

SB0010-FAV-DTMG-2-4-21.pdf

Uploaded by: Bartlett, Olivia

Position: FAV



Committee: Education, Health, and Environmental Affairs

Testimony on: SB0010 - Election Law – Polling Sites – Firearms Prohibitions

Position: Favorable

Hearing Date: February 4, 2021

Bill Contact: Senators Waldstreicher and Ferguson

DoTheMostGood (DTMG) is a progressive grass-roots organization with more than 2500 members who live in a wide range of communities in Montgomery and Frederick Counties, from Bethesda near the DC line north to Frederick and from Poolesville east to Silver Spring and Olney. DTMG supports legislation and activities that keep all the members of our communities healthy and safe in a clean environment, uplift all members of our communities, and promote equity across all of our communities. DTMG strongly supports SB0010 because everyone must be able to feel safe in all of our polling places.

In the United States, the right to vote is fundamental to our democracy, and our elected officials must ensure that all eligible citizens have access to vote. In every election, our polling places are also staffed with hundreds of volunteers. It is imperative that all voters and polling place volunteers feel safe in and around polling places. However, recent events raise concerns about armed intimidators acting to prevent citizens from casting their ballot.

SB0010 will directly address this concern by prohibiting carrying or displaying any type of firearm at and within 100 feet of a polling site, including in a parking lot, during an election. This is a commonsense provision for the safety of voters and poll workers and to reduce voter intimidation.

There is a long history of using weapons to intimidate voters, particularly voters of color. During and after Reconstruction, guns were often used to scare Black voters away from the polls. Under a 1982 consent decree, the Republican National Committee agreed to refrain from sending squads of armed people to patrol polling places in Black and Latino neighborhoods. The patrols were ostensibly to prevent voter fraud but had the effect of intimidating and deterring would-be voters. That decree is no longer in effect, but conspiracy theories, false stories about ballot security and voter fraud, and recent armed political protests raise a similar set of risks today.

Private citizens with firearms demonstrated at polling places in several states during the 2016, 2018, and 2020 elections. In the week before the 2016 election, Guns Down America launched a campaign to give voters a way to report instances of armed intimidation at polling places. In less than twelve hours, 85 voters in 28 states reported seeing firearms at the polls. These incidents were reported by Voter Protection Hotline personnel to local law enforcement and election authorities. Similarly, during the 2018 midterm elections, then-NRA spokesperson Dana Loesch suggested that NRA supporters may need to bring guns to polling locations to fend off attacks from “anti-gun progressives”. There were armed demonstrations outside of a northern Virginia early voting site just a few months ago ahead of the November, 2020 election.

Polling places are already heavily regulated in a variety of ways to preserve what the Supreme Court called an “island of calm” for voters. All states prohibit “electioneering” at polling places, such as campaigning, displaying signs, or even wearing campaign clothing in or near voting sites. But only six states and the District of Columbia prohibit open carry of firearms at polling places and just a handful of others prohibit concealed carrying (though additional restrictions may apply if, for example, the polling place is in a school or other building where guns are already prohibited).

Without a “bright-line” rule like that proposed in SB0010, gun carriers must still comply with legal prohibitions against voter intimidation and brandishing a weapon as a threat. But those laws require the government to make discretionary calls about, for example, whether a particular individual is intimidating. Such judgments are prone to racial and other forms of bias, while also leaving gun owners subject to the whims of local officials.

There are already too many impediments to voting. Fear of people with guns at polling places should not be one of them. Therefore, DTMG strongly supports SB0010 and urges a **FAVORABLE** report on this bill.

Respectfully submitted,

Olivia Bartlett
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Testimony for MD SB 10 (2021).pdf

Uploaded by: Carey, Tim

Position: FAV



THE COALITION TO STOP GUN VIOLENCE

Testimony of Tim Carey, Law & Policy Staff Attorney
The Coalition to Stop Gun Violence
In Support - Senate Bill 10: Prohibiting Firearms at Polling Places during Elections
Education, Health, and Environmental Affairs Committee
February 4, 2021

Dear Chair Pinsky, Vice Chair Kagan, and Committee members,

I am writing to you in my capacity as a staff attorney for the Coalition to Stop Gun Violence in support of Senate Bill 10. 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.¹ Laws have validity in a democracy, in large part, because the people are able to 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.”² The presence of firearms at the polls places our most sacred right in peril.

Relatively few states have laws that explicitly prevent the presence of guns at polling places, which became a point of grave concern for many state legislatures during the 2020 elections. Incendiary remarks by then-President Trump and his most ardent supporters created legitimate fears about election-day violence, recognized by news media, law enforcement, and the FBI.³ Michigan’s secretary of state notably attempted to pass a directive banning guns at the polls after credible threats of violence surrounding the

¹ 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...”

² *Wesberry v. Sanders*, 376 U.S. 1, 17 (1964).

³ See Daniel L. Byman & Colin P. Clarke, *Why the risk of election violence is high*, Brookings (Oct. 27, 2020), <https://www.brookings.edu/blog/fixgov/2020/10/27/why-the-risk-of-election-violence-is-high/> (last visited Jan 21, 2021); Joel Rose, *Guns, Protests And Elections Do Not Mix: Conflict Experts See Rising Warning Signs*, NPR (Oct. 29, 2020),

<https://www.npr.org/2020/10/29/928791633/guns-protests-and-elections-do-not-mix-conflict-experts-see-rising-warning-signs> (last visited Jan 21, 2021); Katie Paul, *Thousands of Facebook Groups buzzed with calls for violence ahead of U.S. election*, Reuters (Nov. 6, 2020),

<https://www.reuters.com/article/us-usa-election-facebook-focus/thousands-of-facebook-groups-buzzed-with-calls-for-violence-ahead-of-u-s-election-idUSKBN27M2UN> (last visited Jan 21, 2021).



election, but her directive was blocked by courts on procedural grounds.⁴ The Maryland legislature is the proper venue to make this policy decision and now is the right time. Though Maryland already has laws that criminalize the use of weapons for intimidation, it can be admittedly difficult to prove whether someone wielding a gun in public intended to stoke fear in others. Even the potential threat of violence during elections threatens to chill participation in democracy. A clear prohibition of firearms at polling places would be an unambiguous protection of the sacrosanct right to vote.

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

Courts in the United States have not interpreted the Second Amendment to provide a right to carry a gun in public or to intimidate others with firearms. In the landmark decision of *District of Columbia v. Heller*, the Supreme Court of the United States interpreted the core of the Second Amendment to protect “the right of law-abiding, responsible citizens to use arms in defense of hearth and home.”⁵ However, the Supreme Court continued to clarify 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.”⁶ 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.”⁷ The Supreme Court has not found a Second Amendment right to carry firearms in public.

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 danger and lethality of the gun itself.⁸ For example, a court in Michigan held that attempts of people to communicate messages by openly carrying firearms did not qualify as protected speech because “numerous emergency calls” made clear that worried members of the public did not perceive the firearms 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.”⁹ North Carolina courts have also “long deemed it reasonable to regulate...the carrying of deadly weapons [at a] public assembly,” given the safety risks posed to the community.¹⁰ The right to free speech cannot be confused with a right to terrorize others and threaten public safety.

⁴ Brakkton Booker, *Michigan Judge Blocks Ban On Open Carry Of Guns At Polls On Election Day*, NPR (Oct. 29, 2020), <https://www.npr.org/2020/10/28/928617983/michigan-judge-blocks-ban-on-open-carry-of-guns-at-polls-on-election-day> (last visited Jan 22, 2021);

⁵ *District of Columbia v. Heller*, 554 U.S. 570, 635 (2008).

⁶ *Heller*, 554 U.S. at 626.

⁷ *Id.*

⁸ See *Baker v. Schwarb*, 40 F. Supp. 3d 881, 894-95 (E.D. Mich. 2014); *Chesney v. City of Jackson*, 171 F. Supp. 3d 605, 616-19 (E.D. Mich. 2016); *Burgess v. Wallingford*, No. 11-cv-1129, 2013 WL 4494481, at *9-10 (D. Conn. May 15, 2013); *Northrup v. City of Toledo Police Div.*, 58 F. Supp. 3d 842, 847-49 (N.D. Ohio 2014), *aff'd in part and rev'd in part on other grounds sub nom. Northrup v. City of Toledo Police Dep't*, 785 F.3d 1128 (6th Cir. 2015).

⁹ *Schwarb*, 40 F. Supp. 3d at 894-95; see also *Chesney*, 171 F. Supp. 3d at 616-19.

¹⁰ *State v. Oaks*, 594 S.E.2d 788, 793 (2004), quoting *State v. Dawson*, 272 N.C. 535, 546, 159 S.E.2d 1, 10 (1968).



Prohibiting Firearms at Polling Places is Congruent with Current Maryland Law

Maryland already has several laws on the books that may indirectly get at the issue of prohibiting firearms at polling places, but codifying an explicit restriction is a natural next step for the legislature to take. Maryland has already made it a crime to carry or possess a firearm on public school property, which many districts utilize as polling places during elections.¹¹ Maryland law also criminalizes any “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.¹²

Maryland has also recognized the need for laws that prevent the presence of firearms from disrupting the performance of civil rights and duties of the public. 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.¹³ 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.¹⁴ However, no measure would communicate as clear and reassuring a message to the public as a plain prohibition of firearms at the polls.

Conclusion

Passing SB 10 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 display firearms in public places 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 legislation has taken to preserve public safety and the core functions of our democracy. The Coalition to Stop Gun Violence is in full support of SB 10 and the protections it affords to Maryland voters.

Sincere Regards,

A handwritten signature in black ink, appearing to read 'Timothy Carey', is written over the typed name.

Timothy Carey, JD
Law & Policy Staff Attorney
Coalition to Stop Gun Violence

¹¹ Md. Code Ann., Crim. Law § 4-102(b).

¹² Md. Elec Law § 16-201(a)(5)-(6); Md. Code Ann., Crim. Law § 3-202.

¹³ Md. Code Ann., Crim. Law § 4-208.

¹⁴ Md. Code Ann., Pub. Safety § 5-307(b).

Testimony SB10 ML.pdf

Uploaded by: Ladd, Melissa

Position: FAV

**Testimony for the House Ways & Means Committee
February 2, 2021**

SB 10 – Election Law-Polling Sites- Firearms Prohibition

FAVORABLE

To Chairman Pinsky, Vice Chair Kagan, and Committee members,

My name is Melissa Ladd. I am a volunteer with Maryland Moms Demand Action, and I live in Olney, Maryland. I am formally submitting my written testimony in support of SB 10 on Firearms Prohibition at Polling Sites.

As you know, Maryland currently allows the open carry of a handgun by a person with a permit to wear, carry, or transport a gun.¹ The open carry of rifles and shotguns is unregulated under state law. We also know that it is permissible for the Maryland State Police to limit the geographic area, circumstances or times in which a handgun carry permit is effective,² but there are no such legal avenues to restrict the open carry of rifles and shotguns. I believe that firearms of all types, whether carried openly or concealed should be prohibited from polling places.

The right to vote is the most fundamental right afforded to citizens of a free country. Voter intimidation is a crime under federal law and under state law in Maryland. The United States Supreme Court wrote “the display of a gun instills fear in the average citizen.”³ Firearms in such polling places act as a tool of intimidation and embolden extremists.

The Maryland General Assembly should act now to ensure that no voter is fearful or intimidated when exercising their most fundamental democratic right. In the current divisive times, it is crucial that we provide security to all participating in elections. By enacting SB 10, the General Assembly will eliminate the potential for terror and intimidation, and ensure dialogue and debate can ensue instead.

Sincerely,
Melissa Ladd
State Legislative Lead
Moms Demand Action for Gun Sense in America, Maryland Chapter

¹ Md. Code Ann., Crim. Law § 4-203(a), (b)(2)

² Md. Code Ann., Pub. Safety § 5-307(b)

³ **McLaughlin v. United States, 476 U.S. 16, 17-18 (1986)**

2021 sb10 Poll sites Support.pdf

Uploaded by: consoli, angelo

Position: FWA



CLYDE BOATWRIGHT
STATE PRESIDENT

Maryland State Lodge
FRATERNAL ORDER OF POLICE

8302 COVE ROAD, BALTIMORE, MD 21222



KENNY SCHUBERT
SECRETARY

EARL KRATSCH
TREASURER

February 2, 2021

Senate Bill 10: Election Law-Polling Sites-Firearms Prohibitions

Dear Chairman Smith and Distinguished Members of the Senate Judicial Proceedings Committee,

On behalf of the Maryland State Fraternal Order of Police, representing over 20,000 members, we **SUPPORT** Senate Bill 10: Election Law-Polling Sites-Firearms Prohibitions, **WITH AMENDMENTS.**

The Oath of Office which law enforcement officers take is a lifetime commitment. The commitment and dedication of our law enforcement officers does not end once they have finished their tour of duty. Law enforcement officers are sworn to protect and serve 24 hours a day, 7 days a week. The commitment certainly doesn't end upon retirement. The Oath is a solemn vow which binds an individual to a lifetime of service and dedication to their community, state, and country.

Most Maryland law enforcement agencies require sworn officers to be armed at all times within their respective jurisdictions. In 2004, the United States Congress saw the benefit of law enforcement officers both sworn and retired being armed throughout the United States. The United States Congress knew that additional highly trained armed individuals would enhance the safety of all citizens.

While Senate Bill 10 will make our polling safer, there needs to be an exception made for off duty and retired officers for the reasons stated above.

The amendment offered is as follows:

16-904.

(B) Except as provided in § 16-903 of this subtitle, **or if an off-duty or retired law enforcement officer and the weapon carried or possessed by the officer or retired officer is concealed; and the officer or retired officer is authorized to carry a concealed handgun in the State;** a person may not:

The Maryland State FOP would encourage a **Favorable** vote with these amendments in place. However, **without these amendments we cannot support this bill as written.**

Sincerely,

Angelo L. Consoli Jr.,

2nd Vice President, FOP, Maryland State Lodge
President, FOP 89, Prince George's County

SB0010 Testimony - Ebling.pdf

Uploaded by: Ebling, James

Position: UNF

James P. Ebling
18600 Gunpowder Road
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District 42B

State of Maryland
Senate Judicial Proceedings Committee
2 East Miller Senate Office Building
Annapolis, MD 21401

February 2, 2021

Re: Bill: **SB0010** - Election Lawn - Polling Sites - Firearms Prohibition
Position: **OPPOSE**

Dear Mr. Chairman, Mr. Vice-Chairman, and Committee Members

Thank you for the opportunity to voice my opinion on this bill.

I have been a Maryland Wear and Carry Permit holder for over ten years. This bill would directly impact me should it become law. I vote at an early polling location specifically because firearms are not prohibited (unlike public school property, which is my Election Day polling place). I travel to and from work while responsibly carrying my firearm. I do not believe that securing my firearm in the car has ever been a good idea (because it makes firearms more likely to fall into the wrong hands), but under this bill, even that would be prohibited. I believe the safest place for my firearm to be is with me.

Furthermore, I do not believe there is a single instance of someone using a gun in a polling place in the commission of a crime. As such, this bill seems to be a solution to a problem that does not exist.

Passing this bill into law would make it a lot harder, if not impossible, for me to vote, as I must carry a firearm as part of my job and my work hours would prohibit dropping my gun at home or another safe place before heading to a polling place.

I respectfully ask that you give an unfavorable report on this bill. If you have any questions, please feel free to contact me.

Thank you for your time and consideration.

Sincerely,

James P. Ebling
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410-746-8938

MSI Testimony on SB 10 polling places.pdf

Uploaded by: Pennak, Mark

Position: UNF



President
Mark W. Pennak

February 4, 2021

WRITTEN TESTIMONY OF MARK W. PENNAK, PRESIDENT, MSI, IN PARTIAL OPPOSITION TO SB 10

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 and the Bar of Maryland. 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, federal 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 and a certified NRA instructor in rifle, pistol, personal protection in the home, personal protection outside the home, muzzleloading, as well as a range safety officer. I appear today in opposition to certain aspects of SB 10.

This bill would amend MD Code, Election Law, §16-904, to provide that that a person may not “CARRY OR POSSESS A FIREARM WITHIN 100 FEET OF A POLLING SITE DURING AN ELECTION.” That provision does not require a “knowing” possession and would appear to ban mere possession (including mere constructive possession) of a firearm in a person’s own home if the home happens to fall within 100 feet of a polling site. The bill is thus overbroad. In *District of Columbia v. Heller*, 554 U.S. 570 (2008), the Supreme Court held that citizens have the right to possess operative handguns for self-defense in the home. *Heller* also made clear that the right belongs to every “law-abiding, responsible citizen[]”). *Heller* 554 U.S. at 635. The Second Amendment “**elevates above all other interests the right of law-abiding, responsible citizens to use arms in defense of hearth and home.**” *Heller*, 554 U.S. at 635. The rights guaranteed by the Second Amendment are fundamental and are, therefore, applicable to the States by incorporation under the Due Process Clause of the 14th Amendment. See *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”). The bill is also overbroad in that it would reach possession by persons with Maryland carry permits or persons who are simply on the way to the range or otherwise permitted location or activity, as specified in Md. Code, Criminal Law, §4-203(b), and who just happen to walk or drive by within 100 feet of a polling place. We respectfully suggest that the bill be amended to except from the bill’s coverage these types of possessions.

Second, the bill provides that a person may not “CARRY OR DISPLAY A FIREARM ON THE PREMISES OF A PRIVATELY OR PUBLICLY OWNED BUILDING

BEING USED AS A POLLING SITE DURING AN ELECTION, INCLUDING IN A PARKING LOT.” This provision, along with the ban on possession within 100 feet of a polling site, creates **literally dozens of new gun-free zones**, including in **privately owned** buildings, but makes no provision to protect those zones. If the State is going to create a gun free-zone then it has the moral obligation to protect these zones with armed security. Such a provision is conspicuously absent from the bill.

In essence, by banning all otherwise lawful possession of firearms, this Bill would actually make these sites more likely to be attacked by a mass shooter, a criminal or deranged individual, rather than less likely. Everyone at the site is less safe. Certainly, there is no evidence that a gun-zone actually makes people safer. See <https://www.rand.org/research/gun-policy/analysis/gun-free-zones.html>. A potential shooter, willing to commit murder, will simply not care that this Bill would make his possession of a firearm illegal. The numbers are chilling: between 1950 and 2018, 94% of all mass shootings (as properly defined by the FBI) have taken place in gun free zones. <https://crimeresearch.org/2014/09/more-misleading-information-from-bloombergs-everytown-for-gun-safety-on-guns-analysis-of-recent-mass-shootings/> Between 1998 and December 2015, the percentage is 96.2%. <https://www.nationalreview.com/2014/01/cruelty-gun-free-zones-john-r-lott-jr/>. Mass shooters are drawn to gun free zones as they know that they will be unopposed for extended periods while they commit their horrific rampages. The Report from the Crime Prevention Research Center (Oct. 2014) (available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2629704), indicates that “mass public shooters pay attention to whether people with guns will be present to defend themselves.” (Id. at 10). **No sane person would post a gun-free zone sign outside their own home. If such signs are not suitable outside the home, they not suitable for polling places.**

We can readily understand the desire to regulate the **open** display of firearms at a polling place. We therefore suggest that the bill be amended to specifically exempt from its coverage **concealed** carry by off-duty police officers, permit holders and other persons who are otherwise legally permitted to carry concealed firearms. School property, if happened to be used as a polling place, would, of course, remain a prohibited area under existing law. See MD Code, Criminal Law, §4-102. Similarly, under federal law, 18 U.S.C. §922(q)(2), the knowing possession of a firearm in a federally defined school zone is banned. Tellingly, however, federal law exempts from that prohibition “private property” not part of school grounds as well as exempting a permit holder “if the individual possessing the firearm is licensed to do so by the State in which the school zone is located.” 18 U.S.C. §922(q)(2)(B)(i), (ii). If those exemptions are appropriate for school zones, they are likewise appropriate for polling places.

Sincerely,



Mark W. Pennak
President, Maryland Shall Issue, Inc.
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