

WRITTEN TESTIMONY OF MICHAEL F. BURKE, IN OPPOSITION TO HB 935/SB 784

I am – a Veteran with 21 years of military service; I am also an experienced law enforcement officer with more than 30 years of experience at the County, State and Federal levels. I am an expert in Maryland Firearms Law, Federal Firearms law and the law of self-defense; 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 and Chief Range Safety Officer. Also – I am a Certified Protection Professional (CPP) and subject matter expert in Physical Security and other security disciplines, a locksmith, and a Computer Security and electronics expert. **I appear today in opposition to HB 935/SB 784.**

The Bill:

Comprehensive Community Safety Funding Act- This bill would impose an excise tax on certain gross receipts of certain firearms dealers derived from the sales of firearms, firearm accessories, and ammunition in the State; and generally relating to a tax on gross receipts derived from firearms, firearm accessories, and ammunition.

Like so many other laws proposed or passed by the Maryland General Assembly, this harsh tax will unfairly punish and impede the poorest third of the Citizens of this state. Most specifically, this TAX punishes the majority of the residents- the VOTERS- of Baltimore City, Baltimore County, Prince Georges County, as well as the Eastern Shore Counties (Caroline, Cecil, Dorchester, Kent, Queen Anne’s, Somerset, Talbot, Wicomico, and Worcester), Southern (Calvert, Charles, and St. Mary’s counties) and Western Maryland (Washington, Allegany, and Garrett counties.)

This TAX will also damage one of Maryland’s most fundamental resources- TOURISM. Tourism is Maryland’s fourth largest industry and has an economic impact on Maryland by creating jobs, generating tax revenue, and increasing business income. Sports shooting and hunting bring billions of dollars in tourism related travel to our state.

https://dnr.maryland.gov/wildlife/Pages/hunt_trap/shooting_ranges.aspx

Maryland 4-H Shooting Sports

Youth Shooting Sports Alliance

<https://www.youthshootingsa.com> › Programs

Three state events are held annually and include a state smallbore rifle match state archery match for both compound recurve and a state shotgun match. Maryland 4-H Shooting Sports offers programs in most counties. Availability of Individual shooting disciplines will vary by county. Programs are offered through a variety of methods including year-round clubs, short term special interest programs, summer camps and special events. Three state events are held annually and include a state smallbore rifle match state archery match for both compound recurve and a state shotgun match. Discipline training and certification for adult volunteer instructors is held annually. The Program is conducted through **the University of Maryland Extension** the same as all other 4-H programs.

Does Maryland have good hunting?

Known for its thriving white-tailed deer populations, Western Maryland is the perfect place to harvest deer for the winter. Its stunning natural beauty has long attracted outdoor enthusiast and hunters.

Maryland is home to various huntable species including Sika and Whitetail Deer, Turkey, different waterfowl, upland birds, and other small game.

Unforgettable Hunts in the Old Line State

1. Chesapeake Bay: Waterfowl, Turkey, and Sika Deer
2. Talbot: Waterfowl, Turkey, and Deer
3. Assateague Island National Seashore:
4. Dorchester: Sika Deer
5. Kent: Waterfowl, Deer, Turkey, and More
6. Queen Anne's: Whitetail Deer, Waterfowl, and Turkey
7. Newark: Waterfowl, Deer, and Turkey
8. Caroline: Waterfowl, Dove, Turkey, and Deer
9. Harford: Upland Birds
10. Courthouse Point Managed Hunting Area

<https://feedingthehungry.org/>



1 in 8 people in Maryland struggles with hunger.

Farmers and Hunters Feeding the Hungry, PO Box 323, Williamsport, MD, 21795

Hunters- local and out-of-state visitors- DONATE thousands of pounds of meat from successful hunts to the NEEDIEST residents of our state. This unnecessary TAX on law abiding HUNTERS will reduce the amount of FOOD available to hungry women and children across Maryland.

Hunters from other areas will AVOID the tax and spend their time- and money- in Pennsylvania, Delaware, and Virginia.

The gross cost of all hunting licenses in Maryland is upwards of \$6 million. But that's merely the tip of the iceberg in terms of how much money hunting generates in the state. According to Hunting Works for Maryland, in 2018, hunting generated **\$401 million** in economic activity in the state, the majority of which was spent at locally owned businesses across the state.

As hunting diminishes, deer and other populations will explode in numbers, INCEASING deer strikes on the usual Maryland Interstates, State roads, and local streets.

Beyond these arguments – note the following points.

First: this is a futile effort to achieve an impossible goal. (Recall that Beretta moved their billion-dollar manufacturing facilities to Tennessee in 2016 because of Maryland laws and taxes.) Prime military firearms contractors today- SIG-Sauer- build their firearms in New Hampshire, while Glock builds their firearms in Georgia.

Second: many firearms and ammunition sales are handled by the Black-Market dealers across Maryland. They will not comply with any State or Federal firearms laws or regulations as they are criminal organizations engaged in for-profit distribution of prohibited products (guns, drugs, sex slaves, stolen property, etc). They won't pay that 11% tax- they'll buy their stocks in 49 other States and won't even pay the local sales tax.

Third: the legitimate individuals who are Federal Firearms License holders (like myself) will immediately adopt best practices to avoid this TAX by only ordering deliveries of most accessories and ammunition through dealers and vendors in Pennsylvania, Delaware (zero sales tax), Virginia and West Virginia. Countless law-abiding residents of Maryland will continue to visit holiday locations in Ocean City, Spring, Summer and Fall, and stop in Dover or Wilmington shops for shooting supplies (tax free) on the way home. Others will visit Virginia or Harper's Ferry for their shopping pleasure.

The Bill Violates the Second Amendment: This Bill affects the exercise of Second Amendment rights. Under the Supreme Court's recent decision in *New York State Rifle & Pistol Association, Inc. v. Bruen*, 142 S.Ct. 2111 (2022), law-abiding gun owners with carry permits have a Second Amendment right to carry in public. 142 S.Ct. at 2135. There is also a well-recognized right to acquire a firearm in this State under the Second Amendment. See *Maryland Shall Issue v. Hogan*, 566 F.Supp. 3d 404, (D. MD 2021). With that right comes the ancillary right to sell firearms, as without dealers, there can be no acquisition. See, e.g., *Andrews v. State*, 50 Tenn. 165, 178 (1871) ("The right to keep arms, necessarily involves the right to purchase them, to keep them in a state of efficiency for use, and to purchase and provide ammunition

suitable for such arms, and to keep them in repair.”); *Teixeira v. City of Alameda*, 873 F.3d 670, 677 (9th Cir. 2017) (en banc), cert. denied, 138 S.Ct. 1988 (2018) (“the core Second Amendment right to keep and bear arms for self-defense ‘wouldn’t mean much’ without the ability to acquire arms”). This Bill would certainly impede the ability of purchasers to acquire firearms BY IMPOSING A POLL TAX.

Even more fundamentally, the State may not condition these Second Amendment rights by subjecting such dealers and customers to unfair TAXATION on 2A protected items. Under the “unconstitutional conditions doctrine,” the State may not condition the exercise of a constitutional right by demanding that a person give up another constitutional right. See, e.g., *Simmons v. United States*, 390 U.S. 377, 393-394 (1968) (it is “intolerable that one constitutional right should have to be surrendered in order to assert another”). Cf. *Perry v. Sindermann*, 408 U.S. 593, 597 (1972) (a government “may not deny a benefit to a person on a basis that infringes his constitutionally protected interests especially, his interest in freedom of speech”); *Elrod v. Burns*, 427 U.S. 347, 359 (1976) (same). That would be true even if there was no Second Amendment right involved at all. See *United States v. American Library Assn., Inc.*, 539 U.S. 194, 210 (2003) (“the government may not deny a benefit to a person on a basis that infringes his constitutionally protected ... freedom of speech even if he has no entitlement to that benefit”). See also *United States v. Scott*, 450 F.3d 863, 868 (9th Cir. 2006) (applying the doctrine to the Fourth Amendment context). It is no answer to these points to assert that the government would not abuse this technology to conduct warrantless surveillance. This “just trust us” approach does not pass constitutional muster. Courts may “not uphold an unconstitutional statute merely because the Government promised to use it responsibly.” *United States v. Stevens*, 559 U.S. 460, 480 (2010). See also *McDonnell v. United States*, 579 U.S. 550, 576 (2016) (same); *Legend Night Club v. Miller*, 637 F.3d 291, 301 (4th Cir. 2011) (same).

In the 1966 case of *Harper v. Virginia State Board of Elections*, the Supreme Court reversed its decision in *Breedlove v. Suttles* to also include the imposition of poll taxes in state elections as violating the Equal Protection Clause of the 14th Amendment to the United States Constitution.

This Bill, if enacted, will not survive judicial review. We urge an unfavorable report.