

Daniel J. Carlin-Weber
HB1174 Public Safety – Permit to Carry, Wear, or Transport a Handgun – Qualifications
Favorable
3/9/2022

I am a firearms instructor and advocate of responsible firearms handling and ownership. Currently, I am a Maryland State Police Qualified Handgun Instructor, a Utah Concealed Firearm Permit Instructor, USCCA Concealed Carry and Home Defense Instructor, NRA Range Safety Officer, and Basic Pistol Instructor. Since 2016, I have instructed Marylanders from all walks of life on how to safely operate firearms and the responsibilities that come with them. I come before you today to urge a favorable report of House Bill 1174.

HB1174 would add the language, “such as PERSONAL PROTECTION, SELF-DEFENSE, OR” to Public Safety Article 5-306 (a)(6)(ii), thus allowing a citizen who otherwise qualifies for a permit to be granted one for their personal defense without needing to be in a select, special category of person. The rigorous 16-hour training component, fees, background checks, fingerprints, and other requirements of applying for a Wear and Carry Permit must still be met. Since 1972’s gun control legislation, demanded by then-Governor Mandel, applying for a Wear and Carry Permit requires that an applicant have a “good and substantial reason to wear, carry, or transport a handgun.” What constitutes “good and substantial reason” has been the center of debate for many, many years, but it is without dispute that the requirement denies the typical Marylander the ability to lawfully carry a handgun beyond their front door. Maryland’s current law demands that only special or favored classes of citizens can protect themselves in public with the “quintessential self-defense weapon.” *District of Columbia v Heller*, 554 U.S., 570 (2008). Business owners (or employees in certain circumstances), top-secret security clearance holders, and other government employees including law enforcement are the only people generally deemed worthy

of having this ability. Those who have been subjected to targeted crimes *might* be able to get a permit with enough documentation, but even then, this supposes that the person survives whatever threat they were faced with.

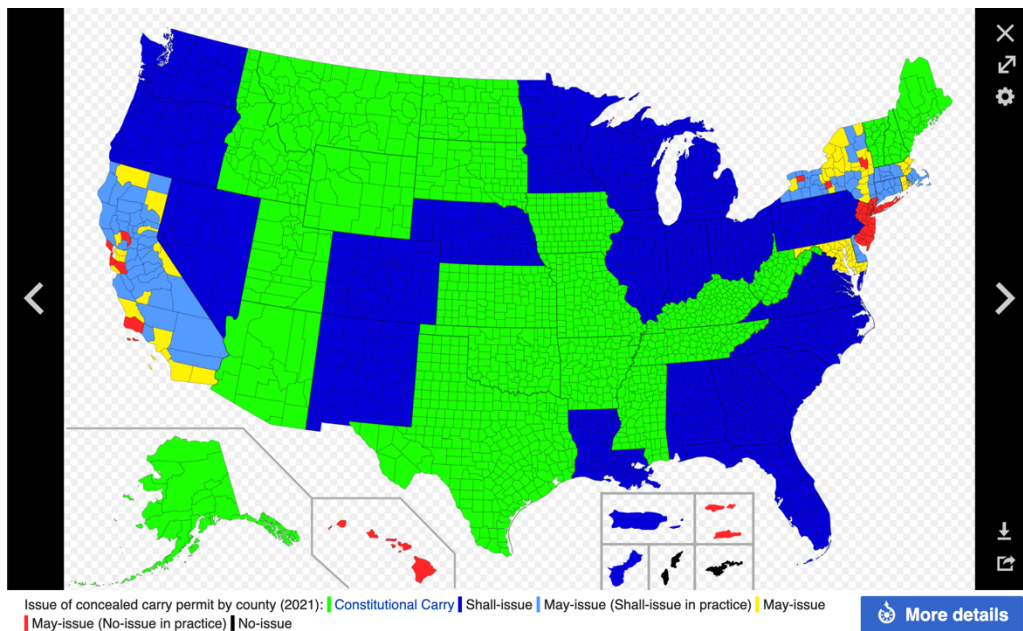


Figure 1 - Map of US by counties' practices of issuing carry permits. Areas in green do not require permits to carry concealed firearms in public at all. Graphic sourced from Wikipedia https://en.wikipedia.org/wiki/Concealed_carry_in_the_United_States

Maryland is one of only a handful of places that choose who gets a permit based on their socio-economic class (because how else would one describe a system where the exercise of a right is predicated on whether the person is a business owner or government agent?). With few exceptions, forty-four states, the District of Columbia, and even Puerto Rico do not subjectively dictate which citizens are more valuable than others. Some states like California and New York defer to local authorities to decide who gets permits, with some areas being relatively permissive with issuance and others practically granting none at all.

Every bordering jurisdiction of Maryland generally issues carry permits to non-prohibited persons (from possessing firearms) without the need for applicants to be deemed special in some way. The District of Columbia once had a system based largely on Maryland's, but their "good reason" requirement, practically identical to Maryland's "good and substantial reason," was found to be unconstitutional under the 2nd Amendment in *Wrenn v District of Columbia*, 864 F.3d 650 (D.C. Circ. 2017). Today and for nearly the last 5 years, anyone who is not prohibited by law from possessing a firearm is eligible for a permit to carry a handgun in public in D.C. *Applying for a License to Carry a Handgun*, Metropolitan Police Department, <https://mpdc.dc.gov/page/applying-license-carry-handgun>.

In Pennsylvania, at least 1 in every 10 adults is licensed to carry a firearm. *Concealed Carry Permit Holders Across the United States: 2019*, John R. Lott, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3463357. Applicants need not provide proof of training but are required to pay a small fee and pass a background check. *Carrying Firearms in Pennsylvania*, Pennsylvania State Police, <https://www.psp.pa.gov/firearms-information/Pages/Carrying-Firearms-in-Pennsylvania.aspx>. Pennsylvania recognizes some out-of-state permits and allows carrying a concealed handgun without a Pennsylvania permit inside a vehicle *only* if the carrier has a permit to carry from anywhere within the United States. Pennsylvania does not require a permit to carry firearms unconcealed.

Delaware does still require that applicants be of 'good moral character,' but generally, issues permits to all those who complete the State's requirements and who are not prohibited from possessing firearms. Delaware also recognizes several out-of-state carry permits and allows the open carrying of a handgun without needing a permit whatsoever. *Concealed Deadly Weapons*, Delaware Courts, <https://www.courts.delaware.gov/superior/weapons.aspx>.

Virginia issues carry permits to all applicants not prohibited by law from owning firearms with proof of some form of training and Virginia recognizes active carry permits issued by any jurisdiction in the United States. *Firearms / Concealed Handguns*, Virginia State Police, <https://www.vsp.virginia.gov/Firearms.shtm>.

West Virginia requires no permit at all for people over the age of 21 to carry firearms openly or concealed within its borders. Those who do must still not be prohibited by law from possessing firearms. West Virginia does still issue carry permits to those who seek them. *Gun Reciprocity / Frequently Asked Questions*, West Virginia State Attorney General's Office, <https://ago.wv.gov/gunreciprocity/Pages/FAQ.aspx>.

Some might wonder what Maryland would look like if more citizens were legally carrying guns. Many generally think of Texas as the wild west of gun ownership, but reality shows otherwise. As of December 31st, 2020, Texas had 1,626,242 License to Carry holders (for perspective, that is more than a fifth of Maryland's entire population who are licensed to carry in the state of Texas) *Active License/Certified Instructor Counts As of December 31, 2020*, Texas Department of Public Safety, <https://www.dps.texas.gov/rsd/LTC/reports/ActLicAndInstr/ActiveLicandInstr2020.pdf>.

There were 26,304 criminal convictions in all of Texas in 2020. Of those convictions, permit holders were responsible for just 144 or 0.547% of all convictions. That means 1,626,098 permit holders weren't responsible for 99.5% of all convictions that year. *Conviction Rates for Handgun License Holders Reporting Period: 01/01/2020 - 12/31/2020*, Texas Department of Safety, <https://www.dps.texas.gov/RSD/LTC/Reports/ConvictionRatesReport2020.pdf>.

The overwhelming majority of permit holders in Texas and elsewhere are peaceable people who abide by the law and follow good judgment while carrying a firearm every day in public.

Nothing makes Texans any better, more mature, or more worthy of having access to the ability to protect themselves than Marylanders do and indeed, Marylanders deserve just that.

It is long past time to end Maryland's classist system of selecting who gets to protect themselves in public and all this debate may become moot soon enough.



Figure 2 - The crowd outside of the US Supreme Court on the morning of November 3rd, 2021, before oral argument was held in *NYSRPA v. Bruen*. Dick Heller, defendant in the landmark *District of Columbia v. Heller* stands at the bottom right of the frame with a red cap on.

Supporters of this bill and similar bills proposed year after year have warned that it's likely the United States Supreme Court would take up a 2nd Amendment challenge against a scheme like Maryland's, and sure enough, they did just that. On November 3rd, 2021, the Court heard oral argument in *New York State Rifle and Pistol Association v. Bruen*, 20-843. Argument audio and transcript are available via Oyez.com: <https://www.oyez.org/cases/2021/20-843>. The plaintiffs are challenging New York's requirement that one demonstrate "proper cause" to be issued a license

or permit to carry a handgun in public, as well as the time, place, and manner restrictions placed upon the permits. These requirements are indistinguishable from Maryland's "good and substantial reason" requirement and restrictions the State Police place upon permits that limit validity only when doing certain things at certain times and places. While it can be fraught to guess which way a case will be decided based on the questions asked by the Justices at oral argument, there's little doubt that New York's Solicitor General, Brenda Underwood, and Principal Deputy Solicitor General for the United States, Brian Fletcher were met with deep skepticism over the defense of the State's requirements. Notably, Chief Justice Roberts seemed curious about how a constitutional right could be dependent on one demonstrating a need to have it:

Brian H. Fletcher:

As to the general question about Heller, we agree completely that the Court ought to apply the method from Heller, which we, like I think all the parties, take to be look to the text, history, and tradition of the Second Amendment right, and we're applying that now to a somewhat different issue with the benefit of somewhat broader materials. Now, as to the question about why you have to have a showing of need, I think the problem with Mr. Clement's formulation is that it assumes the conclusion. If you had a right, the Second Amendment conferred a right to carry around a weapon for possible self-defense just because an individual wants to have one available, then, obviously, you couldn't take away that right or make it contingent upon a discretionary determination. But the whole question is whether the Second Amendment right to keep and bear arms confers that right to have a pistol with you for self-defense even absent a showing of demonstrated need.

John G. Roberts, Jr.:

Well, I'm not sure that's right.

I mean, you would -- regardless of what the right is, it would be surprising to have it depend upon a permit system. You can say that the right is limited in a particular way, just as First Amendment rights are limited, but the idea that you need a license to exercise the right, I think, is unusual in the context of the Bill of Rights.

Brian H. Fletcher

So I -- I agree with that, but I think I heard even Mr. Clement in response to a question from Justice Kavanaugh say he doesn't have a quarrel with licensing regimes in general. And I think what that is one illustration of is that the Second Amendment has a distinct history and tradition and that the way to be faithful to the Second Amendment is to be faithful to that history and tradition and not to

draw analogies to other rights with -- with their own histories and traditions.

John G. Roberts, Jr.

Well, there's licensing and there's licensing.

Maybe it's one thing to say we need to check, make sure you don't have a criminal record, make sure that -- all the --

Brian H. Fletcher

Right.

John G. Roberts, Jr.

-- all the other things you can check on, but not that we assume you don't have a right to exercise your -- your --

Brian H. Fletcher

So I guess --

John G. Roberts, Jr.

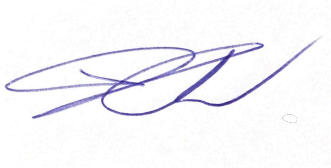
It's hard to say it without saying it, exercise your right under the Second Amendment, and you've got to show us that -- that you do.

It is also well worth reading the amicus brief submitted by the Black Attorneys for Legal Aid and the Bronx Defenders in support of the plaintiffs in *NYSRPA* to get a glimpse of how schemes like Maryland's and how gun safety laws are physically enforced. <https://bit.ly/3LdnJZn>. As they note in their brief, even if licenses are no longer deniable based on one demonstrating a need, the other strenuous requirements involved still make lawful gun ownership and carriage difficult for their clients. The same is of course true here in Maryland.

The votes in *NYSRPA* have already been cast and someone at the Court is writing an opinion right now. It will likely be delivered not long after Sine Die and the State Police could very well be no longer able to legally require that applicants demonstrate "good and substantial reason" before they're issued a permit to carry a handgun. This body won't be able to reconcile with its self-inflicted past of criminalizing the ability for average people to carry handguns for their defense

until an entire year from now. The State can get ahead of the imminent embarrassment and inevitable costs related to litigation for the denial of these rights by passing this bill.

I urge a favorable report.

A handwritten signature in blue ink, appearing to read 'DCW', is centered below the text. The signature is fluid and cursive.

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