I believe that Mark W. Pennak, President, Maryland Shall Issue, Inc. has provided more thorough testimony than I personally can as he stated below :

"The bills would create a massive new gun ban on the possession, receipt, sale, transfer or purchase of un-serialized unfinished receivers and frames. First, the bills provide that “person may not purchase, receive, sell, offer to sell, or transfer an unfinished frame or receiver unless it is required by federal law to be, and has been, imprinted with a serial number by a federally licensed firearms manufacturer or federally licensed firearms importer in compliance with all federal laws and regulations applicable to the manufacture and import of firearms.” This ban would go into effect on June 1, 2022. Next, the bills ban mere possession of an unserialized, privately made firearm on or after January 1, 2023. To be lawfully kept after January 1, 2023, all unfinished frames and receivers would have to be serialized as the bills describe. The mere possession of any unserialized item considered to be a firearm is a criminal offense as of 1/1/2023.

The bills create a very broad and new definition of "firearm" to make clear that unfinished receivers will now be considered to be a “firearm.” Specifically, the bills define "unfinished frame or receiver" to mean "a forged, cast, printed, extruded, or machined body or similar article that (1) Has reached a stage in manufacture where it may readily be completed, assembled, or converted to be used as the frame or receiver of a functional firearm; or (2) Is marketed or sold to the public to become or be used as the frame or receiver of a functional firearm once completed, assembled, or converted." In this respect, the bills go far beyond the definition of a firearm set forth in federal law. Under federal law, 18 U.S.C. 921(a)(3), a firearm is defined as “(A) any weapon (including a starter gun) which will or is designed to or may readily be converted to expel a projectile by the action of an explosive; (B) the frame or receiver of any such weapon; (C) any firearm muffler or firearm silencer; or (D) any destructive device. Such term does not include an antique firearm.”

A similar definition is set forth in current Maryland law. See Md. Code Public Safety, 5-101(h). These bills would amend Section 5-101(h) to include as well an “unfinished frame or receiver” and then define an “unfinished frame or receiver” to mean “a forged, cast, printed, extruded, or machined body or similar article that: * * * (2) Is marketed or sold to the public to become or be used as the frame or receiver of a functional firearm once completed, assembled, or converted.” Under this definition, a "zero percent" receiver (a solid block of aluminum, for example) would fall under the bills’ coverage if it is sold or marketed as such. The bills do not even attempt to define the meaning of “readily completed, assembled or converted.” Nothing in the bills purport to incorporate federal law in this definition.

Notwithstanding the bills’ new and radically different definition of a “firearm,” the bills otherwise piggyback heavily on federal law. For example, the ban on an unfinished frame or receiver in new Section 5-703(a) applies to all such items “unless it is required by federal law to

be, and has been imprinted with a serial number by a federally licensed firearms manufacturer, or federally licensed firearms importer in compliance with all federal laws and regulations….” Similarly, for existing privately made firearms, the bills require that, before January 1, 2023, a federally licensed dealer, importer, manufacturer, or other federal licensee authorized by federal law to “provide marking services” mark firearms with a serial number that consists of the first three and last five digits of their FFL number, plus “another number,” presumably one selected by the federally licensed manufacturer or importer.

The bills require that the inscriptions be in compliance with the federal rules that define depth, height, and method. Specifically, federally licensed manufacturers and importers are required to engrave serial numbers on firearms. See 18 U.S.C. § 923(i). Federal regulations concerning Section 923(i) (also incorporated by the bills) 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 precise and expensive engraving machine. The bills do not require that any federally licensee actually perform this service and the bills likewise do not purport to limit the fees that potential engravers are able to charge. A violation of any of these requirements is punishable by up to 3 years in prison and/or a $10,000 fine for each violation as each violation is deemed by these bills to be a “separate crime.”

Finally, it must be noted that pending regulations issued by the ATF propose to change how the ATF defines a firearm within the definition established by 18 U.S.C. § 921(a)(3)(providing: “The term “firearm” means (A) any weapon (including a starter gun) which will or is designed to or may readily be converted to expel a projectile by the action of an explosive; (B) the frame or receiver of any such weapon; (C) any firearm muffler or firearm silencer; or (D) any destructive device. Such term does not include an antique firearm.”). The notice of proposed rulemaking for these ATF regulations was issued on May 21, 2021. See 86 Fed. Reg. 27720-01 (May 21, 2021). As proposed, the ATF rule would define unfinished receiver “kits” to fall within the federal definition of a “firearm.” See 86 Fed. Reg. at 27726. The proposed rule would also define “readily be converted” under Section 921(a)(3) to mean “a process that is fairly or reasonably efficient, quick, and easy, but not necessarily the most efficient, speedy, or easy process.” (Id. at 27730). The regulations would then list a number of factors to be considered in applying that definition, including cost and difficulty of conversion or assembly. Unlike these bills, nothing in those regulations would purport to reach any “unfinished receiver” that is “marketed or sold to the public to become or be used” as a receiver. Nothing in these proposed regulations would purport to bar private persons from manufacturing their own privately made firearms or otherwise prohibit the possession of such firearms manufactured in the past. These federal regulations are expected to issue in final no later than June of 2022. See Introduction to the Unified Agenda of Federal Regulatory and Deregulatory Actions—Fall 2021, 87 Fed. Reg. at 5111 (January 31, 2022).

A. Privately Manufactured Firearms Are Rarely Used In Crime And Existing Owners Are Law-Abiding Hobbyists, Not Criminals

These new provisions, if enacted, would burden and penalize an 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 typically "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 a typical "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 may cost 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).

There has been much ado made about "kits" that are available from manufacturers, such as Polymer 80 and others. Accordingly to the ATF, such "kits" are made by non-licensed manufacturers "who manufacture partially complete, disassembled, or inoperable frame or receiver kits, to include both firearm parts kits that allow a person to make only a frame or receiver, and those kits that allow a person to make a complete weapon." 86 Fed. Reg. at 27736. Several points bear mentioning.

First, most (if not all) of the unserialized "ghost guns" recovered by the police in Maryland are made from such kits. Indeed, the Baltimore Police Department has announced to great fanfare that ghost gun seizures have increased over the last few years. Yet, according to information we have obtained from the Baltimore Police Department, the BPD seized 2,355 guns in 2021. Of that number, according to the BPD, 352 were "ghost guns," including guns made from kits (Polymer 80s). That is slightly less than 15% of the total number of guns seized in 2021. Baltimore's problem with illegal guns is thus far vaster than "ghost guns." The BPD does not identify separately the number ghost guns actually used in violent crimes and there are few statistics available on the number of ghost guns actually used in crime. What numbers that are available suggest that the use of ghost guns in violent crime is minute. For example, "the Justice Department reported that more than 23,000 weapons without serial numbers were seized by law enforcement between 2016 and 2020 and were linked to 325 homicides or attempted homicides." https://bit.ly/3GgaT94. That 325 homicides or attempted homicides represent a tiny percentage of the universe of 23,000 ghost guns seized (0.14%).

Legislation, such as these bills, focusing on "ghost guns" thus will not make the slightest dent in the soaring homicide rate. The numbers in Baltimore bear that out. For example, in 2011, the BPD seized 2,178 firearms (no ghost guns) and the number of murders was 196, of which 88 resulted in arrests (a 44.9% clearance rate). In 2011 there were also 379 non-fatal shootings. In 2020, the BPD seized roughly the same number of guns (2,244) (including 128 ghost guns), and yet the number of murders was 335 of which only 102 resulted in arrests (a 28.7% arrest clearance rate). And by 2020, the number of non-fatal shootings had nearly doubled from 2011 to 724. Similarly, BPD's weapons possession arrests were 1,224 in 2011, but virtually the same in 2020 (1,233), but the number of murders in 2020 were 81.1% higher than in 2011.

We note with sadness that Baltimore is headed for a new record in homicides with 36 killings in January 2022, a pace that would result in 432 murders for 2022, a number never seen in Baltimore before. https://bit.ly/3KYQzN1. No word from the BPD if any of these killings came from the use of "ghost guns." The BPD has not released murder arrest numbers for 2021, but we are informed that there were 337 homicides in 2021, 2,355 gun seizures and 726 non-fatal shootings, numbers not much different than 2020. We note that in the years between 2011 and 2021, the General Assembly enacted numerous gun control statutes, including the much-touted Firearms Safety Act of 2013. None of those laws had the slightest impact on crime in Baltimore.

At a minimum, it should be obvious that there is no correlation (much less cause and effect) between guns seized and violent crime. A more relevant statistic is the clearance rate for serious crimes. As noted above, BPD's arrest clearance rate for murder in 2020 was a merely 28.7% and only 44.9% in 2011. By comparison, the nationwide clearance rate for murder is 54.4%. https://bit.ly/3s3qiVb. Baltimore's clearance rate for homicides is plainly abysmal, a reality that does not go unnoticed by violent criminals and law-abiding citizens alike. See Johns Hopkins Center for Gun Policy and Research, Reducing Violence And Building Trust at 5 (June 2020) ("In Baltimore neighborhoods most impacted by gun violence, residents lack faith in BPD's ability to bring individuals who commit violence to justice. Perceived risk of being shot and perceptions that illegal gun carrying is likely to go unpunished lead some residents to view gun carrying as a necessary means for self-defense."). In any event, there is no evidence of which we are aware that the inability to trace an unserialized firearm actually has prevented an arrest for any serious violent crime. The General Assembly seriously errs in focusing on "ghost guns" when it should be paying attention to the soaring rate of violent crime.

Second, the proposed regulations issued by the ATF would effectively ban unserialized kits by reclassifying them as "firearms" for purposes of federal law. That reclassification of kits would mean that the frame or receiver of the kit would be required to be serialized (and sold through FFLs like other firearms). Specifically, under the proposed rule, "weapon parts kits with partially complete frames or receivers containing the necessary parts such that they may readily be completed, assembled, converted, or restored to expel a projectile by the action of an explosive would be "firearms" for which each frame or receiver of the weapon, as defined under this rule, would need to be marked." (86 Fed. Reg. at 27736). After the proposed rule goes into effect in June of 2022, such unserialized kits will thus be completely unavailable commercially. Likewise unavailable would be any "readily be converted" unfinished frames or receivers, as the ATF proposed rule would likewise deem such items to be firearms and thus must be serialized in order to be sold legally and only then through FFLs who would perform backgrounds checks for these items, just like for any other type of firearm. The only unserialized receivers that would remain unregulated by the ATF would be those receivers that are NOT "readily" converted or assembled into a completed receiver, such as blocks of aluminum sold as "zero percent" receivers and that number is vastly smaller than the current universe of "ghost guns." As noted, the ATF proposed regulations heavily tighten the definition of

"readily" converted, thereby further limiting the number and availability of these remaining types of unfinished receivers.

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

The ATF proposed rule would ban unserialized "kits" and would dry up the market for unserialized receivers. Period, full stop. Yet, ironically, the bans imposed by these bills would not stop any person from actually acquiring any non-regulated receivers that would be left, such as "zero percent receivers." Such items would still not be "firearms" under federal law and thus would not be regulated by federal law. Such items thus would remain available all over the United States, even if the bills should become law and were perfectly enforced 100% of the time. The market for these items is nationwide in scope. Accordingly, nothing in the bans imposed by these bills would or could actually stop any criminal or disqualified person from acquiring all the hardware necessary to make his own gun. All such a person would need do is drive to another state and buy over the counter. The idea that these bills would prevent crime or acquisition of a "ghost gun" is thus fantasy.

More importantly, a disqualified person would not be deterred by these bills 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 (as further defined by the ATF rule) would be sufficient to constitute a violation of these existing laws, as a receiver alone is considered a "firearm" under existing Maryland and federal law. See 18 U.S.C. § 921(a)(3); MD Code, Public Safety, § 5-101(h)(1)(ii). These bills would not change that reality an iota. See https://bit.ly/3rgG9Au (announcing arrests and prosecutions of violent criminals and illegal gun manufacturers in Cecil County).

These bills go beyond the requirements of federal law and the proposed ATF regulations by making possession of existing privately manufactured firearms illegal. That result simply criminalizes innocent, law-abiding hobbyists and gun owners who have done nothing wrong. Existing criminals in possession of a "ghost gun" can be and should be arrested for illegal possession and the existing punishments for such illegal possession are far harsher than those imposed by these bills. These bills will not change that legal reality. Yet, these bills will also result in the arrest of law-abiding hobbyists. The reality is that 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 bills are utterly pointless as a public safety measure. They would succeed only in turning otherwise law-abiding citizens into criminals. That is not sound public policy.

C. The Bills Impose Impracticable Requirements

The bills provide that "ON OR AFTER JANUARY 1, 2023, A PERSON MAY NOT POSSESS A FIREARM UNLESS:

(1) THE FIREARM IS REQUIRED BY FEDERAL LAW TO BE, AND HAS BEEN, IMPRINTED BY A FEDERALLY LICENSED FIREARMS MANUFACTURER OR FEDERALLY LICENSED FIREARMS IMPORTER WITH A SERIAL NUMBER IN COMPLIANCE WITH ALL FEDERAL LAWS AND REGULATIONS APPLICABLE TO THE MANUFACTURE AND IMPORT OF FIREARMS; OR

(2) THE FIREARM HAS BEEN IMPRINTED BY A FEDERALLY LICENSED FIREARMS DEALER OR OTHER FEDERAL LICENSEE AUTHORIZED TO PROVIDE MARKING SERVICES WITH THE FIRST THREE AND LAST FIVE DIGITS OF THE LICENSEE'S FEDERAL FIREARMS LICENSE NUMBER, FOLLOWED BY A HYPHEN, AND THEN FOLLOWED BY ANOTHER NUMBER." Taken together, these requirements banning possession go far beyond federal law. They severely criminalizes (with 3 years of imprisonment) innocent possession by law-abiding hobbyists who may have built these firearms or possessed these frames for years, including all privately made guns built since 1968, a period of approximately 53 years. The bills thus encompass an untold number of home-built firearms, probably numbering in the tens of thousands. The requirements imposed by the bills simply cannot be met, much less by the January 1, 2023, effective date of these bills.

The bills 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" importer or other "federal licensee authorized to provide marking services." Such a licensed manufacturer is also known as a "Class 07" FFL and these manufacturers necessarily possess the equipment and expertise to perform serial number markings, as Section 923(i) has imposed this requirement on manufacturers since 1968. While there are many other, non-manufacturer 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. See https://www.atf.gov/resource-center/types-federal-firearms-licenses-ffls. These Class 01 dealers do not perform engraving required by Section 923(i) as they are not manufacturers or importers, the two types of entities on whom the duty to engrave serial numbers is imposed by Section 923(i). The proposed ATF rule would require a federally licensed dealer to perform engravings only if an unserialized firearm was accepted by the dealer and thus entered in the dealer's A&D books as an acquired firearm. See 86 Fed. Reg. at 27737 ("FFLs would be required to mark PMFs within 7 days of the firearm being received by a licensee, or before disposition, whichever first occurs."). Since Class 01 dealers cannot perform this function, this requirement would be primarily applicable to Class 07 manufacturers, of which there are relatively few in Maryland, as compared to Class 01 dealers. Nothing in the ATF rule would require any dealer to accept a homemade gun into his inventory or perform any engraving.

The bills require that the marking be done "in compliance with all federal laws," and thus the bills would require the federal licensee to meet the engraving requirements specified in Section 923(i) and implementing federal regulations. Federal regulations require that the markings 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 2021 illustrated testimony of Andrew Starr Raymond, Co-Owner – Engage Armament LLC, of Rockville, MD (submitted with respect to

2021 bills HB 638 and SB 624). Relatively few manufacturers with this sort of capability to 'imprint" a serial number in compliance with federal law even exist in Maryland. Class 01 dealers, of which there are hundreds in Maryland, have neither the expertise nor the equipment to engrave a serial number in a manner compliant with Section 923(i). Arguably, Class 01 dealers are not even authorized by federal law to engage in such engraving as federal law, Section 923(i), expressly is limited to "manufacturers" and "importers."

The bills also require that any federally licensed manufacturer, importer or other federal licensee "authorized to perform marking services" must also "retain records for all firearms imprinted in accordance with all federal laws and regulations applicable to the sale of a firearm." That requirement would impose additional legal risks and costs on the Class 07 dealer, above and beyond the costs of maintaining the equipment and the training necessary to perform engraving markings to the level required by Section 923(i) and federal regulations. Few, if any, dealers would take on these additional costs and risks necessary to meet the demand that would be created by these bills. In sum, these risks and the high costs associated with investing in the equipment and training additional personnel necessary to perform the required engraving would ensure that very few dealers would offer the engraving services to existing owners. Thus, there is no likelihood that such services would be actually available to existing owners by January 1, 2023, the effective date of the ban on mere possession. These practical realities effectively convert the bills into a total ban on the possession of any existing receiver or firearm as it would be virtually impossible for the existing owners to obtain a serial number. The mere six months available to obtain the required engraving is unrealistically short.

D. These Bills Are Overbroad and Violative of the Due Process Clause of the 14th Amendment

As noted, the bills impose a new definition of a "firearm" that goes beyond any federal definition of "firearm." That definition would be far stricter than any definition of firearm that would be imposed by the proposed ATF rule. Specifically, the bills define a firearm to include "A FORGED, CAST, PRINTED, EXTRUDED, OR MACHINED BODY OR SIMILAR ARTICLE THAT: * * * (2) IS MARKETED OR SOLD TO THE PUBLIC TO BECOME OR BE USED AS THE FRAME OR RECEIVER OF A FUNCTIONAL FIREARM ONCE COMPLETED, ASSEMBLED, OR CONVERTED." Mere possession of such an object would be criminalized after January 1, 2023. This definition leads to absurd results. There is no "reasonable person" modifier for the ban on the possession of an "object" that was marketed or sold for this purpose. There is no mens rea

requirement. The bills impose strict criminal liability for mere innocent possession.

For example, under these provisions, the bills would impose a ban on the mere possession of a "zero percent" receiver (a solid block of aluminum or readily available metal tubing aka pipe) marketed as such. And because that block of aluminum was originally marketed as a zero percent receiver, the bills would criminalize mere possession 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 (in the undersigned's case) as a means to illustrate the absurdities of Maryland ghost gun bills. And because the bills strictly ban mere possession, regardless of whether the possessor even knew that the block of aluminum had been "marketed" for these purposes, the bills 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 bills is vastly overbroad.
This overbroad coverage of the bills is particularly pernicious as the bills contain no mens rea requirement and thus impose 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).

Indeed, most recently, the Maryland Court of Appeals has stressed the importance of a mens rea requirement in the context of Maryland's ban on carrying a handgun imposed by Md. Code Criminal Law, § 4-203(a)(1) (providing that "person may not: (i) wear, carry, or transport a handgun, whether concealed or open, on or about the person"). Lawrence v. State, 475 Md. 384, 408, 257 A.3d 588, 602 (2021) (discussing the Supreme Court's longstanding presumption that criminal statutes should generally include a mens rea requirement). The Lawrence Court even suggested that a strict liability law could violate the Due Process Clause for lack of notice, taking the extraordinary step of expressly communicating this point to the General Assembly. See Lawrence, 475 Md. at 420-21. As the Court stated, these "policy concerns" made it appropriate "to signal to the General Assembly" that, "in light of these policy concerns, ... legislation ought to be considered" to address the scope CR § 4-203(a)(1)(i) given its classification as a strict liability offense." (Id. at 422). The General Assembly ignores such "signals" at its peril.

Here, because the bills impose strict liability, it would not matter if the existing owners simply were unaware that these new requirements even exist. Without doing a thing, they would unknowingly wake up on January 1, 2023, as criminals. Such a law is violative of the Due Process Clause as it criminalizes entirely passive conduct by a person who is without actual

knowledge of the requirement. See Lambert v. California, 355 U.S. 225, 228 (1957) (striking down a California statute under the Due Process Clause where "entirely passive conduct could subject a defendant to conviction without any knowledge of their duty to comply with the statute"); Lawrence, 475 Md. at 420-21 (citing Lambert). It should be obvious that few law-abiding citizens follow the legislative sausage-making of the Maryland General Assembly. See also Conley v. United States, 79 A.3d 270, 282 (D.C. 2013) ("[T]he requirement of notice embodied in due process 'places some limits' on the application of these tenets [that ignorance of the law is no defense] when a law criminalizes 'conduct that is wholly passive' ... [and] unlike the commission of acts, or the failure to act under circumstances that should alert the doer to the consequences of his deed.").

Indeed, Lawrence makes clear that this lack of a mens rea requirement plus the use of vague, ill-defined terms will virtually ensure that these bills will be struck down as unconstitutionally vague. As noted above, Lawrence took pains to expressly "signal" the General Assembly that the ban on carrying a handgun "about" the person found in Md. Code Criminal Law, § 4-203(b)(1), is unconstitutionally vague and that the Court would strike it down on that basis in the next appropriate case. See Lawrence, 475 Md. at 420-21. These bills are fatally vague in the same way. In particular, the bills criminalize the possession of any unfinished receiver that can be "readily" converted into a firearm. That term is inherently vague. While federal law, 18 U.S.C. § 921(a)(1)(3) uses the same term, existing federal regulations have long limited that term by defining "frame or receiver" to mean: "That part of a firearm which provides housing for the hammer, bolt or breechblock, and firing mechanism, and which is usually threaded at its forward portion to receive the barrel." See 27 C.F.R. § 478.11. As explained above, the ATF and the Department of Justice have long maintained that an 80% unfinished receiver is not a firearm within the meaning of Section 921(a)(3) because such an object is not "readily converted" into a firearm. The ATF proposed regulation likewise refines that existing definition of a frame or receiver so as to tighten the definition of "readily converted" to include kits and other items. See 86 Fed. Reg. at 27730.

Context also matters. Unlike the bans imposed by these bills, federal law is far narrower, as nothing federal law purports to criminalize mere possession of a receiver by an otherwise law-biding person, much less criminalize the mere possession of an "unfinished" receiver. And nothing in federal law, including the proposed federal ATF regulations, purport to ban or limit an individual's right to make firearms at home for personal use. In contrast, these bills criminalize mere innocent possession and are completely silent as to the meaning of "readily." Indeed, the bills do not even purport to incorporate the federal definition, either the existing definition or the proposed AFT changes to that definition of "readily." A person is left totally at sea as to the meaning under these bills.

In contrast, as noted above, federal firearms law imposes specific mens rea requirements. For example, a violation of 18 U.S.C. § 922(a)(1)(B) (barring "any person" except federal licensees from engaging in the "business" of the manufacture of firearms) is not a crime unless the person "willfully" violates that provision. See 18 U.S.C. § 924(a)(1)(D).

Such a "willful" violation is a 5 year federal felony. (Id.). The Supreme Court has held that "in order to establish a 'willful' violation of a statute, 'the Government must prove that the defendant acted with knowledge that his conduct was unlawful.'" Bryan v. United States, 524 U.S. 814, 191-92 (1998), quoting Ratzlaf v. United States, 510 U.S. 135, 137 (1994) (emphasis added). No such mens rea requirement is found in these bills.

As noted above, the same unconstitutional lack of notice is self-evident in the bills' strict liability ban on possession of any item that is "marketed" or "sold" as an unfinished lower receiver, as the bills do not require any knowledge that the item was thus marketed or sold. The bills would ban a block of aluminum if it was marketed or sold as zero percent receiver, but would permit the sale and possession of the same block of aluminum if it was marketed or sold as something else. That result is bizarre. Either the block of aluminum is a significant threat to public safety or it is not – how it is "marketed" ought to be irrelevant. In any event, a person possessing such a block of aluminum may have no idea how it was sold or marketed, yet the mere possession of the block would be criminalized by these bills. Indeed, apparent from obvious circumstances, such as a printed advertisement, the term "marketed" is simply too vague to provide an intelligible standard.

The Supreme Court has made clear that such vagueness is particularly intolerable where the terms affect the exercise of a constitutional right. See, e.g., City of Chicago v. Morales, 527 U.S. 41, 53 (1999). There, the Court found highly significant that the loitering ordinance in question was a "criminal law that contains no mens rea requirement" and concluded "[w]hen vagueness permeates the text of such a law, it is subject to facial attack." Id. at 55. See also Colautii v. Franklin, 439 U.S. 379, 394 (1979) ("This Court has long recognized that the constitutionality of a vague statutory standard is closely related to whether that standard incorporates a requirement of mens rea.") (collecting cases). As explained below, these bills use vague language in an effort to regulate the exercise of a Second Amendment right to make firearms for personal use, a practice long steeped in our Nation's history and traditions. In short, these bills will not survive a constitutional vagueness challenge.

Indeed, Nevada's "ghost gun" law was recently struck down on vagueness grounds for failing to adequately define "unfinished frame or receiver" under the Due Process Clause of the Nevada constitution. Polymer80, Inc. v. Sisolak, No. 21-CV-00690 (3d Jud. District for Co. of Lyon, December 10, 2021). The court found it significant that Nevada statute, like these bills, did not contain a scienter or mens rea standard. See Id., slip op. at 14. The Nevada courts employ the same test for vagueness as employed by Maryland Court of Appeals under Article 24 of the Maryland Declaration of Rights and by the federal courts under the Due Process Clauses of the Fifth and Fourteenth Amendments. See, e.g., Flamingo Paradise Gaming v. Att'y General, 125 Nev. 502, 510 (2009) ("A criminal statute can be invalidated for vagueness (1) if it fails to provide a person of ordinary intelligence fair notice of what is prohibited or (2) if it is so standardless that it authorizes or encourages seriously discriminatory enforcement."); Galloway v. State, 365 Md. 599, 614-15, 781 A.2d 851 (2001) ("The void-for vagueness doctrine as applied to the analysis of

penal statutes requires that the statute be 'sufficiently explicit to inform those who are subject to it what conduct on their part will render them liable to its penalties'" and must provide "legally fixed standards and adequate guidelines for police ... and others whose obligation it is to enforce, apply, and administer [it]" and "must eschew arbitrary enforcement in addition to being intelligible to the reasonable person."); Kolender v. Lawson, 461 U.S. 352, 357 (1983) (a penal statute must "define the criminal offense with sufficient definiteness that ordinary people can understand what conduct is prohibited and in a manner that does not encourage arbitrary and discriminatory enforcement"). These bills are awaiting the same fate as the Nevada statute.

Here, for example, the bills' criminal penalties could be imposed even though it would take substantial expertise and a very sophisticated milling machine costing many thousands of dollars to convert a "zero percent" receiver 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. As explained above, 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. It blinks reality to believe that such an object is a significant threat to public safety requiring the imposition of strict liability. That is particularly so when federal law already ban any person (other than a licensee) from engaging in the "business" of manufacture, and federal and State law already criminalizes possession of any receiver by disqualified persons. 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.").

Then there are other absurdities associated with the extreme overbreadth of the bills. For example, as explained, the bills effectively require that a Class 07 manufacturer engrave a serial number on this solid block of aluminum marketed as a "zero percent" receiver. Yet, that serial number would then be obliterated should that block ever be actually milled. 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 illustrates the legal absurdity of criminalizing the possession of objects that are not regulated by federal law. In short, in their attempt to be all-encompassing, the bills create multiple unconstitutional traps for the unwary. The bills thus invite arbitrary and discriminatory enforcement. We all know which segments of society will bear the enforcement brunt of these bills. 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)). In short, given that the ATF is about to abolish the sale of unserialized kits and anything else that can be "readily" converted into a receiver, it is overkill to go beyond that regulation to criminalize additional items, especially in a bill that otherwise incorporates and relies on federal law as setting the appropriate standards.

E. These Bills Are Unconstitutional Under The Second Amendment

As noted, this bills imposes 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 ban guns or 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, 579 U.S. 517 (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 these bills.

We are compelled to note that the Supreme Court may well clarify the appropriate standard of review for Second Amendment cases in its upcoming decision in in NYSRPA v. Bruen, No. 20-843, cert. granted, 141 S.Ct. 2566 (2021). Bruen was argued November 3, 2021, and a decision is expected by June of this year. See also ANJRPC v. Bruck, No. 20-1507 (SCt.) (challenging New Jersey's ban on so-called large capacity magazines; the petition for certiorari in that case is presently being held by the Supreme Court pending a decision in Bruen). We note as well that Maryland's ban on so-called "assault weapons" is currently before the

Supreme Court on a petition for certiorari in Bianchi v. Frosh, No. 21-902 (S.Ct.) (docketed December 16, 2021). A decision in Bruen may well affect the disposition of that petition as well.

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 and outright ban all home manufacture of firearms. 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 these bills purport to address is guns without serial numbers because such guns are not "traceable." That interest is necessarily limited. 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 bills 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 for tracing (rather than an illegitimate desire to criminalize gun owners and hobbyists), then that concern can be fully addressed without banning homemade guns. Specifically, there are alternatives to bans. For example, a 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 with proof 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." A violation of the California law is punishable with a year imprisonment or a $1,000 fine if the firearm was a handgun and by 6 months imprisonment and a fine for other types of firearms. (Id.). Connecticut uses a similar system. See Conn. Gen. Stat. 29-36a,b.

Indeed, D.C. has responded to a federal lawsuit by amending its "ghost gun" law to specifically provide that an owner "may register a self-manufactured firearm that does not bear a serial number as described in paragraph (l)(B) of this subsection, if, prior to finishing the frame or receiver, the applicant has caused a unique serial number to be engraved, casted, stamped (impressed), or placed on the unfinished frame or receiver, as set forth in subparagraphs (B) and (C) of this paragraph." Ghost Gun Clarification Emergency Amendment Act of 2021, subsection (b), amending D.C. Official Code § 7-2502.02 (December 13, 2021). This approach allows the continued manufacture of privately made firearms while addressing the perceived need for a serial number. The D.C. approach does not require adherence to federal Section 923(i) standards for such future manufacture – it allows the owner to engrave a number as long as he or she confirms with the MPD "that the proposed serial number has not already been registered to another firearm." (Id.) As these laws indicate, there are less restrictive alternatives. If D.C. can do this, then Maryland can too. There is no reason to take the extreme step of flatly banning homemade guns or converting existing owners into criminals. Under Heller, the State may not reject this alternative simply because a draconian general ban is more convenient. Gun owners may not be criminalized for such flimsy reasons. See, e.g., Bonidy v. Postal Service, 790 F.3d 1121, 1127 (10th Cir. 2015), cert. denied, 577 U.S. 1216 (2016) ("administrative convenience and economic cost-saving are not, by themselves, conclusive justifications for burdening a constitutional right under intermediate scrutiny").

We note in this regard that, in 2019, the House Judiciary Committee favorably reported and the House of Delegates ultimately passed HB 740 (the bill died in the Senate). That bill expressly required the State Police to conduct a study of this California alternative. These bills unaccountably abandon that approach. Yet, this California approach is even more appropriate (from the State's perspective) given that the ATF regulations will go into effect in June of 2022. Those regulations will effectively dry up the interstate availability of unserialized kits and

other unserialized unfinished receivers that may be "readily" converted into firearms. Those regulations will thus effectively address the future availability of "ghost guns" as no current manufacturer of such unserialized unfinished receivers or kits would be allowed to continue to sell such items. Doing so would be a federal felony, nationwide. See 18 U.S.C. § 922(a)(1)(A)(barring "any person" except federal licensees, from engaging in the "business" of manufacturing or, in the course of such business, from shipping, transporting or receiving any firearm in interstate or foreign commerce); 18 U.S.C. § 924(a)(1)(D) (punishing such conduct as a felony). The bills thus should be more accommodating to existing owners, not more punitive. There is no need to pursue a scorched earth policy against existing law-abiding owners who have committed no crime. The State should have zero interest in needlessly criminalizing otherwise law-abiding Marylanders. Maryland already has more than enough criminals. Plainly, these bills have not exhausted reasonable alternatives.

F. The Penalties Are Excessively Severe

As noted, under these bills any violation is punishable by imprisonment for up to three years for each violation and/or a fine of $10,000 for each violation (the bills make clear that "each violation . . . is a separate crime"). As noted above, not even California imposes such severe penalties. Similarly, D.C. punishes a violation of its "ghost gun" statute with not more than 1 year imprisonment and a fine of $2,500. Code of the District of Columbia § 22-4515. By making each privately manufactured firearm a separate crime, the bills empower prosecutors to seek extreme prison terms and fines in the aggregate if the owner happened to possess multiple privately manufactured firearms, as many hobbyists do. Such penalties are breathtaking when applied to existing owners who may have legally possessed their privately manufactured firearms for decades, without incident or any problem. Suddenly, these owners will have a mere 6 months to find a Class 07 FFL manufacturer who is willing and able to mark all his or her homemade firearms in accordance with the bills' strict requirements. And that is assuming that these owners even know about these requirements.

Indeed, only last Session, the "ghost gun" bills would have imposed only a civil penalty for a first offense, not a severe, disqualifying, criminal penalty. See HB 638 and SB 624 (providing that "for a first violation, is guilty of a civil offense and on conviction shall be fined not less than $1,000 but not exceeding $2,500"). Those bills did not make each violation "a separate crime." Under these prior bills, a second conviction would have been punishable by imprisonment for 2 years and a $5,000 fine, still less than 3 years and the $10,000 fine imposed for each violation by these bills. A misdemeanor crime punishable by 2 years or less is not disqualifying under State and federal law. See 18 U.S.C. § 921(a)(20)(B); Md. Code Public Safety, § 5-101(g)(3). HB 638 and SB 624 last Session thus did not create the permanent disqualification created by these bills. What has changed (other than the involvement of Attorney General Frosh)? There is no evidence whatsoever that existing, law-abiding owners have suddenly turned to a life of crime. Disqualified persons, or persons who misuse their firearms or illegally manufacture and sell guns can be and are arrested and charged with existing serious crimes without criminalizing

the law-abiding owners. There is no public safety justification for treating these law-abiding citizens in such a vindictive, cavalier manner.

G. The Bills' Exemption For Firearms Made "Before 1968" Is Erroneous

The bills provide that the requirements imposed by the bills do not apply to "A FIREARM THAT: (I) WAS MANUFACTURED BEFORE 1968." This exemption is in apparent recognition that serial numbers were not required by federal law until the enactment of the federal Gun Control Act of 1968, Public Law 90-618, 82 Stat. 1213 (1968). However, the Gun Control Act of 1968 was not even enacted into law until October 22, 1968, and that portion of the Act requiring serial numbers (Section 923(i) enacted as part of Section 102 of the Act) did not go into effect until December 16, 1968. See Section 105(a), 82 Stat. at 1226. Thus, by exempting only firearms manufactured "before 1968" the bills erroneously include unserialized firearms made between January 1, 1968, and December 15, 1968. Many thousands of firearms without serial numbers were undoubtedly manufactured during that nearly year-long time period. Many, if not most, of those firearms cannot be distinguished from guns made prior to 1968. The bills' reference to "before 1968" is just lazy and sloppy draftsmanship. The bills should be thus amended to recognize the correct effective date of the Gun Control Act of 1968. After all, this is a criminal statute and thus must be written with precision. See, e.g., United States v. Vuitch, 402 U.S. 62, 69 n.3 (1971) (noting the need for "necessary precision in [a] criminal statute").

CONCLUSION

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