



President
Mark W. Pennak

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WRITTEN TESTIMONY OF MARK W. PENNAK, PRESIDENT, MSI, IN OPPOSITION TO HB 30, AS AMENDED BY THE SPONSOR

I am the President of Maryland Shall Issue (“MSI”). Maryland Shall Issue is a Section 501(c)(4), 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, muzzle loading, as well as a range safety officer. I appear today in opposition to certain aspects of HB 30.

The bill, as originally submitted, was a carbon copy of SB 10 from the 2021 General Assembly Session as it was amended and passed by the Senate. That bill never emerged from the House Ways and Means Committee after a hearing. Like SB 10, HB 30 would amend MD Code, Election Law, §16-904, to provide that a person may not “CARRY OR POSSESS A FIREARM WITHIN 100 FEET OF A POLLING SITE DURING AN ELECTION.” 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.” A violation of the Bill is punished as a civil infraction under which a \$5,000 fine may be assessed against the violator under MD Code, Election Law, § 13-604. That fine may be imposed even though the person commits a violation “without knowing that the act is illegal.” MD Code, Election Law, § 13-604(a). The bill thus imposes strict liability for otherwise innocent conduct without regard to the person’s knowledge of the law or the person’s intent.

Like the Senate amendments to SB 10 in 2021, the original version of HB 30 included subsection (C)(2) which provided an exemption where **(I) THE INDIVIDUAL IS LEGALLY IN POSSESSION OF A FIREARM; (II) THE RESIDENCE OF THE INDIVIDUAL IS WITHIN 100 FEET OF A PRIVATELY OR PUBLICLY OWNED BUILDING BEING USED AS A POLLING SITE DURING AN ELECTION; AND (III) THE INDIVIDUAL IS TRANSFERRING THE FIREARM TO THE INDIVIDUAL’S RESIDENCE OR VEHICLE WITHIN 100**

FEET OF A POLLING PLACE. The bill would also permit an off-duty police officer to carry a concealed weapon if that officer is displaying his badge.

The Sponsor's Amendment: We are advised that the sponsor has submitted an amendment. The amendment would retain the exemption and further amend the original version of HB 30 to provide that an individual in a residence within 100 feet of a polling place is not in violation of the ban if "THE INDIVIDUAL IS LOCATED AT THE RESIDENCE" and further provides that the an individual is not in violation of the ban if "THE INDIVIDUAL IS LAWFULLY TRANSPORTING THE FIREARM IN A VEHICLE ON A PUBLIC ROADWAY THAT IS WITHIN 100 FEET OF A POLLING PLACE." The amendment is welcomed and we are impressed and gratified that the sponsor is showing sensitivity to the constitutional issues created by the original version of the Bill, as detailed in our House testimony on SB 10 and on the original version of HB 30. Unfortunately, the amendment does not resolve all the problems associated with this Bill.

The Bill Is Extreme: The following concerns remain applicable, even with the sponsor's amendments. First, the Bill is extreme as it would make Maryland the most restrictive state, by far, of any of the twelve states that purports to limit possession at a polling site. See <https://www.ncsl.org/research/elections-and-campaigns/polling-places.aspx>. For example, California, with the most restrictive gun control laws in the country, only bans a person from being "**stationed** in the immediate vicinity of, **or posted at**, a polling place without written authorization of the appropriate city or county elections official..." California Election Code § 18544(a) (emphasis added). And Texas bans carry **in** a polling place only "if the person **intentionally, knowingly, or recklessly** possesses or goes with a firearm, illegal knife, club, or prohibited weapon **on the premises** of a polling place on the day of an election or while early voting is in progress." Texas Penal Code § 46.03(a)(2) (emphasis added). No such scienter requirements are imposed by this bill.

The Bill Overreaches: We also can see no justification for extending the scope of the ban to **100 feet** of a polling station. Of the few states (again only twelve states regulate **any** possession at a polling site) that have enacted similar laws, all but one limits its restrictions on the possession of firearms **to the polling station itself**. The only exception is Missouri which extends its ban outside the polling station, but it limits the distance to a mere **25** feet, but further provides that "[p]ossession of a firearm in a vehicle on the premises of the polling place shall not be a criminal offense so long as the firearm is not removed from the vehicle or brandished while the vehicle is on the premises." Missouri, MRS § 571.107.1(2). The bill should be amended to remove the language that extends the prohibition to 100 feet beyond the polling place.

We can readily understand the desire to regulate the **open** display of firearms **at** a polling place as such possession can be viewed as intimidating. However, voter intimidation is rare and we are unaware of any such open display of firearms has ever even happened in Maryland. See <https://www.baltimoresun.com/politics/bs-md-pol-few-incidents-of-voter-intimidation-20201211-62xuahitendlbz7nu2svqcscy-story.html>. Voter intimidation, of any kind, is already

a crime under both federal law, 18 U.S.C. § 594, and state law, MD Code, Elec. Law § 16-201(a), and that includes banning the brandishing of firearms at a polling station. See Maryland Attorney General Guidance on Voter Intimidation. <https://archive.mymcmedia.org/maryland-attorney-general-voter-intimidation-voter-harassment-is-a-crime/>. The Bill is thus a solution in search of a problem. In any event, that concern over potential intimidation does not apply to non-open possession **otherwise permitted by law**. This Bill should be amended to exempt from its coverage **concealed** carry not only by off-duty police officers (as permitted by the Bill), but also by permit holders who are otherwise legally permitted to carry concealed firearms in public and who have been already thoroughly investigated and vetted by the Maryland State Police pursuant to MD Code, Public Safety, §5-306.

Such permitted individuals have been issued permits for a “good and substantial reason” under Section 5-306(a)(6)(ii), and thus include many persons who have demonstrated to the Maryland State Police a **particularized, special** need for self-protection. Of the eight states (including New York and New Jersey) in the United States that impose such a “good cause” requirement on carry permits, **NONE** have imposed any restriction on concealed carry by a permit holder at a polling place. Under HB 30, even as amended, in order to vote, such a permitted person would have to park her vehicle more than 100 feet from the polling place, leave her firearm in the vehicle (where it is open to theft) and walk to the polling place, vote, and walk back to the vehicle. Such an individual should not have to choose between exercising her right to vote and her right to self-defense. Private property owners should likewise be permitted to continue to store firearms on their own property when it is used as a polling place.

School property, if it happened to be used as a polling place, would, of course, remain a prohibited area under existing law, MD Code, Criminal Law, §4-102, even with a carry permit, as every permit issued by the Maryland State Police states on its face that the permit is not valid “where firearms are prohibited by law.” Such a restriction is permitted by MD Code, Public Safety, §5-307. 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.

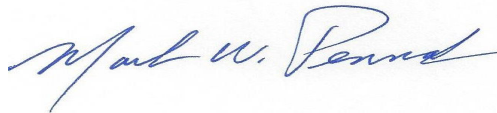
More fundamentally, the Bill creates dozens of new gun free zones, including new zones on private property that is not used as a residence. In particular, the Bill would ban a **private property owner** from merely storing firearms (any firearm) on his or her private property if that non-residential private property were to be used as a polling place. A mere innocent failure to remove existing firearms from that private property could result in a \$5,000 penalty. Ironically, that reality may well discourage individual private property owners from consenting to the use of their private property as a polling place.

The Bill Invites Attacks: By banning virtually all otherwise lawful possession of firearms and failing to mandate armed security for such sites, this bill would actually make polling 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-free-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. See Report from the Crime Prevention Research Center (Oct. 2014), at 10 (available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2629704) (“mass public shooters pay attention to whether people with guns will be present to defend themselves.”). **No sane person would post a gun-free zone sign outside their own home. The statutory equivalent of such a sign is likewise not suitable outside polling places, particularly where the polling places are located on private property.**

Sincerely,



Mark W. Pennak
President, Maryland Shall Issue, Inc.
mpennak@marylandshallissue.org