Presidential Security and Freedom of Expression in the Age of Obama

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I. Introduction

The right to be critical of the government and express political dissent is a fundamental part of the American democracy. Just as fundamental is the right prescribed by the Second Amendment, the right to keep and bear arms. In recent weeks, months, Americans have expressed their dissatisfaction with President Obama's plans for healthcare reform at town hall meetings throughout the country. Some dissenters, particularly in states that have open carry laws; have gone as far as openly brandishing guns at town halls where President Obama was speaking. In marked contrast to the "free speech zones"[1] former President Bush was known for setting up to keep his dissenters at bay, President Obama has expressed that gun-toting citizens are well within their rights to display their weapons at his political events. However, with a topic as heated and controversial as healthcare reform, this may not be the "change" that President Obama envisioned.

America has a longstanding tradition of political dissent toward the federal government.[2] The Declaration of Independence has been credited as the basis for political dissent in America.[3] President Lincoln once suggested that the Declaration of Independence is the "standard maxim for a free society.[4]"

[1] James Bovard, *Quarantining Dissent, How the Secret Service Protects Bush from Free Speech,* (January 4, 2004), *available at* http://www.sfgate.com/cgi-bin/article.cgi?f=/c/a/2004/01/04/INGPQ40MB81.DTL.
[2] Michael J. Hampson, *Protesting the President: Free Speech Zones and the First Amendment*, 58 RULR 245, 247 (2005).
[3] *Id*. at 248.
[4] *Id*.

The First Amendment states that "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press."[5] Freedom of speech serves an essential "checking value" on government[6] and that freedom of speech checks the abuse of power by public officials.[7] Moreover, the United States Supreme Court has argued that the ability to criticize the government and government officers constitutes the "the central meaning of the First Amendment."[8]

The principles of freedom of expression and liberty set out by the Declaration of Independence and the First Amendment have permitted a tradition of political discourse in this country, including the abolitionist movement of the mid- 1800s, the women's rights movement in the early 19th century and culminated during the civil rights movement in the 1960s.[9] The civil rights movement "sought to integrate blacks into American legal and political life through the elimination of institutional discrimination."[10] The movement produced several influential black political and religious leaders such as Dr. Martin Luther King, Medgar Evers, and Malcolm X, each of whom died by the hands of assassins. [11]

This note argues that in states with open-carry laws, a federal regulation needs to be put in place to restrict protestors who choose to brandish guns at Presidential events. First, I will argue that the practice of carrying weapons at presidential events is expressive conduct constituting symbolic speech. Placing time, place, or manner restrictions on protestors would not

[5] U.S. Const. amend II.
[6] Vincent Blasi, The Checking Value in First Amendment Theory, 1977 Am. B. Found. Res. J. 523.
[7] *Id.* at 542.
[8] New York Times v. Sullivan, 376 U.S. 254, 273 (1964).
[9] Theodore Otto Windt, Presidents and Protestors: Political Rhetoric in the 1960s, at 163 (1990).
[10] Hampson, *supra* note 2, at 251.
[11] http://www.infoplease.com/spot/civilrightstimeline1.html.

abridge protestor's First Amendment rights to freely protest against the president because these restrictions are content neutral. This would not abridge the protestor's second amendment rights because like many other rights, freedom of speech is subject to restriction.

Legacy of Presidential Assassinations

American history has shown that the office of the President holds considerable risks. Presidents Lincoln, McKinley, Garfield and Kennedy were assassinated while in office.[12] Unsuccessful attempts were made against Presidents Ford, Reagan, Truman and Andrew Jackson.[13] Likewise, presidential visits involve substantial risks to the President's security.[14] More specifically, Presidential security is heightened in an age where America has its first African American president.[15] By all accounts, since President Obama took office, threats against him have risen to a staggering 400 percent more than his predecessor, President George W. Bush.[16] Coupled with the country's history of presidential assassinations; the uneasiness some Americans have accepting that for the first time in history; the President of the United States is African American; and the legacy of assassinations of African American political figures, make these figures even more troubling.

History has proven that the President is most vulnerable to assassination attempts when he attends high-profile local events.[17] In recent months, as the health care reform debate has

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[12] Martin, Kelly, *Presidential Assassinations and Assassination Attempts*,(October 1, 2009) http://americanhistory.about.com/od/uspresidents/a/assassinations.htm.
[13] *Id*.
[14] Elizabeth Craig, *Protecting the President from Protest: Using the Secret Service's Zone of Protection to Prosecute Protestors,* 9 J. Gender Race & Just. 665,668 (2006).
[15]Adam Nagourney, *Obama Elected President as Racial Barrier Falls*, N.Y. Times, (November 4, 2008), *available at* http://www.nytimes.com/2008/11/05/us/politics/05elect.html?_r=2&scp=1&sq=barack%20obama%20election&st=cse
[16] Michael Yaki, *Gun Nuts at Obama Events*, San Francisco Chronicle, (Aug. 17, 2009), available at http://www.sfgate.com/cgi-bin/blogs/yaki/detail?entry_id=45689.
[17] Craig, *supra* note 14, at 668.

heated up, protestors at President Obama's political events have come bearing arms, an unprecedented occurrence.[18] The Secret Service is the federal agency charged with protecting the president, vice president and their families. [19] To reduce the risk of harm to the President, the Secret Service secures the local venue the President will be visiting, consults with local law enforcement and acts as the President's bodyguard.[20] The Secret Service typically has three layers of protection surrounding the President: an inner circle of agents a few feet away; a secure building arena in which the President is appearing, with restrictive admission, metal detectors and bomb-sniffing dogs; and an outer perimeter with checkpoints. [21] While protestors in certain open-carry states have the legal right to carry weapons to spots near presidential visits, every gun-toting protestor requires greater attention from the Secret Service and local law enforcement, which may cause a distraction to law enforcement.[22] "If the local police are drawn away to deal with these fools, then there's a vacuum somewhere." [23] "Perhaps one of those cops was supposed to be in a critical place where he or she could have stopped someone from doing something to the President. That's a real problem."[24]

I. Freedom of Expression

When reviewing a government action prohibiting political speech in a public forum,[25] courts determine whether the restriction is "content based" or "content neutral" in order to

[18] Mark Thompson, *When Protestors Bear Arms Against Health-Care Reform*, Time (August 19, 2009), *available at* http://www.time.com/time/nation/article/0,8599,1917356,00.html.
[19] http://www.secretservice.gov/faq.shtml#faq2.
[20] Craig, *supra* note 14 at 668.
[21] Thompson, *supra* note 18.
[22] *Id*.
[23] *Id*.
[24] *Id*.
[25] See generally Erwin Chemersinksy, Constitutional Law Principles and Policies, 1127 (3d ed. 2006) A public forum is government owned properties that the government is constitutionally obligated to make available for speech purposes. Speech may be regulated in a public forum only if the speech is content-neutral(unless the content restriction is justified under strict scrutiny). Reasonable time, place and manner restrictions must also be considered.

determine the proper standard of review.[26] Content-based regulations restrict communication based on the message it conveys.[27] Laws that ban seditious libel, outlaw the display of the swastika in certain neighborhoods, or forbid the hiring of teachers who advocate a violent overthrow of the government are examples of content-based restrictions.[28] The Supreme Court has argued that [c]ontent-based regulations are presumptively invalid.[29] In *Turner Broadcasting System v. Federal Communication Commission,* the Court declared that the general rule is that content-based restrictions on speech must meet strict scrutiny. More specifically, the court will determine whether the government restriction is narrowly tailored to achieve a necessary and compelling government interest. [30]

In contrast, content neutral restrictions need only meet intermediate scrutiny.[31] A court reviewing a content-neutral restriction on political speech must determine whether the restriction is narrowly tailored to achieve a significant government interest, while leaving open "alternative channels of communication."[32] Content neutral regulations include regulations that restrict the time, place, and manner of expression.[33] Content-neutral restrictions limit expressive conduct without regard to its content or the communicative impact of the message conveyed.[34] Examples of content neutral laws include laws that restrict noisy speeches near a hospital, limit campaign contributions or ban the mutilation of draft cards.[35] In sum, laws that distinguish favored speech

[26] Hampson, *supra* note 2 at 261.
[27] Geoffrey Stone, *Content Neutral Restrictions*,54 UCHILR 46, 47 (1987).
[28] *Id*. at 48.
[29] R.A.V. v. City of St. Paul, 505 U.S. 377, 382 (1992).
[30] Hampson, *supra* note 2 at 261.
[31] Turner v. Broadcasting System Inc. v. F.C.C., 512 U.S. 622, 658 (1994).
[32] Frisby v. Schultz, 487 U.S. 474, 482 (1988) (quoting Perry Educ. Ass'n v. Perry Local Educators' Ass'n, 460 U.S. 37, 45 (1983)).
[33] Philips v. Borough of Keyport, 107 F.3d 164 (3d Cir. 1997), *cert denied*, 118 S. Ct. 336 139 L.Ed. 2d 261 (U.S. 1997).
[34] Stone, *supra* note 27 at 48.
[35] *Id*.

from disfavored speech on the basis of ideas or views expressed are content-based and subject to strict scrutiny under the Constitution, while laws that bestow benefits or impose burdens on speech without reference to ideas or viewpoints are generally content- neutral.[36]

A. When is Conduct Communicative?

The Supreme Court has articulated that "[i]t is possible to find some kernel of expression in almost every activity a person undertakes, for example, walking down the street, or meeting one's friends at a shopping mall, but such a kernel is not sufficient to bring the activity within the protection of the First Amendment."[37] In Spence v. Washington, the Supreme Court considered when conduct should be considered communicative and set out two factors, intent to convey a specific message and second, there is a substantial likelihood that the message would be understood by those receiving it.[38]

Although openly carrying a weapon in itself may not be considered an "expressive activity", the brandishing of weapons while protesting at a presidential town-hall meeting intersects with expressive activity because of the intention of the speaker.[39] The conduct at issue here, the openly carrying of firearms at political events is a form of symbolic speech because it is intended to convey a specific message. The message, some protestors believe, that they are quickly losing their rights. "I wanted people to remember the rights that we have and how quickly we are losing them in this country," said William Kostric, a protestor who attended an

[36] Simon v. Schuster v. Members of New York State Crime Board, 502 U.S. 105, 112 S.Ct. 501 (1991).

[37] West Virginia State Board of Education v. Barnette, 319 U.S. 624, 632 (1943).
[38] Spence v. Washington, 418 U.S. 405, 410 (1974).
[39] Mary M. Cheh, *Demonstrations, Security Zones, And First Amendment Protection of Special Places*, 8 U.D.C. L. Rev. 53, 69 (2004).

Obama town hall in New Hampshire.[40] "It doesn't take a genius to see we're traveling down a road at breakneck speed that's toward tyranny."[41] "If you don't exercise your rights, you lose them."[42] "Openly carrying firearms sends a very mixed message," said John Pierce, co-founder of opencarry.org.[43] "One of the things I find a little bit less than perfect about the recent situation is not the fact that citizens were open-carrying, but rather that they were there as a form of open conduct to disagree with a political position that the president has taken." Openly carrying firearms sends a very mixed message indeed.

In addition, this message is substantially likely to be discerned by those receiving it. While protestors believe that they are exercising their Second Amendment right, a right which they believe is in jeopardy since Obama took office in January; other observers believe that openly carrying guns at town hall meetings endangers those in attendance. "Bringing loaded firearms to any Presidential event endangers all in attendance," said Brady Campaign President Paul Helmke. "We should use a little common sense, the possibility that these weapons might be grabbed or stolen or accidently mishandled increases the risks of serious injury or death to all in attendance."[44]

B. Clear and Present Danger Doctrine

The clear and present danger doctrine may be used as a guide to determine the constitutionality of governmental restrictions on the right of free speech and free press.[45] The

[40] Mike Stucky, *Guns Near Obama Fuel Open Carry Debate*, Aug. 25, 2009, http://www.nbcwashington.com/news/politics/Guns_near_Obama_fuel__open-carry__debate-54849862.html.
[41] *Id*.
[42] *Id*.
[43] *Id*.
[44] http:/firstread.msnbc.msn.com/archive/2009/08/17/2032801.aspx.
[45] *See generally,* Dennis v. United States, 341 U.S. 494 (1951).

doctrine was first formulated by Justice Holmes[46]and provides protections for expressions so that the printed or spoken words may not be the subject of previous restraint or subsequent punishment unless the speech creates a "clear and present danger of bringing about a substantial evil which government at all levels has the power to prohibit."[47]

The issue of when freedom of expression may pose a danger is difficult to determine.[48] Prohibiting or enjoining expression before the expression takes place would presumably constitute a violation of the First Amendment.[49] Courts must make reasonable attempts to protect the public, not from acts that constitute obvious unlawful misconduct, However, the present excesses of direct, active conduct are not presumptively prohibited because the restrictions interfere with and in some forms may restrain the exercise of First Amendment rights.[50]

The clear and present danger test focuses on "circumstances that are of such a nature as to create a clear and present danger that they will bring about the substantive evils that Congress has a right to prevent."[51] The clear and present danger test connotes three requirements: the likelihood, of imminent, significant harm.[52] Moreover, to justify a limit on free speech, courts must determine whether the gravity of the evil, including the probability of the evil is of a nature to justify an invasion of free speech and is necessary to avoid the danger of imminent, lawless conduct.[53] Fear of serious injury alone will not justify the suppression of free speech.[54] Finally,

[46] Schenck v. United States, 249 U.S. 47 (1919).
[47] Associated Press v. U.S., 326 U.S. 1, 7 (1945).
[48] *See generally*, Schafer v. U.S., 251 U.S. 466 (1920).
[49] *Id*.
[50] American Communications Ass'n, C.I.O. v. Douds, 339 U.S. 382 (1950).
[51] *Id*. at 52 (1919).
[52] *See generally* Abrams v. United States, 250 U.S. 616 (1919).
[53] Landmark Communications Inc., v. Virginia, 435 U.S. 829, 843 (1978).
[54] U.S. v. National Treasury Employees Union, 513 U.S. 454, 475 (1995).

any attempt to restrict speech must be validated by a clear public interest.[55] The threat must leave no doubt that it meets the clear and present danger test.[56]

In light of political protestors at Obama town halls, although the open display of weapons near the president may be disquieting, it is purely speculative that the presence of weapons would be likely to cause an imminent risk of significant harm to those in attendance. Although there is a clear public interest in protecting the president, here, it is unlikely that the clear and present danger test is met due to the speculative nature of imminent, lawless conduct.

C. Content Restrictions

The Supreme Court has acknowledged that the very core of the First Amendment is that the government cannot regulate speech based on its content.[57] Content-based restrictions limit communication because of the message the communication conveys.[58] The government has no authority to restrict expression because of the expression's message, ideas, its subject matter or its content.[59] Content based regulations imposed by the government are deemed invalid.[60]

In regulating content-based restrictions, the government must be both viewpoint neutral and subject matter neutral.[61] Viewpoint neutral means that speech cannot be regulated based on the ideology of the message.[62] A law regulating speech is content neutral if it applies to all speech regardless of the message.[63] A subject matter neutral regulation means that the

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[55] *See generally*, Landmark Communications v. Virginia, 435 U.S. 829 (1978).
[56] *Id.*
[57] Chemerinsky, *supra* note 25 at 932.
[58] Stone, *supra* note 27 at 48.
[59] Police Department of Chicago v. Mosely, 408 U.S. 92, 95-96 (1972).
[60] Turner, 512 U.S. at 642.
[61] *See e.g.* Perry Education Assn. v. Perry Local Educators' Assn. 460 U.S. 37, 45 (1983).
[62] Chemerinsky, *supra* note 25 at 934; *See also* Amy Sabrin, Thinking About Content: Can it play an appropriate role in government funding the arts? 102 Yale L.J. 1209, 1220 (1993).
[63] Sabrin, *supra* note 52 at 1220.

government cannot regulate speech based on the speech's topic.[64] Whenever the government undertakes to regulate speech in public places, the regulations must be subject matter neutral.[65]

A law may also be content neutral if the law regulates conduct that has an effect on speech without regard to its content.[66] A content neutral approach to gun-toting protestors at presidential events is instructive. A law regulating the prohibition of open carry protestors at presidential events would be a constitutional content neutral regulation of freedom of expression. While the proposed regulation would have a significant effect on speech, the law would still be content neutral. Moreover, the idea the demonstrators seek to express, their right to keep and bear arms under the Second Amendment would not be suppressed because the demonstrators are free to express this viewpoint in other ways, such as carrying signs or distributing leaflets. These methods leave demonstrators alternative means to express their viewpoints, which comports with the protections set out by the First Amendment.

II. Government Regulation of Conduct that Communicates

Determining that conduct has a communicative impact does not mean that it is impervious to government regulation. [67] After determining that conduct has a communicative impact, the question arises as to whether the government has a sufficient justification for regulating that conduct.[68] Time, place and manner restrictions do not constitute a complete ban on speech, these restrictions merely regulate the circumstances in which speech may occur.[6970]

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[64] Chemerinksy, *supra* note 25 at 936.
[65] Id. at 936
[66] *Id*.
[67] *Id*. at 1065.
[68] *Id*.
[69] Susan H. Williams, *Content Discrimination and the First Amendment*, 139 UPALR 615 (Time, place and manner restrictions are very similar to content-neutral regulations in that in a symbolic speech case, the regulation interferes with speech by preventing symbolic action rather than by restricting the time, place, or manner of verbal expression).
[70] *Id* at 645.

In United States v. O'Brien, the court articulated a test for evaluating the constitutional protection for conduct that communicates.[71] O'Brien involved several individuals who burned their draft cards on the steps of a Boston courthouse as a way to protest against the Vietnam War in violation of Selective Service laws.[72] The Supreme Court articulated "when speech and nonspeech elements are combined in the same course of conduct, a sufficiently important governmental interest in regulating the non-speech element can justify incidental limits on First Amendment freedoms."[73] The Court upheld O'Brien's conviction and articulated a test for evaluating conduct that communicates.[74] The four-part test set out in the case allows incidental restriction of speech if the regulation, is 1) "sufficiently justified when it is within the constitutional power of the Government, 2) it furthers an important or substantial governmental interest, 3)if the governmental interest is unrelated to the suppression of free expression, and 4) if the incidental restriction on First Amendment freedoms is no greater than is essential to the furtherance of that interest."[75] In laymen's terms, the O'Brien test stands for the proposition that government can regulate conduct that is communicative if the government has an important interest unrelated to the suppression of the message and if the impact on the communicative conduct is no more than necessary to achieve the government's purpose.[76][77]

A similar approach should be taken regarding the conduct of protestors at presidential events. Here, federal government regulation is sufficiently justified because it is within the power of the government to regulate speech via the First Amendment. Further, the government

[71] Chemerinsky, pg 1065.
[72] *See generally* [72] United States v. O'Brien, 391 U.S. 367 (1986).
[73] *Id*. at 376 (1986).
[74] Chemerinsky pg 1065
[75] *O'Brien*, 391 U.S. at 377.
[76] Chemerinsky, *supra* note 25 at1066.
[77] This test basically articulates that intermediate scrutiny is required to regulate communicative conduct

interest here, protection of the Commander in Chief, is substantial.[78] By the same token, protecting and providing for the safety of the President is unrelated to the freedom of expression. Demonstrators can still voice their opposition to the President's policies in other manners that do not include openly carrying firearms at Presidential events. Finally, government restriction of demonstrators openly carrying firearms at Presidential events is minimal because citizens in states that permit open carry, are still allowed to carry their weapons in other venues that allow such conduct. The objective here is not to quarantine dissent. If restrictions were put in place, demonstrators would still have an opportunity to express their dissent by using alternative methods.

Another argument for restricting demonstrators would be that openly carrying firearms at presidential events suppresses debate. "Loaded weapons at political forums endanger all involved, and end up stifling debate," said Paul Helmke, head of the Brady Campaign to Prevent Gun Violence.[79]

Second Amendment

The Second Amendment's right guaranteeing the people to keep and bear arms applies only to the federal government, leaving the states the freedom to regulate the manner of bearing arms, subject to the provisions of the individual constitutions of each state.[80] A state's legislature is free to regulate the manner of bearing arms, although it may lack the power to entirely destroy the right.[81] In contrast to the federal Constitution, which protects the right only to preserve a "well-ordered" militia, many state constitutions also protect the right to

[78] *See supra* notes 11-13.
[79] Thompson, *supra* note 18.
[80] Corpus Juris Secundum Constitutional Right to Bear Arms
[81] Glasscock v. City of Chattanooga, 157, Tenn. 518, 11 S.W.2d 678, 679 (1928).

keep and bear arms in self defense,[82]which is broader that the right afforded by the Second Amendment.[83] However, the right protected by state constitutions is not absolute,[84] but is subject to reasonable regulation by the states,[85] and their political subdivisions,[86] under each state's police power[87], provided the regulation is reasonable.[88]

Likewise, the First Amendment does not protect the right of citizens to speak for any purpose.[89] In 2008, the United States Supreme Court articulated in its landmark decision of *District of Columbia v. Heller* that the Second Amendment was an individual right of self-defense and not just a collective right.[90] However, the personal right to keep and bear arms afforded by the Second Amendment is not unlimited, and does not protect the right to carry firearms for any type of confrontation. [91] On the other hand, the right to keep and bear arms does not confer on individual citizens the right to bear arms in violation of a federal law.[92] To be valid, a law regulating the use and ownership of arms must pass constitutional requirements, including the law being a reasonable limitation; reasonably necessary to protect the public safety or welfare, and be substantially related to the ends sought.[93]

Considering both the First and Second Amendments, the central question to be considered is whether a proposed regulation would "significantly impair the ability of individuals to communicate their views to others, or whether they significantly impair the

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[82] State v. Moerman, 182 Ariz. 255, 259, 895 P.2d 1018, 1022 (Ct. App. Div. 1 1994).
[83] Akron v. Rasdan, 105 Ohio App. 3d 164, 171, 663 N.E.2d 947, 951-952 (9th Dist. Summit County 1995).
[84] *Moerman*, 182 Ariz. at 258, 895 P.2d at 1022.
[85] *Id*.
[86] Peoples Rights Organization v. City of Columbus, 925 F. Supp. 1254 (S.D. Ohio 1996) *judgment aff'd in part, rev'd in part on other grounds*, 152 F.3d 522, 1998 FED App. 210P (6th Cir. 1998).
[87] Jackson v. State, 37 Ala. App. 335, 68 So. 2d 850 (1953).
[88] *Rasdan*, 105 Ohio App. 3d at 171.
[89] District of Columbia v. Heller, 128 S.Ct. 2783, 2799 (2008).
[90] *See generally Heller*, 128 S.Ct. at 2783.
[91] *Id*. at 2799
[92] U.S. v. Visnich, 65 F. Supp. 2d 669, 671 (N.D. Ohio 1999).
[93] *Supra* note 36; City of Seattle v. Montana, 129 Wash.2d 583, 594, 919 P.2d 1218 (1996).

ability of the people to protect themselves."[94] The answer to that question should be a resounding no. As articulated in Heller, the inherent right to self-defense is central to the Second Amendment right.[95] Nevertheless, that right still is subject to restrictions. [96] The Second Amendment does not prohibit laws prohibiting the possession of firearms by certain groups, including felons, the mentally ill, or laws forbidding the carrying of arms in sensitive places such as schools,[97] government buildings, some public streets, courthouses and airports.[9899]

In addition, several states permit the open carry of firearms, including Arizona, New Mexico, Alaska, and Virginia.[100] Likewise, many of these states employ the same restrictions on openly carrying firearms as the federal government.[101] Many state and federal government cases look to the magnitude of the burden on self defense.[102] Restricting the open carry of firearms at presidential events, while a burden on self-defense are not a substantial burden because citizens are still allowed to carry firearms for self defense in other venues. These types of restrictions are akin to First Amendment time, place and manner restrictions on speech, because citizens in open carry states still have "alternative channels" to openly carry a firearm in many public places. Moreover, the restriction proposed by this article is no more burdensome than state and federal laws that already restrict the carrying of firearms in

[94]Eugene Volokh, *Implementing the Right to Keep and Bear Arms for Self-Defense*, 56 UCLA L. Rev. 1443, 1458 (2009).
[95] *See generally*, Heller note 79.
[96] *Id* at 2816.
[97] Volokh, *supra* note 84 at 1528-(California and Wisconsin prohibit open carrying within 1,000 feet of a school, even when the gun is unloaded. Outside those zones these states generally allow unloaded open carry and Wisconsin allows loaded open carry.)
[98] *Id*. at 1526.
[99] Volokh, *supra* note 84 at 1515-17.
[100] http://en.wikipedia.org/wiki/Open_carry.
[101] Volokh, *supra* note 87.
[102] Volokh, *supra* note 84 at 1457.

sensitive places. The government has a substantial interest in outlawing guns in these areas.[103]

The burden placed on the right to self defense in airports and courthouses is modest enough to fall below the constitutional threshold.[104] Similarly, the restriction proposed by this article, the restriction of citizens openly-carrying firearms to Presidential events, is a modest burden on those wishing to openly carry firearms, a burden that should fall below the constitutional threshold. However, a balancing test must be made, considering the government's compelling interest in protecting a sitting U.S. president and the right of the citizen to openly carry firearms. Just as schools or courthouses are considered "sensitive places" the area surrounding presidential events should be given a similar classification due to the government's compelling interest in protecting the president.

Finally, the proposed regulation is reasonably related to the end sought. The end sought is protecting the president from harm, while placing less of a burden on local law enforcement and the Secret Service whose job is to protect the president, and not to "monitor" those who wish to open carry at presidential events.[105][106] In addition, an argument could be made that restricting citizens from open carrying at presidential events protects the public welfare in that the restriction may reduce danger to the hundreds or thousands of other demonstrators/supporters in attendance, a legitimate interest.[107]

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[103] Volokh, *supra* note 84 at 1447. (The government might have special power stemming from its authority as proprietor, employer, or subsidizer to control behavior on its property or behavior by recipients of its property).
[104] United States v. Davis, 2008 US App Lexis 26934.
[105] Volokh, *supra* note 84 (When a gun is visible it occupies people's attention in a way that statistical realities do not).
[106] *Supra* note 44.
[107] Volokh, *supra* note 84 at 1521. (In many places, carrying openly is likely to frighten many people and lead to social ostracism and confrontations with the police.

Conclusion

Restricting the right to openly-carry firearms at presidential events constitutes an important governmental interest that should trump any state right to open-carry. Moreover, this slight restriction would not be a substantial burden on the right to self-defense because the restriction leaves open ample alternative channels for those wishing to open carry to do so. Protestors are still allowed to voice their dissent by other means. Further, in light of the government's compelling interest in protecting the president, coupled with this country's history of assassinating political figures should trump an individual right to open carry in this limited circumstance.