

**Testimony of Timothy Carey – Law & Policy Advisor  
Johns Hopkins Center for Gun Violence Solutions  
In Support – Prohibiting Firearms at Polling Places during Elections  
House Ways and Means Committee  
Tuesday, February 21, 2023**

Dear Chair Atterbeary, Vice Chair Wilkins, and Committee members,

I am writing to you in my individual capacity as an attorney and lifelong Marylander in support of House Bill 580. The views expressed here are my own and do not necessarily reflect the policies or positions of Johns Hopkins University. By prohibiting the presence of firearms within 100 ft of a polling place, Maryland would be joining a growing number of states taking steps to protect the sanctity of their elections and the security of their electorate.

**Prohibiting Firearms at Polling Places Protects Democracy**

The right to vote is a fundamental right that all eligible American citizens ought to exercise freely and safely. All fifty states provide their citizens with a substantive right to vote, forty-nine with an explicit state constitutional right and one with an implicit right.<sup>1</sup> Laws have validity in a democracy, in large part, because the people can choose their representation in government. The Supreme Court of the United States said it best when they reasoned that “[n]o right is more precious in a free country than that of having a voice in the election of those who make the laws under which, as good citizens, we must live. Other rights, even the most basic, are illusory if the right to vote is undermined.”<sup>2</sup> The presence of firearms at the polls places our most sacred right in peril.

Leading up to the 2022 elections, 9 out of 10 Americans were concerned that political divisions have inflamed to create an increased risk of politically motivated violence in this country.<sup>3</sup> These concerns were substantiated by the growing prevalence of armed political demonstrations,<sup>4</sup> threats against elected officials and government workers,<sup>5</sup> and survey data revealing a broader willingness of Americans to engage in political violence.<sup>6</sup> Inaction in light of these trends would be an endorsement for the erosion of peace in our politics.

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<sup>1</sup> Joshua A. Douglas, *The Right to Vote Under State Constitutions*, 67 *Vanderbilt Law Review* 89 (2019); ARIZ. Const. art VII, § 2 is the lone outlier, stating that “No person shall be entitled to vote...unless such person be a citizen of the United States of the age of eighteen years or over, and shall have resided in the state for a period of time preceding such election as prescribed by law...”

<sup>2</sup> *Wesberry v. Sanders*, 376 U.S. 1, 17 (1964).

<sup>3</sup> Gary Langer, *Americans express broad concerns about the risk of political violence: POLL*, ABC News (Nov. 2022), <https://abcnews.go.com/US/americans-express-broad-concerns-risk-political-violence-poll/story?id=92621243> (last visited Feb. 16, 2023).

<sup>4</sup> The Armed Conflict Locations and Event Data, *Fact Sheet: Updated Armed Demonstration Data Released A Year After the 6 January Insurrection Show New Trends*, ACLED (Jan. 5, 2022) [bit.ly/35rsVc0](https://bit.ly/35rsVc0).

<sup>5</sup> See Cat Zakrzewski, *Election workers brace for a torrent of threats: 'I know where you sleep,'* The Washington Post (Nov. 8, 2022), <https://www.washingtonpost.com/technology/2022/11/08/election-workers-online-threats/> (last visited Feb. 16, 2023) and Vera Bergengruen, *How the threat of Political Violence Is Transforming America*, Time (Nov. 4, 2022), <https://time.com/6227754/political-violence-us-states-midterms-2022/> (last visited Feb 16, 2023).

<sup>6</sup> Nathan P. Kalmoe & Lilliana Mason, *Radical American Partisanship: Mapping Violent Hostility, Its Causes, and the Consequences for Democracy* (2022).

## **Prohibiting Firearms at Polling Places is Constitutional Under the First and Second Amendments**

The Second Amendment does not permit the carrying of firearms in all places at all times. In the landmark decision of *District of Columbia v. Heller*, the Supreme Court of the United States observed that “[l]ike most rights, the right secured by the Second Amendment is not unlimited” and it is “not a right to keep and carry any weapon whatsoever in any manner whatsoever and for whatever purpose.”<sup>7</sup> The Supreme Court emphasized that “nothing in our opinion should be taken to cast doubt on longstanding prohibitions on... laws forbidding the carrying of firearms in sensitive places such as schools and government buildings.”<sup>8</sup> The Supreme Court later in *NYSRPA v. Bruen* listed “legislative assemblies, polling places, and courthouses” as examples of “sensitive places” where firearm possession can be constitutionally limited.<sup>9</sup>

Courts have also not found that carrying firearms in public qualifies as “speech” protected under the First Amendment. In contrast, courts have found it to be extremely difficult for the carrying of a firearm to convey any particularized message beyond the lethality of the gun itself. For example:

- Michigan courts have held that attempts to communicate messages by openly carrying firearms did not qualify as protected speech because worried members of the public did not perceive the firearm owners “as open carry activists demonstrating their First... Amendment rights,” but rather “were simply alarmed and concerned for their safety and that of their community.”<sup>10</sup>
- A Connecticut court evaluating a case in which an individual was openly carrying a firearm, while wearing a right to bear arms t-shirt, wrote that reasonable officers could disagree whether carrying the gun conveyed a message in support of the Second Amendment or was simply carrying for other purposes.<sup>11</sup> In doing so, the court found that the gun carrier’s conduct was not protected by the First Amendment.<sup>12</sup>
- A court in Ohio also rejected that the open carry of firearms amounted to protected symbolic speech, observing that the defendant “[having] to explain the message he intended to convey undermines the argument that observers would likely understand the message.”<sup>13</sup>

These court findings emphasize that the right to free speech cannot be confused with a right to terrorize others and threaten public safety.

## **Prohibiting Firearms at Polling Places is Congruent with Current Maryland Law**

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<sup>7</sup> *District of Columbia v. Heller*, 554 U.S. 570, 626 (2008).

<sup>8</sup> *Id.*

<sup>9</sup> *New York State Rifle & Pistol Association, Inc. v. Bruen*, 213 L. Ed. 2d 387, 142 S. Ct. 2111, 2133 (2022).

<sup>10</sup> *Baker v. Schwarb*, 40 F. Supp. 3d 881, 894-95 (E.D. Mich. 2014); *see also Chesney v. City of Jackson*, 171 F. Supp. 3d 605, 616-19 (E.D. Mich. 2016) and *Deffert v. Moe*, 111 F. Supp. 3d 797 (W.D. Mich. 2015).

<sup>11</sup> *Burgess v. Wallingford*, 2013 WL 4494481, at \*9 (D.Conn. May 15, 2013).

<sup>12</sup> *Id.*

<sup>13</sup> *Northrup v. City of Toledo Police Div.*, 58 F. Supp. 3d 842, 848 (N.D. Ohio 2014), affirmed in part, reversed in part and remanded sub nom. *Northrup v. City of Toledo Police Dep't*, 785 F.3d 1128 (6th Cir. 2015).

Maryland already has several laws on the books that may indirectly impact the presence of some firearms at some polling places, but codifying an explicit regulation is both the natural and needed next step for the legislature to take. Maryland has made it a crime to carry or possess a firearm on public school property, which many districts utilize as polling places during elections, but not all Maryland polling locations are in schools.<sup>14</sup> Polling locations in Maryland may be established in any public building “that creates an environment suitable to the proper conduct of an election,” which can extend to currently unprotected places.<sup>15</sup> Maryland law also criminalizes attempts to “willfully and knowingly...influence or attempt to influence a voter’s voting decision...[or] decision whether to go to the polls to cast a vote through the use of force, fraud, threat, menace, [or] intimidation...” and automatically elevates assault with a firearm to a first degree offense.<sup>16</sup> However, it is notoriously difficult to prove the intent to intimidate when someone is holding a firearm.<sup>17</sup> No measure would communicate as clear and reassuring a message to the public and election officials as a prohibition of firearms at the polls.

Maryland has recognized the need for laws that prevent firearms from disrupting the public’s civil rights and duties before. Maryland prohibits the possession of a firearm, both loaded and unloaded, at a demonstration in a public place or in a vehicle within 1,000 feet of such demonstration after law enforcement has both (1) notified the person about the public demonstration and (2) ordered the person to leave the demonstration until their firearm is stored elsewhere.<sup>18</sup> The Secretary of State Police also possesses the power to further limit the geographic area, circumstances, and times in which state handgun permits are effective, which could be applied to polling places and other political events.<sup>19</sup> Adding a prohibition of firearms at polling places would be consistent with other actions of the Maryland legislature to limit the role of guns in politics.

## **Conclusion**

Passing HB 580 would protect the integrity of Maryland’s elections and the wellbeing of their electorate. The presence of firearms at polling places risks both the chilling of participation in elections and the safety of prospective voters. Courts have not recognized a First or Second Amendment right to possess firearms in locations like polling sites, instead holding that the display of firearms in such places can be presumptively outside the scope of the right to bear arms. A prohibition of firearms at the polls is also consistent with past steps the Maryland legislature has taken to preserve public safety and the core functions of our democracy. I am in full support of HB 580 and the protections it affords to Maryland voters.

Sincere regards,

Timothy Carey, JD

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<sup>14</sup> Md. Code Ann., Crim. Law § 4-102(b).

<sup>15</sup> Md. Code Ann., Elec. Law § LAW § 10-101.

<sup>16</sup> Md. Elec Law § 16-201(a)(5)-(6); Md. Code Ann., Crim. Law § 3-202.

<sup>17</sup> See Joseph Blocher, Samuel W. Buell, Jacob D. Charles, Darrell A.H. Miller, *Pointing Guns*, 99 Tex. L. Rev. 1173, 1175 (2021).

<sup>18</sup> Md. Code Ann., Crim. Law § 4-208.

<sup>19</sup> Md. Code Ann., Pub. Safety § 5-307(b).