

Submitted Written Testimony
Senate Bill 1 (SB0001) – Unfavorable
Criminal Law – Wearing, Carrying, or Transporting Firearms – Restrictions 3 (Gun Safety Act of 2023)

Good afternoon, Senator Smith and Senator Waldstreicher, Chair and Vice-Chair of the Committee, respectively.

Introduction

I am Allan Barall, a resident of Potomac, Maryland in Montgomery County. I oppose Senate Bill 1 in its current form because it significantly weakens a handgun permit holder's right to carry in public for self-defense.

I am a retired and decorated United States Army colonel. I faithfully served as an Army military intelligence officer for over 31 years, with a security clearance above Top Secret and with polygraphs. I served in Special Forces and Special Operations units in Afghanistan and other global locations, in major intelligence organizations, at the White House on the National Security Council staff, and at the Pentagon on the staff of the Chairman of the Joint Chiefs of Staff. In one assignment with an Army unit designated to provide support to United States embassies I routinely qualified with weapons to the same certification standard as US Department of State Diplomatic Security officers on dynamic ranges.

I also worked professionally as a strategy and management consultant in a consulting firm, and I now work for a Fortune 50 company.

I am not a member of the National Rifle Association. Nor do I subscribe to any gun enthusiast periodical. I am a law-abiding citizen. I am an active member in the Jewish community and an active member of a Jewish synagogue in Potomac, and I serve as a volunteer auxiliary plain-clothed armed security member of that synagogue at the request of the rabbi and synagogue leadership.

Situation

I have a State of Maryland issued wear and carry permit. I chose to obtain that wear and carry handgun permit in 2020 at the request of my synagogue's rabbi. In addition to myriad notable international antisemitic incidents that took place prior to that year, according to the Anti-Defamation League in 2019 there were 2,107 antisemitic incidents recorded in the United States that year alone. Following the deadly October 2018 armed attack against the Tree of Life – Or L'Simcha Congregation in Pittsburgh, Pennsylvania, in 2019 there were multiple violent attacks, including: an April 2019 armed attack against Chabad of Poway synagogue in Poway, California; a December 2019 knife attack against rabbi in Monsey, New York, and a December 2019 attack in a kosher grocery store in Jersey City, New Jersey. In addition to religious service attendees, worshippers, and guests in our synagogue, we also have multiple priceless Hebrew Torah Scrolls that are adorned with silver. These Torah scrolls are routinely taken out of their storage for use during religious services, in preparation for upcoming services, and for frequent adjustment, checking, and repair. In light of all of this, my synagogue's rabbi requested that I serve discretely as an armed volunteer to enhance our security.

The unfortunate trend of antisemitism that I cite above has only gotten worse according to publicly available religious bias and hate crimes reports from both the Anti-Defamation League and the Federal

Bureau of Investigation. And, in 2021 while I was walking home along a busy road from my synagogue following Sabbath services on a Saturday morning, the occupant of a passing car yelled a vulgar antisemitic statement at me.

A report issued on December 28, 2022, entitled the “Hate Crime Accountability Project” documents that 194 antisemitic assaults occurred between 2018 and 2022. (<https://bit.ly/3X4BNtn>.) Among the incidents noted in the report was that two men were arrested on November 18, 2022, for a plot to attack a New York City synagogue. “What might have been the next Pittsburgh or Poway synagogue massacre was averted,” the CEO of UJA-Federation of New York, Eric Goldstein, said, referring to the 2018 and 2019 massacres at Jewish houses of worship. (<https://bit.ly/3i6KEfq>.) I believe that the same sort of antisemitic attack could just as easily happen at my synagogue or any other synagogue in the Montgomery County, and that it is only a matter of time.

Orthodox Jews often attend services at a synagogue two or three times a day. Synagogues are especially open places. My specific synagogue is mere feet off a busy road where the congregation has its collective back to windows that face the street. It is especially easy for someone with ill intent to enter.

On this past November 15, 2022, Montgomery County passed a new law that prohibits the possession of firearms in or near places of public assembly and removes an exemption that allows individuals with handgun permits to possess handguns within 100 yards of a place of public assembly, to include houses of worship.

Problem

Upon passage of Montgomery County’s new law, I stopped carrying a handgun in my synagogue even though I was specifically requested to carry by the synagogue’s rabbi and senior leadership for security measures. Knowing that the new law would only affect law-abiding, permit holding people, I heard at least three independent persons state that they now feel like “sitting ducks” in my synagogue. This exact, precise phrase was used by separate, independent individuals. And, I am personally aware of at least two individuals who have now stopped coming to the synagogue because they no longer feel that it is safe to do so in light of the County’s new law.

The proposed Maryland SB 1 bans handguns from “places of accommodation” while not appearing to include houses of worship. Montgomery County law aside, however, if a permit holder is carrying anyway to and from synagogue regularly, it is especially easy to inadvertently cross into the prohibited zone around “places of accommodation”. To not carry at all, on the other hand, exposes me to increased risk through constructive disarming.

Implication

It is my opinion that SB 1 would infringe on my personal right of self-defense and creates additional risk in the face of attacks such as I just described.

General Considerations in Light of the Proposed Bill

I leave the Constitutional and legal argument to others.

Given my background as a strategy and management consultant, my attention is drawn to at least two cognitive biases displayed in the proposed SB 1:

Streetlight Effect

The first is an observational bias down as the Streetlight Effect, where people only search for something where it is easiest to look. You likely have heard the story of the police officer who sees a man searching for something under a streetlight and asks the man what he has lost. The man responds that he lost his keys, and they both look under the streetlight together. After some fruitless minutes, the police officer asks the man if he is sure he lost his keys there. The man replies, no, that he lost his keys in the park. The incredulous police officer then asks why they are searching here. The man replies, "This is where the light is".

Maslow's Hammer

The second cognitive bias is named after the psychologist Abraham Maslow and known as Maslow's Hammer. It involves over-reliance on a familiar tool. Maslow famously wrote in 1966 that "if the only tool you have is a hammer, it is tempting to treat everything as if it were a nail."

Senators, I appreciate that you desperately want to curtail gun violence in this state. So, do I. And, you want to be able to tell your constituents that you are tackling gun crime and making Maryland safe. However, you no doubt are aware of the overwhelming data that shows that gun crimes are not committed by legal permit holders. In fact, our laws have little deterrence effect on determined criminals. So, why are you looking under the streetlight and proposing laws that affect the law-abiding person like me, yet doing nothing to protect the law-abiding citizen from the criminal element, who I believe will continue to illegally carry just they have always illegally carried? You should be looking in the park for your keys by aiding enforcement of current laws.

I understand that you are members of the state's legislature, and that your hammer is the ability to pass laws. Where is the proposed legislation to post police officers at houses of worship when being actively used? Where is the proposed law to compel prosecutors to charge and prosecute gun cases under existing law, and hold them accountable for obtaining convictions?

Look in the Park Rather Than Under the Streetlight

There is a specific article from this past June in the Washington Post that looked at how gun seizures in Washington, DC were soaring, but charges weren't sticking. ("D.C. gun seizures are soaring — but charges aren't sticking" <https://www.washingtonpost.com/dc-md-va/2022/06/01/gun-seizures-dc/>) Defense attorneys blamed weak cases by prosecutors, and the police criticized existing laws. In one sample week looked at in the article, DC police arrested 23 people for gun offenses. Prosecutors did not pursue charges against 13 of those 23. Of 10 charges filed, only 6 were convicted and 4 were awaiting trial at the time of the article's publication.

I also recall reading an article once about insider trading. In some respects, why have laws at all if criminals will simply ignore them? However, that article, as I recall, highlighted the relative success of discovering and prosecuting insider trading crimes, which does serve as a deterrent. Gun crimes, on the other hand, have a relatively very poor prosecution and conviction rate.

Strengthen enforcement. Force prosecutors to prosecute. Eliminate legal loopholes.

Does Reducing the Demand for Legal Guns Also Reduce the Demand for Illegal Guns?

I assume that SB 1 is intended to make legal gun possession so cumbersome that the legal demand for guns will diminish, and, by extension, so will the demand for illegal guns. Second Amendment issues aside, I'm not sure that data exists to support that assertion.

Given my military experience, I'm specifically familiar with the problem of improvised explosive devices (IEDs) that the US military had for many years in Afghanistan and Iraq. One of the significant challenges in the counter-IED fight was the use of nitrogen, and specifically ammonium nitrate. Nitrogen is one of the most vital nutrients for plants, so nitrogen-based fertilizers are essential for food production. However, a major drawback is that they can either be used as explosives, or as explosive precursor ingredient.

This posed a dilemma in Afghanistan. Afghanistan, at the insistence of the US, banned the use of ammonium nitrate in favor of less effective alternative chemicals. This not only reduced crop yields for already struggling farmers, but also created a robust black market for ammonium nitrate coming in from Pakistan. The attempt to decrease the supply for ammonium nitrate did, indeed, have a dampening effect on IED production, but also had the unintended consequence to decreasing crop yields in a way that negatively affected the population. I recall this being the subject of a US Senate Committee on Foreign Relations hearing in 2010 (https://www.govinfo.gov/content/pkg/CHRG-111shrg63236/html/CHRG-111shrg63236.htm?fbclid=IwAR3SpwDhSY1I5iDctT-RUX_sITxKHvnJ8JwhXlwQ7bzLtMMHAKllyDlmaKg) This same conundrum has also been seen in parts of Africa, specifically in Nigeria.

For fertilizers that are either explosives in their own right, e.g. ammonium nitrate, or that can easily turned into explosives, governments have two options: either restrict them, or ban them outright. Nations with highly effective security services generally opt to restrict because they can enforce that and avoid the crop yield problem. The US is one such country where ammonium nitrate is legal, but strictly controlled by regulation and, I believe jointly by both the Department of Homeland Security and the Department of Agriculture.

SB 1, though presented as a restriction, is effectively a proposed ban. Please be mindful of the unintended consequences of attempting to control demand for a commodity. You need to have the enforcement mechanism to accompany that ban. And, please be mindful of the risk that you may introduce. It would be better to fix the existing restrictions and their enforceability.

Is the First Amendment Right to Assemble Restricted by Handgun Permit Holders?

In defending Montgomery County's new handgun ban, the County and Defendant stated in legal filing that "... Plaintiff's fear is outweighed by the fear the non-permit holding public may have that a stranger standing next to them – of unknown current state or temperament – is carrying a loaded firearm as they exercise their First Amendment right to assemble in a place of public assembly". Referenced is a quote from the Montgomery County Council President "on the right of me and my family to go to a movie theater without having to wonder or worry about someone sitting next to me is carrying a gun on them."

In order to obtain a wear and carry permit, I went through a background check from the Maryland State police, including fingerprinting, an interview with a State investigator, and reference checks. It is thus simply not correct to state that my "state of temperament" is "unknown." Further, if "wonder or worry" about a legally armed permit holder is a harm, then I believe that the "wonder or worry" of me and my fellow synagogue members about "being sitting ducks" to antisemitic criminal attack is even a greater harm. Since the Montgomery County law passed, I have not seen a single police officer at my synagogue, and I have attended consistently three services daily. Without the ability to defend myself, the additional anxiety and worry about my physical safety is, indeed, "irreparable harm" to me and my fellow congregants' right to peaceably assembly.

Submitted by:

Allan Barall
7624 Mary Cassatt Drive
Potomac, MD 20854
(202) 316-4689
allan.barall@gmail.com