



May 4, 2020
via Certified Mail

Hon. Larry Hogan
Governor of Maryland
100 State Circle
Annapolis, Maryland 21401-1925

Re: Request to Reverse Position of Superintendent of Maryland State Police
with Respect to Certain Firearm Shooting Ranges

Dear Governor Hogan:

Gun Owners of America and Gun Owners Foundation (together “GOA”) are nonprofit organizations dedicated to protecting the right of the people to acquire, possess, and use firearms. GOA represents the interests of over 2 million members and supporters, many thousands of whom reside in Maryland.

Our members in Maryland have been extremely concerned about the position taken by Colonel Woodrow W. Jones III, Superintendent of the Maryland State Police, that certain firearms shooting ranges are required to close under your Executive Order #20-03-30-01 statewide shutdown order (“Order”). The purpose of this letter is to ask you to correct the position taken by Superintendent Jones, because it is inconsistent with the plain terms of your Executive Order, and also conflicts with federal guidance and guidance from your office.

Your March 30, 2020 Order requires all persons in Maryland to shelter in their residences, and closes all non-essential businesses in the State of Maryland, subject to certain exceptions. At issue is how your Order should apply to certain firearms shooting ranges within the state, including various “clubs” or “membership” shooting ranges, some of which are organized as Internal Revenue Code Section 501(c)(7) tax exempt “social clubs.”

Pursuant to Section V.f.9 of your Order, businesses are required to close if they are **“subject to the admission and amusement tax** under Title 4 of the Tax-General Article of the Maryland Code.” Emphasis added. As 501(c)(7) “social clubs,” certain gun ranges within the state are required to pay that tax, and ostensibly would be covered by the shutdown order.

However, Section IV of your order expressly exempts from shutdown those businesses that appear on the Department of Homeland Security Critical Infrastructure list, stating explicitly

that “[t]his Order controls the occupancy and use of all businesses ... that are not part of the critical infrastructure sectors identified by the U.S. Department of Homeland Security’s Cybersecurity and Infrastructure Security Agency.”¹ As you are likely aware, the current April 17, 2020 version of the CISA list designates as “Essential Critical Infrastructure” “[w]orkers supporting the operation of firearm, or ammunition product manufacturers, retailers, importers, distributors, **and shooting ranges.**”² Emphasis added.

In other words, due to the unique characteristics of certain shooting ranges within the state of Maryland, the Order **both includes and also expressly excludes** such ranges from the requirement to shut down.

In response, shooting range representatives reached out to State Senator Mary Beth Carozza who, in turn, contacted Colonel Jones for guidance. On April 10, 2020, Colonel Jones responded to Senator Carroza, stating his personal interpretation that shooting ranges which pay the Maryland amusement tax must shut down. Several days later, Colonel Jones was contacted again, in order to bring to his attention that such ranges are included on the DHS CISA list, and thus would be exempt from shutdown.

Colonel Jones, however, has refused to change his interpretation of your Order. Rather, Colonel Jones has taken the strained position that, because shooting ranges appear in the “Law Enforcement, Public Safety, and Other First Responders” category of the CISA list, this would not cover shooting ranges, at least ones that are operated as private clubs.

Governor Hogan, Colonel Jones’ interpretation of your Order is untenable for numerous reasons, and should be overruled.

First, the fact that “shooting ranges” appear under the public safety category on the CISA list does not mean that only companies which do business with law enforcement are covered. Colonel Jones appears to be the only government official in the United States who has taken this curious position. If the Colonel’s position was correct, it would mean that gun stores within Maryland could operate only to serve the needs of law enforcement. Yet current state guidance is that gun stores may remain open (for all purposes) under the Order. To say the very same designation on the CISA list allows gun stores to remain open, but forces shooting ranges to close, would make no sense.

Second, the majority — if not all — of the “club” type shooting ranges Colonel Jones has ordered closed are **outdoor ranges** — where the risk of transmission of any virus is far lower than most (if not all) indoor businesses that remain open within the state — such as grocery

¹ Your order wisely provides a link to the main web page for the CISA list, thus incorporating the current version of the list, as it is updated.

² DHS, *Advisory Memorandum on identification of Essential Critical Infrastructure Workers During COVID-19 Response*, April 17, 2020. See the DHS document at: https://www.cisa.gov/sites/default/files/publications/Version_3.0_CISA_Guidance_on_Essential_Critical_Infrastructure_Workers_4.pdf

stores, drug stores, and home improvement stores. Outdoor shooting ranges typically designate shooters into specific “lanes,” where they must be physically separated — meaning social distancing is an inherent reality for outdoor ranges.

Third, private shooting ranges generally do not engage in retail sales to the public, but instead are freely accessed by existing members, meaning little to no person-to-person interaction is necessary. For Colonel Jones to order that private outdoor shooting ranges must be closed to stop the spread of COVID-19, while countless indoor businesses remain open to the public, is extremely suspect.

Fourth, outdoor shooting ranges permit the necessary exercise of the enumerated constitutional right to keep and bear arms. Protected by the U.S. Constitution, the right to keep and bear arms necessarily implicates the right to practice and maintain proficiency with firearms. Numerous courts have held as much. The Seventh Circuit has explained that “[t]he right to possess firearms for protection implies a corresponding right to acquire and maintain proficiency in their use; the core right wouldn’t mean much without the training and practice that make it effective.” *Ezell v. City of Chicago*, 651 F.3d 684, 704 (7th Cir. 2011). *See also Jackson v. City & County of San Francisco*, 746 F.3d 953, 967 (9th Cir. 2014) (“Thus ‘the right to possess firearms for protection implies a corresponding right’ to obtain the bullets necessary to use them.”). And, as you may know, a Virginia judge recently ruled, in a case brought by Gun Owners of America as a plaintiff, that Governor Northam had no authority to order an indoor shooting range to close its doors.³ Likewise, several members of the Supreme Court recently indicated that shooting ranges are within the scope of the Second Amendment’s protections.⁴ In short, there is simply no need — much less legal justification — for closing an outdoor business that operates with the sole purpose of facilitating the exercise of an enumerated constitutional right.

Fifth, given the unique situation in which some Maryland shooting ranges find themselves — being both included and excluded from your Order — principles of fairness and the rule of lenity would require that the more permissive reading be adopted — that shooting ranges are exempt from the Order because they appear on the CISA list. Indeed, from a legal perspective, that would likely be the result any court would reach.

Finally, Colonel Jones’ decision to order closed various Maryland shooting ranges presents a clear and present threat to Marylanders’ personal and family safety and the protection of others residing in their homes, exposing them to the very real risk of physical harm. Already, countless members of law enforcement nationwide have either been tested positive for the COVID-19 virus or have been put into quarantine. What is more, some police and sheriff departments across the country have been announcing that they will not be making arrests for

³ Veronica Stracqualursi, CNN, "Judge rules Virginia indoor gun range can reopen amid coronavirus pandemic," April 28, 2020. See: <https://www.cnn.com/2020/04/28/politics/virginia-gun-range-coronavirus/index.html>

⁴ *NYSRPA v. New York* (2020) See: https://www.supremecourt.gov/opinions/19pdf/18-280_ba7d.pdf

minor crimes in many locations. Under such circumstances, the right — and need — of each individual to protect himself and his family becomes clearly apparent. Many states and cities reportedly have been releasing low level inmates from various jails, in an effort to stem the tide of the virus. Finally, news stories have reported increasing worries of civil unrest. For all of these reasons, law abiding Maryland gun owners must be permitted to continue to train and practice with their firearms, in order to maintain proficiency. Indeed, responsible and well trained gun owners increases public safety.

It is one thing for a state to order closed a tanning salon or pet grooming service for public health reasons. It is quite another for a state police superintendent to order closed businesses which permit Marylanders to exercise constitutional rights that are expressly and unequivocally protected by the federal constitution. The Second Amendment's protections do not stop, nor does the need for self-defense abate, during a pandemic. Indeed, the exact opposite is true. The protection of constitutional rights is most important during times of emergency and unrest, because that is precisely when those rights are needed the most, and is often when the agents of government are most interested in curtailing them.

Governor Hogan, Gun Owners of America appreciates that **your current shutdown Order has recognized the importance of Second Amendment related businesses**, and has allowed them to remain open, consistent with federal guidance. **Colonel Jones' decision, however, undermines both the Second Amendment and your Order.**

Thus, we respectfully request that you reverse Colonel Jones' interpretation of your Order as it has been applied to close various firearm shooting ranges within the state. We urge you to bring Maryland into line with the vast majority of other states that have allowed shooting ranges to continue operation, and into line with the DHS CISA Memorandum, and federal and state constitutional requirements. With best regards.

Sincerely,



Erich Pratt
Senior Vice President

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