

Maryland General Assembly
House Judiciary Committee, 2023 Session
Testimony in Opposition (unfavorable) to HB 307
Written testimony submitted on 13 February, 2023

To the Chair, members and staff of the 2023 House Judiciary Committee,

Thank you for taking time to read my testimony **in opposition** to HB 307, “Firearm Safety – Storage Requirements and Youth Suicide Prevention (Jaelynn’s Law)”. For background, I am a Maryland resident and I live in Montgomery County. I have an unfavorable opinion about this bill and I am opposed to it. I stand in opposition to this proposed legislation because this proposed law violates the Maryland Declaration of Rights and the US Constitution Bill of rights. Further, it will not reduce youth suicides. I say this because one of my siblings committed suicide by hanging many years ago. I personally learned then that if someone is intent on suicide they will achieve it. We need look no further than nations like Korea, Mexico, India and other states that have strict limitations on firearms to note that suicide is a problem is driven by behavioral health causes, not the instrument or method of suicide.

Further, it is likely that this regulation will not stand up to legal scrutiny. It violates the Second Amendment and the prescriptions of the U.S. Supreme Court Bruen decision because the bill is counter to the plain text meaning of the Second Amendment to the U.S. Constitution. It is also outside the norms of all known and referenced historical regulations from the era of the nation’s founding. And it matches the historical tradition of the 20th century instead of the traditions of the country’s founding.

Our civil rights, including the right to keep and bear arms in public, are integral and important to the social fabric of Maryland, and the US. When we weaken one right, we weaken all of them. This proposed legislation will expose victims of violent crime, especially women, to murders, rapes, shootings and other violent acts because they will be unable to immediately take arms to defend themselves when confronted with violence. The Act will not solve the problems which it intends to solve, it will alienate a substantial amount of the population from itself and its government, and it will waste a lot of the State’s resources when the State will be compelled to unsuccessfully defend it in public. Please do not let this Law out of Committee. Here are many reasons why I think the this bill should not be advanced out of the House Judiciary Committee.

Maryland Declaration of Rights, Article 2; & US Constitution and Bill of Rights, 2nd Amendment

First, this Law would *prima facie* violate the [Maryland Constitution Declaration of Rights](#), Article 2; and the 2nd Amendment to the [United States Constitution Bill of Rights](#). Article 2 of the Maryland Declaration of Rights ***unambiguously*** states ***“The Constitution of the United States, and the Laws made, or which shall be made, in pursuance thereof, and all Treaties made, or which shall be made, under the authority of the United States, are, and shall be the Supreme Law of the State; and the Judges of this State, and all the People of this State, are, and shall be bound thereby; anything in the Constitution or Law of this State to the contrary notwithstanding.”*** The Maryland Declaration of Rights does not specifically cite a right to bear arms, **but the US Bill of Rights does**, and it does so explicitly in the 2nd Amendment, which states ***“A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed.”*** The members of this Committee shall no doubt read ample commentary about the meaning of the US Bill of Rights 2nd Amendment, and how this should be incorporated into the legislative process. For purposes of this

Maryland General Assembly
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testimony, **the Committee members must note** that according to the US Supreme Court’s many rulings and orders over the last several decades, the “...right of the people to keep and bear arms, shall not be infringed” must be interpreted and understood via the following principles:

1. **The right to self-defense pre-dates the founding of the United States (and Maryland.)** This right is a pre-existing right, and it endures until today; and **the right to self-defense includes but is not limited to hearth and home. The right to self-defense is present in any place a person is located.**
2. The 2nd Amendment should be understood through **the clear meaning of the text**, including the prefatory and operative clauses of the 2nd Amendment, i.e.
 - a. Prefatory clause: “A well-regulated militia, being necessary to the security of a free state...” means that the existence of the Free State of Maryland necessitates that the people are entitled and able to keep **AND BEAR** arms in order that they may support and defend the Free State should it be required, **and**
 - b. Operative clause: “...the right of the people to keep and bear arms shall not be infringed.” means that where the state is concerned, the people have had and continue to have a pre-existing right to bear arms for self-defense; and the fact that this right exists enables the Free State of Maryland to be supported and defended by the people who are able to bear arms in support of the Free State. It also means that this right **cannot be infringed** because in so doing the Free State of Maryland is imperiled.
3. To determine if conduct around the keeping and bearing of arms is protected by the Maryland Declaration of Rights and/or the 2nd Amendment of the US Bill of Rights, **legislators AND justices** must first assess if the 2nd Amendment is implicated by the conduct in question.
4. If the conduct in question implicates the 2nd Amendment of the US Bill of Rights, the legislators must then assess if the conduct is legal. If it is legal and protected by the 2nd Amendment to the US Constitution, the inquiry stops. No law should be made that would violate the conduct in question, and should the law be in place, it should be struck.

In Sum:

- The Maryland Declaration of Rights does not explicitly reference the right to keep and bear arms.
- The US Constitution and Bill of Rights, including the 2nd Amendment, are the “...Supreme Law of the State; and the Judges of this State, and all the People of this State, are, and shall be bound thereby...”
- The right to self-defense is a pre-existing right that is protected under the 2nd Amendment of the US Bill of Rights.
- The right to self-defense exists in and extends beyond hearth and home.
- The viability of the Free State of Maryland necessitates that the people are entitled to keep and bear arms.
- The immediate possession of firearms for self-defense inside and outside the home for self-defense is legal because it is a protected right.
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Maryland General Assembly
House Judiciary Committee, 2023 Session
Testimony in Opposition (unfavorable) to HB 307
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- Maryland Legislators MUST consider if any proposed legislation regarding the right to keep and carry a gun inside and outside the home for self-defense implicates the 2nd Amendment right to keep and bear arms outside the home. The legislature must do this analysis PRIOR to adopting any legislation regarding these rights.
- In the case of HB 307, **it is 100% certain that this legislation will implicate the 2nd amendment right to lawfully keep and carry firearms inside and outside the home for self-defense throughout the state of Maryland.** The publicly available first text/publication of this law is a blanket requirement to store firearms in conditions that do not make them immediately available for self-defense in the urgency required to defend against criminal violent confrontations.
- The legislature must then consider if the 2nd Amendment implicating conduct (restricting the carrying of firearms for self-defense) is legal under the US Bill of Rights.
- It is 100% certain that that the this bill's requirement to store and inhibit firearm usage within and outside the home will be illegal under the US Constitution, and as such, the Maryland Declaration of Rights.

Maryland Declaration of Rights, Article 44

Additionally, the bill violates the Maryland Declaration of Rights, Article 44, which declares ***“That the provisions of the Constitution of the United States, and of this State, apply, as well in time of war, as in time of peace; and any departure therefrom, or violation thereof, under the plea of necessity, or any other plea, is subversive of good Government, and tends to anarchy and despotism.”***

The proposed Law violates this Article of the Maryland Declaration of rights because the rights of the people under the 2nd Amendment of the US Constitution, and the Maryland Declaration of rights, are violated under a “plea of necessity”. The “plea of necessity” flies under the flag of high suicide rates, but in truth, and from personal experience with my own sibling’s suicide, suicide will be accomplished if the person intends to commit it. We must also think, speak and legislate frankly about the statistics that color suicides. The sad reality is that suicides will happen if those intent on achieving it can access any number of modalities that will enable its achievement. The law-abiding people of Maryland are justly entitled to keep and bear firearms in and outside their homes for self-defense, and they are entitled to do so with having immediate access for the purpose of self-defense. The criminals that are engaged in assaults and murders with firearms will continue to behave violently, and the only thing this bill will do is prevent law abiding people from protecting themselves and their families from violent criminals. This Law, sadly, will have no impact on suicide rates in Maryland.

The Law violates the Maryland Declaration of Rights because it subverts the right to self-defense under a “plea of necessity”. The Law is illegal because it flies in the face of prohibitions against suspending constitutional provisions, rights and laws, including self-defense. Not only is the Law illegal, it subverts the Good Government of Maryland because should it be adopted, the Government and State will “...tend towards anarchy and despotism.”

Maryland General Assembly
House Judiciary Committee, 2023 Session
Testimony in Opposition (unfavorable) to HB 307
Written testimony submitted on 13 February, 2023

Further, the Supreme Court has said that “...interest balancing...is not deference that the Constitution demands...” when considering legislation and regulations regarding the 2nd Amendment. In fact, the Court has said the 2nd Amendment “is the very product of an interest balancing by the people.”

Maryland’s Declaration of Rights expressly prevents departure from the Declaration and the Constitution “under the plea of necessity”, which is the same thing as “interest balancing.” It is a violation of the Declaration and the Constitution for the Legislature to do this.

The Committee MUST heed the wise words and sentiments of the Article 44 of the Maryland Declaration of Rights. Not only does the Law EXPLICITLY violate this Article, it also imperils the Free State because the Law’s passing may lead to anarchy and despotism.

Maryland Declaration of Rights, Article 46

Article 46 of the Maryland Declaration of Rights states “*Equality of rights under the law shall not be abridged or denied because of sex*” (added by Chapter 366, Acts of 1972, ratified Nov. 7, 1972. Amended by Chapter 681, Acts of 1977, ratified Nov. 7, 1978). The proposed Law exposes women to the depredations of violent criminals, most of whom are larger, stronger, faster and more violent men. When women are victims of criminal violence, in the vast majority of cases the women are already at a physical disadvantage. Women are likely to be slower to react than their assailants, and weaker. Not only are women disadvantaged, but they also exclusively suffer the consequences of rape and its horrific aftermath. This proposed Law nearly explicitly punishes women because women are vulnerable to violence inside and outside the home. The proposed Law makes an all-too-frequently predatory and dangerous world significantly more dangerous to women, whom with the passage of this legislation will be largely defenseless against violent rapists, murderers and felons.

ON THIS BASIS ALONE THE PROPOSED LAW SHOULD BE STOPPED IN COMMITTEE. For too long the daughters, mothers, wives, sisters, cousins and friends of Maryland have been subject to violent, criminal acts, rapes and murders without sufficient means for them to defend themselves. This legislation will further the victimization of women **and I IMPLORE you to stop this legislation from becoming law at your earliest opportunity.**

Maryland Declaration of Rights, Article 6

The last explicit reference to the Free State’s Declaration of Rights can be found in Article 6 of that August instrument. The Article reads “*That **all persons invested with the Legislative or Executive powers of Government are the Trustees of the Public, and, as such, accountable for their conduct: Wherefore, whenever the ends of Government are perverted, and public liberty manifestly endangered, and all other means of redress are ineffectual, the People may, and of right ought, to reform the old, or establish a new Government; the doctrine of non-resistance against arbitrary power and oppression is absurd, slavish and destructive of the good and happiness of mankind.***”

Maryland General Assembly
House Judiciary Committee, 2023 Session
Testimony in Opposition (unfavorable) to HB 307
Written testimony submitted on 13 February, 2023

Our forebearers were wise to include these words in their legacy. It is patently obvious from the language of HB 307 is in clear violation of the Maryland Declaration of Rights, as well as the US Constitution Bill of Rights. The proposed Law contravenes and subverts the 2nd and other amendments to the US Bill of Rights. It equally and dramatically contravenes and subverts the Maryland Declaration of Rights, in particular the Articles referenced above. Due to the proposed Law's subversion of the Maryland Declaration of Rights and the US Bill of Rights, the Law creates several problems for the legislature.

US Supreme Court Decision No. 20-843

**NEW YORK STATE RIFLE AND PISTOL ASSOCIATION V BRUEN, SUPERINTENDENT OF NEW YORK STATE
POLICE**

The Committee will doubtless receive ample information about this and other Supreme Court cases. I am not an attorney or expert in Supreme Court jurisprudence. However, I must also testify that the proposed Law violates this and other decisions in more than a few ways.

1. The Law is being considered due to an "interest balancing" by the State. As mentioned, this violates Article 44 of the Maryland Declaration of Rights, which states *"That the provisions of the Constitution of the United States, and of this State, apply, as well in time of war, as in time of peace; and any departure therefrom, or violation thereof, under the plea of necessity, or any other plea, is subversive of good Government, and tends to anarchy and despotism."* The Bruen decision echoes this when it quotes the Supreme Court's Heller decision saying, *"...interest balancing...is not the deference that the Constitution demands here. The Second Amendment is the very product of an interest balancing by the people,"* and it *"surely elevates above all other interests the right of law-abiding, responsible citizens to use arms for self-defense."* The Maryland General Assembly will break the law in passing this proposed Law because it is a product of interest balancing.
2. The Bruen decision also relies upon the Heller decision when it says *"...the Second Amendment guarantees an "individual right to possess and carry weapons in case of confrontation."* The Law violates the right to have immediate access to weapons in case of confrontation inside and outside the home because the Law will make it illegal to carry a firearm for self-defense in nearly all the state. The right to self-defense will be gutted by the Law.
3. It again quotes Heller in saying that *"Constitutional rights are enshrined with the scope they were understood to have when the people adopted them."* This requires that any law which implicates the 2nd amendment must have an analog that matches the understanding of the right to self-defense as it was understood during the founding of the US. The only regulatory analogs to this Law are those that are found in the early 20th century. There are no historical analogs from the era of the founding of the country.
4. The Court also said in Bruen, quoting another case (McDonald), that *"The constitutional right to bear arms...is not "a second class right, subject to an entirely different body of rules than other Bill of Rights guarantees."* This proposed Law treats the right to keep and bear arms as a second

Maryland General Assembly
House Judiciary Committee, 2023 Session
Testimony in Opposition (unfavorable) to HB 307
Written testimony submitted on 13 February, 2023

5. class right. No other constitutional rights suffer the burdens that the State of Maryland is considering applying here.
6. The Bruen decision also states, *“Throughout modern Anglo-American history, the right to keep and bear arms in public has traditionally been subject to well-defined restrictions governing the intent for which one could carry arms, the manner of carry, or the exceptional circumstances under which one could not carry arms.”* The proposed Law obliterates the right to have a gun immediately available for self-defense in the home. In fact, the Law would eviscerate the right to have a firearm available for self-defense because it would make it a practical impossibility to have one at the ready at any time. This far exceeds the traditional understanding of the right as required by the Bruen decision.
7. This violates the Bruen decision case law because under Bruen there must be a historical analog to this legislation regarding the storage of weapons for self-defense. This regulation’s analogs are from the 20th century.
8. The Bruen decision clearly requires the Maryland General Assembly to identify an American tradition justifying the State’s prohibitions of firearm readiness. The traditions upon which this proposed Law rely date from the 19th and 20th centuries. Because the State has no such historical analog to support the proposed Law, it is illegal and it should not be passed.
9. A Bruen decision concurrence also says that “...the Second Amendment protects the right of law-abiding people to carry a gun...for self-defense...”; and that any law “...which makes that virtually impossible...is unconstitutional.” The proposed Law makes it virtually impossible for a law-abiding person to have a firearm immediately available for self-defense inside or outside the home. It is unconstitutional.

Additional Reasons for Opposition

Judicial Proceedings and Cost: First, the proposed Law will be illegal. Upon its passing, legal action will be taken against the state. It is a near certainty that the legal actions will result in restraining orders against the illegal Law. Further, it is near certain that the Law will be struck down completely and in full. No doubt the State will attempt to argue for the soundness of the Law and its legality, but given its constitutional infirmities relative to the Maryland Declaration of Rights and the US Constitution, the State will not prevail. What will happen is the State will instead expend millions of dollars of direct cost, and countless hours of staff and attorney time trying to defend an indefensible law. It would be far more effective to address the problems this regulation attempts to solve through constitutional means. For example, it would be better for the state to expend resources on public communications and/or health campaigns that would address the causes of suicides in Maryland. As noted above, the passage of the Law will not result in a reduction in homicides, shootings or suicides.

Social Fabric: This law will victimize people that wish to exert their right to self-defense inside and outside the home. These people will observe that the right to self-defense remains a disfavored right in Maryland. They will resent being treated as second class citizens, and they will be right to do so. This legislation will damage our social fabric and we should not allow that to happen.

Maryland General Assembly
House Judiciary Committee, 2023 Session
Testimony in Opposition (unfavorable) to HB 307
Written testimony submitted on 13 February, 2023

Governmental Distrust: The authors of Maryland’s Declaration of Rights were clear. Legislators are the “Trustees of the Public.” Adoption of the Law will alienate a large percentage of the Public, and it will only demonstrate to the Public that the Government does not trust the people, even those who are the most reliably law abiding. This Law will NOT contribute to the solution to suicides; and it will only engender distrust and alienation between the Government and the People. The Government and People will both lose if the bill is adopted.

Capricious Governance: It appears that this this legislation is in response to US Supreme Court decisions regarding the purpose, scope and necessity of the 2nd Amendment. As demonstrated above, the Law violates the rights of Maryland residents and US citizens. The recent Supreme Court decision (NYSRPA vs Bruen) correctly guides legislators and the judiciary as to how the 2nd Amendment to the US Constitution should be interpreted. The Court’s guidance is clear and simple. **Whether the sponsors agree with the decision or not, the Bruen decision is the law of the land.** The proposed law is abundantly and clearly in contravention of this decision, and as such it directly disobeys the law of the land in its multitude of constitutional violations.

With respect to this proposed Law Section 2 (a), I would be happy to engage with the Deputy Secretary for Public Health Services to establish and participate in a stakeholder advisory committee to make recommendations regarding the development of the youth suicide prevention and firearm safe storage guide under 13-39A-01of the Health – General Article (but not as part of this proposed Law). My personal experience from my sibling’s suicide and my personal knowledge of firearm laws and requirements may add value to any such discussions.

Injuries and Deaths to Innocent Victims of Crime: Lastly, and most importantly, the State of Maryland and the United States are based on civil right and freedoms. The proposed Law subverts the right to self-defense inside and outside the home. It will surely result in innocent victims of violent crime being killed, raped, wounded or injured. The Law strips away the right to self-defense for the most vulnerable people in our society (women) and it disenfranchises the poorest of us, who are the people that are most at risk for being victims of criminal violence. This Law cannot stand because the people that are most at risk for the occurrence and impact of criminal violence, are the people that are most likely to want to exercise their right to self-defense at home and in public. This proposed Law will restrict these people from legal self-defense.

Please vote unfavorably on HB 307. It is illegal. It will NOT solve the problem of suicides in Maryland. It subverts and eviscerates our civil rights, the Maryland Declaration of Rights and the US Constitution. It will contribute to corruption of government and the alienation of the People from Maryland’s elected Trustees. It will further damage the fabric of our society. And it will leave the most vulnerable people among us, especially women, exposed to criminal violence. PLEASE DO NOT PASS THIS LEGISLATION. Thank you for your consideration.

Frank Clary

13 February 2023