

No. 19-1469

**In the
United States Court of Appeals
for the Fourth Circuit**

◆

**MARYLAND SHALL ISSUE, *et al.*,
Plaintiffs-Appellants**

v.

**LAWRENCE HOGAN, *et al.*,
Defendants-Appellees**

◆

On Appeal from the United States District Court
for the District of Maryland
No. 1:16-cv-03311-ELH (Hon. Ellen L. Hollander)

◆

BRIEF OF APPELLANTS

◆

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UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT
DISCLOSURE OF CORPORATE AFFILIATIONS AND OTHER INTERESTS

Disclosures must be filed on behalf of all parties to a civil, agency, bankruptcy or mandamus case, except that a disclosure statement is **not** required from the United States, from an indigent party, or from a state or local government in a pro se case. In mandamus cases arising from a civil or bankruptcy action, all parties to the action in the district court are considered parties to the mandamus case.

Corporate defendants in a criminal or post-conviction case and corporate amici curiae are required to file disclosure statements.

If counsel is not a registered ECF filer and does not intend to file documents other than the required disclosure statement, counsel may file the disclosure statement in paper rather than electronic form. Counsel has a continuing duty to update this information.

No. 19-1469 Caption: Maryland Shall Issue, Inc. et al. v. Hogan, et al.

Pursuant to FRAP 26.1 and Local Rule 26.1,

Susan Brancato-Vizas
(name of party/amicus)

who is appellant, makes the following disclosure:
(appellant/appellee/petitioner/respondent/amicus/intervenor)

1. Is party/amicus a publicly held corporation or other publicly held entity? ☐ YES ☒ NO
2. Does party/amicus have any parent corporations? ☐ YES ☒ NO
If yes, identify all parent corporations, including all generations of parent corporations:
3. Is 10% or more of the stock of a party/amicus owned by a publicly held corporation or other publicly held entity? ☐ YES ☒ NO
If yes, identify all such owners:

4. Is there any other publicly held corporation or other publicly held entity that has a direct financial interest in the outcome of the litigation (Local Rule 26.1(a)(2)(B))? ☐ YES ☒ NO
If yes, identify entity and nature of interest:
5. Is party a trade association? (amici curiae do not complete this question) ☐ YES ☒ NO
If yes, identify any publicly held member whose stock or equity value could be affected substantially by the outcome of the proceeding or whose claims the trade association is pursuing in a representative capacity, or state that there is no such member:
6. Does this case arise out of a bankruptcy proceeding? ☐ YES ☒ NO
If yes, identify any trustee and the members of any creditors' committee:

Signature: /s/ Cary J. Hansel

Date: 05/08/2019

Counsel for: Appellants

CERTIFICATE OF SERVICE

I certify that on 05/08/2019 the foregoing document was served on all parties or their counsel of record through the CM/ECF system if they are registered users or, if they are not, by serving a true and correct copy at the addresses listed below:

/s/ Cary J. Hansel
(signature)

05/08/2019
(date)

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No. 19-1469 Caption: Maryland Shall Issue, Inc. et al. v. Hogan, et al.

Pursuant to FRAP 26.1 and Local Rule 26.1,

Deborah Kay Miller

(name of party/amicus)

who is appellant, makes the following disclosure:
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Signature: /s/ Cary J. Hansel

Date: 05/08/2019

Counsel for: Appellants

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No. 19-1469 Caption: Maryland Shall Issue, Inc. et al. v. Hogan, et al.

Pursuant to FRAP 26.1 and Local Rule 26.1,

Maryland Shall Issue, Inc.
(name of party/amicus)

who is appellant, makes the following disclosure:
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If yes, identify any trustee and the members of any creditors' committee:

Signature: /s/ Cary Hansel

Date: 05/08/2019

Counsel for: Appellants

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I certify that on 05/08/2019 the foregoing document was served on all parties or their counsel of record through the CM/ECF system if they are registered users or, if they are not, by serving a true and correct copy at the addresses listed below:

/s/ Cary J. Hansel
(signature)

05/08/2019
(date)

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No. 19-1469 Caption: Maryland Shall Issue, Inc. et al. v. Lawrence Hogan, et al.

Pursuant to FRAP 26.1 and Local Rule 26.1,

Atlantic Guns, Inc.

(name of party/amicus)

who is appellant, makes the following disclosure:
(appellant/appellee/petitioner/respondent/amicus/intervenor)

1. Is party/amicus a publicly held corporation or other publicly held entity? ☐ YES ☒ NO
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6. Does this case arise out of a bankruptcy proceeding? ☐ YES ☒ NO
If yes, identify any trustee and the members of any creditors' committee:

Signature: /s/ John Parker Sweeney

Date: May 14, 2019

Counsel for: Atlantic Guns, Inc.

CERTIFICATE OF SERVICE

I certify that on May 14, 2019 the foregoing document was served on all parties or their counsel of record through the CM/ECF system if they are registered users or, if they are not, by serving a true and correct copy at the addresses listed below:

/s/ John Parker Sweeney
(signature)

May 14, 2019
(date)

RELATED CASES

The district court in this case expressly relied on a prior district court decision *MSI v. Hogan*, 353 F. Supp. 3d 400 (D. Md. 2018) to hold that the Plaintiffs in this case lack standing to bring their claim that part of the Handgun License Requirement is void for vagueness under the Due Process Clause. Plaintiffs have appealed that decision to this Court, and that appeal is docketed as *MSI v. Hogan*, No. 18-2474 (4th Cir.). That appeal is fully briefed and awaits oral argument.

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JURISDICTIONAL STATEMENT

Susan Vizas and Deborah Miller (collectively, “Individual Plaintiffs”), Maryland Shall Issue, Inc. (“MSI”), and Atlantic Guns, Inc. (“Atlantic Guns”) (collectively, “Appellants”) challenge Md. Code Ann., Pub. Safety § 5-117.1 and the Maryland State Police’s implementing regulations, COMAR 12.15.05 and 29.03.01 (collectively, the “Handgun License Requirement”), under the Second and Fourteenth Amendments to the United States Constitution and under state law. The United States District Court for the District of Maryland had subject matter jurisdiction pursuant to 28 U.S.C. § 1331 and 28 U.S.C. § 1343, and supplementary jurisdiction over the state law claims pursuant to 28 U.S.C. § 1367. The district court’s final judgment dismissing all claims of all parties for lack of standing was entered on the docket on April 1, 2019. Joint Appendix (“JA”) 1364. Appellants timely noticed their appeal on April 25, 2019. JA 1409. This appeal is from a final judgment. This Court has jurisdiction under 28 U.S.C. § 1291.

STATEMENT OF THE ISSUES

1. Whether the Individual Plaintiffs and MSI members have standing to challenge the Handgun License Requirement's unconstitutional and ultra vires burdens imposed by that application process.
2. Whether MSI has organizational standing to challenge the Handgun License Requirement.
3. Whether Atlantic Guns has personal or third party standing to challenge the constitutionality of the Handgun License Requirement.

STATEMENT OF THE CASE

I. Maryland's Relevant Handgun Laws

In 1941, Maryland enacted a “Pistols” Subtitle to the Maryland Code to regulate the “sale, identification marks and possession of pistols.” *See* 1941 Maryland Laws, Chapter 622. This statute prohibited selling or transferring a handgun to persons convicted of a crime of violence or to fugitives from justice. *See* Md. Code Ann., Art. 27, § 531(D)–(E), currently codified at Md. Code Ann., Pub. Safety § 5-118. Maryland has since enacted four sets of laws intended to prevent prohibited persons from acquiring handguns: the 77R Handgun Registration Requirement (1966), the Gun Violence Act of 1996, the Responsible Gun Safety Act of 2000, and the Firearms Safety Act of 2013 that included the Handgun License Requirement.

A. The 77R Handgun Registration Requirement

In 1966, Maryland enacted what is known as the 77R Handgun Registration Requirement. *See* 1966 Maryland Laws, Chapter 502. This law prohibited firearms dealers from transferring a handgun to a prospective purchaser “until after seven days shall have elapsed from the time an application to purchase or transfer shall have been executed by the prospective purchaser or transferee, . . . and forwarded by the prospective seller . . . to the Superintendent of the Maryland State Police.” Md. Code. Ann., Art. 27, § 442, currently codified at Md. Code Ann., Pub. Safety

§§ 5-118, 5-120 & 5-123. The required application contained the prospective purchaser's identifying information, which the Maryland State Police used to conduct a background check. *Id* at § 442, currently codified at Md. Code Ann., Pub. Safety §§ 5-118, 5-121.

B. The Gun Violence Act of 1996

The Gun Violence Act of 1996 made the 77R Handgun Registration Requirement process applicable to all handgun transfers, including gifts and private sales. Md. Code. Ann., Art. 27, § 445, currently codified at Md. Code Ann., Pub. Safety § 5-124.

C. The Responsible Gun Safety Act of 2000

The Responsible Gun Safety Act of 2000 expanded the 77R Handgun Registration Requirement process to require all prospective firearms purchasers complete an hour-long, online firearm safety training course on Maryland firearm law, home firearm safety, and handgun mechanisms and operation. Md. Code Ann., Pub. Safety § 5-118; JA 719.

D. The Handgun License Requirement

The Handgun License Requirement was enacted as part of the Firearms Safety Act of 2013. *See* 2013 Maryland Laws, Chapter 427. It added additional, redundant requirements to the 77R Handgun Registration Requirement, the Gun Violence Act of 1996, and the Responsible Gun Safety Act of 2000.

The Handgun License Requirement prohibits law-abiding, responsible Maryland citizens from acquiring a handgun unless they have a Handgun License.¹ Md. Code Ann., Pub. Safety, § 5-117.1(c). It also prohibits firearms dealers from “sell[ing], rent[ing], or transfer[ing] a handgun to [anyone] unless the [individual] presents to the dealer or other person a valid handgun qualification license.” *Id.* § 5-117.1(b). To apply for a Handgun License, a Maryland citizen must submit: (1) an online application; (2) proof of completion of a qualifying firearms safety course with a live-fire requirement; (3) a complete set of fingerprints; and (4) “a statement made by the applicant under the penalty of perjury that the applicant is not prohibited under federal or State law from possessing a handgun.” Md. Code Ann., Pub. Safety § 5-117.1(f)–(g); COMAR 29.03.01.29(C)(4). The firearms safety course mandated by the Handgun License Requirement replaced the online presentation mandated by the Responsible Gun Safety Act of 2000 with an in-class, half-day course covering the same subject areas. JA 719. Once the prospective purchaser obtains a Handgun License, he may begin the process required by the pre-existing firearms laws, including undergoing another background check. JA 633–34; Md. Code Ann., Pub. Safety § 5-123.

¹ Maryland does not require active or retired military or law enforcement personnel to obtain a Handgun License before purchasing a handgun. Md. Code Ann., Pub. Safety § 5-117.1(c).

Violating the Handgun License Requirement is a misdemeanor punishable by up to five years in jail and a \$10,000 fine. Md. Code Ann., Pub. Safety § 5-144. Firearms dealers also face mandatory revocation of their dealer's license. *Id.* at § 5-114(b)(2). The Maryland State Police has signaled its intent to enforce the Handgun License Requirement against firearms dealers as recently as July 21, 2017, "remind[ing] all Maryland's Licensed Firearms Dealers . . . that unless otherwise exempted, a person may not purchase, rent, or receive a handgun unless they possess a valid Handgun Qualification License (H.Q.L.) issued by the Maryland Department of State Police." Maryland State Police, Advisory LD-HQL-17-002 (July 21, 2017).² The Maryland State Police previously demonstrated its intent to enforce the Handgun License Requirement against firearms dealers by providing Handgun License Requirement compliance training to them. *See* Maryland State Police Licensing Division, Maryland Firearms Dealer Seminar 2015.³ Defendants have never stated nor signaled an intent to not enforce the Handgun License Requirement.

The Handgun License Requirement has deterred tens of thousands of law-abiding, responsible Maryland citizens, including the Individual Plaintiffs, many of MSI's members, and hundreds of Atlantic Guns' customers, from acquiring a handgun. *Compare* JA 889 with JA 894, 898 & 900; JA 1192. Fewer handgun sales

² Available at <https://bit.ly/2MXm6Vw> (last visited June 24, 2019).

³ Available at <https://bit.ly/2WQ1eUN> (last visited June 24, 2019).

is the intended result of Maryland's long term effort to "restrict legal gun ownership" through "licensing and registration" so as to "constrain the supply of guns" that could conceivably be illegally transferred to or stolen by criminals. JA 1362; JA 824 (then Attorney General published a report with the stated "goal" of "eliminat[ing] widespread handgun ownership through restrictive handgun licensing").

II. The Individual Plaintiffs

Susan Brancato Vizas is a Maryland resident and an MSI member, who has been negatively impacted by the newly enacted Handgun License Requirement. JA 598–99. Ms. Vizas has never owned a firearm, but, in 2015, she decided that she wanted to purchase a handgun when her daughter expressed an interest in shooting. JA 600. She also wanted to purchase a handgun for self-defense, target practice, the ability to inherit her father's gun, and other lawful purposes. JA 600–02. Ms. Vizas has taken and passed the hunter safety training in the State of Maryland, but because of the additional costs and time commitment of acquiring a handgun pursuant to the Handgun License Requirement, she has been dissuaded from further pursuing the purchase of a handgun. JA 603, 605. The Handgun License Requirement has significantly impacted Ms. Vizas' ability to purchase a handgun. JA 603, 605.

Deborah Kay Miller is a Maryland resident and an MSI member. She is employed by the Department of Defense. JA 608–10, 616. Ms. Miller has never owned a firearm, but, in 2017, she decided that she wanted to purchase a handgun

for self-defense in her home. JA 611, 613. Ms. Miller understands the financial burden of purchasing a handgun and despite the financial ability to do so, she has been discouraged from acquiring a handgun due to a physical disability that would make it very difficult to sit through a half day of classroom training, thereby making it futile for her to apply. JA 617 (“I have back issues [disc] so sitting still for four hours would be a burden on me.”); JA 615, 617–18. Because Ms. Miller does not possess a Handgun License, she is faced with the obstacles created by the Handgun License Requirement, impeding her constitutional right to purchase a handgun in Maryland. JA 617.

III. Plaintiff Maryland Shall Issue

Maryland Shall Issue is a non-profit membership organization incorporated under the laws of Maryland with its principal place of business in Annapolis, Maryland, with over 1,100 members statewide. MSI is:

an all-volunteer, non-partisan organization dedicated to the preservation and advancement of gun owners’ rights in Maryland. It seeks to educate the community about the right of self-protection, the safe handling of firearms, and the responsibility that goes with carrying a firearm in public.

Maryland Shall Issue, About Us.⁴ MSI promotes and defends the exercise of the right to keep and bear arms in and outside the home.

⁴ Available at <https://www.marylandshallissue.org/jmain/index.php> (last visited June 14, 2019).

As part of its mission, MSI actively encourages law-abiding, adult citizens of Maryland, members and non-members alike, to acquire handguns for lawful self-defense in and outside the home. MSI's membership includes each of the Individual Plaintiffs as well as numerous other individuals who do not possess a Handgun License and who are faced with the obstacles created by the Handgun License Requirement, which infringes upon their constitutional right to purchase a handgun in Maryland. JA 558. MSI brings this suit on its own behalf as an organization and on behalf of its members who do not have a Handgun License or who are threatened with arbitrary or discriminatory enforcement of the vague provisions of the Handgun License Requirement. MSI has many such members. JA 558.

One such MSI member is Ms. Dana Hoffman. Ms. Hoffman is a 75-year-old woman who lives alone in Takoma Park, Maryland. JA 908. Even though she is not a named plaintiff, Ms. Hoffman has fully participated individually in this lawsuit by subjecting herself to discovery, including a deposition taken by Defendants. *See* JA 285. Ms. Hoffman suffers from a documented medical condition, hyperacusis, which is a severe sensitivity to sound, that prevents her from completing the Handgun License Requirement's training requirement. JA 915–16. The Handgun License Requirement, therefore, precludes her from obtaining a handgun for self-defense in the home.

IV. Plaintiff Atlantic Guns

Atlantic Guns is a family-owned Maryland and federally licensed firearms dealer. JA 1411. Its customers include law-abiding, responsible Maryland citizens wishing to possess handguns for lawful purposes, including self-defense in their homes. JA 1411. Because the Handgun License Requirement prohibits Atlantic Guns from transferring handguns to individuals who do not have a Handgun License, Atlantic Guns has made no such sales since Maryland adopted the Handgun License Requirement. JA 1412. Atlantic Guns would sell handguns to these individuals but for the Handgun License Requirement. JA 1412. Atlantic Guns has turned away, and thus lost business from, hundreds of handgun customers because they lack a Handgun License. JA 1412. These customers' status as firearms owners is a sensitive issue of personal privacy. *See* Md. Code Ann., Gen. Prov. § 4-325(a)–(b) (prohibiting public records custodians from disclosing records of firearms dealers and those “authorized to . . . carry, wear, or transport a handgun”). To protect its customers' privacy, Atlantic Guns has not identified them by name, but did produce emails with specific individual customers' names redacted by Atlantic Guns to protect their identities during discovery. Defendants neither objected to these redactions nor moved to compel the production of the individuals' names.

Atlantic Guns sells significantly fewer handguns than it did before the Handgun License Requirement took effect. JA 1412. Maryland State Police's own

records demonstrate beyond dispute that the Handgun License Requirement has severely impacted Atlantic Guns' business. JA 1412–13. That spreadsheet sets forth the number of Atlantic Guns' total annual handgun sales each year from 2000 to 2017. JA 1413. In the four years since the Handgun License Requirement took effect (2014–2017), Atlantic Guns has lost approximately 20 percent of its average annual handgun sales compared to the four-year period following the Handgun License requirement's implementation (2009–2012). JA 1413. Atlantic Guns' gross revenues from handgun sales also have decreased by a similar amount over this same time. JA 1414.

V. Defendants Governor Hogan and Colonel Pallozzi

Defendants are Governor Lawrence J. Hogan, Jr. and Superintendent of Maryland State Police Colonel William M. Pallozzi. Both were sued in their official capacity. JA 21–22. Governor Hogan is responsible for enforcement of the Handgun License Requirement. JA 21. Colonel Pallozzi is responsible for executing and administering the Handgun License Requirement. JA 22.

VI. Amended Complaint and Proceedings Below

Count I of the amended complaint alleged that the Handgun License Requirement violates the Second Amendment because it prohibits law-abiding, responsible Maryland citizens who lack a Handgun License from acquiring handguns for lawful purposes, including self-defense in the home. JA 27–29. Count

I also alleged that the Handgun License Requirement violates Atlantic Guns’ right to sell handguns to such individuals. JA 27. Count II alleged that the Handgun License Requirement is void for vagueness because its ban on “receive” and “receipt” of a handgun without a Handgun License is unconstitutionally vague in violation of the Due Process Clause of the Fourteenth Amendment. JA 29. Count III alleged that the implementing regulations are ultra vires under Maryland state law because they impose restrictions and conditions for obtaining a Handgun License beyond those authorized by the statute. JA 33–36.

Defendants initially filed a motion to dismiss the amended complaint, alleging, *inter alia*, that the plaintiffs all lacked standing to challenge the Handgun License Requirement. The district court (Judge Garbis presiding) denied the motion in all parts material here. JA 68. The court noted that:

Defendants do not deny that the HQL Provision and implementing regulations burden conduct within the scope of the Second Amendment, namely, the ability of a law-abiding citizen to attain a handgun for use in the home for self defense.

JA 51. The court ruled against defendants on standing, holding that, at least as to Individual Plaintiffs and MSI members, the amended complaint alleged injuries that were sufficient to establish standing. JA 54. The court did not reach the organizational standing of MSI or the standing of Atlantic Guns, because “the presence of one party with standing is sufficient to satisfy Article III’s case-or-controversy requirement.” JA 54 (quotation omitted).

The parties then conducted discovery and filed cross-motions for summary judgment, addressing the merits and standing issues. The court (Judge Hollander presiding) ruled that none of the Plaintiffs had standing to sue and thus did not reach the merits. JA 1364. Addressing first the standing of the Individual Plaintiffs and individual MSI members, the court ruled that to have standing to challenge the Handgun License Requirement, the Individual Plaintiffs and MSI members must have actually applied for a Handgun License or shown that an application would have been futile. JA 1392–93. Noting that the Individual Plaintiffs had done neither, the court held that they lacked standing to challenge the Handgun License Requirement. JA 1393. The court then held that MSI had not shown sufficient harm to have organizational standing, apart from its members, on grounds that MSI had not suffered any impairment in its ability to further its mission. JA 1396–99. The court further held that Atlantic Guns has no right to sell handguns and had not suffered economic injury and that Atlantic Guns lacks third party standing because the Handgun License Requirement does not “inhibit[]” the “ability of any of its customers to acquire firearms.” JA 1403–05.

SUMMARY OF ARGUMENT

The district court erred in holding that the Individual Plaintiffs, MSI, and Atlantic Guns lack standing to challenge the Handgun License Requirement. A core part of MSI's mission is to promote the acquisition of handguns by law-abiding citizens for self-defense in the home, a right fully protected by the Second Amendment. The Handgun License Requirement is antithetical to this mission because the intent and effect of the Handgun License Requirement is to suppress handgun ownership by imposing heavy burdens on the right of persons to acquire a handgun for this lawful purpose. The Handgun License Requirement directly burdens the right to acquire a handgun. It has forced MSI to divert its resources from promoting and educating the public concerning the constitutionally protected uses of handguns into responding to the demands and requirements that the Handgun License Requirement has placed on MSI members and the public. The Handgun License Requirement also has suppressed handgun ownership in Maryland by dramatically cutting sales of handguns in Maryland. That suppression has directly and adversely affected membership in MSI, because MSI draws its members from persons who own, or seek to own, handguns for lawful self-defense and who are attracted to MSI as an organization that is dedicated to protecting that right.

Atlantic Guns has both personal and third party standing. Atlantic Guns has personal standing to assert its right to sell handguns to law-abiding, responsible

Maryland citizens. The Handgun License Requirement prohibits Atlantic Guns' sale of handguns to such citizens who lack a Handgun License. It therefore prevents Atlantic Guns from exercising its right to sell handguns, which has caused Atlantic Guns economic injury in the form of lost revenue from handgun sales that significantly decreased after imposition of the Handgun License Requirement.

Atlantic Guns also, independently, has third party standing to assert its customers' right to acquire a handgun for self-defense in the home, for two reasons. First, because enforcement of the Handgun License Requirement against Atlantic Guns results in the violation of its customers' right to acquire a handgun. Second, because Atlantic Guns and its customers have a close relationship, and its customers' privacy concerns surrounding handgun ownership hinder them from bringing suit.

ARGUMENT

A district court's holding regarding standing is reviewed *de novo*, "constru[ing] the facts in the light most favorable to Appellants and draw[ing] all reasonable inferences in their favor." *Wilmington Shipping Co. v. New England Life Ins. Co.*, 496 F.3d 326, 328, 331 (4th Cir. 2007); *Air Evac EMS, Inc. v. Cheatham*, 910 F.3d 751, 759 (4th Cir. 2018).

Litigants may have standing to assert their own rights (personal standing), *e.g.*, *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 561–62 (1992), and, separately, to assert a third party's rights (third party standing), *e.g.*, *Craig v. Boren*, 429 U.S. 190,

194–95 (1976). A plaintiff has personal standing when he can demonstrate: (1) an injury-in-fact; (2) that is fairly traceable to the challenged statute; and (3) that will likely be redressed by a favorable decision. *Air Evac EMS, Inc.*, 910 F.3d at 759–60 (quotation omitted). There is “little question” these requirements are met when, like here, “the plaintiff is himself an object of the [government] action (or forgone action) at issue.” *Lujan*, 504 U.S. at 561–62; *see also, e.g., Virginia v. Am. Booksellers Ass’n, Inc.*, 484 U.S. 383, 392 (1988) (finding that plaintiffs had standing because “the law is aimed directly at plaintiffs”) (citing *e.g., Craig*, 429 U.S. at 194 and affirming this Court’s standing analysis).

Separate and distinct from personal standing, a business or association has third party standing in certain circumstances. An association has standing to assert its own rights as well as its members’ rights. *See, e.g., Warth v. Seldin*, 422 U.S. 490, 511 (1975) (“There is no question that an association may have standing in its own right to seek judicial relief from injury to itself and to vindicate whatever rights and immunities the association itself may enjoy.”); *see also Hunt v. Wash. State Apple Advert. Comm’n*, 432 U.S. 333, 342 (1977).

A business has standing to assert its customers’ rights when “enforcement of the challenged restriction *against the litigant* would result indirectly in the violation of third parties’ rights.” *Kowalski v. Tesmer*, 543 U.S. 125, 130 (2004) (emphasis in original; citation omitted); *see also, e.g., Craig, supra; Griswold v. Connecticut*, 381

U.S. 479, 481 (1965); *Barrows v. Jackson*, 346 U.S. 249, 255–60 (1953). A business also has third party standing when it has a close relationship with its customers who face some hindrance to bringing suit. *Kowalski*, 543 U.S. at 130.

Finally, “the Supreme Court has made it clear that ‘the presence of one party with standing is sufficient to satisfy Article III’s case-or-controversy requirement.’” *Bostic v. Schaefer*, 760 F.3d 352, 370 (4th Cir. 2014) (quoting *Rumsfeld v. Forum for Acad. & Institutional Rights, Inc.*, 547 U.S. 47, 52 n.2 (2006)). If even one of the Individual Plaintiffs, MSI, or Atlantic Guns has standing on each claim, this Court and the court below have jurisdiction over Appellants’ claims.

I. The Individual Plaintiffs and MSI members have standing.

The district court held that the individual plaintiffs (and the individual MSI members) lacked standing because none of these individuals have ever actually applied for a Handgun License. JA 1393. In this respect, the standing inquiry is the same for the Individual Plaintiffs as it is for unnamed MSI members, because “an association has standing to bring suit on behalf of its members when: (a) its members would otherwise have standing to sue in their own right; (b) the interests it seeks to protect are germane to the organization’s purpose; and (c) neither the claim asserted nor the relief requested requires the participation of individual members in the lawsuit.” *Hunt*, 432 U.S. at 343. The discussion below is thus applicable to both the

Individual Plaintiffs and unnamed MSI members. The district court's dismissal was based on the same rationale for both. JA 1393.

A. Plaintiffs are not required to apply for a Handgun License to challenge the facial constitutionality of the Handgun License Requirement.

This Court looks to First Amendment doctrine for guidance in applying the Second Amendment. *Kolbe v. Hogan*, 849 F.3d 114, 133 (4th Cir. 2017) (en banc) (“In pinpointing the applicable standard of review, we may ‘look[] to the First Amendment as a guide.’”) (quoting *United States v. Chester*, 628 F.3d 673, 682 (4th Cir. 2010)). There is no dispute that individuals have a right to acquire a handgun for self-defense in the home or that the Handgun License Requirement burdens that right by banning the exercise of the right until and unless these individuals bear all the burdens imposed by the Handgun License Requirement. The district court nonetheless held wrongly that notwithstanding those burdens, the individuals must actually apply for a Handgun License to have standing to challenge the constitutionality of the Handgun License Requirement. Plaintiffs need only show that the Handgun License Requirement burdens their right to acquire a handgun for self-defense in the home, which lies at the very core of the Second Amendment. Plaintiffs have easily shown that in this case.

In the analogous First Amendment context, it is well-settled that “[t]he Constitution can hardly be thought to deny to one subjected to the restraints of [a

licensing law] the right to attack its constitutionality, because he has not yielded to its demands.’” *Shuttlesworth v. City of Birmingham, Ala.*, 394 U.S. 147, 151 (1969) (citation omitted); *see also City of Lakewood v. Plain Dealer Pub. Co.*, 486 U.S. 750, 755–56 (1988) (following *Shuttlesworth*); *Lovell v. City of Griffin*, 303 U.S. 444, 452 (1938) (“As the ordinance is void on its face, it was not necessary for appellant to seek a permit under it.”).

Thus, in *Green v. City of Raleigh*, 523 F.3d 293, 299 (4th Cir. 2008), this Court relied on *Shuttlesworth* to reverse a dismissal for lack of standing in an as-applied challenge to a city ordinance where the plaintiff had refused to comply with a permit requirement on grounds it was unconstitutional. The Court further sustained the district court’s holding that the plaintiff likewise had standing to mount a facial challenge to the same ordinance. *Id.* Other circuits are in accord. *See, e.g., Fernandes v. Limmer*, 663 F.2d 619, 625 (5th Cir. 1981) (applying *Shuttlesworth* and sustaining standing “because the very existence of the discretion lodged in the public official [under the permit scheme] is constitutionally unacceptable”); *The Nationalist Movement v. City of York*, 481 F.3d 178, 182 (3d Cir. 2007) (“[T]he Supreme Court has long held that statutes which threaten to chill First Amendment speech may be facially challenged without the necessity of the speaker being denied, or even having applied for, a permit.”).

The principles recognized in *Shuttlesworth* and its progeny are fully applicable here. It is well established that standing “turns on the nature and source of the claim asserted.” *Warth*, 422 U.S. at 500. The Handgun License Requirement imposes unconstitutional burdens on Plaintiffs’ undisputed Second Amendment right to acquire a handgun for self-defense in the home. The Handgun License Requirement is thus “an invasion of a judicially cognizable interest which is (a) concrete and particularized and (b) actual or imminent, not conjectural or hypothetical.” *Bennett v. Spear*, 520 U.S. 154, 167 (1997). The ban on the unlicensed acquisition imposed by the Handgun License Requirement is itself the harm from which Plaintiffs seek relief.

Specifically, Plaintiffs have not claimed that they are entitled to a Handgun License or that a Handgun License has been wrongly withheld or denied. To the contrary, Plaintiffs wish to exercise their constitutional right to acquire a handgun without being forced to bear all (or any of) the unconstitutional burdens imposed by the Handgun License Requirement, just as the plaintiff in *Green* argued that the permit requirements in that case were unconstitutional. Such a case is fundamentally different from a case where the plaintiff is asserting a right to the permit, such as the cases on which the district court relied. As *Shuttlesworth* illustrates, there is no requirement to actually suffer the constitutional harm to challenge the statutory scheme imposing the harm.

These principles were applied to the Second Amendment context in *Dearth v. Holder*, 641 F.3d 499 (D.C. Cir. 2011). There, the D.C. Circuit applied its prior precedent in *Parker v. District of Columbia*, 478 F.3d 370, 376 (D.C. Cir. 2007), *aff'd sub nom. District of Columbia v. Heller*, 554 U.S. 570 (2008), to hold that the plaintiffs had standing to challenge a federal law that prohibited a person living outside the United States from purchasing a firearm inside the United States. Rejecting the government's argument that Dearth needed to apply to acquire a firearm under the challenged statutory scheme and be denied, the court explained that Dearth "does not claim he has a right to be issued a 'permit' or 'license' by the Government." *Id.* at 502. Rather, because "the right to possess, not the right to a permit or license, was the substance of [his] claim," Dearth had standing. *Id.* (citing *Parker*, 478 F.3d at 374–76).

Here, as in *Dearth*, Plaintiffs "raise[] a constitutional challenge to the regulatory and 'statutory classifications' that bar [plaintiffs] from acquiring a firearm." *Id.* Like in *Dearth* and *Parker*, Plaintiffs claim "the right to possess, not the right to a permit or license." *Id.* Thus, as in *Dearth* and *Parker*, Plaintiffs need not apply for a permit they do not want to have standing. *Id.* The injury caused by the challenged law on the exercise of the right is sufficient to confer Article III standing to bring that claim. At a minimum, a person who is being required to pay money, as required by the Handgun License Requirement, has standing to complain

that the money is being illegally extracted by an unconstitutional program. *See, e.g., Danvers Motor Co. v. Ford Motor Co.*, 432 F.3d 286, 292–93 (3d Cir. 2005) (noting that “[t]here can be no doubt that this financial harm counts as injury-in-fact”). No more is required.

As in *Dearth*, these injuries are ongoing and continuous. In *Dearth*, the court rejected the government’s argument that Dearth lacked standing because he “cannot show he suffers either the ‘continuing, present adverse effects,’ or the ‘sufficient likelihood of future injury.’” 641 F.3d at 502 (citations omitted). The court credited Dearth’s claim that he “suffers a cognizable injury to his constitutional rights because the federal regulatory scheme thwarts his continuing desire to purchase a firearm.” *Id.* at 503. Plaintiffs suffer exactly the same cognizable injury to their Second Amendment rights because the Handgun License Requirement “thwart[s]” their “continuing desire to purchase” a handgun in Maryland.

B. The district court’s standing analysis is flawed.

The district court purported to distinguish *Dearth* on grounds that the federal law at issue in that case made it “*impossible*” for the plaintiff to obtain the permit. JA 1389 (emphasis in original). Yet, the court in *Dearth* rejected that very point, stating “[t]hat the regulatory regime does not provide for the Government’s issuance of a permit or license *is of no moment*; the challenged provisions have similarly thwarted Dearth’s best efforts to acquire a firearm.” *Dearth*, 641 F.3d at 502

(emphasis added). Like one of the plaintiffs in *Parker* and the plaintiff in *Dearth*, Plaintiffs “raise[] a constitutional challenge to the regulatory and ‘statutory classifications’ that bar [them] from acquiring a firearm.” *Id.* Again, no more is required.

Moreover, it is irrelevant whether the challenged “classifications” impose an “impossible” burden or some other burden, because standing to challenge the constitutionality of those “classifications” does not turn on such distinctions. At most, the relative burdens imposed by the classifications is a merits inquiry, not a standing issue, and is addressed under the appropriate level of heightened scrutiny under this Court’s precedent. *See Chester*, 628 F.3d at 680. Thus, in purporting to distinguish *Dearth* on this ground, the district court conflated standing with the merits. *See Covenant Media of S.C., LLC v. City of N. Charleston*, 493 F.3d 421, 429 (4th Cir. 2007) (“A plaintiff’s standing to bring a case does not depend upon his ultimate success on the merits underlying his case” because otherwise “‘every unsuccessful plaintiff will have lacked standing in the first place.’”) (quoting *White Tail Park, Inc. v. Stroube*, 413 F.3d 451, 461 (4th Cir. 2005))).

The district court also failed to follow this Court’s reasoning in *Lane v. Holder*, 703 F.3d 668, 674 (4th Cir. 2012). In *Lane*, the plaintiffs asserted that they were harmed because out-of-state dealers (third parties) were barred by the federal

law at issue from selling a handgun to a non-resident purchaser. *Id.* at 670–71. In addressing this claim, this Court acknowledged that:

[c]onsumers burdened by regulation of the sellers they transact with may be able to establish that they have suffered an injury in fact, as the Supreme Court has made clear in the context of Commerce Clause litigation[.]

and held that in those cases the plaintiffs had standing because they “were burdened directly.” *Id.* at 672–73. But the plaintiffs in *Lane* were not directly burdened because they could legally purchase a handgun in their home state of residence. *Id.* Here, unlike the plaintiffs in *Lane*, Plaintiffs do not challenge a restriction placed on third parties. Rather, they challenge statutory requirements and regulations directed specifically at them. *See Warth*, 422 U.S. at 499. And, unlike the plaintiffs in *Lane*, Plaintiffs cannot bypass the Handgun License Requirement by buying handguns elsewhere, as federal law bans such out-of-state sales. *See Mance v. Sessions*, 896 F.3d 699 (5th Cir. 2018). The harm is directly inflicted in this case and, under *Lane*, such harm is sufficient to confer standing.

This Court’s decision in *Hamilton v. Pallozzi*, 848 F.3d 614, 620 (4th Cir. 2017), cited by the district court, JA 1389–90, is not to the contrary. There, the Court sustained the plaintiff’s standing to bring an as-applied Second Amendment challenge to a disqualification provision of Maryland firearms law that barred the plaintiff from obtaining a carry permit, holding that the plaintiff need not apply for the permit because it was legally futile to do so. 848 F.3d at 620–21. The district

court cited *Hamilton* as support for its ruling that an application is otherwise required where not futile, but failed to recognize that in *Hamilton*, the plaintiff “desire[d] to obtain a permit” from the Maryland State Police. *Id.* at 617. Here, Plaintiffs do not want a Handgun License; they want to purchase a handgun *without* the Handgun License. By focusing on whether it would be futile to *seek* the Handgun License, the district court failed to realize that the futility of seeking a Handgun License is irrelevant to the claim that the Handgun License Requirement is, itself, unconstitutional.

The district court also committed multiple errors on summary judgment concerning the individual Plaintiffs. For example, the district court disregarded the claims of Ms. Miller and Ms. Hoffman that their physical disabilities made it difficult or impossible for them to complete the required training because these individuals could have sought “accommodations” from the Maryland State Police. JA 1391–92. Yet, there is nothing in the Handgun License Requirement that provides any avenue for seeking an accommodation, much less a standard for granting such accommodations. The Maryland State Police have no discretion under State law to disregard requirements imposed by statute, or by otherwise-binding regulations. *See, e.g., Harvey v. Marshall*, 389 Md. 243, 302–03 (2005); *Board of Educ. v. Howard Cty. Educ. Ass’n-ESP, Inc.*, 445 Md. 515, 523 (2015). The district court’s ruling that Plaintiffs must seek an accommodation as a condition to standing demands the

legally impossible under State law. Furthermore, the court's holding goes to the merits of whether the Handgun License Requirement is constitutional, not whether Plaintiffs have standing to test that requirement.

Finally, and in any event, the Supreme Court is clear that there is no requirement to exhaust administrative remedies, even where they do exist, in suits brought under 28 U.S.C. § 1983. *See Patsy v. Board of Regents*, 457 U.S. 496, 516 (1982) (“we conclude that exhaustion of state administrative remedies should not be required as a prerequisite to bringing an action pursuant to § 1983”). Yet, in holding that these individuals lack standing unless they have sought an accommodation, the district court has effectively imposed an exhaustion requirement as a jurisdictional prerequisite to bringing suit under Section 1983. That result is especially inexplicable where, as here, State law does not even afford a method or procedure for seeking any such accommodation.

The district court also improperly resolved factual issues. On summary judgment, the court's “function” is not “to weigh the evidence and determine the truth of the matter but to determine whether there is a genuine issue for trial.” *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 249 (1986). Yet, here, the district court did precisely that when it discounted Ms. Hoffman's hyperacusis disability by asserting that she could have used alternative ammunition (“simunitions”) that supposedly is less loud and that supposedly does not require a range. JA 1392. Each

of those points is disputed. For example, while the district court cited Maryland State Police testimony that their Troopers shoot simunition rounds in training without ear protection, even the Maryland State Police concede in their Advisory LD-HQL-17-004,⁵ JA 565–67, 593, cited by the district court, JA 1392, that this ammunition is, in fact, live ammunition under Maryland law, Md. Code Ann., Public Safety § 5-133.1(a), in that it uses an “explosive” charge to move a projectile out of the barrel. That makes a loud noise, just less loud than regular ammunition.⁶ To a person suffering from hyperacusis, such as Ms. Hoffman, any such loud noise would be excruciating. The district court erred when it assumed that Ms. Hoffman would be able to use this “alternative ammunition.”

Similarly, the testimony from the Maryland State Police, cited by the district court, JA 1392, that such ammunition does not require a range ignores that the discharge of all ammunition is banned by local law in the urban portions of Maryland, including all of the City of Baltimore, all of Prince George’s County and

⁵ Available at <https://bit.ly/2WYEJNq>.

⁶ For example, a 9mm simunition handgun round has the noise level of 135 dB at 1 m (3 ft.) – Peak Noise Level. For comparison, a regular 9mm round has a noise level of approximately 162 dB. National Gun Trusts, *Relative Sound Pressure Levels in Decibels (dB) of Firearms* (July 21, 2017), available at <https://www.nationalguntrusts.com/blogs/nfa-gun-trust-atf-information-database-blog/relative-sound-pressure-levels-in-decibels-db-of-firearms-2>. Noise levels above 140dB can cause damage to hearing after just one exposure. Center for Hearing and Communication, *Common environmental noise levels*, available at <http://chchearing.org/noise/common-environmental-noise-levels/>.

most of Montgomery County. JA 566–68. The only exception applicable here is for discharges taking place on “established ranges,” which are protected from local regulation by state law. Md. Code. Ann., Crim. Law § 4-209(d)(2); JA 564–65. Ms. Hoffman, as resident of Montgomery County, would thus effectively be required to use a public range. Obviously, such ranges are loud places, harmful to Ms. Hoffman’s condition, given the discharge of firearms from other shooters. The facts are also undisputed that the “alternative” ammunition suggested by the district court requires special protective equipment and modifications to handguns and that very few instructors “have ready access” to such equipment. JA 566. All these facts bear on Ms. Hoffman’s standing to challenge the training requirements, and yet all were wrongly ignored or wrongly resolved by the district court on summary judgment.

C. The Individual Plaintiffs have standing to bring the vagueness claim.

All the individuals also have standing to maintain the vagueness. In that claim, Plaintiffs allege that the ban on the “receipt” or “receive” of a handgun without possessing a Handgun License is void for vagueness because the ban:

could include the temporary receipt of a handgun by a spouse, family member or friend, who may lack an HQL, at a firing range, or in the home or such receipt while conducting firearms instruction for such persons lacking an HQL.

JA 31. The district court concluded that Plaintiffs lack standing because they had not shown “a specific threat” of enforcement of these provisions. JA 1396. In so holding,

the district court applied the wrong legal standard and impermissibly resolved questions of fact.

First, the district court's holding that plaintiffs must await a "specific threat" of enforcement is incorrect. The Supreme Court repeatedly has instructed that standing does "not require a plaintiff to expose himself to liability before bringing suit to challenge the basis for the threat—for example, the constitutionality of a law threatened to be enforced." *MedImmune, Inc. v. Genentech, Inc.*, 549 U.S. 118, 128–29 (2007). Thus, in *Babbitt v. United Farm Workers Nat. Union*, 442 U.S. 289, 302 (1979), the Court held:

when fear of criminal prosecution under an allegedly unconstitutional statute is not imaginary or wholly speculative, a plaintiff need not 'first expose himself to actual arrest or prosecution to be entitled to challenge [the] statute.'

(Citation omitted). This Court's decisions are in accord. *See Kenny v. Wilson*, 885 F.3d 280, 288 (4th Cir. 2018) (applying *Babbitt* to sustain standing without any specific threat of prosecution); *Davison v. Randall*, 912 F.3d 666, 677–79 (4th Cir. 2019) (sustaining standing where the plaintiff "intends to engage in a course of conduct 'arguably' impacted by the challenged conduct"). A "specific threat" of enforcement, required by the district court here, would require precisely the sort of exposure rejected in these cases. *See also Ezell v. City of Chicago*, 651 F.3d 684, 695–96 (7th Cir. 2011) (deciding that plaintiffs, who wished to engage in range training, had standing to bring a Second Amendment challenge to a Chicago

ordinance banning firing ranges, reasoning that the very existence of the ordinance implied a threat to prosecute).

Here, there is nothing “imaginary” about Plaintiffs’ fear of prosecution under these vague provisions. *See, e.g.*, JA 614 (“Because of the new law, I was concerned that if I used [my husband’s] gun it would be considered receiving the handgun and that I could be prosecuted” because the law was “unclear”); JA 558–59 (“instructors, including myself, as well as other members of MSI, have been burdened and are deterred by the vague provisions of Md. Code Ann., Pub. Safety § 5-117.1 from temporarily loaning handguns to others, including friends and family”). All this evidence must “be believed” on summary judgment. *Anderson*, 477 U.S. at 255.

The prospect of such enforcement also directly chills the exercise of Plaintiffs’ core fundamental right, recognized in *Heller*, to possess handguns for self-defense in the home, as all non-Handgun License holders are barred from “receiving” a handgun and any person who knowingly “participates” in such a “receipt” commits a serious crime. Md. Code Ann., Public Safety § 5-144. Highlighting the vague nature of this law is that under federal law, “receipt” of a firearm can be proven by mere possession. *See, e.g., United States v. Turnmire*, 574 F.2d 1156, 1157 (4th Cir. 1978) (construing “receive” as used in 18 U.S.C. § 922(h)). This chilling of a constitutional right fully suffices as harm for purposes of standing. *See, e.g., Susan B. Anthony List v. Driehaus*, 573 U.S. 149, 159 (2006); *Am. Booksellers*, 484 U.S.

at 393; *NRA v. Magaw*, 132 F.3d 272, 279 (6th Cir. 1997) (“[P]reinforcement review is usually granted under the Declaratory Judgment Act when a statute imposes costly, self-executing compliance burdens or if it chills protected activity.”) (quotation omitted).

The district court ignored this evidence and instead resolved the issue on the merits by impermissibly crediting a Maryland State Police Advisory, which purported to define “receive” and “receipt” so as to exempt the temporary receipt of a handgun from the statute. JA 1395. Yet, the Maryland State Police Advisory is not a regulation; it was not issued pursuant to Maryland State Police notice and comment rulemaking authority under Md. Code Ann., Pub. Safety § 5-117.1(n), unlike the other regulations challenged by Plaintiffs. The Advisory was not issued until November 2017, soon after the district court denied defendants’ motion to dismiss and held that “Plaintiffs adequately allege a plausible claim that the HQL Provision is impermissibly vague,” and stating further that “[t]o address Defendants’ arguments, the Court would have to analyze the merits of Plaintiffs’ vagueness claim,” which the court found “inadvisable.” JA 64.

Given that timing, and the reality that the Maryland State Police had previously refused to issue any regulation or even an Advisory on this issue, the Advisory was obviously issued for the purpose of securing a litigation advantage in this case. The Maryland State Police’s non-binding “litigation position” is not

entitled to any consideration by this Court. *See, e.g., Sierra Club v. Dept. of the Interior*, 899 F.3d 260, 286–87 (4th Cir. 2018) (refusing to give any credence to “litigation positions that do not reflect an exercise of delegated legislative authority”).

Critically, because it is not a regulation, the Advisory binds no one, not even the Maryland State Police. In Maryland, the prosecution authority lies with the State’s Attorneys, *Murphy v. Yates*, 276 Md. 475 (1975), who are independent of the Attorney General under the Maryland Constitution. *See* Md. Const. Art. V, § 7. Maryland law also holds that “equitable estoppel does not apply against the State in regard to governmental functions,” *Heartwood 88, Inc. v. Montgomery Cty.*, 156 Md. App. 333, 370 (2004), which means that local law enforcement and State’s Attorneys and the Maryland State Police itself, are free to proceed without regard to the Advisory.

In effect, the Advisory amounts to no more than a non-binding assurance, for now, that the Maryland State Police will not arrest for temporary possessions (other Maryland law enforcement agencies have not issued any such assurances). Yet, as a matter of law, the assurance is insufficient to negate the vagueness of these provisions—even for the Maryland State Police. *See McDonnell v. United States*, 136 S. Ct. 2355, 2373–74 (2016) (noting that “we cannot construe a criminal statute on the assumption that the Government will ‘use it responsibly’”) (quoting *United*

States v. Stevens, 559 U.S. 460, 480 (2010)); *Wollschlaeger v. Governor, Fla.*, 848 F.3d 1293, 1322 (11th Cir. 2017) (en banc) (“But we cannot find clarity in a wholly ambiguous statute simply by relying on the benevolence or good faith of those enforcing it.”); *Lewis v. Alexander*, 685 F.3d 325, 341 (3d Cir. 2012) (“[T]o the extent the agency is pleading for a chance to interpret the statute more leniently than the statute’s text might suggest, we question whether we can credit such an interpretation”). In sum, nothing in the Advisory eliminates the harm faced by plaintiffs, much less does so as a matter of law on summary judgment.

D. The Individual Plaintiffs have standing to bring the state law claims.

On summary judgment, Plaintiffs contended that the Maryland State Police’s “live fire” requirement in the regulations was unauthorized by the statute. Plaintiffs further argued that Maryland State Police regulations had illegally shifted its fingerprinting duties and costs under Md. Code Ann., Pub. Safety § 5-117.1(f) to the applicants and private vendors and wrongly eliminated NRA certified instructors as a separate category of “qualified handgun instructors” under Md. Code Ann., Pub. Safety § 5-101(q)(3) by requiring such instructors (which include many MSI members) to obtain a Maryland State Police-issued license. Dkt. 77 at 64–68. In that way, the Maryland State Police effectively conscripted Section 5-101(q)(3) instructors into its online system for applications in a manner that is directly contrary

to the statute. JA 564. All these aspects had the effect of increasing the burden on applicants, MSI instructors and other MSI members.

When considering the motion to dismiss, the district court ruled that “Plaintiffs have adequately pled an ultra vires claim under [Md. Code Ann., State Government] § 10-125,” holding further that the plaintiffs were fully entitled to obtain a declaratory judgment under State law, regardless of merits of the claims. JA 67. That decision was correct. *See Christ by Christ v. Md. Dept. of Nat. Res.*, 335 Md. 427, 435 (1994) (“Where a controversy is appropriate for resolution by declaratory judgment, however, the trial court must render a declaratory judgment.”). Yet, the district court, now at the summary judgment stage, concluded that Plaintiffs did not have standing under State law because none of the plaintiffs had a “special interest, distinct from that of the general public.” JA 1407.

That conclusion is belied by the record. JA 558, 563–68. For example, Handgun License applicants (not the general public) are subjected to the “live-fire” training and fingerprinting requirements. MSI instructors are likewise uniquely burdened by this live-fire requirement because they must obtain range access and provide firearms and ammunition for the live-fire, which increases their costs. NRA instructors, who are also MSI members, JA 558, are harmed by the Maryland State Police’s additional licensure requirements imposed in violation of Md. Code Ann., Pub. Safety 5-101(q)(3) because they expressly impose duties on instructors and

drive up instructors' costs. None of these "interests" are shared by the "general public." None of these facts is disputed, and yet all were ignored by the court. These facts are sufficient to establish standing under the very Maryland case law cited by the district court because the Individual Plaintiffs and MSI members are "personally and specifically affected in a way different from . . . the public generally." *Sugarloaf Citizens' Ass'n v. Dep't of the Env't.*, 344 Md. 271, 288 (1996) (quotations and citations omitted).

The district court compounded its error in opining that the court's "constitutional analysis" for the constitutional claims also demonstrated that plaintiffs did not have standing on the state law claims. JA 1407. It is well established that standing is claim-dependent. *See, e.g., DaimlerChrysler Corp. v. Cuno*, 547 U.S. 332, 351 (2006). Each claim must be analyzed independently. Accordingly, the district court's ruling on the constitutional claims is not controlling (or even relevant) to standing on the State law claims. As demonstrated above, MSI and its members are harmed in ways that are quite specific to these State law claims. These harms confer standing because they are "(a) concrete and particularized, and (b) actual or imminent," indisputably caused by the regulations challenged here, and fully "redressible" by the declaratory relief sought. *Lujan*, 504 U.S. at 560.

II. MSI has organizational standing.

In addition to representing its members in this suit, MSI has organizational standing to sue on its own behalf. The injury in fact requirement is satisfied where the challenged actions have worked to “frustrate” achievement of the organization’s purposes and objectives. *Havens Realty Corp. v. Coleman*, 455 U.S. 363, 379 (1982) (explaining that a “concrete and demonstrable injury to the organization’s activities—with the consequent drain on the organization’s resources—constitutes far more than simply a setback to the organization’s abstract social interests”). Under this test, “[a]n organization may suffer an injury in fact when a defendant’s actions impede its efforts to carry out its mission.” *Lane*, 703 F.3d at 674. Stated differently, a challenged “policy frustrates the organization’s goals and requires the organization ‘to expend resources in representing clients they otherwise would spend in other ways,’” *Comite de Jornaleros de Redondo Beach v. City of Redondo Beach*, 657 F.3d 936, 943 (9th Cir. 2011) (en banc) (citation omitted).

MSI satisfies this test because MSI’s mission is to “endorse[], promote[] and encourage[] law-abiding adults . . . to acquire and to become proficient in the use of handguns for lawful self-defense purposes” and “to educate the community about the right of self-protection, the safe handling of firearms, and the responsibility that goes with carrying a firearm in public.” JA 558, 561. There is no dispute that MSI promotes the acquisition of handguns for self-defense in the home and there no

dispute that the Handgun License Requirement burdens that acquisition. As the MSI President explained during his deposition:

HQL, in our view, stands as an obstacle to the acquisition of firearms . . . for no other reason than to ration and prohibit and obstruct the exercise of the constitutional right to acquire a firearm. And that is, in itself, an obstacle to MSI's mission.

JA 1397. MSI strongly opposed this legislation before the Maryland General Assembly, JA 560, and filed extensive comments opposing the regulations adopted by the Maryland State Police. JA 560, 570. There is, thus, "a direct conflict between the defendant's conduct and the organization's mission." *NTEU v. United States*, 101 F.3d 1423, 1429–30 (D.C. Cir. 1996).

But the injury to MSI goes well beyond an abstract disagreement with the Handgun License Requirement. The Handgun License Requirement directly and adversely affects MSI's programs and other activities. MSI must divert resources from MSI's core mission of promoting the rights of gun owners and educating the public concerning the Second Amendment rights of law-abiding persons, to educating and assisting its members and public on how to satisfy the many and complex requirements imposed by the Handgun License Regulation. Because acquiring a handgun for lawful self-defense (part of MSI's core mission) is legally impossible without a Handgun License, MSI and its instructors must now assist the public and members in obtaining Handgun License training and answering inquiries concerning the elaborate new process imposed on the receipt of a handgun by these

requirements. Similarly, MSI instructors must now devote time and effort to becoming State certified instructors and devote resources to Handgun License instruction, rather than training individuals on other matters, such as teaching basic handgun skills in courses such as the NRA's Basic Pistol course or instructing in more advanced courses, such as Personal Protection in the Home and Personal Protection Outside the Home. *See* JA 558–62. These facts alone are sufficient to establish standing. *See Fair Emp't Council of Greater Washington, Inc. v. BMC Mktg. Corp.*, 28 F.3d 1268, 1276 (D.C. Cir. 1994) (sustaining organizational standing where the defendant's actions “have interfered with these [plaintiff's] efforts and programs and have also required the [plaintiff] to expend resources to counteract” defendant's challenged conduct).

And there are still more harms to MSI. The Handgun License Requirement also has “adversely impacted the ability of MSI to attract new members, as MSI membership is largely composed of individuals who have or seek to have handguns in the home for lawful self-defense.” JA 561. More specifically, “[a]s individuals acquire handguns, they are more likely to join MSI so as to defend their Second Amendment rights.” JA 561. Accordingly, “[a]ny law or regulation that burdens or discourages the acquisition of handguns harms MSI by reducing the number of persons who see the need to join MSI.” JA 561. Indeed, “[s]uch a decline in the number of members actually happened after the enactment of the Firearms Safety

Act of 2013.” JA 561. As the President of MSI explained, “[t]his loss of members and potential members, with the consequent loss of membership dues and contributions, has reduced the ability of MSI to promote its agenda and achieve its purposes, thereby further harming MSI directly, as an organization.” JA 561.

All these harms need only be “perceptible” to have standing. *Havens*, 455 U.S. at 379; *see also Ragin v. Harry Macklowe Real Estate Co.*, 6 F.3d 898, 905 (2d Cir. 1993) (holding that only a “perceptible impairment” of an organization’s activities is necessary for there to be an “injury in fact”). And the Defendant’s activities need not be the only cause or even the immediate cause of the injury. *Sierra Club*, 899 F.3d at 284 (“The causation element of standing does not require the challenged action to be the sole or even immediate cause of the injury.”).

Rather than address these facts, the district court simply echoed Defendants’ contention that MSI has not been injured because MSI’s membership has grown since the instigation of this lawsuit and MSI is not prohibited by the Handgun License Requirement from advocating issues of concern to its members. JA 1397. But such facts simply are insufficient, on summary judgment, to establish that MSI has not been harmed under *Havens* and *Lane*. Specifically, that MSI membership has increased by a few hundred members since this litigation has started simply suggests that existing gun owners in Maryland are willing to support this lawsuit, but it establishes nothing about the effect of the Handgun License Requirement on

MSI's ability to recruit new members from among non-gun owners. Nothing in that growth of membership negates the diversion of MSI resources caused by the Handgun License Requirement. That MSI is free to continue to advocate in support of its mission is similarly irrelevant. Organizational standing under *Havens* and *Lane* does not turn on whether the organization's First Amendment rights have been suppressed.

In particular, the district erred in relying on this Court's decision in *Lane* for support of its conclusion that MSI lacked organizational standing. JA 1397. *Lane* rejected the standing of the plaintiff organization (SAF) on grounds that expenses borne by SAF in contesting the federal requirement there at issue did not constitute cognizable harm because it "results not from any actions by [the defendants] but rather from the [organization's] own budgetary choices." *Lane*, 703 F.3d at 671. As explained above, here, in contrast, burdening the acquisition of handguns for self-defense in the home harms MSI's ability to recruit new members and necessitates the diversion of MSI's resources to address the issues caused by the Handgun License Requirement. MSI adamantly opposed the enactment of the legislation and the regulations at issue here because the legislation harms its mission, not because of budgetary choices. JA 560. Once again, the district court effectively resolved the merits under the guise of a standing ruling.

III. Atlantic Guns has personal and third party standing.

A. Atlantic Guns has personal standing to assert its Second Amendment right to sell handguns to law-abiding, responsible citizens.

1. Atlantic Guns has a right to sell handguns.

The Second Amendment's core right is "the right of law-abiding, responsible citizens to use arms in defense of hearth and home." *Kolbe*, 849 F.3d at 131 (quoting *Heller*, 554 U.S. at 634–35). The Second Amendment also confers "ancillary rights necessary to the realization of the core right." *Teixeira v. City of Alameda*, 873 F.3d 670, 677 (9th Cir. 2017) (en banc); *see also, e.g., Richmond Newspapers v. Virginia*, 448 U.S. 555, 579–80 (1980) ("[F]undamental rights, even though not expressly guaranteed, have been recognized by the Court as indispensable to the enjoyment of rights explicitly defined.") (footnote omitted).

The right to acquire a handgun is a well-established ancillary right of the Second Amendment. *E.g., Teixeira*, 873 F.3d at 678; *Ass'n of Firearms Retailers v. City of Chicago*, 961 F. Supp. 2d 928, 930 (N.D. Ill. 2014) ("[T]he right to keep and bear arms for self-defense under the Second Amendment . . . must also include the right to *acquire* a firearm.") (emphasis in original). Courts have recognized for nearly 150 years that "[t]he right to keep arms, necessarily involves the right to purchase them." *Andrews v. State*, 50 Tenn. 165, 178 (1871) (cited in *Heller*, 554 at 608). The United States Circuit Court for the Ninth Circuit, sitting en banc, explained

that this ancillary right is necessary because “the core Second Amendment right to keep and bear arms for self-defense ‘wouldn’t mean much’ without the ability to acquire arms.” *Teixeira*, 873 F.3d at 678 (quoting *Ezell*, 651 F.3d at 704).

A buyer’s right to buy may give rise to a provider’s right to sell. This principle is well-established. In *Carey v. Population Services, International*, 431 U.S. 678 (1977), the Supreme Court held that “[l]imiting the distribution of nonprescription contraceptives to licensed pharmacists clearly imposes a significant burden on the right of the individuals to use contraceptives.” In *Planned Parenthood of Wisconsin v. Doyle*, 162 F.3d 463, 471 (7th Cir. 1998), the United States Circuit Court for the Seventh Circuit held that “[t]he constitutional right to an abortion carries with it the right to perform medical procedures that many people find distasteful or worse.” And in *FW/PBS, Inc. v. City of Dallas*, 493 U.S. 215, 224 (1990), the Supreme Court agreed that “the right to sell [sexually explicit] material is a constitutionally protected right” that comes with the right to buy it. *See also, e.g., Lovell*, 303 U.S. at 447, 452 (striking down an ordinance criminalizing the distribution of certain literature because prohibiting distribution of constitutionally protected speech amounts to “censorship in its baldest form” that renders the First Amendment protection meaningless). The constitutional right to buy entails the concomitant constitutional right to sell.

Teixeira and other courts have recognized that this general principle applies in the Second Amendment context, stating that “[c]ommerce in firearms is a necessary prerequisite to keeping and possessing arms for self-defense.” *Teixeira*, 873 F.3d at 682; *Radich v. Guerrero*, No. 1:14–CV–00020, 2016 WL 1212437, at *7 (D.N. Mar. I. Mar. 28, 2016) (“If the Second Amendment individual right to keep and bear a handgun for self-defense is to have any meaning, it must protect . . . the complimentary right to sell handguns.”).⁷ At issue in *Teixeira* was a zoning ordinance that prohibited a firearms dealer from being located within 500 feet of certain identified entities. *Teixeira*, 873 F.3d at 682. Because the zoning ordinance affected only one “particular proprietor,” the Ninth Circuit concluded that it was “wholly detached from any customer’s ability to acquire firearms” generally and therefore did not affect the established right to acquire a firearm. *Id.* The Handgun License Requirement, in direct contrast, prohibits *all* Maryland firearms dealers, including Atlantic Guns, from selling handguns to all Marylanders without a Handgun License. It therefore interferes with its customers’ ability to acquire a

⁷ In *United States v. Chafin*, 423 F. App’x 342, 344 (4th Cir. 2011) (unpublished, per curiam), this Court held that an individual who was prohibited under federal law from possessing a firearm had no right to sell his illegally-gotten AK-47 to another prohibited person. Not only does *Chafin* state that it is non-precedential, it is not even persuasive authority because Chafin did not brief that issue to this Court or even present any evidence to support his claim. As set forth above, such evidence exists and demonstrates that the historical understanding of the right to keep and bear arms included an ancillary right to sell. Subsequent opinions in the Ninth and Seventh Circuits confirm this.

handgun. *Teixeira* noted correctly that a right to acquire arms comes with the right to sell them, but its ultimate holding concerning a single proprietor is inapplicable here, where the challenged laws directly preclude an entire segment of the law-abiding, responsible citizenry of Maryland from exercising their Second Amendment rights.

The right to sell handguns is also necessary to protect the Second Amendment's core right. If there were no right to sell, Maryland could effectively skirt *Heller* by regulating the Second Amendment's core right out of existence through sales prohibitions. The United States Circuit Court for the Third Circuit warned against this unconstitutional outcome, explaining that:

If there were somehow a categorical exception for [commercial] restrictions, it would follow that there would be no constitutional defect in prohibiting the commercial sale of firearms. Such a result would be untenable under *Heller*.

United States v. Marzzarella, 614 F.3d 85, 92 n. 8 (3d Cir. 2010).

The right to sell handguns to law-abiding, responsible citizens also is consistent with the Second Amendment's text, history, and tradition. The Second Amendment's text supports the right to sell because it does not preclude the right. The text instead codifies the pre-existing right of law-abiding, responsible citizens to acquire arms for lawful purposes. *Heller*, 554 U.S. at 576–603. As established above on pages 42–44, and as explained in *Marzzarella* and *Radich*, this pre-existing right necessarily entails the right to sell.

History and tradition confirm that the Second Amendment protects the right to sell. *Teixeira*, 873 F.3d at 693 (J. Tallman, concurring in part and dissenting in part) (“History supports the view that the Second Amendment must contemplate the right to sell firearms if citizens are to enjoy the core, fundamental right to own and possess them in their homes.”). Thomas Jefferson in 1793 recognized the history and tradition supporting the right to sell, writing that “[o]ur citizens have always been free to make, vend, and export arms.” Thomas Jefferson, 3 Writings 558 (H.A. Washington ed., 1853).⁸ National Archive notes indicate that Jefferson’s letter was approved by both of his Cabinet members and by President Washington. *See id.* Firearms dealers in America pre-date the Second Amendment. For instance, in colonial Virginia, all persons had “liberty to sell armes and ammunition to any of his majesties loyall subjects inhabiting this colony.” Laws of Va., Feb., 1676–77, Va. Stat. at Large, 2 Hening 403 (cited in *Teixeira v. Cty. of Alameda*, 822 F.3d 1047, 1054 (9th Cir. 2016)), *on reh’g en banc*, 873 F.3d 670 (9th Cir. 2017). “In terms of the original meaning of the Second Amendment, the right to engage in firearms commerce is clear.” David B. Kopel, *Does the Second Amendment Protect Firearms Commerce?*, 127 Harv. L. Rev. F. 230, 234–35 (2014).

⁸ Available at <https://founders.archives.gov/documents/Jefferson/01-26-02-0031> (last visited June 20, 2019).

2. Atlantic Guns has standing to assert its right to sell handguns because it has suffered injury.

As an initial matter, Atlantic Guns has standing because it is an object of the Handgun License Requirement. *E.g.*, *Lujan*, 504 U.S. at 562–63; *Craig*, 429 U.S. at 194–95 (finding standing where “the statutory sections under challenge are addressed directly to vendors such as appellant. She is obliged either to heed the statutory discrimination, thereby incurring a direct economic injury through the constriction of her buyers’ market, or to disobey the statutory command and suffer . . . sanctions and perhaps loss of license”). The Handgun License Requirement prohibits Atlantic Guns from transferring a handgun to law-abiding, responsible Maryland citizens who lack a Handgun License. Md. Code Ann., Pub. Safety § 5-117.1(b). Like the plaintiff in *Craig*, Atlantic Guns is obliged to either heed the Handgun License Requirement, thereby incurring a direct economic injury, or disobey the statutory command and suffer a fine, jail time, and loss of its dealer’s license. *Id.* at §§ 5-114(b)(2), 144(b). Atlantic Guns therefore has personal standing.

Atlantic Guns also has personal standing because it satisfies the criteria set forth in *Air Evac EMS*. Its economic injury is fairly traceable to the Handgun License Requirement, and a favorable outcome will likely redress this economic injury. *See Air Evac EMS*, 910 F.3d at 760. Atlantic Guns complies with the Handgun License Requirement, foregoing the exercise of its Second Amendment right to sell handguns to its customers who lack a Handgun License, because it credibly fears prosecution.

JA 1412. Not only “would [it] be unreasonable to assume that the General Assembly adopted the [challenged statute] without intending that it be enforced,” *Am. Booksellers*, 802 F.2d at 694 n.4 (4th Cir. 1986), *vacated on other grounds*, 488 U.S. 905 (1988), but the Maryland State Police has broadcasted its intention to prosecute non-compliant firearms dealers. After enactment of the Handgun License Requirement, the Maryland State Police provided compliance training to firearms dealers. *See* Maryland State Police Licensing Division, Maryland Firearms Dealer Seminar 2015.⁹ It has since, on July 21, 2017, “remind[ed] all Maryland’s Licensed Firearms Dealers . . . that unless otherwise exempted, a person may not purchase, rent, or receive a handgun unless they possess a valid Handgun Qualification License (H.Q.L.).” Maryland State Police, Advisory LD-HQL-17-002 (July 21, 2017).¹⁰

Atlantic Guns’ compliance with the Handgun License Requirement has caused it economic injury, the “classic and paradigmatic form of injury in fact.” *See Air Evac EMS*, 910 F.3d at 760 (internal quotation omitted). Economic injury includes lost revenue. *Id.* It also includes lost business opportunities. *E.g.*, *Craig*, 429 U.S. at 194 (“constriction of [appellant’s] buyers’ market” was a “direct economic injury”); *CC Distribs., Inc. v. United States*, 883 F.2d 146, 150 (D.C. Cir. 1989) (“[A] plaintiff suffers a constitutionally cognizable injury by the loss of an

⁹ Available at <https://bit.ly/2WQ1eUN> (last visited June 24, 2019).

¹⁰ Available at <https://bit.ly/2MXm6Vw> (last visited June 24, 2019).

opportunity to pursue a benefit—such as a . . . contract—even though the plaintiff may not be able to show that it was certain to receive that benefit had it been accorded the lost opportunity.”).

Atlantic Guns has lost both revenue and business opportunities. As detailed above on page 11, after the Handgun License Requirement took effect, Atlantic Guns’ handgun revenue decreased by approximately 20 percent. JA 1412–14. Atlantic Guns also lost business opportunities with hundreds of handgun customers it turned away because they lacked a Handgun License. JA 1412.

Atlantic Guns satisfies the traceability requirement because the Handgun License Requirement is “addressed directly to [it].” *See Magaw*, 132 F.3d at 282; *Primera Iglesia Bautista Hispana of Boca Raton, Inc. v. Broward Cty.*, 450 F.3d 1295, 1299–300 (11th Cir. 2006) (holding that the traceability requirement is “clearly present” when the challenged law “directly and expressly limits” the plaintiff’s conduct). The traceability requirement is met in this circumstance because “the injury . . . stems directly from the [challenged law]’s ban of specific [conduct].” *Magaw*, 132 F.3d at 282. The Handgun License Requirement is addressed directly to firearms dealers such as Atlantic Guns, Md. Code Ann., Pub. Safety § 5-117.1(b); thus Atlantic Guns’ injuries are traceable to the Handgun License Requirement.

Defendants have not disputed that Atlantic Guns satisfies the redressability requirement. In any event, a favorable ruling is likely to redress an injury where the

plaintiff “abandoned a line of business because of passage of the [challenged law]” and “would promptly resume the prohibited activities” if “the [challenged law] [was] declared unconstitutional.” *Magaw*, 132 F.3d at 282. The redressability requirement is similarly met where a favorable outcome would repeal “burdens” on purchasing the plaintiff’s goods. *See Finlator v. Powers*, 902 F.2d 1158, 1161 (4th Cir. 1990). Like the plaintiffs in *McGaw* and *Finlator*, Atlantic Guns abandoned selling handguns to law-abiding, responsible Maryland citizens without a Handgun License because of the Handgun License Requirement. *See* JA 1412. It would resume this activity if the Handgun License Requirement were held unconstitutional, likely redressing Atlantic Guns’ economic injury. *See* JA 1412.

The district court’s opinion finding that Atlantic Guns did not have personal standing was flawed because it improperly weighed the evidence produced by Atlantic Guns demonstrating a reduction in sales and determined that Atlantic Guns’ demonstrated loss in revenue was not attributable to the Handgun License Requirement alone. JA 1452–54. To do this, the district court distorted the sales evidence, averaged numbers over unlike years, ignored the loss of revenue at one of Atlantic Guns’ two stores, and attributed any reduction to “inherent variations in sales numbers” without any factual basis. JA 1452–54. All of these actions by the district court were improper in a standing analysis. The extent of the economic loss is an issue that is part of the Second Amendment merits analysis. The undisputed

facts establish that Atlantic Guns suffered economic loss following imposition of the Handgun License Requirement. JA 1412–14. As demonstrated above, Atlantic Guns has established its personal standing.

B. Atlantic Guns has third party standing to assert its customers' right to acquire handguns.

Atlantic Guns has standing to assert the rights of its customers because enforcement of the Handgun License Requirement against Atlantic Guns results indirectly in the violation of its customers' rights. *E.g.*, *Kowalski*, 543 U.S. at 130; *Craig*, 429 U.S. at 194–95; *Barrows*, 346 U.S. at 255–56. Firearms dealers like Atlantic Guns are no different than the:

vendors and those in like positions [who] have been uniformly permitted to resist efforts at restricting their operations by acting as advocates of the rights of third parties who seek access to their market or function.

Craig, 429 U.S. at 194–95. Two circuit courts have considered whether a firearms-related business fits within a rule allowing third party standing where enforcement of the challenged statute against the litigant results indirectly in the violation of its customers' rights: *Teixeira* and *Ezell*. Both courts, citing *Craig*, determined that they do. *Teixeira*, 873 F.3d at 678; *Ezell*, 651 F.3d at 696.

Atlantic Guns fits within this rule. Defendants enforce the Handgun License Requirement against Atlantic Guns by prohibiting it from transferring a handgun to its customers who lack a Handgun License. Md. Code Ann., Pub. Safety § 5-117(b).

As demonstrated above on pages 10–11, Maryland’s enforcement of the Handgun License Requirement against Atlantic Guns prevents law-abiding, responsible Maryland citizens without a Handgun License from acquiring a handgun for self-defense in the home, violating their Second Amendment rights. Atlantic Guns therefore has third party standing to assert its customers’ rights to address this harm.

Atlantic Guns also has third party standing to assert its customers’ rights for a second, independent reason: it has a close relationship with them, and their privacy concerns surrounding handgun ownership hinder them from bringing suit. *See, e.g., Kowalski*, 543 U.S. at 130; *Freilich v. Upper Chesapeake Health, Inc.*, 313 F.3d 205, 215 (4th Cir. 2002).

Atlantic Guns has a close relationship with its customers. The Supreme Court has explained that “the relationship of the litigant to the person whose right he seeks to assert” is sufficiently close “[i]f the enjoyment of the right is inextricably bound up with the activity the litigant wishes to pursue.” *Singleton v. Wulff*, 428 U.S. 106, 115 (1976). Because Atlantic Guns’ customers’ right to acquire a handgun is inextricably bound up with Atlantic Guns ability to sell a handgun (the activity Atlantic Guns wishes to pursue), *see Marzzarella*, 614 F.3d at 92 n. 8, Atlantic Guns and its customers have a close relationship. In any event, courts hold unanimously that a business has a sufficiently close relationship with its customers when, like here, the challenged law prevents the business from transacting with them. *E.g.,*

Lepelletier v. F.D.I.C., 164 F.3d 37, 43–44 (D.C. Cir. 1999) (finding a close relationship on “the basis of the vendor-vendee relationship alone”) (internal quotation omitted); *Craig*, 429 U.S. at 192–97 (vendors have a close relationship with their potential vendees); *Carey*, 431 U.S. at 683 (same).

Atlantic Guns’ customers’ privacy concerns hinder them from bringing suit. The hindrance requirement is a low threshold that does not require an inability to bring suit. *Singleton*, 428 U.S. at 117. It is met, for instance, where an individual’s privacy concern discourages him from bringing suit. *Id.* (A third party’s privacy concern becomes a hindrance where she “may be chilled from [an] assertion [of her own rights] by a desire to protect the very privacy of her decision from the publicity of a court.”); *see also Carey*, 431 U.S. at 684 n. 4 (holding that a “vendor’s standing to assert the rights of potential purchasers of his product is . . . compelling,” especially where the “rights involved fall within the sensitive issue of personal privacy”). An individual’s status as a firearms owner is a sensitive issue of personal privacy. Maryland has even codified this privacy concern by prohibiting public records custodians from disclosing records of firearms dealers. Md. Code Ann., Gen. Prov. § 4-325(a)–(b). And courts in other jurisdictions agree that firearm ownership is “a personal decision of considerable importance” that “reveals intimate or embarrassing details of an individual’s private life.” *Mager v. State, Dep’t of State Police*, 460 Mich. 134, 143 (1999). It may be fairly inferred from the undisputed

facts that Atlantic Guns' customers, with whom Atlantic Guns has a close relationship, are likely discouraged from bringing suit and revealing the "intimate" details of their firearms ownership. Whether someone owns a handgun or does not own a handgun, or whether that person may have other firearms, is highly personal and entitled to confidentiality protected by law. Fear of revealing this information to the world if embroiled in the discovery attendant to a lawsuit is a concrete hindrance to bringing suit. Atlantic Guns therefore has third party standing to assert its customers' rights for this second reason.

The district court determined that Atlantic Guns did not have standing to assert the claims of its customers because it believed that "the [Handgun License Requirement] does not impose any categorical prohibition that constricted Atlantic Guns' buyers' market." JA 1404. This is simply false. With few exceptions not relevant here, no law-abiding, responsible Marylander can acquire a handgun unless they subject themselves to the challenged law. This effects a complete prohibition on the possession of handguns to those without a Handgun License, constricting the market of buyers. Compounding that error, the district court rejected Atlantic Guns' undisputed evidence demonstrating that numerous individuals began the process of purchasing a firearm and did not complete it. *Compare* JA 889 (from October 1, 2013 through 2017, 30,877 Marylanders started a Handgun License application but stopped before completing it) *with* JA 894, 898 & 900 (Maryland issued 93,155

Handgun Licenses during this same time). The district court cannot substitute its hypothesized rationales for undisputed record evidence. JA 1404–05. The district court misapplied the law as to what Atlantic Guns must demonstrate for third party standing, and violated the mandate of Rule 56 when it weighed the evidence on summary judgment to deny Atlantic Guns demonstrated standing.

CONCLUSION

For the reasons stated above, Appellants have standing to challenge the Handgun License Requirement. Appellants respectfully request that this Court REVERSE the judgment of the district court and REMAND the case to be decided on its merits.

Respectfully Submitted,

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REQUEST FOR ORAL ARGUMENT

Appellants hereby request oral argument before this Court.

CERTIFICATE OF COMPLIANCE

This brief complies with the type-volume limitations of Fed. R. App. P. 28(e)(2)(a) because this brief contains less than 13,000 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(a)(7)(B)(viii).

This brief complies with the typeface requirements of Fed. R. App. P. 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using Microsoft Word 2007 in 14-point Times New Roman font.

Dated: June 24, 2019.

/s/ John Parker Sweeney

John Parker Sweeney

Attorney for Appellant Atlantic Guns Inc.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 24th day of June, Appellants' brief was served, via electronic delivery to all parties' counsel via the Court's appellate CM/ECF system which will forward copies to Counsel of Record.

/s/ John Parker Sweeney
John Parker Sweeney

ADDENDUM

West's Annotated Code of Maryland
Public Safety (Refs & Annos)
Title 5. Firearms (Refs & Annos)
Subtitle 1. Regulated Firearms (Refs & Annos)

MD Code, Public Safety, § 5-117.1

§ 5-117.1. Handgun qualification license required to sell, rent, or transfer handguns

Effective: October 1, 2013
Currentness

Application of section

(a) This section does not apply to:

- (1) a licensed firearms manufacturer;
- (2) a law enforcement officer or person who is retired in good standing from service with a law enforcement agency of the United States, the State, or a local law enforcement agency of the State;
- (3) a member or retired member of the armed forces of the United States or the National Guard; or
- (4) a person purchasing, renting, or receiving an antique, curio, or relic firearm, as defined in federal law or in determinations published by the Bureau of Alcohol, Tobacco, Firearms and Explosives.

Handgun qualification license required for purchaser, lessee, or transferees

(b) A dealer or any other person may not sell, rent, or transfer a handgun to a purchaser, lessee, or transferee unless the purchaser, lessee, or transferee presents to the dealer or other person a valid handgun qualification license issued to the purchaser, lessee, or transferee by the Secretary under this section.

Requirements for purchase, rent, or receipt of handguns

(c) A person may purchase, rent, or receive a handgun only if the person:

- (1)(i) possesses a valid handgun qualification license issued to the person by the Secretary in accordance with this section;
- (ii) possesses valid credentials from a law enforcement agency or retirement credentials from a law enforcement agency;

(iii) is an active or retired member of the armed forces of the United States or the National Guard and possesses a valid military identification card; or

(iv) is purchasing, renting, or receiving an antique, curio, or relic firearm, as defined in federal law or in determinations published by the Bureau of Alcohol, Tobacco, Firearms and Explosives; and

(2) is not otherwise prohibited from purchasing or possessing a handgun under State or federal law.

Issuance of handgun qualification license

(d) Subject to subsections (f) and (g) of this section, the Secretary shall issue a handgun qualification license to a person who the Secretary finds:

(1) is at least 21 years old;

(2) is a resident of the State;

(3) except as provided in subsection (e) of this section, has demonstrated satisfactory completion, within 3 years prior to the submission of the application, of a firearms safety training course approved by the Secretary that includes:

(i) a minimum of 4 hours of instruction by a qualified handgun instructor;

(ii) classroom instruction on:

1. State firearm law;

2. home firearm safety; and

3. handgun mechanisms and operation; and

(iii) a firearms orientation component that demonstrates the person's safe operation and handling of a firearm; and

(4) based on an investigation, is not prohibited by federal or State law from purchasing or possessing a handgun.

Exemptions from firearms safety training course requirements

(e) An applicant for a handgun qualification license is not required to complete a firearms safety training course under subsection (d) of this section if the applicant:

- (1) has completed a certified firearms training course approved by the Secretary;
- (2) has completed a course of instruction in competency and safety in the handling of firearms prescribed by the Department of Natural Resources under § 10-301.1 of the Natural Resources Article;
- (3) is a qualified handgun instructor;
- (4) is an honorably discharged member of the armed forces of the United States or the National Guard;
- (5) is an employee of an armored car company and has a permit issued under Title 5, Subtitle 3 of this Article; or
- (6) lawfully owns a regulated firearm.

Applications to Central Repository for State and national criminal history records check

(f)(1) In this subsection, “Central Repository” means the Criminal Justice Information System Central Repository of the Department of Public Safety and Correctional Services.

- (2) The Secretary shall apply to the Central Repository for a State and national criminal history records check for each applicant for a handgun qualification license.
- (3) As part of the application for a criminal history records check, the Secretary shall submit to the Central Repository:
 - (i) a complete set of the applicant's legible fingerprints taken in a format approved by the Director of the Central Repository and the Director of the Federal Bureau of Investigation;
 - (ii) the fee authorized under § 10-221(b)(7) of the Criminal Procedure Article for access to Maryland criminal history records; and
 - (iii) the mandatory processing fee required by the Federal Bureau of Investigation for a national criminal history records check.
- (4) The Central Repository shall provide a receipt to the applicant for the fees paid in accordance with paragraph (3) (ii) and (iii) of this subsection.
- (5) In accordance with §§ 10-201 through 10-234 of the Criminal Procedure Article, the Central Repository shall forward to the applicant and the Secretary a printed statement of the applicant's criminal history information.
- (6) Information obtained from the Central Repository under this section:

(i) is confidential and may not be disseminated; and

(ii) shall be used only for the licensing purpose authorized by this section.

(7) If criminal history record information is reported to the Central Repository after the date of the initial criminal history records check, the Central Repository shall provide to the Department of State Police Licensing Division a revised printed statement of the applicant's or licensee's State criminal history record.

Application form and fee

(g) An applicant for a handgun qualification license shall submit to the Secretary:

(1) an application in the manner and format designated by the Secretary;

(2) a nonrefundable application fee to cover the costs to administer the program of up to \$50;

(3)(i) proof of satisfactory completion of:

1. a firearms safety training course approved by the Secretary; or

2. a course of instruction in competency and safety in the handling of firearms prescribed by the Department of Natural Resources under § 10-301.1 of the Natural Resources Article; or

(ii) a valid firearms instructor certification;

(4) any other identifying information or documentation required by the Secretary; and

(5) a statement made by the applicant under the penalty of perjury that the applicant is not prohibited under federal or State law from possessing a handgun.

Issuance or denial of handgun qualification license

(h)(1) Within 30 days after receiving a properly completed application, the Secretary shall issue to the applicant:

(i) a handgun qualification license if the applicant is approved; or

(ii) a written denial of the application that contains:

1. the reason the application was denied; and

2. a statement of the applicant's appeal rights under subsection (l) of this section.

(2)(i) An individual whose fingerprints have been submitted to the Central Repository, and whose application has been denied, may request that the record of the fingerprints be expunged by obliteration.

(ii) Proceedings to expunge a record under this paragraph shall be conducted in accordance with § 10-105 of the Criminal Procedure Article.

(iii) On receipt of an order to expunge a fingerprint record, the Central Repository shall expunge by obliteration the fingerprints submitted as part of the application process.

(iv) An individual may not be charged a fee for the expungement of a fingerprint record in accordance with this paragraph.

Expiration of license

(i) A handgun qualification license issued under this section expires 10 years from the date of issuance.

Renewal of license

(j)(1) The handgun qualification license may be renewed for successive periods of 10 years each if, at the time of an application for renewal, the applicant:

(i) possesses the qualifications for the issuance of the handgun qualification license; and

(ii) submits a nonrefundable application fee to cover the costs to administer the program up to \$20.

(2) An applicant renewing a handgun qualification license under this subsection is not required to:

(i) complete the firearms safety training course required in subsection (d)(3) of this section; or

(ii) submit to a State and national criminal history records check as required in subsection (f) of this section.

Revocation of license

(k)(1) The Secretary may revoke a handgun qualification license issued or renewed under this section on a finding that the licensee no longer satisfies the qualifications set forth in subsection (d) of this section.

(2) A person holding a handgun qualification license that has been revoked by the Secretary shall return the license to the Secretary within 5 days after receipt of the notice of revocation.

Hearing upon denial or revocation of license

(1)(1) A person whose original or renewal application for a handgun qualification license is denied or whose handgun qualification license is revoked, may submit a written request to the Secretary for a hearing within 30 days after the date the written notice of the denial or revocation was sent to the aggrieved person.

(2) A hearing under this section shall be granted by the Secretary within 15 days after the request.

(3) A hearing and any subsequent proceedings of judicial review under this section shall be conducted in accordance with Title 10, Subtitle 2 of the State Government Article.

(4) A hearing under this section shall be held in the county of the legal residence of the aggrieved person.

Lost or stolen licenses

(m)(1) If an original or renewal handgun qualification license is lost or stolen, a person may submit a written request to the Secretary for a replacement license.

(2) Unless the applicant is otherwise disqualified, the Secretary shall issue a replacement handgun qualification license on receipt of a written request and a nonrefundable fee to cover the cost of replacement up to \$20.

Regulations

(n) The Secretary may adopt regulations to carry out the provisions of this section.

Credits

Added by Acts 2013, c. 427, § 1, eff. Oct. 1, 2013.

MD Code, Public Safety, § 5-117.1, MD PUBLIC SAFETY § 5-117.1

Current through legislation effective June 1, 2019, from the 2019 Regular Session of the General Assembly.

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West's Annotated Code of Maryland
Public Safety (Refs & Annos)
Title 5. Firearms (Refs & Annos)
Subtitle 1. Regulated Firearms (Refs & Annos)

MD Code, Public Safety, § 5-144
Formerly cited as MD CODE Art. 27, § 449

§ 5-144. Knowing participation in violation of subtitle

Effective: October 1, 2013
Currentness

Prohibited

(a) Except as otherwise provided in this subtitle, a dealer or other person may not:

(1) knowingly participate in the illegal sale, rental, transfer, purchase, possession, or receipt of a regulated firearm in violation of this subtitle; or

(2) knowingly violate § 5-142 of this subtitle.

Penalty

(b) A person who violates this section is guilty of a misdemeanor and on conviction is subject to imprisonment not exceeding 5 years or a fine not exceeding \$10,000 or both.

Separate crime

(c) Each violation of this section is a separate crime.

Credits

Added as Public Safety § 5-143 by Acts 2003, c. 5, § 2, eff. Oct. 1, 2003. Amended by Acts 2011, c. 164, § 1, eff. Oct. 1, 2011; Acts 2011, c. 165, § 1, eff. Oct. 1, 2011; Acts 2011, c. 343, § 1, eff. Oct. 1, 2011. Renumbered as Public Safety § 5-144 by Acts 2013, c. 427, § 1, eff. Oct. 1, 2013.

Editors' Notes

LEGISLATIVE NOTES

Revisor's Note (Acts 2003, c. 5):

This section is new language derived without substantive change from former Art. 27, § 449(f).

In subsection (a) of this section, the reference to this “subtitle” is substituted for the former reference to this “section” even though this subtitle is derived, in part, from provisions outside of former Art. 27, § 449. Because the provisions revised in this subtitle do not affect the application of this subtitle in a way contrary to the provisions set forth here, no substantive change results.

Defined terms: “Dealer” § 5-101

“Person” § 1-101

“Regulated firearm” § 5-101

Notes of Decisions (1)

MD Code, Public Safety, § 5-144, MD PUBLIC SAFETY § 5-144

Current through legislation effective June 1, 2019, from the 2019 Regular Session of the General Assembly.

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Code of Maryland Regulations

Title 12. Department of Public Safety and Correctional Services

Subtitle 15. Criminal Justice Information System Central Repository

Chapter 05. Use of Private Provider Services for Non-Criminal Justice Purposes (Refs & Annos)

COMAR 12.15.05.05

.05. Private Provider Business Location Requirements.

Currentness

A. Before the Central Repository enters into a private provider agreement with or issues an original or renewal authorization certificate to a private provider, the Central Repository shall review a private provider's location plan.

B. A private provider's location plan, at a minimum, shall have:

- (1) A Livescan machine that is approved by the Central Repository;
- (2) A waiting area that, at a minimum, includes:
 - (a) A reception desk; and
 - (b) Seating for individuals requesting a criminal history records check;
- (3) A method of securing and maintaining records that meets Central Repository requirements; and
- (4) Electronic connections, electric power supply, and office climate control that meet manufacturer and Central Repository requirements.

Complete through Maryland Register Vol. 46, Issue 10, dated May 10, 2019.

COMAR 12.15.05.05, MD ADC 12.15.05.05

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Code of Maryland Regulations
Title 29. Department of State Police
Subtitle 03. Weapons Regulations
Chapter 01. Regulated Firearms (Refs & Annos)

COMAR 29.03.01.29

.29. Handgun Qualification License -Training Requirement.

Currentness

A. Except as provided in §B of this regulation, an applicant shall complete a Firearms Safety Training Course and submit a Firearms Safety Training Certificate issued by a Qualified Handgun Instructor. The submission of the Firearms Safety Training Certificate shall constitute proof that the applicant satisfactorily completed a Firearms Safety Training Course.

B. An applicant does not need to complete a Firearms Safety Training Course if the applicant:

- (1) Has satisfactorily completed a firearms training course approved by the Secretary as an exemption from the Firearms Safety Training Course;
- (2) Has satisfactorily completed a course of instruction in competency and safety in the handling of firearms as prescribed by the Department of Natural Resources under Natural Resources Article, §10-301.1, Annotated Code of Maryland;
- (3) Is a Qualified Handgun Instructor in accordance with Regulation .37 of this chapter;
- (4) Is an honorably discharged member of the armed forces of the United States or the National Guard;
- (5) Is a former law enforcement officer of the State or a local law enforcement agency in the State who has successfully completed initial law enforcement training;
- (6) Is an employee of an armored car company and has a permit issued under Public Safety Article, Title 5, Subtitle 3, Annotated Code of Maryland; or
- (7) Lawfully owns a regulated firearm.

C. A Firearms Safety Training Course shall consist of a minimum of 4 hours of instruction by a Qualified Handgun Instructor and include the following minimum curricula.

(1) State Firearm Law. Overview of the State firearm laws, including discussion of what constitutes a regulated firearm, how to properly purchase or transfer a firearm, where allowed to carry or transport a firearm, when necessary to possess a carry permit, and who is prohibited from possessing firearms.

(2) Home Firearm Safety. Overview of handgun and firearm safety in the home, including discussion of access to minors, locking and storing of firearms, and use of safety devices, such as secure lock boxes.

(3) Handgun Mechanisms and Operation. Overview of the proper operation and safe handling of a handgun, including cleaning and maintenance, the loading and unloading of ammunition, and the differences between revolvers and semi-automatic handguns.

(4) Operation and Handling Demonstration. Orientation that demonstrates the applicant's safe operation and handling of a firearm, including a practice component in which the applicant safely fires at least one round of live ammunition.

Complete through Maryland Register Vol. 46, Issue 10, dated May 10, 2019.

COMAR 29.03.01.29, MD ADC 29.03.01.29

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United States Code Annotated
Constitution of the United States
Annotated
Amendment II. Keeping and Bearing Arms

U.S.C.A. Const. Amend. II

Amendment II. Keeping and Bearing Arms

Currentness

A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed.

Notes of Decisions (481)

U.S.C.A. Const. Amend. II, USCA CONST Amend. II
Current through P.L. 116-21.

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United States Code Annotated
Constitution of the United States
Annotated

Amendment XIV. Citizenship; Privileges and Immunities; Due Process; Equal Protection;
Apportionment of Representation; Disqualification of Officers; Public Debt; Enforcement

U.S.C.A. Const. Amend. XIV-Full Text

AMENDMENT XIV. CITIZENSHIP; PRIVILEGES AND IMMUNITIES; DUE
PROCESS; EQUAL PROTECTION; APPOINTMENT OF REPRESENTATION;
DISQUALIFICATION OF OFFICERS; PUBLIC DEBT; ENFORCEMENT

Currentness

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Section 2. Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice President of the United States, Representatives in Congress, the Executive and Judicial officers of a State, or the members of the Legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State.

Section 3. No person shall be a Senator or Representative in Congress, or elector of President and Vice President, or hold any office, civil or military, under the United States, or under any State, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any State legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may by a vote of two-thirds of each House, remove such disability.

Section 4. The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any State shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations and claims shall be held illegal and void.

Section 5. The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

<Section 1 of this amendment is further displayed in separate documents according to subject matter,>

<see USCA Const Amend. XIV, § 1-Citizens>

<see USCA Const Amend. XIV, § 1-Privileges>

<see USCA Const Amend. XIV, § 1-Due Proc>

<see USCA Const Amend. XIV, § 1-Equal Protect>

<sections 2 to 5 of this amendment are displayed as separate documents,>

<see USCA Const Amend. XIV, § 2,>

<see USCA Const Amend. XIV, § 3,>

<see USCA Const Amend. XIV, § 4,>

<see USCA Const Amend. XIV, § 5,>

U.S.C.A. Const. Amend. XIV-Full Text, USCA CONST Amend. XIV-Full Text
Current through P.L. 116-21.

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