

***NYSRPA v. BRUEN* AND THE FUTURE OF THE SENSITIVE PLACES DOCTRINE: REJECTING THE AHISTORICAL GOVERNMENT SECURITY APPROACH**

CARINA BENTATA GRYTING*
MARK ANTHONY FRASSETTO**

Abstract: On November 3, 2021, the Supreme Court heard oral arguments in *New York State Rifle & Pistol Ass’n v. Bruen*, a Second Amendment case challenging New York’s concealed carry licensing system. The justices’ questions focused not only on who may obtain a license to carry a firearm in public, but also where those with a license may or may not bring their weapons. These questions acknowledged that the Court’s decision in *District of Columbia v. Heller* provided a carveout for firearms restrictions in “sensitive places,” providing “schools and government buildings” as just two examples. In the fourteen years since *Heller*, state and federal courts have upheld firearms restrictions in a number of locations under the sensitive places doctrine. However, in anticipation of a wave of sensitive places litigation following the *Bruen* decision, several conservative scholars now seek to limit the doctrine to only those locations protected by strict government security measures, such as metal detectors and security guards. This article demonstrates that such an approach is inconsistent with our nation’s history of regulating public carry and both historical and present-day case law, including *Heller*.

INTRODUCTION

On November 3, 2021, the Supreme Court heard oral arguments in *New York State Rifle & Pistol Ass’n v. Bruen*, a Second Amendment case challeng-

© 2022, Carina Bentata Gryting & Mark Anthony Frassetto. All rights reserved.

* Constitutional Law Fellow, Everytown for Gun Safety; B.A. Washington University in St. Louis, J.D. Harvard Law School.

** Deputy Director Second Amendment History and Scholarship, Everytown for Gun Safety; B.A. Marquette University, J.D. Georgetown University Law Center.

The Authors would like to thank Professor Joseph Blocher, Professor Jake Charles, Professor Eric Ruben, Professor Saul Cornell, Janet Carter, William Taylor, and Eric Tirschwell for their helpful comments. The Authors would also like to thank the staff of the *Boston College Law Review’s Electronic Supplement* for their insightful comments, tireless work, and attention to detail. Any errors or omissions remain our own. The views expressed in this article are solely those of the authors and do not necessarily represent those of Everytown for Gun Safety.

ing New York's concealed carry licensing system.¹ The justices' questions focused not only on *who* may obtain a license to carry a firearm in public, but also *where* those with a license may or may not bring their weapons. For example, the justices posed several hypotheticals to counsel as to whether the state could restrict firearms on university campuses or in the New York City subway, sports stadiums, bars, or Times Square. These questions referred to what is known as the "sensitive places" doctrine, which originated in the Court's decision in *District of Columbia v. Heller*.² Although *Heller* involved a firearms restriction within the home, the Court provided some guidance as to firearms restrictions in public, stating that "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."³ Based on this passage, the lower courts have upheld firearms restrictions in locations that they have determined to be particularly sensitive. These cases have relied upon various factors in determining whether a place is sensitive, such as the presence of vulnerable people, historical prohibitions, or potential conflicts with other constitutional rights.⁴ Still, in the more than a decade since *Heller*, doctrinal development of the sensitive places standard has been fairly limited.

If the Court's decision in *Bruen* strikes down New York's law and limits states' ability to restrict public carry, questions about the scope of the sensitive places doctrine would move to the fore, as a wave of Second Amendment challenges to location-based firearms restrictions are almost certain to follow. In anticipation of future litigation over sensitive places, the right-wing Independent Institute filed an amicus brief in *Bruen*, arguing that a location should only be deemed sensitive if the government provides strict security measures such as metal detectors and security guards.⁵ Under this extremely high standard, this brief argued that the government must provide a level of security similar to that of airport terminals in order to designate a location as sensitive. This narrow view appeared to gain traction with Justice Alito, who posed the following question to petitioners' counsel at oral argument:

So starting with that, could we analyze the sensitive place question by asking whether this is a place where the state has taken alternative means to safeguard those who frequent that place? If it's a—if it's a place like a courthouse, for example, a government building,

¹ Transcript of Oral Argument at 32, 34, *N.Y. State Rifle & Pistol Ass'n v. Bruen*, No. 20-843 (U.S. Nov. 3, 2021).

² *District of Columbia v. Heller*, 554 U.S. 570, 626 (2008).

³ *Id.*

⁴ See *infra* notes 41–49 and accompanying text (exploring the post-*Heller* case law on the sensitive places doctrine).

⁵ Brief for the Independent Institute as Amici Curiae Supporting Petitioners at 22, *N.Y. State Rifle & Pistol Ass'n v. Bruen*, No. 20-843 (U.S. July 20, 2021).

where everybody has to go through a magnetometer and there are security officials there, that would qualify as a sensitive place. Now that doesn't provide a mechanical answer to every question, and—but it—would that be a way of analyzing—of beginning to analyze this?⁶

In a recent Volokh Conspiracy blog post, NRA-affiliated scholar Stephen Halbrook similarly advocated for a sensitive-places standard based on metal detectors and security guards.⁷ Under Halbrook's proposal, only areas like “an airport terminal on the other side of TSA screening” would qualify as sensitive places.⁸

This standard is inconsistent with our nation's history of regulating public carry and both historical and present-day case law, including *Heller*.⁹ Historically, “sensitive places” have never been limited to locations where the government has searched everyone entering the location. This article will show that the “metal detector and security guard” principle for identifying sensitive places is inconsistent with the original public understanding of the Second Amendment, both at its ratification and at its incorporation via the Fourteenth Amendment.

I. THE HISTORICAL SCOPE OF THE SENSITIVE PLACES DOCTRINE

Historically, the sensitive places doctrine has gone well beyond the narrow category suggested by Justice Alito's question and advocated by Halbrook.¹⁰

Starting at the beginning, laws in ancient Athens, which influenced both English and Founding Era American thought, broadly prohibited weapons-carrying in populous urban areas.¹¹ The English Parliament took a similar approach in 1285, when it prohibited carrying weapons in the City of London at night, stating that, “none [should] be so hardy to be found going or wandering

⁶ Transcript of Oral Argument, *supra* note 1, at 32.

⁷ See David Kopel, *The Sensitive Places Issue in New York Rifle*, REASON.COM: THE VOLOKH CONSPIRACY (Nov. 8, 2021), <https://reason.com/volokh/2021/11/08/the-sensitive-places-issue-in-new-york-rifle/> [<https://perma.cc/R7DU-7A25>] (discussing Stephen Halbrook's analysis of the Supreme Court's focus during oral arguments on the standard for permissible exclusion based on the sensitive place doctrine).

⁸ *Id.*

⁹ *District of Columbia v. Heller*, 554 U.S. 570, 626–27 (2008). Schools and government buildings rarely have metal detectors or security guards screening entry and requiring such to qualify for the sensitive places doctrine would remove most of these categories from inclusion. See Brief for the Independent Institute as Amici Curiae, *supra* note 5, at 22 (advocating to limit the sensitive places doctrine with these qualifiers).

¹⁰ See Kopel, *supra* note 7.

¹¹ See 1 JOHN POTTER, *THE ANTIQUITIES OF GREECE* 170 (1722) (quoting the Law of Solon: “[h]e shall be fined, who is seen to walk the City-Streets with a sword by his Side, or having about him other Armour, unless in the case of exigency”); 4 WILLIAM BLACKSTONE, *COMMENTARIES* *148–49 (citing POTTER, *supra*).

about the [s]treets of the City, after [c]urfew tolled at St. Martins le Grand, with Sword or Buckler, or other arms for doing Mischief, or whereof evil suspicion might arise; *nor any in any Manner*, unless he be a great Man or other lawful Person of good repute, or their certain Messenger.”¹²

In 1328, the Statute of Northampton forbade “go[ing] nor rid[ing] armed by night nor by day, in Fairs, Markets, nor in the presence of the Justices or other Ministers, nor in no part elsewhere, upon pain to forfeit their Armour to the King, and their bodies to Prison at the King’s pleasure.”¹³ Although the statute was a broad prohibition on publicly carrying weapons (“in no part elsewhere”), it singled out “fairs, markets” and “in the presence of the Justices or other Ministers” as areas of special concern.¹⁴ In 1402, a law titled “Welshmen shall not be armed” required that “no [person dwelling or residing within Wales] be armed nor bear defensible Armour to [Merchant Towns Churches nor Congregations,] in the same nor in the Highways, in Affray of the Peace or the King’s Liege People, upon Pain of Imprisonment, and to make Fine and Ransom at the King’s Will; except those which be lawful Liege People to our Sovereign Lord the King.”¹⁵ In 1534 Henry VIII forbade the carrying of any “hand-gun, sword, staff, dagger, halberd, morespice, spear or any other weapon, privy coat or armour defensive” by any “person or persons dwelling or residing within Wales . . . to any town, church, fair, market, or any other congregation, except it be upon the hue and outcry.”¹⁶

Like in England and Wales, many colonies and states had broad restrictions on carrying weapons in public. For example, in the late 18th century, Virginia and North Carolina enacted prohibitions similar to the Statute of Northampton.¹⁷ More specific sensitive-places restrictions existed at or soon after the Founding—for example, in 1776 Delaware and Maryland forbade weapons at election grounds,¹⁸ and in 1810, the University of Georgia prohib-

¹² Statutes for the City of London, 13 Edw. (emphasis added).

¹³ Statute of Northampton, 2 Edw. 3, c. 3 (1328) (Eng.). See generally Patrick J. Charles, *The Faces of the Second Amendment Outside the Home: History Versus Ahistorical Standards of Review*, 60 CLEV. ST. L. REV. 1 (2012) (analyzing the historical context of the Statute of Northampton).

¹⁴ Statute of Northampton, 2 Edw. 3, c. 3.

¹⁵ 4 Hen. 4, c. 29 (1402) (Eng.) (second alternation in original). Wales was a separate principality under the authority of the English monarch until the 1535 Act of Union.

¹⁶ 26 Hen. 8, c. 6, § 3 (1534) (Eng.).

¹⁷ See An Act Forbidding and Punishing Affrays, 1786 Va. Laws 35; FRANÇOIS-XAVIER MARTIN, A COLLECTION OF STATUTES OF THE PARLIAMENT OF ENGLAND IN FORCE IN THE STATE OF NORTH CAROLINA 60–61 (Newbern, Editor’s Press 1792).

¹⁸ DEL. CONST. of 1776, art. 28 (“To prevent any violence or force being used at the said elections, no person shall come armed to any of them . . .”); see Darrell A.H. Miller, *Constitutional Conflict and Sensitive Places*, 28 WM. & MARY BILL RTS. J. 459, 473 (2019) (citing PROCEEDINGS OF THE CONVENTIONS OF THE PROVINCE OF MARYLAND, HELD AT THE CITY OF ANNAPOLIS IN 1774, 1775, and 1776 (1836)). Other states enacted restrictions on weapons at election grounds in the 19th century. See, e.g., 1869–70, Tenn. Pub. Acts 23 (making it unlawful for any person “attending any election” to carry a pistol or other dangerous weapon); 1870 Ga. Laws 421 (prohibiting carrying pistol

ited students from possessing firearms on campus.¹⁹ In 1824, the University of Virginia Board of Visitors issued the following rule: “No student shall, within the precincts of the University . . . keep or use weapons or arms of any kind, or . . . appear in school with . . . any weapon”²⁰ Notably, James Madison, who authored the Second Amendment, and Thomas Jefferson attended the board meeting, providing strong evidence that they did not view a prohibition of guns on campus as a violation of any right to bear arms.²¹

These restrictions expanded during the Reconstruction era—the most relevant period for determining the constitutionality of state laws²²—when a number of states adopted prohibitions in locations such as churches, schools, and public gatherings. For example, in 1870, Texas prohibited carrying in any “church or religious assembly, any school-room or other place where persons are assembled for educational, literary, or scientific purposes, or into a ball room, social party, or other social gathering . . . or any other public assembly.”²³ A year earlier, Tennessee had prohibited carrying guns at “any election . . . fair, race course, or other public assembly of the people.”²⁴ Similarly, in 1870, Georgia prohibited guns at “a court of justice or an election ground or precinct, or any place of public worship, or any other public gathering in this State.”²⁵ In 1877, Virginia prohibited weapons in churches or carried on Sundays.²⁶ And in 1883 Missouri prohibited carrying firearms at:

or other deadly weapon to “any election ground or precinct”); 1870 La. Acts 159(making it unlawful to carry any gun or other dangerous weapon on election day, while polls are open); 1886 Md. Laws 315 (outlawing in Calvert County to carry any gun within 300 yards of polls on election days).

¹⁹ The Minutes of the Senatus Academicus 1799–1842, at 84, 86 (Nov. 27, 1799) (transcription available at University of Georgia Libraries), <https://www.libs.uga.edu/hargrett/archives/senatus/senatus%20academicus%201799-1811.pdf> [<https://perma.cc/7RJR-9JYR>].

²⁰ See University of Virginia Board of Visitors Minutes 6–7 (Oct. 4–5, 1824) (transcription available at Encyclopedia Virginia), <https://encyclopedia.virginia.org/entries/university-of-virginia-board-of-visitors-minutes-october-4-5-1824/> [<https://perma.cc/5ATK-2357>]; see also LAWS OF THE UNIVERSITY OF NORTH CAROLINA 9 (Raleigh, J. Gales & Son 1829) (ebook) (“No student shall keep a dog, or fire arms, or gunpowder. He shall not carry, keep, or own at the College, a sword, dirk, sword-cane, or any deadly weapon; nor shall he use fire arms without permission from some member of the Faculty.”).

²¹ Olivia Li & The Trace, *When Jefferson and Madison Banned Guns on Campus*, THE ATLANTIC (May 6, 2016), <https://www.theatlantic.com/politics/archive/2016/05/when-jefferson-and-madison-banned-guns-on-campus/481461/> [<https://perma.cc/89VF-9TCX>].

²² Mark Anthony Frassetto, *Judging History: How Judicial Discretion in Applying Originalist Methodology Affects the Outcome of Post-Heller Second Amendment Cases*, 29 WM. & MARY BILL RTS. J. 413, 421–27 (2020) (discussing how federal circuit courts have handled the issue and arguing for looking to Reconstruction when assessing the scope of incorporated rights); see Transcript of Oral Argument, *supra* note 1, at 8 (discussing whether to look to Founding or Reconstruction for analyzing scope of rights incorporated by the 14th Amendment).

²³ An Act Regulating the Right to Keep and Bear Arms, 1870 Tex. Gen. Laws 63.

²⁴ 1869–70, Tenn. Pub. Acts 23.

²⁵ An Act to Preserve the Peace and Harmony of the People of this State, and for Other Purposes, 1870 Ga. Laws 421; see also An Act to Amend Section 1274, Article 2, Chapter 24 of the Revised Statutes of Missouri, Entitled “Of Crimes and Criminal Procedure,” 1883 Mo. Laws 76.

²⁶ 1877 Va. Acts 305.

[A]ny church or place where people have assembled for religious worship, or into any school room or place where people are assembled for educational, literary or social purposes, or to any election precinct on any election day, or into any court room during the sitting of court, or into any other public assemblage of persons met for any lawful purpose other than for militia drill.²⁷

Similar restrictions were enacted in Oklahoma in 1890,²⁸ and Arizona in 1901,²⁹ which, in addition to prohibitions in churches, schools, and social gatherings, prohibited guns at any “circus, show or public exhibition” and any place where intoxicating liquors are sold.³⁰

None of these locations match Justice Alito’s proposed restrictive criterion of limiting “sensitive places” to locations where “the state has taken alternative means to safeguard those who frequent that place.”³¹ Indeed, it is difficult to imagine what such places would have been, in an era when even locations such as the White House were open to the public without serious security provisions.³² Halbrook identifies historical prohibitions on guns at election precincts as supportive of the metal detector and security guard approach to sensitive places.³³ This is a questionable claim considering even today few election precincts—or, for that matter, few schools and government buildings—host these heightened security measures. It is also inconsistent with the historical record. For example, Delaware’s 1776 constitutional prohibition on carry-

²⁷ An Act to Amend Section 1274, Article 2, Chapter 24 of the Revised Statutes of Missouri, Entitled “Of Crimes and Criminal Procedure,” 1883 Mo. Laws 76.

²⁸ Crimes and Punishment, § 7, 1890 Okla. Sess. Laws 496 (prohibiting guns at “any church or religious assembly, any school room or other place where persons are assembled for public worship, for amusement, or for educational or scientific purposes, or into any circus, show or public exhibition of any kind . . . or into any ball room, or to any party or social gathering, or to any election, or to any place where intoxicating liquors are sold, or to any political convention, or to any other public assembly”).

²⁹ Crimes and Punishments, §§ 387; 391, 1901 Ariz. Sess. Laws 1252–53 (prohibiting guns at any “church or religious assembly, any school room, or other place where persons are assembled for amusement or for educational or scientific purposes, or into any circus, show or public exhibition of any kind, or into a ball room, social party or social gathering, or to any election precinct, on the day or days of any election, or to any other place where people may be assembled to minister or to perform any other public duty, or to any other public assembly”).

³⁰ *Id.* at 1252; see also Brief of the Cities of Columbus, Cincinnati, Akron, Dayton, Lima and Toledo as Amici Curiae Supporting Appellees at 14, *State v. Weber*, 168 N.E.3d 468 (Ohio 2019) (No. 2019-0544) (discussing the history of regulating guns and alcohol).

³¹ Transcript of Oral Argument, *supra* note 1, at 32.

³² Katie Zezima, *People Used to Be Able to Walk into the White House. Legally.*, WASH. POST (Sept. 23, 2014), <https://www.washingtonpost.com/news/post-politics/wp/2014/09/23/people-used-to-be-able-to-walk-into-the-white-house-legally/> [<https://perma.cc/M2UM-VHND>] (“Despite being open to the public, there was very little security at the White House until a drunk man threw rocks at President John Tyler Abraham Lincoln . . . stationed guards at the White House. After the Civil War, however, security measures dropped off.”).

³³ See Kopel, *supra* note 7.

ing arms at polling places applied not just to individuals but also the state militia, which was banned from mustering on election days or coming within a mile of polling locations on the days before and after elections.³⁴

Reconstruction-era courts upheld restrictions on public carry without considering whether the specified locations had heightened security measures in place. Instead, courts focused on the fact that these locations were particularly unsuitable for carrying deadly weapons. In 1871, in *Andrews v. State*, the Tennessee Supreme Court said: “a man may well be prohibited from carrying his arms to church, or other public assemblage, as the carrying them to such places is not an appropriate use of them.”³⁵ Similarly, in 1873, in *English v. State*, the Texas Supreme Court stated: “We confess it appears to us little short of ridiculous, that any one should claim the right to carry upon his person any of the mischievous devices inhibited by the statute, into a peaceable public assembly, as, for instance, into a church, a lecture room, a ball room, or any other place where ladies and gentlemen are congregated together.”³⁶ In upholding the state’s 1870 law regulating carrying in populated places, the Georgia Supreme Court stated: “The practice of carrying arms at courts, elections and places of worship, etc., is a thing so improper in itself, so shocking to all sense of propriety, so wholly useless and full of evil, that it would be strange if the framers of the constitution have used words broad enough to give it a constitutional guarantee.”³⁷

Furthermore, in the 19th century most states had strict laws regulating the carrying of weapons generally, not just in sensitive places. Many northern states broadly prohibited public carry absent a specific threat to a person’s safety.³⁸ Most other states broadly prohibited the carrying of concealed firearms, which effectively functioned as a prohibition on all forms of carry because carrying arms openly was socially unacceptable.³⁹ Together, these laws would have prohibited the carrying of firearms in a broad and inclusive range

³⁴ DEL. CONST. of 1776, art. 28; *see also, e.g.*, An Act to Amend the Charter of the City of Knoxville, Tenn., 1911 Tenn. Priv. Acts 1431 (“[T]hat no officer of Election or Commissioner of Election shall be in, at, or near any ballot box or voting precinct during any election or the canvassing of the returns armed with pistol, gun, or other deadly weapon . . .”).

³⁵ 50 Tenn. (3 Heisk.) 165, 182 (1871).

³⁶ 35 Tex. 473, 478–79 (1873).

³⁷ *Hill v. State*, 53 Ga. 472, 475 (1874).

³⁸ *See* Eric M. Ruben & Saul Cornell, *Firearm Regionalism and Public Carry: Placing Southern Antebellum Case Law in Context*, 125 YALE L.J.F. 121, 125–26 (2015), https://www.yalelawjournal.org/pdf/Ruben-Cornell_PDF_jiipxsss.pdf [<https://perma.cc/2V5Z-CVTT>] (explaining the Supreme Court’s analysis of nineteenth century case law).

³⁹ Mark Anthony Frassetto, *The Myth of Open Carry*, 55 DAVIS L. REV. (forthcoming 2022), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4008510 [<https://perma.cc/G3PR-968U>].

of sensitive places as they generally prohibited the carrying of firearms everywhere.⁴⁰

None of these historical laws or cases support limiting the sensitive places doctrine solely to locations secured by the government. The laws covered effectively all places where people gathered with catch-all phrases like “other social gathering,” “any other public assembly,” and “any other public gathering,” as well as locations critical to democracy, such as courts and polling places. And the courts upholding those laws recognized that it was the nature of the location—either its solemn function as a court, election-ground, or place of worship, or the fact of being a place where “ladies and gentlemen are congregated together”—that made those locations inappropriate for weapons.

II. POST-*HELLER* CASE LAW ON SENSITIVE PLACES

The approach raised by Justice Alito also fails to comport with the post-*Heller* case law on sensitive places in state and federal courts. In fact, the United States Court of Appeals for the D.C. Circuit explicitly rejected the metal detector and security guard approach in a recent case, *United States v. Class*. In determining that a parking lot outside the Capitol building was a sensitive place, the court rejected the defendant’s attempt to distinguish the unprotected parking lot from other government property that is protected by security or not accessible to the public.⁴¹ As the court explained, this approach would be contrary to *Heller* itself:

For this inquiry, we do not look to the “level of threat” posed in a sensitive place. Many “schools” and “government buildings”—the paradigmatic “sensitive places” identified in *Heller I*—are open to the public, without any form of special security or screening. In an unsecured government building like a post office or school, the risk of crime may be no different than in any other publicly accessible building, yet the *Heller I* opinion leaves intact bans on firearm possession in those places.⁴²

⁴⁰ See Joseph Blocher, *Firearms Localism*, 123 YALE L.J. 82, 100 (2013) (discussing how permit regulations could be very restrictive on access to gun ownership in certain locations). States were not the only entities regulating the carrying of firearms in public; many municipalities also either prohibited or substantially regulated public carry. See *id.* (exploring common types of municipal regulation of weaponry).

⁴¹ *United States v. Class*, 930 F.3d 460, 465 (D.C. Cir. 2019).

⁴² *Id.*

Instead of designating locations as “sensitive” based on the security measures in place, the court explained that locations are deemed sensitive based on “the people found there” or the “activities that take place there.”⁴³

In the years since the Supreme Court decided *Heller*, federal and state courts have upheld prohibitions in not only government buildings and schools, but also churches,⁴⁴ university buildings and campus events,⁴⁵ national parks,⁴⁶ United States Postal Service parking lots,⁴⁷ and county fairgrounds,⁴⁸ among others. In upholding firearms restrictions in these locations, courts did not ask only whether the government provided specific security measures. Instead, they examined a variety of factors that could make a location particularly unsuitable for public carry, such as the likelihood that children are present, the use of a location for large public gatherings, whether the property is privately owned or owned by the government, and whether it is a location where people gather to engage in expressive or other constitutionally-protected conduct.⁴⁹

CONCLUSION

A single, all-encompassing sensitive places theory—one that covers such disparate places as courthouses, ballrooms, schools, bars, racetracks, protests, and election precincts—is challenging to articulate. The concerns that would support prohibiting guns in places where alcohol is consumed are very different from those justifying prohibiting guns at public lectures or election precincts. The number of potential targets, the nature of the activity, and the increased risk of conflict all seem to be relevant in the historical determination that an area constitutes a sensitive place.

That said, the history and case law clearly show that a sensitive places doctrine based solely on the presence of enhanced governmental security measures—such as metal detectors and security guards—is inconsistent with both the historical understanding of the Second Amendment and the approach taken by modern courts.

⁴³ *Id.* (quoting *GeorgiaCarry.Org, Inc. v. Georgia*, 764 F. Supp. 2d 1306, 1319 (M.D. Ga. 2011), *aff’d*, 687 F.3d 1244 (11th Cir. 2012)).

⁴⁴ *GeorgiaCarry.Org, Inc.*, 687 F.3d at 1266 (permitting restriction on carrying firearms in a private place of worship).

⁴⁵ *DiGiacinto v. Rector & Visitors of George Mason Univ.*, 704 S.E.2d 365, 368 (Va. 2011).

⁴⁶ *United States v. Masciandaro*, 638 F.3d 458, 459–60 (4th Cir. 2011).

⁴⁷ *Bonidy v. U.S. Postal Serv.*, 790 F.3d 1121, 1123 (10th Cir. 2015); *see also* *United States v. Dorosan*, 350 F. App’x 874, 875–76 (5th Cir. 2009) (affirming a conviction for bringing a handgun onto United States Postal Service property).

⁴⁸ *Nordyke v. King*, 563 F.3d 439, 460 (9th Cir. 2009), *vacated*, 611 F.3d 1015 (9th Cir. 2010).

⁴⁹ *See* Miller, *supra* note 18, at 465 (providing further discussion on the application of the sensitive places doctrine in locations involving other constitutional rights—such as the rights to free speech, free exercise of religion, and the right to vote).

The approach to sensitive places Justice Alito raised is out of step with history. An originalist approach to the Second Amendment would reject limiting sensitive places to locations protected by government security. Instead, the approach Judge Griffith advanced in *Class*—which considers “the people found” or the “activities that take place” at a location when determining its sensitive status—is much more clearly tied to historical tradition and the post-*Heller* case law.⁵⁰

Preferred citation: Carina Bentata Gryting & Mark Anthony Frassetto, *NYSRPA v. Bruen and the Future of the Sensitive Places Doctrine: Rejecting the Ahistorical Government Security Approach*, 63 B.C. L. REV. E. SUPP. I.-60 (2022), <http://lawdigitalcommons.bc.edu/bclr/vol63/iss9/12/>.

The purpose of the *Boston College Law Review's Electronic Supplement* is to provide a platform to publish shorter and topical pieces—without the constraints usually imposed on content published in print journals—and, thereby, to give authors the opportunity to connect with a wider audience in a more timely manner.

⁵⁰ *United States v. Class*, 930 F.3d 460, 465 (D.C. Cir. 2019) (quoting *GeorgiaCarry.Org, Inc. v. Georgia*, 764 F. Supp. 2d 1306, 1319 (M.D. Ga. 2011), *aff'd*, 687 F.3d 1244 (11th Cir. 2012)).