

No. 24-1046

IN THE
Supreme Court of the United States

JASON WOLFORD, ET AL.,

Petitioners,

v.

ANNE E. LOPEZ, ATTORNEY GENERAL OF HAWAII,

Respondent.

**On Writ Of Certiorari
To The United States Court Of Appeals
For The Ninth Circuit**

**BRIEF OF PATRICK J. CHARLES AS
AMICUS CURIAE IN SUPPORT OF
NEITHER PARTY**

PATRICK J. FUSTER
Counsel of Record
JEREMY S. SMITH
ALLISON ROY KAWACHI
GIBSON, DUNN & CRUTCHER LLP
333 South Grand Avenue
Los Angeles, CA 90071
(213) 229-7000
pfuster@gibsondunn.com

T. HUNTER MASON
GIBSON, DUNN & CRUTCHER LLP
1700 M Street, N.W.
Washington, DC 20036

Counsel for Amicus Curiae

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**BRIEF OF PATRICK J. CHARLES AS
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INTEREST OF AMICUS CURIAE*

Historian and legal scholar Patrick J. Charles is the author of several books, including *Vote Gun: How Gun Rights Became Politicized in the United States* (2023) and *Armed in America: A History of Gun Rights from Colonial Militias to Concealed Carry* (2018), as well as more than 20 articles on the history of the

* Under this Court's Rule 37.6, no counsel for a party authored this brief in whole or in part, and no person or entity other than amicus or his counsel made a monetary contribution intended to fund the preparation or submission of this brief.

Second Amendment, firearm regulations, and the use of history as a jurisprudential tool. The federal courts of appeals and justices of this Court have cited and relied on Mr. Charles's scholarship. Mr. Charles currently serves as a Senior Historian for the Air Force Historical Support Division, Department of the Air Force (DAF). For the past 15 years, Mr. Charles has served as a United States Air Force (USAF) historian in several capacities, including recently serving as the head of the Air Force Historical Research Agency's Studies and Interviews Division, wherein he oversaw DAF's oral history and special studies programs.

Mr. Charles submits this brief to provide the Court with a historian's perspective on the tradition of restricting armed carriage in certain public and private places, otherwise known as "sensitive places." While this case does not directly implicate the sensitive-places doctrine, the parties may attempt to invoke it in adjudicating the constitutionality of Haw. Rev. Stat. § 134-9.5. This brief aims to inform the Court of recent discoveries regarding historical sensitive-places laws and to urge caution while research remains ongoing. This brief reflects the views of Mr. Charles, not those of the DAF, USAF, or the Department of War.

INTRODUCTION AND SUMMARY OF ARGUMENT

This Court has confined its review to the constitutionality of Hawaii's private-property default rule, excluding consideration of petitioners' separate challenges to the Ninth Circuit's decision upholding under the Second Amendment other Hawaii statutes that designate various locations as sensitive places into which people cannot carry firearms. Pet. Br. 3; Pet. App. 32a-49a. While Mr. Charles takes no position as to how the Court should answer the lone remaining

question presented, he offers an update on the ongoing historical research into the sensitive-places doctrine. The parties might argue inferences from that doctrine to attack or support the constitutionality of the private-property default rule in Haw. Rev. Stat. § 134-9.5. For example, petitioners and the United States may attempt to cast Hawaii's default rule as an overly broad sensitive-places restriction or an effort to transform nearly all of Hawaii into a sensitive place. See Pet. Br. 19-22, 39-42; U.S. Cert. Br. 16-17.

Because this case may incidentally collide into the sensitive-places doctrine, Mr. Charles submits this brief to make two principal points: one about what we know (and do not yet know) about location-based firearm restrictions and another about the importance of treading cautiously around the sensitive-places doctrine until a case directly presents the issue on a fully developed historical record.

First, the sensitive-places doctrine has a firm footing in limits on the English right to bear arms that the Second Amendment codified, as well as the early American tradition of location-based restrictions. State, territorial, and local governments restricted the carrying of firearms into a range of locations where the public would assemble, such as churches, parks, markets, polling places, schools, and social venues. Few questioned the legality of these restrictions. And when challenges to sensitive-places laws did arise, courts had no trouble rejecting them.

Second, a sound resolution of the question presented requires an awareness of the sensitive-places doctrine but does not require any decision on its scope. Historically, sensitive-places restrictions have governed both public and private property. The history and tradition of the sensitive-places doctrine thus

may inform the constitutionality of private-property default rules in an appropriate case. But Hawaii's statute does not distinguish between sensitive and non-sensitive private property. The Court should not venture any opinion on the locations that might qualify as sensitive places in a case that does not directly present the issue, particularly because our historical understanding of location-based firearm restrictions continues to deepen as Mr. Charles and others continue to conduct archival research.

In short, Mr. Charles takes no position as to whether Hawaii's private-property default rule has an appropriate historical analogue under *New York State Rifle & Pistol Association, Inc. v. Bruen*, 597 U.S. 1 (2022), and *United States v. Rahimi*, 602 U.S. 680 (2024). He urges only that, in answering that question, this Court should be aware that the sensitive-places doctrine also applies to private property, has a distinct tradition in English and American law, and would benefit from further historical development before the Court squarely addresses its scope.

ARGUMENT

I. Historical Research into the American Tradition of the Sensitive-Places Doctrine Remains Underway.

The sensitive-places doctrine is a deeply rooted aspect of the American history and tradition of firearm regulation.¹ Yet accumulating every fact pertaining to said history and tradition is impossible, even for professionally trained historians like Mr. Charles. The best anyone can do is collect all the currently available

¹ For the Court's convenience, cited primary sources can be found at: <https://patrickcharleswolfordamicusbrief.wordpress.com>.

evidence, be transparent as to what the evidence does and does not inform, and analyze the evidence in an objective and honest way. At the same time, it is important that the Court continuously keep in mind that “history is both fluid and stagnant.” Patrick J. Charles & Kevin Francis O’Neill, *But for a Free Press: A Response to Press Freedom Skeptics*, 33 WM. & MARY BILL RTS. J. 1073, 1076 (2025). What happened in the past cannot change. But the questions that historians ask of the past do, along with our understanding and interpretation of the past when new evidence is uncovered and laid bare.

This Court’s analysis of the sensitive-places doctrine in *New York State Rifle & Pistol Association, Inc. v. Bruen*, 597 U.S. 1 (2022), illustrates how history is both fluid and stagnant. In a short passage that did not “comprehensively define ‘sensitive places,’” the Court cited a law review article for the proposition that “the historical record yields relatively few 18th- and 19th-century ‘sensitive places’ where weapons were altogether prohibited—*e.g.*, legislative assemblies, polling places, and courthouses.” *Id.* at 30 (citing David B. Kopel & Joseph G.S. Greenlee, *The “Sensitive Places” Doctrine: Locational Limits on the Right to Bear Arms*, 13 CHARLESTON L. REV. 205, 229-236, 244-247 (2018)); see Pet. Br. 39-40 (citing same article). Because of new archival research conducted by Mr. Charles and others, we know today that the law review article’s assertions about the sensitive-places doctrine’s narrow historical scope were wrong—or at best premature.² Sensitive-places restrictions were

² *E.g.*, Kari Still, Kellen Heniford & Mark Anthony Frassetto, *The History and Tradition of Regulating Guns in Parks*, 19 HARV. L. & POL’Y REV. 201 (2024); Julia Hesse & Kevin Schascheck II,

far more widespread by the close of the 19th century than some might have previously believed. And every court at that time to confront such laws held them to be constitutional exercises of governmental authority.

A. The Second Amendment “codified a right inherited from our English ancestors.” *Bruen*, 597 U.S. at 20 (quoting *District of Columbia v. Heller*, 554 U.S. 570, 599 (2008)). By ratifying “a pre-existing right,” the Amendment retained “pre-existing limits on that right [that] are part and parcel of it.” *United States v. Rahimi*, 602 U.S. 680, 737 (2024) (Barrett, J., concurring).

Location-based restrictions were one pre-existing limit on the right to carry arms in public that forms an important part of the American tradition of firearm regulation. Neither English law nor early American law explicitly recognized a formal doctrine called “sensitive places.” But even though the label is new, the concept of location-based weapons restrictions goes at least as far back as the Edward III’s reign in the 14th century, when Parliament enacted the Statute of Northampton, which provided that people could not go “armed by night nor by day, in Fairs, Markets, nor in the presence of the [King’s] Justices or other Ministers.” 2 Edw. 3, c. 3 (1328); see Tr. of Oral Arg. at 44:10-16, 77:17-21, *Heller*, *supra* (No. 07-290). Parliament later updated the Statute of Northampton to forbid arms in and near court, as well as in “any towne, churche, fayre, markett, or other congregacion.” 26 Hen. 8, c. 6, § 3 (1534). And historical treatises reflect that this restriction retained its force centuries later,

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well after the advent of firearms. See, *e.g.*, JOSEPH KEBLE, *AN ASSISTANCE TO JUSTICES OF THE PEACE FOR THE EASIER PERFORMANCE OF THEIR DUTY* 224 (1683).

Other legal sources show early English restrictions on bearing arms in sensitive places. For example, a 1351 proclamation barred “go[ing] armed” with dangerous weapons “within the City of London, or within the suburbs, or in any other places between the said city and the Palace of Westminster * * * except the officers of the King.” Royal Proclamation as to the Wearing of Arms in the City, and at Westminster; and as to Playing at Games in the Palace at Westminster, *reprinted in* MEMORIALS OF LONDON AND LONDON LIFE 268-269 (H.T. Riley ed., 1868); see also JOHN CARPENTER, *LIBER ALBUS: THE WHITE BOOK OF THE CITY OF LONDON* 335 (H.T. Riley ed., 1861) (reprint of 1419 treatise stipulating that “no one, of whatever condition he be, go armed in the said city [of London] or in the suburbs, or carry arms, by day or by night, except the vadlets [*sic*] of the great lords of the land, carrying the swords of their masters in their presence, and the serjeants-at-arms of his lordship the King, of my lady the Queen, the Prince, and the other children of his lordship the King * * * and the officers of the City, and such persons as shall come in their company in aid of them, at their command, for saving and maintaining the said peace; under the penalty aforesaid, and the loss of their arms and armour”).

No one will ever know the full extent to which the broad English understanding that the government can restrict arms-bearing in sensitive places traveled across the Atlantic. As Justice Story explained for the Court, the Colonies received English statutes that were “pass[ed] before the emigration of our ancestors” and “applicable to our situation” as “a part of our common

law.” *Doe v. Winn*, 30 U.S. (5 Pet.) 233, 241 (1831). Yet local enforcement records of such common-law restrictions have not survived, leaving no way for anyone to adequately reconstruct exactly how often, when, and where sensitive-places restrictions were enforced on a day-to-day basis.

All agree, however, that sensitive-places restrictions made their way into the American Colonies. See *Bruen*, 597 U.S. at 30-31. Colonial assemblies not only adopted English statutes as part of their common law but also enacted new restrictions. Just 15 years after securing its royal charter, for example, Maryland restricted the carrying of dangerous weapons in its legislative assemblies. 1647 Md. Laws 216; see also 1650 Md. Laws 273. Later, when the Colonies separated from England and became States, Delaware restricted the act of going armed before any election. Del. Const. Art. XXVIII (1776).

In the decades that followed, American lawmakers sporadically adopted sensitive-places restrictions. See, e.g., New Orleans, La., Ordinance Respecting Public Balls (Oct. 27, 1817), *reprinted in* GENERAL DIGEST OF THE ORDINANCES AND RESOLUTIONS OF THE CORPORATION OF NEW-ORLEANS 371 (1831); see also Patrick J. Charles, *The Second Amendment and Heller’s “Sensitive Places” Carve-Out Post-Rahimi: A Historiography, Analysis, and Basic Framework*, 58 UIC L. REV. 813, 845-849 (2025) (hereinafter Charles, *Sensitive Places*) (providing examples of sensitive-places laws at universities and colleges).

By the mid-19th century, state, territorial, and local governments began adopting sensitive-places restrictions more frequently and widely. Several factors account for this important shift in the sensitive-places doctrine, including the vast territorial expansion of the

United States and a tripling of the total U.S. population. Patrick J. Charles, *The Fugazi Second Amendment: Bruen's Text, History, and Tradition Problem and How to Fix It*, 71 CLEV. ST. L. REV. 623, 652 (2023). But no factor contributed more to the growth of the sensitive-places doctrine than the commercial proliferation of revolvers and repeating firearms. See generally CARL R. HELLSTROM, SMITH & WESSON: THE STORY OF THE REVOLVER (1953); HUGH B.C. POLLARD, A HISTORY OF FIREARMS (1936). Suddenly, a person carrying a revolver or repeating rifle had the technological capability to carry out a mass shooting. Charles, *Sensitive Places*, *supra*, at 841-844.

This new risk propelled several States to adopt armed-carriage restrictions in sensitive places. Tennessee, acting just one year after the Fourteenth Amendment's ratification, restricted the carrying of firearms and other dangerous weapons into "any election * * * fair, race course, or other public assembly of the people." 1869 Tenn. Acts ch. 22, § 2, pp. 23-24. Not long thereafter, Georgia restricted the carrying of firearms and other dangerous weapons into "any court of justice, or any election ground, or precinct, or any place of public worship, or any other public gathering in this State[.]" 1870 Ga. Acts no. 285, § 1, p. 421. Texas, too, adopted a law restricting the carrying of firearms and other dangerous weapons "into 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 other social gathering, or to any election precinct on the day or days of any election, where any portion of the people of this State are collected to vote at any election, or to any other place where people may be assembled to muster, or to perform any other

public duty * * * or to any other public assembly[.]” 1871 Tex. Gen. Laws ch. 34, § 3, pp. 25-26.

U.S. Territories also adopted sensitive-places restrictions.³ Arizona, for instance, restricted the carrying of firearms and other dangerous weapons “into 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, where any portion of the people of this Territory are collected to vote at any election, or to any other place where people may be assembled to muster or to perform any other public duty, or to any other public assembly[.]” 1889 Ariz. Terr. Sess. Laws no. 13, § 3, pp. 30-31. Similarly, Oklahoma restricted the carrying of firearms and other dangerous weapons “into 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 social 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[.]” 1890

³ Because the Bill of Rights has always applied in the Territories, people could assert Second Amendment objections to territorial laws even before modern incorporation doctrine. See *Reynolds v. United States*, 98 U.S. 145, 162 (1879) (so holding for First Amendment); cf. *McDonald v. Chicago*, 561 U.S. 742, 777-778 (2010) (holding that the Fourteenth Amendment incorporates the Second Amendment against the States). Territorial laws thus are critical evidence of historical views on the Second Amendment’s scope. See Andrew Willinger, *The Territories Under Text, History, and Tradition*, 101 WASH U.L. REV. 1, 48-58 (2023).

Okla. Terr. Stats., ch. 25, art. 47, § 7, p. 496; see also 1853 N.M. Laws 69 (restricting the carrying of firearms where “Liquors are sold”).

Another important source of historical firearm regulation comes from local laws and ordinances. In the 19th century, the prevailing legal practice was “firearms localism”—a preference among state lawmakers to delegate the regulation of firearms and other deadly weapons to the local level. Joseph Blocher, *Firearms Localism*, 123 YALE L.J. 82, 112-116 (2013). Numerous state laws bear out that localities, not state governments, were the front-line regulators of firearms in sensitive places. See, e.g., 1871 Kan. Sess. Laws ch. 60, § 62, p. 134 (empowering cities of the third class to “prohibit and punish the carrying of firearms or other deadly weapons, concealed or otherwise”); *id.* ch. 62, § 45, p. 157 (same for cities of the second class); 1879 Ind. Acts ch. 98, p. 202 (authorizing cities to “regulate or prohibit the use of firearms, fireworks, or other things tending to endanger persons and property”); 1888 N.J. Laws ch. 325, § 47, p. 501 (devolving on towns the authority “to regulate or prohibit the use of firearms and the carrying of weapons of any kind”); 1893 Ky. Acts ch. 222, § 29(13), p. 1076 (providing cities wide latitude to “regulate the sale of fire-arms, and to prevent the carrying of concealed deadly weapons”); Mont. Political Code § 4800(55) (1895) (similar grant of authority to localities).

Such restrictions dotted the face of state maps. Consider Missouri, which empowered city and town councils to “prohibit and punish the carrying of firearms and other deadly weapons, concealed or otherwise[.]” 1877 Mo. Laws 166. In 1890, Columbia adopted an ordinance restricting the carrying of dangerous weapons “into any 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 into any court room, during the sitting of court, or to any election precinct on any election day; or into any other public assemblage of persons met for any lawful purpose[.]”⁴ Columbia was soon joined by Gainesville (1896),⁵ Huntsville (1894),⁶ Leonard (1891),⁷ Marceline (1892),⁸ Ridgeway (1893),⁹ Rocheport (1895*),¹⁰ and

⁴ Columbia, Mo., General Ordinances ch. 17 (May 22, 1890), *reprinted in* GENERAL ORDINANCES OF THE TOWN OF COLUMBIA, IN BOONE COUNTY, MISSOURI 35 (1890).

⁵ Gainesville, Mo., Ordinances of the Incorporation of the Town of Gainesville (May 26, 1896), *reprinted in* OZARK COUNTY WEEKLY NEWS, June 4, 1896, at 1 (“It shall be unlawful for any person * * * to go into any public gathering or place where people are assembled for any lawful purpose, with any kind of firearms * * * or other deadly weapon[.]”).

⁶ Huntsville, Mo., Ordinance in Relation to Carrying Deadly Weapons (July 17, 1894), *reprinted in* REVISED ORDINANCES OF THE CITY OF HUNTSVILLE, MISSOURI 58-59 (1894).

⁷ Leonard, Mo., Ordinance No. 23: Concerning the Carrying of Deadly Weapons (July 6, 1891), *reprinted in* SHELBY COUNTY HERALD, July 29, 1891, at 4.

⁸ Marceline, Mo., Ordinance No. 9 (Mar. 12, 1892), *reprinted in* MARCELINE JOURNAL-MIRROR, Oct. 28, 1892, at 8.

⁹ Ridgeway, Mo., Town Ordinance No. 28: In Relation to Misdemeanors (Apr. 3, 1893), *reprinted in* RIDGEWAY JOURNAL, Apr. 6, 1893, at 4.

¹⁰ Rocheport, Mo., Ordinance: Misdemeanors (undated), *reprinted in* ROCHEPORT COMMERCIAL, Sept. 20, 1895, at 8 (“If any person shall carry concealed upon or about his person any deadly or dangerous weapon, or shall go into any court room during the sitting of the court, or into any public assemblage of persons met for a lawful purpose, having upon or about his person any kind

Warrensburg (1890),¹¹ which all adopted similar laws and ordinances. Meanwhile, other Missouri localities—to name just a few, Collins (1887),¹² Craig (1880*),¹³ Cuba (1881),¹⁴ and Granby (1873)¹⁵—adopted ordinances restricting the carrying of dangerous weapons within their “corporate” or “incorporate”

of fire arms * * * or other deadly weapon * * * shall be deemed guilty of a misdemeanor[.]”). In this brief, the asterisk next to the year of publication signifies that the source published the ordinance without an “approved” or “enacted” date.

¹¹ Warrensburg, Mo., Ordinance: Concealed or Deadly Weapons (June 5, 1890), *reprinted in* JOHNSON COUNTY STAR, June 7, 1890, at 4.

¹² Collins, Mo., Town Ordinance No. 4 (May 2, 1887), *reprinted in* OSCEOLA ADVANCE, July 7, 1887, at 4 (“Any person who shall carry any concealed weapon or any revolver, pistol, knife or dirk which may not be concealed within the corporate limits of the town of Collins, shall * * * be fined * * * except however, that upon good cause shown, the board may grant a permit to any citizen of good reputation to carry weapons for self defense.”).

¹³ Craig, Mo., Ordinance No. 8: Carrying Concealed Weapons (undated), *reprinted in* CRAIG WEEKLY GAZETTE, Oct. 13, 1880, at 4 (“Any person who shall within the corporate limits of said city of Craig, carry or have upon his person, any concealed weapon or weapons, shall be adjudged guilty of a misdemeanor[.]”).

¹⁴ Cuba, Mo., Revised Ordinances ch. 8 (May 24, 1882), *reprinted in* CRAWFORD MIRROR, July 27, 1882, at 1 (“If any person be found carrying concealed about his person in the corporate limits, any kind of fire arms * * * or other deadly weapon, within the limits of said town he shall be fined[.]”).

¹⁵ Granby, Mo., Ordinance No. 8: Concerning the Carrying of Weapons (Oct. 30, 1873), *reprinted in* GRANBY MINER, Nov. 1, 1873, at 2 (“That any person within the corporate limits of the town of Granby who shall be found carrying, either openly or concealed, any pistol * * * or any other offensive weapon * * * shall be fined[.]”).

limits, when such carrying was open, concealed, or either. Such laws made the carrying of dangerous weapons within commercial and public epicenters (*i.e.*, downtown, high-traffic shopping areas, and government buildings) off limits, while allowing the carrying of weapons immediately outside such areas.

Localities across Kansas adopted similar laws. Stockton restricted the carrying of dangerous weapons “into any church or place where the people have assembled for public worship, or into any school room or place where people have assembled for educational, literary or social purposes, or to any election on any election day, or into any court room during the sitting of court, or into any other public assemblage of persons[.]”¹⁶ Other localities adopted sensitive-places restrictions making commercial and public epicenters off limits to firearms, when carrying was open, concealed, or either, including Abilene (1870),¹⁷ Arkansas City (1885),¹⁸

¹⁶ Stockton, Kan., Ordinance No. 76: Prohibiting Deadly Weapons (July 1, 1887), *reprinted in* STOCKTON REVIEW AND ROOKS COUNTY RECORD, July 1, 1887, at 1.

¹⁷ Abilene, Kan., Ordinance Relating to the Carrying of Fire Arms and Other Deadly Weapons (effective May 20, 1870), *reprinted in* ABILENE WEEKLY CHRONICLE, May 12, 1870, at 1 (“That any person who shall carry, within the limits of the town of Abilene, or commons, a pistol, revolver * * * or other dangerous weapon * * * either openly or concealed, except to bring the same and forthwith deposit it or them at their house, boarding house, store room or residence, shall be fined[.]”).

¹⁸ Arkansas City, Kan., Ordinance No. 1 (May 11, 1885), *reprinted in* ARKANSAS CITY WEEKLY TRAVELER, May 20, 1885, at 4 (“That any person carrying any deadly or dangerous weapons, such as loaded fire-arms * * * or any other weapons which when used are liable to produce death or great bodily harm, unconcealed, within the corporate limits of the city” shall pay a fine of \$1 to \$10, and for “concealed” carrying, a fine of \$5 to \$25.).

Beloit (1872),¹⁹ Caldwell (1885*),²⁰ Coolidge (1886),²¹
Elk City (1898),²² Harper (1887*),²³ Howard (1889),²⁴

¹⁹ Beloit, Kan., Ordinance No. 5 (Sept. 9, 1872), *reprinted in* BELOIT GAZETTE, Sept. 19, 1872, at 4 (“That any person who shall be found within the corporate limits of this city with any revolver, pistol * * * or any other dangerous or deadly weapon concealed or otherwise shall be deemed guilty of a misdemeanor[.]”).

²⁰ Caldwell, Kan., Revised Ordinances (undated), *reprinted in* CALDWELL ADVANCE, May 4, 1882, at 2 (“Any person carrying any deadly or dangerous weapon, such as firearms * * * or any other weapon which when used is liable to produce death or great bodily harm, unconcealed, within the corporate limits of the city” shall pay a fine of \$10 to \$100, and carrying of said weapons “concealed” will pay a fine of \$15 to \$100.).

²¹ Coolidge, Kan., Ordinance Concerning Offenses in the Nature of Misdemeanors (Apr. 22, 1886), *reprinted in* BORDER RUFFIAN, May 1, 1886, at 1 (“It shall be unlawful for any person or persons to display or make any improper use of any deadly weapon within the corporate limits of this city. * * * Any person or persons, other than the duly appointed and commissioned officers of this city, or officers of this county or State, carrying concealed deadly weapons * * * within the corporate limits of the city, shall, upon conviction, be deemed guilty of a misdemeanor.”).

²² Elk City, Kan., Ordinance No. 165 (Mar. 7, 1898), *reprinted in* ELK CITY ENTERPRISE, Mar. 11, 1898, at 2 (“That any person within the corporate limits of said city of Elk City who * * * shall carry or have on his or her person in a concealed manner, or otherwise any pistol * * * or any deadly weapon * * * shall be deemed guilty of a misdemeanor[.]”).

²³ Harper, Kan., Ordinance No. 180 (undated), *reprinted in* HARPER DAILY SENTINEL, Aug. 23, 1887, at 2 (“[I]t shall be unlawful for any person to carry any deadly or dangerous weapon, such as fire arms * * * within the incorporate limits of said city.”).

²⁴ Howard, Kan., Ordinance No. 72: To Prevent Carrying Concealed Weapons and the Discharge of Firearms (May 16, 1889), *reprinted in* CITIZEN, May 22, 1889, at 3.

Kendall (1887),²⁵ Meade Center (1885),²⁶ Mount Hope (1887),²⁷ and Scandia (1893).²⁸

Nebraska also embraced firearms localism by affording its more populous localities wide latitude in regulating dangerous weapons.²⁹ While some localities

²⁵ Kendall, Kan., Ordinance (Mar. 18, 1887), *reprinted in* KENDALL FREE PRESS, Mar. 23, 1887, at 1 (forbidding “persons to display or make any improper use of any deadly weapon within the corporate limits of this city” and, “other than the duly appointed and commissioned officers of this city, or officers of this county or state, [to] carr[y] concealed deadly weapons * * * within the corporate limits of this city”).

²⁶ Meade Center, Kan., City Ordinances (Nov. 23, 1885), *reprinted in* MEADE GLOBE, Nov. 28, 1885, at 2 (restricting all persons “not authorized by the laws of the United States or the state of Kansas” from carrying a “pistol * * * or other deadly weapons” within the “incorporate limits”).

²⁷ Mount Hope, Kan., Ordinance No. 12 (May 4, 1887), *reprinted in* MOUNT HOPE CLARION, May 5, 1887, at 3 (restricting all except officers and travelers from carrying “firearms * * * or other deadly weapons, concealed, within the corporate limits,” and “any person under the age of twenty one years of age” from “carrying any deadly weapon, concealed or otherwise”).

²⁸ Scandia, Kan., Ordinance No. 79 (Dec. 27, 1893), *reprinted in* SCANDIA JOURNAL, Jan. 5, 1894, at 8 (restricting the concealed carry of any “pistol * * * or other deadly weapon” within the “corporate limits” except for persons “engaged in a lawful occupation and of good moral character” who are “granted a permit to carry such concealed weapons”).

²⁹ *E.g.*, 1879 Neb. Laws 101 (authorizing any city of the “first class” to “punish and prevent the carrying of concealed weapons, the discharge of fire-arms or fire-works of any description in any of the streets, alleys, or public grounds, or about or in the vicinity of buildings”); *id.* at 216 (authorizing all cities of the “second class” and “villages” to “regulate, prevent, and punish the carrying of concealed weapons”).

adopted firearm regulations that mirrored the state criminal code,³⁰ others regulated firearms in more restrictive ways. Lincoln and Fairfield, for instance, gave their mayors wide discretion in issuing armed-carriage licenses.³¹ In 1884, Valentine restricted both open and concealed carry of “any dirk-knife, bowie-knife, slung-shot, pistol, or other fire-arm (excepting a rifle or shot gun used for sporting purposes) or any other deadly weapon” within its corporate limits.³² In 1885, Rushville required every non-resident entering the town to immediately “deliver” concealable weapons to the “marshal or * * * deputy, or to the sheriff or * * * deputy, who [would] take care of the same until the time of * * * departure.”³³

Missouri, Kansas, and Nebraska are just three of the States with a rich tradition of historical sensitive-places laws reflecting that firearms localism was the norm until the mid-20th century. These laws spanned a range of sensitive places and existed in every corner

³⁰ Compare 1875 Neb. Laws 3 with, *e.g.*, Central City, Neb., Ordinance No. 96 (May 24, 1887), *reprinted in* CENTRAL CITY NON-PAREIL, June 9, 1887, at 8; Tobias, Neb., Ordinance No. 2 (July 1, 1884), *reprinted in* TOBIAS TRIBUNE, Nov. 28, 1884, at 1.

³¹ Lincoln, Neb., Ordinance Regulating the Carrying of Concealed Weapons (Aug. 26, 1895), *reprinted in* REVISED ORDINANCES OF LINCOLN, NEBRASKA 209-210 (1895); Fairfield, Neb., Ordinance No. 20 (undated), *reprinted in* COMPILED ORDINANCES OF THE CITY OF FAIRFIELD, CLAY COUNTY, NEBRASKA 34-35 (1899).

³² Valentine, Neb., Ordinance No. 2 (Jan. 24, 1884), *reprinted in* VALENTINE REPORTER, Jan. 24, 1884, at 1.

³³ Rushville, Neb., Ordinance No. 2 (Dec. 25, 1885), *reprinted in* RUSHVILLE STANDARD, Jan. 2, 1886, at 1.

of the country—from the Northeast³⁴ to the Midwest³⁵

³⁴ *E.g.*, Phoenixville, Pa., Ordinance (July 2, 1878), *reprinted in* DIGEST OF THE ORDINANCES OF TOWN COUNCIL OF THE BOROUGH OF PHOENIXVILLE 135 (1906) (“No person shall carry fire-arms or shoot birds or throw stones or other missiles” in a park.); Reading, Pa., Park Rules and Regulations (Dec. 30, 1887), *reprinted in* DIGEST OF THE LAWS AND ORDINANCES FOR THE GOVERNMENT OF THE MUNICIPAL CORPORATION OF THE CITY OF READING, PENNSYLVANIA 240 (1897) (“No person shall carry fire arms or shoot in the common, or within fifty yards thereof, or throw stones or other missiles therein.”); Pittsburgh, Pa., Ordinance (July 27, 1893), *reprinted in* DIGEST OF THE ACTS OF ASSEMBLY RELATING TO AND THE GENERAL ORDINANCES OF THE CITY OF PITTSBURGH 496 (1897) (“No person shall be allowed to carry firearms, or to shoot or throw stones * * * within the limits of the parks or within one hundred yards thereof.”); York Haven, Pa., Ordinance (Mar. 14, 1893), *reprinted in* GAZETTE, June 13, 1893, at 2 (“That if any firearms may be found upon any person or persons, or discharge, or fire off any firearms, within the Borough limits * * * on being convicted before a Justice of the Peace or Chief Burgess, each shall pay a fine of One Dollar[.]”); Williamsport, Pa., Ordinance (June 18, 1890), *reprinted in* LAWS AND ORDINANCES, FOR THE GOVERNMENT OF THE MUNICIPAL CORPORATION OF THE CITY OF WILLIAMSPORT, PENNSYLVANIA 141 (1891) (“No person shall carry fire-arms, or shoot in the park[.]”); Manchester, Pa., Ordinances (Oct. 30, 1869), *reprinted in* YORK GAZETTE, Nov. 23, 1869, at 1 (“That if any fire-arms may be found upon any person or persons * * * within one hundred yards of any public road or street, or building within the afore-said Borough * * * each shall pay a fine of not less than one dollar[.]”); Dover, Pa., Ordinances (May 13, 1867), *reprinted in* YORK DEMOCRATIC PRESS, May 24, 1867, at 2 (same as Manchester law).

³⁵ *E.g.*, Fort Pierre, S.D., Ordinance (undated), *reprinted in* *Bad Men Squelched*, DAILY ARGUS-LEADER, Sept. 27, 1898, at 8 (restricting the carrying, “either concealed or otherwise,” of “any gun, pistol or other variety of fire arms [in the “city limits”] without first obtaining a permit from the mayor, duly signed by him and endorsed by the city auditor, city attorney and chief of police”); Lawrence, Kan., Ordinances ch. 12 (undated), *reprinted in* LAWRENCE DEMOCRAT, July 26, 1895, at 4 (“That it shall be unlawful for any

to the Mountain West³⁶ to Pacific Northwest³⁷ down to

person to carry about their person any pistol * * * or other deadly weapon within this Corporation[.]”); Omaha, Neb., Ordinance No. 2133 (July 23, 1889), *reprinted in* OMAHA WORLD-HERALD, Aug. 4, 1889, at 12 (“It shall be unlawful for any person to wear under his clothes, or concealed about his person, any pistol or revolver, colt, billy, slungshot, brass knuckles or knuckles of lead, dirk, dagger, or any knife resembling a bowie knife, or any other dangerous or deadly weapon within the corporate limits of the city of Omaha.”); Rapid City, Dak., Ordinance No. 11 (Dec. 4, 1882), *reprinted in* BLACK HILLS WEEKLY JOURNAL, Dec. 8, 1882, at 1 (“That it shall be, and it is hereby declared to be unlawful for any person to carry, openly or concealed, any musket, rifle, shot gun, pistol * * * or any other dangerous or deadly weapon within the corporate limits of the town of Rapid City,” excluding “me[re] * * * transportation from one place to another.”); Nebraska City, Neb., Ordinance Prohibiting the Carrying of Fire Arms and Concealed Weapons (undated), *reprinted in* DAILY NEBRASKA PRESS, July 8, 1869, at 4 (identical prohibition applicable to “the corporate limits of Nebraska City”).

³⁶ *E.g.*, Provo City, Utah, Revised Ordinances ch. 32 (undated), *reprinted in* REVISED ORDINANCES OF PROVO CITY, UTAH 96 (1893) (“Every person who shall wear, or carry upon his person any pistol, or other fire arm, slungshot, false-knuckles, bowieknife, dagger or any other dangerous or deadly weapon within the limits of this city is guilty of an offense, and upon conviction thereof shall be liable to a fine in any sum not exceeding twenty-five dollars, or to be imprisoned in the city jail not exceeding twenty-five days, or to both fine and imprisonment[.]”); Green River City, Wyo., City Ordinance (Sept. 19, 1868), *reprinted in* FRONTIER INDEX, Sept. 29, 1868, at 3 (restricting both the open and concealed “wearing or carrying of pistols, revolvers or other deadly weapons, within the corporate limits of the city”).

³⁷ *E.g.*, Albany, Ore., Ordinance (undated), *reprinted in* *Will Be Enforced*, STATE RIGHTS DEMOCRAT, Mar. 9, 1894, at 3 (restricting “persons [from carrying] any deadly or dangerous weapons of any kind whatever in a concealed manner within the corporate limits”).

the Southwest³⁸ and back to the South.³⁹

³⁸ *E.g.*, Wellston, Okla., Ordinance No. 20 (Feb. 6, 1900), *reprinted in* WELLSTON NEWS, Feb. 9, 1900, at 4 (restricting “within this town” the carrying of “any pistol, dirk or bowie knife or other deadly weapon” whether in a “concealed or unconcealed manner”); Cerrillos, N.M., Ordinances ch. 7 (undated), *reprinted in* RUSTLER, Sept. 11, 1891, at 5 (“That it shall be unlawful for any person to carry a deadly weapon, either concealed or unconcealed within the limits of the Town of Cerrillos, unless the same be carried in lawful defense of himself, his family or his property, the same being at the time threatened with danger, or unless by order of legal authority[.]”); Santa Fe, N.M., Ordinances ch. 8 (Aug. 11, 1891), *reprinted in* SANTA FE WEEKLY SUN, Aug. 15, 1891, at 4 (“That it shall be unlawful for any person to carry a deadly weapon, either concealed or unconcealed, within the limits of the city of Sante Fe, unles[s] the same be carried in lawful defense of himself, his family or his property, the same being at the time threatened with danger, or unless by order of legal authority[.]”); Tucson, Ariz., Ordinance No. 44 (May 8, 1883), *reprinted in* ARIZONA DAILY STAR, May 11, 1883, at 3 (“If any person within the corporate limits of the city of Tucson carry concealed upon his person any gun, pistol, bowie-knife, dagger or other deadly weapon, he shall be deemed guilty of * * * a misdemeanor[.]”); Galveston, Tex., Ordinance No. 18 (Aug. 19, 1873), *reprinted in* GALVESTON DAILY NEWS, Aug. 28, 1873, at 4 (“That any person carrying on or about his person, saddle or vehicle, within the corporate limits of the city of Galveston, any pistol [or other dangerous weapons] * * * for the purposes of offense or defense * * * unless he has reasonable grounds for fearing an unlawful attack on his person, and that such attack shall be immediate and pressing” will be fined between \$25 and \$100.).

³⁹ *E.g.*, Chattanooga, Tenn., Ordinance to Prevent the Carrying of Arms (Apr. 9, 1873), *reprinted in* DAILY TIMES, Apr. 24, 1873, at 1 (“That if any person shall, within the corporate limits of the City of Chattanooga, either publicly or privately carry any dirk, sword-cane, Spanish stiletto, belt or pocket pistol, Bowie knife or any large knife of like form or size to a Bowie knife, brass knuckles or slung shot, [they] shall be deemed guilty of a misdemeanor and

No one can say exactly how many localities across the United States maintained sensitive-places restrictions by the turn of the 20th century. Like most local government records, many 19th-century ordinances and other laws were not preserved for historical posterity. Localities often published their laws and ordinances in local newspapers, which were the source for many of the local sensitive-places restrictions that Mr. Charles was able to locate. See Charles, *Sensitive Places*, *supra*, at 845-886. But as any historian or archivist can attest, we have preserved only a fraction of the local newspaper publications that could contain sensitive-places regulations and other ordinances.⁴⁰ Fully mapping out all the sensitive-places laws (whose records still exist) will require visiting hundreds, if not thousands, of local libraries and special

* * * shall be fined not less than fifty dollars and confined in the city jail not less than thirty days.”); Fayetteville, Ark., Ordinance (undated), *reprinted in* FAYETTEVILLE DEMOCRAT, Aug. 12, 1871, at 3 (“[N]o person or persons * * * will be permitted to wear or bear pistols or bowie-knives upon their persons—concealed or otherwise—within the corporate limits of the Town of Fayetteville—unless summoned by some official to aid in enforcing the laws.”).

⁴⁰ For instance, we know that Edgar, Nebraska, adopted a law restricting minors’ access, use, and carrying of pistols and revolvers only from a passing reference in a nearby town’s newspaper. [*Local News*], CRETE GLOBE, June 18, 1885, at 4; see also, *e.g.*, *Local Affairs*, FRONTIER INDEX, May 5, 1868, at 3 (referring without elaboration to “ordinances prohibiting carrying or bearing fire arms or deadly weapons” enacted by Laramie City, Wyoming, in 1868); Charles, *Sensitive Places*, *supra*, at 877 n.371 (discussing an 1891 Birmingham, Alabama, law whose text was not preserved).

archives, and then sifting through the relevant material.⁴¹

B. Historians will never be able to fully reconstruct the exact number of sensitive-places restrictions that existed by the turn of the 20th century. But three propositions are undeniable.

First, state, territorial, and local governments routinely exercised their authority to restrict the carrying of firearms and other dangerous weapons in a variety of sensitive places where people were regularly known to congregate. See pp. 9-21, *supra*.

Second, although the precise locations varied depending on local customs and practices, lawmakers most frequently restricted the carrying of firearms into (a) churches and places of worship; (b) places where large public assemblies generally took place, such as public parks and town squares; (c) polling places and other locations for political activity; (d) schools and institutions of higher learning; (e) places of amusement and other large planned events; and (f) bars, clubs, social venues, or anywhere that alcohol could be purchased or consumed. See Charles, *Sensitive Places*, *supra*, at 834-887.

Third, Mr. Charles is aware of “no disputes regarding the lawfulness” of sensitive-places laws. *Bruen*, 597 U.S. at 30. Courts unanimously rejected the few challenges that were made. *E.g.*, *State v. Shelby*, 90 Mo. 302, 305 (1886); *Owens v. State*, 3 Tex. App. 404,

⁴¹*E.g.*, Charles, *Sensitive Places*, *supra*, at 864 n.315 (describing a visit to Auburn University’s Special Collections that turned up a law that predates the laws readily available via online databases by 36 years).

407 (1878); *Hill v. State*, 53 Ga. 472, 474 (1874); *English v. State*, 35 Tex. 473, 478-479 (1871); *Andrews v. State*, 50 Tenn. 165, 182 (1871).

II. The Tradition of the Sensitive-Places Doctrine Is Distinct from Yet Overlaps with Private-Property Default Rules.

Mr. Charles takes no position as to whether the creation in Haw. Rev. Stat. § 134-9.5 of a default rule requiring express consent to carry firearms onto private property that is held open to the public is “‘relevantly similar’ to laws that our tradition is understood to permit.” *Rahimi*, 602 U.S. at 692 (quoting *Bruen*, 597 U.S. at 29). Instead, Mr. Charles files this brief to point out the distinct yet overlapping spheres for sensitive-places laws and private-property default rules.

Petitioners argue that “private property open to the public cannot be a ‘sensitive place.’” Pet. Br. 39. Petitioners cite no historical support for that categorical assertion. Nor could they. Governments have long regulated the carrying of firearms into not only public buildings but also privately owned sensitive places, including private places of worship, private places of amusement, and private commerce centers. See pp. 6-21, *supra*.

The Court should not suggest or conclude that sensitive-places restrictions and private-property default rules apply to mutually exclusive categories of property. The history and tradition of firearm regulation definitively shows that governments can restrict firearms in certain sensitive private places. And a government could choose between an outright ban of firearms in a sensitive place and a “lesser restriction,” such as a heightened requirement of express consent

to carry into the sensitive private place. *Rahimi*, 602 U.S. at 699. In a case raising the issue, the existence of sensitive private places (if not already covered by other sensitive-places restrictions) could bear on a plaintiff’s likelihood to succeed on a facial challenge, which will “fail[] if the law is constitutional in at least some of its applications.” *Id.* at 701 n.2 (citing *United States v. Salerno*, 481 U.S. 739, 745 (1987)). But this case is not an appropriate vehicle for addressing that theoretical overlap because Section 134-9.5 does not purport to draw a line based on the sensitivity of the private place, nor has Hawaii ever defended the statute on a sensitive-places theory.

This Court also should continue to be cautious about making any broad pronouncements about the sensitive-places doctrine, especially in a case that does not directly raise the issue. See *Bruen*, 597 U.S. at 30. In only the two years since *Bruen*, Mr. Charles and others have uncovered a wide array of historical location-based restrictions. Any firm legal conclusions as to the scope of the sensitive-places doctrine should be drawn from the fullest historical record available at the time.

There remains much more work left to do. Historians are just scratching the archival surface. For instance, Mr. Charles and others are in the process of peeling back the American history and tradition of firearms localism, which shows how state law was only one of several layers of firearm regulation within the United States. One area of developing research is the tradition of regulating the carrying of firearms in and around schools. Presently, this research is uncovering a long history of restricting firearms at both *publicly* and *privately* owned schools. See Charles, *Sensitive Places*, *supra*, at 845-864.

Recall that Nebraska law delegated authority over firearm regulation to localities. See p. 16, *supra*. Several localities flexed that authority to prohibit firearms and other dangerous weapons in and around schools, including Fairbury,⁴² Falls City,⁴³ Juniata,⁴⁴ Red Cloud,⁴⁵ and St. Paul.⁴⁶

Next consider Mississippi, which adopted a law restricting the carrying of any “concealed” weapon by a student within “any university, college or school.” 1878 Miss. Laws ch. 46, § 4, p. 176. The law did not preclude several Mississippi localities from adopting more restrictive sensitive-places laws in schools. McComb City restricted not only the carrying of concealed weapons within its high school, but also the open carrying of any “pistol, gun, bow and arrow, sling

⁴² Fairbury, Neb., Rules and Regulations (undated), *reprinted in* FAIRBURY GAZETTE, Mar. 27, 1886, at 8 (“That no scholar shall be permitted under any circumstances to carry fire-arms, concealed or otherwise, on the school premises[.]”).

⁴³ Falls City, Neb., Rules and Regulations of the Board of Education (Aug. 23, 1877), *reprinted in* GLOBE-JOURNAL, Sept. 1, 1877, at 2 (“Any scholar carrying fire arms, or other deadly weapons, about the premises, shall be suspended and reported to the Directors.”).

⁴⁴ Juniata, Neb., Rules and Regulations of the Juniata Schools (Nov. 4, 1889), *reprinted in* JUNIATA HERALD, Nov. 21, 1889, at 2 (“Pupils are forbidden to * * * bring firearms, fire crackers, torpedoes, or [slingshots] about the buildings or grounds.”).

⁴⁵ Red Cloud, Neb., Rules for the Government of the Red Cloud Schools (undated), *reprinted in* WEBSTER COUNTY ARGUS, Sept. 14, 1882, at 4 (“No pupil shall * * * bring any weapons or fire-arms upon the [school] premises[.]”).

⁴⁶ MANUAL OF ST. PAUL SCHOOLS 2 (1896) (“No pupil will be permitted to carry or use either a sling shot, pistol or other dangerous weapon on the school premises or to or from school.”).

shot, or anything by which others may be injured.”⁴⁷ Similarly, Hinds County maintained a law restricting the “carrying of deadly weapons” into its public schools, whether concealed or openly.⁴⁸

Or consider the tradition of location-based regulation in Pennsylvania. In 1875, the Commonwealth restricted the concealed carry of dangerous weapons, but only if the carrying was done “with the intent therewith unlawfully and maliciously to do injury to any other person[.]” 1875 Pa. Laws no. 38, p. 33. But that law did not preclude localities from utilizing their “corporate powers” to adopt more restrictive armed-carriage provisions.⁴⁹ Exercising that authority, Mount Holly Springs,⁵⁰ Northumberland,⁵¹ Phoenixville,⁵²

⁴⁷ McComb City, Miss., General Rules for the Government of McComb City Graded High School (undated), *reprinted in Our School’s*, MCCOMB CITY ENTERPRISE, Sept. 14, 1899, at 1.

⁴⁸ Hinds County, Miss., Rules and Regulations to Be Observed in the Public Schools (Nov. 15, 1872), *reprinted in* JOURNAL OF THE SENATE OF THE STATE OF MISSISSIPPI 845 (1873).

⁴⁹ *E.g.*, FRANK F. BRIGHTLY, DIGEST OF THE LAWS OF PENNSYLVANIA 2303, 2306 (1887); DIGEST OF THE LAWS AND ORDINANCES FOR THE GOVERNMENT OF THE MUNICIPAL CORPORATION OF THE CITY OF HARRISBURG, PENNSYLVANIA 62 (1906).

⁵⁰ Mount Holly Springs, Pa., School Regulations (undated), *reprinted in* CARLISLE DAILY HERALD, Aug. 28, 1888, at 1 (“No deadly weapons of any kind * * * shall be brought in or around the buildings.”).

⁵¹ Northumberland, Pa., Course of Study and Rules and Regulations of the Northumberland Public Schools (Sept. 1897), *reprinted in* PUBLIC PRESS, Sept. 17, 1897, at 2 (“[C]arrying fire arms or matches shall constitute good cause for suspension or expulsion.”).

⁵² Phoenixville, Pa., Public School Rules and Regulations (undated), *reprinted in* INDEPENDENT PHOENIX, Aug. 30, 1873, at 2

Schuylkill County,⁵³ Warren,⁵⁴ and Williamsport⁵⁵ all maintained laws restricting the carrying of firearms and other dangerous weapons within their respective schools.

A historical analysis that focused squarely on state session laws (here, related to guns in schools) would overlook core aspects of the American tradition of firearm regulation. Historians, such as Mr. Charles, are uncovering more and more local sensitive-places regulations each day, furthering our understanding of federalism and firearm regulation. Someday this Court will review the constitutionality of a sensitive-places law. When that day comes, the Court should consider the full historical record supporting those laws—a record that, in all likelihood, will be even more robust than it is now.

(“Pupils are expected to abstain from * * * bringing fire-arms upon the premises[.]”).

⁵³ Schuylkill County, Pa., Educational: Rules for School Government (undated), *reprinted in* STAR OF THE NORTH, Feb. 7, 1856, at 2 (“All pupils are prohibited from * * * using fire-arms, gun-powder or fireworks of any description on the school premises.”).

⁵⁴ CATALOGUE OF THE WARREN UNION SCHOOL AND ACADEMY 35 (1892) (“[C]arrying fire-arms” is “strictly forbidden on or about the premises.”).

⁵⁵ ELEVENTH BIENNIAL REPORT OF THE PUBLIC SCHOOLS OF WILLIAMSPORT, PENNSYLVANIA 65 (1890) (“Any pupil found carrying fire-arms, or what is termed concealed weapons, shall be suspended from school, and reported to the Board by the teacher for expulsion and arrest.”).

CONCLUSION

Mr. Charles takes no position on the constitutionality of Haw. Rev. Stat. § 134-9.5. In deciding that question, this Court should be aware of but reserve judgment on the sensitive-places doctrine, which can apply to private property as to public property.

Respectfully submitted.

PATRICK J. FUSTER
Counsel of Record
JEREMY S. SMITH
ALLISON ROY KAWACHI
GIBSON, DUNN & CRUTCHER LLP
333 South Grand Avenue
Los Angeles, CA 90071
(213) 229-7000
pfuster@gibsondunn.com

T. HUNTER MASON
GIBSON, DUNN & CRUTCHER LLP
1700 M Street, N.W.
Washington, DC 20036

Counsel for Amicus Curiae

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