



President
Mark W. Pennak

February 25, 2019

**WRITTEN TESTIMONY OF MARK W. PENNAK, PRESIDENT, MARYLAND SHALL ISSUE,
IN OPPOSITION TO HOUSE BILL 92**

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 and a certified NRA instructor in rifle, pistol and personal protection in the home and personal protection outside the home and a range safety officer. I appear today as President of MSI in opposition to House Bill 92.

House Bill 92 would amend MD Code Public Safety 5-304. That section sets out the requirements for an application for wear and carry permits issued by the Maryland State Police. It establishes fee caps for the applications and provides that the applicant for a carry permit may pay the fees under this section by “a personal check, business check, certified check or money order.” HB 92 would amend this last requirement, providing that the applicant **must** pay via “a method of payment approved by the Secretary.” For the reasons set forth below, this change is misguided and would impose additional barriers on applicants who lack the means to meet the State Police’s new requirements.

Specifically, in January of 2019, the undersigned was privileged to be invited to a demonstration conducted by the State Police of a *beta* version of their new, fully electronic application process for carry permit applications. At the demonstration, the State Police stated that this electronic application will be the exclusive means of making an application and that individuals would be expected to scan and attach all supporting documentation to this electronic application. Because Maryland is a “may issue” state, the State Police require substantial documentation for all carry permits and, as a result, many applications are quite voluminous. In addition, the State Police intend that the payment of fees would be conducted solely by credit card or debit card. Once a credit card vendor is approved, the State Police do not intend to accept checks of any type. The State Police thus need this bill in order to institute this “credit card only” method of payment for electronic applications.

As a general matter, we have no objection to an electronic application process. Many “shall issue” states, such as Utah, have such a process and it works well.

However, those states do not require the heavy documentation required by the State Police here. We thus oppose the efforts of the State Police to make the application process even harder and more burdensome for the applicant than it already is. Specifically, applicants should retain the option of submitting applications in paper form and the State should continue to allow payment of the requisite fees by personal check or certified check, as currently provided in Section 5-304. While many applicants may possess scanners and computers with fast internet connections, not all applicants are so fortunate as to be so well equipped. Not all applicants possess a credit card. The process should not be discriminatory.

Indeed, the State Police will likely face many more applications from such less affluent persons should the Supreme Court resolve the current conflict in the circuits and hold that the Second Amendment applies outside the home. In *Wrenn v. District of Columbia*, 846 F.3d 650 (D.C. Cir. 2017), the D.C. Circuit squarely held that the Second Amendment applied outside the home, holding unconstitutional, under the Second Amendment, D.C.'s requirement that an applicant for a carry permit show "good reason to fear injury." Under *Wrenn*, D.C. is now a "shall issue" jurisdiction. The Fourth Circuit, in contrast, sustained Maryland "good and substantial reason" requirement on a facial attack in *Woollard v. Gallagher*, 712 F.3d 865, 876 (4th Cir.), *cert. denied*, 134 S.Ct. 422 (2013). This circuit conflict is 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.

Lawsuits challenging the "good cause" laws of New York, Massachusetts, California and Maryland will soon make their way to the Supreme Court as well. The conflict between these laws and the D.C. Circuit's decision in *Wrenn* is direct and unavoidable and thus will have to be resolved soon by the Supreme Court. The scope of the Second Amendment outside the home may also be addressed in *NYSRPA v. NYC*, 883 F.3d 45 (2d Cir. 2018), *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 will likely be in late 2019 or 2020, during the Court's next Term. It is well understood that the Court took that case to reverse. The State Police should thus be maximizing the "user friendliness" of the application process, not making it more difficult and expensive. Administrative convenience for the State Police is not a constitutionally valid reason to burden access to the right. We urge that the bill be withdrawn or be given a negative report by this Committee. Alternatively, the bill should be amended to require the State Police to accept paper applications or electronic submissions, at the applicant's option, and payment by check.

Sincerely,



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