

WRITTEN TESTIMONY OF MICHAEL F BURKE, IN SUPPORT OF **HB 756**

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 756.

The Bill:

Amends MD Code, Public Safety § 5-306, to make clear that a person who has been granted a petition for expungement of conviction under Title 10, Subtitle 1 of the Criminal Law article of Maryland is eligible for a wear and carry permit.

The Bill is Appropriate: Federal and State law has long recognized the restoration of rights by expungement. For example, federal law, 18 U.S.C. § 921(a)(33)(B)(ii), makes clear that conviction of an otherwise disqualifying misdemeanor under State law is not disqualifying if the conviction “has been expunged, or set aside or for which a person has been pardoned or has had civil rights restored shall not be considered a conviction for purposes of this chapter, unless such pardon, expungement, or restoration of civil rights expressly provides that the person may not ship, transport, possess, or receive firearms.” Similarly, 18 U.S.C. § 921(a)(20) provides that “[a]ny conviction which has been expunged, or set aside or for which a person has been pardoned or has had civil rights restored shall not be considered a conviction for purposes of this chapter, unless such pardon, expungement, or restoration of civil rights expressly provides that the person may not ship, transport, possess, or receive firearms.”

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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.

The State and Federal laws regarding Marijuana and other controlled dangerous substances is steeped in racism, and has long been discriminatory in the way drug laws have been investigated and enforced.

<https://www.naacpldf.org/cannabis-laws-racism/>

AMERICA'S RACIST HISTORY OF CANNABIS CRIMINALIZATION

There is a long history of recreational and medicinal cannabis usage in the United States. In fact, Vanity Fair advertised its benefits as early as 1862. The trend toward cannabis criminalization occurred later in U.S. history — and stemmed from racism and xenophobia. Mexican immigrants to the United States first introduced the practice of smoking cannabis leaf in cigarettes and pipes in the early 1900s — and, soon afterward, many states passed laws prohibiting the plant.

The racial and political climate around cannabis continued to sour with the rise of Harry J. Anslinger, the first commissioner of the now-defunct Federal Bureau of Narcotics. He led a campaign against cannabis, perpetuating racial bias about users and capitalizing on false claims that it could cause people to commit crimes. Anslinger pointedly employed the Spanish term “marijuana” in place of “cannabis” to associate the drug with Mexican immigrants. He also tied cannabis use to jazz music, alleging that it was an evil music form created by people under the plant’s influence. In the end, Anslinger successfully capitalized on these racialized fears. His campaign resulted in the Marihuana Tax Act of 1937, which regulated the importation, cultivation, possession, and distribution of cannabis — and levied fines that were as high as the average American’s annual income.

In 1938, New York City Mayor Fiorello La Guardia commissioned the New York Academy of Medicine to conduct a study on cannabis, as he was skeptical of efforts to strictly control its usage. The report, *The Marihuana Problem in the City of New York*, discredited the sociological, psychological, and medical ills being attributed to cannabis at the time.

Unfortunately, the movement toward criminalization was already too deeply embedded in the American psyche, which resulted in lasting political and social consequences. In 1970, Congress passed the Controlled Substances Act following *Leary v. United States* (1969), in which the Supreme Court unanimously held that the Marihuana Tax Act of 1937 was unconstitutional because it violated the Fifth Amendment right against self-incrimination. The Controlled Substances Act placed cannabis under Schedule I and thereby outlawed all uses. The War on Drugs had begun.

DISPROPORTIONATE EFFECTS OF THE WAR ON DRUGS

The War on Drugs, according to John Ehrlichman, Assistant to the President for Domestic Affairs under President Richard Nixon, began as a war against antiwar advocates and Black people. By Ehrlichman’s own admission, the Nixon administration could not criminalize being Black or being against the Vietnam

War, so instead it sought to disrupt these communities by getting the public to associate heroin with Black people and marijuana with “hippies” — and then heavily criminalizing them. Those lies ruined lives and fueled the acceleration of mass incarceration in the United States.

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Black and Latina people have endured significantly disproportionate suffering because of these laws. Despite using cannabis at a slightly lower rate than their white counterparts, Black people are roughly four times more likely to be arrested for cannabis. In 2018, 89% of the more than 2000 offenders who were federally sentenced on cannabis charges were people of color — and 43% of all drug arrests made were cannabis arrests. Today, many Black Americans continue to sit in jails under mandatory life sentences, while the legal pot industry (run primarily by white men) is projected to bring in \$45 billion in 2024. Efforts to legalize recreational cannabis are but a first step in addressing these pervasive injustices.

CHANGING THE STATUS QUO

Indeed, legalizing recreational cannabis alone does nothing to right past racial wrongs and the outcomes of the War on Drugs. In 2021, Virginia passed laws that legalized recreational use of cannabis, provided for expungement guidelines and record sealing, and established a commercial market. Nonetheless, a provision that would have granted resentencing hearings for individuals incarcerated on certain cannabis charges was not included in the final bill. We will see debates about expungement more frequently as additional states move toward recreational legalization.

Oklahoma, for example, is having a similar debate about potential cannabis ballot initiatives. Some groups who would otherwise be sympathetic to recreational cannabis legalization oppose Question 820 because it doesn’t address expungement — which is addressed in another potential ballot initiative, Question 819.

Record expungement is critical for formerly incarcerated individuals, as criminal background checks may inhibit their ability to secure jobs and provide for their families upon reentry to society. Further, lack of expungement prohibits many from participating in the burgeoning, yet racially stratified, cannabis industry. Though, there are some examples of states already committing to righting wrongs. Massachusetts, for example, has established an equity program for Black and Latinx residents who were convicted of drug crimes due to the disparate enforcement and harm endured by these communities.

LOOKING FORWARD

Cannabis legislation is a first step in the reimagining of punitive drug policy. As the country waits to see whether Congress will act at the federal level, it’s critical that voters simultaneously make their voices heard on these ballot initiatives in November. Though these votes do not undo the harmful legacy of cannabis policy, they are a strong foundation from which citizens can advocate for more

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comprehensive solutions, including expungement, treatment, and recovery programs. There is no doubt that the herculean efforts to instill racism and disinformation into drug policy will not easily be overcome. An equally great effort must be made to remedy these harms.

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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 historical use of Marijuana by minority citizens.

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

Michael F Burke, CPP