MARYLAND SHALL ISSUE®
SELF DEFENSE IS A CIVIL RIGHT

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WRITTEN TESTIMONY OF MARK W. PENNAK, PRESIDENT, MSI, IN OPPOSITION TO SB 1

Introduction: 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. This testimony is respectfully submitted in OPPOSITION to SB 1 as passed by the Senate this session. To the extent otherwise applicable, my prior testimony on SB 1 before the Senate Judicial Proceedings Committee is incorporated herein by reference. I also incorporate by reference my prior written and oral testimony on HB 824 before this Committee. This testimony focuses on the issues that remain in SB 1 as passed by the Senate.

***Bruen*:** SB 1 is a response to the June 2022 decision of the Supreme Court in *New York State Rifle & Pistol Association, Inc. v. Bruen,* 142 S.Ct. 2111 (2022). *Bruen* holds that "the Second Amendment guarantees a general right to public carry." 142 S.Ct. at 2135. See also *Bruen*, 142 S.Ct. at 2134 (there is a "general right to publicly carry arms for self-defense." A "general right" to carry in public cannot be reasonably limited to particular places. *Bruen* explains that the "'textual elements' of the Second Amendment's operative clause— 'the right of the people to keep and bear Arms, shall not be infringed'— 'guarantee the individual right to possess and carry weapons in case of confrontation.'" 142 S.Ct. at 2134, quoting *District of Columbia v. Heller*, 554 U.S. 570, 592 (2008). The right to bear arms thus "naturally encompasses public carry" because confrontation "can surely take place outside the home." Id.

The *Bruen* Court ruled that "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 of firearm regulation." 142 S.Ct. at 2127. The relevant time period for that historical analogue is 1791, when the Bill of Rights was adopted. 142 S.Ct. at 2135. That is because "'Constitutional

rights are enshrined with the scope they were understood to have when the people adopted them.'" Id., quoting *District of Columbia v. Heller*, 554 U.S. 570, 634–635 (2008). As stated in *Hirschfeld v. Bureau of Alcohol, Firearms, Tobacco & Explosives*, 5 F.4th 407, 417 (4th Cir.), *vacated as moot*, 14 F.4th 322 (4th Cir. 2021), *cert. denied*, 142 S.Ct. 1447 (2022), "[w]hen evaluating the original understanding of the Second Amendment, 1791—the year of ratification—is 'the critical year for determining the amendment's historical meaning." 5 F.4th at 419, quoting *Moore v. Madigan*, 702 F.3d 933, 935 (7th Cir. 2012) (citing *McDonald*, 561 U.S. at 765 & n.14). Thus, "'how the Second Amendment was interpreted from immediately after its ratification through the end of the 19th century" represented a "critical tool of constitutional interpretation.'" *Bruen*, 142 S.Ct. at 2136, quoting *Heller*, 554 U.S. at 605. The Court stressed, however, that "to the extent later history contradicts what the text says, the text controls." Id. at 2137. Similarly, "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**.'" Id., at 2137, quoting *Heller*, 554 U.S. at 614 (emphasis added).

Bruen also holds that governments may regulate the public possession of firearms at **five** very specific locations, *viz.*, "legislative assemblies, polling places, and courthouses," "in" schools and "in" government buildings. *Bruen*, 142 S.Ct. at 2133, citing *Heller*, 554 U.S. at 599. These five all are historically justified and share the common feature that all are discrete locations that are easily identifiable. These locations are also places where armed security may be provided by the government, thus making it unnecessary for an individual to be armed for self-defense. *Bruen* states that "courts can use analogies to those historical regulations of 'sensitive places' to determine that modern regulations prohibiting the carry of firearms in new and analogous sensitive places are constitutionally permissible." (Id.).

Again, this historical inquiry focuses on the Founding era. Thus, in *Bruen*, the Court rejected New York's reliance on "a handful of late-19th-century jurisdictions," stating these laws did not demonstrate a tradition of broadly prohibiting the public carry of commonly used firearms for self-defense." 142 S.Ct. at 2138. The Court rejected New York's reliance as well on other post-1791 statutory prohibitions, holding that "the history reveals a consensus that States could *not* ban public carry altogether." 142 S.Ct. at 2146 (emphasis the Court's).

The State is not free to enact "sensitive area" legislation that that "would in effect exempt cities from the Second Amendment" because such laws "would eviscerate the general right to publicly carry arms for self-defense." *Bruen*, 142 S.Ct. at 2134. For the same reason, the *Bruen* Court **specifically rejected** New York's assertion that sensitive places "include 'all "places where people typically congregate and where law-enforcement and other public-safety professionals are presumptively available.'" Id. at 2133, quoting New York's brief. As the Court explained, "expanding the category of 'sensitive places' simply to all places of public congregation that are not isolated from law enforcement defines the category of "sensitive places" **far too broadly**." Id. at 2134 (emphasis added). See *Siegel v. Platkin*, 2023 WL 1103676 (D.N.J. Jan. 30, 2023) *12 (holding that "'sensitive place' is a term within the Second Amendment context that should not be defined expansively").

For the reasons explained below, if enacted into law, SB 1 would likely be "dead on arrival" in federal court as it was plainly intended to restrict the very "general right" to carry in public that *Bruen* expressly holds that the State must allow under the Second Amendment. As Congressman Raskin recently stated in the context of a carry bill enacted by Montgomery County, "there is no reason for us to be passing ordinances that we know that will be struck down." https://youtu.be/TrM4_JVlURs?t=733 (at 13:56).

SB 1, as passed by the Senate:

SB 1, as passed by the Senate, creates multiple new places in which firearms are banned. In new section 4-111, SB 1 bans firearms in 3 areas and then defines each of the three. The three are 1. "**Area for children and vulnerable individuals**" 2. A "**special purpose area**," and 3. "**government or public infrastructure area**." SB 1 also creates a new Section 6-411, which addresses other private property areas, banning firearms in dwellings without permission of the owner or lessee and allowing private property owners to post GFZ signs and giving those signs the force of law. This structure suffers from numerous flaws.

Special Purpose Areas: The definition of "Special Purpose Area" is far too broad. It is defined by SB 1 as:

(I) A location licensed to sell or dispense alcohol or cannabis for on–site consumption;
(II) A stadium;
(III) A museum;
(IV) A location being used for:
1. An organized sporting or athletic activity (except for shooting sports);
2. A live theater performance;
3. A musical concert or performance for which members of the audience are required to pay or possess a ticket to be admitted; OR
4. A fair or carnival;
(V) A racetrack;
(VI) A video lottery facility, as defined in § 9–1A–01 of the State Government Article, OR
(VII) Within 100 yards of a place where a public gathering, a demonstration, or an event which requires a permit from the local governing body is being held, if signs posted by a law enforcement agency conspicuously and reasonably inform members of the public that the wearing, carrying, and transporting of firearms is prohibited.

No signage is required for any of these three areas. Firearms are flatly banned, unless the possession is by a person who is otherwise excepted under Section 4-111(b).

None of these above places have a proper "longstanding" and "well-established, representative, historical analogue" from 1791, as required by *Bruen*. See *Bruen*,142 S.Ct. 2133. The sole common denominator for all these locations is that they are places at which people may assemble in public. As such, these places run head long into *Bruen*'s holding that places where people "congregate" or assemble simply are not "sensitive places." Id. Certainly, none of these places are remotely analogous to the five discrete sensitive places identified in *Bruen*. These places do not involve children (schools), the need to protect government officials (government buildings, legislative assemblies, and courthouses) or the political process (polling stations). Nor can these places be justified for other reasons. *Bruen*

made clear that the analogue inquiry is controlled by reference to two "metrics" which are "how and why the regulations burden a law-abiding citizen's right to armed self-defense." Id. Here, there is no historical tradition dating back to 1791 that disarmed law-abiding persons in these locations. Quite to the contrary. See D. Kopel & J. Greenlee, *The "Sensitive Places" Doctrine*, 13 Charleston L. Rev. 205, 229–236, 244–247 (2018), cited with approval in *Bruen*, 142 S.Ct. at 2133. The absence of any such regulation is largely dispositive. See *Bruen*, 142 S.Ct. at 2131 ("the lack of a distinctly similar historical regulation addressing that problem is relevant evidence that the challenged regulation is inconsistent with the Second Amendment").

Particularly egregious in its practical effects is the ban on firearms in locations licensed to sell alcohol for on-site consumption. That ban would include almost all restaurants in the State, other than fast food outlets, such McDonald's and Wendy's. It would ban the mere entry into the restaurant, even for a carryout, regardless of whether the permit holder consumes any alcohol or is even goes into the bar section of the restaurant. Respectfully, that is absurd. People need to eat. This prohibition will force permit holders to stow their firearms in their vehicles, where they are open to theft, whenever they go inside a restaurant. Indeed, this ban could extend to hotels, as many hotels have bars, and the hotel (not merely the bar) is the "location licensed" to sell alcohol for on-site consumption. It is insane to pass a bill that will require permit holders to store their guns in their parked cars while they eat or sleep. Theft from vehicles is a growing serious problem, as the New York Times has recently documented. https://www.nytimes.com/2023/03/25/us/illegal-guns-parked-cars.html.

Similarly absurd is the ban on possession in any "video lottery facility." As that term is defined by Section 9-1A-01(aa) (incorporated by reference by SB 1), this ban would include not only actual casinos (of which there are four in this State), but also include "a facility at which players play video lottery terminals and table games under this subtitle." Such terminals are widely distributed in the State, including at 7-11s, Royal Farms gas station/marts and a variety of ordinary corner markets. A person who goes inside to pay for gas, use the restroom or buy a sandwich or a snack becomes a criminal the moment she walks inside the door to do so. Indeed, because the term "facility" is not defined, she may even be arrested and prosecuted for gassing up at the pumps without ever entering the interior of the mart. At the very least, this restriction should be limited to actual casinos, not every video lottery facility.

Areas for Children and Vulnerable Individuals: As noted, Section 4-111, as added by SB 1, bars all firearms, including by permit holders, in any "Area for Children and Vulnerable Individuals," including in "a health care facility, as defined in § 15–10b–01 of the Insurance Article." Section 15-10b-01, in turn defines that term to mean:

> (1) a hospital as defined in § 19-301 of the Health-General Article;
> (2) a related institution as defined in § 19-301 of the Health-General Article [which includes overnight personal or nursing care for 2 or more individuals]
> (3) an ambulatory surgical facility or center which is any entity or part thereof that operates primarily for the purpose of providing surgical services to patients not requiring hospitalization and seeks reimbursement from third party payors as an ambulatory surgical facility or center;

(4) a facility that is organized primarily to help in the rehabilitation of disabled individuals;
(5) a home health agency as defined in § 19-401 of the Health-General Article;
(6) a hospice as defined in § 19-901 of the Health-General Article;
(7) a facility that provides radiological or other diagnostic imagery services;
(8) a medical laboratory as defined in § 17-201 of the Health-General Article; or
(9) an alcohol abuse and drug abuse treatment program as defined in § 8-403 of the Health-General Article.

These locations suffer from the same flaw as the "special purpose areas" as none are supported by any well-established, representative historical analogue. The rationale appeals to be that these locations house "vulnerable" individuals." But such a rationale plainly fails because there is no historical analogue that disarmed people **because of that reason**. As *Bruen* holds, the controlling inquiry is "how and why" the historical regulation affected the right of self-defense. If anything, vulnerable people have an increased need for arming themselves, not a diminished need. There is no long-standing or enduring American historical tradition of forcing vulnerable people to disarm. The very notion is senseless.

An ordinary law-abiding person is also unlikely to understand these definitions, as the definitions rely on multiple levels of cross-referenced Maryland Code provisions. There is no signage requirement. Some of these locations are obvious, like a hospital, but many are not. A permit holder who enters any one of these facilities can do jail time without ever receiving notice or an opportunity for compliance. For example, there is no definition for a facility that is organized "primarily" to help the rehabilitation of disabled persons. Does that definition include gyms at which rehabilitation takes place? How would any permit holder possibly know whether a given facility is organized "primarily" for these purposes?

The definition of a "home health agency" is even further afield. The referenced definition, found in § 19-401(b) of the Health-General Article, defines the term to mean "a health-related institution, organization, or a part of an institution that:

(1) Is owned or operated by 1 or more persons, whether or not for profit and whether as a public or private enterprise; and
(2) Directly or through a contractual arrangement, provides to a sick or disabled individual in the residence of that individual skilled nursing services, home health aid services, and at least one other home health care service that are centrally administered.

So, does the ban on firearms apply to the "residence" of the "sick or disabled" person who is receiving services? Or does the ban apply to the "other home health service" location which "centrally administers" the service? Or does it apply only to the office of the organization or institution or agency that provides such home care services? And if it is only the latter, what possible justification is there for treating such offices or locations any differently than any other office? The services to the "vulnerable" persons are rendered at the residence of the individual, not at the office building of the organization.

A medical laboratory, as defined by the referenced section of the Health-General article of the Maryland Code includes "any facility, entity, or site that offers or performs **tests or**

examinations in connection with the diagnosis and control of human diseases or the assessment of human health, nutritional, or medical conditions or in connection with job-related drug and alcohol testing." MD Code, Health-General, § 17-201(c)(1). That definition does not give reasonable notice. A facility that provides offers or performs "tests or examinations" could easily be read to include a private doctor's office, or even the neighborhood CVS pharmacy. A permit holder simply has no way of knowing whether such tests or examinations are performed at any given location. A permit holder who enters the CVS pharmacy to buy school supplies or a gallon of milk will be subject to arrest.

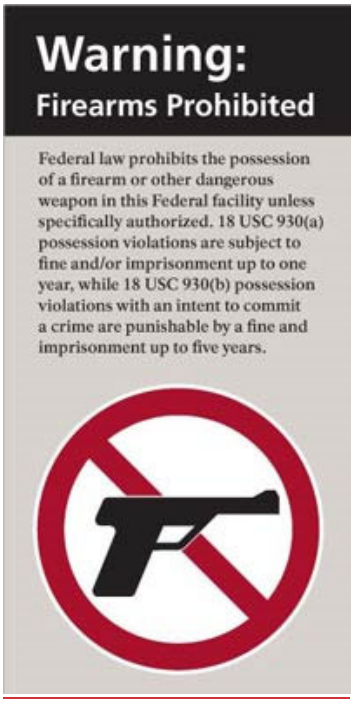
Similarly, a facility that "provides radiological or other diagnostic services" could include any private doctor's or dentist's office with an x-ray machine. The term "diagnostic services" is utterly undefined. But even if the term was clear, a permit holder could go to jail regardless of whether she even knew of the existing of such devices or services at the location and regardless of whether such tests services were used on the individual. All these difficulties illustrate the problems associated with using existing definitions, which were enacted for entirely different civil regulatory purposes, and applying such definitions to impose criminally enforceable firearms restrictions. Such short-hand definitions are simply too vague to be criminally enforceable under the Due Process Clause

Government Or Public Infrastructure Areas: Section 4-111, as created by SB 1, also bans carry in "Government Or Public Infrastructure Area," which is defined as:

(I) A building owned or leased by a unit of State or local government;
(II) A building of a public or private institution of higher education, as defined in § 10–101 of the Education Article;
(III) A location that is currently being used as a polling place in accordance with title 10 of the Election Law Article or for canvassing ballots in accordance with title 11 of the Election Law Article; or
(IV) an electric plant or electric storage facility, as defined in § 1–101 of the Public Utilities Article.

A "government building" can be a sensitive place as noted in *Bruen*. Likewise, *Bruen* permits bans in polling places. But there are multiple issues with how "government building" is defined as well as with remaining areas banned under this part of SB 1.

First, there is no signage required for a government building so, apart from obvious cases, there is no practical way for someone to know whether a given building is government "owned or leased." In contrast, federal law, 18 U.S.C. § 930, expressly requires signage (or actual knowledge) before a person may be convicted of carrying a firearm into a federal facility under that provision. That sign looks like this:



SB 1 is a criminal statute. The State should be seeking to foster compliance rather than imposing criminal sanctions for innocent mistakes. It is not asking too much for government buildings be signed in a similar manner. All it would take is a decal on the door.

Moreover, unlike "government buildings" as used in SB 1, a "federal facility" under Section 930 **is a defined term** and the definition is whether federal employees are "regularly" located in the building. Ownership or a leasehold is not controlling or even relevant. Under SB 1 a building leased by a local government is covered even though it has no government employees and even though it could be used for proprietary purposes, rather than government purposes. A government building that is being used for propriety or non-governmental purposes is not a "government building" within the meaning *Bruen*. Such buildings are improperly designated gun free zones.

Second, there is no well-established, representative 1791 historical analogue for banning guns at higher education institutions for all adults (other than students), particularly at private institutions of higher education. Such private institutions have historically provided their own policies. Indeed, Section 6-411, as created by SB 1, would permit private colleges to post GFZ signs however they like. The State simply may not substitute its judgment for that of private property owners. See *Siegel*, 2023 WL 1103676 at *16-*17.

Likewise, there is no historical analogue for banning firearms at an electric plant, which, of course, did not exist in 1791. The term "electric plant" is defined at the reference Code provision to mean "the material, equipment, and property owned by an electric company and used **or to be used** for or **in connection with** electric service" MD Code, Public Utilities, § 1-101(j). That definition could include a simple, privately owned warehouse that stored "equipment" that could be used "in connection with electric service". A warehouse is not a sensitive location in *any* sense, much less an historically justified sensitive place. Without a signage requirement, no permit holder would have notice that such locations are being used for the storage of equipment that could "be used for or in connection with electric service." We know of no historical analogue for such a place. Under *Bruen*, the burden is on

the State to prove an historical analogue for disarming people in "infrastructure" areas. Again, any such analogue must be justified by reference to the Court's "how and why" metrics. Any other policy reasons for doing so are simply irrelevant.

LEOSA: Section 4-111(b) sets forth exceptions and exemptions from the regulatory bans imposed by that section. Specifically, Section 4-111(b)(1) provides an exception from Section 4-111 for "a law enforcement official of the United States, the state, or a local law enforcement agency of the state." Section 4-11(b)(7) contains another exception, providing an exception for:

> Subject to subsection (i) of this section, an off–duty law enforcement official or a person who has retired as a law enforcement official in good standing from a law enforcement agency of the United States, the State, or a local unit in the State who possesses a firearm, if:
>
> (i) 1. the official or person is displaying the official's or person's badge or credential;
> 2. the firearm carried or possessed by the official or person is concealed from view under or within an article of the official's or person's clothing; **and**
> 3. the official or person is authorized to carry a handgun under the laws of the state or the United States; **or**
>
> (ii) 1. the official or person possesses a valid permit to wear, carry, or transport a handgun issued under title 5, subtitle 3 of the Public Safety Article; **and**
> 2. the firearm carried or possessed by the official or person is concealed from view under or within an article of the official's or person's clothing;

These provisions are preempted by the Law Enforcement Office Safety Act ("LEOSA"), Pub. L. 108–277, 118 Stat. 865 (2004), codified as amended at 18 U.S.C. § 926B and 18 U.S.C. § 926C. Those federal law provisions allow an active-duty law enforcement officer ("LEO") of any federal agency or of any state or local agency, nationwide (§ 926B), and a retired LEO of any federal agency or any state or local agency, nationwide (§ 926C) to carry concealed "[n]otwithstanding any other provision of the law of any State or any political subdivision."

Specifically, the exception provided in Section 4-111(b)(1) for active-duty LEOs is limited to federal LEOs and LEOs employed by **Maryland** State agencies and localities. Section 4-111(b)(1) does not include active-duty LEOs of **other** States. In contrast, Section 926B expressly encompasses **all** active-duty LEOs of **any** State or federal agency, nationwide. Second, Section 4-111(b)(4) expressly excepts an active-duty LEO of another state only if he or she is in Maryland on "official business." The nationwide carry rights accorded by Section 926B to all LEOs are not so limited. Third, Section 4-111(b)(7) requires the off-duty LEO or retired LEO to display his or her "badge or credential." Under Sections 926B and 926C, the LEO or retired LEO need only "carry" his credentials, **not** display them. Fourth, Section 4-111(b)(7)(ii), provides that the LEO or retired LEO need not display his or her badge or credentials if he or she has a Maryland wear and carry permit. No such provision or limitation is found in Sections 926B or 926C. These LEOSA provisions are judicially enforceable, as New Jersey recently discovered when its restrictions on LEOSA carry rights were struck down in *Federal Law Enforcement Officers Association v. Grewal*, 2022 WL 2236351 (D.N.J. June 21, 2022), *appeal pending* No. 22-2209 (3d Cir.). Unless SB 1 is

amended, the restrictions on LEOSA rights imposed by SB 1 will meet the same fate. MSI has numerous members who carry under LEOSA.

Conflict with Section 4-203: New Section 4-111 provides for penalties for carry by a permit holder in banned areas of 90 days for the first offense and 15 months for a second or subsequent offenses. See 4-111(g). Section 6-411(d) imposes a similar set of penalties for a violation of Section 6-411 (addressing carry within a dwelling or on posted private property), with a term of imprisonment of 90 days for the first offense and 6 months for the second and subsequent offenses. While substantial, these penalties do not create a firearms disqualification and appropriately so, given that the offenses apply, as practicable matter, solely to permit holders and the violation may well have been inadvertent.

However, these penalties are incompatible with the penalties imposed by Section 4-203 of the Criminal Law Article. As amended in 2013, Section 4-203(b)(2) exempts permit holders from the general ban on carry otherwise imposed by Section 4-203(a), but limits that exemption to "the wearing, carrying, or transporting of a handgun**, in compliance with any limitations imposed under § 5-307 of the Public Safety Article**, by a person to whom a permit to wear, carry, or transport the handgun has been issued under Title 5, Subtitle 3 of the Public Safety Article." (Emphasis added).

On the back of **every** carry permit, the State Police have placed a Section 307 limitation stating: **"Not valid where firearms are prohibited by law."** Thus, if a permit holder carries in any location in which firearms are banned by SB 1, even by mistake or inadvertence, the permit is **NOT VALID**. Without a "valid" permit, a permit holder who carries, by mistake or otherwise, in such banned locations may be charged under Section 4-203, which imposes a 3-year term of imprisonment. A conviction under Section 4-203 is disqualifying under Maryland law and federal law. See MD Code, Public Safety, 5-101(g)(3) (defining a disqualifying crime to include any crime punishable by more than 2 years in prison); 18 U.S.C. § 922(g)(1); 18 U.S.C. § 921(a)(20) (imposing a lifetime federal disqualification for any State misdemeanor conviction punishable by more than 2 years). Section 4-203(a)(1)(i) has no *mens rea* requirement. Maryland's highest court has thus held that Section 4-203(a)(1)(i) is a strict liability statute, and thus imposes criminal liability regardless of whether the violation was knowing or willful. *Lawrence v. State*, 475 Md. 384, 408, 257 A.3d 588, 602 (2021). Likewise, nothing in Section 4-111 or Section 6-411 requires a knowing or willful violation.

Basically, inadvertent carry into any one of the many, unsigned gun-free-zones established by SB 1 would make the permit holder criminally liable under both Section 4-203 and under lesser penalties established by Section 4-111(g) and Section 6-411(d), thus effectively rendering Section 4-111(g) and Section 6-411(d) irrelevant as a mere lesser included offense. See *State v. Prue*, 414 Md. 531, 996 A.2d 367, 378 (2010). That result is particularly egregious as the impact of that reality would fall solely on permit holders, as non-permit holders generally may not carry in public **at all** under Section 4-203(a). Permit holders are, of course, thoroughly vetted by the State Police and are quite likely to the most law-abiding persons in the State. There is no conceivable justification for severely punishing permit holders for mistakes or inadvertence.

Application of Section 4-203 to permit holders for carrying in areas newly banned by SB 1 would obviously be contrary to legislative intent. As passed by the Senate, SB 1 was intended to impose a different set of penalties for persons who have carry permits. https://mgaleg.maryland.gov/mgawebsite/FloorActions/Media/senate-41-A?year=2023RS (on third reader, remarks of Senator Waldstreicher starting at 1:00) (making this point). See also https://mgaleg.maryland.gov/mgawebsite/FloorActions/Media/senate-40-?year=2023RS (on second reader, remarks of Senator Waldstreicher starting at 2:00, noting that SB 1 was not intended to "jam anyone up").

To avoid this unintentional nullification of the penalty provisions of Section 4-111(g) and Section 6-411(d), SB 1 must be amended to provide that the Bill's punishments in Section 4-111(g) and Section 6-411(d) for any violation of Section 4-111 and Section 6-411 apply to permit holders **in lieu of** any penalty imposed by Section 4-203. Such an amendment is easily done simply by inserting into Section 4-111(g) and Section 6-411(d), a clause stating: "**Notwithstanding Section 4-203 of the Criminal Law Article, a violation of Section 4-111 [or 6-411] by a person to whom a permit to wear, carry, or transport the handgun has been issued under Title 5, Subtitle 3 of the Public Safety Article, is guilty of a misdemeanor and on conviction is subject to:**" at the beginning of Section 4-111(g) and Section 6-411(d). See, e.g, *McGraw v. Loyola Ford*, 124 Md.App. 560, 723 A.2d 502, 518 (1999) (explaining the meaning of a "notwithstanding" clause).

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Any Desire To Curtail *Bruen* Is Constitutionally Illegitimate: A government may not suppress possible adverse secondary effects flowing from the exercise of a constitutional right by suppressing the right itself. See, e.g., *City of L.A. v. Alameda Books, Inc.,* 535 U.S. 425, 449-50 (2002) (Kennedy, J., concurring) ("It is no trick to reduce secondary effects by reducing speech or its audience; but [the government] may not attack secondary effects indirectly by attacking speech"). See *Imaginary Images, Inc. v. Evans*, 612 F.3d 736, 742 (4th Cir. 2010) (same); *St. Michael's Media, Inc. v. Mayor and City Council of Baltimore*, 566 F.Supp.3d 327, 374 (D. Md. 2021), *aff'd.*, 2021 WL 6502219 (4th Cir. 2021) (same). This point applies to Second Amendment rights no less than to other constitutional rights. *Grace v. District of Columbia*, 187 F.Supp.3d, 124, 187 (D.D.C. 2016), *aff'd, sub. nom. Wrenn v. Dist. of Columbia,* 864 F.3d 650 (D.C. Cir. 2017) ("it is not a permissible strategy to reduce the alleged negative effects of a constitutionally protected right by simply reducing the number of people exercising the right") (quotation marks omitted). See *Bruen*, 142 S.Ct. at 2126, 2148 (citing *Wrenn* with approval). "[T]he enshrinement of constitutional rights necessarily takes certain policy choices off the table." *Heller*, 554 U.S. at 636. As the Supreme Court noted in *Bruen*, "[t]he 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.'" *Bruen*, 142 S.Ct. at 2156 (citation omitted).

The Senate leadership has suggested that the exercise of Second Amendment rights by permit holders under *Bruen* is outweighed by the fears or discomforts the non-permit holding members of public may have that a permit holder may be carrying a concealed firearm nearby. See https://www.youtube.com/watch?v=wx0ZJm69X7E&t=1599s starting at minute 28.00. However, legislation based on that notion is constitutionally illegitimate. Any law enacted for the avowed purpose of minimizing or curtailing the exercise of a constitutional right is "patently unconstitutional." See *Saenz v. Roe*, 526 U.S. 489, 499 n.11

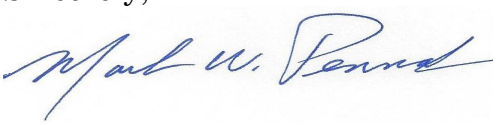
(1999) ("[i]f a law has 'no other purpose . . . than to chill the assertion of constitutional rights by penalizing those who choose to exercise them, then it [is] patently unconstitutional.'"), quoting *United States v. Jackson*, 390 U.S. 570, 581 (1968) (brackets and ellipsis the Court's).

Fundamentally, unpopular constitutional rights may not be suppressed merely because their exercise might cause discomfort in others. *Kenney v. Bremerton School District*, 142 S.Ct. 2407, 2427-28 (2022) (rejecting a "heckler's veto"). See also *Forsyth Cnty. v. Nationalist Movement*, 505 U.S. 123, 134-35 (1992) ("Speech cannot be ... punished ... simply because it might offend a hostile mob."). *Bruen* abrogated "means-end," interest-balancing under which such concerns might have been relevant and made clear that "[t]he 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.'" *Bruen*, 142 S.Ct. at 2156 (citation omitted). See *Koons*, slip op. at *9 ("a balancing of interests" is something "this Court cannot do" under *Bruen*).

It is no answer to *Bruen* to emotionally assert that guns are not the answer to violent crime. That argument simply is incompatible with *Bruen*'s holding that there is "general right" to carry in public. Law-abiding residents of Maryland are rushing to obtain carry permits after *Bruen* because Maryland, with all its highly restrictive gun-control laws and policies, has been singularly **unsuccessful** in controlling violent crime, particularly in urban areas. *Bruen* confirms that law-abiding people have a constitutional right to obtain carry permits on a "shall issue" basis so that they may defend themselves in public with firearms. As the segregationists discovered in the 1950s and 1960 when they refused to accept *Brown v. Board of Education*, defying the Supreme Court ultimately fails. It also results in massive attorneys' fees awards against the State and local governmental defendants under 42 U.S.C. § 1988. For example, the attorneys for plaintiffs in *Bruen* have sought a fee award of $1,269,232.13. And that litigation proceeded very quickly. More importantly, restricting the right to carry and imposing still more gun control restrictions will not make people feel safer. People feel *less* safe when they cannot defend themselves, which is why otherwise law-abiding people carry in Baltimore.

Insanity is commonly defined as "doing the same thing over and over and expecting different results." SB 1 fits that definition. The General Assembly should stop focusing on inanimate objects and illegally restricting the rights of law-abiding citizens and start insisting on accountability from State government agencies and local government officials who are in the position to enforce existing laws that bar disqualified persons from possessing and carrying firearms. Persons who use firearms for criminal purposes must be arrested and prosecuted and thus individually held accountable. Maryland fails miserably on that score.

Sincerely,



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