

Maryland General Assembly
Senate Judicial Proceedings Committee, 2023 Session
Testimony in Opposition (unfavorable) to HB 0580
“Election Law – Polling Sites – Firearms Prohibitions”
Written testimony submitted on 17 February, 2023

To the Chair, members and staff of the 2023 House Ways & Means Committee,

Thank you for taking time to read my testimony **in opposition** to HB 0580, “Election Law – Polling Sites – Firearms Prohibitions”. I have an unfavorable opinion about this bill, and I am opposed to it. I stand in opposition to this proposed legislation for a number of reasons.

For background, I am a Maryland resident and I reside in Montgomery County. I am a lay person and I have also lived for about 14 years outside the country, including about 10 years in the Middle East and about 4 years in Europe. I have a substantial amount of professional and personal travel to many countries around the world, with most being in pioneer, emerging and developing markets, and most of it in the private sector. Electoral freedom and election integrity are important to me because I’ve personally seen the negative outcomes from unfair or un-democratic elections.

This bill has been proposed as an emergency legislative bill. I am assuming that the emergency is a concern for licensed persons carrying firearms to the polls during elections.

Here are many reasons why I think this bill should not be advanced out of the House Ways & Means committee.

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

First, the bill *prima facie* violates 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 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:

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1. Any law or legislative action that implicates the Second Amendment should be created or interpreted based on the plain text meaning of the Amendment; the historical context of the law relative to the era of the nation’s founding, and the historical traditions of the issues relative to the era of the nation’s founding.
2. **The right to self-defense pre-dates the founding of the United States (and Maryland.)** This right is a pre-existing right, it endures until today; and **the right to self-defense is not limited to hearth and home. The right to self-defense is present in any place a person is located.**
3. 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.
4. 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.
5. 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 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 carrying of firearms for self-defense outside the home for self-defense is legal because it is a protected right.
- Maryland Legislators **MUST** consider if any proposed legislation regarding the right to carry a gun outside the home for self-defense implicates the 2nd Amendment right to keep and bear

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arms outside the home. The legislature must do this analysis PRIOR to adopting any legislation regarding these rights.

- In the case of the HB 580, it is **100% certain that the bill will implicate the 2nd amendment right to lawfully carry firearms outside the home for self-defense throughout the state of Maryland.**
- The legislature must then consider if the 2nd Amendment implicating conduct (restricting the carrying of firearms for self-defense while at the polls) is legal under the US Bill of Rights.
- While the state of Delaware had laws regulating firearms at the polls in the era of the nation’s founding, no other states had such laws. Therefore, this proposed legislation would enact laws with origination in the late 19th and 20th centuries, not during the era of the nation’s founding.
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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 bill 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 “gun violence” or “voter intimidation”, but in truth, the vast majority of violent acts involving firearms are executed by criminals, not the law abiding. Similarly, there are not a rash or large number of incidents of intimidation at polling places on election day. Further, Maryland appears to have firmly adopted vote by mail and absentee voting, which also reduce the risk of voter intimidation at the polls.

And, while we commonly hear of the “scourge of gun violence and its tens of thousands of deaths”, we must also think, speak and legislate frankly about the statistics that color these kinds of statements. The sad reality is that the substantial majority of gun-related deaths are attributable to suicides. The law-abiding people of Maryland are justly entitled to carry firearms outside their homes for self-defense in case of confrontation, wherever that may occur, including traveling to and from polls. The criminals that are engaged in assaults and murders with firearms will continue to do so. The only thing this bill will do is prevent law abiding people from protecting themselves and their families from violent criminals on election day. The bill will also have no impact on suicide rates in Maryland.

The bill violates the Maryland Declaration of Rights because it subverts the right to self-defense under a “plea of necessity”. The bill is illegal because it flies in the face of prohibitions against suspending constitutional provisions, rights and laws, including self-defense under emergencies. This bill would be passed as “an emergency” but it will violate the Declaration of Rights if it does pass. Not only is the bill illegal, it subverts the Good Government of Maryland because should this law be adopted, the Government and State will “...tend towards anarchy and despotism.”

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

Maryland Declaration of Rights, Article 24

Article 24 of the Maryland Declaration of Rights reads *“That no man ought to be taken or imprisoned or disseized of his **freehold, liberties or privileges, or outlawed, or exiled, or, in any manner, destroyed, or deprived of his life, liberty or property, but by the judgment of his peers, or by the Law of the land** (amended by Chapter 681, Acts of 1977, ratified Nov. 7, 1978).*

This Article clearly demonstrates another reason why the bill should not be adopted. Should anyone violate any portion of the bill, that person will be subject to seizure of liberties through criminal penalties, including loss of the right to keep and bear arms under the Maryland Declaration of Rights and the US Bill of Rights. Further, it is likely persons that rightly and justly carry firearms for self-defense outside the home and in and around polling places will face state-sponsored destruction under the color of an unjust “Law of the land.” Such persons will be subject to arrest, detention, court proceedings, imprisonment, fines and other punishments deemed appropriate by the State.

As noted above, the bill facia violates the US Constitution and Bill of Rights, as well as the Maryland Declaration of Lights. It is an unconstitutional law, and should it be enacted it will become the “Law of the land” but unjustly so. Those subject to this law will be at risk of loss of freehold, liberties, privileges, destruction, and deprivation. They will also be considered outlaws for the simple of acts of asserting the right to self-defense. The bill cannot stand under Article 24 of the Maryland Declaration of Rights.

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 bill exposes women to the depredations of violent criminals, most of whom are larger, stronger, faster and more violent men. Violent criminals do not cease their predatorial acts on election days or at the polls. When women are victims of criminal violence, in the vast majority of cases the women are already at a physical disadvantage. Not only are

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women disadvantaged, but they also exclusively suffer the consequences of rape and its horrific aftermath. The bill nearly explicitly punishes women because women are most vulnerable outside the home, including while voting at polls. The bill makes an all-too-frequently predatorial and dangerous world more dangerous to women, whom with the passage of this legislation will be largely defenseless against violent rapists, murderers and felons on election day, and in and around polling locations during elections.

ON THIS BASIS ALONE THE BILL 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.**”*

Our forebearers were wise to include these words in their legacy. It is patently obvious from the language of HB 580 is in clear violation of the Maryland Declaration of Rights, as well as the US Constitution Bill of Rights. The bill 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 bill’s subversion of the Maryland Declaration of Rights and the US Bill of Rights, it 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 bill violates this and other decisions in more than a few ways.

1. The bill 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*

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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 law because it is a product of interest balancing. It is being passed ostensibly as “an emergency” but in reality it’s being passed because of the recent changes to law that enable more people to exert their rights to self-defense outside the home. There is no emergency related to voter intimidation in Maryland, and certainly not by persons licensed to wear and carry firearms for self-defense outside the home.

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 bill violates the right to carry weapons in case of confrontation outside the home because it will make it illegal to carry a firearm for self-defense in any polling place. The right to self-defense will be gutted by the bill on election days. It will also prevent some voters from attending polls if they cannot safely carry or store their licensed handguns in order to vote.
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. There are no such regulatory analogs to the bill in Maryland’s history.
4. The Court also said in Bruen, quoting another case (McDonald), that “The constitutional right to bear arms in public for self-defense is not “a second class right, subject to an entirely different body of rules than other Bill of Rights guarantees.” The bill treats the right to bear arms in public as a second class right.
5. When discussing “sensitive places”, the Court said in Bruen *“But expanding the category of “sensitive places” simply to all places of public congregation that are not isolated from law enforcement defines the category of “sensitive places” far too broadly. Respondents (i.e. State of New York) argument would in effect exempt cities from the Second Amendment and would eviscerate the general right to publicly carry arms for self-defense that we discuss in detail below.”* Clearly the bill does exactly what the Supreme Court said the government unambiguously must not do! The bill obliterates the right to carry a gun for self-defense in public by eliminating the right to carry on election day and in and around polling areas because it would make it illegal to carry a gun within 100 feet of polling places.
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 bill does not have an appropriate historical analog

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or tradition upon which is would rely to prevent people from asserting their right to self defense on election day. This far exceeds the traditional understanding of the right as required by the Bruen decision.

7. The Bruen decision also notes that “...*the history reveals a consensus that States could not ban public carry altogether.*” The proposed law would for all practical purposes ban public carry altogether on election day. This violates the law because under Bruen there must be a historical analog to current legislation regarding the carrying of weapons in public for self-defense and there is no such analog in Maryland’s history, and only one such analog across the 13 original states at the time of the founding (Delaware.) The historical analogs upon which the Legislature would rely come from the late 19th century and 20th century, which is inappropriate.
8. The Bruen decision clearly requires the Maryland General Assembly to identify an American tradition justifying the State’s prohibition of carrying a weapon for self-defense in or within 100 feet of any polling place. There is no such tradition offered by the State. Because the State has no such historical tradition to support the bill, 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 outside the home for self-defense...”; and that any law “...which makes that virtually impossible...is unconstitutional.” The bill makes it virtually impossible for many law-abiding person to carry a gun outside the home for self-defense on election day. It is unconstitutional on its face.

Additional Reasons for Opposition

Judicial Proceedings and Cost: First, the proposed bill 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 bill. Further, it is near certain that the bill will be struck down completely and in full. No doubt the State will attempt to argue for the soundness of the bill 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 prevention of voter intimidation, as well as suicides and murders/shootings in Maryland. As noted above, there is no widespread occurrence of voter intimidation in Maryland, and passage of the bill 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 outside the home, including on election day. 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.

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Governmental Distrust: The authors of Maryland’s Declaration of Rights were clear. Legislators are the “Trustees of the Public.” Adoption of the bill 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 bill will NOT contribute to the solution to suicides, murders and shootings; 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: As demonstrated above, the proposed 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. While some legislators may believe the Supreme Court decision to be ill reasoned, **whether these legislators agree with the with the decision or not, the Bruen decision is the law of the land.** The bill 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.

This bill sets a terrible example of appropriate behavior from a “Trustee of the Public.” We do not get to pick and choose what laws and precedents we wish to follow. There are mechanisms for redress that the members of the Committee and the Maryland General Assembly can undertake if they are dissatisfied with the Maryland Declaration of Rights and the US Constitution Bill of Rights. This proposed law is not one of them. It violates the US Constitution and the Maryland Declaration of Rights on their face, and as such it is illegal.

The bill is an example of capricious governance. If the Committee and the Maryland General Assembly choose to ignore the law of the land by enacting this legislation, and to subvert fundamental human rights by the bill’s design, and to violate the Maryland Declaration of Rights and the US Bill of Rights, why should ANYONE follow ANY law that the General Assembly passes? If the Trustees of the Public choose to act capriciously and un-Constitutionally, no one should be surprised when members of the public behave likewise on ANY legislative matter those same Trustees produce.

The bill should be struck as soon as possible to ensure that the People understand that the Trustees also follow the law. The General Assembly should look to other ways to solve any problems related to voter intimidation on polling day and in polling places, as well as the problems of murders, shootings and suicides in the state without destroying the entire democratic foundations of the Free State along the way.

Inequality: The 14th amendment to the U.S. Constitution Bill of Rights guarantees “...equal protection under the law”. In this proposed legislation, police officers and other classes of state employees would be able to wear and carry firearms to the polls on election day. Licensed wear and carry permit holders will not have the same right to self-defense as these people. It is unfair, and unconstitutional for members of the public to not have the same right to self-defense that government employees have. The risk environment is identical, but the right to self-defense is not.

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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 bill subverts the right to self-defense outside the home. It may result in innocent victims of violent crime being killed, raped, wounded or injured on election day and in and around polling areas. The proposed 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 – including on election days and in/around polling areas. This bill 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 in public.

Bruen Decision: The proposed law 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 known and referenced historical regulations from the era of the nation’s founding. There is but one founding era historical analog to the bill’s proposed regulations, and the analog is not from Maryland. And it matches the historical traditions of the late 19th and 20th centuries instead of the era of the country’s founding. It does not match historical tradition of the country’s founding.

Please do not pass this bill out of committee. It is illegal. There is no emergency regarding voter intimidation at the polls. Persons licensed to wear and carry firearms for self-defense outside the home represent the safest segment of society. They are not a risk to their fellow voters. The bill will NOT solve the problems of suicides, murders and criminal shootings. 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

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