Written by **Michael Tennant** on March 7, 2012

Federal Judge: Citizens Need Not Ask Permission to Exercise 2nd Amendment Rights

"A citizen may not be required to offer a 'good and substantial reason' why he should be permitted to exercise his rights," wrote U.S. District Judge Benson Everett Legg. "The right's existence is all the reason he needs."

The suit was brought by Navy veteran Raymond Woollard, who lives on a farm in rural Baltimore County. On December 24, 2002, Woollard's son-in-law, Kris Lee Abbott, on a drug-induced high broke into Woollard's house during a family gathering in search of his wife's car keys so he could go buy more drugs. Woollard momentarily stopped Abbott by aiming a shotgun at him, but Abbott wrested the gun away from him, only to be halted again by Woollard's son, who also had a gun. Woollard and his son then kept Abbott at bay until the police arrived *two-and-a-half hours* later.

Abbott was convicted of first degree burglary and put on probation. He was later incarcerated for violating his probation.

Woollard, who now knew that he could not count on the police to come to his aid in an emergency, applied for a handgun carry permit in 2003. The permit was granted, as was Woollard's request to renew it three years later, just after Abbott was released from prison. However, when Woollard attempted to renew his permit again in 2009, his request was denied by the Maryland state police on the basis that he had not demonstrated to their satisfaction that he was in danger. His appeals were denied on the same basis.

At that point he sued the State Police Secretary and the Handgun Permit Review Board. He was represented by attorney Alan Gura of the Second Amendment Foundation (SAF), who has argued — and won — two significant gun rights cases before the U.S. Supreme Court: *District of Columbia v. Heller* (2008), in which the court found that the Constitution guarantees an individual's right to bear arms; and *McDonald v. City of Chicago* (2010), in which the court found that the Second Amendment applies to the states.

Relying in part on those two decisions, Judge Legg held that the Maryland law "impermissibly infringes the right to keep and bear arms, guaranteed by the Second Amendment" by imposing "a rationing system" that "aims … simply to reduce the total number of firearms carried outside the home by limiting the privilege to those who can demonstrate 'good reason' beyond a general desire for self-defense."

Legg elaborated:

> A law that burdens the exercise of an enumerated constitutional right by simply making that right more difficult to exercise cannot be considered "reasonably adapted" to a government interest, no matter how substantial that interest may be. Maryland's goal of "minimizing the proliferation of handguns among those who do not have a demonstrated need for them,"… is not a permissible method of preventing crime or ensuring public safety; it burdens the right too broadly. Those who drafted and ratified the Second Amendment surely knew that the right they were enshrining carried a risk of misuse, and states have considerable latitude to channel the exercise of the right in ways that will minimize that risk. States may not, however, seek to reduce the danger by means of widespread curtailment of the right itself.

He also pointed out that "issuing permits specifically to those applicants who can demonstrate an increased likelihood that they may need a firearm would seem a strange way to allay Defendants' fear that 'when handguns are in the possession of potential victims of crime, their decision to use them in a public setting may actually increase the risk of serious injury or death to themselves or others'" because this policy "puts firearms in the hands of those *most* likely to use them in a violent situation." (Emphasis in original.)

Legg's ruling was far from an absolute affirmation of the right to keep and bear arms. In keeping with *Heller* and *McDonald*, he maintained that states have the right to restrict the ownership and carrying of firearms in a variety of ways. The problem with the Maryland law, he wrote, "lies in the overly broad means by which it seeks to advance [the] undoubtedly legitimate end" of protecting the public from crime. In other words, there is nothing wrong with a state's requiring individuals to obtain permits to carry handguns, but there *is* something wrong with presumptive denial of a permit unless an applicant can convince the state that he might actually need to use a gun in his own defense.

Of course, giving the government the power to decide who is deserving of his rights is anathema to the original understanding of the Bill of Rights, which held that the those 10 amendments merely codified preexisting, God-given rights and prevented the government from infringing on them. (The Second Amendment specifically states that "the right of the people to keep and bear arms shall not be infringed," which presumes that the right already exists.) It is, however, perfectly in keeping with the philosophy of the gun control crowd.

"It's perfectly reasonable and prudent for Maryland to have law enforcement decide who has a demonstrated need to carry loaded guns in public," Jonathan Lowy, director of the Legal Action Project of the Brady Center to Prevent Gun Violence, told the *Baltimore Sun*. Not surprisingly, the Brady Center submitted a brief to the court siding with the state.

Even the SAF isn't "against the idea of a permit process," Gura told Fox News. All they want, Gura added, is for "the licensing system … to acknowledge that there's a right to bear arms." He therefore declared Legg's decision "a great boost for the right to bear arms," according to the *Washington Post*.

The foundation itself hailed the ruling as "a huge victory," with SAF founder and executive vice president Alan M. Gottlieb saying it is "a monumentally important decision" because "the federal district court has carefully spelled out the obvious, that the Second Amendment does not stop at one's doorstep, but protects us wherever we have a right to be."

The Maryland Attorney General's office said it would appeal and request a stay of the decision. The plaintiff's lawyers, too, vowed to fight on. They also said they hoped it would help them in court battles

in other states that grant permits on a discretionary basis.

In the Old Line State, the outcome of the appeal may ultimately be moot if Republicans in the House of Delegates get their way; they have four bills pending to repeal the "good and substantial reason" requirement. Del. Michael D. Smigiel, Sr., sponsor of one of the bills, even got Maryland State Police Lt. Jerry Beason to admit that the language is "impossible" to define, the *Post* reports. Perhaps Legg's decision will spur the legislature, which has heretofore been unwilling to address the matter, to pass one of the repeal bills.