CIVIL RIGHTS DEFENSE FIRM, P.C.

Defending YOUR Inalienable Rights

Joshua Prince
Adam Kraut
Jorge Pereira

Phone: 888-202-9297
Fax: 610-400-8439

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Baltimore City Council
Office of the President
Suite 400
City Hall
100 North Holliday Street
Baltimore, MD 21202

RE: Proposed Ordinance: Weapons - Prohibiting Handguns Near Places of Public Assembly

Dear President Young and Council Members,

I represent numerous individuals and organizations that are concerned for numerous reasons with the recent proposed ordinance: Weapons - Prohibiting Handguns Near Places of Public Assembly. For the reasons set-forth *infra*, my client and I are respectfully requesting that the proposal not be enacted.

The proposed ordinance would criminalize the carry or transport of a handgun, either openly or concealed, within 100 yards of a public building, park, church, school or other place of public assembly, with a mandatory penalty of one-year imprisonment and a $1,000 fine; however, it fails to consider the U.S. Supreme Court's holding in District of Columbia v. Heller, where the Court defined "bear arms" as to "wear, bear, or carry … upon the person *or in the clothing or in a pocket*, for the purpose of . . . being armed and ready for offensive or defensive action in a case of conflict with another person." 554 U.S. 570, 584-585 (2008) *(quoting*, Muscarello v. United States, 524 U.S. 125, 143 (1998)(emphasis added)). More recently, the Court held that the possession of electronic incapacitation devices – commonly referred to as Tasers or stun guns – come under the protection of the Second Amendment, including in public. Caetano v. Massachusetts, 136 S. Ct. 1027 (2016).

The proposal also fails to take into consideration that the enactment of this ordinance would result in a patchwork of laws that serve no purpose but to ensnare those, who have no intention of violating the law but whom unwarily find themselves in a jurisdiction, which imposes restrictions on their rights that state law otherwise allows. By including parks, churches, schools, public buildings and other places of public assembly – for which the proposal provides no definitions – it makes it almost impossible for any individual to know, whether or not, he/she is violating the law. The verbiage is also discriminatory in that only Christian-oriented religious buildings are included to the exclusion of other religious-oriented buildings, which do not constitute a "church."

More disconcerting is that the proposal only requires it to be a "knowing" violation in relation to transporting a handgun, but not in relation to wearing or carrying – neither of which are defined and clearly result in substantial overlap – and then provides for a presumption that the individual is presumed to know that he/she is transporting the handgun; yet, as mentioned previously, fails to define the actual locations that are covered by the proposal.

Of even greater concern is that the proposed ordinance provides for a mandatory minimum sentence of a year; thereby, stripping the judiciary of its ability to determine appropriate penalties based upon the facts and circumstances of individual cases, after both the prosecutor and defendant have opportunity to argue for what they perceive to be an appropriate sentence. These concerns were recently echoed by Baltimore City Public Defender Todd Oppenheim. *See*, http://www.baltimoresun.com/news/opinion/oped/bs-ed-op-0720-mandatory-minimum-guns-20170718-story.html. More concerning is that this ordinance would permit unequal application of the law and sentencing across Maryland; therefore, drawing into question its constitutionality under the United States and Maryland Constitutions. The proposal also seeks to divest prosecutors of prosecutorial discretion, by stripping their ability to offer probation before judgment in cases that warrant such a disposition. While these provisions are offered under the guise that the judiciary is not providing for harsh enough sentences, as evidenced by the recent refusal of a Baltimore City District Court judge to lower bail in a situation involving a young man's unlawful possession of a handgun, this contention is erroneous, at best, if not disingenuous. *See*, http://www.wbaltv.com/article/baltimore-judge-throws-book-at-young-man-in-gun-arrest/10330794. Moreover, as correctly declared by Adam Jackson of the community group Leaders of a Beautiful Struggle in his Statement, "[m]andatory minimums are a vestige of the failed war on drugs and perpetuate failed, feel-good 'law and order' policies instead of focusing political capital on proven crime prevention strategies such as investment in anti-violence programs, drug treatment, reentry and workforce development initiatives." *See*, http://lbsbaltimore.com/op-ed-mandatory-minimums-for-illegal-handguns-will-not-stop-murders-in-baltimore.

In fact, Mr. Jackson's profound Statement goes much further when reviewed through the lens of firearm regulation, which has its roots in slavery in the antebellum South. While racist laws precluding the possession of arms by African Americans predate the establishment of the United States, in 1751, the French Black Code required Louisiana colonists to detain any African Americans, and if necessary, beat "any black carrying any potential weapon, such as a cane." In the event the African American refused to stop on demand while on horseback, the colonist was authorized to "shoot to kill." See, Thomas N. Ingersoll, "Free Blacks in a Slave Society: New Orleans, 1718-1812", *William and Marry Quarterly*, 48:2 [April, 1991], pgs. 178-79. Even after the Founding, while no restrictions existed on the peaceable carrying of arms either openly or concealed for Caucasians (*Heller*, 554 U.S. at 614), the states remained in absolute fear of armed African Americans, resulting in slave states to pass laws designed *only* to disarm all African Americans, both slave and free, while explicitly preserving the right of Caucasians to bear arms. In fact, in Maryland, these prohibitions went so far as to prohibit free African Americans from owning dogs without a license, and authorizing any Caucasian to kill an unlicensed dog owned by a free African American, for fear that African Americans would use dogs as weapons. Theodore Brantner Wilson, The Black Codes of the South (University of Alabama Press: 1965), pgs. 26-30.

In one of the most abhorrent decisions in U.S. Supreme Court history, the Court, in denying the privileges and immunities of citizens to African Americans, declared that if it were to hold otherwise, "[i]t would give to persons of the negro race, who were recognized as citizens in any

one State of the Union, the right … to keep and carry arms wherever they went. And all of this would be done in the face of the subject race of the same color, both free and slaves, and inevitably producing discontent and insubordination among them, and endangering the peace and safety of the State." Scott v. Sandford, 60 U.S. 393, 417 (1857). It is interesting to note that the proposed ordinance is also cloaked in the argument that it is necessary so as to protect the peace or safety of the public.

While the reduction of crime is a laudable goal, it must be recognized that individuals, intent on violating the law, will commit criminal acts. If the felonies and far more egregious misdemeanors (*i.e.* murder, manslaughter, unlawful homicide, assault with a firearm, assault) that are currently provided for in the law are not dissuading criminals from committing these violent acts, how is it possible for the proposed ordinance to dissuade them? Rather, the proposed ordinance will only ensnare those, who have no intention of violating the law but whom unwarily find themselves in a Baltimore City, which, unbeknownst to them, imposes restrictions on their rights that state law otherwise allows.

For these reasons, my clients and I respectfully request that this Honorable Council vote against enactment of this proposed ordinance.

Yours truly,
Civil Rights Defense Firm, P.C.

Joshua Prince
joshua@civilrightsdefensefirm.com

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