

# **Brent Amsbaugh SB463 Testimony.pdf**

Uploaded by: Brent Amsbaugh

Position: FAV

Brent Amsbaugh

SB463 Written testimony

Bruen found that the “good and substantial” clause was unconstitutional. I had applied for my carry permit prior to the Bruen decision and was denied. I want my money back. The Maryland general assembly appears to be playing dirty politics. I am well aware that if I had a business and could show cash flow, then I would have been able to get my permit. It is frustrating because that tells me the state cares more about money than about our safety. You do not have the right to keep my money when you have the desk stacked against me. Do the right thing and pass this bill.

**230308-SB463-reimburse-denied-firearm-permit-appl-**

Uploaded by: Christine Hunt

Position: FAV

Christine Hunt and Jay Crouthers  
1014 Dockser Drive  
Crownsville, MD 21032

March 8, 2023

Maryland General Assembly  
Members of the Judicial Proceedings Committee  
Annapolis, MD

RE: SB 463 – Public Safety – Permit to Wear, Carry, or Transport a Handgun Denial – Refund of Application Fee

Dear Senators,

We support SB 463 and respectfully request that you vote for it.

A citizen of the United States has the right to “bear arms” according to the 2<sup>nd</sup> Amendment of the U.S. Constitution. Therefore, when an honest citizen of our State is denied that right, and had to pay for the application of a firearm permit, it is fair and just that they be reimbursed.

Please vote for it.

Sincerely,

Christine Hunt and Jay Crouthers

**SB 463 Testimony 20230308.pdf**

Uploaded by: Frank Clary

Position: FAV

**Maryland General Assembly**  
**Senate Judicial Proceedings Committee, 2023 Session**  
**Testimony in Support (favorable) to SB 0463**  
**“Public Safety - Permit to Wear, Carry, or Transport a Handgun Denial - Refund**  
**of Application Fee”**  
**Written testimony submitted on 08 March, 2023**

To the Chair, members and staff of the 2023 Senate Judicial Proceedings Committee,

Thank you for taking time to read my testimony **in support** of SB 0463, “Public Safety - Permit to Wear, Carry, or Transport a Handgun Denial - Refund of Application Fee”. I have a favorable opinion of this bill, and I am supportive of it. I stand in support of this proposed legislation for a number of reasons. For background, I am a Maryland resident and I reside in Montgomery County. Here are many reasons why I think this bill should be advanced out of the House Judiciary committee.

The relevant laws related to fees for wear & carry permits DO NOT comply with the Bruen decision. These laws violated the 2nd Amendment and the prescriptions of the recent U.S. Supreme Court Bruen decision because they were counter to the plain text meaning of the Second Amendment to the U.S. Constitution. The existing law is analogous to regulations and laws from the 20th century, not the era of the country’s founding. It is outside the analogs and norms of all known and referenced historical regulations from the era of the nation’s founding. There are no founding era historical analogs to the existing regulation. The existing law matches the historical tradition of the 20th century instead of the era of the country’s founding.

However, the Maryland Declaration of Rights recognizes the U.S. Constitution Bill of Rights as the Supreme Law of the Land. This bill does not conflict with the 2<sup>nd</sup> Amendment and the prescriptions of the recent U.S. Supreme Court Bruen decision because the bill is in keeping with the plain text meaning of the Second Amendment to the U.S. Constitution. The proposed law is analogous to regulations and laws from the 18<sup>th</sup> century, including the era of the country’s founding, when the people were not required to pay any fees to exercise the right to self-defense outside the home. It is within the analogs and norms of all known and referenced historical regulations from the era of the nation’s founding. There are founding era historical analogs to the bill’s proposed regulations. The bill matches the historical tradition of the 18<sup>th</sup> century and the era of the country’s founding. Therefore, on its face the proposed law is in keeping with the Constitution and the Maryland Declaration of Rights, as well as the requirements from hundreds of years of judicial precedent including the Bruen decision.

**It is also in compliance with the Maryland Declaration of Rights, including Articles:**

2 – Which recognizes that the US Constitution is the Supreme Law of the State, including the 2<sup>nd</sup> Amendment.

6 – That requires Maryland’s Senators and Delegates to be accountable for their conduct as Trustees of the Public. Because the bill meets the requirement of the Declaration and Bill of Rights, and because the Committee members have been informed and know the Act is in compliance with the Declaration and Bill of Rights, should the bill be made law the Public trust will be upheld by the Committee members and other General Assembly members.

16 – That sanguinary laws ought to be avoided as far as it is consistent with the safety of the State; and no Law to inflict cruel and unusual pains and penalties ought to be made in any case, or at any time,

**Maryland General Assembly**  
**Senate Judicial Proceedings Committee, 2023 Session**  
**Testimony in Support (favorable) to SB 0463**

**“Public Safety - Permit to Wear, Carry, or Transport a Handgun Denial - Refund of Application Fee”**

**Written testimony submitted on 08 March, 2023**

hereafter. This proposed law is not sanguinary. It is the opposite. It enables refunding illegally collected fees to the people that paid them during a specific time period.

19 – That every man, for any injury done to him in his person or property, ought to have remedy by the course of the Law of the Land, and ought to have justice and right, freely without sale, fully without any denial, and speedily without delay, according to the Law of the Land. This law will ensure that people that are entitled to remedy via refunds receive it.

24 – Which prohibits unconstitutional and illegal loss of liberties, property, personal destruction, etc. If the bill is not enacted people that should have property restored will not have it restored. They will instead be unconstitutionally and illegally deprived of property.

25 – That excessive bail ought not to be required, nor excessive fines imposed, nor cruel or unusual punishment inflicted, by the Courts of Law. This proposed law is in keeping with the exact requirements of this Article. It would be cruel and unusual for the State to retain illegally collected fees from its residents.

This bill should be passed with great haste out of committee. This law will help the State to ensure that the rights of its law-abiding citizens are respected and protected. It is in keeping with lawful governance and rule of law and it complies with the requirements of Supreme Court precedent and jurisprudence. It also restores trust in the Maryland’s elected Trustees.

PLEASE PASS THIS LEGISLATION WITH ALL DUE HASTE. Thank you for your consideration.

Frank Clary

08 March 2023

# **MSI Testimony on SB 463 refund.pdf**

Uploaded by: Mark Pennak

Position: FAV





March 9, 2023

## WRITTEN TESTIMONY OF MARK W. PENNAK, PRESIDENT, MSI, IN SUPPORT OF SB 463

I am the President of Maryland Shall Issue (“MSI”). Maryland Shall Issue is a Section 501(c)(4), 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 SUPPORT of SB 463.

### **The Bill:**

This Bill is very simple. It requires the State Police to refund the application fee (\$75) for a wear and carry permit governed by MD Code, Public Safety, § 5-306, for any application that was denied between July 5, 2019, and July 5, 2022. The Bill requires that any person whose application was denied during that time period must file a claim for this refund and submit “supporting documents.”

**The Bill is Appropriate:** On June 23, 2022, the Supreme Court decided *New York State Rifle & Pistol Association, Inc. v. Bruen*, 142 S.Ct. 2111 (2022). In *Bruen*, the Court struck down as unconstitutional New York’s “proper cause” requirement for issuance of a permit to carry a handgun in public. Maryland’s “good and substantial reason” requirement, found in MD Code, Public Safety, 5-306(a)(6)(ii), is indistinguishable from New York’s “proper cause” requirement. Both New York and Maryland employed “may issue” statutes, as identified by the Court in *Bruen* itself. See *Bruen*, 142 U.S. at 2124 n.2 (identifying Maryland as a “may issue” State like New York). On July 5, 2022, the Maryland Attorney General and the Governor instructed the State Police that the “good and substantial reason” requirement could no longer be enforced. <http://bit.ly/3SsOfUt>. The Maryland Court of Special Appeals agreed. *Matter of Rounds*, 255 Md.App. 205, 213, 279 A.3d 1048 (2022) (“We conclude that this ruling [in *Bruen*] requires we now hold Maryland’s ‘good and substantial reason’ requirement unconstitutional.”). As of July 5, 2022, Maryland wear and carry permits began to be issued on a “shall issue” basis to all applicants who otherwise satisfy the stringent training, fingerprinting and investigation requirements set forth in MD Code, Public Safety, § 5-306(a)(5),(6).

Under *Bruen*, the good and substantial reason requirement of Maryland law has always been unconstitutional. It is well-established that “[w]hen this Court applies a rule of federal law to the parties before it, that rule is the controlling interpretation of federal law and must be given full retroactive effect in all cases still open on direct review and as to all events, regardless of whether such events predate or postdate our announcement of the rule.” *Harper v. Virginia Dept. of Taxation*, 509 U.S. 86, 97-98 (1993). See, e.g., *Watkins v. Healy*, 986 F.3d 648, 665 (6<sup>th</sup> Cir. 2021) (applying *Harper* to a claim of immunity).

That principle means that every past application of the “good and substantial reason” requirement was unconstitutional when it was applied and remains unconstitutional to this day. The 3-year period noted in this Bill applies the 3-year statute of limitations period set out in State law. MD Code, Courts and Judicial Proceedings, § 5-101. The recovery period is measured from July 5, 2022, the point at which the State stopped applying the “good and substantial reason” requirement after *Bruen*.

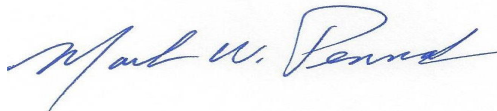
Under *Harper* and on these facts, if the “good and substantial reason” requirement had been imposed by a municipality, a damages suit under 42 U.S.C. § 1983, would undoubtedly lie to recover the costs suffered by the applicant because of the requirement. See *Monell v. Department of Social Services*, 436 U.S. 658 (1978); *Starbuck v. Williamsburg James City County School Board*, 28 F.4th 529, 533-34 (4<sup>th</sup> Cir. 2022). See also *Prince George’s C. v. Longin*, 419 Md. 450, 19 A.3d 859 (2011) (applying Local Government Tort Claims Act, noting “we think it highly unlikely that Article 24 contains any exemption from liability for an unconstitutional pattern or practice”).

The State and State agencies may be sued in State and federal courts for prospective equitable relief under the *Ex parte Young* doctrine. See, e.g., *Berger v. North Carolina State Conference of the NAACP*, 142 S.Ct. 2191, 2197 (2022); *Glover v. Glendening*, 376 Md. 142, 829 A.2d 532, 536-37 (2003). But, with the limited exceptions noted below, the State (and State agencies) generally enjoy sovereign immunity from *damages* actions. See *Haywood v. Drown*, 556 U.S. 729, 735 n.4 (2009); *Baltimore Police Dept. v. Cherkas*, 140 Md.App. 282, 780 A.2d 410, 425-26 (2001). Only because of sovereign immunity has the State escaped such damages suits under Section 1983 or in State court. Sovereign immunity has saved the State from paying for the consequences of its unconstitutional policies.

Sovereign immunity prevents recovery by those who have been wronged by the State. The proper approach is for the General Assembly to enact a bill that generally waives sovereign immunity for all unconstitutional actions of the State, just as it has for State torts. Indeed, there is no sovereign immunity under State law for violations of self-executing State constitutional provisions. *Benson v. State*, 389 Md. 615, 887 A.2d 525, 532 (Md. 2005) (“A private right of action for violation of Article 14 may lie because it is a self-executing constitutional provision.”). Suits for damages are available under this analysis where “the constitutional provision at issue conveyed an individual right” and where a damages action would be otherwise available under Maryland common law, such as for violations of “the right to be free from unreasonable searches and seizures or the right to be free from the taking of private property without just compensation.” *Id.* at 534. It would be a small step for the State to create a general waiver for suits in which violation of all constitutional rights, State and federal, is alleged and proven. The General Assembly certainly has that power. *Rodriguez v. Cooper*, 458 Md. 425, 430, 182 A.3d 853 (2018). The General Assembly need only amend MD Code, State Government, § 12-104, to so provide.

This bill is very narrow, as it is confined to violations of the federal constitutional right recognized in *Bruen*. Simple fairness and equity require that the State compensate applicants who were denied their constitutional rights to a carry permit because of the imposition of the “good and substantial reason” requirement during the statute of limitations period. Every such unsuccessful applicant expended far more than the \$75.00 application fee. Such applicants also paid for fingerprinting and background checks, an amount that is roughly \$70.00. Every applicant not otherwise exempt had to pay for 16 hours of instruction from a State-certified firearms instructor. That training runs roughly \$400 and up. None of these costs account for the time lost taking the training and submitting the application. The very least the State can do is refund the application fee it charged for its unconstitutional practice. The number of such unsuccessful applications is relatively few, and the bill requires documentation from the unsuccessful applicant. This State can afford it. We urge a favorable report.

Sincerely,

A handwritten signature in blue ink that reads "Mark W. Pennak". The signature is fluid and cursive, with the first letters of each word being capitalized and prominent.

Mark W. Pennak  
President, Maryland Shall Issue, Inc.  
mpennak@marylandshallissue.org

# **TESTIMONY OF MICHAEL F BURKE SB463.pdf**

Uploaded by: Michael Burke

Position: FAV

WRITTEN TESTIMONY OF MICHAEL F BURKE, IN SUPPORT OF **HB 860/SB 463**

02/28/2023

In introduction, please be informed that I am:

- \* Veteran of the Armed Forces, with 21 years of Service with the US Army, as a Military Police Office, MP Investigator, and Counterintelligence Agent.
- \* 25 years Law Enforcement Officer and Special Agent, at the County, State, and Federal levels.
- \* Expert in Maryland Firearms Law, federal firearms law and the law of self-defense.
- \* Maryland State Police Qualified Handgun Instructor QHIC-2016-0123 for the Maryland Wear and Carry Permit and the Maryland Handgun Qualification License
- \* NRA Pistol Instructor, Chief Range Safety Officer
- \* Subject Matter Expert in Physical Security – Certified Protection Professional (**CPP**), ASIS International
- \* Firefighter, Emergency Medical Technician (EMT) with over 30 yrs. experience
- \* An experienced Chief Election Judge with service over the terms of several past Governors in Maryland (speaking as a Citizen, not for the Elections Board);
- \* Board Member of Maryland Shall Issue (“MSI”)

**I appear today in SUPORT OF HB 860/463.**

The Bill:

This Bill is very simple. It requires the State Police to refund the application fee (\$75) for a wear and carry permit governed by MD Code, Public Safety, § 5-306, for any application that was denied between July 5, 2019, and July 5, 2022. The Bill requires that any person whose application was denied during that time period must file a claim for this refund and submit “supporting documents.”

The US Constitution affirms (not grants) the right of the PEOPLE (not just citizens, not just adults) to keep and bear arms. This proposed legislation flies in the face of the Constitution and is in direct contravention of the orders of the Supreme Court.

As a teenager myself, I carried a rifle, a machine gun, AND a handgun as a soldier and Military Police officer from age 18 to 21. I was entrusted by the US and State governments to stand watch and to go to war for over 21 years.

Michael F Burke, CPP. P.O. Box 23111, Baltimore, MD 21203 – (443) 757 4693

The US Constitution affirms (not grants) the right of the PEOPLE (not just citizens, not just adults) to keep and bear arms. This proposed legislation flies in the face of the Constitution and is in direct contravention of the orders of the Supreme Court.

I bring your attention to the decision in the Supreme Court in June of 2023.

**NEW YORK STATE RIFLE & PISTOL ASSOCIATION, INC., ET AL. v. BRUEN, SUPERINTENDENT OF NEW YORK STATE POLICE, ET AL.**

“...The constitutional right to bear arms in public for self-defense is not “a second-class right, subject to an entirely different body of rules than the other Bill of Rights guarantees.” McDonald, 561 U. S., at 780 (plurality opinion). We know of no other constitutional right that an individual may exercise only after demonstrating to government officers That is not how the First Amendment works when it comes to unpopular speech or the free exercise of religion. It is not how the Sixth Amendment works when it comes to a defendant’s right to confront the witnesses against him. And it is not how the Second Amendment works when it comes to public carry for self-defense. New York’s proper cause requirement violates the Fourteenth Amendment in that it prevents law-abiding citizens with ordinary self-defense needs from exercising their right to keep and bear arms. “

As in Bruen, the State of Maryland does not have the authority to restrict, limit, or infringe upon the rights of free citizens because certain individuals dislike the advertising, marketing, or sale of certain inanimate objects. Tools. Weapons. Firearms.

The past practice of denying citizens a RIGHT based on the lack of a perceived “need” was and is entirely unconstitutional.

In the alternative, I would ask the committee amend the bill to direct Maryland State Police to issue a new Handgun Permit to each and every claimant who was denied solely for the lack of a “good reason” rather than issue a \$75.00 check.

**I urge the Committee to issue a FAVORABLE report on this bill.**

Michael F Burke, CPP

