



President
Mark W. Pennak

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WRITTEN TESTIMONY OF MARK W. PENNAK, PRESIDENT, MARYLAND SHALL ISSUE, IN SUPPORT OF HB 1189

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 personal protection outside the home and a range safety officer. I appear today as President of MSI in support of HB 1189.

This bill would amend MD Code, Public Safety, § 5-306 to provide that State Police would be required to issue a handgun carry permit to a person who is eligible to receive or has received a civil protective order entered under the Family Law article. It would further provide that the State Police shall issue such a carry permit within 10 days of receipt of the application and that the permit would expire 5 years after issuance. Denials of such a permit would be subject to an expedited appeal process before the Handgun Permit Review Board, which is directed to conduct a hearing within 10 days. The State Police would be accorded 5 days to issue a permit if so directed by the Board. The applicant would remain subject to all qualification standards, background checks and training requirements imposed by existing law.

This bill addresses a pressing need for fast action for the protection of persons who have been forced to obtain, or is eligible to obtain, a civil protective order from the threats posed by an abuser. The hard reality is that such persons are at immediate risk of attack soon after the issuance of such orders. <http://www.politifact.com/ohio/article/2013/may/30/do-protection-orders-really-protect-answer-isnt-cl/> Protective orders are simply not effective in some cases and there may well be an urgent need in some cases to afford the abused person protection that can only be provided by armed self-defense. See <http://www.independent.org/newsroom/article.asp?id=1537>

Such persons cannot rely on the police to protect them. It is well-established that the police have no enforceable duty to provide such protection. The Supreme Court so held in *Town of Castle Rock v. Gonzales*, 545 U.S. 748 (2005). That rule fully

obtains in Maryland, as confirmed by the Maryland Court of Appeals in *Ashburn v. Anne Arundel County*, 306 Md. 617 (1986). In *Castle Rock*, the police simply refused to enforce a domestic abuse restraining order that a wife had obtained against her husband. The husband, after being served with the order, promptly kidnapped and murdered their 3 children and died in shootout with police. The Supreme Court assumed that the restraining order imposed a mandatory duty on the police to enforce the order in the domestic-violence context of the underlying statute. The Court held nonetheless that the wife did not have any legally enforceable entitlement to the performance of that duty. The wife buried her 3 children and was left without any remedy.

The lesson in *Castle Rock* is that a protective order may not be worth the paper on which it is printed. *Castle Rock* also makes clear that the abused person cannot rely on the police because the police are under no obligation to enforce the terms of any order that is entered. In a very real and immediate sense, an abused person may well be on her own. All law-abiding individuals have a fundamental constitutional right to protect themselves. That is the holding of *District of Columbia v. Heller*, 554 U.S. 570 (2008), and *McDonald v. City of Chicago*, 561 U.S. 742, 768 (2010) (“[c]itizens must be permitted to use handguns for the core lawful purpose of self-defense.”). See also *Wrenn v. District of Columbia*, 864 F.3d 650, 661 (D.C. Cir. 2017) (holding 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”).

Yet, that right may be essentially important to an abused spouse or other person who is entitled to a protective order as such individuals may be in special peril. See, e.g., *Caetano v. Massachusetts*, 136 S.Ct. 1027, 1029 (2016) (Alito, J. concurring) (“By arming herself, Caetano was able to protect against a physical threat that restraining orders had proved useless to prevent.”). Such armed self-defense for such persons is undoubtedly effective. Studies have found that “[d]efensive use of guns by crime victims is a common occurrence” and that there is a “consistently lower injury rates among gun-using crime victims compared with victims who used other self-protective strategies.” Institute of Medicine and National Research Council of the National Academies, *Research to Reduce the Threat of Firearm-Related Violence*, at 15-16 (2013) (The National Academies Press) <https://www.nap.edu/catalog/18319/priorities-for-research-to-reduce-the-threat-of-firearm-related-violence>. Maryland should facilitate such self-defense by allowing a trained and vetted abused person to obtain a carry permit without the usual months of delay and denials. We urge a favorable report.

Sincerely,



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