

MORE RIGHTS, MORE RESPONSIBILITIES: A POST-*BRUEN* PROPOSAL FOR CONCEALED CARRY COMPROMISE

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“Guns don’t kill people. People kill people.” If true, this gun rights refrain cuts both ways. If the person—rather than the gun—is the causal variable behind violent crime, accidental gun deaths, and mass shootings, it follows that not all people should be permitted to carry firearms. In other words, if the problem is not too many guns but simply guns in the wrong hands, laws regulating the public carry of arms should limit arms to the thoroughly trained, vetted, and law abiding. To this end, loaded, concealed handguns should not be carried by the criminally inclined, the incompetent, or the irresponsible. Unfortunately, recent judicial and legislative developments are producing just that result.

The Supreme Court recently held—in *New York State Rifle & Pistol Association v. Bruen*—that the Second Amendment protects the right to carry a handgun for self-defense outside the home. The Court also held that states can only prohibit firearms in a few narrowly construed “sensitive places.” Simultaneously, states are enacting “constitutional carry” at an astounding rate—allowing ordinary adults to carry concealed handguns without any training, background check, or permit. The combined effect of *Bruen* and the constitutional carry wave is more guns in more places carried by more untrained and unvetted hands. This Article—the first of its kind in the academic literature—offers a statutory solution to both these challenges.

For better or worse, constitutional carry and *Bruen* are here to stay. States should adapt by adopting bifurcated statutory systems in which unlicensed and licensed carry coexist. In the twenty-nine (and counting) constitutional carry states, concealed carry permits should remain available, and citizens should have to undergo extensive training and background checks to obtain them. But data shows that permit numbers drop precipitously when states enact constitutional carry. Therefore, to incentivize armed citizens to

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voluntarily undergo thorough training and vetting, states should exempt permit holders from most location-based restrictions on firearms. By banning unlicensed and open carry in some public spaces—but authorizing licensed concealed carry—states can limit the number of firearms in public (especially those in untrained hands) while still complying with *Bruen*. This Article presents a comprehensive framework for how states can responsibly embrace constitutional carry.

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INTRODUCTION

Even among the myriad legal issues surrounding firearms today, two rise to the forefront in terms of their public impact. The first issue concerns state “constitutional carry”¹ laws, which allow most adults to carry concealed handguns without a permit. A staggering twenty-nine states (and counting) now have permitless concealed carry laws on their books.² The result of the recent constitutional carry wave is that millions of Americans—many of whom are entirely untrained, unvetted, and unsafe with firearms—are now carrying loaded handguns in public.³ The second issue concerns the Supreme Court’s pronouncement in *New York State Rifle & Pistol Association v. Bruen*⁴ that, to pass constitutional muster, statutory bans on firearms in sensitive places must be justified under the history and tradition of the Second Amendment.⁵ The result of the Court’s holding is the inability of states to prohibit firearms in many controversial locations such as bars, sports stadiums, hospitals, churches, and perhaps even schools.⁶ Taken together, these two issues mean there are now more guns in more places carried by more untrained and

1. The term “constitutional carry” stems from proponents’ argument that the only permit required to carry a concealed firearm for self-defense is the Second Amendment to the Constitution. Adam Winkler, *Is the Second Amendment Becoming Irrelevant?*, 93 IND. L.J. 253, 258 (2018). The terms “permitless carry” and “unlicensed carry”—while more descriptive and neutral—are less ubiquitous. This Article uses the three terms interchangeably.

2. Guy J. Sagi, *Constitutional Carry Gaining Steam*, AM. RIFLEMAN (Apr. 16, 2023), <https://www.americanrifleman.org/content/constitutional-carry-gaining-steam/> [https://perma.cc/YL23-HA9K] (explaining that Florida recently passed constitutional carry and listing the other twenty-five constitutional carry states at that time). John R. Lott, *Nebraska Becomes the 27th Constitutional Carry State*, CRIME PREVENTION RSCH CTR. (Apr. 19, 2023), <https://crimeresearch.org/2023/04/nebraska-becomes-the-27th-constitutional-carry-state/> [https://perma.cc/K7MU-FGDP] (explaining that the Nebraska legislature just passed a constitutional carry bill [that its governor later signed] and arguing that South Carolina will likely follow suit in the next year).

3. Cf. Rebecca Schneid, *Texans Do Not Need a License To Carry, but Some Gun Owners Still Want One*, TEX. TRIB. (Aug. 10, 2023, 5:00 AM), <https://www.texastribune.org/2023/08/10/texas-license-to-carry-handgun/> [https://perma.cc/92AU-4Y97] (“[With permitless carry,] [y]ou’re not just removing the requirement of a license. You’re also removing the requirement for minimal training.” (quoting Eric Reuben, Assoc. Professor, SMU L. Sch.)).

4. 142 S. Ct. 2111 (2022).

5. *Id.* at 2131–34.

6. See discussion *infra* Section II.A.

unvetted hands. Fortunately, there is a single statutory solution to both these challenges.⁷

For better or worse, the political reality is that constitutional carry and *Bruen* are here to stay. Therefore, states should get ahead of the problem by adopting bifurcated statutory systems in which unlicensed and licensed carry can coexist. In the twenty-nine constitutional carry states, concealed carry weapons (CCW) permits⁸ should remain available, and citizens should be required to undergo extensive training and background checks to obtain them. Unfortunately, citizens are not motivated to go to the trouble of obtaining CCW permits when they can simply carry without a permit.⁹ Therefore, to incentivize armed citizens to undergo a thorough training and vetting process, states should exempt permit holders from nearly all location-based restrictions on firearms. Not only will this lead to armed citizens being safer, better trained, and vetted, but it will also solve the “sensitive places” problem presented by *Bruen*.¹⁰ By banning unlicensed or open carry in many public spaces, but authorizing licensed concealed carry virtually everywhere, states will limit the number of firearms in public spaces—especially those in untrained hands. This proposal complies perfectly with *Bruen* because, while *Bruen* prevents states from banning firearms in most public locations, it does nothing to prevent states from banning the *permitless* carry of firearms in these locations.¹¹

7. See *infra* Part III.

8. Texas uses the term “License to Carry” (LTC) to refer to its state-issued permit that authorizes citizens to carry handguns in public. See *Handgun Licensing*, TEX. DEP’T PUB. SAFETY, <https://www.dps.texas.gov/section/handgun-licensing/overview> [<https://perma.cc/SB4N-FY5Q>]. Other states use terms such as “Concealed Weapons License,” “Concealed Pistol License,” or “Concealed Carry Weapons Permit” (CCW permit). See, e.g., *Applying for a Concealed Weapon License*, FLA. DEP’T AGRIC. & CONSUMER SERVS., <https://www.fdacs.gov/Consumer-Resources/Concealed-Weapon-License/Applying-for-a-Concealed-Weapon-License> [<https://perma.cc/RZ2N-QA7J>]; *Get Your License: Concealed Pistol License*, WASH. ST. DEP’T LICENSING, <https://www.dol.wa.gov/professional-licenses/concealed-pistol-license/get-your-license-concealed-pistol-license> [<https://perma.cc/E37Z-T8K7>]; *Legislative Info Concealed Weapon*, WIS. DEP’T JUST., <https://www.doj.state.wi.us/dles/cib/conceal-carry/legislative-info-concealed-weapon> [<https://perma.cc/A33P-X8NL>]. Although some states’ permits also affect citizens’ rights to carry handguns openly or to carry weapons other than handguns, this Article refers to “permits” or “licenses” solely in the context of authorization to carry a *concealed handgun* in public. Here, the terms “LTC” and “CCW permit” are used interchangeably throughout.

9. See discussion *infra* Section III.B.

10. *Bruen*, 142 S. Ct. at 2133.

11. See *id.* at 2138 n.9; *id.* at 2161–62 (Kavanaugh, J., concurring).

This Article is the first proposal of its kind in the academic literature. Other academic articles have advocated a tiered approach to concealed carry licensing, and a few states have implemented bifurcated concealed carry schemes on a micro-level.¹² But this Article is the first to propose a comprehensive statutory scheme for state concealed carry laws considering the challenges posed by *Bruen* and constitutional carry. It is also the first to examine the combined effects of constitutional carry and *Bruen* on sensitive place restrictions.

In short, states should adopt bifurcated statutory schemes in which unlicensed and licensed carriers of firearms are treated differently. Permit holders should be granted greater public carry rights if they undertake greater responsibilities to become well trained and vetted.¹³ After introducing and contextualizing this thesis, Part I briefly surveys Second Amendment jurisprudence, recent case law, and the evolution of statutes governing the carrying of firearms in the United States.¹⁴ Section II.A describes the constitutional confusion surrounding *District of Columbia v. Heller*'s¹⁵ and *Bruen*'s exception for sensitive places.¹⁶ Section II.B describes the public policy problem created by constitutional

12. See, e.g., Brian C. Whitman, Comment, *In Defense of Self-Defense: Heller's Second Amendment in Sensitive Places*, 81 Miss. L.J. 1987, 2022–23 (2012) (arguing states could implement a two-tier system that “provide[s] for the ability to obtain a license to carry a weapon in sensitive places (second tier) if sufficient security cannot be supplied”); *Benefits of a Texas Handgun License*, TEX. DEP’T PUB. SAFETY, <https://www.dps.texas.gov/section/handgun-licensing/ltc-benefits> [<https://perma.cc/QR5G-CV6C>] [hereinafter *Benefits of a Texas Handgun License*]; IDAHO CODE § 18-3302K (2023) (“Issuance of Enhanced Licenses to Carry Concealed Weapons”); S.D. SEC’Y OF STATE, A GUIDE TO UNDERSTANDING CONCEALED CARRY PISTOL PERMITS IN SOUTH DAKOTA, <https://sdsos.gov/general-services/concealed-pistol-permits/cc-permit-types.aspx> [<https://perma.cc/49N4-EVMD>]; Sarah Whites-Koditschek, *Arkansas’ ‘Enhanced Concealed Carry’ Allows Guns in Churches, Bars, State Capitol*, NPR (Apr. 30, 2018, 5:01 AM), <https://www.npr.org/2018/04/30/606990239/arkansas-requires-training-for-enhanced-concealed-carry-permit> [<https://perma.cc/R5SB-A78R>].

13. A similar concept already exists in the few states that offer both regular and “enhanced” CCW permits, which sometimes exempt the holder from a few location bans but generally exist for interstate-reciprocity purposes. See G. Halek, *Are ‘Enhanced’ Concealed Carry Permits Worth It?*, CONCEALED NATION (Dec. 24, 2017), <https://concealednation.org/2017/12/are-enhanced-concealed-carry-permits-worth-it/> [<https://perma.cc/D963-7YMZ>] (“[I]f an enhanced concealed carry permit allows greater freedom of travel across state lines and potentially within one’s home state, go for it.”).

14. See *infra* Part I.

15. 554 U.S. 570 (2008).

16. See *infra* Section II.A.

carry.¹⁷ Section II.C shows how these two issues are playing out in Texas, which adopted constitutional carry in September 2021.¹⁸

Section III.A argues that states should adopt a bifurcated statutory system to regulate concealed carry, and it describes the principles upon which such a system should be based.¹⁹ Most importantly, these include retaining both licensed and unlicensed carry, making licenses more difficult to obtain, and incentivizing citizens to undergo the training and vetting required to obtain licenses by exempting them from firearm location bans.²⁰ Section III.B again uses Texas to show how this scheme could be implemented in a specific constitutional carry state.²¹ The Article then concludes with some final thoughts.²²

I. BACKGROUND²³

A. *The Right to Keep and Bear Arms*

The Second Amendment plainly states that “the right of the people to keep and bear Arms, shall not be infringed.”²⁴ The Framers’ inclusion

17. See *infra* Section II.B.

18. See *infra* Section II.C.

19. See *infra* Section III.A.

20. See *infra* Section III.A.

21. See *infra* Section III.B.

22. See *infra* Conclusion.

23. Portions of this Article are similar in substance and structure to language in Tyler R. Smotherman, Comment, *Troubleshooting the Gun-Free School Zones Act: A Call for Amendment in the Age of Constitutional Carry*, 55 TEX. TECH L. REV. 359 (2023). Used with permission.

24. U.S. CONST. amend. II. Debates about the Second Amendment’s prefatory clause—particularly the meaning of “well regulated Militia”—are important, but outside this Article’s scope. In short, once dominant collective-right theorists came under effective attack by conservative scholars in the 1980s and 1990s. See, e.g., Eugene Volokh, *The Commonplace Second Amendment*, 73 N.Y.U. L. REV. 793, 802–04, 807, 810 (1998) [hereinafter *The Commonplace Second Amendment*] (arguing against collective-right theory of the Second Amendment); JOYCE LEE MALCOLM, *TO KEEP AND BEAR ARMS: THE ORIGINS OF AN ANGLO-AMERICAN RIGHT* 135–37, 162–64 (1994); STEPHEN P. HALBROOK, *THAT EVERY MAN BE ARMED: THE EVOLUTION OF A CONSTITUTIONAL RIGHT* 35–95 (rev. ed. 2013) [hereinafter *THAT EVERY MAN BE ARMED*] (examining English common law in relation to the Second Amendment). The collective-right interpretation—holding the Second Amendment only confers rights tied to service in the organized militia (*i.e.*, the Army National Guard)—was eventually repudiated in *District of Columbia v. Heller*. See *District of Columbia v. Heller*, 554 U.S. 570, 595–97 (2008) (holding that “militia” simply meant all free able-bodied males, and “the adjective ‘well-regulated’ implie[d] nothing more than the imposition of proper discipline and training”). See also Eugene Volokh, *Textualism and District of Columbia v. Heller*,

of the right to keep and bear arms in the Bill of Rights reflected the early American consensus that free citizens have always had a natural, pre-existing right to possess and carry weapons for all lawful purposes.²⁵ “While these lawful purposes are several—e.g., resisting foreign invasion, deterring domestic tyranny, hunting, and engaging in sport or recreation—chief among them is individual self-defense.”²⁶

After nearly a century of silence, the Supreme Court examined the nature of the right to keep and bear arms in the milestone case *District of Columbia v. Heller*.²⁷ There, the Court struck down Washington, D.C.’s ban on law-abiding citizens possessing handguns—loaded and readily accessible—in their homes for self-defense.²⁸ The *Heller* Court clarified that the Second Amendment “guarantee[s] the individual right to possess and carry weapons in case of confrontation.”²⁹ Shortly thereafter, in *McDonald v. City of Chicago*,³⁰ the Court struck down a similar handgun ban in Chicago and incorporated the Second Amendment against the states.³¹ While groundbreaking, *Heller*’s and *McDonald*’s holdings were limited to the right to keep firearms for self-defense in the

37 HARV. J.L. & PUB. POL’Y 729, 734 (2014) [hereinafter *Textualism and Heller*] (“[T]he Court (I think quite persuasively) concluded that, in the language of the time, ‘militia’ meant basically the entire armed adult male citizenry, and ‘well-regulated’ meant well-trained or well-functioning (rather than subject to many restrictions).”).

25. See *Heller*, 554 U.S. at 592 (holding the Second Amendment “codified a pre-existing right,” which is not “in any manner dependent [on the Constitution] for its existence,” and “guarantee[s] the individual right to possess and carry weapons in case of confrontation” (quoting in part *United States v. Cruikshank*, 92 U.S. 542, 553 (1876))). See generally MALCOLM, *supra* note 24 (illuminating the history behind the right to self-defense and the development of firearms ownership into a constitutional right); THAT EVERY MAN BE ARMED, *supra* note 24 (tracing the right to bear arms back to antiquity); STEPHEN P. HALBROOK, *THE FOUNDERS’ SECOND AMENDMENT: ORIGINS OF THE RIGHT TO BEAR ARMS* (2008) (illuminating the basis and significance of the Second Amendment for the Founders).

26. Smotherman, *supra* note 23, at 367 (citing *Heller*, 554 U.S. at 599 (“[Self-defense] was the central component of the right [to keep and bear arms] itself.”)).

27. *Heller*, 554 U.S. at 592. See also Nelson Lund, *Heller and Second Amendment Precedent*, 13 LEWIS & CLARK L. REV. 335, 336 (2009) (emphasizing the lack of Supreme Court precedent for the *Heller* Court); *United States v. Miller*, 307 U.S. 174, 178 (1939) (addressing the Second Amendment for the first and only time during the twentieth century and holding the National Firearms Act’s ban on short-barreled shotguns was constitutional because such weapons were not suited to military use in an organized militia).

28. *Heller*, 554 U.S. at 635.

29. *Id.* at 592.

30. 561 U.S. 742 (2010).

31. *Id.* at 791.

home; neither case discussed the scope of the right to bear arms outside one's home.³²

The Supreme Court finally took up the issue of public carry in *New York State Rifle & Pistol Association v. Bruen*.³³ There, six justices agreed that New York's discretionary "may-issue" law—which required law-abiding adults to articulate some atypical need to obtain a concealed carry permit—was unconstitutional.³⁴ Before *Bruen*, New Yorkers with spotless criminal records, extensive firearms training, and a desire to protect themselves in high-crime areas were systematically denied the right to carry concealed handguns for self-defense.³⁵ Applicants were forced to prove "some additional special need" to carry concealed outside the home.³⁶ "Additionally, New York also banned open carry, thus totally denying most residents the right to carry a handgun for self-defense outside their homes or places of business."³⁷ The *Bruen* Court invalidated New York's licensing regime and unequivocally held, "consistent with *Heller* and *McDonald*, that the Second and Fourteenth Amendments protect an individual's right to carry a handgun for self-defense outside the home."³⁸ The Court explained that "[n]othing in the Second Amendment's text draws a home/public distinction with respect to the right to keep and bear arms" and that "[t]o confine the right to 'bear' arms to the home would nullify half of the Second Amendment's operative protections."³⁹

More generally, the Supreme Court rejected the "two-step" framework for analyzing Second Amendment challenges that combines history with means-end scrutiny.⁴⁰ The Court interpreted *Heller* and *McDonald* to "not support applying means-end scrutiny in the Second Amendment context. Instead, the government must affirmatively prove that its firearms regulation is part of the historical tradition that delimits

32. See *Heller*, 554 U.S. at 628–29; *McDonald*, 561 U.S. at 780.

33. 142 S. Ct. 2111, 2122 (2022).

34. *Id.* at 2123–26.

35. See Transcript of Oral Argument at 67–72, *Bruen*, 142 S. Ct. 2111 (No. 20-843), https://www.supremecourt.gov/oral_arguments/argument_transcripts/2021/20-843_7m5e.pdf [<https://perma.cc/CZ2J-SE3L>].

36. *Bruen*, 142 S. Ct. at 2122.

37. See Smotherman, *supra* note 23, at 368 (citing Transcript of Oral Argument, *supra* note 35, at 19–21).

38. *Bruen*, 142 S. Ct. at 2122.

39. *Id.* at 2134–35.

40. *Id.* at 2125. See also *infra* note 119 (discussing the two-part analysis adopted by most circuit courts prior to *Bruen*).

the outer bounds of the right to keep and bear arms.”⁴¹ Even so, the majority conceded that when analyzing modern gun laws unforeseeable by the Founders, “this historical inquiry that courts must conduct will often involve reasoning by analogy.”⁴² While it did not “provide an exhaustive survey of the features that render regulations relevantly similar under the Second Amendment,” the Court did explain that “whether modern and historical regulations impose a comparable burden on the right of armed self-defense and whether that burden is comparably justified are ‘central’ considerations when engaging in an analogical inquiry.”⁴³

Bruen’s treatment of modern sensitive place restrictions is particularly relevant here.⁴⁴ Multiple justices punctuated the ability of states to ban guns in certain places (*e.g.*, bars, college campuses, sporting arenas, and even Times Square) under *Heller*’s “sensitive places” doctrine with their repeated questions during oral arguments.⁴⁵ The *Bruen* Court also employed sensitive place restrictions as its primary example that the government need only “identify a well-established and representative historical *analogue*, not a historical *twin*.”⁴⁶ The majority opinion seemed to endorse “‘longstanding’ ‘laws forbidding the carrying of firearms in sensitive places such as schools and government buildings.’”⁴⁷ However, the Court also rejected New York’s laughably expansive definition of a sensitive place (*i.e.*, any crowded location where police are generally present) and cautioned that “we have no occasion to comprehensively define ‘sensitive places’ in this case.”⁴⁸

1. THE POST-*BRUEN* LEGAL LANDSCAPE

Although the dust is still settling, *Bruen* is already having significant ripple effects on sensitive place restrictions in the lower courts. For example, a federal court in New York recently issued at least two injunctions preventing the enforcement of a state law that made it a felony for a concealed carry permit holder to carry her handgun in any place of

41. *Bruen*, 142 S. Ct. at 2127.

42. *Id.* at 2132.

43. *Id.* at 2132–33 (citations omitted).

44. *See id.* at 2133–34.

45. Transcript of Oral Argument, *supra* note 35, at 24–33.

46. *Bruen*, 142 S. Ct. at 2133.

47. *Id.* (quoting *District of Columbia v. Heller*, 554 U.S. 570, 626 (2008)). *See also infra* Section II.A.1 (discussing *Bruen*’s ambiguity regarding designation of schools as sensitive places).

48. *Bruen*, 142 S. Ct. at 2133.

worship.⁴⁹ Another federal court recently criticized New York’s long list of sensitive places as “almost limitless” and “unsupported by any historical examples that are actual analogues.”⁵⁰ The court particularly criticized sensitive place restrictions in restaurants that serve alcohol, healthcare facilities, public transportation, and public spaces or gatherings; the court unequivocally held that “the Supreme Court in [*Bruen*] effectively barred the expansion of sensitive locations beyond schools, government buildings, legislative assemblies, polling places and courthouses.”⁵¹ The same situation has taken place in other restrictive states, such as New Jersey.⁵² There, a federal court—in at least two cases—prevented New Jersey from prohibiting licensed carry in parks, public libraries, museums, bars, restaurants that serve alcohol, casinos, entertainment facilities, private property, and private vehicles.⁵³ Likewise, in Hawai‘i, a federal court recently prevented state officials from enforcing new bans on licensed concealed carry in bars, restaurants, parks, beaches, certain parking lots, and various other locations.⁵⁴

But not all challenges to sensitive place restrictions have been successful.⁵⁵ For example, a federal court in Maryland recently rejected

49. *Hardaway v. Nigrelli*, 639 F. Supp. 3d 422, 443–44 (W.D.N.Y. 2022) *vacated as moot by* *Antonyuk v. Chiumento*, 89 F.4th 271, 352, 387–88 (2d Cir. 2023); *Spencer v. Nigrelli*, 648 F. Supp. 3d 451, 456 (W.D.N.Y. 2022), *aff’d in part by* *Antonyuk*, 89 F.4th at 352; *Antonyuk*, 89 F.4th at 387–88 (upholding lower court injunctions of New York’s concealed carry ban in houses of worship and on all private properties open to public without affirmative permission and New York’s social media disclosure requirement for CCW permit applicants, but vacating injunctions of New York’s other broad sensitive-place restrictions). *See also* Jonathan Turley, *Second Circuit Strikes Down Critical Provisions in New York’s Most Recent Gun Control Law*, JOHNATHAN TURLEY (Dec. 9, 2023), <https://jonathanturley.org/2023/12/09/second-circuit-strikes-down-critical-provisions-in-new-yorks-most-recent-gun-control-law/> [<https://perma.cc/6W5U-FXWD>] (arguing this decision by the Second Circuit—“one of the most supportive courts for gun control advocates”—will likely make its way to the Supreme Court).

50. *Antonyuk v. Bruen*, 624 F. Supp. 3d 210, 254 (N.D.N.Y. 2022).

51. *Id.*

52. *See, e.g., Siegel v. Platkin*, 653 F. Supp. 3d 136, 141–42 (D.N.J. 2023); *Koons v. Reynolds*, 649 F. Supp. 3d 14, 17–18 (D.N.J. 2023).

53. *Siegel*, 653 F. Supp. 3d. at 161–62; *Koons*, 649 F. Supp. 3d at 27–28. *See also* *Koons v. Platkin*, No. 22-7464, 2023 WL 3478604, at *4, *107–08 (D.N.J. May 16, 2023) (casting doubt on most of New Jersey’s sensitive place restrictions but supporting the state’s shall-issue permit requirements).

54. *Wolford v. Lopez*, No. CV 23-00265, 2023 WL 5043805, at *32–33 (D. Haw. Aug. 8, 2023).

55. *See, e.g., United States v. Power*, No. 20-po-331, 2023 WL 131050, at *14 (D. Md. Jan. 9, 2023); *United States v. Robertson*, No. 22-po-867, 2023 WL 131051, at *15 (D. Md. Jan. 9, 2023); *Antonyuk v. Chiumento*, 89 F.4th 471, 387–88

two Second Amendment challenges by plaintiffs arrested for possessing handguns in their vehicles on the campus of the National Institutes of Health.⁵⁶ There, the court accepted a broad definition of “government building” and held “that the *Bruen* Court blanketly defines ‘government buildings,’ and other locations that are ‘similar to’ government buildings, as sensitive places.”⁵⁷ Therefore, the court held the National Institutes of Health’s total ban on firearms did not violate the Second Amendment.⁵⁸

Precisely which sensitive place restrictions will be upheld remains to be seen. Still, *Bruen* explicitly affirmed the right to carry for self-defense, listed only a few location bans as presumptively constitutional, and has already led courts to invalidate various firearms location bans.

Recent cases demonstrate that *Bruen* may spell death for a variety of other firearms laws as well. For example, in *United States v. Rahimi*,⁵⁹ the Fifth Circuit held that 18 U.S.C. § 922(g)(8)—a federal statute prohibiting the possession of firearms by someone subject to a domestic violence restraining order—is unconstitutional under the Second Amendment.⁶⁰ Although the court acknowledged the statute’s “salutary policy goals,” it held that “*Bruen* forecloses any [means-end] analysis in favor of a historical analogical inquiry.”⁶¹ Because a total ban on firearms possession for those subject to civil protection orders is an “outlier[] that our ancestors would never have accepted,” the Fifth Circuit held the statute unconstitutional under *Bruen*.⁶² Likewise, after *Bruen*, a federal court in Texas held 18 U.S.C. § 922(n)—which prohibits those under felony indictment from obtaining a firearm—unconstitutional.⁶³ And another federal court struck down a Texas law prohibiting eighteen-to-

(2d Cir. 2023) (concluding that the majority of New York’s new, expansive firearms location bans “do not violate the Constitution on their face”).

56. *Power*, 2023 WL 131050, at *1, *14; *Robertson*, 2023 WL 131051, at *1, *15.

57. *Power*, 2023 WL 131050, at *8 (citation omitted).

58. *Id.* at *9.

59. 61 F.4th 443 (5th Cir. 2023), *cert. granted*, 143 S. Ct. 2688 (2023).

60. *Id.* at 448. Following oral arguments in November 2023, it appears the Supreme Court may be poised to reverse the Fifth Circuit’s decision in *Rahimi*. *See generally* Transcript of Oral Arguments, *Rahimi*, 61 F.4th 443 (No. 22-915). There, several justices expressed myriad reservations about overturning Section 922(g)(8). *See generally id.*

61. *Rahimi*, 61 F.4th at 461.

62. *Id.* (quoting in part *N.Y. State Rifle & Pistol Ass’n v. Bruen*, 142 S. Ct. 2111, 2133 (2022)).

63. *United States v. Quiroz*, 629 F. Supp. 3d 511, 527 (W.D. Tex. 2022).

twenty-year-old adults from obtaining a license to carry.⁶⁴ Even more recently, two federal district courts and the Fifth Circuit held 18 U.S.C. § 922(g)(3)—which prohibits marijuana users from owning or possessing firearms—unconstitutional under the Second Amendment.⁶⁵ Those are just a few examples.⁶⁶

On the other hand, federal courts continue to uphold a variety of firearms regulations and restrictions post-*Bruen*.⁶⁷ In particular, courts have consistently upheld 18 U.S.C. § 922(g)(1)—prohibiting the possession of firearms by convicted felons.⁶⁸ However, there are some,

64. *Firearms Pol’y Coal., Inc. v. McCraw*, 623 F. Supp. 3d 740, 758 (N.D. Tex. 2022) (holding that the Second Amendment protects the right of law-abiding young adults to carry handguns for self-defense outside the home).

65. *United States v. Harrison*, 654 F. Supp. 3d 1191, 1222 (W.D. Okla. 2023); *United States v. Connelly*, No. EP-22-CR-229(2), 2023 WL 2806324, at *12, *15 (W.D. Tex. Apr. 6, 2023) (“The law’s broad prohibition on the sale or transfer of firearms to unlawful users of controlled substances burdens the Second Amendment rights of . . . individuals.”); *United States v. Daniels*, 77 F.4th 337, 355 (5th Cir. 2023) (finding marijuana users analogous to alcoholics, who were not disarmed at the founding, and holding “§ 922(g)(3) fails constitutional muster under the Second Amendment”). *But see United States v. Grubb*, No. 23-CR-1014, 2023 WL 6960371, at *5 (N.D. Iowa Oct. 20, 2023) (“Section 922(g)(3) is a constitutional restriction consistent with historical tradition.”); *United States v. Black*, 649 F. Supp. 3d 246, 253 (W.D. La. 2023) (finding modern bans for unlawful drug users sufficiently analogous to historical firearms bans for felons and the mentally ill to pass constitutional muster under *Bruen*).

66. Several other state and federal firearms laws continue to be enjoined or invalidated post-*Bruen*. *See, e.g., Renna v. Bonta*, No. 20-cv-2190, 2023 WL 2846937, at *1, *16 (S.D. Cal. Apr. 3, 2023) (enjoining enforcement of parts of California’s “Unsafe Handgun Act,” which has prevented the legal sale of any new handgun model in California for over a decade by requiring handguns to have various “safety” features not required by forty-seven other states).

67. *See, e.g., Del. State Sportsmen’s Ass’n v. Del. Dep’t of Safety & Homeland Sec.*, 664 F. Supp. 584, 603 (D. Del. 2023) (finding large-capacity magazine and “assault long gun” prohibitions “consistent with the Nation’s historical tradition of firearm regulation”); *United States v. Serrano*, 651 F. Supp. 3d 1192, 1205, 1213 (S.D. Cal. 2023) (finding prohibitions on possession of unregistered suppressors and firearms with obliterated serial numbers constitutional under the Second Amendment); *United States v. Sitladeen*, 64 F.4th 978, 985 (8th Cir. 2023) (holding non-American citizens present in United States without permission have no Second Amendment right to possess firearms); *id.* (“[U]nlawfully present aliens are not within the class of persons to which the phrase ‘the people’ refers. Nothing in *Bruen* casts doubt on our interpretation of this phrase.”).

68. *See, e.g., Vincent v. Garland*, 80 F.4th 1197, 1199, 1202 (10th Cir. 2023) (upholding Section 922(g)(1) as applied to woman convicted of nonviolent bank fraud offense); *United States v. Jackson*, 69 F.4th 495, 498, 505–06 (8th Cir. 2023) (holding Section 922(g)(1) constitutional as applied to man convicted of selling controlled substances); *United States v. Robinson*, No. 21-CR-00159, 2023 WL 4304762, at *1–3 (N.D. Tex. June 29, 2023) (finding Section 922(g)(1) constitutional under the Commerce Clause and Second Amendment); *United States v. Clark*, No. 20-CR-49, 2023 WL

including Justice Amy Coney Barrett, who hold the position that Section 922(g)(1)—at least insofar as it imposes a lifetime ban on all firearms possession and applies even to nonviolent felons—is unconstitutional under the Second Amendment.⁶⁹

Last June, in *Range v. United States*,⁷⁰ the en banc Third Circuit largely agreed with Justice Barrett.⁷¹ There, the court held Section 922(g)(1) unconstitutional as applied to a defendant convicted of a state misdemeanor (punishable by five years in prison) for making a false statement on a food stamp application.⁷² The court explained that, notwithstanding his conviction for this nonviolent offense in 1995, the defendant “remains one of ‘the people’ protected by the Second Amendment, and his eligibility to lawfully purchase a rifle and a shotgun is protected” because the government could not show “that our Republic has a longstanding history and tradition of depriving people like [the defendant] of their firearms.”⁷³ Thus, even Section 922(g)(1) could fall to a *Bruen*-based challenge in the coming years.

Relatedly, the Eleventh Circuit—in *National Rifle Association v. Bondi*⁷⁴—recently upheld a ban on the purchase of firearms by adults aged eighteen to twenty.⁷⁵ The court held that, “[b]ecause Florida’s Act is at least as modest as the firearm prohibitions on 18-to-20-year-olds in the Reconstruction Era and enacted for the same reason as those laws, it is ‘relevantly similar’ to those Reconstruction Era laws” and “does not

2346284, at *3–4 (N.D. Ind. Mar. 2, 2023); *United States v. Price*, 635 F. Supp. 3d 455, 466 (S.D. W. Va. 2022); *United States v. Collette*, 630 F. Supp. 3d 841, 851 (W.D. Tex. 2022).

69. See *Kanter v. Barr*, 919 F.3d 437, 451 (7th Cir. 2019) (Barrett, J., dissenting) (“[L]egislatures have the power to prohibit dangerous people from possessing guns. But that power extends only to people who are *dangerous*. Founding-era legislatures did not strip felons of the right to bear arms simply because of their status as felons.”); C. Kevin Marshall, *Why Can’t Martha Stewart Have a Gun?*, 32 HARV. J.L. & PUB. POL’Y 695, 698 (2009) (“[S]tripping a person of his right to keep and bear arms for a ‘felony’ conviction is constitutionally dubious unless the conviction was for a ‘crime of violence’ [A]lthough some disability is plainly justified for persons convicted of crimes of violence, a lifetime ban on all keeping of firearms by such felons is also constitutionally dubious.”).

70. 69 F.4th 96 (3d Cir. 2023) (en banc).

71. See *id.* at 106.

72. *Id.* at 98, 106.

73. *Id.* See also *United States v. Freeman*, No. 23 CR 158, 2023 WL 7325934, at *11 (N.D. Ill. Nov. 7, 2023) (holding Section 922(g)(1) violates the Second Amendment).

74. 61 F.4th 1317 (11th Cir.), *vacated*, 72 F.4th 1346 (2023).

75. *Id.* at 1332.

violate the Second Amendment.”⁷⁶ The Eleventh Circuit’s holding in *Bondi* was directly contrary to the Ninth Circuit’s holding just a year earlier in *Jones v. Bonta*.⁷⁷ Notably, the *Bondi* court looked to 1868—not 1791—for the historical scope of the right to keep and bear arms.”⁷⁸

While beyond the scope of this Article, it is worth briefly noting that this choice of time period does matter, primarily “because there were more gun control laws on the books (think: Southern Black Codes) in 1868 than in 1791, and thus more opportunities to find historical ‘analogues’ to restrict individual rights.”⁷⁹ The *Bruen* Court “generally assumed” that the scope of the Second Amendment’s protection “is pegged to the public understanding of the right when the Bill of Rights was adopted in 1791.”⁸⁰ Justice Barrett also wrote separately to emphasize that *Bruen* “should not be understood to endorse freewheeling reliance on historical practice from the mid-to-late 19th century to establish the original meaning of the Bill of Rights.”⁸¹ But the majority opinion avoided directly answering the question—simply “acknowledg[ing] that there is an ongoing scholarly debate”—and left the door open for lower courts to opt for the more restrictive Reconstruction Era.⁸²

In sum, *Bruen* was a gamechanger.⁸³ In the short time since it was decided, *Bruen* has spurred “an unprecedented number of challenges” to gun laws across the country—with results varying wildly.⁸⁴ Given the

76. *Id.* (quoting *N.Y. State Rifle & Pistol Ass’n v. Bruen*, 142 S. Ct. 2111, 2132 (2022)).

77. 34 F.4th 704 (9th Cir.), *vacated*, 47 F.4th 1124 (9th Cir. 2022) (remanding to district court for reconsideration after *Bruen*). *See id.* at 710 (holding the Second Amendment protects the right of young adults to purchase and keep arms, striking down California’s ban on semiautomatic centerfire rifles for eighteen-to-twenty-year-olds).

78. *Bondi*, 61 F.4th at 1322 (“[B]ecause the Fourteenth Amendment is what *caused* the Second Amendment to apply to the States, the Reconstruction Era understanding of the right to bear arms—that is, the understanding that prevailed when the States adopted the Fourteenth Amendment—is what matters.”).

79. Mark Smith, *Attention Originalists: The Second Amendment Was Adopted in 1791, not 1868*, HARV. J.L. & PUB. POL’Y PER CURIAM, Fall 2022, at 1, 2–3.

80. *Bruen*, 142 S. Ct. at 2137.

81. *Id.* at 2163 (Barrett, J., concurring).

82. *Id.* at 2138 (majority opinion).

83. *See* Alanna Durkin Richer & Lindsay Whitehurst, *Supreme Court Ruling Creates Turmoil over Gun Laws in Lower Courts*, PBS (Feb. 18, 2023, 2:05 PM), <https://www.pbs.org/newshour/nation/supreme-court-ruling-creates-turmoil-over-gun-laws-in-lower-courts>.

84. Billy Clark, *Second Amendment Challenges Following the Supreme Court’s Bruen Decision*, GIFFORDS L. CTR. (June 21, 2023), <https://giffords.org/memo/second->

inevitable and already emerging disagreement among the lower courts, it will eventually be up to the Supreme Court “to either establish a broader limiting principle on Second Amendment challenges or simply accept whatever public safety consequences that *Bruen* will bring.”⁸⁵ Some Supreme Court justices and circuit court judges appear to have already chosen the latter.⁸⁶ But other justices may be more cautious.⁸⁷ Some clarity is likely forthcoming this summer because the Supreme Court recently granted the government’s petition for certiorari and heard oral arguments in *Rahimi*.⁸⁸ Still, the full implications of *Bruen* may not be seen for years.⁸⁹

B. The Evolution of the Right to Carry

The precise contours of the right to bear arms have been subject to reasonable disagreement since the Second Amendment’s ratification in

amendment-challenges-following-the-supreme-courts-bruen-decision/
[<https://perma.cc/J5H7-3LJS>]. See also Richer & Whitehurst, *supra* note 83.

85. Brandon E. Beck, *The Federal War on Guns: A Story in Four-and-a-Half Acts*, 26 U. PA. J. CONST. L. (forthcoming) (manuscript at 67), [https://perma.cc/9VQC-L3NC](https://deliverypdf.ssrn.com/delivery.php?ID=456095106112069004013097005027118074006004004021063037072115084105017097067106068085036126038056110028118086120116126021077117050082005021006116070068107090030027113067017085112082001107067118091076028027096020025072087126009069097025120108067017113127&EXT=pdf&INDEX=TRUE)].

86. See, e.g., *Bruen*, 142 S. Ct. at 2126 n.3 (“The dissent invokes . . . [crime] statistics presumably to justify granting States greater leeway in restricting firearm ownership and use. But, as Members of the Court have already explained, ‘[t]he right to keep and bear arms . . . is not the only constitutional right that has controversial public safety implications.’” (quoting *McDonald v. City of Chicago*, 561 U.S. 742, 783 (2010))); *id.* at 2157–59 (Alito, J., concurring) (criticizing the dissent’s reliance on gun violence statistics and its failure “to understand that it is these very facts that cause law-abiding citizens to feel the need to carry a gun for self-defense”); *United States v. Rahimi*, 61 F.4th 443, 462 (5th Cir. 2023) (Ho, J., concurring) (arguing exclusionary rule and *Miranda* warnings also pose challenges for law enforcement and that the Second Amendment is compatible with society’s interest in combatting violent crime).

87. *District of Columbia v. Heller*, 554 U.S. 570, 626 (2008). See also *Bruen*, 142 S. Ct. at 2161–62 (Kavanaugh, J., concurring) (“I write separately to underscore two important points about the limits of the Court’s decision. . . . Properly interpreted, the Second Amendment allows a ‘variety’ of gun regulations.” (citing *Heller*, 554 U.S. at 636 (Stevens, J., dissenting))).

88. See generally *United States v. Rahimi*, 61 F.4th 443 (5th Cir. 2023), *cert. granted*, 143 S. Ct. 2688 (2023).

89. See Beck, *supra* note 85 (manuscript at 64).

1791.⁹⁰ “From Blackstone through the 19th-century cases, commentators and courts routinely explained that the right was not a right to keep and carry any weapon whatsoever in any manner whatsoever and for whatever purpose.”⁹¹

For example, “[b]ecause carrying weapons concealed was sometimes viewed as evidence of criminal intent in the eighteenth and nineteenth centuries—done with a ‘tendency to secret advantages and unmanly assassinations’—and openly carrying arms was both commonplace and socially acceptable, most courts upheld prohibitions on carrying concealed firearms as constitutional.”⁹² As the Court acknowledged in *Bruen*, “[s]tates could lawfully eliminate one kind of public carry—concealed carry—so long as they left open the option to carry openly.”⁹³

In early America, there were also proscriptions on unsafe storage of gunpowder, reckless discharge of firearms, and terrorizing or threatening others, but “[t]here was *never* a ban on taking a gun outside” the home that applied to fully enfranchised citizens.⁹⁴ Simply put: ordinary Americans during the antebellum period could legally carry firearms for self-defense in every state.⁹⁵

Regarding firearms bans in certain special locations, “a few jurisdictions in the colonial or Founding periods did adopt analogues to

90. See *The Second Amendment Right To Keep and Bear Arms*, FINDLAW, <https://constitution.findlaw.com/amendment2.html> (July 21, 2022).

91. *Heller*, 554 U.S. at 626. See also *id.* at 627 (holding that “the historical tradition of prohibiting the carrying of ‘dangerous and unusual weapons’” limits weapons protected by the Second Amendment to those “in common use at the time” like rifles and pistols (quoting in part *United States v. Miller*, 307 U.S. 174, 179 (1939))).

92. Smotherman, *supra* note 23, at 370 (quoting *State v. Chandler*, 5 La. Ann. 489, 490 (1850)). See also *Bruen*, 142 S. Ct. at 2150 (“The historical evidence from antebellum America does demonstrate that *the manner* of public carry was subject to reasonable regulation.”). Nevertheless, these prohibitions must be viewed in context, as eighteenth-century Americans had the right to openly carry firearms with almost no restrictions. See *id.* at 2147 (“[A]ntebellum state-court decisions evince a consensus view that States could not altogether prohibit the public carry of ‘arms’ protected by the Second Amendment or state analogues.”).

93. *Bruen*, 142 S. Ct. at 2150.

94. Joyce Lee Malcolm, *The Right To Carry Your Gun Outside: A Snapshot History*, 83 LAW & CONTEMP. PROBS. 195, 207 (2020). See generally *Bruen*, 142 S. Ct. at 2142–51 (analyzing firearms regulations from the American colonial period through the Civil War).

95. See Stephen P. Halbrook, *To Bear Arms for Self-Defense: A ‘Right of the People’ or a Privilege of the Few?*, 21 FEDERALIST SOC’Y REV. 46, 46–47 (2020); *Heller*, 554 U.S. at 597–99 (holding self-defense was the core purpose of the Second Amendment’s codification of the right to bear arms).

the English laws against bringing arms to legislative proceedings or to court hearings.”⁹⁶ But the list of restricted locations was shockingly short, and it never included the vast majority of places firearms are typically banned today, such as schools.⁹⁷ In actuality, “[c]ompared to arms bans in some ‘government buildings,’ arms bans in ‘schools’ have very weak historical lineage,” not appearing until the early twentieth century in only a few states.⁹⁸

Before 1900, any prohibitions on the right to carry arms in public applied only to enslaved persons and persons of color.⁹⁹ While outside the scope of this Article, suffice it to say that the history of American gun control has been defined by systematic and overtly racist efforts “to keep disfavored minorities from having guns.”¹⁰⁰ As Justice Clarence Thomas highlighted in *Bruen*, even the Supreme Court worried in *Dred Scott v. Sandford*¹⁰¹ that

[i]f blacks were citizens, . . . they would be entitled to the privileges and immunities of citizens, including the right “to keep and carry arms *wherever they went*.” Thus, even Chief

96. David B. Kopel & Joseph G.S. Greenlee, *The ‘Sensitive Places’ Doctrine: Locational Limits on the Right To Bear Arms*, 13 CHARLESTON L. REV. 205, 234–35 (2018).

97. *See id.* at 234–35, 247–50, 262–63.

98. *Id.* at 289. *See also infra* Section II.A.1. Legislative prohibitions on firearms in schools did not become commonplace until increases in violent crime during the “War on Drugs” in the 1980s and 1990s. *See* Kopel & Greenlee, *supra* note 96, at 264–66; *United States v. Lopez*, 514 U.S. 549, 581 (1995) (Kennedy, J., concurring) (finding over forty states outlawed possession of firearms on or near school grounds).

99. *See* Smotherman, *supra* note 23, at 370–72 (discussing historical links between racism and American arms control). *See also* M.R. Franks, *Racial Discrimination in Issuance of Concealed-Carry Permits*, 42 T. MARSHALL L. REV. 5, 5 (2016) (explaining that the first gun control law in the Americas was enacted by the Virginia legislature in 1680 to prohibit persons of color, both free and enslaved, from carrying a firearm).

100. Adam Winkler, *Adam Winkler, “Gun Fight” Author, on Gun Control’s Racism*, DAILY BEAST, <https://www.thedailybeast.com/adam-winkler-gun-fight-author-on-gun-controls-racism> [<https://perma.cc/G3C8-RW25>] (July 13, 2017, 10:01 PM). *See also* *N.Y. State Rifle & Pistol Ass’n v. Bruen*, 142 S. Ct. 2111, 2151 (2022) (“After the Civil War, of course, the exercise of this fundamental right [to keep and bear arms] by freed slaves was systematically thwarted.”); *McDonald v. City of Chicago*, 561 U.S. 742, 771 (2010) (noting “systematic efforts” made by southern states to disarm Black Americans after the Civil War); Robert J. Spitzer, *Gun Law History in the United States and Second Amendment Rights*, 80 LAW & CONTEMP. PROBS. 55, 79 (2017) (explaining eighteenth and nineteenth century “gun prohibitions often extended to free blacks as well” as slaves).

101. 60 U.S. 393 (1856).

Justice Taney recognized (albeit unenthusiastically in the case of blacks) that public carry was a component of the right to keep and bear arms—a right free blacks were often denied in antebellum America.¹⁰²

Fast-forwarding into the twentieth century, because “Reconstruction and the Fourteenth Amendment forced Southern states to repeal laws explicitly forbidding blacks to have guns,” states enacted “facially neutral laws banning inexpensive guns, or requiring permits to own or carry a gun.”¹⁰³ “These laws spread north and became the precursors to discretionary regimes like New York, whose may-issue permitting law—as Justice Alito pointed out during oral arguments in *Bruen*—was originally enacted in 1911 to disarm Black Americans, Italians, Jews, and other disfavored groups.”¹⁰⁴

May-issue laws vested law enforcement officials with broad discretion to issue or deny a CCW permit based on whether they subjectively believed the applicant had “a justifiable need to carry a concealed firearm.”¹⁰⁵ Until 1987, only six states had “shall-issue” concealed carry laws, which require officials to issue a license to any applicant who meets the statutory criteria (*e.g.*, reaching twenty-one years of age, completing firearms training, paying administrative fees, and passing a criminal and mental health background check).¹⁰⁶ Further,

102. *Bruen*, 142 S. Ct. at 2150–51 (citation omitted) (quoting *Dred Scott*, 60 U.S. at 417 (emphasis added)). See *United States v. Cruikshank*, 92 U.S. 542, 542–44 (1875) (examining application of Enforcement Act of 1870—criminalizing conspiracies to prevent persons from exercising their constitutional rights by injuring them—to White militias’ murder, disenfranchisement, and disarmament of Black citizens in Louisiana). The right of Black Americans to keep and bear arms was one of the issues in *Cruikshank*. See *id.* at 544–45. There, the Supreme Court held that the right to bear arms is not “in any manner dependent upon [the Constitution] for its existence,” but that “[t]he second amendment . . . has no other effect than to restrict the powers of the national government.” *Id.* at 542.

103. David B. Kopel, *The Racist Roots of Gun Control*, ENCOUNTER BOOKS (Feb. 23, 2018), <https://www.encounterbooks.com/features/racist-roots-gun-control/> [https://perma.cc/X24B-PBDT] (highlighting the suspect historical background of gun control).

104. Smotherman, *supra* note 23, at 371 (citing Transcript of Oral Argument, *supra* note 35, at 103–04).

105. ROBERT B. COLLINGS, ABA, REPORT TO THE HOUSE OF DELEGATES 2–3 (2011), https://www.americanbar.org/content/dam/aba/administrative/gun_violence/11a115.pdf.

106. See *Concealed Carry | Right-To-Carry*, NRA-ILA, <https://www.nraila.org/get-the-facts/right-to-carry-and-concealed-carry/> [https://perma.cc/BJ69-NQ5Q].

one state (Vermont) stood alone for decades with its absence of *any* permit requirement to legally carry a concealed handgun.¹⁰⁷ Admittedly, open carry was legal in many states, but the practice had become uncommon and prone to cause alarm in urban areas. Thus, restricting *concealed* carry to those with state-issued permits—and then refusing to issue permits—was the principal method by which states limited the public carry of arms.¹⁰⁸

In 1987, Florida passed a shall-issue concealed carry statute that would serve as the paradigm for similar statutes adopted by thirty-three states over the next three decades.¹⁰⁹ States' passage of shall-issue laws often correlated with declines in their violent crime rates; some evidence even suggests a strong causal effect on rates of murder, rape, and aggravated assault—all of which dropped significantly in new shall-issue states.¹¹⁰ In under thirty years, the number of may-issue states fell from

107. *Id.*; Charles C. W. Cooke, *Vermont: Safe and Happy and Armed to the Teeth*, NAT'L REV. (June 24, 2014, 8:21 PM), <https://www.nationalreview.com/corner/vermont-safe-and-happy-and-armed-teeth-charles-c-w-cooke/> [https://perma.cc/R22H-4T3A] (explaining that before the term “constitutional carry” became popular, permitless carry states were widely referred to as “Vermont carry” states).

108. Indeed, restrictive may-issue regimes remained effective at limiting the number of legal firearms in public through 2022. *See* Winkler, *supra* note 1, at 264. For example, Los Angeles County—with a population of over ten million—had less than 400 CCW permit holders in 2018 (many of whom were likely wealthy and well connected). *See id.* Given that around ten percent of adults in shall-issue states have concealed carry permits, the number of legally armed citizens in Los Angeles County could soon surpass one million following *Bruen*. *See* JOHN R. LOTT, JR., CARLISLE E. MOODY & RUJUN WANG, CRIME PREVENTION RSCH. CTR., CONCEALED CARRY PERMIT HOLDERS ACROSS THE UNITED STATES: 2021, at 3–4, 20–22 (2021), <https://deliverypdf.ssrn.com/delivery.php?ID=814097103098091078022116029067077029017056072092062036000096089108097022030127030027043029022061045007055002096065081031116065029094032037017025120105065077072064089080087066125094104009092092002072099065101120105098064004121067069103022100098002&EXT=pdf&INDEX=TRUE> [https://perma.cc/V7SM-RFDC].

109. *Concealed Carry | Right-to-Carry*, *supra* note 106.

110. JOHN R. LOTT, JR., MORE GUNS, LESS CRIME: UNDERSTANDING CRIME AND GUN CONTROL LAWS 259–65 (3d ed. 2010) [hereinafter MORE GUNS, LESS CRIME]. *Cf.* *N.Y. State Rifle & Pistol Ass'n v. Bruen*, 142 S. Ct. 2111, 2159 (2022) (Alito, J., concurring) (“According to survey data, defensive firearm use occurs up to 2.5 million times per year. . . . [S]tudies . . . have found consistently lower injury rates among gun-using crime victims compared with victims who used other self-protective strategies.” (citation omitted)). *Contra Effects of Concealed-Carry Laws on Violent Crime*, RAND CORP., <https://www.rand.org/research/gun-policy/analysis/concealed-carry/violent-crime.html> [https://perma.cc/7VFW-52ZC] (Jan. 10, 2023) (finding that evidence of the effect of shall-issue laws on total homicides, firearm homicides, robberies, assaults, and rapes is inconclusive).

forty-three in 1987 to eight in 2014, and the number of shall-issue or permitless-carry states shot up from seven to forty-two.¹¹¹ Today—although a few states continue to defy the Supreme Court or slow-walk the reforms required by *Bruen*—the number of may-issue states theoretically dropped to zero in June 2022.¹¹²

Although transformational, the shall-issue wave was merely a precursor to the tectonic shift towards constitutional carry. Between 2010 and 2020, thirteen shall-issue states joined Vermont and Alaska in allowing most adults (*i.e.*, those at least twenty-one years old with no felony convictions) to carry concealed handguns in public *without* a permit.¹¹³ Constitutional carry spread even more rapidly after 2020; an astounding fourteen states enacted constitutional carry laws in just three years.¹¹⁴ Most prominent among these were Texas and Florida, whose laws (enacted in September 2021 and July 2023, respectively) significantly raised the public profile of constitutional carry due to their population sizes and political significance.¹¹⁵ Twenty-nine states (most recently Louisiana and South Carolina in March 2024) now allow permitless concealed carry.¹¹⁶ At least thirteen additional states issue CCW permits on a genuinely shall-issue basis.¹¹⁷ Once the last may-issue holdouts (*e.g.*, California, New York, Hawai‘i, Massachusetts, and New

111. See *Concealed Carry | Right-To-Carry*, *supra* note 106.

112. See Jacob Sullum, *State Reactions to the SCOTUS Ruling Against Discretionary Carry-Permit Laws Range from Compliance to Defiance*, REASON (July 7, 2022, 5:15 PM), <https://reason.com/2022/07/07/state-reactions-to-the-scotus-ruling-against-discretionary-carry-permit-laws-range-from-compliance-to-defiance/> [<https://perma.cc/8X9H-NPWH>]. Even if states reluctantly get rid of their “good cause” or “special need” requirements, those still refusing to comply with the spirit of *Bruen* can expect successful constitutional challenges. *Bruen*, 142 S. Ct. at 2138 n.9 (“[B]ecause any permitting scheme can be put toward abusive ends, we do not rule out constitutional challenges to shall-issue regimes where, for example, lengthy wait times in processing license applications or exorbitant fees deny ordinary citizens their right to public carry.”).

113. HANDGUNLAW.US, PERMITLESS CARRY STATES (2024), https://www.handgunlaw.us/documents/Permitless_Carry_States.pdf [<https://perma.cc/N78L-SELF>] [hereinafter PERMITLESS CARRY STATES].

114. *Id.*

115. See *id.*

116. *Id.*

117. *Right To Carry: History*, HANDGUNLAW.US, <https://handgunlaw.us/images/right-to-carry-history.gif> [<https://perma.cc/2P6Y-GNZH>]. See also Sullum, *supra* note 112 (explaining that permitting regime “classifications are somewhat contested” and that some may-issue states persist in defying the Court’s holding in *Bruen*). The District of Columbia and Guam also issue CCW permits on a shall-issue basis. See *Handgunlaw.us*, HANDGUNLAW.US, <https://handgunlaw.us/> [<https://perma.cc/DN9K-RTEU>] (Jan. 20, 2024).

Jersey) finally decide—or are forced by the courts—to revise their laws to comply with *Bruen*, every state and U.S. territory will be either a permitless-carry or shall-issue jurisdiction.¹¹⁸

II. THE NEED TO REFORM STATE CONCEALED CARRY LAWS AFTER *BRUEN*

States should update their concealed carry laws in the post-*Bruen* era for at least two reasons. First, *Bruen*'s rejection of means-end scrutiny in favor of a purely historical approach casts many laws into constitutional doubt.¹¹⁹ This includes state laws prohibiting firearms in locations unlikely to qualify under *Heller*'s and *Bruen*'s sensitive places exception. Firearms bans in locations such as restaurants, bars, museums, parks, public transportation, hospitals, churches, and sports stadiums are now likely unconstitutional.¹²⁰ This presents a significant legal and public policy problem for states wishing to limit firearms in public places.

Second, the *Bruen* decision came in the middle of a nationwide constitutional carry wave.¹²¹ With twenty-nine states now allowing citizens to carry concealed firearms with no training, vetting, or permitting, the number of handguns in public has increased exponentially.¹²² Unfortunately, many of the armed citizens carrying

118. *N.Y. State Rifle & Pistol Ass'n v. Bruen*, 142 S. Ct. 2111, 2123–24 (2022) (listing jurisdictions with unconstitutional may-issue laws like New York's). Of course, just because they have nominally become shall-issue jurisdictions does not mean all states are fully complying with *Bruen*. States like New York, New Jersey, and California continue to enact laws—e.g., myriad broad location bans—that will almost certainly be struck down under *Bruen*. See cases cited *supra* notes 49–54.

119. *Bruen*, 142 S. Ct. at 2125–26 (“In the years since [*Heller*], the Courts of Appeals have coalesced around a ‘two-step’ framework for analyzing Second Amendment challenges that combines history with means-end scrutiny. Today, we decline to adopt that two-part approach. . . . [T]he government must demonstrate that the regulation is consistent with this Nation’s historical tradition of firearm regulation.”).

120. See cases cited *supra* notes 49–54.

121. See *supra* notes 106–12 and accompanying text.

122. See JOHN R. LOTT, JR., CRIME PREVENTION RSCH. CTR., CONCEALED CARRY PERMIT HOLDERS ACROSS THE UNITED STATES: 2022, at 4, 9 (2022), <https://deliverypdf.ssrn.com/delivery.php?ID=880092106083030023124024091101103029101082025061065066002116010127024091117096018086017003032014014000038090101022072105119093019023009076035067101107083123025029006045069065070121004094092120114099010001088081004102124089004085002108094017008027&EXT=pdf&INDEX=TRUE> [https://perma.cc/UNA3-5L5W] [hereinafter CONCEALED CARRY PERMIT HOLDERS].

without a permit are likely less trained and less safe with their firearms.¹²³ Although concealed carry permits are still available in most constitutional carry states, citizens have little incentive to spend time and money to complete the training, background checks, and administrative requirements.¹²⁴

As a practical matter, constitutional carry is here to stay; there is no putting the toothpaste back in the tube.¹²⁵ As more untrained, unvetted people are carrying concealed firearms in public, states are also losing the ability to limit where those firearms are carried.¹²⁶ Fortunately, there is a statutory solution to kill two birds with one stone.¹²⁷ This Article presents both a comprehensive fix to public carry issues and a *Bruen*-compliant compromise between gun rights and gun control advocates that will withstand constitutional attack.¹²⁸ But first, it is important to describe the nature and extent of the problems.

A. What Is a Sensitive Place?: The Constitutional Question after Bruen

Following the Supreme Court's landmark rulings in *Heller*, *McDonald*, and *Bruen*, it is now settled law that the Second Amendment protects the pre-existing “‘individual right to possess and carry weapons,’ especially handguns for self-defense, both inside and outside the home.”¹²⁹ The most reasonable interpretation of *Heller* has always been that the average law-abiding adult possesses an individual right to carry weapons in common use in most public places for self-defense;¹³⁰

123. See *id.* at 9.

124. See *id.* (“[T]he number of people who actually carried [concealed handguns] undoubtedly went up significantly when there were no longer any fees or training requirements to carry.”).

125. See Lott, *supra* note 2 (reporting that constitutional carry continued to expand to more states in 2023).

126. See *infra* Section II.A.

127. See *infra* Section III.A.

128. See *infra* Section III.A.

129. Smotherman, *supra* note 23, at 377 (citing *District of Columbia v. Heller*, 554 U.S. 570, 592 (2008); *N.Y. State Rifle & Pistol Ass’n v. Bruen*, 142 S. Ct. 2111, 2122 (2022)).

130. See *Heller*, 554 U.S. at 592; *Wrenn v. District of Columbia*, 864 F.3d 650, 661 (D.C. Cir. 2017) (“[T]he individual right to carry common firearms beyond the home for self-defense—even in densely populated areas, even for those lacking special self-defense needs—falls within the core of the Second Amendment’s protections.”); *Moore v. Madigan*, 702 F.3d 933, 936, 942 (7th Cir. 2012) (“The Supreme Court has decided that the [Second] [A]mendment confers a right to bear arms for self-defense,” and a “right to bear arms . . . implies a right to carry a loaded gun outside the home.”);

Bruen resolved any ambiguity by explicitly holding that the Second Amendment applies to public carry.¹³¹ The Supreme Court could have simply held that the right “to keep *and bear* Arms”¹³² entails a right to carry a handgun outside the home and that may-issue regimes fail under intermediate or strict scrutiny. But the *Bruen* Court’s holdings were much more expansive.¹³³ The Supreme Court unequivocally rejected all means-end scrutiny of firearms laws (despite most federal appellate courts using such an approach since *Heller*).¹³⁴ Instead, the Court held that—to pass constitutional muster—firearms laws must comport with the text, history, and tradition of the Second Amendment.¹³⁵ Although undoubtedly the correct approach from an originalist perspective, this holding has thrown the doors wide open to challenges against a wide variety of firearms laws.¹³⁶ Since *Bruen*, courts have overturned laws prohibiting marijuana users, eighteen-to-twenty-year-old adults, those under felony indictments, and those subject to domestic-violence restraining orders from possessing firearms.¹³⁷ Laws prohibiting the

Textualism and Heller, *supra* note 24, at 733 (“[I]t would be very strange, the [*Heller*] majority concluded, that ‘keep’ in ‘keep and bear arms’ would mean an individual private right, and ‘bear’ in the same phrase would mean just a military right.”); *In re Brickey*, 70 P. 609, 609 (Idaho 1902) (invalidating state ban on carrying firearms in cities under Second Amendment); *People v. Aguilar*, 2 N.E.3d 321, 327 (Ill. 2013) (holding “the [S]econd [A]mendment protects the right to possess and use a firearm for self-defense outside the home” and finding unconstitutional a statute prohibiting the carry of a loaded, immediately accessible firearm on one’s person outside the home).

131. *Bruen*, 142 S. Ct. at 2122.

132. U.S. CONST. amend. II (emphasis added).

133. *See Bruen*, 142 S. Ct. at 2127.

134. *Id.* Although the precise standard of scrutiny to be applied in gun-rights cases was noticeably absent from the *Heller* opinion, it was generally considered some level of heightened scrutiny because the Court explicitly rejected the use of rational basis scrutiny “to evaluate the extent to which a legislature may regulate a specific, enumerated right . . . [such as] the right to keep and bear arms.” *Heller*, 554 U.S. at 628 n.27. After *Heller*, most federal courts tested gun-control measures under a variant of intermediate scrutiny. RUSSELL L. WEAVER, STEVEN I. FRIEDLAND, CATHERINE HANCOCK, BRYAN K. FAIR, JOHN KNECHTLE & RICHARD D. ROSEN, *CONSTITUTIONAL LAW: CASES, MATERIALS, AND PROBLEMS* 289–94 (4th ed. Supp. 2020). At least eleven circuits used a two-pronged approach to first “determine whether the challenged law burdens conduct falling within the scope of the Second Amendment” and, if so, then “evaluate[d] the law under some heightened form of means-end scrutiny.” *Id.* at 290. *Bruen* did away with this two-pronged approach in favor of “a test rooted in the Second Amendment’s text, as informed by history.” *Bruen*, 142 S. Ct. at 2127.

135. *Bruen*, 142 S. Ct. at 2127.

136. *See Richer & Whitehurst*, *supra* note 83.

137. *See supra* notes 56–66 and accompanying text.

carrying of firearms in various “sensitive places” have also been cast into doubt.¹³⁸

Discussion of sensitive place restrictions was a prominent feature in *Bruen*.¹³⁹ The scope of the sensitive place exception has also taken center stage as states have resisted the *Bruen* decision and made their concealed carry laws more restrictive by designating dozens of new locations “sensitive.”¹⁴⁰ To be sure, like every right enshrined in the Bill of Rights, the right to keep and bear arms is not unlimited.¹⁴¹ And even after *Bruen*, the Supreme Court has yet to “undertake an exhaustive historical analysis . . . of the full scope of the Second Amendment” and all its possible limitations.¹⁴² However, there is the Court’s well-known language in *Heller* stating: “[N]othing in our opinion should be taken to cast doubt on longstanding prohibitions on the possession of firearms by felons and the mentally ill, or laws forbidding the carrying of firearms in sensitive places such as schools and government buildings”¹⁴³

Perhaps surprisingly, there are good arguments that “*Heller*’s asterisk”¹⁴⁴—as the above exceptions have come to be known—is entirely wrong.¹⁴⁵ Regardless, it is at best ambiguous as to precisely which

138. See *supra* notes 45–51 and accompanying text.

139. See *Bruen*, 142 S. Ct. at 2133–34.

140. See, e.g., *Understanding Recent Changes to New York’s Gun Laws*, N.Y. ST. ATT’Y GEN., <https://ag.ny.gov/new-york-gun-laws> [<https://perma.cc/AT28-GB9B>] (explaining New York law now bars firearms in additional “sensitive” public places: universities, hospitals, churches, public buses and subways, “places where alcohol is consumed,” stadiums, theaters, casinos, daycare centers, homeless shelters, libraries, parks, and zoos).

141. *District of Columbia v. Heller*, 554 U.S. 570, 595 (2008).

142. *Id.* at 626; *Bruen*, 142 S. Ct. at 2134 (quoting *Heller*, 554 U.S. at 626).

143. *Heller*, 554 U.S. at 626.

144. See Miguel E. Larios, *To Heller and Back: Why Many Second Amendment Questions Remain Unanswered After United States v. Hayes*, FED. LAW., Sept. 2009, at 58, 63 (“The asterisk metaphor is used here to emphasize *Heller*’s flippant dismissal of an important constitutional issue.”).

145. See *Kanter v. Barr*, 919 F.3d 437, 451 (7th Cir. 2019) (Barrett, J., dissenting) (“Founding-era legislatures did not strip felons of the right to bear arms simply because of their status as felons.”); Marshall, *supra* note 69, at 698 (arguing lifetime ban on firearms possession for all felons is “constitutionally dubious”); Kopel & Greenlee, *supra* note 96, at 292 (“Despite *Heller*’s dicta, wide-ranging bans on bearing arms ‘in sensitive places such as schools and government buildings’ have a weak foundation in history and tradition. Bans in particular government buildings, such as legislatures, polling places, and courthouses, have a stronger basis.” (quoting *Heller*, 554 U.S. at 626)); *Heller*, 554 U.S. at 721 (Breyer, J., dissenting) (“Why these [particular restrictions]? Is it that similar restrictions existed in the late-18th century? The majority fails to cite any colonial analogues.”); Carlton F.W. Larson, *Four Exceptions in Search of a Theory: District of Columbia v. Heller and Judicial Ipse Dixit*, 60 HASTINGS L.J.

locations may be designated “sensitive” under the text and history of the Second Amendment.¹⁴⁶ Likewise—despite its more extensive discussion of the issue—the *Bruen* Court stated that “we have no occasion to comprehensively define ‘sensitive places’ in this case.”¹⁴⁷

However, the Court did provide some guidance on sensitive places in *Bruen*.¹⁴⁸ For example, the Court rejected New York’s definition of sensitive places—essentially “all places of public congregation that are not isolated from law enforcement”—as “far too broad[.]”¹⁴⁹ The Court appeared particularly concerned with any definition so expansive that it “would in effect exempt cities from the Second Amendment [or] would eviscerate the general right to publicly carry arms for self-defense.”¹⁵⁰ To be sure, modern day regulations, even if not an exact match, may still be analogous enough to well-established historical analogues to pass constitutional muster.¹⁵¹ But the Court cautioned that analogical reasoning is not “a regulatory blank check” and courts must “not ‘uphold every modern law that remotely resembles a historical analogue,’ because doing so ‘risk[s] endorsing outliers that our ancestors would never have accepted.’”¹⁵²

The takeaway is that dozens of sensitive place laws are now likely unconstitutional. Certain enumerated places are safe for states to continue prohibiting firearms (*i.e.*, “legislative assemblies, polling places, and courthouses”).¹⁵³ Other secured government buildings (*i.e.*, those with controlled entrances, metal detectors, and armed security) are likely safe

1371, 1372 (2009) (“The Court offered no citations to support this statement, and its ad hoc, patchy quality has been readily apparent to commentators, who have speculated that it was compromise language designed to secure Justice Kennedy’s vote.”).

146. See *Heller*, 554 U.S. at 626 (majority opinion).

147. *Bruen*, 142 S. Ct. at 2133.

148. See *id.* at 2133–34.

149. *Id.* at 2134.

150. *Id.*

151. *Id.* at 2133.

152. *Id.* (quoting *Drummond v. Robinson*, 9 F.4th 217, 226 (3d. Cir. 2021)).

153. *Id.*

as well.¹⁵⁴ This includes airports and prisons.¹⁵⁵ As the analysis below shows, even schools only *might* be safe—despite their mention in *Heller* and *Bruen*.¹⁵⁶ Beyond those locations, however, it remains to be seen.

For example, many states prohibit firearms in bars or all restaurants that serve alcohol.¹⁵⁷ Perhaps a court could locate an eighteenth-century law prohibiting drunkenness while armed to justify prohibitions in bars.¹⁵⁸ But even this is a stretch because prohibiting people from carrying firearms while intoxicated is quite different than prohibiting them from carrying firearms in bars altogether.¹⁵⁹ The latter, more

154. See 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. (ELEC. SUPP.) I.-60, I.-61–62 (2022) (explaining that conservative scholars “advocate[] for a sensitive-places standard based on metal detectors and security guards”); Transcript of Oral Argument, *supra* note 35, at 32 (containing Justice Alito’s suggestion that courts could “analyze the sensitive place question by asking whether . . . everybody has to go through a magnetometer and there are security officials there”).

155. See Stephen P. Halbrook, *Sensitive Places Where Firearms May Be Restricted*, in STATE BAR OF TEXAS, FIREARMS LAW, at 1, 1 (2022), Westlaw (assuming the secure portion of airports are still sensitive places after *Bruen*); Whitman, *supra* note 12, at 1989 (“When a person enters a government building [or] airport, . . . the right to self-defense is not infringed upon because the ability to defend is transferred to those providing security in that sensitive place. There are metal detectors and federal agents in federal buildings, and police officers and security guards in airports . . .”).

156. See *District of Columbia v. Heller*, 554 U.S. 570, 626 (2008); *Bruen*, 142 S. Ct. at 2133.

157. See *Which States Prohibit the Concealed Carry of Guns in Bars?*, EVERYTOWN FOR GUN SAFETY, <https://everytownresearch.org/rankings/law/no-guns-in-bars/> [<https://perma.cc/68QN-C2RC>] (listing fifteen states that prohibit guns in bars); Andrew Willinger, *As States Weigh New Sensitive Places Laws, How Might Current State Practice Impact Litigation After Bruen?*, DUKE CTR. FOR FIREARMS L. (Oct. 19, 2022), <https://firearmslaw.duke.edu/2022/10/as-states-weigh-new-sensitive-places-laws-how-might-current-state-practice-impact-litigation-after-bruen/> [<https://perma.cc/KB87-SPH3>] (listing several permitless carry states that ban guns in restaurants serving alcohol); *Carry in Restaurants Serving Alcohol*, CONCEALED CARRY.COM, <https://www.concealedcarry.com/concealed-carry-laws-in-the-united-states/carry-in-restaurants-serving-alcohol/> [<https://perma.cc/LMW4-4GHN>] (summarizing state concealed carry laws related to alcohol establishments).

158. Cf. *United States v. Daniels*, 610 F. Supp. 3d 892, 897 (S.D. Miss. 2022) (“[A]nalogous statutes which purport to disarm persons considered a risk to society—whether felons or alcoholics—were known to the American legal tradition.”); *United States v. Black*, 649 F. Supp. 3d 246, 252 (W.D. La. 2023) (recognizing historical tradition of government keeping arms from alcoholics and analogizing to uphold modern law prohibiting firearms possession by marijuana users).

159. See, e.g., cases cited *supra* notes 50–54 (showing examples of New York, New Jersey, and Hawai‘i courts questioning the validity of concealed carry prohibitions in bars). Cf. *United States v. Harrison*, 654 F. Supp. 3d 1191, 1199–200 (W.D. Okla.

expansive prohibition would prevent even a non-drinking designated driver (and “designated gun carrier”) or professional bodyguard from being armed in a bar. And one struggles to think of a historical analogue that could justify the prohibition of firearms in restaurants.¹⁶⁰

Many states also prohibit firearms in outdoor parks, churches, museums, amusement parks, racetracks, sports stadiums, hospitals, and shopping malls.¹⁶¹ It is unclear what might make any of these locations more sensitive than other places of public congregation or what historical analogues might be located to justify them under a historical tradition approach.¹⁶² Likewise, many states have buffer-zone laws prohibiting firearms within a certain distance of locations such as schools, parks, power plants, and places of execution.¹⁶³ Buffer-zone laws are especially

2023) (rejecting seven laws put forth by the government—from the seventeenth to nineteenth centuries—as inapposite to modern firearms ban for marijuana users because “the restrictions imposed by each law only applied while an individual was actively intoxicated or actively using intoxicants”).

160. Firearms bans in restaurants would be difficult to justify even under loose-constructionist “living Constitution” interpretations. *See generally* Gryting & Frassetto, *supra* note 154. Even under such an expansive approach to sensitive places, it is hard to tell how “the people found” or the “activities that take place” in an ordinary restaurant would justify a ban on legal concealed carry. *Id.* at 69 (quoting *United States v. Class*, 930 F.3d 460, 465 (D.C. Cir. 2019)).

161. *See, e.g.,* TEX. PENAL CODE ANN. § 46.03 (2023) (listing places weapons are prohibited in Texas); Andrew Willinger, *New York’s Response to Bruen: The Outer Limits of the “Sensitive Places” Doctrine*, DUKE CTR. FOR FIREARMS L. (July 13, 2022), <https://firearmslaw.duke.edu/2022/07/new-yorks-response-to-bruen-the-outer-limits-of-the-sensitive-places-doctrine/> [<https://perma.cc/A2PY-GWLY>] (discussing New York’s “expansive list of sensitive places” and arguing it will result in “even more litigation”).

162. *See* cases cited *supra* notes 49–54 (invalidating gun bans in many of these locations). *Cf.* Willinger, *supra* note 157 (arguing New York’s long list of prohibited locations will “be the focus of future litigation” and predicting some arguments on both sides). *Compare* Kopel & Greenlee, *supra* note 96, at 290 (“[W]hen a building, such as a courthouse, is protected by metal detectors and [armed] guards, the government shows . . . that the building is sensitive. . . . Conversely, when the government provides no security at all—such as in a Post Office or its parking lot—the government’s behavior shows that the location is probably not sensitive.”), *with* Gryting & Frassetto, *supra* note 154, at 62, 69 (arguing the approach taken in *United States v. 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” than the “metal detector and security guard” principle (quoting in part *United States v. Class*, 930 F.3d 460, 465 (D.C. Cir. 2019))).

163. *See, e.g.,* TEX. PENAL CODE ANN. §§ 46.03, 46.11 (2023) (describing 1,000-foot and 300-foot buffer zones related to prisons and schools, respectively, in Texas); *People v. Tapia*, 29 Cal. Rptr. 3d 158, 160, 162 (Ct. App. 2005) (holding California’s Gun-Free School Zones Act (GFSZA) constitutional and affirming conviction for gun possession on private property subject to public easement); *Hall v.*

unconstitutional.¹⁶⁴ Expansive buffer zones around ubiquitous locations (e.g., schools or parks) make it nearly impossible for armed citizens to legally travel around urban areas.¹⁶⁵ Because expansive buffer zones “would in effect exempt cities from the Second Amendment,” they are patently unconstitutional under *Bruen*.¹⁶⁶ Likewise for bans on carrying firearms on public buses, trains, and subways. Citizens in large cities must use these forms of transportation to go about their daily lives; preventing them from carrying firearms while travelling to and from work, school, or the grocery store “would eviscerate the general right to publicly carry arms for self-defense” and thus be patently unconstitutional under *Bruen*.¹⁶⁷ To demonstrate the extent to which

Garcia, No. C 10-03799, 2011 WL 995933, at *4–5 (N.D. Cal. Mar. 17, 2011) (holding California’s GFSZA constitutional under *Heller*).

164. See, e.g., Kopel & Greenlee, *supra* note 96, at 288 (“[B]uffer zones are not sensitive places.”); *Ezell v. City of Chicago*, 846 F.3d 888, 894–95 (7th Cir. 2017) (invalidating prohibition on shooting ranges within 500 feet of a school and rejecting attempt to use *Heller*’s asterisk to justify city’s “buffer-zone rule”); *People v. Chairez*, 104 N.E.3d 1158, 1175, 1177 (Ill. 2018) (holding prohibition on firearms within 1,000 feet of public parks facially unconstitutional under the Second Amendment). But see *United States v. Lewis*, 50 V.I. 995, 1000–01 (D. 2008) (“It is beyond peradventure that a school zone . . . is precisely the type of location of which *Heller* spoke. Indeed, *Heller* unambiguously forecloses a Second Amendment challenge to [the Gun-Free School Zones Act] . . .”).

165. Royce de R. Barondes, *Conditioning Exercise of Firearms Rights on Unlimited Terry Stops*, 54 IDAHO L. REV. 297, 342 (2018) [hereinafter *Conditioning Firearm Rights*] (“It is often impractical to enter or transit a city without passing through one of these [gun-free school] zones.”). See also John R. Lott, *The Very Real Limits on Constitutional Carry: The Problem with Gun-Free School Zones*, CRIME PREVENTION RSCH. CTR. (Mar. 30, 2016), <https://crimeresearch.org/2016/03/the-very-real-limits-on-constitutional-carry/> [https://perma.cc/Z67B-YHGG]; Royce de R. Barondes, *Federalism Implications of Non-Recognition of Licensure Reciprocity Under the Gun-Free School Zones Act*, 32 J.L. & POL. 139, 190–94 (2017); *United States v. Lopez*, 514 U.S. 549, 583 (1995) (Kennedy, J., concurring) (“Each [school] now has an invisible federal zone extending 1,000 feet beyond the (often irregular) boundaries of the school property. In some communities no doubt it would be difficult to navigate without infringing on those zones.”).

166. *N.Y. State Rifle & Pistol Ass’n v. Bruen*, 142 S. Ct. 2111, 2134 (2022). See also Kopel & Greenlee, *supra* note 96, at 269 (“[T]he area surrounding a sensitive place cannot itself be treated as sensitive.”).

167. *Bruen*, 142 S. Ct. at 2134. Justice Samuel Alito to New York Solicitor General Barbara Underwood during oral arguments in *Bruen*:

JUSTICE ALITO: . . . I want you to think about people like this, people who work late at night in Manhattan, it might be somebody who cleans offices, it might be a doorman at an apartment, it might be a nurse None of these people has a criminal record. They’re all law-abiding citizens. They get off work around midnight They have to commute home by subway, maybe

Bruen might invalidate sensitive place restrictions, take schools for example.

1. DO SCHOOLS EVEN QUALIFY AS SENSITIVE PLACES UNDER *BRUEN*?¹⁶⁸

A K–12 public school is a location that many people agree is appropriate to ban firearms—certainly more so than restaurants, museums, churches, and public transit.¹⁶⁹ There is perhaps no other location (aside from secure government buildings and prisons) for which a stronger legal and public policy case can be made to prohibit firearms.¹⁷⁰ Yet, even the status of schools is not entirely clear under *Bruen*.¹⁷¹ Bans on firearms in schools have a much weaker foundation in American legal history and tradition than do bans in certain government buildings such as legislatures, polling places, and courthouses.¹⁷² The *Bruen* Court “assume[d] it settled that [legislative assemblies, polling places, and courthouses] were ‘sensitive places’ where arms carrying

by bus [T]hey have to walk some distance through a high-crime area They do not get licenses, is that right? MS. UNDERWOOD: That is in general right, yes. If there’s nothing particular to them, that’s right. JUSTICE ALITO: How is that consistent with the core right to self-defense, which is protected by the Second Amendment?

Transcript of Oral Argument, *supra* note 35, at 66–67.

168. See generally Smotherman, *supra* note 23 (questioning the designation of schools as “sensitive places” under *Bruen* and challenging constitutionality of the Gun-Free School Zones Act, codified at 18 U.S.C. § 922(q)).

169. Compare Gryting & Frassetto, *supra* note 154, at 68 (listing factors that make a location sensitive and “particularly unsuitable for public carry”: “the likelihood that children are present, the use of a location for large public gatherings, [and] whether the property is privately owned or owned by the government”), with Whitman, *supra* note 12, at 1989, 2005–06 (arguing the prohibition of guns in K–12 public schools “has a logical explanation,” whereas prohibitions on university campuses and in places of worship do not).

170. See, e.g., Gryting & Frassetto, *supra* note 154, at 67–69; Whitman, *supra* note 12, at 2005–06.

171. See *Bruen*, 142 S. Ct. at 2133–34. This Article limits the definition of “schools” under *Heller* and *Bruen* to K–12 schools. See Jordan E. Pratt, *A First Amendment-Inspired Approach to Heller’s “Schools” and “Government Buildings,”* 92 NEB. L. REV. 537, 543 (2014) (“[C]ollege campuses generally are less sensitive than primary and secondary school classrooms. Courts therefore should not interpret *Heller*’s schools to encompass college campuses.”).

172. Kopel & Greenlee, *supra* note 96, at 292. See also *Bruen*, 142 S. Ct. at 2133 (agreeing with Kopel and Greenlee 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”).

could be prohibited consistent with the Second Amendment.”¹⁷³ But notably, *Bruen* did not list schools alongside these three locations presumed to be sensitive places.¹⁷⁴ On the other hand, *Bruen* does allow courts to “use analogies to those historical regulations of ‘sensitive places’ to determine that modern regulations prohibiting the carry of firearms in *new* and analogous sensitive places are constitutionally permissible.”¹⁷⁵

The question then becomes: is a public K–12 school a new and analogous sensitive place? The answer is unclear.¹⁷⁶ “Schools existed in the late eighteenth and early nineteenth centuries just as they do today, but no law prohibited responsible adults from carrying firearms for self-defense on school property.”¹⁷⁷ However, a salient argument can be made that—in the eighteenth and nineteenth centuries—“the conditions of public education did not approximate those existing today.”¹⁷⁸ Because “the movement toward free common schools, supported by general taxation, had not yet taken hold,” public schools were the exception rather than the rule, attendance was generally not compulsory, and the school year was often as short as three months.¹⁷⁹ Therefore, it might be reasonable to argue that the Founders did not contemplate that millions of American children would congregate together in vulnerable public buildings more than 180 days each year.¹⁸⁰

Still, “it is a stretch to call gun-free school laws *new* in terms of being justified by circumstances unforeseeable by the Founders (as bans on possessing man-portable surface-to-air missiles or nuclear weapons would be).”¹⁸¹ Likewise, in what way are public schools—any more than

173. *Bruen*, 142 S. Ct. at 2133.

174. *See id.*

175. *Id.*

176. Smotherman, *supra* note 23, at 380.

177. *Id.* *See* Kopel & Greenlee, *supra* note 96, at 249–50 (“None of the above laws provides support for *Heller*’s designation of ‘schools’ as sensitive places where arms carrying may be banned.”).

178. *Brown v. Bd. of Educ.*, 347 U.S. 483, 490 (1954).

179. *Id.* at 489–90.

180. *See Bruen*, 142 S. Ct. at 2132 (“The regulatory challenges posed by firearms today are not always the same as those that preoccupied the Founders in 1791 Although its meaning is fixed according to the understandings of those who ratified it, the Constitution can, and must, apply to circumstances beyond those the Founders specifically anticipated.”).

181. Smotherman, *supra* note 23, at 380 (citing *Bruen*, 142 S. Ct. at 2132); *Bruen*, 142 S. Ct. at 2132 (“While the historical analogies here and in *Heller* are relatively simple to draw, other cases implicating unprecedented societal concerns or dramatic technological changes may require a more nuanced approach.”).

public parks, museums, transit systems, or hospitals—analogous to government buildings with legislative or judicial purposes?¹⁸² Are the only requirements that the “analogous” location be narrowly defined (*i.e.*, not simply “all places of public congregation that are not isolated from law enforcement”¹⁸³) and have a rational public policy reason to ban firearms? Surely not.¹⁸⁴ “Thus, despite its repeat appearances in *McDonald* and *Bruen*, the constitutional validity of *Heller*’s asterisk—at least as it pertains to schools—remains uncertain.”¹⁸⁵

Nevertheless, the plain language of *Heller* does support “longstanding prohibitions on . . . the carrying of firearms in sensitive places such as schools,”¹⁸⁶ and such language cannot easily be dismissed as dicta. Indeed—while it did not specifically list schools as “settled” or “assume[d]” sensitive places—the *Bruen* Court repeated *Heller*’s language about “laws forbidding the carrying of firearms in sensitive places such as *schools* and government buildings.”¹⁸⁷ Whether a modern K–12 school ban “impose[s] a comparable burden on the right of armed self-defense” to a courthouse, legislative assembly, or polling-place ban “and whether that burden is comparably justified”¹⁸⁸ are complex

182. *Id.* (citing Larson, *supra* note 145, at 1383) (“What characteristics determine a ‘sensitive’ place? The Court does not say. Do hospitals, subways, sport stadiums, train stations, or shopping malls count?”).

183. *Bruen*, 142 S. Ct. at 2134.

184. *Cf. id.* at 2126 n.3 (“[T]he right to keep and bear arms . . . is not the only constitutional right that has controversial public safety implications.” (citing *McDonald v. City of Chicago*, 561 U.S. 742, 783 (2010))); *id.* at 2130, 2156 (explaining that the individual right to carry a gun for self-defense should be treated the same way as other rights guaranteed in the Bill of Rights).

185. Smotherman, *supra* note 23, at 380–81. *See also McDonald v. City of Chicago*, 561 U.S. 742, 786 (2010); *Bruen*, 142 S. Ct. at 2133.

186. Smotherman, *supra* note 23, at 381 (quoting *District of Columbia v. Heller*, 554 U.S. 570, 626 (2008)). Even if it was dismissible as dicta in *Heller*, it was “dicta of the strongest sort,” Larson, *supra* note 145, at 1372, and became precedent when the Court explicitly “repeat[ed] those assurances” two years later in *McDonald*, 561 U.S. at 786, and twelve years after that in *Bruen*, 142 S. Ct. at 2133.

187. Smotherman, *supra* note 23, at 381 (quoting *Bruen*, 142 S. Ct. at 2133 (emphasis added)). *See also Bruen*, 142 S. Ct. at 2162 (Kavanaugh, J., concurring) (arguing that the Second Amendment still allows a variety of gun regulations, including those listed in *Heller*’s asterisk).

188. Smotherman, *supra* note 23, at 381 (quoting *Bruen*, 142 S. Ct. at 2133 (majority opinion)). There may be good arguments on both sides. Like courthouses, polling places, and legislative assemblies, public schools are narrowly defined places of congregation, owned by the government, intended to fulfill a civic purpose, and not of such a nature as to require the average adult to frequent the location often (thus preventing him from carrying a firearm throughout the day). *See Kopel & Greenlee, supra* note 96, at 254–55. On the other hand—unlike the other locations—schools do not fulfill a judicial

questions deserving of their own law review article. Thus, this Article neither affirms nor contests the validity of *Heller*'s asterisk; for present purposes, it assumes the permissibility under the Second Amendment of prohibiting firearms in K–12 schools [and government buildings].¹⁸⁹

But, as this brief analysis demonstrates, even the designation of schools as “sensitive places” is uncertain under *Bruen*'s historical approach.

What is certain is that—even in light of *Bruen*'s compromise language—hundreds of state laws prohibiting firearms in dozens of locations are now unconstitutional.¹⁹⁰ State bans on firearms in places like bars, universities, public buses and subways, churches, parks, entertainment venues, and buffer zones will all continue to fall under *Bruen* in the coming years.¹⁹¹ States may have more success prohibiting firearms on public school grounds and unsecure government properties.¹⁹² But, even where states may have the stronger case, it behooves them to avoid the time and litigation expenses involved by crafting a preemptive legislative solution.¹⁹³ Before outlining this solution in detail, an examination of the constitutional carry phenomenon compounding the issue is in order.

B. Why Should I Get a License?: The Public Policy Problem with Constitutional Carry

The last few years have seen a tidal wave of states enacting constitutional carry laws, which authorize most adults to carry concealed handguns without a permit.¹⁹⁴ When Texas became a constitutional carry

or legislative purpose, are often without armed security, are ubiquitous throughout cities, and require many adults (*e.g.*, every parent of minor children, not to mention teachers) to visit them on an almost daily basis. *See id.* at 289–94. Likewise, a ban on guns is almost certainly more justified to protect the lives of children than a polling place (assuming gun bans work to do either). But if protecting the innocent in vulnerable, crowded places is enough to comparably justify a gun ban, one struggles to think of any location that could not be deemed a sensitive place (*e.g.*, parks, museums, hospitals, restaurants, movie theaters, grocery stores, malls, public buses and subways, sporting events). *See* Larson, *supra* note 145, at 1383–84.

189. Smotherman, *supra* note 23, at 382. *See also* Larson, *supra* note 145, at 1378, 1385 (arguing the sensitive-places exception “is probably the easiest of the exceptions to justify on strict originalist grounds”).

190. *See supra* notes 49–54 and accompanying text.

191. *See supra* notes 49–54 and accompanying text.

192. *See supra* notes 55–58 and accompanying text.

193. *See infra* Section III.A.

194. *See* PERMITLESS CARRY STATES, *supra* note 113.

state in September 2021, it garnered significant attention due to the state's large population and political prominence, but it was far from the first to do so.¹⁹⁵ In fact, Texas was one of nine new states to pass constitutional carry legislation in 2021 and 2022.¹⁹⁶ Florida's passage of constitutional carry in April 2023 was perhaps even more significant.¹⁹⁷ Florida becoming the twenty-sixth constitutional carry state meant that the majority of states now allowed their residents to carry concealed firearms without a permit.¹⁹⁸ Florida's law (along with Nebraska's, South Carolina's, and Louisiana's since then) brought the total population living in constitutional carry states to over 151 million people.¹⁹⁹ With 151 million people living in twenty-nine constitutional carry states, millions of people are likely carrying concealed firearms in public without any training, education, or vetting.²⁰⁰ This is arguably the principal challenge created by constitutional carry.²⁰¹

For gun rights supporters, constitutional carry simply eliminates a burdensome government hurdle to the exercise of a constitutional right. After all, they argue, no government permit is required to exercise one's rights to freedom of speech or religion.²⁰² Why should a law-abiding adult have to ask the government's permission to exercise her right to keep and bear arms if the Constitution already recognizes and protects that preexisting right?²⁰³

195. See *id.*; Neil MacFarquhar & Edgar Sandoval, *Texas Lawmakers Move To Drop Most Handgun Licensing Requirements*, N.Y. TIMES (May 25, 2021), <https://www.nytimes.com/2021/05/25/us/texas-guns-law-permits.html>.

196. See PERMITLESS CARRY STATES, *supra* note 113.

197. See Sagi, *supra* note 2.

198. *Id.*

199. Table 1. *Annual Estimates of the Resident Population for the United States, Regions, States, and Puerto Rico: April 1, 2010 to July 1, 2019*, U.S. CENSUS BUREAU (Dec. 2019), <https://www2.census.gov/programs-surveys/popest/tables/2010-2019/state/totals/nst-est2019-01.xlsx> [hereinafter *Census Bureau: 2010–2019*].

200. See also Schneid, *supra* note 3 (noting concern about the “hundreds of thousands of people out there that might be carrying unlicensed” just in Texas (quoting Nicole Golden, Exec. Dir., Tex. Gun Sense)).

201. See *id.* (explaining that law enforcement officials and gun-control advocates in Texas are not concerned with LTC holders but with unlicensed carriers because “[w]e don’t know what their history is and we don’t know if they’ve learned any shooting proficiency” (quoting Nicole Golden, Exec. Dir., Tex. Gun Sense)).

202. See generally U.S. CONST. amend. I.

203. See *District of Columbia v. Heller*, 554 U.S. 570, 592 (2008) (“[I]t has always been widely understood that the Second Amendment, like the First and Fourth Amendments, codified a *pre-existing* right. The very text of the Second Amendment implicitly recognizes the pre-existence of the right and declares only that it ‘shall not be infringed.’ As we said in *United States v. Cruikshank*, 92 U.S. 542, 553 (1876), ‘[t]his

To be sure, there are reasonable arguments in favor of not requiring a CCW permit. For example, applying for a CCW permit and obtaining the necessary training can cost several hundred dollars and take multiple days.²⁰⁴ After paying perhaps \$1,000 for a handgun and necessary accessories, many cannot afford to miss work and spend \$500 to \$1,200 more on application, training, and ammunition costs.²⁰⁵ Research shows that “the people who are the most likely victims of violent crime—poor blacks who live in high crime urban areas—are the ones who benefit the most from having concealed handgun permits. Yet, higher fees and longer training periods prevent poor people from getting permits.”²⁰⁶ Further, those with extensive firearms training might fairly determine a basic concealed carry class to be a waste of money—former police officers and military veterans, for example.²⁰⁷ “Others may face an imminent need to carry a concealed handgun for self-defense—a domestic violence or stalking victim or a district attorney facing threats to her life, for example—and cannot afford to wait the several months it often takes for a CCW permit to be approved.”²⁰⁸ Obtaining a permit to carry is generally the best choice.²⁰⁹ But it may not always be the clear choice,

is not a right granted by the Constitution. Neither is it in any manner dependent upon that instrument for its existence.”).

204. See CONCEALED CARRY PERMIT HOLDERS, *supra* note 122, at 38–39.

205. See *id.* at 6–7, 23–28, 38 (listing application fees by state and explaining costs for a D.C. permit and required training are about \$570 and costs for a California permit and required training can be \$450 to \$1,100).

206. *Id.* at 38–39 (footnote omitted) (showing that “higher costs of getting a permit differentially impact blacks and other minorities”).

207. Smotherman, *supra* note 23, at 391.

208. *Id.*

209. As a practical matter, obtaining a CCW permit is recommended. See Kevin D. Williamson, ‘Constitutional’ Carry? Maybe Not, NAT’L REV. (May 5, 2021, 1:28 PM), <https://www.nationalreview.com/2021/05/constitutional-carry-maybe-not/> [<https://perma.cc/9VGQ-4M3R>]; Darren Britto, *The Benefits of Having a Carry Permit in a Permitless State*, GUNS.COM (May 3, 2023, 4:00 AM), <https://www.guns.com/news/2023/05/01/concealed-carry-permit-benefits>. It allows the holder to receive more training and education, take advantage of reciprocity laws when travelling out of state, enjoy expedited background checks when purchasing a firearm, and prevents him from running afoul of violating state laws prohibiting firearms in certain locations (e.g., colleges and universities in Texas) without a permit. See *id.* The benefits are worth the training costs and administrative requirements. See *id.*; Williamson, *supra*. Aside from emergency situations and political principle (e.g., “I should not have to obtain government permission to exercise a constitutional right.”), one can think of few good reasons to carry a concealed firearm without a permit. See *id.*

nor is it a choice that ought to be made by the government rather than the individual.²¹⁰

For gun control supporters, constitutional carry seems dangerous and reckless.²¹¹ Especially for those unfamiliar with firearms or opposed to private citizens carrying them, it is difficult to fathom why a state would do away with training and education classes, criminal and mental health background checks, and other permit requirements. Yet collective right theorists and supporters of discretionary permitting regimes have lost those legal battles, and rightfully so.²¹² Still, reasonable minds can disagree as to the wisdom of allowing untrained, unvetted individuals to carry loaded, concealed handguns in public.

Indeed, virtually no gun rights supporter would argue that becoming a more knowledgeable armed citizen and a better trained shooter is a bad thing.²¹³ Defenders of constitutional carry often argue that the training required to obtain a concealed carry permit is woefully inadequate anyway and that most armed citizens obtain more extensive legal education and tactical training elsewhere.²¹⁴ They are right on the first count but wrong on the second. Most people are unfortunately reluctant to invest the time and money necessary to become truly knowledgeable

210. Smotherman, *supra* note 23, at 391.

211. See, e.g., *Permitless Carry: Carrying a Concealed Gun in Public with No Permit and No Training*, EVERYTOWN FOR GUN SAFETY, <https://everytownresearch.org/report/permitless-carry-carrying-a-concealed-gun-in-public-with-no-permit-and-no-training/> [<https://perma.cc/5H62-ACP5>] (Mar. 23, 2022); Press Release, Brady, Brady Condemns Florida Senate Passage of Permitless Concealed Carry Legislation (Mar. 30, 2023), <https://www.bradyunited.org/press-releases/brady-condemns-fla-senate-concealed-carry> [<https://perma.cc/Q9ZQ-WXS4>].

212. See generally *District of Columbia v. Heller*, 554 U.S. 570 (2008); *N.Y. State Rifle & Pistol Ass'n v. Bruen*, 142 S. Ct. 2111 (2022).

213. Cf. *Permitless Carry: Carrying a Concealed Gun in Public with No Permit and No Training*, *supra* note 211 (“Law enforcement experts, firearm trainers, and military personnel overwhelmingly agree that people who carry concealed weapons in public should take firearm training, including live-fire training.”); Benjamin Johnson, *Gun Training Isn’t Required Under Permitless Carry Bill, but Experts Sure Do Recommend It*, PENSACOLA NEWS J. (Apr. 5, 2023, 4:10 AM), <https://www.pnj.com/story/news/crime/2023/04/05/concealed-carry-without-permitworries-pensacola-gun-instructors/70077672007/> [<https://perma.cc/F3EL-3AAJ>].

214. Cf. Johnson, *supra* note 213 (quoting constitutional carry supporters in Florida who recommend citizens nevertheless obtain training); Jennifer Mascia & Chip Brownlee, 32 *States Let People Carry Guns Without Learning How To Shoot One*, TRACE (Jan. 25, 2022), <https://www.thetrace.org/2022/01/which-states-require-firearm-safety-course-concealed-carry/> [<https://perma.cc/C7CS-RQ8T>] (“In [one instructor’s] classes, which are typically at least six hours long, he teaches stances, grip, and trigger control, among many other safety fundamentals. But [he] believes prior training is only a basic necessity; regular practice and ongoing training are just as important.”).

and tactically proficient with their firearm—even if it is only \$200 and an eight-hour class.²¹⁵ Aside from a sizable minority—which consists largely of military veterans, ex-law enforcement, competitive shooters, and security professionals—most gun owners see extensive training as an unnecessary inconvenience.²¹⁶ They simply do not do it. They may ask themselves, “Why should I spend the time and money when I can just carry a handgun under my state’s new constitutional carry law?” Then, they may justify their reasoning by telling themselves that they grew up around guns, they hunt, or that they are a decent shot (as if hunting or static marksmanship skills prepare someone to deal with the tactical, psychological, and legal realities of using deadly force).²¹⁷ Most armed citizens will not obtain any tactical training or legal education beyond the state-mandated minimum to obtain a CCW permit.²¹⁸

The public policy problem in constitutional carry states is that even these minimal training and education requirements are now gone.²¹⁹

215. See generally MASSAD AYOUB, *THE GUN DIGEST BOOK OF COMBAT HANDGUNNERY* (7th ed. 2020) (describing training and skills necessary for owners of defensive handguns); MASSAD AYOUB, *DEADLY FORCE: UNDERSTANDING YOUR RIGHT TO SELF DEFENSE* (1st ed. 2014) (describing basic legal knowledge necessary for armed citizens) [hereinafter *DEADLY FORCE*]; TOM GIVENS, *CONCEALED CARRY CLASS: THE ABCS OF SELF-DEFENSE TOOLS AND TACTICS* (1st ed. 2020) (describing training and skills necessary for carriers of concealed handguns).

216. See, e.g., Jack Lemnus, *Florida’s Permitless Carry Gun Law Leads to Dramatic Drop in Safety Classes*, TAMPA BAY TIMES, <https://www.tampabay.com/news/florida-politics/2023/11/02/florida-permitless-carry-gun-safety-instruction-sales-classes-concealed-permits/> (Nov. 3, 2023).

217. Cf. Johnson, *supra* note 213 (“Unfortunately now that they have permitless carry, they’re going to think they can just carry and not know the laws . . . [T]he ones who don’t have a permit are usually the ones that get in more trouble when something does happen because they didn’t really know what they were supposed to do.” (quoting Robert Vincent, a retired U.S. Navy firearms instructor)). See generally JOHN S. FARNAM, *THE FARNAM METHOD OF DEFENSIVE HANDGUNNING* (2d ed. 2005) (discussing practical and tactical aspects of defensive handgun use); *DEADLY FORCE*, *supra* note 215 (discussing legal aspects of using deadly force in self-defense); DAVE GROSSMAN, *ON COMBAT: THE PSYCHOLOGY AND PHYSIOLOGY OF DEADLY CONFLICT IN WAR AND IN PEACE* (3d ed. 2008) (discussing psychological and physiological aspects of using deadly force).

218. Cf. Johnson, *supra* note 213 (“We’re going to have a lot of untrained carriers out there now, concealed carriers, and that isn’t safe for anybody.” (quoting Robert Vincent, a retired U.S. Navy firearms instructor)).

219. See Chip Brownlee, *A Majority of U.S. States Now Have Permitless Carry*, TRACE (Apr. 3, 2023), <https://www.thetrace.org/2023/04/permitless-concealed-carry-gun-law-map/> [https://perma.cc/7DDD-UV7F] (“By removing the requirement for a permit prior to carrying a concealed gun, Florida also effectively nullified its requirement that permit-seekers receive live-fire training before receiving a permit.”).

Citizens have less incentive to get trained—or pay money and subject themselves to government background checks—when they can simply carry under a constitutional carry statute.²²⁰ In many cases, this results in untrained, unvetted, and ultimately unsafe individuals carrying handguns in public. While these individuals may not be likely to go on shooting sprees or conduct armed robberies, they do increase the potential risk for tragedy.²²¹ This is because more firearms in untrained hands means more firearms stolen or carelessly left to be found by children, more negligent discharges in public, more questionable and unnecessary self-defense shootings, and more potential for mistaken identity “blue-on-blue” shootings.²²² The great majority of Americans prefer, if people are going to carry concealed handguns in public, that they have to undergo fairly extensive training and background checks.²²³ After all, even most gun control advocates are comfortable with off-duty police officers carrying firearms. Why? Because people trust police officers generally to be law abiding, legally educated, tactically proficient, and thoroughly vetted.²²⁴ The problem with constitutional carry is that there is no way to ensure private citizens follow suit.

Regardless, from a pragmatic political perspective, there is no going back from constitutional carry in most states.²²⁵ The genie is already out

220. *See id.* (“While permits will still be available for those who want them in order to carry in other states with reciprocity agreements, it’s likely that fewer people will pursue permits, or training.”).

221. *See The Effects of Concealed-Carry Laws*, RAND CORP., <https://www.rand.org/research/gun-policy/analysis/concealed-carry.html> [https://perma.cc/F2GE-3V8U] (Jan. 10, 2023); Mascia & Brownlee, *supra* note 214 (“The worst person that you can be around is a person who has a firearm and no training.”).

222. *See* sources cited *supra* note 221.

223. DANIEL W. WEBSTER, CASSANDRA K. CRIFASI, JON S. VERNICK & ALEXANDER MCCOURT, JOHNS HOPKINS BLOOMBERG SCH. OF PUB. HEALTH, CONCEALED CARRY OF FIREARMS: FACTS VS. FICTION 9 (2017), <https://www.ricagv.org/wp-content/uploads/2017/12/2017-Johns-Hopkins-Study-Concealed-Carry-of-Firearms-Facts-vs-Fiction.pdf> [https://perma.cc/FF3B-48TW] (describing survey data showing around eighty percent of Americans—regardless of political affiliation—agreed “that a person who can legally carry a concealed gun should be required to pass a test demonstrating they can safely and lawfully handle a gun in common situations they might encounter”).

224. *See* Olafimihan Oshin, *62 Percent in New Survey Trust Police To Do What Is Right All or Most of the Time*, THE HILL (Feb. 16, 2023, 1:35 PM), <https://thehill.com/homenews/state-watch/3861578-62-percent-in-new-survey-trust-police-to-do-what-is-right-all-or-most-of-the-time/>.

225. *See* Lott, *supra* note 2 (reporting that constitutional carry continued to expand to more states in 2023).

of the bottle.²²⁶ In fact, constitutional carry legislation will likely continue its rapid expansion.²²⁷ Therefore, constitutional carry states have both an interest and arguably a societal duty to incentivize their citizens to voluntarily become more trained, educated, and vetted before carrying concealed handguns for self-defense.²²⁸ This Article outlines a statutory solution to accomplish this goal.²²⁹

C. Constitutional Carry Case Study: The State of Texas

The problems outlined above, and the solutions outlined below, apply to all twenty-nine constitutional carry states.²³⁰ This Article's statutory framework works for any state with a constitutional carry statute. Nonetheless, it is instructive to explore how these considerations are playing out in reality. Texas—a recent constitutional carry state with relatively complex firearms laws—serves as an illustrative example.

1. LICENSE TO CARRY VERSUS CONSTITUTIONAL CARRY

Texas's constitutional carry statute went into effect in September 2021.²³¹ The law generally “[a]uthorizes the unlicensed carrying of firearms by a person who is 21 years of age or older and not otherwise prohibited by state or federal law from possessing the firearm.”²³² Previously, the only way to legally carry a concealed handgun in Texas was to obtain a concealed carry permit—called a “license to carry” (LTC) in Texas.²³³ LTCs were—and are—issued on a shall-issue basis to all applicants who meet the statutory criteria.²³⁴ To be eligible for an LTC, an applicant must be a legal resident, at least twenty-one years old,²³⁵ not

226. *See id.*

227. *See id.*

228. *See infra* Section III.A.

229. *See infra* Section III.A.

230. *See supra* Sections II.A–B; *infra* Section III.A.

231. *87th Legislative Session: 2021: Summary of New Laws Impacting Handgun Licensing*, TEX. DEP'T PUB. SAFETY, <https://www.dps.texas.gov/section/handgun-licensing/87th-legislative-session-2021> [https://perma.cc/V6SH-NY2W].

232. *Id.*

233. *See id.*; *Handgun Licensing*, *supra* note 8.

234. TEX. GOV'T CODE ANN. § 411.177 (West 2021); *Concealed Carry | Right-to-Carry*, *supra* note 106.

235. *See Eligibility FAQs*, TEX. DEP'T PUB. SAFETY, <https://www.dps.texas.gov/section/handgun-licensing/faq/eligibility-faqs> [https://perma.cc/U3ZV-4WXC] (“A federal district court has ruled the Department can no longer apply the License to Carry statutory eligibility criteria that prohibit otherwise

a convicted felon, “not a chemically dependent person,” not convicted of certain misdemeanors within five years, not a fugitive from justice or subject to a court protective order, and “not incapable of exercising sound judgment with respect to the proper use and storage of a handgun.”²³⁶ The requirement regarding “sound judgment” is limited to individuals with certain serious mental health and substance-abuse disorders.²³⁷ Applicants must submit an application—including a photograph, identification, and fingerprints—to the Texas Department of Public Safety (DPS) and pay an application fee of \$40.²³⁸

Finally, the applicant must complete an approved “handgun proficiency” course.²³⁹ The course must be at least five hours long and include instruction on “laws that relate to weapons and to the use of deadly force,” “handgun use and safety,” “nonviolent dispute resolution,” and “proper storage practices for handguns.”²⁴⁰ The course must include at least one hour of live-fire range training and a handgun proficiency demonstration by the applicant.²⁴¹ The proficiency test mandated by Texas DPS involves firing fifty rounds at a large, human-size silhouette from distances of fifteen yards, seven yards, and three yards with virtually no time limit.²⁴² Applicants must score a seventy percent and are given up to three attempts.²⁴³ The proficiency test is easy enough that people who have never before handled or fired a handgun pass on their first attempt.²⁴⁴ Handgun proficiency courses are

eligible 18-to-20 year-olds from obtaining the license. The Department will therefore no longer deny applications solely on the basis that the applicants are 18-to-20 years old.” (citation omitted)); *Application FAQs*, TEX. DEP’T PUB. SAFETY, <https://www.dps.texas.gov/section/handgun-licensing/faq/application-faqs> [https://perma.cc/SCV9-MAZJ].

236. TEX. GOV’T CODE ANN. § 411.177.

237. TEX. GOV’T CODE ANN. §§ 411.172(d)–(f).

238. TEX. GOV’T CODE ANN. § 411.174.

239. TEX. GOV’T CODE ANN. § 411.188.

240. TEX. GOV’T CODE ANN. § 411.188(b). *See also Training Requirements FAQ*, TEX. DEP’T PUB. SAFETY, <https://www.dps.texas.gov/section/handgun-licensing/faq/training-requirements-faq> [https://perma.cc/2MS3-7CCL].

241. TEX. GOV’T CODE ANN. § 411.188; *Training Requirements FAQ*, *supra* note 240.

242. *See Shooting Test*, TEX. LICENSE TO CARRY/CHL, <https://www.stateoftexaschl.com/chl-shooting-test/> [https://perma.cc/T2DU-ESAF]; *Range Proficiency for License To Carry (LTC)*, TEX. CONCEALED CARRY INST., <https://txconcealedcarry.com/range-qualification/> [https://perma.cc/88MB-R7CF].

243. *Shooting Test*, *supra* note 242.

244. *See id.* (“Remember, I have had students pass the shooting proficiency test with flying colors who fired a gun for the first time ever when they took the test.”).

administered by private state-certified instructors, are regularly available throughout the state, and usually cost about \$100.²⁴⁵

Once the applicant has completed the training course and submitted his application materials, Texas DPS has sixty days by statute to complete a background check and issue the LTC.²⁴⁶ Texas law states that DPS “shall issue a license to carry a handgun to an applicant if the applicant meets all the eligibility requirements and submits all the application materials. . . . [DPS] may not deny an application on the basis of a capricious or arbitrary decision”²⁴⁷ LTCs are valid for five years, and applicants are not required to repeat the training course upon renewal.²⁴⁸

In short, the requirements to obtain a concealed carry permit in Texas are not onerous. All told, applicants spend about \$160 (for training, licensing, and ammunition) and a few hours for a five-year license they are guaranteed to receive if they meet the statutory criteria.²⁴⁹ And friends, coworkers, members of the public, and law enforcement officers can be assured that the LTC holder is at least minimally trained and proficient, without dangerous mental illness or drug addiction, and not a criminal.²⁵⁰ Thus, the LTC serves as a training and proficiency “floor” for armed Texans and a verification to others that they are “good guys”; but its basic requirements are still a far cry from the training and vetting that law enforcement officers and security professionals receive.²⁵¹

245. See, e.g., LONE STAR SHOOTING SPORTS, <https://onlinetexasltc.com/LoneStarShootingSports> [https://perma.cc/867C-KDSR] (offering online and live-fire components of LTC class for \$100).

246. TEX. GOV'T CODE ANN. § 411.177.

247. TEX. GOV'T CODE ANN. § 411.177(a) (emphasis added).

248. See TEX. GOV'T CODE ANN. §§ 411.183, 411.185. See also *Training Requirements FAQ*, *supra* note 240 (“There is no continuing education or other training required to renew an LTC.”).

249. See generally *Application FAQs*, *supra* note 235; *Do the Official Texas License To Carry a Handgun Class*, GUARDIAN TRAINING AGENCY, <https://guardiantrainingagency.com/license-to-carry> [https://perma.cc/HSF9-2ZH8].

250. See *Application FAQs*, *supra* note 235 (describing training requirements and factors that make one ineligible for an LTC such as criminal convictions, “chemical or alcohol dependency,” certain “psychological diagnoses,” and “protective or restraining orders.”).

251. See *Course Curriculum Materials and Updates*, TEX. COMM’N ON L. ENF’T, <https://www.tcole.texas.gov/content/course-curriculum-materials-and-updates-0> [https://perma.cc/NKQ3-3MRB] (listing curriculum of firearms courses and other training for Texas law enforcement personnel).

Unfortunately—but unsurprisingly—significantly fewer Texans are bothering to obtain LTCs after the passage of constitutional carry. At the beginning of 2022, approximately 1.71 million Texans held active LTCs.²⁵² About 480,000 of those LTCs were issued just in the year 2020.²⁵³ In 2021, as Texans prepared for constitutional carry to go into effect, only 362,000 LTCs were issued.²⁵⁴ In 2022—the first year of constitutional carry—the number of issued LTCs dropped to 274,000.²⁵⁵ This number fell even further—below 265,000 LTCs—in 2023.²⁵⁶ And the significance of this drop is even more drastic than these numbers indicate because the vast majority of LTCs issued in the last three years were renewals.²⁵⁷ The number of original, newly issued LTCs has dropped even more precipitously as Texans forgo the LTC’s training and vetting requirements in favor of permitless carry.²⁵⁸ Figure 1 shows the abrupt drop in original LTC issuances between 2020 and 2023. Immediately after the passage of constitutional carry, the number of newly issued LTCs dropped to its lowest level in at least fourteen years.²⁵⁹

252. TEX. DEP’T OF PUB. SAFETY, ACTIVE LICENSE/CERTIFIED INSTRUCTOR COUNTS AS OF DECEMBER 31, 2021 (2021), <https://www.dps.texas.gov/sites/default/files/documents/rsd/ltc/reports/actlicandinstr/activelicandinstr2021.pdf> [<https://perma.cc/S5NG-6RKG>] [hereinafter ACTIVE LICENSE COUNTS].

253. TEX. DEP’T OF PUB. SAFETY, DEMOGRAPHIC INFORMATION BY AGE (2020), <https://www.dps.texas.gov/rsd/ltc/reports/2020calendar/byage/9licenseapplicationsissued.pdf> [<https://perma.cc/NSW6-GQUP>].

254. TEX. DEP’T OF PUB. SAFETY, DEMOGRAPHIC INFORMATION BY AGE (2021), <https://www.dps.texas.gov/sites/default/files/documents/rsd/ltc/reports/2021calendar/byage/9licenseapplicationsissued.pdf> [<https://perma.cc/FY22-XCGT>].

255. TEX. DEP’T OF PUB. SAFETY, DEMOGRAPHIC INFORMATION BY AGE (2022), <https://www.dps.texas.gov/sites/default/files/documents/rsd/ltc/reports/2022calendar/byage/9licenseapplicationsissued.pdf> [<https://perma.cc/YA5S-7HMX>].

256. TEX. DEP’T OF PUB. SAFETY, DEMOGRAPHIC INFORMATION BY AGE (2023), <https://www.dps.texas.gov/sites/default/files/documents/rsd/ltc/reports/2023calendar/byage/9licenseapplicationsissued.pdf> [<https://perma.cc/CG7H-GENW>].

257. TEX. DEP’T OF PUB. SAFETY, 2023 ANNUAL FIREARM REPORT 6 (2024), <https://www.dps.texas.gov/sites/default/files/documents/rsd/ltc/reports/annualfirearm/firearm-report-2023.pdf> [<https://perma.cc/NY9Y-Z3LF>] [hereinafter 2023 ANNUAL FIREARM REPORT].

258. *Id.*

259. *Id.* See also, Schneid, *supra* note 3 (noting that LTC numbers dipped in 2021 but “dropped even further in 2022, the first full calendar year after permitless carry went into effect”).

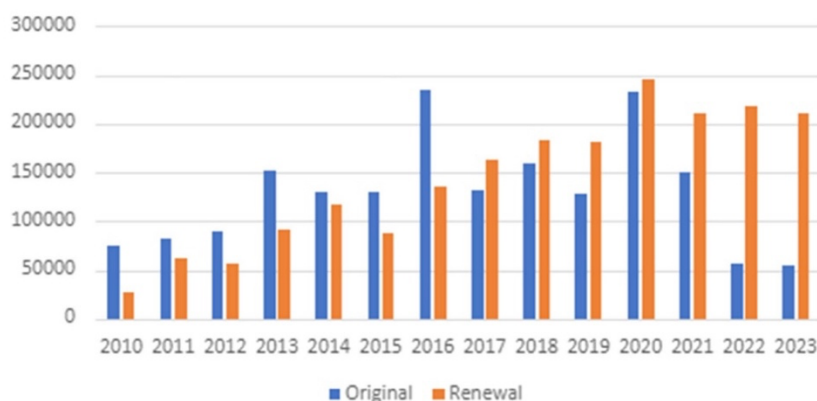


Figure 1. LTC Licenses Issued.²⁶⁰

In short—despite Texas’s efficient shall-issue permitting process, low fees, and modest training requirements—it appears that the number of Texans who choose to obtain an LTC will continue to drop as new gun carriers opt for the easier path of permitless carry.²⁶¹ The same phenomenon is playing out in other constitutional carry states.²⁶² This is regrettable because those who obtain CCW permits are not only better educated and trained, they are also on average more law abiding than even police officers.²⁶³ Indeed, despite constituting about 8% of Texas’s adult population, LTC holders account for less than 0.5% of all criminal

260. 2023 ANNUAL FIREARM REPORT, *supra* note 257, at 6.

261. See Schneid, *supra* note 3.

262. See CONCEALED CARRY PERMIT HOLDERS, *supra* note 122, at 9 (noting that, “despite the fact that the number of people who actually carried undoubtedly went up significantly when there were no longer any fees or training requirements to carry, the number of permits in Constitutional Carry states actually *fell* by 131,827” in 2022).

263. See MORE GUNS, LESS CRIME, *supra* note 110, at 251 (arguing CCW permit holders are “very law-abiding,” “rarely use their guns to cause harm,” and from 1990 to 2008 “committed murder at 1/182nd the rate of the general public”); LOTT, MOODY & WANG, *supra* note 108, at 44 (“[C]onced carry permit holders are even more law-abiding than police.”).

convictions.²⁶⁴ Whether the same is true for unlicensed carriers is unknown.²⁶⁵

2. TEXAS PENAL CODE AND LOCATIONS OFF-LIMITS TO FIREARMS

The firearms provisions in the Texas Penal Code are not well organized or straightforward.²⁶⁶ Nor—contrary to popular belief—is Texas one of the most permissive states when it comes to regulating firearms in public.²⁶⁷ In fact, one could not openly carry a handgun in Texas (even with a license) until 2015.²⁶⁸ Firearms in Texas are regulated by Chapter 46 of the Texas Penal Code. Section 46.03 prohibits firearms in several locations, whether or not a person has an LTC.

Firearms are prohibited “on the premises of a school or postsecondary educational institution, [or] on any grounds or building owned by and under the control of a school or postsecondary educational institution and on which an activity sponsored by the school or institution is being conducted.”²⁶⁹ The prohibition on “postsecondary educational institutions” (*i.e.*, colleges and universities) does not apply to *concealed* carry by LTC holders, but LTC holders still may not carry in K–12 schools.²⁷⁰ Problematically—even as amended in September 2023—Section 46.03(a)(1) is unclear as to what constitutes “an activity

264. TEX. DEP’T OF PUB. SAFETY, CONVICTION RATES FOR HANDGUN LICENSE HOLDERS (2022), <https://www.dps.texas.gov/sites/default/files/documents/rsd/ltc/reports/convictionratesreport2022.pdf> [<https://perma.cc/WS2G-WMCQ>]; ACTIVE LICENSE COUNTS, *supra* note 252.

265. See CONCEALED CARRY PERMIT HOLDERS, *supra* note 122, at 3, 42–47 (describing data showing LTC holders are extremely law-abiding and pointing out that trends in constitutional carry states are hard to measure because they “no longer provide data on all those legally carrying a concealed handgun”).

266. See TEX. PENAL CODE ANN. §§ 30.05–.07, 46.01–.15 (West 2023); Interview with Lauren Murphree, Assistant Crim. Dist. Att’y (App. Div.), Lubbock Cnty., Tex., in Lubbock, Tex. (May 3, 2023).

267. See, *e.g.*, TEX. PENAL CODE ANN. §§ 30.06, 46.03 (listing various restrictions on concealed carry permit holders).

268. Daniel Costa-Roberts, *Texas Approves Open Carry Law for Handguns*, PBS (May 30, 2015, 3:00 PM), <https://www.pbs.org/newshour/politics/texas-verge-passing-open-carry-law> (“In spite of its reputation for conservatism, Texas’ laws regarding the open carry of handguns have long been closer to those of blue states like California and Illinois.”).

269. TEX. PENAL CODE ANN. § 46.03(a)(1).

270. TEX. PENAL CODE ANN. § 46.03(a)(1)(B).

sponsored by the school.”²⁷¹ This places armed parents in legal jeopardy for picking their children up outside school—despite other statutes appearing to protect exactly such conduct—if the school marching band happens to be practicing in the parking lot or the school district decides to deem pick-up and drop-off “school sponsored activities.”²⁷²

Firearms are also prohibited in polling places, airports, courthouses, racetracks, amusement parks, bars, hospitals, mental hospitals, and some government meetings.²⁷³ Firearms are likewise banned within 1,000 feet of a place of execution and “where a high school, collegiate, or professional sporting event or interscholastic event is taking place.”²⁷⁴ Many of these location restrictions apply only to the “[p]remises,” a term the statute defines as “a building or a portion of a building” that “does not include any public or private driveway, street, sidewalk or walkway, parking lot, parking garage, or other parking area.”²⁷⁵ Thus, citizens can generally leave their firearms in their vehicles (locked and out of sight) before entering one of these prohibited locations.²⁷⁶

Carrying a firearm into a sporting event, hospital, or amusement park is a Class A misdemeanor, punishable by up to one year in jail.²⁷⁷ Carrying a firearm onto the premises of any other location listed above is a third-degree felony, punishable by at least two years and up to ten years in state prison.²⁷⁸

271. TEX. PENAL CODE ANN. § 46.03(a)(1). Texas House Bill 1760—effective September 1, 2023—amended Section 46.03(a)(1) to require that the school-sponsored activity be conducted on grounds “owned by and under the control of a school” in order for the firearms prohibition to apply. H.B. 1760, 88th Leg., Reg. Sess. (Tex. 2023). Prior to that, the statute was even more problematic because it criminalized lawful concealed carry essentially wherever students happened to visit on school field trips.

272. See Application of Penal Code Sections 30.07 & 46.03, Relating to the Open Carry of Handguns, to Sch. Dists., Op. No. KP-0050, Tex. Att’y Gen. 1, 2 (2015) (“[I]f a high school utilizes a school parking lot for a band rehearsal, that parking lot would likely fall within the scope of subsection 46.03(a)(1), prohibiting weapons during the time of the rehearsal. Yet, the other parking areas at the school where school activities are not occurring . . . would not be places where weapons are prohibited.”).

273. TEX. PENAL CODE ANN. § 46.03.

274. *Id.*

275. TEX. PENAL CODE ANN. § 46.03(c)(4).

276. See *id.* See also TEX. LAB. CODE § 52.061 (West 2023) (restricting the prohibition of employee storage of firearms in locked vehicles in employer’s parking lot); TEX. EDUC. CODE § 37.0815 (West 2023) (allowing storage of concealed firearms in locked vehicles in school parking lots).

277. TEX. PENAL CODE ANN. § 46.03(g-2); TEX. PENAL CODE ANN. § 12.21.

278. TEX. PENAL CODE ANN. §§ 12.34, 46.03(g).

Section 46.15 contains various exceptions, carve-outs, and defenses to Section 46.03's prohibitions.²⁷⁹ Some are relatively straightforward. For example, police officers, prosecutors and judges with LTCs, and certain security and military personnel are all permitted to carry firearms in many of the prohibited locations.²⁸⁰ Other provisions, such as varying notice requirements and affirmative defenses, are more convoluted. For example, it is an affirmative defense if a person carrying a handgun in a prohibited location personally receives notice from someone with authority over the property that carrying a firearm there is prohibited and the person promptly departs.²⁸¹ It is unclear whether the person must be given a chance to depart. Likewise, Texas law contains no less than eight different types of mandatory signs to provide notice to various types of persons (*i.e.*, unlicensed versus licensed carriers) that various types of carry (*i.e.*, open versus concealed carry) are prohibited.²⁸² Ignoring certain signs is a third-degree felony, others a Class A misdemeanor, and still others a Class C misdemeanor (an infraction-like offense punishable only by a \$200 fine).²⁸³

In addition to Section 46.03, Sections 30.05 to 30.07 further restrict the carrying of firearms at posted locations under criminal trespass provisions.²⁸⁴ Premises owners must provide notice of the prohibition with a sign that complies with the statute.²⁸⁵ A Section 30.05 sign prohibits unlicensed carry (*i.e.*, constitutional carry) but does not apply to LTC holders.²⁸⁶ A Section 30.06 sign prohibits concealed carry even by LTC holders.²⁸⁷ But a Section 30.06 violation is only a Class C misdemeanor punishable by a \$200 fine, and it is an affirmative defense if an LTC holder is asked to leave and promptly departs.²⁸⁸ A Section 30.07 sign prohibits only *open* carry by LTC holders.²⁸⁹

279. TEX. PENAL CODE ANN. § 46.15.

280. *Id.*

281. TEX. PENAL CODE ANN. § 46.15(m).

282. Richard D. Hayes, II, *Texas "No Gun" Sign Laws Explained*, WALKER & TAYLOR PLLC, <https://www.walkertaylorlaw.com/texas-no-gun-sign-laws/> [https://perma.cc/CM34-XYQQ] (Sept. 1, 2023).

283. *See id.*

284. *See id.*; TEX. PENAL CODE ANN. §§ 30.05–.07.

285. *See* Hayes, *supra* note 282.

286. *Id.*; TEX. PENAL CODE ANN. § 30.05.

287. TEX. PENAL CODE ANN. § 30.06.

288. *Id.*; Hayes, *supra* note 282.

289. TEX. PENAL CODE ANN. § 30.07.

In sum, Texas law bans firearms in several locations.²⁹⁰ And it contains even more exceptions, qualifications, explanations, and affirmative defenses to these bans.²⁹¹ The result is a statute soup of different laws of differing severity that apply to different people at different times. Many of these locations do not qualify as sensitive places under *Bruen*, even if they might be considered “sensitive” by the average citizen.²⁹² But that does not mean Texas must allow hundreds of thousands of unlicensed persons to bring firearms into schools, bars, hospitals, and stadiums.²⁹³ There is a realistic legislative solution that ensures constitutional compliance *and* that only thoroughly trained and vetted citizens carry firearms in many public spaces.²⁹⁴

III. RECOMMENDATION: STATES SHOULD ADOPT A BIFURCATED STATUTORY SYSTEM FOR CONCEALED CARRY

The core thesis of this Article is that constitutional carry states should adopt a bifurcated statutory system to regulate the public carry of firearms.²⁹⁵ Such a system would create two groups of people: (1) unlicensed “constitutional carriers” subject to established restrictions and location bans; and (2) license holders subject to very few restrictions by virtue of their decision to undergo extensive training and screening.²⁹⁶ Repealing constitutional carry is likely not an option in states that have adopted it.²⁹⁷ The better answer is to provide a different path for citizens—one by which they are *incentivized* to voluntarily undergo training and vetting in exchange for fewer restrictions on when, where, and how they can carry their firearms.²⁹⁸ In other words, states should recognize greater rights for those who undertake greater

290. See TEX. PENAL CODE ANN. § 46.03.

291. See TEX. PENAL CODE ANN. § 46.15.

292. See *supra* notes 45–51 and accompanying text.

293. See *infra* Section III.B.

294. See *infra* Section III.A.

295. See *infra* Section III.A.

296. See *infra* Section III.A.

297. Cf. Katharina Buchholz, *Which States Allow the Permitless Carry of Guns?* (Apr. 6, 2023, 8:37 AM), FORBES, <https://www.forbes.com/sites/katharinabuchholz/2023/04/06/which-states-allow-the-permitless-carry-of-guns-infographic/?sh=44d772614e85> [https://perma.cc/DAP5-AC6D] (explaining that twenty-four states have enacted constitutional carry since 2011 and that there is some heightened pressure to enact even more pro-gun legislation).

298. See *infra* Section III.A.

responsibilities.²⁹⁹ As a significant bonus, this solution also helps states preempt *Bruen*-based legal challenges to statutory restrictions on firearms in certain locations.³⁰⁰

A. The Three Pillars of a Bifurcated Concealed Carry System

The bifurcated concealed carry system outlined below will solve both the sensitive places issue and constitutional carry issue described in Part II.³⁰¹ This scheme will allow states to preempt legal challenges to their location-based restrictions on firearms while simultaneously incentivizing citizens to undergo training and vetting to obtain CCW permits—despite the availability of constitutional carry.

Simply put, the proposed scheme does three things: (1) it keeps the option of permitless carry; (2) it removes almost all location restrictions for CCW permit holders (but not unlicensed carriers); and (3) it increases the requirements to obtain a CCW permit.³⁰² The belief underlying this proposal is that publicly carried, defensive firearms should be in well-trained and vetted hands. Police officers, the generally unarmed public, and armed citizens themselves all benefit if the people carrying guns are tactically proficient, legally educated, and of trustworthy character and disposition.³⁰³ But for the approximately ten to twenty million Americans carrying guns daily (just in constitutional carry states), there is little incentive to prove they are such.³⁰⁴ Thus, to incentivize citizens to voluntarily undergo the training and vetting proposed below, states

299. Cf. *Near v. Minnesota*, 283 U.S. 697, 732 (1931) (discussing link between constitutional rights and individual responsibilities and “the greatest importance” of allowing states to “be untrammelled and free” in ensuring rights are exercised responsibly).

300. See *infra* notes 332–43 and accompanying text.

301. See *supra* Sections II.A–B.

302. See *infra* Section III.A.

303. See RAND CORP., *supra* note 221 (arguing that permitless carry could increase deadly violence during interpersonal conflicts, “increase criminal access to guns through theft,” and “chang[e] officer perceptions about the likelihood of encountering an armed person”—potentially increasing the number of shootings where police officers and/or legally-armed citizens shoot one another due to misperception and mistaken identity).

304. See CONCEALED CARRY PERMIT HOLDERS, *supra* note 122, at 12 (analyzing Pew Research Center survey data to determine that 12.3% of American adults carry a handgun in public “at least some of the time” and 5.4% “carry most or all the time”). Approximately 8.5% of American adults (10.2% outside of still-restrictive New York and California) have concealed carry permits. *Id.* at 3. This means a total of 22 million Americans have concealed carry permits, and millions more likely carry without a permit. See *id.* at 6.

should exempt permit holders from location restrictions.³⁰⁵ States should put more trust in those who have proven themselves more trustworthy. The three pillars of this statutory proposal are outlined below.³⁰⁶

1. LICENSED AND UNLICENSED CARRY SHOULD COEXIST IN CONSTITUTIONAL CARRY STATES

States should have bifurcated systems allowing both licensed and unlicensed carry. In other words, states that have passed constitutional carry should not repeal it. Despite the challenges posed by constitutional carry, there is merit to the argument that one should not have to apply for a license to exercise a preexisting right recognized by the Constitution.³⁰⁷ Likewise, there are a few situations in which it makes sense to have a permitless carry option.³⁰⁸ In any case, as a matter of realpolitik, constitutional carry is here to stay.³⁰⁹ Thus, there is little sense trying to repeal permitless carry laws in states that have passed them.³¹⁰ The better answer is to give citizens the option of obtaining a CCW permit. This pillar requires states to change very little, as most are already operating under a basic version of this bifurcated system.³¹¹ Almost every constitutional carry state continues to issue CCW permits, mostly for purposes of interstate reciprocity.³¹²

305. See *infra* Sections III.A.2–3.

306. See *infra* Section III.A.

307. See *supra* notes 202–10 and accompanying text.

308. See *supra* notes 202–10 and accompanying text.

309. See Edward Helmore, ‘Politics over Safety’: The Pro-gun Laws Giving Americans Easier Access to Firearms, *GUARDIAN* (Mar. 29, 2022, 5:00 AM), <https://www.theguardian.com/us-news/2022/mar/29/us-constitutional-permitless-carry-gun-laws> [<https://perma.cc/4G5G-K7LJ>] (“These laws are a signal from Republican legislatures There was a time when many people in the Republican party were supportive of gun rights but they wanted [public carry] regulated. That’s gone out the window.” (quoting Josh Horwitz, Exec. Dir. of the Coal. to Stop Gun Violence)).

310. See *id.* (“[T]he momentum toward permitless [concealed carry] is unmistakable . . .”).

311. See *supra* note 13 (discussing states that have both a basic CCW permit and an enhanced CCW permit, which has additional requirements but grants a few additional benefits); PERMITLESS CARRY STATES, *supra* note 113 (listing all twenty-nine permitless carry states); HANDGUNLAW.US, U.S. STATES THAT HONOR MY PERMIT (2023), <https://handgunlaw.us/states/USStatesThatHonorMyPermit.pdf> [<https://perma.cc/L2ER-UQHL>] [hereinafter STATES THAT HONOR MY PERMIT] (showing that every permitless carry state except Vermont still issues CCW permits and describing reciprocity agreements between states).

312. See PERMITLESS CARRY STATES, *supra* note 113 (listing all permitless carry states); STATES THAT HONOR MY PERMIT, *supra* note 311 (showing that every

Constitutional carry states should retain their CCW permit option. Issuing permits is something every constitutional carry state has been doing for decades.³¹³ Because offering a CCW permit—even if just for interstate reciprocity purposes—is something virtually every constitutional carry state is already doing, there is no additional cost to continue doing so. But constitutional carry states can use their CCW permits for much more than just interstate reciprocity.³¹⁴

2. STATES SHOULD INCENTIVIZE CITIZENS TO OBTAIN LICENSES TO CARRY BY EXEMPTING LICENSE HOLDERS FROM BANS ON FIREARMS IN MOST LOCATIONS

It is not enough for a constitutional carry state to just retain its permit option; the lure of permitless carry is too strong.³¹⁵ Most residents of constitutional carry states who “still choose to obtain permits [do so only] so that they can carry in other states that have reciprocity agreements.”³¹⁶ Unfortunately, interstate reciprocity has not been enough of an incentive for most people to obtain a CCW permit.³¹⁷ Nor has anything else. There are at least two federal advantages to obtaining a CCW permit—exemption from the Gun-Free School Zones Act and the National Instant Criminal Background Check (NICS) required to purchase a firearm from a commercial dealer—but these are minor benefits of which most gun owners are not even aware.³¹⁸ The minor benefits provided by a few state

constitutional carry state except Vermont still issues CCW permits and describing reciprocity agreements between states).

313. *See supra* notes 106–18 and accompanying text (describing evolution of state concealed carry laws from 1980s to today).

314. *See infra* Sections III.A.2–3.

315. *See supra* notes 252–62 and accompanying text (describing how CCW permit numbers drop when states adopt constitutional carry).

316. CONCEALED CARRY PERMIT HOLDERS, *supra* note 122, at 4.

317. *Cf.* Dan Zimmerman, *3 Reasons You Should Still Have a Carry Permit in a Constitutional Carry State*, TRUTH ABOUT GUNS (Aug. 2, 2021), <https://www.thetruthaboutguns.com/3-reasons-you-should-still-have-a-carry-permit-in-a-constitutional-carry-state/> [<https://perma.cc/3RB3-VGNC>] (attempting to convince permitless carriers to obtain permits for purposes of interstate reciprocity, NICS checks, and credibility in court).

318. *See* Smotherman, *supra* note 23, at 364, 395 (discussing GFSZA exception for permit holders); *About NICS*, FBI, <https://www.fbi.gov/how-we-can-help-you/more-fbi-services-and-information/nics/about-nics> (Feb. 1, 2024) (“Twenty-six states issue ATF-qualified alternate permits that may substitute for a NICS background check. . . . A person with an active qualified permit is not required to have another NICS background check [when purchasing a firearm].”).

statutes—such as the ability to carry on university campuses—have also not convinced many to go to the trouble of getting a permit.³¹⁹

Mirroring the Texas trends above, 2021 saw “the slowest percent and absolute increase” in permit holders nationwide in over ten years largely “due to the number of permits declining in Constitutional Carry states even though it is clear that more people are legally carrying.”³²⁰ The number of concealed carry permits nationwide had been skyrocketing until the recent constitutional carry wave.³²¹ The number of permit holders nationwide grew from 4.6 million in 2007, to 11.1 million in 2014, to 22 million in 2022.³²² But 2021 saw only a 2.3% increase of about 488,000 new permit holders nationwide (150,000 of which were in Texas), the smallest growth in over ten years.³²³ And—due to the recent rise of constitutional carry—the 22 million number “clearly underestimates the true number and growth of people who [are] legally carry[ing] concealed handguns.”³²⁴ The number of people legally carrying handguns in constitutional carry states “undoubtedly went up significantly when there were no longer any fees or training requirements”; yet, the number of CCW permits in these states actually *fell* by over 131,000.³²⁵ These numbers show that, despite having the option to obtain a permit, citizens in constitutional carry states are largely opting not to.³²⁶

If states want their armed citizens to be screened, safe, educated, and trained, they must incentivize them to become so. And the best way to incentivize armed citizens to obtain CCW permits is to link the permit to a benefit, specifically by allowing them to be armed in more locations.³²⁷ The logic behind this proposal is not entirely different from the rationales behind passports (which allow citizens to travel more places after vetting) or TSA PreCheck (which grants air travelers

319. See e.g., *Benefits of a Texas Handgun License*, *supra* note 12 (describing enhanced location access for LTC holders in Texas). See also *supra* notes 252–61 and accompanying text and figure (describing how, despite those benefits, fewer Texans have sought concealed carry licenses since Texas adopted permitless carry).

320. CONCEALED CARRY PERMIT HOLDERS, *supra* note 122, at 3.

321. See *id.* at 8–9.

322. *Id.*

323. *Id.* at 3; 2023 ANNUAL FIREARM REPORT, *supra* note 257, at 6.

324. CONCEALED CARRY PERMIT HOLDERS, *supra* note 122, at 9.

325. *Id.*

326. See *supra* notes 320–25 and accompanying text (describing national trend). See also *supra* notes 252–61 and accompanying text (describing Texas trend).

327. See sources cited *supra* note 13 (providing examples of states that exempt enhanced permit holders from some location bans).

expedited security processing in exchange for additional vetting at the citizen's expense). For dedicated armed citizens, carrying a concealed handgun is something that must be done every day in every location they are legally able.³²⁸ This is because carrying a concealed handgun is a precaution against the unknown.³²⁹ If one *knew* he would face a lethal threat at a certain time and place, he would be a fool to go there unless absolutely necessary. Thus, responsible armed citizens do not carry handguns because they expect trouble; they carry them in case of unexpected trouble.³³⁰ Therefore, the legal right to carry in every location she frequents means a great deal to the law-abiding, armed citizen. Exempting her from location bans gives the armed citizen a significant, concrete reason to go to the trouble of obtaining a permit.³³¹

As previously described, *Bruen* calls many location-based firearms restrictions into question.³³² When they are inevitably challenged in court, many locations will not qualify as “sensitive places” under the text and history of the Second Amendment.³³³ However, it is critical to recognize that while the Constitution may prevent states from banning firearms in certain locations, it does not require states to allow the *permitless* carry (or open carry) of firearms in those locations.³³⁴ The *Bruen* Court was clear that “nothing in [its] analysis should be interpreted to suggest the unconstitutionality of . . . ‘shall-issue’ licensing regimes, under which ‘a general desire for self-defense is sufficient to obtain a [permit].’”³³⁵ The Court explained that, “[b]ecause these licensing regimes do not require applicants to show an atypical need for armed

328. See *Conditioning Firearm Rights*, *supra* note 165, at 375 (“Carrying a firearm for self-defense is not something that can be satisfactorily done sporadically. It is a precaution for events that may occur at times unknown.”).

329. *Id.* See also *DEADLY FORCE*, *supra* note 215, at 223 (“[A gun] is a special-purpose emergency rescue tool: no more, no less.”).

330. See *DEADLY FORCE*, *supra* note 215, at 220–23 (“Criminals attack people in times and places where they don’t think the victims will be prepared for them. . . . The only way to be prepared to ward off [criminal violence is] . . . to be routinely armed and constantly ready to respond to deadly threats . . .”).

331. See *id.* at 226–27 (discussing importance to armed citizens of following concealed carry laws). “Don’t let the legal system make you a felon for living up to your responsibilities to protect yourself and those who count on you. If you carry, make sure you carry legally.” *Id.* at 227.

332. See *supra* Section II.A.

333. See *supra* notes 49–54 and accompanying text.

334. See *N.Y. State Rifle & Pistol Ass’n v. Bruen*, 142 S. Ct. 2111, 2138 n.9 (2022).

335. *Id.* (quoting *Drake v. Filko*, 724 F.3d 426, 442 (3d Cir. 2013) (Hardiman, J., dissenting)).

self-defense, they do not necessarily prevent ‘law-abiding, responsible citizens’ from exercising their Second Amendment right to public carry.”³³⁶ Far from questioning the validity of concealed carry permits, the Supreme Court spoke favorably of shall-issue regimes that “require applicants to undergo a background check or pass a firearms safety course” because these requirements “are designed to ensure only that those bearing arms in the jurisdiction are, in fact, ‘law abiding, responsible citizens.’”³³⁷

Justice Brett Kavanaugh’s concurrence went even further to clarify that nothing in *Bruen* affects shall-issue licensing regimes.³³⁸ Justice Kavanaugh explained that—as long as states “do not grant open-ended discretion to licensing officials and do not require a showing of some special need” to obtain a permit—it is perfectly permissible under the Constitution to “require a license applicant to undergo fingerprinting, a background check, a mental health records check, and training in firearms handling and in laws regarding the use of force, among other possible requirements.”³³⁹ If it is constitutional for a state to prohibit permitless carry anywhere in public, it is certainly constitutional for a state to prohibit permitless carry in only particular enumerated places.³⁴⁰

Herein lies the solution to states’ sensitive places concerns. Many locations where states want to prohibit firearms will not qualify under the sensitive places exception when challenged.³⁴¹ These include restaurants, hospitals, sports facilities, movie theaters, churches, bars, and perhaps even schools.³⁴² *Bruen* prevents states from banning firearms in these non-sensitive places, but it does nothing to prevent states from banning *permitless* carry in these places.³⁴³

Accordingly, states should maintain their lists of locations where unlicensed firearms are banned by statute. Those without CCW permits could be prohibited from carrying firearms in locations such as

336. *Id.* (quoting *District of Columbia v. Heller*, 554 U.S. 570, 635 (2008)).

337. *Id.* (quoting *Heller*, 554 U.S. at 635).

338. *Id.* at 2161 (Kavanaugh, J., concurring).

339. *Id.* at 2162 (Kavanaugh, J., concurring).

340. *Cf. id.* (Kavanaugh, J., concurring) (“Properly interpreted, the Second Amendment allows a ‘variety’ of gun regulations.” (quoting *Heller*, 554 U.S. at 636)).

341. *See id.* at 2133–34 (majority opinion) (listing only three locations as presumptively “sensitive” and discussing historical test to qualify as such). *See also supra* notes 49–54 and accompanying text (describing recent cases invalidating sensitive-place restrictions post-*Bruen*).

342. *See supra* note 341.

343. *See Bruen*, 142 S. Ct. at 2138 n.9; *id.* at 2161–62 (Kavanaugh, J., concurring).

courthouses, legislative buildings, polling places, jails, airports (even outside secured areas), bars, churches, parks, hospitals, theaters, amusement parks, zoos, public buses and subways, sports arenas and stadiums, shopping malls, government offices, college campuses, and public and private K–12 schools (except in a vehicle while picking up or dropping off children).³⁴⁴

It should remain possible for an unlicensed carrier generally to go about his daily errands while armed. For instance, he should be able to drive from home to work and walk on public sidewalks while exercising his right to carry a handgun for self-defense. However, it should also be sufficiently inconvenient that he is incentivized to obtain a CCW permit. The idea is that the unlicensed carrier will notice and envy his licensed friend's ability to protect herself from lethal violence in many more places and to not have to constantly leave her firearm at home (or secured in her vehicle) as she visits prohibited locations throughout her day.

There should be a statutory constructive notice requirement for an unlicensed carrier to be found guilty of violating these firearms location bans. Specifically, all prohibited locations should be required to post a “No Unlicensed Firearms” sign at each public entrance, with a particular image, size, font, and wording prescribed by statute.³⁴⁵ And, of course, permission from the property owner could be made an affirmative defense for privately owned locations.³⁴⁶ With these caveats, states reasonably could impose severe penalties on those who carry firearms in violation of the statute. Depending on the location, carrying an unlicensed firearm into a prohibited location could be a serious misdemeanor (*e.g.*, for places like parks, churches, and theaters) or a felony (*e.g.*, for places like K–12 schools and bars).³⁴⁷

Likewise, states should give “No Unlicensed Firearms” signs posted by private property owners the force of law.³⁴⁸ This would mean that a property owner—even of a non-prohibited location—could post a sign making any permitless carrier automatically guilty of misdemeanor

344. An exception to these location bans for unlicensed carriers should be—for any privately owned property—if the owner has given them written permission to carry on the property.

345. *See, e.g.*, TEX. PENAL CODE ANN. §§ 30.05–.07 (West 2023).

346. *See supra* note 344.

347. *See, e.g.*, TEX. PENAL CODE ANN. §§ 46.03(a), (g).

348. *See, e.g.*, TEX. PENAL CODE ANN. § 30.05 (describing how private businesses can post signs criminalizing the carry of firearms on their properties); TEX. PENAL CODE ANN. §§ 30.06–.07 (same).

criminal trespass.³⁴⁹ Of course, private property owners would still retain the right to post signs purporting to exclude even *licensed* individuals. But the permit holder would not be guilty of criminal trespass unless he was personally asked to leave and refused to do so.³⁵⁰ In other words, “No Guns” signs would only carry the force of law for unlicensed carriers.³⁵¹ In any case—as a practical matter—a store employee is unlikely to notice and attempt to exclude someone peacefully going about his shopping while discretely carrying a concealed handgun.

In contrast, states should place far fewer restrictions on CCW permit holders. License holders who meet the high standards proposed below should have a permissive carry environment—more akin to that of off-duty police officers than unlicensed carriers. The state must send the message that, if one undergoes much greater screening and training, she will be treated with much greater trust and respect. As such, licensed individuals should only be prohibited from carrying concealed firearms in locations that are both sensitive *and* secure.

First—as a constitutional matter—the location must qualify as sensitive under the analysis laid out in *Bruen*.³⁵² For present purposes, let us assume this list is limited to K–12 public schools, government buildings, polling places, legislative assemblies, courthouses, and jails.³⁵³

349. See Hunter Gilroy, *No Guns Allowed Signs, Force of Law and You*, ALIEN GEAR HOLSTERS (Apr. 15, 2019), <https://aliengearholsters.com/blog/no-guns-allowed-signs/> [<https://perma.cc/3GT2-PQQH>] (listing seventeen states where privately posted “no guns allowed” signs carry the force of law).

350. See, e.g., TEX. PENAL CODE ANN. § 30.06(d) (increasing offense level from Class C misdemeanor to Class A misdemeanor for LTC holder who receives oral notice that firearms are prohibited and subsequently refuses to depart).

351. Under this Article’s proposal, businesses must still affirmatively act to ban firearms (e.g., post a “No Guns Allowed” sign). This is entirely different than a statutory ban on guns *unless* businesses post a “Guns Welcome” sign. As part of its package of post-*Bruen* gun-control laws, New York implemented such a scheme. See N.Y. PENAL LAW § 265.01-d (McKinney 2023) (“A person is guilty of criminal possession of a weapon in a restricted location when such person possesses a firearm, rifle, or shotgun and enters into or remains on or in private property where such person knows or reasonably should know that the owner or lessee of such property has not permitted such possession by clear and conspicuous signage indicating that the carrying of firearms, rifles, or shotguns on their property is permitted or by otherwise giving express consent.”). This statutory scheme is likely unconstitutional under *Bruen*. See *Christian v. Nigrelli*, 642 F. Supp. 3d 393, 398 (W.D.N.Y. 2022), *aff’d sub nom. Antonyuk v. Chiumento*, 89 F.4th 271 (2d Cir. 2023).

352. See *N.Y. State Rifle & Pistol Ass’n v. Bruen*, 142 S. Ct. 2111, 2133–34 (2022).

353. See *id.*

Second—as a policy matter—the location must be truly secure. In other words, all entrances should have manned security checkpoints with metal detectors, and there should be ample armed security personnel on site. The mere presence of “No Guns” signs is not enough, as these deter only the law-abiding.³⁵⁴ Preventing LTC holders—people who have proven themselves both competent and law-abiding—from carrying firearms in an unsecure location merely creates a pretend gun-free zone. A “pretend ‘gun-free zone’ is a deadly legal fiction . . . which exists by administrative declaration but is not enforced by metal detectors with armed guards—[it] is simply a zone where the people who follow the rules are made into easy victims for mass killers.”³⁵⁵ Consequently, these illusory “gun-free zones” may give people a false sense of security, but they also increase the likelihood and severity of an active shooter attack.³⁵⁶ If a school, polling place, or government office—though a sensitive place—is unprotected and unsecure, licensed individuals should be legally permitted to carry concealed firearms there. For bans applying to licensed individuals, the location must be both constitutionally “sensitive” and practically secure.³⁵⁷

To be sure, reasonable minds may question the wisdom of allowing even trained and vetted permit holders to carry firearms in locations like schools, bars, and courthouses. But even for licensed individuals, the right to carry a firearm under this system would not be unlimited. A few limitations on concealed carry permit holders help to alleviate concern.

First, in all locations off-limits to unlicensed firearms, permit holders should be limited to *concealed* carry. Open carry should be

354. See MORE GUNS, LESS CRIME, *supra* note 110, at 323 (arguing “a criminal who is intent on massacring people . . . would unlikely be deterred by any penalties for violating gun regulations”).

355. David B. Kopel, *Pretend “Gun-Free” School Zones: A Deadly Legal Fiction*, 42 CONN. L. REV. 515, 552 (2009).

356. See MORE GUNS, LESS CRIME, *supra* note 110, at 30 (arguing “[a]llowing citizens to carry concealed handguns reduces violent crimes” and “[m]ass shootings in public places”).

357. Of course, states do not have to prohibit LTC holders from every sensitive and secure building. For example, the Texas State Capitol building qualifies as both sensitive (legislative assembly) and secure (entrances with metal detectors guarded by Texas State Troopers). Still, Texas allows legally armed citizens to carry firearms there. “In fact, an LTC holder carrying a handgun will get quick entry and bypass security at the Texas Capitol building.” Emily Taylor & Richard Hayes, *Is Your Gun Banned Here? Carrying at State Buildings...* | Texas, U.S. LAW SHIELD (Feb. 26, 2021), <https://www.uslawshield.com/state-capitol-carry-tx/> [<https://perma.cc/MYY5-9W27>]. Especially with the heightened training and vetting requirements proposed herein, there is no reason why states cannot do likewise with other secure locations (*i.e.*, honor an LTC similar to a police ID and allow the holder entry).

prohibited in these locations. Concealed carry is preferred because—among other reasons—it prevents public alarm, reduces the chance of a gun grab, and gives the carrier tactical advantages (*e.g.*, the ability to surprise an assailant and the benefit of not being shot first by the armed robber or mass-shooter who notices the openly carried handgun).³⁵⁸

Limiting permit holders to concealed carry in many locations is not only more tactically sound and socially acceptable; it is also perfectly constitutional.³⁵⁹ After going through a lengthy examination of the historical evidence from antebellum America, the *Bruen* Court explicitly held that “[s]tates could lawfully eliminate one kind of public carry—concealed carry—so long as they left open the option to carry openly.”³⁶⁰ It follows that the inverse is also true; states may ban or restrict open carry today so long as they leave open the option of concealed carry.³⁶¹ Because “*the manner of public carry was subject to reasonable regulation*” in eighteenth and nineteenth century America, it remains constitutional to regulate how arms are carried as long as states do not “prevent law-abiding citizens with ordinary self-defense needs from carrying arms in public.”³⁶²

Thus—under this Article’s proposal—there would be no risk of an intoxicated bar patron attempting to grab the licensed (and sober) patron’s holstered handgun; no one would know the permit holder was carrying a firearm. Likewise, no first graders would be alarmed by the sight of a teacher or visiting parent openly carrying a handgun. Limiting permit holders to concealed carry in many locations also means long guns (*i.e.*, rifles and shotguns) will—for all intents and purposes—be prohibited. And handguns will be out of sight and out of mind.

358. This opinion is held almost universally by law enforcement trainers, professional firearms instructors, and experts in the field. *See, e.g.*, MASSAD AYOOB, THE GUN DIGEST BOOK OF CONCEALED CARRY 208–10 (Ken Ramage ed., 1st ed. 2008) (discussing downsides of open carry); Massad Ayoob, *Self-Defense: Should You Open Carry or Go Concealed?*, GUN DIGEST (Oct. 24, 2017), <https://gundigest.com/handguns/concealed-carry/self-defense-open-carry-concealed> [<https://perma.cc/JQ6W-GLA4>] (discussing problems of weapon retention, public alarm, and false accusations for open carriers); John Lovell, *WHY You SHOULD Open Carry | JLS EP009*, YOUTUBE (May 4, 2023), <https://www.youtube.com/watch?v=sCdGHWecPE&list=PLKMLEEGKqNwIEimioKJq-GSdsGdf6Zg7tS> (discussing pros and cons of open carry).

359. *See N.Y. State Rifle & Pistol Ass’n v. Bruen*, 142 S. Ct. 2111, 2150 (2022). *See also supra* notes 91–93 and accompanying text.

360. *Bruen*, 142 S. Ct. at 2150.

361. *See id.*

362. *Id.*

Second, states should enact stiff penalties for permit holders who carry firearms under the influence of alcohol or drugs. Most states already make it a crime to do so.³⁶³ Under this Article's proposal, it would be a serious misdemeanor—akin to a driving under the influence conviction—for a permit holder to be publicly intoxicated while carrying a firearm.³⁶⁴ The permit holder's intoxication should be provable by the per se legal limit (*i.e.*, 0.08 blood alcohol content) or by a police officer's observations and circumstantial evidence.³⁶⁵ Upon an arrest, the individual's CCW permit should be suspended; upon conviction, revoked.³⁶⁶ As an additional safeguard in bars and restaurants that serve alcohol, states could also make it a misdemeanor offense for a permit holder to consume any alcohol while armed. Several states already have similar laws.³⁶⁷ This would ensure that if a permit holder is carrying a concealed firearm in a bar, he is above reproach and avoids any appearance of impropriety.³⁶⁸

363. *See, e.g.*, IDAHO CODE § 18-3302B (2023) (“It shall be unlawful for any person to carry a concealed weapon on or about his person when intoxicated or under the influence of an intoxicating drink or drug.”).

364. Note that, in Texas, it is a crime for an unlicensed individual to be intoxicated while carrying a firearm in public, but the same conduct currently is not criminalized for license holders. *See* TEX. PENAL CODE ANN. § 46.02(a-6) (West 2023); TEX. PENAL CODE ANN. § 46.15(b)(6); *Laws That Relate to Carrying a Handgun FAQs*, TEX. DEP'T PUB. SAFETY, <https://www.dps.texas.gov/section/handgun-licensing/faq/laws-relate-carrying-handgun-faqs> [<https://perma.cc/ER9X-AYS5>] (“[T]he Penal Code's prohibition against carrying a handgun while intoxicated does not apply to license holders . . .”).

365. *See, e.g.*, TEX. PENAL CODE ANN. § 49.01(2) (defining “intoxicated” as either “having an alcohol concentration of 0.08 or more” or “not having the normal use of mental or physical faculties by reason of the introduction of alcohol, a controlled substance, a drug, a dangerous drug, a combination of two or more of those substances, or any other substance into the body”). *Compare* TEX. PENAL CODE ANN. § 49.02(c) (punishing public intoxication as a Class C misdemeanor), *with* TEX. PENAL CODE ANN. § 49.04(d) (punishing driving while intoxicated with blood alcohol content over 0.15 as a Class A misdemeanor). This Article advocates for punishing public intoxication by armed license holders as more serious Class A misdemeanors.

366. *See, e.g.*, TEX. GOV'T CODE ANN. § 411.186 (West 2023) (listing criteria for LTC revocation, including conviction of a Class A or Class B misdemeanor).

367. *See, e.g.*, VA. CODE ANN. § 18.2-308.012(B) (2023) (allowing licensed concealed carry in alcohol establishments, provided the license holder consumes no alcohol); OHIO REV. CODE ANN. § 2923.121(B)(e) (West 2023–24) (same); TENN. CODE ANN. § 39-17-1321(b) (2023) (same).

368. Avoiding the appearance of impropriety that can result from consuming even a small amount of alcohol while armed can be critical in the legal aftermath of a justified self-defense shooting. That is part of the reason many police departments have policies against their off-duty officers consuming alcohol while armed. *See* Kevin Rector & Richard Winton, *Armed and Drunk: Off-Duty Cops Get into Trouble Drinking*, LAPD

Third, states should continue allowing property owners and employees to exclude permit holders on an individual basis. Merely because it is not a crime for a permit holder to carry a firearm on a certain premises, does not mean she must be permitted to enter or remain there. Private property owners should still retain the right to exclude or refuse service to anybody. For example, a nightclub owner could employ bouncers with metal detectors at the entrance and refuse entrance to anyone carrying a concealed weapon—permit or no permit. Likewise, a bar manager might notice a patron with a CCW permit legally but indiscreetly carrying a concealed firearm while seated at the bar (*i.e.*, the gun is obviously “printing” or protruding underneath the patron’s shirt). The bar manager would be within her rights to ask the permit holder to leave.³⁶⁹ If the permit holder refused to leave, he would be guilty of criminal trespass.³⁷⁰ Although “No Guns” signs would not carry the force of law for permit holders, an establishment could still screen all customers for weapons and/or exclude any individual found to be carrying a weapon.

Likewise, an establishment could still serve a permanent trespass warning upon any individual suspected to be dangerous, known to carry weapons in violation of store policy, or thought likely to cause a disturbance.³⁷¹ Similarly, if a courthouse or local government office was not secured by controlled entrances and armed security (or it nevertheless chose to admit armed permit holders),³⁷² it could still exclude certain people or subject them to additional screening to ensure they are unarmed. For example, suppose a constitutional carry state has county courthouses in both urban and rural areas; some are secure buildings, and some are not. Therefore, the state decides that LTC holders—but not unlicensed individuals—will be legally permitted to carry concealed firearms in courthouses (despite the state’s ability to outlaw the practice under *Bruen* if it so chose). The state could still allow judges and court security officers to search or exclude certain individual permit holders

Rules Fail To Prevent It, L.A. TIMES, <https://www.latimes.com/california/story/2021-06-04/lapd-policy-mum-armed-off-duty-officers-drinking-alcohol> [<https://perma.cc/AE55-JGKZ>] (June 4, 2021, 7:30 AM).

369. See generally TEX. PENAL CODE ANN. §§ 30.05–.07 (West 2023) (discussing criminal trespass offenses in Texas).

370. See TEX. PENAL CODE ANN. § 30.06 (criminalizing this action in Texas).

371. See TEX. PENAL CODE ANN. § 30.05(a) (making it an offense to enter or remain on private property if individual “had notice that the entry was forbidden” or “received notice to depart but failed to do so”).

372. See *supra* note 357 and accompanying text.

who might cause a disturbance or act rashly (*e.g.*, parties to a case, co-defendants, victims and their family members).

Finally, only permit holders who meet the extensive training and vetting requirements outlined below would be allowed to carry firearms in these locations.³⁷³ The proposed standards and requirements to obtain a CCW permit under this scheme are more stringent than any currently in existence in the United States.³⁷⁴ Thus—in terms of quantity and quality of training and vetting—the permit holder in this proposed system is more akin to an off-duty police officer than to the average armed citizen today. In short, even for permit holders, the right to carry would not be unlimited. But it must be expansive enough to incentivize them to undergo the training and screening outlined below.

3. STATES SHOULD INCREASE THE AMOUNT OF TRAINING AND VETTING REQUIRED TO OBTAIN A LICENSE TO CARRY

Given the availability of constitutional carry and the greater trust this proposal places in permit holders, concealed carry permits should be more difficult to obtain. Of course, permits should—and must after *Bruen*—be issued on a nondiscretionary shall-issue basis.³⁷⁵ There should be no subjective litmus tests related to the applicant’s personal, political, or religious views.³⁷⁶ To remain compliant with *Bruen*—and to avoid the

373. See *infra* Section III.A.3.

374. Compare *Frequently Asked Questions*, ILL. ST. POLICE FIREARMS SERVS. BUREAU, <https://www.ispfsb.com/Public/Faq.aspx> [https://perma.cc/4R6B-6YPU] (requiring sixteen hours of class, one hour of live-fire training, and thirty-round shooting qualification at maximum of ten yards), and DIV. OF CRIM. JUST. SERVS., N.Y. STATE POLICE, MINIMUM STANDARDS FOR NEW YORK STATE CONCEALED CARRY FIREARM SAFETY TRAINING 3–4 (2022), https://gunsafety.ny.gov/system/files/documents/2022/09/nysp_dcjsminimumstandards_firearmsafetytraining.pdf [https://perma.cc/8MY2-RG2B] [hereinafter MINIMUM STANDARDS FOR NEW YORK STATE] (requiring sixteen hours of class, two hours of live-fire training, and five-round shooting qualification at four yards), with training requirements proposed *infra* Section III.A.3.

375. See *N.Y. State Rifle & Pistol Ass’n v. Bruen*, 142 S. Ct. 2111, 2138 n.9 (2022).

376. See *Antonyuk v. Chiumento*, 89 F.4th 271, 387–88 (2d Cir. 2023) (affirming district court’s injunction on New York’s social media disclosure requirement for CCW permit applicants); Kenichi Serino & Justin Stabley, *5 Questions About New York’s New Social Media Requirements for Gun Applicants*, PBS (Sept. 7, 2022, 4:49 PM), <https://www.pbs.org/newshour/politics/how-new-yorks-new-social-media-requirements-for-gun-permits-work-and-possible-challenges-ahead> (describing criticisms of and potential challenges to New York’s requirement that CCW permit applicants

racial and socioeconomic discrimination that has plagued discretionary regimes—any statutory scheme for permit issuance should “contain only ‘narrow, objective, and definite standards’ guiding licensing officials, rather than requiring the ‘appraisal of facts, the exercise of judgment, and the formation of an opinion.’”³⁷⁷ But nothing prevents a state from making those objective standards more demanding. In states with the alternative of a permitless-carry option, there should be a higher bar to obtain a concealed carry permit.

First, each applicant should undergo a thorough full-scope background check. States should use the background checks they require for prospective police officers as a framework for codifying the specific requirements. Except for polygraph interviews (which are of questionable reliability in any case)³⁷⁸ and extensive credit checks, the background check for a CCW permit should be the same as for a law enforcement position. Accordingly, it should include criminal, mental health, substance abuse, and personal history. Applicants should have no felony convictions, and they should not have been convicted of a serious misdemeanor within five years (*e.g.*, driving under the influence, possession of marijuana, simple assault or battery, criminal trespass, reckless driving, disorderly conduct, petit theft).³⁷⁹ Furthermore, they should not have more than five Class C misdemeanor convictions or infractions in the last three years (*e.g.*, speeding tickets, city code violations).³⁸⁰ Applicants should not have been involuntarily committed or adjudicated as having certain enumerated mental illnesses (*e.g.*, schizophrenia, bipolar personality disorder), unless they provide letters from two mental health professionals stating they are cured or otherwise safe to carry a firearm.³⁸¹ Likewise, applicants should not have been in in-patient treatment for drug or alcohol abuse in the last ten years, unless they provide letters from two primary care providers or professional

submit three years’ of social media history so authorities can assess their “character and conduct”).

377. *Bruen*, 142 S. Ct. at 2138 n.9 (first quoting *Shuttlesworth v. City of Birmingham*, 394 U.S. 147, 151 (1969); and then quoting *Cantwell v. Connecticut*, 310 U.S. 296, 305 (1940)).

378. See *The Truth About Lie Detectors (aka Polygraph Tests)*, AM. PSYCH. ASS’N, <https://www.apa.org/topics/cognitive-neuroscience/polygraph> [<https://perma.cc/BNX4-T5Z7>]; Christian L. Hart, *Do Lie Detector Tests Really Work?*, PSYCH. TODAY (Jan. 14, 2020), <https://www.psychologytoday.com/us/blog/the-nature-deception/202001/do-lie-detector-tests-really-work>.

379. See, *e.g.*, TEX. GOV’T CODE ANN. § 411.172(a) (West 2021).

380. Multiple infraction-level offenses do not disqualify an applicant in most states today. See, *e.g.*, *id.*

381. See, *e.g.*, TEX. GOV’T CODE ANN. §§ 411.172(d)–(f).

counselors stating they are recovered and safe to carry a firearm.³⁸² States might also require applicants to not be delinquent in paying taxes, child support, or other court-ordered financial obligations.³⁸³

Second, each applicant should complete a drug test.³⁸⁴ Applicants should submit urine samples through occupational health providers approved by the state. The providers will test the samples for alcohol, marijuana (even in states that have legalized recreational marijuana), opiates, cocaine, methamphetamine, and a host of other controlled substances. The providers would then submit the results to the state agency responsible for issuing CCW permits—usually the state police.

Third, and most important, states must require applicants to complete considerable training.³⁸⁵ This Article recommends twenty-four hours of training, two written tests, and a challenging live-fire qualification. Twenty-four hours of training is more than any state currently requires for a CCW permit.³⁸⁶ This training should consist of three portions: online self-study and pretest, in-person classroom instruction, and live-fire range training.

Before applicants can begin the course, they should be required to pass a multiple-choice pretest on firearms safety and related information. This online, open-book test would—in effect—add more hours of training. Each state should ask its state law enforcement agency to promulgate a self-study guide covering basic information about the four basic rules of firearms safety,³⁸⁷ firearms nomenclature and functions, safe firearms storage, the fundamentals of marksmanship,³⁸⁸ and other

382. See, e.g., TEX. GOV'T CODE ANN. §§ 411.172(c)–(f).

383. See, e.g., TEX. GOV'T CODE ANN. §§ 411.172(a)(11)–(12).

384. The requirements outlined in this paragraph better ensure the applicant “is not a chemically dependent person.” TEX. GOV'T CODE ANN. § 411.172(a)(6).

385. See Mascia & Brownlee, *supra* note 214 (“Unless laws require training, some gun owners won’t seek it out. . . . 39 percent of gun owners [have] never received formal firearms training.”).

386. See, e.g., *supra* note 374. See also *Carry Concealed Weapons (CCW) License*, SAN DIEGO CNTY. SHERIFF’S DEP’T, <https://www.sdsheriff.gov/i-want-to/get-a-permit-or-license/regulatory-licenses-and-fees/concealed-weapons-license> [https://perma.cc/LQ2E-M92C] (describing California’s eight-to-sixteen-hour training requirement).

387. See *4 Primary Rules for Gun Safety*, NSSF (July 5, 2021), <https://www.nssf.org/articles/4-primary-rules-of-firearm-safety/> [https://perma.cc/29FF-RMZU] (describing the four basic rules of firearms safety: (1) “Treat guns as though they are always loaded”; (2) “Always keep gun pointed in a safe direction”; (3) “Keep your finger off of the trigger until your sights are on your intended target”; and (4) “Always be sure of your target and what’s behind it”).

388. ARK. L. ENF’T TRAINING ACAD., FIREARMS MANUAL: FUNDAMENTALS OF MARKSMANSHIP 15, <https://www.dps.arkansas.gov/wp-content/uploads/PAPP->

pertinent information. This would not be challenging to do, as law enforcement agencies and training academies already have voluminous amounts of training material on these topics for their own officers.³⁸⁹ The pretest should be published online and generate a certificate upon its completion—to be presented to the LTC instructor at the beginning of the course. As a bonus, this curriculum would be available to all—improving the firearms safety and proficiency of more than just LTC holders.³⁹⁰

After successfully completing the pretest, the student should be required to attend sixteen hours of in-person classroom instruction with a state-certified instructor.³⁹¹ The instructor should be required by statute to cover several broad topics: firearms safety, marksmanship fundamentals, self-defense and tactical considerations, de-escalation techniques, handgun concealment and retention, interacting with police while armed, and state laws relating to firearms and the use of deadly force.³⁹² States could also require that the legal portion (*e.g.*, at least two hours) be taught by a licensed attorney.³⁹³

FA3 Fundamentals-of-Marksmanship.pdf [https://perma.cc/2W6P-9N3J] (describing the fundamentals of handgun marksmanship: stance, grip, sight alignment, sight picture, breath control, trigger control, and follow through).

389. See generally *Idaho Peace Officer Standards and Training*, IDAHO POST, <https://elearning.post.idaho.gov/> [https://perma.cc/QH9S-H5NP] (last visited May 4, 2023); *Course Curriculum Materials and Updates*, TEX. COMM’N ON L. ENF’T, <https://www.tcole.texas.gov/content/course-curriculum-materials-and-updates-0> [https://perma.cc/MF5Y-5RZZ].

390. See, *e.g.*, *Firearm Carry Act*, TEX. DEP’T PUB. SAFETY, <https://www.dps.texas.gov/section/training-operations-tod/firearm-carry-act> [https://perma.cc/K2V5-N594] (Sept. 1, 2021) (“The [DPS] Training Operations Division has developed the following two-part video overview for firearm safety and handling under the Firearm Carry Act. The course is free of charge.”).

391. Of course, states should have high standards for their concealed carry instructors as well. Instructors should have to be LTC holders in good standing, graduates of a firearms instructor course, and otherwise qualified and certified by the state to teach concealed carry permit classes. See, *e.g.*, TEX. GOV’T CODE ANN. § 411.190 (West 2017) (“Qualified Handgun Instructors and Approved Online Course Providers”); IDAHO CODE § 18-3302k(4)(c) (2015) (requiring instructors to be certified by National Rifle Association or Idaho Peace Officer Standards and Training).

392. See, *e.g.*, TEX. GOV’T CODE ANN. § 411.1883 (West 2023) (describing special LTC training course for certain first responders); IDAHO CODE § 18-3302k(4)(c)(iv) (requiring instruction in laws “relating to firearms and the use of deadly force,” firearms safety, “[s]elf-defense principles,” and “[l]ive fire training”); MINIMUM STANDARDS FOR NEW YORK STATE, *supra* note 374, at 1–3 (mandating several curriculum topics: firearm safety and maintenance, firearms laws, situational awareness, de-escalation tactics, interacting with police, use of deadly force, suicide prevention, marksmanship principles).

393. See, *e.g.*, IDAHO CODE § 18-3302k(4)(c)(iv) (requiring portion of enhanced concealed carry permit course on “Idaho law relating to firearms and the use of deadly

Beyond that, instructors should be given leeway in the design and delivery of their curriculum. For example, they could incorporate scenario-based training, dry-fire practice, and other practical exercises. Instructors could even choose to add extra live-fire training. However, there should be a state-mandated, standardized written exam that all applicants must pass to obtain their permits. As opposed to the open-book pretest—which serves more as a primer and review—this exam should be a closed-book test consisting of multiple-choice and short-answer questions. It should cover all the topics instructors are mandated by the state to teach.³⁹⁴ Each applicant should have to score a seventy-five percent or better (say, out of fifty questions) to pass. Applicants who fail should be given one opportunity to retest.

Last, each student should be required to complete eight hours of live-fire range training (out of twenty-four hours of total training) and fire at least 200 rounds.³⁹⁵ Instructors should have the freedom to integrate live-fire training with classroom instruction as they see fit. For example, all live-fire training could be conducted for eight hours straight on the last day of class, or it could be spread out among multiple days. The state should mandate certain tactical and firearms-manipulation skills be introduced, however.³⁹⁶ These should include handgun marksmanship from contact distances out to twenty-five yards, drawing from the holster, tactical and emergency reloads, one-handed shooting, low-light shooting, clearing malfunctions, and weapon retention.³⁹⁷

There should also be a state-mandated, standardized firearms qualification that all applicants must pass to obtain their CCW permits.³⁹⁸

force” to be taught by a senior law enforcement officer or “member of the Idaho state bar”).

394. See *supra* note 392 and accompanying text.

395. Cf. Halek, *supra* note 13 (“Arguably, an 8 hour class or a 24 hour class won’t change incompetence. What it will do is demonstrate that at a minimum, this individual has experienced a set of training, completed a curriculum of study, and demonstrated basic competency in the principles.”).

396. See, e.g., TEX. GOV’T CODE ANN. § 411.1883 (describing heightened live-fire training requirements for certain first responders on “reactive shooting,” “tactical shooting,” “shooting while moving,” and “shooting in low light conditions”); MINIMUM STANDARDS FOR NEW YORK STATE, *supra* note 374, at 3 (requiring two hours of live-fire instruction on “[s]afe drawing, target acquisition, and re-holstering,” “[s]afe loading and unloading,” “[p]erforming a firearm condition check,” and “[s]afely discharging the firearm”).

397. See *supra* note 396.

398. See Mascia & Brownlee, *supra* note 214 (emphasizing the importance of sufficient training). But see Note, Bruen’s Ricochet: Why Scored Live-Fire Requirements

A challenging, realistic qualification—which tests the practical skills covered in the class—is critical to ensuring every CCW permit holder is trained and proficient.³⁹⁹ Most states have no shooting requirement to obtain a CCW permit.⁴⁰⁰ Other states require the applicant to complete live-fire training, but mandate no actual test or qualification; an applicant could simply fire the prescribed number of rounds into the ground and still meet the requirement.⁴⁰¹ A few states do have standardized shooting tests, but they are all laughably easy to pass.⁴⁰² For this Article’s statutory scheme to make sense, LTC holders must be trained to a higher level of proficiency.

States should mandate that LTC holders pass similar handgun qualification tests as police officers. States could even simply copy and paste the test administered by their statewide law enforcement agency or state police academy. Most law enforcement handgun qualifications involve firing approximately fifty rounds at distances between three and twenty-five yards.⁴⁰³ Officers must generally score between eighty to ninety percent, and they are given two or three attempts to pass.⁴⁰⁴ The

Violate the Second Amendment, 136 HARV. L. REV. 1412, 1432–33 (2023) (arguing scored live-fire qualifications for CCW permits are unconstitutional under *Bruen*).

399. See Mascia & Brownlee, *supra* note 214.

400. *Id.* (“As of January 2022, the Sunshine State was one of only 18 that require ‘live-fire’ training to carry guns in public . . .”).

401. See, e.g., IDAHO CODE § 18-3302k(4)(c)(iv) (2023) (requiring “the firing of at least ninety-eight (98) rounds by the student” but prescribing no qualification test or proficiency standard). See also Mascia & Brownlee, *supra* note 214 (“[T]he split on live-fire mandates does not necessarily follow the usual partisan divide.”).

402. See, e.g., MINIMUM STANDARDS FOR NEW YORK STATE, *supra* note 374, at 4 (describing New York test requiring student to hit a 25”x11” target four out of five times from a distance of four yards); *Carry Concealed Weapons (CCW) License*, *supra* note 386 (describing California test requiring student to hit target thirteen out of fifteen times from distances of seven, five, and three yards); sources cited *supra* note 242 (describing Texas test requiring student to hit large silhouette target thirty-five out of fifty times from distances of fifteen, seven, and three yards).

403. See, e.g., Nate Parker, *Shooting the New 2019 FBI Handgun Qualification*, USACARRY, <https://www.usacarry.com/2019-fbi-handgun-qualification/> [https://perma.cc/9WMP-NRJJ] (Dec. 29, 2021); IDAHO PEACE OFFICER STANDARDS & TRAINING, POST HANDGUN QUALIFICATION SHORT COURSE (2023), <https://isp.idaho.gov/forensics/wp-content/uploads/sites/19/documents/forms/F/Firearms%20Basic%20Qualification.pdf> [https://perma.cc/A9S5-KNF7]; TEX. COMM’N ON L. ENF’T, COURSE NO. 2222, FIREARMS INSTRUCTOR CERTIFICATION COURSE 86 (2021) [hereinafter FIREARMS INSTRUCTOR CERTIFICATION]; TEX. DEP’T OF PUB. SAFETY, FIREARMS TRAINING UNIT, HANDGUN QUALIFICATION (“PRIMARY” OR “IN LIEU OF”) 25 YARD LINE COURSE – 50 ROUNDS (2021) (on file with author) [hereinafter HANDGUN QUALIFICATION].

404. See sources cited *supra* note 403.

better “courses-of-fire” all incorporate realistic skills and tasks (*e.g.*, drawing from the holster, reloading, shooting one-handed, shooting while moving, giving verbal commands).⁴⁰⁵ Each state’s live-fire qualification standard for a CCW permit should be based on the live-fire standard for its police officers (with adjustments and reasonable accommodations for citizens with disabilities).⁴⁰⁶ It should test the hands-on skills learned in class, be tactically realistic, and be challenging but attainable by the average citizen. Holding CCW permit holders to the higher training standards of police officers makes sense if permit holders are to represent a more “elite” group of citizens publicly carrying firearms.

In fact, if a state were to require the same handgun qualification as police officers, it would be holding permit holders to a *higher* standard. This is because it is significantly more difficult to pass a timed shooting test using a subcompact firearm and drawing from concealment than it is using a full-size handgun and drawing from a duty holster.⁴⁰⁷ This is also because a CCW permit class is not a marksmanship class; students will have to come with some previous training because eight hours is simply not enough time to get a brand new shooter to a level of proficiency capable of passing the shooting test.⁴⁰⁸ New law enforcement officers

405. See, *e.g.*, sources cited *supra* note 403.

406. Cf. sources cited *supra* note 403. Admittedly, law-abiding citizens with physical disabilities present a unique challenge to this training proposal. One need not be as physically capable as a soldier or police officer to proficiently use a handgun in self-defense. Thus, additional time and other reasonable accommodations should be given to allow responsible citizens with disabilities an equal opportunity to pass the live-fire test. But inclusion must be balanced against public safety; this means a completely blind applicant—for example—likely would be unable to obtain a permit under this system. See generally David Olson, *Blind Fargo Man Secures Elusive Minnesota Concealed Weapons Permit*, PARK RAPIDS ENTER. (Aug. 9, 2021, 8:30 AM), <https://www.parkrapidsenterprise.com/community/blind-fargo-man-secures-elusive-minnesota-concealed-weapons-permit> [https://perma.cc/Y4DW-26WE].

407. Subcompact handguns—while easier to conceal and more comfortable to carry—generally have short sight radiuses (making it more difficult to aim), hold less ammunition (requiring more reloads), weigh less, and have shorter barrels (increasing felt recoil). These factors—combined with the need to clear a cover garment before drawing—make it more difficult to shoot quickly and accurately under pressure. For this reason, most law enforcement agencies have an easier “back-up gun” course-of-fire for officers to qualify with their smaller off-duty and back-up guns. See, *e.g.*, FIREARMS TRAINING UNIT, TEX. DEP’T OF PUB. SAFETY, BACK UP (“IN ADDITION TO”) FIREARMS QUALIFICATION COURSE (2017) (on file with author).

408. Cf. Mascia & Brownlee, *supra* note 214 (arguing a CCW class “is only a basic necessity” and additional “regular practice and ongoing training are just as important”).

have the benefit of several days of handgun marksmanship training in a police academy.⁴⁰⁹ Private citizens will have to achieve this same level of marksmanship skill and firearms proficiency on their own if they are to pass the test. But this is all the better; if armed citizens can pass the same handgun qualification as their state's law enforcement officers, and do so under even less optimal conditions, there should be no doubt as to their firearms proficiency.

In terms of other considerations—as long as all training is complete within ninety days of pretest completion—instructors should have flexibility to devise their own schedules.⁴¹⁰ For example, many LTC classes would likely consist of three eight-hour days, but classes could also be organized as two twelve-hour days. Similarly, an LTC class could be completed in one long weekend, split into two weekends, or even conducted across eight three-hour evening sessions.

Instructors should be free to set their own prices in accordance with market conditions. A twenty-four-hour LTC class would likely cost between \$300 to \$500.⁴¹¹ When one adds in another \$80 to \$100 in ammunition costs and \$40 to \$60 in administrative fees (*e.g.*, fingerprinting and permit processing by the state), the costs to obtain a CCW permit under this statutory scheme are not insignificant.⁴¹² But neither are the costs unreasonable or unnecessary.⁴¹³ Assuming the state keeps its own administrative fees reasonable (say, \$50)—and constitutional carry is still an option for low-income individuals or those facing an emergency—these costs would be reasonable.⁴¹⁴ Yet, the cost would also limit the number of permit holders to those truly motivated to spend the time and money to achieve a higher level of proficiency.⁴¹⁵ In other words, moderately high training time and costs would serve as

409. *Cf.* FIREARMS INSTRUCTOR CERTIFICATION, *supra* note 403, at 2 (describing the forty-hour minimum length of course required to become a certified firearms instructor).

410. *See, e.g.*, IDAHO CODE § 18-3302k(4)(c) (2023) (requiring completion of required training within the twelve months preceding application for enhanced CCW permit).

411. *See supra* note 245 and accompanying text (citing source describing eight-hour CCW class price for \$100).

412. *See supra* notes 204–06, 245, 249 and accompanying text.

413. *See supra* notes 204–06, 245, 249 and accompanying text.

414. *See supra* note 206 and accompanying text (describing current costs in several states already in this range).

415. *See* CONCEALED CARRY PERMIT HOLDERS, *supra* note 122, at 38–40 (describing how states with higher costs and training requirements have far fewer CCW permit holders). “The number of people who carry permitted concealed handguns is clearly related to the cost of getting permission.” *Id.* at 9.

minor barriers to entry.⁴¹⁶ This further mitigates concern about too many people carrying firearms in crowded and controversial locations.⁴¹⁷ In the alternative, if states determine these costs impose an unacceptable burden on permit applicants (or disproportionately affect minority applicants), they could provide vouchers or tax credits to reimburse permit holders for their training costs.⁴¹⁸ This would provide even further incentive for armed citizens to obtain CCW permits.

Training and background checks should have to be repeated every four years upon CCW renewal.⁴¹⁹ This is also a higher standard than almost any state today, most of which renew permits every five years and do not require any refresher training.⁴²⁰

In sum, this Article proposes specific objective criteria for issuing permits on a shall-issue basis—as required by the Supreme Court in *Bruen*.⁴²¹ But it also proposes criteria that are challenging and relatively difficult to achieve. This is by design. Any citizen with a general desire to carry a firearm for self-defense should be able to do so regardless of

416. See *id.* at 38 (arguing relatively higher costs and training requirements are the reason only 3.37% of adults in Illinois and 0.79% of adults in D.C. have CCW permits, compared to 9.2% of adults in other shall-issue states).

417. See *id.*

418. Cf. *id.* at 39–40 (arguing high permitting and training costs discriminate against Black and low-income Americans).

419. Cf. Mascia & Brownlee, *supra* note 214 (arguing that “regular practice and ongoing training are just as important” as an initial class, and that “muscle memory is crucial for people to effectively respond to a threat when their adrenaline is pumping”). Even if it is a condensed version (*e.g.*, an eight-hour class with legal update and skills review, shortened written test, and live-fire qualification), requiring LTC renewal applicants to refresh their knowledge and reinforce their skills is critical to ensuring they remain competent and qualified.

420. See CONCEALED CARRY PERMIT HOLDERS, *supra* note 122, at 23–28 (listing length CCW permit is valid in each of the fifty states); TEX. GOV’T CODE ANN. § 411.185 (West 2017) (requiring no refresher training to renew LTC). But see *Carry Concealed Weapons (CCW) License*, *supra* note 386 (“For license renewal applicant[s] [in California] the course of training for issuance of a license is 8-hours of instruction on firearm safety, firearm handling, shooting technique and laws regarding the permissible use of a firearm. . . . [T]he renewal applicant course of training shall include live-fire shooting exercises.”).

421. See *N.Y. State Rifle & Pistol Ass’n v. Bruen*, 142 S. Ct. 2111, 2138 n.9 (2022). See also *The Commonplace Second Amendment*, *supra* note 24, at 803 n.32 (explaining that the adjective “well-regulated” meant well-trained and disciplined). Indeed, training and proficiency requirements can likely be justified under *Bruen*’s text-and-history approach based on the meaning of “well-regulated” in the Second Amendment’s prefatory clause. See *id.*

race, religion, occupation, or political connections.⁴²² Doing so is his right. But the armed citizen—especially the one who seeks a more permissive carry environment—should also be willing to undergo substantial training, vetting, and education.⁴²³ Doing so is his responsibility.⁴²⁴

B. Applying Principles to Practice: Implementing the Scheme in Texas

The bifurcated statutory scheme for concealed carry that this Article proposes is appropriate for any constitutional carry state. Yet, just as Texas served as an example of the problem,⁴²⁵ it can also illustrate implementation of the solution. Below are a few specific ways this system should be implemented in Texas.

Texas already has both constitutional carry and licensed carry options.⁴²⁶ Texas also already requires a training class, written test, and pistol qualification to obtain an LTC.⁴²⁷ Furthermore, the Texas government seems to recognize that, after constitutional carry, people may need to be incentivized to obtain an LTC.⁴²⁸ The problem is that—aside from those who must frequent university campuses or travel out of state often—there is no benefit to carrying with an LTC rather than with no permit at all.⁴²⁹ This should change.

The simplest way to enact the proposed statutory scheme in Texas is to amend just a few provisions of the Texas Penal Code and Texas Government Code. Although Texas weapons laws are confusing and convoluted, a complete overhaul is beyond the scope of this Article.⁴³⁰ Since Texas—like most constitutional carry states—already has the basic

422. See *Bruen*, 142 S. Ct. at 2161 (Alito, J., concurring) (“Today, unfortunately, many Americans have good reason to fear that they will be victimized if they are unable to protect themselves. And today, no less than in 1791, the Second Amendment guarantees their right to do so.”). See also *supra* notes 99–104 and accompanying text (discussing racist history of discretionary permitting laws).

423. See Mascia & Brownlee, *supra* note 214 (“‘It is important for people to be responsible gun owners,’ Crew [a firearms instructor] said. ‘And being responsible looks like a few things: It looks like a person that wants to train, a person that continues to train.’”).

424. See *id.*

425. See *supra* Section II.C.

426. See *supra* Section II.C.1.

427. See *supra* Section II.C.1.

428. See *Benefits of a Texas Handgun License*, *supra* note 12.

429. See *id.*

430. Interview with Lauren Murphree, *supra* note 266.

statutory framework for a bifurcated system, the first step is to incentivize citizens to reject the permitless carry option.⁴³¹

Texas Penal Code Section 46.03 lists the various places weapons are prohibited by statute.⁴³² Locations generally off-limits to firearms—and other prohibited weapons⁴³³—under Section 46.03 include schools, polling places, courtrooms and court offices, racetracks, airports, bars, sporting or interscholastic events, correctional facilities, hospitals, mental-health facilities, amusement parks, and government meetings.⁴³⁴ Some of these bans are quite vague and broadly defined.⁴³⁵ After listing the myriad prohibited locations (and a few exceptions), Section 46.03(f) states that “it is not a defense to prosecution under this section that the actor possessed a handgun and was licensed to carry a handgun under Subchapter H, Chapter 411, Government Code.”⁴³⁶

The easiest way for the Texas legislature to incentivize Texans to obtain LTCs is to remove one word from Section 46.03(f): “not.” This would exempt LTC holders from Section 46.03’s location restrictions, but it would keep all those bans in place for unlicensed carriers. Of course, the legislature could also leave a few sensitive, secure locations off-limits to all, such as courtrooms, jails, and K–12 schools (airports are already covered by federal law).⁴³⁷ If Texas chose to keep secured courthouses, jails, and K–12 schools off-limits even to LTC holders, the amended Section 46.03(f) statute should read as follows:

Except for the facilities described in Subsections (a)(1), (a)(3), and (a)(9)—provided the facility has armed security personnel, metal detectors, and posted No-Firearms signs complying with Section 46.15(o) at each public entrance—it is a defense to prosecution under this section that the actor

431. See *supra* Section III.A.2.

432. TEX. PENAL CODE ANN. § 46.03 (West 2023).

433. Section 46.03 includes firearms, “location-restricted kni[ves],” clubs, and weapons described in Section 46.05, like explosives and zip guns. See TEX. PENAL CODE ANN. §§ 46.03, 46.05. Smaller knives and pepper spray are not defined as weapons nor banned in these locations. See TEX. PENAL CODE ANN. § 46.01.

434. TEX. PENAL CODE ANN. § 46.03.

435. See *supra* Section II.C.2 (discussing ambiguous and problematic aspects of Texas’s firearms location restrictions).

436. TEX. PENAL CODE ANN. § 46.03(f).

437. See 49 C.F.R. § 1540.111(a) (2022) (prohibiting weapons in secure areas of airports).

possessed a handgun and was licensed to carry a handgun under Subchapter H, Chapter 411, Government Code.⁴³⁸

The effect of this change would be to exempt LTC holders from Section 46.03's location bans.⁴³⁹ However, this change would not prevent individual locations from implementing their own security protocols or excluding individuals for any reason.⁴⁴⁰ Property owners and managers would still retain control of their premises.⁴⁴¹ There simply would not be a statutory penalty for LTC holders who carry firearms in those locations (aside from a criminal trespass charge if they were discovered armed, asked to leave, and refused to do so).⁴⁴² And *secured* courthouses, jails, and schools could still be made statutorily off-limits to firearms.

Of course, Texas could also opt to admit armed LTC holders into secure locations after checking their credentials. Texas already does this quite effectively at the Texas State Capitol building, which has controlled security checkpoints manned by Texas State Troopers.⁴⁴³ When Texas LTC holders seek to enter the capitol building—whether for business or pleasure—they simply present their licenses to carry to a state trooper for verification and are allowed to bypass security.⁴⁴⁴ Especially with the heightened LTC standards proposed herein, there is no reason such a scheme could not be implemented even for sensitive and secure locations like schools and courthouses.

In addition to exempting LTC holders from Section 46.03's location bans, the Texas legislature should delete Texas Penal Code Section 30.06. This would remove the statutory prohibition on the licensed, concealed carry of firearms on posted private properties.⁴⁴⁵ Given the myriad exceptions and defenses in Section 30.06—and the fact that it is only “a Class C misdemeanor punishable by a fine not to exceed \$200”⁴⁴⁶—this statute is not much of a deterrent to LTC holders

438. This proposed statutory language is based on Texas Penal Code § 46.03(f). *See* TEX. PENAL CODE ANN. § 46.03(f).

439. TEX. PENAL CODE ANN. § 46.03.

440. *See* TEX. PENAL CODE ANN. §§ 30.05–.06 (describing criminal trespass laws).

441. *See id.*

442. *See id.*

443. *See supra* note 357.

444. *See* TEX. GOV'T CODE ANN. § 411.0625 (West 2023) (“Pass for Expedited Access to Capitol”).

445. *See* TEX. PENAL CODE ANN. § 30.06.

446. TEX. PENAL CODE ANN. § 30.06(d).

anyway.⁴⁴⁷ And Section 30.06 signs are obviously no deterrent to the armed criminal or active shooter.⁴⁴⁸ All Section 30.06 serves to accomplish is to make people more vulnerable to criminal violence in already vulnerable public places like department stores, shopping malls, and restaurants.⁴⁴⁹ And, of course, if an LTC holder drew attention to herself or was causing a disturbance, she could still be ordered to leave the property and prosecuted for criminal trespass if she refused.⁴⁵⁰ Furthermore, Section 30.05(c) (banning unlicensed carry [*i.e.*, constitutional carry] on posted properties) and Section 30.07 (banning licensed *open* carry on posted properties) would remain in effect.⁴⁵¹ This statutory change would only apply to trained, vetted LTC holders discretely carrying concealed handguns.⁴⁵²

These changes would not weaken other firearms laws in Texas. For example, it would remain a crime for an LTC holder to possess a firearm if prohibited by any other law—*e.g.*, if he was convicted of a felony or misdemeanor crime of domestic violence.⁴⁵³ It would likewise remain a crime for an LTC holder to negligently allow a child to access a loaded firearm.⁴⁵⁴

On the contrary, this Article advocates for strengthening certain aspects of Texas’s firearms laws—even in ways beyond heightened training and vetting requirements. Surprisingly, it is not a crime for an LTC holder to carry a loaded, concealed firearm while intoxicated or while committing another serious crime.⁴⁵⁵ Section 46.02(a-6) makes it a crime to carry a handgun while intoxicated, and Section 46.02(a-1)(2)(A) makes it a crime to carry a handgun in a vehicle while “engaged in criminal activity, other than a Class C misdemeanor that is a violation of a law or ordinance regulating traffic.”⁴⁵⁶ But neither of

447. See TEX. PENAL CODE ANN. § 30.06.

448. See *supra* note 354 and accompanying text. See *N.Y. State Rifle & Pistol Ass’n v. Bruen*, 142 S. Ct. 2111, 2157 (2022) (Alito, J., concurring) (“Does the dissent think that laws like New York’s prevent or deter such atrocities? Will a person bent on carrying out a mass shooting be stopped if he knows that it is illegal to carry a handgun . . . ?”).

449. See *supra* notes 354–55 and accompanying text.

450. See TEX. PENAL CODE ANN. § 30.05(a).

451. See TEX. PENAL CODE ANN. §§ 30.05(c), 30.07.

452. See TEX. PENAL CODE ANN. § 30.06.

453. See TEX. PENAL CODE ANN. § 46.04.

454. See TEX. PENAL CODE ANN. § 46.13.

455. TEX. PENAL CODE ANN. § 46.15(b)(6).

456. TEX. PENAL CODE ANN. §§ 46.02(a-1)(2)(A), (a-6). Section 46.02(a)(2)(A) also criminalizes the public possession of handguns by those under twenty-one years old.

these prohibitions apply if the person holds a license to carry.⁴⁵⁷ Licensed individuals should be held to a higher standard, not a lower standard. Texas should criminalize the possession of a firearm in public while intoxicated or while committing a Class A misdemeanor or above—whether or not the person is in a vehicle and whether or not the person has a license to carry.⁴⁵⁸ To whom much is given, much is required.⁴⁵⁹

Accordingly, after incentivizing Texas LTC holders with a more permissive carry environment and placing greater trust in them, the state also needs to ensure they are worthy of that trust. To do so, the Texas legislature should amend Chapter 411, Subchapter H of the Texas Government Code (*i.e.*, Sections 411.171 to 411.209) to bring LTC requirements more in line with the standards outlined in Section III.A.3. There is no need to reiterate those standards here. However, it is helpful to highlight a few specific places the legislature should amend the code to increase LTC standards.⁴⁶⁰

Subchapter H contains provisions addressing almost all the proposed standards outlined above.⁴⁶¹ For example, Section 411.172 outlines criteria related to criminal history and mental health, and Section 411.174 outlines basic application requirements (*e.g.*, photographs, affidavit, fingerprints, \$40 application fee).⁴⁶² Sections 411.183 and 411.185 address LTC expiration and renewal requirements.⁴⁶³ And Section 411.188 describes the training requirements.⁴⁶⁴

Although a federal district court recently enjoined Texas’s statutory scheme “to the extent that law-abiding 18-to-20-year-olds are prohibited from applying for a license to carry a handgun,” it arguably did not invalidate Section 46.02(a)(2)(A) as it applies to *unlicensed* individuals under twenty-one. *Firearms Pol’y Coal., Inc. v. McCraw*, 623 F. Supp. 3d 740, 745 (N.D. Tex.), *appeal dismissed sub nom. Andrews v. McCraw*, No. 22-10898, 2022 WL 19730492 (5th Cir. Dec. 21, 2022). This Article takes the position that Section 46.02(a)(2)(A) is still constitutional as applied to *unlicensed* individuals and argues it generally should be enforced—especially given the disproportionate number of violent crimes committed by young men under twenty-one. *See id.* at 753–54 (“[I]t is consistent with the Supreme Court’s reassurances to require Texas to provide 18-to-20-year-olds the opportunity to satisfy whatever nondiscretionary licensing restrictions Texas chooses.”).

457. TEX. PENAL CODE ANN. § 46.15(b)(6).

458. *See generally id.*; TEX. PENAL CODE ANN. §§ 46.02(a-1)(2)(A), (a-6).

459. Luke 12:48 (English Standard Version).

460. *See* TEX. GOV’T CODE ANN. §§ 411.171–.209 (West 2023).

461. *See id.*

462. *See* TEX. GOV’T CODE ANN. §§ 411.172, 411.174.

463. *See* TEX. GOV’T CODE ANN. §§ 411.183, 411.185.

464. *See* TEX. GOV’T CODE ANN. § 411.188.

Section 411.172 should be amended to make the criminal history and mental health background check requirements more demanding.⁴⁶⁵ Section 411.174 should require the submission of drug test results.⁴⁶⁶ Sections 411.183 and 411.185 should be amended to make LTCs renewable every four years, but only upon successful completion of abbreviated refresher training.⁴⁶⁷ Most importantly, Section 411.188 should be amended to significantly increase training requirements.⁴⁶⁸ In addition to adding enumerated topics to be taught and increasing the amount of required training to twenty-four hours, Texas should make the LTC live-fire qualification mirror those currently in place for Texas State Troopers or state-certified police firearms instructors.⁴⁶⁹

In sum, by amending only a few provisions of Texas law, Texas can implement this Article's bifurcated statutory scheme for concealed carry.⁴⁷⁰ Texas can keep its recently passed constitutional carry provisions, incentivize Texans to obtain LTCs by exempting them from location bans, and strengthen concealed carry laws to ensure more armed citizens are vetted, trained, and trustworthy.⁴⁷¹ The Texas legislature should do so immediately.

CONCLUSION

Bruen has fundamentally altered the legal landscape. Constitutional carry has fundamentally altered the public-policy landscape. To help their concealed carry laws account for both, states should adopt this Article's bifurcated statutory scheme.⁴⁷² States should restrict unlicensed carry in many public places, but states should permit *licensed* carry in all but a small number of secure sensitive locations.⁴⁷³ States should simultaneously enact more rigorous licensing standards, while keeping those standards "narrow, objective, and definite" to comply with *Bruen*.⁴⁷⁴

465. See TEX. GOV'T CODE ANN. § 411.172.

466. See TEX. GOV'T CODE ANN. § 411.174.

467. See TEX. GOV'T CODE ANN. §§ 411.183, 411.185.

468. See TEX. GOV'T CODE ANN. § 411.188.

469. See FIREARMS INSTRUCTOR CERTIFICATION, *supra* note 403; HANDGUN QUALIFICATION, *supra* note 403.

470. See discussion *supra* Section III.B.

471. See discussion *supra* Section III.B.

472. See *supra* Section III.A.

473. See *supra* Section III.A.

474. *N.Y. State Rifle & Pistol Ass'n v. Bruen*, 142 S. Ct. 2111, 2138 n.9 (2022).

By requiring a permit to carry in many public places, one of two situations will likely result: either (1) most citizens will undergo extensive training, education, and background checks and be able to carry concealed firearms in almost all locations; or (2) most citizens will decide the permit is not worth the effort and opt instead to carry sporadically or not at all, and they will remain legally barred from carrying firearms in many public locations.⁴⁷⁵ Either way is a victory for both gun control supporters and gun rights supporters.

In the first situation, gun control advocates can take solace in the fact that most citizens carrying firearms in public are doing so concealed, have undergone thorough government background checks, and are safe and proficient with their firearms.⁴⁷⁶ The number of people carrying firearms in public would not increase, but their training and vetting would.⁴⁷⁷ For those concerned about suicides, accidental gun deaths, and violent crime, requiring gun carriers to be screened and trained is a big win.⁴⁷⁸

Likewise, gun rights advocates can celebrate that—should they choose—they now can protect themselves and others in far more locations.⁴⁷⁹ No longer do they have to choose between not going to a particular location, risking their safety by leaving their firearm at home, or risking theft by leaving their firearm in their vehicle.⁴⁸⁰ No longer do they have to be inconvenienced by removing and replacing their concealed handgun a dozen times a day as they enter and exit prohibited locations.⁴⁸¹ Those who undertake significant training and vetting—a percentage of whom will be former military and law enforcement personnel anyway—will now be treated with a level of respect commensurate with their training, experience, and demonstrated character.⁴⁸²

In the second situation, gun control advocates can celebrate that they have dulled the effect of constitutional carry.⁴⁸³ For unlicensed carriers,

475. See generally CONCEALED CARRY PERMIT HOLDERS, *supra* note 122 (describing recent trends and interplay between permitting requirements and constitutional carry).

476. See *supra* Section III.A.3.

477. See *supra* Section III.A.3.

478. See sources cited *supra* notes 218–22 (discussing negative aspects of permissive shall-issue and constitutional carry laws).

479. See *supra* Section III.A.2.

480. See *supra* Section III.A.2.

481. See *supra* Section III.A.2.

482. See *supra* Section III.A.2.

483. See *supra* Section III.A.2.

the number of prohibited locations will be so numerous that most may rarely bother to carry a firearm.⁴⁸⁴ Most will opt to leave their handgun at home or perhaps locked in their vehicle's glovebox.⁴⁸⁵ For those opposed to concealed carry or private handgun ownership in general, fewer guns in public is a good thing.⁴⁸⁶ And, even if many still choose to wear a handgun under constitutional carry, their legal inability to carry inside bars, restaurants, schools, theaters, malls, stadiums, and other public locations reduces the likelihood of accidental discharges and helps gun-wary customers feel safer.⁴⁸⁷

Likewise, gun rights advocates can appreciate that they retain the right to carry a handgun under their state's constitutional carry statute.⁴⁸⁸ And—should they find the location restrictions too onerous—they always have the option of getting trained and acquiring the state permit available on a shall-issue basis.⁴⁸⁹

It is axiomatic that “with great power comes great responsibility.”⁴⁹⁰ Legally armed citizens have a responsibility to be tactically proficient, legally knowledgeable, and personally trustworthy.⁴⁹¹ But it might also be said that with greater responsibilities should come greater rights.⁴⁹² States should reward citizens who subject themselves to extensive training and vetting with more trust and a more permissive carry environment. This Article's statutory system represents the best compromise available to all parties concerned.⁴⁹³ Its bifurcated

484. See *supra* Section III.A.2.

485. See *supra* Section III.A.2.

486. See sources cited *supra* notes 219–22 (discussing negative aspects of permissive shall-issue and constitutional carry laws).

487. See generally sources cited *supra* notes 219–22 (discussing negative aspects of permissive shall-issue and constitutional carry laws).

488. See *supra* Section III.A.1 (advocating for retaining both licensed and unlicensed carry in constitutional carry states).

489. See *supra* Section III.A.3.

490. SPIDER-MAN (Columbia Pictures, Marvel Enterprises & Laura Ziskin Productions 2002). See Geoffrey S. Corn, *Corn: Military Knows, with Guns, Responsibility Comes First*, LUBBOCK AVALANCHE-J. (July 17, 2022), <https://www.lubbockonline.com/story/opinion/columns/2022/07/17/geoffrey-corn-military-knows-with-guns-responsibility-comes-first/65372908007/> [https://perma.cc/Y7TH-EKD6].

491. See *supra* note 419 and accompanying text.

492. Cf. *Near v. Minnesota*, 283 U.S. 697, 732 (1931) (discussing link between constitutional rights and individual responsibilities and “the greatest importance” of allowing states to “be untrammelled and free” in ensuring rights are exercised responsibly).

493. In a way, this Article's proposal blends the strict training and vetting requirements of left-leaning states with the more permissive carry environments (and

framework can be adopted by each of the twenty-nine constitutional carry states to ensure their laws comply with *Bruen*, respect Second Amendment rights, and incentivize citizens to voluntarily undergo extensive training and background checks before carrying a firearm.⁴⁹⁴ To modify a common gun rights refrain, the only thing that stops a bad guy with a gun, is a *competent* good guy with a gun.⁴⁹⁵ Thus, the more states can ensure that armed citizens truly are “competent” and “good,” the more safe and secure their communities will be.

constitutionally compliant sensitive-places definitions) of right-leaning states. The result will be a compromise that may be disliked by all but will work for everyone.

494. See *supra* Section III.A.

495. See David Yamane, *NC Gun Culture Expert: Why I’ve Never Liked the ‘Good Guy with a Gun’ Slogan*, CHARLOTTE OBSERVER, <https://www.charlotteobserver.com/opinion/article262529372.html> [https://perma.cc/7SHP-CPQX] (June 16, 2022, 10:16 AM) (“What if we define bad guys as those who acted imprudently? We could add individuals who were legally exonerated but nonetheless made poor decisions that led to deaths that could have been avoided.”).