March 8, 2019

WRITTEN TESTIMONY OF MARK W. PENNAK, PRESIDENT, MSI, IN OPPOSITION TO HB 1343 AND SB 1000

I am the President of Maryland Shall Issue ("MSI"). Maryland Shall Issue is an all-volunteer, non-partisan 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. I recently 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. I appear today as President of MSI in **OPPOSITION** to HB 1343 and SB 1000.

These bills would repeal MD Code Public Safety § 5-302 to eliminate the Handgun Permit Review Board established by that section. Under that Section, the Board consists of five persons appointed by the Governor. The bill would also amend 5–312 of the Public Safety Article to provide appeals from decisions concerning a handgun carry permit would be only to the Office of Administrative Hearings (OAH), an administrative body which employs administrative law judges to conduct trial-type hearings in disputes over agency decisions. These bills must be considered in the greater context of the law and the facts associated with carry permits in Maryland. Thus viewed, the bills are misguided and uninformed.

The Context I: Restrictions Reversals

The Board has been existence since 1972, when it was created as part of gun control legislation that sharply limited the issuance of carry permits to persons having a "good and substantial reason" for such a permit. Chapter 13, Laws of Maryland 1972, http://aomol.msa.maryland.gov/megafile/msa/speccol/sc2900/sc2908/000001/000708/html/am708--50.html That 1972 legislation is part of the shameful legacy of gun control in Maryland as it is indisputable that Maryland's restrictive carry laws are a vestige of slavery in Maryland. See Henry Heymering, *Maryland weapon carry laws, A brief chronology* (attached). Indeed, much of the history of gun control is explained by overt racism. See Clayton E. Cramer, *The Racist Roots of Gun Control*, 4 Kan. J.L. & Pub. Pol'y 17, 20 (1995) ("The various Black Codes adopted after the Civil War required blacks to obtain a license before carrying or possessing firearms or bowie knives .... These restrictive gun laws played a part in provoking Republican efforts to get the Fourteenth Amendment passed."), quoted in *Young v. Hawaii*, 896 F.3d 1044, 1059 (9th Cir. 2018).

But, setting all that aside, rational decision-making demands that the bills be viewed by reference to the actual number of permits at issue. According to press reports, there have

been 269 cases heard by the Board since December 2017, of which the board has reversed the decision of the Maryland State Police 77 times and modified restrictions 145 times. https://www.marylandmatters.org/2019/02/18/state-police-have-sought-reviews-of-handgun-permit-board-decisions-22-times-since-oct/. Thus by a margin of 2-1, the bulk of the Board's reversals are in **restriction** cases where the State Police have issued permits and thus have **already found** that the applicant has a "good and substantial reason" under Maryland law for carrying a handgun outside the home. These persons include business entrepreneurs carrying cash, security guards, private investigators and federal government employees with top security clearances and who are vulnerable to attack by foreign and domestic terrorists. The State Police recognize that such individuals qualify for permits.

The same press reports indicates that since October 1, 2018, Maryland State Police has been appealing the decisions of the Board to the Office of Administrative Hearings ("OAH") for a full *de novo* hearing. Of the Board's first 34 decisions rendered after hearings conducted since Oct. 1, the Maryland State Police has appealed 22 times. Twenty-one of the cases are still under consideration. Id. So, the State Police have acquiesced in 12 of the Board's decisions in cases considered since October 1, 2018, and the merits of almost all of the State Police appeals are still being reviewed. It is premature to say that the State Police will win all or even a majority of these cases. We are reliably informed that the State Police have brought this many appeals to OAH simply to **discourage** applicants from applying and/or from appealing to the Board. OAH proceedings are formal, trial-type proceedings before an administrative law judge. Such proceedings are complex and the applicant realistically must retain a lawyer. That is expensive, a reality of which the State Police are well aware. The State Police practice of "attrition by litigation" is a nothing less than a bully tactic aimed at the least affluent applicants. That tactic is shameful and unworthy of the State Police.

These numbers also make clear the overwhelming number of cases in which the Board has reversed the State Police are in cases where the State Police have placed restrictions on carry permits issued to persons that the State Police have found to qualify for permits. Without exception, these reversals are because the restrictions placed on those permits by the State Police are hopelessly vague and thus expose these individuals to a great risk of detention, arrest and incarceration if the permit holder should ever have a chance encounter with a law enforcement officer, such as being pulled over for a broken tail light. Under Maryland law, as amended in 2013 by the Firearms Safety Act, carrying outside the restrictions on the permit is the same thing as carrying without **any permit at all** and thus expose the permit holder to 3 years in prison under MD Code Criminal Law § 4-203. Before 2013, carrying outside the restrictions was an administrative violation, with no criminal consequences. Now, carrying outside the restrictions risks serious jail time. **Any** conviction of Section 4-203, regardless of actual sentence, results in life-time disqualification under both federal and state law from possessing any modern firearms or ammunition.

On a chance encounter with law enforcement on the roadside, the permit holder with restrictions is faced with the Hobson's Choice: Either try to convince the officer that he or she is carrying within the restrictions, thereby forfeiting the right to remain silent and other constitutional rights, or insisting on his or her constitutional rights and face an unlawful arrest for "lack of cooperation." That's the street reality and that's indefensible. The Board quite properly has insisted that the restrictions not be vague, relying on expert witness testimony submitted by the undersigned on the constitutional issues created the State Police use of vague restrictions. See Attached. The State Police have never even attempted

to rebut that testimony. In short, in criminalizing carry permit restrictions in 2013, the General Assembly has necessarily changed the legal framework. The State Police have ignored that change, preferring to leave these law-abiding citizens at great legal peril.

More than once, innocent permit holders have been detained for hours and even wrongly arrested because of these restrictions. See for an actual video of sworn testimony before the Board of one such case, see https://youtu.be/T3UH3Zrxt9g A. Dwight Pettit, a renowned Baltimore civil rights attorney, has quite rightly noted that these restrictions are discriminatory in impact and racist in enforcement against law-abiding citizens of Baltimore. See https://youtu.be/iYc00BH9DwA?t=718 Indeed, a law-abiding Baltimore resident was arrested for carrying outside his permit restrictions while lawfully transporting the handgun to work where he was employed **as a security guard**. He spent the night in jail before the charges were dropped. According to Dwight Pettit, these sorts of arrests have happened over and over again in Baltimore. (Id.). There's more. A doctor of veterinarian medicine who carries narcotics in his practice was arrested on the side of Interstate 270 for carrying outside his restrictions. The charges were dropped. A professional bail bondsman was arrested for carrying outside his restrictions in Hagerstown when he was forced to pull his concealed firearm when faced with a knife attack. He was never charged with any crime associated with that armed self-defense; the only charge was that he violated the restrictions on his carry permit. The charges were ultimately dropped. In all these cases, Maryland most law-abiding citizens have been needlessly legally traumatized because of permit restrictions. And as Dwight Pettit attests, that's just the tip of the iceberg. Restrictions are ripe for arbitrary and discriminatory enforcement.

In this context, it is not at all surprising that the Board is hearing many more restriction cases than in years past. Word of such legal nightmares gets around and permit holders are terrified of getting arrested simply for carrying a gun with a permit with restrictions. Restrictions thus defeat the purpose for which the permit was issued and create a new, adversarial and risky relationship between the permit holder and the police in which the constitutional rights of permit holders are being sacrificed. By making carrying outside restrictions a crime, the General Assembly created these constitutional issues and these opportunities for abuses of power by the police. The General Assembly should not blame the Board for being forced to confront the legal fallout created by that legislation.[1]

The Context II: Tiny Number of Permits Issued vs. Violent Crime in Maryland

The carry permits ordered by the Board are not a problem. Even gun control advocates admit that permit holders are the most law-abiding persons in America, with crime rates a fraction of those of commissioned police officers. https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3233904 The most recent study (January 2019) published by the American College of Surgeons (hardly a gun group) demonstrated "no statistically significant association between the liberalization of state level firearm carry legislation over the last 30 years and the rates of homicides or other violent crime." https://www.sciencedirect.com/science/article/pii/S107275151832074X We

[1] The Board has also been wrongly criticized for holding some of its hearings in closed session. Virtually all of these hearings involve restriction cases where the appeal is seeking to lift the restriction on an existing permit. Maryland law expressly protects the confidentiality of these individuals who thus have every right to request closed sessions. MD Code, General Provisions, § 4-325. These closed sessions are thus fully compliant with and, indeed, required by the Maryland's Open Meeting statute. MD Code General Provisions § 3-305(b)(13).

are unaware of any permit holder who has ever been arrested (much less convicted) for a violent crime in Maryland. Not one.

In any event, these 269 cases entertained by the Board is an infinitesimally small number. By way of comparison, 12% of the entire adult population of neighboring Pennsylvania and over 8% of adults in Virginia have carry permits. Over a million adults have carry permits in Florida, Texas and Pennsylvania, and yet the crime rate in these states is markedly less than in Maryland. In fact, 42 states are "shall-issue" and only 8 states, including Maryland, are "may-issue." http://www.handgunlaw.us/ "In 2018, the number of concealed handgun permits soared to now over 17.25 million – a 273% increase since 2007. 7.14% of American adults have permits." https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3233904 The total number of carry permits issued to Maryland citizens, including overwhelmingly to security guards and special police, is tiny. https://www.gunstocarry.com/concealed-carry-statistics/. The notion that carry permits in Maryland are too easily obtained under the current Board is laughable.

In this regard, persons hostile to the Board err in their premise that Maryland is safer because it restricts the right to carry to a truly tiny number of individuals. The FBI violent crime statistics for 2017 confirm that Maryland citizens are far safer in Virginia (shall issue) and Pennsylvania (shall issue) than they are at home. https://ucr.fbi.gov/crime-in-the-u.s/2017/crime-in-the-u.s.-2017/topic-pages/tables/table-4 According to FBI statistics, in 2017, Maryland far exceeded the national average for violent crime. Specifically, the national rate was **394** violent crimes per 100,000. Maryland's violent crime rate was **500.2** per 100,000, over 25% higher. And Maryland's rate is **up** from 2016, while the national rate in 2017 **fell** from 2016. https://ucr.fbi.gov/crime-in-the-u.s/2017/crime-in-the-u.s.-2017/topic-pages/tables/table-4.

The violent crime rate in Baltimore, in particular, is mind-boggling. Specifically, the press has reported that "there were 1,780 violent crimes reported per 100,000 Baltimore residents in 2016, far more than the national rate of 386 incidents per 100,000 Americans." https://www.msn.com/en-us/news/crime/25-most-dangerous-cities-in-america/ss-AAsxtw1#image=23 That was far more than even the District of Columbia, which had a violent crime rate of 1,203.5 per 100,000 in 2016, according to the FBI. It is Baltimore that leads the nation with the second-highest per capita murder rate (exceeded only by St Louis). https://www.statista.com/statistics/718903/murder-rate-in-us-cities-in-2015/. Every legislator in the General Assembly should be ashamed of these numbers. Abolishing the Board will do nothing about this crime wave. It will simply further discourage law-abiding persons who are otherwise fully qualified from applying for permits or seeking review of arbitrary State Police actions.

Context III: Armed Self-Defense Is Common Nationwide and Desirable

Suppressing permits is bad public policy. Maryland's "good and substantial reason" permit law is used to exclude ordinary citizens from applying and receiving a carry permit for their own self-defense. Indeed, it is almost impossible for ordinary, law-abiding residents of the City of Baltimore to obtain carry permits. As a result, these citizens are forced to carry illegally simply to protect themselves from the violent predators that have taken over in so many communities in Baltimore. That means that these persons do not receive the 16 hours of formal training, including live fire qualification that permit holders obtain under current

Maryland law. Certainly, the Baltimore police have proved unable to stop Baltimore's violent crime wave. Some members of the Baltimore Police Department have even become criminals. https://www.baltimoresun.com/news/maryland/crime/bs-md-ci-police-scandal-timeline-20180516-story.html. In light of these realities, legislators should not expect law-abiding citizens, particularly in Baltimore, to sacrifice their own lives and safety on the altar of Maryland's unthinking antipathy toward guns.

Self-defense is a positive social good. The FBI has found that out of the 50 mass shooting incidents studied, "[a]rmed and unarmed citizens engaged the shooter in 10 incidents. They safely and successfully ended the shootings in eight of those incidents. **Their selfless actions likely saved many lives**." FBI, Active Shooter Incidents in the United States in 2016 and 2017 at 8. Available at https://www.fbi.gov/file-repository/active-shooter-incidents-us-2016-2017.pdf/view. And armed self-defense is common. One report states that "a range of credible data suggest that civilian use guns to stop violence more than 100,000 times per year." https://fee.org/articles/defensive-gun-use-is-more-than-shooting-bad-guys/ In 1994, a CDC study found that Americans use guns to frighten away intruders breaking into their homes about 498,000 times per year. (Id.). In 2013, the CDC ordered a study conducted by The National Academies' Institute of Medicine on the incidence of armed self-defense. That study reported that "[d]efensive use of guns by crime victims is a common occurrence," stating further that "almost all national survey estimates indicate that defensive gun uses by victims are at least as common as offensive uses by criminals, with estimates of annual uses ranging from about 500,000 to more than 3 million, in the context of about 300,000 violent crimes involving firearms in 2008." https://www.forbes.com/sites/paulhsieh/2018/04/30/that-time-the-cdc-asked-about-defensive-gun-uses/#3aaa3929299a. Eliminating the Board will simply make it harder to review arbitrary State Police actions and thus needlessly limit permits and discourage applications. Inevitably, lives that could have been saved by armed citizens will be lost.

Context IV: Maryland's Restrictive Permit Law Will Soon Fall

In *District of Columbia v. Heller*, 554 U.S. 570 (2008), the Supreme Court held that citizens have the right to possess operative handguns for self-defense. That holding was extended to the States in *McDonald v. City of Chicago*, 561 U.S. 742, 768 (2010), which held that "[c]itizens must be permitted to use handguns for the core lawful purpose of self-defense." Following *McDonald*, the Seventh Circuit held that the Second Amendment applies with full force outside the home. *Moore v. Madigan*, 702 F.3d 933, 937 (7th Cir. 2013). The court held that "[t]o confine the right to be armed to the home is to divorce the Second Amendment from the right of self-defense described in *Heller* and *McDonald*." (Id.). As a result of the decision in *Moore*, Illinois enacted "shall issue" legislation, thus converting that State from a "no-issue" state into a "shall issue" jurisdiction.

Most recently, the D.C. Circuit applied these principles to strike down the "good reason" requirement for a carry permit imposed by D.C. law, a statute that was largely copied from Maryland law. *Wrenn v. District of Columbia*, 864 F.3d 650 (D.C. Cir. 2017). In so holding, the court stressed that the "core" of the Second Amendment protected "the individual right to carry common firearms beyond the home for self-defense—even in densely populated areas, even for those lacking special self-defense needs." (Id. at 661). That meant, the court explained, that "the Second Amendment must enable armed self-defense by commonly situated citizens: those who possess common levels of need and pose only common levels of

risk." (864 F.3d at 664). Under this test, the Court reasoned that the "District's [good reason] regulation completely prohibits most residents from exercising the constitutional right to bear arms as viewed in the light cast by history and *Heller I*" (id. at 665) and that "the good-reason law is necessarily a total ban on most D.C. residents' right to carry a gun in the face of ordinary self-defense needs, where these residents are no more dangerous with a gun than the next law-abiding citizen." (Id.). The court concluded that "no tiers-of-scrutiny analysis could deliver the good-reason law a clean bill of constitutional health." (Id. at 666).

Under *Wrenn*, D.C. is now a "shall issue" jurisdiction, just like 42 states in the United States. Importantly, *Wrenn* created a direct conflict with the Fourth Circuit's decision that had previously sustained Maryland "good and substantial reason" requirement. *Woollard v. Gallagher*, 712 F.3d 865, 876 (4th Cir.), *cert. denied,* 134 S.Ct. 422 (2013), as well as a direct conflict with prior decisions in other circuits that had sustained the "good cause" laws in the few states that still impose this requirement. These circuit conflicts are presently before the Supreme Court on a petition for certiorari filed in *Rogers v. Grewal*, No. 18-824 (filed Dec. 20, 2018), a case involving a challenge to New Jersey's "good cause" requirement. In an order issued February 19, 2019, the Supreme Court ordered New Jersey to respond to this petition filed in *Rogers*. Such orders are not issued unless at least one Justice on the Court has wants a response before deciding on whether to grant review. New Jersey's law is thus "on the table." Maryland's "good cause" law is being challenged in *Malpasso v. Pallozzi*, No. 18-2377 (4th Cir.), which is presently pending in the Fourth Circuit. Also pending are suits against the "good cause" laws of New York, Massachusetts and California. The conflict between these laws and the D.C. Circuit's decision in *Wrenn* will have to be resolved soon by the Supreme Court. The Second Amendment cannot mean one thing in D.C. and 42 states, and something else in Maryland. We fully expect that the Supreme Court will follow the analysis applied in *Wrenn* and strike down "good cause" laws.

Indeed, the scope of the Second Amendment outside the home may also be addressed in *NYSRPA v. NYC*, No. 18-280, *cert. granted*, 2019 WL 271961 (S.Ct. Jan 22, 2019), a New York City case involving transport outside the home. The Supreme Court has already agreed to hear that case. A decision in *NYSRPA* will likely address the appropriate "standard of review" to be utilized in assessing the constitutionality of state gun control laws. It is widely understood that the Supreme Court took the case in order to reverse the Second Circuit's decision sustaining NYC's law. A decision will likely be in late 2019 or 2020, during the Court's next Term. In short, Maryland can follow Illinois' lead and become "shall issue" by legislation, or follow D.C.'s lead and have "shall issue" forced on it by the courts. Either way, the Board and/or OAH will have far fewer cases once Maryland becomes a "shall issue" jurisdiction. These bills are thus little more than a needless waste of time and resources that could be better used to deal with Maryland's rampaging crime problem.

Sincerely,

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Maryland's weapon carry laws:
A brief chronology

By Henry Heymering

1642
"Noe man able to bear arms to goe to church or Chappell or any considerable distance from home without fixed gunn and 1 Charge at least of powder and Shott." (Maryland Statute of 1642) Presumably this included indentured servants and blacks as well as whites – as it did in Massachusetts. Every able man had to have a gun and carry it with him whenever he left home.

1715
"And be it Enacted, by the Authority, Advice and Consent aforesaid, That no Negro or other Slave, within this Province, shall be permitted to carry any Gun or any other offensive Weapon, from off their Master's Land, without Licence from their said Master…." (*Archives of Maryland* 75:268 XXXIII) The first Maryland restriction on carrying weapons applied only to blacks and/or slaves – as slaves were being imported in larger numbers, and neither blacks nor slaves were citizens. A license from their master is equivalent to a note from a parent.

1776
"That the Inhabitants of Maryland are entitled to the Common Law of England … and to the benefit of such of the English statutes as existed on the Fourth day of July, seventeen hundred and seventy-six." (Declaration of Rights, Art. 5a in both the original (1776) and current Maryland Constitutions)

Under English Common Law around the time our Maryland and U.S. Constitutions were being written, it was not only a right to have and carry arms for self-defense but it was considered the duty of citizens to protect themselves as well as others: "The right of his majesty's Protestant subjects, to have arms for their own defense, and to use them for lawful purposes, is most clear and undeniable. It seems, indeed, to be considered, by the ancient laws of this kingdom, not only as a right, but as a duty; for all the subjects of the realm, who are able to bear arms, are bound to be ready, at all times, to assist the sheriff, and other civil magistrates, in the execution of the laws and the preservation of the public peace." Opinion of the Recorder of London, 1780 (The Recorder of London was the foremost legal advisor to the city.)

As neighboring Virginian Patrick Henry put it during Virginia's ratification convention 1788, "The great object is that every man be armed. Everyone who is able might have a gun." (*The Debates of the Several State Conventions on the Adoption of the Federal Constitution* at 386, Jonathan Elliot, New York, Burt Franklin: 1888)

1809
A law prohibiting any carry of weapons "with the intent feloniously to assault any person." (*Archives of Maryland* 570:94) Any carry, concealed or open, with no permit required, was still legal as long as it was without felonious intent.

1831
A statewide law that requires free blacks (only) to obtain a license from a local court for possession or carry (open or concealed) of firearms. (*Archives of Maryland*, 213:448) This is clearly racist. Why did it happen? It was a reaction to the Turner Rebellion of slaves in Virginia earlier that year.

1857
The 'Dred Scott' U.S. Supreme Court decision, written by Marylander Justice Roger Taney, explains what rights a citizen was recognized to have at that time:
"It would give to persons of the negro race, who were recognized as citizens in any one State of the Union, the right to enter every other State whenever they pleased, singly or in companies, without pass or passport, and without obstruction, to sojourn there as long as they pleased, to go where they pleased at every hour of the day or night without molestation, unless they committed some violation of law for which a white man would be punished; and it would give them the full liberty of speech in public and in private upon all subjects upon which its own citizens might speak; to hold public meetings upon political affairs, **and to keep and carry arms wherever they went**." [emphasis added]

1866
Concealed carry is banned, but open carry is not. (*Archives of Maryland* 389:468-9) This was the first time a Maryland restriction on carry of weapons for **citizens** could be found. It is a reasonable assumption that this law was passed partly as a result of the assassination of President Lincoln in 1865, and as a result of slavery being abolished at the 1864 Maryland Constitutional Convention. Since blacks could no longer be directly legislated against, the 1831 law was dropped and the concealed carry prohibition was made general – but could be selectively enforced against blacks or any other group.

1884
At this time concealed carry, with no permit required, is legal again. Concealed carry is only illegal when arrested and charged with another crime. (*Archives of Maryland*, 390:522-3) It suggests that the 1866 ban on concealed carry may have been struck down or rescinded as unconstitutional.

1904
After more than 300 years of legal concealed carry for all citizens, with no permit required, concealed carry is again made illegal in Maryland, but this time with the exception of "carrying such weapon as a reasonable precaution against apprehended danger."(*Archives of Maryland* 209:4025-6) Probably the exception was made to allow selective enforcement against blacks only, while keeping it from being a total ban that would be unconstitutional.

Clayton Cramer in his 1995 testimony to the Michigan House Judiciary Committee (http://www.claytoncramer.com/Michigan.htm) notes: "In a few cases, we have direct and explicit statements that these laws were passed to disarm feared minority groups, without violating the 14th Amendment's guarantee of equal protection. Florida Supreme Court Justice Buford's concurring opinion in *Watson* v. *Stone* (Fla. 1941) is perhaps the most blunt:

> 'I know something of the history of this legislation. The original Act of 1893 was passed when there was a great influx of negro laborers in this State…. [T]he Act was passed for the purpose of disarming the negro laborers ... and to give the white citizens in sparsely settled areas a better feeling of security. The statute was never intended to be applied to the white population and in practice has never been so applied.' [*Watson* v. *Stone* , 4 So.2d 700, 703 (Fla. 1941).]"

1972
Open carry of weapons in Maryland requires a permit for the first time ever – after nearly 400 years of unrestricted open carry by citizens. (*Archives of Maryland*, 708:48-51) It now requires a permit from the Maryland State Police to carry a handgun in any way – concealed or open – State Police get to determine whether citizens have "good and substantial" reasons to carry a handgun, which show the permit is necessary "as a reasonable precaution against apprehended danger." The only previous time in Maryland history that any and all carry required a permit was in 1831 and applied to free blacks only. The adoption of discretionary carry laws are a direct result from fears of the Baltimore Race Riots in 1968, and the rise in crime after the national gun control act of 1968. The similarity of this 1972 law to the 1831 law in response to the slave rebellion is striking and inescapable.

1988
"Saturday Night Special Law" – Creates the Handgun Roster Board to approve of all handguns sold in Maryland. The roster board disapproves of cheap and concealable, easy to carry, handguns. This law is reminiscent of, and harkens back to, other laws directly aimed at keeping guns out of the hands of slaves and recently freed men – the "Georgia Slavery Act of 1765" and the "Army and Navy Law" of Tennessee in 1879:

> Since slaves did not work on Saturday Nights they were prohibited from carrying guns even if they had a license to do so. "PROVIDED ALSO That no Slave shall have Liberty

to carry any Gun, Cutlass, Pistol or other Offensive Weapon abroad at any Time, between Saturday Evening after Sun-set and Monday Morning before Sun rise Notwithstanding a Licence or Tickett for so doing.... " (AN ACT For the better Ordering and Governing Negroes and other Slaves … 25 March 1765, in THE COLONIAL RECORDS OF THE STATE OF GEORGIA, VOLUME XVIII, at 649, as cited by Edwin Vieira, "The Constitutional Militia, Slavery, And Contemporary 'Gun Control'" at http://newswithviews.com/Vieira/edwin15.htm)

"In 1879, the General Assembly of Tennessee banned the sale of any pistols other than 'army or navy' model revolvers. This law effectively limited handgun ownership to whites, many of whom already possessed these Civil War service revolvers, or to those who could afford to purchase these more expensive firearms. These military firearms were among the best made and most expensive on the market, and were beyond the means of most blacks and laboring white people. The Ku Klux Klan was not inconvenienced since its organization in Tennessee had long since aquired its guns many of which were surplus army/navy model revolvers." (Stefan B. Tahmassebi, "GUN CONTROL AND RACISM" *GMU Civil Rights Law Journal* Vol. 2 (1991): 67)

Conclusion

Our Maryland weapons carry laws originated from, and are based on, the attempts to prevent slaves and negro freedmen from carrying weapons. Even the fairly recent laws of 1972 and 1988 were written as a result of racist fears. In a true democracy the people – not just a select group of police and military – have the power to defend themselves. Inalienable rights to life, liberty and happiness mean nothing without the ability to protect them.

"In a democracy, citizens are supposed to act as partners in enforcing laws. Those forced to follow rules without being trusted even for a moment are, in fact, slaves." (Jaron Lanier, 2001)

"That rifle on the wall of the labourer's cottage or working class flat is the symbol of democracy."
(George Orwell)

"Arms are the only true badges of liberty. The possession of arms is the distinction between a freeman and a slave. He who has nothing, and belongs to another, must be defended by him, and needs no arms: but he who thinks he is his own master, and has anything he may call his own, ought to have arms to defend himself and what he possesses, or else he lives precariously and at discretion." (Andrew Fletcher, 1749)

(Thanks to Clayton Cramer, author of *Concealed Weapon Laws of the Early Republic*; *For Defense of Themselves and the State;* and *Armed America*, for the legal research.)