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WRITTEN TESTIMONY **IN OPPOSITION TO** SB 1

03/27/2023

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);
* Director of **Maryland Shall Issue** ("MSI")
* Member of the **American Legion** and **Veterans of Foreign Wars**

I appear today in OPPOSITION TO SB 1.

The Bill:

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).

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 over the most sensitive facilities and your neighborhoods, and to go to war for over 21 years.

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.

This bill hosts a long list of newly "prohibited places" in Maryland. There is no rationale or reason for prohibiting citizens with valid Handgun Permits from traveling around the state and visiting such suddenly "sensitive places."

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) of SB 1.

Banning permit holding Citizens from bearing arms in ANY of these locations is totally without merit. Totally without any historical justification. My wife and I have been legally carrying handguns (with permits) in ALL of these locations for quite some time, without injury or harm to anyone.

We frequently visit Maryland businesses that hold liquor licenses, and our business (taking meals, holding/attending meetings, wedding parties, funerals and memorials, baby showers, birthday celebrations, etc.) supports thousands of JOBS and we pay thousands of dollars annually into the Maryland economy and taxes into the State coffers and local jurisdictions.

This "**alcohol**" ban will harm hundreds of organizations across the state- here's a partial list:

Alpha Phi Alpha Fraternity, Founded 1906, Cornell University.

Alpha Kappa Alpha Sorority, Founded 1908, Howard University.

Kappa Alpha Psi Fraternity, Founded 1911, Indiana University.

Omega Psi Phi Fraternity, Founded 1911, Howard University.

Delta Sigma Theta Sorority, Founded 1913, Howard University.

Phi Beta Sigma Fraternity, Founded 1914, Howard University.

Zeta Phi Beta Sorority, Founded 1920, Howard University.

Sigma Gamma Rho Sorority, Founded 1922, Butler University.

Iota Phi Theta Fraternity, Founded 1963, Morgan State University.

Stop discrimination against Historically African American communities and schools.

Grand Lodge of Ancient Free and Accepted Masons of Maryland

Most Worshipful Prince Hall Grand Lodge of Maryland (MWPHGLM) aka Prince Hall Freemasonry is a branch of North American Freemasonry for African Americans founded by Prince Hall on September 29, 1784.

Loyal Order of Moose, with 34 lodges across Maryland.

Benevolent and Protective Order of Elks (BPOE) with over 20 Lodges in Maryland.

The International Association of Lions Clubs, with 25 Chapters in Maryland.

Rotary International, with 16 Clubs in Maryland.

The Independent Order of Odd Fellows (IOOF) was founded in 1819 by Thomas Wildey in Baltimore, Maryland, with 6 different Lodges.

Let us not forget:

The **American Legion.** Has a total of 135 active American Legion Posts located within each of the 23 Counties and in Baltimore City, with

The **Veterans of Foreign Wars** (VFW), formally the Veterans of Foreign Wars of the United States.

Many of these Lodges, Posts, Fraternities and Sororities have physical facilities with liquor license (some also have video gaming under the Lottery Commission) and others commonly meet at commercial restaurants with bars and/or liquor licenses.

Many of these charitable organizations support Youth Athletics, community sports.

Many, many Maryland citizens members of these various fraternal/civic minded and philanthropic organizations have Handgun Permits. The language in SB-1 will disproportionately harm them.

Power Plants

Likewise, there is no historical analogue for banning firearms at an electric plant, which, of course, did not exist in 1791. Watermills were an essential source of power during the colonial period. It was the first standard form of tool which was used to switch a mechanical wheel of a single variety or another. These water-powered mills also paved the way for displaying the advantages of mechanical power and machinery. Ellicott's Mills (now Ellicott City) was producing power for industrial use as early as 1772. In 1779, wheat production increased and the Ellicotts began shipping flour to foreign markets. They prospered and started other enterprises, such as the Avalon Iron and Nail Works here on this site. They perfected inventions such as the wagon brake, a harbor dredge and more efficient milling machinery. To get crops to their mills they developed a road system; we now call it the Baltimore National Pike.

Historically, the State of Maryland only prohibited **SLAVES** from possessing firearms in Ellicott City.

Built along the banks of the Blackstone River's Pawtucket Falls in 1793, the Slater Mill was the first water-powered cotton-spinning mill in the country, ushering in the American Industrial Revolution.

Again, the States of Massachusetts and Rhode Island did not prohibit citizens from possessing firearms when working at or visiting those mills. They also prohibited **SLAVES** and Natives from bearing arms.

In summary, the Sponsors create THOUSANDS of locations across the state where lawful citizens with Handgun Permits will be barred from entering or attending.

Assuming that several hundred thousand men and women with Handgun Permits "obey" this unconstitutional statute, the MGA will force them to DISARM themselves and store handguns in THOUSANDS of parked cars, trucks, SUV's and leave them UNATTENDED and available for theft by non-compliant members of society.

This CREATES thousands of unacceptable risks. This unnecessary prohibition will potentially lead to THOUSANDS of new crimes, as criminal organizations, gangs, and individual thieves learn that any parking lot near a "prohibited place" is a potential source of UNPROTECTED firearms.

Don't forget that destruction of property (breaking a window in a parked car) is a MISDEMEANOR.

Theft of a handgun is a MISDEMEANOR.

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). Thus, 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. See Koons v. Reynolds, --- F.Supp.3d ----2023 WL 128882 at *12 (D.N.J. Jan. 9, 2023) (granting a temporary restraining

order); 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 ban 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) of SB 1.

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. Particularly egregious 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 in any bar area 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.

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 stations and a variety of ordinary corner markets. A person who goes inside to pay for their gas or uses the restroom facilities, or buys a sandwich or a snack becomes a criminal the moment she walks inside the door to do so. Indeed, because "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.

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.

There is no way a layperson can understand these definitions, as the definitions rely on multiple levels of cross-referenced Maryland Code provisions. There is no historical analogue for these locations. And 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? What does "primarily" mean in this context and 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 is "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."

This would include the automated blood pressure measuring device found at thousands of pharmacies and grocery stores in Maryland.

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. 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 simply won't work under *Bruen*. These definitions are also 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 the 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 before a person may be convicted of this offense. Moreover, unlike this provision, a “federal facility” is a defined term and the definition is whether federal employees are “regularly” located in the building. Ownership or a leasehold is not controlling. 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.

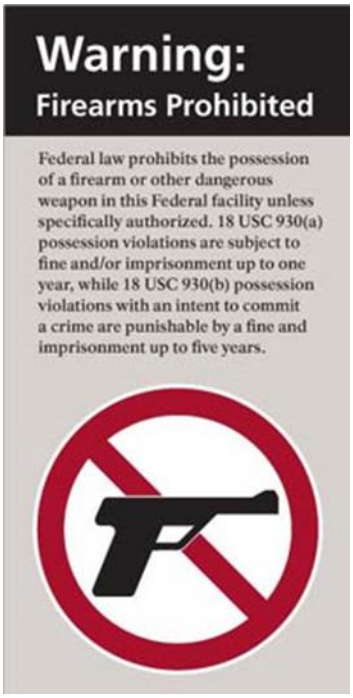

Figure 1 The sign posted at Federal facilities where firearms are prohibited under 18 USC § 930.

Second, there is no 1791 historical analogue for banning guns at higher education institutions for all adults, not just students, particularly at private institutions of higher education. Such private institutions have historically provided their own rules and security mechanisms.

Please explain why one of our DAUGHTERS or SISTERS OR MOTHERS, women who have been victims or sexual assault and/or domestic violence must be rendered DEFENSELESS by crossing a notional line on a

map. Hundreds of thousands of Maryland citizens have filed extensive police reports, been seen and treated for injuries caused by VIOLENT attacks, and have been issued DOMESTIC RESTRAINING ORDERS or PEACE ORDERS by Maryland Judges. Thousands of these well-mannered people have been issued Handgun Permits for SELF DEFENSE against known criminals who are free to lurk and wait for their victims in "Gun Free Zones."

This is UNACCEPTABLE.

Likewise, there is no historical analogue for banning firearms at an electric plant, which, of course, did not exist in 1791. **Watermills** were an essential source of power during the colonial period. It was the first standard form of tool which was used to switch a mechanical wheel of a single variety or another. These water-powered mills also paved the way for displaying the advantages of mechanical power and machinery. Ellicott's Mills (now Ellicott City) was producing power for industrial use as early as 1772. In 1779, wheat production increased and the Ellicotts began shipping flour to foreign markets. They prospered and started other enterprises, such as the Avalon Iron and Nail Works here on this site. They perfected inventions such as the wagon brake, a harbor dredge and more efficient milling machinery. To get crops to their mills they developed a road system; we now call it the Baltimore National Pike.

Built along the banks of the Blackstone River's Pawtucket Falls in 1793, the Slater Mill was the first water-powered cotton-spinning mill in the country, ushering in the American Industrial Revolution.

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, 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."

There is no historical analogue for such a place. The Senate sponsors have made no effort to present any such rationale or explanation for these prohibitions. Under *Bruen*, the burden is on the State to prove an historical analogue.

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 4-111(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 in direct conflict with and 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** agencies and localities. Section 4-111(b)(1) does not include LEOs of other states. However, 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 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. As noted, these LEOSA provisions preempt State law and are judicially enforceable, as New Jersey recently discovered when its restrictions on LEOSA 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.). These 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**. A permit holder who carries, by inadvertence or otherwise, in such banned locations may thus be charged under Section 4-203, which imposes a 3-year term of imprisonment, which IS disqualifying under MD Code, Public Safety, 5-101(g)(3) (defining a disqualifying crime to include any crime punishable by more than 2 years in prison). See also 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 imposes 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).

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 penalties established by Section 4-111(g) and Section 6-411(d), thus effectively rendering Section 4-111(g) and Section 6-411(d) dead letters. That result is particularly egregious as the impact would fall 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. 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) (noting 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 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:"** under 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).

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 County. 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. 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 handguns for personal protection in Baltimore.

Persons who use firearms for criminal purposes must be arrested and prosecuted and thus individually held accountable. Consequences need not be harsh; they must be reasonably certain to be effective as a deterrent. Maryland continues to fail miserably on that score. Persons who carry firearms for SELF DEFENSE must not be restricted from exercising that fundamental HUMAN RIGHT.

(See also the attached Letter of Information from Maryland State Police.)

I urge the Committee to issue an UNFAVORABLE report on this bill.

Sincerely,

Michael F Burke, CPP
SFC, US Army (Retired)