March 1, 2021

WRITTEN TESTIMONY OF MARK W. PENNAK, PRESIDENT, MSI, IN OPPOSITION TO HB 1291

I am the President of Maryland Shall Issue ("MSI"). Maryland Shall Issue 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. I am also an attorney and an active member of the Bar of Maryland and of the Bar of the District of Columbia. I recently retired from the United States Department of Justice, where I practiced law for 33 years in the Courts of Appeals of the United States and in the Supreme Court of the United States. I am an expert in Maryland firearms law, federal firearms law and the law of self-defense. I am also a Maryland State Police certified handgun instructor for the Maryland Wear and Carry Permit and the Maryland Handgun Qualification License ("HQL") and a certified NRA instructor in rifle, pistol, personal protection in the home, personal protection outside the home and in muzzle loader. I appear today as President of MSI in opposition to HB 1291.

The Bill:

The bill would create a massive new gun ban on the possession, receipt, sale, transfer or purchase of un-serialized lower receivers and frames and well as imposing the same ban on mere "objects" that are marketed, advertised or designed to be manufactured into such unfinished lower receivers or frames. It would ban as well the manufacture or assembly of a firearm or a receiver that was not "imprinted" with a serial number by a federally licensed manufacturer or importer.

A. Homemade Guns Are Rarely Used In Crime And Existing Owners Are Law-Abiding Hobbyists, Not Criminals

These new provisions, if enacted, would burden and penalize a harmless activity that has been perfectly legal under federal and state law for the entire history of the United States, *viz.*, the manufacture of homemade guns for personal use. Under Federal law, a person may legally manufacture a firearm for his own personal use. See 18 U.S.C. § 922(a). However, "it is illegal to transfer such weapons in any way." *Defense Distributed v. United States,* 838 F.3d 451, 454 (5th Cir. 2016). This manufacture "involves starting with an '80% lower receiver,' which is simply an unfinished piece of metal that looks quite a bit like a lower receiver but is not legally considered one and may therefore be bought and sold freely. It requires additional milling and other work to turn into a functional lower receiver." (Id).

Manufacturing an "80% lower" into a "functional lower receiver" is not a trivial process. It takes tools, expertise and hours of time. Miscues are common and, when made, essentially convert the "80% lower" into scrap. Individuals who undertake this process are hobbyists. Even after the receiver is successfully made, the owner would still have to purchase the

additional parts, such as a barrel, the trigger, slide and all the internal parts to complete the assembly. All these additional parts are expensive. With the cost of the tools to mill the receiver, plus the cost of the parts, a final assembled homemade gun costs **more to make than** it would to actually buy an identical gun from a dealer.

The complexity of this process has been pointed out in court filings by the ATF and the U.S. Department of Justice. For example, in *State of California v. BATF*, No. 20-cv-0761 (N.D. Cal.), the Department of Justice and the ATF explained:

> An unfinished receiver that has not yet had "machining of any kind performed in the area of the trigger/hammer (fire-control) recess (or cavity)," see ATF Firearms Technology Branch Technical Bulletin 14-01 ("Bulletin 14-01"), filed in Calif. Rifle and Pistol Ass'n v. ATF, Case No. 1:14-cv-01211, ECF No. 24 at 285 (E.D. Cal. Jan. 9, 2015),requires that numerous steps be performed simply to yield a receiver, that then in turn must be assembled with other parts into a device that can expel a projectile by the action of an explosive. These milling and metalworking steps—each of which require skills, tools, and time—include: 1) "milling out of fire-control cavity"; 2) "drilling of selector-lever hole"; 3) "cutting of trigger slot"; 4) "drilling of trigger pin hole; and 5) "drilling of hammer pin hole." Compl. Ex. 9. Importantly, ATF will treat any "indexing"—the inclusion, in the receiver blank, of visual or physical indicators regarding the two-dimensional or three-dimensional parameters of the machining that must be conducted—as rendering the receiver blank a firearm. See Compl. Ex. 12; Ex. 13; Shawn J. Nelson, Unfinished Lower Receivers, 63 U.S. Attorney's Bulletin No. 6 at 44-49 (Nov. 2015) ("Nelson, Unfinished Receivers"), available at: https://go.usa.gov/x7pP3. This prevents the makers of receiver blanks from annotating the blank to instruct the purchaser as to the precise measurements needed, in three dimensions, to "excavate the fire control cavity and drill the holes for the selector pin, the trigger pin, and the hammer pin." Nelson, Unfinished Receivers, at 47. The need to conduct these machining steps from scratch, without indexing, and "carefully" means a working gun cannot be produced "without difficulty." Id. And the work to excavate the cavities and drill holes in a solid, unmachined substrate requires care rather than speed to avoid doing so raggedly or in the wrong area. See id. Therefore, the receiver cannot be completed "without delay," even leaving aside the further assembly with many other parts needed to have a weapon that can expel a bullet by explosive action. A receiver blank therefore may not "readily be converted" into a firearm.

Federal Defendants' Notice Of Motion And Motion To Dismiss Plaintiffs' Complaint For Declaratory And Injunctive Relief, at 16-17 (filed Nov. 30, 2020).

B. The Bill Would Do Nothing To Prevent Or Deter Criminals From Acquiring Guns While Criminalizing Existing, Law-Abiding Hobbyists

The bans imposed by the bill would also not stop any person from actually acquiring "80% lowers" or the other parts necessary to manufacture firearms. Such items are not "firearms" under Federal law and thus are not regulated by Federal law. These "80% lowers" and other parts are thus available all over the United States, including over-the-counter, on-line and by mail order. Unfinished frames or receivers would remain available in other states, even

if the bill should become law and were perfectly enforced 100% of the time. The market for these parts and unfinished receivers is nationwide in scope.

Accordingly, nothing in all the bans imposed by this bill would or could actually stop any criminal or disqualified person from acquiring all the hardware necessary to make his own gun, including the 80% lower, simply by driving to another state. **More importantly,** a disqualified person or criminal would not be deterred by this bill because such a disqualified person is **already** precluded by Federal law from possessing **any** modern firearm or modern ammunition of **any** type. 18 U.S.C. § 922(g). Actual or constructive possession of a modern firearm or ammunition by a person subject to this firearms disability is a felony, punishable by up to **10** years imprisonment under Federal law. See 18 U.S.C. § 924(a)(2). The same disqualification and similar punishments are also **already** imposed under existing Maryland law. See MD Code, Public Safety, § 5-101(g)(3), § 5-133(b)(1), § 5-205(b)(1). Simple actual or constructive possession of a receiver **alone** (an "81% receiver") would be sufficient to constitute a violation of these existing laws, as a receiver **alone** is considered a "firearm" under both Maryland and Federal law. See 18 U.S.C. § 921(a)(3); MD Code, Public Safety, § 5-101(h)(1)(ii).

Making possession "**more** illegal" in the bill simply criminalizes innocent, law-abiding hobbyists and gun enthusiasts who have done nothing wrong. Thus, if this bill became law, few existing, otherwise law-abiding owners of these homemade guns will know or realize that possession of their existing firearms or unfinished frames has been banned. Actual compliance by existing owners will thus likely be virtually non-existent. In short, the bill is utterly **pointless** as a public safety measure. It would succeed only in turning otherwise law-abiding hobbyists into criminals. That is not sound public policy.

C. The Bill Impose Impracticable Requirements

The bill provides that a person may not POSSESS, SELL, OFFER TO SELL, TRANSFER, PURCHASE, OR RECEIVE: (I) A FIREARM OR AN UNFINISHED FRAME OR RECEIVER THAT IS NOT IMPRINTED WITH A SERIAL NUMBER ISSUED BY A FEDERALLY LICENSED FIREARMS MANUFACTURER OR FEDERALLY LICENSED FIREARMS IMPORTER IN COMPLIANCE WITH ALL FEDERAL LAWS AND REGULATIONS REGULATING THE MANUFACTURE AND IMPORT OF FIREARMS. This ban on possession severely criminalizes innocent possession by law-abiding hobbyists who may have built these firearms or possessed these frames for years, including all home built guns built since 1968, a period of approximately 53 years. The bill thus encompasses an untold number of home-build firearms. The requirements simply cannot be met, much less by the October 1, 2021, effective date of this bill.

First, the bill would require every innocent owner of a receiver (or existing firearm) to have it "imprinted" with a serial number "issued by" a federal licensed "firearms manufacturer" or "importer." Such a licensed manufacturer is also known as a "Class 07" FFL. While there are many FFLs in Maryland, almost all of these FFLS are dealers who merely sell firearms or perform transfers and are thus classified as Class 01 FFLs. These dealers are not "manufacturers." Very few manufacturers with this capability to 'imprint" a serial number in compliance with federal law even exist in Maryland. Indeed, by requiring that the imprinting be done "in compliance with all federal laws," the bill would require the

manufacturer FFL to meet the engraving requirements specified in 18 U.S.C. § 923(i) and implementing federal regulations.

More importantly, the bill's use of the term "issued by" is a major problem. That term is simply not defined. If that term means that the Class 07 FFL manufacturer must bring the item into its recordkeeping books and issue a serial number as if it originally manufactured the item, then the manufacturer would be deemed to be the legal manufacturer of the item. If the item is anything other than a receiver (or similar item), then the Class 07 FFL would be then liable for the Firearms and Ammunition Excise Tax (FAET), which is paid to the Alcohol and Tobacco Tax and Trade Bureau (TTB), U.S. Dept. of Treasury. See https://www.atf.gov/firearms/firearms-guides-importation-verification-firearms-ammunition-and-implements-war-firearms. If that interpretation of "issued by" is correct, then the costs would be overwhelming and the FFLs would not do those engravings required by this bill. Similarly, as a practical matter, no Class 07 FFL will take the legal risks associated with entering any item (including a receiver) into its ATF books. The legal uncertainty and costs would be too high. That would convert the bill into a total ban on any existing receiver or firearm that does not have a serial number as it would be impossible for the existing owner to obtain a serial number. If that is the intent of this bill, then the bill should at least define its terms in that manner. If that is not the intent, then the bill should likewise make that clear by defining "issued by" so as to make the actual intent clear.

Even apparent from the issue associated with the term "issued by," the requirements imposed by this bill are both expensive and quite technically difficult to meet. First, federal regulations concerning Section 923(i) (incorporated by the bill) require that the markings required by Section 923(i) must be to a minimum death of .003 inches and in a print size no smaller than 1/16 inches and "must be placed in a manner not susceptible of being readily obliterated, altered, or removed." 27 C.F.R. §478.92(a)(1). That process requires a precision engraving machine. For example, an entry level engraving machine that can fully comply with Federal law costs in the neighborhood of $7,000 and that machine is of low quality. Engage Armaments, a Class 07 manufacturer in Rockville, MD, uses a $75,000 engraving machine to engrave serial numbers. See attached illustrated testimony of Andrew Starr Raymond, Co-Owner – Engage Armament LLC, of Rockville, MD.

Second, engraving or imprinting serial numbers on unfinished receivers is often utterly impractical. Existing manufacturers of polymer frames, such as Glock and Sig Sauer, use a metal plate inserted into the frame or use the internal metal assembly to mark the serial number. Many unfinished polymer receivers that existing owners may possess simply lack such a plate or internal assembly. For those owners, it is nearly impossible to perform all the imprinting required by the bill on the frame or receiver. As the attached testimony of Andrew Raymond of Engage Armament (a Class 07 manufacturer), makes clear, imprinting or engraving the information onto a polymer frame could actually destroy it. See attached illustrated testimony of Andrew Starr Raymond, Co-Owner – Engage Armament LLC, of Rockville, MD. The average owner also has no way to be sure that the requirements of Section 923 and Section 478.92(a)(1) are satisfied. For example, if the required information is etched to the depth of .002 inches or if engraved slightly smaller than 1/16 of an inch, the owner would be in be in violation of the bill because the imprinting would not be in compliance with federal standards. Indeed, because this bill imposes strict liability, that person would be criminalized even though the error was inadvertent. Without access to expensive equipment that can meet these precise standards imposed by federal law, no

person will be able to comply with the bill. Again, Class 07 FFL manufacturers even capable of complying with these requirements are very few in number.

Third, the bill purports to incorporate federal law, but federal law simply does not apply to 80% lowers or wholly unfinished receivers and thus were never intended to be used in this manner. Incorporating federal law is thus inherently self-contradictory. Specifically, federal regulations allow the information to be "engraved, casted, stamped (impressed) or placed on the frame, receiver **or barrel, not merely "imprinted" on a receiver**. See 27 C.F.R § 497.92(a)(1)(ii). For example, the Sig Sauer newest Model M-17 pistol engraves the model and serial number on the metal trigger assembly inserted into the polymer frame, but engraves the caliber on the barrel. Such placement and use of the **barrel** are not allowed under the bill as the bill requires that the receiver be serialized even though the receiver been never been finished into an actual firearm (or even an 80% lower). And because the bill does not even define "imprint," it is not clear at all whether all the means allowed by federal regulations would even be permissible under this bill.

D. The Bill Is Overbroad.

The bill provides that a person may not POSSESS, SELL, OFFER TO SELL, TRANSFER, PURCHASE, OR RECEIVE: * * *

(II) AN **OBJECT MARKETED** OR **ADVERTISED** TO BE, **OR** THAT A REASONABLE PERSON WOULD UNDERSTAND TO BE, **DESIGNED** FOR THE PURPOSE OF BEING MANUFACTURED OR ASSEMBLED INTO AN UNFINISHED FRAME OR RECEIVER THAT IS NOT IMPRINTED WITH A SERIAL NUMBER ISSUED BY A FEDERALLY LICENSED FIREARMS MANUFACTURER OR FEDERALLY LICENSED FIREARMS IMPORTER IN COMPLIANCE WITH ALL FEDERAL LAWS AND REGULATIONS REGULATING THE MANUFACTURE AND IMPORT OF FIREARMS. The bill defines an unfinished frame or receiver to include "ANY OTHER OBJECT, PART, OR COMBINATION OF PARTS THAT IS NOT A FUNCTIONAL FRAME OR RECEIVER BUT IS DESIGNED OR INTENDED TO BE USED FOR THAT PURPOSE AND CAN BE READILY MADE INTO A FUNCTIONAL FRAME OR RECEIVER OF A FIREARM." These provision are vastly overbroad.

By its terms, the bill would ban the possession of any "object" that was "marketed" or "advertised" for the purpose of being manufactured into an unfinished receiver. The "marketing" or "advertisement" of the "object" **alone** is sufficient to bring the "object" under the bill's ban on possession. And by using the disjunctive "or," the object that is "marketed or advertised" is separately banned and distinguished from the **additional** ban placed on possession of an object that is a "reasonable person" would understand to be "designed" for the purpose of being manufactured into a receiver. See *Walker v. Lindsey*, 65 Md. App. 402, 407, 500 A.2d 1061 (1985) stating that "[t]he word 'or' is a disjunctive conjunction which serves to establish a relationship of contrast or opposition"). There is thus no "reasonable person" modifier for the ban on the possession of an "object" that was marketed or advertised for this purpose.

Under these provisions, the bill would impose a ban on the mere possession or receipt of a "zero percent receiver" (a solid block of aluminum) advertised or marketed as such. **See e.g.:**

And because that block of aluminum was originally marketed as a zero percent receiver (see attached advertisement), the bill would criminalize mere possession, receipt, sale, purchase or transfer of the block even though the possessor of this block of solid aluminum intended to use it as a paper weight or a book end or simply as a means to illustrate the absurdities of Maryland gun laws. And because the bill strictly bans mere possession, regardless of whether the possessor even knew that the block of aluminum had been "marketed" for these purposes, the bill would likewise criminalize a person who was **utterly unaware** that the block was originally marketed as a "zero percent receiver." In short, the reach of the bill is vastly overbroad. As the Maryland Court of Appeals has stressed, the General Assembly has an "obligation to establish adequate guidelines for enforcement of the law." *Ashton v. Brown*, 339 Md. 70, 88, 660 A.2d 447, 456 (1995).

Stated in legal terms, the bill contains no *mens rea* requirement and thus imposes strict criminal liability for simple possession (or constructive possession) without regard to the owner's actual purpose, knowledge or intent. In contrast, an intent or knowledge requirement is part and parcel of federal gun control law. See, e.g., *Rehaif v. United States*, 139 S.Ct. 2191 (2019) (holding that the "knowingly" requirement on the federal ban on possession of a firearm by an illegal alien required proof that the alien actually knew that he was illegally in the United States). This sort of *mens rea* requirement is also part of Maryland law. See, e.g., *Chow v. State*, 393 Md. 431 (2006) (holding that a knowing violation of a Maryland statute making it unlawful for a person who is not a regulated gun owner to sell, rent, transfer, or purchase any regulated firearm without complying with application process and seven-day waiting period requires that a defendant knows that the activity they are engaging in is illegal).

These criminal penalties could be imposed **even though** it would take substantial expertise and a very sophisticated milling machine costing in the neighborhood of $30,000 to convert that block of aluminum into an 80% receiver, not to mention the *additional* milling that would be required to convert it into an actual **finished** receiver. Additional assembly of more parts (a barrel, a trigger, a slide and associated springs and parts) would then be necessary to covert that finished receiver into something that could actually fire a round of ammunition. As the Supreme Court stated in *Rehaif*, it is a "basic principle that underlies the criminal law, namely, the importance of showing what Blackstone called 'a vicious will.'" *Rehaif*, 139 S.Ct. at 2196, quoting 4 W. Blackstone, Commentaries on the Laws of England 21 (1769). As a matter of sound public policy and simple fairness, the General Assembly should not be enacting criminal statutes without a *mens rea* requirement. *Morissette v.*

United States, 342 U.S. 246, 250 (1952) ("The contention that an injury can amount to a crime only when inflicted by intention is no provincial or transient notion. It is as universal and persistent in mature systems of law as belief in freedom of the human will and a consequent ability and duty of the normal individual to choose between good and evil.").

Indeed, in purporting to cover all "objects" that are "marketed" for manufacturing into a lower receiver, the bill would require a serial number on this solid block of aluminum marketed as a "zero percent receiver." That serial number would then be obliterated should that block ever be actually milled into a real lower receiver. Yet, any such removal of the serial number would be a **federal felony** under 18 U.S.C. § 922(k), which makes it a crime to "possess or receive any firearm which has had the importer's or manufacturer's serial number removed, obliterated, or altered." A knowing violation of Section 922(k) is punished by up to 5 years in a federal prison. See 18 U.S.C. § 924(a)(1)(B). That reality simply illustrates the legal absurdity of incorporating federal law to criminalize the possession of objects that are **not** regulated by federal law. Federal law cannot be used in this manner. In short, in its attempt to be all-encompassing, the bill creates multiple traps for the unwary, all without regard to the *mens rea* of the possessor. **The bill thus invites arbitrary and discriminatory enforcement.** 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))

The bill is overbroad in other ways. The bill expressly includes any firearm as defined by MD Code, Public Safety, § 5-101(h). That section very broadly defines a firearm to include "a weapon that expels, is designed to expel, or may readily be converted to expel a projectile by the action of an explosive." **Yet, that broad definition would also include black powder replicas of antique firearms**. Antique firearms and replicas are not even considered to be firearms under either State or federal law for purposes of possession by otherwise **prohibited persons**. See MD Code, Criminal Law, § 4-201(b), 18 U.S.C. § 921(a)(3), (16). Indeed, federal law expressly **excludes** antique and replica firearms from its definition of "firearm." (Id.). Thus, the serial number requirements imposed by 18 U.S.C. § 923(i) on manufacturers simply do not apply to replica antique firearms under federal law. Yet, this bill would criminalize the possession of these very same replicas of antique firearms, if they were purchased after 1968. That result is senseless, especially where the bill otherwise purports to incorporate federal standards. We know of no evidence that un-serialized antique, black power, muzzle loading replica firearms are a problem on the streets of Maryland.

These provisions likewise impact the sale of firearms. Federal law, 18 U.S.C. § 922 comprehensively addresses sales of all modern firearms, including requiring that all persons who are "engaged in the business" of selling firearms in interstate commerce must become Federal Firearms Licensees. See *Abramski v. United States*, 134 S.Ct. 2259, 2271 n.9 (2014) ("'the federal scheme ... controls access to weapons' through the federally licensed firearms dealer, who is 'the principal agent of federal enforcement'"), quoting *Huddleston v. United States*, 415 U.S. 814, 824, 825 (1974). However, as noted, federal law expressly defines firearms to "not include an antique firearm." 18 U.S.C. § 921(a)(3). Maryland law similarly requires that "[a] person must lawfully possess a dealer's license issued by the Secretary before the person engages in the business of selling, renting, or transferring **regulated firearms**" (handguns). MD Code, Public Safety, § 5-106. And, like federal law, Maryland regulates to whom a dealer may sell **regulated** firearms, including also categorically banning

the sale of any such firearm to a minor. MD Code, Public Safety, § 5-134. But, Maryland law does not otherwise address the sale to adults of **unregulated** firearms, such as modern long guns (leaving those sales to federal regulation under Section 922). And, as noted above, like federal law, Maryland also excludes "antiques" from its definition of firearms for these purposes. MD Code, Criminal Law, § 4-201(b). This bill effectively criminalizes **the sale** of antique and replica firearms in Maryland, even though those firearms may be sold without serial numbers under existing State and federal law. No person will realize that mere sale or possession of a replica is a criminal act. Once again, the bill trips over the complexities of existing federal and State firearms law.

E. The Bill Is Unconstitutional Under The Second Amendment.

As noted, the bill could easily be read as imposing a categorical ban on the mere possession in the home of a previously-owned unfinished receiver or a firearm without a serial number. Such a gun ban violates the Second Amendment right of owners to possess firearms under *District of Columbia v. Heller*, 554 U.S. 570 (2008), and *McDonald v. Chicago*, 561 U.S. 742, 750 (2010). Even under the least demanding test ("intermediate scrutiny"), if the State can accomplish its legitimate objectives without a ban (a naked desire to penalize gun owners is not legitimate), then the State must use that alternative. *McCullen v. Coakley*, 134 S. Ct. 2518, 2534 (2014). Stated differently, under intermediate scrutiny, the State has the burden to demonstrate that its law does not "burden substantially more [protected conduct] than is necessary to further the government's legitimate interest." Id. at 2535, quoting *Ward v. Rock Against Racism*, 491 U.S. 781, 796 (1989). See also *NY State Rifle & Pistol Assn. v. Cuomo*, 804 F.3d 242, 264 (2d Cir. 2015), *cert. denied*, 136 S.Ct. 2486 (2016) (striking down a 7 round load limit in a firearm magazine because the limit was "untethered from the stated rationale"). See also *Reynolds v. Middleton*, 779 F.3d 222, 232 (4th Cir. 2015) (holding that, under the intermediate scrutiny test as construed in *McCullen*, the government must "prove that it actually tried other methods to address the problem"). (Emphasis in original).

The test for "strict scrutiny" is even more demanding as, under that test, the State must prove both a "compelling need" and that it used the "least" restrictive alternative in addressing that need. See *United States v. Playboy Entm't. Grp., Inc.*, 529 U.S. 803, 813 (2000). More generally, the constitutionality of gun laws must be analyzed under the "text, history and tradition" test that was actually used in *Heller* and *McDonald*. See, e.g., *Heller v. District of Columbia*, 670 F.3d 1244, 1269 (D.C. Cir. 2016) (Kavanaugh, J., dissenting) ("In my view, *Heller* and *McDonald* leave little doubt that courts are to assess gun bans and regulations based on text, history, and tradition, not by a balancing test such as strict or intermediate scrutiny."). There is no "text, history or tradition" that could possibly support the types of bans imposed by this bill.

Heller held that guns in "common use" by law abiding persons are prima facie protected arms under the Second Amendment. *Heller*, 554 U.S. at 627. Homemade guns easily satisfy this requirement as there are literally tens of thousands of such guns made over many years throughout the United States. Guns for personal use have been made at home for centuries, even before the Revolutionary War. The State simply may not disregard that reality. See *Caetano v. Massachusetts*, 136 S.Ct.1027 (2016) (summarily reversing Massachusetts' highest court for failing to follow the reasoning of *Heller* in sustaining a state ban on stun guns); *Ramirez v. Commonwealth,* 479 Mass. 331, 332, 352 (2017) (on remand from *Caetano*, holding that "the absolute prohibition against civilian possession of stun guns under § 131J

is in violation of the Second Amendment" and declaring the State's absolute ban to be "facially invalid"). Homemade guns are at least as much "in common use" as stun guns at issue in *Caetano*.

Here, the supposed evil that this bill purports to address is guns without serial numbers because such guns are not "traceable." Yet, tracing runs out after identification of the gun's first purchaser and firearms may be stolen or sold and resold many times in their lifetime. As explained above, criminals, who may not possess firearms at all, will not be deterred by the bill as possession of a firearm by a prohibited person is already a 10-year federal felony, 18 U.S.C. § 922(g), and a serious crime under existing State law, MD Code, Public Safety, § 5-101(g)(3), § 5-133(b)(1), § 5-205(b)(1). The few crimes that are solved by tracing guns left at a crime scene are only a small fraction of guns used in crimes because relatively few guns are actually traced by the ATF. See David B. Kopel, Clueless: The Misuse of BATF Firearms Tracing Data. http://www.davekopel.org/2A/LawRev/CluelessBATFtracing.htm. See also Police Departments Fail to Regularly Trace Crime Guns. https://www.thetrace.org/2018/12/police-departments-gun-trace-atf/. The ATF itself has cautioned against any use of trace data, noting that "[t]he firearms selected [for tracing] do not constitute a random sample and should not be considered representative of the larger universe of all firearms used by criminals, or any subset of that universe." Bureau of Alcohol, Tobacco, Firearms and Explosives. Firearms Trace Data, 2016: Maryland, https://www.atf.gov/docs/163521-mdatfwebsite15pdf/download. As the ATF further notes, "[n]ot all firearms used in crime are traced and not all firearms traced are used in crime," stating further that "[f]irearms are normally traced to the first retail seller, and sources reported for firearms traced do not necessarily represent the sources or methods by which firearms in general are acquired for use in crime."

But, if the concern is truly that these guns lack a serial number (rather than a desire to criminalize gun owners and hobbyists), then that concern can be addressed without banning homemade guns. Specifically, there are alternatives to bans. For example, a new law passed in California (which is ranked by the Giffords Law Center as having the most restrictive gun laws in the nation) provides that a new resident to the state shall apply to the Department of Justice for a unique serial number within 60 days of arrival for any firearm the resident wishes to possess in the state that the resident previously self-manufactured or self-assembled or a firearm the resident owns, that does not have a unique serial number or other mark of identification. As of July 1, 2018, prior to manufacturing or assembling a new firearm, a person is required to apply to California for a unique serial number. The gun owner is then simply required to engrave that number onto the receiver and report back to California that he or she has done so. As of January 1, 2019, owners of existing guns were required to apply for such serial numbers and perform this engraving. See California Penal Code §§ 29180-29184.

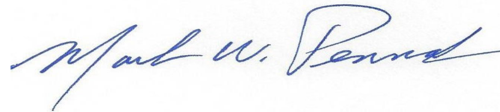
In short, assembly of new homemade guns and existing possession is permitted as long as this serial number is obtained, engraved and reported. California Penal Code §29180. In this way, the owner is identified and the gun is fully "traceable" and thus no longer a so-called "ghost gun." As this law indicates, there is no reason to take the extreme step of flatly banning homemade guns or converting existing owners into criminals. Under *Heller*, the County may not simply reject this alternative simply because a general ban is more convenient or cheaper. Gun owners may not be penalized for such flimsy reasons. See, e.g., *Board of Estimate of City of New York v. Morris*, 489 U.S. 688, 702 n.10 (1989); *Heller v.*

District of Columbia, 801 F.3d 264, 310 (D.C. Cir. 2015) (Henderson, J., concurring in part and dissenting in part). Indeed, in 2018, the House Judiciary Committee in the General Assembly favorably reported a bill (HB 740) that expressly required the State Police to conduct a study of this California alternative. Yet, this bill unaccountably abandons that approach. Plainly, the State has not exhausted reasonable alternatives to a ban.

CONCLUSION

Given all the problems, detailed above, the bill plainly has not been fully thought out. For all these reasons, we strongly urge an unfavorable report.

Sincerely,



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ENGAGE ARMAMENT, L.L.C.

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WRITTEN TESTIMONY OF ANDREW RAYMOND, OWNER OF ENGAGE ARMAMENT LLC, AGAINST HOUSE BILL 638

To Whom It May Concern,

My name is Andrew Raymond, and I am the co-owner of Engage Armament LLC, a federally licensed firearms manufacturer who has been in business for 11 years. I am a lifelong Maryland resident, and my family has been in Maryland on both sides for at least 337 years.

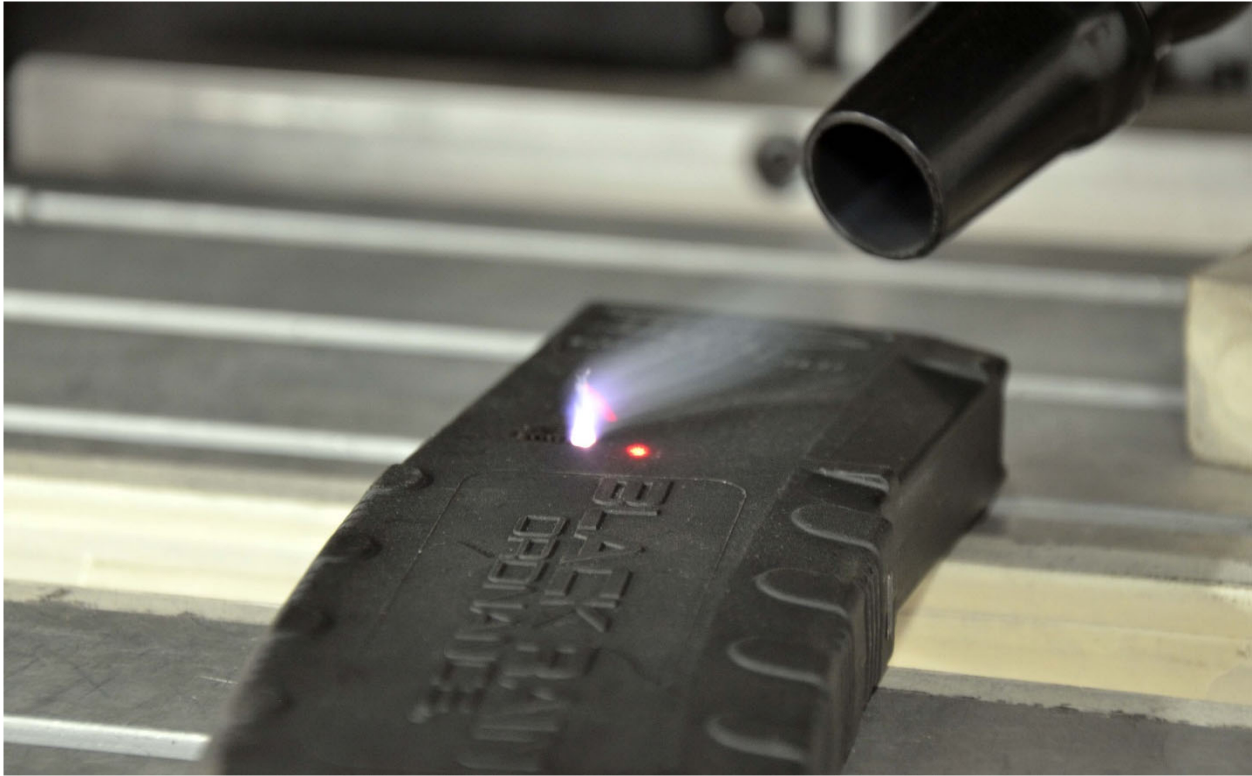
Part of firearm manufacturing is engraving the ATF required information on a firearm. I would say we have become experts on firearm markings over the past years and have invested more than $75,000 in firearm marking equipment to not only comply with the federal regulations but also to have the most advanced equipment to do so. Our main tool is a 60W fiber laser made <u>entirely</u> in the United States.

From both the cost and technical implications, there are a multitude of issues with this bill.

The cost of getting quality equipment to do the job effectively. As mentioned early, we spent quite a bit of money getting quality equipment, but even cheap imported equipment to mark metal will cost at least $7,000 and do a poor job of doing so, especially considering depth and permanency of the engraving.

The cost to the consumer will also increase significantly. For example, presently for NFA engraving we charge $45 which is the basic requirement of name/city/state under the National Firearms Act. This bill requires individuals to have their information engraved along with serial number, model AND after 1st January 2022 the manufacturers and “importers” info. This is substantially more required markings; therefore costs are going to quite high. For example, if I need to mark the info of the person who made the forging, plus my own info, and the gun information that could easily run $90 or more. That is on an item that would normally cost about $50 for an AR forging. I should also mention that I did ask for friends/acquaintances who I knew built their own firearms for a brief rundown of the numbers of items they may have. It appears most people who enjoy this hobby have many items that would fall under this bill. For example, engraving 5 items at $90 per engraving would cost $450. Many of these people are on the younger side, and in our current economy might not be able to afford compliance with the bill.

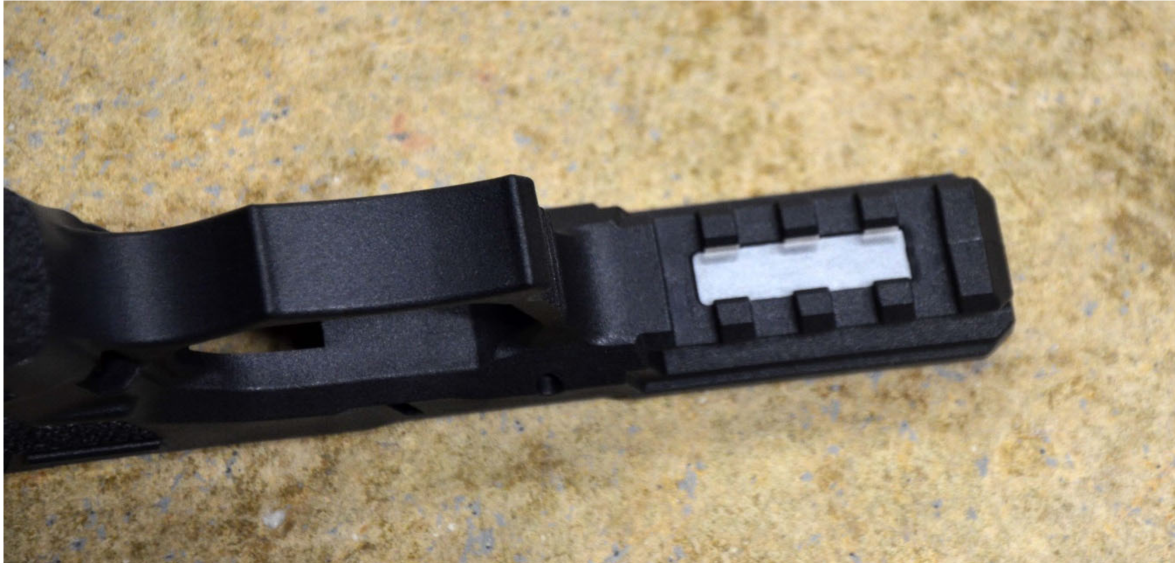
The other issues are technical. The first to be the actual act of marking the “receivers”. Generally, these “receivers” are made either out of metal or polymer. Polymer has a great deal of variance to it and engraving settings from one type of polymer will catch another set on fire:



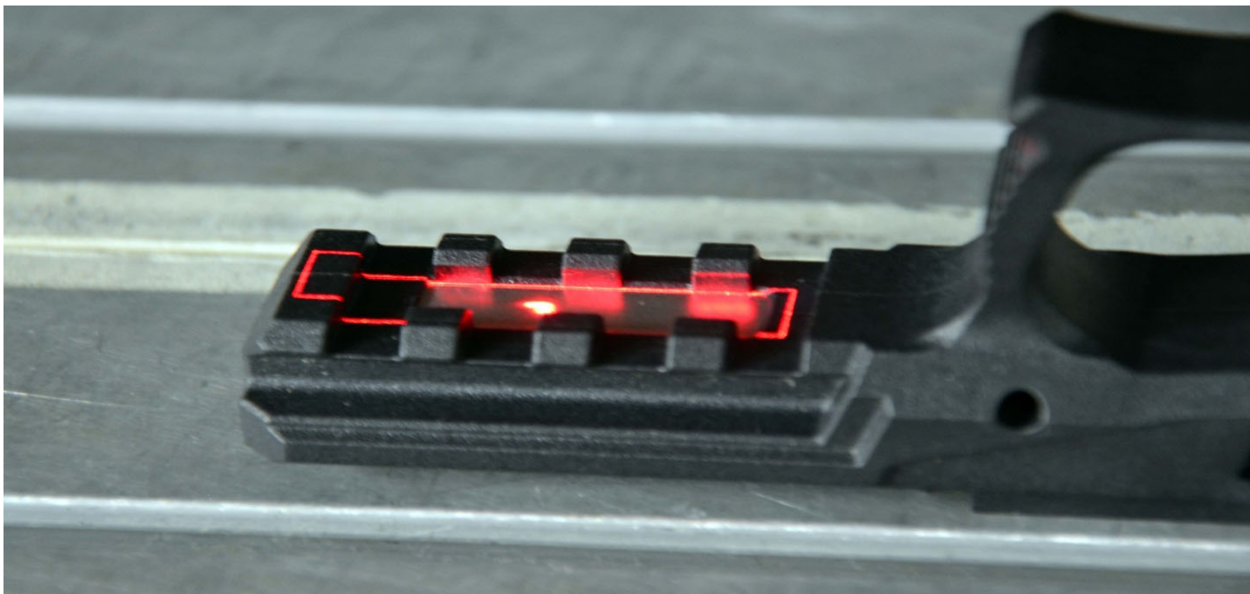
Here you can see a magazine catching fire using the settings from a known German polymer on this unknown polymer. The result is:

This marking is not legible and would not be compliant. Not to mention most people would now consider the product destroyed.

The next technical issue is sizing. While a metal “receiver” has a multitude of places to pollute with engravings, a good percentage of these products are polymer. A good example of the sizing issue would be the Polymer 80 “receivers” which are probably the most common plastic hobby “receivers” we see. These have a small metal piece imbedded in the polymer specifically for engraving purposes:



This small metal piece usually gives us only enough space for a serial number. In fact, to add the requirements from this law would require us to bring the size down to the point where it would not be compliant or readily legible. The below picture is a laser overlay of the space required for compliant sized markings using my personal information:



As you can see, the required engraving cannot fit in the supplied space. Once again, this is using my personal info as required under the law.

We should also consider required markings of original manufacturer and seller/importer into the state. This would double the space requirement and would not be feasible to do. Shrinking the size would not be compliant/legible either. The below is an example of that information at the minimum compliant size:

In order to fit only one set of the required markings my information must be shrunk to .055 which is not compliant. In the below picture, that is the 3rd example:

Another issue is going to be the length of the individual's name. For example, one of our customers is named "Ad****** Ra************* Kr******. His name has 32 characters not including spaces. I have no idea how we can fit that along with city, state, caliber etc. I am also not going to charge standard rates for an engraving of this size and will have to move to a per character rate. I believe this will disproportionately effect persons of color and increase their cost to comply with this law.

Manufacturers/brokers will not be able to effectively fit the required information on all types of these "receivers" in a compliant fashion as there will just not be enough space on a good percentage of these items.

The cost to the customer is also going to go up substantially if people even decide to continue their hobby or be compliant.

While my company stands to gain financially from it, we stand against it not only on principle but also upon the basis of the unfeasible practicality of the requirements. I urge you to fully consider the cost implications, practicality, and the inequity of this bill and issue an unfavorable report.

Sincerely,

Andrew Starr Raymond
Co-Owner – Engage Armament LLC
andy@engagearmament.com

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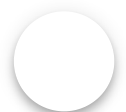

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