



Curbing Insurrection

Limits on Carrying Firearms in Public Spaces

What happened in our nation's capital on January 6th, 2021 is without precedent in living memory. The hallowed spaces of the U.S. Capitol Building – the heart of our democracy – were besieged by domestic terrorists attempting to overturn the results of a free and fair presidential election. Amid the violence, lawmakers were prevented from performing their constitutional duty, lives were lost, and our country was shaken.

This attack was sparked by the increasingly inflammatory and anti-government rhetoric spread by President Donald Trump, but had been building for years in the insurrectionist ideology of the gun lobby and other extremists. Such rhetoric has fueled, with growing frequency, the rise of armed insurrectionist groups across the country who use violence to menace those who do not agree with them. We have seen these groups invoke terror and discord on many occasions over the past four years, from the neo-nazi rally in Charlottesville, to the armed seizures of state capitols and armed intimidation of poll workers.

Yet, for as bad as it was, the attack on January 6th could have been far worse. Thanks to the District of Columbia's strong gun laws, few of the rioters carried firearms during their siege – and fewer still carried semi-automatic assault weapons. These laws undoubtedly saved lives. Unfortunately, this is not the case at many state capitols.

Now is the time to establish clear limits on the public carrying of firearms to prevent armed intimidation of legislators and advocates.

Permissive public carry laws increase gun violence and encourage armed intimidation by hate groups.

- Research finds that just the presence of firearms can prime aggressive thoughts regardless of whether a “good guy” or “bad guy” is holding the gun.¹
- Permissive concealed carry laws are linked to an 8.6% higher firearm homicide rate, and 13-15% higher violent crime rates compared to states with strong laws.^{2,3}
- At least 35 mass shootings were carried out by concealed carry permit holders since May 2007.⁴
- Extremist hate groups often openly carry military-style weapons to intimidate and thereby suppress the rights of others wishing to express their views.
- Weak public carry laws impair law enforcement's effectiveness by complicating how police can respond to potential threats. As an increasing number of Americans carry concealed weapons, police face a greater risk of encountering lethal violence when investigating suspected criminal activity.

Carrying firearms in public threatens our safety and our democracy

Historically, states have strictly regulated the carrying of guns in public through outright prohibitions or by requiring a rigorous permitting process in which state law enforcement has discretion to issue or deny a permit on a case-by-case basis.⁵ Over the last four decades, the gun lobby has weakened our nation's public carry laws, allowing Americans to carry loaded guns in more public places. Today, in most states it is legal to openly carry a loaded firearm, or carry a concealed gun in public, with almost no oversight.⁶ As a result of these lax laws, three million Americans carry a loaded handgun in public each day.⁷

The gun lobby has also engaged in a campaign to remove state restrictions on guns in sensitive areas where such actions pose a particular danger to public safety or conflicts with other protected rights, such as free speech. In many states, individuals can now carry guns on college campuses, into courthouses and government buildings, at protests, and in front of polling places.⁸ White supremacists and other hate groups have capitalized on these lax regulations openly carrying assault-style guns into state capitals and other public areas to intimidate lawmakers and anyone who disagrees with them. Law enforcement and local officials are left without the tools to effectively address these threats of hate and violence.

Where the First and the Second Amendments meet

Carrying firearms is not speech and therefore not protected under the First Amendment. The courts have a long history of constitutionally restricting specific kinds of speech and the manner in which it is conveyed.⁹ The Supreme Court has rejected “the view that an apparently limitless variety of conduct can be labeled as ‘speech’ whenever the person engaging in the conduct intends thereby to express an idea.”¹⁰ Conduct that is “sufficiently imbued with elements of communication [may] fall within the scope of the First and Fourteenth Amendments.”¹¹ More specifically, the Supreme Court has held that conduct is only eligible for First Amendment protections when (i) there is an “intent to convey a particularized message,” and (ii) the surrounding circumstances give rise to a great “likelihood ... that the message would be understood by those who viewed it.”¹²

Courts have generally not found that the carrying of a firearm conveys any specific – or constitutionally protected – message beyond the danger and lethality of the gun itself.¹³ For example, a court in Michigan disagreed with the argument that openly carrying firearms qualified as protected speech because “numerous emergency calls” made clear that worried members of the public did not perceive the firearm owners “as open carry activists demonstrating their First ... Amendment rights,” but rather “were simply alarmed and concerned for their safety and that of their community.”¹⁴ North Carolina courts have also “long deemed it reasonable to regulate ... the carrying of deadly weapons [at a] public assembly,” given the safety risks posed to the community.¹⁵ The right to free speech cannot be confused with a right to terrorize others and threaten public safety.

In the landmark decision *District of Columbia v. Heller*, the Supreme Court interpreted the core of the Second Amendment to protect “the right of law-abiding, responsible citizens to use arms in defense of hearth and home.”¹⁶ However, the court continued to clarify that “[l]ike most rights, the right secured by the Second Amendment is not unlimited,” and it is “not a right to keep and carry any weapon whatsoever in any manner whatsoever and for whatever purpose.”¹⁷ The Supreme Court emphasized that “nothing in our opinion should be taken to cast doubt on longstanding prohibitions on ... laws forbidding the carrying of firearms in sensitive places such as schools and government buildings,”¹⁸ and has not found a Second Amendment right to carry firearms in public.

The bottom line

- Carrying guns in public makes America less safe; research consistently notes that public carrying of firearms escalates conflict and increases violent crime.
- Courts **have not** found that the First Amendment applies to the display of firearms in public, or to protect speech that intimidates others or incites violence. Additionally, courts **have not** interpreted the Second Amendment to provide a right to carry a gun in public or threaten others with it.
- States should prohibit the open carry of firearms in public places and strongly regulate the concealed carry of firearms.

For more information, visit our website at www.csgv.org/issues/guns-in-public.

Endnotes

1. Bushman B. (2017). [Guns automatically prime aggressive thoughts, regardless of whether a “good guy” or “bad guy” holds the gun](#). *Social Psychological and Personality Science*.
2. Siegel M, Xuan Z, Ross CS, Galea S, Kalesan B, Fleegler E, & Goss KA. (2017). [Easiness of legal access to concealed firearm permits and homicide rates in the United States](#). *American journal of public health*.
3. Donohue JJ, Aneja A, & Weber KD. (2019). [Right-to-carry laws and violent crime: A comprehensive assessment using panel data and a state-level synthetic control analysis](#). *Journal of Empirical Legal Studies*.
4. Violence Policy Center. (2019). [Concealed Carry Killers Background](#). *Violence Policy Center: Concealed Carry Killers*.
5. Spitzer RJ. (2017). [Gun law history in the United States and Second Amendment rights](#). *Law & Contemp. Probs.*
6. Legal analysis of state concealed carry laws conducted by Giffords Law Center. Available: [Concealed Carry. Giffords Law Center](#).
7. Rowhani-Rahbar A, Azrael D, Lyons VH, Simonetti JA, & Miller M. (2017). [Loaded handgun carrying among US adults](#), 2015. *American Journal of Public Health*.
8. See [Local Restrictions](#). Giffords Law Center.
9. See *Miller v. California*, 413 U.S. 15, 23 (1973) (holding that obscenity is not protected by the First Amendment); *Watts v. United States*, 394 U.S. 705, 707-08 (1969) (holding that “true threats” are not protected by the First Amendment); *Chaplinsky v. New Hampshire*, 315 U.S. 568, 573 (1942) (holding that “fighting words” are not protected by the First Amendment); *Brandenburg v. Ohio*, 395 U.S. 444, 448 (1969) (holding that words intended to incite violence are not protected by the First Amendment); See *Perry Educ. Ass’n v. Perry Local Educators’ Ass’n*, 460 U.S. 37, 46 (1983) (outlining constitutional time, place, and manner restrictions for content-neutral limitations on speech).
10. *United States v. O’Brien*, 391 U.S. 367, 376 (1968).
11. *Texas v. Johnson*, 491 U.S. 397, 404 (1989).
12. *Spence v. Washington*, 418 U.S. 405, 410–11 (1974).
13. See *Baker v. Schwarb*, 40 F. Supp. 3d 881, 894-95 (E.D. Mich. 2014); *Chesney v. City of Jackson*, 171 F. Supp. 3d 605, 616-19 (E.D. Mich. 2016); *Burgess v. Wallingford*, No. 11-cv-1129, 2013 WL 4494481, at *9-10 (D. Conn. May 15, 2013); *Northrup v. City of Toledo Police Div.*, 58 F. Supp. 3d 842, 847-49 (N.D. Ohio 2014), *aff’d in part and rev’d in part on other grounds sub nom. Northrup v. City of Toledo Police Dep’t*, 785 F.3d 1128 (6th Cir. 2015).
14. *Schwarb*, 40 F. Supp. 3d at 894-95; see also *Chesney*, 171 F. Supp. 3d at 616-19.
15. *State v. Oaks*, 594 S.E.2d 788, 793 (2004), quoting *State v. Dawson*, 272 N.C. 535, 546, 159 S.E.2d 1, 10 (1968).
16. *District of Columbia v. Heller*, 554 U.S. 570, 635 (2008).
17. *Heller*, 554 U.S. at 626.
18. *Id.*