



# Guns and Voting

How to Protect Elections After *Bruen*

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# Introduction

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Over the last 20 years, several distinct developments have increased the risk of gun violence in American elections. A marked shift in the U.S. Supreme Court’s approach to the Second Amendment and an aggressive pro-gun movement have caused significant deregulation of guns in some states and cast a shadow of legal uncertainty on strong gun regulations in others. Moreover, as the political system has grown more polarized and prone to violence, politicians have spread disinformation about voting rules to sow distrust in our democracy.

The result: voting and elections have become the targets of threats and intimidation just as the nation faces a proliferation of guns, more frequent gun violence, and fewer legal protections. This is a toxic combination. Still, most states’ laws do not adequately protect voters or the election system.

The 2024 election will unfold in a transformed legal environment. In a majority of states, gun advocates have successfully pushed deregulation of firearms in legislatures and the courts. In 2010, only two states let people carry concealed firearms in public without a permit or background check. Now, 27 states allow “permitless carry.” While other states have strengthened gun regulations during this period, the Supreme Court has threatened their ability to do so. Last year, in *New York State Rifle & Pistol Association, Inc. v. Bruen*, the Court forced the six states with the strongest concealed carry laws, as well as Washington, DC, to weaken their restrictions.<sup>1</sup> And it announced an entirely new test for evaluating the constitutionality of gun regulations, inviting a wave of litigation. Courts have already issued more than 450 decisions analyzing *Bruen* in Second Amendment challenges to gun laws.<sup>2</sup>

In this environment, guns have proliferated. The United States now has more guns than people. In 2020 and 2021, the social unrest caused by the pandemic, unprecedented racial justice protests, and the presidential election and its aftermath drove gun purchasing to record levels — more than 42 million guns were sold in those two years alone. Violence rose. Compared with historical averages, the period between March 1, 2020, and February 28, 2021, saw a 15 percent increase in firearm-related incidents, a 34 percent increase in nonfatal gun injuries, and a 28 percent increase in gun deaths.<sup>3</sup> Then, in 2022, applications for permits to carry guns in public in the states directly affected by *Bruen* sharply increased. In the first three weeks following the decision, applications in Maryland rose to 700 percent of the level that they had been the year prior.<sup>4</sup>

Meanwhile, American democracy has been facing new and unnerving pressure as the result of a growing election denial movement. In 2020, states expanded voting by mail

and early voting due to the coronavirus pandemic. Endeavoring to overturn the results of the 2020 presidential election, then President Donald Trump and his allies launched massive disinformation campaigns targeting this expanded access to voting, claiming that the election was “rigged” and that election administration officials were engaged in fraud. This election denial movement has spread beyond Trump and reached into state and local elections, fueled by conspiracy theories about mail voting, drop boxes, election officials, poll workers, and ballot counting.

From its inception, threats of political violence marked this movement. The most prominent example, of course, was the January 6, 2021, attack on the U.S. Capitol. But even in the hours and days immediately following the 2020 election, armed protesters gathered outside ballot-counting facilities. And in the years since, election officials and poll workers have come under attack, experiencing a shocking volume of threats, including threats of gun violence. Voters as well have faced novel forms of intimidation, including armed surveillance of drop boxes.

With more guns and more political polarization and violence, states need strong laws to limit risk. In *Bruen*, the Supreme Court recognized that prohibitions on guns in “sensitive places” — and specifically in “polling places” — were “presumptively lawful.” Yet today only 12 states and Washington, DC, prohibit both open and concealed carry of firearms at poll sites. Ironically, the states with the strongest gun regulations — which had restricted the ability to carry guns in public generally, rather than prohibiting guns in particular locations — were made most vulnerable in the wake of *Bruen*. In fact, only one of the six states that had their laws struck down by the decision specifically prohibited guns in polling places at the time of the decision.

Now these states that once had strong general gun laws must scramble to enact new protections for elections. Although some states have banned guns at polling places since *Bruen*, there is far more work to do.

This report evaluates the new risks that gun violence poses for U.S. elections and proposes policy solutions to limit those risks. Solutions include prohibitions on

firearms wherever voting or election administration occurs — at or near polling places, ballot drop boxes, election offices, and ballot counting facilities. In addition, states need stronger laws preventing intimidation of voters, election officials, election workers, and

anyone else facilitating voting, with express recognition of the role that guns play in intimidation.

American elections remain, by and large, peaceful. To keep them that way, state legislatures must keep guns away from voting.

# I. Recent Changes in Gun Regulation Laws

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In 2008, in *District of Columbia v. Heller*, for the first time in history, the U.S. Supreme Court interpreted the Second Amendment to the U.S. Constitution to protect a law-abiding citizen’s right to possess an operable handgun in the home for self-defense unrelated to service in a militia.<sup>5</sup>

The Supreme Court cautioned, however, that “the right secured by the Second Amendment is not unlimited” and identified a nonexhaustive list of “presumptively lawful regulatory measures,” including “laws forbidding the carrying of firearms in sensitive places such as schools and government buildings.”<sup>6</sup> Two years after *Heller*, in *McDonald v. City of Chicago*, the Court made clear that the ruling in that case applied to state and local governments as well, holding that Second Amendment protections are “fundamental rights.”<sup>7</sup>

*Heller* and *McDonald* did not set out a test for evaluating challenges to gun laws. Lower courts were thus left to determine how to apply the decisions, and they developed a two-step test to do so. First, courts were to determine whether the challenged law implicated rights protected by the Second Amendment. If it did, the reviewing court then evaluated the degree to which the law burdened the right and weighed the state’s interest in the law against that burden.<sup>8</sup> The two-step test was arrived at by consensus among lower courts.<sup>9</sup> And it was consistent with tests used to evaluate challenges to other constitutional rights.

When lower courts applied this test, they overwhelmingly upheld gun violence prevention laws. In fact, Second Amendment challenges between 2008 and 2016 succeeded only 9 percent of the time.<sup>10</sup>

## The Supreme Court Constrains Regulation, Causing Uncertainty

The constitutional landscape for firearm restrictions changed, however, on June 23, 2022, when the Supreme Court issued its opinion in *New York State Rifle & Pistol Association, Inc. v. Bruen*.

The plaintiffs had challenged a provision in New York’s 1911 concealed carry licensing law requiring applicants to show “proper cause” — a heightened need for self-protection — before being issued a license to carry a gun in public. In a 6–3 decision written by Justice Clarence Thomas, the Court held for the first time that Americans have a Second Amendment right to carry guns in public for self-defense and that the state cannot require appli-

cants for concealed carry permits to demonstrate proper cause as a condition for licensure eligibility.<sup>11</sup>

Only a handful of states had proper cause provisions in their concealed carry laws at the time of *Bruen*, but the decision had far broader implications. The Court held that the right to own a gun for self-defense in the home enshrined in *Heller* also exists outside the home. And it rejected the balancing approach followed by lower courts for a dozen years, replacing it with an entirely novel framework for deciding whether gun laws are constitutional under the Second Amendment.

No longer can courts balance the individual right to own a gun against the needs of public safety. Rather, gun restrictions are now held constitutional only if they align with “history and tradition.”<sup>12</sup> This new test announced in *Bruen* requires a court to assess whether a challenged law burdens the Second Amendment’s individual right to keep and bear arms. If it does, the court must find that the law is analogous to historical restrictions. While it is unclear what historical reference points are relevant under the standard — in *Bruen* the Court examined laws from the 1700s and 1800s — the court must find sufficient historical analogues to establish that the law is permissible under the Second Amendment. Justice Thomas emphasized that courts should compare “how and why” modern and historical regulations burdened Second Amendment rights to determine whether the regulations are “analogous enough” for the modern law to be deemed constitutional.<sup>13</sup>

Thus far, a year after the ruling, this test has provoked considerable confusion in the courts, proving to be an unwieldy tool for determining the constitutionality of modern firearm regulations. Courts are applying *Bruen*’s methodology in varying ways, resulting in disparate rulings and inconsistent constitutional interpretations.<sup>14</sup> In several instances, judges evaluating the same laws have ruled differently on their constitutionality.<sup>15</sup> For example, one federal court struck down a 1968 federal law that prohibits people under the age of 21 from purchasing handguns, while a different federal court upheld the law using the same test.<sup>16</sup>

Several other decades-old gun violence prevention laws have been invalidated by courts using the *Bruen* test, including a federal law prohibiting gun possession by people subject to domestic violence restraining orders, a Texas law prohibiting individuals under the age of 21 from

carrying guns in public, and bans on assault weapons.<sup>17</sup>

Despite *Bruen*'s confounding effects on courts' review of Second Amendment challenges, its holding makes clear that the long-standing gun laws identified in *Heller*, including laws forbidding guns in "sensitive places such as schools and government buildings," remain presumptively lawful.<sup>18</sup> The Court maintained that even though these modern-day prohibitions on guns in sensitive places extend beyond the places regulated in the 18th and 19th centuries, it was "aware of no disputes regarding the lawfulness of such prohibitions," because a modern-day regulation need not be "a dead ringer for historical precursors . . . to pass constitutional muster."<sup>19</sup> The Court also enumerated specific examples of sensitive areas where guns were historically prohibited: legislative assemblies, polling places, and courthouses.<sup>20</sup> In other words, even within the category of "sensitive place" regulations, which the Court described as constitutionally uncontroversial, prohibitions on guns at polling places are on the most solid ground.

To date, no court has invalidated a prohibition on gun carrying in the sensitive locations enumerated in *Heller* and *Bruen*.

## Many State Legislatures Embrace Deregulation

Supreme Court doctrine tells only part of the story. Over the last two decades, gun rights advocates have won looser rules in state legislatures around the country. Several states have dramatically expanded the areas where guns may be carried and repealed popular laws that required background checks and permits to purchase firearms. Many states have also passed broad self-defense laws, upending centuries of custom and common law and making it easier for a person to evade justice after shooting someone.

Other states, however, are moving in the opposite direction to instead limit public carry, expand background checks, and prohibit guns in sensitive locations where they are particularly dangerous to public health or the exercise of other constitutional rights.

**Many states have dramatically expanded public carry and eliminated background checks.** Roughly 40 years ago, prior to the Supreme Court's novel interpretation of the Second Amendment in *Heller*, almost every state prohibited or strictly regulated concealed carry in public.<sup>21</sup> Specific restrictions on concealed carry in polling places and other sensitive areas were therefore less critical. Yet since then, pressured by the gun lobby, many states have weakened their laws and allowed more

people to carry firearms in public.<sup>22</sup> Between 1980 and 2021, 36 states moved from prohibiting concealed carry in public altogether, or having strong permitting requirements, to eliminating or weakening such requirements.<sup>23</sup> The last remaining state to prohibit all concealed carry, Illinois, was forced by a court ruling to allow the practice in 2013.<sup>24</sup>

These changes have had a detrimental effect on public safety: the most comprehensive and rigorous study of concealed carry laws found that states that have weakened such laws have experienced violent crime rates that are 13 to 15 percent higher after 10 years than would have been the case had they not done so. They also experienced an 11 percent increase in handgun homicides.<sup>25</sup>

Over the last 13 years, gun advocates have pushed to repeal laws requiring a permit and background check — and in some states, safety training — to carry concealed firearms in public. In 2009, only Alaska and Vermont allowed permitless carry.<sup>26</sup> By May 2023, 25 additional states had repealed their laws to become permitless carry states.<sup>27</sup>

Since adopting permitless carry in 2021, Texas has seen a sharp increase in arrests for illegal gun carrying.<sup>28</sup> In 2023, Florida also repealed its concealed carry licensing law, which had required people to undergo a background check in order to carry guns in public.<sup>29</sup> In the year prior, between July 1, 2022, and June 30, 2023, more than 17,000 Florida residents were denied concealed carry permits, or had their permits revoked or suspended, because of a disqualifying history.<sup>30</sup> The licensing repeal will likely have an outcome similar to the one in Texas, with more people carrying guns in public who are ineligible to do so.

The weakening and elimination of concealed carry licensing standards and background check requirements have led to more people carrying guns in public. In 2015, researchers estimated that 3 million Americans carried loaded handguns every day; by 2019, that number had more than doubled.<sup>31</sup>

The examples from Texas and Florida illustrate the importance of background check requirements for purchasing and carrying firearms in public. While federal law requires people purchasing guns from licensed gun dealers to undergo background checks, it does not impose this requirement on individuals buying from private or unlicensed sellers.<sup>32</sup> As of 2023, only 21 states and Washington, DC, have closed the private sale loophole.<sup>33</sup> (Moving in the opposite direction, Iowa repealed its private sale background check law in 2021, as did North Carolina in 2023.)<sup>34</sup> Of the 29 states that allow purchases from private or unlicensed sellers without a background check, 25 are also permitless carry states.<sup>35</sup> In other words, in half the states, a person can purchase and carry a firearm without any background check, permit, or safety training whatsoever.

The *Bruen* decision has also led to an enormous increase in the number of people applying for concealed

carry licenses. The six states (and Washington, DC) whose laws were struck down together contain about 25 percent of the American population. Within three weeks of the ruling, one of these states, Maryland, saw a 700 percent increase in the number of applications for concealed carry permits relative to the same period the previous year.<sup>36</sup> Densely populated cities such as New York and San Francisco saw similar spikes in applications.<sup>37</sup>

Some of the most populous states in the country, however, are strengthening concealed carry and background check laws. In recent years, California, Hawaii, New Jersey, and New York have increased safety training requirements for concealed carry.<sup>38</sup> Washington and New York heightened eligibility requirements for concealed carry, and Illinois made it easier to revoke permits for people who become ineligible.<sup>39</sup>

Several states have also closed the private sale loophole to ensure that people with dangerous histories are unable to legally purchase firearms. Since 2014, eight states — Maryland, Michigan, New Mexico, Nevada, Oregon, Virginia, Vermont, and Washington — have begun requiring background checks on all gun purchases.<sup>40</sup> In 2023, Minnesota passed a law requiring purchasers of handguns and assault weapons to undergo a background check.<sup>41</sup>

**Several states have deregulated sensitive places.** With the deregulation of public gun carrying generally, prohibitions on guns in sensitive places have become more important. Many states, even if they did not specifically ban guns in polling places, have historically prohibited them in many locations where elections are held or administered, including government buildings, schools, and churches, limiting the likelihood of gun violence in elections. Another legislative priority for gun rights advocates has been allowing people to carry guns in more public spaces under the disproven theory that more guns will improve public safety.<sup>42</sup>

Over the last 15 years, several states have begun to allow guns in public and private spaces that are frequently used as polling places or sites for election administration and ballot counting, including houses of worship,<sup>43</sup> government buildings,<sup>44</sup> college campuses,<sup>45</sup> and even elementary schools.<sup>46</sup> Some of this legislation was an ill-advised response to mass shootings at schools. But even though several high-profile mass shootings have occurred on school campuses, these spaces where guns are heavily restricted have generally been safe havens from gun violence.<sup>47</sup>

Many laws that expand the public spaces where guns are permitted also allow open carry — that is, carrying a plainly visible firearm. In fact, very few states broadly restrict open carry. Only four states — California, Connecticut (as of October 1, 2023), Florida, and Illinois — and Washington, DC, prohibit all openly carried firearms in public. Two more states — New York and New

Jersey — prohibit the open carry of handguns.<sup>48</sup> Six states require a permit or license to openly carry a handgun. (Indiana repealed its law in 2022 when the state passed permitless carry.)<sup>49</sup> Six states regulate, but do not prohibit, the open carrying of long guns, such as AR-15s and other military-style assault weapons.<sup>50</sup>

**A majority of states have passed stand-your-ground laws.** Gun deregulation has resulted in an expansion of not just where people can carry guns, but also when they can legally use a gun. Many states have passed so-called stand-your-ground (SYG) laws, which drastically expand the ability to use deadly force during a confrontation by distorting a centuries-old legal principle of self-defense.

The U.S. legal system and the English legal system that it was built on have both recognized that a person's home is their castle and that they have certain rights in their home that they do not have in public. Accordingly, the "castle doctrine" is the principle that if a person is attacked in their home, they may use deadly force to defend themselves and their home without being required to retreat from conflict, even if they could do so safely. Outside the home, however, where others are present, a person is required to retreat from conflict before using force if it can be done safely.

For the first time in the history of American law, in 2005, Florida removed this historical duty to retreat before using deadly force in public. Since then, an additional 29 states have followed Florida's lead and enabled more people to use guns in self-defense in public.<sup>51</sup>

Some states, such as Texas, have gone even further, expanding SYG laws to allow deadly force in defense of property crimes and against a fleeing person.<sup>52</sup> Other states, including Florida, have provided shooters with immunity from criminal arrest or prosecution when they have claimed to have acted in self-defense.<sup>53</sup>

Since the adoption of SYG laws, there have been numerous instances of common arguments turning into shootouts in public spaces. In Florida, a vigilante stalked a Black teenager walking home with a bag of Skittles in his pocket and then claimed SYG after killing him.<sup>54</sup> Also in Florida, a father was shot and killed in a movie theater after an altercation over sending text messages to his toddler's caregiver. The shooter successfully defended against a murder charge by invoking an SYG defense.<sup>55</sup>

SYG laws have contributed to an 8–11 percent national increase in monthly firearm homicide rates, with early adopters such as Alabama and Florida experiencing even more dramatic increases of 33 and 30 percent, respectively.<sup>56</sup>

SYG laws also promote racist violence.<sup>57</sup> Expert testimony submitted to the U.S. Commission on Civil Rights examined FBI data in more than 2,600 homicide cases to determine the likelihood that a fatal shooting would be deemed justified when a civilian male shot and killed another male.<sup>58</sup> In SYG states, these homicides were ruled

justified in 45 percent of cases involving a white shooter and Black victim, but in just 11 percent of cases involving a Black shooter and white victim.<sup>59</sup>

Across the United States, killings are much more likely to be ruled justified when the perpetrator is white or when the victim is not. SYG laws have deepened the vast preexisting racial disparities in the legal system. Between 2005

and 2011, homicides of Black people deemed justifiable more than doubled in SYG states while remaining unchanged in the rest of the country.<sup>60</sup> An analysis of SYG cases in Florida found “striking evidence” of racial bias.<sup>61</sup> Defendants invoking SYG defenses were twice as likely to be convicted for killing white victims as for killing nonwhite victims.<sup>62</sup>



## II. Disinformation Sows the Seeds of Political Violence

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**A**s the United States wrestles with the legal uncertainty of gun laws in the wake of *Bruen*, and as many states move to deregulate guns, the country must also contend with new vulnerabilities to violence and intimidation. For two decades, politicians have increasingly peddled false rhetoric about voter fraud, undermining faith in democracy and restricting voting access.<sup>63</sup> At the same time, a countervailing trend of laws expanding access to voting has helped build more inclusive democracies in many states.<sup>64</sup> Beginning in 2020, both trends accelerated.

The coronavirus pandemic prompted rapid expansion of voting options, especially mail voting.<sup>65</sup> These changes exposed new targets for political violence, including election officials and election workers, and resulted in intimidation at drop boxes and counting facilities. Donald Trump seized on these developments, using them as fodder for a conflagration of disinformation and conspiracy theories aimed at overturning the 2020 election, which culminated in the attempted insurrection at the U.S. Capitol on January 6, 2021. These lies also launched an election denial movement that has unleashed a tide of abuse, harassment, and threats aimed at voters, election workers, and election infrastructure. The threat of political violence has surged, and the potential targets of that violence have broadened.

### The Covid-19 Pandemic Accelerates a Shift to Mail Voting

In the years leading up to 2020, mail voting became increasingly available.<sup>66</sup> With the sudden public health risks posed by polling places during the 2020 general election, this trend accelerated rapidly. The percentage of voters who cast a mail ballot more than doubled between 2016 and 2020.<sup>67</sup> The share of voters who submitted their ballot at a drop box grew from 3.4 percent in 2016 to 9.1 percent in 2020.<sup>68</sup> While many voters returned to in-person voting in 2022, mail voting remained significantly more popular than before the pandemic.<sup>69</sup>

The dramatic shift to mail voting also affected how and when votes were counted, when elections were called, and how the public perceived the results. Mail ballots take longer to process and tabulate. While many states expanded access to mail voting, not all states changed their counting procedures accordingly. In addition, many states accepted mail ballots arriving after Election Day, so long as the ballots were posted on time. And a host of states allowed voters to fix technical defects in their mail

ballots, such as a missing signature, after Election Day. Because of these factors, the soaring number of mail ballots, and razor-thin election margins in a few swing states, it took longer — in some cases several days — for the press to declare election winners, including in the presidential race.

Americans in many parts of the country were unaccustomed to waiting so long for election results. While they waited for the results to trickle in, the news media covered the election in its typical manner — as a horse race. As mail ballots were being processed and counted, this horse-race reporting contributed to an ever-changing narrative about the putative winner.

### Politicians Spread Disinformation and Provoke Violence

Prior to Election Day, trailing in polls, then President Trump began to sow doubt about the upcoming election's results. He falsely claimed that the increase in mail voting — and particularly, the widespread use of drop boxes — allowed massive fraud. After the election, Trump seized on vote tabulation delays to claim that election officials and election workers were corrupting the counting process. Both false claims inspired new threats of political violence, not just in the days and weeks that followed, but also in the 2022 election.<sup>70</sup>

**False claims of misconduct by election officials and election workers in the counting process made the process, and those responsible for conducting it, targets for political violence.** As vote counting dragged on and Trump's disinformation campaign ramped up, protests erupted at counting centers in states such as Michigan, Nevada, and Arizona.<sup>71</sup> Election officials became the focus of national media attention and vicious lies charging that these officials, and by extension the vote-count process, had polluted the integrity of the election.

This new focus on the public servants who run U.S. elections ignited a barrage of threats against election officials and workers.<sup>72</sup> A Brennan Center poll of election officials across the country in 2023 revealed that one in three had experienced threats, harassment, or abuse because of their job.<sup>73</sup> Nearly half were concerned about the safety of their colleagues going forward.<sup>74</sup> The vast majority of election officials believed that threats against their profession had increased in recent years.<sup>75</sup>

Many of these all-too-common threats were violent, and some included references to firearms.<sup>76</sup> The experience of Al Schmidt, a Republican election commissioner in Philadelphia in 2020, is illustrative. About a week before the election, he and his fellow commissioners received a voice message stating that they were “the reason why we have the Second Amendment.”<sup>77</sup> Just after the election, as votes were being counted at the Pennsylvania Convention Center, police arrested two men armed with “two loaded semiautomatic Beretta pistols, one semiautomatic AR-15-style rifle, and ammunition” after receiving an FBI tip that the men were making threats against the convention center.<sup>78</sup> Then, after Joe Biden’s win in Pennsylvania was announced and Schmidt defended the results, Trump excoriated him publicly.<sup>79</sup> In the weeks that followed, Schmidt and his family received a slew of threats, including a text message to Schmidt stating, “You lied. You a traitor. Perhaps 75cuts and 20bullets will soon arrive.”<sup>80</sup> Schmidt’s wife received an email stating, “ALBERT RINO SCHMIDT WILL BE FATALLY SHOT” and “HEADS ON SPIKES. TREASONOUS SCHMIDTS.”<sup>81</sup>

The false claims spread by Trump and his allies usually blamed his loss on cities with large populations of color, such as Atlanta, Detroit, Milwaukee, Philadelphia, and Phoenix.<sup>82</sup> Perhaps unsurprisingly, many of the resultant threats targeted election officials in those jurisdictions and contained racist or antisemitic language or references.

Perhaps the most prominent example of this sort of racist harassment inspired by dog-whistle falsehoods is the experience of Wandrea ArShaye “Shaye” Moss and her mother, Ruby Freeman, two Black election workers in Atlanta. Rudy Giuliani — President Trump’s personal lawyer — falsely accused Moss and Freeman in a Georgia State Senate hearing of passing around USB drives during the vote-counting process like “vials of cocaine,” an ugly stereotype that plays on associations of Black Americans and drug distribution. As Moss later testified before the House Select Committee to Investigate the January 6th Attack on the United States Capitol, she and her mother became the target of pervasive harassment, including many racist and hateful messages.<sup>83</sup> Moss received “a lot of threats wishing death upon me, telling me I’ll be in jail with my mother and saying things like ‘Be glad it’s 2020 and not 1920.’”<sup>84</sup>

Other examples are numerous. In Fulton County, Georgia, registration chief Ralph Jones, a Black man, received

a threat that he was a “n\*\*\*\*\*” who should be shot. He was also told he would be dragged around by a truck until he died.<sup>85</sup> In Detroit, city clerk Janice Winfrey, a Black woman, received a report from authorities that a white supremacist was making death threats against her.<sup>86</sup> And in Broward County, Florida, Supervisor of Elections Joe Scott, who is Black, received many threats containing racist and derogatory language, including one email that read: “Listen up you m\*\*\*\*\* f\*\*\*\*\*, 2022, 2024 is not going to be the same third world, banana republic s\*\*\* you blacks pulled in 2020.” The threat also included a racial slur and called Scott “sub-human.”<sup>87</sup>

The 2023 Brennan Center survey has found that election officials may also be targeted on the basis of the communities they serve. While the sample size of local election officials serving majority-minority jurisdictions was small, their responses nonetheless point to meaningful differences: those officials were more likely than election officials overall to report having been threatened, harassed, or abused because of their job. They were also considerably more likely to be concerned about being assaulted.<sup>88</sup>

This racist harassment of election workers is particularly troubling in light of the historically significant role that election workers of color have played in protecting Black Americans’ right to vote free from intimidation and violence. In the years following the enactment of the Voting Rights Act, the drive to secure Black representation among election officials and workers was a significant component of broader efforts to ensure full and equal political participation by Black voters.<sup>89</sup> Black community leaders fought rampant discrimination against and obstruction of Black election workers because they believed these workers would better assist Black voters and protect them against intimidation.<sup>90</sup>

**False claims of fraud in mail voting caused an expansion of voter intimidation at drop boxes and even voters’ homes.** In the lead-up to the 2020 election, Trump frequently denounced mail voting and ballot drop boxes. He falsely claimed that mail voting would facilitate voting by noncitizens or ballots being cast in the names of dead people.<sup>91</sup> He called drop boxes “a big fraud” and a “voter security disaster.”<sup>92</sup>

Trump and his allies filed a spate of lawsuits to limit the use of mail voting in multiple states.<sup>93</sup> In most instances, the courts were unpersuaded by the suits’ unproven claims of fraud.<sup>94</sup> Undeterred, Trump and his allies continued to pursue these frivolous allegations in court after Election Day in an attempt to overturn the results.<sup>95</sup> These efforts, too, were rejected by courts.<sup>96</sup>

But these conspiracy theories lived on in an election denial movement with consistently violent and militaristic overtones that continues to harm U.S. elections. The movement has been funded and organized at the

national level. The America Project, an organization founded by Trump ally and Overstock.com founder Patrick Byrne and former National Security Advisor Michael Flynn, invested almost \$3 million to support “election reform activists” in eight states in 2022.<sup>97</sup> The Conservative Partnership Institute spearheaded the so-called Election Integrity Network, led by attorney Cleta Mitchell, to recruit a “volunteer army of citizens” to monitor voters and election offices.<sup>98</sup> While the leaders of these movements often describe their work as efforts to promote election integrity, they each advised Trump in his election subversion efforts.<sup>99</sup> Their organizations hosted seminars and provided funding for local activists to engage in putative investigations into election fraud.<sup>100</sup> As Mitchell described it, “We are arming the army of patriots; that’s our goal.”<sup>101</sup>

Local election denial activists, in turn, engaged in a variety of intimidating or potentially intimidating tactics in the 2022 election. Some took part in traditional poll-watching efforts but acted aggressively, as if intent on exposing a rigged system.<sup>102</sup> Others took their aggressive surveillance efforts to less traditional venues. Echoing scenes from the 2020 election, angry election watchers showed up at counting facilities in Colorado,

pounding on windows, yelling at election workers, or recording them with cell phones.<sup>103</sup> In Arizona — one of the focal points of a debunked documentary called *2000 Mules*, which spread false conspiracy theories about electoral fraud perpetrated at drop boxes — activists organized “dropbox tail gate parties.”<sup>104</sup> These “parties” were encouraged by candidates running for office, who praised the “vigilantes” and urged them to stand just outside the 75-foot electioneering perimeter established by Arizona law. “The mere fact that you are there watching scares the hell out of them,” one candidate said.<sup>105</sup> Some of the people who showed up to surveil drop boxes carried firearms, wore tactical gear, and covered their faces.<sup>106</sup>

These intimidating tactics extended even further, to voters’ homes. In at least 19 states, door-to-door “canvassing” efforts were reported in which civilians knocked on doors to purportedly identify voter fraud.<sup>107</sup> Canvassers engaged in intimidating conduct — posing as government officials, asking voters intrusive questions, requesting that they sign affidavits, and even carrying weapons.<sup>108</sup> In a lawsuit challenging the efforts of one group in Colorado, one canvasser testified that he probably carried a firearm with him while he engaged in canvassing.<sup>109</sup>

### III. Increased Gun Violence, Mass Shootings, and Extremism

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Beginning in March 2020, there was an unprecedented increase in gun sales and gun violence. In fact, gun sales were 83 percent higher in March 2020 than they were in March 2019. Overall, Americans purchased an estimated 22 million guns in 2020, an increase of nearly 65 percent over the previous year's sales.<sup>110</sup> In the following two years, Americans bought more than 42 million guns.<sup>111</sup> National firearm-related homicide rates increased by 35 percent between 2019 and 2020.<sup>112</sup> Relative to historical averages, the period between March 1, 2020, and February 28, 2021, saw a 15 percent increase in firearm-related incidents, a 34 percent increase in nonfatal gun injuries, and a 28 percent increase in gun deaths.<sup>113</sup>

Both gun suicide and gun homicide rates had been climbing since 2015, but the Covid-19 pandemic and protests against the murders of unarmed Black Americans, together with the gun deregulation and democratic instability detailed above, almost certainly contributed to 2021 being the worst year on record for firearm deaths, with a dismaying 48,830 lives lost — an 8 percent increase from 2020, which was itself a record-breaking year.<sup>114</sup>

Mass shootings are also on the rise. The number of mass shootings — in which four or more victims are injured or killed — has increased each year since at least 2013. And the trend continues: so far this year (as of July 20, 2023), there have been more mass shootings (420) than at the same point in any year since at least 2013.<sup>115</sup>

Weakened gun laws in dozens of states, increases in firearm purchases, and spikes in gun deaths have coincided with a disturbing rise in armed political violence and intimidation, with such behavior becoming not only more frequent, but also more brazen and dangerous. Over the past decade, domestic extremists have overwhelmingly used firearms rather than other weapons in mass killings.<sup>116</sup>

As the insurrection at the U.S. Capitol on January 6, 2021, demonstrates, some people are willing to use violence to advance their political objectives. A study conducted by the Violence Policy Research Center at the University of California, Davis, found that 12.4 million Americans would be somewhat, very, or completely willing to kill a person in a situation in which they believe force or violence is justified to advance an important political objective.<sup>117</sup> The same study found that more than 47.7 million Americans, including those who don't own guns, think it is somewhat, very, or extremely likely that they will be armed

with a gun in the next few years in a situation in which they think force or violence is justified to advance an important political objective.<sup>118</sup>

The increasing presence of extremists, guns, and violence in public spaces has had a clear dampening effect on the public's willingness to exercise their First Amendment rights. Although public assemblies in the United States remain mostly peaceful events, some do turn violent or destructive, and among these, 10 percent involve armed individuals.<sup>119</sup> People are less likely to attend a protest, express their opinions at a protest using signs or vocalization, or bring children to a protest if guns are present.<sup>120</sup>

In 2022, the Global Project Against Hate and Extremism (GPAHE) conducted a poll on the effects of extremist political rhetoric and activities and the proliferation of guns in public spaces. It found that less than half of all respondents — just 41 percent — feel safe at their polling places. That number was even lower for Hispanic respondents (37 percent) and Black respondents (28 percent) and those aged 18–25 (26 percent). Four in ten people said they were nervous about attending political rallies or marches; 35 percent were nervous about even showing support for a candidate through yard or window signs. Voter intimidation, suppression, and harassment were all a “grave concern” for 27 percent of those polled. The numbers were even higher for groups that have historically experienced harassment and disenfranchisement — 37 percent of Hispanic people and 45 percent of Black people. Nearly one in three respondents (32 percent) said they were very worried that a violent attack or shooting would occur on Election Day; the same percentage said they were very worried that people would carry weapons at polling places on Election Day.<sup>121</sup>

## IV. States Must Act to Protect Voting from Violence and Intimidation

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In the face of a rising tide of gun violence, new threats of political violence, and uncertainty over states' ability to regulate firearms, local and state legislators and officials must enact policies that expressly protect voters by removing the threat of armed intimidation at polling locations, as well as in other election spaces including drop boxes and counting sites.

Laws that regulate guns at polling places and prevent voter intimidation are constitutional and will almost certainly be upheld by the courts. But only a handful of states have such laws in place. Most states' laws are insufficient to prevent intimidation, election interference, or tragedy. Below are specific recommendations to improve state gun regulations and protect elections.

### Prohibit All Guns in and Around Sites Where Elections Take Place

States should broadly prohibit firearms, including concealed carry, at and around all voting sites — including drop boxes — and places where votes are being counted and elections are being administered.

Prohibitions on guns at polling places were specifically enumerated by the Supreme Court in *Bruen* as presumptively constitutional. While several state laws have already been struck down or enjoined by lower courts under the new history and tradition test set forth by *Bruen*, there have been no successful challenges to a prohibition on gun carrying in the sensitive locations specifically enumerated in *Heller* and *Bruen* (that is, legislative assemblies, polling places, courthouses, schools, and other government buildings).<sup>122</sup>

While *Bruen* has broad implications for Second Amendment jurisprudence, its immediate effect, as mentioned above, was to strike down the “proper cause” requirement of the concealed carry permitting laws in California, Hawaii, Maryland, Massachusetts, New Jersey, New York, and Washington, DC. These jurisdictions have relatively strong gun regulations compared with most of the country. But only two — California and Washington, DC — prohibited guns in polling places at the time of the *Bruen* decision. Generally, states with strong laws limiting who is eligible to carry in public have fewer restrictions on where eligible people may carry. Often the converse is true as well: states with fewer restrictions on *who* may carry guns put greater restrictions on *where* people may

carry them. The *Bruen* decision forced states with strong eligibility requirements to weaken those laws, and so they have had to respond with legislation to tighten location restrictions.

Soon after the decision, New York enacted a law prohibiting gun carrying in a wide range of “sensitive places,” including polling places as well as schools, restaurants, hospitals, and entertainment venues.<sup>123</sup> The law has been challenged but remains in effect while the litigation proceeds through the lower courts.<sup>124</sup> Similarly, Hawaii, Maryland, and New Jersey passed broad sensitive-location restrictions following the decision. California and Massachusetts are expected to pass similar legislation later in 2023.<sup>125</sup>

As table 1 shows, however, most states still lack broad restrictions on guns in places where democratic rights are being exercised and, specifically, where votes are cast and counted or elections are administered.

**Most states do not prohibit guns where voting and other election activity take place.** Only 12 states and Washington, DC, broadly prohibit both open and concealed carry in polling places.<sup>126</sup> Even fewer states regulate guns at other sensitive elections locations such as drop boxes and ballot processing facilities.

- Seven additional states impose limited restrictions specifically on guns in polling locations. For instance, Colorado and Washington prohibit open carry at polling locations but allow concealed carry.<sup>127</sup> Conversely, Missouri and Nebraska prohibit concealed carry in polling places but have no laws that prohibit open carry.<sup>128</sup> Mississippi generally prohibits concealed handguns at polls, but people with enhanced permits are exempt.<sup>129</sup> In Ohio, only poll observers are prohibited from carrying at poll sites.<sup>130</sup> And while South Carolina prohibits the concealed and open carry of handguns, no law prohibits the open carry of long guns at polling places.<sup>131</sup>
- Two other states, Connecticut (as of October 1, 2023) and Illinois, broadly prohibit open carry in public, including at poll sites, but not concealed carry.<sup>132</sup>

**TABLE 1**

## State Prohibitions on Guns at Election Locations

STATE	GENERAL PROHIBITION ON OPEN CARRY	POLLING PLACES		GOVERNMENT-OWNED BUILDINGS		DROP BOXES		COUNTING FACILITIES	
		OPEN CARRY	CONCEALED CARRY	OPEN CARRY	CONCEALED CARRY	OPEN CARRY	CONCEALED CARRY	OPEN CARRY	CONCEALED CARRY
Alabama									
Alaska									
Arizona		X	X						
Arkansas									
California	X	X	X	X		X		X	
Colorado		X				X		X	
Connecticut*	X	X		X		X		X	
Delaware		X	X						
District of Columbia	X	X	X			X		X	
Florida	X	X	X	X		X		X	
Georgia		X	X						
Hawaii		X	X	X	X	X	X		
Idaho									
Illinois	X	X		X	X	X		X	
Indiana									
Iowa									
Kansas					X <sup>†</sup>				
Kentucky									
Louisiana		X	X						
Maine									
Maryland		X	X	X	X			X	X
Massachusetts									
Michigan									
Minnesota									
Mississippi			X <sup>‡</sup>						
Missouri			X						

\*In effect on October 1, 2023

<sup>†</sup>Prohibited in buildings with security screenings

<sup>‡</sup>People with enhanced permits are exempt

<sup>§</sup>Prohibits handguns only

<sup>||</sup>Only poll workers are prohibited

<sup>#</sup>Local governments may opt to allow

<sup>\*\*</sup>People with permits are exempt

(continued on next page)

**TABLE 1** (continued from previous page)

## State Prohibitions on Guns at Election Locations

STATE	GENERAL PROHIBITION ON OPEN CARRY	POLLING PLACES		GOVERNMENT-OWNED BUILDINGS		DROP BOXES		COUNTING FACILITIES	
		OPEN CARRY	CONCEALED CARRY	OPEN CARRY	CONCEALED CARRY	OPEN CARRY	CONCEALED CARRY	OPEN CARRY	CONCEALED CARRY
Montana									
Nebraska			X						
Nevada					X				
New Hampshire									
New Jersey	X <sup>§</sup>	X	X	X	X	X <sup>§</sup>		X	X
New Mexico									
New York	X <sup>§</sup>	X	X	X	X	X <sup>§</sup>		X <sup>§</sup>	
North Carolina									
North Dakota				X	X				
Ohio		X <sup>¶</sup>	X <sup>¶</sup>		X <sup>#</sup>				
Oklahoma				X	X				
Oregon									
Pennsylvania									
Rhode Island									
South Carolina		X <sup>§</sup>	X	X	X				
South Dakota									
Tennessee									
Texas		X	X						
Utah									
Vermont									
Virginia		X	X	X	X			X	X
Washington		X						X	X
West Virginia									
Wisconsin				X <sup>**</sup>					
Wyoming									

\*In effect on October 1, 2023

†Prohibited in buildings with security screenings

‡People with enhanced permits are exempt

§Prohibits handguns only

¶Only poll workers are prohibited

#Local governments may opt to allow

\*\*People with permits are exempt

- Of the 34 states that do not ban open carry at polling places,<sup>133</sup> 33 do not regulate military-style assault weapons.<sup>134</sup> In other words, in 33 states, no laws specifically prohibit an individual from openly carrying an AR-15-style assault weapon at a poll site.
- As of June 2023, only two states, Colorado and Hawaii, had expressly prohibited firearms at or near drop boxes, though Arizona appears to enforce its “75-foot limit” at drop boxes as well.<sup>135</sup>
- Only five states have explicitly expanded their prohibitions to places where votes are counted.<sup>136</sup>

**Most states place few restrictions on public carrying generally.** States that lack prohibitions on guns at polling places may nonetheless limit the likelihood of carrying at poll sites if they implement more general restrictions on carrying weapons. In fact, while the events of January 6, 2021, provide perhaps the best example of the increased risk of political violence, they also demonstrate how strong restrictions on public carrying can prevent violence. While a number of the participants in the attack carried firearms, some of the attack’s organizers later testified that strong gun laws in Washington, DC, deterred them from bringing a much larger arsenal, which was cached outside the city limits in Virginia.<sup>137</sup> Despite the apparent effectiveness of DC’s gun laws on January 6, however, most states today place few or no restrictions on the open carry of firearms in public and a majority allow concealed carry without a permit.

Forty-four states, home to more than 220 million people, do not prohibit the open carry of firearms.<sup>138</sup>

- Only four states (California, Connecticut, Florida, and Illinois) and the District of Columbia prohibit all openly carried firearms in public.<sup>139</sup>
- Two more states, New York and New Jersey, prohibit the open carry of handguns in public but not the carrying of long guns.
- Six states do not prohibit open carry but require a permit or license to openly carry a handgun. (Indiana repealed its law in 2022 when the state passed permit-less carry.)<sup>140</sup>
- Six states regulate in some manner, but do not prohibit, the open carrying of long guns.<sup>141</sup>

Twenty-three states generally require a state-issued permit in order to carry concealed weapons in public. The remaining 27 states allow people to carry concealed weapons in most public spaces without any permit, background check, or training at all.<sup>142</sup>

**Strong public support for regulating guns at poll sites gives reason for hope.** While the current state of the law is troubling, progress is politically feasible and may be on the horizon. The GPAHE poll found that 63 percent of respondents supported prohibitions of guns at polling places. While approval among Democrats was high (80 percent), as expected, more than 50 percent of Republicans and independents also indicated support for such a ban. And importantly, 62 percent of gun owners supported a ban, whereas only 22 percent opposed.<sup>143</sup> A Brennan Center poll of white U.S. citizens of voting age showed similar results. The overwhelming majority (74 percent) of respondents either somewhat or strongly agreed that there should be rules against carrying firearms in sensitive locations such as polling places. Supermajorities of gun owners (68 percent) and individuals who said the right to own and carry a gun is “very important” to them (67 percent) felt similarly. More than 60 percent of Republicans (and Republican-leaning independents) and self-identified conservatives also believed that keeping guns out of polling places is important.<sup>144</sup>

State policy on poll site prohibitions does not appear to be dictated by partisan politics — a rarity in the field of gun regulation. A number of states controlled by conservative majorities typically opposed to strong gun regulations — Arizona, Florida, Georgia, Louisiana, and Texas — prohibit both open and concealed carry at poll sites. And while some of these prohibitions may date back to a different political era, they have remained largely untouched during the recent and generally partisan wave of deregulation.

While there is still much progress to be made, the tide does appear to be turning in recent years. A growing number of states have listened to voters’ concerns and enacted preventive legislation to restrict guns in certain areas sensitive to the exercise of democracy. In 2021, Oregon, Virginia, and Washington prohibited individuals from carrying some or all guns in or around their state buildings. Virginia also prohibited guns in state-owned buildings or offices where state employees work regularly.<sup>145</sup> In 2022, Colorado, New Jersey, New York, and Washington State prohibited some or all guns in certain sensitive areas, such as polling places, school board meeting sites, demonstrations, and places where votes are tabulated.<sup>146</sup> In 2023, Delaware, Hawaii, and Maryland prohibited guns at polling locations, demonstrations, government buildings, and schools.<sup>147</sup> Colorado’s law also explicitly prohibits openly carried guns within 100 feet of drop boxes, while Hawaii’s prohibits guns in adjacent parking areas. New Jersey’s and Maryland’s laws also protect election workers by prohibiting firearms in any location used for the storage or tabulation of ballots.<sup>148</sup>

Michigan and Massachusetts have legislation pending that would bar guns from polling places or areas where



ballots are being counted.<sup>149</sup> A similar bill in Nevada was vetoed by the state’s governor.<sup>150</sup>

In 2022 and 2023, six of the states that passed laws to keep guns from the polls did so as a direct response to threats of armed intimidation during the 2020 election or as a response to *Bruen*.

## Strengthen Anti-Intimidation Laws

In addition to prohibiting guns wherever protected voting or election activity occurs, states can strengthen voter intimidation laws. As previously discussed, while the availability and popularity of voting by mail has grown, so too has the use of guns to intimidate voters near drop boxes and election workers in places where votes are being counted.<sup>151</sup>

The Supreme Court was unequivocal in *Bruen* that prohibiting firearms in polling places is constitutional. The Court relied on a centuries-old assumption that the mere carrying of firearms in specific circumstances can constitute unlawful intimidation.<sup>152</sup> It is both constitutionally sound and a logical extension of the Court’s reasoning in *Bruen*, therefore, for states to prohibit guns wherever protected voting activity may occur, including near ballot drop boxes or places where votes are being tabulated.

Today, federal law and the laws of all 50 states already prohibit voter intimidation.<sup>153</sup> And many states criminalize the use of a firearm to intimidate in any context.<sup>154</sup> However, no state or federal law prohibiting voter intimidation expressly acknowledges that the mere presence of firearms can constitute intimidation.<sup>155</sup> States must fill that gap and explicitly address the intimidating effects of firearms.

To be clear, current federal legal prohibitions against intimidating voters and those who aid them are written broadly. Though they never mention firearms explicitly, they certainly ban intimidation involving firearms. Section 11(b) of the Voting Rights Act of 1965 broadly prohibits the intimidation of any person for “voting or attempting to vote” or for “urging or aiding any person to vote or attempt to vote.”<sup>156</sup> Unlike its predecessors,<sup>157</sup> the provision forbids conduct that intimidates regardless of whether it was intended to have that effect.<sup>158</sup> In some respects, the strength of Section 11(b) lies in its general terms. Rather than listing specific behaviors that are intimidating, the law prohibits any conduct that intimidates, giving it the flexibility to offer voters relief even as trends in voting and intimidation shift.

In 2022, this general language proved effective in Maricopa County, Arizona, where voters were intimidated by armed civilians conducting surveillance of drop boxes. An organization filed suit under Section 11(b) on behalf of

those intimidated voters and obtained a temporary restraining order from a federal court that, among other things, enjoined defendants from “openly carry[ing] firearms within 250 feet of a ballot drop box.”<sup>159</sup>

But an explicit reference to firearms in anti-intimidation law could make such prohibitions even more effective by deterring armed intimidation before it occurs. In response to the first reports of armed individuals dressed in tactical gear monitoring ballot drop boxes with their faces covered, the Maricopa County Sheriff’s Office sent deputies to the scene. The sheriff’s office confirmed that some of the observers that night had been armed, but later issued a statement explaining, “Deputies responded and were able to determine that the individuals were not breaking any laws and were more than 75 feet away from the ballot box as required by law.”<sup>160</sup> In other words, the office suggested that these armed individuals had broken no law because they remained outside the 75-foot perimeter for electioneering near a polling place under Arizona law.

Body camera video footage from that night shows that, just after the armed individuals left, the officers measured to confirm that the remaining observers in the area were outside the 75-foot perimeter surrounding the drop box.<sup>161</sup> One of the officers then informed the observers that it was still possible to violate the law against intimidating or hindering voters when outside the perimeter and noted that wearing tactical gear could be intimidating. But, he said, the law is “very vague; it says ‘hindering voting.’” He said he would seek clarification on what that meant.<sup>162</sup>

If Arizona law had made clear that openly carrying firearms while observing poll sites was presumptively intimidating, the election conspiracists might not have been emboldened to patrol ballot boxes with firearms in the first place. And law enforcement officials would not have had any doubt as to whether they were properly interpreting the law. They might not have issued a statement that could be misread to suggest that carrying firearms just outside the 75-foot perimeter was, by definition, legal.

States should use the broad language of Section 11(b) of the Voting Rights Act as a model for their anti-intimidation laws and should also expand on that model.

States should adopt the following crucial components of Section 11(b), which provide the broad, flexible protections necessary to allow civil suits to stop armed intimidation from disrupting the elections process:

- a general prohibition on any conduct that intimidates, regardless of intent;<sup>163</sup>
- protection for voters and for those urging or aiding others to vote;
- a broad definition of voting that includes everything necessary to register, cast a ballot, and have the ballot counted;<sup>164</sup>

- a private right of action allowing anyone aggrieved by intimidation to file suit for relief and attorneys' fees; and
- enforcement power for the state attorney general.

States should supplement these components with these additional protections:

- explicit acknowledgment that election officials and election workers are covered by the protections for those urging or aiding others to vote and that election administration, including vote counting, canvassing, and certification, is protected conduct;
- a presumption that openly carrying a firearm while interacting with or observing those engaged in protected conduct is intimidating, requiring individuals carrying firearms to bear the burden of proving otherwise in a suit to enforce the law;
- an explicit allowance for courts to include prohibitions or limitations on firearms that extend beyond statutory perimeter limits in any relief granted; and
- enforcement power for election officials that allows them to bring suit to stop intimidation occurring within their jurisdictions and intimidation of voters eligible to vote in their jurisdictions.

# Conclusion

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**A**merican elections in the 21st century have been overwhelmingly peaceful. But the country faces unprecedented challenges, including an aggressive rise in election denial and political violence. These new threats are emerging against a backdrop of rapid gun deregulation in a large swath of the country where they are most likely to take hold. Coupled with a dramatic expansion of Second Amendment rights by the Supreme Court, these developments create a growing risk of gun violence in our elections.

Despite this risk, no federal law prohibits the possession of firearms at polling locations or places where the electoral process is being conducted, making it imperative that the states pursue this policy. Most states' laws, however, also lack such prohibitions. States must fill this

void and enact legislation banning guns at polling places, drop boxes, election offices, and ballot-counting facilities to guard against efforts to undermine American democracy. States must also shore up anti-intimidation laws to properly account for today's threats.

# Endnotes

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- 1 New York State Rifle & Pistol Association, Inc. v. Bruen, 142 S. Ct. 2111 (2022).
- 2 Billy Clark, “Second Amendment Challenges Following the Supreme Court’s Bruen Decision,” Giffords Law Center, June 21, 2023, <https://giffords.org/lawcenter/memo/second-amendment-challenges-following-the-supreme-courts-bruen-decision/>.
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- 4 Walter Morris, “Concealed Carry Permit Applications Soar in Maryland,” NBC Washington, July 12, 2022, <https://www.nbcwashington.com/news/local/concealed-carry-permit-applications-soar-in-maryland/3098367/>.
- 5 District of Columbia v. Heller, 554 U.S. 570 (2008).
- 6 Heller, 554 U.S. at 626–27, 627 n.26.
- 7 McDonald v. City of Chicago, 561, 778 U.S. 742 (2010).
- 8 See, e.g., Woollard v. Gallagher, 712 F.3d 865, 874-75 (4th Cir. 2013) (collecting cases applying two-step approach). See also United States v. Chovan, 735 F.3d 1127, 1138 (9th Cir. 2013) (“The level of scrutiny should depend on (1) how close the law comes to the core of the Second Amendment right, and (2) the severity of the law’s burden on the right.”) (quotations and citations omitted); and Heller v. District of Columbia (Heller II), 670 F.3d 1244, 1257 (DC Cir. 2011) (“A regulation that imposes a substantial burden upon the core right of self-defense protected by the Second Amendment must have a strong justification, whereas a regulation that imposes a less substantial burden should be proportionately easier to justify.”).
- 9 Bruen, 142 S. Ct. at 2125 (“the Courts of Appeals have coalesced around a ‘two-step’ framework for analyzing Second Amendment challenges that combines history with means-end scrutiny”); Bruen, 142 S. Ct. at 2174 (Breyer, J., dissenting) (“every Court of Appeals to have addressed the question has agreed on a two-step framework for evaluating whether a firearm regulation is consistent with the Second Amendment”).
- 10 Eric Ruben and Joseph Blocher, “From Theory to Doctrine: An Empirical Analysis of the Right to Keep and Bear Arms After Heller,” *Duke Law Journal* 67 (2018): 1433–1509, 1472, <https://scholarship.law.duke.edu/dlj/vol67/iss7/3>.
- 11 Bruen, 142 S. Ct. 2111, 2122 (2022) (Thomas, J., concurring).
- 12 Bruen, 142 S. Ct. at 2128.
- 13 Bruen, 142 S. Ct. at 2133.
- 14 Alanna Durkin Richer and Lindsay Whitehurst, “Turmoil in Courts on Gun Laws in Wake of Justices’ Ruling,” *Los Angeles Times*, February 18, 2023, <https://www.latimes.com/world-nation/story/2023-02-18/turmoil-in-courts-on-gun-laws-in-wake-of-justices-ruling>.
- 15 Compare United States v. Rahimi, No. 21-11001 (5th Cir. 2023) (finding that 18 U.S.C. § 922(g)(8), which criminalizes possession of firearms by persons subject to domestic violence protection orders, is unconstitutional because it is an “outlier[] that our ancestors would never have accepted”) with United States v. Silvers, No. 5:18-cr-50-BJB, 2023 U.S. Dist. LEXIS 77061 (W.D. Ky. May 3, 2023) (holding that § 922(g)(8) does not violate the Second Amendment because it is consistent with the nation’s historical tradition of disarming dangerous individuals). See also Joseph Blocher and Eric Ruben, “Originalism-by-Analogy and Second Amendment Adjudication,” *Yale Law Journal* 133 (forthcoming 2023): 6–7, [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=4408228](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4408228).
- 16 Fraser v. BATFE, No. 3:22-cv-410, 2023 U.S. Dist. LEXIS 82432, at \*2 (E.D. Va. May 10, 2023); and Reese v. BATFE, No. 6:20-CV-01438, 2022 U.S. Dist. LEXIS 230140, at \*2 (W.D. La. December 21, 2022).
- 17 See generally Ryan Busse, “One Nation Under Guns,” *Atlantic*, December 14, 2022, <https://www.theatlantic.com/ideas/archive/2022/12/gun-violence-scotus-bruen-ruling-mass-shootings/672446/>. United States v. Perez-Gallan, No. PE:22-CR-00427-DC, 2022 WL 16858516 (W.D. Tex. November 10, 2022); Firearms Policy Coalition, Inc. v. McCraw, 623 F. Supp. 3d 740 (N.D. Tex. 2022), appeal dismissed sub nom. Andrews v. McCraw, No. 22-10898, 2022 WL 19730492 (5th Cir. December 21, 2022); and Jennifer Mascia, “Tracking the Effects of the Supreme Court’s Gun Ruling,” *The Trace*, last updated October 14, 2022, <https://www.thetrace.org/2022/08/nysrpa-v-bruen-challenge-gun-regulations/> (detailing litigation filed in the wake of Bruen to reverse state assault weapons bans in nine states: California, Colorado, Connecticut, Delaware, Hawaii, Illinois, Maryland, Massachusetts, and New York).
- 18 Bruen, 142 S. Ct. at 2118, 2133 (quoting Heller, 554 U.S. at 626).
- 19 Bruen, 142 S. Ct. at 2133.
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- 21 Giffords Law Center, “Concealed Carry,” last accessed April 7, 2023, <https://giffords.org/lawcenter/gun-laws/policy-areas/guns-in-public/concealed-carry/>.
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- 25 See John J. Donohue, Abhay Aneja, and Kyle D. Weber, *Right-to-Carry Laws and Violent Crime: A Comprehensive Assessment Using Panel Data and a State-Level Synthetic Control Analysis*, NBER Working Paper No. w23510, October 9, 2018, 1–126, <https://ssrn.com/abstract=2988731>; and Donohue, Aneja, and Weber, *Right-to-Carry Laws and Violent Crime*, 64–65 (“While Siegel et al. using their own model on the 1991–2015 CDC data found that overall homicides rose by 6.5 percent, firearm homicides rose by 8.6 percent, and handgun homicides rose by 10.6 percent, Donohue [2017b] running the DAW model on the 2000–2014 period generated comparable estimates of 6.0 percent, 9.5 percent, and 15.8 percent for overall, firearm, and handgun homicides, respectively [although the 6.0 estimate for overall homicides lost statistical significance at the .05 level]”).
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**91** Examples of Trump's lies are numerous. On many occasions, he asserted without evidence that vote-by-mail was "very dangerous for this country because of cheaters." See Stephanie Saul and Reid J. Epstein, "Trump Is Pushing a False Argument on Vote-by-Mail Fraud. Here Are the Facts," *New York Times*, September 28, 2020, <https://www.nytimes.com/article/mail-in-voting-explained.html>. He routinely claimed that mail votes were being cast in the names of the deceased to steal the election for Democrats. See Martin Pengelly, "Trump Claims 5,000 Dead People Voted in Georgia – but the Real Number Is Four," *Guardian*, December 28, 2021, <https://www.theguardian.com/us-news/2021/dec/28/donald-trump-georgia-2020-election-dead-people>. He made the unfounded claim that "millions of mail-in ballots will be printed by foreign countries," resulting in a "rigged" election. See Eugene Kiely and Rem Rieder, "Trump's Repeated False Attacks on Mail-In Ballots," FactCheck.org, September 25, 2020, <https://www.factcheck.org/2020/09/trumps-repeated-false-attacks-on-mail-in-ballots/>. He falsely alleged that Democrats were mailing out "80 million unsolicited ballots" to "harvest" votes and elect Joe Biden, ballots that were "swamping election officials." See "Fact Check: Clarifying Trump's 80 Million 'Unsolicited' Ballots Claim," Reuters, September 11, 2020, <https://www.reuters.com/article/uk-factcheck-80-million-unsolicited-ball/fact-check-clarifying-trumps-80-million-unsolicited-ballots-claim-idUSKBN2622SZ>; and MaryAlice Parks and Kendall Karson, "A Step-by-Step Look at Trump's Falsehoods on Mail-In Voting: Analysis," ABC News, October 1, 2020, <https://abcnews.go.com/Politics/step-step-trumps-falsehoods-mail-voting-analysis/story?id=73354979>. Trump falsely claimed that states like California sent mail ballots to "anyone that aren't citizens." See Holmes Lybrand and Daniel Dale, "Fact Check: Trump Falsely Claims California Is Sending Mail-In Ballots to Undocumented Immigrants," CNN, May 28, 2020, <https://www.cnn.com/2020/05/26/politics/fact-check-trump-vote-by-mail-fraud-gavin-newsom-california/index.html>. He consistently floated the claim that "big massive [ballot] dumps"

were occurring across the nation including in “Michigan, Pennsylvania, and all over.” See Jack Brewster, “Trump Renews Ballot ‘Dump’ Conspiracy Theory Claim — Here’s Why It’s Bogus,” *Forbes*, November 30, 2020, <https://www.forbes.com/sites/jackbrewster/2020/11/30/trump-renews-ballot-dump-conspiracy-theory-claim-heres-why-its-bogus/>.

**92** Donald J. Trump (@realDonaldTrump), “So now the Democrats are using Mail Drop Boxes, which are a voter security disaster. Among other things, they make it possible for a person to vote multiple times. Also, who controls them, are they placed in Republican or Democrat areas? They are not Covid sanitized. A big fraud!” Twitter post, August 23, 2020, <https://twitter.com/realDonaldTrump/status/1297495295266357248>.

**93** Elise Viebeck, “Courts View GOP Fraud Claims Skeptically as Democrats Score Key Legal Victories over Mail Voting,” *Washington Post*, September 28, 2020, [https://www.washingtonpost.com/politics/courts-voting-fraud-claims-republicans/2020/09/28/ceff1184-fda2-11ea-b555-4d71a9254f4b\\_story.html](https://www.washingtonpost.com/politics/courts-voting-fraud-claims-republicans/2020/09/28/ceff1184-fda2-11ea-b555-4d71a9254f4b_story.html).

**94** Viebeck, “Courts View GOP Fraud Claims Skeptically.”

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**96** William Cummings, Joey Garrison, and Jim Sergent, “By the Numbers: President Donald Trump’s Failed Efforts to Overturn the Election,” *USA Today*, January 6, 2021, <https://www.usatoday.com/in-depth/news/politics/elections/2021/01/06/trumps-failed-efforts-overturn-election-numbers/4130307001/>.

**97** Peter Stone, “‘It’s a Sham’: Fears over Trump Loyalists’ ‘Election Integrity’ Drive,” *Guardian*, July 7, 2022, <https://www.theguardian.com/us-news/2022/jul/07/sham-fears-over-trump-loyalists-election-integrity-drive>.

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- 129** Miss. Code Ann. § 45-9-101; 97-37-7.
- 130** See, e.g., Ohio Rev. Code Ann. § 3505.21 (prohibiting only persons who serve as poll observers from carrying firearms).
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**154** Giffords Law Center, “Preventing Armed Voter Intimidation: A State-by-State Analysis,” last accessed July 6, 2023, <https://files.giffords.org/wp-content/uploads/2020/09/Giffords-Law-Center-Preventing-Armed-Voter-Intimidation.pdf>.

**155** A few states, however, have issued guidance indicating that carrying weapons near a polling place constitutes voter intimidation. In Arizona, see Arizona Secretary of State, “Guidance on Voting Location Conduct” (stating that openly carrying a firearm outside the

75-foot limit is likely to result in unlawful voter intimidation). In California, see Letter from California Secretary of State to California Law Enforcement Agencies re: “Protecting California Voters on Election Day and During Early Voting,” No. 2022-DLE-16, October 11, 2022, <https://oag.ca.gov/system/files/media/2022-dle-16.pdf> (classifying brandishing firearms as an example of voter intimidation). In Maryland, see Maryland Office of the Attorney General, “Guidance on Voter Intimidation,” last accessed July 6, 2023, [https://www.marylandattorneygeneral.gov/Reports/GUIDANCE\\_ON\\_VOTER\\_INTIMIDATION.pdf](https://www.marylandattorneygeneral.gov/Reports/GUIDANCE_ON_VOTER_INTIMIDATION.pdf) (stating that brandishing firearms or the intimidating display of firearms would likely constitute voter intimidation). In New Mexico, see New Mexico Secretary of State, “Guidance on Voter Intimidation and Discriminatory Conduct,” last accessed July 6, 2023, <https://www.sos.nm.gov/voting-and-elections/voter-information-portal-nmvote-org/guidance-on-voter-intimidation-and-discriminatory-conduct/> (classifying brandishing of weapons as an example of voter intimidation). In New York, see New York Office of the Attorney General, “New York State Election Advisory,” October 28, 2022, [https://ag.ny.gov/sites/default/files/oag\\_guidance\\_re\\_voter\\_intimidation.pdf](https://ag.ny.gov/sites/default/files/oag_guidance_re_voter_intimidation.pdf) (stating that displaying weapons outside polling places would likely constitute voter intimidation). In Pennsylvania, see Pennsylvania Department of State, “Guidance on Voter Intimidation and Discriminatory Conduct,” October 2020, <https://www.dos.pa.gov/VotingElections/OtherServicesEvents/Documents/DOS%20Voter%20Intimidation%20Guidance%2010.14.16.pdf> (classifying aggressive or threatening brandishing of weapons as an example of voter intimidation).

**156** 52 U.S.C § 10307(b).

**157** 42 U.S.C. § 1985(2); and 52 U.S.C. § 10101(b).

**158** National Coalition on Black Civic Participation v. Wohl, No. 20 Civ. 8668 (VM), 2023 WL 2403012, \*23 (S.D.N.Y. March 8, 2023); Colorado Montana Wyoming State Area Conference of the NAACP v. United States Election Integrity Plan, No. 1:22-cv-00581-CNS, 2023 WL 1338676, \*5 (D. Colo. January 31, 2023); League of United Latin American Citizens — Richmond Region Council 4614 v. Public Interest Legal Foundation, No. 1:18-CV-00423, 2018 WL 3848404, at \*3–4 (E.D. Va. August 13, 2018); and H.R. Rep. No. 89-439, at 30 (1965), *reprinted in* 1965 U.S.C.A.N. 2437, 2462 (“The prohibited acts of intimidation need not be racially motivated; indeed, unlike 42 U.S.C. 1971(b) [which requires proof of a ‘purpose’ to interfere with the right to vote] no subjective purpose or intent need be shown.”).

**159** Temporary Restraining Order, Arizona Alliance for Retired Americans v. Clean Elections USA, No. CV-22-01823-PHX-MTL (D. Ariz. November 1, 2022), <https://www.documentcloud.org/documents/23257289-troballetboxwatchers>.

**160** Balevic, “Armed and Masked ‘Ballot Watchers.’”

**161** Yvonne Wingett Sanchez and Adriana Usero, “Video Offers Rare Glimpse of Police Enforcing Arizona’s Election Laws,” *Washington Post*, March 9, 2023, <https://www.washingtonpost.com/politics/2023/03/09/video-arizona-ballot-drop-box-observers/>.

**162** Sanchez and Usero, “Video Offers Rare Glimpse.”

**163** This recommendation is limited to prohibitions subject to civil enforcement. States should require proof of criminal intent to intimidate in any criminal prohibition on voter intimidation.

**164** See 52 U.S.C. § 10310.

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