Background:

Any analysis regarding the constitutionality of a restriction on the 2cd Amendment must start with the text of the Second Amendment. To aid in this analysis, the meaning of all terms in the 2cd Amendment are now clearly defined by Supreme Court precedence in Heller, McDonald, Cattaneo and Bruen.

The second part of an analysis puts the burden on the government to demonstrate that laws or contemplated laws are constitutional by proving historical analogous laws existed that restricted firearm use in the same existing or proposed ways during the founding period. To employ historical analog, at a minimum for a current law to be relevant some historical equivalent law must have existed from about the American Revolution through the founding era which is somewhere between 1760 to 1826 given the last founding fathers instrumental in the development of our Constitution, Thomas Jefferson, and John Adams, both died on July 4th, 1826. That is the historical period. The Supreme Court in Bruen explained the limited use of other periods. Example below:

> "As we recognized in *Heller* itself, because post-Civil War discussions of the right to keep and bear arms "took place 75 years after the ratification of the Second Amendment, they do not provide as much insight into its original meaning as earlier sources." 554 U. S., at 614; cf. *Sprint Communications Co.*, 554 U. S., at 312 (Roberts, C. J., dissenting) ("The belated innovations of the mid- to late-19th-century courts come too late to provide insight into the meaning of [the Constitution in 1787]"). And we made clear in *Gamble* that *Heller*'s interest in mid- to late-19th-century commentary was secondary. *Heller* considered this evidence "only after surveying what it regarded as a wealth of authority for its reading—including the text of the Second Amendment and state constitutions." *Gamble*, 587 U. S., at ___ (majority opinion) (slip op., at 23). **In other words, this 19th-century evidence was "treated as mere confirmation of what the Court thought had already been established**." From Bruen Opinion

The following from the "New York State Rifle & Pistol Association Inc. v. Bruen" relates to SB1,

- The Government must affirmatively prove that its firearms regulation is part of the historical tradition that delimits the outer bounds of the right to keep and bear arms.
- There is no historical basis for New York to effectively declare the island of Manhattan a "sensitive place" simply because it is crowded and protected generally by the New York City Police Department.
- The standard for applying the Second Amendment is as follows: **When the Second Amendment's plain text covers an individual's conduct, the Constitution presumptively protects that conduct.** The Government must then justify its regulation by demonstrating that it is consistent with the Nation's historical tradition.

The Supreme Court in Bruen did not restrict the definition of "sensitive places" to only government-sanctioned or affiliated places but **it did indicate a skepticism as to expanding the definition of "sensitive places" based on the historical record**. See Bruen, 142 S. Ct. at 2133 (indicating that "although the historical record yields relatively few 18th- and 19th-century "sensitive places" where weapons were altogether prohibited—e.g., legislative assemblies, polling places, and courthouse— we are also aware of no disputes regarding the lawfulness of such prohibitions.") Thus, "sensitive place" is a term within the Second Amendment context that should not be defined expansively.

SB1 contains very similar text and concepts discussed on some antigun law web sites like the Brennan Center for Justice and were included in recent New Jersey enacted legislation, "Chapter 131 of the 2022 Laws of New Jersey that imposed a new set of requirements, many of which became effective immediately, including declaring certain locations as "sensitive places" where handguns are prohibited even by licensed carriers. All of this was post and reactionary to Bruen. In Section 7(a) of the New Jersey legislation the enumerated "sensitive place" under subpart 24 contains SB1 similar "private property" sensitive areas in New Jersey's new law.

> *Subpart 24 (prohibiting handguns in "private property, including but not limited to residential, commercial, industrial, agricultural, institutional or undeveloped property, **unless the owner has provided express consent or has posted a sign indicating that it is permissible to carry** on the premises a concealed handgun with a valid and lawfully issued permit under N.J.S.2C:58-4, provided that nothing in this paragraph shall be construed to affect the authority to keep or carry a firearm established under subsection e. of N.J.S.2C:39-6").

This was challenged in two different lawsuits. One, AARON SIEGEL, et al., Plaintiffs, v. MATTHEW PLATKIN, et al., Defendants was consolidated under KOONS v. REYNOLDS, -- with concurrence of Judge Karen M. Williams (Biden Appointee).

Judge Renee Marie Bumb, United States District issued and opinion in regard to a motion for a Temporary Restraining Order and Preliminary Injunction specific to New Jersey's Subpart 24:

> "Subpart 24 (Private Property Unless Indicated Otherwise by Owner) Subpart 24 of the statute deals with private property, which is broadly defined as: [P]rivate property, including but not limited to residential, commercial, industrial, agricultural, institutional or undeveloped property, unless the owner has provided express consent or has posted a sign indicating that it is permissible to carry on the premises a concealed handgun with a valid and lawfully issued permit under N.J.S.A. 2C:58-4, provided that nothing in this paragraph shall be construed to

> affect the authority to keep or carry a firearm established under subsection e. of N.J.S.A. 2C:39-6. 2022 N.J. Laws c. 131 § 7(a)(24). "[1]
>
> **"First, the plain text of the Second Amendment covers the conduct in question, so the threshold inquiry articulated in Bruen is met.** See 142 S. Ct. at 2126, 2129–30 ("When the Second Amendment's plain text covers an individual's conduct, the Constitution presumptively protects that conduct."). Accordingly, **the burden to justify Subpart 24 rests with Defendants**. See id. at 2130 ("The government must then justify its regulation by demonstrating that it is consistent with the Nation's historical tradition of firearm regulation."). Defendants make the same arguments that they did in Koons to justify Subpart 24 and offer no additional historical analogues. For the same reasons that this Court rejected Defendants' arguments in Koons, it rejects them here."

The temporary restraining order was granted as in all likelihood the plaintiffs will be successful.

As of the filing of this written testimony the State of New Jersey has yet to appeal Judge Bumb's decision that granted a temporary restraining order and announced a desire for an expedited trial.

<u>My Direct Opposition to Senate Bill 1</u>

I am absolutely opposed to SB1. The text of SB1 is a grossly unconstitutional attempt to make most of Maryland a sensitive place. The logic in New Jersey's Koons v. Reynolds Temporary Restraining Order and Preliminary Injunction Opinion by Judge Bumb based on the text of Bruen applies. If SB1 passes a lawsuit will be immediately filed.

- **The plain text of the Second Amendment covers the conduct in question in SB1, so the threshold inquiry articulated in Bruen will be met**.
- **The burden to justify SB1 will rest with Defendants.**

In this case, there exists no historical tradition for the central proposal in this bill. The state will fail the historical burden test. **Simple question**: When did all property owners in the times of our founding fathers or any point in our history been required by the government to post activities ALLOWED on their property or required by the government provide express consent for activities on their property and notify the public? This

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[1] IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEW JERSEY CAMDEN VICINAGE, AARON SIEGEL, et al., Plaintiffs, v. MATTHEW PLATKIN, et al., Defendants. Opinion BUMB, United States District Judge: Motion for a Temporary Restraining Order and Preliminary Injunction. (Uploaded as second document for review)

completely **reverses the traditional logic of prohibiting activity** and forces property owners to now list or announce approved activities. If such a law stands, the State of Maryland will become a de facto sensitive area.

Specific to my issue, I will be severely limited to where I can legally carry a firearm for personal protection in reference to where I have carried my firearm as an FFL and Regulated Firearm licensee in my daily routine since my first permit issued in 2016. Depending on language in the final bill, I may need to actually get approval from two utility companies who have an easement on my land to legally check my own mailbox while armed. My movements throughout the day to include the conduct of my business will be severely impeded if this unconstitutional bill were to pass.

For additional consideration, Five Federal Circuit Courts in New York have issued temporary restraining orders against bills with very similar unconstitutional restrictions. In those cases, an Appellate Court stayed the restraining orders. An Emergency appeal to the Supreme Court predictively was denied on technical issues as the cases had not actually been heard. However, Justice Alito was joined by Justice Thomas in a statement issued with the Supreme Court order.

> ________________ ________________ 1 Cite as: 598 U. S. ____ (2023)
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> Statement of ALITO, J. SUPREME COURT OF THE UNITED STATES No. 22A557 IVAN ANTONYUK, ET AL. v. STEVEN NIGRELLI, IN HIS OFFICIAL CAPACITY AS ACTING SUPERINTENDENT OF NEW YORK STATE POLICE, ET AL. ON APPLICATION TO VACATE STAY [January 11, 2023]
>
> The application to vacate stay presented to JUSTICE SOTOMAYOR and by her referred to the Court is denied. Statement of JUSTICE ALITO, with whom JUSTICE THOMAS joins, respecting the denial of the application to vacate stay.
>
> The New York law at issue in this application presents novel and serious questions under both the First and the Second Amendments. **The District Court found, in a thorough opinion, that the applicants were likely to succeed on a number of their claims, and it issued a preliminary in-junction as to twelve provisions of the challenged law. With one exception, the Second Circuit issued a stay of the in- junction in full, and in doing so did not provide any explanation for its ruling**.
>
> App. to Emergency Application 2. In parallel cases presenting related issues, **the Second Circuit has likewise issued unreasoned summary stay orders**, but in those cases it has ordered expedited briefing. See, e.g., Order in Hardaway v. Nigrelli, No. 22–2933 (CA2, Dec. 7, 2022), ECF Doc. 53; Order in Christian v. Nigrelli, No. 22– 2987 (CA2, Dec. 12, 2022), ECF Doc. 40.
>
> I understand the Court’s denial today to reflect respect for the Second Circuit’s procedures in managing its own docket, rather than expressing any view on the merits of ANTONYUK v. NIGRELLI Statement of ALITO, J. the case.
>
> **Applicants should not be deterred by today’s order from again seeking relief if the Second Circuit does not, within a reasonable time, provide an explanation for its stay order or expedite consideration of the appeal**.

Noteworthy, "**The District Court found, in a thorough opinion, that the applicants were likely to succeed on a number of their claims**, and it issued a preliminary injunction as to twelve provisions of the challenged law" contrasted to "**the Second Circuit has likewise issued unreasoned summary stay orders**."

In the end if SB1 passes then law-abiding citizens of Maryland will once again have their rights denied until SB1 is overturned via the legal process. Heller was clear but apparently not clear enough and Bruen fixed that. Now Bruen is clear on sensitive places but seeing unconstitutional laws passed by several antigun State governments, apparently not clear enough. The next case won't take 10 years and I expect the Supreme Court to fully define an all-encompassing "sensitive places list" and address all other unconstitutional issues being pushed by desperate antigun groups.

Though law-abiding citizens of Maryland may have to wait if SB1 passes and watch as our rights are denied by this unconstitutional law, in the end we will make major gains like we did after Heller. Like we did after McDonald. Like we did after Cattaneo. Like we did most recently after Bruen. **The antigun crowd advising you are the same ones on the wrong side of Heller, McDonald, Cattaneo and Bruen. Their advocacy in passing unconstitutional laws always backfires on them by further solidifying the constitutional rights of law-abiding citizens after the legal process completes.**

Though no financial rider may be required for SB1, serious planning should occur to plan out how all legal bills associated with trying to defend SB1 to include paying fees of those who win in this challenge to an unconstitutional law. As a MD taxpayer I oppose from this vector as well.

If the Senate wants too actually pass laws that effect criminals and not blatantly attack law-abiding citizens, then make theft of any firearm, regardless of monetary value a felony. Show us you are serious about gun related crime.

Hopefully by next year we finally get to point where no new restrictive gun laws are proposed. Eventually the Courts will get us to that point. Either national reciprocity or what is commonly referred to as Constitutional Carry may be at the end of this road paved with overturned unconstitutional laws.

Michael T. Bourque, CDR USN (ret)
625 Stillwater Lane
Prince Frederick, MD 20678
Mike.bourque@mtbgunworks.com "