

**TESTIMONY OF
JOSHUA PRINCE, ESQ.**

On behalf of

**Firearms Industry Consulting Group
a division of Civil Rights Defense Firm, P.C.**

&

Firearm Owners Against Crime



**JOINT PUBLIC HEARING BEFORE THE PENNSYLVANIA HOUSE
JUDICIARY AND HEALTH COMMITTEES ON
MARIJUANA USE AND SECOND AMENDMENT RIGHTS**

JUNE 3, 2019

Chairmen and Honorable Members of the Health and Judiciary Committees, I appreciate the opportunity to be here today and discuss the impact of marijuana use on an individual's Second Amendment rights.

I am a licensed member, in good standing, of the Pennsylvania and Maryland Bars and am admitted to numerous courts, including: Pennsylvania Supreme Court, U.S. Supreme Court, U.S. Court of Appeals for the Third, Sixth, and D.C. Circuits, and District Courts for the Eastern, Middle, and Western Districts of Pennsylvania, as well as, the District of Columbia. As my curriculum vitae is beyond the scope of my testimony today, I am attaching it as Exhibit A.¹

Summary of Testimony

While many in the public are misled by social media postings and statements even by Pennsylvania Governor Tom Wolf suggesting that marijuana use does not result in the

¹ Joshua Prince, Esq. is Chief Counsel of the Firearms Industry Consulting Group[®] ("FICG[®]"), a division of Civil Rights Defense Firm, P.C. and actively litigates all forms of firearms-related issues, at the state and federal level.

FICG[®] represents numerous individuals, gun clubs and Federal Firearms Licensees in Pennsylvania and Maryland with regards to state law issues. Furthermore, in relation to federal issues, FICG represents numerous Federal Firearms Licensees across the United States in all matters relating to firearms. FICG[®] actively works to defend, preserve, and protect constitutional and statutory rights of firearm owners, including through Article 1, Section 21 of the Pennsylvania Constitution and the 2nd Amendment of the United States Constitution.

FICG's purpose is to provide zealous legal representation in the protection and defense of the Constitutions of Pennsylvania and the United States, especially with reference to the inalienable right of the individual citizen guaranteed by such Constitutions to acquire, possess, transport, carry, transfer ownership of, and enjoy the right to use arms, in order that the people may always be in a position to exercise their legitimate individual rights of self-preservation and defense of family, person, and property, as well as to serve effectively in the appropriate militia for the common defense of the Republic and the individual liberty of its citizens.

individual losing his/her Second Amendment rights ², *it remains unlawful, pursuant to federal law, for an individual to utilize marijuana* ³ and purchase, possess ⁴, or otherwise utilize firearms and ammunition for a one year period after utilizing marijuana or being convicted of possessing or utilizing marijuana. If a user of marijuana is found in actual or constructive possession of a firearm or a single round of ammunition, the individual could be subjected to 10 years in jail and \$250,000 in fines, per firearm or round of ammunition.⁵

Whether such prohibition is unconstitutional under the U.S. Constitution is an issue that is playing out in the federal courts ⁶ with no court yet holding that the prohibition is unconstitutional; however, there do not appear to be any cases that have challenged the prohibition under Pennsylvania's Constitution. Unlike the U.S.

Constitution, Pennsylvania's Constitution – when Article 1, Sections 21 and 25 are read

² See, https://www.cnhinews.com/pennsylvania/article_4a081c2e-f197-11e7-b1d0-2bd5bcd7e5c0.html, <https://www.wesa.fm/post/wolf-we-wont-take-guns-away-medical-marijuana-users> and <https://www.philly.com/philly/business/cannabis/pa-medical-marijuana-law-enforcement-stop-patient-gun-purchases-feds-legalize-20180112.html>

³ It must be noted, as few individuals are aware, that an individual, who utilizes a medication that requires a prescription, would likewise be prohibited, if that medication is not prescribed to that individual. For example, if a doctor prescribed Percocet – or even an antibiotic – to Person A, and Person A's spouse (Person B) was to later have the same condition that warranted the prescription, but does not obtain his/her own prescription and instead utilizes the medication prescribed for his/her spouse, Person B would be prohibited from purchasing, possessing, and utilizing firearms and ammunition for a one year period.

⁴ This includes both actual and constructive possession. For example, constructive possession would occur where, although the person does not have actual physical possession of the firearm, the individual knows the combination to the safe, where the firearms and ammunition are stored. In such a situation, the individual having that knowledge – and therefore ability to take actual physical possession – would likely be deemed to be in constructive possession of the firearm and each round of ammunition.

⁵ See, 18 U.S.C. §§ 924, 3571.

⁶ See, <https://www.apnews.com/bbb3ef37357d4799bec33cb2d36a7bae> and <https://fee.org/articles/pennsylvania-doctor-denied-handgun-over-legal-medical-marijuana-use-sues-fbi-atf>

together – explicitly provides that “[t]he right of the citizens to bear arms in defense of themselves and the State shall not be questioned” and that right is “excepted out of the general powers of government and shall forever remain inviolate.”

Nevertheless, given Article VI, Clause 2 of the U.S. Constitution – otherwise known as the Supremacy Clause – unless the prohibition is found unconstitutional pursuant to the U.S. Constitution or a court finds that the U.S. Congress has overstepped its powers pursuant to the 10th Amendment, a finding under the Pennsylvania Constitution will be of no avail to those desiring to purchase or possess firearms and ammunition while utilizing marijuana.

Federal Law

18 U.S.C. § 922(d)(3) provides

It shall be unlawful for any person to sell or otherwise dispose of any firearm or ammunition to *any person knowing or having reasonable cause to believe* that such person . . . is an unlawful user of or addicted to any controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802). (emphasis added).⁷

⁷ The emphasized language is important in relation to several challenges that have been brought in federal court, where the individual, for example, utilized his/her medical marijuana card for purposes of purchasing a firearm or where the individual was known to the Federal Firearms Licensee as being a user of marijuana. Although the mere possession of a medical marijuana card would not, in and of itself, prove that the individual is prohibited under 18 U.S.C. § 922(g)(3), it would, as the Ninth Circuit Court of Appeals held, be sufficient to cause the Federal Firearms Licensee to have “reasonable cause to believe” that the individual is an unlawful user of marijuana. *See*, <https://www.apnews.com/bbb3ef37357d4799bec33cb2d36a7bae>. This holding is consistent with ATF’s September 21, 2011 Open Letter to All Federal Firearm Licensees, available at <https://www.atf.gov/file/60211/download> and the Pennsylvania State Police’s guidance that “the mere possession of a Medical Marijuana Card will give rise to an inference that you are an ‘unlawful user of or addicted to’ a controlled substance, pursuant to 27 C.F.R. § 478.11” available at <https://www.psp.pa.gov/firearms-information/Pages/Firearms-Information.aspx>.

18 U.S.C. § 922(g)(3) provides

It shall be unlawful for any person ... who is an unlawful user of or addicted to any controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)) ... to ship or transport in interstate or foreign commerce, or possess in or affecting commerce, any firearm or ammunition; or to receive any firearm or ammunition which has been shipped or transported in interstate or foreign commerce.

The regulatory definition in 27 C.F.R. § 478.11 of an “unlawful user of or addicted to any controlled substance” as enacted by the Bureau of Alcohol, Tobacco, Firearms and Explosives provides

A person who uses a controlled substance and has lost the power of self-control with reference to the use of controlled substance; and any person who is a current user of a controlled substance in a manner other than as prescribed by a licensed physician. Such use is not limited to the use of drugs on a particular day, or within a matter of days or weeks before, but rather that the unlawful use has occurred recently enough to indicate that the individual is actively engaged in such conduct. A person may be an unlawful current user of a controlled substance even though the substance is not being used at the precise time the person seeks to acquire a firearm or receives or possesses a firearm. An inference of current use may be drawn from evidence of a recent use or possession of a controlled substance or a pattern of use or possession that reasonably covers the present time, e.g., a conviction for use or possession of a controlled substance within the past year; multiple arrests for such offenses within the past 5 years if the most recent arrest occurred within the past year; or persons found through a drug test to use a controlled substance unlawfully, provided that the test was administered within the past year. For a current or former member of the Armed Forces, an inference of current use may be drawn from recent disciplinary or other administrative action based on confirmed drug use, e.g., court-martial conviction, nonjudicial punishment, or an administrative discharge based on drug use or drug rehabilitation failure.

As a result of many states passing medical marijuana statutes, while marijuana remained federally prohibited, the Bureau of Alcohol, Tobacco, Firearms and Explosives entered into rulemaking⁸ and modified the ATF 4473 Form on November 14, 2016,

⁸ See, <https://blog.princelaw.com/2016/04/12/atf-soliciting-comments-on-proposed-revisions-to-the-firearms-transaction-record-4473>

effective January 16, 2017,⁹ to make explicitly clear that marijuana remains a federally prohibited drug and that an individual that utilizes marijuana is prohibited from purchasing, possessing, and utilizing firearms and ammunition. Specifically, Question 11, e., was amended to include “**Warning: The use or possession of marijuana remains unlawful under Federal law regardless of whether it has been legalized or decriminalized for medicinal or recreational purposes in the state where you reside.**”

Nevertheless, Governor Tom Wolf, as well as those who support the legalization of marijuana for medicinal and recreational purposes, have frequently and erroneously told the public that the use of medical marijuana will not jeopardize their right to purchase, possess, and utilize firearms and ammunition.¹⁰ Relying on this disinformation campaign, many individuals, including doctors¹¹, have found themselves being denied when attempting to purchase a firearm. In fact, *prior to medical marijuana even being available in the Commonwealth*, I represented an individual, who the Pennsylvania State Police denied solely on the basis of his approved medical marijuana card when he attempted to purchase a firearm. My client had, unfortunately, relied upon his doctor’s statement that he would not lose his Second Amendment rights as a result of obtaining a medical marijuana card in advance of medical marijuana becoming available in the Commonwealth and that he also would not lose his Second Amendment rights when

⁹ See, <https://blog.princelaw.com/2016/11/16/atf-announces-new-form-4473-firearms-transaction-record>

¹⁰ See e.g., https://www.cnhinews.com/pennsylvania/article_4a081c2e-f197-11e7-b1d0-2bd5bcd7e5c0.html, <https://www.wesa.fm/post/wolf-we-wont-take-guns-away-medical-marijuana-users> and <https://www.philly.com/philly/business/cannabis/pa-medical-marijuana-law-enforcement-stop-patient-gun-purchases-feds-legalize-20180112.html>

¹¹ See, <https://fee.org/articles/pennsylvania-doctor-denied-handgun-over-legal-medical-marijuana-use-sues-fbi-atf>

medical marijuana became available and he used it consistent with Pennsylvania's medical marijuana laws. The Pennsylvania State Police disagreed and denied my client's purchase of a firearm in December of 2017 on the basis of my client merely being a "medical marijuana card holder."¹²

December , 2017

File Number:

Possible Reasons for Denial/Undetermined

Name:

CURRENT MEDICAL MARIJUANA CARD HOLDER

Location: PENNSYLVANIA

The public confusion over the lawfulness of an individual to purchase, possess, and utilize firearms and ammunition as a result of comments by Governor Wolf and those supporting the legalization of marijuana for medicinal and recreational purposes, caused the Pennsylvania State Police to publish information on its website explicitly advising individuals that "the possession of medical marijuana remains a violation of federal law, and possession of a valid Medical Marijuana Card and/or the use of medical marijuana makes you an 'unlawful user of or addicted to any controlled substance' who is prohibited by federal law from the purchase or acquisition, possession, or control of a firearm pursuant to 18 U.S.C. § 922(g)(3), and 27 C.F.R. § 478.32(a)(3)."¹³

¹² See, <https://blog.princelaw.com/2018/01/04/psp-is-denying-firearm-purchases-for-medical-marijuana-card-holders-even-after-governor-wolf-stated-that-we-wont-take-guns-away>. The denial has been redacted to remove identifying information (e.g. name, PSP file number, and exact date).

¹³ See, <https://www.psp.pa.gov/firearms-information/Pages/Firearms-Information.aspx>

Solutions

Other than a court finding that the prohibitions of 18 U.S.C. §§ 922(d)(3), (g)(3) are unconstitutional or violative of the 10th Amendment, the only ways to resolve the issue is either for the U.S. Congress to legalize marijuana¹⁴ or for the DEA to de-schedule marijuana (*i.e.* de-schedule it to a Schedule 2 or lesser schedule); whereby, it could be prescribed by a doctor. Pursuant to 27 C.F.R. § 478.11, if an individual has a lawful prescription for a controlled substance, the individual would not lose his/her right to purchase, possess, or utilize firearms and ammunition, unless the person becomes addicted to the controlled substance.

Need to Inform the Public

As there is no immediate solution and a disinformation campaign has been waged deceiving the public into believing that they may lawfully use medical marijuana while purchasing, possessing, and utilizing firearms and ammunition, it is imperative that our elected officials notify the public that the use of medical marijuana will result in the individual losing his/her right to purchase, possess, and utilize firearms and ammunition. Furthermore, the Pennsylvania General Assembly should mandate that anyone authorized to provide or otherwise make available medical marijuana under the Medical Marijuana Act to an individual in Pennsylvania inform their patient/customer that the use of marijuana is federally prohibited and that the use of marijuana will result in that patient/customer losing his/her right to purchase, possess, and utilize firearms and

¹⁴ In this context, legalize means either permit it to be prescribed for medicinal purposes or to completely legalize it; whereby, an individual could utilize it recreationally without any criminal or civil penalties attaching to the mere use. Of course, in both contexts, an individual could still be held criminally liable for DUI resultant from driving under the influence of marijuana, as an example.

ammunition. This same warning should be required on any application(s) that an individual must complete to become a medical marijuana cardholder.

Conclusion

Regardless of whether one supports the legalization of marijuana for medicinal and recreational purposes, marijuana remains a Schedule 1 drug under the Controlled Substances Act and pursuant to 18 U.S.C. § 922(g)(4) and 27 C.F.R. § 478.11, an individual is prohibited from purchasing, possessing, or utilizing firearms and ammunition for a one year period from the use of marijuana. More importantly, an individual found in possession of a firearm or ammunition, while being a user of marijuana, could be subjected to 10 years in jail and \$250,000 in fines, per firearm or round of ammunition.

Thank you Charimen and Members of the Committees for the opportunity to testify before you today.


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Exhibit A

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BAR ADMISSIONS

State Admissions

Pennsylvania Supreme Court – October 13, 2009
Maryland Court of Appeals – June 12, 2017

Federal Admissions

U.S. Supreme Court – January 22, 2013
U.S. Court of Appeals for the D.C. Circuit – February 15, 2019
U.S. Court of Appeals for the 3rd Circuit – April 11, 2012
U.S. Court of Appeals for the 6th Circuit – July 17, 2017
U.S. District Court, Eastern District of Pennsylvania – March 19, 2010
U.S. District Court, Middle District of Pennsylvania – February 10, 2012
U.S. District Court, Western District of Pennsylvania – December 20, 2012
U.S. District Court, District of Columbia – August 6, 2018 (Bar No. PA0081)
U.S. District Court, District of Colorado – June 16, 2011

EDUCATION

McGill University, Montreal, Canada

- **Double Major in Political Science and World Religions**
- **Graduated Cum Laude**

Widener University of Law, Harrisburg, PA

2006 - 2009

- **Top 10% of class**
- **Member of the Widener Law Journal**
- **Graduated Cum Laude**

EMPLOYMENT

Prince Law Offices, P.C., Bechtelsville, PA

2009 - present

- Handling legal matters, including, but not limited to:
 - Civil Rights deprivations at the state and federal level, including unlawful seizure, failure to provide procedural and substantive due process, and violations of equal rights;

- Class Actions;
- Mental Health Commitments under Pennsylvania’s Mental Health and Procedures Act;
- Criminal Law;
- School Law, including requirements to provide students with due process and the appointment of school law enforcement officers; and,
- Estate Planning and Administration.

Civil Rights Defense Firm, P.C., Bechtelsville, PA 2016 - present

- Handling legal matters, including, but not limited to:
 - All firearms law and Second Amendment issues at the state and federal level;
 - Civil Rights deprivations at the state and federal level, including unlawful seizure, failure to provide procedural and substantive due process, and violations of equal rights; and,
 - Class Actions.

MAJOR CASES

- *Alton Franklin v. Sessions, et al.*, 291 F.Supp.3d 705 (W.D. Pa. 2017) – Establishing that a 302 evaluation under Pennsylvania’s Mental Health and Procedures Act does not trigger a federal prohibition under 18 U.S.C. § 922(g)(4), due to the lack of due process provided.
- *Commonwealth v. Goslin*, 2017 PA Super 38 (*en banc*) – Establishing that an individual is entitled to the defense found within 18 Pa.C.S. § 912(c), if he/she is in lawful possession of a weapon on school grounds, provided that it is possessed for a lawful purpose.
- *Michael Keyes, et al., v. Lynch, et al.*, 195 F.Supp.3d 702 (M.D. Pa. 2016) and 282 F.Supp.3d 858 (M.D. Pa. 2017) – Establishing a right to relief under a Second Amendment *as-applied* challenge to a single-isolated involuntary mental health commitment. The court held that 18 U.S.C. § 922(g)(4)’s prohibition, in perpetuity, was unconstitutional as applied.
- *John Doe, et al. v. Franklin County, et al.*, 139 A.3d 296 (Cmwlth. Ct. 2016) – Establishing that pursuant to 18 Pa.C.S. § 6111(i) that all license to carry firearms applicant information is confidential and not subject to disclosure, including through the use of un-enveloped postcards.
- *Andrew Dissinger v. Manheim Township School District*, 72 A.3d 723 (Pa. Cmwlth. 2013) – Represented Mr. Dissinger in an action regarding violations of his due process rights, which the Commonwealth Court confirmed. Thereafter, represented Mr. Dissinger in a federal civil rights deprivation action, 5:14-cv-2741 in the Eastern District of Pennsylvania, which resulted in a settlement.

- *Justin Dillon v. City of Erie*, 1038 C.D. 2013 (Pa. Cmwlth. 2013) – Establishing that state preemption precludes the City of Erie’s ordinance criminalizing the possession of firearms in city parks.
- *John Doe, et al. v. City of Philadelphia, et al.*, Docket No. 121203785, (Philadelphia County Court of Common Pleas, 2012)– Class action lawsuit against the City of Philadelphia and several other defendants relating to their publication of statutorily confidential information, which resulted in a \$1.425 million dollar settlement.
- *Barbara Hensch, et al., v. Perry County Sheriff Carl Nace*, Docket No. 2014-454 (Perry County Court of Common Pleas, 2014) – Successfully represented Sheriff Nace, *pro-bono*, in an action by the Perry County Auditors to force him to disclose statutorily confidential information.
- *Caba v. Weaknecht*, 64 A.3d 39 (Pa. Cmwlth. 2012) – Before the Commonwealth Court, successfully established both a liberty and property interest, for procedural due process purposes, in an issued license.

PUBLICATIONS

Law Journal Publications

- Joshua G. Prince and Allen Thompson, *The Inalienable Right to Stand Your Ground*, St. Thomas Law Journal, 27 St. Thomas. L. Rev. 32 (2015)
- Joshua G. Prince, *Fee Disputes in Workers' Compensation Cases: The Hendricks/Weidner Headache*, Widener Law Journal, Vol. 18, No. 2 (2009)
- Joshua G. Prince, *Violating Due Process: Convictions Based on the National Firearms Registration and Transfer Record when its "Files are Missing"*, Article awaiting publication in a Law Journal, available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2752028

Legal Publications

- Joshua G. Prince, *Weapons on School Grounds: The En Banc Goslin Decision* (PA BAR ASSOC. AT ISSUE, Spring 2017) available at <http://www.pabar.org/public/yld/pubs/atissue/At%20Issue%20Spring2017.pdf>.

- Joshua G. Prince, *Grandpop's Machine Gun in the Chest: Part II of II* (PA BAR ASSOC. AT ISSUE, Spring 2013) available at <http://www.pabar.org/public/yld/pubs/atissue/AtIssueSpring13.pdf>.
- Joshua G. Prince, *Grandpop's Machine Gun in the Chest: Part I of II* (PA BAR ASSOC. AT ISSUE, Fall 2012) available at <http://www.pabar.org/public/yld/pubs/atissue/AtIssue%20Fall%202012.pdf>.
- Joshua G. Prince, *Firearms Law 101: Knowing When Your Client Loses His/Her Second Amendment Rights*, (PA BAR ASSOC. AT ISSUE, Spring 2012) available at <http://www.pabar.org/public/yld/pubs/atissue/AISpring2012.pdf>.
- Joshua G. Prince, *I Bequeath My Machine Gun to...* (PA BAR ASSOC. NEWSLETTER, REAL PROPERTY, PROBATE AND TRUST LAW, Issue No. 64), Fall 2007 at 18-19.

LEGAL SEMINARS TAUGHT

- **Pennsylvania License to Carry Firearms Overview** – 96th Annual Pennsylvania Sheriffs' Association Conference – July 11, 2018
- **The 4473 and You** – Penn State Law School – April 5, 2018
- **Understanding the Second Amendment, Mental Health Prohibitors and Federal Firearms Right Restoration** – USCCA Expo – April 8, 2017.
- **Gun Law: Advanced Issues** – National Business Institute (NBI) – January 31, 2017
- **My Estate Has Firearms, Now What?** – 15th Annual Estate & Elder Law Symposium, PBI – Feb 12, 2014 and Feb. 20, 2014 and 20th Annual Estate Law Conference, PBI – November 14, 2013
- **Firearms and Real Estate in Estates** – Estate Planning Council of Lehigh Valley – February 13, 2013
- **2012 Firearms Law & The Second Amendment Symposium** – View from the Street: Firearms Law in Pennsylvania and New Jersey – NRA – October 13, 2012
- **Firearms Law for Every Practitioner** – Berks Bar Assc. – July 11, 2012
- **When the Primer Ignites No More** – 18th Annual Estate Law Conference, PBI – November 18, 2011

- **Pennsylvania Gun Crimes and Sentencing** – Montgomery Bar Assc. – Sept. 9, 2011
- **Firearms & Estates** – PBI – Apr. 7, 2011
- **Firearms Law 101 – What Every Practitioner Need to Know about Firearms Law** – Berks Bar Assc. – Aug. 18, 2011
- **Firearms in Estates and Trusts** – Berks, Cumberland, and Dauphin Bar Assc. 2008-2009.