

**IN THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT**

MARYLAND SHALL ISSUE, INC., et al.)

Plaintiffs-Appellants,)

v.)

LAWRENCE HOGAN, et al.)

Defendants-Appellees.)

No. 21-2017(L)

(No. 16-cv-3311-ELH)

**REPLY IN SUPPORT OF
MOTION TO HOLD APPEAL IN ABEYANCE**

Defendants do not dispute that *New York State Rifle & Pistol Ass’n v. Bruen*, No. 20-843 (U.S.), “may affect the ultimate resolution of [this] appeal,” which is all that Local Rule 12(d) requires for this Court to hold an appeal in abeyance. *See Seguin v. United States Dep’t of Lab., Admin. Rev. Bd.*, 789 F. App’x 383, 384 (4th Cir. 2020).

Defendants instead make the strawman argument that *Bruen* and this appeal are not factually identical. *Opp.*, at 1-4. But it is inarguable that *Bruen* may reconfirm that the text, history and tradition standard used in *District of Columbia v. Heller*, 554 U.S. 570, 628 (2008), *McDonald v. Chicago*, 561 U.S. 742, 750 (2010), and *Caetano v. Massachusetts*, 136 S. Ct. 1027, 1027–28 (2016), governs all challenges to a law burdening the Second Amendment right. *See Motion*, at 1-2. Defendants do not dispute that this reconfirmation would almost certainly affect this Court’s

analysis of this appeal because this Court does not apply the text, history, and tradition standard but instead applies to the two-step approach. *See, e.g., Kolbe v. Hogan*, 849 F.3d 114, 132–33 (4th Cir. 2017) (en banc) (rejecting the text, history, and tradition standard in favor of two-step approach)). *Bruen* may also elucidate when, if ever, strict or intermediate scrutiny is appropriate. Defendants do not dispute that clarity regarding the level of any applicable heightened scrutiny would also likely affect this Court’s analysis and may affect the ultimate resolution of this appeal.

Because *Bruen* may affect the ultimate resolution of this appeal, the Court should hold this appeal in abeyance.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 14th day of October, 2021, I caused the foregoing to be filed via the Court's electronic filing system, which will make service on all parties entitled to service.

/s/
John Parker Sweeney