the complex and significant issues raised in this matter.

Jonathan E. Lowy  
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Dated: April 15, 2011

Respectfully submitted,

s/ Ashley French

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**CERTIFICATE OF CONFERENCE**

I hereby certify that on April 11, 2011, *amicus curiae* conferenced with both Plaintiffs' and Defendants' counsel. All parties consent to the filing of this *amicus* brief.

s/ Ashley French  
\_\_\_\_\_  
Ashley W. French (WVSB #9060)

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\* \* \* \* \*

**[PROPOSED] ORDER GRANTING MOTION OF BRADY CENTER TO PREVENT  
GUN VIOLENCE TO FILE AN AMICUS BRIEF IN SUPPORT OF DEFENDANTS**

Upon consideration of the motion and proposed brief submitted by counsel, the Court hereby grants the motion of the Brady Center to Prevent Gun Violence for leave to file an *amicus* brief in support of Defendants.

It is SO ORDERED this \_\_\_ day of \_\_\_\_\_, 2011

\_\_\_\_\_  
John T. Copenhaver, Jr.  
United States District Judge

**CERTIFICATE OF SERVICE**

I hereby certify that on April 15, 2011, I filed this Motion for Leave to File *Amicus Curiae* Brief in Support of Defendants with the Clerk of Court using the CF/ECF system, which will electronically serve this motion on both Plaintiffs' and Defendants' attorneys as follows:

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