President
Mark W. Pennak

February 12, 2025

WRITTEN TESTIMONY OF MARK W. PENNAK, PRESIDENT, MARYLAND SHALL ISSUE, IN SUPPORT, *WITH AMENDMENTS*, TO SB 585 and HB 308

I am the President 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. It seeks to educate the community about the right of self-protection, the safe handling of firearms, and the responsibility that goes with carrying a firearm in public. I am also an attorney and an active member of the Bar of the District of Columbia and the Bar of Maryland. I retired from the United States Department of Justice, where I practiced law for 33 years in the Courts of Appeals of the United States and in the Supreme Court of the United States. I am an expert in Maryland Firearms Law and the law of self-defense. I am also a Maryland State Police certified handgun instructor for the Maryland Wear and Carry Permit and the Maryland Handgun Qualification License ("HQL") and a certified NRA instructor in rifle, pistol and personal protection in the home and outside the home and muzzle loading. I appear today as President of MSI IN SUPPORT WITH AMENDMENTS to SB 585 and HB 308.

The Bill and Existing State Law: This Bill amends MD Code, Criminal Law, § 6-411, enacted by the 2023 General Assembly. See 2023 Maryland Session Laws, Ch. 680, *codified in part at* MD Code, Criminal Law, §§ 4-203, 4-111 and 6-411, and MD Code, Public Safety, § 5-307. Section 6-411 regulates locations where carry permit holders (who number over 200,000 individuals currently).[1] As enacted by Senate Bill 1, MD Code, Criminal Law, § 6-411(d) prohibits a permit holder from entering any private property that is otherwise open to the public, such as stores and the like, unless "the owner or the owner's agent has posted a clear and conspicuous sign indicating that it is permissible to wear, carry, or transport a firearm on the property." Section 6-411(a)(6) defines "property" for purposes of the ban on entering private property to mean only "a building" and further makes clear that "property does not include the land adjacent to a building." Thus, for example, a permit holder may drive or walk to a store but may not enter the store while armed.

Section 6-411(b) sets forth exceptions from this general ban, providing that Section 6-411 does not apply to "a law enforcement official or police officer," an on-duty "member of the armed forces of the United States," a "correctional officer or warden,

[1] As of July 1, 2024, there were 199,053 carry permit holders in Maryland. See Lott, Moody & Wang, Concealed Carry Permit Holders Across the United States: 2024 at 17 (available at https://bit.ly/4hyabXV) (last viewed Jan. 26, 2025). That is up from approximately 30,000 permits in July 2022, at the time *Bruen* was decided. There are undoubtedly significantly more permit holders now.

or to a "portion of real property subject to an easement, a right-of-way, a servitude, or any other property interest that allows public access on or through the real property, or portion of real property subject to an easement, a right-of-way, servitude, or any other property interest allowing access on or through the real property by: (i) the holder of the easement, right-of-way, servitude, or other property interest; or (ii) a guest or assignee of the holder of the easement."

This Bill would add to this list of exceptions an additional exception for retired police officers who possess and carry a concealed a firearm in accordance with the requirements imposed by the federal LEOSA statute. See 18 U.S.C. § 926C. The LEOSA statute generally preempts State restrictions on carry by such LEOSA qualified retired officers. However, that preemption expressly does not apply to limit any State law that "(1) permit private persons or entities to prohibit or restrict the possession of concealed firearms on their property." 18 U.S.C. § 926C(b)(1). This Bill is obviously intended to overcome that restriction imposed by Section 926C by allowing LEOSA retired officers to carry on private property otherwise open to the public without obtaining prior permission from the private owner.

The Existing Ban On Carry By Permit Holders On Private Property Otherwise Open To The Public Is Unconstitutional Under the Second Amendment.

The Supreme Court has held that the Second Amendment guarantees a "general right to publicly carry arms for self-defense." *New York State Rifle & Pistol Ass'n, Inc. v. Bruen*, 597 U.S. 1, 30–31 (2022). As enacted by Senate Bill 1, Section 6-411(d) violates that guarantee by establishing a new "default rule" that bans carry by permit holders on private property otherwise open to the public without first obtaining consent of the private owner or where the owner has posted signage expressly allowing such carry. The United States District Court for the District of Maryland (Baltimore) has held that this default rule violates the Second Amendment enjoined the State from enforcing this provision. See *Kipke v. Moore*, 695 F.Supp.3d 638, 646 (D. Md. 2023), appeals pending No. 24-1799(L) (4th Cir.) (consolidated). Under that injunction, LEOSA officers and all Maryland permit holders may continue to carry a concealed firearm on private property otherwise open to the public. Thus, under *Kipke*, this Bill is unnecessary.

The Maryland district court's decision in *Kipke* is well supported. The United States Court of Appeals for the Second Circuit has expressly affirmed district court rulings striking down New York's identical default rule, which, like Senate Bill 1, was enacted in response to *Bruen*. See *Antonyuk v. James*, 120 F.4th 941, 1044 (2d Cir. 2024), *affirming holdings on this point in Christian v. Nigrelli*, 642 F.Supp.3d 393, 398 (W.D.N.Y. 2022) and in *Antonyuk v. Hochul*, 639 F.Supp.3d 232, 248 (N.D.N.Y. 2022). The State of New York has not sought further review of that Second Circuit holding.[2] A federal district court has likewise enjoined New Jersey's identical

[2] The plaintiffs in *Antonyuk* have sought Supreme Court review from other aspects of the Second Circuit's decision in *Antonyuk*. See *Antonyuk v. James*, No. 24-795, *petition for certiorari docketed* (January 22, 2025). New York has not sought further review of the Second Circuit's invalidation of its default rule.

default rule in *Koons v. Platkin*, 673 F.Supp.3d 515, 607 (D.N.J., 2023), *appeal pending* No. 23-1900 (3d Cir.). New Jersey's appeal from that holding was heard in October of 2023 and the Third Circuit's decision on that appeal could come down any day. Only the Ninth Circuit has sustained such default rule like that imposed by Section 6-411(d) and only in part. *Wolford v. Lopez*, 116 F.4th 959, 993 (9th Cir. 2024) (sustaining Hawaii's default rule but striking down California's default rule).[3] The Ninth Circuit's denial of rehearing sustaining Hawaii's default rule drew sharp disagreement from eight judges of the Ninth Circuit. *Wolford v. Lopez*, 125 F.4 1230, 1231 (9th Cir. 2025). Given the vigorous dissent and the circuit conflict with *Antonyuk* (and with every decision of every other court addressing the issue), a successful petition for certiorari is probable in *Wolford*.

There Is No Rational Basis For A Special Exception For LEOSA Retirees

Finally, we fail to see any rational basis for distinguishing between retirees and carry permit holders with respect to the ban otherwise imposed for both under Section 6-411(d). Permit holders, nationwide, are the most law-abiding persons in America, with crime rates a fraction of those of active-duty police officers. See John Lott, Carlisle E. Moody, and Rujun Wang, *Concealed Carry Permit Holders Across the United States: 2024*, at 42-43 (2024) ("it is impossible to think of any other group in the US that is anywhere near as law-abiding," noting further that "concealed carry permit holders are even more law-abiding than police") (available at https://bit.ly/3Pyv8G0).

What's worse, Section 6-411(d) forces these law-abiding permit holders to leave their carry guns in their vehicles whenever they visit a store or other establishment open to the public. Theft of firearms from vehicles is a problem that should concern everyone. See https://everytownresearch.org/report/gun-thefts-from-cars-the-largest-source-of-stolen-guns-2/. Stolen guns are crime guns, and this State punishes theft of a firearm valued under $1,500 as minor misdemeanor and no differently than theft of any other type of personal property. MD Code, Criminal Law § 7-104(g)(2) ("a person convicted of theft of property or services with a value of at least $100 but less than $1,500, is guilty of a misdemeanor"). State law provides no significant deterrence at all to theft of a firearm.

The same risk of theft from vehicles obtains under MD Code, Criminal Law, 4-111, also enacted by Senate Bill 1. MD Code, Criminal Law, § 4-111(a)(4), establishes a specified locations in which carry by a permit holder is banned, including in a

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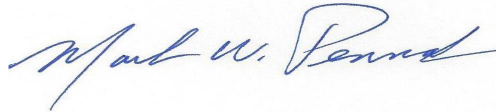
[3] The Ninth Circuit in *Wolford* struck down California's default rule on grounds that the rule (unlike Hawaii's) did not allow a private property owner to allow carry by signage, only by express permission. See *Wolford*, 116 F.4th at 973. California did not seek rehearing from that ruling. That distinction is nonsensical under any reading of our historical traditions. See *United States v. Rahimi*, 602 U.S. 680, 692 (2024) ("A court must ascertain whether the new law is 'relevantly similar' to laws that our tradition is understood to permit, "apply[ing] faithfully the balance struck by the founding generation to modern circumstances."), quoting *Bruen*, 597 U.S. at 29.

government "building" or a "building" of a public or private institution of higher education. Section 4-111(b)(11) provides that the bans imposed by Section 4-111 "do not apply" if the "firearm that is carried or transported in a motor vehicle if the firearm is: (i) locked in a container; or (ii) a handgun worn, carried, or transported 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." This provision thus likewise forces permit holders to leave firearms in vehicles. Again, leaving guns in cars invites theft.

By any measure, forcing permit holders to leave carry guns in vehicles is poor public policy. The carry gun is best protected by allowing the permit holder **to carry it**, not by forcing permit holders to leave it in a vehicle where it can be stolen. Under *Bruen*, the State may not ban carry by permit holders. Full stop. It is senseless to impose restrictions that may imperil public safety by creating more opportunities for theft of a firearm. Such policies also defeat the purpose of carry. See *Bruen*, 597 U.S. at 74 (Alito, J., concurring) ("Ordinary citizens frequently use firearms to protect themselves from criminal attack. According to survey data, defensive firearm use occurs up to 2.5 million times per year."). "Studies consistently show between 60,000 and 2,500,000 defensive uses per year." https://ammo.com/research/defensive-gun-use-statistics. A gun locked in a vehicle is useless for self-defense.

We urge a favorable report but only if the Bill is amended to provide an exception for all permit holders in addition to LEOSA retirees.

Sincerely,



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