

## 4th Circuit appears ready to strike Md. handgun licensing law

By: Steve Lash Daily Record Legal Affairs Writer March 10, 2023

A three-judge federal appeals court panel appears poised to strike down as unconstitutional Maryland's training and licensing requirement for would-be handgun purchasers because the state's mandate has no historical roots from when the right to keep and bear arms was ratified in 1791 or extended to the states in 1868.

During arguments Friday, Judges G. Steven Agree and Julius N. Richardson of the 4th U.S. Circuit Court of Appeals were sharply critical of Maryland's defense of the requirement as in keeping with 18th-century militia training requirements and necessary to prevent dangerous people from getting access to weapons.

By contrast, both judges were sympathetic to the argument by a gun rights attorney who challenged the licensing requirement as "a novel attempt at addressing an old problem."

"There is no historical analog, tradition or anything related to the idea that an individual needs permission from the government to be allowed to undergo the background check that determines that they are in fact eligible to possess a firearm," said Marc A. Nardone, on behalf of the gun rights group Maryland Shall Issue. "The (licensing requirement's) individual components, the fingerprinting, the class, those are unconstitutional in and of themselves because there is no historical tradition of those."

Judge Barbara Milano Keenan, in contrast to her colleagues, suggested that Maryland's handgun qualification license, or HQL, requirement might be constitutional if it does not impose exorbitant fees or a long waiting period for the applicant.

The 4th Circuit is grappling with whether the HQL complies with the U.S. Supreme Court's June decision that gun restrictions are valid only if in keeping with the constitutional text, history and tradition of state firearm regulations when the Second Amendment was adopted in 1791 or when the 14th Amendment extended the right to keep and bear arms to the states in 1868.

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The high court stated in the ninth footnote to its *New York State Rifle & Pistol Association Inc. v. Bruen* decision that licensing regimes that require a firearms safety course may be constitutional if their fees are not exorbitant and the processing time for the license is not long.

Assistant Maryland Attorney General Ryan R. Dietrich defended the HQL and its training requirement as generally rooted in history.

"The historical tradition is the substantive limitations that are furthered by the HQL law and those are ensuring that the dangerous, subversive, non-virtuous — however, you want to describe it — folks do not get deadly firearms and ensuring the tradition of firearm competency that was alive and well at the founding," Dietrich said.

That argument drew criticism from Agee.

"What founding era analog do you have, from any of the states, that a citizen was required to have a permit from the government before they could have a handgun in their home?" Agee said, adding that keeping guns from dangerous people is "a generic concept" not rooted in a specific law from the 18th or 19th centuries.

Dietrich responded that the training requirement is "part of the generic constitutional landscape" of permitted governmental regulations before the right to bear arms is exercised.

Maryland's handgun licensing requirement.

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"Courts are entitled to decide a case based on the historical records compiled by the parties," Richardson said. "You've done, I'm certain, the best you could do, but we're entitled to rely based on the record compiled by the parties."

Keenan said the constitutional question should perhaps be remanded to the district court to give the judge "the first shot" at analyzing the case in light of *Bruen*, which was decided after the judge had upheld the HQL.

The 4th Circuit has not stated when it will render its decision in the case, *Maryland Shall Issue Inc. et al v. Wes Moore et al.*, No. 21-2017.

The 2013 Maryland Firearm Safety Act's licensing requirement mandates that an applicant be at least 21 years old, be a Maryland resident, complete four hours of firearms safety training, and not be prohibited by federal or state law from buying or possessing a handgun. Licensed gun dealers, as well as current and retired law-enforcement and military officers, are exempt from the handgun licensing requirement.

A violation of the law is a misdemeanor punishable by up to five years in prison and a \$10,000 fine.

U.S. District Judge Ellen L. Hollander upheld the license requirement's constitutionality in August 2021, saying it was reasonably related to the state's important interest in protecting public safety. Maryland Shall Issue then sought review by the 4th Circuit.

Gun rights advocates also have a pending 4th Circuit challenge to Maryland's ban on semiautomatic assault-style weapons based on *Bruen*.

In *Bruen*, the justices struck down a state regulation that required gun owners to show a good and substantial reason for carrying their weapon outside. The high court said New York could not show a history or tradition of requiring gun permits.



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