CONSTITUTIONAL LAW—SECOND AMENDMENT—*HELLER*, *MCDONALD*, AND PROHIBITIONS ON CONCEALED CARRY IN CHURCHES.

I. INTRODUCTION

It is December 2007. Twenty-four year old Matthew Murray shoots and kills two people at a missionary training center in the Denver suburb of Arvada.[1] Then he drives sixty-five miles to New Life Church in Colorado Springs where he shoots and kills two teenage sisters standing outside.[2] Jean Assam is inside when she hears the shots.[3] Assam, a former police officer, had been attending New Life Church for only a few months.[4] The church allows her to volunteer as a security guard, and she is carrying a handgun.[5] After Murray walks through the doors, Assam opens fire, injuring Murray[6] who then kills himself.[7]

If these same events had transpired in Arkansas rather than Colorado, Jean Assam likely would have been unarmed and much less able to stop the attacker. This is because Arkansas prohibits licensed citizens from carrying concealed handguns into churches and other places of worship.[8] This is true, even if a church or place of worship wants to allow members or visitors to carry defensive weapons. Other states have similar prohibitions on carrying defensive weapons in churches and other places of worship.[9]

This note argues that legislatively imposed gun bans that prohibit citizens from carrying defensive weapons to church gatherings, despite a church's willingness to allow its attendees to carry defensive weapons, should be held unconstitutional under the Second Amendment. Churches should be allowed to choose whether citizens may carry defensive weapons in their midst.

This note will first discuss *District of Columbia v. Heller*[10] and *McDonald v. City of Chicago*,[11] the two most recent cases on the Second Amendment.[12] Then this note will argue that the right to carry concealed handguns likely applies outside the home.[13] Next, this note will argue that the historical reasons for gun bans in places outside the home are insufficient post-*Heller* to justify a blanket ban on guns in churches.[14] Finally, this note will argue that blanket bans on carrying firearms in churches should not stand under any modern framework of constitutional analysis of firearms regulations.[15]

II. BACKGROUND

If churches possess a constitutional right to choose whether to allow defensive weapons, the foundation of this right will begin with *Heller*. In *Heller*, the Supreme Court of the United States struck down a District of Columbia law that banned private possession of handguns for self-defense in the home.[16]

The Court rooted its ruling on two key premises. First, the Second Amendment affirms an individual right to keep and bear arms unconnected with service in a militia.[17] Thus, although Heller was not a member of a branch of the military, he had a constitutional right to keep and bear arms.[18] Second, the Second Amendment enshrines self-defense as a core-constitutional value.[19] Therefore, the Court reasoned that the District's handgun ban was unconstitutional because an individual's home is where the need for self-defense is greatest.[20]

However, the Court also noted that the right to keep and bear arms is not unlimited.[21] According to the majority in *Heller*, and later reaffirmed in *McDonald*, prohibitions on carrying firearms in "sensitive places"[22] such as schools and government buildings are presumptively lawful.[23]

If the Supreme Court later adopts this dicta as legally binding, it means that the core value of the Second Amendment—self-defense—may be overridden by other concerns, because a person's need for self-defense could conceivably arise in a school, a government building,[24] or anywhere else one may lawfully be. The Supreme Court did not identify what concerns it had in mind when it classified schools and government buildings as "sensitive places." Thus, before deeming other places as "sensitive," the lower courts should identify characteristics that not only are common to schools or government buildings, but that are also sufficient to overcome the individual's right to self-defense.

Until 2010, the Second Amendment did not apply to the states.[25] However, the Supreme Court's ruling in *McDonald* incorporated the Second Amendment to the states through the Fourteenth Amendment's Due Process Clause.[26] Therefore, post-*McDonald*, the constitutionality of state prohibitions on concealed carry in churches is subject to challenge on Second Amendment grounds.

III. THE RIGHT TO BEAR ARMS OUTSIDE THE HOME

To show that a prohibition on concealed carry in churches is unconstitutional, it is essential to first demonstrate that the Second Amendment

guarantees the right to carry concealed weapons outside the home.[27] If a concealed weapon permit system is a mere statutory right above what is required by the United States Constitution, then a restriction on where a licensee can carry a concealed weapon is not an infringement of a constitutional right. Therefore, a prohibition on carrying concealed handguns in churches would not be constitutionally problematic. But if a concealed weapon permit system is a constitutional right, then a prohibition on carrying concealed weapons in certain places would be subject to judicial review.[28]

This section asserts that the Supreme Court's explication of the Second Amendment in *Heller* strongly suggests that there is a right to carry defensive weapons outside the home.[29] Furthermore, state court opinions strongly suggest that some form of carrying defensive weapons, either open or concealed, should be allowed.[30] Thus, at least in states that generally prohibit open carry,[31] concealed carry can be considered a constitutional right.

A. The General Right to Bear Arms Outside the Home

Several aspects of the Supreme Court's decision in *Heller* suggest that a right to bear arms outside the home exists.[32] One example is the Supreme Court's interpretation of the Second Amendment's operative clause.[33] While discussing the operative clause of the Second Amendment—specifically, the meaning of "keep and bear"—the Court noted that the word "bear" means to "carry."[34] The Court went on to say that to bear arms is to "wear, bear, or carry them . . . upon the person or in the clothing or a pocket, for the purpose . . . of being armed and ready for offensive or defensive action in a case of conflict with another person."[35] In summing up the Court's interpretation of the Second Amendment's operative clause, Scalia wrote that it guarantees "the individual right to possess and carry weapons in case of confrontation."[36]

In addition, the fact that Scalia carefully listed sensitive places from which firearms may be banned suggests that a right to bear arms outside the home exists.[37] The enumerated list of sensitive places suggests that they are only a subset of places where the overall right to carry in public can be limited.[38] If no right to carry outside the home exists, "there would be little point in singling out 'sensitive places'" as places where the government may ban the carrying of firearms.[39]

B. Concealed Carry as a Constitutional Right

Today's concealed carry laws represent a shift in the method of exercising the constitutional right to bear arms from open carry to concealed carry.[40] Concealed carry statutes should not be considered a mere statutory right that may be regulated into non-existence or expressly revoked.[41] His-

torically, some legislatures banned the concealed carrying of firearms,[42] and state supreme courts generally upheld those bans.[43] However, those states recognized broad open carry rights.[44] Today, some states have enacted concealed carry statutes in the place of open carry rights.[45]

Early courts upheld these restrictions on concealed carry for several reasons. First, some states simply considered open carry to be the usual method of exercising the right to bear arms.[46] Some state supreme courts characterized prohibitions on concealed carry as a regulation of the mode or manner of carry, as opposed to a destruction of the right to bear arms generally.[47] In other states, the state constitutions explicitly reserved the right of the legislature to ban concealed carry.[48] But the state supreme courts consistently held that a complete revocation of the right to bear arms, such as a ban on open-carry in addition to a ban on concealed-carry, was unconstitutional.[49] This suggests that, at minimum, concealed carry should be considered a constitutional right in states where open carry is generally banned.

IV. THE CONSTITUTIONALITY OF PROHIBITIONS ON CONCEALED CARRY IN CHURCHES

Individuals have the right to keep arms and to use those arms for self-defense.[50] If the right to bear defensive arms extends outside the home,[51] the next step is to determine the breadth of that right. This section explores the possible justifications for gun-free zones and analyzes whether those justifications are sufficient to ban concealed carry in churches. This section moves from general to specific justifications. When discussing specific justifications, this section begins with historical reasons for why gun-free zones were allowed and then provides a post-*Heller* analysis.

A. General Justifications for Gun-Free Zones

Before analyzing specific justifications for gun bans at schools and government buildings, this section considers general justifications for gun-free zones as a possible basis for banning firearms at all churches.

One possible justification for a gun-free zone would be protecting the public from the inherent danger of firearms.[52] One might argue that firearms are inherently dangerous, and therefore, gun-free zones are constitutional because of the danger that firearms present to the public.[53] For this discussion, this general concern should not be confused with specific public-safety concerns, such as possession of firearms in bars, where the danger

does not rest in the firearm alone, but rather, in the possibility that someone may be handling a firearm coupled with impaired judgment.[54]

The second major reason would be prevention of terrorism.[55] For purposes of this discussion, terrorism can include both political terrorism and random active shooter situations, such as the shooting at Virginia Tech University that killed thirty-three people.[56] One might argue that a gun-free zone is constitutional for the prevention of terrorism and public safety.[57]

Although justifications for gun-free zones exist,[58] states should not base gun-free zones at all churches on these general justifications. As one commentator has noted, the ordinary danger of defensive weapons "is precisely what the right to bear arms expressly contemplates."[59] Thus, the inherent danger of firearms, by itself, should not serve as a basis for any gun-free zone, including churches.[60]

The Supreme Court's opinion in *Heller* comports with this notion. In his dissent, Justice Breyer noted that the D.C. gun ban would pass rational-basis review because it was rationally related to the legitimate government interest of preventing gun-related accidents.[61] The majority agreed, but rejected rational basis as the standard of review.[62] Thus, the Justices appeared to agree that because of the inherent danger of firearms, a complete ban on their use or possession would rationally relate to the legitimate government interest of public safety. Despite this agreement, however, the Court held the District of Columbia gun ban to be unconstitutional.[63] This suggests that gun regulations should be based on more than just protecting the public from the inherent danger of firearms alone, without some additional concern.

Furthermore, if law-abiding citizens possess a right to bear arms outside the home,[64] these general justifications for gun-free zones have a strong potential to swallow up that right. The government's interest in eliminating the inherent danger of firearms and preventing terrorism could extend everywhere.[65] This would create the need for a limiting principle to preserve the general right to bear arms outside the home for self-defense.[66]

A legal distinction between secured and unsecured gun-free zones might serve as such a limiting principle.[67] A secured gun-free zone would be a place with limited points of entry, government searches, and metal detectors.[68] Examples would be airports or high profile government buildings where there is some degree of assurance that no one else inside is armed.[69] An unsecured gun-free zone would be a place that is declared off limits to carrying defensive weapons by statute, but does not have limited points of entry, government searches, or metal detectors.[70] Unsecured gun-free zones may have some level of security or no security at all.[71] Examples would be colleges and universities, rural post offices, and churches.[72]

Under this limiting principle, prevention of terrorism would serve as a basis for a secured gun-free zone, but not for unsecured gun-free zones such as churches. The fact that an unsecured gun-free zone is not enforced with

metal detectors and searches[73] suggests that, whatever justifications exist for unsecured gun-free zones, prevention of terrorists or active shooter situations is not included. This is supported by several observations. First, in unsecured gun-free zones, one can rationally argue for or against a total ban on guns in unsecured gun-free zones to prevent active shooter situations. The Brady Campaign for the Prevention of Violence, for example, claims that allowing students to carry defensive firearms on campus would make campuses more dangerous.[74] On the other hand, others assert that unsecured gun-free zones leave people inside defenseless.[75] They claim that allowing law-abiding citizens to carry defensive weapons on campus will deter would-be shooters from choosing colleges and universities as targets.[76] This creates difficulty in reaching a legal conclusion because, although both arguments are rational, we cannot really know who is right because "scientific proof of any of these theories is very hard to get."[77] Additionally, regulations that prevent firearms from getting into the hands of people who are disposed to commit crime, terrorism, or who would generally pose a public safety risk already attempt to prevent terrorism in unsecured gun-free zones.[78] The Supreme Court expressly endorsed these types of regulations.[79] Restrictions on possession of firearms by felons and the mentally ill[80] or conditions and qualifications on the commercial sale of arms serve as examples of these regulations.[81] If these regulations fail, then an unsecured gun-free zone likely will also fail to prevent a determined person from committing a terrorist act.[82]

In sum, general justifications such as the inherent danger of firearms or prevention of terrorism should not serve as a basis for a ban on carrying defensive weapons in churches. Protecting the public from the inherent danger of firearms alone should not be a sufficient justification in any context. Furthermore, even if we say that these general justifications are appropriate, we need a limiting principle that rationally preserves the right to carry defensive weapons outside the home because these general justifications could potentially swallow that right. Distinguishing between secured and unsecured gun-free zones would serve as a limiting principle; but if churches are considered unsecured gun-free zones, then the prevention of terrorism justification does not support a prohibition on carrying defensive firearms in all churches.[83]

B. Specific Justifications for Unsecured Gun-free Zones

The goal of this section is twofold: to identify specific justifications for banning guns in places outside the home and to determine whether those

justifications would apply to the unique circumstances of a church. This section first sheds light on whether the historical justifications for banning guns in places outside the home are still valid in light of *Heller*'s two key premises—that the right to bear arms is unconnected with militia service and that self-defense is the core purpose of the right.[84] Next, this section discusses the evolving modern framework for analyzing whether a ban on guns in all churches is constitutional.

1. *Pre-Heller Justifications*

Historically, the courts upheld gun bans at "public assemblies."[85] Legislatures carved out enumerated lists of places where the government could ban guns, such as courthouses, election grounds, and churches.[86] Over the years, the courts upheld these gun bans at public assemblies based on many different justifications.

One justification for banning firearms at public assemblies was that the purpose of the right to keep and bear arms is to guarantee the existence of a militia.[87] The substance of this justification can be summarized as follows: The right to keep and bear arms is for the purpose of allowing the citizens to become adept at handling firearms in case the militia is needed for war. Bringing firearms to public assemblies does not further the purpose of allowing citizens to become adept at handling firearms. Therefore, the right to bear arms does not extend to public assemblies.

This militia justification manifested itself in several court cases. In *Andrews v. State*,[88] for example, the Supreme Court of Tennessee considered whether a total ban on the carrying of various weapons, including revolvers, was constitutional.[89] After finding that revolvers were the type of weapon that a soldier would use, the court held that the ban was unconstitutional as to revolvers.[90] According to the court, the right to keep and bear the usual arms of a soldier ensured that a large body of citizens would be familiar with the use of arms in case the militia was needed for war.[91]

Arguing in favor of the ban, the Attorney General reasoned that unless the legislature has the absolute power to ban revolvers, the citizens would have the right to carry arms anywhere and anytime.[92] The court responded by saying that the legislature may ban guns at church or any other public assemblage because "carrying them to such places is not . . . necessary in order to [assure] his familiarity with them, and his training and efficiency in their use."[93]

The sentiment of the *Andrews* court was shared by Arkansas in *Wilson v. State*.[94] In that case, the Arkansas Supreme Court overturned a total ban on pistols,[95] but was careful to note that "in time of peace, persons might be prohibited from wearing war arms to places of public worship, or elections, etc."[96]

The Supreme Court of Georgia followed this reasoning as well, in *Hill v. State*, when it upheld a ban on carrying firearms in a courthouse as constitutional.[97] It reasoned that "the constitution grants to the general assembly . . . the power to regulate the whole subject of using arms, provided the regulation does not infringe that use of them which is necessary to fit the owner of them for a ready and skillful use of them as a militiaman."[98]

Prohibitions on concealed carry in churches should not stand on the militia justification. The Supreme Court's decision in *Heller* obliterated the notion that the sole reason for the right to keep and bear arms is to secure the existence of a well-trained militia.[99] According to the Court, the militia clause of the Second Amendment gives the reason that the right was codified, but does not limit the purposes for which the right may be exercised.[100] Although one would not normally bring a firearm to church in order to train for militia duty, militia training is not the only lawful reason one may decide to bear arms. Self-defense, which the Court characterized as central to the right to keep and bear arms, supplies one example.[101]

States also historically justified gun bans at public assemblies as a measure to prevent the violation of other rights. In *Hill*, the Supreme Court of Georgia emphasized the chilling effect that an open display of weapons could have upon those who are trying to exercise their right to use the courts of justice:

> The right to go into a court-house and peacefully and safely seek its privileges, is just as sacred as the right to carry arms, and if the temple of justice is turned into a barracks, and a visitor to it is compelled to mingle in a crowd of men *loaded down with pistols and Bowie-knives, or bristling with guns and bayonets*, his right of free access to the courts is just as much restricted as is the right to bear arms infringed by prohibiting the practice before courts of justice.[102]

The Tennessee Supreme Court's opinion in *Amyette v. State*[103] harmonized with *Hill* on this point. In *Amyette*, the defendant, Amyette, had been convicted for carrying a bowie knife concealed about his person in violation of a criminal statute.[104] On appeal, Amyette argued that the Tennessee constitution[105] grants an unfettered right to carry any kind of arm in any manner at any time and prohibits the legislature from enacting any regulation otherwise.[106] The court rejected this assertion.[107] It hypothesized that if the legislature had no power to regulate the carrying of arms, then bands of lawless individuals could, under color of law and without penalty, break up people who are lawfully assembled at theatres and churches:

> Supose [sic] it were to suit the whim of a set of ruffians to enter the theatre in the midst of the performance, with drawn swords, guns, and fixed bayonets, or to enter the church in the same manner, during service, to the terror of the audience, and this were to become habitual; can it be that it would be beyond the power of the Legislature to pass laws to remedy such an evil? Surely not. If the use of arms in this way can not be prohibited, it is in the power of fifty armed ruffians to break up the churches, and all other public assemblages, where they might lawfully come, and there would be no remedy.[108]

In similar fashion, the Supreme Court of Tennessee in *Andrews* made the point that the exercise of one constitutional right cannot be used to subdue another.[109] The court hypothesized that a citizen who possesses a horse has a constitutional right to his property.[110] However, the court said this constitutional right did not give the owner a right to bring his horse into a church or other public assembly "to the disturbance of the people."[111]

If prohibitions on carrying defensive weapons in all churches are intended to protect the free exercise of religion, they rest on shaky ground. Securing the opportunity to exercise other rights is a valid reason to regulate the right to bear arms today.[112] However, the Arkansas prohibition, for example, goes further than necessary to promote that purpose.[113] The Arkansas prohibition bans firearms from churches that would otherwise choose to allow them.[114] Many churches are close-knit communities of people who all know each other. Some of those churches would welcome its members to carry concealed handguns to services.[115] Thus, the right of the church to worship as a whole would not be violated if the members choose to allow concealed handguns in their buildings.

Furthermore, careful analysis of the courts' language in *Hill*, *Amyette*, and *Andrews* reveals that those cases do not foreclose the possibility that a church could choose whether to allow people to bear arms.[116] Those courts were rebutting the notion that citizens have an absolute right to bear arms. For example, in *Amyette*, the court simply used an extreme example—the illustration of a band of thugs busting into a church with drawn swords, guns, and fixed bayonets—to prove its point.[117] The court did not contemplate the members of a church voting to allow its members or the public to bring firearms to church for the legitimate purpose of self-defense.

The courts' emphasis on the exercise of a right "to the disturbance of the people" also suggests that the right of a church to choose was not necessarily foreclosed.[118] The court's illustration in *Andrews* of a man riding his horse into church to the disturbance of the people assumes that the church members did not want the man to ride his horse into the church.[119] In similar fashion, the court's hypothetical in *Amyette* assumed that the ruffians entered the church, openly carrying weapons, "to the terror of the audience,"[120] rather than with the permission of the audience.

As another justification for banning firearms at public assemblies, the Supreme Court of Georgia in *Hill* declared that allowing people to carry firearms to public assemblies demonstrates doubt in, and mistrust of, government police protection.[121]

However, states should not justify a gun-free zone on the notion that the government will protect everyone within that gun-free zone at the moment that protection is needed. Our modern tort law rejects the idea that the government can be liable for failing to protect an individual from harm.[122]

In sum, the historical justifications for banning firearms from public assemblies should not be used as a basis for restricting a church's right to choose its own policy relating to firearms. First, the courts upheld gun-free zones at public assemblies based on the militia justification, but the militia justification as the sole basis for keeping and bearing arms was expressly rejected by *Heller*. Furthermore, banning firearms from churches that want to allow them does not further the interest in protecting the free exercise of religion. This point will be discussed in further detail in the next section. Finally, preserving the citizens' belief in police protection should not be used as a reason for banning firearms at all churches because modern tort law rejects the idea that the government has a duty to protect individual citizens from attack.

2. *Post-Heller Second Amendment Analysis*

The lower courts are struggling with how to evaluate the constitutionality of gun regulations in light of *Heller* and *McDonald*.[123] The courts have taken several different approaches to analyzing regulations that define where a person may carry weapons, but they have consistently upheld those regulations.[124]

This section will first discuss the possible approaches for analyzing a gun regulation concerning particular places.[125] The possible approaches are either a categorical approach or means-ends scrutiny, such as intermediate scrutiny.[126] This section will then reveal what characteristics the courts have identified as suggesting that a place is "sensitive" and why those characteristics fail to comport with *Heller*.[127] Next, this section will identify alternative characteristics of sensitive places that comport with *Heller* and explain why a church building is not a sensitive place.[128] This section will then argue that gun bans at churches should be held unconstitutional even under intermediate scrutiny.[129]

a. Framework for analyzing gun regulations on carrying in public

Two major approaches for analyzing gun laws are relevant to analyzing gun regulations concerning particular places. One approach is the "categorical approach." In the categorical approach, the courts essentially compare the particular place where guns are banned to schools and government buildings, without subjecting the regulation to means-ends scrutiny.[130] If the place is analogous to schools or government buildings, then an outright ban on guns in those places is constitutional.[131] If the place is not analogous, then an absolute ban is unconstitutional.[132]

This approach is attractive for several reasons. It is congruent with *Heller* in that the Court did not subject the D.C. gun ban to any means-ends scrutiny.[133] The categorical approach also gives effect to *Heller's* premise that self-defense is at the core of the Second Amendment. It does this by recognizing that the need for self-defense could conceivably arise anywhere a person has a lawful right to be,[134] while also recognizing that the right to self-defense may have to cede to competing concerns that are particular to sensitive places.[135] It also avoids the conundrum of whether to subject the Second Amendment to intermediate scrutiny or strict scrutiny[136] while subjecting substantial interference with other fundamental rights to strict scrutiny.[137]

Another approach is to analyze regulations concerning weapons in particular places using both sensitive places analysis and traditional means-ends scrutiny.[138] Some courts appear to use sensitive places analysis and means-ends scrutiny as independent bases for upholding regulations.[139] Other courts, such as the United States District Court for the Middle District of Georgia, find it prudent to take a linear two-step approach.[140] In the two-step approach, the sensitive places analysis is used to determine whether the regulation is within the scope of the Second Amendment, and if so, then means-ends scrutiny is applied to determine whether the regulation is constitutional.[141]

b. Sensitive places analysis in the lower courts

The Supreme Court in *Heller* gave two examples of sensitive places, but did not provide a test for determining whether other places are sensitive.[142] This section argues that the lower courts have attempted but failed to satisfactorily define the characteristics of sensitive places. The next paragraph proposes a framework for determining what a sensitive place is. Then, the rest of the section will demonstrate how the lower courts have failed to follow that framework.

As discussed, the *Heller* Court emphasized that the core purpose of the right to keep and bear arms is self-defense,[143] and one's need to exercise

self-defense could arise anywhere, including "sensitive places."[144] However, the Court also noted that the right to keep and bear arms can be abrogated in sensitive places such as schools and government buildings.[145] These clashing policy considerations suggest that, in order to determine what a sensitive place is, the lower courts should begin by carefully identifying those characteristics common to all schools and government buildings that would justify the government in abrogating the right to self-defense. This sort of analysis would not only help to identify what other places might be considered sensitive, but it would also give equal weight to the core right of self-defense and the government's right to ban firearms in sensitive places as articulated in *Heller*.

Although the lower courts have identified many characteristics of schools and government buildings, they have failed to explain how or why those characteristics justify the government in abrogating the right to self-defense. For example, a three-judge panel of the Ninth Circuit opined that sensitive places are presumably where the possession of firearms risks "harm to great numbers of defenseless people," such as children.[146]

Several problems arise when defining sensitive places in this way. First, the panel's definition of a sensitive place is circular. The Court says that sensitive places are where large groups of defenseless people are gathered.[147] But in government buildings, for example, the reason that people are defenseless is because a legislative or regulatory body has banned the carrying of defensive weapons inside.[148] Second, the definition fails to explain why the government may ban firearms at a rural post office, which, according to *Heller*, is permissible because a post office is a government building.[149] One can conceive of some rural post offices where not more than two, three, or four people gather at any one time. So the panel's definition would not explain gun bans at these rural post offices if "great numbers"[150] of defenseless people do not congregate there. Third, the court's definition suggests that sensitive places are where we need to prevent terrorist acts on large groups of people, such as what happened at Virginia Tech where a shooter killed thirty-three people.[151] But as discussed, this justification for banning firearms fails to account for gun bans in unsecured gun-free zones.[152] Not all government buildings and schools are secured gun-free zones,[153] so the court's definition fails to account for unsecured government buildings and schools. These issues with the court's definition suggest that there are other reasons why government buildings and schools are sensitive places.

In *United States v. Masciandaro*, the United States District Court for the Eastern District of Virginia noted that "[s]chools and government build-

ings are sensitive places because, unlike homes, they are public properties where large numbers of people, often strangers (and including children), congregate for recreational, educational, and expressive activities."[154]

This definition falls short because it limits sensitive places to public properties. Public K-12 schools would fall within the definition, because public schools are public properties where large groups of children congregate for educational activities. Private K-12 schools, however, would fall outside the definition because, although they have large groups of children congregating for educational activities, they are not public properties. Given that *Heller* unqualifiedly identified schools as sensitive places,[155] a better approach should provide a theory that explains why both public and private K-12 schools may be the subject of a total gun ban.

In *Warden v. Nickels*,[156] the United States District Court for the Western District of Washington concluded that schools are sensitive places because they are used for educational and recreational programming for children.[157] This suggests that the definition of a sensitive place, according to the *Warden* court, includes any place where children are likely to be present for educational or recreational activities.[158]

The court correctly states that this is a characteristic common to all K-12 schools, and one possible reason why the presence of children may overcome the right of self-defense is because of a child's "natural curiosity to touch and handle the forbidden."[159] Proponents of this view may reason that, in places where children are gathered, the likelihood of a child injuring him or herself would be so great that the individual right to self-defense should yield.[160]

However, this logic could potentially justify a gun ban in the home, which is plainly foreclosed by *Heller*.[161] A child in a home likely enjoys as much access to a firearm as a child at a recreational gathering. In the home, a child may have actual knowledge that a firearm is located nearby because the child has an opportunity to observe the adults either perform cleaning and maintenance or use the weapon for hunting or target practice. These factors may make the child in a home more likely than a child at a recreational gathering to seek out the forbidden object in the first place. Additionally, a child in the home has the opportunity to observe where the gun is stored. If the gun is stored in a safe, perhaps the child has the ability to find the key or decipher the combination. These are not unreasonable conjectures because statistics suggest that accidental firearm related deaths among children occur mostly at the child's home, in a friend's home, or in the home of a relative.[162] Therefore, although the presence of children is a common characteristic in schools, their mere presence should not be considered as the reason why all schools are deemed sensitive places.

One might alternatively argue that schools are sensitive places given the disproportionate number of children and adults. If children generally

outnumber adults in schools in greater proportion than in homes, perhaps the risk of a firearm mishap is higher in schools.

Despite this argument, a church would not necessarily be a sensitive place. In schools, parents send their children into the care of other adults. Parents are often at work or home and not in close proximity to their children. In churches, parents are often present with their children at the same complex, if not in the same room. The parents are still exercising control over their children in a way that cannot be done in schools. So the proportion of adults to children is not out of balance in churches as it might be in schools. This weighs in favor of the argument that a church is not a sensitive place.

c. Developing sensitive places analysis

The purpose of this section is to properly identify characteristics of sensitive places and to address whether those characteristics would apply to churches. This process answers whether a church should be deemed a sensitive place, such that the government has the absolute right to ban firearms there. The ultimate answer is no.

Substantively, this section answers whether a church should be deemed a sensitive place by first extrapolating characteristics that are common to schools and government buildings, which we know are sensitive places.[163] This section, however, will avoid the pitfalls of the cases cited in the previous section, in which the courts merely identified common characteristics of schools and government buildings, without satisfactorily explaining why those characteristics overcome the right to self-defense. This section will identify those common characteristics of schools and government buildings not in a vacuum, but in a way that provides a holistic framework for understanding why the government may totally ban firearms in sensitive places. This approach comports more closely with *Heller*, as it recognizes that sensitive places are designated as such because the very nature of a sensitive place warrants abrogation of the core right of the Second Amendment—the right to self-defense.[164]

Conceptually, this section answers whether a church should be deemed a sensitive place by using an imaginary spectrum, as represented by a horizontal line. Places on the left side of the spectrum are sensitive places, and places on the right side of the spectrum are non-sensitive places. The goal is to determine whether a church would fall on the left or the right side of the spectrum by determining if churches are more analogous to government

buildings and schools, where guns may be banned, or to homes, where guns may not be banned.[165]

i. *Government buildings as sensitive places*

On the sensitive places side of the spectrum, at the far left end, are government buildings.[166] Several characteristics taken together give the government a strong interest in preventing law abiding gun owners from exercising their right to bear arms for self-defense in government buildings. First, the government has a property interest, much like a corporation would have an interest in its place of business or private persons would have on their property.[167]

The government's interest in preventing the interruption of important government functions couples with its property interest.[168] A firearm mishap could slow or shut down the government's public functions because of injuries to government officials or the investigation that would follow. Even a slight mishap could affect the lives of many people. A mishap in a post office, for example, could delay someone's paycheck, welfare, or social security check. It could also delay notices, such as service of process, creditors' notices, or letters from doctors explaining the results of a test.

In addition to the property and prevention of mishap interests, there is the likelihood of proportionate security. Although the government cannot protect everyone at all times, the government has a strong incentive and abundant resources to protect its own assets. A post office in rural Arkansas will receive less security than the Department of Justice building in Washington, D.C., but the level of security is likely proportionate to the risk. The Department of Justice building will most likely be a secured gun-free zone because of the risk of terrorism. A rural post office will most likely be an unsecured gun-free zone because there is virtually no risk of terrorist attack. The rural post office may not even have security if the government determines that there is no risk of general criminal activity. In either case, the government's own efforts to provide security that is proportionate to the risk of a terrorist attack incidentally diminishes the individual's need for self-defense.

Thus, the consequences of a mishap, the government's property interest, and the individual's diminished need for self-defense (a result of abundant government resources to protect its own assets) explain how all government buildings can be sensitive places despite the wide variety of government buildings that exist.

ii. *Schools as sensitive places*

On the sensitive places side of the spectrum, public schools should lie in the same place or slightly to the right of government buildings.[169] Public

schools include both K-12 schools and colleges. Just as with government buildings, the government owns public schools, and therefore, the government has a property interest in banning firearms there. Furthermore, schools are likely to have proportionate security like other government buildings. Some schools in large cities have metal detectors and limited points of entry, whereas, many small town schools have resource officers that patrol the hallways.

The only consideration that may push public schools to the right of a government building is that the effect of a mishap in a public school has less potential to be as wide ranging. A mishap is likely to directly affect a particular subset of the community—the students and family of students. Nonetheless, a public school has many of the same characteristics of a government building.[170]

On the sensitive places side of the spectrum, K-12 private schools should lie to the right of public schools. Although still considered a sensitive place, the government has no property interest in banning guns at private K-12 schools. This is why it lies closer to non-sensitive places than government buildings and public schools. However, like government buildings and schools, K-12 private schools are likely to have proportionate security.

But more importantly, K-12 public and private schools share a characteristic that gives the government a strong interest in prohibiting firearms. K-12 private schools exist concurrently with K-12 public schools as a forum in which people may comply with compulsory education laws. But for those laws, the students would not be exposed to the risks those laws create. For example, suppose that an ordinary law-abiding gun owner brought a gun to a K-12 private school. In that situation, but for the government's compulsory education laws, the students would not have been exposed to even the slight risk of a firearm related accident. A total gun ban at K-12 schools, therefore, protects the rights of parents who, except when compelled to send their child into the care of strangers, would never allow their child to be exposed to even the slightest risk of mishap involving a firearm.

Thus, gun bans at K-12 schools should not rest, as the court in *Masciandaro* asserted, on the fact that schools are *public properties* where large numbers of children congregate for educational activities. This definition leads one to the conclusion that public K-12 schools are sensitive places, but private K-12 schools are not.[171]

Nor should gun bans be justified, as the court in *Warden* asserted, because of the presence of children. This would suggest that a gun ban in the home could be justified given the presence of children in many homes.[172]

But this result is plainly foreclosed by *Heller*.[173] Furthermore, if the government may ban guns at places where children are gathered for educational purposes, as the *Warden* court suggested, then it could arguably ban Boy Scout gun safety courses.[174] But such a result would run contrary to parents' rights to educate their children in a manner they deem fit.[175] Therefore, protecting parents who would never expose their children to even the slightest risk of a firearm mishap, but for compulsory education laws, serves as a better explanation for why the government may ban guns in K-12 schools.

The last of the known sensitive places are private colleges and universities. This is the most difficult of the sensitive places to explain because many factors that apply to public schools and private K-12 schools do not apply to private colleges and universities. The government has no proprietary interest in banning guns in private colleges and universities. Also, the government's interest in protecting students from a risk that the government itself creates does not exist as with K-12 schools because the government does not compel students to continue their education after high school.

However, private colleges and universities could plausibly lie on the sensitive places side of the spectrum because of the likelihood of proportionate security and because the government compels that proportionate security. Like their public counterparts, federal law requires private colleges to establish a campus security policy and report statistics on criminal activity that affects their students.[176] This suggests that private colleges and universities constantly assess and account for the risk of general criminal activity. It also shows that one's need for self-defense is diminished in private colleges and universities through the government's exercise of control, even though the government's exercise of control is not as a property owner.

iii. *Homes as non-sensitive places*

On the non-sensitive places side of the spectrum, at the far right end, lies the home. The home is a classic example of a non-sensitive place. It is, according to the Supreme Court, "where the need for defense of self, family, and property is most acute."[177]

Individuals traditionally possess their strongest expectation of privacy in the home, both from government and non-government intrusions, as evidenced by many aspects of our history and system of government. The Third Amendment to the United States Constitution says that the government may not quarter soldiers in a person's home, in times of peace, without the consent of the owner.[178] The Fourth Amendment prohibits unreasonable physical invasions of the home, "by even a fraction of an inch."[179] Individuals are never required to retreat from their home if attacked through no fault of their own.[180] The government has essentially no interest in regulating one's political activities in the home.[181] An individual may discriminate against persons entering their home for any or no reason at all.[182]

iv. *Churches as sensitive places*

Churches are more similar to homes than government buildings and schools for several reasons. Freedom of thought, expression, association, and religion are all fundamental to a church. In one sense, the exercise of religion is about adopting a particular system of thinking and expressing oneself with respect to the universe, its formation, and humankind's role in it.[183] Much like an individual in a home, a church is a private group of individuals who have the right to abstain from associating with people who do not share their beliefs and to associate with people who do.[184] This freedom of association, for many churches, is necessary for the free exercise of religion. For example, although some churches are not strict doctrinally, others are diligent in keeping out those who may try to undermine certain theological doctrines.[185] All these factors show that the sorts of rights that one exercises in a home are similar to those exercised in churches, making churches very similar to homes.

Furthermore, the relationships among people who are at a church can be just as strong as or stronger than the relationship among the people in a home. Individuals often bring their families with them to church services. Even if they do not have blood relatives, in the Christian faith, many church members refer to their fellow believers as their "church family" or their "brothers and sisters in Christ."[186]

By contrast, churches have very little in common with government buildings and schools.[187] Unlike government buildings and public schools, the government has no property interest in deciding whether guns should be allowed in churches. The churches have the property interest. Unlike in K-12 schools, the government cannot compel people to go to church. The government, therefore, has no interest in mitigating a risk that it created. As compared with private colleges and universities, churches do not necessarily provide any security, nor are they compelled to by the government. Like individuals in a home, many churches rely on the local police or their own ability to subdue an attacker. Some churches do have security guards, but other churches cannot afford them.

The logical conclusion, therefore, is that churches are more like homes than government buildings and schools. This means that churches should not be considered sensitive places, and therefore, the government should not have an absolute right to ban firearms in churches.

d. The final step: Applying means-ends scrutiny to gun bans at churches

Under the categorical approach, one might conclude that an outright gun ban in churches is unconstitutional if a church is not a sensitive place.[188] However, because some courts also analyze gun regulations under means-ends scrutiny, such as intermediate scrutiny,[189] it is appropriate to do the same here.

In *GeorgiaCarry.Org, Inc. v. Georgia*, a church and several of its members claimed that a ban on carrying concealed weapons inside a place of worship is unconstitutional on its face and as applied to them.[190] The court first grappled with whether a church was within the scope of the Second Amendment or whether it was a sensitive place.[191] It decided that the safest route was to assume that a church was not a sensitive place, and therefore, within the scope of the Second Amendment.[192]

The court then chose to test the church gun ban against intermediate scrutiny, ultimately holding that the ban was constitutional.[193] The state claimed that it had "an interest in deterring and punishing violent crime."[194] The court agreed that this was an important government interest.[195] It was unwilling to say, however, that prohibiting the possession of firearms in churches is substantially related to that interest.[196] The court noted that laws restricting felons, violent criminals, and drug users from obtaining weapons substantially relates to the furtherance of preventing violent crime because it targets people who have already shown a propensity to commit violent crime.[197] The court went on to say that churches, however, are neither targets nor locations "of frequent criminal activity such that prohibiting the possession of firearms there would achieve the tight[] fit demonstrated by the prohibitions" on possession of firearms by criminals.[198]

The state also argued that it had an interest in protecting the free exercise of religion, and the court agreed that this was an important government interest.[199] Without any further analysis, the court held that "[p]rohibiting the carrying of firearms in a place of worship bears a substantial relationship to [protecting the free exercise of religion] by protecting attendees from the fear or threat of intimidation or armed attack."[200]

The court's conclusion about the government's interest in banning guns at churches is unclear at best and inconsistent at worst. The court concluded that churches are neither targets nor locations of frequent criminal activity [201] and that a gun ban at churches does not further the interest of "deterring and punishing violent crime."[202] Yet, the court also concluded that a ban on guns in churches furthers the interest of protecting churches from the "fear or threat of intimidation or armed attack."[203] If churches are neither targets nor locations of frequent criminal activity and violent crime, then the government has no interest in protecting churches from the fear or threat of criminal activity in the form of intimidation or armed attack.

Put another way, the court failed articulate a substantive difference between these similar interests. "Deterring and punishing violent crime" intuitively sounds a lot like protecting people from "fear or threat of intimidation or armed attack." In fact, the method by which the government protects people from "fear or threat of intimidation or armed attack" is by "deterring and punishing violent crime." This means that, despite the court's effort to distinguish the interest in protecting the free exercise of religion from the interest of violent crime prevention, the church gun ban must logically rest on the government's interest in "deterring and punishing violent crime." Yet, even though the court held that a church gun ban does not substantially relate to "deterring and punishing violent crime," it held that the church gun ban passed intermediate scrutiny.[204]

Even if a substantive difference between the two interests exists, the plaintiffs still should have prevailed. The court failed to articulate any facts to support the notion that a gun ban at all churches substantially relates to protecting the free exercise of religion by preventing the "fear or threat of intimidation or armed attack."[205] It merely concluded that the gun ban is substantially related without any further analysis.[206] At the very least, the plaintiffs' as applied challenge should have prevailed given that the church wanted to allow firearms, suggesting that a gun ban at that church did nothing to protect it from the "fear or threat of intimidation or armed attack." In other words, the fact that the plaintiff church wanted to allow firearms eliminates the government's interest preventing fear and intimidation from armed attack at that church.

To summarize, allowing churches to choose their policies regarding firearms embodies the most sensible approach, and the one that makes sense under the intermediate scrutiny standard of review. The government has an important interest in protecting the free exercise of religion, but a ban on firearms at all churches does not substantially relate to the furtherance of that interest. A church that is willing to allow firearms inside does not need protection from the fear or threat of intimidation or armed attack because such a church manifests a lack of fear about the negative impact of firearms in its midst by its willingness to allow firearms. A gun ban in a church that is willing to allow firearms may actually be counter to protecting the church from the fear or threat of intimidation or armed attack because that is exactly the reason a church may want to allow its congregation to carry defensive weapons inside.[207]

If a church does not want firearms in their midst, then the law should allow the government to prosecute those who would bring guns into that church. A gun ban that is limited to those churches that do not want fire-

arms inside their buildings would be substantially related to the interest of protecting the free exercise of religion. This is because those churches presumably believe that firearms would significantly burden its free exercise of religion, perhaps because of the risk of intimidation or attack or the risk of mishap. We should give effect to those churches' judgments on the impact that firearms would have on their ability to exercise their religion.

V. CONCLUSION

Serious doubt surrounds the constitutionality of prohibitions on concealed carry in churches. Tradition and the recent ruling in *Heller* strongly suggest that a right to bear arms outside the home for purposes of self-defense does exist and that today's method of concealed carry is likely included. In addition, the historical justifications for an outright ban on guns in churches no longer hold credence.

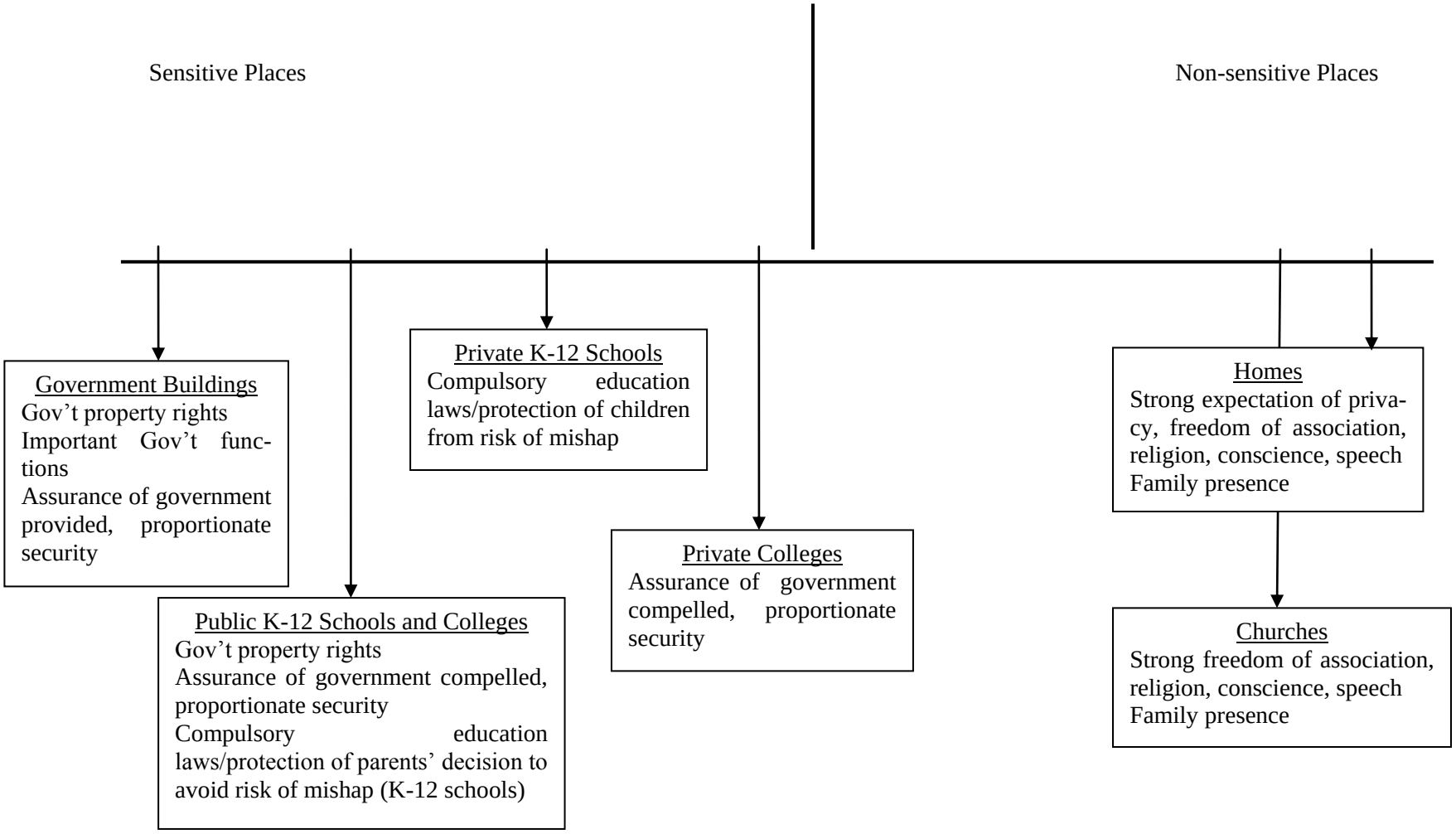
Furthermore, a strong argument can be made putting churches within the scope of the Second Amendment because they are not sensitive places. Churches are more like homes than schools and government buildings in that a church is privately owned property where the government has very little interest in abrogating individual rights.

Finally, gun bans that affect all churches fail under intermediate scrutiny because the government interest in protecting the free exercise of religion is not substantially furthered by a total ban on guns in churches. Some churches are willing to allow firearms in their buildings, which suggests that a gun ban at those churches does not further the important government interest of protecting their ability to worship freely. The prohibitions on concealed carry in churches prevent the attendees or congregants from exercising their Second Amendment right to bear arms for the core lawful purpose of self-defense.

Joshua West[*]

* Please refer to original version with footnotes for accurate page numbers

APPENDIX


Sensitive Places
Non-sensitive Places
Government Buildings
Gov't property rights
Important Gov't functions
Assurance of government provided, proportionate security
Public K-12 Schools and Colleges
Gov't property rights
Assurance of government compelled, proportionate security
Compulsory education laws/protection of parents' decision to avoid risk of mishap (K-12 schools)
Private K-12 Schools
Compulsory education laws/protection of children from risk of mishap
Private Colleges
Assurance of government compelled, proportionate security
Homes
Strong expectation of privacy, freedom of association, religion, conscience, speech
Family presence
Churches
Strong freedom of association, religion, conscience, speech
Family presence

1. *Police Say Colorado Shootings Were by Same Gunman*, CHINADAILY.COM.CN (Dec. 11, 2007, 2:05 PM), http://www.chinadaily.com.cn/world/2007-12/11/content_6313186.htm.

2. *US Church Gunman Killed Himself*, BBC NEWS (Dec. 12, 2007, 1:34 PM), http://news.bbc.co.uk/2/hi/americas/7140409.stm.

3. Jennifer Wilson, *Me, the Gunman and God*, GAZETTE.COM (Dec. 10, 2007, 6:27 PM), http://www.gazette.com/articles/assam-30739-church-new.html.

4. *Id.*

5. *Id.*

6. Judith Kohler, *Colorado Church Gunman Killed Himself, Autopsy Finds*, CHRON (Dec. 11, 2007), http://www.chron.com/news/nation-world/article/Colorado-church-gunman-killed-himself-autopsy-1542036.php.

7. *Id.*

8. *See* ARK. CODE ANN. § 5-73-306(16) (Repl. 2005) (prohibiting licensed citizens from carrying concealed handguns into "[a]ny church or other place of worship," without exceptions).

9. *See* GA. CODE ANN. § 16-11-127(b)(4) (LEXIS through the 2012 Regular Session); MISS. CODE ANN. § 45-9-101(13) (LEXIS through the 2011 Regular Sess. and 1st Extraordinary Sess.) (amended 2012); N.D. CENT. CODE § 62.1-02-05(1) (LEXIS through the 2011 Regular and Special Legis. Sess.); TEX. PENAL CODE § 46.035(b)(6) (LEXIS through the 2011 Regular Sess. and First Called Sess.); VA. CODE ANN. § 18.2-283 (LEXIS the 2012 Regular Sess. and 2012 Special Sess.).

10. 554 U.S. 570 (2008).

11. 130 S. Ct. 3020 (2010).

12. *See infra* Section II.

13. *See infra* Section III. This point follows the discussion of *Heller* and *McDonald* because the Supreme Court limited its holdings to possession of weapons inside the home. *See generally Heller*, 554 U.S. 570; *McDonald*, 130 S. Ct. 3020.

14. *See infra* Section IV.B.1.

15. *See infra* Section IV.B.2.

16. District of Columbia v. Heller, 554 U.S. 570, 683 (2008).

17. *Id.* at 581–626.

18. *Id.*

19. *Id.* at 599, 628.

20. *Id.* at 628 (noting that the home is "where the need for defense of self, family, and property is most acute").

21. *Id.* at 626.

22. The Court did not define "sensitive place," nor did it provide any framework for determining what a sensitive place is. *Id.* Rather, it merely listed schools and government buildings as examples of sensitive places. *Id.* ("Although we do not undertake an exhaustive historical analysis today of the full scope of the Second Amendment, nothing in our opinion should be taken to cast doubt on . . . laws forbidding the carrying of firearms in sensitive places *such as* schools and government buildings . . . .") (emphasis added).

23. *Id.* at 626–627 (dictum); McDonald v. City of Chicago, 130 S. Ct. 3020, 3047 (2010) (dictum).

24. The massacre at Virginia Tech demonstrated how the need for self-defense may exist in a school. Alex Johnson et. al., *Worst U.S. Shooting Ever Kills 33 on Va. Campus*, NBCNEWS.COM (Apr. 17, 2007, 1:07 AM), http://www.msnbc.msn.com/id/18134671/. The need for self-defense existed in a government building when Brian Nichols shot four people in a courthouse in Georgia. *See* Larry Copeland, *'I Could Tell He Was Going to Shoot Eve-*

rybody', USA TODAY (Mar. 14, 2005, 8:43 PM), http://www.usatoday.com/news/nation/2005-03-13-ga-courthouse_x.htm.

25. *See McDonald*, 130 S. Ct. at 3026.

26. *See id.*

27. This is because because the Supreme Court limited its holdings to possession of weapons *inside* the home. *See generally*, *Heller*, 554 U.S. 570; *McDonald*, 130 S. Ct. 3020.

28. Marbury v. Madison, 1 Cranch 137, 177 (1803) ("It is a proposition too plain to be contested, that the constitution controls any legislative act repugnant to it . . . .")

29. *See infra* Section III.A.

30. *See infra* Section III.B.

31. *See* OPENCARRY.ORG, http://opencarry.org/opencarry.html (last visited Aug. 22, 2012) (providing a map that shows open carry rights by state).

32. *See Heller*, 554 U.S. 570.

33. Michael P. O'Shea, *The Right to Defensive Arms after District of Columbia v. Heller*, 111 W. VA. L. REV. 349, 377 (2009).

34. *Heller*, 554 U.S. at 584.

35. *Id.* (quoting Muscarello v. United States, 524 U.S. 125, 143 (1998) (Ginsburg, J., dissenting)).

36. *Id.* at 592.

37. *See* Michael C. Dorf, *Does Heller Protect a Right to Carry Guns Outside the Home?*, 59 SYRACUSE L. REV. 225, 228 (2008); Carlton F.W. Larson, *Four Exceptions in Search of a Theory: District of Columbia v. Heller and Judicial Ipse Dixit*, 60 HASTINGS L.J. 1371, 1384 (2009).

38. *Id.*

39. *Id.*

40. *See* O'Shea, *supra* note 33, at 377–80; William J. Michael, *Questioning the Necessity of Concealed Carry Laws*, 38 AKRON L. REV. 53, 66–67 (2005).

41. *See id.*

42. *See* David B. Kopel, *The Second Amendment in the Nineteenth Century*, 1998 BYU L. REV. 1359, 1427–28 (1998) (citing State v. Chandler, 5 La. Ann. 489, 489 (1850)).

43. *See Heller*, 554 U.S. at 612–13 (citing State v. Chandler, 5 La. Ann. 489, 490 (1850) & Nunn v. State, 1 Ga. 243, 251 (1846)); Kopel, *supra* note 42, at 1413–1433. *But see* Bliss v. Commonwealth, 12 Ky. 90 (1822).

44. *See* O'Shea, *supra* note 33, at 378.

45. *See* Steven W. Kranz, *A Survey of State Conceal and Carry Statutes: Can Small Changes Help Reduce the Controversy?*, 29 HAMLINE L. REV. 637, 670–706 (2006) (listing a state by state survey of conceal and carry laws).

46. For example, according to the Supreme Court of Louisiana, open carry incited "men to a manly and noble defence [sic] of themselves . . . without any tendency to secret advantages and unmanly assassinations." State v. Chandler, 5 La. Ann. 489, 490 (1850). The Supreme Court of Arkansas said that concealable weapons were typically "used in quarrels, brawls and fights between maddened individuals." Wilson v. State, 33 Ark. 557, 559 (1878).

47. For example, in Alabama, the state supreme court said "[t]he constitution in declaring that, '[e]very citizen has the right to bear arms in defence [sic] of himself and the State,' has neither expressly nor by implication, denied to the Legislature, the right to enact laws in regard to the manner in which arms shall be borne." State v. Reid, 1 Ala. 612, 616 (1840). In Arkansas, the state supreme court said that "the Legislature might, in the exercise of the

police power of the State, regulate the *mode* of wearing war arms. *Wilson*, 33 Ark. at 559 (emphasis added) (explaining the court's decision in *Fife v. State*, 31 Ark. 455 (1876)).

48. *See* State v. Shelby, 2 S.W. 468, 469 (Mo. 1886); State v. Kerner, 107 S.E. 222, 223 (N.C. 1921); Kopel, *supra* note 42, at 1413.

49. *See* Nunn v. State, 1 Ga. 243, 251 (1846) (holding a statute that completely prohibited the carrying of arms was unconstitutional as it applied to open carrying of arms, but constitutional as it applied to concealed carrying of arms). In North Carolina, the state constitution expressly stated that the right to bear arms did not include concealed carry. *Kerner*, 107 S.E. at 223. The North Carolina Supreme Court interpreted this to mean that "the Legislature can prohibit the carrying of concealed weapons, but no further." *Id*.; *see also* Kopel, *supra* note 42, at 1413–1433.

50. *See supra* Section II.

51. *See supra* Section III.A and III.B.

52. District of Columbia v. Heller, 554 U.S. 570, 688 (2008) (Breyer, J. dissenting) (noting that the firearm regulation at issue in part sought to prevent gun-related accidents); USLEGAL.COM, http://firearms.uslegal.com/carrying-of-firearms/ (last visited March 30, 2011) ("Many states impose restrictions on the right to carry firearms due to the inherent danger of the weapons . . . .").

53. *See* Mark John Kappelhoff, Note, Bowers v. Hardwick: *Is There A Right To Privacy?*, 37 AM. U. L. REV. 487, 511 (1988) ("Drugs and weapons are inherently dangerous and often lethal, and thus provide a compelling state interest for regulating their possession and use.").

54. GUNS & ALCOHOL DON'T MIX, http://gunsandalcoholdontmix.org/bars-can-besites-confrontation-and-last-thing-we-need-ready-access-firearms (last visited Jan. 16, 2013) (deriding the carrying of firearms into bars because of the danger presented by mixing alcohol *and* firearms together).

55. Allen Rostron, *High-Powered Controversy: Gun Control, Terrorism, and the Fight Over .50 Caliber Rifles*, 73 U. CIN. L. REV. 1415, 1415–19 (2005) (discussing the concern of a particular type of firearm getting into the hands of a terrorist).

56. *See* Johnson et. al., *supra* note 24.

57. *See* Paula Reid, *U.S. Airports a "Constitutional Twilight Zone,"* CBSNEWS.COM (Nov. 23, 2010, 12:01 PM), http://www.cbsnews.com/stories/2010/11/23/national/main7082555.shtml.

58. *See infra* Section IV.B.2.c.

59. Eugene Volokh, *Implementing the Right to Keep and Bear Arms for Self-Defense: An Analytical Framework and a Research Agenda*, 56 UCLA L. REV. 1443, 1462–64 (2009).

60. *See id.*

61. District of Columbia v. Heller, 554 U.S. 570, 687–688 (2008) (Breyer, J., dissenting).

62. *Id.* at 629 n.27.

63. *Id.* at 635.

64. *See supra* Section III.

65. Most everyone would agree to the broad notion that terrorism should be prevented everywhere, not just schools and government buildings.

66. *See supra* Sections II and III for a discussion of the right to bear arms for self-defense outside the home.

67. *See* Allen Rostron, *Incrementalism, Comprehensive Rationality, and the Future of Gun Control*, 67 MD. L. REV. 511, 557–58 (2008).

68. *See id.*

69. *See id.*

70. *See id.*

71. For example, universities typically have their own security program. *See* Student Right–To–Know and Campus Security Act of 1990, Pub. L. No. 101-542, tit. II, § 204–205, 104 Stat. 2381, 2385–2388 (requiring all colleges and universities that receive federal funds to (1) certify that "the institution has established a campus security policy" and (2) report crime statistics), whereas many churches do not have any security.

72. *See* Rostron, *supra* note 67, at 557–58.

73. *See infra* note 83–85 and accompanying text.

74. BRADY CAMPAIGN TO PREVENT GUN VIOLENCE, http://www.bradycampaign.org/stategunlaws/publicplaces/gunsoncampus (last visited Feb. 10, 2011).

75. David B. Kopel, *Pretend "Gun-Free" School Zones: A Deadly Legal Fiction*, 42 CONN. L. REV. 515, 518 (2009); Reid K. Smith, *The Fallacy of 'Gun Free' Zones*, STUDENTS FOR CONCEALED CARRY (Jan. 8, 2013), http://concealedcampus.org/common_arguments.php.

76. Kopel, *supra* note 75; Smith, *supra* note 75.

77. Volokh, *supra* note 59, at 1465.

78. *See* Rostron, *supra* note 67, at 568–69.

79. Eugene Volokh calls these regulations "Who Bans." *See* Volokh, *supra* note 59, at 1493.

80. *Heller*, 554 U.S. at 626–627 (dictum).

81. *Id.*

82. *See* Rostron, *supra* note 67, at 568–69.

83. This author has never seen a church where the government enforced the gun-free zone with metal detectors, searches, and limited points of entry. This suggests that whatever the reasons for gun-free zones in churches, prevention of active shooter situations is not one.

84. *See supra* notes 16–18 and accompanying text for an explanation of *Heller's* two major premises.

85. *See, e.g.*, Hill v. State, 53 Ga. 472, 474 (1874) (discussing a Georgia statute that prohibited carrying firearms to courthouses, public places of worship, election grounds, and public gatherings.)

86. *See id.*

87. *See, e.g.*, Andrews v. State, 50 Tenn. 165 (3 Heisk. 165) (1871).

88. *Id.*

89. The law read as follows: "[I]t shall not be lawful for any person to publicly or privately carry a dirk, swordcane, Spanish stiletto, belt or pocket pistol or revolver." *Id.* at 171.

90. *Id.* at 187.

91. The weapons of a soldier "are to be kept, evidently with a view that the citizens making up the yeomanry of the land, the body of the militia, shall become familiar with their use in times of peace, that they may the more efficiently use them in times of war; then the right to keep arms for this purpose involves the right to practice their use, in order to attain to this efficiency." *Id.* at 178.

92. *Id.* at 181.

93. *Id.* at 182.

94. Wilson v. State, 33 Ark. 557 (1878).

95. *See id.* at 560.

96. *Id.* (citing Andrews v. State, 50 Tenn. 165 (3 Heisk. 165) (1871)). Taken by itself, this language suggests that, in times of peace, the government has an absolute right to ban firearms at churches. However, the fact that the court cited to *Andrews* suggests that it was

relying on the assumption that the right to keep and bear arms is really just to preserve the militia.

97. 53 Ga. 472, 482–483 (1874). The act prohibited carrying firearms to courthouses, public places of worship, election grounds, and public gatherings *except at militia muster grounds*. *Id.* at 474. A Missouri statute excepted militia muster grounds from the general prohibition on carrying firearms to public gatherings as well. State v. Loahmann, 58 S.W.2d 309, 310 (Mo. 1933).

98. *Hill*, 53 Ga. at 480 (interpreting the Georgia constitution, which read: "A well regulated militia being necessary to the security of a free state, the right of the people to keep and bear arms shall not be infringed; but the general assembly shall have power to prescribe by law the manner in which arms may be borne.").

99. *See supra* text accompanying note 16.

100. District of Columbia v. Heller, 554 U.S. 570, 598–99 (2008).

101. *Id.* at 599, 628.

102. *Hill*, 53 Ga. at 477–78 (emphasis added).

103. *See* Aymette v. State, 21 Tenn. 154 (2. Hum. 154) (1840).

104. *Id.* at 155.

105. The Tennessee constitution declared that "the free white men of this State, have a right to keep and bear arms for their common defence [sic]." *Id.* at 156.

106. *Id.* ("[The Tennessee constitution], it is insisted, gives to every man the right to arm himself in any manner he may choose, however unusual or dangerous the weapons he may employ; and thus armed, to appear wherever he may think proper, without molestation or hindrance, and that any law regulating his social conduct, by restraining the use of any weapon or regulating the manner in which it shall be carried, is beyond the legislative competency to enact, and is void.").

107. *See id.* at 159.

108. *Id.*

109. *See* Andrews v. State, 50 Tenn. 165, 185 (3 Heisk. 165) (1871).

110. *Id.*

111. *Id.*

112. *See* GeorgiaCarry.Org, Inc. v. Georgia, 764 F. Supp. 2d 1306, 1319 (M.D. Ga. 2011), *aff'd*, 687 F.3d 1244 (11th Cir. 2012) (noting that "protecting the free exercise of religion[] is an important governmental interest").

113. For a more thorough discussion of this analysis under the modern intermediate scrutiny standard, *see infra* Section IV.B.2.d.

114. *See* ARK. CODE ANN. § 5-73-306(16) (Repl. 2005) (prohibiting licensed citizens from carrying concealed handguns into "[a]ny church or other place of worship," without exceptions).

115. *See GeorgiaCarry.Org, Inc.*, 764 F. Supp. 2d at 1307; *Arkansas Pastors Divided over Packing Heat in Church*, FOXNEWS.COM (Feb. 15, 2009), http://www.foxnews.com/story/0,2933,493010,00.html.

116. To be clear, these courts still would have upheld a law that forbids churches to choose whether to allow members to carry arms based on the now defunct theory that the legislature may prohibit all manner of carrying arms that does not further the purpose of preparing for service in a militia. But, the courts' language about protecting churches' right to worship as a justification for gun-free zones, by itself, does not foreclose the idea, as a matter of historical precedent, that churches have a right to choose.

117. *See supra* text accompanying note 108.

118. *See supra* text accompanying note 112. This is in harmony with the common-law rule prohibiting the carrying of dangerous and unusual weapons to the terror of the people. *See* State v. Huntly, 25 N.C. 418, 422–423 (3 Ired. 418) (1843) (noting that "although a gun is an 'unusual weapon,' it is to be remembered that the carrying of a gun *per se* constitutes no

offence [sic]. For any lawful purpose--either of business or amusement--the citizen is at perfect liberty to carry his gun. It is the wicked purpose--and the mischievous result--which essentially constitute[s] the crime. He shall not carry about this or any other weapon of death to terrify and alarm, and in such manner as naturally will terrify and alarm, a peaceful people.").

119. *See supra* text accompanying notes 111–112.

120. *See supra* text accompanying note 108.

121. "To suppose that the framers of the constitution ever dreamed, that in their anxiety to secure to the state a well regulated militia, they were sacrificing the dignity of their courts of justice, the sanctity of their houses of worship, and the peacefulness and good order of their other necessary public assemblies, is absurd. To do so, is to assume that they took it for granted that their whole scheme of law and order, and government and protection, would be a failure, and that the people, instead of depending upon the laws and the public authorities for protection, were each man to take care of himself, and to be always ready to resist to the death, then and there, all opposers." Hill v. State, 53 Ga. 472, 478 (1874).

122. For example, in *Zelig v. County of Los Angeles*, the government was not liable for failure to protect a woman from being shot to death by her ex-husband in a courthouse. 45 P.3d 1171, 1183–84 (Cal. 2002). The court noted that "law enforcement officers, like other members of the public, generally do not have a legal duty to come to the aid of [another] person." *Id* at 1182; *see also* Kircher v. City of Jamestown, 543 N.E.2d 443, 445–446 (N.Y. 1989) (reiterating the rule that a municipality cannot be liable for failure to provide police protection to an individual in a park, unless a special duty to that individual is assumed); Doe v. Calumet City, 641 N.E.2d 498, 503 (Ill. 1994) (noting that "municipalities in Illinois owe[] no duty to the public to supply police or fire protection").

123. TINA MEHR & ADAM WINKLER, THE STANDARDLESS SECOND AMENDMENT 1 (2010), *available at* http://www.acslaw.org/files/Mehr%20and%20Winkler%20Standardless%20Second%20Amendment.pdf.

124. *Id.*

125. *See infra* Section IV.B.2.a.

126. *See infra* Section IV.B.2.a.

127. *See infra* Section IV.B.2.b.

128. *See infra* Section IV.B.2.c.

129. *See infra* Section IV.B.2.d.

130. *See* United States v. Dorosan, 350 F. App'x. 874, 875–876 (5th Cir. 2009).

131. *See id.*

132. The idea that an absolute ban in non-sensitive places is unconstitutional is only theoretical. It has not manifested itself in challenges to gun regulations of places because, so far, most courts have found that the regulation at issue fits within the definition of a sensitive place. Only one court has entertained the idea that the challenged regulation possibly prohibited firearms in a non-sensitive place. *See* GeorgiaCarry.Org, Inc. v. Georgia, 764 F. Supp. 2d 1306, 1316–17 (M.D. Ga. 2011) (noting that the court was hesitant to accept the notion that a place of worship is necessarily a sensitive place) The court went on to apply intermediate scrutiny. *See id.* at 1317–20.

133. Although the Supreme Court suggested that the D.C. gun ban would fail under any level of heightened scrutiny, *see* District of Columbia v. Heller, 554 U.S. 570, 628–629 (2008), it did not actually analyze the regulation under means-ends scrutiny.

134. *See* Copeland, *supra* note 24; Johnson et al., *supra* note 24.

135. *See infra* Section IV.B.2.c for an argument of what those concerns are.

136. *See* United States v. Masciandaro, 648 F. Supp. 2d 779, 787 (E.D. Va. 2009) ("T[he] lower courts to address the *Second Amendment* challenges to statutes and regulations post-*Heller* have not been uniform . . . some have applied strict scrutiny, others have used intermediate scrutiny . . . .") (emphasis added).

137. *See* Turner Broad. Sys. v. Fed. Commc'n Comm'n, 512 U.S. 622, 642 (1994) (noting that "[o]ur precedents . . . apply the most exacting scrutiny to regulations that suppress, disadvantage, or impose differential burdens upon speech because of its content); Zablocki v. Redhail, 434 U.S. 374, 388 (1978) (noting that "[w]hen a statutory classification significantly interferes with the exercise of a fundamental right, it cannot be upheld unless it is supported by sufficiently important state interests and is closely tailored to effectuate only those interests" in a case involving the right to marry); Carey v. Population Servs. Int'l, 431 U.S. 678, 686 (1977) (noting that "where a decision as fundamental as that whether to bear or beget a child is involved, regulations imposing a burden on it may be justified only by compelling state interests, and must be narrowly drawn to express only those interests").

138. *See, e.g.*, *Masciandaro*, 648 F. Supp. 2d at 789–791.

139. *See, e.g.*, *id.*

140. *See* GeorgiaCarry.Org, Inc. v. Georgia, 764 F. Supp. 2d 1306, 1314–19 (M.D. Ga. 2011).

141. *See id.*

142. District of Columbia v. Heller, 554 U.S. 570, 626 (2008).

143. *Id.* at 599, 628.

144. Copeland, *supra* note 24; Johnson et al., *supra* note 24.

145. *Heller*, 554 U.S. at 626–627.

146. Nordyke v. King, 563 F.3d 439, 459 (9th Cir. 2009), *vacated*, 611 F.3d 1015 (9th Cir. 2010) ("[V]enues, such as County-owned parks, recreational areas, historic sites, parking lots of public buildings . . . and the County fairgrounds . . . [and] gathering places where high numbers of people might congregate . . . fit comfortably within the same category as schools and government buildings").

147. *Id.*

148. *See, e.g.*, ARK. CODE ANN. § 5-73-306 (Repl. 2005) (prohibiting concealed firearms from government buildings and other places).

149. *Heller*, 554 U.S. at 626–627.

150. *Nordyke*, 563 F.3d at 459.

151. *See id.* ("The Court [in *Heller*] listed schools and government buildings as examples [of sensitive places], presumably because possessing firearms in such places risks harm to great numbers of defenseless people (e.g., children)."). If the court were worried about *accidental* discharge of a firearm, then it would have no reason to worry about the potential harm to defenseless people, because defenseless people do not need to defend themselves against a person who does not intend to hurt them. *See* Johnson et. al., *supra* note 24 for information on the Virginia Tech shooting.

152. *See supra* notes 72–96 and accompanying text.

153. For example, many post and revenue offices are not secured with metal detectors. Yet, unless and until Second Amendment jurisprudence is further refined, *Heller* suggests that the government may ban firearms in these buildings, regardless of whether they are secured or unsecured. *See Heller*, 554 U.S. at 626 ("[N]othing in our opinion should be taken to cast doubt on . . . laws forbidding the carrying of firearms in sensitive places such as . . . government buildings. . . .").

154. 648 F. Supp. 2d 779, 790 (E.D. Va. 2009).

155. *See Heller*, 554 U.S. at 626.

156. 697 F. Supp. 2d 1221, 1229 (W.D. Wash. 2010).

157. *Id.*

158. *See id*.
159. *Id.* at 1230.
160. *See id.*
161. District of Columbia v. Heller, 554 U.S. 570, 683 (2008).
162. WASHINGTON STATE DEPARTMENT OF HEALTH, CHILD DEATH REVIEW STATE COMMITTEE RECOMMENDATIONS ON CHILD FIREARM DEATH PREVENTION 6 (2003), *available at* http://www.childdeathreview.org/reports/WAchild_firearm_death_prevention.pdf; *Firearms-Injury Statistics and Incidence Rates*, CHILD. HOSP. OF PITTSBURGH, http://www.chp.edu/CHP/P02982 (last visited Feb. 16, 2011).
163. District of Columbia v. Heller, 554 U.S. 570, 626–27 (2008).
164. *See supra* Section II. Section II explains how *Heller* created two competing concepts in Second Amendment law: The right to self-defense and the right of the government to ban firearms in sensitive places. *See supra* Section II. If one's *need* for self-defense could conceivably arise anywhere, the government's right to ban firearms in "sensitive places" shows that "sensitive places" share inherent characteristics that limit one's *right* to self-defense under the Second Amendment. *See supra* Section II. This section proposes a holistic approach to determining what those characteristics are.
165. *See Heller*, 554 U.S. at 626–27 (discussing schools and government buildings and homes). A diagram of this spectrum is located in the appendix.
166. *See infra* appendix.
167. *See* United States v. Dorosan, 350 F. App'x. 874, 875 (5th Cir. 2009) (noting that the government's right to ban firearms from a post office employee parking lot stemmed from its constitutional authority as the property owner). In Arkansas, concealed carry permit holders cannot carry their firearms into any private home without first obtaining permission from the owner, or into any place where the proprietor posts a sign. ARK. CODE ANN. § 5-73-306(19) (Repl. 2005).
168. *See Dorosan*, 350 F. App'x. at 875 (holding that a post office parking lot was a sensitive place because it was used for loading mail and staging mail trucks).

169. *See* appendix.
170. *See supra* Section IV.B.2.c.i.
171. *See supra* notes 154–155 and accompanying text and following paragraph.
172. *See supra* text beginning at note 160.
173. District of Columbia v. Heller, 554 U.S. 570, 683 (2008).
174. A Boy Scout gun safety course would be a place where children are gathered for educational purposes, which is how the *Warden* court defined a sensitive place. Warden v. Nickels, 697 F. Supp. 2d 1221, 1229 (W.D. Wash. 2010).
175. *See* Meyer v. Nebraska, 262 U.S. 390, 399–403 (1923) ("[T]he right of parents to engage [a teacher] so to instruct their children, we think, [is] within the liberty of the [Fourteenth] [A]mendment").
176. *See* Student Right–To–Know and Campus Security Act, Pub. L. No. 101-542, Tit. II, § 204–205, 104 Stat. 2381, 2385–2388 (1990) (requiring all colleges and universities that receive federal funds to (1) certify that "the institution has established a campus security policy" and (2) report crime statistics).
177. *Heller*, 554 U.S. at 628.
178. U.S. CONST. amend. III.
179. Kyllo v. United States, 533 U.S. 27, 37 (2001). Even where there is no physical invasion of the home, the Fourth Amendment prohibits the use of sense enhancing technolo-

gy to obtain information that otherwise could not have been obtained without a physical invasion into the home. *Id.* at 34.

180. United States v. Peterson, 483 F.2d 1222, 1236 (D.C. Cir. 1973); People v. Lewis, 48 P. 1088, 1090 (Cal. 1897) (noting that, even though the authorities are split on whether a duty to retreat exists while in public, "[t]he right to stand one's ground when assailed in one's own home or upon one's own premises was never seriously questioned, even by the common-law writers").

181. *See* Darrell A.H. Miller, *Guns as Smut: Defending the Home-Bound Second Amendment*, 109 COLUM. L. REV. 1278, 1306 (2009) ("By tradition, a man at home answered to no one but himself. At home the man was Leviathan. His home was his castle. . . . The proprietary interest in the home was the center and totem of a man's physical autonomy, just as speech in the home became the center and totem of a man's mental autonomy.").

182. *See* 42 U.S.C. § 3603(b) (Supp. 2006) (exempting people who rent parts of their own homes from prohibitions on discrimination in housing).

183. *See, e.g.*, *Genesis* 1:1 (English Standard Version) ("In the beginning, God created the heavens and the earth."); *Genesis* 1:26 (English Standard Version) ("God said, 'Let us make man in our image . . .' [a]nd let them have dominion over the fish of the sea and over the birds of the heavens and over the livestock and over all the earth . . . ."); *Matthew* 22:35–39 (English Standard Version) ("[A] lawyer[] asked [Jesus] a question to test him. 'Teacher, which is the great commandment in the Law?' And [Jesus] said to him, 'You shall love the Lord your God with all your heart and with all your soul and with all your mind. . . . And . . . [y]ou shall love your neighbor as yourself.'").

184. *See* Roberts v. U.S. Jaycees, 468 U.S. 609, 622 (1984) (citations omitted) ("An individual's freedom to speak, to worship, and to petition the government for the redress of grievances could not be vigorously protected from interference by the State unless a correlative freedom to engage in group effort toward those ends were not also guaranteed. According protection to collective effort on behalf of shared goals is especially important in preserving political and cultural diversity and in shielding dissident expression from suppression by the majority. Consequently, we have long understood as implicit in the right to engage in activities protected by the First Amendment a corresponding right to associate with others in pursuit of a wide variety of political, social, economic, educational, religious, and cultural ends.").

185. For example, the proper method of taking of the Lord's Supper, also known as the Eucharist or communion, is subject to a variety of views varying in strictness. Some churches allow anyone who earnestly repents of their sins to take the Lord's Supper, regardless of whether that person belongs to a church or is a member of the particular local congregation. *See, e.g.*, *United Methodists and Communion: Some Questions and Answers*, UNITED METHODIST CHURCH, http://www.umc.org/site/c.lwL4KnN1LtH/b.2311293/k.BD59/United_Methodists_and_Communion_Some_Questions_and_Answers.htm (last visited on April 6, 2012) ("Christ our Lord invites to his table all who love him, who earnestly repent of their sin and seek to live in peace with one another. . . . Whether you should receive Communion with us is between you and God."). Others follow a closed communion view, where only the members of the local congregation may participate in taking the Lord's Supper. *See, e.g.*, Thomas Williamson, *The Case for Closed Communion*, THOMASWILLIAMSON.NET, http://www.thomaswilliamson.net/Communion.htm (last visited on April 6, 2012). Churches that follow a closed view point out that people practiced communion in the era of the Apostles among those who were in the same congregation. *See id.* ("In 1 Cor. 10:17 Paul describes the partakers of the Lord's Supper as 'one body.' The one body, or body of Christ, is a reference to the Church at Corinth, 1 Cor. 12:27. The terms 'body of Christ' or 'one body' in the New Testament always refer to a local church, not to all Christians."). Others follow a close communion view, where only the members of the local congregation or visitors from

other churches with like faith and practice may take the Lord's Supper. *See, e.g.*, David Pyles, *The Case for Close Communion*, THE PRIMITIVE BAPTIST WEB STATION, http://www.pb.org/pbdocs/close_communion.html (last visited on April 6, 2012). These churches take the view that the first communion service was among those with like faith and practice, and therefore, so should modern communion services. *See id*., ("None were present at this service but the Lord and His Apostles.").

186. *See, e.g.*, 1 Cor. 16:12 (English Standard Version) (referring to fellow believers as "brothers").

187. The United States District Court for the Middle District of Georgia intuitively came to the same conclusion, noting that "[s]chools and government buildings do not immediately suggest any unifying theme or greater purpose that would go unserved if places of worship were not included [in the list of sensitive places]." GeorgiaCarry.Org, Inc. v. Georgia, 764 F. Supp. 2d 1306, 1316 (M.D. Ga. 2010).

188. *See supra* Section IV.B.2.a.

189. *See supra* Section IV.B.2.a.

190. *GeorgiaCarry.Org, Inc.*, 764 F. Supp. 2d at 1308–09.

191. *Id.* at 1316–17.

192. *Id.* at 1317, 1319 (noting that the safe approach is to assume "that possession [of a firearm] at a place of worship is within the *Second Amendment* guarantee") (emphasis added).

193. *Id.* at 1317–19, 1322.

194. *Id.* at 1318.

195. *Id.*

196. *GeorgiaCarry.Org, Inc.*, 764 F. Supp. 2d at 1318–19.

197. *Id.* at 1318.

198. *Id.*

199. *Id.* at 1309–10, 1319.

200. *Id.* at 1319.

201. *Id.* at 1318.

202. *GeorgiaCarry.Org, Inc.*, 764 F. Supp. 2d at 1318.

203. *Id.* at 1319.

204. *Id.*

205. *See id.*

206. *See id.*

207. *See supra* Section I for an example of how a shooter was stopped by an armed member of a church.

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