

27 February 2007

RE: SB 43

**Maryland Shall Issue, Inc. opposes SB 43**

We are opposed to SB 43 because:

- 1) The militia is the best defense of a free state.
- 2) SB 43 is a law without any benefit.
- 3) SB 43 violates the prohibitions against *ex post facto* laws.
- 4) SB 43 violates the US Constitution's 2<sup>nd</sup> and 14<sup>th</sup> amendments.
- 5) SB 43 violates the Maryland Constitution Article IX, Section 1.

**1) THE MILITIA IS THE BEST DEFENSE OF A FREE STATE**

U.S.

“A well regulated Militia being necessary to the security of a free state ...” (2<sup>nd</sup> Amendment)

Maryland

“That a well regulated Militia is the proper and natural defence of a free Government.”  
(Declaration of Rights, Art. 28)

It has been commonplace in recent times to speak of the Militia as being the National Guard, however this is not correct. The National Guard is only part of the Militia. “The organized militia consists of the Maryland National Guard ("MDNG"), the MDDF, and the reserve militia (Minute Men). Subject to certain exceptions, **the ‘unorganized’ militia consists of ‘all able-bodied citizens of the State,’** whom the Governor may order into State service if troop strength in the organized militia is insufficient to deal with a crisis.” (Joe Curran, "Opinion of the Attorney General" dated September 13, 1996) [emphasis added]

Current U.S. Code Title 10, Sec. 311 defines the Militia: “The Militia of the United States consists of all able-bodied males at least 17 years of age... “

This is consistent with the vision of the framers of the constitution. “Every citizen should be a soldier. This was the case with the Greeks and Romans, and must be that of every free state.” (Thomas Jefferson) Machiavelli notes, “Rome remained free for four hundred years and Sparta eight hundred, although their citizens were armed all that time; but many other states that have been disarmed have lost their liberties in less than forty years.” (*The Art of War*, 1521 rev. ed. 1965)

“...but if circumstances should at any time oblige the government to form an army of any magnitude that army can never be formidable to the liberties of the people while there is a large body of citizens, little, if at all, inferior to them in discipline and the use of arms, who stand ready to defend their own rights and those of their fellow-citizens.” (Alexander Hamilton, Federalist Paper No. 29)

“Who are the militia? Are they not ourselves? ... Congress have no power to disarm the militia. Their swords, and every other terrible implement of the soldier, are the birthright of an American...[T]he unlimited power of the sword is not in the hands of either the federal or state governments, but, where I trust in God it will ever remain, in the hands of the people.” (Tenche Coxe, *The Pennsylvania Gazette*, Feb. 20, 1788)

“... Madison used the words ‘people’ and ‘militia’ as synonymous, as does the Second Amendment, which he was later to draft.” (“Standing Armies and Armed Citizens” by Roy G. Weatherup *Hastings Constitutional Law Quarterly* Fall 1975, Vol. 2 No. 4 pp 961-1001)

"In 1789, when used without any qualifying adjective, 'the militia' referred to all citizens capable of bearing arms. The seeming tension between the dependent and the main clauses of the Second Amendment thus evaporates on closer inspection — **the "militia" is identical to "the people"** in the core sense described above. Indeed, the version of the amendment that initially passed the House, only to be stylistically shortened in the Senate, explicitly defined the militia as 'composed of the body of the People.'" (Akhil Reed Amar, “The Bill of Rights: Creation and Reconstruction”) [emphasis added]

The U.S Supreme Court decision in the landmark 2<sup>nd</sup> Amendment case of *U.S. v. Miller* (1939) stated: “...the Militia comprised all males physically capable of acting in concert for the common defense. ... expected to appear bearing arms supplied by themselves and of the kind in common use at the time.”

Because the vast majority of citizens are law-abiding, **guns in the hands of the citizens provide the best defense from criminals, terrorists, invaders, and tyranny alike.**

#### CRIMINALS

Kennesaw, Georgia (1982 – 2007):

“Every head of household, the 1982 law states, must own a firearm and appropriate ammunition.

On a per capita basis, the city's serious crime rate has plunged since the law was passed. The actual number of the most serious crimes has barely increased, even as the city's population has exploded from about 5,000 in 1980 to more than 30,000 in 2005.” (David A. Markiewicz, “Kennesaw sticks to its guns: Law requires firearms”, *The Atlanta Journal-Constitution*, 02/19/07)

## TERRORISTS

“American massacres in which dozens of unarmed victims are mowed down before police can arrive astound Israelis who note what occurred at a Jerusalem [crowd spot] some weeks before the California MacDonald's massacre: Three terrorists who attempted to machine-gun the throng managed to kill only one victim before being shot down by handgun-carrying Israelis. Presented to the press the next day, the surviving terrorist complained that his group had not realized that Israeli civilians were armed. The terrorists had planned to machine-gun a succession of crowd spots, thinking that they would be able to escape before the police or army could arrive to deal with them. (Don B. Kates, “Guns and Public Health: Epidemic of Violence or Pandemic of Propaganda?”)

## INVADERS

"When Pancho Villa attacked Columbus, New Mexico, in March 1916 with more than 600 men, he did so in the early morning, catching everyone by surprise. Although his men damaged a great deal of property, only 17 Americans died, 8 of whom were soldiers from a nearby army post. Because the civilians were well-armed, 94 of Villa's men were killed and an unknown number wounded, despite the surprise attack." (Benedict LaRosa, “Can Gun Control Reduce Crime?” Part 1, October 2002 <http://www.fff.org/freedom/fd0210e.asp>)

## TYRANNY

“...my own personal experiences in which in Birmingham, Alabama, my father and his friends defended our community in 1962 and 1963 against white nightriders by going to the head of the community, the head of the cul-de-sac, and sitting there armed. And so I'm very concerned about any abridgement of the Second Amendment. I'll tell you that I know that if Bull Connor had had lists of registered weapons, I don't think my father and his friends would have been sitting at the head of the community defending the community.”

Condoleezza Rice went on to say, “But we have to be very careful when we start abridging rights that our Founding Fathers thought very important. And on this one, I think that they understood that there might be circumstances that people like my father experienced in Birmingham, Alabama, when, in fact, the police weren't going to protect you.” (Condoleezza Rice, Interview with Larry King - May 11, 2005 - [www.state.gov/secretary/rm/2005/46063.htm](http://www.state.gov/secretary/rm/2005/46063.htm))

Please read “The Rationale of the Automatic Rifle” By Massad Ayoob (attached or <http://www.realfighting.com/0102/rational.htm>)

While we are currently involved in war (right or wrong) and while terrorism is a daily

threat, this is the time to pass laws to strengthen, not weaken, the unorganized militia.

## **2) SB 43 IS A LAW WITHOUT BENEFIT – UNNECESSARY AND INEFFECTIVE**

SB 43 is a non-solution for a non-problem, unnecessary because rifles are rarely used in crime, and ineffective because gun bans have been shown in study after study to be ineffective in reducing crime.

### **RIFLES ARE RARELY USED IN CRIMES**

“Despite Maryland ranking high in violence throughout the 27 year period, not a single police officer has been shot and killed with an ‘assault rifle’ [or any rifle] during the period 1980 through 2006.” (Phil Lee “Risks to Police from Firearms” <http://www.mcrkba.org/LEOsKIA.pdf>)

“It is worth noting in Maryland, that from 1994 through 2005 more murders have been committed with personal weapons (hands, feet, . . .), knives, shotguns, and blunt objects than with rifles of any kind in Maryland. Over that period, the Maryland State Police report 56 murders with rifles out of 4461 with all firearms (1.4%). Also, over that period, there were 12.1 times as many murders using knives as all rifles, 5.3 times as many murders using blunt objects, and 4.4 times as many murders using hands or feet or other personal weapons. Among the weapons used for murder and annually reported by the state police, it is hard to find a weapon used less frequently than rifles.” (Phil Lee, “A 10th comment on Ceasefire's ‘EVERY 48 HOURS’ AW screed”)

### **GUN BANS ARE OF NO BENEFIT**

“Gun bans don’t disarm criminals, gun bans attract them.” (Walter Mondale)

“Unfortunately, an almost perfect inverse correlation exists between those who are affected by gun laws, particularly bans, and those whom enforcement should affect. Those easiest to disarm are the responsible and law abiding citizens whose guns represent no meaningful social problem. Irresponsible and criminal owners, whose gun possession creates or exacerbates so many social ills, are the ones most difficult to disarm.” (Don B. Kates, “Guns and Public Health: Epidemic of Violence or Pandemic of Propaganda?”)

UK – 2006

"The English government has effectively abolished the right of Englishmen, confirmed in their 1689 Bill of Rights, to "have arms for their defence," insisting upon a monopoly of force it can succeed in imposing only on law-abiding citizens. It has come perilously close to depriving its people of the ability to protect themselves at all, and the result is a

more, not less, dangerous society. Despite the English tendency to decry America's 'vigilante values,' English policy makers would do well to consider a return to these crucial common law values, which stood them so well in the past." (Joyce Lee Malcom, "Gun Control's Twisted Outcome" <http://www.reason.com/news/show/28582.html>)

#### USA - 2006

"...none of the attackers interviewed was 'hindered by any law--federal, state or local--that has ever been established to prevent gun ownership. They just laughed at gun laws.'" (Ed Davis, co-author of "Violent Encounters: A Study of Felonious Assaults on Our Nation's Law Enforcement Officers") Criminals, by definition, do not obey the law so the fact that gun-control laws do not control criminals should come as no surprise.

#### AUSTRALIA - 2006

In Australia, an island where the National Firearms Act in 1996 banned nearly all semi-automatic firearms and more than 600,000 guns were then gathered and destroyed they found that there was no benefit to the new law: "Homicide patterns (firearm and non-firearm) were not influenced by the NFA, the conclusion being that the gun buy-back and restrictive legislative changes had no influence on firearm homicide in Australia." (Baker & McPhedran, "Gun Laws and Sudden Death: Did the Australian Firearms Legislation of 1996 Make a Difference?" *Brit. J. Criminol.* 2006)

#### USA - 2005

"*The good news* on this critical question is that we have state-of-the-art mandated-by-law government-sponsored research on the ban's effects ...

*The bad news* is that the answer --on the best available evidence-- is NO, the 'assault weapon' ban had no discernible effect respecting its *ultimate goal*: reducing criminal violence --even criminal *gun* violence." (Preston K. Covey, Ph.D., "Can Gun Control Reduce Violence?")

#### USA - 2003

"[A]n independent CDC [Centers for Disease Control] task force reviewed 51 published studies about the effectiveness of eight types of gun-control laws. The laws included bans on specific firearms or ammunition, measures barring felons from buying guns, and mandatory waiting periods and firearm registration. None of the studies was done by the federal government. In every case, a CDC task force found 'insufficient evidence to determine effectiveness.'" (AP "No Proof Gun Laws Reduce Violence" <http://www.cbsnews.com/stories/2003/10/03/national/main576422.shtml>)

#### INTERNATIONAL - 2002

"I attended a conference in Australia about ten years ago, and there were all the leading anti-gun academics at the conference. ... I asked if someone could give me one example anywhere in the world at any point in time when introducing further legislative controls on firearms had reduced crime—and terrorism is crime. Nobody could do so. I have continued to research it since, and I can find no example." (Colin Greenwood, Testimony to Parliament about gun control 17 July 2002)

UK – 1971

“Half a century of strict controls on pistols has ended, perversely, with a far greater use of this class of weapon in crime than ever before... **one is forced to the rather startling conclusion that the use of firearms in crime was very much less when there were no controls of any sort** and when anyone, convicted criminal or lunatic, could buy any type of firearm without restriction.” (Colin Greenwood, *Firearms Control: A study of armed crime and firearms control in England and Wales*) [emphasis added]

ITALY - 1764

“False is the idea ... that would take fire from men because it burns, and water because one may drown in it; that has no remedy for evils, except destruction. The laws that forbid the carrying of arms are laws of such a nature. They disarm those only who are neither inclined nor determined to commit crimes. Can it be supposed that those who have the courage to violate the most sacred laws of humanity, the most important of the code, will respect the less important and arbitrary ones, which can be violated with ease and impunity, and which, if so dear to the enlightened legislator — and subject innocent persons to all the vexations that the guilty alone ought to suffer? Such laws make things worse for the assaulted and better for the assailants; they serve rather to encourage than to prevent homicides, for an unarmed man may be attacked with greater confidence than an armed man.” (Cesare Beccaria, *On Crimes and Punishments*)

### **3) EX POST FACTO**

U.S. and Maryland law (Maryland Constitution, Declaration of Rights, Art. 17) forbid *ex post facto* laws. SB 43 would make criminals out of those who lawfully bought guns that would be made illegal without registering.

### **4) U.S. CONSTITUTION**

SB 43 violates the U.S. Constitution because it ignores the Second and Fourteenth Amendments.

Although Attorney General Joe Curran wrote an opinion in 1994 that the Second Amendment of the U.S. Constitution does not apply to Maryland (“Firearms: Constitutional Law – Second Amendment Does Not Apply to State Legislation – Article 28 of Declaration of Rights Does Not Bar Gun Control Legislation”) a new legal analysis, “The Right of the People of Maryland to Keep and Bear Arms” by Titus, Olson and Miles (attached <http://www.marylandshallissue.org/images/legan.pdf>) examines new and old evidence and calls that opinion into serious question.

In fact, the Maryland Constitution, Declaration of Rights, Art. 2. would seem to lay the

whole question to rest: “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.”

If states could disarm the public then there could be no militia. The Second Amendment of the U.S. Constitution was clearly intended to be an individual right and to take precedence over state law – otherwise it would have no meaning. However, the interpretation of the Second Amendment by courts and states changed as they felt threatened by slaves and the emancipation of slaves. So, in response, the Fourteenth amendment was written to clarify and make certain that the Bill of Rights applied to the citizens of every state. "Senator Jacob Howard when introducing the [14<sup>th</sup>] amendment in Congress in 1866, explained that its purpose was to protect 'personal rights' such as 'the right to keep and bear arms' from state infringement." (Kopel, Halbrook & Korwin, *Supreme Court Gun Cases*, 2004 p. 58) Unfortunately, several high court decisions took a view inconsistent with the intent, and we expect this too will be corrected – as explained by the new legal analysis above, “The Right of the People of Maryland to Keep and Bear Arms,” and also by the most recent U.S. Department of Justice memorandum on the subject: “[O]ur examination of the original meaning of the Amendment provides extensive reasons to conclude that the Second Amendment secures an individual right, and no persuasive basis for either the collective-right or quasi-collective-right views.” (“Whether The Second Amendment Secures An Individual Right” Memorandum Opinion for the Attorney General - August 24, 2004)

## **5) MARYLAND CONSTITUTION**

SB 43 violates the Maryland Constitution because it acts to destroy rather than promote the Volunteer Militia.

The current Maryland Code, and the Maryland Constitution states in Article IX, Section 1: “The General Assembly shall make, from time to time, such provisions for organizing, **equipping** and disciplining the Militia, as the exigency may require, and **pass such Laws to promote Volunteer Militia organizations as may afford them effectual encouragement.**” [emphasis added]

An example of a U.S. law encouraging volunteer militias is the Militia Act of 1792. “In the Militia Act of 1792, the second Congress defined ‘*militia of the United States*’ to include almost **every free adult male** in the United States. These persons were **obligated by law to possess a firearm and a minimum supply of ammunition and military equipment.** This statute, incidentally, remained in effect into the early years of the present century as a legal requirement of gun ownership for most of the population of the United States.” (*The Right to Keep and Bear Arms* Report of the Subcommittee on the

Constitution of the United States Senate Ninety-Seventh Congress Second Session  
February 1982) [emphasis added]

Examples of Maryland acts to provide effectual encouragement of volunteer militias as required by our constitution go as far back as 1638 and are as recent as 1942.

### 1638

'Act for Military Discipline' of 1638 which required " ... that every house keeper or housekeepers within this Province shall have ready continually upon all occasions within his her or their house for him or themselves and for every person within his her or their house able to bear armes one Serviceable fixed gunne of bastard muskett boare' along with a pound of gunpowder, four pounds of pistol or musket shot...." (*Archives of Maryland*, 1:77)

There is significance to requiring 'muskett boare.' "They wanted fewer rifles and more muskets 'as they are more easily kept in order, can be fired oftener and have the advantage of Bayonets.'"(Clayton Cramer, *Armed America*, p. 147) In essence, muskets were the 'assault weapons' of the day. Rifles were for hunting, muskets were for defense of the community.

### 1942

"Only today, for instance, have I been advised by the Commanding General of the First Army, in New York, that the presence and increasing activity of enemy submarines off the Maryland Coast require additional drastic measures." Governor Herbert L. O'Connor then goes on to say:

"I propose to meet this need by the organization in every part of the State of a Reserve Militia. ... It offers the opportunity for **every able-bodied man** to assist in protecting his home and his community against enemy activities. The militia will be organized under our State Law, and the men who enlist at this time of our grave emergency will be known as the 'Maryland Minute Men.'"

Gov. O'Connor further stated, "For the present the hard-pressed Ordnance Department of the United States Army cannot be expected to furnish sufficient arms, ammunition, or equipment. Hence, the volunteers, for the most part, will be **expected to furnish their own weapons**. For this reason, gunners ... members of Rod and Gun Clubs, of Trap Shooting and similar organizations, will be expected to constitute a part of this new military organization." (radio address March 10, 1942, *Archives of Maryland Online*, Volume 409, Page 616) [emphasis added]

To be a citizen is to be prepared to defend ourselves, our neighborhood, and our country. "Today we need a nation of Minutemen, citizens who are not only prepared to take arms, but citizens who regard the preservation of freedom as the basic purpose of their daily life and who are willing to consciously work and sacrifice for that freedom." (John F. Kennedy)

## CONCLUSION

Honorable Senators, you expect us to follow the laws you pass. With all due respect, we expect you to follow the laws that are currently on the books – change the constitution if need be, but don't ignore it. Banning guns, especially military-style weapons, is very likely illegal, and certainly of no benefit in reducing crime. We urge you to vote against SB 43

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*"When the Cambrian measures were forming, They promised perpetual peace.  
They swore, if we gave them our weapons, that the wars of the tribes would cease.  
But when we disarmed They sold us and delivered us bound to our foe,  
And the Gods of the Copybook Headings said 'Stick to the Devil you Know.'"*

Rudyard Kipling, "The Gods of the Copybook Headings" (1919)