



# COMMONWEALTH *of* VIRGINIA

*Office of the Attorney General*

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Attorney General

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Dear colleague,

I know we all share a commitment to doing what each of us can in our respective roles to ensure a safe, smooth, fair, and accurate election, and a positive experience for voters at their polling place.

As we did last year, my team and I would like to provide updated information regarding laws, resources, and tools at your disposal to ensure that Virginians have a safe and comfortable voting experience when they go to the polls on Election Day or before.

Attached you will find an advisory opinion that I issued on September 24, 2020 outlining protections in both state and federal law against voter intimidation and harassment. As you play a critical role in protecting the elections process in the Commonwealth, I thought it important to ensure that you know the protections that are in place and the options available to you should we see any behavior over that could constitute voter intimidation or harassment.

The most significant recent change in our voter protection laws involves an expansion of the prohibition on firearms at polling places. As amended, Virginia Code § 24.2-604(A) makes it unlawful “to knowingly possess any firearm . . . within 40 feet of any building, or part thereof, used as a polling place” while “the polls are open and ballots are being counted, or within one hour of opening or after closing.” Last month, I issued the attached advisory opinion about this new provision that highlights the importance of protecting voters and ensuring everyone can safely and freely cast their ballot. As I explained in that opinion, the right to vote free of intimidation and harassment lies at the very core of our democratic society, and the prohibition on firearms at polling places under Code § 24.2-604(A) applies to any location that is designated as a polling place, including during the period of early voting prior to each election.

Virginians need to know that they can vote safely and securely if they choose to vote in person, and no matter how they vote, whether in person or by mail, their vote will count. Voting is the bedrock of our democracy and no one should ever feel intimidated or afraid when casting their ballot.

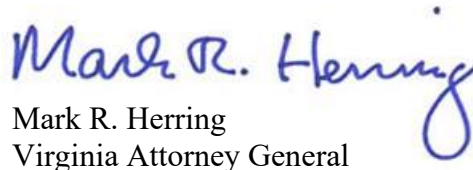
In addition to the guidance included in my opinions, the Virginia Department of Elections has resources for voters or election workers who believe they may have experienced or witnessed voter intimidation, or encountered other problems at the polling place. These incidents can be reported on the Department's website (<https://www.elections.virginia.gov/voter-complaints/>) or by phone at (800) 552-9745.

And finally, the OAG's Office of Civil Rights has civil authority to protect Virginians' voting rights through the Virginia Voting Rights Act. Any concerns that may implicate Virginians' civil rights or unlawful discrimination may also be reported to OAG's Office of Civil Rights at [CivilRights@oag.state.va.us](mailto:CivilRights@oag.state.va.us) or by phone at (804)786-2071.

In 2020, we worked together to overcome many unprecedented challenges, including a once-in-a-generation pandemic. Because of your work, and that of others involved in our elections process, Virginians were able to exercise their fundamental right to vote, and our Commonwealth held a safe, fair, secure, and accurate election. I know we can do it again in 2021.

Please do not hesitate to reach out to my office if you have any questions or if we can help you in any way during this time.

Sincerely,

  
Mark R. Herring  
Virginia Attorney General



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7-1-1

September 1, 2021

Mr. Peter Wurzer  
Chairman, Albemarle County Electoral Board  
401 McIntire Road, Room 130  
Charlottesville, Virginia 22902

Dear Mr. Wurzer:

I am responding to your request for an official advisory opinion in accordance with § 2.2-505 of the Code of Virginia.

## Issues Presented

You ask two questions regarding a provision in House Bill 2081 (“H.B. 2081”) that prohibits a person from “knowingly possess[ing] any firearm as defined in § 18.2-308.2:2 within 40 feet of any building, or part thereof, used as a polling place.” Specifically, you ask the following:

1. “[D]uring ‘early voting,’ prior to the date of a general, special, or primary election, are central absentee voter precincts, voter satellite offices, and offices of general registrars ‘polling places,’ and thus subject to the firearm prohibition?”
2. “[T]hat prohibition refers to the ‘building, or part thereof, used as a polling place.’ Where a polling place only takes up a part of the building that hosts it, does the prohibition apply to the entire building or only to those areas used for polling and access to the polls?”

## Applicable Law and Discussion

H.B. 2081, effective July 1, 2021, amended § 24.2-604(A) to read in pertinent part:

During the times the polls are open and ballots are being counted, or within one hour of opening or after closing, it is unlawful for any person . . . (iv) to knowingly possess any

firearm as defined in § 18.2-308.2:2 within 40 feet of any building, or part thereof, used as a polling place.<sup>[1]</sup>

Any person violating the provisions of § 24.2-604(A) “is guilty of a Class 1 misdemeanor.”<sup>2</sup> As I stated last fall,

In our democratic system of governance, the right to vote is “a fundamental political right.”<sup>3</sup> Voting both ensures “a representative form of government” and also “preserv[es] . . . other basic civil and political rights.”<sup>4</sup> “[T]he right to exercise the franchise in a free and unimpaired manner” is therefore a “bedrock” principle in any “free and democratic society.”<sup>5</sup> Intimidation of citizens who are seeking to vote is both illegal and antithetical to one of the basic promises that binds us together: that of democratic self-governance.<sup>[6]</sup>

Your questions relate to the application of this statute during the early voting period, beginning this year on September 17, 2021. Section 24.2-101 defines “[p]olling place” as “the structure that contains the one place provided for each precinct at which the qualified voters who are residents of the precinct may vote.” That section also defines “[p]recinct” as “the territory designated by the governing body of a county, city, or town to be served by one polling place.”<sup>7</sup>

A county or city may designate one or more voter satellite offices for absentee voting in person prior to Election Day,<sup>8</sup> and it is required to establish one or more central absentee voter precincts for counting absentee ballots on Election Day.<sup>9</sup> Albemarle’s central absentee voter precinct is “established on the first floor of the Albemarle County Office Building [at] 1600 5th Street, Charlottesville.”<sup>10</sup>

By statute, absentee voting in person—also known as early voting—begins 45 days prior to any election and continues until the Saturday before Election Day.<sup>11</sup> Early voting in Albemarle County is permitted 45 days prior to each election in Room A at the 5th Street Albemarle County Office Building.<sup>12</sup>

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<sup>1</sup> VA. CODE ANN. § 24.2-604(A). This and all other citations to the Code of Virginia herein are from the electronic version of the Code on LexisNexis and are current through the 2021 Special Session I of the General Assembly.

<sup>2</sup> VA. CODE ANN. § 24.2-604(G).

<sup>3</sup> *Yick Wo v. Hopkins*, 118 U.S. 356, 370 (1886); *see also* *Etheridge v. Med. Ctr. Hosps.*, 237 Va. 87, 98 (1989) (noting that “the right to vote” has “been recognized as fundamental”).

<sup>4</sup> *Reynolds v. Sims*, 377 U.S. 533, 562 (1964).

<sup>5</sup> *Id.*; *see also* *Harper v. Virginia State Bd. of Elections*, 383 U.S. 663, 670 (1966) (describing “the right to vote” as “precious” and “fundamental”).

<sup>6</sup> 2020 Op. Va. Att’y Gen. 53, 53 (Sept. 24, 2020) (internal footnote numbers amended).

<sup>7</sup> VA. CODE ANN. § 24.2-101.

<sup>8</sup> VA. CODE ANN. § 24.2-701.2.

<sup>9</sup> VA. CODE ANN. § 24.2-712 (providing that “the governing body of each county or city shall establish one or more central absentee voter precincts in the courthouse or other public buildings for the purpose of receiving, counting, and recording absentee ballots cast in the county or city”).

<sup>10</sup> *See* COUNTY OF ALBEMARLE, VA., Code § 2-107, available at [https://library.municode.com/va/albemarle\\_county/codes/code\\_of\\_ordinances?nodeId=CH2AD\\_ART1EL](https://library.municode.com/va/albemarle_county/codes/code_of_ordinances?nodeId=CH2AD_ART1EL).

<sup>11</sup> VA. CODE ANN. § 24.2-701.1.

<sup>12</sup> ALBEMARLE COUNTY DEPARTMENT OF ELECTIONS, *How to Vote*, available at <https://www.albemarle.org/government/elections/vote-absentee>.

Your first question is whether central absentee voter precincts, voter satellite offices, and offices of general registrars are considered “polling places” during the period of early voting prior to each election for purposes of the firearm prohibition in § 24.2-604(A)(iv). Applying the definition of “polling place” provided by the General Assembly in § 24.2-101, the aforementioned locations are “structure[s] that contain[] the one place provided” for qualified voters to cast their ballots. If the central absentee voter precincts, voter satellite offices, and offices of general registrars are designated locations for early voting in the locality, they are “polling places” as defined in § 24.2-101. Therefore, it is my opinion that firearms are prohibited at central absentee voter precincts, voter satellite offices, and offices of general registrars where they are the designated locations for early voting in the locality, in the same way that firearms are prohibited at polling places when the polls are open on Election Day.

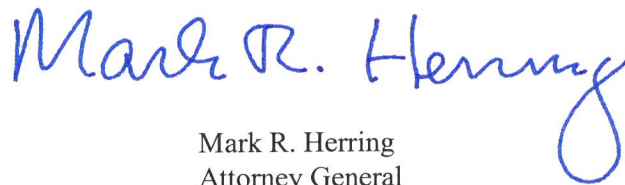
With regard to your second question, § 24.2-604(A)(iv) prohibits the knowing possession of a firearm “within 40 feet of any building, *or part thereof*, used as a polling place.”<sup>13</sup> For those polling places that are not located in school buildings where the possession of a firearm is already prohibited by § 18.2-308.1(B), it is my opinion that the firearm prohibition in § 24.2-604(A)(iv) applies to the 40-foot boundary around the portion of the building being used as a polling place, including any entrances and exits, and not the entire building. That interpretation is consistent with the prohibitions in § 24.2-604(A) against campaigning and congregating within 40 feet of the entrance to a polling place. And regardless of any person’s geographical location, it remains unlawful “to hinder, intimidate, or interfere with any qualified voter so as to prevent the voter from casting a . . . ballot.”<sup>14</sup>

### Conclusion

It is my opinion that locations such as central absentee voter precincts, voter satellite offices, and offices of general registrars that are used as the designated location for early voting are considered “polling places” such that the prohibitions of § 24.2-604(A)(iv) apply. Further, it is my opinion that the prohibitions of § 24.2-604(A)(iv) do not apply to the entire building that houses a polling place, but rather to the 40-foot boundary around the discrete portion of that building that is used as the polling place.

With kindest regards, I am,

Very truly yours,



Mark R. Herring  
Attorney General

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<sup>13</sup> VA. CODE ANN. § 24.2-604(A) (emphasis added); *see also* VA. CODE ANN. § 24.2-1005 (providing criminal penalties and civil remedies in the event that “[a]ny person . . . intimidates, threatens, or coerces, or attempts to intimidate, threaten, or coerce, any other person in giving his vote or ballot or who intimidates, threatens, or coerces, or attempts to intimidate, threaten, or coerce a voter to deter or prevent him from voting”).

<sup>14</sup> VA. CODE ANN. § 24.2-906(A)(iv) (emphasis added).



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September 24, 2020

The Honorable Marcus B. Simon  
Member, Virginia House of Delegates  
Post Office Box 958  
Falls Church, Virginia 22040

Dear Delegate Simon:

I am responding to your request for an official advisory opinion in accordance with § 2.2-505 of the Code of Virginia.

## Issue Presented

You explain that, with the start of in-person early voting in Virginia for the 2020 November election, there have been reports of activity near polling places that led some voters to fear for their safety while waiting to cast their vote, or led them to believe that they would be harmed for supporting a particular candidate. You have asked what, if any, protections state and federal law may provide against voter intimidation at a polling place.

## Applicable Law and Discussion

In our democratic system of governance, the right to vote is “a fundamental political right.”<sup>1</sup> Voting both ensures “a representative form of government” and also “preserv[es] . . . other basic civil and political rights.”<sup>2</sup> “[T]he right to exercise the franchise in a free and unimpaired manner” is therefore a “bedrock” principle in any “free and democratic society.”<sup>3</sup> Intimidation of citizens who are seeking to vote is both illegal and antithetical to one of the basic promises that binds us together: that of democratic self-governance.

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<sup>1</sup> *Yick Wo v. Hopkins*, 118 U.S. 356, 370 (1886); *see also Etheridge v. Med. Ctr. Hosps.*, 237 Va. 87, 98, 376 S.E.2d 525, 530 (1989) (noting that “the right to vote” has “been recognized as fundamental”).

<sup>2</sup> *Reynolds v. Sims*, 377 U.S. 533, 562 (1964).

<sup>3</sup> *Id.*; *see also Harper v. Virginia State Bd. of Elections*, 383 U.S. 663, 670 (1966) (describing “the right to vote” as “precious” and “fundamental”).

1. Intimidating a voter in Virginia is a criminal offense.

Both state and federal law include provisions designed to ensure that voters may cast their votes free from interference or harassment. The Code of Virginia, for example, expressly prohibits voter intimidation. Section 24.2-607(A) makes it unlawful “for any person to hinder, intimidate, or interfere with any qualified voter so as to prevent the voter from casting a secret ballot.”<sup>4</sup> Violations of that provision are punishable as a Class 1 misdemeanor.<sup>5</sup> Section 24.2-1005 separately makes it a Class 1 misdemeanor to use “threats, bribery, or other means in violation of the election laws” to “attempt[] to influence any person in giving his vote or ballot or . . . deter him from voting.”<sup>6</sup> And under § 24.2-1015, it is a Class 5 felony to “conspire to injure, oppress, threaten, intimidate, prevent, or hinder any citizen of this Commonwealth in the free exercise or enjoyment of any right or privilege secured to him by the provisions of [the election laws].”<sup>7</sup> Finally, while polls are open, no person may “hinder or delay a qualified voter in entering or leaving a polling place.”<sup>8</sup>

Federal criminal law similarly provides that any person who “intimidates, threatens, [or] coerces” another person “for the purpose of interfering with the right of such other person to vote or to vote as he may choose” in a federal election—or “attempts” to do the same—may be fined and/or imprisoned for up to one year.<sup>9</sup>

The Code of Virginia also prohibits certain conduct at polling places that might interfere with the right to vote free from influence. First, “[n]o person shall conduct himself in a noisy or riotous manner at or about the polls so as to disturb the election . . . .”<sup>10</sup> In addition, while polls are open, it is unlawful to “loiter or congregate,” “give, tender, or exhibit any . . . campaign material,” or “solicit or in any manner attempt to influence any person in casting his vote” within 40 feet of “any entrance of any polling place.”<sup>11</sup> It is also unlawful to “use[]” a “loudspeaker . . . within 300 feet of a polling place on an election day.”<sup>12</sup> Should they so choose, officers of election—with the consent of the locality’s chief law-enforcement officer—are empowered to “designate a law-enforcement officer” to “preserve order inside and outside at the polling place.”<sup>13</sup>

2. Virginia and federal law provide that voters shall not be harassed for exercising their rights.

Voters similarly should not fear for their safety when voting, whether they are within the forty-foot zone of a polling place or in socially-distanced lines beyond that zone. Both state and local law protect citizens from violent threats, and in particular from being threatened with firearms. It is a criminal offense in Virginia “to point, hold or brandish any firearm or any air or gas operated weapon or any object

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<sup>4</sup> VA. CODE ANN. § 24.2-607(A) (This and all other citations to the Code of Virginia are from the electronic version of the Code on LexisNexis and are current through the 2020 Regular Session, and 2020 Special Session 1, c. 1, of the General Assembly.).

<sup>5</sup> *Id.*

<sup>6</sup> *Id.* § 24.2-1005.

<sup>7</sup> *Id.* § 24.2-1015.

<sup>8</sup> *Id.* § 24.2-604(A).

<sup>9</sup> 18 U.S.C. § 594 (LexisNexis, current through Public Law 116-158, approved Aug. 14, 2020).

<sup>10</sup> VA. CODE ANN. § 24.2-607(B).

<sup>11</sup> *Id.* § 24.2-604(A).

<sup>12</sup> *Id.* § 24.2-605.

<sup>13</sup> *Id.* § 24.2-606.

similar in appearance, whether capable of being fired or not, in such manner as to reasonably induce fear in the mind of another or hold a firearm or any air or gas operated weapon in a public place in such a manner as to reasonably induce fear in the mind of another of being shot or injured.”<sup>14</sup> Virginia law also prohibits carrying or possessing firearms or weapons at specific locations that may be used as polling places, such as schools and courthouses.<sup>15</sup> A number of Virginia localities, including Arlington County and Richmond City, have enacted ordinances that restrict individuals from carrying firearms around certain public areas that may also serve as polling locations.<sup>16</sup>

Finally, it is a criminal offense for private individuals to usurp the role of actual law enforcement, and it is accordingly unlawful to appear at the polls attempting to exercise roles that rightfully belong to law enforcement. Virginia law makes it a Class 1 misdemeanor to “falsely assume[] or exercise[] the functions, powers, duties, and privileges incident to the office of sheriff, police officer, marshal, or other peace officer, or any local, city, county, state, or federal law-enforcement officer.”<sup>17</sup> This criminal prohibition can apply to “a group of private militia members coming as a unit, heavily armed with assault-style weapons, dressed in fatigues and other military accessories, and acting in a coordinated fashion” where the “militia members patrol[] a line of citizens” and “project[] authority to manage the crowd.”<sup>18</sup>

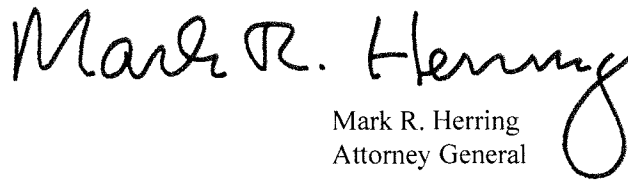
These types of protection have an important history in our law. They have helped vindicate racial equality in voting, ensure the constitutional guarantee of equal protection of the laws, and invoke the basic respect that is due every voter at the polls.

### Conclusion

The legitimacy of our government—and its success in fulfilling the promises of our Constitution—rely on the notion of uncoerced choice. Virginia and federal law protect the fundamental right to vote freely. Accordingly, it is my opinion that the conduct you describe could violate state and/or federal law if it threatens or intimidates voters casting their ballots at polling places.

With kindest regards, I am,

Very truly yours, .

  
Mark R. Herring  
Attorney General

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<sup>14</sup> *Id.* § 18.2-282(A). A violation of this section is punishable as a Class 1 misdemeanor, unless it occurs “upon any public, private or religious elementary, middle or high school, including buildings and grounds or upon public property within 1,000 feet of such school property,” in which case a violation is punishable as a Class 6 felony. *Id.*

<sup>15</sup> *See* VA. CODE ANN. § 18.2-308.1 (prohibiting possession of firearms and certain other weapons on “property of any . . . public, private, or religious preschool, elementary, middle, or high school, including buildings and grounds”); *id.* § 18.2-283.1 (prohibiting possession of firearms and certain other weapons in courthouses).

<sup>16</sup> *See* COUNTY OF ARLINGTON, VA., CODE ch. 13, art. II, § 13-14 (2020); City of Richmond, Va., Ordinance No. 2020-184 (Sept. 8, 2020) (amending City Code § 19-334.1); *see also generally* VA. CODE ANN. § 15.2-915 (authorizing localities to adopt ordinances prohibiting possession of firearms in certain public areas).

<sup>17</sup> VA. CODE ANN. § 18.2-174.

<sup>18</sup> 2019 Op. Va. Att’y Gen. 81, 84 (Aug. 16, 2019).