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WRITTEN TESTIMONY OF MICHAEL F BURKE, IN OPPOSITION TO HB 307 and SB 858

02/14/2023

In introduction, please be informed that I am a Veteran of the Armed Forces, with 21 years of Service with the US Army, as a Military Police Office, MP Investigator, and Counterintelligence Agent. Beyond that, I have more than 25 years of experience as a County, State, and federal Law Enforcement Officer and Special Agent. 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 and a certified NRA instructor in pistol, as well as a Chief Range Safety Officer. I am also a member of Maryland Shall Issue ("MSI"). Maryland Shall Issue is a Section 501(c)(4), all-volunteer, non-partisan, non-profit organization dedicated to the preservation and advancement of gun owners' rights in Maryland. We seek 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 appear today in opposition to HB 307 and SB 858.**

The Bills:

The Bills would amend **MD Code Criminal Law § 4-104.** Specifically, current law provides that "[a] person may not store or leave a loaded firearm in a location where the person knew or should have known that an unsupervised child would gain access to the firearm." A child is defined for these purposes as a person "under the age of 16 years." These bills would change the definition of a child to any minor (a person under the age of 18 years). The bills then provide that a person may not store or leave any firearm, loaded or unloaded, in a location where a person knew or reasonably should have known that A PROHIBITED PERSON OR AN UNSUPERVISED MINOR IS LIKELY TO gain access to the firearm.

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 and to go to war for over 21 years. As a highly qualified expert in firearms handling and safety, I cannot find any logic or consistency in the requirements of these bills.

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 bills create 3 categories of prohibitions concerning such access. The first is simply that A PERSON MAY NOT STORE OR LEAVE A FIREARM IN A LOCATION WHERE THE PERSON KNEW OR REASONABLY SHOULD HAVE KNOWN THAT A PROHIBITED PERSON OR IS LIKELY TO GAIN ACCESS TO THE FIREARM, but the minor does not actually gain access. Such storage is punishable with 90 days in prison or a fine of $1,000 or both.

The second category is where such storage occurs and A PROHIBITED PERSON OR AN UNSUPERVISED MINOR such individuals actually does GAIN ACCESS TO THE FIREARM. Such storage is punishable by imprisonment by up to 2 years and a $2,500 fine or both.

The third category is that the firearm is left WHERE THE PERSON KNEW OR REASONABLY SHOULD HAVE KNOWN THAT A PROHIBITED PERSON OR AN UNSUPERVISED MINOR IS LIKELY TO GAIN ACCESS and the minor's access RESULTS IN HARM TO THE PROHIBITED PERSON, THE MINOR OR TO ANOTHER PERSON. Such storage is punishable by up to 3 years imprisonment and a fine of $5,000. The Bills then add a new subtitle 39A to the Health General article of the Maryland Code to impose an obligation on the deputy secretary for public health services to develop a youth suicide guide containing certain information. The Bills direct the Department to distribute the guide in specified ways.

The bills also create a number of "safe harbors" for certain conduct or storage which are exempt from the bills' prohibitions. Specifically, the bills retain current law exemptions for when minor access is supervised by a person 18 or older and where the prohibited person's or minor's access is the result of unlawful entry. The bills add an exemption for firearms that are stored UNLOADED, and the ammunition for such firearm is IN A SECURE LOCATION WHERE A PROHIBITED PERSON OR MINOR IS NOT LIKELY TO GAIN ACCESS TO THE AMMUNITION and THE FIREARM: 1. SECURED IN A LOCKED CONTAINER THAT IS EQUIPPED WITH A TAMPER-RESISTANT LOCK; OR 2. RENDERED INOPERABLE TO ANYONE OTHER THAN AN AUTHORIZED ADULT. The bill also retains the existing law's exemption for a minor who has a certificate of firearm and hunter safety issued by the State, but restricts that access solely to a rifle or shotgun and adds the caveat that the minor must have BEEN GIVEN EXPRESS PERMISSION BY THE MINOR'S PARENT OR GUARDIAN TO ACCESS THE RIFLE OR SHOTGUN FOR THE PURPOSE OF ENGAGING IN A LAWFUL ACTIVITY.

Due Process:

Hopelessly vague is the exemption for firearms left or stored unloaded and "RENDERED INOPERABLE TO ANYONE OTHER THAN AN ADULT." It is virtually impossible to know what this means, as a practical matter.

As an instructor, I have taught persons from age 5 to 95 how to operate a firearm- handguns, rifles, and shotguns. These are mechanical devises – tools- and

I know of no manner of storage in which the firearm is operable by an 18-year-old but is not operable by a 17-year-old or a prohibited person. The Bills offer no definition for such storage and the ordinary gun owner would simply have to guess at the meaning of this requirement. Under the Due Process Clauses of the Fifth and Fourteenth Amendments, a penal statute must "define the criminal offense with sufficient definiteness that ordinary people can understand what conduct is prohibited and in a manner that does not encourage arbitrary and discriminatory enforcement." Kolender v. Lawson, 461 U.S. 352, 357 (1983). See also United States v. Davis, 139 S. Ct. 2319, 2325 (2019) ("Vague statutes threaten to

hand responsibility for defining crimes to relatively unaccountable police, prosecutors, and judges, eroding the people's ability to oversee the creation of the laws they are expected to abide.").

The same is true under Article 24 of the Maryland Declaration of Rights. Under Article 24, "[t]he void-for-vagueness doctrine as applied to the analysis of penal statutes requires that the statute be "sufficiently explicit to inform those who are subject to it what conduct on their part will render them liable to its penalties." Galloway v. State, 365 Md. 599, 614, 781 A.2d 851 (2001). Under Article 24, a statute must provide "legally fixed standards and adequate guidelines for police ... and others whose obligation it is to enforce, apply, and administer [it]" and "must eschew arbitrary enforcement in addition to being intelligible to the reasonable person." (Id. at 615). Under this test, a statute must be struck down if it is "'so broad as to be susceptible to irrational and selective patterns of enforcement.'" (Id. at 616). Thus, as the Maryland Court of Appeals has stressed, the General Assembly has an "obligation to establish adequate guidelines for enforcement of the law." Ashton v. Brown, 339 Md. 70, 88, 660 A.2d 447, 456 (1995). These bills are penal statutes and utterly fail to satisfy either the Due Process Clause or Article 24. If enacted, the bills will fail in a pre-enforcement challenge on these grounds alone. Pizza di Joey, LLC v. Mayor of Baltimore, 470 Md. 308, 343-44, 235 A.3d 873 (2020).

Similarly vague is the exemption for a firearm that is stored UNLOADED and where the ammunition is stored in A SECURE LOCATION WHERE A MINOR IS NOT LIKELY TO GAIN ACCESS TO THE AMMUNITION and where the firearm itself is SECURED IN A LOCKED CONTAINER THAT IS EQUIPPED WITH A TAMPER–RESISTANT LOCK. The bills do not attempt to define a "SECURE location" which is a requirement in addition to the requirement that the location must be where a minor IS NOT LIKELY TO GAIN ACCESS. One would have thought that a location where the minor is not likely to gain access to the ammunition would be sufficiently secure, but not under these bills. The location must also be "SECURE," a term that the bills do not define. The owner is left at sea as to the meaning of SECURE locations. The bills do not even define "unloaded," a term that is open to multiple meanings.

Finally, for the owner to be entitled to rely on this exemption, the firearm itself must be SECURED IN A LOCKED CONTAINER THAT IS EQUIPPED WITH A TAMPER–RESISTANT LOCK. The bills contain no definition or any standard to assess the meaning of "TAMPER-RESISTANT." The dictionary definitions for the term "tamper-resistant" address the term in the context of prescription bottles or electronic devices, but those definitions do not address locks used to store items such firearms. The term is not in general usage in the firearms industry. This requirement of a tamper-resistant lock is also unnecessary. It should be quite sufficient to the bills' purpose that the firearm is unloaded, that the ammunition is inaccessible to a prohibited person or a minor and the firearm itself is locked in some manner.

Second Amendment:

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Heller: The bills also create massive problems under the Second Amendment. A criminalization of home possession of a firearm is flatly unconstitutional under District of Columbia v. Heller, 554 U.S. 570 (2008). Under Heller, responsible, law-abiding adults have a constitutional right to keep firearms in the home in order to exercise their right of armed self-defense. The Second Amendment "elevates above all other interests the right of law-abiding, responsible citizens to use arms in defense of hearth and home." Heller, 554 U.S. at 635. Thus, in Heller, the Supreme Court struck down as unconstitutional DC's safe storage law that required a firearm to be "disassembled or bound by a trigger lock at all times." (Id. at 628). The Court held this requirement unconstitutionally burdened the right to self-defense in the home because the requirement prevented residents from rendering their firearms "operable for the purpose of immediate self-defense." Id. at 635 (emphasis added).

In Heller, the Court ruled that handguns could not be banned as "the American people have considered the handgun to be the quintessential self-defense weapon." Heller, 554 U.S. at 629. Under these bills, an unsupervised minor with a firearms safety certificate is only allowed to access a rifle or a shotgun with the express permission of his or her parents, and is completely barred from accessing a handgun (loaded or unloaded). There is no exemption for emergency access to a handgun (or to a long gun if the minor does not have a certificate), such as to repel an armed intrusion into the home. Yet, such preclusion of emergency access to a firearm is flatly inconsistent with MD Code, Public Safety, § 5-133(d)(2)(iv), which allows possession of a handgun by a person under 21 "for self-defense or the defense of others against a trespasser into the residence of the person in possession or into a residence in which the person in possession is an invited guest." Such self-defense uses by minors are hardly uncommon. https://lawnews.tv/examples-of-kids-using-guns-to-defend-themselves/. See also https://www.wymt.com/content/news/14-year-old-girl-fires-gun-to-save-sisters-from-intruder-526603881.html (14 year old girl used a 9mm pistol to defend herself and her younger sisters from a home break-in). Under these bills, such access by a minor for self-defense could result in three years of imprisonment for the minor's parents, if the minor actually "harms" the home invader, and two years of imprisonment if the intruder runs away and the minor does not "harm" anyone. And that would true even though the minor's possession was perfectly legal under Section 5-133(d)(2)(iv). Respectfully, that result is absurd.

While the bills pertain to storage rather than requiring that the firearms be locked up "at all times," storage is a practical necessity for possession in the home as it is utterly impossible to wear or carry a firearm 24/7. For example, one does not sleep or take a shower while carrying a firearm on one's person. In Jackson v. San Francisco, 746 F.3d 953 (9th Cir. 2014), cert. denied, 576 U.S. 1013 (2015), the Ninth Circuit sustained a San Francisco safe storage law that required that a handgun be locked up in a container or secured with a trigger lock, but exempted from that requirement a "handgun is carried on the person of an individual over the age of 18." These bills would likewise permit a person to carry a firearm on his or her person in the home, a right recognized by other Maryland law. See, e.g., MD Code, Criminal Law, § 4-203(b)(6). Yet, even though the Supreme Court denied review of the Ninth Circuit's decision, the dissent of Justice of Justice Thomas and Justice Scalia from that denial is particularly powerful. That dissent would have taken the case because that San Francisco law "burdens their right to self-defense at the times they are most vulnerable—when they are sleeping, bathing, changing clothes,

or otherwise indisposed." Jackson v. San Francisco, 576 U.S. at 1013 (2015) (Thomas, J., dissenting). It is, of course, well established that a denial of certiorari has "no implication whatever regarding the Court's views on the merits of a case which it has declined to review." Reed v. Texas, 140 S.Ct. 686, 689 (2020) (Sotomayor, statement respecting the denial of certiorari) (citation omitted). These bills, if enacted, would create an ideal opportunity for litigating the scope of Heller's holding on this issue under the new standard of review established in New York State Rifle & Pistol Association, Inc. v. Bruen, 142 S.Ct. 2111 (2022).

In any event, these bills apply to all firearms (other than antiques), not merely handguns, as in Jackson, and the storage requirements are more severe than presented in either Heller or in Jackson. Specifically, these bills create an exemption only where 1. the firearm is unloaded, 2. the ammunition for the firearm is stored in a "secure" location where a minor's or prohibited person's access is unlikely, and 3. the firearm itself must be locked up in a LOCKED CONTAINER that has a TAMPER-RESISTANT LOCK. A trigger lock, which DC thought sufficient under the statute invalidated in Heller as did San Francisco under the ordinance sustained in Jackson, is insufficient under these Bills. Indeed, these "safe harbor" provisions are likely illusionary. Hind-sight being 20-20, securing the firearm in this manner is not likely to save the gun-owner from prosecution should the minor or prohibited person actually gain access, through hook or crook, to the firearm or ammunition. That is because the Bills use weasel words, e.g., "tamper-resistant lock" and "secure" location, to modify its provisions. If access is gained, then it is a sure bet that the "locked container" or the "secure" location for the ammunition will be deemed insufficient simply by exploiting the uncertainty inherent in these modifiers. The safe harbors are not safe at all.

Ironically, a trigger lock is sold as a security device approved by the Maryland Roster Board under MD Code, Public Safety § 5-132(c), but a trigger lock is not a "locked container" and is thus insufficient. Indeed, it would appear that none of the devices on that Roster Board list would be sufficient under these bills. http://bitly.ws/oE4X. Such devices approved by the Roster Board also satisfy 18 U.S.C. § 921(a)(34) (defining a "secure gun storage or safety device" to mean "a device that, when installed on a firearm, is designed to prevent the firearm from being operated without first deactivating the device"). Such devices meet the requirement imposed on federal licensees by 18 U.S.C. § 923(d)(1)(G), to have safety storage devices available at dealer locations. We see no possible justification for eliminating such approved devices. Under these bills, a person purchasing a firearm with such an approved safety device could still become a criminal the moment he or she arrived home and stored the firearm using one of these approved devices. Another trap for the unwary.

Bruen: The proper analysis for cases arising under the Second Amendment is set forth in New York State Rifle & Pistol Association, Inc. v. Bruen, 142 S.Ct. 2111 (2022), where the Court struck down as unconstitutional New York's "proper cause" requirement for issuance of a permit to carry a handgun in public. 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). The Court stressed 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).

Under Bruen, the historical analogue necessary to justify a regulation must also be "a well-established and representative historical analogue," not outliers. Id. at 2133. Thus, historical "outlier" requirements of a few jurisdictions or of the Territories are to be disregarded. Id. at 2133, 2153, 2147 n.22 & 2156. Such outliers do not overcome what the Court called "the overwhelming evidence of an otherwise enduring American tradition permitting public carry." 142 S.Ct. at 2154. Laws enacted in "the latter half of the 17th century" are "particularly instructive." Id. at 2142. In contrast, the Court considered that laws in enacted in the Territories were not "instructive." Id. at 2154. Similarly, the Court disregarded "20th century historical evidence" as coming too late to be useful. Id. at 2154 n.28.

Under that standard articulated in Bruen, "the government may not simply posit that the regulation promotes an important interest." 142 S.Ct. at 2126. Likewise, Bruen expressly rejected deference "to the determinations of legislatures." Id. at 2131. Bruen thus abrogates the two-step, "means-end," "interest balancing" test that the courts had previously used to sustain gun laws, including the storage law at issue in Jackson. 142 S.Ct. at 2126. Those prior decisions are no longer good law. So, the constitutionality of these Bills will turn exclusively on an historical analysis, as Heller and Bruen make clear that the term "keep and bear arms" in the text of the Second Amendment necessarily includes the right to possess ("keep") and the right to carry ("bear").

If these Bills are enacted, the State will have a very difficult time carrying its burden to justify the storage requirements under test set out in Bruen. These Bills basically criminalize the right to "keep" firearms unless the owner jumps through various hoops as to storage. We know of no appropriate historical analogue in the Founding era that could justify the requirements imposed by these Bills. In order to be a well-established, representative historical analogue, the historical law must be "relevantly similar" to the modern law (Id. at 2132). Bruen makes clear that this analogue inquiry is controlled by two "metrics," viz., "how and why the regulations burden a law-abiding citizen's right to armed self-defense." Id. at 2133. The inquiry is "whether modern and historical regulations impose a comparable burden on the right of armed self-defense." Id. at 2133 (emphasis added). The Court thus ruled that "whether modern and historical regulations impose a comparable burden on the right of armed self-defense and whether that burden is comparably justified are 'central' considerations when engaging in an analogical inquiry." (Id.) (emphasis added). As explained above, the Bills can no longer be justified by reference to any means-ends or intermediate scrutiny.

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The Bills Are Unnecessary: These requirements cannot be justified as necessary to bar access to a firearm by a prohibited person. Existing federal and State law already bans possession by a prohibited person and these bans extend not only to actual possession but to constructive possession. "'Constructive possession' of a firearm is established when a person, though lacking physical custody of the firearm, still has the power and intent to exercise control over the firearm." Henderson v. United States, 575 U.S. 622, 626 (2015). Such constructive possession is a violation of federal law, 18 U.S.C. § 922(g)(1), which is punishable by up to 10 years imprisonment under federal law. 18 U.S.C. § 924(a)(2). Such constructive possession by a prohibited person also violates MD Code, Public§ 5-133(b)(1) (regulated firearms), § 5-205(b)(1) (long guns). See, e.g., Moore v. State, 2106 WL 103352 (Ct.of.Sp.App. 2016). A violation of MD Code Public Safety, § 5-133(b), is punishable by imprisonment for up to 5 years and/or a fine not exceeding $10,000. MD Code, Public Safety, § 5-144(b). A violation of MD Code, Public Safety, § 5-205(b), is punishable by up to 3 years of imprisonment and/or a $1,000 fine. MD Code, Public Safety, § 5-205(d). These punishments are more severe than the punishments imposed by these Bills.

Persons who allow such access may be charged as accessories or as aiders and abettors or as co-conspirators. See 18 U.S.C. §§ 2, 3; MD Code, Criminal Procedure, § 4-204. See United States v. Olson, 856 F.3d 1216 (9th Cir. 2017); Bellamy v. State, 403 Md. 308, 334, 941 A.2d 1107, 1122 (2008). Allowing such access to a disqualified person is also chargeable under 18 U.S.C. § 922(d), a violation of which is a federal felony punishable by imprisonment for up to 15 years. 18 U.S.C. § 924(a)(8); United States v. Stegmeier, 701 F.3d 574, 580 (8th Cir. 2012). Indeed, misconduct in storing a firearm can be (and has been) charged under Maryland's reckless endangerment statute. MD Code, Criminal Law, § 3-204. That statute provides that "(a) A person may not recklessly: (1) engage in conduct that creates a substantial risk of death or serious physical injury to another." A violation is "subject to imprisonment not exceeding 5 years or a fine not exceeding $5,000 or both." See https://www.foxnews.com/us/baltimore-grandmother-indicted-9-year-old-boy-fatally-shot-teen-girl. These Bills add little or nothing to these existing severe prohibitions.

Unloaded Guns: The bills would change the focus of existing law on access to a "loaded" gun into a ban on access to either a loaded or an unloaded gun. Criminalizing the possibility that a minor (any minor) might access an unloaded gun makes no sense at all. And the burdens imposed by the Bills are even more substantial because the Bills effectively require the owner to store the unloaded firearm SECURED IN A LOCKED CONTAINER THAT IS EQUIPPED WITH A TAMPER–RESISTANT LOCK, and that the ammunition be stored in A SECURE LOCATION WHERE A PROHIBITED PERSON OR MINOR IS NOT LIKELY TO GAIN ACCESS TO THE AMMUNITION. An unloaded gun is no more dangerous than a brick and far less dangerous than a knife or a baseball bat or many other household items. Ammunition is worthless without a firearm and a firearm without ammunition is useless for self-defense.

Heller struck down the District of Columbia's "prohibition against rendering any lawful firearm in the home operable for the purpose of immediate self-defense." 554 U.S. at 635 (emphasis added). In dicta, the Court stated that "our analysis" did not "suggest the invalidity of laws regulating the storage of firearms to prevent accidents." (554 U.S. at 632). But that dicta cannot be read as swallowing the

holding in Heller. Again, Heller held that the Second Amendment "elevates above all other interests the right of law-abiding, responsible citizens to use arms in defense of hearth and home." Heller, 554 U.S. at 635. "All" means all. See Heller, 554 U.S. at 636 ("the enshrinement of constitutional rights necessarily takes certain policy choices off the table"). Thus, storage laws may not "render" any firearm unavailable for the owner to use for "immediate self-defense." Requiring a firearm to be stored "unloaded" and in "A LOCKED CONTAINER THAT IS EQUIPPED WITH A TAMPER-RESISTANT LOCK" makes "immediate" access to the firearm for self-defense quite impossible. Criminalizing such storage of an unloaded gun is thus particularly unjustifiable under Heller and is utterly without any appropriate historical analogue as required by Bruen. See Heller, 554 U.S. at 631-32 (rejecting reliance on gunpowder-storage laws and a 1783 Massachusetts law).

If enacted, the changes made to Section 4-104 by these Bills will quite likely prompt a Second Amendment challenge to Section 4-104, either in a facial challenge suit or as a defense to any charges brought under Section 4-104. Such a challenge will likely not be limited to the changes made by these Bills and thus could well result in the invalidation of the existing requirements currently imposed by Section 4-104. Section 4-104 has thus far escaped a constitutional challenge. That is not by accident. If these Bills are enacted, the resulting burdens on Second Amendment rights will be increased past the point of toleration. The Committee should ask itself whether the alleged benefits provided by these Bills are worth the risk that Section 4-104 will be invalidated.

A Final Note On Policy: We presume that the purpose of these Bills is to encourage safe storage by gun owners. That is laudable goal and one that MSI fully shares and supports. However, that goal cannot be achieved through unconstitutional means. See, e.g., Suth Carolina v. Baker, 485 U.S. 505, 516 (1988) ("Congress cannot employ unconstitutional means to reach a constitutional end"). The State is simply not free to ignore Heller and Bruen and enact legislation as if those cases had not been decided. We urge an alternative approach which is to encourage safe storage by subsidizing the purchase of gun safes and storage devices by gun owners. That approach was taken by Senator Carter in Senate Bill 773, as amended and passed in the Senate last Session. https://bit.ly/3JXplrU. SB 773 created an Income Tax - Credit for Firearm Safety Devices and promoted the purchase of gun safes and other devices designed to prevent a firearm from being operated without first deactivating the device. Devices thus obtained (at State expense) are much more likely to be purchased and used. That bill has been reintroduced this Session as SB 655. That approach is not only fully constitutional but is, in our view, much more likely to lead to safe storage than threatening law-abiding gun owners with still more prison time. The premise of these Bills is that the existing approach is not working. If so, then it is time to try something new rather than doubling down on a failed approach. Heller and Bruen require the State to alter its "ban and imprison" approach to otherwise law-abiding gun owners. **This is a good place to start.**

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. Under that standard articulated in Bruen, "the government may not simply posit that the regulation promotes an important interest." 142 S.Ct. at 2126. Likewise, Bruen expressly rejected deference "to the determinations of legislatures."

Id. at 2131. Bruen thus abrogates the two-step, "means-end," "interest balancing" test that the courts had previously used to sustain gun laws, including the storage law at issue in Jackson. 142 S.Ct. at 2126. Those prior decisions are no longer good law.

The constitutionality of Section HB 307 / SB 858 broad ban on storage in the home obviously turns on strict adherence to Bruen.

The Bill Wrongly Increases the Punishment for Exercising A Constitutional Right: Section 4-203(a) was enacted in 1972, long before public carry was recognized as a constitutional right. Under Bruen, there is a right to carry in public by an otherwise law-abiding citizen of the State. Bruen allows the State to demand that citizens obtain a carry permit, but the underlying holding of Bruen is that "the Second Amendment guarantees a general right to public carry," 142 S.Ct. at 2135, and that there is a "general right to publicly carry arms for self-defense." Bruen, 142 S.Ct. at 2134. In contrast, Section 4-203(a) was premised on the theory that the Second Amendment did not even embody an individual right at all, much less that the right applied to the States. Those assumptions were abrogated by the Supreme Court's decisions in District of Columbia v. Heller, 554 U.S. 570, 592 (2008) (recognizing an individual right to keep and bear arms), and McDonald v. City of Chicago, 561 U.S. 742, 783-84 (2010) (holding that the Second Amendment was a fundamental right and thus incorporated as against the States).

Bruen now makes clear that the right to keep and bear arms is inviolable and may not be infringed with such vague and undefined restrictions.

I urge the Committees to issue an unfavorable report on these bills.

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