

No. 11-5963

---

---

IN THE  
**United States Court of Appeals  
for the Sixth Circuit**

LEONARD EMBODY,  
Plaintiff-Appellant,

v.

STEVE WARD,  
Defendant-Appellee.

---

Appeal from the United States District Court for the  
Middle District of Tennessee in Case No. 3:10-cv-126  
Judge William J. Haynes, Jr.

---

**CONSENT MOTION FOR LEAVE TO FILE A BRIEF *AMICUS CURIAE*  
OF BRADY CENTER TO PREVENT GUN VIOLENCE IN SUPPORT OF  
APPELLEE**

---

---

Pursuant to Federal Rule of Appellate Procedure 29(b), *amicus curiae* the Brady Center to Prevent Gun Violence moves for leave to file the attached brief in support of Defendant-Appellee Steve Ward to address erroneous and misleading claims made by *amici* Second Amendment Foundation and CalGuns Foundation concerning whether public gun carrying and possession of assault weapons are constitutionally protected under the Second Amendment. All parties consent to this filing. Because no party has fully addressed these issues in their briefs, the Brady Center to Prevent Gun Violence seeks leave to file this brief to ensure that the Court has a full and accurate statement of the law concerning these issues. The Brady Center to Prevent Gun Violence has a substantial interest in the Second Amendment issues in this case, and the proposed brief *amicus curiae* will aid the Court in its disposition of this appeal. *See* Fed. R. App. P. 29(b).

The Brady Center to Prevent Gun Violence is the nation's largest non-partisan, non-profit organization dedicated to reducing gun violence through education, research, and legal advocacy. Through its Legal Action Project, the Brady Center has filed numerous briefs *amicus curiae* in cases involving both state and federal gun laws. *See, e.g., McDonald v. City of Chicago*, 130 S. Ct. 3020 (2010); *United States v. Hayes*, 129 S. Ct. 1079, 1087 (2009) (citing amicus brief of Brady Center to Prevent Gun Violence); *District of Columbia v. Heller*, 554 U.S. 570 (2008).

Here, *amicus* brings a broad and deep perspective to the issues raised by this

case and has a compelling interest in the federal courts' interpretation of Second Amendment issues. *Amicus* thus respectfully submits the attached brief to assist the Court with the constitutional issues in this case, including important questions of Second Amendment law. The proposed brief provides an overview of recent and longstanding Supreme Court Second Amendment jurisprudence, discussing historic and modern treatments of whether there is a right to carry firearms in public. The brief also discusses the case law regarding the status of assault weapons under the Second Amendment and the policy implications of extending Second Amendment protections to assault weapons. In addition, the brief outlines the trend emerging among lower courts to employ a two-pronged approach to Second Amendment claims that asks (1) whether the law or regulation at issue implicates protected Second Amendment activity, and if so, (2) whether it passes the appropriate standard of review. Applying this approach, the brief concludes, using case law and legal commentary, that this case does not implicate protected Second Amendment activity because (1) the Supreme Court has only recognized a Second Amendment right to possess and carry guns in the home, and (2) the Second Amendment does not protect the possession of dangerous and unusual weapons, such as assault weapons. *Amicus* therefore respectfully submits the attached brief to assist the Court in deciding the issues raised in this matter.

## CONCLUSION

For the foregoing reasons, *amicus curiae* the Brady Center to Prevent Gun Violence respectfully requests that the Court grant leave to file the attached *amicus* brief.

Dated: December 19, 2011

Respectfully submitted,

/s/ Jessica L. Ellsworth  
JONATHAN L. DIESENHAUS  
JESSICA L. ELLSWORTH  
MATTHEW C. SULLIVAN  
HOGAN LOVELLS US LLP  
555 13th Street, NW  
Washington, DC 20004  
Telephone: (202) 637-5600  
Facsimile: (202) 637-5910

JONATHAN E. LOWY  
DANIEL R. VICE  
Brady Center to Prevent Gun Violence  
Legal Action Project  
1225 Eye Street, NW, Suite 1100  
Washington, DC 20005

Counsel for *Amicus Curiae*

**CERTIFICATE OF SERVICE**

I hereby certify that on December 19, 2011, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to all registered users of the CM/ECF system. I further certify that I mailed a copy of the foregoing to all non-registered users of the CM/ECF system.

/s/ Jessica L. Ellsworth  
JONATHAN L. DIESENHAUS  
JESSICA L. ELLSWORTH  
MATTHEW C. SULLIVAN  
HOGAN LOVELLS US LLP  
555 Thirteenth Street, N.W.  
Washington, D.C. 20004  
Tel.: (202) 637-5600  
Fax: (202) 637-5910

Counsel for *Amicus Curiae*